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Another NY Civil Union Recognition Loss

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BY ARTHUR S. LEONARD | Dealing a second appellate defeat to John Langan in his quest for compensation for the loss of his partner, a five-member panel of New York's Appellate Division, 3rd Department, based in Albany, ruled on December 27 that Langan, a surviving partner of a Vermont civil union, is not a "spouse" within the meaning of the state's Workers' Compensation Law.

This upheld a determination by the Workers' Compensation Board to deny a survivor's benefit to Langan after the death of his spouse, Neal Conrad Spicehandler, as a result of injuries incurred on the job.

A New York court rules that a surviving partner of a Vermont civil union does not qualify for spousal benefits under the state's Workers' Compensation Law.

A panel of judges from the 2nd Department of the Appellate Division, based in Brooklyn, had previously rejected Langan's argument that he should be able to litigate a wrongful death action against St. Vincent's Hospital, whose negligence he charges resulted in Spicehandler dying from his injury.

According to the opinion for the panel by Justice Anthony T. Kane, Spicehandler, in 2002, was engaged in business for his employer, State Farm Fire & Casualty Company, when, as a pedestrian, he was struck by a motorist in New York City. He was taken to St. Vincent's Hospital, where he died somewhat mysteriously after an apparently successful operation.

The couple, who lived on Long Island, had several years before been united as civil partners in Vermont. Langan filed a Workers' Compensation claim with State Farm's insurer. The insurer determined that the injury created an obligation for compensation to the Spicehandler estate, but that Langan was not entitled to a survivor's benefit as a "spouse."

Langan appealed that determination to the Workers' Compensation Board, which upheld the refusal, taking the position that state law authorizing survivors' benefits intended the term "spouse" to mean a marital partner. Langan appealed further to the 3rd Department, which hears appeals from decisions of the Workers' Compensation Board.

Langan raised three distinct arguments. He contended that the word "spouse" in the statute should be interpreted to include him, noting that under Vermont's Civil Union Law, partners are referred to as "spouses."

Second, he argued that under a principle known as comity, New York government agencies and courts should accord Vermont civil union partners recognition as spouses under New York law.

Finally, he argued that failure to recognize him as Spicehandler's spouse violates his Equal Protection rights under the federal Constitution's 14th Amendment.

Justice Kane does not mention Langan making any Full Faith and Credit federal constitutional argument.

Kane's opinion referred to a prior 3rd Department decision, *Valentine v. American Airlines*, in which the court rejected a Workers' Compensation surviving spouse claim from a New York City-registered same-sex domestic partner of an airline worker killed in a crash off Long Island in 2001. That court held that a "legal spouse" for purposes of the statute "is a husband or wife of a lawful marriage."

Noting that the workers' comp law provides that benefits for a surviving spouse end upon remarriage, Kane commented, "If a party to a Vermont civil union was considered a legal spouse for workers' compensation purposes, the statute would have the anomalous result of allowing a surviving civil union partner to continue collecting spouse [sic] benefits even after entering into another civil union, because that new civil union is not considered a 'remarriage.'"

On the question of comity, Kane described that doctrine as "an expression of one state's voluntary choice."

"We are not thereby bound to confer upon them all of the legal incidents of that status recognized in the foreign jurisdiction that created the relationship," he wrote, adding, "The extension of benefits entails a consideration of social and fiscal policy more appropriately left to the Legislature."

On the Equal Protection argument, Kane found that Langan would have to show that denying benefits to civil union partners "serves no legitimate governmental purpose." Looking to the state's high court ruling in 2006 denying same-sex marriage rights, he found support for the proposition that the government has legitimate purposes in distinguishing between same-sex and different-sex partners.

The court acknowledged that a Vermont civil union might provide a stronger argument than the domestic partner rights in the American Airlines case, but it found that the origins of the workers' compensation statute in the early 20th century clearly indicated it was intended to assist widows without gainful employment and that the law "compensates that spouse for sacrificing his or her own career by remaining at home to raise children." Kane noted that many same-sex couples now raise children, some with one partner staying at home, but again pointed to the Court of Appeals marriage ruling to sustain the distinction he was making.

In other words, the incompetent, illogical reasoning of the majority in the 2006 *Hernandez v. Robles* marriage ruling lives on to do damage in other contexts.

Dissenting Justice Robert S. Rose argued that the court should have exercised its discretion to apply the comity doctrine to a Vermont civil union, clearly contemplated in that state as creating a spousal relationship. He also rejected the comparison between a municipal domestic partnership, as in the American Airlines case, and a Vermont civil union.

Finally, Rose found a way around the potential anomaly Kane warned of by arguing that the provision ending survivor benefits in the event of remarriage could be interpreted to include entering into a new civil union as well.

Rose also commented in conclusion that if comity is not extended, a violation of the Equal Protection clause does occur, which would require reversing the Workers' Compensation Board decision.

The court's decision can yet be appealed by permission to the Court of Appeals, New York's highest.