

2008

Dependency and No-Fault Survivors' Economic Loss Benefits After Auto Owners Ins. Co. v. Perry: A Call for Legislative Action

Markus C. Yira

Follow this and additional works at: <http://open.mitchellhamline.edu/lawandpractice>

 Part of the [Insurance Law Commons](#)

Recommended Citation

Yira, Markus C. (2008) "Dependency and No-Fault Survivors' Economic Loss Benefits After Auto Owners Ins. Co. v. Perry: A Call for Legislative Action," *Journal of Law and Practice*: Vol. 2, Article 3.

Available at: <http://open.mitchellhamline.edu/lawandpractice/vol2/iss1/3>

This Article is brought to you for free and open access by the Law Reviews and Journals at Mitchell Hamline Open Access. It has been accepted for inclusion in Journal of Law and Practice by an authorized administrator of Mitchell Hamline Open Access. For more information, please contact sean.felhofer@mitchellhamline.edu.

© Mitchell Hamline School of Law

Dependency and No-Fault Survivors' Economic Loss Benefits After Auto Owners Ins. Co. v. Perry: A Call for Legislative Action

Keywords

No-Fault Automobile Insurance, Survivor;s Benefits

DEPENDENCY AND NO-FAULT SURVIVORS' ECONOMIC LOSS BENEFITS AFTER AUTO OWNERS INS. CO. V. PERRY: A CALL FOR LEGISLATIVE ACTION

Markus C. Yira¹

Introduction

In May 2008, the Minnesota Supreme Court addressed survivors' economic loss benefits under the Minnesota No-Fault Automobile Insurance Act, Minnesota Statute Sections 65B.41-71 (2006) ("the Act").² In *Perry*, the Supreme Court narrowly defined the term "dependent" as used in the act to mean only a spouse or child; precluding a decedent's live-in girlfriend from recovering survivors' economic loss benefits under the Act.³

The *Perry* court engaged in a method of statutory interpretation with the stated goal of ascertaining and effectuating the intent of the legislature.⁴ Ultimately, the Court concluded that section 65B.44, subdivision 6 is not ambiguous and "is devoid of any explicit reference to a class of dependents consisting of persons other than the decedent's surviving spouse and children."⁵

This article examines the critical issues of *Perry*, and suggests that the Court misinterpreted the definition of "dependent" under the Act. As Justice Page argues in his dissent, the *Perry* majority inexplicably departs from a plain reading of the statute, the Court's own prior interpretations of section 65B.44, and the remedial nature of the Act "to relieve the severe economic distress of uncompensated victims."⁶ Because of this departure, the Minnesota legislature should amend the Act to preempt the court's misinterpretation.

Summary of Auto Owners Ins. Co. v. Perry, 749 N.W.2d 324 (Minn. 2008)

Chong Suk Perry applied to Auto Owners Insurance Co. for survivors' economic loss benefits after her boyfriend, Daniel Savage, died in a motor vehicle accident.⁷ Daniel Savage resided with Chong Suk Perry

¹ Markus C. Yira, a graduate of William Mitchell College of Law, is a member of the Minnesota Supreme Court's *No-Fault Panel of Arbitrators*. He is also an adjunct Professor of Law at William Mitchell College of Law.

² Auto Owners Ins. Co. v. Perry, 749 N.W.2d 324 (Minn. 2008).

³ *Id.* at 329.

⁴ *Id.* at 326 (citing Minn. Stat. § 645.16 (2006)).

⁵ *Id.* at 327.

⁶ Minn. Stat. § 65B.42 (2006).

⁷ *Perry*, 749 N.W.2d at 325.

WILLIAM MITCHELL JOURNAL OF LAW AND PRACTICE

in Savage, Minnesota for approximately seven years preceding his death.⁸ Perry and Savage owned their home together, had a joint checking account, and pooled their financial assets and resources.⁹

Auto Owners issued a garage liability insurance policy to Kincaids Cars, Inc., an automobile sales company owned by Daniel Savage.¹⁰ Daniel Savage was fatally injured in a motor vehicle accident while operating a company owned vehicle.¹¹ Auto Owners subsequently paid medical expense benefits and funeral benefits under the insurance policy.¹²

Following Daniel Savage's death, Chong Suk Perry applied for survivors' economic loss benefits under the insurance policy.¹³ Auto Owners subsequently denied Perry's claim on the ground that the insurance policy provides for the payment of survivors' economic loss benefits only to the decedent's surviving spouse and children.¹⁴

Chong Suk Perry sought arbitration of her claim, compelling Auto Owners to commence a declaratory judgment action.¹⁵ Auto Owners brought a motion for summary judgment, contending that Chong Suk Perry failed to qualify as a "dependent" under the insurance policy, and that the policy met the requirements of the Minnesota No-Fault Automobile Insurance Act ("the Act").¹⁶

The district court granted Auto Owners' summary judgment motion.¹⁷ The Minnesota Court of Appeals affirmed, determining that the definition of "dependent" in subdivision 6 is limited to a decedent's surviving spouse and children.¹⁸ The Court of Appeals rejected Chong Suk Perry's argument "that the last sentence of the [A]ct's definition of 'dependent' creates a broader class of dependents" than is provided for in the Auto Owners insurance policy.¹⁹

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* In the event of death arising out of the maintenance or use of a motor vehicle, the Minnesota No-Fault Automobile Insurance Act provides for the payment of survivors' economic loss benefits to a decedent's "surviving dependents." Minn. Stat. § 65B.44, subdiv. 6.

¹⁷ *Perry*, 749 N.W.2d at 326.

¹⁸ *Auto Owners Ins. Co. v. Perry*, 730 N.W.2d 282, 285 (Minn. Ct. App. 2007) (quoting Minn. Stat. § 65B.44, subdiv. 6).

¹⁹ *Id.*

WILLIAM MITCHELL JOURNAL OF LAW AND PRACTICE

The Minnesota Supreme Court began its analysis with the premise that the Act requires insurers to offer survivors' economic loss benefits to a decedent's surviving dependents.²⁰ The Act defines "dependent" as follows:

For the purposes of definition under sections 65B.41 to 65B.71, the following described persons shall be presumed to be dependents of a deceased person: (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.²¹

The crux of the dispute in *Perry* focused on the interpretation of the final sentence of the second paragraph of subdivision 6: "Questions of the existence and the extent of dependency shall be questions of fact . . ." ²² Chong Suk Perry argued that a plain reading of this language created a class of provable dependents consisting of persons other than the surviving spouse and children of the decedent.²³ To the contrary, Auto Owners argued that the Act defines a "dependent" as the decedent's surviving spouse or child and that the final sentence of the second paragraph of section 65B.44 only permits the presumed dependency of a surviving spouse or child to be rebutted.²⁴

After concluding that the Supreme Court's prior assessment of section 65B.44, subdivision 6 in *Peevy v. Mut. Services Cas. Ins. Co.*²⁵ was mere dicta, the *Perry* court reasoned that subdivision 6 was "devoid of any explicit reference to a class of dependents consisting of persons other than the decedent's surviving spouse and children."²⁶ The *Perry* court concluded that "the better argument" is that the Statute is not ambiguous.²⁷ Inexplicably, the Supreme Court also dismissed its prior analysis of section 65B.44, subdivision 6 in *Dahle v. Aetna Cas. & Sur. Ins. Co.*²⁸ in a footnote.²⁹ According to the *Perry* court, only

²⁰ *Perry*, 749 N.W.2d at 325-26.; Minn. Stat. § 65B.44, subdiv. 6.

²¹ Minn. Stat. § 65B.44, subdiv. 6 (emphasis added); see *Perry*, 749 N.W.2d at 326.

²² *Perry*, 749 N.W.2d at 326 (quoting Minn. Stat. § 65B.44, subdiv. 6).

²³ *Id.*

²⁴ *Id.*

²⁵ *Peevy v. Mut. Servs Cas. Ins. Co.*, 346 N.W.2d 120 (Minn. 1984) (interpreting Minn. Stat. § 65B.44, subdiv. 6 and concluding that an ex-wife was entitled to survivors' economic loss benefits).

²⁶ *Perry*, 749 N.W.2d at 327.

²⁷ *Id.*

²⁸ *Dahle v. Aetna Cas. & Sur. Ins. Co.*, 352 N.W.2d 397 (Minn. 1984). In *Dahle*, the Court concluded that "dependency is a question of fact in situations where dependency is not presumed," before holding that a posthumous child is included in the definition of "surviving dependent." *Id.* at 400-01.

²⁹ *Perry*, 749 N.W.2d at 327, n.2.

WILLIAM MITCHELL JOURNAL OF LAW AND PRACTICE

those who the Act presumes to be surviving dependents can qualify to receive survivors' benefits under the Act.³⁰ Relying on the third paragraph of subdivision 6, the *Perry* court further concluded that since Chong Suk Perry was not a surviving spouse or child, she did not possess a "status" that she must "maintain" in order to receive survivors' economic loss benefits.³¹

Although the Court concluded that section 65B.44, subdivision 6 was unambiguous, it carried the analysis a step further, reviewing the legislative history and purpose of subdivision 6.³² The court reviewed the 1975 Amendments to the Act, which eliminated the phrase "[i]n all other cases" from the language of the subdivision.³³ When enacted in 1974, the second paragraph of the statute provided, "In all other cases, questions of the existence and extent of dependency shall be determined in accordance with the facts at the time of the death."³⁴ According to the court, the legislature's elimination of the phrase "[i]n all other cases" from subdivision 6 meant that that the legislature likely intended to limit the definition of "dependent" to a decedent's surviving spouse and children.³⁵

After its analysis of legislative intent, the *Perry* court addressed the legislative purposes behind the Act.³⁶ Despite the Act's remedial nature and stated purpose of relieving the severe economic distress of uncompensated victims,³⁷ the *Perry* court believes there is no evidence the legislature actually intended to require insurers to provide survivors' economic loss benefits to individuals other than the presumed dependents.³⁸ This narrow view, according to the Minnesota Supreme Court, furthers the purposes of the Act.³⁹ Thus, the *Perry* court held that the definition of "dependent" in Minnesota Statute section 65B.44, subdivision 6 is limited to a decedent's surviving spouse and children.⁴⁰

The holding of the *Perry* court calls into question the validity of the language found in section 65B.44, subdivision 6; specifically, the language stating, "[q]uestions of the existence and the extent of dependency shall be questions of fact, considering the support regularly received from the deceased."⁴¹ Contrary to the

³⁰ *Id.* at 329.

³¹ *Id.* at 327.

³² *Id.* at 328 (rationalizing that an analysis of legislative history and purpose was necessary in light of its "contrary statement in dicta" in *Peevy*).

³³ *Id.*; see Act of Mar. 28, 1975, ch. 18, § 5. 1975 Minn. Laws 208, 210.

³⁴ Act of April 11, 1974, ch. 408, § 4, 1974 Minn. Laws 762, 766-67 (codified at Minn. Stat. § 65B.44, subdiv. 6 (1974)); see *Perry*, 749 N.W.2d at 328.

³⁵ *Perry*, 749 N.W.2d at 328.

³⁶ *Id.* at 328-29.

³⁷ Minn. Stat. § 65B.42 (2006).

³⁸ *Perry*, 749 N.W.2d at 329.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Minn. Stat. § 65B.44, subdiv. 6 (2006).

WILLIAM MITCHELL JOURNAL OF LAW AND PRACTICE

court's holding, a plain reading of section 65B.44, subdivision 6, and an examination of the historical development of the statute, strongly indicates that there are people, other than a surviving spouse and children, who may qualify as a 'dependent' of a decedent under the Act. The *Perry* court's hurried analysis bears little resemblance to its prior interpretations of section 65B.44, subdivision 6.

A Departure From Prior Reasoning

The *Perry* court's narrow reading of section 65B.44, subdivision 6, ignores a plain reading of the statute, its history, and the underlying purpose of the Act.

In 1984 the Minnesota Supreme Court considered for the first time how to interpret section 65B.44, subdivision 6.⁴² In *Peevy*, a decedent's ex-wife sought survivor's economic loss benefits under the decedent's No-Fault Automobile insurance policy.⁴³ The ex-wife relied on her former husband's spousal maintenance to pay for her medical insurance premiums and eighty-seven percent of her monthly income.⁴⁴ The *Peevy* court held that an ex-wife was entitled to survivor's economic loss benefits under the terms of the insurance policy, and that section 65B.44, subdivision 6 was ambiguous.⁴⁵

The *Peevy* court concluded that "one possible reading of the statute" supports a former spouse's claim of dependency to qualify for payment of survivor's economic loss benefits.⁴⁶ The Minnesota Supreme Court concluded that, "[i]f dependency were limited to the presumed categories, there would be no need for further inquiry into the existence of dependency based on regular receipt of support. Consideration of regularly received support is not relevant to the dependency of those persons entitled to a presumption."⁴⁷

Rather than discussing the reasoning in *Peevy*, the *Perry* court rejects it as dicta without addressing how the reasoning is flawed.⁴⁸ The majority in *Perry* makes no effort to explain why the reasoning in *Peevy* is unsound.⁴⁹ According to Justice Page, "the *Peevy* court's reasoning underlying its interpretation of subdivision 6 was sound then and continues to be sound today."⁵⁰ However, the Minnesota Supreme Court's

⁴² See *supra* note 24.

⁴³ *Peevy*, 346 N.W.2d at 121.

⁴⁴ *Id.*

⁴⁵ *Id.* at 121-23.

⁴⁶ *Id.* at 121-22.

⁴⁷ *Id.* at 122.

⁴⁸ *Perry*, 749 N.W.2d at 326.

⁴⁹ *Id.* at 330 (Page, J., dissenting).

⁵⁰ *Id.* at 330 n.7, (Page, J., dissenting opinion) "Although the court rejects our assessment of the No-Fault Act in *Peevy* as dicta, the mere fact it was dicta does not mean the *Peevy* court's reasoning is flawed. Interestingly, the court makes no effort to explain why that reasoning is unsound". *Id.*

WILLIAM MITCHELL JOURNAL OF LAW AND PRACTICE

reasoning was sound in 1984, and remains unaffected by the court's analysis in *Perry*.

The Minnesota Supreme Court had the occasion to revisit the interpretation of Minnesota Statute section 65B.44, subdivision 6 a second time in 1984. In *Dahle v. Aetna Cas. & Ins. Co.*,⁵¹ the Minnesota Supreme Court interpreted section 65B.44, subdivision 6 and determined that a posthumous child was included in the definition of "surviving dependent."⁵² The *Dahle* court noted that a child is "presumed" dependent when receiving regular support from the deceased parent at the time of the parent's death.⁵³ The court reasoned that section 65B.44, subdivision 6 "also can be read to outline *obvious* situations of dependency."⁵⁴ The *Dahle* court concluded that a posthumous child "cannot be characterized as [involving an] obvious" dependency and that "[d]ependency is a question of fact by definition."⁵⁵ The court reasoned further stating, "dependency is a question of fact in situations where dependency is not presumed."⁵⁶ Thus, the *Dahle* court recognized that there are situations in which dependency is not obvious,⁵⁷ a fact ignored by the court in *Perry*.⁵⁸

Since 1984, the Minnesota Legislature has taken no action to overrule the Minnesota Supreme Court's interpretation of section 65B.44, subdivision 6 in *Peevy* and *Dahle*. Even so, the *Perry* court dismisses the reasoning of *Dahle* in a footnote, without addressing the *Dahle* court's analysis that there are situations where dependency is not obvious.⁵⁹

A Plain Reading of Minnesota Statute section 65B.44, subdiv. 6.

Minnesota Statute section 65B.44, subdivision 6 identifies three classes of people presumed to be dependents for purposes of claiming survivors' economic loss benefits.⁶⁰ After identifying three presumed classes of survivorship dependents, section 65B.44, subdivision 6 confirms that questions of the *existence* and *extent* of dependency are questions of fact.⁶¹

⁵¹ *Dahle v. Aetna Cas. & Ins. Co.*, 352 N.W.2d 397 (Minn. 1984).

⁵² *Id.* at 400-01.

⁵³ *Id.* at 400.

⁵⁴ *Id.* (emphasis added).

⁵⁵ *Id.*

⁵⁶ *Id.* at 400-01.

⁵⁷ *Dahle*, 352 N.W.2d at 400-01.

⁵⁸ *See Perry*, 749 N.W.2d at 330 n.8.

⁵⁹ *See supra* notes 28-29 and accompanying text.

⁶⁰ *See supra* note 20.

⁶¹ *Id.*; *see Perry*, 749 N.W.2d at 331 (Page, J., dissenting).

WILLIAM MITCHELL JOURNAL OF LAW AND PRACTICE

The *Perry* court relied on this language to hold that only presumed surviving dependents can qualify for survivor's economic loss benefits under the Act.⁶² Contrary to the holding in *Perry*, a plain reading of Minnesota Statute section 65B.44, subdivision 6 supports the proposition that there are individuals outside the presumed classes of surviving dependents that may qualify as dependents entitled to claim survivor's economic loss benefits.⁶³

Section 65B.44, subdivision 6 states, "the following *described* persons shall be presumed to be dependents of a deceased person."⁶⁴ This language implies that there are individuals who could qualify as dependents but are not specifically delineated as a presumed class under subdivision 6.⁶⁵ Such a conclusion is further supported by the legislature's confirmation that questions of the existence and extent of dependency shall be questions of fact.⁶⁶ Despite this language, the *Perry* court concluded that in amending section 65B.44, subdivision 6 in 1975 by removing the language "in all other cases," the legislature intended to limit the definition of dependent to the presumed classes of only a surviving spouse and children.⁶⁷ As persuasively stated by Justice Page,

[w]hen the deleted language is included in the sentence, the sentence suggests that, in all cases other than those in which the person is presumed to be a dependent, questions of the existence and extent of dependency are questions of fact and that in cases in which the person is presumed to be a dependent the existence or extent of their dependency is not a question of fact.⁶⁸

Justice Page continued, reasoning,

[i]ndeed, the court, without saying so, essentially concedes that before the last sentence of the second paragraph of subdivision 6 was amended in 1975 by the deletion of the words "in all other cases," persons other than those presumed to be dependents were eligible for benefits under subdivision 6 if they could establish the existence and extent of their dependency. If the legislature had intended such a significant change, however, it certainly knew how to say so explicitly. But it did not.⁶⁹

Justice Page points out the perplexing pitfall in the *Perry* court's logic.⁷⁰ He points out, that the *Perry* court

⁶² See *supra* notes 37-39.

⁶³ *Perry*, 749 N.W.2d at 331 (Page, J., dissenting).

⁶⁴ See *supra* note 22; *Perry*, 749 N.W.2d at 331 (Page, J., dissenting).

⁶⁵ *Perry*, 749 N.W.2d at 331 (Page, J., dissenting).

⁶⁶ *Id.*

⁶⁷ See *supra* note 34.

⁶⁸ *Perry*, 749 N.W.2d at 332 (Page, J., dissenting).

⁶⁹ *Id.*

⁷⁰ *Id.*

WILLIAM MITCHELL JOURNAL OF LAW AND PRACTICE

reached the opposite conclusion the Minnesota Supreme Court reached in *Peevy*.⁷¹ In *Peevy*, the court determined that the legislative history of the amendment to Minnesota Statute section 65B.44, subdivision 6 supports an interpretation that the legislature intended to create a category of dependents beyond those presumed to be dependent.⁷² Indeed, Senator Jack Davies, the sponsor of the amendment, indicated that “in some instances the present language is awkward and in others unintended language will be removed from the law, but that the bill does not make any substantive changes in the law.”⁷³

In *Peevy*, the Minnesota Supreme Court reasoned that

[t]he reason for the change, in Senator Davies’ words, was that “dependency has to be determined on a continuing basis rather than as of the time of death.” There was no discussion of the elimination of the language “[i]n all other cases.” The language allowing inquiry into the existence of dependency, however, may make the “[i]n all other cases” language unnecessary and could explain its elimination in the redrafting. In light of Senator Davies’ statement that the amendment made no substantive changes, the legislative history supports a conclusion that there can be dependents under the statute other than the presumed dependents.⁷⁴

Rather than eliminate nonpresumed classes of dependents from qualifying for survivor’s economic loss benefits under the Act, it is more reasonable to infer that the legislature intended to have courts examine the factual question of dependency.⁷⁵ If the legislature intended to change Minnesota Statute section 65B.44, subdivision 6 by limiting survivor’s economic loss benefits to a surviving spouse and children, Senator Davies would not have indicated that the amendment made no substantive change. Any major change certainly would have been more clear and explicit by the legislature. The class of persons qualifying as a “dependent” could have been expressly limited. It was not.

Instead, the more reasonable interpretation is that the deletion of the phrase “in all other cases” by the Minnesota Legislature in 1975 changed Minnesota Statute section 65B.44, subdivision 6 to require that in all cases, including those involving presumed dependents, questions of the existence and extent of dependency shall be questions of fact.⁷⁶ Senator Davies’ amendment was intended to delete unintended language, not change the substantive meaning of section 65B.44, subdivision 6. Since *Peevy* and *Dahle* were decided in 1984, the legislature has not acted to modify or further define “dependency” under section 65B.44, subdivision 6.⁷⁷ The legislature could not have intended the narrow interpretation rationalized by the *Perry* court. Indeed, the *Perry* court’s narrow view would render the statutory language “[q]uestions of

⁷¹ *Id.*

⁷² *Peevy*, 346 N.W.2d at 122.

⁷³ Hearing on S.F. 28 Before the S. Comm. on Labor and Commerce, 69th Leg. Sess. (Minn. 1975) (minutes); *Perry*, 749 N.W.2d at 332 (Page, J., dissenting).

⁷⁴ *Peevy*, 346 N.W.2d at 122.

⁷⁵ See *Perry*, 749 N.W.2d at 333 (Page, J., dissenting).

⁷⁶ *Id.*

⁷⁷ *Perry*, 749 N.W.2d at 329, n.5.

the existence and the extent of dependency shall be questions of fact” meaningless under section 65B.44, subdivision 6.

Eligibility for Survivor’s Economic Loss Benefits Extends Beyond the Presumed Class

Courts and commentators alike have agreed that eligibility for survivors’ economic loss benefits extends beyond the presumed class of dependents in section 65B.44, subdivision 6. In *Peevy*, the Minnesota Supreme Court reviewed the statutory language and legislative history of section 65B.44, subdivision 6 to conclude that there is a category of dependents beyond the presumed dependents under subdivision 6.⁷⁸ In *Dahle*, the Minnesota Supreme Court concluded “dependency is a question of fact in situations where dependency is not presumed.”⁷⁹

The Minnesota Court of Appeals also supported a broader interpretation of section 65B.44, subdivision 6. In *School Sisters of Notre Dame v. State Farm Mut. Auto. Ins. Co.*,⁸⁰ the court of appeals stated that “[i]n addition to persons presumed to be dependents, the statute indicates an intent to create a category of persons whose dependent status is a question of fact.”⁸¹

Professor Michael Steenson has also noted that there is no apparent limitation to relatives in section 65B.44, subdivision 6. According to Professor Steenson, in his discussion of *Peevy*, “[t]he last sentence of subdivision 6 could be read as an attempt to create an open category of dependents other than the presumed dependents. The Minnesota Supreme Court also noted that this suggested construction is supported by the legislative history underlying subdivision 6.”⁸² Questions relative to the existence of and extent of dependency have been and remain questions of fact to be determined by the factfinder.

In *Crockett v. Millers Mut. Ins. Assoc.*,⁸³ the Minnesota Supreme Court illustrated the fact-specific nature of a dependency determination under section 65B.44, subdivision 6. In *Crockett*, the issue was whether a woman’s claim for survivor’s economic loss benefits should be denied because she was separated from her spouse at the time of his death.⁸⁴ Although separated, facts indicated they intended to reunite.⁸⁵ For instance, the decedent accepted a job driving truck for his wife’s brother to begin a few weeks after the accident.⁸⁶

⁷⁸ *Peevy*, 346 N.W.2d at 121-22.

⁷⁹ *Dahle*, 352 N.W.2d at 400.

⁸⁰ *Sch. Sisters of Notre Dame v. State Farm Mut. Auto. Ins. Co.*, 476 N.W.2d 523, 525 (Minn. Ct. App. 1991).

⁸¹ *Id.*

⁸² Michael K. Steenson, *Minnesota No-Fault Automobile Insurance* § 8.06[2], 8-51 (3d ed. 2007).

⁸³ *Crockett v. Millers Mut. Ins. Assoc.*, 323 N.W.2d 771,772 (Minn. 1982).

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

WILLIAM MITCHELL JOURNAL OF LAW AND PRACTICE

Moreover, he had also moved his furniture into his wife's residence.⁸⁷ Prior to being separated, he had contributed his income to their joint support.⁸⁸

Under Minnesota Statute section 65B.44, subdivision 6, the decedent's wife was not a presumed dependent because she was not living with him at the time of his death.⁸⁹ The court analyzed the language of subdivision 6, acknowledging that questions concerning the existence and extent of dependency are questions of fact.⁹⁰ Under the circumstances of the case, the trial court concluded that the decedent's wife was a dependent.⁹¹ The Minnesota Supreme Court affirmed, determining that the trial court's findings were not "manifestly and palpably contrary to the evidence."⁹² Whether dependency exists in the first instance, is a question of fact.⁹³

Conclusion

Contrary to the *Perry* court's holding, a plain reading of the language of Minnesota Statutes section 65B.44, subdivision 6, and an examination of the historical development of the statute, strongly indicates that there are people other than a surviving spouse and children who may qualify as a 'dependent' of a decedent under the Act. Inexplicably, the *Perry* court ignores prior decisions and the clear mandate of the legislature that "[q]uestions of the existence and the extent of dependency shall be questions of fact."⁹⁴ Indeed, the "statute indicates an intent to create a category of persons whose dependent status is a question of fact."⁹⁵

Since the *Perry* court misinterprets the definition of dependent under Minnesota Statute section 65B.44, subdivision. 6, legislative action is necessary. The Minnesota Legislature needs to clarify that the category of persons eligible to receive survivor's economic loss benefits, as dependents are not limited to presumed dependents under subdivision 6. Whether dependency exists under the circumstances was and should remain a question of fact.

⁸⁷ *Id.*

⁸⁸ *Crockett*, 323 N.W.2d at 772.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *See Id.*

⁹⁴ § 65B.44, subdiv. 6.

⁹⁵ *Sch. Sisters of Notre Dame*, 476 N.W.2d at 525.