

**ORIGINAL**

THE STATE OF SOUTH CAROLINA  
IN THE S.C. SUPREME COURT

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

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**S.C. Supreme Court**

Case No. 2009-CP-04-4335  
Appellate Case No. 2012-213025

Earl Phillips as Personal Representative of the  
Estate of Bobby Gene Barnett ..... Respondent,

v.

Brigitte Quick ..... Petitioner.

**BRIEF OF PETITIONER**

Stephen R.H. Lewis  
Covington, Patrick, Hagins, Stern & Lewis, P.A.  
211 Pettigru Street, P.O. Box 2343  
Greenville, SC 29602  
(864) 242-9000  
Attorney for Petitioner

Other Counsel of Record:

J. Michael Turner, Sr.  
Turner & Burney, P.C.  
P.O. Box 668  
Laurens, SC 29360  
(864) 984-6565  
Attorney for Respondent

Carey B. Murphy  
P.O. Box 809  
Anderson, SC 29622  
(864) 224-1569  
Attorney for Respondent

**TABLE OF CONTENTS**

I. STATEMENT OF QUESTIONS PRESENTED FOR REVIEW .....1

II. STATEMENT OF THE CASE.....1

III. ARGUMENT.....4

    A. The Court of Appeals Erred in Concluding the Petitioner’s Claim Was  
    Barred By §62-3-803 of the Probate Code When Such a Conclusion is in  
    Conflict With the S.C. Uniform Gift to Minors Act .....4

    B. The Court of Appeals Erred in Failing to Determine that the Decedent’s  
    Conduct Created a Constructive Trust .....7

IV. CONCLUSION.....9

## **I. STATEMENT OF QUESTIONS PRESENTED FOR REVIEW**

- A. **Whether the Court of Appeals Erred in Concluding the Petitioner's Claim Was Barred By §62-3-803 of the Probate Code When Such a Conclusion is in Conflict With the S.C. Uniform Gift to Minors Act**
- B. **Whether the Court of Appeals Erred in Failing to Determine that the Decedent's Conduct Created a Constructive Trust**

## **II. STATEMENT OF THE CASE**

The Petitioner, Brigitte Quick, is the only child of Bobby Gene Barnett, the Decedent, who died on January 12, 2003. The Respondent, Earl Phillips, was the original Personal Representative of Mr. Barnett's Estate and published the Creditor's Notice at issue in this case on February 19, 2003 (Defendant's Exhibit "2", R. p. 61). Mr. Phillips was appointed by the Anderson County Probate Court as Personal Representative of Mr. Barnett's Estate on February 11, 2003. Ms. Quick objected to the appointment of Mr. Phillips and sought appointment as Personal Representative of her father's Estate, and, by Order dated May 5, 2003, Mr. Phillips was removed as Personal Representative of the Estate and Ms. Quick was appointed as successor Personal Representative of the Estate.

After her appointment, the Mr. Phillips turned over Estate documents to Ms. Quick (R. p. 45), and in those documents, she discovered the existence of a divorce decree from her parents' divorce (Plaintiff's Exhibit "1", R. Pp. 64-66) which referenced an account to be set up by her father for her benefit. This led to her discovery of an A.G. Edwards account in the amount of \$41,646.27 which had been established by her father pursuant to the *S.C. Uniform Gift to Minor's Act ("UGMA")* (R. p. 18-19). She also discovered the funds had been removed from the account and converted by her father without her knowledge or consent. Upon discovering these facts, she promptly filed a

Statement of Creditor's Claim based on the UGMA account on December 8, 2003 (approximately 9 ½ months after the Creditor's Notice was published but within one year after her father's death).

Following protracted litigation involving the contesting of Mr. Barnett's Will, Ms. Quick filed a Petition for Claim under the UGMA claiming she was entitled to funds from the Estate in amounts equal to the UGMA account balance prior to her father's conversion of the account, plus interest accrued. A hearing was held on April 1, 2009, before the Honorable Donald B. Hocker. By Order dated July 13, 2009, Judge Hocker concluded that Ms. Quick's claims were valid and approved the claims. A Motion for Reconsideration was filed by Mr. Phillips on July 21, 2009. By Order dated October 19, 2009, Judge Hocker denied the Motion for Reconsideration.

Mr. Phillips filed an appeal to the circuit court on October 27, 2009. The appeal was heard by the Honorable J. Cordell Maddox, Jr. on March 17, 2010. An Order was filed on July 12, 2010 by Judge Maddox affirming the Probate Court's ruling. A Notice of Appeal to the S.C. Court of Appeals was filed by Mr. Phillips and, following oral argument, the Court of Appeals reversed the judgment of the Circuit Court. Earl Phillips as Personal Representative of the Estate of Bobby Gene Barnett, Appellant v. Brigitte Quick, Respondent, Appellant Case No. 2010-168488, Opinion No. 5003, filed July 18, 2012. Ms. Quick filed a Petition of Rehearing with the Court of Appeals on August 2, 2012, and that Petition was denied on August 27, 2012. Ms. Quick then filed a Petition for Writ of Certiorari to this Court and, subsequently, an Amended Petition for Writ of Certiorari which this Court granted on October 4, 2013.

### III. ARGUMENT

In its reversal of the two lower court decisions, the Court of Appeals has chosen to ignore the reprehensible conduct of the decedent which gave rise to this litigation and, instead, substitute form over substance by holding Ms. Quick's claim is barred by a procedural statute intended to merely assist the Probate Court in handling estate cases with efficiency and expediency. In so doing, it has failed to recognize and address the tension the decedent's conduct creates between two statutes, the S.C. Children's Code and the Probate Code, which each have legitimate state interests. Petitioner believes the issues raised in this appeal relating to the conflict between the Children's Code (containing the UGMA) and the Probate Code (containing the non-claim notice statute) are of first impression with this Court and, therefore, novel questions of law. Petitioner also believes the decision by the Court of Appeals raises significant public policy concerns. In addition, the Court of Appeals simply made no effort to address whether the decedent's conduct invokes at least a consideration of the equitable and moral principles upon which our justice system is based.

A. **The Court of Appeals Erred in Concluding the Petitioner's Claim Was Barred By §62-3-803 of the Probate Code When Such a Conclusion is in Conflict With the S.C. Uniform Gift to Minors Act**

In both her brief and oral argument before the Court of Appeals, Quick argued extensively about the irreconcilable tension this set of facts creates between the S.C. Probate Code and the UGMA. Yet, with the exception of a three-sentence footnote at the end of its decision, the Court of Appeals made no effort to address whether its reversal of the two lower court decisions, resulting in a barring of Quick's claim, was inconsistent with, or in conflict with, the clear and unambiguous language of the UGMA. "In

construing a statute, the Court looks to the language as a whole in light of its manifest purpose”. Jones v. State Farm Mutual Automobile Ins. Co., 364 S.C. 222, 231, 612 S.E.2d 719, 724 (Ct. App. 2005). “A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992).

The UGMA is contained in Title 63 of the *S.C. Code of Laws* known as the “S.C. Children’s Code”, §63-1-10 of the *S.C. Code of Laws*. By enacting the S.C. Children’s Code, the S.C. Legislature clearly intended to establish a state policy which protects children from harm. See §63-1-20. This is a legitimate state interest. However, the Court of Appeals’ failure to appropriately interpret the clear language of the statute frustrates this interest.

“When the terms of a statute are clear, the Court must apply those terms according to their literal meaning.” Georgia-Carolina Bail Bonds, 354 S.C. 18, 24, 579 S.E.2d 334, 337 (Ct. App. 2003) (citing Cooper v. Moore, 351 S.C. 207, 212, 569 S.E.2d 330, 332 (2002)). In this case, the Court of Appeals failed to recognize that this case is controlled by the S.C. Uniform Gift to Minors Act because the Act, by its very terms, vests irrevocable, indefeasible legal title of the UGMA to Ms. Quick. Section 63-5-520 of the *S.C. Code of Laws* provides, in part:

- (A) An adult person may, during his lifetime, make a gift of...money...to a person who is a minor on the date of the gift:
  - (3) If the subject of the gift is money, by paying or delivering it to a broker or a domestic financial institution for credit to an account in the name of the donor, another adult, or a trust company followed in substance by the words: “as custodian for \_\_\_\_\_

(name of minor) Under the Uniform Gifts to Minors Act”.

§63-5-520(A)(3)

Both lower courts found an account had been established in compliance with the UGMA. Although the Court of Appeals did not address this issue, presumably, it would so find. However, the Court of Appeals simply ignored the clear and unambiguous language of the UGMA. Section 63-5-530 provides for the effect of the gift:

- (A) A gift made in a manner prescribed in this article is *irrevocable* and conveys to the minor *indefeasibly vested legal title* to the...money...given... (emphasis added)

§63-5-530.

Pursuant to this section, when the account was set up in compliance with the statute, irrevocable, indefeasible vested legal title was conveyed to Ms. Quick.

Therefore, if in fact, the Court of Appeals, when interpreting a statute is to apply the terms of statutes “according to their literal meaning”, the gift to Ms. Quick was indefeasibly vested legal title, and was irrevocable.<sup>1</sup> Essentially, the Court of Appeals revoked and divested Ms. Quick of legal title to her property based on the non-claim statute found in §62-3-803, which requires creditors who are not given actual notice to present their claims within eight months after the date of the first publication of the notice. The Court of Appeals’ decision essentially results in a court sanctioned conversion of over \$41,000 by Ms. Quick’s father.<sup>2</sup> “Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been

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<sup>1</sup> “Indefeasible” is defined by Webster as “that cannot be undone or made void”. “Vested” is defined by *Black’s Law Dictionary* as “fixed, accrued, settled, absolute. Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent”. “Irrevocable” is defined by *Webster* as “that cannot be revoked, recalled, or undone; unalterable”.

<sup>2</sup> Mr. Barnett’s conduct is nothing short of fraud and deceit perpetrated on his own daughter.

intended by the Legislature or would defeat the plain legislative intention.” *Jones v. State Farm Mut. Auto. Ins. Co.* 364, SC 222, 612 S.E. 2d 719, 724 (Ct. App. 2005). Surely, the Legislature did not intend the UGMA nor the non-claim statute contained in the Probate Code to be interpreted in such a manner that it would lead to the “plainly absurd” result in this case.

Obviously, the State of South Carolina has legitimate interests in both the protection of children and the administration of estates. However, the Petitioner believes that a balancing of these two legitimate state interests would weigh in favor of protecting children from fraud perpetrated on them, especially by a parent. The non-claim statute is essentially a procedural statute that when in conflict with a substantive statute vesting title to property in an irrevocable manner, should not produce a result that favors form over substance.

It is anticipated that the Respondent will argue that such a holding by this Court would “open the floodgates” of untimely claims being filed against estates. However, a holding limited to the facts of this case or restricted to similar conduct of a decedent in the context of a UGMA gift would eliminate that concern.

**B. The Court of Appeals Erred in Failing to Determine that the Decedent’s Conduct Created a Constructive Trust**

In its decision, the Court of Appeals, in a footnote, found Ms. Quick’s constructive trust argument “intriguing” but declined to consider it (Court of Appeals Decision, p. 6, fn. 3). However, the very nature of the decedent’s conduct in this case compels a consideration of the equities involved. Although the Court of Appeals declined to consider it, the issue may be considered by this Court. “Under the present rules, a respondent---the ‘winner’ in the lower court---may raise on appeal any additional

reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court." Toal, VaFai & Muckenfus, Appellate Practice in S.C., 2<sup>nd</sup> Ed., p. 234.

"Equity owes its birth to the desire to look beneath the rigid rules of the law---to seek substantial justice". State Ex Rel Daniel v. Strong, 185 S.C. 27, 192 S.E.2d 671, 681 (1937). "Equity does not permit a party to defeat justice by asserting violation of public policy, statute, or illegality of agreement in order to insulate the party from its own wrong". Price v. Price, 325 S.C. 379, 480 S.E.2d 90 (Ct. App. 1996). Notwithstanding the Court of Appeals failure to address whether Kolb v. Cook, 284 S.C. 598, 602, 327 S.E.2d 379, 382 (Ct. App. 1985) supports Ms. Quick's argument that the UGMA account, as an "irrevocable" property interest, was an undistributable asset of the estate<sup>3</sup>, therefore relieving Ms. Quick from the requirement of complying with the claim filing procedure, the Court of Appeals completely disregarded Petitioner's argument that her father's conduct created a constructive trust.

Petitioner and her father were in a confidential relationship<sup>4</sup> and, as such, his fraudulent and deceitful abuse of that relationship should result in the formation of a constructive trust.

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<sup>3</sup> The facts of this case coupled with the clear language of the UGMA designating the account as an "irrevocable" property interest supports an argument that the account was never estate property to begin with. Had the decedent broken into his daughter's home and stolen \$40,000 in cash, then deposited it into his own account, following his death, the Probate Court would presumably have the authority to exercise its equitable powers to order the money be returned to the daughter without being constrained by a procedural statute designed to provide for an expedient administration of estate assets and not to deprive victims of fraud and conversion from receiving equitable relief.

<sup>4</sup> See Chapman v. Citizens and Southern Nat'l Bank of SC, 302 S.C. 469, 395 S.E.2d 466 (1990), which defines a "confidential relationship" as "a fiduciary relation. It is a peculiar relation which exists between...parent and child...It exists when one reposes a special confidence in another so that the latter, in equity and good conscience is bound to act in good faith and with due regard to the interest of the one reposing the confidence". Citing SSI Medical Services, Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990).

When matters of the conscience are decided improvidently, equity stands ready to rectify. The abuse of a confidential relationship is recognized by our Supreme Court as the basis of the imposition of a constructive trust by a court of equity. (Citation omitted). A constructive trust arises entirely by operation of law without reference to any actual or supposed intentions of creating a trust. A constructive trust arises whenever a party has obtained money which does not equitably belong to him or has been acquired through a breach of trust or the violation of a fiduciary duty. (Citation omitted).

Chapman, id., 302 S.C. 479, 395 S.E.2d 453.

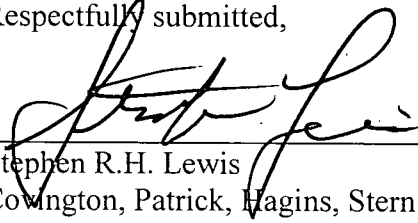
The facts of this case clearly invoke the time honored equitable maxims: 1) equity regards as done that which ought to have been done; 2) equity applies substance over form; and, 3) equity abhors a forfeiture. Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 715 S.E.2d 348. Based on the conduct of the decedent in this case, the Court of Appeals should have found a constructive trust was created.

#### IV. CONCLUSION

The Court of Appeals' strict application of the Probate Code's claims statute clearly puts it at odds with the clear and unambiguous language of the UGMA. Although both statutes represent legitimate state interests, the UGMA's substantive interest of protecting children, especially from fraud and deceit, should outweigh the administrative interests of the Probate Code's notice requirements. This is true especially in light of the very restrictive context under which this situation has occurred. A reversal of the Court of Appeals' decision would harmonize the two statutes without creating additional and unnecessary litigation. In the alternative, under these facts, this Court should create a

constructive trust, thereby doing justice when justice ought to be done, while avoiding any concern relating to increased litigation over untimely claims.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephen R.H. Lewis", written over a horizontal line.

Stephen R.H. Lewis  
Cowington, Patrick, Hagins, Stern & Lewis, P.A.  
P.O. Box 2343  
Greenville, SC 29602  
(864) 242-9000  
Attorney for the Petitioner

November 1, 2013

Greenville, South Carolina

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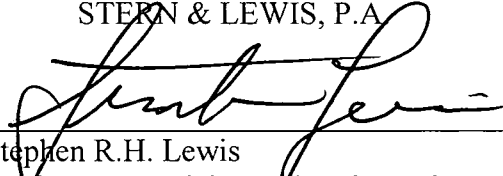
**CERTIFICATE OF SERVICE**

This is to certify that I have served a true copy of the foregoing **Brief of Petitioner and Appendix to Writ of Certiorari** on all counsel of record this date, by depositing a copy of same in the United States Mail, postage prepaid, addressed as follows:

J. Michael Turner, Sr.  
Turner & Burney, P.C.  
P.O. Box 668  
Laurens, SC 29360

Carey B. Murphy  
P.O. Box 809  
Anderson, SC 29622

COVINGTON, PATRICK, HAGINS,  
STERN & LEWIS, P.A.



Stephen R.H. Lewis  
Covington, Patrick, Hagins, Stern & Lewis, P.A.  
211 Pettigru Street, P.O. Box 2343  
Greenville, SC 29602  
(864) 242-9000

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