THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC File No. 1312352
Appellate Case No. 2016-000258

Tyrone York, as personal representative
for Timothy York (Deceased), Shirley York,
and Yvonne Burns, Plaintiffs,

Of whom Yvonne Burns is the ..... Appellant,

And Shirley York is a ..... Respondent,

v.

Longlands Plantation a.k.a. Knollwood,
Inc., and Companion Property
and Casualty Group ..... Respondents.

INITIAL BRIEF OF RESPONDENT

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COUNTER-STATEMENT OF ISSUE ON APPEAL

Whether the Workers' Compensation Commission correctly held, consistent with controlling precedent, that an injured worker's unmarried romantic cohabitant is not a "dependent" under the Workers' Compensation Act.

STATEMENT OF THE CASE

This is a dispute over the proceeds of Timothy York's workers' compensation claim.

Timothy worked at Longlands Plantation until he drowned on August 26, 2013, after his boat capsized while he and a co-worker were spraying a pond. (APA pp.14-15) (Sheriff's Incident Report). He was 39 years old when he died. (APA p.17) (death certificate).

In September of 2013, the personal representative for Timothy's estate initiated a claim with the Workers' Compensation Commission by filing a Form 52, giving notice of a claim in a death case. (Form 52 of Sept. 11, 2013). The PR filed an additional Form 52 in February of 2014, requesting a hearing. (Form 52 of Feb. 18, 2014).

The parties with competing claims are Shirley York and Yvonne Burns. Shirley is Timothy's mother. Yvonne claimed to be Timothy's common law wife.

The case was tried over three days—June 5th, 18th, and 19th—in 2014. Seventeen witnesses testified. The total transcript exceeds 750 pages.

The parties discussed their arguments at the beginning of the trial. (June 5, Tr.pp.10-17). Yvonne claimed she was Timothy's common law wife and, alternatively, that she was nevertheless Timothy's "dependent" under the Worker's Compensation Act even though they were not married. (Id.p.12). Shirley said Yvonne was not Timothy's common law spouse and that Shirley was the sole beneficiary under the Act as Timothy's next of kin. (Id.pp.12-13). The hearing commissioner recited these arguments in her order. (James Or., p.2).

The hearing commissioner issued her final order on June 5, 2015; nearly a year after the trial concluded. The order is 73 pages long. It includes an extensive summary of the evidence, see (Id.pp.5-54), as well as 63 findings of fact, see (Id.pp.54-70), and a number of conclusions of law. (Id.p.70-73).

The hearing commissioner found there was no common law marriage. She found Timothy and Yvonne "lived together off and on in a tumultuous relationship characterized by separations resulting from either alcohol consumption or arguments regarding finances." (Id.p.55, ¶11). There was trial testimony that although Timothy often stayed at Yvonne's house, which she owned, Yvonne also threw Timothy out frequently and he would stay with friends, sometimes for 5 to 7 days at a time. (Jun. 5 Tr.pp.251-52; pp.293-94; pp.335-36). The hearing commissioner cited this testimony in her order. (James Or.pp.11, 13, 17). There was also conflicting testimony about whether Timothy and Yvonne planned to get married. Yvonne and some of her witnesses claimed they did. Timothy's witnesses disputed this.

The order's analysis on the dependency argument spans several pages. (Id.pp.62-68).

The hearing commissioner rejected Yvonne's dependency argument by relying on precedent. The commissioner explained that both Shirley and Yvonne had some degree of financial dependence on Timothy. (James Or.pp.62-63, ¶¶37-39). Indeed, the hearing commissioner found Yvonne's level of dependency was greater. *Id.* But this did not control the outcome; the hearing commissioner cited the Supreme Court's decision in *Day v. Day*, which holds that the legislature did not intend to permit a woman to be classified as a dependent under the Workers' Compensation Act when she lives in an illicit relationship with a man to whom she is not legally married. (Id.p.67, ¶53).

The hearing commissioner cited other things as well. She viewed a North Carolina case with a similar holding as persuasive, see (Id.p.67, ¶54), and she noted South Carolina still has a statutory prohibition against "fornication." See (Id.p.68, ¶56). That said, the order explicitly instructs that the Supreme Court's decision in *Day* "is dispositive." (Id.p.67, ¶53). The order cited many things, but it also recites that *Day* controlled.

The commission's appellate panel affirmed. Yvonne asked the commission to review the hearing commissioner's order and the panel heard the case in September of 2015. In January of 2016, the panel issued an order that closely resembled the hearing commissioner's decision, with no noteworthy variances. (Panel Or.pp.1-73).

ARGUMENT

This case is not about statutes penalizing fornication or adultery. It is also not about North Carolina law or impairing anyone's freedom to engage in intimate conduct. It is, however, about a ruling that is supported by the evidence and that follows settled law.

Two longstanding precedents hold that the legislature did not intend to include an unmarried cohabitant as a "dependent" under the Workers' Compensation Act. These precedents control this case. They are not distinguishable in any way that matters.

The legislature's prolonged silence suggests the Court should continue following these precedents. And even if the Court was writing on a blank slate, which it is not, there are significant risks to a contrary holding: Opening up the status of "dependent" to non-relatives creates an opportunity to dilute the meager benefits payable to loved ones by inviting dishonest claims from people the law regards as strangers. The better view is to follow precedent. This Court should affirm.

A. This case is controlled by *Day v. Day* and *Palm v. General Painting Co.* "Dependent" does not include an injured worker's unmarried romantic cohabitant.

When someone dies as the result of an on-the-job injury, the death benefit must be divided among the injured worker's dependents. S.C. Code Ann. § 42-9-290 (2015). When there are no dependents, the benefit goes first to the decedent's nondependent children, and if there are none, to the decedent's mother and father. S.C. Code Ann. § 42-9-140 (2015).

The Code does not define "dependent." One statute lists the persons who are conclusively presumed to be dependents: the decedent's surviving spouse and "child." S.C. Code Ann. § 42-9-110 (2015). "Child" is separately defined. S.C. Code Ann. § 42-1-70 (2015). The final relevant statute is section 42-9-120 (2015), which explains "[i]n all other cases questions of dependency, in whole or in part, shall be determined in accordance with the facts as the facts may be found at the time of the accident[.]"

Yvonne's dependency argument is the same argument the Supreme Court considered in *Day v. Day*. As Yvonne did here, the *Day* appellant claimed benefits first as the injured worker's widow, and alternatively, as a non-spousal dependent. 216 S.C. 334, 336, 58 S.E.2d 83, 84 (1950). In support of her argument, the *Day* appellant pointed to the same statutory language; the language instructing that dependency should be determined "[i]n all other cases"—meaning, cases where the person claiming to be a dependent is not a surviving spouse or child—"based on the facts." *Day*'s language recites this argument explicitly. *Id.* at 341, 58 S.E.2d at 86.

The Supreme Court rejected this argument, explaining "we cannot escape the conclusion that it was not the intention of the legislature to permit a woman to be classed and

considered as a dependent within the meaning of our Compensation Act who lives in illicit relationship with a man to whom she is not legally married." *Id.* at 345, 58 S.E.2d at 88. The Court finished by reciting its view that if the legislature had intended to include such a relationship as constituting a basis for dependency, the legislature would have made an express provision to that effect in the relevant statutes. *Id.* at 345, 58 S.E.2d at 88.

Several things are noteworthy about *Day* beyond the case's holding. First, the record showed "beyond question" that the appellant was dependent on the deceased worker. *Id.* at 341, 58 S.E.2d at 86. Second, the Court recited that the facts of the case appealed "strongly" to the Court's sympathy on behalf of the appealing party, who genuinely believed she was married to the decedent. *Id.* at 344, 58 S.E.2d at 88. In spite of having these things in her favor, the appealing party nevertheless lost her claim to dependency. Unanimously.

The facts are not as favorable to Yvonne. Yvonne owns her own home, has a job, and appears to be able-bodied. (Panel Or.p.39). She also has no good faith claim to a marital relationship—the commission said that at best, Yvonne and Timothy *may* have planned to get married at some point in the future. (Id.p.55, ¶11). The commission did not view as credible Yvonne's contention that the wedding was set to occur the week after Timothy died; specifically noting Yvonne never told her son about any upcoming wedding, no invitations were sent, and there were no plans for any sort of celebration. (Id.pp.59-61, ¶29). The commission recited that Timothy's mother, brother, other family and friends were unaware of any wedding *or any engagement*. (Id.p.55, ¶13). Yvonne's story seemed dubious.

Yvonne's argument is also the same argument this Court rejected in *Palm v. General Painting Co.* See 296 S.C. 41, 370 S.E.2d 463 (Ct. App. 1988). As in *Day*, the cohabitant

in *Palm* was found to be wholly dependent on the injured worker while at the same time, she was married to another person. *Id.* at 43, 370 S.E.2d at 464. There is at least one material difference between *Palm* and *Day* that has relevance here: The *Day* appellant believed herself married to the decedent, but the woman in *Palm* did not claim she was a spouse. *Id.* at 49, 370 S.E.2d at 468. *Palm* relies heavily on *Day*, and this Court explained if "dependent" does not include someone with a good faith but mistaken belief of marriage, it obviously does not include someone who knowingly cohabits while not married. *Id.* at 49-50, 370 S.E.2d at 468.

There are no material differences between these cases and the present case. There are factual differences of course: *Day* and *Palm* both involve marriages that would have been bigamous because one of the cohabitants was married to someone other than their roommate, but the controlling legal principle is not distinguishable. Unmarried cohabitants are not "dependents" under the Workers' Compensation Act. There is no claim of bigamy here, but there is still an impediment to this marriage: The commission found Yvonne and Timothy were not married at common law, which means, as *Callen v. Callen* explains, Timothy and Yvonne did not intend to secure themselves in a "legally binding" relationship. 365 S.C. 618, 626, 620 S.E.2d 59, 63 (2005). As the Supreme Court explained in *Callen*, "South Carolina does not impose marriage upon a couple," even if the couple intends to be together forever. *Id.* at 626, 620 S.E.2d at 63. *Day* and *Palm* follow this same principle and control.

B. The legislature's prolonged silence suggests this Court should continue following these precedents.

The Supreme Court has explained that the doctrine of *stare decesis* is especially important to challenges concerning the judicial construction of statutes and determinations

about the legislature's intent. *Wehle v. South Carolina Retirement System*, 363 S.C. 394, 402, 611 S.E.2d 240, 244 (2005). A recent application of this principle to the Workers' Compensation Act occurred in *Wigfall v. Tidelands Utilities*; a challenge to an earlier Supreme Court decision about the different methods an injured worker may use to establish total disability.

In rejecting that challenge in *Wigfall*, the Supreme Court specifically noted the legislature's 40 years of inactivity since the court decided the precedent in question. The court explained "[t]he Legislature is presumed to be aware of this Court's interpretation of its statutes[,]" and that "[w]hen the Legislature fails over a forty-year period to alter a statute, its inaction is evidence the Legislature agrees with this Court's interpretation." 354 S.C. 100, 111, 580 S.E.2d 100, 105 (2003).

The same principle applies to the present case. In the 66 years since the Supreme Court decided *Day*, there has been precisely one (1) amendment to the statutes discussing dependency. Act No. 92 of 1983 substituted "surviving spouse" in section 42-9-110 for "widow or widower." 1983 S.C. Acts 189, 190. There have been no amendments to the "in all other cases" statute; section 42-9-120. This silence is particularly noteworthy given that both *Day* and *Palm* looked to the legislature to tell the court if the court was reading the statute incorrectly. *Palm*, 296 S.C. at 50, 370 S.E.2d at 468; *Day*, 216 S.C. at 345, 58 S.E.2d at 88. It is also noteworthy to consider *Palm*'s rationale: *Palm* was not based on the idea that the romantic relationship was illegal. Instead it reasoned that if "dependent" did not cover someone who had a good faith belief of marriage, it surely did not cover someone who knowingly cohabits while not married. *Id.* at 50, 370 S.E.2d at 468.

C. Even if the Court was writing on a blank slate, and it is not, the better view is the one articulated by precedent.

California cases contain helpful articulations of the reason for holding as Yvonne would have this Court hold. There *was* a time when the law imposed criminal liability for adultery and other intimate conduct, and when California considered this dependency issue in 1979, it noted a previous decision observing "the prevalence of nonmarital relationships in modern society and the social acceptance of them." *Dep't of Indus. Relations v. Workers' Comp. Appeals Bd.*, 156 Cal. Rptr. 183, 186 (Cal. Ct. App. 1979) (quoting *Marvin v. Marvin*, 557 P.2d 106, 122 (Cal. 1976)). The court believed this justified California abandoning a rule that—in the court's view—improperly equated all nonmarital cohabitation with prostitution. The court said "[t]he mores of the society have indeed changed so radically in regard to cohabitation that we cannot impose a standard based on alleged moral considerations that have apparently been so widely abandoned by so many." *Id.*

There are strong counter-arguments to this reasoning, moral judgments aside.

We might begin by noting the Workers' Compensation Act's goal of preventing "the injured employee and those *lawfully* dependent on them for support from becoming charges on society." *Hines v. Hendricks Canning Co.*, 263 S.C. 399, 406, 211 S.E.2d 220, 223 (1975) (emphasis added). Yvonne could not have divorced Timothy or sued him for separate maintenance or support. In the eyes of the law, Yvonne and Timothy were strangers. Unwed cohabitants have been barred from benefits such as underinsured motorist coverage. *Bell v. Progressive*, 407 S.C. 565, 757 S.E.2d 399 (2014). It is not surprising that precedent involving other benefits like workers' compensation benefits would follow a similar rule.

Timing also hurts this argument's persuasiveness. California announced its decision in 1979. This was after the South Carolina Supreme Court decided *Day* but before this Court decided *Palm*. It was also before the legislature amended the dependency statutes in 1983. *Palm* explained this Court was already "well aware of cases elsewhere" that supported someone like Yvonne's right to recover, yet this Court nevertheless held if "dependent" does not include someone with a good faith but mistaken belief of marriage, it obviously does not include someone who knowingly cohabits while not married. *Id.* at 49-50, 370 S.E.2d at 468. Yvonne's argument has already been litigated and rejected.

Then there is Indiana's experience, which provides useful insight. After the Indiana court followed the same approach as California, the Indiana legislature changed the law to explain that a common law wife would not qualify as a dependent unless the common law marriage had been open and notorious for at least 5 years. *Guevara v. Inland Steel Co.*, 88 N.E.2d 398, 401 (Ind. Ct. App. 1949). Indiana law now limits total or partial dependents to persons related to the decedent by blood or marriage. Ind. Code Ann. § 22-3-3-20.

Day articulates the reason the law views these relationships skeptically—people who consciously living together in a nonmarital relationship may endeavor to take advantage of the situation for their own gain. 216 S.C. at 345, 58 S.E.2d at 88. People who cohabit and do not marry may have any number of reasons for doing so, but one of the foremost would seem to be an unwillingness to assume the obligations associated with marriage. If the parties wanted to assume those obligations, they would have gotten married.

Sure, there is broad language in *Day* defining dependency and it does not expressly limit dependency to relatives. *Id.* at 342, 58 S.E.2d at 87. Yet, in the six decades since *Day*,

there are no decisions recognizing dependency outside the relational context. The dependent in *Adams v. Texfli Industries* was a stepchild. 341 S.C. 401, 535 S.E.2d 124 (2000). The dependent in *Second Injury Fund v. Young* was an adult niece who was entirely dependent on the decedent; she quit work because of poor health, and the record reflects that her uncle told her he would take care of her. 301 S.C. 524, 528, 392 S.E.2d 807, 810 (Ct. App. 1990). If the legislature intended the sort of relationship at issue to come within the ambit of dependency, it would have broadened the statute's language after *Day* and *Palm*. It did not.

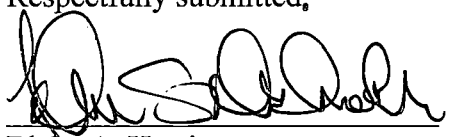
This is the correct result. Yvonne may have "depended" on Timothy in the technical sense of that term, but not as the term is used in the Worker's Compensation Act. Dependency means relying on someone for the basic necessities of life. *Day*, 216 S.C. at 342, 58 S.E.2d at 87. Yvonne has a job and owns her own home. (Panel Or.p.39). She said Timothy bought a television and the couple bought furniture together, but pooling resources for luxuries is not dependency. Timothy's mother had an insurance policy covering the funeral expenses. (June 5 Tr.pp.162-63). Yvonne did not. Timothy's brother, not Yvonne, applied to handle Timothy's estate; a significant point because Timothy had no assets but he *did* have debts. (Id.p.177). Tax returns indicate Timothy had no dependents. (APA pp.40-42). Yvonne's 2012 return indicates noone could claim her as a dependent. (APA p.30).

There is a reason the law treats marriage differently. Marriage necessarily involves mutual recognition of partnership and support. It is not a criticism of nonmarital cohabitation to say that when cohabitants elect not to marry, the law presumes they do not intend the partnership and dependency marriage involves. That is their choice. The law wisely honors that choice, before death and after.

CONCLUSION

Precedent holds that the legislature did not intend to include an unmarried cohabitant as a "dependent" under the Workers' Compensation Act. This Court should affirm.

Respectfully submitted,



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APPELLATE PANEL, WORKERS' COMPENSATION COMMISSION

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and

Shirley York is a ..... Respondent,

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PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel with a copy of the *Initial Brief of Respondent Shirley York* and *Designation of Matter to be Included in the Record on Appeal* by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

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VIA HAND DELIVERY

The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: Timothy York v. Longlands Plantation
Case Tracking No.: 2016-000258

Dear Ms. Kitchings:

Please find enclosed for filing the original and one (1) copy of the Initial Brief of Respondent Shirley York and Designation of Matter to be Included in the Record on Appeal in reference to the above matter. I have also enclosed a Proof of Service upon counsel of record. Please return the additional filed copies to me via our courier.

Thank you for your attention to this mater. If you need any additional information, please do not hesitate to contact me.

Sincerely,

Erin Bridges

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