

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

WILLIAM GROOM, Surviving Spouse of  
JUANITA GROOM, Deceased,

UNPUBLISHED  
October 4, 1996

Plaintiff-Appellant,

and

No. 180904  
WCAC No. 92-0769

MICHAEL J. FISH, SR., Conservator of  
CHRISTOPHER FISH, Son,

Plaintiff,

v

ADDISON PRODUCTS and HARTFORD  
INSURANCE COMPANY,

Defendants-Appellees.

---

Before: Neff, P.J., and Fitzgerald and C.A. Nelson,\* JJ.

PER CURIAM.

Plaintiff William Groom, surviving spouse of Juanita Groom, deceased, appeals by leave granted a decision of the Worker's Compensation Appellate Commission (WCAC) affirming the decision of the magistrate that plaintiff Christopher Fish was wholly dependent on decedent for support. We affirm.

Groom and decedent were married in 1985. Christopher Fish (DOB 1-26-74), decedent's natural son, became a member of the household in 1986. Groom did not adopt Christopher, and incurred no legal obligation to support him. Plaintiff Michael Fish, Christopher's natural father, incurred no support obligation after Christopher went to reside with Groom and decedent.

Groom and decedent worked for defendant Addison Products, and made approximately the same wage. Their income was placed into a single account from which family expenses were paid.

---

\* Circuit judge, sitting on the Court of Appeals by assignment.

On September 14, 1987, decedent stopped working. She claimed that her health problems were caused by exposure to toxic epoxy paint at work. Addison voluntarily paid worker's compensation benefits until decedent's death on April 3, 1990.

Addison voluntarily paid death benefits to Groom. MCL 418.331; MSA 17.237(331). Christopher, through his natural father/conservator, sought a hearing on his entitlement to benefits as a wholly dependent survivor for the period between April 3, 1990, and January 26, 1992, his 18th birthday. The amount in dispute totaled approximately \$10,000.

At the hearing, the evidence showed that decedent paid family expenses, including those incurred by Christopher, from the single account. Groom acknowledged that he turned his paycheck over to decedent, and that he did not deal with the bills. He stated that both he and decedent supported Christopher. For his part, Christopher testified that he did not know whether decedent's funds were commingled with those earned by Groom. He noted that when he needed money, he asked his mother. Christopher stated that he lived with Groom for approximately six weeks after decedent died. Groom requested and was given fifty percent of the first social security check he received after his mother's death. Thereafter, the checks were sent to his natural father, who acted as his conservator.

The magistrate found that Christopher was totally dependent on decedent at the time of her death. Decedent alone was legally obligated to support Christopher. The magistrate concluded that Christopher was entitled to benefits in the amount of \$105.38 per week for the stipulated period. As no petition for recoupment had been filed by Hartford Insurance, Addison's carrier, Groom was not ordered to repay the benefits he had received.

Groom appealed, and the WCAC affirmed the magistrate's decision. The WCAC rejected Groom's argument that the magistrate erred by finding that Christopher was totally dependent on decedent at the time of her death. Citing *Nowak v Shedd-Bartush Foods, Inc*, 381 Mich 502; 164 NW2d 5 (1969), the WCAC characterized as "not precisely correct" Groom's argument that Christopher could not be conclusively presumed to be a dependent because he had attained the age of 16 at the time of his mother's death. The WCAC found that the magistrate's finding that Christopher was wholly dependent on decedent at the time of her death was supported by the requisite evidence.

Findings of fact made by a magistrate are conclusive on the WCAC if they are supported by competent, material, and substantial evidence on the whole record. MCL 418.861a(3); MSA 17.237(861a)(3). Judicial review is of the findings of fact made by the WCAC, not those made by the magistrate. The findings of fact made by the WCAC are conclusive if there is any competent evidence in the record to support them. *Holden v Ford Motor Co*, 439 Mich 257, 263; 484 NW2d 227 (1992).

On appeal, Groom argues that because Christopher had attained the age of 16 at the time of his mother's death, he could not be conclusively presumed to have been dependent on her for support. MCL 418.331(b); MSA 17.237(331)(b). We disagree. Whether Christopher could be conclusively presumed to be decedent's dependent at the time of her injury, MCL 418.341; MSA 17.237(341), or

whether he was, at most, a factual dependent at the time of her death pursuant to § 331(b), is not determinative of whether the WCAC's decision was correct. The undisputed evidence established that factually, Christopher was wholly dependent on decedent both at the time she stopped working, when he was under the age of 16, and at the time of her death, when he had attained the age of 16. Decedent placed her wages into the account from which all family expenses, including Christopher's, were paid. When he needed money, Christopher asked decedent, and not Groom, for funds. Ample evidence supported the finding that decedent supported Christopher until the time of her death. Groom did not adopt Christopher, and thus had no legal duty to support him. Christopher could not be conclusively presumed to be Groom's dependent. *Black v General Motors Corp*, 125 Mich App 469, 472; 336 NW2d 28 (1983), lv den 418 Mich 872 (1983). At most, Christopher could be deemed a factual dependent of Groom. MCL 418.353(1)(b); MSA 17.237(353)(1)(b). The WCAC's finding that the evidence did not show such factual dependency was supported by the requisite evidence. *Holden, supra*. While Groom turned his paycheck over to decedent, who placed it into the account, Groom acknowledged that he did not know how decedent used available funds to pay expenses. Christopher testified that he did not know whether Groom's funds were commingled with those earned by decedent. While some of Groom's wages might have gone for Christopher's support, any such contribution was essentially gratuitous. The legal obligation to support Christopher rested with decedent.

The conclusion that death benefits were payable solely to Christopher as a wholly dependent survivor of decedent was legally correct and supported by the requisite evidence. As no petition for recoupment of benefits paid to Groom has been filed, no remand for further proceedings is necessary.

Affirmed.

/s/ Janet T. Neff

/s/ E. Thomas Fitzgerald

/s/ Charles A. Nelson