

STATE OF SOUTH CAROLINA CLERK OF COURT IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE S.C. THIRTEENTH JUDICIAL CIRCUIT

Case No. 2015-CP-23-02860

Lauren Murphy, as statutory beneficiary, FM 4 23

Respondent,

v.

Mark Collins,

Appellant.

ORDER

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SC Court of Appeals

Date of Hearing: September 10, 2015
Presiding Judge: Perry H. Gravely
Court Reporter: Deborah Garrison

Mark Collins ("Appellant Collins") appeals a Greenville County Probate Court Order entered on April 29, 2015, in the matter of: *Tynslee Elizabeth Fields, Deceased; Lauren Murphy as Statutory Beneficiary vs. Mark Collins, and The Estate of Tynslee Elizabeth Fields, Deceased*, Case No. 2012-ES-23-01718.

Pursuant to the Order of the Probate Court, Appellant Collins was divested of any portion of the wrongful death and survival settlement proceeds resulting from the lawsuit relating to the death of the parties' infant daughter shortly after her birth.

FACTS

Based on the record, the relevant facts are set forth below.

Appellant Collins and Respondent Lauren Murphy ("Respondent Murphy") became romantically involved in 2011 after which Respondent Murphy became pregnant and informed Appellant Collins that he was the father. The parties were never married, but continued their relationship for several more months during which time they attended the medical appointment

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for the ultrasound to determine the child's sex. Prior to the birth, the parties became estranged and Respondent Murphy informed Appellant Collins that he was not the father, and that Jeremy Fields was the father of the unborn child.

On June 12, 2012, Tynslee Elizabeth Fields was born and died within hours as a result of complications during birth. The infant spent her short life under the administration of emergency medical care, the expense for which was paid entirely by Medicaid.

Respondent Murphy did not notify Appellant Collins of Tynslee's birth and identified Jeremy Fields as Tynslee's father on Tynslee's birth and death certificate and in the published obituary. On August 14, 2012, Respondent Murphy identified both Jeremy Fields and Appellant Collins as possible fathers of Tynslee in her Petition for Appointment as the personal representative of the estate. Subsequently, a DNA test confirmed that Appellant Collins was Tynslee's father. The court appointed Respondent Murphy, with the consent of Appellant Collins, as the personal representative of the estate Tynslee Elizabeth Fields.

On or about August 2, 2013, Respondent Murphy initiated the lawsuit for the wrongful death of Tynslee. On February 24, 2014, the Circuit Court issued an Order approving a settlement with Mercy Obstetrics & Gynecology, P.A. and Ragesh Pandya, M.D.

After procedural hopscotch between Probate and Circuit Court, Respondent Murphy filed a motion in Probate Court on November 18, 2014 pursuant to S.C. Code § 15-51-40, requesting that Appellant Collins not be allowed to receive proceeds from the wrongful death settlement because he failed to provide reasonable support to their daughter.

On April 29, 2015, Greenville County Probate Court issued an order granting Respondent Murphy's motion and denying Appellant Collins' right to any proceeds from the wrongful death settlement, and Appellant Collins filed this appeal with the Court of Common Pleas for

Greenville County. After a thorough review of the record and the parties' briefs and having received the argument of counsel, this Court, for the reasons set forth below, reverses the Probate Court's decision.

STANDARD OF REVIEW

The standard of review applicable to cases originating in the Probate Court depends upon whether the underlying cause of action is at law or in equity. In re Estate of Hyman, 362 S.C. 20, 25, 606 S.E.2d 205, 207 (Ct. App. 2004); In re Thames, 344 S.C. 564, 568, 544 S.E.2d 854, 856 (Ct. App. 2001). In an appeal of a matter of law, "the circuit court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them" and "if there is any evidence in [the] case that reasonably supports the factual findings of the probate judge, [the] order must be affirmed." In re Howard, 315 S.C. at 361–62, 434 S.E.2d at 257–58. When reviewing a question of law, the appellate court may decide the matter with "no particular deference to the lower court." In re Estate of Rider, 407 S.C. 386, 392, 756 S.E.2d 136, 140 (2014) (quoting Neely v. Thomasson, 365 S.C. 345, 349–50, 618 S.E.2d 884, 886 (2005)). An issue regarding statutory interpretation is a question of law. Wimberly v. Barr, 359 S.C. 414, 418, 597 S.E.2d 853, 855 (Ct. App. 2004). This Court finds that the underlying cause of action is an action at law and the applicable review by this court is set forth above.

LAW / ANALYSIS

South Carolina statutory and supporting case law are clear on the manner in which wrongful death proceeds are to be distributed. That is, they are to be divided equally to the statutory beneficiaries:

The amount so recovered shall be divided among the [statutory beneficiaries] in those shares as they would have been entitled to if the deceased had died intestate and the amount recovered had been personal assets of his or her estate.



S.C. Code § 15-51-40.

These shares are determined as follows according to South Carolina's laws governing Intestacy: "the part of the intestate estate not passing to the surviving spouse under Section 62-2-102, or the entire estate if there is no surviving spouse, passes as follows: ... (2) if there is no surviving issue, to his parent or parents equally..." S.C. Code § 62-2-103.

It is undisputed that the statutory beneficiaries of the Estate of Tynslee Fields are Lauren Murphy and Mark Collins.

There are only certain circumstances in which the Probate Court may limit a statutory beneficiary's entitlement. S.C. Code Section 15-51-40 provides:

[U]pon motion by either parent or any other party of potential interest based upon the decedent having died intestate, the probate court may deny or limit either or both parent's entitlement for a share of the proceeds if the court determines, by a preponderance of the evidence, that the parent or parents failed to reasonably provide support for the decedent as defined in Section 63-5-20 and did not otherwise provide for the needs of the decedent during his or her minority.

S.C. Code § 15-51-40 (emphasis added).

The applicable paragraph of S.C. Code § 63-5-20 referred to by S.C. Code § 15-51-40 states,

(A) Any able-bodied person capable of earning a livelihood who shall, without just cause or excuse, abandon or fail to provide reasonable support . . . to his or her minor unmarried legitimate or illegitimate child dependent upon him or her shall be deemed guilty of a misdemeanor As used in this section "reasonable support" means an amount of financial assistance which, when combined with the support the member is reasonably capable of providing for himself or herself, will provide a living standard for the member substantially equal to that of the person owing the duty to support. It includes both usual and unusual necessities.

Pursuant to the statute, the period of time relevant to the Court's determination of whether Appellant Collins provided reasonable support for the needs of his daughter was during her "minority." In this case, Tynslee's minority was a period that consisted of mere minutes to hours between her birth and her death, during which time emergency medical care was being administered.

The Probate Court found that the burial, funeral, memorial and legal expenses and time spent in pursuit of the wrongful death action constituted "unusual necessities" under S.C. Code § 63-5-20(a) which, if not provided by the statutory beneficiary, would justify the divestment of proceeds. This Court finds that none of these were incurred within the statutorily-defined relevant time period under S.C. Code § 15-51-40. Therefore, evidence of the failure to pay these expenses is not evidence which reasonably supports the findings by the Probate Court.

The Probate Court found that medical expenses constitute "usual necessities" for which Appellant Collins failed to reimburse the payor. The record reflects that Medicaid and/or the hospital paid for the medical care rendered during Tynslee's brief minority. The record is devoid of any evidence that there was any need or opportunity for Appellant Collins to provide reimbursement. It does not reflect any unpaid expenses. There is no evidence that any person or entity requested reimbursement of these medical expenses. Where there is no evidence of a debt, there cannot be evidence of failure to pay the debt.

Due to Tynslee's short life and the circumstances surrounding her death, Appellant Collins being unaware that he was Tynslee's father, was unable to provide the more usual means of attention and support to his minor child during her brief life. There is no evidence which reasonably supports the application of the statute in this regard.

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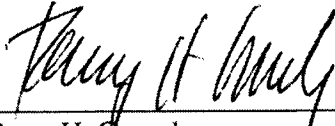
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

That the Probate Court's Order filed April 29, 2015, is hereby reversed. Appellant Collins, as a statutory beneficiary of the estate of Tynslee Elizabeth Fields is entitled to one half of any and all proceeds derived therefrom.

That the custodian of wrongful death and estate settlement proceeds, Ruth F. Hindman, Esq., is hereby authorized and directed to distribute the entirety of said proceeds presently held in trust to the statutory beneficiaries, Lauren Murphy and Mark Collins in equal shares.

That this Court's Order applies and shall apply to the distribution of all proceeds, past, present, and future which arise from the referenced action.

IT IS SO ORDERED.



Perry H. Gravely
Circuit Court Judge, Greenville County

December 4, 2015
Greenville, South Carolina

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF GREENVILLE FILED-CLERK OF COURT CASE NO: 2015CP2302860

IN THE COURT OF COMMON PLEAS
PAUL B. WICKENSIMER

2015 DEC 28 11 11 23
Mark Collins vs Lauren Murphy

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 28th day of December, 2015, and a copy mailed first class this 28th day of December, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court