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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-939

No. COA22-581

Filed 29 December 2022

North Carolina Industrial Commission, I.C. File No. 18-028971

DAMIR THOMPSON, Minor Child (By and Through His Guardian ad Litem, TIMOTHY C. MORRIS) of DAQUONN THOMPSON, Deceased Employee; ANIYAH THOMPSON, Minor Child (By and Through Her Guardian ad Litem, CRYSTAL WILCOX) of DAQUONN THOMPSON, Deceased Employee, and SHEILA THOMPSON, Alleged Next of Kin of DAQUONN THOMPSON, Deceased Employee; Plaintiffs,

v.

J.H. HONEYCUTT & SONS, INC., Employer, and NATIONAL TRUST INSURANCE COMPANY, Carrier, Defendants.

Appeal by plaintiff from order entered 26 May 2022 by the Full Industrial Commission. Heard in the Court of Appeals 15 November 2022.

*Buzzard Law Firm, by Robert A. Buzzard for Plaintiff-Appellant Timothy C. Morris, Guardian ad Litem for Damir Thompson.*

*The Law Office of G. Lee Martin, PA, by G. Lee Martin for Plaintiff-Appellee Crystal Wilcox, Guardian ad Litem for Aniyah Thompson.*

*McAngus Goudelock & Courie, PLLC, by H. George Kurani and Alexander S. Blake for Defendants-Appellees, J.H. Honeycutt & Sons, Inc. and National Trust Insurance Company.*

CARPENTER, Judge.

¶ 1 Timothy C. Morris (“Appellant”), Guardian ad Litem for Damir Thompson (“Damir”), appeals from an order of the Full Industrial Commission (“Commission”) concluding Aniyah Thompson (“Aniyah”) was an acknowledged, illegitimate child of Daquonn Thompson (“Decedent”) who was substantially dependent on Decedent. On appeal, Appellant argues Conclusion of Law No. 7—that Aniyah was substantially dependent on Decedent—is not supported by competent evidence. After careful review, we affirm the order of the Commission.

### **I. Factual and Procedural Background**

¶ 2 On 18 June 2018, Decedent was making a delivery in the course of his employment with J.H. Honeycutt & Sons, Inc. (“Honeycutt”) when his truck went off the road and struck a telephone pole after he overcorrected. Decedent died from chest injuries inflicted in the accident. On 19 June 2018, Defendant filed a Form 19 providing notice of Decedent’s death. Decedent’s mother, Sheila Thompson (“Ms. Thompson”), and his two putative minor children—Aniyah and Damir—were listed as Decedent’s possible dependents and next of kin.

¶ 3 On 15 July 2020, Deputy Commissioner, Lori A. Gaines, entered an Opinion and Award granting both Aniyah and Damir compensation, payable to their respective legal guardians, at a rate of \$243.29 weekly from 18 June 2018 and continuing for 500 weeks or until they each reach eighteen years of age, whichever is longer. Appellant appealed this Opinion and Award to the Full Commission, arguing

the Deputy Commissioner erred by concluding Aniyah was Decedent's acknowledged child and presumed "wholly dependent on Decedent."

¶ 4

The Commission made the following findings of fact, which are undisputed by the parties. Decedent and Crystal Wilcox ("Wilcox") began dating when Decedent was attending Livingstone College. On 2 November 2009, Wilcox gave birth to Aniyah. Decedent was not present at the hospital at the time of Aniyah's birth because he was at college, but Decedent returned home to visit Aniyah the following weekend. Wilcox testified Decedent is not listed as Aniyah's father on her birth certificate because Wilcox was unsure whom the biological father of Aniyah was, as she had been sexually active with a person other than Decedent. Decedent later expressed doubts about whether he was Aniyah's biological father but told Wilcox that Aniyah was "his daughter and regardless of anything that we [were] going to take care of her." Even though Decedent was aware of the possibility Aniyah was not his biological daughter, he did not want a paternity test.

¶ 5

Wilcox and Aniyah resided with Ms. Thompson after they were discharged from the hospital and continued to live with Ms. Thompson from 2010 through 2011. Decedent and Wilcox terminated their romantic relationship in 2011, but they continued to co-parent Aniyah. Decedent bought Aniyah birthday and Christmas presents, placed Aniyah on his employer's health insurance, and helped pay for her bills and expenses. Until Decedent's death, Aniyah lived with Decedent and Ms.

Thompson during the school year and would visit Wilcox on weekends and in the summer. Decedent took care of Aniyah when she was with him; bought her school supplies, clothes, and necessities; brought her to football games; and attended school functions such as “Doughnuts with Dads.” Additionally, Decedent listed Aniyah as the beneficiary of the life insurance policy offered by his employer. While Aniyah was living with Decedent, Wilcox never contributed to Aniyah’s needs.

¶ 6 Following Decedent’s death, Ms. Thompson filed a petition seeking primary custody of Aniyah. The Consent Order granting Ms. Thompson and Wilcox “joint care, custody and control of [Aniyah], with [Ms. Thompson] having primary custody and [Wilcox] having secondary custody with visitation,” listed Ms. Thompson as the paternal grandmother of Aniyah.

¶ 7 In 2019, LabCorp conducted a DNA analysis with samples from Aniyah, Ms. Thompson, and Decedent’s biological brother. Results from this analysis indicated Decedent was likely not Aniyah’s biological father, specifically, finding the “alleged paternal relatives were 286 times more likely to be not related to the child as opposed to related.” The Commission did not find these DNA results dispositive, however, stating “[a]lthough the DNA analysis conducted after Decedent’s death did not support a biological relationship, the Commission finds that by caring for Aniyah from her birth until his death, Decedent treated and acknowledged Aniyah as his child.”

¶ 8

Based on these findings, the Commission concluded:

7. Decedent acknowledged Aniyah as his child. Decedent held Aniyah out to his family, Aniyah's school, and his employer, as his daughter. Decedent's obituary states that Aniyah is his daughter. Decedent's assurances to his family that Aniyah was his daughter were so accepted that Decedent's mother, Sheila Thompson, initiated a custody proceeding to become the primary guardian for Aniyah following Decedent's death. Aniyah lived with Sheila Thompson for at least two years, and Decedent and Sheila Thompson provided support for Aniyah. Given the particular circumstances of Decedent's strong acceptance of Aniyah as his daughter, the Full Commission concludes that Aniyah is Decedent's acknowledged illegitimate child and was dependent upon him for support at the time of his death.

After a review of the original Opinion and Award, the record of the proceedings before Deputy Commissioner Gaines, and the briefs and arguments of the parties, the Full Commission entered an Amended Opinion and Award ("Award") compensating both Damir and Aniyah.

## **II. Jurisdiction**

¶ 9

This Court has jurisdiction to address Appellant's appeal pursuant to N.C. Gen. Stat. § 7A-29 (2021).

## **III. Issue**

¶ 10

The sole issue is whether the Commission's Conclusion of Law No. 7, that Aniyah was Decedent's acknowledged, illegitimate child who was substantially

dependent upon Decedent for support at the time of his death, was supported by the findings of fact in the Award.

#### IV. Analysis

##### A. Standard of Review

¶ 11 Review of an Award of the Industrial Commission “is limited to consideration of whether competent evidence supports the Commission’s findings of fact and whether the findings support the Commission’s conclusions of law. This ‘Court’s duty goes no further than to determine whether the record contains any evidence tending to support the finding.’” *Richardson v. Maxim Healthcare/Allegis Grp.*, 362 N.C. 657, 660, 669 S.E.2d 582, 584 (2008) (citation omitted). “[T]he Commission’s designations of ‘findings’ and ‘conclusions’ are not binding on this Court, and our review extends to whether the facts found by the Commission are sufficient to support its [ultimate] conclusion[s].” *Tucker v. City of Clinton*, 120 N.C. App. 776, 779, 463 S.E.2d 806, 809 (1995). When interpreting The Workers’ Compensation Act (“the Act”), we adhere to the “time honored rules of statutory construction with respect to [the Act].” *Winstead v. Derreberry*, 73 N.C. App. 35, 38, 326 S.E.2d 66, 69 (1985).

¶ 12 Relevant to our inquiry here, “the . . . [Act] should be liberally construed . . . so that benefits will not be denied upon mere technicalities or strained and narrow interpretations of its provisions.” *Id.* at 38, 326 S.E.2d at 69 (quoting *Deese v. Lawn and Tree Expert Co.*, 306 N.C. 275, 293 S.E.2d 140 (1982)). Furthermore, “the

Industrial Commission’s legal interpretation of a particular provision is persuasive, although not binding, and should be accorded some weight on appeal and not idly cast aside, since that administrative body hears and decides all questions arising under the Act in the first instance[.]” *Id.* at 38, 326 S.E.2d at 69. “[T]he purpose of the [Act is] to provide benefits to those individuals who have relied upon the deceased for financial support.” *Id.* at 41, 326 S.E.2d at 71.

¶ 13 The findings of the Commission may be set aside on appeal “only if there is a complete lack of evidence to support them.” *Thompson v. Tyson Foods, Inc.*, 119 N.C. App. 411, 414, 458 S.E.2d 746, 748 (1995). Here, the Commission found, *inter alia*:

2. Ms. Wilcox testified that she began dating Decedent when she was fifteen years old attending high school. At the time, Decedent was attending Livingstone College in Salisbury, North Carolina. They were romantically involved until 2011. On November 2, 2009, Ms. Wilcox gave birth to Aniyah Thompson (hereinafter “Aniyah”) at Columbus County Hospital in North Carolina. Ms. Wilcox testified that her mother, Melissa Smith, and Sheila Thompson, were present at the hospital at the time of Aniyah’s birth. Decedent was not present because he was at college. Decedent returned home to visit Aniyah the weekend following her birth, and treated Aniyah as his daughter. According to Ms. Wilcox, Decedent was not listed as Aniyah’s father on her birth certificate because he was not at the hospital when Aniyah was born.

3. According to Ms. Wilcox’s testimony, she and Aniyah lived with Sheila Thompson after they were discharged from the hospital. Thereafter, Ms. Wilcox and Aniyah “lived back and forth between [Ms. Smith’s house] and Sheila Thompson’s house . . . .” Ms. Wilcox and Aniyah lived with

Ms. Thompson from 2010 through 2011. Ms. Wilcox testified that Decedent would visit them “[a]s often as he could.”

4. Ms. Wilcox further testified that she and Decedent stopped dating in 2011 but they remained in touch regarding Aniyah’s well-being. Ms. Wilcox testified that Decedent: bought Aniya birthday and Christmas gifts, placed Aniyah on his employer’s health insurance policy, and helped pay for Aniyah’s bills and expenses.

5. Ms. Wilcox testified that Aniyah returned to live with Sheila Thompson so that Aniyah could attend elementary school in Whiteville, North Carolina. Ms. Wilcox explained that, during the school year, Aniyah lived with Sheila Thompson and Decedent. Aniyah would visit Ms. Wilcox on weekends and in the summer.

6. According to Ms. Wilcox, Decedent “basically took care of [Aniyah] whenever she was with him . . .” and would buy her school supplies, clothes, and basic needs. Decedent would also take Aniyah to football games and school functions, like “Doughnuts with Dads.” At the time of Decedent’s death, Aniyah was living with Decedent and Sheila Thompson.

7. Ms. Wilcox testified that Decedent expressed “doubts” that he was Aniyah’s biological father but “never really pressured [Ms. Wilcox] or anybody else about the situation.” Rather, Ms. Wilcox explained that “[w]e just took care of Aniyah . . .” and “[h]e just said Aniyah was his daughter and regardless of anything that we [were] going to take care of her.” According to Ms. Wilcox, Decedent was aware of the “possibility” that Aniyah was not his daughter, but he did not want a paternity test.

. . .

11. Following Decedent’s death, a memorial service was held on June 23, 2018 in Whiteville, North Carolina.



Decedent's obituary lists Damir as his son, and Aniyah as his daughter.

12. On July 10, 2018, approximately one month after Decedent's death, Sheila Thompson filed a Complaint for primary custody of Aniyah with Ms. Wilcox "having secondary custody with visitation as the parties may mutually agree." The Complaint further stated that Aniyah resided with Sheila Thompson from 2016 through July 10, 2018 (the date of the Complaint) and stated that Sheila Thompson was Aniyah's paternal grandmother.

13. In a Consent Order filed in Columbus County, File No. 18 CVD 000870, the parties indicated it was their understanding and belief that Decedent and Ms. Wilcox were "the biological parents of the minor child who is the subject of this action, ANIYAH LANE THOMPSON, born November 2, 2009, and Plaintiff is the paternal grandmother of the minor child." Sheila Thompson and Ms. Wilcox were awarded "joint care, custody and control of the minor child, ANIYAH LANE THOMPSON, born November 2, 2009, with Plaintiff having primary custody and Defendant, Crystal Marie Wilcox having secondary custody with visitation as the parties may mutually agree."

14. A Relationship Report, DNA Analysis, with samples from Aniyah, Sheila Thompson, and Daquonn Thompson (Decedent's biological brother) collected by LabCorp in 2019 did not support that Decedent is Aniyah's biological father. Specifically, the Report stated that the DNA samples do "not support the claim that a son of the alleged paternal grandmother [i.e. Decedent], and a full brother of the alleged paternal uncle is the biological father of the child [Aniyah]." The report further stated that "[u]sing the genetic markers found in the testing of the alleged paternal relatives, the likelihood ratio for this relationship versus unrelated is 0.0035 to 1." "This value indicates that the alleged paternal relatives are 286 times more likely to be not related to the child as opposed to related."

...

16. Based upon the preponderance of the evidence in view of the entire record, the Full Commission finds that Decedent held Aniyah out as his daughter through his cumulative actions. Specifically, by providing care and support, attending school activities (like “Doughnuts with Dads”), and introducing Aniyah to his family as his daughter, Decedent consistently acknowledged Aniyah as his daughter. Although the DNA Analysis conducted after Decedent’s death did not support a biological relationship, the Full Commission finds that by caring for Aniyah from her birth until his death, Decedent treated and acknowledged Aniyah as his child.

17. Based upon the preponderance of the evidence in view of the entire record, the Full Commission finds that Aniyah was dependent on Decedent and relied on him to provide care and support. In reaching this finding, the Full Commission gives weight to the fact that Aniyah frequently lived with Decedent as well as Sheila Thompson, for significant periods of her life. Additionally, while living with Decedent, Decedent paid for Aniyah’s school supplies, and provided Aniyah with health insurance.

¶ 14 Appellant stipulated the Award’s findings of fact were supported by competent evidence, and they are binding on appeal. *See Plomaritis v. Plomaritis*, 222 N.C. App. 94, 105, 730 S.E.2d 784, 791 (2012).

B. Workers’ Compensation Act

¶ 15 The Act provides, in relevant part, “[p]ersons wholly dependent for support upon the earnings of the deceased employee at the time of the accident shall be entitled to receive the entire compensation payable share and share alike to the

exclusion of all other persons.” N.C. Gen. Stat. § 97-38(1) (2021). Under the Act, “child” includes an “acknowledged child born out of wedlock dependent upon the deceased[.]” N.C. Gen. Stat. § 97-2(12) (2021). A natural child is presumed to be wholly dependent for support upon a deceased employee, but an acknowledged, illegitimate child does not receive the presumption of dependence and must also show they were both acknowledged and dependent. *Winstead*, 73 N.C. App. at 39–40, 326 S.E.2d at 70. The test, therefore, is whether: (1) the decedent acknowledged an illegitimate child in sufficient fashion; and (2) the child was substantially dependent on decedent. *See id.* at 41, 326 S.E.2d at 71; *see also Tucker*, 120 N.C. App. at 779, 463 S.E.2d at 809. It is undisputed Aniyah was an acknowledged, illegitimate child of Decedent. Rather, Appellant argues the Commission’s findings of fact lacked sufficient evidence to support the conclusion Aniyah was substantially dependent on Decedent at the time of his death.

1. Acknowledged, Illegitimate Child

¶ 16

The Commission found, and Appellant does not dispute, Aniyah meets the definition of “child” under the Act, even though the DNA analysis showed Decedent was not Aniyah’s biological father. While we are not bound by the Commission’s interpretation of the statute, we agree the Commission’s recognition of Aniyah as Decedent’s acknowledged, illegitimate child furthers the Act’s purpose of affording benefits to those who relied on Decedent. *See Winstead*, 73 N.C. App. at 41, 326

S.E.2d at 71. Decedent held Aniyah out to be his daughter in all relevant aspects. He introduced Aniyah to his family and the public as his daughter, took Aniyah to school events such as “Doughnuts with Dad,” and his obituary listed Aniyah as his surviving daughter. Decedent was aware of the possibility Aniyah was not his biological daughter, but consciously chose not to take a paternity test because “Aniyah was his daughter.” It is clear Aniyah was acknowledged by Decedent as his daughter. Accordingly, we agree with the Commission that Aniyah is an acknowledged child of Decedent as defined by N.C. Gen. Stat. § 97-2(12).

## 2. Substantial Dependency

¶ 17

We next turn to the question of whether Aniyah was substantially dependent on Decedent at the time of his death. *See Winstead*, 73 N.C. App. at 40, 326 S.E.2d at 70. To receive benefits provided by the Act, an acknowledged, illegitimate child must be substantially dependent on the deceased. *Id.* at 41, 326 S.E.2d at 71. There is no bright-line rule to determine what qualifies as substantial, and “whether a specific child’s dependency is ‘substantial’ is largely in the discretion of the Commission.” *Goodrich v. R.L. Dresser*, 161 N.C. App. 394, 401, 588 S.E.2d 511, 516 (2003). “We do not purport to establish a minimum percentage or to require mathematical certainty to determine substantial dependency of a child.” *Winstead*, 73 N.C. App. at 42, 326 S.E.2d at 71. The question of substantial dependency is one of fact and should be determined by the facts of each case. *See id.* at 42, 326 S.E.2d

at 71. “The ultimate fact to be determined is whether the [acknowledged, illegitimate child] was substantially dependent on the financial support of [Decedent] . . . as compared with all other sources of financial support[.]” *Id.* at 42, 326 S.E.2d at 71. The Commission is not held to the same evidentiary rules applicable in a court of law. *Tucker*, 120 N.C. App. at 780, 463 S.E.2d at 810 (citation omitted). In determining whether competent evidence supports the Commission’s findings, however, this Court “must apply those courtroom evidentiary principles which embody the legal concept of competence.” *Id.* at 780, 463 S.E.2d at 810 (citation and internal quotations omitted).

¶ 18 Here, the Commission considered ample evidence in the record which supported the conclusion Aniyah substantially relied on Decedent for support. *See Richardson*, 362 N.C. at 660, 669 S.E.2d at 584. Aniyah lived with Decedent nine months out of the year, and relied on him for clothes, school supplies, and basic needs. Aniyah was listed on Decedent’s health and life insurance policies, and Decedent contributed to her bills and expenses. Appellant argues there is insufficient evidence of “substantial dependence” because there is no evidence showing how much financial support, in an actual dollar amount, Decedent, Wilcox, or Ms. Thompson provided for Aniyah prior to Decedent’s death. North Carolina law, however, does not require mathematical certainty or a minimum percentage of support to show a child was substantially dependent. *See Winstead*, 73 N.C. App. at 41, 326 S.E.2d at 71. The

Commission, in its discretion, appropriately determined Aniyah's residence with Decedent for seventy-five percent of the year constituted substantial dependency. *See Goodrich*, 161 N.C. App. at 401, 588 S.E.2d at 516. Contrary to Appellant's assertions, there is competent evidence in the record to support this conclusion. *See Winstead*, 73 N.C. App. at 38, 326 S.E.2d at 69; *see also Richardson*, 362 N.C. at 660, 669 S.E.2d at 584. Aniyah substantially relied on Decedent's financial support by residing with Decedent for at least nine months out of the year and depending on Decedent to provide for her basic needs during that time without receiving any support from Wilcox.

¶ 19 Requiring a complete accounting of who provided Aniyah with financial support would contradict our case law and the purpose of the Act to provide benefits to those who were substantially dependent on Decedent. *See Winstead*, 73 N.C. App. at 41, 326 S.E.2d at 71. In so holding, we adhere to our principles of statutory interpretation by liberally construing the Act as to not deny benefits upon "mere technicalities or strained and narrow interpretations of its provisions." *Id.* at 38, 326 S.E.2d at 69.

## V. Conclusion

¶ 20 We hold the Commission did not err by granting Aniyah compensation under the Act because Aniyah is Decedent's acknowledged child, born out of wedlock, who was substantially dependent on Decedent. *See* N.C. Gen. Stat. § 97-2(12).

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*Opinion of the Court*

Accordingly, we affirm the Commission's Opinion and Award granting Aniyah an equal share of Decedent's employee benefits.

AFFIRMED.

Judges INMAN and ARROWOOD concur.

Report per Rule 30(e).