

NO. A06-1235

State of Minnesota
In Court of Appeals

Chong Suk Perry,

Appellant,

v.

Auto Owners Insurance Company,

Respondent.

**APPELLANT CHONG SUK PERRY'S
BRIEF AND APPENDIX**

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I. STATEMENT OF LEGAL ISSUES

1. Although Appellant Chong Suk Perry and the decedent, Daniel Savage, were not married, they owned a home together, shared a relationship as close as any typical marriage, and Ms. Perry was largely dependent on Mr. Savage for financial support. Can Ms. Perry be considered a dependent of Mr. Savage under the Minnesota No-Fault Act, Minn. Stat. § 65B.44, subd. 6, and therefore be eligible for survivor's economic loss benefits from the Auto Owners Insurance Company No-Fault policy?

The trial court answered: "No."

Apposite cases: *Peevy v. Mut. Servs. Cas. Ins. Co.*, 346 N.W.2d 120 (Minn. 1984); *Dahle v. Aetna Cas. & Sur. Ins. Co.*, 352 N.W.2d 397 (Minn. 1984); *School Sisters of Notre Dame at Mankato, Minn. Inc. v. State Farm Mut. Auto. Ins. Co.*, 476 N.W.2d 523 (Minn. Ct. App. 1991).

II. STATEMENT OF THE CASE

On June 15, 2005, Appellant Chong Suk Perry (hereinafter "Perry") requested survivor's benefits from Respondent Auto Owners Insurance Company (hereinafter "Auto Owners") pursuant to the automobile insurance policy Decedent Daniel Savage's (hereinafter "Savage") held with Auto Owners. *See App. A. 1.*¹ Auto Owners denied Ms. Perry's request reasoning that Ms. Perry does not qualify as a "dependent" as defined by Auto Owner's no-fault policy, and therefore, is ineligible for survivor's benefits. *See App. A. 2 - 3.*

After being denied benefits, Ms. Perry petitioned for no-fault arbitration with the American Arbitration Association (hereinafter "AAA") on July 26, 2005. *See App. A. 4 - 5.* Claiming that the no-fault matter involved questions of coverage that are not subject to arbitration, and that AAA does not have jurisdiction to arbitrate this matter, Auto Owners requested that Ms. Perry's petition be dismissed, and that Ms. Perry be ordered to pursue her claims in district court. *See App. A. 6.* On October 2, 2005, Auto Owners filed a Summons and Complaint for Declaratory Judgment and Motion to Stay Arbitration with the Scott County District Court. *See App. A. 7 - 12.*

On November 29, 2005, the Honorable Willaim E. Macklin, presiding over the Scott County District Court, granted Auto Owners request to stay the arbitration proceeding pending determination of insurance coverage by the Court and requiring Ms. Perry to appear at a deposition. *See App. A. 13 - 15.* Ms. Perry attended her deposition on December 22, 2005, and following the deposition, Auto Owners moved for summary judgment on February 13, 2006. *See*

¹ References to "App. A." herein are to Appellant's Appendix.

App. A. 16 - 17.

On April 30, 2006, the Honorable Judge Michael R. Savre granted summary judgment in favor of Auto Owners. *See* App. A. 18 - 22. Ms. Perry now appeals.

III. STATEMENT OF FACTS

Auto Owners issued a Garage Liability policy of insurance, effective from March 12, 2004 to March 12, 2005, to Kincaids Cars, Inc. *See* App. A. 8. The policy provided Mr. Savage with Personal Injury Protection benefits. *Id.*

On December 23, 2004, while driving a vehicle owned by Kincaids Cars, Inc., Mr. Savage was injured in an automobile accident. *See* App. A. 9. The injuries Mr. Savage sustained in the accident ultimately claimed his life. *Id.*

At the time of the accident, Mr. Savage was living with Ms. Perry in Savage, Minnesota. *See* App. A. 29. They owned this residence jointly for approximately seven years at the time of Mr. Savage's death. *Id.* Although Ms. Perry and Mr. Savage were not married, their relationship mirrored any typical marriage in the sense that they shared the same bed, shared household responsibilities and expenses, and shared a joint account. *See* App. A. 30, 36. Ms. Perry worked at Mystic Lake Casino during the entire span of her relationship with Mr. Savage, and although she contributed her income to their joint account, Ms. Perry largely depended on Mr. Savage for financial support. *See* App. A. 36 - 37. Further, Ms. Perry would give Mr. Savage any money she earned, and he would handle paying their bills. *See* App. A. 36. Additionally, Mr. Savage would give Ms. Perry approximately \$5,000.00 annually from the joint account to go to Korea. *Id.* All of the money Mr. Savage and Ms. Perry earned was pooled together and spent together. *See* App. A. 37.

IV. LEGAL ARGUMENT

A. Standard of Review

Chong Suk Perry challenges the district court's grant of summary judgment in favor of Auto Owners Insurance Company with respect to her claim for survivor's economic loss benefits under an automobile policy that insured Mr. Savage at the time of his death. On appeal from summary judgment, the reviewing court must ask (1) whether any genuine issue of material fact exists, and (2) whether the lower court erred in applying the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). The appellate court should review the lower court's judgment de novo, applying the same standard as the lower court. *Schiernbeck v. Davis*, 143 F.3d. 434, 435 (8th Cir. 1998). The evidence should be reviewed in the light most favorable to Chong Suk Perry, the party against whom judgment was granted. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). Because the facts in this matter are undisputed, this case concerns only issues of statutory interpretation, which are questions of law subject to de novo review. *See Garrick v. Northland Ins. Co.*, 469 N.W.2d 709, 711 (Minn. 1991).

B. Under Minn. Stat. § 65B.44, subd. 6, Appellant Chong Suk Perry Can be Considered a Dependent of Mr. Savage Because She Was Largely Dependent on Mr. Savage For Financial Support.

The legal question presented to the district court below and presented in this appeal involves interpretation of a portion of the Minnesota No-Fault Automobile Insurance Act, Minn. Stat. § 65B.44. Specifically, the legal question concerns the qualifications of a dependent established by Minn. Stat. § 65B.44, subd. 6.

1. "Survivors Economic Loss Benefits" Under the Minnesota No-Fault Act

Pursuant to Minn. Stat. § 65B.44, subd. 6., a decedent's surviving dependents are entitled to receive economic loss benefits. *See* Minn. Stat. § 65B.44, subd. 6 (2006). Under the statute certain people are presumed to be dependents:

(a) a wife is dependent on a husband with whom she lives at the time of his death; (b) a husband is dependent on a wife with whom he lives at the time of her death; (c) any child while under the age of 18 years, or while over that age but physically or mentally incapacitated from earning, is dependent on the parent with whom the child is living or from whom the child is receiving support regularly at the time of the death of such parent. *Questions of the existence and the extent of dependency shall be questions of fact, considering the support regularly received from the deceased.*

Id. (emphasis added). The last sentence of the statute indicates an intent to create a category of persons others than those presumed to be dependents. *Peevy v. Mut. Servs. Cas. Ins. Co.*, 346 N.W.2d 120, 122 (Minn. 1984).

2. Basic Rules of Statutory Interpretation Require that a Person's Dependency Status Rests on that Person's Similarity to the Enumerated Classes.

When interpreting statutes, the court must construe words and phrases according to their plain meaning. *See* Minn. Stat. § 645.08(1) (2006). In ascertaining the obvious legislative intent, the court must consider the whole statute and give effect to all of its provisions. *See In re Petition of Minnesota Power & Light Co.*, 435 N.W.2d 550, 556 (Minn. Ct. App. 1989); *see also* Minn. Stat. § 645.16 (2006). No word, phrase or sentence of a statute "should be deemed superfluous, void or insignificant." *Baker v. Ploetz*, 616 N.W.2d 263, 269 (Minn. 2000).

In Minn. Stat. § 65B.44, subd. 6, an enumeration of specific subjects (wife, husband, and child) is followed by general language. "Where general language in a statute follows specific subjects, the general language is presumed to include only subjects of a class similar to those enumerated." *School Sisters of Notre Dame at Mankato, Minnesota, Inc. v. State Farm Mut.*

Auto. Ins. Co., 476 N.W.2d 523, 525 (Minn. Ct. App. 1991). Further, in situations where dependency is not presumed, it is a question of fact. *See Dahle v. Aetna Cas. & Sur. Ins. Co.*, 352 N.W.2d 397, 400 (Minn. 1984).

In previous cases, the Court ruled that survivors, who were not presumed dependents under the statute, were entitled to survivors economic loss benefits. In these cases, the Court found that these survivors were in a class similar to one of the enumerated classes. *See id.* (posthumous child was entitled to survivors economic loss benefits); *see also Peevy*, 346 N.W.2d at 123 (ex-wife was entitled to survivors economic loss benefits); *but see School Sisters*, 476 N.W.2d at 525 (a non-human, non-profit corporation could not be considered a dependent for purposes of survivors economic loss benefits).

Ms. Perry is in a class similar to that of a spouse, which is a class enumerated by Minn. Stat. § 65B.44, subd. 6. Ms. Perry lived alone with Mr. Savage for approximately seven years. They owned a home together, shared a bedroom, shared a joint checking account where each of them deposited their paychecks and shared the money in the account, and supported each other on an emotional level. Although they each deposited their income into the account, Mr. Savage was the primary bread winner and his salary paid most of their bills. Mr. Savage managed the money in the account by paying their bills and providing Ms. Perry with money when needed. Essentially their relationship mirrored any stereotypical American marriage in which the husband earns more than the wife, and they mostly depend on the husband's income to pay their bills.

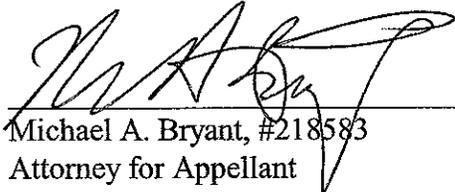
Because Ms. Perry is in a class similar to that of a spouse, which is a class specifically enumerated by the statute, she is entitled to survivor's economic loss benefits.

V. CONCLUSION

Basic principles of statutory construction require that survivors, who are in a class similar to those classes enumerated by Minn. Stat. § 65B.44, subd. 6, be considered dependents and therefore, entitled to economic loss benefits. Further, Minnesota case law dictates that dependency is a question of fact when it is not presumed. There is evidence that Ms. Perry and Mr. Savage shared a relationship similar to that of a married couple. There is further evidence that Ms. Perry largely depended on Mr. Savage economically. Therefore, the order of the district court granting summary judgment on this issue should be reversed.

Dated this 25th day of July, 2006.

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).