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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

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

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JUN 21 2018

SC Court of Appeals

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.

PETITION FOR REHEARING

This petition is filed pursuant to Rules 221 and 240 of the South Carolina Appellate Court Rules. Rule 221 governs petitions for rehearing. Rule 240 governs motions and petitions generally.

The Court issued its decision June 6, 2018. See Op. No. 5566 (Shearouse Adv. Sh. No. 23 at 43). This petition is timely under Rule 221(a).

Shirley York respectfully resubmits the arguments from her brief. She additionally submits the Court may have overlooked or misapprehended these points in its decision:

First, the Court may have overlooked that this case is not about intimate conduct between adults. This case is controlled by the legal question of whether an unmarried romantic cohabitant can be a “dependent” under the Workers’ Compensation Act. At least on this record, the answer is plainly “no.”

Second, there is no reason to prolong this litigation instead of answering this legal question and ending the parties’ disagreement. *Day v. Day* and *Palm v. General Painting Co.* stand for the proposition that dependency under the Act does not include someone who cohabits while not married. *Day*, 216 S.C. 334, 58 S.E.2d 83 (1950); *Palm*, 296 S.C. 41, 370 S.E.2d 463 (Ct. App. 1988). No South Carolina case has ever recognized dependency under the Act outside the context of a familial relationship. *Adams v. Texfli Industries*, 341 S.C. 401, 535 S.E.2d 124 (2000) (stepchild); *Second Injury Fund v. Young*, 301 S.C. 524, 392 S.E.2d 807 (Ct. App. 1990) (adult niece). *Day* and *Palm* rest on the assumption that if the legislature intended to include this sort of relationship as a basis for dependency the legislature would have said so. That principle controls.

Third, while this case is not about intimate conduct between adults, it is only fair to also note that the commission discussed intimate conduct in its decision. One can easily imagine less sensational ways the commission could have written the decision, but the way the decision is written makes sense given the language the Supreme Court used in *Day v. Day* and the language the North Carolina Supreme Court used in *Fields v. Hollowell*, 78 S.E.2d 740 (N.C. 1953), which the commission reviewed in preparing its decision. (R.p.142, ¶54).

The language in those cases is dramatic by modern standards, but the reasoning underlying these decisions is straightforward and sound. This was not a conventional relationship. Ms. Burns and Mr. York lived together “off and on.” The commission called their relationship “tumultuous.”

(R.p.130, ¶11). It is not disparaging this relationship to say that it was different. Being married to someone is different from living together and not being married. Precedent correctly recognizes this as a significant difference when it comes to statutory dependency.

This case is not about proving whether anyone is guilty of statutes that might be antiquated or unenforceable. This case is about someone who claimed to be married to the deceased claimant, who lost that claim, and who now argues that the Workers' Compensation Act allows an unmarried romantic cohabitant to take a deceased individual's death benefits. Ms. Burns could not have sued Mr. York for a divorce or for alimony. She could not have kept him from testifying against her in a criminal trial. Mr. York could have abandoned Ms. Burns at any time and gotten married at any time. Neither party claimed the other as dependents on their tax returns. A fair reading of precedent compels the conclusion that if the legislature intended to include this sort of relationship as a basis for dependency under the Act the legislature would have said so.

For the foregoing reasons, this Court should grant this petition and issue an order affirming the judgment below.

June 21, 2018

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Respectfully submitted,

SC BAR 77882

for Blake Hewitt

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PROOF OF SERVICE

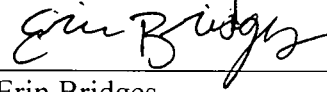
The undersigned hereby certifies that on the date indicated below she served counsel
with a copy of the *Petition for Rehearing* by mailing copies of the same by United States

Mail with first class postage prepaid to the following addresses:

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Erin Bridges

June 21, 2018

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VIA HAND DELIVERY

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

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SC Court of Appeals

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

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of a *Petition for Rehearing* in reference to the above matter. I have also enclosed a proof of service of this document on counsel of record and a \$25.00 check for filing this motion. Please return the additional filed copy 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
Paralegal to Blake A. Hewitt
Bluestein Thompson Sullivan, LLC

/emb

Enclosures

cc: Ann M. Mickle, Esquire
William E. Jenkinson, III, Esquire
Helen F. Hiser, Esquire
J. Brandon Hylton, Esquire