

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>ANTHONY ANGUIANO, Deceased</b>	)	
Claimant	)	
	)	
VS.	)	
	)	
<b>LARRY'S ELECTRICAL CONTRACTING L.L.C.</b>	)	
Respondent	)	Docket No. 1,036,237
	)	
AND	)	
	)	
<b>CONTINENTAL WESTERN INS. CO.</b>	)	
Insurance Carrier	)	

**ORDER**

**STATEMENT OF THE CASE**

Claimants Tasha Burns Anguiano (Tasha), Acario Anguiano, and Antonia Anguiano, requested review of the May 7, 2009, Award entered by Administrative Law Judge Brad E. Avery. The Board heard oral argument on September 9, 2009. Mark W. Works, of Topeka, Kansas, appeared for claimant Tasha. Jerome Saskowski, of Topeka, Kansas, appeared for claimants Acario Anguiano and Antonia Anguiano. Thomas G. Lemon, of Topeka, Kansas, appeared for claimants Angelica Anguiano and Anthony Anguiano, Jr. Ronald J. Laskowski, of Topeka, Kansas, appeared for respondent and its insurance carrier (respondent).

The Administrative Law Judge (ALJ) found there was no present agreement of marriage between the deceased, Anthony Anguiano, and Tasha and, consequently, Tasha was not Anthony's common law wife. The ALJ ordered that Anthony's four dependent children were entitled to payment of \$10,000 each from respondent, minus amounts previously paid, after presentation of proof of the establishment of a conservatorship for each dependent child. The ALJ noted a potential disparity in the amount of weekly payments to each dependent child because of the differences in their ages. Therefore, the ALJ allotted payments by respondent to Angelica and Anthony, Jr., in the amount of \$120 per week each until each child reaches the age of 18 or 23 if either or both satisfy the requirements of K.S.A. 44-510b(a)(3)(A)(B). The ALJ allotted payments to Acario and

Antonia in the amount of \$50.76 per week each until each child reaches the age of 18 or 23 if either or both satisfy the requirements of K.S.A. 44-510b(a)(3)(A)(B). At the time of the cessation of payments to Angelica and Anthony, Jr., the weekly payments to Acario and Antonia would increase by 50 percent of the amounts previously paid to Angelica and Anthony, Jr. The ALJ ordered that these payments would continue until the \$250,000 statutory maximum had been paid or the dependents reached 18 or 23 if either or both satisfy the requirements of K.S.A. 44-510b(a)(3)(A)(B), whichever occurred first.

The Board has considered the record and adopted the stipulations listed in the Award. The record also includes the transcript of the Motion Hearing held September 23, 2008. In addition, during oral argument to the Board, the parties agreed that the apportionment of compensation payments to the dependent children was not an issue, so long as the Board modified or clarified the ALJ's Award to reflect that such payments do not cease until each child has attained the age of 18 years regardless of whether the \$250,000 cap has been paid. The parties also agreed that payment of all benefits should commence on the date of the decedent's death, including the benefits for Antonia, even though she was not born until three weeks after her father's death.

#### ISSUES

Tasha contends that she was Anthony's common law wife, that she is a dependent of Anthony, that she is entitled to one-half of the \$40,000 initial payment of death benefits, that she is entitled to one-half of the remaining death benefits, and that she is entitled to payment for Anthony's funeral and medical expenses.

Claimants Acario and Antonia Anguiano request the Board affirm the finding of the ALJ that there was no present agreement of marriage between Anthony and Tasha and, therefore, Tasha was not Anthony's common law wife. Claimants Acario and Antonia Anguiano contend, however, that the ALJ erred in ordering payments to cease once the statutory maximum of \$250,000 is reached, irrespective of whether the beneficiaries are still in their minority. Although these claimants listed apportionment of the benefits in their application for review before the Board, this issue was not briefed. It was withdrawn as an issue at oral argument to the Board so long as the Board ordered benefits to continue past the \$250,000 maximum for any dependent child that had not reached the age of 18 years.

Claimants Angelica Anguiano and Anthony Anguiano, Jr., contend there was no evidence that Tasha and Anthony had a present marriage agreement nor that they held each other out as husband and wife to the public. Claimants Angelica Anguiano and Anthony Anguiano, Jr., request that the ALJ's Award be affirmed in all respects except to clarify that the \$250,000 maximum does not apply to a minor child who has not attained the age of 18. If the \$250,000 maximum is held to apply to all of decedent's children regardless of their age at the time the maximum is reached and if Tasha is held not to be entitled to benefits, then all four children agree that the ALJ's Award should be modified to apportion the benefits equally.

Respondent did not file a brief in this appeal but argues the \$250,000 cap should apply to all dependents regardless of their age. Respondent further advised the Board that all funeral expenses were paid up to the \$5,000 statutory maximum.

The issues for the Board's review are:

(1) Is Tasha entitled to benefits as either the common law wife or as a dependent of Anthony?

(2) Did the ALJ err by ordering payments of the death benefit to cease after the statutory maximum has been paid regardless of whether all of the dependent children have reached the age of 18 years?<sup>1</sup>

(3) Did the ALJ properly apportion the payment of the death benefit among the four minor dependents of the deceased claimant?<sup>2</sup>

#### **FINDINGS OF FACT**

Anthony Anguiano died on August 22, 2007, as a result of an accident that arose out of and in the course of his employment with respondent. At the time of his death, he had three dependent children, Angelica, date of birth March 11, 1993; Anthony, Jr., date of birth July 15, 1994; and Acario, date of birth August 23, 2006. Three weeks after his death, on September 11, 2007, another dependent child, Antonia, was born. Angelica and Anthony, Jr., were his children as a result of a relationship and marriage to Patricia Noriega Anguiano (Patty). Acario and Antonia were born to Tasha, who claims to be Anthony's common law wife. The uncontroverted evidence in the record is that all four of the children were Anthony's natural children and all were dependent upon Anthony. There was no evidence that Anthony had any other dependent children.

Tasha and Anthony met in March 2003, and Anthony moved in with her and her mother shortly thereafter. At the time Anthony moved in with Ms. Burns, he was still married to Patty. Although Anthony and Patty separated in March 2003, their Default Decree of Divorce was not filed until May 25, 2004.

Tasha and Anthony moved into a trailer park a few months after they met. While they lived at the trailer, Tasha considered their relationship to be boyfriend and girlfriend, although they were getting closer. While they lived at the trailer park, some of the bills were in Tasha's name and some were in Anthony's name. Tasha testified that they had

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<sup>1</sup> Whether benefits should continue past the age of 18 and until all of the dependent children were no longer qualified for benefits under either K.S.A. 44-510b(a)(3)(A) or (B) was not made an issue.

<sup>2</sup> The parties agreed that this is not an issue if Tasha is held not to be entitled to benefits and the \$250,000 maximum is held inapplicable to dependent children under the age of 18.

car insurance in both her name and Anthony's name. A copy of correspondence and a declaration of insurance made a part of the record shows that the policy period was from March 17, 2004, to April 13, 2004. During this period of time, Anthony would have been still legally married to Patty. Tasha said that Anthony purchased a car for her, but she could not remember whether the title was in her name, Anthony's name, or in both their names. The tags, however, were registered to her as Tasha Burns.

After living in the trailer park about a year, Tasha and Anthony moved into a rental house on Lime Street in Topeka. Both Tasha and Anthony signed the rental agreement. Tasha signed the agreement under the name of Tasha Burns. Later, Anthony and Tasha moved into a home on Woodruff Street. This was also a rental home. Again, both Tasha and Anthony signed the rental agreement, and Tasha said she probably signed the rental agreement as Tasha Burns. Tasha and Anthony continued to live together until his death.

Tasha testified that during the time they lived together, she and Anthony pooled their money and shared their living expenses, including the child support Anthony paid for his two older children. She said that they paid their bills in cash. Tasha testified that Anthony opened a bank account a couple months before he died so that he would be able to cash his checks. He did not put her name on that bank account. Anthony did not have a life insurance policy. Neither Anthony nor Tasha had any charge accounts. Anthony had no health insurance, 401(K) plan, or investments. They did not borrow any money from a bank or lending institution during their time together, but only borrowed money, if necessary, from family members.

At one point in their relationship, Tasha worked for Hallmark Cards (Hallmark). She could not remember if she identified herself as a single person or a married person on her job application. However, for tax purposes, she was identified as single on her W-2. One of her fringe benefits at Hallmark was a life insurance policy, and she named Anthony as a beneficiary on that policy. She also had health insurance as a fringe benefit during the time she was employed at Hallmark. She did not add Anthony's name on the health insurance policy. Tasha also testified that during this period she had a bank account that was in her name only. When she was laid off from Hallmark, she applied for unemployment under the name of Tasha Burns.

Tasha said that she and Anthony filed separate income tax returns as single persons, not jointly as a married couple. She never claimed on her tax returns that she was married. She filed all her tax returns as Tasha Burns. Anthony's income tax returns from 2004 through 2006 indicate that he was a head of household and only listed as dependents Angelica and Anthony Anguiano.<sup>3</sup>

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<sup>3</sup> Depo. of Patty Anguiano, Ex. 4.

Tasha admitted that other than possibly the car Anthony purchased for her, she had no other assets that included her name as a joint owner. She said that Anthony had no written documents that indicated that she was his wife. Although Tasha listed Anthony as a beneficiary on life insurance policies she had through her employment at Hallmark and Wal-Mart, she could not remember if she named him as her husband on those documents.

Before her first child was born, Tasha applied for a medical card from SRS. She could not recall if the paperwork asked if she was married or single but guessed she would have indicated she was single. She testified she never used the name Anguiano on any application for any type of benefits or health insurance. She has never written her name on any document as Tasha Anguiano. She never used Tasha Anguiano in any official capacity, such as paying a bill.

Tasha testified that she never told family members that she and Anthony were married because the family knew they had not been married through the court. She also testified that she never officially told anyone that they were husband and wife. Tasha believed, however, that they were viewed as husband and wife. In public, Tasha would refer to him as “my old man,” and he referred to her as his “old lady” or “baby.”<sup>4</sup> She also testified that Anthony would introduce her as his wife and that Anthony’s father referred to her as Anthony’s wife.

Tasha said that she and Anthony determined they were common law married about a year after they got together, which would have been sometime in 2004. When asked if there had been a time when they were with people that Anthony and she made a declaration that they considered each other to be husband and wife, Ms. Burns answered:

A. [by Ms. Burns] He would say I’m going to marry this girl or this is my baby and I’m going to marry her.

Q. Okay. What time frame are we talking about when that happened?

A. God, I don’t know. Two or three years ago.

Q. Okay.

A. He’d say it all the time.

Q. Okay. Were you ever at one of these functions where Tony said, instead of saying I’m going to marry her, that we are married?

A. No.<sup>5</sup>

Tasha further contends that she and Anthony entered into a common law relationship because they gave each other rings. Around Christmas 2005, Anthony gave Tasha a ring and told her he wanted to marry her. Tasha gave Anthony a ring in shortly before the birth of their son, Acario, in July 2006. Tasha said the rings exchanged were

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<sup>4</sup> R.H. Trans. at 11.

<sup>5</sup> Deposition of Tasha Anguiano (Jan. 29, 2008) at 60-61.

engagement rings, and she never referred to the rings as wedding rings. When Anthony gave her the ring, it was her intention that they would get married. Ms. Burns stated: "I believe me and Tony were going to get married. We didn't know Tony was going to pass away."<sup>6</sup> They did not make plans to have a marriage ceremony. Anthony told Tasha that he did not want to get married in a church and would prefer to go to the courthouse to get married. She said he told her that it was just a piece of paper.

Tasha did not indicate that her status was married on any forms, however, because they had not gotten married legally. Whenever she was asked if she was married or single, she would indicate that she was single. Tasha said she had what property she and Anthony had accumulated in the time they lived together. Other than that property, they had two children, which she claims is evidence of a common law marriage. She also entered into evidence a picture of herself and her son standing in front of the house she had shared with Anthony. The photograph showed her standing behind a large stone on which the name "Anguiano" was etched.

Q. [By Mr. Lemon] And besides those things, anything else that you can point me to that is evidence of a common law marriage?

A. I don't know. I don't even know what a common law marriage is.

Q. Ma'am, you're making a claim here that you were married to Mr. Anguiano.

A. I feel I was married to Tony. I was with him for five years. What more does anybody want?<sup>7</sup>

After Anthony's death, Tasha, along with Anthony's older children, parents and some of his siblings, met at the funeral home to make arrangements. She said that she was in shock at the time and has no memory of giving the funeral home any information. However, she said she had some input in giving the funeral home personnel the information for the death certificate and obituary. The death certificate names Tasha Burns as the person giving the information for that document. It lists Anthony's marital status as divorced. Tasha said that everything on the death certificate was accurate. The obituary lists Tasha's relationship with Anthony as "companion." When asked why she was not listed as Anthony's wife, she said that it did not matter to her because she had been with Anthony and was his companion. However, she admitted that she, along with Anthony's family, gave the information for the obituary, and she had indicated she was Anthony's companion, not his wife.

Tasha testified that she referred to herself as Tasha Anguiano to friends and family. She said that Anthony would refer to her as Tasha Anguiano. However, she also said that if a coworker would ask her name, she would identify herself as Tasha Burns. She never

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<sup>6</sup> R.H. Trans. at 31.

<sup>7</sup> Tasha Anguiano Depo. (Oct. 15, 2008) at 146.

provided any indication that her name was Tasha Anguiano before Anthony's death in writing. Although in her testimony in this claim, she gave her name as Tasha Dakota Burns Anguiano, the application for hearing listed her as "Tasha Burns," and she signed that document "Tasha D. Burns."<sup>8</sup>

Tasha testified that she has been designated as Anthony's common law wife by the Social Security Administration. She added as an exhibit a "Statement Regarding Marriage" she filed in that regard. The document included an statement made by Anthony's father in which he stated that Anthony and Tasha "lived together like husband & wife."<sup>9</sup> The document also included a statement of Tasha's brother that he considered Anthony and Tasha to be husband and wife because they "treated each other as so, Tony also asked me for permission [*sic*] several times, made baby's, took real good care of my sister, as if they were married."<sup>10</sup>

Patty Anguiano disputes that Anthony and Tasha had a common law marriage. She testified that Anthony had told her he would never marry again. She said that Anthony paid her child support every Friday when he got off work. Tasha never gave her money for child support, and to her knowledge, Anthony never borrowed money from Tasha to pay the child support.

### PRINCIPLES OF LAW AND ANALYSIS

#### **(1) Is Tasha entitled to benefits as either the common law wife or as a dependent of Anthony?**

Kansas has long recognized the validity of a common law marriage.<sup>11</sup> In order to establish such a relationship, three elements must be shown: first, a capacity to marry; second, a present marriage agreement between the parties; and third, a holding out of each other as husband and wife to the public.<sup>12</sup> "Although the marriage agreement need not be in any particular form, it is essential there be a present mutual consent to the

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<sup>8</sup> Form K-WC E-2, Surviving Spouse, Dependent or Heir Application for Hearing (filed Aug. 23, 2007).

<sup>9</sup> Depo. of Tasha Anguiano, Vol. 1, Ex. 2 at 5.

<sup>10</sup> Depo. of Tasha Anguiano, Vol. 1, Ex. 2 at 7.

<sup>11</sup> See e.g., *Schrader v. Schrader*, 207 Kan. 349, 350, 484 P.2d 1007 (1971).

<sup>12</sup> *In re Adoption of X.J.A.*, 284 Kan. 853, Syl. ¶ 9, 166 P.3d 396 (2007); *In re Estate of Antonopoulos*, 268 Kan. 178, 192, 993 P.2d 637 (1999); *Sullivan v. Sullivan*, 196 Kan. 705, 709, 413 P.2d 988 (1966).

marriage between the parties.”<sup>13</sup> The one alleging a common law marriage has the burden of proof.<sup>14</sup>

The Board agrees with and adopts the findings and conclusions of the ALJ. There is no need to repeat those findings and conclusions herein. Tasha obviously had a loving and stable relationship with Anthony, but there was never a present agreement between them to be husband and wife. As such, there was no common law marriage and Tasha is not entitled to receive any death benefits under the Workers Compensation Act.

**(2) Did the ALJ err by ordering payments of the death benefit to cease after the statutory maximum has been paid regardless of whether all of the dependent children have reached the age of 18 years?**

K.S.A. 2008 Supp. 44-510b states in part:

Where death results from injury, compensation shall be paid as provided in K.S.A. 44-510h and 44-510i and amendments thereto, and as follows:

(a) If an employee leaves any dependents wholly dependent upon the employee's earnings at the time of the accident, all compensation benefits under this section shall be paid to such dependent persons. There shall be an initial payment of \$40,000 to the surviving legal spouse or a wholly dependent child or children or both. . . . The initial payment shall be immediately due and payable and apportioned 50% to the surviving legal spouse and 50% to the dependent children. Thereafter, such dependents shall be paid weekly compensation, except as otherwise provided in this section, in a total sum to all such dependents, equal to 66 2/3% of the average gross weekly wage of the employee at the time of the accident, computed as provided in K.S.A. 44-511 and amendments thereto, but in no event shall such weekly benefits exceed the maximum weekly benefits provided in K.S.A. 44-510c and amendments thereto, nor be less than a minimum weekly benefit of the dollar amount nearest to 50% of the state's average weekly wage as determined pursuant to K.S.A. 44-511 and amendments thereto subject to the following:

(1) If the employee leaves a surviving legal spouse or a wholly dependent child or children, or both, who are eligible for benefits under this section, then all death benefits shall be paid to such surviving spouse or children, or both, and no benefits shall be paid to any other wholly or partially dependent persons.

(2) A surviving legal spouse shall be paid compensation benefits for life, except as otherwise provided in this section.

(3) Any wholly dependent child of the employee shall be paid compensation, except as otherwise provided in this section, until such dependent child becomes 18 years of age. A wholly dependent child of the employee shall be paid compensation, except as otherwise provided in this section, until such dependent

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<sup>13</sup> *Driscoll v. Driscoll*, 220 Kan. 225, 227, 552 P.2d 629 (1976).

<sup>14</sup> *Id.*

child becomes 23 years of age during any period of time that one of the following conditions is met:

(A) The wholly dependent child is not physically or mentally capable of earning wages in any type of substantial and gainful employment; or

(B) the wholly dependent child is a student enrolled full-time in an accredited institution of higher education or vocational education.

(4) . . . .

(b) Where the employee leaves a surviving legal spouse and dependent children who were wholly dependent upon the employee's earnings and are eligible for benefits under this section 50% of the maximum weekly benefits payable shall be apportioned to such spouse and 50% to such dependent children.

. . . .

(e) The administrative law judge, except as otherwise provided in this section, shall have the power and authority to apportion and reapportion the compensation allowed under this section, either to wholly dependent persons or partially dependent persons, in accordance with the degree of dependency as of the date of the accident . . . .

. . . .

(h) Notwithstanding any other provision in this section to the contrary, the maximum amount of compensation benefits payable under this section, including the initial payment in subsection (a) to any and all dependents by the employer shall not exceed a total amount of \$250,000 and when such total amount has been paid the liability of the employer for any further compensation under this section to dependents, other than minor children of the employee, shall cease **except that the payment of compensation under this section to any minor child of the employee shall continue for the period of the child's minority at the weekly rate in effect when the employer's liability is otherwise terminated under this subsection and shall not be subject to termination under this subsection until such child becomes 18 years of age.** (Emphasis added.)

The Board finds that the plain meaning of K.S.A. 44-510b(h) is that the \$250,000 maximum does not terminate respondent's liability for compensation to any minor child of the decedent until that child becomes 18 years of age.

#### CONCLUSION

(1) Tasha Burns Anguiano is not entitled to benefits.

(2) Benefits to the minor dependent children do not cease after the \$250,000 maximum has been paid until such child has reached 18 years of age.

(3) Because of the Board's holdings in issues Nos. 1 and 2, this issue is not before the Board by agreement of the parties.

**AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Brad E. Avery dated May 7, 2009, is modified to provide that payments shall continue to any minor child who has not reached the age of 18 years irrespective of the cap of \$250,000 but is otherwise affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of October, 2009.

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

- c: Mark W. Works, Attorney for Claimant Tasha Burns Anguiano
- Jerome Saskowski, Attorney for Claimants Acario and Antonia Anguiano
- Thomas G. Lemon, Attorney for Claimants Angelica Anguiano and Anthony Anguiano, Jr.
- Ronald J. Laskowski, Attorney for Respondent and its Insurance Carrier
- Brad E. Avery, Administrative Law Judge