

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

69878

APPEAL FROM FLORENCE COUNTY  
Court of Common Pleas

George C. James, Jr., Circuit Court Judge

Case No.: 2013-CP-21-01483

GILBERT JARRELL, MARY LOU IRWIN, BETH A. LONG, AS EXECUTRIX OF THE ESTATE OF FREDERICK LAWRENCE IRWIN, GARY IRWIN, ROSE MARY IRWIN, JONATHAN TEAL, STACIE TEAL, NICOLA WILLIAMS, STEVEN ROLLER, BRIAN HOFFMAN, ROBIN MONTI, JOE MONTI, CHRISTOPHER HUNTLEY, JERRY BENNETT, MICHAEL BLOOM, MARKELL ERVIN, KAREN PRUITT, SHEILA GRAHAM, STEVEN HURST, APRIL OWENS AND BRITTANY SHARP, APRIL BULLARD, JAMES DOUGLAS, VINCENT EAGLETON, FRAN JACOBS, JIMMY JOHNSON, BRENDA ANNETTE FORD LOCKLEAR, LEATISHA MULDROW, AUBREY OWENS, CRYSTAL PENNEY, KATINA PIPKINS, RUDOLPH RATLEY, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF BERNICE RATLEY STEADMAN, JONATHAN WILLIAMS, BOBBY YOUNG, INDIVIDUALLY AND AS CLASS REPRESENTATIVES OF OTHERS SIMILARLY SITUATED.....Appellants

-vs-

MALINDA SCHURLKNIGHT, LEE I. SCHURLKNIGHT AND LAURA SCHURLKNIGHT.....Respondents

NOTICE OF APPEAL

Gilbert Jarrell, Mary Lou Irwin, Beth A. Long, as Executrix of the Estate of Frederick Lawrence Irwin, Gary Irwin, Rose Mary Irwin, Jonathan Teal, Stacie Teal, Nicola Williams, Steven Roller, Brian Hoffman, Robin Monti, Joe Monti, Christopher Huntley, Jerry Bennett, Michael Bloom, Markell Ervin, Karen Pruitt, Sheila Graham, Steven Hurst, April Owens, Brittany Sharp, April Bullard, James Douglas, Vincent Eagleton, Fran Jacobs, Jimmy Johnson,

RECEIVED

SEP 25 2013

SC Court of Appeals

Brenda Annette Ford Locklear, Leatisha Muldrow, Aubrey Owens, Crystal Penney, Katina Pipkins, Rudolph Ratley, as the Personal Representative of the Estate of Bernice Ratley Steadman, Johnathan Williams, Bobby Young, Individually and as Class Representatives of Others Similarly Situated hereby appeal the following Orders of the Honorable George C. James, Jr.:

- 1) Order With Regard to Requested Injunctive Relief filed on August 12, 2013; and
- 2) Order filed August 28, 2013, denying Plaintiffs' Motion to Reconsider..

Copies of the referenced Orders are attached hereto. Appellants received written notice of the entry of the Order denying its motion for reconsideration on September 3, 2013.

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September 23, 2013

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Attorney for Respondents,  
Malinda Schurlknight, Lee I. Schurlknight and Laura Schurlknight

BY:   
Andrea Smith, Paralegal to  
TWENGE + TWOMBLEY LAW FIRM

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM FLORENCE COUNTY  
Court of Common Pleas

George C. James, Jr., Circuit Court Judge

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Case No.: 2013-CP-21-01483

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GILBERT JARRELL, MARY LOU IRWIN, BETH A. LONG, AS EXECUTRIX OF THE ESTATE OF FREDERICK LAWRENCE IRWIN, GARY IRWIN, ROSE MARY IRWIN, JONATHAN TEAL, STACIE TEAL, NICOLA WILLIAMS, STEVEN ROLLER, BRIAN HOFFMAN, ROBIN MONTI, JOE MONTI, CHRISTOPHER HUNTLEY, JERRY BENNETT, MICHAEL BLOOM, MARKELL ERVIN, KAREN PRUITT, SHEILA GRAHAM, STEVEN HURST, APRIL OWENS AND BRITTANY SHARP, APRIL BULLARD, JAMES DOUGLAS, VINCENT EAGLETON, FRAN JACOBS, JIMMY JOHNSON, BRENDA ANNETTE FORD LOCKLEAR, LEATISHA MULDROW, AUBREY OWENS, CRYSTAL PENNEY, KATINA PIPKINS, RUDOLPH RATLEY, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF BERNICE RATLEY STEADMAN, JONATHAN WILLIAMS, BOBBY YOUNG, INDIVIDUALLY AND AS CLASS REPRESENTATIVES OF OTHERS SIMILARLY SITUATED.....Appellants

-vs-

MALINDA SCHURLKNIGHT, LEE I. SCHURLKNIGHT AND LAURA SCHURLKNIGHT.....Respondents

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CERTIFICATE OF SERVICE

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The undersigned, Andrea Smith, hereby avers that she is a Paralegal with TWENGE + TWOMBLEY LAW FIRM, Attorneys for Appellants, and that on the 23rd day of September 2013 a true and accurate copy of the attached Notice of Appeal was placed in an envelope with first class postage thereon prepaid through the United States Postal Service and mailed to the following:

**RECEIVED**

SEP 25 2013

**SC Court of Appeals**

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Gilbert Jarrell, Mary Lou Irwin, Beth A. Long, As Executrix of the Estate of Frederick Lawrence Irwin, Gary Irwin, Rose Mary Irwin, Jonathan Teal, Stacie Teal, Nicola Williams, Steven Roller, Brian Hoffman, Robin Monti, Joe Monti, Christopher Huntley, Jerry Bennett, Michael Bloom, Markell Ervin, Karen Pruitt, Sheila Graham, Steven Hurst, April Owens, Brittany Sharp, April Bullard, James Douglas, Vincent Eagleton, Fran Jacobs, Jimmy Johnson, Brenda Annette Ford Locklear, Leatisha Muldrow, Aubrey Owens, Individually and as the Personal Representative of the Estate of Colon Owens, Crystal Penney, Katina Pipkins, Rudolph Ratley, as the Personal Representative of the Estate of Bernice Ratley Steadman, Jonathan Williams, Bobby Young, Individually and as Class Representatives of others similarly situated,

Plaintiffs,

v.

Malinda Schurlknight, Lee I. Schurlknight, Laura Schurlknight and The Citizens Bank,

Defendants.

IN THE COURT OF COMMON PLEAS  
C/A # 2013-CP-21-01483

ORDER WITH REGARD TO REQUESTED  
INJUNCTIVE RELIEF

FILED

2013 AUG 12 AM 11:54

CONNIE REEL-SHEARER  
CCCP & GS  
FLORENCE COUNTY, SC

This matter is presently before the Court on cross-motions of the parties with regard to their respective claims to life insurance proceeds paid on the life of John L. Schurlknight who died November 13, 2012. Plaintiffs' complaint requested an injunction enjoining Malinda Schurlknight, Lee I. Schurlknight, and Laura Schurlknight (the Schurlknight Defendants) from spending or otherwise disposing of life insurance proceeds. Thereafter, the Schurlknight Defendants filed a motion to deposit with the Court funds equal to premiums paid on Mr.


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SEP 25 2013  
CLERK OF COURT  
FLORENCE COUNTY, SC  
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Connie Reel Shearer  
Court of Appeals

Schurlknight's life insurance policies from 2009 until the last premium payment. The Plaintiffs filed a corresponding motion seeking an injunction to freeze or preserve all remaining life insurance proceeds in the possession of the Defendants. These motions were heard by the Court at a lengthy hearing in Florence on July 16, 2013. At the conclusion of the hearing, this Court ordered the funds at issue frozen until issuance of this order. Each side has extensively briefed and argued their positions, and the Court has considered all such briefs and arguments.

**Life Insurance Proceeds**

Lee I. Schurlknight is the son and oldest child of the deceased John Schurlknight. The evidence before the Court shows that Lee I. Schurlknight was the beneficiary of life insurance on his father's life. Thus, after his father's death, he has collected such insurance benefits. The life insurance proceeds have been placed on deposit with the Defendant Bank (though Bank has since been dismissed without prejudice from this action). The insurance benefits payable to Lee I. Schurlknight include:

- 1) \$250,000 from Mass Mutual on a policy issued to John Schurlknight in December of 1990,
- 2) \$500,000 from CNA-Valley Forge on a policy issued to John Schurlknight in December of 1999,
- 3) \$135,135.61 (after set-off for a policy loan) of a \$150,000 Ameritas policy issued to John Schurlknight in October of 1992, and
- 4) \$500,000 from Reassure America on a policy issued to the law firm of Schurlknight & Rivers and owned by that law firm until just a few months before John Schurlknight's death.

A handwritten signature in black ink, appearing to be 'F. J. P.', is located in the bottom right corner of the page.

Some of these life insurance proceeds were used by Lee I. Schurlknight prior to the Court's imposition of temporary restraint at the hearing on July 16, 2013 and prior to any action against him asserting a constructive trust upon the life insurance proceeds. All remaining life insurance proceeds are currently deposited with the Defendant Bank.

### **Positions of The Parties**

#### **Plaintiffs' Position**

Plaintiffs argue that the Court should temporarily enjoin any party from using any of the life insurance proceeds until Plaintiffs' claims are adjudicated. The Plaintiffs contend that since the premiums for the life insurance policies were paid for using Plaintiffs' stolen funds, the Plaintiffs are the true owners of the insurance proceeds, and the Schurlknight Defendants hold the insurance proceeds in a constructive and/or resulting trust for the benefit of the Plaintiffs. Plaintiffs concede that there is no clear South Carolina case directly on point imposing a constructive trust over life insurance proceeds under the circumstances similar to that of this case and there is no case resolving whether or not South Carolina's exemptions statutes exempt life insurance proceeds purchased with stolen money. However, Plaintiffs argue that numerous cases from other jurisdictions and leading insurance treatises expressly recognize the imposition of a constructive trust over life insurance proceeds purchased with stolen funds despite exemptions statutes. According to Plaintiffs, because South Carolina injunction law provides that Plaintiffs' need not prove an absolute legal right but rather must show only a "fair question" as to the existence of such a right, an injunction is proper. In other words, Plaintiffs' argue that they have presented a "fair question" as to whether or not they can recover the life insurance proceeds.

#### **Schurlknight Defendants' Position**

A handwritten signature in black ink, appearing to be 'B/S', is located in the bottom right corner of the page.

The Schurlknight Defendants assert that the use of these funds by Lee I. Schurlknight is protected by a series of South Carolina exemption statutes that protect certain aspects of an Estate from the collection efforts of a creditor. The Schurlknight Defendants further assert that the fraud exception to the exemption provisions still protects all proceeds beyond the amount of any fraud-related premiums. The Schurlknight Defendants assert that where the legislature has made policy, the Courts are not free to actively rewrite that policy. Moreover, the Schurlknight Defendants point to case law from other jurisdictions that support their position that life insurance proceeds are either fully exempted from the collection efforts of others or such efforts are limited to the premium payments or actual losses of the Plaintiffs. The Schurlknight Defendants oppose the imposition of an injunction on all of the insurance proceeds.

Defendant The Citizen Bank's Position

Defendant Bank took no position relating to these matters.

Both the Plaintiffs and the Schurlknight Defendants have briefed their respective positions well and included a survey of case law from all over the country – some supporting each of their respective positions. There appears to be no South Carolina case law precisely on point.

This Court's Analysis

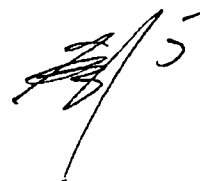
This Court is familiar with the provisions of Rule 65, SCRCP, and the required elements outlined in related case law including Scratch Golf Co. v. Dunes West Residential Golf Props., Inc., 361 S.C. 117, 603 S.E.2d 905 (2004), Peek v. Spartanburg Reg'l Healthcare Sys., 367 S.C. 450, 626 S.E.2d 34 (Ct. App. 2005), and County of Richland v. Simpkins, 348 S.C. 664, 560 S.E.2d 902 (Ct. App. 2002), among others. These elements required of a party seeking



injunctive relief are: that he: 1) will suffer irreparable harm if the injunction is denied; 2) will likely succeed on the merits of the litigation; and 3) has no adequate remedy at law.

In my view, South Carolina law would perhaps not foreclose the Plaintiffs from prevailing on their action to recover proceeds from the Reassure America policy which was owned by the law firm and transferred to new ownership only months before Mr. Schurlknight's death. It is for that reason that the Court has determined that it will grant the Plaintiffs' motion with regard to the amount of that policy or \$500,000.00 – an amount still available in the account identified by the Defendant Bank. Despite pointed allegations to the contrary, this Court, to date, has seen no evidence of any fraudulent conduct on Lee I. Schurlknight's part with regard to the life insurance funds. However, no discovery has taken place to date. Nevertheless, the Court does not believe that the Plaintiffs have met the required elements as to the remaining life insurance proceeds and declines to enjoin those amounts. However, it may well be established that the Plaintiffs are entitled to at least a portion of the unenjoined life insurance proceeds. The Court will rely on the parties' research and evidentiary presentations as to whether Lee I. Schurlknight may have to account for any of the life insurance proceeds that the Court is not enjoining. In other words, the Court is not ruling up front that the unenjoined funds are Lee I. Schurlknight's property as a matter of fact and law. The Court is simply finding that the Plaintiffs are not entitled to an injunction as to those proceeds at this time.

The Court hereby directs that \$500,000 held by the Defendant Bank, representing the amount of the Reassure America policy, be deposited with the Florence County Clerk of Court as soon as possible. Further, the Court directs that this deposit include an additional sum equal to prejudgment interest (calculated at 8.75%) from the date of initial deposit of the Reassure



America proceeds into Lee I. Schurlknight's bank account through the date of transfer to the Clerk of Court.

The funds on deposit with the Clerk of Court shall remain there until further order of the Court and are subject to the claims of both Plaintiffs and Defendant Lee I. Schurlknight.

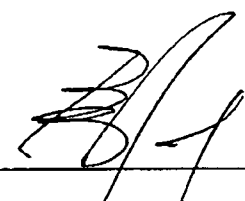
In the event Plaintiffs seek reconsideration of this ruling, the Court directs that all the funds presently frozen by the Court in the Defendant Bank remain frozen with the exception that the Defendant Lee I. Schurlknight is authorized to withdraw the sum of \$38,212 (the net sum for educational expenses represented by University officials) and that Lee I. Schurlknight shall use these funds for the sole authorized purpose of paying his educational expenses for the upcoming academic year at the University of the South in Sewanee, Tennessee. This educational withdrawal shall not be stayed by any motion to reconsider.

This order is entered without considering the merits of the case, is entered without regard to the ultimate termination of the case on the merits, and is made without prejudice to the rights of the parties pending a hearing/trial on the merits, which shall all be determined without reference to this temporary injunction.


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2013 AUG 12 AM 11:54  
FLORENCE COUNTY, SC  
CONNOR REEL-SHEARER  
CLERK OF COURT C.P. & G.S.

**AND IT IS SO ORDERED.**

Date: August 9, 2013

  
\_\_\_\_\_  
George C. James, Circuit Court Judge

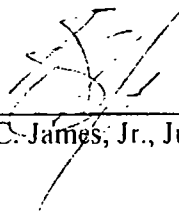
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C. Maria Reel-Shearer  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.





order unless the comment was specifically framed as a finding of fact, conclusion of law, or an order of the court. The court has not made any type of finding that attorney fees should be deducted from any money stolen by John Schurlknight. Therefore, the motion on this ground is denied.

**AND IT IS SO ORDERED.**

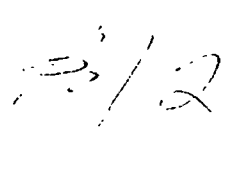


George C. James, Jr., Judge

Sumter, South Carolina

August 26, 2013

2013 AUG 28 AM 11:36  
CORNIE REE-CRECH  
CLERK OF COURT  
FLORENCE COUNTY, SC



CERTIFIED: A TRUE COPY  
*Cornie Ree-Crech*  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

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**KARL D. TWENGE**  
**JENNIFER I. CAMPBELL+**

:+ LICENSED IN SC + GA  
:+ OF COUNSEL

September 23, 2013

**Via U.S. Mail**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
S.C. Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

**RE: Gilbert Jarrell, et al. v. Malinda Schurlknight, et al.**  
**Case No.: 2013-CP-21-01483**

Dear Ms. Kitchings:

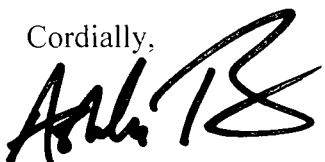
Enclosed for filing, please find the original and two copies of the Notice of Appeal with regard to the referenced matter. Also enclosed is the original and two copies of the Certificate of Service of the Notice of Appeal serving the same upon opposing counsel on this date. Enclosed is my firm's check in the amount of \$100.00, which represents the requisite filing fee. Please return the file stamped copy to me in the enclosed self-addressed stamped envelope.

By copy of this letter I am serving the same upon the Clerk of Court for Florence County and request she file a copy of the same, and I am also serving opposing counsel.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

With kindest regards, I remain,

Cordially,



J. Ashley Twombley

cc: The Honorable Connie Reel-Shearin, Florence County Clerk of Court  
J. René Josey, Esquire  
Arthur E. Justice, Esquire

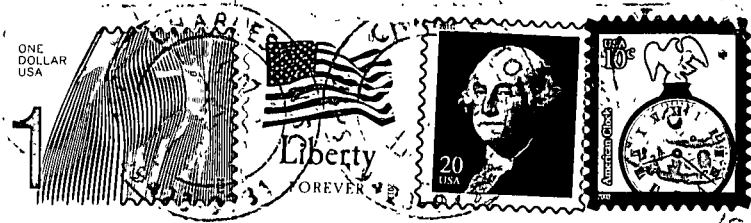
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SC Court of Appeals

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