

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

Case No.: 2016-000509

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SC Court of Appeals

Susie Henley, Employee,

v.

Otis Spunkmeyer, Employer, and Trumbull Insurance Company
c/o The Hartford, Carrier,

Respondents.

Ex Parte: David Henley,

Appellant,

And

Jeannette Padgett, Joel Padgett, and Maurice Padgett,

Respondents.

INITIAL BRIEF OF RESPONDENTS JEANNETTE PADGETT, JOEL PADGETT, AND
MAURICE PADGETT

TINSLEY & TINSLEY, P.C.
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STATEMENT OF ISSUES ON APPEAL

- I. WHETHER SUBSTANTIAL EVIDENCE SUPPORTS THE APPELLATE PANEL'S RULING THAT DAVID HENLEY DOES NOT QUALIFY AS SUSIE HENLEY'S SURVIVING SPOUSE PURSUANT TO S.C. CODE ANN. §42-1-175.
- II. WHETHER SUBSTANTIAL EVIDENCE SUPPORTS THE APPELLATE PANEL'S RULING THAT DAVID HENLEY WAS NOT WHOLLY OR PARTIALLY DEPENDENT UPON SUSIE HENLEY PRIOR TO HER DEATH.

STATEMENT OF CASE

Respondents Jeannette, Joel, and Maurice Padgett (“the Padgetts”) accept the statement of the case submitted by Appellant David Henley (“David”) with the addition that the Appellate Panel of the Workers’ Compensation Commission (“Appellate Panel”) scheduled a hearing November 17, 2015, for David’s appeal but proceeded without oral argument when neither David nor his counsel appeared at the scheduled time.

FACTS

Susie Henley (“Susie”) lived alone when she died in 2012. (Tr. p. 26, l. 23 – p. 27, l. 4; APA p. 4) She married George Williams (“Williams”) in July 1988. (Tr. p. 121, ll. 14-19.) He filed legal separation papers against Susie in 1989, and the family court issued a temporary order on Jan. 9, 1990, that allowed Williams to live separate and apart from Susie. (APA pp. 26-28.) Williams claimed the parties separated because Susie deserted him and committed adultery, but the family court order did not mention adultery or desertion. (Tr. p. 121, l. 24 – p. 122, l. 25; p. 126, ll. 8-11; p. 127, ll. 2-9; p. 132, l. 23 – p. 133, l. 25; p. 136 l. 17 – p. 137, l. 25; APA pp. 26-28.) During the hearing, Williams admitted that he did not live with Susie at the time of her death, never divorced Susie, was not dependent on her, and had been living with another woman

as his purported wife for twelve years. (Tr. p. 127, ll. 16-24; p. 129, l. 24 – p. 131, l. 9; p. 132, ll. 2-6; p. 134, l. 22 – p. 135, l. 3; p. 136, ll. 5-7.) The dependency investigation revealed no divorce decree between Williams and Susie after searching the records at various clerk of court's offices. (Tr. p. 21, l. 17 – p. 22, l. 8; APA pp. 25, 29.)

Despite her existing marriage, Susie and David engaged in a marriage ceremony and applied for a marriage license on March 1, 2010, in Lexington County. (APA p. 12.) Susie and David separated, though, at least one year prior to her death and never resumed living together. (Tr. p. 13, ll. 15-19; p. 17, ll. 2-8; APA pp. 2, 4-5, 8.) David testified he and Susie separated because of problems related to financial issues. (Tr. p. 19, l. 21 – p. 20 l. 7; APA p. 20.) When they separated, David left their residence and moved to Saluda. (Tr. p. 47, ll. 8-9; p. 74, l. 20 – p. 75, l. 1.)

The testimony indicated that through the years Susie would oftentimes provide money and help pay bills for her adult children, the Padgetts.¹ (Tr. p. 61, l. 22 – p. 62, l. 2; p. 77, ll. 1-24; p. 93, ll. 2-24; p. 111, l. 16 – p. 112, l. 10.) The Padgetts would also periodically live with Susie, but none were living with her at the time of her death. (Tr. p. 46, ll. 3-9; p. 84, ll. 1-3, p. 112, ll. 20-23.)

Susie would also sometimes assist Jeannette Padgett with raising Jeannette's minor children by providing them with clothing and shoes and paying bills for Jeannette. (Tr. 80:15 – 82:5.) While Jeannette and the grandchildren had previously lived with Susie, they did not live with Susie at the time of her death, and Susie had never had custody of her grandchildren. (Tr. p. 84, ll. 4-8; p. 85, ll. 11-20.) Susie lived alone in an apartment on Broad River Road in the Columbia area when she died. (Tr. p. 76, ll. 11-13.)

¹ Neither Williams nor David are the father of the Padgetts.

STANDARD OF REVIEW

In reviewing a decision from the S.C. Workers' Compensation Commission, the Commission is the ultimate fact-finder in workers' compensation cases, and therefore the findings of the Commission are presumed correct and will not be set aside unless they are unsupported by substantial evidence in the record. Holmes v. Nat'l Serv. Indus., Inc., 395 S.C. 305, 308-09, 717 S.E.2d 751, 752 (2011).

“Substantial evidence is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action.”

Thomas v. 5 Star Transp., 412 S.C. 1, 770 S.E.2d 183, 187 (Ct. App. 2015); Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (internal quotation marks omitted). Whenever evidence conflicts, either in testimony given by different witnesses or in the testimony of the same witness, the Commission's findings of fact are conclusive. Anderson v. Baptist Med. Ctr., 343 S.C. 487, 492-93, 541 S.E.2d 526 (2001). “The Appellate Panel's decision must be affirmed if supported by substantial evidence in the record.” Thomas at ___, 770 S.E.2d at 187; Shuler v. Gregory Elec., 366 S.C. 435, 440, 622 S.E.2d 569, 571 (Ct. App. 2005).

The determination of the existence of a common-law marriage is a question of fact for the Appellate Panel. Thomas at ___, 770 S.E.2d at 189 (internal citations omitted). When the evidence is conflicting over a factual issue, the findings of the Appellate Panel are conclusive.

Id.

ARGUMENT

I. SUBSTANTIAL EVIDENCE SUPPORTS THE APPELLATE PANEL'S RULING THAT DAVID DID NOT QUALIFY AS SUSIE'S SURVIVING SPOUSE PURSUANT TO S.C. CODE ANN. §42-1-175.

The South Carolina Workers' Compensation Law defines a surviving spouse as "only the decedent's wife or husband living with or dependent for support upon the decedent at the time of the decedent's death or living apart from the decedent for justifiable cause or by reason of desertion by the decedent at such time." S.C. Code Ann. § 42-1-175 (1985). A surviving spouse is presumed to be wholly dependent and thus entitled to the decedent's full workers' compensation benefits. §§ 42-9-110 and -290. If the decedent does not have a surviving spouse, then anyone dependent upon the decedent receives the benefits. § 42-9-120 and -290. If the decedent leaves no dependents then the decedent's non-dependent adult children receive the benefits. § 42-9-140.

A. David and Susie had an impediment that prevented their marriage.

Thomas presents the issue of whether a party qualifies as a surviving spouse where the decedent was already married when he entered into the marriage with the party claiming to be a surviving spouse. In Thomas, the decedent told his second wife a day or two prior to their marriage ceremony that he was divorced from his first wife. Thomas at ____, 770 S.E.2d at 186. The divorce from the first wife, however, did not become final until almost five months after the decedent married the second wife but while the decedent was still alive. Id. The court of appeals determined that no common-law marriage existed in Thomas. Id. at ____, 770 S.E.2d at 191. The court made this ruling because the evidence did not show that the decedent and the second wife intended to enter a new contract of marriage once the impediment to the marriage was removed with the first wife's divorce from the decedent. Id. The Court reasoned that the second wife

could not have considered the removal of the impediment and then decided to enter into another contract of marriage because she never knew he was still married at the time of their marriage ceremony until after he died. Id.

Similarly, Susie and David had an impediment at the time they purported to marry because Susie was still married to Williams. Unlike in Thomas, the impediment in the present case was never removed because Susie was still married to Williams when she died.

B. The good-faith exception does not apply to David and Susie's marriage.

The court in Thomas, however, upheld the Appellate Panel's finding that the second wife was the surviving spouse entitled to benefits pursuant to the good faith exception. Id. at ___, 770 S.E.2d at 192. The court described the requirements of the good-faith exception:

If a man and woman enter into a contract of marriage believing in good faith that they are capable of entering into the relation notwithstanding a former marriage, when, in fact, the marriage is still of force, and after the removal of the obstacle of the former marriage the parties continue the relation and hold themselves out as man and wife, such action constitutes them man and wife from the date of the removal of the obstacle.

Id. at ___, 770 S.E.2d at 191 (quoting Davis v. Whitlock, 90 S.C. 233, 246, 73 S.E.2d 171, 175 (1911)). In Thomas, the court found the husband believed in good faith that he was divorced from his first wife when he entered into the marriage with his second wife. Id. at ___, 770 S.E.2d at 192. The court found that they continued to act as husband and wife after the decedent's marriage to the first wife ended in divorce so the second wife qualified as the surviving spouse pursuant to the good faith exception once the impediment to marriage was removed by the first wife's divorce from the decedent. Id.

In the present case, David was not Susie's husband after they held their marriage ceremony because they had an illegal bigamous marriage with Susie still married to Williams. See Id. at ___, 770 S.E.2d at 190 (internal citation omitted). The good faith exception does not

apply to David because, unlike in Thomas, the impediment to David's marriage to Susie was never removed. Susie's marriage to Williams never ended during her life. (Tr. p. 21, l. 17 – p. 22, l. 8, APA pp. 25, 29.)

Also, no evidence in the case shows Susie entered into the purported marriage with David with a good-faith belief she was divorced from Williams and thus free to marry. David relies on other people's testimony that they believed Susie was divorced from Williams, but the only person who testified that Susie ever actually said she was divorced from Williams was David. (App. Brief pp. 12-13.) The record, on the other hand, supports the position that Susie knew her divorce from Williams was not final when she agreed to marry David because she had been present and represented by counsel at the temporary hearing in the divorce proceeding, which resulted in an order that was only temporary rather than a divorce decree ending the marriage. (APA pp. 26-28.) Given the lack of these two elements, the good faith exception does not apply to this case so David does not qualify as Susie's surviving spouse.

David's reliance on Bowlin v. Bowlin, 285 S.E.2d 273 (N.C. Ct. App. 1981), to argue a good-faith exception is misplaced because in that case no evidence suggested the decedent was involved in his divorce case that did not end in divorce. Thomas at ___, 770 S.E.2d at 191-92. In that case, the decedent ripped up the papers he received from his first wife's lawyer and told a disinterested witness that he was divorced before marrying his second wife. Id. at ___, 770 S.E.2d at 191. In this case, Susie participated in the incomplete divorce case by appearing with counsel at a hearing that did not result in divorce, and the only person who testified to hearing her say she was divorced was David. Thus, the evidence does not support the proposition that she entered the marriage to David with a good-faith belief that she was divorced and free to marry. Also unlike in the other cases cited, the impediment to Susie's marriage to David was

never removed during her lifetime so the good-faith exception cannot make David a surviving spouse based on her marriage to Williams ending upon her death.

C. David was separated from Susie without justifiable cause.

Even assuming, arguendo, David was Susie's husband at the time of her death, he still would not qualify as her statutory surviving spouse because he was separated from her without justifiable cause.

The statute allows a separated spouse from the decedent to qualify as a surviving spouse if the separated spouse was "living apart from the decedent for justifiable cause." § 42-1-175. Young v. Hyman Motors, Inc., 199 S.C. 233, 19 S.E.2d 109 (1942), sheds light on what constitutes justifiable cause for living separate and apart from a spouse. That case, decided under an earlier statute, found that a woman was not living apart from her husband for justifiable cause when the evidence showed that she moved away from her husband to take a job elsewhere after they allegedly had some financial problems. Id. at 236, 240-41, 19 S.E.2d at 110, 112. Based upon Young, voluntarily leaving a spouse does not constitute justifiable cause so voluntarily leaving would disqualify someone from being a surviving spouse. Id.

In the present case, David testified he and Susie separated because of arguments and financial problems but planned to get back together. (Tr. p. 51, ll. 12-24; APA p. 20.) David mistakenly asserts that his testimony regarding their plans to get back together after a year is the only evidence on that point in the record. (App. Brief p. 14.) Neither Susie nor David told Jeannette or Joel Padgett that she planned to move back in with David a year after their separation. (Tr. p. 82, ll. 11-22, p. 109, ll. 17-24.) A disinterested person, Susie's sister Annie Buckett, told the dependency investigator that Susie planned to file a divorce action against

David. (APA p. 5.) David's voluntary separation from Susie does not constitute justifiable cause under the surviving spouse statute pursuant to the precedent laid out in Young.

David, therefore, does not meet the statutory definition of surviving spouse and is not entitled to the accompanying presumption of dependency.

II. SUBSTANTIAL EVIDENCE SUPPORTS THE APPELLATE PANEL'S SPECIFIC FINDING THAT DAVID WAS NOT WHOLLY OR PARTIALLY DEPENDENT UPON SUSIE AT THE TIME OF HER DEATH.

When no one meets the statutory criteria to be presumed dependent, the commission must determine if anyone was wholly or partially dependent on the decedent for at least three months prior to her death as that person would be entitled to all or some of the benefits. §§ 42-9-120, -130, and -290. "Stated generally, a dependent is one who looks to another for support and maintenance; one who is in fact dependent—one who relies on another for the reasonable necessities of life." Adams v. Texfi Industries, 320 S.C. 213, 217, 464 S.E.2d 109, 112 (1995) (quoting Day v. Day, 216 S.C. 334, 342, 58 S.E.2d 83, 86-87 (1950)). After remand in that case, the court of appeals determined that decedent's step-child did not qualify as a dependent where the step-child claimed the decedent provided the step-child with "medical insurance, braces, household utilities, groceries, car expenses, payment of indebtedness on the family home, clothing, summer camp, and other usual family support." Adams v. Texfi Industries, 330 S.C. 305, 310, 498 S.E.2d 885 (Ct. App. 1998). The Court overturned the Appellate Panel's finding of dependency because the only evidence that the decedent paid all of these things for the step-child was the step-child's mother's self-serving testimony. Also, the court stated "we are unconvinced that payments for braces, summer camp, and car expenses, even if made would constitute 'reasonable necessities of life.'" Id.

Similarly in the case at bar, David cannot produce evidence that he depended on Susie for the reasonable necessities of life for three months prior to her death. He claims dependency because Susie shared bills with him, washed his clothes, cooked his food, bought and delivered his groceries, maintained him on her health insurance policy, and engaged in sexual relations. (Tr. p. 48, ll. 10-19; p. 49, ll. 6-9, 20-23; p. 54, ll. 8-18.) David did not provide copies of any bills that they shared to show he relied upon Susie to pay bills for him. He testified that he would give Susie money towards bills, which shows he was not dependent upon her for the necessities for life. (Tr. p. 54, ll. 10-24.) He also paid her for his portion of the health insurance premium. (Tr. p. 54, l. 25 – p. 55, l. 4.) His testimony regarding sexual relations and washing clothes is self-serving with no verification, and he did not mention these things when questioned by the dependency investigator. (Tr. p. 20, ll. 4-7; APA pp. 1-2, 20.) Susie and her children did sometimes buy and deliver groceries for David. (Tr. p. 48, ll. 14-23; p. 84, ll. 14-20; p. 99, ll. 9-20.) The record shows Susie was not always the one to purchase the groceries for David as sometimes Jeannette or Joel Padgett paid for the groceries. (Tr. p. 84, ll. 14-20; p. 99, ll. 13-20.) The record only supports that Susie and David sometimes bought groceries for each other, and Susie sometimes took David groceries. This assistance does not rise to the level of making David a statutory dependent of Susie.

The Appellate Panel's order was specific and definite enough regarding the fact that David was not wholly or partially dependent upon Susie. The Appellate Panel found "[Susie] left no dependents in this matter." (Appellate Panel Order p. 20, ¶ 12.) The Appellate Panel, thus, clearly found that David was not wholly or partially dependent on Susie. This finding is definite enough so that the appellate court can review the record to see whether substantial evidence supports the Appellate Panel's finding so remand is not necessary or appropriate. See

Nettles v. Spartanburg Sch. Dist. 7, 341 S.C. 580, 590, 535 S.E.2d 146, 151 (Ct. App. 2000).

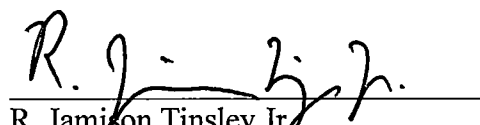
Just because the Appellate Panel articulated its reasoning as to why the Padgetts and Susie's grandchildren did not qualify as dependents and did not specifically articulate why David did not qualify, it does not negate that the Appellate Panel made a clear finding that David did not qualify as a dependent.

Substantial evidence in the record, therefore, supports the finding that David does not qualify as a dependent entitled to benefits.

CONCLUSION

Substantial evidence supports the Appellate Panel's finding that Susie did not have a surviving spouse or any dependents so the Padgetts are the proper beneficiaries as Susie's non-dependent children pursuant to section 42-9-140(a). The Court should, therefore, affirm the Appellate Panel's order.

Respectfully submitted,


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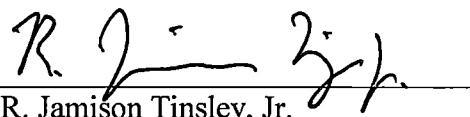
Otis Spunkmeyer, Employer and Trumbull Insurance Company
c/o The Hartford, Carrier,

Respondents

PROOF OF SERVICE

I certify that I have served Initial Brief Of Respondents Jeannette Padgett, Joel Padgett, And Maurice Padgett and Designation Of Matter on South Carolina Court of Appeals, counsel for the Respondents, Otis Spunkmeyer and Trumbull Insurance Company, and counsel for Appellant, by depositing a copy of it in the United States Mail, postage pre-paid, on November 4, 2016, addressed to South Carolina Court of Appeals at Post Office Box 11629 Columbia, South Carolina 29211, Helen F. Hiser, Esquire, at Post Office Box 650007, Mount Pleasant, South Carolina 29465, and Joyce Farr Cheeks, Esquire, at Post Office Box 881, Columbia, South Carolina 29201.

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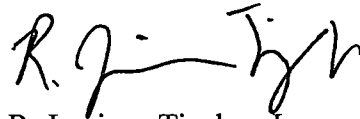
re: Appellate Case No.: 2016-000509

Dear Court of Appeals:

Enclosed please find Initial Brief of Respondents Jeannette Padgett, Joel Padgett, and Maurice Padgett and Designation Of Matter in the above-referenced case along with Proof of Service for filing.

Please contact me should you have questions or concerns.

Yours truly,

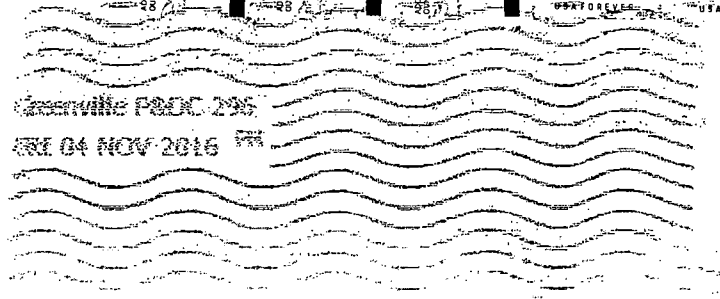
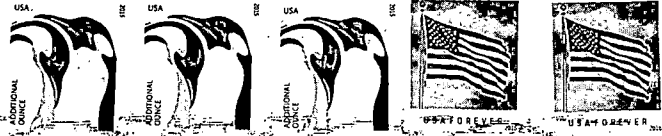
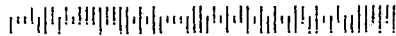


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