

**OPINION SUMMARY**

**MISSOURI COURT OF APPEALS EASTERN DISTRICT**

GARY GERVICH, Deceased and ) No. ED94726  
DEBORAH GERVICH, Appellant, )  
)  
vs. ) Appeal from the Labor and  
) Industrial Relations Commission  
)  
CONDAIRE, INC. and TREASURER OF )  
MISSOURI AS CUSTODIAN OF )  
SECOND INJURY FUND, Respondents. ) Filed: March 8, 2011

The claimant, Deborah Gervich, appeals the decision of the Labor and Industrial Relations Commission denying her permanent total disability benefits as the sole surviving dependent of the injured worker, the claimant’s deceased husband Gary Gervich. The Commission determined that Mrs. Gervich was not entitled to continuing benefits pursuant to *Schoemehl v. Treasurer of Missouri*.<sup>1</sup>

**REVERSED AND REMANDED WITH INSTRUCTIONS**

**DIVISION THREE HOLDS:** The Commission’s decision is not authorized by law. Mrs. Gervich’s rights as a dependent vested on the date that her husband suffered his work-related injury. Mr. Gervich’s workers’ compensation claim was pending when our Supreme Court decided *Schoemehl*. Thus, the 2008 statutory amendments abrogating *Schoemehl* do not apply to Mrs. Gervich, and we hold that she is entitled to assume her late husband’s place as the “employee” for purposes of receiving continuing permanent total disability benefits pursuant to *Schoemehl*. The Commission’s decision is reversed and remanded for an appropriate award made in accordance with *Schoemehl* and with this opinion.

Opinion by: Lawrence E. Mooney, J. Sherri B. Sullivan, P.J. and Clifford H. Ahrens, J., concur.

Attorney for Appellant: Richard T. Grossman

Attorneys for Respondent: Kenneth D. Alexander and Carol L. Barnard

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.**

<sup>1</sup> 217 S.W.3d 900 (Mo. banc 2007).