

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 IN THE MATTER OF:)
Tynslee Elizabeth Fields, Deceased)
)
 Lauren Murphy as Statutory Beneficiary,)
)
 Petitioner,)
)
 vs.)
)
 Mark Collins, and The Estate of Tynslee)
 Elizabeth Fields, Deceased,)
)
 Respondents.)

IN THE PROBATE COURT

CASE NO.: 2012-ES-23-01718

ORDER

RECEIVED
 MAR 11 2016
 SC Court of Appeals
FILED
 APR 29 2015
 GREENVILLE COUNTY
 PROBATE COURT

Hearing Date..... January 9, 2015
 Presiding Judge..... Debora A. Faulkner
 Attorney for Petitioner..... Charles W. Marchbanks, Jr., Esq.
 Attorneys for Respondent..... John M. Read, IV, Esq. & Jessica A. Salvini, Esq.
 Attorney for the Estate of Decedent..... Ruth F. Hindman Dipasquale, Esq.

The facts of the case before the Court are immeasurably tragic. Lauren Murphy and Mark Collins conceived baby girl, Tynslee Elizabeth Fields (hereinafter “Tynslee”), who was born, lived for one hour, and passed away as a result of an injury during her delivery. The parties, who have been estranged since early in the pregnancy, dispute the division of a partial settlement from a medical malpractice lawsuit [Civil Action Number 2013-CP-23-04186] incident to the baby’s death.

The mother of the child, Lauren Murphy (hereinafter “Murphy”), filed Motions both in Circuit Court and Probate Court requesting that Mark Collins (hereinafter “Collins”) be denied any distribution of the proceeds from the above-mentioned partial settlement. After careful

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consideration of the facts presented and a thorough analysis and application of South Carolina law, Petitioner's Motion is hereby GRANTED.

PROCEDURAL BACKGROUND

1. On June 12, 2012, Murphy gave birth to Tynslee Elizabeth Fields. Tragically she died shortly thereafter due to an injury to her vertebrae during delivery.
2. On October 4, 2012, Murphy filed a Petition in this Court requesting appointment as Personal Representative (hereinafter "PR") of the estate of Tynslee. The Respondents named in the action were *Tynslee Elizabeth Fields, Decedent, and her next of kin*. The action was served on Collins and Jeremy Paul Fields (hereinafter "Fields"). Fields was Murphy's boyfriend at the time she met Collins. All parties were served and noticed of the hearing set for December 3, 2012.
3. On December 3, 2012, Fields did not appear for the hearing neither did he file an Answer. Collins and Murphy were represented by counsel. The Parties settled all issues. They agreed Fields would be dismissed as a party since DNA test results were conclusive that Collins was the biological father of Tynslee. Collins did not contest the appointment of Murphy as PR so long as the estate would remain open until the *disposition of the civil lawsuit*. Collins also agreed that Murphy could serve as Personal Representative without bond with the following provision, *no monies in this matter are to be distributed to Ms. Murphy until a bond or bond waiver is finalized*.
4. On January 30, 2013, the Hon. Edward M. Sauvain issued the Order memorializing the agreement and included the language quoted above. The Order added a clause directing DHEC



to amend Tynslee's Death Certificate to reflect Collins as her father.¹ No specific finding of paternity was made in the Order, although it was certainly implied.

5. On February 24, 2014, Murphy as PR filed a *Petition* in Circuit Court captioned as *Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields vs. Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Mercy Obstetrics & Gynecology, P. A., Ragesh Pandya, MD, Upstate OB-GYN Assoc., PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10*, with the case number C.A. No.: 2013-CP-23-04186. The *Petition* requested Court approval of a settlement reached with Mercy Obstetrics & Gynecology, P.A., and Ragesh Pandya. She requested authority as PR and individually to consummate the settlement with these Respondents alleging the settlement was in the best interest of the estate and statutory heirs. An Order was issued on the same date, approving the partial settlement proceeds totaling Five Hundred Eighty-Three Thousand, Five Hundred Seventy-Seven Dollars and Fifty-Two Cents (\$583,577.52). The Order found that Murphy and Collins were the statutory beneficiaries. Further, it found that \$5,000.00 would be allocated to the Estate as survival proceeds. The proceeds were deposited and held in trust with the Hughey Law Firm, LLC.

6. On July 29, 2014, Collins' attorney sent a demand letter demanding that his one half of the proceeds, \$291,788.76, be paid to Collins directly as a statutory beneficiary. Murphy, through her attorney, refused his demand.

7. On August 6, 2014, Collins filed a *Motion to Compel* in Circuit Court under the same caption and case number as set forth above in #5.

¹ There is nothing in the record indicating that the Death Certificate was amended. The Court's file has only the original Death Certificate which names Fields as the father.



8. On August 15, 2014, Murphy filed a *Return* entitled *Motion to Deny Collins Any and All Proceeds Derived From Settlement of Survival and Wrongful Death Actions*.

9. On October 17, 2014, the Hon. Steven H. John issued an Order after a hearing on September 30, 2014. The Order found that the Circuit Court did not have subject matter jurisdiction to hear the Motion. The Order directed the matter be referred to the Greenville County Probate Court under S. C. Code of Laws, §15-51-40.

10. On November 18, 2014, Murphy filed her *Motion to Deny Collins Any and All Proceeds Derived From Settlement of Survival and Wrongful Death Actions* in the Probate Court. Collins filed his *Return in Opposition*. The hearing on the Motion was January 9, 2015. The attorneys presented their arguments and submitted evidence by way of sworn affidavits and verified pleadings. No testimony was taken. After the hearing, the Court directed counsel to prepare memoranda with all relevant cases and prepare proposed orders.

FINDINGS OF FACT

Based on the presentations of counsel, all exhibits, and pleadings submitted by counsel, I make the following findings of fact:

1. Murphy, age 22, met Collins, age 37, in July, 2011, while both were employed at the same Wal-Mart Store. Murphy and Collins were unmarried. Murphy had no children. Collins had two (2) minor children from a relationship with Angela King. Murphy was in a relationship with Fields, and Collins was in a relationship with Angela King when they met. Murphy alleges that she ended the relationship with Fields in August, 2011, after she and Collins became intimate. Their intimate relationship continued from August, 2011, until sometime shortly after



October 4, 2011, when Murphy learned she was pregnant. The estimated date of conception was September 16, 2011.

2. After sharing the news with Collins, Murphy shared the news that she and Collins were expecting a baby with her family and her friends. Collins' sister was also aware of the news as well as Angela King, mother of his other 2 children. Collins appeared excited about the news. Collins did ask Murphy if Fields could be the father. Murphy told him *no* because Fields had suffered with testicular cancer some time ago. Collins appeared very accepting of the fact that he was the father. Collins alleges that he promised Murphy to *always be an active father in our child's life*².

3. During their brief romance, it appears that Fields continued to pursue Murphy, and Collins continued relations with Angela King and later developed a new relationship with Lisa.

4. Soon after the pregnancy announcement, the relationship between Collins and Murphy deteriorated. Murphy learned that Collins was being unfaithful with Lisa. Despite their breakup, Collins told Murphy he *would not turn his back on her or their child*.³

5. In reaction to this news, Murphy intensified her relationship with Fields and tells Collins that she believes that Fields is the baby's father. Collins claims that Murphy prohibited him from going with her to any other doctor's appointments and blocked his telephone calls. This was in November, 2011.

6. On November 28, 2011, Murphy had her first pre-natal visit. At the visit, she listed Fields as the child's father. She alleges that she did this since Collins was out of the picture, and she felt her future was with Fields.

² See Affidavit of Mark Collins, Exhibit C

³ Affidavit of Mark Collins, Exhibit C

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7. In December, 2011, despite alleging he was prohibited from attending any doctor's appointments with Murphy, it is undisputed that Collins attended the first-trimester ultrasound with Murphy for the purpose of determining the sex of the child. Later Collins gave Murphy a necklace with the word *Mom* for Christmas in December, 2011.

8. Murphy initiated contact with Collins on New Year's Eve of 2011 by driving to his home. Following their visit, Murphy had a pre-natal appointment on January 2, 2012, and January 6, 2012. Collins did not attend.

9. In February, 2012, Collins promised to purchase a comforter for the baby which he never did. Also, Murphy had seventeen (17) prenatal appointments with the last one being on June 5. Collins did not attend or inquire about any of these appointments. He became engaged to Lisa and suggested several times that Lisa did not trust him. As such, he became indifferent to Murphy and the pregnancy.

10. On June 11, Murphy was admitted into the hospital to be induced on June 12. She did not notify Collins. She was driven to the hospital by Fields with her mother and a friend in tow.

11. On June 11, Angela King called Collins to inform him that Murphy was in the hospital. Collins did not go to the hospital because *I did not want an altercation with Lauren's family or Jeremy Fields.*⁴

12. After Tynslee was delivered, she was transferred to Special Care Nursery where she died on June 12. With the encouragement of her mother and with Fields consent, Murphy listed Fields as the child's father on birth and death certificates. She also listed him as father in the obituary.

13. On June 12, Angela King called Collins expressing her sorrow over the baby's death. This was the first time he knew of the baby's death. Ms. King learned of it via *Facebook*. Collins

⁴ Affidavit of Mark Collins, Exhibit C



became concerned and called Lisa, his fiancée, to discuss whether he should go to the hospital. He decided not to go to the hospital.

14. On June 13, Murphy called Collins. Collins alleges that Murphy reiterated that the child was Fields and that Collins was not to come to the funeral on June 16 or cause any more pain.

15. On June 16, Collins did not attend the funeral. He went to the lake with his family.

16. At some point after the baby's death, the Coroner informed Murphy that the baby's neck had been broken during delivery.

17. With this knowledge, Murphy visited Cynthia Hopkins, Collins' sister, and gave her pictures of the baby and apologized for lying to Collins about Fields being the baby's father. Murphy asked her to have Collins contact her to talk about the baby.

18. Murphy arranged a meeting with Collins in July, 2012. She alleges she wanted to show him photos of the baby to prove to him that Tynslee was his due to their strong resemblance. She also alleges that she wanted him to assist her in getting justice for Tynslee. At some point after discussing the possibility of recovering against the medical providers, Collins agreed to have a DNA test. He paid for one half of the test.

19. Although neither the test results nor the date of the DNA test is not in the record, it appears to have been in July or August of 2012. The DNA test conclusively established Collins as Tynslee's father. When Murphy received the DNA results, she called Collins and asked for a meeting. Murphy presented the test results to Collins. He did not offer any denial or challenge the results. After seeing the results, Collins asked if he could have some photographs of Tynslee. Then Lisa, his fiancée, drove up and Collins left immediately without further discussion. Murphy alleges that she became very upset and cried when he left since she wanted to talk with him about what they should do about Tynslee's death.

Handwritten initials "JRS" and "JH" with a date "2/11" written below them.

20. Later, Murphy made a box of photographs and other memorabilia for Collins. Murphy still has the box, although she says she has made it available to Collins. Collins has not alleged that he desired photographs of Tynslee.

21. In September, 2012, Murphy sent a text to Collins inviting him to a Memorial Walk for Tynslee set for October 21, 2012. Collins did not attend.

22. After the text, Collins called Murphy, put her on *speaker phone* and told her he was never going to speak to her again. Lisa was present with Collins listening to the conversation.

23. The next meeting between Collins and Murphy was on December 3, 2012, at the Probate Court hearing on the appointment of a Personal Representative for Tynslee.

24. After Tynslee's death, Murphy was diagnosed with Acute Stress Disorder, a Parent-Child Relational Problem, and later a Generalized Anxiety Disorder. In January, 2014, she was diagnosed by the clinician with Post Traumatic Stress Disorder.

25. Murphy, alone, undertook to vindicate Tynslee's death by initiating an action to become Personal Representative, by engaging counsel to file suit against the individuals and entities responsible for her death. After reaching a settlement with some of the Defendants, she appeared in Circuit Court with her attorneys. She has filed a complaint with the Medical Board against the doctor, contacted state lawmakers to advocate for laws to protect other newborns, worked with March of Dimes, organized a memorial event to honor Tynslee's 2nd birthday, and collected baby blankets to donate in Tynslee's honor to the GHS NICU. She is also inquiring into the establishment of a park in memory of Tynslee. The record does not show that Collins participated in or initiated any event to memorialize Tynslee.

27. S. C. Medicaid, insurance for indigents, paid for all of Murphy's prenatal care and paid all the hospital expenses for Murphy and Tynslee. Collins was working full time during



Murphy's pregnancy and after Tynslee's death. At the hearing on January 9, 2015, he was still employed full time with Wal Mart. He has two (2) other children who live with their mother, Angela King. They both are covered by S. C. Medicaid.

28. All parties are in agreement that the issue of paternity is not contested. That issue is addressed at the conclusion of this order and requires no further discussion. The contested issues will be discussed in detail.

ISSUES PRESENTED

1. Whether the Petitioner should be denied the relief she is requesting pursuant to S.C. Code of Laws, §15-51-40, because, in her capacity as Personal Representative, she requested Court approval of the wrongful death settlement alleging the settlement served "the best interests of ... the statutory beneficiaries". The Order provided after the payment of fees, costs, and liens, the balance of the proceeds should be paid in accordance with the law.

2. If the above is not dispositive, whether or not the Petitioner has satisfied the requirements of S. C. Code of Laws, §15-51-40, by presenting a preponderance of evidence supporting Petitioner's allegation that Respondent failed to reasonably provide support for the Decedent as defined in S. C. Code of Laws, §63-5-20, and failed to otherwise provide for her needs during her minority.

Law/Analysis

Issue # 1:

Respondent asserts the issue of allocation among the statutory beneficiaries has already been decided by Petitioner's statement in the Circuit Court action affirming that the settlement was in the best interests of the Estate/statutory beneficiaries. Further, Respondents point to the



Circuit Court Order's direction that the balance of the proceeds (after payment of costs/fees) should be paid *in accordance with the law*.

S. C. Code of Laws, §15-51-42(A), provides that only a Personal Representative has authority to settle a wrongful death or survival action. Therefore, Murphy as PR had the statutory duty and authority to act on behalf of the statutory heirs, herself and Collins, and on behalf of the Estate, which includes Collins, herself, and any estate creditors. A Personal Representative is a fiduciary and is duty bound to protect the interests of the statutory heirs and the estate. In this case, that involved the advancement of the legal interests of the deceased in the case of a survival action and the advancement of the legal interests of the statutory heirs in case of the wrongful death action.

In the proceedings to settle the wrongful death and survival actions, Murphy, acting as Personal Representative in accordance with law, requested the Circuit Court to approve the settlement. As a part of her duties as a fiduciary, she hired counsel to advise her and, as such, she submitted the settlement as serving the best interests of the Estate and the statutory beneficiaries. Respondent now argues that by making this representation she has given up any right to now come before the Court to request that Respondent's inheritance be diminished. For Respondent to prevail on his argument, he must show that Murphy's *actions as Personal Representative* resulted in the forfeiture of her right to proceed *individually* under S. C. Code of Laws, §15-51-40, to limit Collins' inheritance. There is no case law or statute which supports this position. There is no requirement that a parent's action to deny or limit inheritance must first be determined before that parent as Personal Representative may resolve a tort action. S. C. Code of Laws, §15-51-10, describes the process of obtaining court approval of a settlement in a wrongful death/survival case. S. C. Code of Laws, §15-51-40, describes the process of bringing



an action to allocate the settlement proceeds. Clearly, the allocation issue is a separate issue as set forth specifically in S. C. Code of Laws, §15-51-40.

While South Carolina has not specifically addressed this issue, the Missouri Court of Appeals has stated that Missouri's Wrongful Death Statute "creates an indivisible cause of action in favor of the parents... and allows them a single recovery for their equal benefit [but] [o]nce the cause of action for wrongful death, which is indivisible, becomes merged in a judgment, the interests of the mother and father then become separable." Glasco et al. v. Fire and Cas. Ins. Co., 709 S.W.2d 550 (Mo. App., 1986).

Likewise, South Carolina's Wrongful Death Statute, which established the underlying cause of action in this case, is separate and apart from the distribution of proceeds statute. The underlying case lay in tort and was in the exclusive jurisdiction of the Court of Common Pleas. S. C. Code of Laws, §22-3-10(1) (1976 as amended). After approving the wrongful death/survival settlement, the Court found that the proceeds would be divided by *law* (emphasis added). The *law* would have been either: 1) an equal division of the proceeds as set forth in the intestacy statute, or 2) an unequal division if one parent's inheritance is successfully denied or limited under S. C. Code of Laws, §15-51-40. The law is clear that "... the probate court may deny or limit either or both parent's entitlement for a share of the proceeds..." S. C. Code of Laws, §15-51-40 (emphasis added). Thus, this wrongful death/survival claim and the subsequent determination of proceeds allocation are, by express statutory language, separate actions with distinct purposes which must be adjudicated separately. This was made clear by the October 17, 2014, Circuit Court Order in this case which directed the issue of allocation to be heard in Probate Court. The argument that the PR's action to settle the tort claim forecloses any action by her individually to limit Collins inheritance is without merit.



This Court finds that the South Carolina Legislature's decision to separate the statute creating a wrongful death/survival cause of action from the statute providing for proceeds allocation is analogous to Missouri's finding that resolving a tort claim and dividing its proceeds is a two-step process. To find otherwise could pit interested persons against each other during the course of the underlying litigation thus creating a chilling effect on the case to the detriment of the decedent's claim.

Therefore, this Court finds the issue of proceeds allocation was not decided when Petitioner, as the Personal Representative of Decedent's Estate, alleged to the Circuit Court that the settlement was in the best interest of the estate and statutory beneficiaries. Further, Murphy, by filing a Motion to limit Collins' inheritance, was acting in accordance with the Circuit Court Order's directive that the proceeds be paid *in accordance with the law*. Petitioner followed the guidelines prescribed by the S. C. Code of Laws by filing her Motion in her individual capacity as an intestate heir asking the Court to deny Respondent any funds stemming from the medical malpractice partial settlement.

Issue # 2

In making the determination as to whether Petitioner has satisfied the legal requirements to deny or limit Collins' inheritance under these facts, the Court must examine the relevant statutes and cases.

The relevant part of the South Carolina Wrongful Death Statute is as follows:

Whenever the death of a person shall be caused by the wrongful act, neglect or default of another and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, the person who would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured...

S. C. Code of Laws, §15-51-10 (1976 as amended).



In survival actions, the appropriate damages include those for medical, surgical and hospital bills, conscious pain and suffering, and mental distress of the deceased. *Scott v. Porter*, 340 S.C. 158, 530 S.E. 2d 215/ (S.C. App. 2000). In Wrongful Death actions damages include pecuniary loss, mental shock and suffering, wounded feelings, grief, sorrow, and loss of society and companionship. *Self v. Goodrich*, 300 S. C. 349, 387 SE 2d 713 (S.C. 1989). The element of pecuniary loss is not a proper element when parents lose a minor child. *Zorn v. Crawford*, 252 S.C. 127, 165 SE 2d 640 (S.C.1969).

Therefore, South Carolina law provides that parents who have suffered the death of a child due to the negligence of another are entitled to a presumption of nonpecuniary damages. *Mock v. Atlantic Coast Line R.R. Co.*, 227 S.C. 245, 259, 87 S.E.2d 830, 836 (1955) (emphasis added); *Self v. Goodrich*, 300 S.C. 349, 352, 387 S.E.2d 713, 714-15 (Ct.App.1989)

The division of proceeds obtained from a wrongful death claim is controlled by S. C. Code of Laws, §15-51-40 (1976 as amended), which states, in relevant part:

The amount so recovered shall be divided among the before-mentioned parties 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. *However, upon 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.*

In 1994 in the case of *Ballard v. Ballard*, 314 SC 40; 443 SE 2d 802 (SC 1994), a mother, acting as Personal Representative, settled a wrongful death case arising out of the death of her 18-year old daughter. The settlement was for \$300,000. Mother petitioned the Court to deny the father his share of the recovery alleging Father had failed to support or visit their Daughter. She argued that the recovery should be proportional to the injury. The Court

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disagreed. The Court denied her request finding that the shares received are strictly controlled by the intestacy statute regardless of the proportion of damages suffered by each parent. *To construe the statute otherwise would be to read the provision regarding distribution out of the statute, a result this Court is constrained to avoid. Ballard v. Ballard, supra.*

In 1994 and again in 1996, this governing statute, §15-51-40, was amended to include the word in italics (see above). Whether these amendments were in response to *Ballard* is not certain; however, it is clear the amendments are designed to avoid a windfall by denying or reducing the parent's intestate share if the parent abandoned his/her parental duty to support his/her child and failed to provide for the child's needs while a minor.

Reasonable Support

S. C. Code of Laws, §63-5-20 (a) (1976 as amended), defines an individual failing to provide reasonable support, as:

any able-bodied person capable of earning a livelihood who shall, without just cause or excuse, abandon or fail to provide **reasonable support** (emphasis added) to ... his or her minor ... child dependent upon him or her ... 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.** (emphasis added)

There is no South Carolina precedent to guide the Court in the application of S. C. Code of Laws, §15-51-40 and §63-5-20, to the facts at bar.

Applying the plain language of §15-51-40, it is undisputed that Collins failed to pay any support for Tynslee whatsoever during her minority. Collins argues applying the statute to an infant whose minority consists of one hour of life is not reasonable. The argument is a cogent one in that it would have been impossible for Collins to pay support during the short life of this infant.

Reasonable Support and the Needs of the Decedent

The facts as presented indicate that Collins had every reason to believe he was the father of Tynslee, despite the ups and downs of his relationship with Murphy. Collins was 37 years old with 2 other children and was not inexperienced in these matters. When Collins received the conclusive DNA results in July or August, 2012, he did not appear at all surprised and has never alleged he was shocked to see the results of the test. Collins affirmed in his affidavit that he believed that the baby was his when she told him in October, 2011. When Collins asked Murphy about Fields, she informed Collins that Fields was incapable of fathering a child due to a prior bout with testicular cancer. This fact has not been refuted by any evidence presented for consideration. After their breakup in October, 2011, Murphy and Collins would continue to have brief interludes with one another which would include telephone conversations or meetings. In December, Collins attended her ultrasound appointment despite her previous allegation to him that Fields was the father. Murphy and Collins would have these interludes while also keeping relations with their other partners, Fields and Lisa. Once Collins became engaged to Lisa, his contact with Murphy came to an end. Collins affirmed in his affidavit that he told Murphy he would support the child and that his new girlfriend would have to understand. He promised to stand by her (Murphy) and the child. Collins made phone calls regarding the status of the child when Murphy was hospitalized but did not go to the hospital or funeral claiming that Murphy prevented his attendance. His affidavit stated his decision was made after discussing this with Lisa. These actions are not consistent with Collins' allegation that he believed Fields to be the father of the child.

Collins made no effort to assist Murphy with any expenses related to the pregnancy. Collins argues that the plain language of the statute at issue does not include payment of prenatal



expenses in the definition of *reasonable support*. If we were to include these prenatal expenses, putative fathers would be subject to contempt actions for failure to pay prenatal care, and it would open up the debate on when life begins. Furthermore, Collins argues that Murphy was adamant that Fields was, in fact, the father at the time of Tynslee's birth and thwarted Collins from being involved whatsoever in Tynslee's birth, funeral, or other final arrangements.

In the 2011 South Carolina Supreme Court decision of *Roe v. Reeves*, 392 S.C. 143, 708 S.E.2d 778 (2011), the Court made the following findings in this adoption case:

[M]ust [support the child] regardless of whether the mother-to-be is willing to have any type of contact with him whatsoever or to submit to his emotional or physical control in any way ... Even in the most acrimonious of situations, a father-to-be can fund a bank account in the mother-to-be's name. He can have property or money delivered to the mother-to-be by a neutral third party. He can—and must—be as creative as necessary in providing material assistance to the mother-to-be during the pregnancy and, the law thus assumes, to the child once it is born ... He must not be deterred by the mother-to-be's lack of romantic interest in him, even by her outright hostility. If she justifiably or unjustifiably wants him to stay away, he must respect her wishes but be sure that his support does not remain equally distant ... It is not enough that the father simply have a desire to raise the child; he must act on that interest and make the material contributions to the child and the mother during her pregnancy required of a father-to-be ... Even though she rebuked some of his efforts, that did not alleviate or in any way mitigate his obligation.

Roe v. Reeves, 392 S.C. 143, 708 S.E.2d 778 (2011).

The case at bar is not an adoption case; so the Court is not extending the definition in this case to include prenatal care. However, given that Collins had reason to believe he was indeed the father, he was on notice that he had the obligation and duty at this time to attend to the needs of his newborn daughter and to make whatever effort was needed to attend to those needs. He was most assuredly on notice after receiving the DNA test results.

S. C. Code of Laws, §63-5-20(a) (1976 as amended), includes *usual or unusual necessities* in its definition of *reasonable support*. Clearly in this case, Tynslee had the *usual*



necessities associated with her birth, including the medical expenses incurred for her birth and for the extraordinary measures taken to try to save her life. She also had *unusual* necessities as a result of her very short life. Those included expenses associated with her death such as the need for a decent funeral, burial, memorial, grave marker; and, eventually legal expenses. After Collins was presented conclusive DNA results, thereby removing his argument that he did not believe he was the father, Collins continued his pattern of indifference toward the tragic death of his daughter. Collins did nothing outwardly to acknowledge his status as Tynslee's father. He took no measure of parental responsibility whatsoever. He made no inquiries into what, if anything, he could do or pay toward the medical expenses paid by Medicaid or the burial and funeral expenses paid by Murphy or Murphy's family.

Collins argues he did not take any steps to reimburse medical expenses for Tynslee since Medicaid paid the medical bills. At the time of Tynslee's birth, Collins was working full time at Wal-Mart and remained a full-time employee as of January, 2015. South Carolina's Supreme Court's decision of *Roe v. Reeves supra* undermines Respondent's assertion that he was not required to pay medical expenses since they were paid by Medicaid. The *Reese* case finds that a duty to support is not extinguished or forgiven if there are collateral sources of support. The support statute finds that an able-bodied parent is to provide support in accordance with his means and standard of living. Collins did not inquire into, offer, or provide any financial assistance by way of reimbursement for the child's medical bills. Collins did not attempt to inquire into, or offer or provide payment toward reimbursement of funeral or burial expenses. He did not attend the community memorial events arranged by Murphy; he did not arrange any independent memorial of his own or have a service of his own for his daughter. He did not purchase a marker or arrange a family event including Tynslee's two half siblings to



acknowledge Tynslee. He did not contribute any of his time, effort, or finances to the underlying medical malpractice case. The *Reese* case *supra* holds that a parent must accept his responsibilities despite the desires of the other parent or level of acrimony between the parties. Other than being a biological link, he has taken no affirmative steps indicating his acceptance of parental responsibility for Tynslee. To date, his only action has been to passively participate in legal proceedings in order to protect his financial interests in any settlement or verdict.

CONCLUSIONS OF LAW

1. I find that subject matter jurisdiction is proper and that the Court has personal jurisdiction over the parties and that all parties have been properly noticed;
2. I find the Respondent, Mark Collins, as a matter of law, is the biological father of Tynslee Fields with all the rights and responsibilities thereto.
3. I find that Petitioner did not forfeit and is in no way estopped from bringing this action in her capacity as intestate heir because of her participation in the proceedings seeking appointment as Personal Representative or her participation as Personal Representative in the settlement proceedings in Circuit Court on behalf of the estate and the statutory heirs.
4. I find that *reasonable support* includes providing for the usual and unusual necessities as set forth in S. C. Code of Laws, §63-5-20 (a) (1976 as amended);
 2. I find that Collins failed to pay anything toward the reimbursement of Tynslee's medical expenses incurred during her minority. I find these expenses are usual necessities;
 3. I find that Collins failed to pay or attempt to pay or reimburse others who paid for Tynslee's unusual necessities. I find these unusual necessities to include her burial, funeral, memorial, or legal expenses since her death. I further find that Collins has neither offered nor



expended any time, except for the time and expense associated with his receipt of the settlement proceeds, in the furtherance of legal actions on Tynslee's behalf seeking justice from those professionals responsible for the tragedy that caused his daughter's death;

4. In view of the law as applied to these facts, receipt of one-half of any settlement or verdict received for Tynslee's death by Collins would amount to a windfall given the fact that his contribution to her life was simply one of biology. The choice to be involved as a father was his and only his to make. The 1994 and 1996 amendments to the S. C. Code of Laws, §15-51-40, sought to prevent such an unjust outcome. Had Collins made some effort on any of the above, there may have been a legal basis to support his receipt of a share or a reduced share. However, he made no effort whatsoever to acknowledge his parental obligation or take responsibility for his daughter. A parent should not receive a windfall simply because he impregnated the child's mother. Respondent openly failed to comply with his duty to provide essential support and did not insert himself into the tragedy of this child's death until it appeared he might receive an inheritance.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that:

1. Petitioner has shown by the preponderance of the evidence that Respondent, an able-bodied man who is and was working full time, failed to provide reasonable support as set forth in S. C. Code of Laws, §15-51-40 (1976 as amended) and §63-5-20(a) (1976 as amended), such that his right to receive any portion of the proceeds received in Civil Action: 2013-CP-23-04186 is denied.

2. Respondent is hereby divested of any proceeds received from any future settlement or verdict in any matter wherein his claim is based upon his relationship with Decedent;



3. Petitioner, as Personal Representative, may proceed to resolve any pending causes of action with regard to medical negligence causes of action against any remaining tortfeasor (s) without the consent of the Respondent given the findings herein.

5. Ruth F. Hindman Dipasquale, Esq., attorney for the Estate of Decedent and court-appointed administrator of the funds at issue, is hereby authorized to distribute existing proceeds in the amount of Five Hundred Eighty-Three Thousand, Five Hundred Seventy-Seven Dollars and Fifty-Two Cents (\$583,577.52) plus whatever interest the funds have generated as follows: Two Hundred Ninety-One Thousand, Seven Hundred Eighty-Eight Dollars and Seventy-Six Cents (\$291,788.76) to Petitioner immediately upon the entry of this Order with the remainder distributed to Petitioner thirty (30) days after the entry of this Order; and

6. That Petitioner may directly receive any future wrongful death proceeds derived from a settlement or verdict payable to statutory heir. She may receive survival proceeds as the Personal Representative of the decedent's estate. After payment of estate costs, fees, valid claims, any funds remaining will be solely to Petitioner.

IT IS SO ORDERED.


Debora A. Faulkner
Probate Court Judge, Greenville County

DATE: April 29, 2015