

IN THE SUPREME COURT OF IOWA

SUPREME COURT NO: 21-1968

LINNHAVEN, INC and ACCIDENT FUND NATIONAL
INSURANCE COMPANY/UNITED HEARTLAND
Petitioners-Appellants,

vs.

ROGER BLASDELL, SURVIVING SPOUSE OF
HEATHER BLASDELL
Respondent-Appellee.

APPEAL FROM THE IOWA COURT OF APPEALS
NO. 21-1968

APPELLEE'S RESISTANCE TO APPELLANTS' APPLICATION
FOR FURTHER REVIEW OF THE COURT OF APPEALS DECISION
FILED JULY 20, 2022

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

- I. The Court of Appeals Correctly Determined that Roger Blasdell Did Not Willfully Desert His Wife, Heather.

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RESISTANCE TO APPLICATION FOR FURTHER REVIEW

Appellants have failed to identify or support an appropriate ground upon which an Application for Further Review of the decision of the Court of Appeals could be granted. *See* Iowa R. App. P. 6.1103(1) (2022).

Appellants assert that Iowa Court of Appeals entered a decision that is in conflict with a case decided in the year 1919, James Black Dry Goods Co. v Iowa Industrial Com’r., 186, Iowa 657 , 173 N.W.2d 23 (1919). Such claims are unfounded. The Court of Appeals clearly and correctly set out the appropriate standard of review and all of the relevant statutes and precedent regarding the same.

Appellants claims that Appellee, Roger Blasdell (“Blasdell”) abandoned his spouse, such that he should not be entitled to workers’ compensation death benefits.

However, as detailed below, the Court of Appeals accurately and appropriately reviewed the record in this case and correctly concluded “The Commissioner’s decision that Roger deserted Heather without fault of Heather was not supported by substantial evidence within the meaning of Iowa Code section 85.42(1)(a).” (Appeal Dec., p. 12).

STATEMENT OF FACTS

Roger Blasdell seeks death benefits as the surviving spouse of Heather Blasdell, who suffered from a work-related injury on November 5, 2012, while working for Linnhaven, Inc., insured by Accident Fund/United Heartland. In an Arbitration Decision dated December 12, 2014, Deputy Workers’ Compensation Commissioner Erin Pals found Heather sustained work-related injuries to her right ankle and back, which had resulted in a permanent aggravation of her pre-existing depression and anxiety (App. pp. 12-13). The Deputy further found her ongoing work-related psychological problems were so significant that she was unable to work (App. p. 13). These determinations were affirmed in an Appeal Decision dated May 20, 2016. Pursuant to an order of delegation, Deputy Workers’ Compensation Commissioner Michelle McGovern affirmed and adopted the presiding deputy’s decision with the following relevant additional analysis. Deputy McGovern concluded, “From a mental point of view, claimant is not functional in the competitive labor market. It is the mental component of her condition that is

standing in the way of claimant's ability to seek and hold gainful employment.” (App. p. 23). On September 9, 2016, Heather died as a result of an overdose of the medications prescribed for her work-related psychological condition.¹

Roger and Heather Blasdell met each other in 1997 and got married in 2008. (App. pp. 253-254). They were still married at the time of Heather's death in September 2016, having been married for eight years at that time. The date of Heather's work injury was November 5, 2012. They were clearly married at the time of Heather's work injury. When they got married, they lived together along with Heather's son, Austen, in Ryan, Iowa. (App. p. 254). Thereafter, in early 2010 the three of them moved to a house in Delhi. Roger and Heather used all of their assets including income taxes, 401k and the title of their truck to put a down payment on the house in good faith, as they were renting to buy. At that time, both Roger and Heather were employed on a full-time basis. (App. pp. 254-256). In late December

¹ Appellees' repeated reference to "suicide" is clearly insensitive, and an attempt to persuade this Court that Blasdell will lose on causation anyway so there is no need to let this go any further. The Agency never reached the issue as to whether Heather's death was accidental or intentional and either way whether it relates back to her work-injury. Any arguments about causation of Heather's death in this Appeal are beyond the scope of the Appeal.

2010, Heather lost her job. She looked for employment as a medical assistant around where they lived and unfortunately, she wasn't having any luck. As a result, Heather looked for employment around the Clinton, Iowa area (App. pp. 256-257). Heather made the choice to leave contrary to what Roger wanted. Heather moved to Clinton but she did not take any of her possessions other than clothes and the truck. She lived in Clinton for a few months but didn't have any success finding employment there either (App. pp. 257-258). As a result, they were no longer able to afford the house in Delhi. Roger stayed there for about 3-4 months after Heather went to Clinton but realized he could not afford to make the payments without Heather's assistance. Austen continued to live with Roger and after leaving the house in Delhi, they moved to Manchester (App. p. 258). Although Heather did not move back in with Roger, she would come to visit Roger and Austen by coming home on the weekends (App. pp. 258, 261). They continued to maintain frequent contact through the years up until the time of her death (App. p. 262). Austen confirmed this via his own testimony at the time of the hearing (App. pp. 218-220). Roger had a relationship with Angela Lee. They met in late 2011 and were just friends which continued through 2012. They became more involved sometime in 2013. Angela Lee confirmed Roger and Heather had regular contact in her deposition testimony (App. pp. 96-97, Depo pp. 8-9). Roger was fully aware of Heather's November 5, 2012 work injury while she was working for Linnhaven and provided some financial

assistance to her after she was injured. Roger and Austen also paid for Heather's funeral and burial expenses (App. pp. 258-262).

Standard and Scope of Review

Appellee's arguments about Blasdell's burden of proving the injury arose in and out of the course of his wife's employment is misplaced, premature and not the issue before this Court. The only issue before this Court is whether Blasdell deserted his wife with no fault of her, thereby denying him survivor benefits pursuant to Iowa Code Section 85.42. "Given the binding findings of the commissioner, we next consider the question of whether the application of law to these facts was "irrational, illogical, or wholly unjustifiable." Iowa Code § 17A.19(10)(m). "When an agency has been clearly vested with the authority to apply law to fact, we will only disturb the agency's application if it is irrational, illogical, or wholly unjustifiable." Clark v. Vicorp Rests., Inc., 696 N.W.2d 596, 603-04 (Iowa 2005). An agency's decision is "irrational" if it is "not governed by or according to reason." Sherwin-Williams Co. v. Iowa Dep't of Revenue, 789 N.W.2d 417, 432 (Iowa 2010). If the decision is "contrary to or devoid of logic," it is "illogical." Id. A decision is considered to be "unjustifiable" "when it has no foundation in fact or reason." Id. Menard, Inc. v. Scheffert, 860 N.W.2d 925 (Iowa App. 2014).

The Court may reverse, modify, or grant other relief when agency action is based on fact determinations "not supported by substantial evidence in the record

before the court when that record is viewed as a whole." Iowa Code § 17A.19(10)(f) (2001). "Substantial evidence" is statutorily defined as the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance. *Id.* § 17A.19(10)(f)(1). To the extent error is predicated on an erroneous interpretation of the law, the Court is not to give deference to the workers' compensation commissioner. Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 334 (Iowa 2008). Bell Bros. Heating & Air Conditioning v. Gwinn, 779 NW 2d 193 (Iowa 2010)

Argument

I. The Court of Appeals Correctly Determined that Roger Blasdel Did Not Willfully Desert His Wife, Heather.

Iowa Code Section 85.42 which addresses survivor death benefits in workers' compensation cases states:

85.42 Conclusively presumed dependent.

The following shall be conclusively presumed to be wholly dependent upon the deceased employee:

1. The surviving spouse, with the following exceptions:

a. When it is shown that at the time of the injury the surviving spouse had willfully deserted the deceased without fault of the deceased, then the surviving spouse shall not be considered as dependent in any degree.

b. When the surviving spouse was not married to the deceased at the time of the injury

Therefore, in order to deny Blasdell survivor benefits, the facts must be that Blasdell had WILLFULLY DESERTED his wife WITHOUT FAULT OF HIS WIFE.

The District Court defined the issue very succinctly when it stated:

A spouse is not required to receive support in order to be considered wholly dependent. Iowa Code Section 85.42(1). The law presumes Claimant wholly dependent on Heather. *Id.* This presumption is subject to the desertion exception, however. *Id.* At 85.42(1)(a). To be clear, in order for this exception to apply, Claimant had to have deserted Heather. *Id.* If Heather deserted Claimant, Claimant would still be eligible for survivor's benefits *Id.* Likewise, if neither party deserted one another, Claimant is eligible for survivor's benefits. *Id.* If both parties deserted the marriage, then it cannot be said Heather is without fault, so Claimant would still collect. *Id.* Therefore, the only question the Court need decide is whether Claimant deserted Heather. Iowa Code Section 85.42(1)(a).

Unfortunately, Iowa Code Section 85.42 is an antiquated statute governed by concepts of fault prior to no-fault divorces. As such, we are looking at a 1919 case to govern what constitutes a marriage relationship in the 21st century. With the advent of no-fault divorces, the agency scrutinizing a marital relationship is inappropriate.

In James Black Dry Goods, Co. v. Iowa Ind. Commissioner, 186 N.W. 657, 172 Iowa 23 (1919), the Supreme Court stated, "separation and desertion are not synonymous" and when spouses agree to live apart there is no desertion. *Id.* At 25. The facts in James Black Dry Goods were similar in that the husband left the marital residence to find work and thereafter the husband and wife met periodically and the

husband mailed the wife money. *Id.* at 25. The Iowa Supreme Court states, “the dependence is presumed unless there is desertion, where the marriage relation between husband and wife is involved.” *Id.* at 24. In order to show desertion, there must be proof of these elements: (1) “the cessation of the marriage relations”; (2) “the intent to desert”; (3) “a continuance of the desertion during the statutory period”; (4) “the absence of consent or misconduct of the deserted party.” *Id.* The court noted that if spouses agreed to live apart, there was no desertion. *Id.* at 25.

Roger maintained his relationship with Heather from the time Heather moved to Clinton (January 2011) until she died. The facts show a continued relationship at least until Heather’s death on November 5, 2016. These facts include, and should be received, in the context of the hearing deputy’s demeanor determination, wherein she finds Roger “to be a generally credible witness,” and “his demeanor reflects positively on his case.” (App. p. 264):

- 1) Roger married Heather on August 23, 2008, and they never divorced (App. p. 195; App. pp. 253-254);
- 2) They never divorced because neither of them wanted it. (App. p. 86, Depo. p. 19);
- 3) Angela Lee knew Roger still communicated with Heather (App. pp. 96-97, Depo. pp. 8-9);
- 4) Roger gave money - - usually in \$50 - \$100 allotments - - to Heather on a weekly basis after Heather moved out (App. p. 86, Depo. pp. 19-20; App. pp. 199-200; App. pp. 261-262);
- 5) Roger stayed in weekly contact with Heather both in person and by phone, to discuss personal matters; *Id.*

- 6) Heather occasionally (5 times a year) gave money to Roger after separation (App. pp. 212-213);
- 7) Roger and Heather split tax liability (App. p. 86, Depo. pp. 19-20);
- 8) Roger and Heather shared tax returns (App. pp. 200, 213);
- 9) Roger and Heather shared emergency designates (Id. at 201-202);
- 10) Roger and Heather shared car insurance (App. p. 205);
- 11) Roger and Heather shared the electric bills (App. p. 209);
- 12) Roger saved his last communication with Heather, after Heather's death (App. p. 211);
- 13) Roger and Heather had a continuing relationship after separation (App. p. 95, Depo. pp. 13-14);
- 14) They met each other in 1997, almost twenty years before death (App. p. 253-254);
- 15) They were married three years (8/23/08) before she left (January 2011) and before her injury – November 5, 2012) (App. p. 195);
- 16) Heather chose to move out only due to financial reasons (App. pp. 195-196);
- 17) Sharing joint expenses (health insurance) (App. p. 84, Depo. p. 10); (listed on car insurance) (App. p. 84, Depo. p. 11; App. p. 200); (life insurance beneficiary) (App. p. 84, Depo. p. 10);
- 18) Payments of expenses by both (App. pp. 86-87, Depo. pp. 19-21; App. pp. 199, 208, 210);
- 19) Roger continued to care for Heather's son, Austen (App. pp. 197, 208, 216-217; App. pp. 257-258);
- 20) They never filed for a divorce over the entire 56-month period (January 2011 separation to September 9, 2016, date of death); and
- 21) Heather chose to move to Clinton from the Delhi home (App. p. 258).

Despite Linnhaven's statement that "Blasdell admitted he separated from Ms. Blasdell because he did not want to pay for her expenses" which they state he says in his deposition, (App. p. 86, Depo. p. 18), is NOT what he said and is certainly not what happened. His actual testimony was that after she lost her job, he was paying the majority of the expenses and couldn't handle paying the rent by himself. (App. p. 86, Depo. p. 18). Heather chose to leave, move to Clinton, and leave her son Austen with Roger. Heather leaving the relationship and moving to Clinton, Iowa, does not equate to willful desertion by Roger.

CONCLUSION

Pursuant to Iowa Code Section 85.42, as properly examined by the Court of Appeals, the only way Blasdell can be denied survivor benefits is if he deserted Heather and she had no fault in the situation OR they were divorced. At no time did Blasdell desert his wife Heather. Heather made the choice to leave the family home and to leave her son with Blasdell. They never divorced each other because neither one wanted that. The evidence supports a continuous relationship, even if it's not the typical marital relationship seen in 1919. The Agency's determination that Blasdell and Heather intended to terminate their marriage when she moved out in 2011 is not supported by the facts and is irrational, illogical, or wholly unjustifiable.

REQUEST FOR NON-ORAL SUBMISSION

Appellee Blasdell agrees with the requests for Non-Oral Submission of this appeal.

Respectfully submitted,



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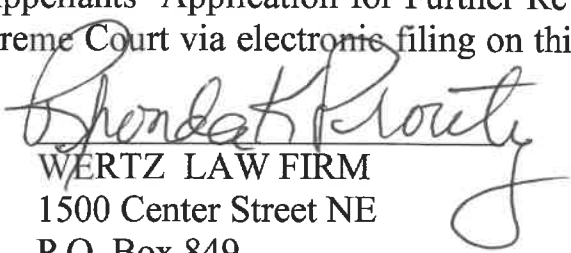
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08/08/2022
Date


Mindi M. Vervaecke

CERTIFICATE OF FILING

I, Rhonda K. Prouty, an employee of Wertz Law Firm, attorneys for the Appellee, certify the attached Resistance to Appellants' Application for Further Review was filed with the clerk of the Iowa Supreme Court via electronic filing on this 8th day of August, 2022.


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CERTIFICATE OF SERVICE

I, Rhonda K. Prouty, an employee of Wertz Law Firm, attorneys for the Appellee, certify the attached Resistance to Appellants' Application for Further Review filed with the Clerk of the Iowa Supreme Court was forwarded to all counsel via the electronic filing system and email on this 8th day of August, 2022, and by U.S. Mail for any party not registered to receive notice of filings via the ECF process.

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