

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION S.C. SUPREME COURT

Op. No. 5566 (S.C. Ct. App. filed June 6, 2018)  
Appellate Case No. 2018-001877

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.

**BRIEF OF PETITIONER**

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## QUESTION PRESENTED

Did the workers' compensation commission correctly find Respondent is not a "dependent" under the Workers' Compensation Act?

## INTRODUCTION

The Workers' Compensation Act provides a financial "death benefit" when an injured worker dies because of a work-related injury. S.C. Code Ann. § 42-9-290(A) (Supp. 2018). "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 (2015).

This case is about whether "dependency" includes "off and on" romantic co-habitants who had no legal obligation to each other and who did not claim each other as dependants.

## STATEMENT OF THE CASE

### A. General abbreviated background.

Timothy York drowned while working at Longlands Plantation in August of 2013. (R.pp.253-254). A few weeks later, in September of 2013, a formal claim on his behalf was filed with the Workers' Compensation Commission. (R.p.149).

Two people presented competing claims to Timothy's death benefit—Shirley York and Yvonne Burns.

Yvonne claimed to be Timothy's common law wife. (R.p.157, lines 2-8). She 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 or his dependent and that she (Shirley) should receive the death benefit as Timothy's next of kin. (R.pp.158-159).

**B. Proceedings at the commission.**

The case was tried in front of a single commissioner over three days in June of 2014. (R.pp.151-250). Fourteen witnesses testified. (R.p.2).

The single commissioner issued her order in June of 2015; nearly a year after the trial. 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.pp.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, 262).

The single commissioner relied on precedent in denying Yvonne’s argument that she was a “dependant.” The commissioner noted Timothy gave money during his life to both Shirley and Yvonne and found this was a degree of “dependency” in fact. (R.pp.64-65, ¶¶37-39). As a matter of law, however, the commissioner relied on this Court’s decision in *Day v. Day*, 216 S.C. 334, 58 S.E.2d 83 (1950) and on a decision from North Carolina, which was persuasive. (R.pp.69-70, ¶¶53-55). The commissioner read these cases as holding that the court would not construe dependency to include someone living in an “illicit” relationship with a person to whom they are not legally married. *Id.* As the commissioner noted, those cases express doubt the legislature intended dependency to include such a relationship. *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).

**C. The arguments to the court of appeals.**

Yvonne appealed to the court of appeals. Her arguments there can be fairly grouped into two points.

First, Yvonne said there was no evidence this relationship had been "illicit." The commission's orders cited a criminal statute penalizing "fornication" and found that Yvonne and Timothy 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 common law *married*. A claim of marriage implies intimacy.

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

Shirley's chief argument to the court of appeals was that the case did not hinge on policing intimate conduct or on a statute purporting to criminalize that conduct. She said the case was controlled by *Day* and by the decision of the court of appeals in *Palm v. General Painting Co.*, both of which stand for the rule 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 married to someone is materially different from living together and not being married. *Id.*

Shirley's secondary argument to the court of appeals 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). The commission also noted Yvonne's recent tax returns state that she is the head of her household and that no one can claim her as a dependent. (R.pp.61. & 133, ¶26). The commission noted Timothy told the government the same story: his tax return said he was single and did not have any dependents. (R.pp.60 & 133, ¶25). Yvonne did not challenge these facts on appeal.

Shirley claimed it was telling that the parties had no significant legal ties to each other. (App.pp.44-46). For example, they did not have insurance policies naming each other as beneficiaries. Shirley was the one who had an insurance policy covering Timothy's funeral expenses. (R.pp.180-181). Yvonne did not have such a policy. And Timothy's brother, not Yvonne, applied to handle Timothy's estate. This was a significant point because Timothy had no assets at the time of his death but he *did* have debts. (R.p.182).

**D. The decision of the court of appeals.**

The court of appeals conducted oral argument in April of 2018. It issued a unanimous decision reversing the commission two months later, in June. (App.p.1).

The court held *Day* was distinguishable because the relationship in *Day* had been bigamous. There, the injured worker had been married to someone else. The woman living with the injured worker believed she was the worker's legal wife, but she was not. (App.p.5). Here, the court of appeals said, there was no evidence Timothy and Yvonne's relationship had been "illicit." (App.p.6). Then, the court of appeals 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 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, on these facts. (App.pp.7-9). Shirley explained precedent's characterization of this relationship as "illicit" was not about passing a moral judgment. *Day* and *Palm*, she contended, are grounded in the common-sense decision to read the dependency statutes in light of values that the law regards as important. The law views being married to someone as meaningfully different from living together and not being married. In Shirley's view, *Day* and *Palm* 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.

The court of appeals denied rehearing in a brief order. (App.p.10).

#### **STANDARD OF REVIEW**

The standard of review is found in section 1-23-380(5) of the South Carolina Code (Supp. 2018). See *Lark v. Bi-Lo*, 276 S.C. 130, 134, 276 S.E.2d 304, 306 (1981) (judicial review is governed by the Administrative Procedures Act). Per the statute, this Court may not substitute its judgment for the commission's as to the weight of evidence but may reverse when the decision is affected by an error of law, clearly erroneous, or arbitrary.

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). There are no facts in dispute here. This case concerns whether the facts constitute legal "dependency." This Court reviews questions of law de novo.

## ARGUMENT

There are three basic reasons this Court should reverse the court of appeals and reinstate the commission's judgment that Respondent is not a dependent.

First, though the statutory text does not directly answer the question whether an unmarried romantic co-habitant can qualify as a "dependent," no South Carolina case has found dependency in the absence of some familial relationship.

Second, *Day* and *Palm* control. Those cases are grounded in the sensible assumption that dependency does not include a non-marital romantic relationship and that the legislature should amend the relevant statutes if that view is erroneous. There have not been any amendments in response. This silence suggests *Day* and *Palm* are sound.

Third, while it is not hard to imagine a co-habitation case that would present a difficult question, this is not that. This was not long-term and happy dependency. The commission found this relationship was unstable and tumultuous. The testimony was that Yvonne wanted Timothy around only as long as he gave her money and that Timothy stayed with others just as much as he stayed with Yvonne, if not more. Also, and tellingly, *neither party* claimed the other as dependents on their tax returns.

The court of appeals remanded but it is hard to see why. This dispute is one of law, not fact. There were few legal ties between Timothy and Yvonne, if any. They did not have joint accounts or own a home together. They did not have insurance policies naming each other as beneficiaries. Nothing suggests they believed they had any legal obligation to support each other. That makes sense—if they wanted that obligation they would have gotten married. The commission got it right. This Court should reverse the court of appeals.

**A. The statutory text does not directly answer the question but no South Carolina case has found dependency in the absence of some familial relationship.**

Two statutes are relevant to this question of dependency. They do not answer this question directly.

The first statute explains an injured worker's spouse and children are conclusively presumed to be dependents. S.C. Code Ann. § 42-9-110 (2015). The second statute says that in all other cases, dependency "shall be determined in accordance with the facts[.]" S.C. Code Ann. § 42-9-120 (2015).

In *Day*, this Court explained the Act "does not define dependency, and does not specifically indicate who are dependents[.]" 216 S.C. at 342, 58 S.E.2d at 86. Then, this Court generally defined a "dependant" as "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." *Id.* at 342, 58 S.E.2d at 86-87.

As with the statutes, *Day* does not expressly limit dependency to relatives. *Id.* at 342, 58 S.E.2d at 87. Still, in the nearly seven decades since *Day*, there are no decisions in this state recognizing dependency under the Workers' Compensation Act without some sort of familial relationship.

The dependent in *Adams v. Texfli Industries* was a minor stepchild. 341 S.C. 401, 535 S.E.2d 124 (2000). There, the deceased injured worker provided his stepchild with several necessities including insurance, paying household utilities, providing clothing, and paying the mortgage on the family home. *Id.* at 404, 535 S.E.2d at 125. This Court also noted the deceased injured worker claimed the stepchild as a dependent for taxes. *Id.*

The dependent in *Second Injury Fund v. Young* was an adult niece who was entirely dependent on her uncle due to her poor health. The record also reflected that the uncle told the niece he would take care of her. 301 S.C. 524, 528, 392 S.E.2d 807, 810 (Ct. App. 1990).

This Court's decision in *Bush v. Gingrey Brothers* involved a situation where both the deceased worker's widow and his mother were wholly dependent on the deceased worker. 232 S.C. 20, 100 S.E.2d 821 (1957). That case held that the death benefit should be divided between the two of them. As noted above, no case in this jurisdiction has found legal dependency outside the context of some recognized familial connection.

One reason for this is probably a function of custom. *Day* defines dependency as relying on someone for the basic necessities of life. The people who depend on the injured worker for those basic necessities will most often be the injured worker's family.

But another reason for this is likely a formal one. This Court has written that the goal of workers' compensation is 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). The phrase "lawfully dependant" connotes a legal obligation to provide support. Those sorts of obligations are traditionally found in a family. They do not commonly exist other places.

The fact that no South Carolina case finds dependency without a familial connection is not controlling. Still, it says something. There are legal obligations to support a spouse and minor child. One can explain a case like *Young* by pointing to the injured worker's promise to provide for the would-be dependent. There is nothing like that here. Nothing suggests Timothy and Yvonne believed they had any legal obligation to support each other.

**B. *Day and Palm* control and the lack of subsequent amendments suggests those decisions are sound.**

Yvonne’s dependency argument is the same argument this Court considered in *Day*. There, as here, the appellant claimed benefits as the injured worker’s widow and alternatively as a non-spousal dependent. 216 S.C. at 336, 58 S.E.2d at 84. The 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* recited this argument explicitly. *Id.* at 341, 58 S.E.2d at 86.

This Court rejected that 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. This Court finished by reciting its view that if the legislature intended to include such a relationship as 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.

Two things are noteworthy about *Day* beyond its holding. First, the record showed “beyond question” that the appellant was completely dependent on the deceased worker. *Id.* at 341, 58 S.E.2d at 86. Second, this Court recited that the facts of the case appealed “strongly” to the Court’s sympathy because the appealing party 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 lost her claim to dependency. The decision was unanimous.

The facts are not as favorable for Yvonne. Yvonne owns her own home, has a job, and appears to be able-bodied. (R.p.114). 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. (R.p.130, ¶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. (R.pp.134-136, ¶29). The commission recited that Timothy’s mother, brother, other family and friends were unaware of any wedding *or of any engagement*. (R.p.130, ¶13). Yvonne’s story was questionable.

Yvonne’s argument is also the same argument the court of appeals rejected in *Palm v. General Painting Co.*, 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. A key difference between *Palm* and *Day* is that 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. The court of appeals explained “dependent” obviously did not include someone who knowingly cohabits while not married if dependency excluded the woman in *Day*, who had a good faith but mistaken belief of marriage. *Id.* at 49-50, 370 S.E.2d at 468.

There is no way to meaningfully distinguish those cases from this one. 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. The commission found Yvonne and

Timothy were not married at common law. As *Callen v. Callen* explains, that means 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 this Court said 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 the same sort of reasoning.

It is particularly notable that *Palm* was not based on the idea that the romantic relationship was criminal or illegal. *Palm* reasoned that if “dependent” did not cover someone who had a good faith belief of marriage, it surely did not cover someone who knew she and her partner were not married. *Id.* at 50, 370 S.E.2d at 468.

It is hard to see how the same rationale would not apply here. The commission found that at most, Yvonne and Timothy may have planned to get married in the future. (R.p.130, ¶11). They are indistinguishable from the couple in *Palm* who knew they were not married.

This Court has explained that following precedent is especially important in statutory interpretation cases. *Wehle v. South Carolina Ret. Sys.*, 363 S.C. 394, 402, 611 S.E.2d 240, 244 (2005). An example of this in workers’ compensation is *Wigfall v. Tidelands Utilities*; a challenge to a prior precedent about the different methods an injured worker may use to establish total disability. This Court rejected that challenge, specifically noting the legislature’s 40 years of inactivity since the prior case was decided. This Court explained “[t]he Legislature is presumed to be aware of this Court’s interpretation of its statutes[.]” and “[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 is true here. It has been nearly 70 years since this Court decided *Day*. It has been 30 years since the court of appeals decided *Palm*. 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* invited 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.

These decisions are not about passing moral judgment on anyone. They are also not about policing intimate conduct. Instead, they are based on the common-sense decision 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. The best reading of *Day* and *Palm* is that they will not interpret dependency as encompassing this sort of relationship unless the legislature says so expressly.

**C. While it is not hard to imagine a co-habitation case that would present a difficult question, this is not that.**

It is not hard to imagine a co-habitation case that would present a difficult question. Consider a hypothetical scenario where a couple lives together for several years, where there is complete dependency, and where all appearances suggest a cozy and stable relationship except the missing detail of the marriage. Professor Larson says this is the most difficult dependency question, and he notes that courts are split on how variations of that case come out. 5 Arthur Larson & Lex K. Larson, *Larson's Workers' Compensation Law* §§ 97.06[3],

at 97-21 to 97-25 (2003). Some courts have found dependency and reason that it is not the court's role to read moral standards into a statute. Other cases deny dependency, explaining the court will not read a statute in a way that upsets fundamental values like marriage that are still recognized as important. The treatise actually proposes the question should be worked out by a statute in the first instance rather than by the court. *Id.* at 97-24 to 97-25.

This Court need not grapple with that question here because this relationship was not long-term, cozy, or complete and stable dependency. The commission found this relationship was unstable. 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. (R.pp.188-189; pp.193-196). The hearing commissioner cited this testimony in her order. (R.pp.13, 15, 19).

As noted earlier, Yvonne has a job and owns her own home. (R.p.114). She filed taxes as head of her household and said no one could claim her as a dependent on her tax returns. (R.p.258). Timothy's tax forms said he was single and had no dependents. (R.p.259). There was evidence Timothy bought Yvonne a television, that the couple bought some furniture together, and that Timothy helped pay for a small renovation to part of Yvonne's home. (R.pp.266-273; pp.278-280). Even so, pooling resources for luxuries does not amount to undertaking a legal obligation to provide life's necessities.

Timothy and Yvonne did not have joint accounts or own a home together. They did not have insurance policies naming each other as beneficiaries. Nothing suggests they believed they had any obligation to support each other. There may well be a future case that causes the Court to confront a difficult dependency question, but this is not that. The

commission found this relationship was “off and on,” “tumultuous,” and characterized by arguments over money. (R.p.130, ¶11). That is not dependency as contemplated by the Act.

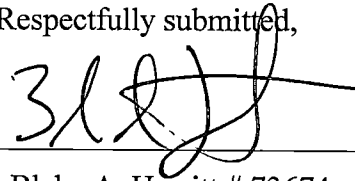
### CONCLUSION

This Court should reverse the court of appeals and reinstate the workers’ compensation commission’s judgment.

May 22, 2019

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

v.

Longlands Plantation a.k.a. Knollwood,  
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**PROOF OF SERVICE**

The undersigned hereby certifies that on the date indicated below she served counsel  
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