

APPEAL NO. 93004  
FILED FEBRUARY 12, 1993

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp. 1992). On October 27, 1992, a contested case hearing was held in Dallas, Texas, with (hearing officer) presiding. He determined that (), hereafter claimant, and () and () are the legal beneficiaries of (), decedent hereafter. Appellant, carrier herein, asserts that the evidence does not show that decedent and claimant had a present intent to be married. Claimant responded that the evidence supported the decision of the hearing officer.

DECISION

Finding that the decision and order are supported by sufficient evidence of record, we affirm.

The only issue at this hearing was whether claimant was a legal beneficiary of the decedent. The decedent was fatally injured on (date of injury). The carrier does not dispute liability. Claimant and decedent had been formally married in 1983. They were living in New York when divorced in January 1990. Claimant's testimony was that decedent and claimant were reconciled in July 1991 while still in New York. They then moved together to Texas in November 1991, where on November 11, 1991, they leased an apartment. The lease they signed, in evidence as claimant's exhibit 1, shows the lessees to be "()" and is signed "()" and "()."

The standard applied to a "marriage without formalities" is found in Vernons Texas Code Annotated, Family Code § 1.91. The pertinent part provides that the couple "agreed to be married, and after the agreement they lived together in this state as husband and wife and there represented to others that they were married." In addition to the lease described above, claimant also provided an application for employment asserted to have been prepared by decedent in which "()" was the name of the applicant and listed in a blank for "spouse's name (if any)" was the word, "()". Also listed on that form for emergency notification was "()" and the address set forth in the lease, described above. Finally, claimant's exhibit 3 showed a bank deposit slip printed in the name of "()", with the same address as was shown on the lease, exhibit 1.

Documents reflecting claimant's acts after decedent died were also in evidence. These included payment for a grave marker, payment of funeral expenses, and an order of the Probate Court which named claimant as the surviving spouse of the decedent. Claimant testified, but did not offer, that she filed an income tax return in 1992, for 1991, as "Married-filing separately."

Claimant testified that she and the decedent reunited in July 1991 after their divorce in 1990. She added that they subsequently held themselves out as husband and wife. She and decedent lived together in New York before coming to Texas together in November 1991. She lived with decedent in Texas from November 1991 until the day of his death. On cross-examination, claimant said that she and decedent intended to be formally married in 1993. On September 16, 1991, she testified that decedent gave her an "engagement ring" and asked her then to remarry him formally. In answer to a question as to whether claimant could have ended the relationship by moving out, claimant said that the relationship would not have ended. Upon being pressed, she said that she would have had to get a divorce to end the relationship.

The carrier, on appeal, calls attention to the engagement ring and states that claimant and decedent had set a date in the future for the wedding. The record of testimony shows, however, that claimant referred to planning for a "formal" marriage, and to waiting, not to be remarried, but for the "ceremony". The claimant, in its response to carrier's assertion about the engagement and future wedding, points to the testimony of claimant that a divorce would be needed to end the relationship.

The testimony of the claimant and the documents showing that decedent and claimant had agreed to be married, lived together as husband and wife, and represented themselves to others as married, were sufficient to support the findings of fact and conclusion of law that claimant is entitled to death benefits as the eligible spouse. In addition, documents provided as to acts after the death of decedent showed those acts to be consistent with the evidence of the relationship between November 1991 when the couple arrived in Texas and (date of injury), when death occurred.

The decision and order are not against the great weight and preponderance of the evidence and are affirmed.

Joe Sebesta  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Phillip F. O'neill  
Appeals Judge