IN THE SUPREME COURT OF FLORIDA

CASE NO: 74,242

MARIE CHRISTINE NADINE THEIS,

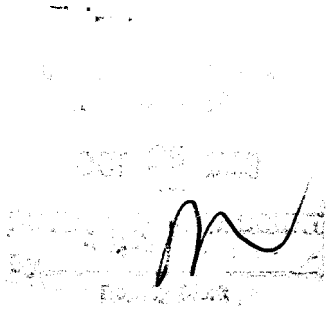
Petitioner,

vs.

CITY OF MIAMI,

Respondent.

_____/



REPLY BRIEF OF PETITIONER

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STATEMENT OF THE CASE AND FACTS

Due to Respondent's flagrant violation of Florida Rule of Appellate Procedure 9.210(c), it is impossible to discern from the Answer Brief any disagreement with Petitioner's Statement of the Facts. However, some of the "facts" asserted by Respondent in its Brief are patently incorrect and require a response.

Respondent attempts to minimize the importance of George Theis' written witnessed statements, that Nadine was his daughter, by asserting that these statements must have been made before George learned that Nadine might have been fathered by another man. In fact, the opposite is true. The only evidence in the record indicating when George Theis first had suspicions that Nadine might not be his biological child shows that several months after Nadine's birth, George told his brother Roger that Nadine was not his biological child. (R.125-126). Despite these concerns, George Theis at all times considered Nadine to be his legal child, and so stated in the following written, witnessed documents:

1. In his October 1, 1974 application to file petition for naturalization, George Theis declared that he had two children, Nadine Christine and Yves Garry. The application was signed by two witnesses. (R.219-21);

2. In an Affidavit dated March 12, 1975, attached to George Theis' application to file petition for naturalization, George declared that he did not, at that time, provide support "for my child Nadine" because he and Edwidge had split custody of the children, with Nadine living with her mother and Garry living

with George. He also declared that Garry and Nadine "were legally adopted by me and my wife when we was married". This document was sworn before a witness. (R.222).

Regardless of Nadine Theis' biological paternity, these witnessed statements signed by George Theis serve to legitimize Nadine as George's child under Florida Statute 732.108. The Statute, which is set forth in Petitioner's Initial Brief, states that a child may be legitimized "for all purposes" by a father who signs a witnessed writing acknowledging the child as his own, and who further marries the child's mother. The Statute requires only that the written statements be witnessed, not that they be notarized. See Knauer v. Barnett, 360 So.2d 399 (Fla. 1978). Thus, Respondent's assertion that these documents should not be relied upon is incorrect and directly contrary to the express provisions of the Statute.

Respondent likewise attempts to minimize the importance of the Haitian divorce decree declaring George Theis to be the father of Nadine and ordering him to pay monthly child support. While, at the time of the divorce, George Theis lived in the United States, it is undisputed that he had knowledge of the divorce proceedings and that he never contested them. (R.129-130, 230). Significantly, Respondent failed to mention that after his divorce from Edwidge, George Theis married another woman, thereby acquiessing to the divorce.(R.130).

Finally, contrary to the assertions in Respondent's statement of "facts", Nadine Theis is not claiming workers' compensation death benefits because she was legally "adopted" by George Theis.

Adoption, legal or otherwise, is not at issue in this case. Regardless of Nadine Theis' biological paternity, she became George Theis' leaal daughter, at the very least by virtue of George's compliance with Florida Statute 732.108, and by virtue of an existing divorce decree declaring George to be Nadine's father. Where, as in this case, the legal relationship of parent-child existed between George and Nadine Theis, adoption is irrelevant.

Likewise, there is no claim in this case that Nadine Theis is entitled to workers' compensation death benefits solely by virtue of her dependency upon George Theis. Although dependency was an issue never reached by the Deputy Commissioner, under Florida law the legal obligation of parent-child must exist before a child may claim workers' compensation death benefits. Tarver v. Evergreen Sod Farms, Inc., 523 So.2d. 765 (Fla. 1988). Nadine Theis is entitled to workers' compensation death benefits because under Florida law, she is the legal child of George Theis and therefore a "child" pursuant to Fla. Statute 440.02(05). As the child of George Theis, she is entitled to the conclusive presumption that she was dependent upon her father at the time of his death. Lakeland Highlands Construction Co. v. Casev, 450 So.2d. 310 (Fla. 1st D.C.A. 1984).

ARGUMENT

I. THE PUBLIC POLICY OF FLORIDA FAVORING LEGITIMACY OF CHILDREN PRECLUDES ANY DETERMINATION OF BIOLOGICAL PATERNITY WHERE THE CLAIMANT AND THE DECEDENT SHARED A LEGALLY RECOGNIZED PARENT-CHILD RELATIONSHIP.

The question before this Court is the legal issue of who is considered a child for the purposes of Florida Statute 440.02(5). Legal relationships which bind people are often distinct and apart from biological ties. In determining the definition of "child" in this case, the decision this Court must make, and which Respondents have assiduously avoided, is whether the establishment of a parent-child relationship recognized by law (as apart from biology) will be recognized by this Court as entitling Nadine Theis to workers compensation death benefits.

In Tarver v. Evergreen Sod Farms, Inc., supra, this Court recognized that the "clear intent" of Florida Statute 440.02(5) required, at a minimum, the existence of the "legal obligation" of the parent-worker to a child, prior to the worker's death, in order for a claimant-child to be eligible for workers' compenation death benefits. Evergreen Sod Farms, Inc., supra, at page 767. In Everareen Sod, supra, this Court held that a 20-year-old woman who had been dependent upon the decedent worker since she was six years old was not a "child" within the meaning of Florida Statute 440.02(5) since the deceased worker had failed to establish a legal relationship of parent-child prior to his death. This Court declined to extend the theory of "equitable adoption" to workers' compensation, which this Court acknowledged

was purely a creature of statute. The statute, this Court held, required the existence of the legal relationship of a parent to child prior to a worker's death, and absent that relationship, workers' compensation death benefits could not be awarded.

The rationale of this Court's holding in ~~Eversreen Sod~~, supra, was followed by the District Court of Appeal, First District, in Williams v. Freedom Truckins, Inc., **538** So.2d 134 (Fla. 1st D.C.A. **1989).** In Williams, supra, a decedent worker who was estranged but not divorced from his wife, had lived for some time with another woman and her three children. Despite the absence of any legal relationship between the decedent and the children, the Deputy Commissioner found that the three children were "step-children" for the purposes of receiving workers' Compensation death benefits. The District Court of Appeal, First District, reversed the Deputy Commissioner's award of workers' compensation death benefits, holding that the decedent's relationship with his girlfriend's children did not "create the legal relationship required by the workers' compensation statute". Williams, supra, at page **136.**

The essence of these cases is that in a workers' compensation setting, courts will not constructively create the legal relationship of parent-child where no such relationship existed at law at the time of the decedent's death. Respondent's reliance on these cases to support the proposition that Nadine Theis is not entitled to workers' compensation death benefits is grossly misplaced. These cases support Petitioner's position that where, as here, the legal relationship of parent-child

existed at the time of the decedent's death, workers' compensation death benefits must be awarded.

Although Respondent failed to directly address the issue, it is apparently its position that a "child" under Florida Statute 440.02(5) does not include a non-biological child recognized by law as the decedent's child at the time of his death. Under Respondent's reasoning, it is biology, not law, that triggers coverage under Florida Statute 440.02(5).

If a "child" under Florida Statute 440.02(5) can only be a biological child of the decedent, an entire class of lawful children are precluded from receiving workers' compensation death benefits. A lawful, but not biological, child is not the "child" of the deceased worker, even if the legal relationship of parent-child exists. The child likewise cannot be termed as the decedent's acknowledged illegitimate child, since the child is not the decedent's biological illegitimate child. Unless formal adoption proceedings have been carried out, a child cannot be termed adopted.

Incredibly, Respondent blames George Theis for its own denial of workers' compensation death benefits to Nadine. Respondent blames George for failing to take "appropriate measures" to ensure that Nadine would be eligible to receive workers' compensation benefits in the event of his death. The irony of this situation is that while he lived, George Theis took every step required by Florida law to establish himself as Nadine's father. He repeatedly acknowledged Nadine as his daughter in witnessed statements made long after he suspected

Nadine might not be his biological child. (R.222, 195, 198). He married Nadine's mother, and remained married to her long after Nadine's birth. (R.196, 250, 253, 256,259). He did not contest the divorce decree declaring him to be Nadine's father and ordering him to pay child support for her. (R.230, 249, 252, 259). Moreover, he kept in contact with Nadine after his divorce from Edwidge, sent Nadine money for clothes and expenses, and paid half of her parochial school tuition. (R.49-51, 303, 327).

Given Respondent's position that George Theis did not take sufficient measures to insure Nadine's eligibility for workers' compensation death benefits in the event of his death, the following questions arise: If compliance with Florida law (here Florida Statue 732.108) does not suffice to legitimize a child for the purposes of receiving workers' compensation death benefits, then what additional "appropriate measures" should George Theis have taken? If a divorce decree establishing George Theis to be Nadine's father, acquiessed to by George through a subsequent re-marriage, does not establish Nadine as George's lawful daughter for the purposes of obtaining workers' compensation death benefits, what other "appropriate measures" would have?

If, as Respondent argues, a "child" under Florida Statute 440.02(5) can be only a biological child, workers' compensation death benefits will be denied to an entire class of children recognized by law as a "legal" children of a deceased worker. In her Initial Brief, Petitioner outlined various situations in which children conclusively presumed legitimate would be denied

workers' compensation benefits under Respondent's interpretation of the law. (Initial Brief, P.21). Respondent did not address these scenarios in its Reply Brief, and therefore apparently agrees that even a child conclusively presumed by law to be the legitimate child of a decedent worker is not eligible for workers' compensation benefits, if the child is not also a biological child of the deceased.

In defining "child", there is simply no logic in distinguishing a child who is recognized by law as legitimate for all purposes from a biological child. In both situations, legitimacy flows from the establishment of the legal relationship of parent-child, either by birth or by operation of law. In determining who is a "child" for the purposes of Florida Statute 440.02(5), biological paternity is not **the** determinitative factor. Rather, it is the legal relationship of parent-child that is the obvious and logical starting point in analyzing whether an individual fits with the definition of "child" so as to be entitled to death and dependency benefits as provided in the Florida Workers' Compensation Law.

The Courts of this State have often expressed a strong public policy interest favoring the legitimacy of children. See Gammon v. Cobb, 335 So.2d 261 (Fla. 1976). This public policy interest has been most commonly expressed in terms of this State's strong presumption in favor of legitimacy "to protect the interest of the child when the child was either born or conceived in wedlock". Gossett v. Ullendorff, 154 So. 117 (Fla. 1934). The "interests" sought to be protected are both emotional and the

financial interest in support. See Gammon, supra. Thus, it has been held that the State's strong public policy favoring the legitimacy of children prohibits collateral kindred seeking inheritance from the decedent to challenge the biological paternity of a child legitimized by the decedent through a witnessed writing, in accordance with Florida Statute 732.108. Knauer v. Barnett, 360 So.2d 399 (Fla. 1978).

The Petitioner acknowledges that the City cannot be precluded from inquiring whether the legal relationship of parent-child existed between Nadine and George Theis at the time of George's death. This is the scope of inquiry contemplated in Knauer, supra, and in fact should be the only relevant inquiry in this case. To allow any further inquiry would be unnecessary, and counter to any public interest.

Respondent argues that the strong public policy favoring legitimacy should give a way to its interest in avoiding payment of workers' compensation death benefits to Nadine Theis, a child recognized by law as the lawful child of George Theis. It is hard to imagine that the State's strong policy should be so easily set aside. In any event, the State's policy would certainly not be furthered by this Court denying workers' compensation benefits to the lawful child of a deceased worker.

II. *AN* INTERPRETATION OF THE TERM "CHILD" THAT REQUIRES A LEGALLY RECOGNIZED CHILD TO BE ALSO THE BIOLOGICAL CHILD OF A DECEASED WORKER IMPROPERLY IMPOSES ON A CLAIMANT *AN* ADDITIONAL PREREQUISITE FOR WORKERS' COMPENSATION DEATH BENEFITS NOT CONTEMPLATED BY THE LEGISLATURE.

The plain meaning of a statute must be determined from the language of the statute itself. In Florida Statute 440.02(5), "child" is defined as follows: "child 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". Nowhere in the statute do the words "biological" or "natural" appear.

Despite the absence of the words "biological" or "natural" limiting the definition of "child" in this statute, Respondent argues that the plain meaning of the statute is that "child" really means "natural child" or "biological child". While this approach is creative, no sort of mental gymnastics can bring about an intellectually honest construction of the word "child" other than the plain meaning of the word. A "child" for the purposes of the statute cannot be solely a biological child, because the legislature did not so indicate.

Respondent's reliance on statutes from other jurisdictions only serves to emphasize the improper statutory construction they urge. State legislatures other than Florida's have indeed chosen to specifically limit workers' compensation death benefits to "biological" children of the deceased. As the language of Florida Statute 440.02(5) indicates, however, the Florida

legislature has chosen not to limit the definition of "child" for the purposes of receiving death and dependency benefits under the Workers Compensation Law. This kind of limitation should not be judicially applied in the absence of any indication that the legislature intended workers compensation benefits to be so restricted.

Respondent's statement that the statutory term "includes" somehow limits individuals who come within the definition of "child" to biological children is similarly misplaced. If, as Respondent argues, the term "includes" as employed in this statute is a term of limitation, then only those categories of children specified in the statute should be defined as children eligible to receive workers' compensation benefits. Such an interpretation would exclude from coverage even a biological child, since biological children are not "included" in the categories listed in the statute. This result cannot have been intended by the legislature in their efforts to provide workers' compensation benefits to the spouses and children of deceased workers. See C.F. Wheeler Co. v. Pullins, 11 So.2d 303(Fla. 1943). In construing the meaning of a statute, this Court must give effect to legislative intent. In re Williams Estate. 182 So.2d 10 (Fla. 1965).

There are no Florida cases supporting Respondent's contention that a "child" under 440.02(5) must be a biological child of the decedent. In Lakeland Hiahlands Construction Co. v. Casev, 450 So.2d 310 (Fla. 1st DCA 1984), cited by Respondent, the Court faced not the issue at bar, but the issue of the

presumption of dependency for children of a deceased worker. The Court in Lakeland was not faced with the issue of whether the legally recognized child of a deceased worker may receive workers'compensation death benefits. Thus, the dicta language of Lakeland cited by Respondent is inapplicable to the case at bar.

CONCLUSION

Contrary to Respondent's assertions, neither the legislature nor this Court ever intended to limit the definition of "child" in Florida Statute 440.02(5) to a biological child. A "child" under the statute should be defined as a person with whom a deceased worker shared a legally recognized parent-child relationship at the time of the worker's death. This interpretation is consistent with previous rulings of this Court, with the public policy of Florida favoring the legitimization of children and the preservation of the family, and with the remedial purposes of the Florida Workers' Compensation Law. Thus, as phrased, the certified question should be answered in the negative. The definition of "child" under Florida Statute 440.02(5) should not be interpreted so as to deny a child born of a legitimate marriage and recognized by law as the husband's child, from receiving death and dependency benefits under Florida Statute 440.16, even if the child was biologically fathered by someone else.

Respectfully submitted,

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