

IN THE SUPREME COURT OF MISSOURI

SC93407

DAVID SPRADLING, Deceased,

LEE SPRADLING, BRITTINEE SPRADLING,
and MARINDA SPRADLING,

Respondents,

v.

TREASURER OF THE STATE OF MISSOURI –
Custodian of the Second Injury Fund,

Appellant.

Appeal from the Labor and Industrial Relations Commission

SUBSTITUTE BRIEF OF APPELLANT

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JURISDICTIONAL STATEMENT

This appeal arises from an award from the Missouri Labor and Industrial Relations Commission (“Commission”) on a workers’ compensation claim. After an opinion was issued by the Court of Appeals, Southern District, this Court granted transfer upon application by the Treasurer of the State of Missouri (“Treasurer”) as custodian of the Second Injury Fund (the “Fund”) pursuant to Rule 83.04 and Missouri Constitution Article V, § 10.

STATEMENT OF FACTS

David Spradling (“Employee”) was injured on September 3, 1998, during the course and scope of his employment. LF 66. Employee filed a claim for workers’ compensation against his employer and the Treasurer as custodian of the Fund. LF 9-10. Employee sought permanent total disability benefits from the Fund based on a combination of the disability from his September 1998 work-related injury and his pre-existing disabilities. LF 9-10; *see* § 287.220.1, RSMo 2000.

While his claim was pending adjudication, Employee died on November 30, 2005, as a result of mixed drug intoxication wholly unrelated to his 1998 work injury. Tr. 34. Following Employee’s death, his children, Respondents Lee, Brittinee, and Marinda Spradling (collectively “Children”), were substituted in their father’s pending workers’ compensation proceedings as claimants. LF 15-16, 19-20, 23-24, 30-31.

Children were born in 1986, 1991, and 1993, respectively, and they were therefore 12, 7, and 5 years old at the time of their father’s work injury. LF 69, 88. They were 19, 14, and 12 years old when Employee died; they were 24, 20, and 17 at the time of the February 2011 hearing on Employee’s claim; and they are presently 27, 22, and 20 years old. LF 69.

In the award, the administrative law judge found that Employee was rendered permanently and totally disabled as a result of his work injury in

combination with his pre-existing disabilities and that, pursuant to § 287.240(4), RSMo 1994, Children were conclusively presumed total dependents of Employee at the time of his work injury. LF 60-61. Given those findings, and based upon the holding in *Schoemehl v. Treasurer*, 217 S.W.2d 900 (Mo. banc 2007), the judge awarded Children “Employee’s permanent total disability benefits” in equal shares “commencing on May 16, 2003¹ and continuing thereafter for life.” LF 88. The Labor and Industrial Relations Commission (“Commission”) affirmed the judge’s award. LF 65-66.

¹ The Fund’s liability commenced on that date because the judge concluded that “[t]he Employer/Insurer’s permanent partial disability payments [for Employee’s September 1998 injury] would have commenced on June 14, 2001 and continued for 100 weeks through May 15, 2003.” LF 61.

POINT RELIED ON

The Labor and Industrial Relations Commission erred in awarding the deceased employee's permanent total disability benefits to his children for their lifetimes because any benefits they receive pursuant to *Schoemehl v. Treasurer* are subject to cessation in that § 287.240(4), RSMo 1994, provides for dependent children's benefits to cease when the children reach the age of majority absent special circumstances inapplicable to the employee's children.

Gervich v. Condaire, Inc., 370 S.W.3d 617 (Mo. banc 2012)

White v. University of Missouri, 375 S.W.3d 908 (Mo.App. W.D. 2012)

Schoemehl v. Treasurer, 217 S.W.3d 900 (Mo. banc 2007)

§ 287.240(4), RSMo 1994²

² Further references to § 287.240(4) in this brief are to RSMo 1994.

ARGUMENT

The Labor and Industrial Relations Commission erred in awarding the deceased employee's permanent total disability benefits to his children for their lifetimes because any benefits they receive pursuant to *Schoemehl v. Treasurer* are subject to cessation in that § 287.240(4), RSMo 1994, provides for dependent children's benefits to cease when the children reach the age of majority absent special circumstances inapplicable to the employee's children.

I. This Court has de novo review of this question of law.

Section 287.495.1, RSMo 2000, establishes this Court's authority to review the Commission's award. Whether § 287.240(4) provides workers' compensation benefits to children of a deceased claimant beyond the children's attainment of 18 years of age is a question of law that is reviewed *de novo*. *Endicott v. Display Techs., Inc.*, 77 S.W.3d 612, 615 (Mo. banc 2002). Appellate courts are not bound by the Commission's interpretation and application of the law, and no deference is given to the Commission's interpretation of the law. *Schoemehl v. Treasurer*, 217 S.W.3d 900, 901 (Mo. banc 2007).

II. The Commission's decision ignores the applicable statute and case law establishing that a dependent spouse or child is not entitled to receive a deceased employee's permanent total benefits indefinitely.

The Commission's award of lifetime benefits to dependents of an injured worker who died of causes unrelated to his work-related injury is contrary to the plain language of § 287.240(4) and to *Gervich v. Condaire, Inc.*, 370 S.W.3d 617 (Mo. banc 2012), and *White v. University of Missouri*, 375 S.W.3d 908 (Mo.App. W.D. 2012). Accordingly, the Commission's award should be reversed.

A. *Schoemehl v. Treasurer* established dependent spouse benefits, which were extended in *Strait v. Treasurer* to children who were dependent on the employee at the time of his or her death.

Gervich and *White* are progeny of *Schoemehl v. Treasurer*, 217 S.W.3d 900, 901 (Mo. banc 2007). In *Schoemehl*, an injured worker died of causes unrelated to his work injury approximately one month after he began receiving benefits from his employer, and his surviving spouse sought to receive an award for permanent total disability benefits from the Fund following his death. *Schoemehl*, 217 S.W.3d at 901.

The surviving spouse's argument in *Schoemehl* was based in large part on her status as a "dependent" of her husband. For purposes of Chapter 287, "dependent" is defined in § 287.240(4), which is the statute that governs workers' compensation death and burial benefits. "[D]ependent" as used in that chapter

shall be construed to mean a relative by blood or marriage of a deceased employee, who is actually dependent of support, in whole or in part, upon his or her wages at the time of the injury.

The following persons shall be conclusively presumed to be totally dependent for support upon a deceased employee . . . :

- (a) A wife upon a husband with whom she lives or who is legally liable for her support, and [vice-versa]; provided that on the death or remarriage of a widow or widower, the death benefit shall cease unless there be other total dependents entitled to any death benefits under this chapter. . . .
- (b) A natural, posthumous, or adopted child or children . . . under the age of eighteen years, or over that age if physically or mentally incapacitated from wage earning, upon the parent legally liable for the support or with whom he, she, or they are living at the time of the death of the

parent. . . . The payment of death benefits to a child or other dependent as provided in this paragraph shall cease when the dependent dies, attains the age of eighteen years, or becomes physically and mentally capable of wage earning over that age, or until twenty-two years of age if the child of the deceased is in attendance and remains as a full-time student in any accredited educational institution, or if at eighteen years of age the dependent child is a member of the Armed Forces of the United States on active duty

In analyzing the surviving spouse's claim in *Schoemehl*, the Court first addressed whether dependents have the right to receive an employee's continued permanent total disability benefits when the employee dies from causes unrelated to the compensable work injury. The Court looked to § 287.230.2, RSMo 2000, to determine when compensation should end in that circumstance.

Under that section, when an employee who would otherwise be entitled to permanent total workers' compensation benefits dies from causes unrelated to the work-related injury, that employee is entitled to "payments of the unpaid accrued compensation . . . but payments of the unpaid unaccrued balance for the injury shall cease and all liability therefore shall

terminate unless there are surviving dependents at the time of death.”

§ 287.230.2, RSMo 2000. In *Schoemehl*, the Court concluded that the statutory clause “unless there are surviving dependents at the time of death” allows the deceased injured worker’s right to compensation for both accrued and unaccrued permanent total disability benefits at the time of death to survive to the worker’s spouse. 217 S.W.3d at 902.

Next, the Court in *Schoemehl* looked to § 287.200.1, RSMo 2000, and held that permanent total disability benefits continue to dependents after the injured worker’s lifetime. That section provides: “Compensation for permanent total disability shall be paid during the continuance of such disability for the lifetime of the employee at the weekly rate of compensation in effect under this subsection on the date of the injury for which compensation is being made.” § 287.200.1, RSMo 2000. Because the definition of “employee” in § 287.020.1, RSMo 2000, for purposes of Chapter 287 “include[s the employee’s] dependents, and other persons to whom compensation may be payable,” the Court held that after an injured worker dies, his dependent becomes the “employee” for whose lifetime benefits under § 287.200.1 are due. *Schoemehl*, 217 S.W.3d at 902.

The Fund unsuccessfully argued in *Schoemehl* that the phrase “during the continuance of such disability” in § 287.200.1, RSMo 2000, should control to defeat the dependent’s right to continued benefits following the injured

worker's death. *Schoemehl*, 217 S.W.3d at 902. The Court, in rejecting that argument, stated that to accept the Fund's argument would "render superfluous" the statutory phrase "for the lifetime of the employee," which it declined to do, particularly "in cases where the injured worker dies while financially responsible for dependents." *Id.*; § 287.200.1, RSMo 2000.

Schoemehl benefits were extended to apply to minor dependent children in *Strait v. Treasurer*, 257 S.W.3d 600 (Mo. banc 2008). On January 12, 2007, the Commission awarded injured worker Rosalyn Strait permanent total disability benefits from the Fund for the duration of her lifetime. 257 S.W.3d at 601. Ms. Strait received an award in her favor that was appealed. *Id.* at 600. On January 27, 2007, while the appeal was pending, Ms. Strait, who was a single mother with minor children, died. *Id.* at 600-01. Her ex-husband, who was the father of her minor children, was substituted into her workers' compensation claim on behalf of their children. *Id.*

After the Court of Appeals affirmed the permanent total disability award in Ms. Strait's claim, her ex-husband filed a motion with the Commission requesting that the Fund be ordered to pay permanent total disability benefits to his and Ms. Strait's children. *Id.* at 601. The Commission concluded it lacked jurisdiction to entertain his request and dismissed it. *Id.* Prior to any appellate opinion, this Court granted transfer of his appeal of that dismissal. *Id.*

This Court held that, because her claim was on appeal when she died, it was not final, and therefore the Commission could apply *Schoemehl* to Ms. Strait's claim. *Id.* at 602. The Court remanded *Strait* to "grant benefits to the minor dependent children as of the date of Rosalyn Strait's death[.]" but did not instruct the Commission or otherwise address the duration for which her children should receive her benefits. *Id.* at 603.

This case, unlike *Strait*, is not one "where the insured worker dies while financially responsible for dependents[.]" (217 S.W.3d at 902). Employee's oldest child, Lee Spradling, was 19 years old when Employee died [LF 69], and no evidence was offered showing that Employee was financially responsible for him at that time or thereafter. Nevertheless, the Commission held that because Employee's oldest child was a statutorily presumed "dependent" at the time of Employee's injury, he is entitled to receive Employee's benefits indefinitely without regard to his age, wage-earning capability, student status, or membership in the armed forces at the time of his father's death or later. *See* § 287.240(4)(b).

B. Gervich v. Condaire and White v. University of Missouri

**recognized the applicable statutory cessation of
Schoemehl benefits when a spouse or child no longer
meets the respective definition of "dependent" in
§ 287.240(4).**

When interpreting *Schoemehl*, tribunals routinely reference the definitions of “dependent” in § 287.240. *See, e.g., Vice v. Advantage Waste Services, Inc.*, 298 S.W.3d 145, 150 (Mo.App. S.D. 2009); *Haag v. Goodyear Tire and Rubber*, 2013 WL 3325143 at *2-3 (Mo. Lab. Ind. Rel. Com., June 28, 2013); *Shelton v. Treasurer*, Injury #03-018920 (Mo. Div. of Workers’ Compensation, March 13, 2013, Award of ALJ Carl Strange). In *Gervich v. Condaire, Inc.*, 370 S.W.3d 617 (Mo. banc 2012), this Court accordingly noted the provisions in that definition mandating cessation of benefits upon certain changes of the dependent’s circumstances, stating in the context of dependent spouse benefits: “Although section 287.240(4) provides that dependency is established at the time of the injury, the statute further provides that a dependent spouse’s entitlement ceases if the spouse dies or remarries.” *Gervich*, 370 S.W.3d at 622 n.5.

In *White v. University of Missouri*, 375 S.W.3d 908 (Mo.App. W.D. 2012), the Court of Appeals accordingly concluded that for a spouse, the conditions precedent to the initial receipt of dependent *Schoemehl* benefits are identical to the conditions subsequent to continue receiving those benefits. *Id.* at 913. In *White*, the wife of an injured worker sought a finding that she was entitled to receive her husband’s permanent total disability benefits should he predecease her. *Id.* at 909.

White was unlike *Schoemehl*, *Strait*, and *Gervich*, in that in *White*, the

injured worker was still living at the time the wife asserted her request.

White, 375 S.W.3d at 908. Nevertheless, the Commission held that the wife qualified for *Schoemehl* benefits. *Id.* at 910.

Although the Court of Appeals upheld the Commission’s factual finding that the wife was the worker’s dependent on her husband’s date of injury, the court ultimately held that “adjudication of her claim to entitlement to successor benefits [wa]s simply not ripe for review” insofar as her husband was still living. *Id.* at 913. In reaching its conclusion, the court analyzed a dependent’s right to receive *Schoemehl* benefits as follows:

There are not only conditions precedent to the dependent’s potential receipt of benefits, but also there are conditions subsequent—identical in content to the conditions precedent, except for the timing—that may be determined after the payment of successor benefits has begun. Section 287.240(4) provides that a dependent spouse’s presumptive entitlement to benefits *ceases* if the spouse dies or remarries. Successor benefit payments begin promptly at the time of qualification, but they remain subject to revocation upon occurrence of death or remarriage.

White, 375 S.W.3d at 913 (emphasis in original).

In other words, the promise of continuing benefits for a spouse under *Schoemehl* is not without qualification; it ends in the same circumstances under which a spouse would be disqualified pursuant to § 287.240(4)(a). Likewise, continued benefits for a child under *Schoemehl* should end in the same circumstances under which a child would be disqualified pursuant to the applicable definition of dependent in § 287.240(4)(b).

C. Contrary to Gervich, White, and § 287.240(4), the Commission neither considered the deceased employee's children's ages and circumstances at the time of its award nor contemplated changes in those ages or circumstances prospectively and instead errantly awarded them lifetime dependent benefits.

In this case, the Commission was presented with the question of *Schoemehl* benefits parallel to those of spouses and had to determine the scope of benefits for minor dependents. The Commission held that Respondents' age and dependency status were irrelevant at Employee's death or later so long as the Respondents were dependents at the time of their father's work injury. LF 66. In other words, the Commission treated minor dependents differently than this Court and the Court of Appeals treated spouses in *Gervich* and *White*, respectively: For minor dependents, the

Commission held, the circumstances that would normally remove them from beneficiary status (i.e. age and dependency) pursuant to § 287.240(4) do not matter; if a person was a minor dependent at the time of the work injury, no matter how the worker dies save from the work accident, and no matter how long the former dependent lives, that former dependent collects from the Fund for the duration of his or her lifetime. LF 66.

Although the Commission's award in this case is consistent with the sentence in *Gervich* stating that dependent status is determined "at the time of injury, not the time of death," the award does not reconcile with the associated footnote for that sentence: "[A] dependent spouse's entitlement to benefits ceases if the spouse dies or remarries." 370 S.W.3d at 622 n.5. Further, it is contrary to the statements in *White* concerning the necessity of dependents meeting the applicable conditions precedent and subsequent in order to receive *Schoemehl* benefits. 375 S.W.3d at 913.

Under § 287.240(4), benefits to dependent children cease when they reach the age of majority absent special circumstances not alleged or proved for Children. This cessation parallels the cessation of spousal benefits. The specific tests for spouses and children may vary but the principle is the same: Once a widow dies or remarries or a child no longer meets the qualifications of a dependent, benefits are no longer owed to that person.

CONCLUSION

The decision of the Commission should be reversed to deny *Schoemehl* benefits to Respondent Lee Spradling and to limit any *Schoemehl* benefits to Respondents Brittinee and Marinda Spradling to the date each no longer qualifies as a dependent under § 287.240(4).

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that a true and correct copy of the foregoing was filed electronically via Missouri CaseNet, on Monday, July 22, 2013, to:

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The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule 84.06(b) and contains 3,341 words and 365 lines of monospaced type, excluding the cover, certification and appendix, as determined by Microsoft Word 2010 software.



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