RECEIVED

JUL 01 2019

S.C. SUPREME COURT

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)
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.

REPLY BRIEF

Ann McCrowey Mickle # 3522
MICKLE & BASS
3200 Devine St.
Columbia, SC 29205
(803) 929-0029
(803) 929-1024 (facsimile)
amickle@mickleandbass.com

Blake A. Hewitt # 73674
BLUESTEIN THOMPSON SULLIVAN LLC
P.O. Box 7965
Columbia, SC 29202
(803) 779-7599
(803) 779-8995 (facsimile)
blake@bluesteinattorneys.com

Attorneys for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other jurisdictions

Statutes & Other Authorities

ARGUMENT

A. "Dependency" is not equivalent to house mates pooling money for joint expenses.

Legal dependency is not the same thing as living together and contributing to joint expenses. That is a key takeaway from *Dunnavant v. Newman Tire Co.*, 656 S.E.2d 431 (Va. Ct. App. 2008), a case the respondent cites in her brief.

That case involved someone who moved into a friend's house, lived there with his friend for years, and claimed he was his friend's dependent after the friend died in a work-related accident. He lost his claim because he could not prove he needed his friend's support and that the friend had a legal or moral duty to support him. *Id.* at 435. The opinion explained the parties had a "mutually assistive" relationship as house mates; a situation that "arises under many circumstances but does not indicate a dependent relationship beyond the sharing of a household." *Id.*

Virginia's statute is similar to South Carolina's; it provides in relevant part that "questions of dependency ... shall be determined in accordance with the facts[.]" *Dunnavant*, 656 S.E.2d at 433. Virginia determines "dependency" by looking at the "frequency and continuity of actual contributions of cash or supplies, the needs of the claimants, and the legal or moral obligations of the employee." *Va. Elec. & Power Co. v. Place*, 143 S.E. 756, 758 (Va. 1928) (quoting *Md. Cas. Co. v. Campbell*, 129 S.E. 447, 448 (Ga. Ct. App. 1925)). Mutual assistance is not enough.

All of that easily fits here. This Court has described dependency as looking *to someone else* for support and maintenance and relying on them for life's reasonable

necessities. *Day v. Day*, 216 S.C. 334, 342, 58 S.E.2d 83, 87 (1950). Looking to someone else and relying on someone else connotes a need for support and an obligation to support.

The record shows this situation to have been much more like house mates than dependency. There is nothing here about need. The respondent said she would take Timothy's pay and her own pay and use that money to pay both of their bills. (R.p.226, lines 6-12). There is no testimony that respondent could not pay her own bills without Timothy's contribution or that she needed any contributions from Timothy in order to pay her own bills.

There is also nothing on obligation. There is no evidence Timothy believed he was responsible for supporting respondent.

And, as mentioned in prior briefing, the year before Timothy died he told the federal government he was single and that he had no dependents. (R.p.259). That same year, respondent told the government nobody could claim her as a dependent. (R.p.258).

The respondent asks this Court to hold that dependency is not limited to relatives. Nobody is arguing dependency is strictly limited to relatives. The argument is that dependency requires a need for support and some evidence of a moral or legal obligation to support. There is just no evidence of a need for support or an obligation to support here.

B. Even if the facts showed dependency, it is hard to see how the Court could rule for the respondent without substantially revising long-standing precedent.

As noted above, the facts here do not show legal dependency. The commission *did* find as a fact that respondent was partially dependent on Timothy, but it did so "because [Timothy] contributed to household expenses." (R.p.142, ¶52). That is not dependency. When people share a roof it is natural for them to share other expenses.

Still, even if the facts showed legal dependency, it is hard to see how the Court could rule for the respondent without substantially modifying its decision in *Day v. Day* and the decision of the court of appeals in *Palm v. General Painting Co*. Both of those cases can be factually distinguished because they involved deceased workers who were married and living with someone else, but most cases are distinguishable from each other factually. The key question is whether there are any legal distinctions between those cases and this case.

Day and *Palm* stand for the proposition that legal dependency under the Workers' Compensation Act does not include someone living in a non-marital romantic relationship and that the General Assembly should take action if that interpretation of the relevant statute is wrong. Shortly before *Day* announced its holding, it explained:

> The decisions are for the most part in accord in holding that a woman living with an employe[e], as man and wife, when he died as the result of an injury, is not entitled to compensation under Workmen's Compensation Laws if not legally married to him although dependent upon him.

216 S.C. 334, 344, 58 S.E.2d 83, 87 (1950). That rule would plainly bar respondent's claim.

In *Palm*, the court of appeals rejected the very distinction the respondent urges here—the court rejected an argument that *Day* "only bars a bigamous spouse." 296 S.C. 41, 50, 370 S.E.2d 463, 468 (Ct. App. 1988).

The respondent would distinguish these cases by saying they involved an impediment to marriage. Respectfully, that is beside the point. Both cases are grounded on the law's special regard for the marital relationship and on the belief that the General Assembly did not intend to include within dependency a romantic relationship that is not a legal marriage. That rule applies here. The respondent claimed this relationship was marital. She lost that

claim. It is hard to see how an opinion in her favor could survive without making a substantial retreat from the language in *Day* and *Palm*.

Nothing suggests there is a reason to overrule these cases. That should be a forceful point because *Palm* specifically cited other jurisdictions that would have allowed a romantic co-habitant to recover. *Palm* declined to follow those jurisdictions and explained the General Assembly was the appropriate body to set the standards for an award in this sort of case if any award in this sort of case was appropriate. 296 S.C. at 50-51, 370 S.E.2d at 468. There have been no amendments to the relevant statute; section 42-9-120. That counts in favor of adhering to precedent because the legislature is "free" to amend a statute if the court misinterprets a statute. *McLeod v. Starnes*, 396 S.C. 647, 655, 723 S.E.2d 198, 203 (2012).

C. The commission's decision is also bolstered by the North Carolina case it cited; a case that is factually different from *Day* and *Palm* and indistinguishable from the case here.

The commission found *Day* was dispositive, but it also said a different decision, one from North Carolina, was persuasive. (R.p.142, ¶¶53 & 54). That case is slightly different from *Day* and *Palm* but it follows the same basic reasoning as those cases and it is indistinguishable from the case here.

The North Carolina Supreme Court's decision in *Fields v. Hollowell & Hollowell* did not involve bigamy. 78 S.E.2d 740 (N.C. 1953). Neither the person claiming to be a dependent nor the worker whose death benefits were at issue was married to someone else. There, as here, a romantic partner sought an injured worker's death benefit and claimed dependency based on extended co-habitation. There, as here, the relevant statute provided that dependency would be determined "in accordance with the facts." *Id.* at 743.

There, the court unanimously reversed an award of benefits, holding "'in all other cases' means in all cases other than those of widows, widowers, and children" and that "[m]anifestly" someone living in cohabitation with a person to whom they are not married is not within the purview of the term "in all other cases." *Id.* at 743. The court believed extending benefits in this situation would diminish the sanctity of marriage, obscure the rights of other dependents, open the door to false pretenses of marriage, and encourage people to contest the claims of legitimate dependents. *Id.* at 744. *Day* mentioned similar concerns. 216 S.C. at 345, 58 S.E.2d at 88. This reasoning applies here with equal force.

The reasoning in *Fields* is sensible. The court explained the parties could not have divorced each other, sued each other for alimony, refused to testify against each other in a criminal case, and could have abandoned each other at any time. *Id.* at 743-744. The court rightly expressed concern that recognizing dependency in this situation would place a non-marital relationship on the same footing with marriage. *Id.* at 744.

The court noted North Carolina's statutes penalizing fornication and adultery. *Id.* at 744. That likely explains the similar citations in the commission's decision here, since the commission said it found *Fields* persuasive. (R.p.142, ¶54).

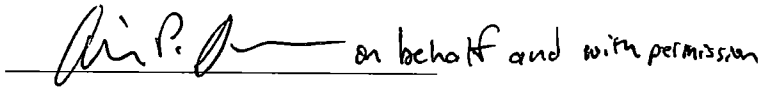
Even so, minimal scrutiny of *Fields* reveals that the decision was not about policing anyone's intimate conduct or convicting anyone of a crime. That did not happen there, and it did not happen here. The case recognizes that the law places special value on the marital relationship and it interprets the dependency statute in light of that special value. That is basically the same reasoning this Court employed in *Day*. Both cases turn on reasonable skepticism of the idea that legal dependency was intended to cover this sort of relationship.

The respondent has consistently tried to make this case about intimate conduct and the constitutional prohibition on criminalizing certain intimate conduct. Neither of those things are at issue. As noted above, the respondent has not been charged with a crime and she was not convicted of a crime. Denying her status as a dependent is not a penalty. It is nothing more than a recognition that she and Timothy were not married and that romantic co-habitants—particularly those who lived together off-and-on and who did not claim each other as dependents—are not legal dependents under the Workers' Compensation Act.

CONCLUSION

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

Respectfully submitted,



June 28, 2019

Ann McCrowey Mickle # 3522
MICKLE & BASS
3200 Devine St.
Columbia, SC 29205
(803) 929-0029
(803) 929-1024 (facsimile)
amickle@mickleandbass.com

Blake A. Hewitt # 73674
BLUESTEIN THOMPSON SULLIVAN LLC
P.O. Box 7965
Columbia, SC 29202
(803) 779-7599
(803) 779-8995 (facsimile)
blake@bluesteinattorneys.com

Attorneys for Petitioner

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)
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.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel with a copy of the *Reply Brief* by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

Helen F Hiser, Esquire
McAngus Goudelock & Courie, LLC
PO Box 650007
Mount Pleasant, SC 29465

J. Brandon Hylton, Esquire
McAngus Goudelock & Courie, LLC
PO Box 7489
Florence, SC 29502

William E. Jenkinson, III, Esquire
J. Thomas Thompson, Esquire
Jenkinson Jarrett & Kellahan, PA
PO Drawer 669
Kingstree, SC 29556

July 1, 2019

Erin Bridges

BLUESTEIN ATTORNEYS

BLUESTEIN THOMPSON SULLIVAN, LLC
BLUESTEINATTORNEYS.COM

July 1, 2019

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.: 2018-001877

Dear Mr. Shearouse:

Please find enclosed for filing the original and fifteen (15) copies of the Reply Brief of Petitioner in reference to the above matter. I have also enclosed a proof of service on counsel for the Respondents. Please return the additional filed copy to me via our courier.

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

Sincerely,

Erin Bridges

Erin Bridges
Paralegal to Blake A. Hewitt
Bluestein Thompson Sullivan, LLC

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