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P S I A

PA WIDOW STILL ENTITLED TO DEATH BENEFITS DESPITE NEW BOYFRIEND

by: *Attorney Christian A. Davis &
Attorney Thomas J. Bailey
Weber Gallagher Simpson
Stapleton Fires & Newby*

Recently, the Pennsylvania Commonwealth Court affirmed a Workers' Compensation Judge's ("WCJ") decision that denied employer's Termination Petition, finding the employer did not establish a right to relief because it failed to prove claimant entered into a common law marriage.¹ The Court opined that, absent evidence of an exchange of words in the present tense, spoken with the specific purpose of creating a legal relationship of husband and wife, the employer failed to establish claimant entered into a common law marriage. The Court further opined, that in this case, it was impermissible to analyze evidence of cohabitation and reputation to determine the existence of a common law marriage.

OVERVIEW

The Pennsylvania Workers' Compensation Act provides for weekly compensation benefits and burial expenses when death results from an injury or occupational disease.² These

are commonly referred to as death benefits. This entitlement to benefits is independent and not conditioned on the right of the injured worker at the time of death.³ The amount of benefits is determined by the Act in effect on the date of the injury. Specifically, Section 307 of the Act provides percentages of the wages of the deceased payable to various classes.⁴

The Act provides that certain dependents are entitled to these benefits. Those entitled to these benefits can include the widow, widower, children under eighteen (18), and, at times, siblings.⁵ The class of entitled dependents is determined as of the date of death.⁶ In some instances, depending on the circumstances, death benefits may be divided amongst the different dependents.⁷

The terms "widow" and "widower" have been interpreted to include those legally married in a formal ceremony and those engaged in a common law marriage.⁸ As statutory law provides that common law marriages contracted after January 1, 2005 are not valid marriages, the term "widow" and "widower," for the purposes of workers' compensation, does not include common law marriages contracted after this date.⁹ However, any otherwise lawful common law marriage contracted before January 1, 2005 is valid and the widow/widower may obtain death benefits.¹⁰

A widow/widower is generally entitled to death benefits for life.¹¹ However, there are certain instances in which these benefits may cease. These include remarriage, engaging in a meretricious relationship, prostitution, and if the widow/

widower becomes self supporting (although subsequent case law has made clear that this last instance is most likely not to be upheld as constitutional).¹²

Unlike the other instances that terminate benefits, those who remarry are still entitled to a lump sum payout of 104 weeks of benefits upon remarriage.¹³ Remarriage, for the purposes of the Act, includes marriage via a formal ceremony and common law marriages contracted prior to January 1, 2005.

A meretricious relationship is defined as two (2) individuals living together in a carnal way without the benefit of marriage.¹⁴ A petition seeking to terminate benefits based on a meretricious relationship must be filed during the course of this relationship.¹⁵ Proof of cohabitation is not sufficient to support a conclusion that a relationship is meretricious. Rather, absent proof of sexual relations, there is not substantial evidence to support a conclusion a relationship is meretricious.¹⁶

PPL v. WCAB (Rebo) illustrates the considerations taken into account in determining whether or not a widow/widower has contracted into a common law marriage. It also demonstrates the great challenges employers face in litigating these types of termination petitions.¹⁷

**ANALYSIS OF
PLL V. REBO (WCAB)**

Sandra Rebo, claimant, was receiving workers' compensation benefits as a dependent spouse following the death of her husband.¹⁸ Employer filed a termination petition on June 12, 2008 seeking to end compensation benefits based on claimant's alleged

meretricious relationship and, in addition, based on claimant's alleged subsequent common law marriage.¹⁹

In defense of employer's petition, claimant presented her own testimony as well as that of her alleged husband, Gary McDonald. Claimant admitted that she and Mr. McDonald were in fact living together and split all expenses.²⁰ Claimant further admitted that she and Mr. McDonald previously engaged in sexual relations but contended that their relationship was not sexually intimate for quite some time.²¹ Claimant advised she never had any intention of marrying Mr. McDonald and, further, that the two of them did not hold themselves out as husband and wife.²² During subsequent testimony, however, claimant admitted that she and Mr. McDonald held themselves out as husband and wife to Mr. McDonald's employer for health insurance purposes and filed their taxes under the status "married filing jointly."²³

Mr. McDonald also testified in this matter and agreed that he and claimant did file taxes as "married filing jointly" and that they held themselves out as married to his employer for health insurance purposes.²⁴ He also admitted that he even tried to declare marital status with his union for additional benefits.²⁵ However, Mr. McDonald confirmed claimant's testimony that the two never had any intention of being married and did not hold themselves out as husband and wife except for these few exceptions, which were purely for financial gain.²⁶

The WCJ denied employer's Termination Petition holding that there was not enough evidence to

prove a meretricious relationship.²⁷ Further, the WCJ found that, while claimant and Mr. McDonald lived together, had previously engaged in sexual relations, and held themselves out as a married couple to the IRS and Mr. McDonald's employer; they never formed any intent to enter into a marital relationship.²⁸ Rather, the WCJ found the couple was simply trying to "game the system."²⁹ In making these determinations, the WCJ credited the testimony of Mr. McDonald but not the claimant's own testimony as claimant would not hesitate to "manipulate the facts in whatever way might be financially beneficial to her."³⁰ Thus, despite the WCJ's credibility determination against the claimant, the WCJ found there was no common law marriage based on a lack of evidence of intent to marry provided by the parties.

Employer appealed this decision to the WCAB and the WCAB affirmed.³¹ Employer then appealed to the Commonwealth Court solely on the issue of whether or not the couple had entered into a common law marriage. Specifically, employer argued that since the individuals had expressed their contract of marriage, they had entered into a common law marriage. The Commonwealth Court, after addressing each of employer's arguments, affirmed the decision of the WCJ.³²

The Commonwealth Court explained that the party alleging a common law marriage carries a very heavy burden. Specifically, as common law marriage can only be created through an exchange of words spoken in the present tense with the purpose of creating the legal relationship of man and

wife, the party trying to prove a common law marriage must, except for limited instances, present clear and convincing direct evidence of this exchange of words.³³ The only exception to this rule is when a party is unable to testify to the *verba in praesenti*. In those limited instances, there is a rebuttal presumption in favor of common law marriage when the burdened party proves constant cohabitation and reputation of marriage. However, this presumption is not established when the couple merely holds themselves out to a few people.³⁴

The Court continued that, as it has become quite evident that claims of common law marriage contain a great source of perjury and fraud, it was prospectively abolished by the Pennsylvania Legislator as of January 1, 2005.³⁵

Turning its attention to the facts of the present case, the Court stated that as both parties were present to testify, the employer was required to show evidence of words *in praesenti* sufficient to establish intent to marry.³⁶ As both claimant and Mr. McDonald denied an exchange of words *in praesenti* showing intent to marry, employer failed to meet its burden of proof.³⁷ Citing that the WCJ found Mr. McDonald's testimony credible, and acknowledging their inability to disturb credibility determinations on appeal, the Court found no sound basis to reverse the WCJ Order.³⁸ The Court added that, even if it were permissible to inquire into evidence of cohabitation and reputation, the employer would still fail to meet its burden as the couple only held themselves out as man and wife to a select group of people.³⁹

Rejecting employer's last argument that the WCJ failed to issue a "reasoned decision," the Court stated that the WCJ's credibility determination finding Mr. McDonald credible cannot be disturbed by appeal.⁴⁰ Further, even if both parties' testimony was deemed not credible, employer's appeal would still be denied as it failed to produce evidence of words *in praesenti* sufficient to establish intent to marry.⁴¹

In a concurring opinion, President Judge Leadbetter expressed great frustration that, while the Court did make the correct determination in affirming the WCJ Order, it did nothing to change the fact, that the end result of rewarding this fraudulent couple was ridiculous and outrageous. She further expressed regret that employer did not appeal on the grounds that there was evidence of a meretricious relationship.⁴²

CONCLUSION

The immediate impact of the case at bar is clear. Employers in Pennsylvania seeking to terminate a claimant's death benefits based on a common law marriage or meretricious relationship face a large, uphill battle. The main reason is that the courts seem reluctant to adapt the stringent rules of proving common law marriage to the forum of workers' compensation. This is truly unfortunate because the result here was clearly distasteful. Judge Leadbetter even goes beyond most published opinions and calls the decision "outrageous." The most disturbing aspect of the result was that it allowed this couple to seemingly unlawfully reap financial rewards in other forums by holding themselves out as married while still

permitting this couples to avoid a termination of benefits because unsurprisingly neither partner admitted to a common law marriage.

A possible solution to this would be advocating for administrating fact finders to not require evidence of words *in praesenti* showing intent to marry even when there is a party of interest available to testify. While the law in Pennsylvania states that where a party is available to testify, evidence of words *in praesenti* is the only evidence sufficient to establish common law marriage, this ignores the troubling fact that interested parties have a strong financial incentive to perjure. This incentive is the reason that the Probate Courts do not allow the living spouse to testify to words *in praesenti* showing intent to marry. While the Court here did acknowledge that even if it were permitted to review evidence of cohabitation and reputation it still would have found employer did not meet its burden of proof; allowing this type of evidence on all cases such as this should drastically reduce the amount of outrageous results that this case produced.

As it stands now, these types of results will continue until there are no longer any remaining widow/widowers who engaged in common law marriage before January 1, 2005. However, the concurring opinion in this case does offer some insight on how to best litigate the termination of death benefits in cases such as this. Prompt filing of a Termination Petition on the basis of a "meretricious relationship" offers the best method in terminating a widow/widower's benefits in case where the claimant is cohabitating and engaged in sexual rela-

tions with another partner. While this is by no means an easy burden, and can be defeated if the party can still show financial distress,⁴³ it does provide a way to terminate benefits that does not rely solely on the testimony of biased and interested parties.

Footnotes

- ¹ 2010 Pa. Commw. LEXIS 510.
- ² Section 307, 77 P.S. § 561.
- ³ *Parks v. Winkler*, 184 A.2d 124 (Pa. Super 1962).
- ⁴ Section 307, 77 P.S. § 561.
- ⁵ *Id.*
- ⁶ *Mohan v. Publicker Industries*, A.2d 326 (Pa. Super. 1964).
- ⁷ 77 P.S. § 561 (1)-(4).
- ⁸ *PNC Bank Corp. v. WCAB (Stamos)*, 831 A.2d 1269 (Pa. Cmwlth. 2003).
- ⁹ 23 Pa.C.S. § 1103; *PNC Bank v. WCAB (Stamos)*, 831 A.2d 1269. (Pa. Cmwlth. 2003).
- ¹⁰ *Costello v. WCAB (Kinsley Constr., Inc.)*, 916 A.2d 1242 (Pa. Cmwlth. 2007).
- ¹¹ *Builders Exch., Inc. v. WCAB (Sacik)*, 439 A.2d 215 (Pa. Cmwlth. 1982).
- ¹² *Campbell v. WCAB (Hards Constr. Co.)*, 695 A.2d 976 (Pa. Cmwlth. 1997); Section 307 77 P.S. § 562; *Oknefski v. WCAB (Louisiana Pacific Corp.)*, 439 A.2d 846 (Pa. Cmwlth. 1981).
- ¹³ *Builders Exch., Inc. v. WCAB (Sacik)*, 439 A.2d 215 (Pa. Cmwlth. 1982).
- ¹⁴ *Campbell v. WCAB (Hards Constr. Co.)*, 695 A.2d 976 (Pa. Cmwlth. 1997).
- ¹⁵ *Todd v. WCAB (Hards Constr. Co.)*, 695 A.2d 1254 (Pa. 1997).
- ¹⁶ *Anthony v. WCAB (Anderson Box Co.)*, 823 A.2d 1071 (Pa. Cmwlth. 2003); *Hess Bros. v. WCAB (Gornick)*, 563 A.2d 236 (Pa. Cmwlth. 1989).
- ¹⁷ 2010 Pa. Commw. LEXIS 510.
- ¹⁸ *Id.* at 1.
- ¹⁹ *Id.*
- ²⁰ *Id.* at 1-2.
- ²¹ *Id.* at 2.
- ²² *Id.*
- ²³ *Id.*
- ²⁴ *Id.* at 2-3.
- ²⁵ *Id.* at 3.
- ²⁶ *Id.*
- ²⁷ *Id.*
- ²⁸ *Id.*
- ²⁹ *Id.* at 3-4.
- ³⁰ *Id.* at 4.
- ³¹ *Id.*
- ³² *Id.* at 1, 4-5.
- ³³ *Id.* at 5-6; *Bowden v. WCAB (G. & W.H. Carson Co.)*, 376 A.2d 1033 (Pa. Cmwlth. 1977).
- ³⁴ *Id.* at 6 (citing *Staudenmayer v. Staudenmayer*, 714 A.2d 1016 (1998); *Giant Eagle v. WCAB (Bahorich)*, 602 A.2d 387 (Pa. Cmwlth. 1992).
- ³⁵ *Id.* at 8.
- ³⁶ *Id.* at 9.

- ³⁷ *Id.*
- ³⁸ *Id.* at 9-10.
- ³⁹ *Id.* at 10.
- ⁴⁰ *Id.* at 12-13.
- ⁴¹ *Id.* at 13-14.
- ⁴² *Id.*

⁴³ *Bethenergy Mines, Inc. v. WCAB (Sadvary)*, 570 A.2d 84 (Pa. 1990) (Even if an employer proves a meretricious relationship, the WCJ has the discretion to continue benefits based on economic need).

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by: *Attorney Kevin L. Connors
DuffyConnors*

BUREAU UPDATE

NO ASSESSMENT FOR THE
SELF-INSURANCE GUARANTY
FUND IN 2010

by: *Chief George Knehr
Self-Insurance Division, BWC*

The Bureau of Workers' Compensation has determined that the existing asset level of the Self-Insurance Guaranty Fund, or SIGF, remains sufficient to cover the claims being paid from the fund. As a result, the bureau will not issue an assessment against existing self-insurers for the maintenance