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DONALD R. STEWART (1949-2021)

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Supreme Court, Appellate Division, Third Department, New York

Matter of SARAH RAMIREZ, Appellant

v.

KEAMESHA ECHEVARRIA, Respondent

and

WORKERS' COMPENSATION BOARD, Respondent

February 16, 2023

Facts:

In 2004, Gregory Echevarria (the decedent) married Keamesha Echevarria (Echevarria), and three children were born out of this relationship. The decedent was in the Army and was stationed in Germany. While the family lived together in Germany for a period of time Echevarria left with the children and returned to New York while the decedent stayed in Germany. In 2012 Keamesha Echevarria filed for divorce in Florida, where she was residing. The decedent briefly stayed with Echevarria and the children in Florida. In 2013, the decedent admitted the charges in the divorce and requested the judgment of divorce should be mailed to him. For reasons not clear in the record the divorce was never finalized. The decedent started another relationship from which a child was born. Echevarria also began a relationship with another from which a child was born in 2016. She filed for divorce again from the decedent in Alabama in 2019. The decedent retained counsel and filed a notice of appearance. However he died in a work related accident in 2019 before the divorce was finalized.

Echevarria filed a claim for workers' compensation benefits in New York for herself and for the three children from that marriage. The decedent's fiancée filed a similar claim for the child she had with the decedent and claimed that Echevarria was not entitled to spousal benefits, having claimed she abandoned the decedent. The Board affirmed the law judge's decision that Echevarria was entitled to spousal benefits in that she did not abandon the decedent. A request

for full Board review was denied and it is from both the original Board decision and the denial of full Board Review and the fiancée appealed.

Holding: *Affirmed.*

Discussion: The Court noted that the Board is the exclusive arbiter of witness credibility. It was entitled credit the testimony of Echevarria that the decedent consented to hear staying in New York while he was in Germany and that they discussed the move to Florida, where the decedent stayed with her briefly. Although they each had a relationship with someone else, she testified that she wanted to work things out and that the divorce action was a threat to persuade him to “act right”.

Stewart, Greenblatt, Manning & Baer