OA 2-8-90
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IN THE SUPREME COURT OF FLORIDA

Case No. 74, 242

MARIE CHRISTINE NADINE THEIS,

Petitioner,

vs.

CITY OF MIAMI,

Respondent.

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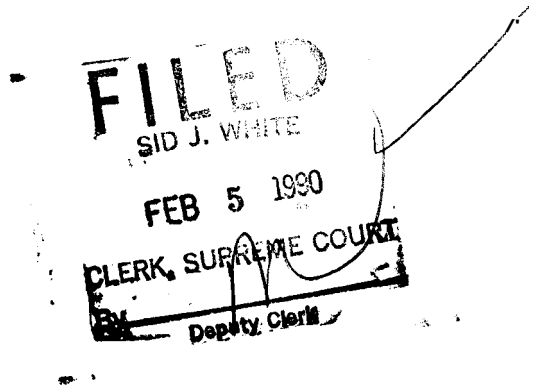

AMENDED ANSWER BRIEF ON THE MERITS
On Discretionary Review From The District
Court of Appeal, First District of Florida

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INTRODUCTION

The parties will be referred to by name or as they appeared in the proceedings in the workers' compensation tribunal: petitioner - claimant; respondent - employer. References to the record on appeal and appendix will be made by the letters "R" and "A," respectively.

STATEMENT OF THE CASE AND FACTS

Petitioner seeks review of an opinion issued by the First District Court of Appeal in a workers' compensation proceeding wherein the appellate court affirmed the deputy commissioner's order denying the payment of death and dependency benefits and certified the following question to be of great public importance:

> WHETHER THE DEFINITION OF "CHILD" IN SECTION 440.02(5), FLORIDA STATUTES (1987), AND FLORIDA'S PUBLIC POLICY FAVORING LEGITIMACY OF CHILDREN PERMITS A CHILD BORN OF A LEGITIMATE MARRIAGE BUT FATHERED BY SOMEONE OTHER THAN THE HUSBAND, TO BE DENIED DEATH AND DEPENDENCY BENEFITS UNDER SECTION 440.16, FLORIDA STATUTES (1987).[1/]

(A. 1-5).

George Theis, a CITY OF MIAMI (CITY) employee, died on August 28, 1986 as a result of work-related accident. On November 21, 1986, Edwidge St. Lot, Theis' ex-wife, filed a claim

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1/ It is respectfully submitted that the applicable statute date is 1985 because the accident occurred and the employee died on August 28, 1986. However, the distinction is of little consequence because the 1985 and 1987 provisions of both sections are identical insofar as this proceeding is concerned.

for workers' compensation benefits on behalf of the then minor claimant, NADINE THEIS. (R. 423). The City filed a notice to controvert payment of benefits on the basis that "[p]erson claiming to be daughter is not a rightful heir nor dependent of George Theis." (R. 425).

George Theis married Edwidge Obas in 1959 in Port-Au-Prince, Haiti. (R. 216, 219). During the marriage, the couple "adopted"[2/] a son, Garry, in 1961 and Edwidge gave birth to NADINE THEIS on November 17, 1969. (R. 196, 253, 273-74).[3/] George Theis was not present for the birth because he came to the United States on November 1, 1969, some two and one half weeks before Nadine was born. (R. 208).

Edwidge and George Theis were later divorced by Haitian decree when Edwidge obtained a default judgment against him dated May 24, 1974, which was later entered in the official record on

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2/ There is *some* evidence in the record that Garry was never formally adopted. George Theis' sister, Evelyn Laurenceau, testified at the final hearing that Roger Theis, brother of George and Evelyn, "brought the child to him [George] as a baby and he raised him." (R. 136). *Garry* did not learn that he was "adopted" until sometime after the death of George Theis. (R. 355, 361). The bare-bones "Affidavit" signed by George Theis stating he "legally adopted" both *Garry* and Nadine is suspect, at best, because there is no supporting documentation. (R. 222). Furthermore, a notary stamp or seal does not appear on the "Affidavit" and there is no indication of where this "Affidavit" was executed. Therefore, Petitioner's reliance on this document to support a "legal" adoption is totally inappropriate.

3/ The certified translation of the minor claimant's birth certificate provides, in pertinent part, as follows: "Came before us, Mrs. Edwidge Obas, wife of Georges Theis ... She brought before us a female child that she declared was her legitimate daughter born at the Hospital ... the 17th of November, 1969." (R. 253)(emphasis added). The certified translator testified that "it is customary in Haiti to have two forms of birth certificates. One usually declares the mother's declaration and another one the father's declaration." (R. 256). There is no such declaration by George Theis in the Haitian registry.

July 17, 1974. (R. 250-51).[4] Edwidge was awarded custody of NADINE THEIS and the decree "ordered" George Theis to pay $30.00 a month as "alimony pension" for the NADINE THEIS. (R. 249).[5] [6] The divorce decree made no provision for the "adopted" son, Garry, although it is undisputed he lived with George Theis until he was 17 or 18 years old.[7]

At the time George Theis applied for permanent residence status in early 1970, he indicated on the application Edwidge as his wife, Garry as his son, and Nadine as his daughter, and showed their address to be in Haiti. (R. 208). However, when George Theis applied for naturalization in 1975, he stated that he was divorced and had "no living children."[8] (R. 204).

4/ At the time of the divorce, George Theis was residing in the United States and was not a resident of domiciliary of Haiti. There is no evidence that George Theis was duly notified of the proceedings via service of process or otherwise.

5/ There is no evidence that George Theis was present at the final hearing or acquiesced to the Haitian Court's "order" to pay support. Further, Haiti did not have jurisdiction over George Theis' person at the time of the divorce proceedings, thus could not render a judgment that is enforceable in the United States as to child support. Williams v. North Carolina, 325 U.S. 226, 65 S.Ct. 1092, 89 L.Ed. 1577 (1945); Williams v. North Carolina, 317 U.S. 287, 63 S.Ct. 207, 87 L.Ed. 279 (1942); Pestana v. Pestana, 486 So.2d 666 (Fla. 1st DCA 1986).

6/ Notwithstanding the Haitian decree ordering George Theis to pay $30.00 a month child support, Edwidge signed a notarized statement dated June 1, 1976 stating "I Mrs. EDWIDGE OBAS, living presently at Brooklyn New-York, of my free will, refuse any economic support what so ever, for my daughter NADINE and myself, from my ex-husband Mr. GEORGES THEIS." (R. 223)(emphasis added).

7/ George Theis left a savings account in Garry's name with approximately $5,000.00 in it. (R. 360).

8/ The evidence demonstrates that George Theis found out some time after the birth of NADINE THEIS that he was not her biological father. (R. 136-37). This provides a logical explanation as to why he did not list NADINE THEIS as his daughter when he later applied for naturalization.

During the February 22, 1988 final hearing, the CITY presented the unrebutted testimony of G.L. Ryals, an expert in blood testing and paternity cases, stating "that it's not biologically possible for Mr. Theis to be the father of Nadine." (R. 108). This opinion was based on the fact that the blood of both Edwidge and George Theis tested O positive while NADINE THEIS's blood tested A positive. (T. 106-09). Neither Edwidge nor George Theis carried the gene for the A blood type. (R. 106-09; see also R. 419-21). Therefore, Mr. Ryals opined that the biological father would have to carry a gene for type A blood in order for NADINE THEIS to have type A blood. (R. 107).

The following evidence was also adduced during the final hearing held on February 22, 1988. The NADINE THEIS, testified during direct examination that George Theis was her father "[b]ecause that is what I've been told and ...[b]ecause of the relationship that we had...." (R. 49). She also testified that she had not seen George Theis for at least twelve years before he died and had last talked to him on the telephone approximately one month before he died. (R. 50, 52).[9/]

Roger Theis, brother of George Theis, testified that as far as he knew, George Theis did not have any children at all because

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9/ NADINE THEIS also testified as to her alleged dependency on GEORGE THEIS. (R. 51-52). Although she does not deny that she is not the biological daughter of George Theis, she attempts to establish that she was George Theis' daughter by virtue of her alleged "dependency" or that she was otherwise entitled to benefits because of such alleged "dependency." However, both positions have no merit because it is apparent from the plain language of the applicable provisions of Florida's Workers' Compensation Act that neither situation is sufficient to transform NADINE THEIS into a "child" entitled to benefits. Therefore, her testimony as to her alleged dependency, as well as any other "evidence" regarding same, that might be in the record, is totally irrelevant.

his brother could not have children. (R. 117-18). He stated that George Theis told him that "the kid was not his kid" and reiterated that Nadine could not be his child after Roger returned from Haiti with pictures. (R. 121, 126).

Evelyn Laurenceau, George Theis' sister, also testified that he told her that Nadine was not his child. (R. 136). George Theis told her that Edwidge, his ex-wife, had subsequently married the father of the child. (R. 137). She also testified that he told her that he was not able to have children. (R. 138).[10/]

The deposition of Edwidge St. Lot was put into evidence. She was asked whether "ten months prior to the birth of your daughter, Nadine, did you have sexual intercourse with someone besides your husband at that time, George Theis?" (R. 277, 280). Edwidge responded "[y]es" and admitted that the other person was Mr. St. Lot, who she married after her divorce from George Theis. (R. 277-78). She assumed that Nadine was the daughter of George Theis, as opposed to that of Mr. St. Lot, because she was living with Theis "as a husband and wife." (R. 278).

The deputy commissioner entered an order making extensive findings of fact, ultimately finding that NADINE THEIS "is not the natural legitimate daughter of decedent, GEORGE THEIS," thus was not entitled to death and dependency benefits. (R. 437-41;

10/ Jean Napoleon, the husband of Edwidge's sister, testified on behalf of NADINE THEIS that the decedent always told him that Nadine was his daughter. (R. 43). This testimony does not negate the deputy commissioner's finding because there was ample competent substantial evidence to support his ruling. See Croft v. Pinkerton Hayes Lumber Co., 386 So.2d 235 (Fla. 1980); Chicken-N-Things v. Murray, 329 So.2d 302 (Fla. 1976).

A. 6-10). The First District Court of Appeal affirmed, but recognizing a "harsh result," certified the question to this Court. (A. 1-5). Accordingly, Petitioner filed a notice to invoke discretionary jurisdiction and this Court issued its Briefing Schedule.

ISSUE ON APPEAL

WHETHER THE PRESUMPTION OF LEGITIMACY OF A CHILD BORN DURING A LEGAL MARRIAGE MAY BE REBUTTED IN WORKERS' COMPENSATION PROCEEDINGS TO DENY DEATH AND DEPENDENCY BENEFITS UNDER SECTION 440.16, FLORIDA STATUTES (1985) WHERE THE DECEASED EMPLOYEE WAS NOT THE CHILD'S BIOLOGICAL PARENT AND DID NOT LEGALLY ADOPT THE CHILD.

SUMMARY OF THE ARGUMENT

This court should affirm the opinion issued by the First District Court of Appeal and answer the question certified in the affirmative. The public policy of Florida favoring legitimacy of children does not preclude an employer/carrier from rebutting the presumption of legitimacy in workers' compensation proceedings. This Court recognized on at least three prior occasions that the presumption may be rebutted notwithstanding the pre-1986 language of Section 742.10, Florida Statutes, indicating that Chapter 742 was "in lieu of other

proceedings."[11/] See Kendrick v. Everheart, 390 So.2d 53, 59 (Fla. 1980); Knauer v. Barnett, 360 So.2d 399 (Fla. 1978); Gammon v. Cobb, 335 So.2d 261 (Fla. 1976).

Petitioner asks this Court to do that which it cannot do -- leaislate -- in order to provide her relief in this case. The plain language of the definition of "child" provided by the legislature in Section 440.02(5) does not encompass a child born of a legitimate marriage who was not the biological offspring of the deceased employee and who was not legally adopted by the employee. Courts are not empowered to judicially rewrite a statute in order to avoid a harsh result.

The seemingly "harsh result" in this case does not stem from the CITY lawfully controverting NADINE THEIS' claim for benefits on the basis it was not legally obligated to pay same. Rather, the "harsh result" is a product of the failure of Edwidge and others to advise both Garry and Nadine of their parentage and to

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11/ Section 742.10 was substantially amended in 1986 to provide as follows:

> 742.10 Establishment of paternity for **children born out of** wedlock. - This chapter provides the primary jurisdiction and procedures for the determination of paternity for children born out of wedlock. When the establishment of paternity has been raised and determined within an adjudicatory hearing brought under the statutes governing inheritance, dependency under workers' compensation or similar compensation programs, or vital statistics, it shall constitute the establishment of paternity for purposes of this chapter. If no adjudicatory proceeding was held, a determination of paternity shall create a rebuttable presumption.... (emphasis added).

Chapter 86-220, Section 153, Laws of Fla., effective Oct. 1, 1986. This amendment further enhances the fact that paternity determinations were never intended to be prohibited where relevant to properly adjudicate matters outside the scope of Chapter 742.

take appropriate measures to ensure that the children would be provided for in the event of death. It is most unfortunate that these individuals did not learn the truth until these proceedings. However, such misfortune cannot serve as a legal basis to require the CITY to pay death and dependency benefits which it is not otherwise legally obligated to pay.

ARGUMENT

THE PRESUMPTION OF LEGITIMACY OF A CHILD BORN DURING A LEGAL MARRIAGE MAY BE REBUTTED IN WORKERS' COMPENSATION PROCEEDINGS TO DENY DEATH AND DEPENDENCY BENEFITS UNDER SECTION 440.16, FLORIDA STATUTES (1985) WHERE THE DECEASED EMPLOYEE WAS NOT THE CHILD'S BIOLOGICAL PARENT AND DID NOT LEGALLY ADOPT THE CHILD.

A. The Presumntion of Legitimatcy Is Rebuttable in Workers' Comnensation Proceedinus

There is no question that there is a strong presumption that a child born during wedlock is legitimate. Estate of Robertson, 520 So.2d 99 (Fla. 4th DCA 1988). However, that presumption **is** rebuttable. Hill v. Parks, 373 So.2d 376 (Fla. 2d DCA 1979); Williams v. Estate of Long, 338 So.2d 563 (Fla. 1st DCA 1976). This is especially so when a paternity determination is "a necessary incident to the adjudication of the ultimate relief sought in the particular proceeding..." and notwithstanding the "exclusivity" provision of Section 742.10, Florida Statutes before it was amended in 1986. Kendrick v. Everheart, 390 So.2d 53, 59 (Fla. 1980); Gammon, supra, at 265-67.

The fact that Florida recognizes that the presumption is rebuttable and permits an employer to rebut the presumption is hardly novel. Other jurisdictions permit the employer/carrier to

rebut the presumption in determining entitlement to workers' compensation benefits. See Stephens & Stephens v. Louan, 538 S.W. 2d 516,521 (Ark. 1976); Jones v. Industrial Commission, 356 N.E. 2d 1,3 (Ill. 1976). As in the instant case, the presumption of legitimacy was rebutted in both cases after the death of the purported father. In both cases, the presumption was sufficiently rebutted so as to deny the award of workers' compensation benefits to the minor claimants.

The CITY controverted the claim for workers' compensation death and dependency benefits on the basis that "[p]erson claiming to be daughter is not a rightful heir nor dependent of George Theis." (R. 425). NADINE THEIS could only be entitled to death and dependency benefits if she satisfied the criteria set forth in the statutory definition of "child." Thus, a determination of paternity was necessary in order to adjudicate whether NADINE THEIS was entitled to the ultimate relief sought in this case. -- death and dependency benefits as provided under Section 440.16, Florida Statutes.

Florida's public policy favoring legitimacy of children does not require a contrary result. In Knauer, supra, at 405, this Court acknowledged that the father of a child born in wedlock has the right to challenge the parentage "in order that he may not be inequitably saddled with the ... financial responsibilities of parenthood when he is not, in fact, the parent of the child.'' Likewise, an employer/carrier should not be inequitably saddled with unlimited exposure by being forced to pay death and dependency benefits to claimants who do not meet the criteria

entitling a child to said benefits as delineated by the legislature in its wisdom. Therefore, this Court should approve the opinion of the First District Court of Appeal, and answer the question certified in the affirmative.

B. The Definition of "Child" in Section 440.02(5), Fla.Stat. Does Not Encompass a Child Born of a Legitimate Marriaae Who Was Not The Biological Offspring of the Deceased Employee and Who Was Not Legally Adopted bv the Employee

The deputy commissioner and the First District Court of Appeal properly found that NADINE THEIS was not entitled to the death and dependency benefits afforded under Section 440.16, Florida Statutes because it is evident from the plain language of Section 440.02(5), Florida Statutes that NADINE THEIS is not a "child" of George Theis. Courts "are not at liberty to alter the plain meaning of statutory language merely to avoid hardships and inequitable results." Emerson v. Dixie Ins. Co., 461 So.2d 172, 176, (Fla. 1st DCA 1984). Further, a court may not go outside the statute to give it a different meaning "[w]hen the language of the statute is clear and not unreasonable or illogical in its operation...." Reed bv and throuah Lawrence v. Bowen, 503 So.2d 1265, 1267 (Fla. 2d DCA 1986).

Petitioner is asking this Court to do precisely what it cannot do -- alter the meaning of the plain language of the definition of "child" in order to avoid a seemingly harsh result. For that reason, the opinion issued by the First District Court of Appeal should be affirmed and the question certified should be answered in the affirmative.

Section 440.16, Florida Statutes, governs the payment of workers' compensation benefits in the event of an employee's death which is work related. It requires, as it pertains to the instant case, that benefits be paid, on account of dependency, "[t]o the child or children, if there is no spouse, 33 1/3 percent for each child." Section 440.16(1)(b)3. "Child" is defined in Section 440.02(5) as follows: "[c]hild includes a posthumous child, a child legally adopted prior to the injury of the employee, and a stepchild or acknowledged illegitimate child dependent upon the deceased, but does not include married children unless wholly dependent on him." (emphasis added).

Due to the fact that workers' compensation is entirely a creature of statute, this definition of "child" has been the subject of strict construction for the purpose of determining entitlement to workers' compensation benefits, notwithstanding an underlying policy of liberal construction to effect coverage for the injured employee or his/her dependents. See Tarver v. Evergreen Sod Farms, 533 So.2d 165 (Fla. 1988), aff'g Everareen Sod Farms, Inc. v. McClendon, 513 So.2d 1311 (Fla. 1st DCA 1987); Williams v. Freedom Trucking, 538 So.2d 134 (Fla. 1st DCA 1987). This is so even though such construction rendered harsh results.

In Everareen Sod Farms, supra, this Court approved the First District Court of Appeal's strict construction of the same definition of child that is at issue in the instant case so as to preclude a woman and her child from receiving death and dependency benefits, even though the woman had been dependent on the deceased employee and his wife since she was six (6) years

old. This Court agreed that the doctrine of virtual adoption could not be applied in workers' compensation proceedings to constitute a legal adoption within the meaning of the statute, despite the fact that the probate court ruled that the woman had been virtually adopted by the employee killed in the industrial accident. Recognizing that "it would be improper for us to judicially amend the statute," this Court properly deferred to the legislature by stating that "[t]his is a harsh result, which we suggest the legislature address." Id. at 767.

In Williams, supra, the deceased employee had been estranged from his wife for approximately seven years and was living out of wedlock with another woman and her three minor children at the time of his death. He provided support to the three minor children even though he "was not the natural father ... nor had he adopted them." Id. at 135 (emphasis added). The deputy commissioner awarded death and dependency benefits to the children, finding that although it was legally impossible for the decedent to marry that woman, "thereby making her children his stepchildren, by any other measurement ... [her] children would be classified as stepchildren of" the decedent. Id. at 135. The First District Court of Appeal reversed, relying on Everareen Sod Farms, supra, and once again acknowledged that strict construction was necessary because of the statutory nature of workers' compensation, and, despite an obviously harsh result, reiterated the principle that courts "must be governed by what the statutes provide, not by what deciding authorities feel the law should be." Id. at 135.

The analysis used by the First District Court of Appeal, that is, "[s]tarting from the premise that the Legislature intended the definition of child to include natural, bioloaical children...", is fundamentally sound. Slip op. at 4 (emphasis added). The biological child is the obvious and logical starting point in analyzing whether one fits within the scope of the definition of child in order to be entitled to death and dependency benefits as provided in the Workers' Compensation Act. This premise is totally consistent with the plain and ordinary meaning of the term.12/

The soundness of this premise is further exhibited in the opinion rendered in Lakeland Highlands Const. Co. v. Casev, 450 So.2d 310, 311 (Fla. 1st DCA 1984). In that case, the court upheld the award of death and dependency benefits to the minor children of the deceased employee based on the deputy commissioner's ruling that unmarried, legitimate, natural minor children are entitled to said benefits without proof of dependency. The court analyzed the definition of "child" as dividing the classification into two groups: the first being legitimate natural children born at the time of the employee's death, legitimate natural children born posthumously and children legally adopted by the employee before the injury; the second being stepchildren and acknowledged illegitimate children dependent upon the employee.

12/ See Luke for Luke v. Bowen, 666 F. Supp. 1340 (D.S.D. 1987)(under Social Security Act, child must be biological child of father in order to determine paternity on the basis of acknowledgment or to be entitled to benefits as a "natural" child); Spencer v. Title Guarantee Loan & Trust Co., 132 So. 730 (Ala. 1931)(primary legal meaning of child is immediate offspring).

The term "includes" as used in Section 440.02(5), should be viewed as a term of limitation as opposed to a term of expansion. See Blankenship v. Western Union Tel. Co., 161 F.2d 168 (4th Cir. 1947).[13/] It is apparent that the legislature intended for the term "includes" to be one of limitation when one considers that as to entitlement to death and dependency benefits, the term "child," at the very least, encompasses biological offspring, and thereafter covers a very broad spectrum.

The legislature's use of the word "includes" thus limits persons who qualify as a "child," other than the employee's biological child, to those born posthumously, legally adopted before the employee's injury, a stepchild or an acknowledged illegitimate child dependent upon the employee. This is only logical as surely the legislature did not intend to subject employers to unlimited exposure by leaving the door open for any "child" to claim entitlement to death and dependency benefits under Florida's Workers' Compensation Act.

Review of statutory provisions of other jurisdictions further exhibits the tenuous nature of Petitioner's position. A number of jurisdictions expressly include a child whom the deceased was legally obligated to support or a child to whom the deceased employee stood in loco parentis in the definition of "child" under their workers' compensation law. See Ill. Rev.

13/ In that case, the court construed the following provision in the Fair Labor Standards Act: "[e]mployee includes any individual employed by an employer." Id. at 169. The court held that the term "includes" is "used as a term of limitation indicating what belongs to a genus, rather than as a term of enlargement." Id. at 169.

Stat. ch.48, para. 138.7; 77 Pa. Cons. Stat. Section 562.[14/]

Similarly, Wisconsin includes a provision in its workers' compensation law that "a child not his [the deceased employee] own by birth or adoption but living with him as a member of the family at the time of the injury shall for the purpose of this section be taken as a child by their marriage." See Wis. Stat. Section 102.49. (emphasis added). Minnesota specifically includes a foster child as being one entitled to benefits within the scope of their workers' compensation law. See Minn. Stat. Section 176.011; see also Ark. Stat. Section 11-9-102(10).

Assuming for the sake of argument that there was substantial competent evidence to support Petitioner's claim of a "parental" relationship with George Theis and that she met the "dependency" requirement, inclusion of provisions akin to those set forth above in Florida's statute would certainly appear to enure to the Petitioner's benefit. However, the principle of "expressio unius est exclusio alterius"[15/] comes into play in the instant case because the Florida legislature did not include any provision in Section 440.02(5) that entitled one in a situation such as that

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14/ See Kransky v. Glen Alden Coal Co., 47 A.2d 645 (Pa. 1956), where the Supreme court of Pennsylvania reversed an award of compensation to the minor claimant who was not the natural (biological) daughter of the deceased employee. The court held that "[i]n order to qualify ... as a "child" of an employee who is not its natural parent, it is necessary" 1) that the "child" claimant be a member of the employee's household at the time of death and 2) that the parent stood in loco parentis to the "child" claimant. Kransky, supra, at 646. Likewise, denial of compensation in the instant case was equally appropriate where the claimant was not the biological daughter of the deceased and the statute makes no provision recognizing a situation akin to that present in this case.

15/ Where one thing is expressed and others are not, the legislature is presumed to have intended to omit the items not expressed. City of Miami v. Cosgrove, 516 So.2d 1125 (Fla. 3d DCA 1987).

of NADINE THEIS to death and dependency benefits.16/

The fact that Section 440.02(5) does not expressly state that the child must be "natural" or "biological" does not save the day. Some jurisdictions include the term "natural" in the definition of child under their workers' compensation law. See Ark. Stat. Section 11-9-102(10); Okla. Stat. tit. 85, Section 3.1. However, these definitions differ from that of Section 440.02(5) in that the term is defined as "child means" as opposed to "child includes" or "child shall include." Furthermore, the definition provided in North Carolina's Workers' Compensation Act is virtually identical to Section 440.02(5), and definitions in other jurisdictions are substantially similar. See Me. Rev. Stat. Ann. tit. 39, Section 2(4)(C); N.C. Gen. Stat. Section 97-2; 77 Pa. Con Stat. Section 562. Like Florida's statute, none of these jurisdictions expressly include the term "natural" or "biological."

It is apparent from the foregoing that the legislature has considerable latitude in setting forth in its legislation who falls within the purview of the workers' compensation statutes so as to be entitled to death and dependency benefits. Petitioner's claim that her situation is encompassed by Florida's Workers' Compensation Act is nullified by the fact that the Florida legislature made no provision for situations similar to hers,

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16/ Furthermore, at least one court reversed an award of benefits where the minor, who was dependent on deceased employee (deceased employee paid money out of his earnings weekly to minor), was not the deceased's biological child, stepchild or adopted child and was not a member of the decedent's household. Boyd V. Publicker Chemical Corp., 118 So. 2d 684 (Ala. Ct. App. 1960).

that is, where a child is born during a lawful marriage but is not the biological child of the deceased employee, when it could have done so if it so desired. Therefore, the opinion of the First District Court of Appeal should be affirmed and the question certified should be answered in the affirmative.

CONCLUSION

Respondent, CITY OF MIAMI, respectfully requests this Court to answer the question certified by the First District Court of Appeal in the affirmative and affirm that court's decision based on the foregoing authorities and argument.

Respectfully submitted,

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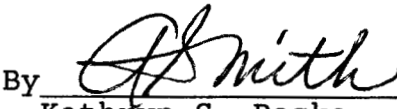
By 
for Kathryn S. Pecko
Assistant City Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by mail this 2nd day of February, 1990, to: R. CORY SCHNEPPER, Esquire, and KATHLEEN L. SPALDING, Esquire, LEVINE, BUSCH, SCHNEPPER & STEIN, P.A., 9100 South Dadeland Boulevard, Datran Center, Suite 1010, Miami, Florida, 33156.

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