IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1999 MTWCC 30

WCC No. 9610-7631

UNA (VANHORN) KILLION

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

and the STATE OF MONTANA

Respondents.

DECISION AND JUDGMENT

Summary: Claimant received death benefits from State Compensation Insurance Fund following the death of her husband. Approximately five years after her husband's death, she remarried. State Fund terminated her death benefits pursuant to section 39-71-721 (5), MCA (1989). Claimant did not challenge application of the statute to her under the facts, but argued the statute conflicted with section 49-2-308(1), MCA (1989), which prohibits the state or its subdivisions from discriminating on the basis of marital status, and violated constitutional guarantees of freedom of religion, equal protection, and privacy.

Held: Section 39-71-721(5), MCA (1989) is a specific statute and is not overriden by the more general provisions of section 49-2-308(1), MCA (1989), which are not, in any event, appropriately applied to State Fund, while arguably a quasi-governmental agency, is funded by premiums from private businesses and acts in the same role as a private insurance company. Section 39-71-721(5), MCA (1989) does not violate constitutional guarantees of freedom of religion where it is neutral as to religion and the termination of death benefits upon remarriage bears a rational relationship to the governmental purpose of providing death benefits to replace, at least in part, income lost upon death of a spouse. The statute does not violate equal protection provisions where marital status is not a suspect classification requiring heightened scrutiny and the statute has a rational basis. The section also does not violate claimant's constitutional right to privacy where the record does not indicate she sought to keep her remarriage private in any other context and where society does not recognize, in any event, a reasonable expectation of privacy in marital status.

Topics:

Constitutions, Statutes, Regulations and Rules: Montana Constitution: Art. II, section 4: Section 39-71-721(5), MCA, which provides that workers' compensation benefits to a surviving spouse terminate upon remarriage, does not violate constitutional provisions guaranteeing equal protection. The classification involved here – marital status – is not a suspect classification requiring heightened scrutiny. Eastman v. Atlantic Richfield, 237 Mont. 332, 338, 777 P.2d 862, 865 (1989). In assessing whether the statute bears a rational relationship to a legitimate governmental purpose, the Court is not limited to the legislative record but must consider "every conceivable basis" for the statute. A rational basis for terminating death benefits upon remarriage exists in that death benefits are intended to replace, at least in part, the loss of financial support provided by a deceased spouse. Remarriage provides a new relationship with the same obligation that existed between the claimant and the deceased spouse.

Constitutions, Statutes, Regulations and Rules: Montana Constitution: Art. II, section 5: Section 39-71-721(5), MCA, which provides that workers' compensation benefits to a surviving spouse terminate upon remarriage, does not violate constitutional provisions prohibiting the state from establishing religion or preventing the free exercise thereof. The statute is religiously neutral and simply reflects the fact that Montana laws create legal obligations between husband and wife, attempting to provide replacement income for the loss of support upon the death of a spouse.

Constitutions, Statutes, Regulations and Rules: Montana Constitution: Art. II, section 10: Section 39-71-721(5), MCA, which provides that workers' compensation benefits to a surviving spouse terminate upon remarriage, does not violate constitutional protections of privacy. While claimant argues the insurer's inquiries regarding her marital status invaded her privacy, the record does not indicate that claimant in fact sought to keep her marital status private in any other context. Moreover, society does not recognize a reasonable expectation of privacy in one's marital status.

Constitutions, Statutes, Regulations and Rules: Montana Code: section 39-71-721, MCA (1989). Section 39-71-721(5), MCA, which provides that workers' compensation benefits to a surviving spouse terminate upon remarriage, does not violate constitutional guarantees of freedom of religion, equal protection, or privacy. The statute is also not overriden by section 49-2-308(1), which prohibits the State or its subdivisions from discriminating on the basis of marital status.

Constitutions, Statutes, Regulations and Rules: Montana Code: section 49-2-308(1), MCA (1989). Statute prohibiting discriminatory practices by state or its political subdivisions does not prohibit or override section 39-71-721, MCA (1989), which provides that workers' compensation death benefits to a surviving spouse terminate upon remarriage. State Compensation Insurance Fund, while arguably a quasi-state agency, is funded by premiums paid by private businesses and operates in the same manner as a private insurer, and is not subject to the statute. Moreover, because section 39-71-721, MCA (1989) is specific and unequivocal in its application, it is controlling on the issue and is not overriden by the general provisions of section 49-2-308(1), MCA (1989).

Benefits: Death Benefits: Remarriage. Statute prohibiting discriminatory practices by state or its political subdivisions does not prohibit or override section 39-71-721, MCA (1989), which provides that workers' compensation death benefits to a surviving spouse terminate upon remarriage. State Compensation Insurance Fund, while arguably a quasi-state agency, is funded by premiums paid by private businesses and operates in the same manner as a private insurer, and is not subject to the statute. Moreover, because section 39-71-721, MCA (1989) is specific and unequivocal in its application, it is controlling on the issue and is not overriden by the general provisions of section 49-2-308(1), MCA (1989).

Benefits: Death Benefits: Remarriage. Section 39-71-721(5), MCA, which provides that workers' compensation benefits to a surviving spouse terminate upon remarriage, does not violate constitutional provisions prohibiting the state from establishing religion or preventing the free exercise thereof. The statute is religiously neutral and simply reflects the fact that Montana laws create legal obligations between husband and wife, attempting to provide replacement income for the loss of support upon the death of a spouse.

Benefits: Death Benefits: Remarriage. Section 39-71-721(5), MCA, which provides that workers' compensation benefits to a surviving spouse terminate upon remarriage, does not violate constitutional provisions guaranteeing equal protection. The classification involved here – marital status – is not a suspect classification requiring heightened scrutiny. Eastman v. Atlantic Richfield, 237 Mont. 332, 338, 777 P.2d 862, 865 (1989). In assessing whether the statute bears a rational relationship to a legitimate governmental purpose, the Court is not limited to the legislative record but must consider "every conceivable basis" for the statute. A rational basis for terminating death benefits upon remarriage exists in that death benefits are intended to replace, at least in part, the loss of financial support provided by a deceased spouse. Remarriage provides a new relationship with the same obligation that existed between the claimant and the deceased spouse.

Benefits: Death Benefits: Remarriage. Section 39-71-721(5), MCA, which provides that workers' compensation benefits to a surviving spouse terminate upon remarriage, does not violate constitutional protections of privacy. While claimant argues the insurer's inquiries regarding her marital status invaded her privacy, the record does not indicate that claimant in fact sought to keep her marital status private in any other context. Moreover, society does not recognize a reasonable expectation of privacy in one's marital status.

Constitutional Law: Constitutional Challenges: Burden. To prevail on a constitutional challenge, claimant must prove beyond a reasonable doubt that the challenged statute is unconstitutional. Heisler v. Hines Motor Co., 282 Mont. 270, 279, 937 P.2d 45, 50 (1997).

Constitutional Law: Equal Protection. Section 39-71-721(5), MCA, which provides that workers' compensation benefits to a surviving spouse terminate upon remarriage, does not violate constitutional provisions guaranteeing equal protection. The classification involved here – marital status – is not a suspect classification requiring heightened scrutiny. Eastman v. Atlantic Richfield, 237 Mont. 332, 338, 777 P.2d 862, 865 (1989). In assessing whether the statute bears a rational relationship to a legitimate governmental purpose, the Court is not limited to the legislative record but must consider "every conceivable basis" for the statute. A rational basis for terminating death benefits upon remarriage exists in that death benefits are intended to replace, at least in part, the loss of financial support provided by a deceased spouse. Remarriage provides a new relationship with the same obligation that existed between the claimant and the deceased spouse.

Constitutional Law: Free Exercise of Religion. Section 39-71-721(5), MCA, which provides that workers' compensation benefits to a surviving spouse terminate upon remarriage, does not violate constitutional provisions prohibiting the state from establishing religion or preventing the free exercise thereof. The statute is religiously neutral and simply reflects the fact that Montana laws create legal obligations between husband and wife, attempting to provide replacement income for the loss of support upon the death of a spouse.

Constitutional Law: Privacy. Section 39-71-721(5), MCA, which provides that workers' compensation benefits to a surviving spouse terminate upon remarriage, does not violate constitutional protections of privacy. While claimant argues the insurer's inquiries regarding her marital status invaded her privacy, the record does not indicate that claimant in fact sought to keep her marital status private in any other context. Moreover, society does not recognize a reasonable expectation of privacy in one's marital status.

Insurers: State Compensation Insurance Fund. While it may be argued that State Fund is a quasi-state agency, the State Fund is funded by premiums paid by businesses and operates in the same manner as a private insurer. State funds and services are not involved in its payment of benefits. Thus, section 49-2-308, MCA (1989), which prohibits discrimination on the basis of marital status, inter alia, by the state or any of its political subdivisions, does not apply to State Fund's termination of death benefits upon the remarriage of a spouse, as required by section 39-71-721(5), MCA (1989).

¶1 The trial in this matter was held July 21, 1998, in Great Falls, Montana, Petitioner, Una (VanHorn) Killion (claimant), was present and represented by Mr. Turner C. Graybill. Respondent, State Compensation Insurance Fund (State Fund), was represented by Mr. Thomas E. Martello.

¶2 Following trial, the parties were permitted to submit legal briefs. The final brief was submitted on October 15, 1998, at which time the case was deemed submitted for decision.

¶3 Exhibits: Exhibits 1 through 15, 17 through 32 and 35 were admitted without objection. Exhibit 16 was admitted over the objection of Mr. Martello. Exhibits 33 and 34 were refused.

¶4 Witnesses: Claimant, Villes Emmel, and Tom Fritch were sworn and testified.

¶5 Issues Presented: As set forth by the parties in the Pretrial Order, the issues presented for decision are as follows:

1. Whether State Fund's termination of death benefits it had been paying Mrs. VanHorn constitutes illegal discrimination based upon marital status under Article II, §4 of the Montana Constitution, or MCA §49-2-308(1) or other applicable law.

2. Whether State Fund's termination of death benefits it had been paying Mrs. VanHorn constituted an illegal violation of Petitioner's right to privacy guaranteed by Article II, §10 of the Montana Constitution.

3. Whether MCA §39-71-721 is constitutional as applied to Petitioner's claim for death benefits under the circumstances of this case.

¶6 Having considered the Pretrial Order, the testimony presented at trial, the demeanor and credibility of the witnesses, and exhibits, the Court makes the following:

FINDINGS OF FACT

¶7 Claimant and Donald VanHorn (Mr. VanHorn) were married on June 18, 1973. They remained married until Mr. VanHorn's death on November 2, 1989.

¶8 On November 2, 1989, Mr. VanHorn died from asphyxiation during the course and scope of his employment with VanHorn Trucking, Incorporated. At the time of Mr. VanHorn's death, VanHorn Trucking was insured by the State Fund.

¶9 On November 10, 1989, the claimant filed a Beneficiaries' Claim for Compensation (Ex. 4). The State Fund accepted her claim and commenced paying benefits. (Uncontested Fact 4.)

¶10 The State Fund paid claimant biweekly death benefits retroactively to November 3, 1989, through October 7, 1994. (Uncontested Fact 5.)

¶11 Claimant remarried on October 8, 1994. Upon learning of the remarriage, the State Fund terminated benefits pursuant to section 39-71-721, MCA. (Uncontested Facts 6-7.)

¶12 The total amount of benefits paid claimant was $65,727.56. (Uncontested Fact 5.)

¶13 Claimant's death benefits were terminated pursuant to section 39-71-721, MCA (1989), which provides that death benefits to a surviving spouse terminate upon payment of 500 weeks of benefits or upon remarriage, whichever occurs first. Claimant does not contend that she was entitled to further benefits under the statute; however, she challenges the constitutionality of the statute's provision for termination of benefits upon remarriage, arguing that the provision violates her constitutional rights to free exercise of her religion, her right to privacy, and her right to be free from discrimination based on her marital status.

¶14 Claimant bases her constitutional challenges on the following facts:

- Between 1992 and 1994, she received four questionnaires from the State Fund inquiring about her marital status. (Exs. 9, 27, 28, and 29.) Claimant feels that these questionnaires invaded her privacy regarding her personal and religious choice to remarry.
- Claimant and her new husband, Donald Killion (Donald), are practicing Baptists. According to claimant, her Baptist religion precludes her from living with Donald without the benefit of marriage. In light of her love for Donald, she chose marriage even though her marriage meant she would be ineligible for continued death benefits. She believes the statute forced her to choose between giving up her death benefits or "living in sin," and that the statute therefore discriminates against her on account of her religious beliefs and her marital status.

¶15 The Court does not question the sincerity of claimant's religious beliefs. It accepts her contention that her religious beliefs preclude her from cohabiting with Donald outside of marriage.

CONCLUSIONS OF LAW

I. Governing Law

¶16 The 1989 version of the Workers' Compensation Act applies in this case as it is the law which was in effect at the time of Mr. VanHorn's death. *Buckman v. Montana Deaconess Hospital,* 224 Mont. 318, 321, 730 P.2d, 380, 382 (1986).

II. Burden of Proof

¶17 Claimant has the burden of proving that she is entitled to workers' compensation benefits by a preponderance of the probative, credible evidence. *Ricks v. Teslow Consolidated,* 162 Mont. 469, 512 P.2d 1304 (1973); *Dumont v. Wicken Bros. Construction Co.,* 183 Mont. 190, 598 P.2d 1099 (1979).

III. Section 39-71-721, MCA (1989)

¶18 Section 39-71-721, MCA (1989), governs death benefits payable on account of Mr. VanHorn's death. Subsection (5) provides:

> **Section 39-71-721. Compensation for injury causing death -- limitation.**
>
> . . . .
>
> (5) If any beneficiary of a deceased employee dies, the right of such beneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116(2)(b) through (2)(d).

The section provides for termination of death benefits upon a widow's or widower's remarriage. Thus, the State Fund's termination of claimant's benefits upon her marriage to Donald was proper.

IV. Section 49-2-308, MCA

¶19 Claimant argues that a general, statutory prohibition against discrimination based on marital status precludes the termination of her benefits. Essentially, she argues that the prohibition supercedes and nullifies the provision for termination of benefits upon remarriage.

¶20 The prohibition against marital discrimination is found in the Montana Human Rights Act, Title 49, ch. 2, MCA. As cited by claimant, it provides, in relevant part:

> **49-2-308. Discrimination by the state**. (1) It is an unlawful discriminatory practice for the state or any of its political subdivisions:
>
> (a) to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of race, creed, religion,

sex, **marital status**, color, age, physical or mental disability, or national origin, unless based on reasonable grounds; [Emphasis added.]

¶21 Section 49-2-308, MCA, concerns federal and state benefits and services. While it may be argued that the State Fund is a quasi-state agency, the State Fund is funded by premiums paid by businesses. It operates in the same manner as a private insurer. State funds and services are not involved and the section is inapplicable.

¶22 Moreover, section 39-71-721, MCA, is specific and unequivocal regarding termination of benefits upon remarriage. As the more specific statute, it is controlling. *Gibson v. State Compensation Mut. Ins. Fund,* 255 Mont. 393, 396, 842 P.2d 338, 340 (1992) ("[W]hen a general statute and a specific statute are inconsistent, the specific statute governs, so that a specific legislative directive will control over an inconsistent general provision.").

V. Constitutional Challenge

¶23 Claimant, however, asserts that the provision for termination of death benefits upon remarriage is unconstitutional. She argues that the provision violates her constitutional rights to (1) free exercise of her religion, (2) equal protection, and (3) privacy. To prevail, the claimant must prove beyond a reasonable doubt that the challenged statute is unconstitutional. *Heisler v. Hines Motor Co.,* 282 Mont. 270, 279, 937 P.2d 45, 50 (1997).

A. Free Exercise of Religion

¶24 The United States Constitution guarantees individuals the right to freely exercise their religions. The guarantee is initially found in the First Amendment to the United States Constitution, which provides in relevant part: Congress shall "make no law . . . prohibiting the free exercise thereof . . . ." The Free Exercise Clause is made applicable to the states through the Fourteenth Amendment to the United States Constitution. *Jimmy Swaggart Ministries v. Board of Equalization of California,* 493 U.S. 378, 384 (1990).

¶25 The Montana Constitution contains its own Free Exercise Clause. Article II, Section 5 provides, "The state shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." In applying the Montana provision, the Montana Supreme Court has applied and followed decisions of the United States Supreme Court regarding the Free Exercise Clause of the United States Constitution. *E.g., Miller v. Catholic Diocese of Great Falls,* 224 Mont. 113, 116-17, 728 P.2d 794, 696 (1986); *Rasmussen v. Bennett,* 228 Mont. 106, 111-12, 741 P.2d 755, 658-59 (1987); *St. John's Lutheran Church v. State Compensation Ins. Fund,* 252 Mont. 516, 524-25, 830 P.2d 1271, 1276-77 (1992).

¶26 Claimant contends that termination of her death benefits upon remarriage violates the Free Exercise clauses of both constitutions. She argues that it punishes her for remarrying because, absent her religious belief, she could have cohabited with Donald without the benefit of marriage.

¶27 The Court has accepted claimant's testimony that her religious convictions precluded her from cohabiting with Donald and continuing to collect death benefits. The acceptance of that testimony, however, does not decide the case. While the Free Exercise clauses preclude laws which regulate religious beliefs or which interfere with the dissemination of religious ideas, *Gillette v. United States,* 401 U.S. at 462, 91 S. Ct. at 843 (1971); or which target religious practices, *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah,* 508 U.S. 520, 113 S. Ct. 2217 (1993), they do not condemn every law which incidentally touches or affects religious practice or belief, *see, e.g., United States v. Lee,* 455 U.S. 252, *Hernandez v. Commissioner of Internal Revenue 490 U.S. 680. 109 S. Ct. 2136; Gillette.* In *Hernandez* the Supreme Court upheld the disallowance of a tax deduction for members of the Church of Scientology with regard to payments they made to the church for spiritual training courses. The Supreme Court upheld the disallowance despite allegations that the denial impeded the taxpayers' free exercise of their religion, noting the government's interest "in maintaining a sound tax system, 'free of' myriad exceptions flowing from a wide variety of religious beliefs." 490 U.S. at 699-700 (quoting from *United States v. Lee, 455 U.S. at 260.)* In *Gillette* the Court rejected a challenge of a military conscription law which did not recognize selective conscientious objection [religious objection to a particular war rather than all wars].

¶28 On the other hand, the fact that a law is religiously neutral and only incidentally impacts religious practice does not mean that the law automatically passes muster under the Free Exercise Clause. "[E]ven as to neutral prohibitory or regulatory laws having secular aims, the Free Exercise Clause may condemn certain applications clashing with the imperatives of religion and conscience, when the burden on First Amendment values is not justifiable in terms of the Government's valid aims." *Gillette,* 401 U.S. at 462. Religiously neutral laws which "unduly burden" religious practices or beliefs are barred. *Wisconsin v. Yoder*, 406 U.S. 205, 220, 92 S. Ct. 1526, 1536(1972). A religiously neutral statute which indirectly affects religious practice is subject to a balancing test. *Id.* at 214. The test is whether the State's secular interests, as reflected in the statute, are "of sufficient magnitude to override" the affected party's interests in the free exercise of her religion. *Id.* Where a law is religiously neutral, the State's interest need not be *compelling*: "A law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. at 531, 113 S. Ct. at 2226.

¶29 In applying the balancing test, *Yoder* is instructive. The issue in *Yoder* was a Wisconsin compulsory education law requiring children to attend school until age 16. The Wisconsin law criminalized parents' failure to send their children to school. The Yoders, and other respondents, were members of the Amish religion and had children. The Amish parents, in accordance with their religious beliefs, did not oppose school attendance through eighth

grade. However, they alleged that compulsory attendance after eighth grade was contrary to their religious beliefs and could cause assimilation of their children into non-Amish society, thereby affecting the continued survival of their religion. The Supreme Court agreed that the evidence supported their contention and struck down the law as it applied to the Amish. The Court characterized the application of the law as punitive and severe:

> The impact of the compulsory-attendance law on respondents' practice of the Amish religion is not only severe, but inescapable, for the Wisconsin law affirmatively compels them, **under threat of criminal sanction**, to perform acts undeniably at odds with fundamental tenets of their religious beliefs. [Emphasis added.]

406 U.S. at 218, 92 S. Ct. at 1534. In assessing Wisconsin's interest in application of the law to the Amish, the Court noted that "the requirement for compulsory education beyond the eighth grade is a relatively recent development in our history." 406 U.S. at 226, 92 S. Ct. at 1538. The Court was unpersuaded that, in light of the nature of the Amish community, a failure of Amish children to obtain the additional one or two years of education required by the law would prevent them from "making their way in the world." 406 U.S. at 224, 92 S. Ct. at 1537.

¶30 Claimant implicitly assumes that non-religious widows and widowers will cohabit without marrying in order to preserve their entitlement to death benefits. Lacking such assumption, there is no penalty for her practicing her religion since the termination provision applies equally to persons remarrying for non-religious reasons.

¶31 There is good reason to question her assumption. She has not offered evidence that the provision deters remarriage by widows and widowers who feel less religiously committed than she. Moreover, marriage is a civil, as well as a religious institution. So far as the Court is aware, atheism does not prohibit marriage; religious affiliation, on the other hand, does not always prevent couples from cohabiting without marriage. There are non-religious reasons for marriage, including love for and commitment to one another.

¶32 The statute at issue in the present case is religiously neutral. It does not distinguish between claimants who are religiously motivated to remarry and those who marry on account of non-religious reasons. It does not require nor prohibit remarriage. Termination of benefits is not conditioned upon religious belief or practice, only upon the fact of remarriage.

¶33 The Court must therefore apply the balancing test laid out in *Yoder* and subsequent cases, weighing the interest of the State in the regulation against the impact it has on the claimant's practice of religion.

¶34 In considering the impact of the law on claimant's practice of her religion, the Court notes that she offered no proof that her religion requires her to remarry. While she provided

persuasive evidence that her religion precluded her from cohabiting with Mr. Killion without the benefit of marriage, there was no evidence presented that her religion required her to remarry. Consistent with her religion, she could have chosen to neither cohabit with nor marry Donald. It was her affair of the heart, not the law or her religion, that created her dilemma.

¶35 The effect of section 39-71-721(5), MCA, on claimant's free exercise of her religion is more indirect and removed than in the cases in which the Supreme Court has struck down religiously neutral laws. In *Yoder,* for example, the conflict between the law and religious practice was direct and unavoidable: The law required the Amish parents to send their children to school in direct violation with their religious tenets or face criminal prosecution. In *Hobbie v. Unemployment Commission,* 480 U.S. 136, 107 St. Ct. 1046 (1987), the claimant's only choice was to work on her Sabbath, in direct violation of her religious beliefs, or be fired without recourse to unemployment benefits. *See also Frazee v. Illinois Dept. of Employment Security,* 489 U.S. 829, 109 S. Ct. 1514 (1989).

¶36 Not only is the conflict between law and religion more remote in this case, but the State's interest is more substantial.

¶37 Marriage is a civil, as well as a religious, institution. Civilly, the State of Montana encourages[(1)] and regulates marriage. The laws of the State impose burdens and rights on husband and wife. They are obligated by law to support each other. § 40-2-102, MCA. Laws governing the obligation of one spouse to support the other are more than abstract statements of policy. Section 40-2-103, MCA, for example, provides:

> **40-2-103. Support of spouse**. If a married person who is able neglects to make adequate provision for the financial support of his spouse, except in the cases mentioned in 40-2-104, any other person may in good faith supply the spouse with articles necessary for support and recover the reasonable value thereof from the married person who has failed to provide such support.

Upon dissolution of marriage, a spouse may be required to pay maintenance to the other. § 40-4-203, MCA. Upon death of a spouse, the surviving spouse has a right to a portion of the estate even if not provided for in a will. § 72-2-221, MCA.

¶38 Death benefits in workers' compensation cases are plainly calculated to provide at least a partial replacement for the loss of support by a spouse. The only persons entitled to death benefits are the widow or widower and legal dependents of the deceased worker. Section 39-71-116(2), MCA (1989), specifies the beneficiaries, as follows:

> "Beneficiary" means:
>
> (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (2)(a) through (2)(d) of this section exists); and

(f) a brother or sister under the age of 18 if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary as defined in subsections (2)(a) through (2)(e) of this section, exists).

The Court is unaware of any Montana law which creates a legal obligation for support as between unmarried but cohabiting persons, or which gives them any right to inheritance.

¶39 Upon remarriage a new set of legal obligations, concurrent with the obligations severed by the death of the previous spouse, arise as between the widow and her new spouse. In view of those new obligations for support, the rationale for death benefits ceases.

¶40 Section 39-71-721(5), MCA, was not promulgated to prohibit religion and does not preclude claimant from practicing her religion. The provision simply reflects the fact that Montana laws create legal obligations between husband and wife. It attempts to provide replacement income for the loss of that support upon death of the spouse. The impact on claimant's religious practices is more indirect than in cases where laws have been held to violate the Free Exercise Clause and the State has demonstrated a substantial, non-religious reason for its statute. Claimant's Free Exercise right was not violated by the statute.

B. Equal Protection Claim

¶41 Claimant also asserts that section 39-71-721(5), MCA, creates an arbitrary distinction between spouses who remarry and those who do not, thereby violating her right to equal protection of the laws.

¶42 Both the United States and Montana constitutions guarantee individuals the right to equal protection of the laws. The guarantee is found in the Fourteenth Amendment to the United States Constitution, which provides in relevant part:

> No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws.

Montana's Equal Protection Clause is found at Article II, section 4 of the Montana Constitution, which provides in relevant part:

> The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

In addition to proscribing laws denying equal protection, it specifically prohibits laws which discriminate against persons on account of their "religious ideas."

¶43 Insofar as the Montana clause specifically proscribes laws discriminating against religious ideas, section 39-71-721(5), MCA, does not violate the proscription. The previous analysis of the law under Free Exercise principles is sufficient answer to any such contention.

¶44 Equal protection analysis is essentially the same under both the Montana and United States constitutions. "The equal protection provisions of the federal and state constitutions are similar and provide generally equivalent but independent protections." *In re. CH,* 210 Mont. 184, 198, 683 P.2d 931, 938 (1984). As a general matter, "[t]he principal purpose of the Equal Protection Clause is to ensure that citizens are not subject to arbitrary and discriminatory state action." *Zempel v. Uninsured Employers' Fund,* 282 Mont. 424, 428, 938 P.2d 658, 661 (1997). It does not preclude different treatment of different groups or classes of people so long as all persons within a group or class are treated the same:

> The Equal Protection Clause does not forbid classifications. It simply keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike.

Nordlinger v. Hahn, 505 U.S. 1, 15 (1992).

¶45 The first step of equal protection analysis "is to identify the classes involved and determine whether the classes are similarly situated." *In re. CH,* 210 Mont. at 198, 683 P.2d at 938. Here, the distinction identified by claimant is between spouses who remarry and those who do not. Benefits for the former cease upon remarriage. Benefits for the latter continue until the surviving spouse receives the maximum amount allowed by the law.

¶46 The second step in the analysis is to determine the test to be applied to the classification. The classification involved here -- marital status -- is not a suspect class. The classification is subject to the same scrutiny as other workers' compensation laws, that being a rational basis test. *See Eastman v. Atlantic Richfield Co.,* 237 Mont. 332, 338, 777 P.2d 862, 865 (1989). The rational basis test requires only that the discriminatory classification bear a rational relationship to a legitimate governmental purpose. *Heisler* at

279, 937 P.2d at 50 (citing *Stratemeyer v. Lincoln County*, 259 Mont. 147, 151, 855 P.2d 506, 509 (1993)). The Montana Supreme Court has described the rational basis inquiry as follows:

> As explained by the United States Supreme Court, to survive scrutiny under the rational basis test, classifications must be reasonable, not arbitrary, and they must bear a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. *Eisenstadt v. Baird* (1972), 405 U.S. 438, 447, 92 S. Ct. 1029, 1035, 31 L. Ed.2d 349, 359. In applying this test the Court in *Eisenstadt* framed the inquiry as: "whether there is some ground of difference that rationally explains the different treatment . . ."

Eisenstadt, 438 U.S. at 447, 92 S. Ct. at 1035.

Montana Stockgrowers Ass'n v. State Dept. of Revenue, 238 Mont. 113, 117-18, 777 P.2d 285, 288 (1989).

¶47 In determining the purpose of the provision requiring termination of a widow's or widower's benefits upon remarriage, the Court is not limited to the legislative record. *Kadrmus v. Dickenson Public Schools,* 487 U.S. 450, 463 (1979). Similarly, in examining the relationship between legislation and its purpose, the Court is not limited to justifications reflected in legislative history. Legislatures are not required to engage in the sort of fact-finding and analysis required of courts. *Federal Communications Comm. v. Beach Communications, Inc.,* 508 U.S. 307, 314 (1993). Thus, the Court must consider "every conceivable basis" which might support the statute. *Id.* at 315. In *Federal Communications Comm. v. Beach,* the Supreme Court articulated the reasons for the broad judicial analysis of the challenged statute:

> [B]ecause we never require a legislature to articulate its reasons for enacting a statute, it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature. United States Railroad Retirement Bd. v. Fritz, supra, at 179. See Flemming v. Nestor, 363 U.S. 603, 612, 4 L. Ed.2d 1435, 80 S. Ct. 1367 (1960). Thus, the absence of "'legislative facts'" explaining the distinction "on the record," 294 U.S. App. D.C. at 389, 959 F.2d at 987, has no significance in rational-basis analysis. See Nordlinger v. Hahn, 505 U.S. 1, 15, 120 L. Ed.2d 1, 112 S. Ct. 2326 (1992) (equal protection "does not demand for purposes of rational-basis review that a legislature or governing decision- maker actually articulate at any time the purpose or rationale supporting its classification"). In other words, a legislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data. See Vance v. Bradley, supra, at 111. See also Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 464, 66 L. Ed. 2d 659, 101 S. Ct. 715 (1981). "'**Only by faithful adherence to this guiding principle of judicial review of legislation is**

> **it possible to preserve to the legislative branch its rightful independence and its ability to function**.'" Lehnhausen, supra, at 365 (quoting Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 510, 81 L. Ed. 1245, 57 S. Ct. 868 (1937)). [Emphasis added.]

Id. at 315.

¶48 The prior discussion of the claimant's Free Exercise challenge sufficiently answers her equal protection challenge. Death benefits for surviving spouses are intended to replace, at least in part, the loss of financial support provided by the deceased spouse. The benefits replace, in part, the deceased spouse's legal obligation for support. Remarriage establishes a new legal relationship with the same obligation between the surviving spouse and the new spouse as existed between the surviving spouse and the deceased spouse, thus the reason for the benefits ceases. The purpose of the law is legitimate; the cut-off of benefits upon remarriage is reasonably related to the purpose.

¶49 *Califano v. Jobst*, 434 U.S. 47, 98 S. Ct. 95 (1977), confirms my analysis. That case involved social security disability benefits. The recipient in that case was totally disabled from birth and his benefits were derivative from one of his parents, i.e., his benefits were based on his dependency upon a parent eligible for benefits under the Social Security Act. He married a woman not entitled to social security disability benefits, although she was also disabled. Upon marriage, his benefits were terminated. The Court rejected equal protection claim based upon his marriage:

> Both tradition and common experience support the conclusion that marriage is an event which normally marks an important change in economic status. Traditionally, the event not only creates a new family with attendant new responsibilities, but also modifies the pre-existing relationships between the bride and groom and their respective families. Frequently, of course, financial independence and marriage do not go hand in hand. Nevertheless, there can be no question about the validity of the assumption that a married person is less likely to be dependent on his parents for support than one who is unmarried.
>
> Since it was rational for Congress to assume that marital status is a relevant test of probable dependency, the general rule which obtained before 1958, terminating all child's benefits when the beneficiary married, satisfied the constitutional test normally applied in cases like this. See *Mathews v. De Castro*, 429 U.S., at 185; *Weinberger v.* Salfi, *supra*, and cases cited at 768-770. **That general rule is not rendered invalid simply because some persons who might otherwise have married were deterred by the rule or because some who did marry were burdened thereby.** For the marriage rule cannot be criticized as merely an unthinking response to stereotyped generalizations about a traditionally

> disadvantaged group, or as an attempt to interfere with the individual's freedom to make a decision as important as marriage.

434 U.S. at 53-54 (emphasis added). *Jobst* refutes claimant's contention that the distinction between surviving spouses who do not remarry and those who do is either arbitrary or irrational.

C. Privacy Claim

¶50 Claimant's final argument is that the State Fund's actions represent an unconstitutional violation of her right to privacy. She notes that in *Loving v. Virginia*, 388 U.S. 1, 87 S. Ct. 1817 (1967), the Supreme Court explicitly extended the right of privacy to the freedom of choice in marriage. She contends that the privacy right recognized in *Loving* shields her from having to reveal her decision to remarry to the State Fund.

¶51 *Loving* concerned the freedom of choice to marry. It did not establish any right to keep the fact of marriage, or non-marriage, secret. The case does not support claimant's argument.

¶52 Montana has its own constitutional guarantee of privacy. Article 2, section 10 of the Montana Constitution provides: "The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest." The compelling state interest test applies only if there is a right of privacy, thus the initial question which must be answered under the section is whether there is a right to privacy.

¶53 Montana has adopted the following two-tier test for determining whether a person has a constitutionally protected privacy interest:

> (a) Whether the person has a subjective or actual expectation of privacy; and
> (b) whether society recognizes that expectation as reasonable.

Montana Health Care Ass'n v. Montana Bd. Of Dirs. Of State Compensation Mut. Ins. Fund, 256 Mont. 146, 150, 845 P.2d 113 (1993). Claimant does not meet either prong of this test. The fact of marriage is widely disseminated, local newspapers publish the names of newly married couples. Indeed, despite her protests, following her marriage claimant adopted Donald's name and proceeded to use her married name to identify herself. (*See* Ex. 11 at 1 and 5; Ex. 14; and Ex. 17.) This indicates to the Court, that she did not desire to keep her new marital status private. She had no expectation of privacy with regard to her marriage.

¶54 Moreover, society does not recognize a reasonable expectation of privacy in one's marital status. Marriage entails both benefits and obligations. Disclosure of marital status occurs as a matter of course in our daily affairs.

D. Resolution

¶55 Claimant has failed to persuade the Court that termination of death benefits upon her remarriage violated her constitutional rights.

JUDGMENT

¶56 1. Claimant's benefits under section 39-71-721, MCA, were properly terminated. She is not entitled to further benefits and her petition is **dismissed with prejudice**.

¶57 2. Claimant is not entitled to attorney fees and costs since she has not prevailed in this action.

¶58 3. This JUDGMENT is certified as final for purposes of appeal pursuant to ARM 24.5.348.

¶59 4. Any party to this dispute may have 20 days in which to request a rehearing from these Findings of Fact, Conclusions of Law and Judgment.

DATED in Helena, Montana, this 22nd day of April, 1999.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Turner C. Graybill
Mr. Thomas E. Martello
Submitted: October 15, 1998

1. Section 40-1-101, MCA, specifically provides that the purpose of laws regulating marriage should be construed to "strengthen and preserve the integrity of marriage and safeguard family relationships."