

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
W.C.C. File Number 1312352 (January 20, 2016)

S.C. SUPREME COURT

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS  
Op. No. 5566 (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 a ..... Petitioner,

v.

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

BRIEF OF RESPONDENT YVONNE BURNS

W. E. Jenkinson, III, Esquire #2984  
J. Thomas Thompson, Esquire #81689  
Jenkinson, Jarrett, & Kellahan, P.A.  
Post Office Drawer 669  
Kingstree, SC 29556  
(843) 355-2000  
(843) 355-2010 (facsimile)  
Email: [billy@jenkinsonlaw.com](mailto:billy@jenkinsonlaw.com)  
Email: [tom@jenkinsonlaw.com](mailto:tom@jenkinsonlaw.com)  
Attorneys for Respondent

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## COUNTER STATEMENT OF ISSUES PRESENTED FOR REVIEW

- I. For purposes of the Workers Compensation Act, S.C. Code § 42-9-120, must "dependency" be construed to allow benefits to factually dependent persons who are unrelated to the worker by blood or marriage?
- II. Is the Commission's decision applying *Day v. Day* and fornication statutes to deny benefits to Yvonne unconstitutional?
- III. Does the Court of Appeals decision to remand this matter to the Commission "to determine ... whether Yvonne qualifies as a dependent under the Act" conflict with this Court's prior decisions and needlessly increase the costs and duration of this litigation?
- IV. Does the Court of Appeals remand constitute reversible error?

## COUNTER STATEMENT OF THE CASE

This matter began with the death of Timothy York on August 26, 2013. Timothy's boat capsized while he was working on a pond at Longlands Plantation, in the course and scope of his employment with Knollwood, Inc. (R.pp. 77; 253-4) In September 2013, Tyrone York, Timothy's brother and personal representative of the estate, filed a claim for death benefits with the South Carolina Workers Compensation Commission and he later requested a hearing. (R. pp. 149-50) The employer and carrier admitted the accident and resulting death and conducted a dependency investigation to determine the beneficiary(s). (R.p. 4)

Com. Melody L. James presided over the three-day hearing in June 2014. (R.p. 3) Seventeen witnesses testified, resulting in more than seven hundred fifty pages of transcript, to which Com. James devoted thirty-six full pages in her resulting order. (R.pp. 7-44)

At the hearing, Tyrone sought workers' compensation death benefits on behalf of Timothy's mother, Petitioner Shirley York, as Timothy's next of kin under S.C. Code Ann. § 42-

9-140(B).<sup>1</sup> (R.p. 56) Respondent, Yvonne Burns, sought benefits as Timothy's common law wife under section 42-9-110<sup>2</sup>; or alternatively, as a dependent under sections 42-9-120<sup>3</sup> or 42-9-130.<sup>4</sup> (R. pp. 157-8)

Com. James held the preponderance of the testimony did not support a finding that Timothy and Yvonne had a common law marriage. (R.pp. 68-9) Com. James 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)

Com. James found that both Shirley and Yvonne were financially dependent on Timothy, Yvonne's dependence being greater than Shirley's, and, that Yvonne would be entitled to benefits under the Act (R.pp. 65; 69), but, that Yvonne's greater degree of financial dependence was not determinative because the South Carolina statutory prohibition against fornication and *Day v. Day*, 216 S.C. 334, 58 S.E.2d 83 (1950) were dispositive. (R.pp. 67-8) Com. James held that the focus

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1 "If the deceased employee leaves no dependents or nondependent children, the employer shall pay the commuted amounts provided for in Section 42-9-290 for whole dependents, less burial expenses which must be deducted from those commuted amounts, to his father and mother, irrespective of age or dependency." S.C. Code Ann. § 42-9-140(B)

2 "A surviving spouse or a child shall be conclusively presumed to be wholly dependent for support on a deceased employee." S.C. Code Ann. § 42-9-110

3 "In all other cases questions of dependency, in whole or in part, shall be determined in accordance with the facts as the facts may be at the time of the accident; but no allowance shall be made for any payment in lieu of board and lodging or services and no compensation shall be allowed unless dependency existed for a period of three months or more prior to the accident." S.C. Code Ann. § 42-9-120

4 " If there is more than one person wholly dependent, the death benefit shall be divided among them and the persons partly dependent, if any, shall receive no part thereof. If there is no one wholly dependent and more than one person partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency." S.C. Code Ann. § 42-9-130

in *Day* "is not the immorality of the relationship but is on the legality. This is a matter of statutory construction." (R.p. 70) Further relying on *Day*, Com. James held that "if it had been the intention of the legislature to sanction an illicit relationship as constituting a basis for dependency, express provision would have been made... in the...Act." (R.p. 71)

For these reasons, Com. James found Shirley entitled to the full sum of death benefits allowable under the Workers' Compensation Act (the "Act"), S.C. Code Ann. §§ 42-1-10 to 42-19-50 (2015 & Supp. 2017) in the amount of \$171,997.79 (plus \$2,500.00 for funeral expenses as stipulated by the parties) (R. pp. 4; 49), from which her attorneys' fees of \$57,275.64, and litigation expenses of \$5,920.76 were deducted. (R. p. 71)

Yvonne appealed from Com. James' order to the Full Commission and the Appellate Panel affirmed and included Com. James' order, verbatim in its January 20, 2016 order. (R.pp. 76-148)

Yvonne then appealed the Commission's order to the Court of Appeals. She argued that the Commission erred in denying death benefits to Yvonne as Timothy's primary dependent on the basis of Com. James' findings and conclusions that Yvonne is barred from receiving benefits due to her "fornication" and "illicit relationship" with Timothy. Yvonne argued that the Workers Compensation Act does not limit or define dependency to exclude her and that no evidence was presented of "fornication" or of any "illicit" relationship. (App. pp. 10-11; 27-32) She contended that South Carolina's criminal fornication statutes are unconstitutional as applied to Yvonne in this case. (App. pp. 22-24)

Shirley argued to the Court of Appeals that the Commission decided correctly under *Day*, and that the legislature's silence after *Day* shows legislative intent to abide by appellate decisions limiting dependent benefits to relatives. (App. pp. 40-46)

On June 6, 2018, the Court of Appeals reversed and remanded to the Commission. *York v. Longlands Plantation*, 424 S.C. 280, 285, 818 S.E.2d 215, 218 (Ct. App. 2018), *reh'g denied* (Sept. 20, 2018). (App. p. 1) It held that the Commission "erred in finding Timothy and Yvonne were engaged in fornication. The record contains no evidence of any acts of fornication or convictions for fornication. Accordingly, we reverse the Appellate Panel as to this issue." *Id.* at 285, 818 S.E.2d at 218. (App. p. 5) Having reversed on this basis, the Court of Appeals declined to address the constitutional challenges. (*Id.*) The Court remanded, directing the Commission as follows:

In light of our reversal of the Appellate Panel's fornication findings, we remand this case to the Appellate Panel to reconsider its holding. *Day* held individuals cannot be dependents under the Act if they are involved in an illicit relationship. Here, no evidence was presented of an illicit relationship. Thus, we ask the Appellate Panel to determine, based on the evidence in the record, whether Yvonne qualifies as a dependent under the Act.

(App. p. 6)

Shirley moved for rehearing in the Court of Appeals, contending that the Court of Appeals may have overlooked that "[t]his case is controlled by the legal question of whether an unmarried romantic cohabitant can be a "dependent" under the Workers' Compensation Act." (App. p. 5) Rehearing was denied by that Court's order of September 20, 2018. (App. p. 10)

Shirley petitioned this Court for a writ of certiorari on October 22, 2018. Yvonne joined in the request for certiorari on November 19, 2018, but on different grounds. Certiorari was granted by order of this Court on April 22, 2019. Shirley filed her brief with this Court on May 22, 2019 and Yvonne now offers her brief.

#### **STANDARD OF REVIEW**

"An appellate court can reverse or modify the Commission's decision if it is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial

evidence in the whole record." *Pierre v. Seaside Farms, Inc.*, 386 S.C. 534, 689 S.E.2d 615 (2010). "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. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). Where the facts are not in dispute, the Court is "free to decide this case as a matter of law" and it is "not constrained by the "substantial evidence" standard of review." *Davaut v. Univ. of S.C.*, 418 S.C. 627, 632, 795 S.E.2d 678, 681 (2016) (citations omitted).

## ARGUMENT

**I. THE COURT OF APPEALS DECISION FAILED TO DETERMINE AN ISSUE RAISED ON APPEAL ON A MATTER OF WORKERS COMPENSATION LAW THAT IS SUBJECT TO REPETITION AND OF GREAT SIGNIFICANCE TO THE CITIZENS OF OUR STATE, AND IT IS IN CONFLICT WITH THIS COURT'S PRIOR DECISIONS CONSTRUING "DEPENDENT" AND "DEPENDENCY" FOR WORKERS COMPENSATION DEATH BENEFITS UNDER S.C. CODE § 42-9-120.**

**A. INTRODUCTION**

On remand, can the Commission itself remand to a single Commissioner to hear evidence of fornication? Can the Commission then punish Yvonne for "criminal" sexual conduct by denying death benefits for which she otherwise qualifies under the Act? Can Yvonne be denied benefits because she is not related to Timothy by blood or marriage? The Court of Appeals decision reversing for lack of "fornication" evidence avoided these hot-potato issues. Its instructions on remand toss them back to the Commission, which does not have jurisdiction to decide these weighty questions of law in the first instance.

Both sides of this litigation agree that remand is unnecessary and unsupported by the evidence and the law, but for different reasons. Shirley would have this Court reverse the Court of Appeals on the basis of *Day v. Day*, 216 S.C. 334, 58 S.E.2d 83 (1950) and her argument that South Carolina jurisprudence bars unrelated persons from being dependents under the Act. That result would be plainly incorrect, as is shown in argument below.

What is needed is this Court's clarification of the law, for Yvonne and Shirley, but also for workers compensation cases generally. Timothy died five long years ago. Of the \$171,997.79 in benefits available, some \$63,000.00, more than one-third, has already been eaten up by attorneys' fees and litigation costs<sup>5</sup> awarded in the process of seeking answers to these questions, which will surely be raised again and again.

Remand, without benefit of the answers the Commission needs to guide its decision, will likely consume yet more of the available benefits in attorneys' fees. And more years will pass without this case and these larger questions being resolved. (Indeed, Com. James' order alone was entered nearly a full year after the hearing, on June 5, 2015, and nearly two years after Timothy's death ended his support for the claimant dependents. (R. p. 3))

That may be par for the course in *ordinary* litigation, but it defeats one of the larger purposes of the Workers Compensation Act. "One primary goal of the Workers' Compensation Act is to provide quick and efficient resolution of work-related injury claims so neither employers nor employees become bogged down in complicated and protracted litigation." *Russell v. Wal-Mart Stores, Inc.*, 426 S.C. 281, 285–86, 826 S.E.2d 863 (2019) (citation omitted). The Act "was designed to supplant tort law by providing a no-fault system focusing on quick recovery, relatively

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<sup>5</sup> (R. p. 71)

ascertainable awards, and limited litigation." *Id.* (citation omitted).

"If the claimants were entitled to benefits, they were entitled to receive them many years ago. If the claimants were not entitled to benefits, [they] were entitled to [know this] many years ago." *Id.* (citation omitted). The remand instruction does not address whether evidence of fornication could constitutionally bar Yvonne's claim, nor whether her status as one unrelated to Timothy could bar her claim under the language of the Act, nor does it explicitly state that no additional evidentiary hearing is required. Thus, the Commission's decision on remand may continue the "perpetual cycle of orders and appeals such that [Yvonne] will be deprived of an adequate remedy." *Russell v. Wal-Mart Stores, Inc.*, 426 S.C. at 285, 826 S.E.2d 863 (citation omitted) (internal quotation marks omitted).

For these reasons, this Court should affirm the Court of Appeals' reversal of the Commission's decision denying benefits to Yvonne, but it should reverse that Court's remand order and it should hold that Yvonne qualifies as a dependent under the Act, as determined by the Commission. It should hold that the Act does not bar unrelated persons from qualifying for death benefits under S.C. Code § 42-9-120 and that the "illicit relationship" analysis of *Day* cannot be used in conjunction with the unconstitutional application of fornication statutes in order to deny benefits to an otherwise qualified claimant.

**B. THE COMMISSION DENIED YVONNE'S CLAIM ON AN UNCONSTITUTIONAL BASIS.**

Yvonne's claim was made in the alternative, as the common law surviving spouse under the presumptive dependents provision of the Act, § 42-9-110, or as a dependent under the catchall provision for "all other cases", § 42-9-120. Yvonne did not appeal the Commission's conclusion,

in its discretion<sup>6</sup> that she did not prove a common law marriage entitling her to benefits under § 42-9-110 of the Act.

But Yvonne contends that she does qualify for benefits under the "in all other cases" provision, S.C. Code Ann. § 42-9-120 and that Com. James and the Full Commission found and concluded<sup>7</sup> as much on the basis of the facts in evidence. That statute provides: "In all other cases questions of dependency, in whole or in part, shall be determined in accordance with the facts as the facts may be at the time of the accident" and the dependency must have "existed for a period of three months or more prior to the accident." S.C. Code Ann. § 42-9-120

The evidence recited in *both* of the Commission's orders amply supports its finding that Yvonne's dependence on Timothy was greater than Shirley's.<sup>8</sup> Judicial review of the commission's order is limited to determining whether the findings are supported by substantial evidence. *Lowe v. AM-CAN Transport Services, Inc.*, 283 S.C. 534, 324 S.E.2d 87 (Ct.App.1984).

Shirley testified that she has never worked but received social security disability payments and Timothy helped her with \$50.00-\$60.00 monthly (approximately \$15.00 per week). Whereas, her other son, Tyrone, who litigates the claim for benefits on Shirley's behalf, also gave her money and provided her home and at least one utility (water), and these facts are reflected in the Commission's orders<sup>9</sup>.

By contrast, the Commission's orders show that witnesses for *both* sides testified that Yvonne used Timothy's debit card to pay bills before giving Timothy an allowance; the bills

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<sup>6</sup> (R. pp. 130-36)

<sup>7</sup> (R. pp. 64-5; 137-38)

<sup>8</sup> (R. pp. 65; 139)

<sup>9</sup> (Transcript Vol. II p. 45 line 17-p. 46 line 2) (R. pp. 22; 94)

included Yvonne's car insurance and maintenance, home repairs and maintenance, groceries, clothes, uniforms, a tab at a local store, utilities, contract payments for furniture the couple bought together (television, recliner and sofa); and that Timothy complained, over a period of years, about how much Yvonne was spending with his debit card.<sup>10</sup>

Thus, this case must be remanded, but only to implement the Commission's findings as to dependency and for apportionment of Decedent's benefits, primarily to Yvonne, in accordance with § 42-9-130. "If there is no one wholly dependent and more than one person partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency." S.C. Code Ann. § 42-9-130.

There are only three South Carolina decisions denying workers compensation benefits to a woman who has proved that she was actually dependent upon and living with a deceased worker at the time of death, under § 42-9-120<sup>11</sup>. They are: *Day v. Day*, 216 S.C. 334, 58 S.E. 2d 83 (1950) (relied upon as dispositive by the Commission and by Petitioner) (R. pp. 69-73; 142-46); *Byers v. Mt. Vernon Mills, Inc.*, 268 S.C. 68, 231 S.E.2d 699 (1977); and, *Palm v. General Painting Co.*, 296 S.C. 41, 370 S.E.2d 463 (Ct. App. 1988) (also relied on by the Commission and Petitioner). All three turned on the bigamous relationships of the parties and all three were decided at least 15 years before the U.S. Supreme Court decision, *Lawrence v. Texas*, 539 U.S. 558 (2003), forbade governments from penalizing private, intimate, adult conduct and relationships. *Lawrence* held "the fact that the governing majority in a State has traditionally viewed a particular practice as

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<sup>10</sup> (R. pp. 12; 15; 19-20; 24; 36-8; 40; 64; 90-2; 96-7; 109-110; 112-13; 137-38)

<sup>11</sup> One other denied benefits under § 42-9-290, defining "surviving spouse" by denying a common law marriage. See, e.g., *Thomas v. 5 Star Transp.*, 412 S.C. 1, 770 S.E.2d 183 (Ct. App. 2015). This decision is not relevant to our issues under § 42-9-120.

immoral is not a sufficient reason for upholding a law prohibiting the practice[.]” *Lawrence v. Texas*, 539 U.S. at 577, 123 S. Ct. at 2483. “[I]ndividual decisions by married persons... are a form of ‘liberty’ protected by the Due Process Clause of the Fourteenth Amendment [that] ... extends to ... unmarried as well as married persons.” *Id.* at 578.

In each of the three South Carolina cases, *Day*, *Byers* and *Palm*, the relationship was held to be "illicit" or illegal, because one of the parties was still married to someone else when they entered into the relationship on which the claim was based. Thus, there was a legal impediment to the relationship in each of the three cases (bigamy) - a crucial distinction *absent* in this case.

Here, the *only* factor creating the illicit nature of the relationship (in the eyes of the Commission) was the fact that Timothy and Yvonne were not legally married to each other. From this single fact, the Commission *assumed* "fornication" by them, because Yvonne claimed to be Timothy's common law spouse. On the basis of this *assumption*, the Commission treated Yvonne as if she were *convicted* of the *crime* of fornication:

56. I find in South Carolina, "Fornication" is still a punishable offense defined as "the living together and carnal intercourse with each other or habitual carnal intercourse with each other without living together or a man and woman, both being unmarried." S.C. Code Ann. § 16-15-60 and 16-15-80.

57. I find evidence in the present claim that the Deceased and Ms. Burns were in violation of the statute. Ms. Burns' argument was not that they were roommates, but that they were living together as man and wife. Therefore, based on the *Day* case. Ms. Burns' claim to the workers' compensation benefits in question is denied as a matter of law.

(R. pp. 70; 143)

"Ms. Burns' argument" is not "evidence" of "fornication" or of "carnal intercourse" nor of a conviction for a "punishable offense". The Court of Appeals correctly held,

The Appellate Panel found Timothy and Yvonne were engaging in fornication, and thus, based on the *Day* court's holding that an individual cannot be a dependent if

they are in an illicit<sup>2</sup> relationship, Yvonne's claim to Timothy's death benefits was denied as a matter of law. We hold the Appellate Panel erred in finding Timothy and Yvonne were engaged in fornication. The record contains no evidence of any acts of fornication or convictions for fornication. Accordingly, we reverse the Appellate Panel as to this issue.<sup>3</sup>

[Footnote 2] "Illegal or improper." Illicit, *Black's Law Dictionary* (10th ed. 2014).

[Footnote 3] Yvonne further asserts South Carolina's fornication statutes are unconstitutional. We decline to address this argument. See *Fairway Ford, Inc. v. Cty. of Greenville*, 324 S.C. 84, 86, 476 S.E.2d 490, 491 (1996) (holding it is this court's firm policy to decline to rule on constitutional issues unless such a ruling is required).

*York v. Longlands Plantation*, 424 S.C. 280, 285, 818 S.E.2d 215, 217–18 (Ct. App. 2018), *reh'g denied* (Sept. 20, 2018) (italics in original). (App. p. 5)

Unfortunately, because the Court of Appeals declined to address the constitutional issues raised on appeal, the questions of whether "fornication" is "still a punishable offense" in South Carolina, and, whether the Commission may use "fornication" as a basis for denying benefits require this Court's attention. Yvonne contends that *Lawrence v. Texas*, 539 U.S. 558 (2003) means that the State (via the Commission) cannot punish Yvonne for private consensual sexual conduct with another single adult in the context of what Yvonne testified was a long-term committed relationship.<sup>12</sup>

"The State cannot demean their existence or control their destiny by making their private sexual conduct a crime. Their right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government." *Lawrence v. Texas*, 539

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<sup>12</sup> Yvonne testified that they began living together in the late 1990's, that she asked Timothy to move out because of his drinking, and they got back together in late 2004 or early 2005 and lived together until his death in August 2013. (Transcript Vol. III pp 52-3) She testified that they loved each other, despite their struggles with his drinking problem. (*Id.* pp. 56-7; 70; 93-4) There are no allegations of prostitution, incest, assault, inability to give consent, bigamy, communicable disease or related issues to legitimize application of the fornication statutes in this case.

U.S. at 578, 123 S. Ct. at 2484. "It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter." *Id.*

By contrast, the State has an important legitimate interest in protecting *unrelated* dependents of deceased workers from financial catastrophe stemming from the worker's death just as it has in protecting *related* dependents. Likewise, the State has the same legitimate interest in protecting the *public* from the risk of becoming financially responsible for *unrelated* dependents as for *related* dependents. These legitimate State interests are the humane purposes behind the Workers Compensation Act. See, e.g., *Bentley v. Spartanburg Cty.*, 398 S.C. 418, 422, 730 S.E.2d 296, 298 (2012). Whereas, the Commission's denial of benefits, despite finding that Yvonne was Timothy's dependent and would be entitled to benefits but for the unconstitutional application of *Day* and fornication statutes, serves no legitimate interest.

Moreover, and perhaps even more importantly for Workers Compensation cases generally, the *Commission* has no authority to punish a claimant for a criminal act, let alone one of which she is not convicted, by denying benefits to which she is otherwise entitled under the plain language of the Act. No authority supports the concept that the Commission may impose criminal punishment on anyone in any context. But punishment is what the Commission meted out to Yvonne, by denying her benefits *solely* because it assumed that she was guilty of a criminal offense. (A whole host of due process issues is implicated by such a punishment, imposed without every charging her, trying her, convicting her, without having jurisdiction to impose a criminal penalty, and the penalty itself is not authorized for this 'crime'. The authorized penalties are "a fine of not less than one hundred dollars nor more than five hundred dollars or imprisonment for not less than six months nor more than one year or by both fine and imprisonment, at the discretion of

the court." S.C. Code Ann. § 16-15-60 (emphasis added).)

Punishment is antithetical to the Commission's purpose. The Workmen's Compensation Act was adopted for the benefit of the employees and their dependents, and it should be liberally construed in order to accomplish this humane purpose. *Sims v. S.C. State Comm'n of Forestry*, 235 S.C. 1, 9, 109 S.E.2d 701 (1959). The Act is liberally construed to provide, rather than to deny coverage in order to further the beneficial purposes for which it was designed. *Bentley v. Spartanburg Cty.*, 398 S.C. at 422, 730 S.E.2d at 298 (citing *Shealy v. Aiken Cnty.*, 341 S.C. 448, 535 S.E.2d 438 (2000)). "Any reasonable doubt as to the construction of the Act will be resolved in favor of coverage." *Id.* (citing *Mauldin v. Dyna-Color/Jack Rabbit*, 308 S.C. 18, 22, 416 S.E.2d 639, 641 (1992)).

As to South Carolina's appellate decisions denying benefits to women claiming as dependents of workers to whom they were not legally married, the Commission relied on *Day v. Day*, 216 S.C. 334, 58 S.E. 2d 83 (1950). There, Maggie Day claimed compensation as decedent's widow, or, alternatively, as his dependent, just as Yvonne did in this case. Day went through a marriage ceremony with the decedent while her first husband was still alive and living nearby, and without making any effort to obtain a divorce. Her alleged marriage to the decedent was void from its inception. The Commission awarded her benefits, but the Circuit Court reversed:

[T]he word 'dependent' as used in our Workmen's Compensation Law, refers to those lawfully dependent, and ... it is against the public policy of our State to make an award to one in a bigamous relationship with a deceased workman.

*Day v. Day*, 216 S.C. at 342, 58 S.E.2d at 86. (Note, however, that after *Lawrence*, "lawfully dependent" cannot be determined by South Carolina "public policy" about the claimant's sexual activity. "The State cannot demean their existence or control their destiny by making their private sexual conduct a crime." *Lawrence v. Texas*, 539 U.S. at 578, 123 S. Ct. at 2484.)

But in 1950, this Court affirmed the *Day* Circuit Court explaining:

An examination of the record shows that for fourteen years she and the deceased lived together as husband and wife in the city of Greenwood, conscientiously and above reproach in accordance with the putative marital relationship. The fact remains, however, that it was an illicit relationship under the law.

*Day v. Day*, 216 S.C. at 342, 58 S.E.2d at 86. The Court acknowledged that the Act does not limit the class of dependents. *Id.* When deciding that Maggie was nevertheless *not* entitled to compensation, the Court repeatedly emphasized the bigamous and illicit or illegal nature of her relationship with the Decedent. *Id.*

Now, Shirley argues "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." (Brief of Pet. p. 7) But, clearly, *Day* did not turn on whether Maggie was a familial relative to the decedent. It turned on the illegality of their bigamous relationship. ("[I]t is against the public policy of our State to make an award to one in a bigamous relationship with a deceased workman." *Day v. Day*, 216 S.C. at 342, 58 S.E.2d at 86. "The fact remains... that it was an illicit relationship under the law." *Id.*) And *Day* envisioned unrelated claimants receiving benefits. The Court recognized, even in 1950, that dependency in the context of the Workers Compensation Act is *evolving*:

[I]t is said that dependency does not include the maintenance of others whom the deceased is under no legal obligation to maintain. This definition, however, has been *modified* by later authority to include *not only legal obligation but moral obligation, and voluntary contributions; if relied upon for support.*

*Day v. Day*, 216 S.C. at 342–43, 58 S.E.2d at 87 (citations omitted) (internal quotation marks omitted) (emphasis added).

By way of example, the Court explained:

In *Commonwealth ex rel. State Highway Commission v. McGuire*, 188 Va. 444, 50 S.E.2d 284, the Virginia Court, construing the dependency section of the Workmen's Compensation Act of that State,—which is *identical with ours*—held that a child whose custody and support were *assumed* by the employee for seven years was a 'dependent' of the employee within the meaning of the Compensation Act so as to be entitled to compensation on account of the employee's death, although the child was *not related* to the employee, was *never adopted* by him, and the child's mother was financially able to care for it.

*Id.* (emphasis added).

In *McGuire*, the Virginia Supreme Court held that "the statute rests neither upon relationship nor presumption, but *wholly upon the facts as they exist at the time of the death* of the employee[.]" *Commonwealth ex rel. State Highway Comm'n v. McGuire*, 188 Va. 444, 448, 50 S.E.2d 284, 286 (1948) (emphasis added). This language nearly quotes our statute: "In all other cases questions of dependency, in whole or in part, shall be *determined in accordance with the facts as the facts may be at the time of the accident*[.]" S.C. Code Ann. § 42-9-120 (emphasis added)

*McGuire* held that the "legal interpretation of the language used, and the facts proven, are so clear and unequivocal, we feel any other decision would be contrary to the law and the facts." *Id.* "These opinions so effectively dispose of the case that little more need be said." *Commonwealth ex rel. State Highway Comm'n v. McGuire*, 188 Va. at 448, 50 S.E.2d at 286. And little more was said. Despite the handwringing predictions Shirley made to the Court of Appeals (to the effect that if unrelated persons qualify under §42-9-120, every charitable organization could claim workers compensation death benefits when the giver dies at work<sup>13</sup>), no earth-shaking stampede of claims

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13 "If you buy Billy's argument that just because she's dependent upon him...for support she should take, then total strangers take. ... And so, under Billy's argument, if something happened to me ... then every orphanage [to which the firm donates money], every child in South America or in South Africa could make a claim for dependency if something happens to me at work...they could make a claim as a dependent under his argument, and they have absolutely no biological or familial relationship..." (R. pp. 160-61)

appears to have bankrupted Virginia carriers after its 1948 *McGuire* decision. In fact, in seventy years, *McGuire* is cited in only five other decisions, one of which is *Day*.

Of the four Virginia decisions, a 2008 case shows that the Commonwealth embraced *McGuire* handily:

Because the statute does not define dependency or specify the indicia of that status, membership in the second ['all other cases'] class of dependents depends on the facts and circumstances of each particular case, from the amounts, frequency and continuity of actual contributions of cash or supplies, the needs of the claimants, and the legal or moral obligations of the employee. The second class of dependents excludes a mere situation of mutual assistance between the decedent and the putative dependent. While the second class relies neither upon relationship nor presumption, it nonetheless must be predicated on specific factual circumstances qualifying the claimant for dependency status. That status presupposes the decedent owed some form of legal or moral obligation of support, thus distinguishing true dependency from being subsumed within the broader category of charity.

*Dunnavant v. Newman Tire Co., Inc.*, 51 Va. App. 252, 257, 656 S.E.2d 431, 434 (2008). Using the *McGuire* decision quoted in *Day* and *Dunnavant* as a guide to potential treatment of claims by unrelated persons, one sees that Yvonne has met her burden. The Commission's orders show that Yvonne was 'truly dependent' on Timothy, more so than Shirley, who relied heavily on Tyrone. And Yvonne and Timothy were in a long-term relationship, not a "mere *situation* of mutual assistance" or "charity".

After *Day*, the next South Carolina case to deny death benefits to a woman who was not married to the deceased worker under § 42-9-120 is *Byers v. Mt. Vernon Mills, Inc.*, 268 S.C. 68, 231 S.E.2d 699 (1977). *Byers* involved a complex bigamous relationship: The decedent married his first wife, Helen, in 1945. Five years later, without obtaining a divorce and while his first wife was still alive, he married a second woman, Martha, with whom he lived, as man and wife until 1967. Six years after the second wedding, the first wife, Helen, divorced decedent. In 1967,

decedent left the second wife, Martha, and legally married the third wife, Dorothy, with whom he lived until his death in 1973. Dorothy and Martha claimed death benefits as the surviving spouse. Martha argued that when Helen divorced the decedent, it removed the impediment to Martha's marriage, which then ripened into a legitimate common law marriage that did not dissolve when the decedent left her to marry Dorothy. The Supreme Court held Dorothy was the legal spouse because there was no evidence that the decedent and Martha entered into a new agreement to be in a common law marriage after the decedent's first wife divorced him. Without such a new agreement, Martha's relationship with the decedent did not ripen into a legitimate marriage. Therefore, there was no impediment to the decedent's marriage to Dorothy in 1967.

*Byers* is summarized for completeness and to demonstrate that it bears little similarity to Yvonne's claim, except that in both, the court rejected claims of a common law marriage. That is within the Commission's discretion and it is not appealed here. *Byers*, thus, is inapposite to the outcome of this case.

The third and last South Carolina case is *Palm v. General Painting Co.*, 296 S.C. 41, 370 S.E.2d 463 (Ct. App. 1988). The facts in *Palm* are similar to those in *Day*. Julia, the mother of the decedent's illegitimate children was married to a man who was in prison. While still married to her incarcerated husband, Harvey, Julia lived with the decedent for two years and had two children with him. The Commission found that the evidence showed she was actually wholly dependent upon the decedent for her support at the time of the decedent's death even though she was still married to Harvey. Relying explicitly on *Day*, the Commissioner denied Julia's claim for benefits and the Court of Appeals upheld that ruling, also relying on *Day*.

Here, there is no bigamy, nor *constitutional* legal impediment to the relationship of Timothy

and Yvonne – only the unconstitutional application of the fornication statutes by an administrative body with no jurisdiction to enforce criminal laws. The Commission found that Yvonne was dependent upon Decedent and would qualify for benefits, but for the "illicit relationship" per *Day* and the fornication statutes through with the Commission imputed the "illicit" nature of the relationship. *Palm*, thus, like *Day*, does not bar Yvonne's claim because, after *Lawrence*, the State is not permitted to punish (assumed) private consensual sexual conduct between single adults.

**C. THIS COURT SHOULD CLEARLY HOLD THAT S.C. CODE § 42-9-120 DEPENDENCY IN "ALL OTHER CASES" IS NOT LIMITED TO RELATIVES BY BLOOD OR MARRIAGE.**

We know that the Workers Compensation Act exists for the "humane" purpose of helping workers. *Sims v. S.C. State Comm'n of Forestry*, 235 S.C. at 9, 109 S.E.2d 701. We know it must be liberally construed for the workers' benefit. *Bentley v. Spartanburg Cty.*, 398 S.C. at 422, 730 S.E.2d at 298 (citation omitted). We know that reasonable doubt as to the construction of the Act must be resolved in favor of coverage." *Id.* (citation omitted). We know that § 42-9-120 does not define or limit the class of 'catchall' dependents. *Day v. Day*, 216 S.C. at 342, 58 S.E.2d at 86; *Adams v. Texfi Indus. [III]*, 320 S.C. 213, 216, 464 S.E.2d 109 (1995). And we know that the dependency standard to be used in a workers' compensation case is that the Commission must make fact findings as to actual dependence on the basis of "the reliable, probative, and substantial evidence on the whole record." *Adams v. Texfi Indus. [IV]*, 341 S.C. 401, 404, 535 S.E.2d 124, 125 (2000) (citation omitted).

But it is clear from the five years of litigation in this case that litigants and the Commission do *not* know that persons unrelated by blood or marriage may qualify for death benefits under § 42-9-120, if they prove actual dependence.

The Act directs the Commission to pay benefits to the “dependents” of a deceased worker. S.C. Code Ann. § 42-9-290 (2013). The Act does not define the overall class of "dependents". *Adams v. Texfi Indus. [II]*, 320 S.C. 213, 216, 464 S.E.2d 109 (1995). Instead, it prescribes the method for establishing dependency.<sup>14</sup> With the exception of those who meet the specific statutory definitions of surviving spouse and children,<sup>15</sup> (who are conclusively presumed to be wholly dependent, per S.C. Code Ann. § 42-9-110 (2013)), all others must prove actual dependence and they may lose their right to compensation if other claimants establish actual *total* dependence and they prove less than actual total dependence. S.C. Code Ann. § 42-9-290 (2013). *Adams v. Texfi Indus. [III]*, 320 S.C. 213, 216, 464 S.E.2d 109 (1995).

In only one very specific circumstance, not applicable here, the Act limits the class of dependents to relatives: Where the claimants are not citizens or residents of the United States or Canada, the Act limits death benefits statutorily defined surviving spouse or children (conclusively presumed wholly dependent), or, in their absence, benefits are limited to statutorily defined surviving parents. S.C. Code Ann. § 42-9-290 (2013) There is no similar limitation for claimants who are citizens or residents of the United States or Canada (as Yvonne undisputedly is).

The absence of similar limiting language in S.C. Code Ann. § 42-9-120 demonstrates two things: (1) that the legislature knows how to limit dependency to relatives by blood or marriage;

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<sup>14</sup>It also directs how the award is to be divided among total dependents, partial dependents and nondependent children and parents. The total death benefit is to be divided among those who are wholly dependent unless there are none, in which case partial dependents are to be paid a portion of the award in accordance with the amount of support provided by the decedent. S.C. Code Ann. § 42-9-290 (2013). If no claimants establish total or partial dependency or if partial dependents can claim only part of the death benefit, the Law directs payment of the remaining death benefits to nondependent children, or if there are none, to the decedent’s parents irrespective of age or dependency. S.C. Code Ann. § 42-9-140 (2013).

<sup>15</sup>Partially dependent claimants other than minor legitimate children of the decedent may be bumped up to the level of wholly dependent claimants if they meet the statutory definition of children in S.C. Code Ann. § 42-1-70 (2013).

and, (2) the legislature did not intend to limit dependency in this catchall "in all other cases" statute, except to persons who can prove actual dependency. Clearly, had the legislature intended to limit this section to relatives or any other class of persons, it was fully capable of doing so, having done so in S.C. Code Ann. § 42-9-290. And this Court has held as much. See, e.g., *Bush v. Gingrey Bros.*, 232 S.C. 20, 24, 100 S.E.2d 821, 823 (1957) (construing § 72-161 [now § 42-9-110] and § 72-162 [now § 42-9-120], holding that they "relate to the same subject matter, are in *Pari Materia*, and must be construed together, keeping in mind of course the legislative intent[.]").

[As to] Section 72–161 [42-9-110] ... there is nothing in the Statute that gives such persons a prior or exclusive right over others who are proven to be wholly dependent in fact without regard to any presumption. Had the Legislature intended otherwise, it could easily have provided that such persons ... shall take to the exclusion of all others. This was not done, and the absence of such language is significant when considered in the light of the language of the other sections heretofore referred to[.]

*Id.* at 24–25, 100 S.E.2d at 824 (italics in original) (underscore added).

This Court's *primary function* in construing a statute is to determine the legislature's intent. *E.g.*, *State v. Ramsey*, 311 S.C. 555, 430 S.E.2d 511 (1993) (emphasis added). Where, as here, a statute is complete, plain, and unambiguous, legislative intent must be determined from the language of the statute itself. *E.g.*, *State v. Blackmon*, 304 S.C. 270, 403 S.E.2d 660 (1991). This Court considers not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. *E.g.*, *South Carolina Coastal Council v. South Carolina State Ethics Comm'n*, 306 S.C. 41, 410 S.E.2d 245 (1991).

"What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." *Bass v. Isochem*, 365 S.C. 454, 470, 617 S.E.2d 369, 378 (Ct. App. 2005)

(construing Workers Compensation Act notice provision § 42–15–20). “In construing a statute, its words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation.” *Olds v. City of Goose Creek*, 424 S.C. 240, 249, 818 S.E.2d 5, 10 (2018) (quoting *City of Myrtle Beach v. Juel P. Corp.*, 344 S.C. 43, 47, 543 S.E.2d 538, 540 (2001)). “Where the language of a statute is clear and explicit, the courts cannot rewrite the statute and inject matters into the statute which are not in the legislature's language.” *Vaughan v. McLeod Reg'l Med. Ctr.*, 372 S.C. 505, 510, 642 S.E.2d 744, 747 (2007) (citation omitted) (brackets omitted).

How, then, must this Court construe the plain, unlimited language of the “in all other cases” provision, § 42-9-120, in light of the Act's beneficent purpose and the policy of liberal construction in favor of coverage? Yvonne urges this Court to hold, more explicitly than it did in *Texfi IV*, that the facts of dependency are determinative, not the relationship to the deceased worker: “[W]e take this opportunity to reiterate that the dependency standard to be used in a workers' compensation case is that announced in *Adams v. Texfi Industries II.*” *Adams v. Texfi Indus. [IV]*, 341 S.C. at 404, 535 S.E.2d at 125. “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 Indus. [III]*, 320 S.C. 213, 217, 464 S.E.2d 109, 112 (1995) (citing *Day v. Day*, 216 S.C. 334, 342, 58 S.E.2d 83, 86–87 (1950)).

Despite *Texfi II* and *IV*, litigants, the Commission and courts continue to misunderstand that neither *Day* nor *Palm* nor § 42-9-120, nor the *Texfi* decisions limit dependents to relatives by blood or marriage. In this brief, Yvonne describes the improper limitation as “by blood or marriage” as opposed to “family” or “relatives” because, after all the years that Yvonne and Timothy lived

together in a committed relationship, raised her son Javon together, improved the home they lived in, struggled to make ends meet and grappled with the myriad effects of alcoholism, it is wickedly untrue to say that they were not family (a concept even bigger than mere 'relatives'). They most definitely were family, by choice, not the compulsion of the law. Disagreements with 'in-laws', Shirley and Tyrone, only serve to sharpen this point.

*South Carolina Second Injury Fund v. Young*, 301 S.C. 524, 392 S.E.2d 807 (Ct. App. 1990) demonstrates that "dependent" is *intentionally* broader than the specific relatives (spouse, parents, children) named in various parts of the Act. Discussing the effect of the 1972 amendment to the Act, the Court held "it in no way restricted the class of persons who could claim as *dependents*." *Id.* at 528, 392 S.E.2d at 809 (emphasis in original).

In *Young*, a wholly dependent niece claimed a right to death benefits, while the Second Injury Fund claimed that 'niece' was not a relative specifically mentioned by the Act. The Court of Appeals rejected the Fund's argument:

*This contention has no merit whatever. Indeed, the Supreme Court put it to rest in Day v. Day*, 216 S.C. 334, 58 S.E.2d 83 (1950). There it said:

*It is generally held that unless a Workmen's Compensation Act specifically sets forth who shall be considered ... dependent ..., dependency and the extent thereof are to be determined as questions of fact in accordance with the facts as they exist at the time of the injury to the employee.*

*Our Act does not define dependency, and does not specifically indicate who are dependents, except the designated persons who are conclusively presumed to be wholly dependent upon the deceased employee. 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.*

In the forty years since *Day* was decided, *our Act still does not define dependency, still does not list who may be dependents, and still only designates those persons who are conclusively presumed to be wholly dependent upon a deceased employee.* See S.C. Code Ann. § 42-9-110 (1976) ("A surviving spouse or a child shall be conclusively presumed to be wholly dependent for support on a deceased

employee.”); id. § 42-9-120 (“*In all other cases questions of dependency ... shall be determined in accordance with the facts as the facts may be at the time of the accident ...*”). Until our Act is changed, then, a niece of a deceased employee may ordinarily qualify for compensation as a dependent. ...

*Because no hard and fast rule can be laid down as to what constitutes actual dependency and because the question of dependency, as the Day case says, is one of fact, each case must rest and be determined on its own particular facts and circumstances.*

*South Carolina Second Injury Fund v. Young*, 301 S.C. at 526-529 (emphasis added).

S.C. Code § 42-9-120 has never been construed as limiting "dependents" to relatives. In each case, the claimant was either a relative or s/he did not make the claim under the catchall statute. For this reason, the question has never come before the Court, until now. The time has come for this Court to state clearly that the Act does not limit the class of dependents who may qualify for death benefits under this 'catchall' section.

## **II. THE COURT OF APPEALS REMAND IS REVERSIBLE ERROR**

Com. James and later the Full Commission, *both*, determined that Yvonne was financially dependent on Timothy, moreso than Shirley, and that Yvonne "would be" entitled to benefits, but for the "illicit relationship" holding in *Day*, which Yvonne has shown in argument above to be unconstitutional. (R. pp. 65; 69; 138; 142) The Commission's unchallenged findings, that Yvonne was dependent on Timothy and more so than Shirley, constitute the law of the case.

Yvonne's dependency was not challenged on appeal nor was it within the scope of her challenge. Shirley now concedes that unchallenged findings are the law of the case and she asserts that only findings related to "intimate contact" were challenged on appeal and that "[t]here are no facts in dispute here". (Petition p 5)

The Court recently explained the law of the case in Workers Compensation cases:

"Only issues raised to the Commission within the application for review of the single commissioner's order are preserved for review." *Ham v. Mullins Lumber Co.*, 193 S.C. 66, 7 S.E.2d 712 (1952) (holding that all findings of fact and law by the Hearing Commissioner became and are the law of the case, unless within the scope of the appellant's exception to the Full Commission); *Brunson v. American Koyo Bearings*, 367 S.C. 161, 165, 623 S.E.2d 870, 872 (Ct. App. 2005) (holding that the findings of fact and law by the single commissioner become and are the law of the case unless excepted to by appellant) *abrogated in part on other grounds by Bone v. U.S. Food Service*, 404 S.C. 67, 744 S.E.2d 552 (2013); *Green v. City of Columbia*, 311 S.C. 78, 80, 427 S.E.2d 685 (Ct. App. 1993) (holding the findings of fact and law by the single commissioner become the law of the case, unless within the scope of the appellant's exception to the single commissioner's order) *abrogated in part on other grounds by Bone v. U.S. Food Service*, 404 S.C. 67, 744 S.E.2d 552 (2013). This Court has also held that general exceptions, such as "the commission erred in making an award," are too ambiguous to fulfill the notice requirements of due process and do not preserve an issue for review. *See Jones v. Anderson Cotton Mills*, 205 S.C. 247, 31 S.E.2d 447 (1944).

*Hilton v. Flakeboard Am. Ltd.*, 418 S.C. 245, 249–50, 791 S.E.2d 719, 721–22 (2016) (underscore added).

The record does not support the Court of Appeals' remand as to "whether Yvonne qualifies as a dependent under the Act", because her qualifications are already the law of the case. The Court of Appeals remand in full shows the source of its error:

In light of our reversal of the Appellate Panel's fornication findings, we remand this case to the Appellate Panel to reconsider its holding. *Day* held individuals cannot be dependents under the Act if they are involved in an illicit relationship. Here, no evidence was presented of an illicit relationship. Thus, we ask the Appellate Panel to determine, based on the evidence in the record, whether Yvonne qualifies as a dependent under the Act.

*York v. Longlands Plantation*, 424 S.C. at 285, 818 S.E.2d at 218. (App. p. 6) If the Court was directing the Commission to make findings and conclusions in accord with its findings of Yvonne's greater dependency than Shirley's and to award benefits to Yvonne and properly apportion them, it did not say so.

It appears that this remand directs the Commission not to hold an additional evidentiary

hearing, and to make its determination instead "on the evidence in the record." (*Id.*) But the Court's intent is unclear and the Commission may well send the matter to a single Commissioner for an evidentiary hearing as happened in *Russell v. Wal-Mart Stores, Inc.*, 426 S.C. 281, 826 S.E.2d 863 (On remand, the Commission remanded claimant's change of condition claim to a single commissioner for what would have been a third ruling on the same claim.).

It is as likely as not that the Commission will be swayed, on remand, by Shirley's argument that "*Day and Palm* stand for the proposition that if the legislature intended to include this sort of relationship [persons unrelated by blood or marriage] as a basis for dependency under the Act, the legislature would have said so expressly." (Petition p. 5) The Commission held that "if it had been the intention of the legislature to sanction an illicit relationship as constituting a basis for dependency, express provision would have been made... in the...Act." (R. pp. 71; 146) The Commission could just as easily substitute "the relationship of persons unrelated by blood or marriage" for the words "an illicit relationship" in its decision on remand, because the Court of Appeals offers no guidance whatsoever as to this critical issue.

That result would be error in light of the analyses of statutory construction and legislative intent. See, *Bush v. Gingrey Bros.*, 232 S.C. at 24, 100 S.E.2d at 823 (the absence of limiting language is significant when considered in the light of the language in other sections in *pari materia*); *State v. Blackmon*, 304 S.C. 270, 403 S.E.2d 660 (plain, unambiguous statutory language is implemented, more so than construed); *South Carolina Coastal Council v. South Carolina State Ethics Comm'n*, 306 S.C. 41, 410 S.E.2d 245 (the statute is considered in the context of the Act's purpose and policy); *Bass v. Isochem*, 365 S.C. at 470, 617 S.E.2d at 378 (the best evidence of legislative intent is the text of the statute); *Olds v. City of Goose Creek*, 424 S.C. at 249, 818 S.E.2d

at 510 (courts should not resort to forced construction to limit or expand the statute's operation); *Vaughan v. McLeod Reg'l Med. Ctr.*, 372 S.C. at 510, 642 S.E.2d at 747 (courts cannot rewrite a clear statute to inject what is not there).

It would also be error in light of the analyses of the humane purpose of the Act in *Sims v. S.C. State Comm'n of Forestry*, 235 S.C. at 9, 109 S.E.2d 701; and the directive of liberal construction of the Act in favor of benefits in *Bentley v. Spartanburg Cty.*, 398 S.C. at 422, 730 S.E.2d at 298.

Thus, the Court of Appeals decision remands without resolving a legal issue of statutory construction that is subject to repeated error on remand in this and future workers compensation cases. For this reason, too, this Court should affirm the Court of Appeals reversal of the Commission's denial of benefits to Yvonne, it should reverse the remand order and hold that the Commissioner's findings of Yvonne's greater dependency are the law of the case. And it should hold that § 42-9-120 does not preclude persons unrelated by blood or marriage from receiving death benefits.

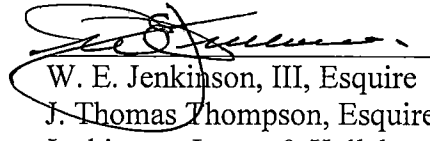
### CONCLUSION

On the basis of all of the above and foregoing it is respectfully requested that the Court affirm in part and reverse in part the Court of Appeals decision in this case. Specifically, it is requested that the Court affirm the Court of Appeals reversal of the denial of benefits to Yvonne; it should hold that *Day* and the fornication statutes were unconstitutionally applied in this case and may not be used to deny workers compensation death benefits under § 42-9-120. Further, it should hold that § 42-9-120 does not preclude persons such as Yvonne, who are unrelated to the worker by blood or marriage, from receiving death benefits. It should reverse the remand order and hold

that the Commissioner's findings of Yvonne's greater dependency are the law of the case. And it should remand to the Commission for an order apportioning all benefits (except funeral expenses, to which Yvonne makes no claim) between Yvonne and Shirley in accord with the findings of the relative extent of their dependency in accordance with S.C. Code § 42-9-130.

Respectfully submitted,

June 19, 2019

  
W. E. Jenkinson, III, Esquire  
J. Thomas Thompson, Esquire  
Jenkinson, Jarrett & Kellahan, PA  
Telephone: (843) 355-2000  
Facsimile: (843) 355-2010  
Email: Billy@Jenkinsonlaw.com  
Attorneys for Appellant

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
W.C.C. File Number 1312352 (January 20, 2016)

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ON WRIT OF CERTIORARI TO THE COURT OF APPEALS  
Op. No. 5566 (Ct. App. filed June 6, 2018)  
Appellate Case No. 2018-001877

RECEIVED

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S.C. SUPREME COURT

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 a..... Petitioner,

v.

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

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PROOF OF SERVICE

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I certify that I have served Brief of Respondent Yvonne Burns on Petitioner Shirley York and Respondents Longlands Plantation a.k.a. Knollwood, Inc., and Companion Property and Casualty Group by depositing a copy of it in the United States Mail, postage prepaid, on June 19, 2019, addressed as follows:

Attorneys of record:

Ann M. Mickle, Esquire  
James R. Davidson, Esquire  
Mickle & Bass, LLC  
Post Office Box 5639  
1519 Richland Street  
Columbia, SC 29201

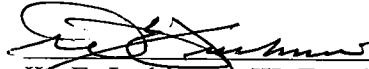
*Attorneys for Petitioner Shirley York*

Blake A. Hewitt, Esquire  
Bluestein Nichols Thompson Delgado  
PO Box 7965  
Columbia, SC 20202  
*Attorney for Petitioner Shirley York*

Helen F. Hiser, Esquire  
McAngus Goudelock & Courie, LLC  
PO Box 650007  
Mount Pleasant, SC 29465  
*Attorney for Respondent Longlands*

J. Brandon Hylton, Esquire  
McAngus Goudelock & Courie, LLC  
Post Office Box 7489  
Florence, SC 29502  
*Attorney for Respondent Longlands*

June 19, 2019



W. E. Jenkinson, III, Esquire, SC Bar#2984  
J. Thomas Thompson, Esquire, SC Bar # 81689  
Jenkinson, Jarrett, & Kellahan, P.A.  
Post Office Drawer 669  
Kingstree, SC 29556  
(843) 355-2000  
[billy@jenkinsonlaw.com](mailto:billy@jenkinsonlaw.com)  
Attorneys for Respondent