

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

PERRY H. GRAVELY, CIRCUIT COURT JUDGE

CASE NO.: 2016-000536

In the Matter of Tynslee Elizabeth Fields, Deceased,

Lauren Murphy as Statutory Beneficiary, Appellant,

v.

Mark Collins, and The Estate of Tynslee Elizabeth Fields, Defendants,

Of Whom Mark Collins is the Respondent.

RECORD ON APPEAL
VOLUME II

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1 STATE OF SOUTH CAROLINA)
2) IN THE PROBATE COURT
3 COUNTY OF GREENVILLE) ORIGINAL
4 IN THE MATTER OF:
5 Tynslee Elizabeth Fields, Deceased
6 CASE NUMBER:
7 2012ES2301718.
8 LAUREN MURPHY,
9 Petitioner.
0 MARK COLLINS and THE ESTATE OF TYNSLEE ELIZABETH
1 FIELDS,
2 Respondents.

14 Probate hearing taken in the aforementioned
15 matter was heard before the Honorable Judge
16 Debora A. Faulkner, taken before Donna B.
17 Friddle, Court Reporter and Notary Public, at
18 Probate Court, Greenville County Square, 301
19 University Ridge, Greenville, South Carolina,
20 on the 9th day of January, 2015, commencing
21 at the hour of 10:18 o'clock, a.m.

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21 - - - - -

22 INDEX OF EXAMINATION

23 PAGE

24 COLLOQUY BETWEEN THE COURT AND

25 COUNSEL.

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THERE WERE NO EXHIBITS INTRODUCED.

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(In the following transcript, a dash [--]
is used to indicate an unintentional or
purposeful interruption in a sentence, or to
indicate halting speech or an unfinished
sentence in dialogue.)

- - - - -

1 THE COURT:

2 This is in the matter of the Estate of
3 Tynslee Elizabeth Fields. The file
4 number is 12-1718. We're here today on
5 a Notice of Motion and Motion to Stay
6 Disbursement of Proceeds. The
7 Petitioner in this matter is Lauren
8 Murphy, who is also the Personal
9 Representative in this matter. This
10 case concerns the distribution of not
11 only survival proceeds, but also
12 wrongful death proceeds. Representing
13 the Petitioner Ms. Murphy is Charles
14 Marchbanks, who is present. The
15 Respondent is Mark Collins, who is
16 present, and Ms. Jessica Salvini and
17 John Read represent him. And we have
18 met in chambers to discuss the process
19 for today, and what we're going to do is
20 we're going to proceed with legal
21 argument unless there is a need to take
22 testimony. We are also going to note
23 for the record that all of the documents
24 provided to This Court from the Circuit
25 Court are entered for the record not as

1 an exhibit but because it has become a
2 part of our official record that it will
3 be relevant to today's argument and will
4 be adopted as it was submitted in the
5 Circuit Court. Okay. Unless there's
6 anything else I'm ready for, Mr.
7 Marchbanks, for you to argue your
8 Motion.

9 MR. MARCHBANKS:

10 Thank you, Your Honor. May it please
11 The Court, the Motion before The Court
12 today pertains to either limiting or
13 denying Mark Collins' take of a
14 settlement, a wrongful death settlement,
15 involving the death of infant Tynslee
16 Elizabeth Fields. My client, Lauren
17 Murphy, is the biological mother of
18 Tynslee. Mark Collins is the biological
19 father. As the evidence in the record
20 that The Court has now adopted shows
21 there is some dispute amongst the facts
22 of some of the details of the case that
23 we may need to get into on a factual
24 basis, but for the purposes of the
25 argument that we have we submit to The

1 Court that Ms. Murphy became pregnant in
2 September of 2011. She notified Mr.
3 Collins of her pregnancy, and Mr.
4 Collins, with the exception of attending
5 one gender-reveal ultrasound
6 appointment, did not interact with Ms.
7 Murphy during the course of the
8 pregnancy. He did not interact with Ms.
9 Murphy during the course of the birth.
10 He did contact Ms. Murphy upon learning
11 of the death of the child. He did not
12 attend the funeral of the child. Did
13 not attend a memory walk set for the
14 child. During that time period Mr.
15 Collins additionally did not provide any
16 financial support to Ms. Murphy
17 throughout the course of the pregnancy,
18 nor did he provide any support for the
19 unborn child in regards to funeral
20 expenses, nursery, those types of
21 things. I think what is in the record
22 in Affidavits and statements and the
23 pleadings certainly covers that in much
24 greater detail, but for the purposes of
25 the legal argument I will limit the

1 facts to that for now. We are moving
2 This Court to deny or reduce Mr.
3 Collins' take of a wrongful death
4 lawsuit that Ms. Murphy filed, that Ms.
5 Murphy involved herself in, contracted
6 with attorneys and worked for a
7 considerable length of time to reach a
8 settlement. The settlement that was
9 reached was a partial settlement against
10 certain defendants, but not against all
11 of the defendants in the case. And I
12 think it's important that the record
13 show that there is still an outstanding
14 defendant. Ms. Murphy settled the claim
15 against Mercy OB-GYN, Dr. Ragesh Pandya
16 of Upstate OB-GYN. There is still a
17 pending claim at this point in time
18 against Bon Secours Health System and
19 Bon Secours St. Francis Health System
20 doing business as St. Francis Eastside.
21 The settlement amount -- the initial
22 settlement amount was \$975,000. Ms.
23 Murphy petitioned for approval of that
24 settlement in the Circuit Court, and
25 that settlement was approved by the

1 Circuit Court on -- let's see, February
2 24th, 2014. At that point in time Ms.
3 Murphy sought to divest Mr. Collins of
4 any interest in the settlement amount by
5 filing a Motion with the Probate Court
6 here in Greenville County. The Probate
7 Court seeing the size of the settlement
8 directed the determination be done by
9 Circuit Court. Circuit Court -- we went
10 and had a hearing in Circuit Court a few
11 months ago, and Circuit Court asked that
12 Probate Court -- they believed Probate
13 Court has original jurisdiction over
14 this specific issue and asked for a
15 determination to be made here. So that
16 is why we are here. And the basis of
17 our argument is, as I stated, found in
18 the Wrongful Death Act, South Carolina
19 Code 15-51-40. And in part, the
20 relevant part of what code section
21 states is, "On Motion by either parent
22 or any other party of potential interest
23 based on the decedent having died
24 intestate" -- which this being a minor
25 child obviously did -- "the Probate

1 Court may limit or deny either or both
2 parents entitlement for a share of the
3 proceeds if The Court determines by a
4 preponderance of the evidence that the
5 parent or parents failed to reasonably
6 provide support for the decedent as
7 defined in 63-5-20 and did not otherwise
8 provide support for the needs of the
9 decedent during his or her minority."
10 Now, the Code Section
11 63-5-20, as The Court knows,
12 specifically goes to the Children's Code
13 in the State of South Carolina, and that
14 references and requires a parent to
15 provide financial assistance for a
16 member of the family substantially equal
17 to that of the person owing the duty to
18 support. And it further states that
19 this includes both usual and unusual
20 necessities. Now, there is in our
21 opinion, and our position is that these
22 two Code Sections, both 15-51-40 and 63-
23 5-20 include child support as would be
24 ordered by Family Court for a minor
25 child. It is also very clear that the

1 language that is contained within these
2 statutes is quite vague. And whereas
3 this specific law prior to 1996 was
4 actually very strictly construed, and it
5 was very clear and evident what a court
6 had to do with this sort of a situation,
7 in 1996 a bill was introduced into the
8 South Carolina State Senate that added
9 the language in this statute that truly
10 I think muddied the water. It added the
11 language that a person must provide
12 reasonable support and otherwise provide
13 for the need of the decedent during his
14 or her minority. And effectively that
15 change clearly demonstrates that the
16 legislative intent of that amendment was
17 to open the door for a factual
18 determination in a situation -- in a
19 wrongful death situation that involves a
20 minor, and that particular amendment
21 spanned Workers' Comp, it spanned
22 wrongful death, it spanned the intestacy
23 statute in Probate Court. Where certain
24 language was added to that clear-cut
25 50/50 split or each statutory

1 beneficiary takes an equal amount, it
2 clearly muddled the water. It muddled
3 the water such that it effectually makes
4 it a situation to where it becomes a
5 factual issue. And in this particular
6 case what we have is the factual issue
7 of a mother who has been through an
8 utter nightmare with the gestation,
9 birth, death of an infant at the hands
10 of a negligent ob-gyn. And I'm certain
11 that The Court is aware of the facts of
12 what The Court needs to be aware of as
13 far as the facts of the baby's death,
14 but baby was effectively -- there's no
15 other way to say it. The ob-gyn
16 basically took the baby's life. And she
17 suffered through the death of the child,
18 sitting with the child in NICU while it
19 survived for the brief period of time
20 that the child survived, burying her
21 daughter, and throughout all of this
22 time had no contact from the biological
23 father. In fact, the biological father
24 in this case, Mark Collins, only took a
25 test, a DNA test, to determine whether

1 or not he was the actual biological
2 father of this child until after he
3 learned of the negligence of the ob-gyn.
4 And so after ignoring this child, after
5 ignoring Ms. Murphy for that entire
6 period of time, he stands here today
7 asking for one-half of the proceeds of a
8 settlement, gross settlement amount of
9 \$975,000. We submit that would create
10 an unfair windfall; he would be unjustly
11 enriched; it would be an absurd result.
12 The unfortunate aspect of this
13 particular law and this particular
14 amendment, and the statute was amended
15 in 1996, is there has been no case law
16 proceeding or after 1996 to guide a
17 court in how to make a determination in
18 a situation like this.

19 THE COURT:

20 Do you have any legislative history of
21 why it was amended?

22 MR. MARCHBANKS:

23 Well, Your Honor, I do not have -- I
24 looked into the legislative history.
25 However, the -- it's not specifically

1 stated in the legislative history as to
2 exactly why or what the intent of the
3 legislature is or was at that time. I
4 will state that in 1995 there was a
5 Supreme Court decision by the name of
6 Ballard versus Ballard. The cite on
7 that case is 443 S.E. 2nd 802. And in
8 Ballard, that -- in that particular case
9 the father was negligent towards the
10 child, did not support the child at all.
11 Now this was an older child. But he
12 failed to support the child. There was
13 a significant settlement in that case.
14 The mother of the child petitioned for
15 the father not to take any of the
16 benefits subsequent to the child's
17 death, and in Ballard versus Ballard
18 based on the old law, The Court said,
19 well, you know, there's nothing we can
20 do. They split it 50/50. Now 21 months
21 after the Ballard decision was published
22 was when the Senate introduced this
23 bill. And that's Senate bill 11-64.
24 And that is the -- that is the bill that
25 eventually led to the amendment of 15-

1 51-40, which was subsequent to the
2 Ballard decision. And effectively what
3 we're saying, Your Honor, is that
4 amendment opened the door to
5 interpretation. That amendment allows
6 for This Court specifically, because it
7 says on Motion to the Probate Court. It
8 allows for the Probate Court to make a
9 determination as to whether or not each
10 beneficiary should take an equal amount
11 or if any beneficiary should be denied
12 any particular amount. Now, given that
13 there are no -- I've been unable to
14 locate any specific case law that would
15 be prejudicial or that would give The
16 Court guidance in -- in figuring out how
17 to approach a situation like this, I
18 began to explore court decisions that
19 dealt with fathers who never had a
20 chance to pay child support, unwed
21 fathers who never had a chance to pay
22 child support and a court's
23 determination as to whether or not they
24 could benefit from a relationship with
25 the child. And in doing that, and I

1 present it to The Court in a number of
2 places in the submissions that I made to
3 The Court, a couple of cases that deal
4 with oddly enough adoption. And those
5 cases would be Rowe versus Reeves, Rowe
6 versus Reeves being 392 South Carolina
7 143. And that's a South Carolina Court
8 of Appeals opinion. No, that's a
9 Supreme Court of South Carolina opinion.
10 And then Lehr versus Robertson.

11 THE COURT:

12 Could you spell Lehr for me?

13 MR. MARCHBANKS:

14 L-e-h-r.

15 THE COURT:

16 Okay.

17 MR. MARCHBANKS:

18 And Lehr versus Robertson, Your Honor,
19 is a United States Supreme Court case
20 463 U.S. 248.

21 THE COURT:

22 Now, these are both concerning adoption
23 cases?

24 MR. MARCHBANKS:

25 Yes, Your Honor, and I know that that's

1 -- that there's nothing precedential
2 there, but I believe that they're
3 instructive. The basis for my argument
4 as to why they are instructive is
5 because these cases follow a line of
6 decisions where the United States
7 Supreme Court has determined that an
8 unwed father has a constitutional right
9 to have a relationship with their child.
10 However, that constitutional right if he
11 neglects the mother and neglects the
12 child during the pregnancy then the
13 child can be put up for adoption without
14 his consent. So effectively in this
15 particular case what we have, and one of
16 the reasons that I so firmly believe
17 that this would create an absurd result,
18 is because -- and this a hypothetical
19 situation, but in the event Ms. Murphy
20 was not in a position in the event
21 Tynslee survived, and in the event Ms.
22 Murphy was not in a position to raise
23 Tynslee, the facts of this case -- these
24 cases support the fact that she could
25 have put Tynslee up for adoption and not

1 had to get his consent to do that at
2 all. He divested himself of the benefit
3 that stems from fatherhood by his
4 failure to act. And how is it that if
5 he divest himself by his failure to act
6 of a constitutional right how is it that
7 he can stand here today and say, "But
8 I'm still entitled to" -- I think a net
9 of - "\$250,000." The -- the other, even
10 though this is not specifically -- this
11 does not specifically deal with the
12 statute, the Wrongful Death Statute, as
13 -- when it comes to beneficiaries there
14 is -- there is instruction as to how
15 wrongful death damages should be
16 distributed, and for that I'm looking to
17 South Carolina Court of Appeals case
18 Scott versus Porter, which is 340 South
19 Carolina 158. And one of the things
20 that Scott versus Porter does a very
21 good job in doing is outlining what
22 damages are recoverable in a wrongful
23 death action. And it specifically
24 states pecuniary loss, mental shock and
25 suffering, wounded feelings, grief and

1 sorrow, loss of companionship,
2 deprivation of the use and comfort of
3 the intestate society, the loss of his
4 experience, knowledge and judgment in
5 managing the affairs of himself and his
6 beneficiaries. Now, Scott goes on and
7 states that South Carolina law provides
8 that parents are entitled to a
9 presumption of nonpecuniary damages.
10 And that seems to fix it. However, The
11 Court goes on and says that it may often
12 be assumed that grief and sorrow will be
13 expected at the loss of a loved one.
14 However, the strength of such
15 presumption is the function of the
16 closeness of the relationship, and in
17 some cases evidence may be necessary to
18 support the claim of loss.

19 THE COURT:

20 What year was that case?

21 MR. MARCHBANKS:

22 This case, 2000.

23 THE COURT:

24 Was that an adoption case, too?

25 MR. MARCHBANKS:

1 No, Your Honor, this is a case that
2 simply dealt with wrongful death
3 damages.

4 THE COURT:

5 Okay.

6 MR. MARCHBANKS:

7 Specific to the loss of a minor child.
8 And so overall what we have is a law
9 that says in some cases in a wrongful
10 death for somebody to benefit from that
11 they're really going to have show that
12 they suffered loss. We have cases that
13 have facts very similar to the case at
14 bar where fathers were divested of a
15 constitutional right based on very, very
16 similar facts. And we have the
17 controlling law in this situation, the
18 one law that does control, states
19 reasonable support and other support as
20 may be provided. But again I'm not
21 quoting it word for word, but it doesn't
22 specifically state, you know, pursuant
23 to the Child Support Statute. It's very
24 vague. It's very ambiguous. And it is
25 our belief and our position that based

1 on the vagueness of the controlling law
2 and by following the instruction of the
3 interpretation of the Wrongful Death
4 Statute, and applying analogous logic
5 and structure from how a father divest
6 himself of a constitutional right, the
7 conclusion that This Court we ask to
8 reach is if he's done enough to divest
9 himself of the constitutional right he's
10 done enough to divest himself of a
11 little bit of money. And that's all I
12 have at this particular time, Your
13 Honor, unless you have questions from
14 the bench.

15 THE COURT:

16 I don't think I have any at this time.

17 MR. MARCHBANKS:

18 All right. Thank you.

19 THE COURT:

20 Ms. Salvini.

21 MS. SALVINI:

22 Thank you, Your Honor. May it please
23 The Court. What happened in this case
24 was horrible. No parents should suffer
25 the death of a child ever, but The Court

1 has to look at the law before it. And
2 it is not vague and ambiguous. We do
3 not stipulate to the facts that Mr.
4 Marchbanks announced to The Court
5 regarding what he said and she said
6 because they both have a different story
7 to tell The Court, which was set forth
8 in the Affidavits that were presented to
9 Circuit Court. And as The Court is
10 aware these parties dated over the
11 course of approximately three and a half
12 to four months. Ms. Murphy became
13 pregnant during that time. While they
14 were together they were excited about
15 the pregnancy. They talked about baby
16 names. Ms. Murphy was staying over at
17 Mr. Collins' house five out of seven
18 days of the week. She knew that he was
19 a good father. He has two other
20 children, one of which lives with him on
21 a full-time basis, and he is actively
22 involved on a daily basis with his other
23 child. As things sometimes do and
24 relationship don't work out they broke
25 up, and I think The Court saw in the

1 Affidavits that she was seeing somebody
2 else, he saw somebody else, and then
3 they had a disagreement about what
4 happened during the course of her
5 pregnancy. Thereafter -- because
6 remember he was present at the
7 ultrasound that determined the sex of
8 the baby. Where the Affidavits before
9 The Court show is that she then told him
10 that he wasn't the father, and they had
11 a back and forth about whether he was
12 and whether he wasn't. She told him to
13 stay away, and to give her her privacy,
14 and to allow who she was staying with,
15 the new father, which she knew he
16 wasn't, to be there with her. What The
17 Court's not hearing about is the fact
18 that Mr. Collins was denied the right to
19 go to the hospital and hold and touch
20 his daughter before she was cremated;
21 about the fact that he had learn about
22 her death from the mother of his other
23 child who happened to see it posted on
24 Facebook. He had to hear from his
25 sister and receive from his sister

1 pictures of his dead daughter from Ms.
2 Murphy because she showed up at the
3 house to say, "I am so sorry that I
4 excluded Mark and I lied to him, and we
5 need to grieve together." He was denied
6 the right to go to the funeral, but all
7 of that is irrelevant. This Court is
8 not charged with taking a yardstick and
9 measuring how many tears each one of
10 them have cried. It's not charged with
11 trying to determine what Mr. Collins
12 should have done during the course of
13 the next six months or five months after
14 they broke up whether, or not he gave
15 her money or demanded to come to the
16 house to see what the nursery looked
17 like, or whether or not he had to file
18 something in court to be able to name
19 his child, because as The Court is aware
20 she put another man's name on his child,
21 on Mr. Collins' child, and then admitted
22 later that she lied about it. So what
23 type of grief does that place on Mr.
24 Collins who has never been able to have
25 closure? It doesn't matter. It's

1 irrelevant. What matters is the law.
2 And what's before The Court is that
3 these statutory beneficiaries they
4 agreed she's the mother, he's the
5 father. He agreed that she could serve
6 as the Personal Representative and
7 represent his interest. If you look at
8 the Circuit Court Order what it says is
9 that she has considered the settlement,
10 and she finds it to be in the best
11 interest of both the statutory
12 beneficiaries. It wasn't until
13 thereafter that she decided that she was
14 not going to agree that it was in Mr.
15 Collins' best interest. Instead what
16 she's directing The Court to do is to
17 say, "Court take a look at 15-51-40, and
18 it's vague," but it's not. It's very
19 clear. Mr. Marchbanks cited for The
20 Court the Ballard case. If you take a
21 look at that case what got the
22 legislature and The Court upset about
23 what occurred and the fact that The
24 Court's hands were tied was the fact
25 that it was an elementary school age

1 child. That's not what we have here.
2 We have a child who lived approximately
3 an hour after she was born. And this is
4 not a situation where she lived for that
5 hour and Ms. Murphy was holding her and
6 they were bonding. This is a situation
7 where the ob-gyn effectively hurt this
8 child so badly that nurses and doctors
9 were working around the clock hoping to
10 save her. Neither parent would have
11 been entitled to touch that child
12 because the doctors were trying
13 desperately to do something. And he was
14 precluded from being there just to be
15 able to be a part of whatever life she
16 had. If you look at 15-51-40 and the
17 amendment that was made to the statute,
18 and you read it in its entirety, you're
19 going to see that it is very clear on
20 its face. Under certain circumstances,
21 and I want to read it specifically
22 because the construction is there, "Upon
23 Motion by either parent or any other
24 party of potential interest based on the
25 decedent having died intestate the

1 Probate Court may deny or limit either
2 or both parents' entitlement for a share
3 of the proceeds if The Court determines
4 by a preponderance of the evidence," and
5 this is where it's specific, "that the
6 parent or parents failed to reasonably
7 provide support for the decedent as
8 defined in Section 63-5-20 and" --
9 there's an "and" there -- "and did not
10 otherwise provide for the needs of the
11 decedent during his or her minority."
12 It's very specific. It says "decedent."
13 And I'm pointing that out because in Mr.
14 Marchbanks' Motion he specifically said,
15 "Ms. Murphy seeks to exclude Collins
16 from benefiting from Tynslee's death
17 because Collins provided no support."
18 Not for the decedent, but for Ms. Murphy
19 during her pregnancy. That's not what
20 the statute provides. The statute
21 provides that it has to be for the
22 decedent. It was a legal impossibility
23 for him to do so. What Mr. Marchbanks
24 and Ms. Murphy is asking The Court to do
25 is to find some ambiguity in a statute

1 that is very clear. We have a case here
2 that is horrible. This is an infant
3 child that did not live. There is no
4 way possible that Mr. Collins could have
5 supported this child. We don't need to
6 go any further and look at 63-5-20,
7 although I am going to address it, but
8 specifically because there was no
9 possible way for him to support his
10 child. She lived for a year -- I mean
11 for an hour, and during that hour she
12 was in the care of doctors. What Ms.
13 Murphy is asking The Court to do is to
14 find that in cases in which a couple is
15 not married, whether that be same sex
16 now or otherwise, the father is required
17 to support the mother during the
18 pregnancy. That's what she's asking
19 This Court to find. And to what extent?
20 Is The Court going to issue an Order
21 that says, yes, she's correct that then
22 requires every father who is not married
23 to a woman, but who wants to be involved
24 in the child's life, to go down to
25 Family Court to have a hearing about

1 what type of support he is going to
2 provide for his unborn child? No. And
3 that's not what those adoption cases
4 even provide, and they concede that they
5 don't have any precedence. Fathers of
6 illegitimate children are not required
7 to do that. That would require the
8 Family Court, if we go down this
9 slippery slope, to issue rulings to
10 decide what type of care is to be
11 provided and whether or not mothers who
12 are pregnant have the right to smoke or
13 drink or take Xanax, any prescription
14 medication, whether or not fathers of
15 unborn children are allowed to show up
16 at doctor's appointments and tell the
17 mother that she can or cannot do this or
18 that. That's not the case. The only
19 other alternative is for them asking The
20 Court to decide minority because the
21 statute is very clear "and did not
22 otherwise provide for the needs of the
23 decedent during his or her minority." I
24 mean Ms. Murphy is asking This Court to
25 essentially decide the question that has

1 been the subject of many disputes and
2 still today. When did this child become
3 a minor? She is saying it's in utero.
4 So does that mean that upon conception
5 when a woman has a right to choose
6 whether or not to have the child or to
7 abort the child that then -- then that
8 period of time is excluded because at
9 the current precedent that we have in
10 our law a woman has a right to abort
11 that child? I mean we're going back to
12 that argument. Does it mean that the
13 morning after pill is now something that
14 has to be addressed between two
15 individuals who become sexually intimate
16 with each other? I mean that is where
17 we are headed with what Ms. Murphy is
18 asking The Court to do. In this case
19 Mr. Collins agreed that Ms. Murphy would
20 serve as his representative, and she had
21 a fiduciary duty to do so. During the
22 course of this litigation no one asked
23 to take Mr. Collins' deposition about
24 how he was feeling or dealing with the
25 grief of losing a child. Do you want to

1 know why? She was representing his best
2 interest. She was deposed. She agreed
3 that she would do so. That's why he
4 indicated that he would agree that she
5 could serve as the Personal
6 Representative. It is not correct that
7 what happened was that upon her death he
8 suddenly was involved to say, "I need to
9 be a part of a lawsuit." That's not
10 what happened. She came to his sister's
11 house and said, "We need to grieve
12 together." And, yes, a lawsuit had
13 started several months later I believe.
14 And they agreed because she gave his
15 daughter someone else's name that there
16 would have to be a DNA test because we
17 had to open an estate. And they agreed
18 to take it. And he agreed to pay for
19 half. Everyone knew this was his child
20 when they saw those pictures. That's
21 what's set forth in the Affidavit. She
22 represented his interest in this lawsuit
23 on the wrongful death action. If you
24 take a look at the case that was cited
25 by Mr. Marchbanks there was the Scott

1 versus Porter case. What we have here
2 it's clear-cut in this wrongful death
3 action that these individuals during the
4 course of the birth of this child harmed
5 irreparably her in such a way that she
6 couldn't survive. This case in Scott
7 versus Porter talks about the fact
8 specifically that our Supreme Court --
9 and it's cited Lucht versus Youngblood,
10 266 South Carolina 127, and it's 1976
11 case but it has been essentially our
12 precedent, "losses to parents from the
13 untimely death of a child are
14 intangibles, the value of which cannot
15 be determined by any fixed yardstick."
16 She agreed to represent him in this
17 lawsuit. She said she would do so, and
18 he trusted her to do so. And when she
19 entered into the settlement agreement
20 she indicated that she thought it was
21 not only best for her, but best for him.
22 That's what that Court Order from the
23 Circuit Court says. They paid out the
24 maximum in that settlement that they
25 could under the policy because of what

1 happened to that child during the course
2 of the birth. She represented his
3 interest in that lawsuit. He was never
4 asked otherwise. I also want to point
5 out to The Court that essentially what
6 is happening in this instance is not a
7 windfall to Mr. Collins. The statute is
8 clear, the legislature considered it. I
9 mean we're not talking about a child who
10 was any age whatsoever. If you take a
11 look at the Affidavits that were
12 presented what Ms. Murphy is asking The
13 Court to do is come up with some type of
14 tests when a child dies at birth, and
15 it's a legal impossibility for the other
16 parent to support or even become a part
17 of that child's life, because they
18 didn't live, so then develop some type
19 of factors that would then warrant
20 whether or not the other parent received
21 a half, one-half as the statute
22 provides, of the proceeds. And if you
23 look at what she's pointed out whether
24 or not the parents spent Christmas with
25 the other parent's family, whether or

1 not the parent purchased a comforter or
2 a crib, whether or not the other parent
3 had a relationship with the in-laws, my
4 point is specifically from her
5 Affidavits that she put and what her
6 statements are in her Motion before The
7 Court the tears that were cried and how
8 many days of mourning were experienced
9 by each, the Court cannot measure those
10 things. I mean if This Court issues a
11 ruling that either substantially
12 decreases the portion that Mr. Collins
13 receives or denies him wholly any of the
14 proceeds, essentially The Courts is
15 saying when this type of circumstance
16 happens unless the father demonstrates
17 that he has tried every possible way to
18 spend time with her or her family or
19 give her money or buy something, he's
20 not entitled to anything, that his
21 feelings don't matter whatsoever, but
22 that those feelings have to be
23 considered and we're going to figure out
24 how to measure them. I submit to The
25 Court that the reason you don't see that

1 in this statute is because The Court is
2 not going to do that test. There is no
3 way to do it. It's impossible. It's
4 impossible. It would be requiring
5 fathers to come before The Court to say,
6 "I just want it on record that's my
7 baby, and I want to be a part of its
8 life, help me. Make her do something.
9 Make her let me do what? Go to every
10 doctor's appointment. I get a say in
11 the name. I need a Court Order that
12 says I get to decide what this baby's
13 first name is, and I want to make sure
14 what the surname is." That's not the
15 law in this state or in any state that
16 I'm aware of. When this child is born,
17 yes, it becomes incumbent upon a father
18 to step up, and if he doesn't or if the
19 mother precludes it, then they go down
20 to Family Court and fight about it. But
21 this child did not survive. And even if
22 we -- if The Court decides to take the
23 next step and take a look at 63-5-20
24 that talks about support, that statute
25 still directs The Court to consider

1 facts as to whether or not the father
2 was precluded from supporting or was
3 somehow denied the right to be a part of
4 that child's life. And I submit those
5 facts are here, but we don't even need
6 to get there because the statute is
7 clear on its face. I'm just going to
8 ask Mr. Read to address one additional
9 point regarding that statute.

10 THE COURT:

11 Okay. Can I ask you a couple of
12 questions before you do that?

13 MS. SALVINI:

14 Yes, ma'am.

15 THE COURT:

16 And this may be something that Mr.
17 Marchbanks might need to answer for me.
18 The medical bills for this child's
19 delivery and the one hour that the child
20 lived, were there no bills because of
21 the negligence of the doctor so there
22 was never like a payment made, or do
23 you?

24 MR. MARCHBANKS:

25 I'll address that.

1 THE COURT:

2 Okay.

3 MR. MARCHBANKS:

4 The child was on Medicaid.

5 THE COURT:

6 Medicaid.

7 MS. SALVINI:

8 Uh-huh.

9 MR. MARCHBANKS:

10 Yeah, which is specifically addressed in
11 some of the case law that I presented.

12 THE COURT:

13 So is it -- so then I can assume that
14 Mr. Collins never made any payment to
15 the hospital of any type for the one
16 hour after he learned he was the father?
17 Is there money owed? Is there something
18 -- there was nothing like that?

19 MS. SALVINI:

20 Medicaid covered all the bills. I
21 believe that we actually submitted a
22 portion of Ms. Murphy's deposition
23 testimony for The Court to attach to our
24 filing in which she confirmed under oath
25 that Medicaid paid for those bills and

1 even I believe during the course of her
2 pregnancy.

3 THE COURT:

4 Was Mr. Collins working at the time?
5 Did he have an income?

6 MS. SALVINI:

7 He was working. Uh-huh. In fact,
8 that's how they met was at work.

9 THE COURT:

10 And had he done anything in terms of --
11 have the Medicaid people asked him for
12 reimbursement or anything like that
13 since he's been listed as the father, or
14 there's not been anything like that?

15 MS. SALVINI:

16 They have not done so, Your Honor.

17 THE COURT:

18 And he hasn't volunteered to say, "Hey,
19 I had a job. You know let me," or
20 anything like that?

21 MS. SALVINI:

22 Under the advice of counsel because he
23 came to us pretty quickly --

24 THE COURT:

25 Okay.

1 MS. SALVINI:

2 -- after we had the DNA test, and there
3 had to be a decision about who was going
4 to serve as the Personal Representative,
5 we did not advise him to do that all. I
6 told him to just see how this lawsuit
7 goes.

8 THE COURT:

9 Okay.

10 MS. SALVINI:

11 Because we assumed, which I do believe
12 that there was a mention in the
13 settlement about some -- there was a
14 small portion of medical bills that were
15 paid after the settlement. I'd have to
16 double check and take a look at that.
17 And we had agreed to that.

18 THE COURT:

19 I would assume with the facts as they
20 played out that the hospital would not
21 be seeking, but, you know, I didn't
22 know. The other question I had for you,
23 Ms. Salvini, is in the 15-51-40, it does
24 say -- let's see. "The Probate Court
25 may deny or limit." So it says the

1 Probate Court can deny or limit, and I'm
2 focusing on the word "limit." It
3 doesn't give any factors that would
4 allow me or the Probate Court to say
5 maybe this shouldn't be 50/50, maybe it
6 should be 60/40, maybe it should be
7 70/30. There are no factors given
8 there, it just says the Probate Court
9 may limit. Is there any case law or
10 argument that you would like to make in
11 terms of what does that essentially
12 mean? Does that mean it's
13 discretionary? Does it mean that I have
14 to look at some objective factors? What
15 does that word mean in your estimation?

16 MS. SALVINI:

17 And I respectfully disagree with The
18 Court's initial reading --

19 THE COURT:

20 Okay.

21 MS. SALVINI:

22 -- of the statute. And I don't know of
23 any case law that I could cite to the
24 Court --

25 THE COURT:

1 Okay.

2 MS. SALVINI:

3 -- at this time. But it does -- it does
4 say The Court may deny or limit, and
5 there are no specifics about the
6 limitations..

7 THE COURT:

8 Correct.

9 MS. SALVINI:

10 However, in order for The Court to even
11 get there it gives The Court guidance
12 and the specific factor, the primary
13 factor that The Court has to find, and
14 that is whether or not the parent or
15 parents failed to reasonably provide
16 support for the decedent as defined in
17 the Family Court statute and did not
18 otherwise provide for the needs of the
19 decedent during his or her minority,
20 which that specific factor is the
21 primary factor. The Court can't even
22 get to whether or not there should be a
23 limit and what to consider as a limit
24 until The Court gets to the first factor.
25 which is whether or not --

1 THE COURT:

2 Sure.

3 MS. SALVINI:

4 -- a parent reasonably failed to provide
5 support, and the statute by its very
6 nature, by -- it's an "and" and
7 indicates minority. And in order for
8 The Court to get there The Court has to
9 find that the child actually lived.

10 THE COURT:

11 So to take a little reading of the
12 statute, that's what you're arguing, I
13 never get to that point?

14 MS. SALVINI:

15 Yes.

16 THE COURT:

17 If you read the statute, the plain
18 language, I don't get to that point
19 because of the other factors in the
20 statute that talk about support and the
21 inability -- or the ability -- or the
22 failure to provide support?

23 MS. SALVINI:

24 I mean The Court has to find
25 specifically by a preponderance of the

1 evidence that the parent failed to --

2 THE COURT:

3 Correct.

4 MS. SALVINI:

5 -- reasonably provide support and --

6 THE COURT:

7 Correct.

8 MS. SALVINI:

9 -- did not otherwise provide support
10 during the minority before The Court
11 could go on to the next question as to
12 whether or not there should be a
13 limitation or a denial.

14 THE COURT:

15 Okay. So if you look just at that --
16 that clause the minority that this child
17 had was one hour.

18 MS. SALVINI:

19 Yes, ma'am.

20 THE COURT:

21 I mean technically.

22 MS. SALVINI:

23 Technically.

24 THE COURT:

25 And for that one hour -- and your client

1 eventually learned he was the father at
2 some point. I think it was after -- I
3 don't know how soon after the birth that
4 he realized he was the biological
5 father. I don't remember from the
6 Affidavit.

7 MS. SALVINI:

8 He was told before, and that's -- they
9 were together, and then after they broke
10 up she maintained he was the father, and
11 that's why he went to the ultrasound.
12 It was after that that then it became a
13 dispute, I guess, between the parties as
14 to whether or not he was the father
15 because she was claiming that Mr. Fields
16 was the father.

17 THE COURT:

18 So after the child was born when did he
19 know he was the father, your client?

20 MS. SALVINI:

21 He already knew that he was the father
22 before.

23 THE COURT:

24 They did a DNA before the baby was --

25 MS. SALVINI:

1 They did not do a DNA before. He
2 believed that he was the father.

3 THE COURT:

4 Okay.

5 MS. SALVINI:

6 Because of what she represented to him.

7 THE COURT:

8 Okay. But at some point after it was
9 confirmed with a DNA test?

10 MS. SALVINI:

11 We had to, yes, Your Honor.

12 THE COURT:

13 Okay.

14 MS. SALVINI:

15 Because of the opening of the estate.

16 THE COURT:

17 And how long after the birth did that
18 -- was that done?

19 MS. SALVINI:

20 I believe that it was done shortly
21 thereafter, maybe several weeks. I want
22 to say maybe three.

23 THE COURT:

24 Okay.

25 MS. SALVINI:

1 I'd have to double check, but --

2 THE COURT:

3 All right.

4 MS. SALVINI:

5 But it was done after. It was done
6 after the child had died they did a DNA
7 because she had given the child someone
8 else's surname.

9 THE COURT:

10 So if we're looking literally at the
11 plain language of this statute the
12 minority of this child was one hour?

13 MS. SALVINI:

14 Yes, ma'am.

15 THE COURT:

16 During that one hour did your client
17 provide any support for that child
18 either -- during that one hour we know
19 he didn't, and he know the reasons why,
20 you know, he was prohibited from coming.

21 MS. SALVINI:

22 Right.

23 THE COURT:

24 After he learned or confirmed or he
25 knew, did he do anything to pay any

1 money, do anything that would have
2 amounted to support for that short
3 minority?

4 MS. SALVINI:

5 Okay. So I'm going to -- I'm going to
6 answer in two parts.

7 THE COURT:

8 Okay.

9 MS. SALVINI:

10 The first -- the first position that I'm
11 taking in respect to that, Your Honor,
12 is it was a legal impossibility for him
13 to pay anything. Medicaid covered the
14 hospital bills. As far as whether or
15 not The Court is asking me if he paid
16 for the funeral or if he made donations
17 or anything to that --

18 THE COURT:

19 No, no, no, no, no, no.

20 MS. SALVINI:

21 -- I mean, no. I mean he did not give
22 her any money nor did he offer to give
23 her any money.

24 THE COURT:

25 Well, let me just ask you this: When

1 you say it's a legal impossibility, are
2 you telling me that I'm a parent of a
3 child that the bills are being paid by
4 Medicaid, I can't call the Medicaid
5 office and say, "I have a job. The
6 state doesn't need to pay my child's
7 healthcare. I want to pay the bills"?
8 I mean is there -- are you saying they
9 would have prohibited him from -- from
10 paying any support legally to "No, sir,
11 I know you're working. You're making
12 money. Medicaid is for indigent people,
13 but we aren't going to take your money"?

14 MS. SALVINI:

15 No, but I think the facts that are
16 before The Court don't warrant that, and
17 let me tell The Court why.

18 THE COURT:

19 Uh-huh.

20 MS. SALVINI:

21 She, on the Birth Certificate, named
22 someone else, and told him that he was
23 not to come to the funeral and that he
24 needed to respect her privacy, and that
25 she was -- she was hurting enough and

1 did not want to have to essentially deal
2 with him. Before there was a DNA test
3 Jeremy Fields was named as the father
4 and was involved in everything. He
5 respectfully precluded. So at the time
6 that he retained my office, and our
7 position was that until we come into
8 Probate Court -- because she had opened
9 an estate. I mean we did the DNA test
10 if my recollection is correct -- and it
11 has been a couple of years now -- but
12 after the estate was already opened and
13 we were contesting the fact that even on
14 the initial filing of the Probate papers
15 she had named Mr. Fields. So there was
16 no ability for him, and nor would I have
17 advised him, to go down to the Medicaid
18 office and say, "She's wrong. I'm the
19 dad. This child has passed away, but
20 you've got to do something about this so
21 that I can pay this bill, because I'm
22 responsible and I'm working."

23 THE COURT:

24 Right.

25 MS. SALVINI:

1 I just wouldn't advise him to do that.
2 I don't want him to be blamed for the
3 course of action that I or my law
4 partner took in this case.

5 THE COURT:

6 I'm just asking this because if we're
7 taking literal meanings and the plain
8 meanings of the statute --

9 MS. SALVINI:

10 Yes, ma'am.

11 THE COURT:

12 -- and this statute talks about the
13 denying or limiting a parent's right to
14 inherit if they did not do certain
15 things during the child's minority.

16 MS. SALVINI:

17 Uh-huh.

18 THE COURT:

19 Okay. So this child had an hour before
20 she died tragically. So I'm looking
21 then the statute says, "Okay. Did he
22 support, do anything?" And, of course,
23 he wasn't there, but he later learned or
24 confirmed by DNA testing that he was the
25 father.

1 MS. SALVINI:

2 Yes, ma'am.

3 THE COURT:

4 So for that one hour of time his
5 daughter was incurring medical bills
6 that were -- that were submitted to the
7 state to be paid because the child was
8 determined to be an indigent patient.
9 And he learns about it, and he's got a
10 job. And had they been married or maybe
11 had he stepped up maybe the child
12 wouldn't qualify as an indigent child.
13 I don't know. I don't know what he
14 makes. I don't know anything about
15 that. He's got other children. I
16 assume they're not on Medicaid. So if
17 I'm looking literally at the statute
18 without going down any slippery slopes,
19 here's the minority. Was support paid?

20 MS. SALVINI:

21 And let me ask some more questions.

22 (Conferring with client.)

23 THE COURT:

24 Okay.

25 MS. SALVINI:

1 So both of his current children are on
2 Medicaid because he doesn't earn enough
3 and neither does his child's mother, so
4 that may alleviate some concerns that
5 This Court may have. His two other
6 minor children, which are with the same
7 woman, are on Medicaid. But -- and I
8 see where The Court is headed in terms
9 of that one hour, but however, whatever
10 was incurred -- and I don't know what
11 was billed to Medicaid, was addressed in
12 the wrongful death suit, which would
13 then reimburse Medicaid anything that
14 would have occurred during the course --
15 at least that's I would assume. I don't
16 have that before me.

17 THE COURT:

18 Right.

19 MS. SALVINI:

20 But if The Court's decision is that
21 there was an hour of life, and he should
22 have taken the steps to do that, The
23 Court would essentially be punishing him
24 for the advice that his counsel gave him
25 because we did not advise him to do

1 that. You know he did not have those
2 funds. He works at Walmart. He doesn't
3 have a high school education. He has
4 two other children who are on Medicaid.
5 Yes, he earned a living, and he -- he is
6 providing for his family, and he has his
7 own home. I just don't -- I know where
8 The Court is headed with that, but I
9 don't know how The Court at that point
10 is using that one hour of, "Okay. What
11 should he have done within that one
12 hour?"

13 THE COURT:

14 Well, what I'm doing is I'm -- I'm just
15 engaging in some argument to try to
16 figure out how we apply these statutes
17 in this very, very unique set of facts.
18 If we open the statute up to
19 interpretation, you know, he wants it
20 opened up to did he help her during the
21 pregnancy and did he help pay the
22 funeral bill? He didn't come to the
23 funeral. All of these things he wants
24 me to open it up maybe and look at that.
25 You're saying I don't need to do that.

1 I've got a statute that clearly says
2 that parents inherit unless I find by
3 the preponderance of the evidence that a
4 parent didn't provide support, and in
5 this case this child didn't live. There
6 was no opportunity for him to provide
7 support. He was faced with a woman who
8 had another man involved, had another
9 man on the Birth Certificate. So if I
10 open it up for him I'm opening it for
11 you to, you know, make all of those
12 arguments which are sound and good. If
13 I don't open it up either way, and I
14 just look at this statute, then it tells
15 me, "Okay. I've got two parents. I
16 have a decedent whose minority was one
17 hour. I know the mother went through
18 hell, so we don't have to worry about
19 it." I'm looking at this father. What
20 did he do for that hour of that child's
21 life to enhance that child's life,
22 support the child, pay the child's
23 medical bills, buy -- -- you know, buy a
24 coffin? What did he do when he found
25 out for sure he was that child's

1 biological father? What did he do in
2 the nature of support retroactively? He
3 doesn't have to show up. What did he do
4 in terms of support under this
5 definition or it talks about "reasonably
6 provides support and did not otherwise
7 provide for the needs of the decedent
8 during his or her minority." This
9 minority was a tiny spot in time, and it
10 may be arguably unreasonable for him to
11 have done that, but we know that the
12 child lived for an hour. We know at
13 some point he got a DNA test, and he
14 knew he was the dad. We know the child
15 had a Medicaid bill. That's the only
16 type of financial support that could
17 reasonably be paid because there's no
18 child support. The child incurred a
19 medical bill directly for --
20 unfortunately. And I'm surprised they
21 even turned in a bill to Medicaid
22 frankly for what happened, but. So I'm
23 trying to focus on if we're not going to
24 open this statute up for him to talk
25 about prior to the birth and all that

1 because it's not relevant, then I'm
2 going to have to -- and you don't want
3 me to open it up because you -- you
4 know, your client was not listed on the
5 Birth Certificate. He was prevented
6 from coming in, you know. So I just
7 look at the words, look at the words,
8 and what they mean, "Did the parent
9 support the child or the decedent during
10 his or her minority." That's what it's
11 asking me. Did they provide reasonable
12 support, by the preponderance of the
13 evidence, for the minority of the child?
14 And so that's why I'm asking because
15 we're going to have to when I decide
16 this case either go down that road where
17 it's just the plain words, these facts,
18 apply the facts, this is the result. Or
19 because the facts are so unusual do we
20 need to open it up and say, well,
21 reasonably provide for the needs because
22 of this particular situation where this
23 child only lives an hour do we say that
24 involves making sure the child had
25 proper medical care? Does that mean the

1 child -- you know, should he have done
2 that? And like you said it would
3 require fathers to go down and say, "I
4 need to do this while the child is in
5 utero," which is, you know, an absurd
6 result. So that's why I'm asking you
7 because if I don't go down a road where
8 we can open it up a little bit for
9 interpretation, pull in some of these
10 cases where it talks about a father's
11 constitutional right, and what their
12 obligations are once they know they have
13 a child, if I just limit it narrowly to
14 this statute and don't look anywhere
15 else, then I'm confronted with support
16 during the child's minority. So I mean
17 I'm just -- I'm going to let you argue
18 it or -- I'm going to let Mr. Marchbanks
19 address it, but I'm just sort of
20 thinking out loud so that you-all can
21 kind of tell me what you think the law
22 should be on that.

23 MS. SALVINI:

24 I have some thoughts, but I'm going to
25 let Mr. Read --

1 THE COURT:

2 Okay.

3 MS. SALVINI:

4 -- address it because he has --

5 THE COURT:

6 Okay. Thank you, Mr. Read.

7 MR. READ:

8 Yes, ma'am, thank you for hearing. With
9 regard to the question about that hour,
10 and the question about when he knew for
11 sure that he was the father, he was
12 joined as a statutory beneficiary in
13 this lawsuit, and as part of the
14 wrongful death action those with
15 Medicaid proceeds or what Medicaid paid
16 is included and considered in part of
17 that. So that would have been his
18 participation within that lawsuit would
19 have been that thing that closes the
20 door, and that's the only thing he
21 possibly could have done to have a role
22 such that it fulfilled that statute, and
23 I think it fulfills it. I think that
24 connects the dots, Your Honor, because
25 that's what it is. And --

1 THE COURT:

2 And so what you're saying is those bills
3 that came a part of the list of damages
4 and --

5 MR. READ:

6 That's correct.

7 THE COURT:

8 -- because they became a part of that,
9 then the amount of the settlement took
10 all of that into consideration?

11 MR. READ:

12 It would have to, Your Honor.

13 THE COURT:

14 And -- okay. All right.

15 MR. READ:

16 And the next -- the next point I would
17 like to raise, Your Honor, is that as
18 we're going through the statute I want
19 to retread a little bit of ground if I
20 can.

21 THE COURT:

22 Sure.

23 MR. READ:

24 When we're talking about the question
25 about whether the standard that The

1 Court is applying under 15-51-40, and
2 we're saying that -- I will restate it,
3 "If The Court determines by a
4 preponderance of the evidence that
5 parent or parents fails to reasonably
6 provide support for the decedent as
7 defined in 63-5-20," -- which I'm going
8 to get down to in just a second, and I
9 know that's been hit on for just -- for
10 a moment, but "and did not otherwise
11 provide for the needs of the decedent
12 during his or her minority." The point
13 here is that if that first is a legal
14 impossibility you don't even get to the
15 question about whether the minority --
16 what "minority" actually is because you
17 have to be able to satisfy that first
18 part. The effort should show that they
19 failed to reasonably provide support as
20 defined in 63-5-20 in order -- if that's
21 an impossibility it would be an
22 impossibility for them to do both, and
23 both is what's required in the statute.
24 Do you see what I'm saying, Your Honor?

25 THE COURT:

1 Uh-huh.

2 MR. READ:

3 So you don't get to the ambiguity that
4 it's talking about.

5 THE COURT:

6 So what you're saying is -- and you can
7 construe this -- they have to meet both
8 of those rather than an "or"?

9 MR. READ:

10 Most assuredly.

11 THE COURT:

12 So you're just saying that they have to
13 have met both of those exceptions in
14 this statute, one being the Family Court
15 statute and the other being "did not
16 otherwise provide for"?

17 MR. READ:

18 That's correct.

19 THE COURT:

20 Okay.

21 MR. READ:

22 During the minority, and that's the
23 ambiguity that they've seized on to say
24 that This Court has to jump into that
25 hole. But This Court doesn't have to

1 jump into that hole because we've got
2 clear law on the one side connected by
3 an "and" to this alleged ambiguity about
4 what a "minority" is. And, Your Honor,
5 past that if we actually -- and I know
6 we've -- we have trod around the actual
7 63-5-20 that it says to apply. First
8 off, in subsection (a), it states that
9 any able-bodied person capable of
10 earning a livelihood who shall without
11 just cause -- and we've talked about
12 that here for a while. So that's
13 another -- I believe the just cause
14 situation is being excluded, number one,
15 from the -- from the process. Being
16 told that you're not the father, the
17 systematic exclusion from the inclusion
18 in the child's development I guess is
19 what you would say in utero, would be
20 just cause. Exclusion from the birth.
21 We have in their own Affidavit -- it's
22 not an Affidavit, but it is a brief, I
23 guess, written that Ms. Murphy has
24 verified. This is a reading from
25 Plaintiff's Memorandum in Support of the

1 Motion to deny Mr. Collins proceeds.
2 And if I look at page three of 12 it
3 states that Ms. Murphy did not
4 personally notified Mr. Collins as he
5 had shown no material interest in the
6 pregnancy. And what she's talking about
7 is her due date and entering the
8 hospital and being induced. So she
9 actually prevented him from being there
10 and participating in that day. That's
11 "just cause" if we're talking about that
12 hour again, which we've also talked
13 about being satisfied by his inclusion
14 in the lawsuit.

15 THE COURT:

16 Does that Affidavit at that point does
17 she believe he's the father, or does she
18 believe the other guy is the father?

19 MR. READ:

20 What she believed and what she says, I
21 think, are very different things in this
22 case, Your Honor.

23 THE COURT:

24 Okay.

25 MR. READ:

1 She says -- well, she was driven to the
2 hospital by Mr. Fields, who was her
3 live-in boyfriend at the time. So
4 whatever she believed, Mr. Fields was
5 present throughout this process instead
6 of Mr. Collins. So the exclusion is
7 therefore complete. Now -- and we can
8 get into the just cause question, but I
9 just wanted to draw The Court's
10 attention to the "and" question to the
11 point that he was involved in the
12 lawsuit she did have a fiduciary
13 responsibility. She was representing
14 his interests; his damages were part of
15 the lawsuit as well, and that the
16 Medicaid question would have been folded
17 into that. And then if The Court takes
18 it down to the just cause question,
19 which we've been speaking about
20 directly, we thought -- or briefly now
21 it's directly I guess, Your Honor, that
22 that also would justify The Court's
23 decision in favor of the Respondent Mr.
24 Collins.

25 THE COURT:

1 Thank you. All right.

2 MS. SALVINI:

3 I just want to point out one other thing
4 before Mr. Marchbanks address, but if
5 The Court is going to even go down the
6 path of looking at that one hour then
7 The Court is charged with looking at 63-
8 5-20 (a) despite the argument about the
9 "and." And essentially what The Court
10 has to find if you take a look at that
11 statute is the definition of what
12 "reasonable support" would be during the
13 course of that hour. And, again, I'm
14 going to assert the argument of a legal
15 impossibility because in reading that it
16 says, "reasonable support means amount
17 of financial assistance, which when
18 combined with the support of the member
19 is reasonably capable of providing for
20 himself or herself," and this is where I
21 want The Court to focus in on, "will
22 provide a living standard for the member
23 substantially equal to that of the
24 person owing the duty to support it."
25 There's no living standard here, Your

1 Honor. It was one hour of being -- and
2 I -- I do not want to hurt the parents
3 by going through this, but of being
4 essentially tubes forced in anything to
5 keep her from dying. There is no living
6 standard for The Court to get to, and if
7 The Court is looking at Medicaid, well;
8 his own children are on Medicaid. I
9 mean if The Court is looking to whether
10 or not he offered to go down to the
11 office and say, "I'll help reimburse,"
12 well, a lawsuit was started, and he was
13 joined in that lawsuit that would
14 address that. But there is no living
15 standard here even if you get down to
16 that definition, and that is where The
17 Court would have to go.

18 THE COURT:

19 Right. And I'm -- I'm doing that
20 because I know that there's been some
21 argument that I don't need to go out and
22 look at all these extraneous factors, I
23 just need to stick to the words of the
24 statute. So if I get to that question
25 despite the "and," it does talk about

1 providing for the needs of the decedent
2 during his or her minority. It doesn't
3 say at the same time. You know so
4 that's why I'm looking at this period of
5 time and what he did, if anything, to
6 pay for the treatment that the doctors
7 were trying to do to save her life. You
8 know did he, "This is my daughter.
9 These people were trying to help her
10 live. I have a job. Let me see, as
11 this child's father, what I can do, even
12 if it's not but a 100 bucks," you know.
13 Or does he say, "It's Medicaid. I don't
14 have to. You know my other two children
15 are on Medicaid. I'm not going to -- I
16 don't have to do that." You know I'm
17 looking at the only type of support that
18 could have been paid and that is paying
19 for the medical care. You know there's
20 no standard of living, you're right.
21 It's like providing health insurance for
22 a child, it is also a part of child
23 support, you know. It's something that
24 factors in to the amount, the amount you
25 have to pay, all of that. So that's the

1 only need this little girl had, so if
2 I'm sticking strictly to this, and this
3 is only if we get to that because of the
4 "and," that's why I'm looking at it.
5 And I understand that would be an
6 unusual thing if someone did that and
7 said, "Well, okay, I'm going to go down
8 to the Medicaid office and do what I can
9 do to help defray some of the costs that
10 the state paid for my daughter." And so
11 I have to ask the question because it is
12 pertinent, I believe, to what my job is,
13 which is to determine what level of
14 support, if any, was paid.

15 MS. SALVINI:

16 Yes, ma'am, and I think that our -- that
17 our position is that this lawsuit
18 commenced. That's where -- that's where
19 we're headed. It's not a matter of --
20 there was not -- there was not a
21 conscious thought by Mr. Collins that
22 "My other kids are on Medicaid, and I
23 don't need to pay anything."

24 THE COURT:

25 Right.

1 MS. SALVINI:

2 I think it was -- it was more of the
3 position of a lawsuit was going to
4 commence that was going to address the
5 hospital if there is any hospital bills
6 and what occurred as a result of the
7 death of this -- the child.

8 THE COURT:

9 Right. Okay.

10 MS. SALVINI:

11 And I think that we're focused in
12 primarily on The Court maintaining the
13 integrity of the statute itself is
14 because it specifically talks about the
15 support for the decedent. And
16 everything that Mr. Marchbanks has
17 raised is support for a mother who was
18 pregnant.

19 THE COURT:

20 Okay. Thank you. Mr. Marchbanks.

21 MR. MARCHBANKS:

22 Well, first of all, Your Honor, I want
23 to kind of go back, and I made some
24 notes throughout the course of their
25 argument, and just touch on a couple of

1 things. I think initially Ms. Salvini's
2 recitation of the facts does at least
3 give me pause and make me wonder if this
4 isn't a case because the facts even
5 though there are some -- there are some
6 points that we agree on, there is a
7 skeletal version of things that we agree
8 on, which I tried to touch on, there is
9 obviously, based on what Ms. Salvini
10 discussed as far as the facts, there's a
11 lot of disagreement in some of the
12 things that she brought up. And she
13 said that she didn't agree with what I
14 did, so clearly there's -- there's a
15 factual issue involved. The -- now, the
16 other thing that she touched on that I
17 want to mention is, you know, she stated
18 that nobody asked Mr. Collins to be
19 deposed during the process of the civil
20 lawsuit, nobody sought him out, nobody
21 did whatever. Well, I would just like
22 to point out that, you know, while my
23 client didn't, she was being represented
24 by an attorney in Charleston who never
25 felt it reasonably important to depose

1 Mr. Collins. No defense lawyer in the
2 case, as you may imagine, with the
3 number of defendants and the type of
4 defendants that are involved here, you
5 know, there's a slew of defense
6 attorneys, in looking at the facts of
7 the case nobody determined that his
8 input was necessary or even required.

9 THE COURT:

10 Well, was his damages included in the
11 settlement?

12 MR. MARCHBANKS:

13 Well, and when it comes to that, you
14 know, the lawsuit -- his damages -- the
15 lawsuit, the Plaintiff in the lawsuit is
16 Lauren Murphy, individually, and the
17 estate of Tynslee, of which she is
18 Personal Representative. Okay?

19 THE COURT:

20 Uh-huh.

21 MR. MARCHBANKS:

22 And that circles back to Ms. Salvini's
23 statement that she, being the Personal
24 Representative, signed a Petition
25 stating that this settlement is in the

1 best interest of all the statutory
2 beneficiaries, which is fine because in
3 essence what they're hinting at there,
4 although they don't want to get
5 completely into it, I don't think, is a
6 collateral estoppel argument. What
7 they're hinting at is that since Ms.
8 Murphy made the determination that this
9 settlement of this lawsuit was in the
10 best interest of all statutory
11 beneficiaries she's already concluded
12 and The Court should, you know, hold her
13 to it that she meant him, too. Okay.
14 But the issue is all the statutory
15 beneficiaries that is something that
16 obviously has to be done in the
17 settlement of that suit, which involves
18 a different set of facts, it involves
19 different law altogether than what we're
20 doing here today. It's a whole
21 different issue. So effectively -- and
22 then as a matter of fact the very last
23 line of the Order, Judge Verdin states,
24 you know, and the remainder of the
25 proceeds after all of the debts and

1 legal fees and everything are taken out,
2 she instructs that the remainder of the
3 proceeds are to be distributed in
4 accordance with law. Well, that's what
5 we're here for today is to determine how
6 the law should help us and instruct us
7 in determining where these proceeds
8 should go. So I don't know that that
9 really comes into play here. I think
10 we're going through -- Ms. Murphy has
11 been going through the proper channels
12 and the proper procedures to have this
13 addressed in an upfront and aboveboard
14 manner. Now, that said, the other thing
15 that is interesting to me is how all of
16 a sudden we are reading 15-51-40 in its
17 entirety, and now we're engaged in the
18 discussion of the "and" and the "did not
19 otherwise provide for the needs of the
20 decedent during his or her minority." I
21 find it's interesting that we're
22 discussing that today, yet that was left
23 out of every brief that they submitted
24 to The Court.

25 THE COURT:

1 It's probably because I asked about it.
2 It's my little insertion into this
3 debate.

4 MR. MARCHBANKS:

5 And I appreciate The Court asking about
6 that, because I believe that phrase, as
7 I stated before, is critically
8 important. I do believe that that is
9 what muddies the water in 15-51-40, and
10 I additionally believe that not only
11 does that get us over at least to the
12 Child Support Statute -- or I say Child
13 Support Statute, it's not a Child
14 Support Statute, it's 63-5-20, the
15 obligation to support statute. You know
16 one way or the other both of these
17 statutes are statutes that can be
18 interpreted 20 different ways. The
19 obligation to support statute may be the
20 basis upon which a child support
21 calculation is made, but nowhere in this
22 statute does it specifically delineate
23 exactly how a person needs to support
24 the child. It just says they have to.
25 And it says that if they don't they

1 could suffer consequences for that. You
2 know here you have a situation where,
3 you know, The Court has asked a few
4 times, you know, regarding after he
5 found out he was the father what did he
6 do? He had done nothing. And the whole
7 idea of, you know -- the whole idea of
8 -- you know, putting him in a situation
9 where he was advised by his attorneys
10 not to do anything, you know, that falls
11 short with me because well before he --
12 any Probate document was filed, well
13 before he sought out legal counsel this
14 child had passed. This child had been
15 buried. And during that time and before
16 he was told, which may have been
17 correctly told, you know, "Wait. Wait.
18 You don't need to do anything. Let's
19 figure out this thing shakes out before
20 you do anything," well before he was
21 told, to me if it's a legal
22 impossibility, for what? He's this
23 child's father. He has an obligation.
24 He has an obligation to support this
25 child whether that be emotionally,

1 financially, in any way shape or form
2 that he possibly could, he has an
3 obligation. These statutes are written
4 because he has an obligation as the
5 child's father, and he did nothing.
6 Now, my concern, and, again, now -- and
7 they've broadened this out in, you know,
8 are we going to take back in utero. You
9 know that's an interesting argument.
10 Well, let me ask you this: One of the
11 things that I'm curious about, if we're
12 going to broaden it out like that, is
13 this society needs fathers to step up.
14 Our overarching -- one of our biggest
15 overarching problems in our country and
16 in our state and our community is
17 fathers who do not support, who do not
18 participate, and are not involved in the
19 lives of their children and in the lives
20 of their children's mothers.

21 THE COURT:

22 So you're doing a public policy argument
23 now?

24 MR. MARCHBANKS:

25 Amen.

1 THE COURT:

2 Okay.

3 MR. MARCHBANKS:

4 Because if this case awards him 250,000
5 some odd dollars that's going to send a
6 message to any unwed father out there
7 that, "Hey, if something happens, if my
8 child suffers, I don't have to do
9 anything. If my child passes away I
10 don't have to do anything, and I can
11 still make a lot of money."

12 THE COURT:

13 But, Mr. Marchbanks, this is a very
14 unusual fact pattern. The typical case
15 that comes in here under this statute is
16 one in which a child had lived and was
17 injured in a car accident or killed in a
18 car accident and they never paid child
19 support.

20 MR. MARCHBANKS:

21 Uh-huh.

22 THE COURT:

23 And they come in here, and they'll say,
24 "Yeah, I never paid child support, but,"
25 and otherwise -- and did not otherwise,

1 they'll say, I never paid child support,
2 but that child lived with me or lived
3 with my family or I visited that child
4 and brought, you know, tangible items,
5 clothes, diapers. I didn't pay child
6 support the way we've already -- you
7 know, looked at this statute is, okay.
8 They didn't pay child support, and they
9 didn't visit. They didn't pay -- bring
10 toys at Christmas. They didn't -- they
11 didn't do either one. So that has been
12 the common or routine interpretation of
13 this when we're trying to determine
14 whether to limit or deny an inheritance
15 is did they pay child support and if
16 they didn't, do they have a sufficient
17 evidence to say, "I didn't, but I did X,
18 Y, Z. I bought her a car when she was
19 17. I did this. I did this. I did
20 this." So that's how that has been at
21 least applied in situations where a
22 child lives. In this one, as we've been
23 talking about, we have a tiny little bit
24 of time, and the child support analogy
25 here I don't think can come into play

1 unless you consider child support, and I
2 haven't looked at the definition, to
3 also include providing, you know,
4 healthcare or, you know, medical care,
5 or -- you know, I don't know. I'm just
6 trying to reach -- I'm trying to look at
7 it in the way the legislature intended,
8 and I'm trying to figure that out in
9 this very unusual set of circumstances.
10 And I apologize for interrupting you,
11 but I just.

12 MR. MARCHBANKS:

13 I think that's a very good point. And I
14 think -- and a lot of times, you know,
15 it seems like you see -- even if child
16 support wasn't paid there is the
17 potential for a recovery to some degree
18 because the parent did do some things.
19 You know in this particular case we are
20 dealing with a very limited amount of
21 time that the child was alive. And just
22 to -- you know, just to keep it as
23 absolutely narrow as possible in the
24 very limited amount of time that the
25 child died or lived Mr. Collins did

1 nothing. You know there's -- there's no
2 and, there's no this, that or that or
3 and this. It's zero. He contributed
4 nothing. Now, the -- now he had plenty
5 -- he had plenty of opportunity. He had
6 plenty of time to step up in between the
7 time throughout this whole thing. And
8 in regards to Medicaid -- and I'm going
9 to go back to an analogous case, and I
10 point that out. I certainly don't want
11 to mislead anybody, but in the analogous
12 case of Rowe versus Reeves on page 784 -
13 - or on page South Carolina -- it's 392
14 South Carolina 154 is the exact cite of
15 this particular phrase. The very last
16 sentence, I believe, of that page says
17 that the father paid no medical expenses
18 because she was on Medicaid and did not
19 pay any living expenses because the
20 mother lived with her mother and
21 received food stamps. "However, this
22 does not excuse father from contributing
23 more than \$11 towards the mother's
24 pregnancy." Now, again, that's an
25 analogous case, but the reason those

1 cases intrigue me is because the facts
2 are so similar. And the analysis that
3 the courts go through in those cases
4 overlay this perfect. So, again, we're
5 in a situation where a father, if he has
6 divested his constitutional right to
7 have a relationship with his child, how
8 in the world does he have a right to
9 benefit from the child's death?

10 THE COURT:

11 Ms. Salvini or Mr. Read, do you want to
12 just address anything before we wrap it
13 up?

14 MS. SALVINI:

15 Your Honor, I just want to point The
16 Court back to Ms. Murphy's Petition that
17 she filed, and specifically she set
18 forth in there asking The Court to
19 consider denying Mr. Collins any of the
20 proceeds or substantially limiting that,
21 not because of what happened during that
22 hour because she didn't point out what
23 she thought he should have done, but
24 because she's asserting that he should
25 have financially supported her and

1 that's contrary to the law. I mean Mr.
2 Marchbanks wants The Court to take a
3 leap and adopt, which you can see does
4 not -- has no precedential value, the
5 adoption case law and statutes that just
6 don't apply here. They just don't. And
7 if The Court goes down that path to say
8 that somehow in the reading of a statute
9 that's plain in its language that he
10 should have been providing support for
11 the mother the law doesn't support that
12 at all. We're talking about the
13 decedent. This is a he said/she said.
14 I mean of course there are the facts.
15 Everybody is going to say, you know,
16 that they're wrong. They're going to
17 argue about what happened after that, I
18 think they were together like I said
19 four or maybe five months, what happened
20 in the last portion of her pregnancy.
21 But the law simply just does not -- does
22 not support that finding by The Court
23 whatsoever.

24 THE COURT:

25 Okay. I'm going to take this of course

1 under advisement, and in the next -- I
2 think we said ten days if you would look
3 to see if you can find some cases
4 anywhere that have similar facts,
5 similar statutes that have been
6 construed that would be most helpful.
7 And if you need more than ten days I
8 don't -- that's not a problem with me,
9 if you want to make it 15 that will be
10 fine. Do you want to do that?

11 MR. MARCHBANKS:

12 Fifteen is fine, Your Honor.

13 THE COURT:

14 Okay.

15 MS. SALVINI:

16 Let's do 15.

17 THE COURT:

18 Let's do 15.

19 MS. SALVINI:

20 Just in case.

21 THE COURT:

22 Okay. All right.

23 MR. MARCHBANKS:

24 Thank you.

25 THE COURT:

1 Thank you. All three of you did a very
2 good job on a very difficult situation.

3 (HEARING ADJOURNED)

4

5

6

7

1 STATE OF SOUTH CAROLINA)

2) CERTIFICATE

3 COUNTY OF GREENVILLE)

4 I, DONNA B. FRIDDLE, a Notary Public, duly
5 commissioned and qualified in and for the
6 State of South Carolina, do hereby certify
7 that the Probate Court hearing was taken
8 before me on January 9, 2015 at 10:18 A.M.;
9 that said hearing was transcribed under my
10 direction; and that this transcript is a true
11 record of said proceedings. I further
12 certify that I am not of kin or counsel to
13 the parties in this case, am not in the
14 regular employ of counsel for any of said
15 parties, nor am I interested in the results
16 of this case.

17 IN WITNESS WHEREOF, I have hereunto set my
18 hand and affixed my official seal this
19 _____ day of _____, 2015.

20

21 Notary Public for South Carolina

22 My Commission Expires: 01/30/16



Office of the Probate Court

Debora A. Faulkner
Probate Judge for Greenville County
Greenville, South Carolina

www.greenvillecounty.org/probate

July 15, 2014

Mr. Charles W. Marchbanks, Jr.
Attorney at Law
1225 South Church Street
Greenville, SC 29605

RE: Estate of Tynslee Elizabeth Fields, Deceased
Probate Court File No. 2012ES2301718

Dear Mr. Marchbanks:

We are returning the Petition to Deny Respondent Wrongful Death Proceeds. Upon review, Judge Sauvain advises it appears a Motion would be filed in the Court which is hearing the Wrongful Death action.

If you have any questions, please call.

Sincerely yours,

Judicial Assistant
Estate Division
(864) 467-7179

Enclosure

Estate Division • 301 University Ridge, Suite 1200, • Greenville, SC 29601 • (864) 467-7170
Protective Proceedings Division • 301 University Ridge, Suite 5600, • Greenville, SC 29601 • (864) 467-7404
Mental Health Division • 301 University Ridge, Suite 5600, • Greenville, SC 29601 • (864) 467-7085
Marriage License Division • 301 University Ridge, Suite 5600, • Greenville, SC 29601 • (864) 467-7171

DEATH CERTIFICATION

STATE FILE NUMBER: 139-12-018635 AMENDED

DECEDENT'S NAME: *TYNLEE ELIZABETH FIELDS*

AKA'S: NA

ARMED FORCES: NO

DATE OF BIRTH: JUNE 12, 2012

TYPE OF PLACE OF DEATH: HOSPITAL- INPATIENT

NAME AND ADDRESS OF PLACE OF DEATH: ST. FRANCIS EASTSIDE, GREENVILLE, SC 29615

PLACE OF DISPOSITION: THOMAS MCAFFEE CREMATION CENTER

DISPOSITION LOCATION: GREENVILLE, SOUTH CAROLINA

METHOD OF DISPOSITION: CREMATION

DECEDENT'S RESIDENCE: 350 FAIRFOREST WAY APT:8302, GREENVILLE, GREENVILLE COUNTY, SC, 29607

PLACE OF BIRTH: SOUTH CAROLINA

SURVIVING SPOUSE'S NAME: NA

FATHER'S NAME: JEREMY PAUL FIELDS

MOTHER'S NAME PRIOR TO FIRST MARRIAGE: LAUREN ELIZABETH MURPHY

INFORMANT'S NAME: JEREMY PAUL FIELDS

MAILING ADDRESS: 350 FAIRFOREST WAY APT:8302, GREENVILLE, SC, 29607

FUNERAL HOME: THOMAS MCAFFEE FUNERAL HOME, 639 N. MAIN ST/PO BOX 527, GREENVILLE, SC, 29601

FUNERAL DIRECTOR: TIME COX

EMBALMER'S NAME: ANDREW KUKLINSKI

ACTUAL OR PRESUMED DATE OF DEATH: JUNE 12, 2012

ACTUAL OR PRESUMED TIME OF DEATH: 1756

CAUSE OF DEATH - PART I

DISRUPTION OF CERVICAL VERTEBRAE C5-C6

BIRTH TRAUMA

SEX: FEMALE

SOCIAL SECURITY NUMBER: NA

AGE: 2 HOURS

COUNTY OF DEATH: GREENVILLE

MARITAL STATUS: NEVER MARRIED

RELATIONSHIP: FATHER

LICENSE NUMBER: 1543

LICENSE NUMBER: 3432

MANNER OF DEATH: ACCIDENT

OTHER SIGNIFICANT CONDITIONS -PART II:

NA

CORONER CONTACTED? YES

AUTOPSY PERFORMED? YES

AUTOPSY AVAILABLE? YES

DATE OF INJURY: JUNE 12, 2012

TIME OF INJURY: 0510

INJURY AT WORK? NO

PLACE OF INJURY: HOSPITAL

LOCATION OF INJURY: 701 GROVE ROAD, GREENVILLE, GREENVILLE COUNTY, SC, 29605

HOW THE INJURY OCCURRED?

SHOULDER DYSTOCIA WITH BIRTH TRAUMA

CERTIFIER NAME AND TITLE: CHIEF MED. EXAM MICHAEL E. WARD, MD. LICENSE NUMBER: NA

CERTIFIER'S ADDRESS: 890 W. FARIS ROAD, SUITE 110, GREENVILLE, SC, 29605

DATE FILED: JUNE 19, 2012

DATE OF ISSUANCE: AUGUST 02, 2012

SPECIAL INSTRUCTIONS:

CAUSE OF DEATH AMENDED BY: DHEC 627 PER MICHAEL WARD, ME 7/24/12. INJURY INFO AMENDED BY: DHEC 627 PER MICHAEL WARD, ME 7/24/12. MANNER OF DEATH AMENDED BY: DHEC 627 PER MICHAEL WARD, ME 7/24/12.

SC02351871

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

Catherine Templeton
Catherine Templeton
Director and State Registrar

Guang Zhao
Guang Zhao
Assistant State Registrar

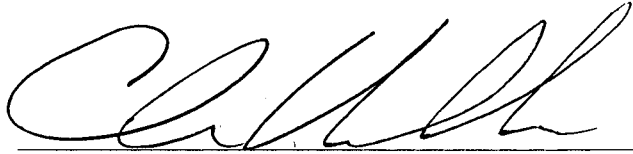
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Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

August 9, 2016



Charles W. Marchbanks, Jr.
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AUG 12 2016

SC Court of Appeals