

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

Op. No. 5566 (S.C. Ct. App. filed June 6, 2018)

**RECEIVED**  
OCT 22 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 ..... Respondent,

And Shirley York is the ..... Petitioner,

v.

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

**PETITION FOR WRIT OF CERTIORARI**

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## INDEX

Certificate of Counsel .....	1
Questions Presented .....	1
I.    Did the Court of Appeals err in remanding this case to the Workers’ Compensation Commission when the question whether Respondent could qualify as a “dependent” under the Workers’ Compensation Act was a question of law rather than a question of fact?	
II.   Is Respondent—who lived “off and on” with the injured worker in a “tumultuous” romantic relationship—a “dependent” under the Workers’ Compensation Act and entitled to the injured worker’s death benefits?	
Statement of the Case .....	1
Arguments .....	5
Conclusion .....	7

## CERTIFICATE OF COUNSEL

The Court of Appeals issued its decision June 6, 2018. (App.p.1). The petition for rehearing was made June 21, 2018 and denied September 20, 2018. (App.pp.7-10).

### QUESTIONS PRESENTED

- I. Did the Court of Appeals err in remanding this case to the Workers' Compensation Commission when the question whether Respondent could qualify as a "dependent" under the Workers' Compensation Act was a question of law rather than a question of fact?
- II. Is Respondent—who lived "off and on" with the injured worker in a "tumultuous" romantic relationship—a "dependent" under the Workers' Compensation Act and entitled to the injured worker's death benefits?

### STATEMENT OF THE CASE

The Workers' Compensation Act provides a financial "death benefit" when a work-related injury results in the injured worker's death. S.C. Code Ann. § 42-9-290(A). "Dependents" have first priority to this benefit. *Id.* If there are no dependents, the benefit passes to the injured worker's family. S.C. Code Ann. § 42-9-140.

This case is about whether dependency under the Act can include roommates; specifically, romantic co-habitants who lived together "off and on" in a "tumultuous relationship."

Timothy York drowned while working at Longlands Plantation on August 26, 2013. (R.pp.253-254). In September of 2013, Timothy's brother Tyrone began a claim with the Workers' Compensation Commission in his capacity as the personal representative of Timothy's estate by filing a Form 52, giving notice of a claim in a death case. (R.p.149).

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

Yvonne alternatively claimed that if she was not Timothy's common law wife, she was nevertheless Timothy's dependent under the Act. (R.p.158, lines 12-17). Shirley said Yvonne was not Timothy's common law wife and that she (Shirley) was the beneficiary as Timothy's next of kin. (R.pp.158-159).

The case was tried over three days in June of 2014. (R.pp.151-250).

The single hearing commissioner issued her order in June of 2015; nearly a year after the trial concluded. The order is 73 pages long and includes an extensive summary of the evidence, see (R.pp.7-56), as well as 63 findings of fact, see (R.pp.56-72), and a number of conclusions of law. (R.p.72-75).

The single commissioner found there was no common law marriage. (R.p.57, ¶11 - p.63, ¶30). Among other things, 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." (R.p.57, ¶11). The single commissioner noted Timothy listed his marital status as "single" with no dependents on his tax returns for the two years preceding his death. (R.p.60, ¶25) see also (R.pp.259, 261).

The single commissioner rejected Yvonne's dependency argument by relying on precedent. The commissioner noted that Timothy had given money during his life to both Shirley and Yvonne, (R.pp.64-65, ¶¶37-39), but the single commissioner relied on this Court's decision in *Day v. Day*, 216 S.C. 334, 58 S.E.2d 83 (1950) as well a decision from

North Carolina, which the hearing commissioner found persuasive. (R.pp.69-70, ¶¶53-55). The commissioner read both cases as standing for the proposition that the legislature did not intend to permit someone to be classified as a dependent under the Workers' Compensation Act as a result of living in an illicit relationship with a person to whom they are not legally married. *Id.*

An appellate panel of the commission affirmed the single commissioner's decision and repeated the single commissioner's order, virtually verbatim. (R.pp.76-148).

Yvonne appealed to the Court of Appeals. Though Yvonne presented several issues on appeal, her arguments for reversal can be fairly grouped into two points.

Yvonne's first argument to the Court of Appeals was that there was no evidence this relationship had been "illicit." The commission's orders had cited the statute penalizing "fornication" and found that Yvonne and Timothy had violated this statute. (R.pp.70 & 143, ¶¶56-57). Yvonne argued no evidence supported the finding that the relationship had been intimate. (App.p.12) (Yvonne's argument headings). This seemed odd given Yvonne's chief argument had been that she and Timothy were *married*, implying intimacy.

Yvonne's secondary argument was that the commission erred in relying on *Day v. Day* and the similar case from North Carolina because South Carolina's statutory provisions regarding dependency do not limit dependency to relatives. *Id.*

Shirley's chief argument in response was that the case did not hinge on intimate conduct or a criminal statute that may or may not be constitutionally enforceable, but about the fact that this Court's decision in *Day* and the decision of the Court of Appeals in *Palm v. General Painting Co.* stand for the proposition that the court will not presume the

legislature intended an unmarried romantic co-habitant to be a dependent under the Workers' Compensation Act. (App.pp.39-43). Shirley argued it was not possible to meaningfully distinguish those cases because at bottom, they are grounded on the reasoning that being legally married to someone is different from living together and not being married. *Id.*

Shirley's secondary response to Yvonne's arguments was that Yvonne's case for legal dependency was foreclosed by the facts. (App.p.46). The commission noted Yvonne has a job and owns her own home. (R.p.114). Timothy's mother had an insurance policy covering Timothy's funeral expenses. (R.pp.180-181). 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. (R.p.182). The commission noted Timothy's representation to the government that he had no dependents. (R.pp.60 & 133, ¶25). The commission also noted Yvonne told the government that no one else could claim *her* as a dependent. (R.pp.61 & 133, ¶26). Yvonne did not challenge any of these facts on appeal.

The Court of Appeals conducted oral argument in April of 2018 and issued a unanimous decision reversing the commission two months later, in June. (App.p.1). The court held *Day* was distinguishable because the relationship there had been bigamous—the injured worker had been legally married to someone other than the woman who believed she was his wife. (App.p.5). Here, the Court of Appeals said, there was no evidence this relationship had been “illicit.” (App.p.6). The court remanded the case to the commission to determine whether Yvonne qualified as a dependent under the Act.

Shirley filed a petition for rehearing, arguing there was no need to remand this case given that no case in South Carolina had ever recognized dependency outside the context of

a familial relationship and that regardless of whether dependency could exist outside the familial relationship, it plainly did not exist here given the factual findings that had not been appealed. (App.pp.7-9). Shirley explained precedent's characterization of this relationship as "illicit" was not about passing a moral judgment on anyone. The correct understanding of *Day*, she contended, is that the case is based on the common-sense decision by this Court to read the dependency statutes in light of values that the law regards as important. The law recognizes that being married to someone is different from living together and not being married. In Shirley's view, *Day*, *Palm*, and the similar case from North Carolina stand for the proposition 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 expressly.

## ARGUMENTS

There are two reasons this Court should grant certiorari and reverse.

First, there is no practical reason to remand. Yvonne did not challenge any of the commission's findings of fact other than its findings related to whether she and Timothy had engaged in intimate conduct. All of the commission's other findings are the law of the case. Precedent correctly recognizes that when the facts of a workers' compensation case are not in dispute, the question presented is one of law, not fact. *Davaut v. Univ. of S.C.*, 418 S.C. 627, 632, 795 S.E.2d 678, 681 (2016). Instead of remanding, the Court of Appeals should have addressed Shirley's argument that the result below was faithful to precedent.

Second, on this record, the answer to whether Yvonne is a dependent under the Act is plainly "no." It is not hard to imagine a factual scenario involving co-habitation that

would present a difficult question, but this is not that case. This was not long-term, cozy, or happy dependency. The commission found this relationship was unstable and tumultuous. Yvonne could not have sued Timothy for a divorce. She could not have kept him from testifying against her in a criminal trial. Timothy could have abandoned Yvonne at any time and gotten married to someone else. *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.

The dependency statutes do not answer this question directly. One statute explains an injured worker's spouse and children are conclusively presumed to be dependents. S.C. Code Ann. § 42-9-110. A second statute says that in all other cases, dependency "shall be determined in accordance with the facts[.]" S.C. Code Ann. § 42-9-120.

Still, no South Carolina case has found dependency where there was no familial relationship. *Adams v. Texfli Industries* involved a stepchild. See 341 S.C. 401, 535 S.E.2d 124 (2000). *Second Injury Fund v. Young* involved a niece. See 301 S.C. 524, 392 S.E.2d 807 (Ct. App. 1990).

The best reading of *Day* and *Palm* is as inviting the legislature to amend the dependency statutes if it wishes to include a non-marital romantic relationship as a potential basis for dependency. As Shirley argued in her brief to the Court of Appeals, the lack of amendments to these statutes cuts in favor of honoring those precedents. (App.pp.42-43).

That reasoning is sound and should control. The statute at issue here—section 42-9-120—admittedly does not limit dependency to family members as a textual matter. But

nothing suggests the legislature intended dependency to include this sort of relationship. That is the core holding of *Day* and *Palm*. In suggesting otherwise, the decision of the Court of Appeals undermines those precedents.

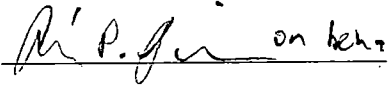
### CONCLUSION

For the foregoing reasons this Court should grant certiorari and reverse the Court of Appeals.

Respectfully submitted,

October 22, 2018

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And Shirley York is a ..... Petitioner,

v.

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**PROOF OF SERVICE**

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The undersigned hereby certifies that on the date indicated below she served counsel with a copy of the *Petition for Writ of Certiorari* 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

October 22, 2018

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VIA HAND DELIVERY

The Honorable Daniel E. Shearouse  
Clerk of Court  
Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, South Carolina 29211

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

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SC Court of Appeals

Dear Mr. Shearouse:

Please find enclosed for filing the original and seven (7) copies of the Petition for a Writ of Certiorari in this case, together with two (2) copies of the Appendix. I have also enclosed a Proof of Service of the Petition on counsel for the Respondents and a check in the amount of \$250.00 for filing the Petition. I have filed a copy of the Petition and Proof of Service with the South Carolina Court of Appeals. Please return the additional copies to me via our courier.

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

Sincerely,



Erin Bridges  
Paralegal to Blake A. Hewitt  
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/emb

Enclosures

cc: Ann M. Mickle, Esquire  
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