CAROL (NADEAU) BREWSTER
(Appellee)

v.

S.D. WARREN/SAPPI NORTH AMERICA
(Appellant)

and

CCMSI
(Insurer)

Argued: February 7, 2024
Decided: February 6, 2025

PANEL MEMBERS: Administrative Law Judges Sands, Chabot and Rooks

Majority: Administrative Law Judges Chabot and Rooks
Dissent: Administrative Law Judge Sands

BY: Administrative Law Judge Rooks

[¶1] S.D. Warren/Sappi North America (hereafter S.D. Warren) appeals from a decision of a Workers' Compensation Board administrative law judge (*Stovall, ALJ*) granting Carol (Nadeau) Brewster's Petition for Award-Fatal. S.D. Warren contends the ALJ erred in determining that Ms. Brewster was entitled to death benefits under 39 M.R.S.A. § 58 because she had been divorced from Donald Nadeau, the deceased employee, for over twenty years and had remarried. We affirm the decision.

I. BACKGROUND

[¶2] Donald Nadeau slipped and fell while working for S.D. Warren on April 28, 1985. He sustained injuries to multiple body parts, which caused chronic pain, mobility issues, and substantial weight gain. He eventually became bedridden. On September 12, 2020, Mr. Nadeau died from septic shock caused by infected pressure sores resulting from the work injury.

[¶3] Mr. Nadeau and Carol (Nadeau) Brewster were married at the time of the injury and remained married until February 1997. During the marriage and until the date of injury, Mr. Nadeau worked full-time at S.D. Warren and Ms. Brewster worked part-time as a nurse. They had a joint savings and checking account, and their house and cars were in both of their names. They divorced in 1997 without any requirement to pay alimony. Ms. Brewster remarried in 2011. During her second marriage, apart from a joint account from which they paid shared living expenses, Ms. Brewster and her second husband, Dr. Thomas Brewster, maintained their assets and finances separately.

[¶4] At issue is Ms. Brewster's entitlement to death benefits on account of Mr. Nadeau's death. The ALJ determined that under the applicable statute, 39 M.R.S.A § 58, dependent status is determined at the time of the injury. Because Ms. Brewster was dependent on Mr. Nadeau at the time of the injury, despite having been divorced for 23 years at the time of his death, the ALJ concluded that she is entitled

to receive death benefits. The ALJ also determined that despite her remarriage, Ms. Brewster had not become a "dependent of another person" and thus did not lose eligibility to receive death benefits. *See* 39-A M.R.S.A § 102(9).

[¶5] S.D. Warren requested additional findings of fact and conclusions of law, which the ALJ denied. This appeal followed.

II. DISCUSSION

A. Statutory Construction

[¶6] This case presents an issue of statutory construction. "When construing provisions of the Workers' Compensation Act, our purpose is to give effect to the Legislature's intent." *Hanson v. S.D. Warren Co.,* 2010 ME 51, ¶ 12, 997 A.2d 730. "In so doing, we first look to the plain meaning of the statutory language, and construe that language to avoid absurd, illogical, or inconsistent results." *Id.* We also consider "the whole statutory scheme of which the section at issue forms a part so that a harmonious result, presumably the intent of the Legislature, may be achieved." *Davis v. Scott Paper Co.,* 507 A.2d 581, 583 (Me. 1986). "If the statutory language is ambiguous, we then look beyond the plain meaning and consider other indicia of legislative intent, including legislative history." *Damon v. S.D. Warren Co.,* 2010 ME 24, ¶ 10, 990 A.2d 1028. "Statutory language is ambiguous if it is reasonably susceptible of different interpretations." *Id.*

B. Eligibility for Death Benefits

[¶7] Title 39 M.R.S.A. § 58, applicable to this case, provides in relevant part:

> If death results from the injury, the employer shall pay the dependents of the employee, dependent upon his earnings at the time of his injury, a weekly payment equal to 2/3 his average gross weekly wages, earnings or salary[.]

[¶8] "Dependent" was defined at 39 M.R.S.A. § 2(4):

> "Dependents" shall mean members of an employee's family or next of kin who are wholly or partly dependent upon the earnings of the employee for support at the time of the injury. The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee:
>
> > A. A wife upon a husband with whom she lives, or from whom she is living apart for a justifiable cause or because he has deserted her, or upon whom she is actually dependent in any way at the time of the injury.

[¶9] The ALJ construed these provisions to mean that for the purposes of section 58, dependent status is determined at the time of the injury. He based this on the plain meaning of the statutory language and the Legislature's consistent linking of dependency status with the date of injury throughout the statutory scheme. There was no dispute that Ms. Brewster was dependent on Mr. Nadeau at the time of his work injury, thus the ALJ awarded her death benefits.

[¶10] S.D. Warren first contends the ALJ's construction of the statute is contrary to its purpose, citing *Ladner v. Mason Mitchell Trucking Co.*, 434 A.2d 37, 41 (Me. 1981) (stating that the purpose of the death benefits provision is to

compensate dependents of the employee for economic loss resulting from the employee's death). S.D. Warren points out that a long-divorced ex-wife who has not been dependent on the employee for many years suffers no economic loss due to the employee's death, and argues that allowing recovery of death benefits in the circumstances is absurd and illogical.

[¶11] The ALJ recognized the "sound policy" underlying S.D. Warren's argument but reasoned that policy arguments are within the Legislature's purview, and he properly looked to the statutory language to resolve the question. The ALJ did not err when discerning the intent of the Legislature from the plain language of the statute.

[¶12] S.D. Warren next asserts that the first sentence of the statute sets forth two requirements for receipt of death benefit payments: (1) the claimant must be a dependent of the employee; and (2) the claimant must have been dependent on the employee's earnings for support at the time of the injury. S.D. Warren notes the two phrases are separated by a comma, and contends the first phrase—"dependent of the employee"—must mean dependent at the time of death, otherwise that clause is made superfluous by the second phrase—"dependent upon his earnings for support at the time of his injury." We disagree with S.D. Warren's reading of the statute.

[¶13] The Law Court has construed the statutory language in 39 M.R.S.A. § 58-A (which contained identical language to section 58) as requiring dependency

at the time of the decedent's injury in order to establish entitlement to death benefits. *Cribben v. Central Maine Home Improvements*, 2000 ME 124, ¶¶ 5-6, 754 A.2d 350. In *Cribben*, the Court held that a child born after an employee's date of injury but before the date of death was not entitled to receive death benefits because the child was not a dependent on the date of injury. *Id.*

[¶14] Similarly, in *Foley v. Thermal Engineering,* Me. W.C.B. No. 15-2, ¶¶ 13, 14 (App. Div. 2015), an Appellate Division panel construed the current version of the death benefits provision, 39-A M.R.S.A § 215,[1] along with the definition of "dependent" in 39-A M.R.S.A § 102(8),[2] to require proof of dependency at the time of the injury, stating "[t]he statute plainly requires

[1] Title 39-A M.R.S.A § 215 provides:

> **Death of employee; date of injury prior to January 1, 2013.** If an injured employee's date of injury is prior to January 1, 2013 and if death results from the injury of the employee, the employer shall pay or cause to be paid to the dependents of the employee who were wholly dependent upon the employee's earnings for support at the time of the injury a weekly payment equal to 80% of the employee's after-tax average weekly wage, but not more than the maximum benefit under section 211, for a period of 500 weeks from the date of death.

[2] Title 39-A M.R.S.A §102(8) provides, relevantly:

> "Dependent" means a member of an employee's family or that employee's next of kin who is wholly or partly dependent upon the earnings of the employee for support at the time of the injury. The following persons are conclusively presumed to be wholly dependent for support upon a deceased employee:
>
> > **A.** A spouse of the deceased employee who was living with the employee at the time of the employee's death, who was living apart from the employee for a justifiable cause or because the spouse had been deserted by the employee or who was actually dependent in any way upon the employee at the time of the injury. A spouse living apart from the employee must produce a court order or other competent evidence as to separation and actual dependency[.]

dependency status to be determined at the time of the employee's injury." *Id.* In that case, the decedent employee was injured at work in 2005, at which time he was not married and had no dependents. *Id.* at ¶ 2. He subsequently married and had a child and eventually died as a result of the work injury. *Id.* at ¶ 3. Because the decedent-employee's spouse and child were not dependent on him at the time of the injury, the panel held they were not entitled to death benefits under the Act. *Id.* at ¶ 13.

[¶15] Like section 58, the provisions construed in *Cribben* and *Foley* refer to dependency at the time of the injury. Accordingly, we find no error in the ALJ's construction of the statute.[3]

C. The Effect of Remarriage

[¶16] S.D. Warren next contends that that Ms. Brewster's remarriage and potential dependency on her new husband disqualified her from receipt of death benefits, and that the ALJ erred when determining that she was not a dependent of Dr. Brewster.

[3] Even if we were to find an ambiguity in the statute and to consider the legislative history, the outcome would remain the same. Review of the extensive legislative history of the death benefit provisions in the Act over the years demonstrates a consistent intent to connect entitlement to death benefits with dependency at the time of the injury. *See* P.L. 1965, ch. 408, § 6; P.L. 1965, ch. 489, § 7; P.L. 1971, ch. 225, § 4; P.L. 1973, ch. 543, § 3; P.L. 1973, ch. 557, § 4; P.L. 1975, ch. 480, §§ 8,9; P.L. 1975, ch. 493, § 3; P.L. 1975, ch. 701, § 24; P.L. 1975, ch. 770, § 217; P.L. 1981, ch. 483, § 3; P.L. 1983, ch. 479, § 10; P.L. 1985, ch. 372, § A24; P.L. 1991, ch. 885, § A7; P.L. 1991, ch. 885, §§ A 9-11.

[¶17] Section 58[4] provides, relevantly:

> If the dependent of the employee to whom compensation will be payable upon his death is the widow of such employee, upon her death or at the time she becomes a dependent of another person, compensation to her shall cease, and the compensation to which she would have been entitled thereafter, but for the death or dependency, shall be paid to the child or children, if any of the deceased employee[.]

[¶18] Preliminarily, we note that this statute technically does not apply because, having been divorced from Mr. Nadeau, Ms. Brewster was not his widow. *See The Town of Solon v. Holoway,* 130 Me. 415, 416, 157 A. 36 (1931) (stating "a widow is a woman whose husband is dead and who has not remarried"). And, although specifically not applicable to this case, the Legislature has defined a "dependent of another person" to mean "a widow or widower of a deceased employee that over ½ of that person's support during a calendar year was provided by the other person." 39-A M.R.S.A § 102(9); *see also* 39 M.R.S.A. § 2(10).[5] In the absence of an applicable legislative definition, S.D. Warren asserts that the ALJ should have considered more than whether Ms. Brewster pays her own living expenses; it contends the ALJ should have considered the percentage Dr. Brewster

[4] A 1975 amendment to section 58 replaced the phrase "upon her death or remarriage" with the phrase "upon her death or at the time she becomes a dependent of another person." P.L 1975 ch. 701, § 24. This amendment was passed "to Conform Certain Maine Statutes to the 14th Amendment of the Constitution of the United States, to Title VII of the United States Civil Rights Act of 1964, as Amended in 1972, and to the Maine Human Rights Act" by removing gender distinctions. *Id.*

[5] Title 39-A M.R.S.A § 102(9) expressly applies only "[f]or the purposes of the payment of termination of compensation under section 215." Title 39 M.R.S.A. § 2(10) was repealed by the Legislature, and not replaced. P.L. 1991, ch. 885, §§ A7, A10.

contributes to her standard of living, as courts have done in the context of divorce or probate proceedings. We disagree.

[¶19] In determining that Ms. Brewster had not become a dependent of her new husband, the ALJ reasoned:

> [Ms. Brewster] persuasively testified that she and her current husband each pay for their living expenses by equally contributing to a joint banking account to pay the monthly bills. They do not comingle the remainder of their money. Ms. (Nadeau) Brewster testified that other than putting money in equal amounts for their monthly living expenses, they keep their money separate. They have individual checking accounts. While [Dr.] Brewster earns more money than Ms. (Nadeau) Brewster yearly, that is not proof that she is dependent. She has her own retirement pension and collects social security.

[¶20] Thus, when assessing dependency, the ALJ considered Ms. Brewster's testimony regarding financial arrangements, as well as financial records relevant to the degree to which she supports herself or receives support, and whether the parties commingled their finances. There was no requirement, as S.D. Warren asserts, to assess whether Dr. Brewster's income contributed to Ms. Brewster's standard of living over and above her living expenses.[6]

[6] On this issue, S.D. Warren further argues that the ALJ abused his discretion by failing to allow additional discovery of the Brewsters' finances. Ms. Brewster had produced relevant tax returns and records pertaining to a joint checking account, and she testified about their financial arrangements. S.D. Warren had also requested copies of the Brewsters' individual bank and investment account records from 2011 to 2022. The ALJ denied this request by order dated September 9, 2022, stating that it was overbroad, unjustified, and based on speculation. The ALJ acted within the bounds of his discretion when denying the discovery request. *See, e.g.*, *Smith v. Me. Sea Coast Vegetables*, Me. W.C.B. No. 20-1, ¶ 13 (App. Div. 2020) ("Board rules provide the ALJ with broad discretion in matters regarding the sequence and conduct of hearings and the admission of evidence."). Moreover, the ALJ did not err by placing the burden to prove dependency status on S.D. Warren instead of on Ms. Brewster. Upon review of the record and the ALJ's decision, it is apparent that Ms. Brewster bore the burden on this issue.

III. CONCLUSION

[¶21] The ALJ did not err when construing 39 M.R.S.A. § 58 to authorize the payment of death benefits to the decedent-employee's ex-wife, who was dependent on the employee's earnings for support at the time of the work injury.

The entry is:

The administrative law judge's decision is affirmed.

Sands, ALJ, dissenting:

[¶22] I respectfully dissent. I would conclude that the language of 39 M.R.S.A. § 58 is ambiguous and therefore I would look beyond the plain meaning of the statute and consider other indicia of legislative intent. For the reasons outlined below, I would interpret the statute as setting forth two requirements for the receipt of death benefit payments: (1) the claimant must be a dependent of the employee at the time of his death, and (2) the claimant must have been dependent upon the employee's earnings at the time of the injury. As Ms. Brewster was not a dependent of the employee at the time of his death, I would vacate the ALJ's decision.

[¶23] The ALJ found 39 M.R.S.A. § 58 to be unambiguous and therefore limited his inquiry to the plain language of the statute. Section 58 reads, in part, "If death results from the injury, the employer shall pay the dependents of the employee, dependent upon his earnings for support at the time of the injury…." The ALJ

specifically interpreted the "dependent upon his earnings at the time of his injury" phrase as providing further explanation as to the meaning of the "dependent of the employee" phrase. This interpretation runs contrary to the salutary principle of statutory construction that words in a statute must be given meaning and not treated as meaningless and superfluous. If the ALJ's interpretation is correct, there would be no reason for the legislature to include the phrase "dependents of the employee." Rather, the statute could simply have been drafted "the employer shall pay those who were dependent upon the employee's earnings for support at the time of his injury, a weekly benefit…."

[¶24] A similar argument could be made with respect to the language of the third paragraph of section 58. The first sentence of this paragraph reads, "If the employee leaves dependents only partly dependent upon his earnings for support at the time of the injury, the employer shall pay such dependents…." If dependency is determined as of the date of injury alone, then the duplicative use of the term "dependent" before the phrase "dependent upon his earnings for support at the time of the injury" is superfluous. The statute should not be construed in a manner which would render part of it meaningless. *See Adams v. Mt. Blue Health Ctr.*, 1999 ME 105, ¶ 9, 735 A.2d 478 ("It is axiomatic that no phrase in a statute should be interpreted as surplusage when a reasonable interpretation supplying meaning to that

phase is possible."). I would hold that the Act's express language cuts against the interpretation found by the ALJ and affirmed by the majority.

[¶25] The ALJ further supported his interpretation by noting that the definition of dependent as found in 39 M.R.S.A. § 2(4) also includes reference to the requirement that the claimant be dependent upon the earnings of the employee "at the time of the injury." While highlighting this phrase, the ALJ downplayed the use of the term "widows" and "widowers" both in section 58 and in section 2(10). There can be no dispute that the terms "widows" and "widowers" specifically relate to the marital status of an individual at the time of a spouse's death. *See Solon v. Holway*, 130 Me. 415, 416, 157 A. 236 (1931) ("a widow is a woman whose husband is dead and who has not remarried."). Similarly, section 58 expressly addresses entitlement to death benefits when an employee "leaves" a dependent. Again, this addresses a relationship between an employee and a dependent at the time of death. One is not "left" when an injury occurs. In considering the meaning of a statute, the board is instructed to consider "the whole statutory scheme of which the section at issue forms a part so that a harmonious result, presumably the intent of the Legislature, may be achieved." *Davis v. Scott Paper Co*., 507 A.2d 581, 583 (Me. 1986). The Legislature expressly utilized language in section 58 and section 2(10) which focuses on the status of the decedent's relationship to the claimant at the time of the decedent's death. Given the goal of reaching a harmonious result, S.D. Warren's

proposed interpretation of the statute requiring dual dependency, both as of the date of injury and as of the date of death, is persuasive.

[¶26] At the very least, for the reasons set forth above, I am convinced that the language of section 58 is "reasonably susceptible of different interpretations." *Damon v. S.D. Warren Co*., 2010 ME 24, ¶ 10, 990 A.2d 1028. Accordingly, I would hold that the ALJ and the appellate panel must look beyond the statutory language to determine the legislative intent.

[¶27] As a starting point, one must consider that the purpose of death benefits "is to compensate dependents for their economic loss resulting from the employee's death." *Ladner v. Mason Mitchell Trucking Co.*, 434 A.2d 37, 41 (Me. 1981). In *Ladner*, the Law Court focuses exclusively on a claimant's need to establish economic loss associated with the employee's death. The facts involved a deceased employee with three minor children whom he had a legal obligation to support stemming from a divorce judgment. *Id.* at 39. He routinely defaulted on this obligation and in fact provided nominal support to the children. *Id.* Nonetheless, the Commissioner found that the existence of the obligation was sufficient to establish dependency. *Id.* at 40. The Law Court disagreed, stating that if there was no expectation or probability that the employee would have fulfilled his legal obligations, then the minor children "suffered no economic loss from the employee's death and are not entitled to death benefits." *Id.* at 41.

[¶28] The majority may argue that the dicta in *Ladner* is inconsistent with the Law Court's clear holding in *Cribben v. Central Me. Home Improvements*, 2000 ME 124, 754 A.2d 350. In *Cribben*, the Law Court was "constrained by the statutory language" in finding that a child born after the injury but before the employee's death was not entitled to death benefits. *Id.* at ¶ 6. The Court addressed the requirement set forth section 58-A, which is identical to section 58 in pertinent part, that a recipient be "dependent upon the employee's earnings for support at the time of the injury." *Id.* at ¶ 3. The Court found this language to be unambiguous and therefore did not resort to examining legislative intent. *Id.* at ¶ 6. I would agree that this discrete phrase is unambiguous. Section 58 as a whole, however, includes ambiguity which requires consideration of legislative intent. The instant question as to the meaning of the phrase "dependents of the employee" which precedes the phrase "dependent upon his earnings at the time of his injury" has not yet been addressed by either the Law Court or the Appellate Division.

[¶29] The majority has also suggested that the legislative history "demonstrates a consistent intent to connect entitlement to death benefits with dependency at the time of the injury." *See above,* ¶ 15, n.3. I have been unable to find any discussion as to the legislative intent behind the pertinent language set forth in section 58. While the specific statutory language at issue remained largely intact from its original drafting in 1919 until the extensive overhaul of the Act occurring

in 1992,[7] this fact does not convince me that the Legislature had any intent to tie entitlement to death benefits with dependency at the time of injury alone. Rather, the Act has historically included a cause of action against an employer reserved specifically for the "widow" or "surviving spouse." R.S. ch. 50, §§ 50, 51 (1916); R.S. ch. 55, § 49, 50 (1930); R.S. ch 26, § 50 (1944); R.S. ch. 31, §§ 49, 50 (1954) (codified at 39 M.R.S.A. §§ 142, 143 (1964) (repealed and replaced 1991 P.L. ch, 885, §§ A-7, A-8; (codified at 39-A M.R.S.A §§ 902, 903))).

[¶30] Section 143, the predecessor of the current section 903, is clear: if death is the result of an employer's negligence, "his surviving spouse or, if he or she leaves no surviving spouse, his or her next of kin, *who at the time of his or her death, were dependent upon his or her wages for support*, shall have a right of action for damages against the employer." 39 M.R.S.A § 143 (emphasis added). Ms. Brewster is not the surviving spouse of Mr. Nadeau. She was not dependent on him in any way at the time of his death. It is illogical to think that the Legislature specifically intended to provide her with benefits under section 58 while expressly excluding her from any causes of action under section 143.

[¶31] The award of death benefits to an ex-spouse who remarried long before the death of an injured worker serves no rational purpose. I would hold that 39

[7] A notable exception occurred in 1939 when the Legislature added language which allows posthumous children to be included in the definition of a dependent. 1939 P.L. ch. 276 (codified at 39 M.R.S. §2(4)(C)). This change supports S.D. Warren's argument that the Legislature intended that death benefits assist those who were left without financial support because of an injured workers' death.

M.R.S.A. § 58 should be interpreted to require recipients of death benefits to establish dependency as of both the date of injury and the date of death. This interpretation is consistent with the rules of statutory construction and the very purpose of death benefits under the Workers' Compensation Act. Because Ms. Brewster has not established that she was dependent upon her ex-husband as of the time of his death, I would vacate the ALJ's award of death benefits.

Any party in interest may request an appeal to the Maine Law Court by filing a copy of this decision with the clerk of the Law Court within twenty days of receipt of this decision and by filing a petition seeking appellate review within twenty days thereafter. 39-A M.R.S.A. § 322

Pursuant to board Rule, chapter 12, § 19, all evidence and transcripts in this matter may be destroyed by the board 60 days after the expiration of the time for appeal set forth in 39-A M.R.S.A. § 322 unless (1) the board receives written notification that one or both parties wish to have their exhibits returned to them, or (2) a petition for appellate review is filed with the law court. Evidence and transcripts in cases that are appealed to the law court may be destroyed 60 days after the law court denies appellate review or issues an opinion.

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