

# The Supreme Court of South Carolina

RE: Administrative Suspensions for Failure to Pay License Fees Required  
by Rule 410 of the South Carolina Appellate Court Rules (SCACR)

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## O R D E R

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The South Carolina Bar has furnished the attached list of lawyers who have failed to pay their license fees for 2020. Pursuant to Rule 419(d)(1), SCACR, these lawyers are hereby suspended from the practice of law. They shall surrender their certificate of admission to practice law to the Clerk of this Court by March 23, 2020.

Any petition for reinstatement must be made in the manner specified by Rule 419(e), SCACR. Additionally, if they have not verified their information in the Attorney Information System, they shall do so prior to seeking reinstatement.

These lawyers are warned that any continuation of the practice of law in this State after being suspended by this order is the unauthorized practice of law, and will subject them to disciplinary action under Rule 413, SCACR, and could result in a finding of criminal or civil contempt by this Court. Further, any lawyer who is aware of any violation of this suspension shall report the matter to the Office of Disciplinary Counsel. Rule 8.3, Rules of Professional Conduct for Lawyers, Rule 407, SCACR.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina  
February 21, 2020

Members Who Have Not Paid 2020 License Fees

Hudson Tyler Anastos  
PO Box 477  
Marietta, SC 29661

Laura Gray Barringer  
120 W Morehead St.  
Ste. 400  
Charlotte, NC 28202

Aretha Venyke Blake  
26th Judicial District of North Carolina  
4512 Cades Cove Drive  
Charlotte, NC 28273

Donald Christopher Colongeli  
Law Office of Donald C. Colongeli, LLC  
11 Sand Live Oak Drive  
Bluffton, SC 29910

Candie Mynatt Dibble  
1116 West Riverside Avenue  
Suite 100  
Spokane, WA 99201-1106

Frances Marie Dogan  
442 Briarwood Dr.  
S. San Francisco, CA 94080

Gene R. Ellison  
Gene R. Ellison, Attorney  
133 E. Sparrowood Run  
Lexington, SC 29072

Alon Faiman  
Motley Rice, LLC  
2312 Mount Pleasant St.  
Charleston, SC 29403

Lucinda Dale Gardner  
Washington College Of Law  
4300 Nebraska Ave. NW, C101  
Washington, DC 20016

Roger Edward George  
Align Technology, Inc.  
2820 Orchard Pkwy.  
San Jose, CA 95134-2019

J. M. Glover  
25 Carolina Street  
Charleston, SC 29403-4736

Andrew G. Goodson  
104 Camellia Lane  
Simpsonville, SC 29681

Charles R. Griffin Jr.  
The Griffin Firm LLC  
508 N. McDuffie St.  
Anderson, SC 29621

Daniel A. Gross  
DiPietro Law Group, PLLC  
2 Wisconsin Cir.  
Suite 700  
Chevy Chase, MD 20815

W. Carole Holloway  
S.C. Department of Social Services  
PO Box 1071  
Florence, SC 29503

Kristie Hannah Jordan  
Michigan Department of Licensing and  
Regulatory Affairs (LARA)  
6656 Aberdeen Drive  
Dimondale, MI 48821

Arif Kapasi  
1609 Old Canaan Rd.  
Spartanburg, SC 29306

Kevin Christopher-John Klein  
134 Meeting Street, Suite 500  
Charleston, SC 29401

Andrew C. Lewis  
401 E 8th Street, Ste. 214-1909  
Sioux Falls, SD 57103

John David Luthy  
Peck Hadfield Baxter & Moore, LLC  
399 North Main Street, Suite 300  
Logan, UT 84321

Don A. Mazursky  
1230 Peachtree St. NE  
Ste. 3100  
Atlanta, GA 30309

Lee Parker McMillian  
507 Nebraska St.  
South Houston, TX 77587

Kyle Douglas Meeder  
4954 Tidalwalk Lane  
Ladys Island, SC 29907

Jordan Paul Nabb  
Jordan Paul Nabb, Attorney at Law  
PO Box 78142  
Charlotte, NC 28277

Ashley Catherine Powell  
Ashley C Powell, Attorney At Law PLLC  
5416 Eastern Shores Dr.  
Greensboro, NC 27455

Melinda Kathleen Powers  
Melinda K. Powers, Attorney at Law, LLC  
421 Cliffview Ct.  
Greer, SC 29650

Kasey Peake Prato  
20423 State Road 7, #F6-180  
Boca Raton, FL 33498-6747

Carolyn Russell  
1590 Holton Place  
Charleston, SC 29407

Keita Christopher Sakata  
3128 Argento Place  
Austin, TX 78613

Douglas M. Schmidt Sr.  
335 City Park Ave.  
New Orleans, LA 70119

Steven Leslie Segall  
Harvey & Vallini, LLC  
3049 Monhegan Way  
Mt. Pleasant, SC 29466

Kristie Anne Shaw  
N/A  
Conway, SC 29528

Susan Buerkert Shaw  
Giacoma Roberts & Daughdrill, LLC  
945 East Paces Ferry Road  
Suite 2750  
Atlanta, GA 30326

Misty B. Soles  
1605 Keowee Lakeshore Drive  
Seneca, SC 29672

Amelia Ann Thompson  
S.C. Environmental Law Project  
PO Box 1380  
Pawleys Island, SC 29585

Wheeler M. Tillman  
Tillman Law Firm  
8811 University Blvd.  
N. Charleston, SC 29406

Robert M. White  
722 Shefwood Drive  
Easley, SC 29642

Katherine Noel Willett  
411 Louise Ave.

China Grove, NC 28023  
Raymond H. Williams  
Raymond H. Williams, PA  
P O Drawer 1027  
Beaufort, SC 29901



**OPINIONS**  
**OF**  
**THE SUPREME COURT**  
**AND**  
**COURT OF APPEALS**  
**OF**  
**SOUTH CAROLINA**

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**ADVANCE SHEET NO. 9**  
**March 4, 2020**  
**Daniel E. Shearouse, Clerk**  
**Columbia, South Carolina**  
[www.sccourts.org](http://www.sccourts.org)

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**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

Tyrone York, as personal representative for Timothy York (Deceased), Shirley York, and Yvonne Burns, Plaintiffs,

Of Whom Yvonne Burns is the Respondent,

And

Shirley York is the Petitioner,

v.

Longlands Plantation a.k.a Knollwood, Inc., and Companion Property and Casualty Group, Respondents.

Appellate Case No. 2018-001877

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**ON WRIT OF CERTIORARI TO THE COURT OF APPEALS**

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Appeal From The Workers' Compensation Commission

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Opinion No. 27950  
Heard November 20, 2019 – Filed March 4, 2020

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**REVERSED**

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Blake A. Hewitt, of Bluestein Thompson Sullivan, LLC, and Ann McCrowey Mickle, of Mickle & Bass, LLC, both of Columbia, for Petitioner.

William E. Jenkinson, III and John Thomas Thompson, both of Jenkinson Jarrett & Kellahan, of Kingtree; Helen F. Hiser, of Mount Pleasant, and Jonathan B. Hylton, of Florence, both of McAngus Goudelock & Courie, LLC, all for Respondents.

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**JUSTICE HEARN:** In this contest for death benefits under the Workers' Compensation Act, we must determine whether a girlfriend can qualify as a dependent. The commission found that because the girlfriend was engaged in an illicit relationship in violation of our fornication statute,<sup>1</sup> she could not recover the death benefits as a matter of public policy. The court of appeals reversed, finding, notwithstanding the fact the girlfriend's initial claim was based on being the deceased's common-law wife, there was no evidence of fornication in the record. Because the relevant facts are not in dispute, we reverse and award benefits to the deceased's mother.

## FACTS

In August 2013, Timothy York drowned when his boat capsized on a pond at Longlands Plantation in Greeleyville, South Carolina. The deceased's brother and personal representative of the estate filed a claim for death benefits under the Act. Although there were initially several individuals who were potential dependents, before the single commissioner, only York's mother, Shirley ("Mother"), and his girlfriend, Yvonne Burns, claimed death benefits.

The deceased's somewhat sporadic relationship with Yvonne began approximately five to seven years before his death. While the deceased lived with Yvonne at times, he often spent two or three days per week at either Mother's or a friend's house, primarily because Yvonne periodically kicked him out of her house. One witness testified that Yvonne kicked him out about eight or ten times in the eight months preceding his death. Another witness testified Yvonne made the

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<sup>1</sup> S.C. Code Ann. § 16-15-60 (2015).

deceased leave nearly every weekend. A third witness noted the deceased lived with Mother "very frequently" over the two years before he died. Yvonne admitted she asked the deceased to leave her house at least three or four times in 2013 due to his excessive drinking.

While the deceased lived at different addresses depending on his status with Yvonne, there were facts supporting that the two were involved in a long term relationship. Yvonne had control of his debit card, which she would use to withdraw money to pay some of his bills. She also used his money to pay for repairs to her house. Additionally, the deceased transferred the title of his vehicle to Yvonne after his license was suspended due to multiple DUIs.

Yvonne noted she began seeing the deceased in the late 1990s, but the parties separated before reuniting sometime in 2004-2005. She worked approximately fifty hours per week as a nurse's aide, and filed as head of the household on her tax returns, indicating no one else could claim her as a dependent. Her house was in her name, and she only used "York" on a furniture contract, purportedly because she planned to marry him. Although several witnesses testified she planned to marry while others were unaware of this fact, no one testified that they were in fact married.

Before the commissioner, Yvonne claimed she was the deceased's common-law wife or alternatively, that she was a dependent under the Act. The commissioner found that Yvonne was not common-law married to the deceased and that finding was not appealed.<sup>2</sup> She noted both parties filed their tax returns as single, and Yvonne checked the box that indicated no one could claim her as a dependent. Concerning dependency, the commissioner found both Mother and Yvonne "did have some level of dependency, albeit Ms. Burns' [dependency] was greater." For Mother, the commissioner noted her degree of dependency included "receiving money from the deceased to pay bills, groceries, laundry, and the pharmacy." This finding was based on Mother's testimony that the deceased gave her approximately \$50-\$60 per month. Both the deceased and his brother financially supported Mother because her monthly social security disability payment was insufficient. Regarding Yvonne, the commissioner found she used the deceased's debit card to pay her bills, including for her vehicle and insurance, groceries, clothes, and work uniforms. The

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<sup>2</sup> We recently abolished common-law marriage prospectively in *Stone v. Thompson*, 428 S.C. 79, 82, 833 S.E.2d 266, 267 (2019). However, this decision does not apply here because of its prospective nature, and regardless, Yvonne abandoned this issue before us.

commissioner noted, "[B]oth Ms. Burns and the deceased's mother, Shirley York, were partially dependent on Deceased and, therefore, would be entitled to benefits pursuant to Section 42-9-130. However, this is immaterial to my ruling."

The commissioner denied recovery for Yvonne based in part on South Carolina's fornication statute, concluding the General Assembly did not intend for the statutory term "dependent" to include someone in an "illicit" relationship. *See* S.C. Code Ann. § 16-15-60 (criminalizing adultery and fornication). In reaching this conclusion, the commissioner also relied on *Day v. Day*, 216 S.C. 334, 341, 58 S.E.2d 83, 86 (1950) (holding a bigamous spouse could not receive benefits because her marriage was void), and a North Carolina case with similar facts, *Fields v. Hollowell & Hollowell*, 78 S.E.2d 740, 744 (N.C. 1953) (noting that cohabitants are not dependents because the court will not reward parties for a relationship that is in open defiance of statutory law).

Yvonne appealed to the commission, which affirmed in full, reciting the commissioner's order verbatim. She then appealed to the court of appeals, which ostensibly reversed the commission's factual finding of fornication because there was no evidence to support that finding. Accordingly, the court of appeals remanded to the commission for a determination of whether Yvonne was a dependent under the Act. Mother sought certiorari, arguing Yvonne cannot be considered a dependent. Yvonne also agreed a remand was unnecessary, albeit on different grounds; instead, she contended the reversal of the commission's finding of fornication means its partial dependency determination as to both Mother and Yvonne remains. This Court granted certiorari.

## **ISSUE**

Does Yvonne qualify as a dependent under the Workers' Compensation Act?

## **DISCUSSION**

Yvonne contends the court of appeals erred in remanding this dispute to the commission to determine whether she qualified as a dependent. Mother also agrees that a remand is unnecessary, but contends a girlfriend is not a legal dependent as contemplated by the Act. We agree with Mother.

We begin by noting the Act sets forth two classes of dependents who may recover death benefits: those who are conclusively presumed as dependents and all others who demonstrate the requisite factual showing. *Adams v. Texfi Indus.*, 320



S.C. 213, 216, 464 S.E.2d 109, 111 (1995). Surviving spouses and children are conclusively presumed to be dependents under section 42-9-110 while section 42-9-120 states, "In all other cases questions of dependency, in whole or in part, shall be determined in accordance with the facts as the facts may be at the time of the accident . . . ." S.C. Code Ann. § 42-9-120. Because this dispute concerns the decedent's mother and girlfriend, our focus is on the latter provision. The question then turns on the meaning of "dependent," which is not defined in the Act. Instead, our case law has set forth a general framework for determining dependency: "Stated generally, a dependent is one who looks to another for support and maintenance; one who is in fact dependent—one who relies on another for the reasonable necessities of life." *Day*, 216 S.C. at 342, 58 S.E.2d at 86–87. This Court has since reaffirmed this test in deciding the requisite showing of dependency for a stepchild to receive death benefits. *Adams*, 320 S.C. at 216, 464 S.E.2d at 111.

In *Day*, the decedent's "spouse" was denied benefits because she was legally married to another man when she married the decedent. 216 S.C. at 344–45, 58 S.E.2d at 88. The spouse thought her prior husband had died, when he had not, and there was no dispute that she married the decedent in good faith. Although the facts appealed "strongly to [the Court's] sympathy," it did not believe the General Assembly intended to permit recovery for a person living in a bigamous relationship.

Nearly forty years later, the court of appeals addressed a similar situation. *Palm v. Gen. Painting Co.*, 296 S.C. 41, 43, 370 S.E.2d 463, 464 (Ct. App. 1988), *aff'd as modified on other grounds*, 302 S.C. 372, 396 S.E.2d 361 (1990). In *Palm*, a woman lived with the decedent for two years before his death while married to another man. 296 S.C. at 49, 370 S.E. 2d at 468. The commission found the woman was wholly dependent on the decedent but concluded she did not qualify as a dependent under the Act based on *Day*. The court noted,

If a bigamous spouse, who mistakenly believed in good faith in the validity of her marriage, is barred from receiving death benefits under the Workers' Compensation Act, surely a person who, while married to another, cohabits with one not his or her spouse with no belief that they are married is likewise not to be considered a dependent within the meaning of the act.

*Id.* at 50, 370 S.E.2d at 468.

While jurisdictions are split regarding whether unmarried cohabitants may recover death benefits,<sup>3</sup> we find the General Assembly's silence over the past seven decades is significant. *See Wigfall v. Tideland Utilities, Inc.*, 354 S.C. 100, 111, 580 S.E.2d 100, 105 (2003) ("When the Legislature fails over a forty-year period to alter a statute, its inaction is evidence the Legislature agrees with this Court's interpretation."). Further, our neighboring states of Georgia and North Carolina are in line with our decision. *Williams v. Corbett*, 398 S.E.2d 1, 2 (Ga. 1990); *Fields*, 78 S.E.2d at 744.<sup>4</sup> While some states bar recovery absent a legal relationship between the claimant and the decedent, *see Banegas v. State Indus. Ins. System*, 19 P.3d 245, 252 (Nev. 2001) (holding an unmarried cohabitant financially dependent on worker was not entitled to death benefits), others, such as Virginia, also look towards some affirmative obligation justifying recovery. As the Virginia Court of Appeals noted in quoting the Third Circuit Court of Appeals,

That concept [of dependency] has been defined with variations *ad nauseam*, by the legislatures and courts, especially in connection with workmen's compensation and wrongful death statutes. But all those definitions, statutory and judicial, comprehend an irreducible common denominator—actual support plus some form of preexisting and at least ethical obligation . . . . "Trivial or casual, or, perhaps, wholly charitable assistance would not create the relationship of dependency . . . . Something more is undoubtedly required . . . . [I]t must, it would seem, rest upon some moral or legal or equitable grounds, and not upon the purely voluntary or charitable impulses or disposition of the member."

*Dunnivant v. Newman Tire Co.*, 656 S.E.2d 431, 434 (Va. Ct. App. 2008) (quoting *Morrell v. Comm'r*, 107 F.2d 34, 35 (3d Cir. 1939)). Accordingly, consistent with

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<sup>3</sup> Some states have interpreted nearly identical statutes to permit recovery for unmarried cohabitants. *See, e.g., Dep't of Indus. Relations v. Workers' Comp. Appeals Bd.*, 156 Cal. Rptr. 183 (Ct. App. 1979), *disapproved of on other grounds by Atl. Richfield Co. v. Workers' Comp. Appeals Bd.*, 644 P.2d 1257 (1982); *West v. Barton-Malow Co.*, 230 N.W.2d 545, 547 (1975); *Kendall v. Hous. Auth. of Baltimore City*, 76 A.2d 767, 769 (Md. 1950) ("Thus, for example, a person supported merely through charitable motives, without legal or moral obligation, would be eligible under the statute as amended.").

<sup>4</sup> We note while the holdings of these cases remain sound, we do not embrace some of the outdated language.

our case law and statutory text, we believe the above analysis is sound and best aligns with our General Assembly's intent in enacting section 42-9-120. As a result, in order to qualify as a dependent under that section, the claimant must show a legal relationship or alternatively, an affirmative undertaking with the decedent.

While the commission found both Yvonne and Mother were partially dependent according to the facts, it did not analyze whether the deceased owed a legal or some other obligation to Yvonne. Regardless, notwithstanding the Act's beneficent purpose, there must be something more than intermittent financial assistance; instead, the claimant must rely on the decedent "for the reasonable necessities of life." *Day*, 216 S.C. at 342, 58 S.E.2d at 87.

Moreover, even if Yvonne were able to demonstrate a legal or other sufficient obligation, she has failed as a matter of law to prove factual dependency. In discussing the degree of dependency required for a stepchild to recover death benefits, we have looked to facts such as whether the deceased employee provided "medical insurance coverage, braces, household utilities, groceries, car expenses, clothing, summer camp, and made payments on the indebtedness on the family home." *Adams v. Texfi Indus.*, 341 S.C. 401, 404, 535 S.E.2d 124, 125 (2000). Additionally, the decedent in *Adams* filed a joint tax return with his wife, claiming the stepchild as a dependent—unlike Yvonne and the deceased, who both filed separately and did not claim any dependents. While the status listed on a tax return is not determinative, it carries weight, as it did in *Adams. Id.* at 404, 535 S.E.2d at 125 ("Evidence in the record also indicates that on their joint tax return, the deceased employee and his wife claimed petitioner as a dependent."). In contrast to the stepparent-stepchild situation, the deceased and Yvonne had an on-again off-again relationship during which time she owned her own home and filed as head of household. Accordingly, Yvonne cannot show that she relied on the decedent for the "reasonable necessities of life," nor can she demonstrate a legal or other sufficient obligation justifying recovery.<sup>5</sup>

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<sup>5</sup> While we are cognizant of *Lawrence v. Texas*, 539 U.S. 558 (2003) and case law from other states casting doubt on the constitutionality of section 16-15-60, we need not address this issue in light of our decision. See *Fairway Ford, Inc. v. Cty. of Greenville*, 324 S.C. 84, 86, 476 S.E.2d 490, 491 (1996) (noting it is an appellate court's "firm policy" of not reaching the constitutionality of a statute unless necessary to resolving the case at issue). See, e.g., *In re J.M.*, 575 S.E.2d 441 (Ga. 2003) (Georgia fornication statute unconstitutional); *State v. Saunders*, 381 A.2d

## CONCLUSION

Based on the foregoing, we reverse the court of appeals and award the decedent's mother, Shirley York, the death benefits as his sole dependent under the Act.

**KITTREDGE, Acting Chief Justice, FEW, JAMES, JJ., and Acting Justice Thomas E. Huff, concur.**

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333 (N.J. 1977) (New Jersey fornication statute unconstitutional); *State v. Pilcher*, 242 N.W.2d 348 (Iowa 1976) (stating the constitution voids state statutes prohibiting consensual sexual acts between unmarried adults).