THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

RECEIVED
AUG 12 2016
SC Court of Appeals

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 I

Charles W. Marchbanks, Jr.
1225 South Church Street
Greenville, SC 29605
864-552-1606
Attorney for Appellant

Jessica Salvini
101 West Park Avenue
Greenville, SC 29601
864-232-5800
Attorney for Respondent

John M. Read, IV
101 West Park Avenue
Greenville, SC 29601
864-501-5110
Attorney for Respondent

INDEX

Court of Appeals Order granting Appellant permission to order the transcript of the September 10, 2015 Circuit Court Appeal Hearing outside of the filing deadline filed April 14, 2016. 1

Greenville County Court Order on Lauren Murphy's Motion for Reconsideration filed February 9, 2016. 3

Greenville County Circuit Court Order filed December 28, 2015 in the matter of Mark Collins Appellant v. Lauren Murphy Respondent, Case Number 2015-CP-23-02860. 5

Greenville County Probate Court Order filed April 29, 2015 in the matter of the Estate of Tynslee Elizabeth Fields, Case No. 2012-ES-23-01718 12

Greenville County Court of Common Pleas filed November 5, 2014 Order on Movant Mark Collins' Motion to Compel Disbursement and Personal Representative Lauren Murphy's Motion to Deny Proceeds entered in the matter of Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields vs. Bon Secours Health System, Inc., et. al., Case No. 2013-CP-23-04186. 32

Return to Respondents' Motion to Stay Disbursement of Estate Assets/Funds & to Extend Deadline filed on June 27, 2014 in the Greenville County Probate Court in the matter of the Estate of Tynslee Elizabeth Fields, Case No. 2012-ES-23-01718 40

Greenville County Court of Common Pleas filed February 24, 2014 Order for Approval of Settlement as to Defendant Mercy Obstetrics & Gynecology, P.A., Ragesh Pandya, M.D. Only, and the Petition for Approval of Settlement as to Defendants Mercy Obstetrics & Gynecology, P.A., Ragesh Pandya, M.D entered in the matter of Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields vs. Bon Secours Health System, Inc., et. al., Case No. 2013-CP-23-04186. 45

Appellant Lauren Murphy's Motion to the Court of Appeals to Order the Transcript of the September 10, Circuit Court Appeal hearing outside of the time limit to request the transcript filed April 12, 2016 47

Appellant Lauren Murphy's Notice of Appeal filed with the Court of Appeals on March 11, 2016 50

Motion for Reconsideration filed with the Circuit Court on January 6, 2016 by Lauren Murphy as Statutory Beneficiary. 80

Respondent Lauren Murphy's Brief filed with the Court of Appeals on August 12, 2015 92

Appellant Mark Collins' Appellate Brief filed with the Circuit Court on July 13, 2015. 120

Notice of Intent to Appeal to Circuit Court filed by Mark Collins on May 1, 2015. 141

Respondent's Submission of Applicable Case Law from Other Jurisdictions filed on January 27, 2015 in the Greenville County Probate Court on in the matter of the Estate of Tynslee Elizabeth Fields, Case No. 2012-ES-23-01718.....165

Plaintiff's Submission to the Court of Case Law from Jurisdictions Other than South Carolina filed on January 23, 2015 in the Greenville County Probate Court on in the matter of the Estate of Tynslee Elizabeth Fields, Case No. 2012-ES-23-01718. 168

Return in Opposition to Motion to Deny Mark Collins Wrongful Death And Survival Settlement Proceeds filed in the Greenville County Probate Court on November 24, 2014 in the matter of the Estate of Tynslee Elizabeth Fields, Case No. 2012-ES-23-01718. 221

Motion to Deny Mark Collins Wrongful Death and Survival Settlement Proceeds filed in the Greenville County Probate Court on November 18, 2014 in the matter of the Estate of Tynslee Elizabeth Fields, Case No. 2012-ES-23-01718.....272

Plaintiff's Memorandum in Support of Motion to Deny Mark Collins Any and All Proceeds Derived from Settlement of Survival and Wrongful Death Actions filed September 27, 2014 in the Greenville County Court of Common Pleas in the matter of Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields vs. Bon Secours Health System, Inc., et. al., Case No. 2013-CP-23-04186. 276

Interested Party Mark Collins' Memorandum in Support of Motion to Compel Disbursement and Response to Motion to Deny Proceeds filed September 26, 2014 in the Greenville County Court of Common Pleas in the matter of Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields vs. Bon Secours Health System, Inc., et. al., Case No. 2013-CP-23-04186. 327

Return to Mark Collins' Motion to Compel and Motion to Deny Mark Collins Any and All Proceeds Derived from Settlement of Survival and Wrongful Death Actions filed August 15, 2014 in the Greenville County Court of Common Pleas in the matter of Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields vs. Bon Secours Health System, Inc., et. al., Case No. 2013-CP-23-04186. 354

Motion to Compel filed August 6, 2014 in the Greenville County Court of Common Pleas in the matter of Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields vs. Bon Secours Health System, Inc., et. al., Case No. 2013-CP-23-04186.....371

Notice of Motion and Motion to Stay Disbursement of Proceeds filed on July 23, 2014 in the Greenville County Probate Court in the matter of the Estate of Tynslee Elizabeth

Fields, Case No. 2012-ES-23-01718 389

Summons and Petition to Deny Respondent Wrongful Death Proceeds filed on July 2, 2014 in the Greenville County Probate Court in the matter of the Estate of Tynslee Elizabeth Fields, Case No. 2012-ES-23-01718. 392

Notice of Motion and Motion to Stay Disbursement of Estate Assets/Funds & to Extend Deadline for Parties to Either Waive or Post Bond filed on June 24, 2014 in the Greenville County Probate Court in the matter of the Estate of Tynslee Elizabeth Fields, Case No. 2012-ES-23-01718 396

Summons and Form 300 PC filed October 4, 2012 by Lauren Murphy in the Greenville County Probate Court. 399

Greenville County Probate Court Certificate of Appointment of Lauren Murphy as the Personal Representative for the Estate of Tynslee Elizabeth Fields filed July 15, 2014.....406

Transcript of the September 10, 2015 appellate hearing before the Circuit Court in the matter of Mark Collins Appellant v. Tynslee Elizabeth Fields, Deceased and Lauren Murphy Respondent. 407

Transcript of the January 9, 2015 Hearing in the Greenville County Probate Court in the matter of the Estate of Tynslee Elizabeth Fields, Case No. 2012-ES-23-01718. 438

Correspondence dated July 15, 2014 from the Greenville County Probate Court regarding the Summons and Petition to Deny Respondent Wrongful Death Proceeds filed on July 2, 2014 in the Greenville County Probate Court in the matter of the Estate of Tynslee Elizabeth Fields, Case No. 2012-ES-23-01718. 522

Death Certificate for Tynslee Elizabeth Fields issued August 2, 2012. 523

Certificate of Appellant 524

The South Carolina Court of Appeals

In the Matter of Tinslee 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.

Appellate Case No. 2016-000536

The Honorable The Honorable Perry H. Gravely, The Honorable Debora A. Faulkner
Greenville County
Trial Court Case No. 2015CP2302860, 2012ES2301718

ORDER

Appellant's motion requesting permission to order transcript outside of the filing deadline is hereby Granted.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

FILED

JS 4/14/16

cc:
Jessica Ann Salvini, Esquire
John Magruder Read, IV, Esquire
Charles W. Marchbanks, Jr., Esquire
Ruth Hindman DiPasquale, Esquire
Paul B. Wickensimer

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2016 FEB 9 PM 3 25

JUDGMENT IN A CIVIL CASE

CASE NO: 2015CP2302860

Mark Collins *vs.* **Lauren Murphy**

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

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

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

Dated at Greenville, South Carolina, this .

Court Reporter:

_____
PRESIDING JUDGE

This judgment was entered on the 9th day of February 2016, and a copy mailed first class this 9th day of February 2016, to attorneys of record or to parties (when appearing pro se) as follows:

Jessica Ann Salvini 101 W. Park Ave. Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Charles W. Marchbanks Jr. 1225 South Church Street Greenville, SC 29605
Ruth Hindman DiPasquale 1225 South Church Street Greenville, SC 29605
John Magruder Read IV 101 W. Park Ave. Greenville, SC 29601

ATTORNEY(S) FOR THE DEFENDANT(S)

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

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2016 FEB 9 PM 3 25

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	Case No. 2015-CP-23-02860
Lauren Murphy, as statutory beneficiary,	)	
	)	
Respondent,	)	
	)	
v.	)	**ORDER**
	)	
Mark Collins,	)	
	)	
Appellant.	)	
	)	

This matter is before the Court upon Respondent's Motion for Reconsideration of the Order filed on December 28, 2015. In considering the Appeal from the Probate Court, the South Carolina Court of Appeals has confirmed the following standard of review:

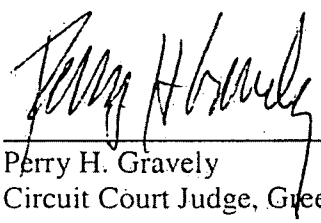
> On appeal from an action at law, the circuit court and the appellate court may not disturb the probate court's findings of fact unless a review of the record discloses that no evidence supports them. Questions of law may, however, be decided by this court without deference to the lower court.

Estate of Patterson v. Palmetto Bank, 374 S.C. 116, 119, 646 S.E.2d 885, 887 (Ct. App. 2007) (citations omitted).

The December 28, 2015 Order of this Court found that there was no "evidence....that reasonably supports the factual finds of the probate judge" and that the probate judge did not properly apply the applicable law.

Therefore, the Respondent's Motion for Reconsideration is denied and the previous Order is confirmed as issued.

IT IS SO ORDERED.



Perry H. Gravely
Circuit Court Judge, Greenville County

February 4, 2016
Greenville, South Carolina

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF GREENVILLE FILED-CLERK OF COURT GREENVILLE CO. S.C. PAUL B. WICKENSIMER 2015 DEC 28 PM 1 23

CASE NO: 2015CP2302860

IN THE COURT OF COMMON PLEAS

Mark Collins vs. **Lauren Murphy**

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

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

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

Dated at Greenville, South Carolina, this .

Court Reporter:

_____
PRESIDING JUDGE -

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

Jessica Ann Salvini 101 W. Park Ave. Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Charles W. Marchbanks Jr. 1225 South Church Street Greenville, SC 29605
Ruth Hindman DiPasquale 1225 South Church Street Greenville, SC 29605
John Magruder Read IV 101 W. Park Ave. Greenville, SC 29601

ATTORNEY(S) FOR THE DEFENDANT(S)

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

CPFORM4M
SCCA SCRCP Form 4 Revised 06/2008

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT
) Case No. 2015-CP-23-02860

FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 DEC 28 PM 4 23

Lauren Murphy, as statutory beneficiary,

Respondent,

v.

Mark Collins,

Appellant.

ORDER

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

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

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

FACTS

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

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

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

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

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

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

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

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

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

STANDARD OF REVIEW

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

LAW / ANALYSIS

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

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

S.C. Code § 15-51-40.

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

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

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

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

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

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

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

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

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

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

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

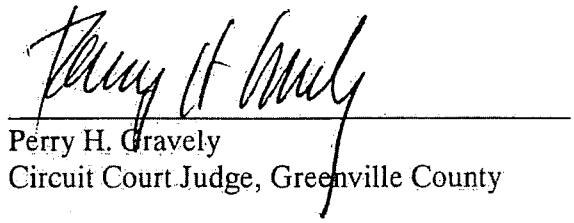
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

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

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

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

IT IS SO ORDERED.



Perry H. Gravely
Circuit Court Judge, Greenville County

December 4, 2015
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
COUNTY OF GREENVILLE	)	**CASE NO.: 2012-ES-23-01718**
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.	)	**ORDER**

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

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 was 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

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 the 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.

20. Later, Murphy made a box of photographs and other memorabilia for Collins. Murphy still has the box, although she says 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

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

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2013CP2304186

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 NOV 5 PM 4 13

Lauren Murphy *vs.* Bon Secours Health System Inc

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

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

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

Dated at Greenville, South Carolina, this November 5, 2014.

Court Reporter:

_____

PRESIDING JUDGE - Steven H. John

This judgment was entered on the November 5, 2014, and a copy mailed first class this November 5, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

Arthur Stuart Hudson PO Box 348 Mount Pleasant, SC 29465
Charles W. Marchbanks Jr. 1225 South Church

Ashby W. Davis 5 Hawthorne Park Ct. Greenville, SC 29615
Steven A. Snyder 5 Hawthorne Park Ct. Greenville,

CPFORM4M
SCCA SCRCP Form 4 Revised 06/2008

Street Greenville, SC 29605

ATTORNEY(S) FOR THE PLAINTIFF(S)

SC 29615
David Lee Williford II 5 Hawthorne Park Ct.
Greenville, SC 29615
John Magruder Read IV 1204-A E. Washington St.
Greenville, SC 29601

ATTORNEY(S) FOR THE DEFENDANT(S)

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

CPFORM4M
SCCA SCRCP Form 4 Revised 06/2008

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
Lauren Murphy, individually, and as Personal Representative of the Estate Of Tynslee Fields, Plaintiffs, v. Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet Dach, D.O., and John and Jane Does 1-10, Defendants.	)	C.A. No.: 13-CP-23-04186 **ORDER ON MOVANT MARK COLLINS' MOTION TO COMPEL DISBURSEMENT AND PERSONAL REPRESENTATIVE LAUREN MUPHY'S MOTION TO DENY PROCEEDS**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 NOV 5 PM 4 11

Date of Hearing	September 30, 2014
Presiding Judge	Honorable Judge Steven H. John
Court Reporter	Caroline Hiskell

This matter is before the Court pursuant to a "MOTION TO COMPEL DISBURSEMENT OF PROCEEDS" filed by Movant and Statutory beneficiary Mark Collins on August, 6, 2014 as well as the "MOTION TO DENY MARK COLLINS ANY AND ALL PROCEEDS DERIVED FROM SETTLEMENT OF SURVIVAL AND WRONGFUL DEATH ACTIONS" filed subsequently by Personal Representative Lauren Murphy on August 15, 2014. Both parties timely filed Memoranda in support of their Motions with the Court.

At issue is the division and disbursement of Five Hundred Ninety-Three Thousand, Five

Hundred Seventy-Seven Dollars and Fifty-Two Cents[1] ($593,577.52) in proceeds from the partial settlement of the above-captioned survival and wrongful death suit. Personal Representative Lauren Murphy and Movant Mark Collins are the only legal heirs and statutory beneficiaries of decedent Tynslee Fields.

Appearing before the Court were Movant Mark Collins, along with his Attorneys, John M. Read, IV and Jessica A. Salvini, Personal Representative Lauren Murphy, along with her Attorney, Charles W. Marchbanks, Jr., Defendants Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc., d/b/a St. Francis Eastside, Upstate OB-GYN, PA and Stephanie Ann Berlet-Daclz, D.O.'s Attorney Ashby W. Davis, and Attorney for the Estate of Tynslee Fields, Ruth F. Hindman.

BACKGROUND AND PROCEDURAL HISTORY

On February 24, 2014, an Order approving a Petition for Approval of Settlement as to Defendants Mercy Obstetrics & Gynecology, P.A., Ragesh Pandya, M.D. was entered by the Greenville County Court of Common Pleas in the litigation in the matter of *Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields, vs. Bon Secours Health System, Inc., et. al,* Case No. 2013-CP-23-04186 (hereinafter "Order"). The Order sets forth the Circuit Court's approval of a settlement reached between the Plaintiffs and several Defendants (that being, Mercy Obstetrics & Gynecology, P.A., Ragesh Pandya, M.D), finding that settlement "is proper and in the best interest of the Estate" named hereinabove. As a result, the Circuit Court approved the sum of five thousand dollars ($5,000.00) being allocated to the Survival Action (hereinafter referred to as "estate proceeds"), as well as the payment of the sum

[1] The amount of proceeds contemplated at the time of the hearing were $583,577.52. Since the hearing, Ms. Murphy's original associate counsel has forgone his $10,000.00 fee, thus increasing the amount to $593,577.52.

of "Five Hundred [Ninety]-Three Thousand, Five Hundred Seventy-Seven Dollars and Fifty-Two Cents ($5[9]3,577.52) (hereinafter referred to as "wrongful death proceeds") to the "statutory beneficiaries."

The estate proceeds and the wrongful death proceeds are currently being held in trust with the Hughey Law Firm, LLC. On or about July 29, 2014, Movant Mark Collins formally demanded disbursement of ½ of the proceeds ($296,788.76) to him as statutory beneficiary. This demand was declined.

Subsequent to this demand but prior to the time that Movant Mark Collins filed the subject Motion to Compel Disbursement with this Court, Personal Representative and statutory beneficiary Lauren Murphy, attempted to file with the Probate Court a Motion to Deny Mark Collins Any and All Proceeds derived from the underlying litigation. A representative of the Probate Court declined to accept the filing, directing Personal Representative Murphy to file the Motion in Circuit Court.

ANALYSIS

Movant Collins has averred that he had brought the subject Motion to Compel Disbursement of Proceeds before the Circuit Court based upon the Probate Court's referral of Personal Representative Murphy's Motion to Deny Proceeds to this Court and upon the law conferring concurrent jurisdiction upon the Probate Court and the Circuit Court where matters involving the allocation of wrongful death and survival action proceeds are concerned. The statute sets forth, in pertinent part:

> (b) The [Probate] court's jurisdiction over matters involving wrongful death or actions under the survival statute is concurrent with that of the circuit court and extends only to the approval of settlements as provided in Sections 15-51-41 and 15-51-42 and to

the allocation of settlement proceeds among the parties involved in the estate. S.C. Code of Laws § 62-1-302(b) (1976 as amended).

Personal Representative Murphy averred that she had brought the subject Motion to Deny Proceeds before the Circuit Court based upon the Probate Court's position that this matter is more properly situated in this forum. She based her original choice to proceed in the Probate Court upon a statutory provision that appears to conflict with that identified above, stating:

> "[U]pon motion by either parent or any other party of potential interest based upon the decedent having died intestate, the probate court may deny or limit either or both parents entitlement for a share of the proceeds if the court determines, by a preponderance of the evidence, that the parent or parents failed to reasonably provide support for the decedent as defined in Section 63-5-20 and did not otherwise provide for the needs of the decedent during his or her minority." S.C. Code of Laws § 15-51-40 (1976 as amended).

This Court is charged with applying the laws of this state according to their plain and ordinary meaning.

> "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning... The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction... Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." University of Southern Cal. v. Moran, 617 S.E.2d 135, 365 S.C. 270 (2005) (internal citations omitted).

These two statutes, which both apply to the instant matter, conflict directly with each other. One statute, § 62-1-302(b), purports to confer concurrent jurisdiction upon both the Probate and Circuit Court regarding matters of allocation; however, the other, § 15-51-40, dictates that actions brought to deny proceeds to a statutory beneficiary can only be brought in the Probate Court. Therefore, this Court has determined that the motions brought by Movant Collins and Personal Representative Murphy may only be brought before the Probate Court if the applicable statutes are to be read consistently.

brought by Movant Collins and Personal Representative Murphy may only be brought before the Probate Court if the applicable statutes are to be read consistently.

The parties have agreed that the proceeds of the wrongful death settlement totaling the sum of Five Hundred Ninety-Three Thousand, Five Hundred Seventy-Seven Dollars and Fifty-Two Cents ($593,577.52) will be transferred to an interest bearing account administered by Ruth F. Hindman, attorney for the Estate of Tynslee Fields, and the funds therein shall not be disturbed until further order of the Probate Court or the Court of Common Pleas. Attorney Hindman consented to administer the account under the Estate's tax identification number.

The parties further agreed that the proceeds from the partial settlement of the survival action totaling the sum of $1,668.50 will be disbursed to Ruth F. Hindman to be placed in an Estate Checking Account under the Estate's tax identification number for the purpose of funding and administering the Estate.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED

A. The subject motions are hereby dismissed from this Court pursuant to SCRCP 12(b)(1), for lack of subject matter jurisdiction;

B. The subject motions are referred to the Probate Court of Greenville County, South Carolina for adjudication.

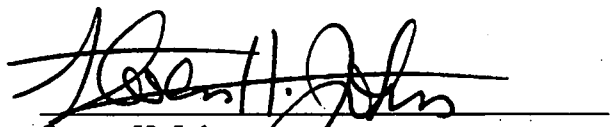
C. The Honorable Steven H. John retains specific jurisdiction over only the referral of the motions to the Greenville County Probate Court, but for no other purposes.

D. The proceeds of the partial wrongful death settlement totaling the sum of $593,577.52, shall be transferred from the trust account of the Hughey Law Firm, LLC to an interest bearing account administered by Ruth F. Hindman, attorney for the Estate of Tynslee

Fields, and the funds therein shall not be disturbed until further order of the Probate Court or the Court of Common Pleas.

E. Proceeds from the partial settlement of the survival action totaling the sum of $1,600.00 shall be placed into an Estate Checking Account by Ruth F. Hindman, Esquire, as the attorney for the Estate of Tynslee Fields for the purpose of funding and administering the Estate.

IT IS SO ORDERED.



Steven H. John
Presiding Judge
Thirteenth Judicial Circuit

October 17, 2014
In Chambers, South Carolina

FILED

JUN 2 7 2014

GREENVILLE COUNTY
PROBATE COURT

STATE OF SOUTH CAROLINA	IN THE PROBATE COURT
COUNTY OF GREENVILLE	THIRTEENTH JUDICIAL CIRCUIT
IN RE: Tynslee Elizabeth Fields	**CA No.: 2012-ES-23-01718**
Lauren Murphy, Petitioner, vs. Tynslee Elizabeth Fields, Decedent, and her next of kin, Mark Collines, et. al, Respondents.	**RETURN TO RESPONDENTS' MOTION TO STAY DISBURSEMENT OF ESTATE ASSETS/FUNDS & TO EXTEND DEADLINE**

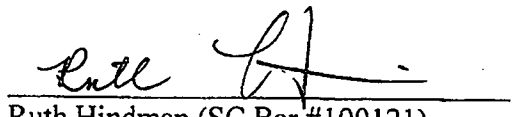
TO THE RESPONDENT ABOVE NAMED, BY AND THROUGH HIS ATTORNEY, JESSICA SALVINI:

Petitioner, Lauren Murphy, as Personal Representative of the Estate, through her attorney, Ruth Hindman, by way of Return to Motion, would respectfully show unto the Court the following:

1. In accordance with the Court's Order of April 3, 2014, the Personal Representative has posted bond in the amount of $5000 as evidenced by Attachment A filed with the Court on June 27, 2014. The documents to secure the bond had already been filed when counsel for the Estate received the Respondent's Motion. Therefore, the Respondent's request to extend the deadline for the parties to waive or post bond is now moot.
2. The Petitioner, as Personal Representative of the Estate, does not contest the Respondent's request to stay disbursement of estate assets and funds for thirty days.

Respectfully submitted,

RUTH LAW FIRM, LLC



Ruth Hindman (SC Bar #100121)
1225 South Church Street
Greenville, SC 29605
(864) 697-8848
(888) 397-9248 fax

Attorney for the Estate

June 27, 2014
Greenville, South Carolina

ATTACHMENT A

BOND OF ADMINISTRATOR-EXECUTOR-GUARDIAN

BOND NO. 22BSBGT5829

In the matter of the estate of TYSLEE ELIZABETH FIELDS

In the PROBATE (Probate, District, Surrogate) Court of the GREENVILLE COUNTY (County, Parish, Judicial District) of the State of SOUTH CAROLINA

KNOW ALL MEN BY THESE PRESENTS

That we Lauren Elizabeth Murphy as principal, and The Undersigned Surety, are held and firmly bound unto Greenville County Probate Court (State, County Probate Court, Judge) in the sum of Five Thousand DOLLARS ($5,000) conditioned that the above bound principal has been appointed EXECUTOR (administrator, executor, guardian) of the *(Estate) (~~Person and Estate~~) of TYSLEE ELIZABETH FIELDS, *(~~Ward~~) (Deceased) shall faithfully perform the duties of the trust required of him by law under said appointment.

Dated this 26th day of June, 2014.

Approved:

Lauren Elizabeth Murphy
Principal

Judge

Hartford Fire Insurance Company
Surety

By M. Foote
Matthew L. Foote, Attorney in Fact

*Strike out words not applicable
FK 06 68 (Ed. 08 94)

Printed in U.S.A.

POWER OF ATTORNEY

Direct Inquiries/Claims to:

THE HARTFORD
Bond T-4
One Hartford Plaza
Hartford, Connecticut 06155
call: **888-266-3488** *or fax:* **860-757-5835**

KNOW ALL PERSONS BY THESE PRESENTS THAT: **Agency Code:** 22 290316

- [x] **Hartford Fire Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- [ ] **Hartford Casualty Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- [ ] **Hartford Accident and Indemnity Company**, a corporation duly organized under the laws of the State of Connecticut
- [ ] **Hartford Underwriters Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- [ ] **Twin City Fire Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- [ ] **Hartford Insurance Company of Illinois**, a corporation duly organized under the laws of the State of Illinois
- [ ] **Hartford Insurance Company of the Midwest**, a corporation duly organized under the laws of the State of Indiana
- [ ] **Hartford Insurance Company of the Southeast**, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, ***up to the amount of*** THREE MILLION DOLLARS ($3,000,000.00) EACH

LARRY FREUDENBERG, POLLYANNA LENGEL, MATTHEW L. FOOTE OF CHARLESTON, SOUTH CAROLINA

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by ☒, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on August 1, 2009, the Companies have caused these presents to be signed by its Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney

Wesley W. Cowling, Assistant Secretary

M. Ross Fisher, Vice President

STATE OF CONNECTICUT
COUNTY OF HARTFORD } ss. Hartford

On this 12th day of July, 2012, before me personally came M. Ross Fisher, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hartford, State of Connecticut; that he is the Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.

CERTIFICATE

Kathleen F. Maynard
Notary Public
My Commission Expires July 31, 2016

I, the undersigned, Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of June 26, 2014

Signed and sealed at the City of Hartford

Gary W. Stumper, Vice President

POA 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields,	)	C.A. No. 2013-CP-23-04186
Plaintiff,	)	ORDER FOR APPROVAL OF SETTLEMENT AS TO DEFENDANTS MERCY OBSTEGRICS & GYNECOLOGY, P.A., RAGESH PANDYA, M.D. ONLY
-vs-	)	
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,	)	
Defendants.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 FEB 24 AM 11 21

UPON READING the annexed Petition of Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, and it appearing that Lauren Murphy deems the offer with the Defendants acceptable, advantageous, and to the best interest of the Estate and the beneficiaries and

IT FURTHER APPEARING in the discretion of this Court that such settlement is proper and in the best interest of the Estate, it is

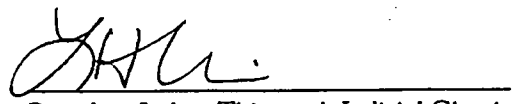
ORDERED, ADJUDGED and DECREED that Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, is hereby authorized to consummate the settlement referred to in the Petition and to execute and deliver to the Defendants an appropriate Release terminating, releasing, and ending all claims and actions asserted or brought under or by virtue of any Federal or South Carolina Statute or by common law in any way arising out of the incident against the Defendants Mercy Obstetrics & Gynecology, PA, Ragesh Pandya only, including their officers, directors, employees, physicians, agents, servants, attorneys, partners and representatives, and all parent, subsidiaries, and related corporations and any of the insured predecessors and successor corporations or entities, and their attorneys, heirs, assigns, executors, administrators, successors, subsidiaries, affiliated companies, parent companies, insiders, and any other indemnitors, including their insured entities. This

copy to Hood Law Firm & counter / will mail copies

in no way affects the rights of Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields to proceed against the remaining Defendants in this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the attorneys fees and costs itemized in the Petition filed herewith are approved by the Court, and Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, is hereby authorized and required to pay such fees and costs as well as any related medical, federal, and/or state liens, including but not limited to Medicare and/or Medicaid, out of the settlement proceeds, with any balance of said proceeds to be paid in accordance with the law.

AND IT IS SO ORDERED this the 24 day of Feb., 2014.



Presiding Judge, Thirteenth Judicial Circuit

Pickens, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF APPEALS
	)	
	)	
Lauren Murphy (As Statutory Beneficiary),	)	**APPELLANT'S MOTION REQUESTING PERMISSION TO ORDER TRANSCRIPT OUTSIDE OF THE FILING DEADLINES**
	)	
Appellant,	)	
	)	
vs.	)	
	)	
Mark Collins,	)	
	)	
Respondent.	)	**APPELLATE CASE NO. 2016-000536**

TO: THE ABOVE-NAMED RESPONDENT AND THE SOUTH CAROLINA COURT OF APPEALS:

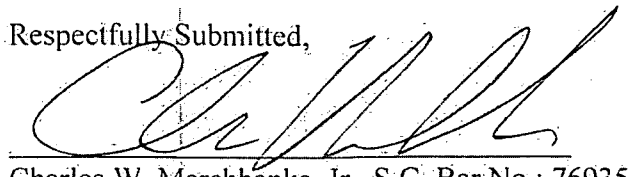
Upon receipt of the letter from the Court of Appeals Clerk dated April 4, 2016 in the above-captioned matter, and noting Rule 207 SCACR, Appellant Lauren Murphy moves this Honorable Court to extend the deadline for requesting the transcript of the proceedings under appeal from March 21, 2016 to March 23, 2016, the date Appellant sent a formal request for the trial transcript to Court Reporter Deborah Garrison regarding the September 10, 2015 hearing before the Honorable Judge Gravely. Attached is a copy of the March 23, 2016 letter requesting the trial transcript.

The basis for this motion is a two-day miscalculation of the deadline date for the transcript request, and the omission of noticing the Appellate Court of Appellant's request for said transcript.

Further, the subject matter of this appeal deals with the clarification of language added to S.C. Code of Laws Section 15-3-40 (1976 as amended) twenty (20) years ago, but said language has not yet had the benefit of interpretation by an Appellate Court.

As such, Appellant respectfully requests the Court to extend the deadline for the request of the trial transcript and to not dismiss this Appeal.

Respectfully Submitted,



Charles W. Marchbanks, Jr., S.C. Bar No.: 76935
The Marchbanks Law Firm, LLC
Attorney for the Appellant Lauren Murphy
1225 South Church Street
Greenville, South Carolina 29605
(864) 552-1606 Telephone
(864) 552-1607 Fax
charles.marchbanks@marchbankslawfirm.com

April 12, 2016
Greenville, South Carolina

THE MARCHBANKS LAW FIRM, LLC
1225 SOUTH CHURCH STREET
GREENVILLE, SOUTH CAROLINA 29605

March 23, 2016

VIA FIRST CLASS MAIL

Deborah Garrison
Post Office Box 27145
Greenville, SC 29616

Re: Tynslee Elizabeth Fields, Deceased
Lauren Murphy, Appellant v. Mark Collins, Respondent
2015-CP-23-02860

Dear Deborah:

Please note that I represent the above-referenced Appellant, Lauren Murphy, in her appeal of the ruling by Judge Gravely that was entered into the record on December 28, 2015.

Please accept this letter as our request for the transcript from the September 10, 2015 hearing before Judge Gravely. Please advise as to the cost of the transcript, and we will send prompt payment.

Should you have any questions or need additional information, please feel free to contact me at 864-552-1606.

Sincerely,

MARCHBANKS LAW FIRM, LLC

Charles W. Marchbanks, Jr.

cc: Jessica Salvini, Esq. (with enclosures)
Jack Read, Esq. (with enclosures)

TELEPHONE 864.552.1606 | FACSIMILE 864.552.1607 | EMAIL CHARLES.MARCHBANKS@MARCHBANKSLAWFIRM.COM

RECEIVED
MAR 11 2016
urt of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

Case No. 2015-CP-23-02860

Mark Collins, Respondent,

v.

Lauren Murphy, as statutory beneficiary, Appellant.

NOTICE OF APPEAL

Lauren Murphy appeals the order of the Honorable Perry H. Gravely dated December 28, 2015. This appeal is taken from a February 9, 2016 subsequent order of the Honorable Perry H. Gravely denying appellant's motion for reconsideration. Appellant received written notice of entry of the order denying appellant's motion for reconsideration on February 14, 2016.

THE MARCHBANKS LAW FIRM, LLC

Charles W. Marchbanks, Jr.
S.C. Bar No.: 76935
Attorney for the Plaintiff
1225 South Church Street
Greenville, SC 29605
864-552-1606 Telephone
864-552-1607 Facsimile
Charles.Marchbanks@MarchbanksLawFirm.com

Greenville, South Carolina
March 9, 2016

FILED-CLERK OF COURT
PAUL B. MIDKIFF, S.C.
2016 FEB 9 PM 3 25

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE) Case No. 2015-CP-23-02860

Lauren Murphy, as statutory beneficiary,

Respondent,

v.

Mark Collins,

Appellant.

ORDER

RECEIVED
MAR 11 2016
SC Court of Appeals

This matter is before the Court upon Respondent's Motion for Reconsideration of the Order filed on December 28, 2015. In considering the Appeal from the Probate Court, the South Carolina Court of Appeals has confirmed the following standard of review:

> On appeal from an action at law, the circuit court and the appellate court may not disturb the probate court's findings of fact unless a review of the record discloses that no evidence supports them. Questions of law may, however, be decided by this court without deference to the lower court.

Estate of Patterson v. Palmetto Bank, 374 S.C. 116, 119, 646 S.E.2d 885, 887 (Ct. App. 2007) (citations omitted).

The December 28, 2015 Order of this Court found that there was no "evidence…that reasonably supports the factual finds of the probate judge" and that the probate judge did not properly apply the applicable law.

Therefore, the Respondent's Motion for Reconsideration is denied and the previous Order is confirmed as issued.

IT IS SO ORDERED.

Perry H. Gravely
Circuit Court Judge, Greenville County

February 9, 2016
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

FILED-CLERK OF COURT
GREENVILLE CO.
PAUL B. WICKENSIMER
2016 FEB 9 PM 3 25

JUDGMENT IN A CIVIL CASE

CASE NO: 2015CP2302860

Mark Collins *vs.* Lauren Murphy

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b). SCRCP; ☐ Rule 41(a). SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

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

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

Dated at Greenville, South Carolina, this .

Court Reporter:

_____
PRESIDING JUDGE -

This judgment was entered on the 9th day of February 2016, and a copy mailed first class this 9th day of February 2016, to attorneys of record or to parties (when appearing pro se) as follows:

Jessica Ann Salvini 101 W. Park Ave. Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Charles W. Marchbanks Jr. 1225 South Church Street Greenville, SC 29605
Ruth Hindman DiPasquale 1225 South Church Street Greenville, SC 29605
John Magruder Read IV 101 W. Park Ave. Greenville, SC 29601

ATTORNEY(S) FOR THE DEFENDANT(S)

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

CHFORMM
SCCA SCRCP Form 4 Revised 06/2008

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE)
) Case No. 2015-CP-23-02860
Lauren Murphy, as statutory beneficiary,)
)
Respondent,)
)
v.) **ORDER**
)
Mark Collins,)
)
Appellant.)

RECEIVED
MAR 11 2016
SC Court of Appeals

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

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

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

FACTS

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

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

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

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

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

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

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

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

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

STANDARD OF REVIEW

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

LAW / ANALYSIS

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

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

S.C. Code § 15-51-40.

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

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

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

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

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

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

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

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

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

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

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

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

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

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

IT IS SO ORDERED.

Perry H. Gravely
Circuit Court Judge, Greenville County

December 4, 2015
Greenville, South Carolina

STATE OF SOUTH CAROLINA **JUDGMENT IN A CIVIL CASE**

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

IN THE COURT OF COMMON PLEAS

PAUL B. WICKENSIMER

2015 DEC 28 PM 1:23

Mark Collins vs. **Lauren Murphy**

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

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

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

Dated at Greenville, South Carolina, this .

Court Reporter:

_____

PRESIDING JUDGE -

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

Jessica Ann Salvini 101 W. Park Ave. Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Charles W. Marchbanks Jr. 1225 South Church Street Greenville, SC 29605
Ruth Hindman DiPasquale 1225 South Church Street Greenville, SC 29605
John Magruder Read IV 101 W. Park Ave. Greenville, SC 29601

ATTORNEY(S) FOR THE DEFENDANT(S)

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

CPFORM4M
SCCA SCRCP Form 4 Revised 06/2008

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
COUNTY OF GREENVILLE	)	**CASE NO.: 2012-ES-23-01718**
IN THE MATTER OF: **Tynslee Elizabeth Fields, Deceased**	)	
Lauren Murphy as Statutory Beneficiary,	)	
Petitioner,	)	**ORDER**
vs.	)	
Mark Collins, and The Estate of Tynslee Elizabeth Fields, Deceased,	)	
Respondents.	)	

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

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 was 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

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 the 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.

20. Later, Murphy made a box of photographs and other memorabilia for Collins. Murphy still has the box, although she says 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

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
13TH JUDICIAL CIRCUIT

Lauren Murphy, as Statutory Beneficiary,
Respondent,
vs.
Mark Collins,
Appellant.

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Docket No. 2015-CP-23-02860

FILED-CLERK OF COURT GREENVILLE CO. S.C. PAUL B. HUGGINS JR. 2016 JAN 6 PM 4:03

Respondent's Attorney:	Appellant's Attorney:
Charles W. Marchbanks, Jr., Bar No. 76935	Jessica Salvini, Bar No. _____
Address:	Address:
1225 South Church Street, Greenville, SC 29605	101 West Park Avenue, Greenville, SC 29601
Phone: 864-552-1606 Fax: 864-552-1607	Phone: 864-232-5800 Fax: 864-232-5888
E-mail: Charles.Marchbanks@MarchbanksLawFirm.com	E-mail: _____ Other: _____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Respondent / ☐ Appellant — January 6, 2016 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____ Date: _____
Judge Signature:

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

Custodial Parent (if applicable): _____

SCCA 233F (12/2009)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	13TH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	
IN THE MATTER OF:	)	CASE NUMBER: 2015-ES-23-02860
	)	(2012-ES-23-01718)
Tynslee Elizabeth Fields, Deceased (Decedent)	)	
	)	
Lauren Murphy (As Statutory Beneficiary),	)	**RESPONDENT'S MOTION FOR RECONSIDERATION**
	)	
Respondent,	)	
	)	
vs.	)	
	)	
Mark Collins,	)	
	)	
Appellant.	)	

FILED-CLERK OF COURT
GREENVILLE C.P.S.C.
PAUL B. WALKER JR.
2016 JAN 6 PM 4 37

TO: THE ABOVE-NAMED APPELLANT:

Upon receipt of the Order in the above-captioned matter and noting the Standard of Review, Respondent moves this Honorable Court pursuant to SCRCP Rule 59(e) to reconsider and amend its Order filed December 28, 2015 (the "Order") holding that Appellant Mark Collins, as a statutory beneficiary of the estate of Tynslee Elizabeth Fields, is entitled to one-half of any and all proceeds derived from the settlement and/or adjudication of a wrongful death claim filed on Tynslee's behalf by Respondent (civil action case number 2012-CP-23-01718).

Specifically, Respondent requests the Court examine an apparent oversight regarding the application of the Standard of Review. As the underlying cause of action is an action at law, the Standard of Review states "the circuit court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them..." In re Howard, 315 S.C. at 361-62, 434 S.E.2d at 257-58.

There are two specific findings of fact by the Probate Court that Respondent requests the Court consider:

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*." (Emphasis in original).

2. Finding of fact number 4 in the Order of the Probate Court: "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*." (Emphasis in original).

(ROA, p. 23).

Evidence supporting these findings is found in the Affidavit of Appellant Mark Collins, wherein he states, "Lauren Murphy and I were involved in a relationship in the Fall of 2011. We dated for only a few months. During the course of our relationship, Lauren became pregnant. Lauren told me that I was the father. She also told her friends and family that I was the father of the baby. I told Lauren that I wanted to be involved in the pregnancy and that I would always be an active father in our child's life. I can recall lying in bed with Lauren, discussing baby names." (ROA p. 98, Appellant's Affidavit).

Respondent requests the Court not disturb the above listed findings of fact of the Probate Court as they are supported by evidence in the record.

Further, Respondent requests this Court reconsider its conclusion that Appellant "was unable to provide the more usual means of attention and support to his minor child during her brief life" because this conclusion is largely based on the finding that Appellant Collins was unaware he was Tynslee's father. (Circuit Court Order on Appeal, p. 5). The alteration of that one fact markedly alters the landscape of this case. It demonstrates that Appellant willfully

ignored this child and, as such, should not be entitled to a windfall of settlement proceeds from Tynslee's underlying wrongful death action.

To prevent Appellant from such a windfall the court must find under the two prongs of S.C. Code Section 15-51-40, by a preponderance of the evidence: (1) That Appellant "failed to reasonably provide support for the decedent as defined in Section 63-5-20," and (2) That Appellant "did not otherwise provide for the needs of the decedent during [ ] her minority." S.C. Code of Laws § 15-51-40 (1976 as amended).

As a threshold issue, Respondent requests the court recognize that, under the first prong, S.C. Code Section 63-5-20 does not specify a period of time in which a parent should provide support. Thus, the Probate Court's examination of usual and unusual necessities pursuant to Section 63-5-20 are not constrained within a specific time frame. As a result, the child's short life does not impact Appellant's failure to reasonably provide support for the decedent as defined in Section 63-5-20.

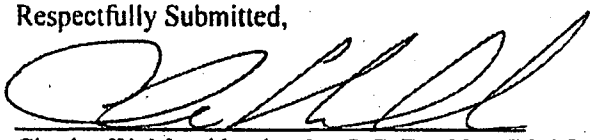
In considering the second prong, Appellant's knowledge he was Tynslee's father early in Respondent's pregnancy provided him a myriad of opportunities to ***otherwise*** provide for the needs of the decedent during her minority. In fact, countless things that an infant child needs during his or her lifetime, no matter how short, are provided before the child's birth. During the months of preparation for this child, and during her brief life, Appellant had many opportunities to provide ***something*** for Tynslee. His patent failure to do so over a period of many months, however, clearly demonstrates his willful choice to abandon this child.

Respondent asserts Appellant's near immediate knowledge of paternity, combined with his willful failure to do ***anything*** to benefit this child, shows by a preponderance of the evidence

that Respondent met both prongs of Section 15-51-40, and Appellant should not reap a windfall from the death of a child he rejected.

As such, Respondent respectfully requests the Court reconsider its Order and deny Appellant's appeal.

Respectfully Submitted,



Charles W. Marchbanks, Jr., S.C. Bar No.: 76935
The Marchbanks Law Firm, LLC
Attorney for the Respondent
1225 South Church Street
Greenville, South Carolina 29605
(864) 552-1606 Telephone
(864) 552-1607 Fax
charles.marchbanks@marchbankslawfirm.com

January 6, 2016
Greenville, South Carolina

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF GREENVILLE FILED-CLERK OF COURT GREENVILLE S.C. PAUL B. WICKENSIMER 2015 DEC 28 PM 1 23

CASE NO: 2015CP2302860

IN THE COURT OF COMMON PLEAS

Mark Collins *vs.* **Lauren Murphy**

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

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

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

Dated at Greenville, South Carolina, this .

Court Reporter:

_____

PRESIDING JUDGE -

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

Jessica Ann Salvini 101 W. Park Ave. Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Charles W. Marchbanks Jr. 1225 South Church Street Greenville, SC 29605
Ruth Hindman DiPasquale 1225 South Church Street Greenville, SC 29605
John Magruder Read IV 101 W. Park Ave. Greenville, SC 29601

ATTORNEY(S) FOR THE DEFENDANT(S)

_____

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

CPFORM4M
SCCA SCRCP Form 4 Revised 06/2008

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	Case No. 2015-CP-23-02860
Lauren Murphy, as statutory beneficiary,	)	
	)	
Respondent,	)	
	)	
v.	)	**ORDER**
	)	
Mark Collins,	)	
	)	
Appellant.	)	
	)	

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

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

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

FACTS

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

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

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

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

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

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

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

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

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

STANDARD OF REVIEW

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

LAW / ANALYSIS

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

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

S.C. Code § 15-51-40.

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

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

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

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

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

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

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

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

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

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

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

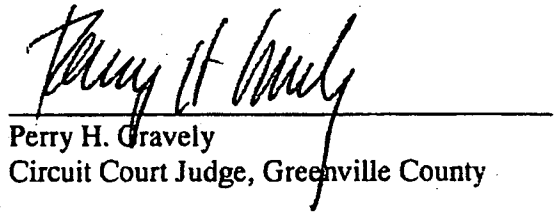
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

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

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

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

IT IS SO ORDERED.



Perry H. Gravely
Circuit Court Judge, Greenville County

December 4, 2015
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT

APPEAL FROM GREENVILLE COUNTY
PROBATE COURT
DEBORA A. FAULKNER, PROBATE COURT JUDGE

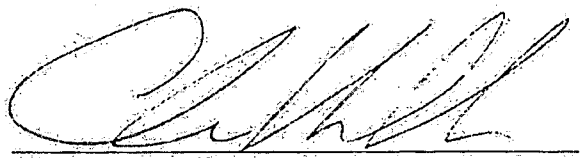
CASE NO.: 2015-CP-23-02860

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 AUG 12 PM 4 10

Lauren Murphy as Statutory Beneficiary ..... Respondent.

Mark Collins ..... Appellant.

RESPONDENT'S BRIEF



Charles W. Marchbanks, Jr.

The Marchbanks Law Firm, LLC
Attorney for Respondent
S.C. Bar No.: 76935
1225 South Church Street
Greenville, South Carolina 29605
(864) 552-1606 Telephone
(864) 552-1607 Fax
charles.marchbanks@marchbankslawfirm.com

Greenville, South Carolina
August 12, 2015

TABLE OF CONTENTS

Statement of Issues on Appeal 1

Statement of the Case 2

Argument 10

I. Standard of Review 10

II. Arguments 10

A. The Greenville County Probate Court was correct in finding that Appellant did not "reasonably provide support" to or provide "reasonable support" to the Decedent in this action pursuant to S.C. Code Sections 15-51-40 and 63-5-20 11

B. The record shows the Greenville County Probate Court considered evidence submitted by Appellant regarding whether "just cause" or "excuse" existed such that his complete failure to provide "reasonable support" for Decedent was justified 15

C. The Greenville County Probate Court was correct in holding that all of the provisions contained within S.C. Code Section 15-51-40 limiting a statutory beneficiary's claim to proceeds derived from a wrongful death settlement, apply to a living person whose death was the result of another's negligence 17

D. The Respondent Personal Representative engaged the appropriate legal steps to ensure the distribution of proceeds stemming from the underlying wrongful death claim pertaining to the parties deceased minor child to ensure the distribution of settlement proceeds was done in accordance with the law 21

Conclusion 23

TABLE OF AUTHORITIES

Cases **Page**

Broadhurst v. City of Myrtle Beach Election Comm'n.
342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000) 12

Bullock v. Thomas et al.,
659 So.2d 574 (Miss., 1995) 20

Estate of Scheller v. Pessetto,
783 P.2d 70 (Utah App., 1989) 19

Federal Reserve Bank of Chicago v. Geannoulis,
203 Iowa 1385, 214 N.W. 576 (1927) 10

Hodges v. Rainey,
341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) 12

In re Estate of Pallister,
363 S.C. 437, 447, 611 S.E.2d 250, 256 (2005) 11

In The Matter of Howard,
434 S.E.2d 254, 315 S.C. 356 (S.C., 1993) 10-11

Lehr v. Robertson,
463 U.S. 248, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983) 18-19

Lonchar v. Thomas,
517 U.S. 314, 323, 116 S.Ct. 1293, 134 L.Ed.2d 440 (1996) 21

Marion Cotton Oil Co. v. Townsend,
222 S.C. 32, 71 S.E.2d 500 (1952) 10

Roe v. Reeves,
392 S.C. 143, 708 S.E. 2d 778 (2011) 14, 19

Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n,
298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989) 22

Scott v. Porter et al.,
340 S.C. 158, 530 S.E.2d 389 (S.C. App. 2000) 18

Sloan v. S.C. Bd. of Physical Therapy Exam'rs,
370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006) 13

Smith v. Barr,
375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct.App.2007) 21

The Estate of Patterson v. Patterson,
798 So.2d 347 (Miss., 2001) 20

Unisun Ins. Co. v. Schmidt,
339 S.C. 362, 529 S.E.2d 280 (2000) 13

University of Southern Cal. v. Moran,
617 S.E.2d 135, 365 S.C. 270 (SC. 2005) 11

Williams v. Farmer,
876 So.2d 300 (Miss., 2004) 20

Wimberly v. Barr,
359 S.C. 414, 597 S.E.2d 853 (Ct. App.2004) 10

Statutes & Rules

S.C. Code of Laws § 15-23-60 (1976) (repealed 1985) 10

S.C. Code of Laws § 15-51-40 (1976 as amended) 11, 13, 15, 17, 20, 21, 22

S.C. Code of Laws § 43-5-580(b) (1976 as amended) 13

S.C. Code of Laws § 43-7-420 (1976 as amended) 14

S.C. Code of Laws § 62-1-306(a) (1976 as amended) 10

S.C. Code of Laws § 63-5-20 (1976 as amended) 11, 12, 13, 15, 17, 21, 22

S.C. Code of Laws § 63-9-310(A)(5)(b) (1976 as amended) 19

S.C. Code of Laws § 63-9-820 (1976 as amended) 19

S.C. Code of Laws § 63-17-470 (1976 as amended) 13

RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

1) The Greenville County Probate Court was correct in holding that the provisions contained within S.C. Code Section 15-51-40 limiting a statutory beneficiary's claim to proceeds derived from a wrongful death settlement, apply to a living person whose death was the result of another's negligence.

2) The Greenville County Probate Court was correct in finding that Appellant did not "reasonably provide support" to or provide "reasonable support" to the Decedent in this action pursuant to S.C. Code Sections 15-51-40 and 63-5-20 and therefore the Probate Court's holding was correct.

3) The record shows the Greenville County Probate Court did, in fact, consider evidence submitted by Appellant regarding whether any "just cause" or "excuse" existed, justifying his failure to provide "reasonable support" for Decedent, and found that evidence to be insufficient.

4) Respondent engaged the appropriate legal steps to ensure the distribution of proceeds stemming from the underlying wrongful death claim pertaining to the parties' deceased minor child to ensure the distribution of settlement proceeds was done in accordance with the law.

STATEMENT OF THE CASE

Respondent is the mother of Tynslee Fields, deceased. Tynslee [hereinafter "Tynslee" or "Decedent"] was born June 12, 2012. (See "Plaintiff's Memorandum In Support Of Motion To Deny Mark Collins Any And All Proceeds Derived From Settlement Of Survival And Wrongful Death Actions.") Her neck was broken by the OBGYN during delivery. She died the same day she was born. (Id.)

Tynslee's death drove Respondent to bring wrongful death case 2013-CP-23-04186 on Tynslee's behalf and, while coping with the Post-Traumatic Stress Disorder and clinical anxieties Respondent suffered as a result of this tragedy, she sacrificed time, energy, and emotion to bring it to a partial resolution. (Id.) She also pushed through her grief to advocate for a change in delivery procedures that would decrease, if not eliminate, the cause of Tynslee's death. (Id.)

As a result of Respondent's efforts, a partial settlement of 2013-CP-23-04186 as against Defendants Mercy Obstetrics & Gynecology, P.A. and Ragesh Pandya, M.D. resulted in a settlement with a distributable amount of $583,577.52. (Id.) This was approved by the Honorable Letitia H. Verdin on February 24, 2014. (Id.)

The estate proceeds and the wrongful death proceeds were initially placed in trust with the attorneys for Respondent in the underlying wrongful death matter, specifically, the Hughey Law Firm, LLC. (Id.)

Around this time, Appellant began inquiring as to when he would receive his money. (Id.) On July 2, 2014, Appellant filed a Petition with the Greenville County Probate Court seeking to deny Respondent any proceeds derived or to be derived from the wrongful death action in Case No. 2013-CP-23-04186. (Id.)

On July 15, 2014, the Greenville County Probate Court declined to proceed forward with Respondent's Petition, and instead directed her to address the issue with the Greenville County Court of Common Pleas. (Id.) After approximately two weeks of informal discussions between the parties, Appellant formally demanded disbursement of one half of the wrongful death proceeds. (Id.) After Respondent denied his requests, Appellant filed a Motion to Compel on August 6, 2014 in the Greenville County Court of Common Pleas demanding Appellant pay him $291,788.76. (See Appellant's Motion to Compel).

Respondent filed her return to Appellant's Motion on August 15, 2014, along with a Motion to deny Mr. Collins any of the proceeds derived from the wrongful death litigation. ("See Plaintiff's Reply to Defendant's Motion to Compel and Motion To Deny Mark Collins Any And All Proceeds Derived From Settlement Of Survival And Wrongful Death Actions.")

At the September 30, 2014 hearing on Appellant's Motion to Compel, the parties' respective motions were referred to the Greenville County Probate Court. (See October 17, 2014 Order of the Circuit Court.)

The Probate Court heard the dispute on January 9, 2015 and took the matter under advisement, requesting the parties submit case law from other jurisdictions on the issues raised in their respective filings.

On April 29, 2015, the Probate Court issued an Order stating:

> [Ms. Murphy] has shown by a preponderance of the evidence that [Mr. Collins], 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 Section 15-51-40 (1976 as amended) and Section 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.
>
> AND

> [That Mr. Collins] 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.

(April 29, 2015 Greenville County Probate Court Order)

Mr. Collins filed a timely notice of appeal.

FACTS

Appellant and Respondent met in July 2010. (See "Plaintiff's Memorandum In Support Of Motion To Deny Mark Collins Any And All Proceeds Derived From Settlement Of Survival And Wrongful Death Actions.") Appellant was thirty-seven (37). Respondent only twenty-two (22). (Id.) The two became physically intimate in August of 2011. (Id.) Respondent learned she was pregnant with Appellant's child on October 4, 2011. (Id.) Respondent notified Appellant of the pregnancy immediately. (Id.) Appellant initially appeared excited about the relationship and the pregnancy. (Id.) However, in October 2011, Respondent learned Appellant was still being intimate with his former girlfriend. (Id.) At that time, Appellant ceased initiating any communication or interaction with Respondent. (Id.) Because Appellant ceased contacting her, and because Respondent's former boyfriend, Jeremy Fields, continued to pursue her, she reconciled with Mr. Fields in November 2011. (Id.) Around that time, Respondent changed cellular telephone carriers and notified Appellant of her new contact information. (Id.)

On November 28, 2011, Respondent had her first pre-natal visit with her OBGYN, Dr. Pandya. (Id.) The pregnancy was 12 weeks along. Given Appellant's apparent lack of interest and failure to initiate contact with her, Respondent listed Jeremy Fields as the father. (Id.)

While **Appellant** did not attend the second and third OBGYN appointments on November 30, 2011 and December 5, 2011, he **did go to a December ultrasound** to learn the sex of the baby.

(Id.) **He would not have known the date, time, and place has that information not been conveyed to him by Respondent.**

Respondent again initiated contact with Appellant on New Year's Eve and drove to his house. (Id.) Even after this meeting, Appellant still failed to attend OBGYN appointments on January 2, 2012; January 6, 2012; and January 25, 2012. (Id.)

In February of 2012, Appellant told Respondent he was going to buy a comforter set for the baby's nursery with his tax refund money. (Id.) Appellant never followed through, and Respondent never heard about this again. (Id.)

From that point forward, Appellant failed to attend OBGYN appointments on February 6, 2012; February 22, 2012; March 14, 2012; March 19, 2012; March 28, 2012; April 11, 2012; April 23, 2012; April 30, 2012; May 8, 2012; May 15, 2012; May 22, 2012; May 23, 2012; May 29, 2012; and June 5, 2012. (Id.) Through this time, Respondent received no communication from Appellant. (Id.)

June 11, 2012 was Respondent's due date, and she entered the hospital to be induced on June 12, 2012 at 7:25 A.M. Respondent did not personally notify Appellant as he had had provided no support and had shown no interest in the pregnancy. (Id.) Appellant later admitted he knew Respondent was in the hospital via Facebook postings, but he did not call or come. (See Respondent's Affidavit).

Because Appellant did not come to the hospital, he was unaware that within three hours of admission, Respondent was thrashing around in bed with severe pain but did not begin to push until 4:20 P.M. Appellant was not present when his daughter Tynslee was born at 4:43 P.M. (See "Plaintiff's Memorandum In Support Of Motion To Deny Mark Collins Any And All Proceeds

Derived From Settlement Of Survival And Wrongful Death Actions.") He was not there when, at 5:05 P.M., Tynslee was transferred to the Special Care Nursery. (Id.)

Not being present, Appellant was oblivious that, for the next 30 or so minutes, Tynslee underwent CPR, had an umbilical venous catheter inserted, was given epinephrine, and generally struggled for her life due to her neck being broken during delivery. (Id.)

Appellant failed to be present when, at 6:09 P.M. on June 12, 2012, doctors told Respondent Tynslee did not survive. (Id.) Appellant failed to be present when, at 6:42 P.M., Respondent was taken in a wheelchair to be with Tynslee's body. (Id.) Respondent sat with her deceased newborn until 9:00 P.M. that night. (Id.)

Appellant failed to be there shortly after 10:00 P.M. when the hospital pastor gave Respondent a perinatal bereavement packet including a teddy bear, perinatal bereavement support brochures and support group information, pictures of Tynslee, a lock of Tynslee's hair, Tynslee's foot prints, and molds of Tynslee's feet. (Id.)

Appellant was aware, however, that something occurred. (Id.) He called Respondent on June 13, 2012 to ask what happened, and despite Respondent informing Appellant as to the events of Tynslee's birth, death, and plans for a funeral, Appellant failed to attend Tynslee's funeral on June 16, 2012. (Id.) Based on Facebook postings, it appeared Appellant chose to go to the lake that day. (Id.)

Initially, Respondent did not know Tynslee's cause of death. (Id.) Upon learning from the Coroner that Dr. Pandya broke the infant's neck during delivery, Respondent contacted Appellant and arranged a meeting with him at the White Horse Road Jockey Lot to tell him what happened. (Id.)

Appellant's response to the information focused on the potential monetary payoff by the Doctor. (Id.) Although Appellant failed to provide support for Respondent and Tynslee throughout Respondent's pregnancy, birth, and Tynslee's death, Respondent arranged a July 2012 meeting with him at Gatti Town in Greenville to show him pictures of Tynslee to prove to him he was Tynslee's father. (Id.) She even requested a DNA test to prove it. Respondent hoped to enlist Appellant's aid in seeking justice on Tynslee's behalf. (Id.) He has done nothing.

Appellant agreed to do a DNA test, and on the day he gave a sample, he arrived at the facility with his girlfriend and a friend of hers. (Id.) Later in July, the DNA results came in showing Appellant as Tynslee's father. (Id.) As soon as Murphy saw this she contacted Appellant to meet him and share the DNA results. (Id.) Appellant, however, did not want to meet Respondent without his girlfriend present. (Id.) He did, eventually agree to meet Respondent at the Westside Park in Greenville. (Id.)

Once at Westside Park, Respondent handed Appellant the DNA results and, in response, Appellant asked Respondent to provide him photographs she had of Tynslee. (Id.) While they were talking, the friend of Appellant's girlfriend who was at the DNA testing facility drove up. (Id.)

Appellant immediately got into his car. (Id.) Respondent, sobbing and overcome with emotion, pleaded with Appellant to stay, but Appellant started his car and drove away, not saying a word. (Id.)

Per Appellant's request, Respondent put a copy of all photographs and memorabilia of Tynslee into a memory box for him. (Id.) As of this writing, Respondent still has this memorabilia despite telling Appellant he could pick it up at any time, that she would bring it to Appellant, or even meet Appellant and his girlfriend in a public place. Appellant has made no efforts.

Respondent received no contact from Appellant in August 2012 but did text him in September 2012 to invite him to an October 21, 2012 Memorial Walk in honor of Tynslee's memory. (Id.) Appellant failed to attend the walk, however, he did text Respondent soon thereafter. (Id.) He was intoxicated. (Id.) He asked her to come to his mother's house because he wanted to talk about Tynslee. (Id.) She did, and on arrival, Appellant asked her to take him to her grandmother's house which was Respondent's residence at the time. (Id.) Once at Respondent's residence, Appellant merely attempted to have sex with Respondent. (Id.) She refused and took him home. (Id.)

Appellant reappeared at a December 3, 2012 Probate Court hearing identifying Respondent as Personal Representative ["PR"] of Tynslee's Estate. (See January 30, 2013 Probate Court Order Appointing PR) At the hearing, Appellant consented to Respondent being PR, and only "request[ed] that the Estate remain open until after the disposition of the civil lawsuit." (Id.)

Throughout all of 2013, Respondent and Appellant had little to no contact. (See "Plaintiff's Memorandum In Support Of Motion To Deny Mark Collins Any And All Proceeds Derived From Settlement Of Survival And Wrongful Death Actions.") When they did, it was solely initiated by Respondent. (Id.)

On December 6, 2013, Appellant posted on Facebook stating, "waat i want for christmas my daddy" (sic) (Id. at Exhibit "A"). Appellant' father passed away in April 2011. (Id.) His public pining for the relationship with his father combined with his entire omission of any postings regarding Tynslee is a clear indication of Appellant's nonexistent relationship with Tynslee. (Id.) The last time Respondent directly communicated with Appellant was December 12, 2013. (Id.)

Respondent has contacted the medical board to file a complaint against Dr. Pandya, contacted state representatives and law makers to advocate for a law to protect other newborns,

raised money for the March of Dimes in honor of Tynslee, organized a memorial event to honor Tynslee's 2nd birthday, and collected baby blankets to donate in her honor to the GHS NICU. (Id.) Respondent is presently talking with the City of Greenville in hopes of arranging a donation of playground equipment to a City Park in Tynslee's memory. (Id.) **Appellant has done nothing.**

Respondent provided Appellant every opportunity to contribute to and participate in all of the above, her pregnancy, the child's life, and the grieving for her death. (Id.) Respondent provided Appellant every opportunity to develop a relationship with his daughter Tynslee. Even so, Appellant:

- Failed to attend Doctor's appointments with Respondent during her pregnancy save one ultrasound;
- Failed to accurately portray the nature of his on-going romantic relationship with his ex-girlfriend while knowing Respondent was pregnant with his child;
- Failed to participate in any of Respondent's family holidays during her pregnancy;
- Failed, in fact, to have ever met Respondent's father;
- Failed to purchase a comforter set for Tynslee's nursery as promised;
- Failed to provide any monetary support throughout the birth, life and death of his daughter;
- Failed to initiate communication with Respondent throughout the pregnancy;
- Failed to attend the birth of his daughter;
- Failed to be present when his daughter died;
- Failed to attend his daughter's funeral, opting instead to vacation at the lake;
- Failed to provide any support or assistance with the underlying wrongful death case;
- Failed to obtain any memorabilia related to his daughter although he superficially requested same;
- Failed to attend a Memorial Walk in honor of Tynslee's memory;
- Failed to assist in advocacy efforts performed by Respondent on his daughter's behalf; and
- Failed to publicly express any grief stemming from the death of his daughter when openly expressing same for his deceased father. (Id.)

While the above recitation of facts varies from those submitted by Appellant, two facts are irrefutably consistent:

(1) Appellant provided no support for this deceased child prior to her birth, during her short life, or after her death, and

(2) Appellant had no relationship with this child.

ARGUMENT

I. Standard of Review.

"The rules governing appeals at law and in equity are well settled. If the proceeding in the probate court is in the nature of an action at law, the circuit court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them. The standard of review at law is the same whether the facts are found by a jury or the judge sitting without a jury. On the other hand, if the probate proceeding is equitable in nature, the circuit court, on appeal, may make factual findings according to its own view of the preponderance of the evidence." In The Matter of Howard, 434 S.E.2d 254, 315 S.C. 356 (S.C., 1993) (internal citations omitted).

"The proceeding in this case involves claims for money due. Ordinarily, such claims are triable at law with an attendant right to trial by jury." See Marion Cotton Oil Co. v. Townsend, 222 S.C. 32, 71 S.E.2d 500 (1952); Federal Reserve Bank of Chicago v. Geannoulis, 203 Iowa 1385, 214 N.W. 576 (1927); S.C. Code Ann. § 15-23-60 (1976) (repealed 1985); S.C. Code Ann. § 62-1-306(a) (Supp.1992). **"Therefore, if there is any evidence in this case that reasonably supports the factual findings of the probate judge, his order must be affirmed."** In The Matter of Howard, 434 S.E.2d 254, 315 S.C. 356 (S.C., 1993).

"An issue regarding statutory interpretation is a question of law." Wimberly v. Barr, 359 S.C. 414, 597 S.E.2d 853 (Ct.App.2004). Thus, "the circuit court may not disturb the probate

court's findings of fact unless a review of the record discloses there is no evidence to support them." In re Howard, 315 S.C. at 364, 434 S.E.2d at 257; see also In re Estate of Pallister, 363 S.C. 437, 447, 611 S.E.2d 250, 256 (2005) ("If the proceeding in the probate court is in the nature of an action at law, the circuit court and the appellate court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them."). University of Southern Cal. v. Moran, 617 S.E.2d 135, 365 S.C. 270 (SC. 2005).

Because the two operative facts in this matter are undisputed by either party, (1) that Appellant provided no support for his deceased child prior to her birth, during her short life, or after her death, and (2) the Appellant had no relationship with this child whatsoever, the issue before the court today is one of law. As such, if this Court finds any evidence in this case that reasonably supports the factual findings of the probate judge, the order must be affirmed.

II. Arguments.

A. The Greenville County Probate Court was correct in finding Appellant failed to "reasonably provide support" or provide "reasonable support" as defined in S.C. Code Section 63-5-20, to the Decedent in this action.

By Order signed April 29, 2014, the Probate Court of Greenville County completely divested Appellant of any and all proceeds from the partial settlement of the above-referenced wrongful death case 2013-CP-23-04186 by way of the authority conveyed to the Court pursuant to S.C. Code of Laws Section 15-51-40 (1976 as amended).

S.C. Code of Laws, Section 15-51-40, in total, reads as follows:

> In every such action the jury may give damages, including exemplary damages, when the wrongful act, neglect, or default was the result of recklessness, wilfulness, or malice, as they may think proportioned to the injury resulting from the death to the parties respectively for whom and for whose benefit such action shall be brought. 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.**

SC Code 15-51-40 Damages: amount and to whom payable (South Carolina Code of Laws (2014 Edition))(emphasis added).

The arguments of Appellant are addressed in a different order herein because prior to reaching a determination of how this statute should be applied to this case, the definitions of the phrases "reasonably provide support for the decedent as defined in Section 63-5-20(A)" and "did not otherwise provide for the needs of the decedent during his or her minority" require consideration.

The definition of "reasonable support" as found in S.C. Code Section 63-5-20(A), is as follows:

> 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.

S.C. Code 63-5-20 Obligation to support (South Carolina Code of Laws (2014 Edition)).

Given that the resolution of this dispute is, at its base, governed by statute, an examination of statutory construction is a necessity. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." Broadhurst v. City of Myrtle Beach Election Comm'n, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000). "The court should give words

their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute's operation." Sloan v. S.C. Bd. of Physical Therapy Exam'rs, 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006). "We will reject a statutory interpretation when to accept it would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention." Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 529 S.E.2d 280 (2000).

In examining the definition of "reasonable support" as found in Section 63-5-20(A), it is noteworthy that the statute expressly omits any reference to S.C. Code of Laws Sections 63-17-470 (*Child Support Proceedings and Awards*) and 43-5-580(b) (*Enforcement of Support Obligations of Absent Parents*), both of which have long been recognized in our State as the "Child Support" Code Sections. By expressly omitting these two Code Sections, the Legislature allows only for the application of the definition of support as provided in Section 63-5-20. This means that for Appellant to be entitled any proceeds from the settlement of any case based upon his daughter's life, Appellant would have had to provide Decedent both usual and unusual necessities substantially equal to the standard of living enjoyed by Appellant.

Another omission from the definition of "reasonable support" in Section 63-5-20 is the time-restrictive phrase of "during the child's minority" that is found in Section 15-51-40. As such, the "reasonable support" definition could easily be expanded to include pre-natal and post-mortem expenses. In fact, the Probate Court Order mentions the following as unusual expenses: "the need for a decent funeral, burial, memorial, grave marker; and, eventually legal expenses." (Probate Court Order at page 17).

Even with Section 15-51-40's added requirement that Appellant "not otherwise provide for the needs of the decedent during his or her minority", Appellant's argument that he did anything to meet these two elements falls far short. At an absolute stripped-down bare minimum, while

Appellant – during the hour the child was living – enjoyed a standard of living encompassing liquid, food, shelter, bedding, blankets, chattel for personal entertainment, warmth, memories of interactions with his own father, transportation, and enough financial wherewithal to support all of the above, he provided the decedent child nothing. It is simply irrefutable. **Appellant provided Decedent nothing.**

The paragraph above provides some examples of "usual necessities" and, as Appellant points out on page 10 of his brief, Medicaid is also a usual necessity. (Brief of Appellant, Page 10). Appellant's assertion, however, that Medicaid has no legal basis upon which to demand reimbursement in a wrongful death action is incorrect. Medicaid frequently exercises its authority to assert a lien against a decedent's assets pursuant to S.C. Code of Laws Section 43-7-420 (1976 as amended).

Appellant could have been (but failed to be) "as creative as necessary in providing material assistance.... to the child once it is born...." Roe v. Reeves, 392 S.C. 143, 708 S.E. 2d 778 (2011) (wherein the father was wholly divested of his *Constitutional Right* to have a relationship with his child due to negligence and omissions both before and after the child was born.) **It was Appellant's choice. He did nothing.**

Appellant asserts his complete failure to provide "reasonable support" for Decedent should be excused by this Court because it was not his fault his daughter only lived for one hour. Because it was not his fault, he asserts he is entitled to $291,788.76. Appellant's argument falls short, however, because he failed to provide Decedent even a modicum of support that could arguably be considered "reasonable." **He provided nothing.**

Because Appellant, by any measure, did nothing to support Decedent in any way, the Greenville County Probate Court was correct in finding Appellant failed to "reasonably provide

support" or provide "reasonable support" to the Decedent as defined in Section 63-5-20, and failed "otherwise provided for the needs of the Decedent during her minority" pursuant to Section 15-51-40. As such, the Respondent prays this Court affirm the decision of the Greenville County Probate Court that Appellant failed to provide "reasonable support" to the Decedent.

B. Greenville County Probate Court considered and dismissed Appellant's argument as to whether "just cause" or "excuse" existed to justify any alleged failure of Appellant to provide "reasonable support" for his minor child, the decedent.

The definition of "reasonable support" required to be inserted into Section 15-51-40 comes from S.C. Code Section 63-5-20(A) which also provides: "Any able-bodied person capable of earning a livelihood who shall, **without just cause or excuse**, abandon or fail to provide reasonable support to his or her spouse or to his or her minor unmarried legitimate or illegitimate child dependent upon him or her shall be deemed guilty of a misdemeanor…" S.C. Code of Laws § 63-5-20(A)(emphasis added).

Appellant relies on this language in arguing that his complete failure to provide support for Decedent should be *excused* by this Court because he was prevented from doing so by acts of the Respondent. Because his failure to provide any support was not his fault, he asserts he is entitled to $291,788.76. Appellant's argument fails, however, because the plain language of the Order of the Probate Court shows this assertion to be simply inaccurate.

In its final Order, the Probate Court stated, that "[Appellant] argues that [Respondent]… thwarted [Appellant] from being involved whatsoever in [Decedent's] birth, funeral, or other final arrangements." (Order on page 15) And, that Appellant "did not go to the hospital or funeral claiming that [Respondent] prevented his attendance." (Id.)

Appellant is correct in that S.C. Code Section 63-5-20(A) states that if "just cause" or "excuse" prevents a parent from meeting the legally required financial responsibilities, then he/she

cannot be held responsible for that failure. However, the plain language of the Probate Court Order clearly shows the Court considered the evidence Appellant submitted regarding this argument and determined it to be insufficient.

Assuming *arguendo*, that Respondent was able to prevent or discourage Appellant from certain avenues of support, Appellant presented no evidence that he engaged in any supportive behavior beyond Respondent's scope of control such as opening a small bank account in the name of his child that was in existence during her life, or visiting his life insurance agent or human resources director to change the beneficiary on his life insurance to Decedent. In fact, nowhere in the record shows Appellant doing something as simple as hand (or mail) Respondent $20.00 for her to get something nice for the baby. **The record and all evidence presented is entirely void of any action taken by Appellant for the benefit of this child.**

Respondent did not hide her pregnancy from him or move away such that he no idea she was pregnant. Appellant knew Respondent was pregnant. He attended an ultrasound early in the pregnancy. He had every reason to believe the child was his. He was living and employed throughout Respondent's pregnancy and during the life of the child. He still did absolutely nothing, and now he asserts this is Respondent's fault.

Because the plain language of the Probate Court's Order is in direct contravention to Appellant's assertion that "The Probate Court erred by failing to consider whether 'just cause' or 'excuse' prevented Appellant from providing support to Decedent", the Respondent prays this Court affirm the decision of the Greenville County Probate Court because the Order shows that the Court expressly contemplated evidence submitted by the Appellant regarding this argument, and determined it to be insufficient to show Respondent prevented Appellant from providing "reasonable support" to the Decedent in this matter.

C. **The Greenville County Probate Court was correct in holding that the provisions contained within S.C. Code Section 15-51-40 limiting or denying a statutory beneficiary's claim to proceeds derived from a wrongful death settlement, apply to a living person whose death was the result of another's negligence.**

Appellant's initial argument is that certain provisions of S.C. Code 15-51-40 are "inapplicable when a decedent passes within an hour of birth." This is even though Appellant admits Decedent was born living, and admits the Decedent died as a result of another's negligence. Appellant cannot add terms to this statute.

Again, S.C. Code of Laws, Section 15-51-40, in total, reads as follows:

> In every such action the jury may give damages, including exemplary damages, when the wrongful act, neglect, or default was the result of recklessness, wilfulness, or malice, as they may think proportioned to the injury resulting from the death to the parties respectively for whom and for whose benefit such action shall be brought. 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.

SC Code 15-51-40 Damages: amount and to whom payable (South Carolina Code of Laws (2014 Edition)).

As previously argued, by failing to provide ***any*** support to the Decedent, Appellant, by default, failed to "reasonably provide support" for the decedent as required in S.C. Code Section 63-5-20(A); and "did not otherwise provide for the needs of the decedent during his or her minority." S.C. Code of Laws, §15-51-40 (1976 as amended). Any other conclusion would create an absurd result in direct contravention of the legislature's clear intent to prevent an unsupportive parent from receipt of a windfall. Further, is has been shown that the Probate Court did, in fact,

"consider" whether Appellant could convey blame onto Respondent for his failure to provide any support due to "just cause" or "excuse." That argument failed.

Respondent asserts the above analysis is sufficient to divest Appellant of all proceeds. However, other precedent exists that can be additionally helpful to the Court.

First, Appellant entirely disregards South Carolina controlling law specific to wrongful death actions stating that, in some cases, before a parent is entitled to any proceeds from a wrongful death suit, evidence of the closeness of the **relationship** between parent and decedent "may be necessary to support claims of loss." Scott v. Porter et al., 340 S.C. 158, 530 S.E.2d 389 (S.C. App. 2000)(emphasis added). In this case, Appellant had no relationship with the child whatsoever. He did nothing to nurture his relationship with the child *in utero* or after she was born.

The importance of a relationship between parent and child as to how it can support a parent's entitlement to benefits from the child has been addressed by United States Supreme Court in the adoption case of *Lehr v. Robertson*, where the Court divested a father of, **not just money, but his Constitutional Right** to have a relationship with his child due to his failures leading to the child's birth. The Court stated,

> **"[M]others and fathers of illegitimate children are not similarly situated. The identity of the mother of an illegitimate child is rarely in doubt. In contrast, the father's identity is frequently unknown... In addition, the mother, because she physically bears the child, automatically is responsible for the child at least to the extent of deciding its immediate future. Further, she bears the physical, emotional and psychological ramifications of pregnancy and must decide whether to abort the child, raise the child alone or give the child up for adoption. If she decides to raise the child, she endures further financial, emotional and psychological responsibilities. The putative father who does not support the child or openly treat the child as his own assumes none of these responsibilities."**

Lehr v. Robertson, 463 U.S. 248, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983)(emphasis added).

Like the U.S. Supreme Court in *Lehr*, South Carolina has also expressed a substantial interest in unwed fathers stepping up to take on the responsibility of their unborn children by establishing a Responsible Father Registry as codified in S.C. Code Section 63-9-820 (S.C. Code of Laws, 1976 as amended). (*Appellant did not avail himself of this registry.*)

The *Lehr* case has also been relied upon to divest a father from his claim to wrongful death benefits. In the case of the *Estate of Scheller v. Pessetto*, the father argued his Constitutional Rights were violated by not being given part of his child's wrongful death estate, but the Court, citing *Lehr*, disagreed. Estate of Scheller v. Pessetto, 783 P.2d 70 (Utah App., 1989).

There are a number of other examples of analogous adoption law with facts very similar to the case at bar where Courts have divested a father of his Constitutional Right to a relationship with his child due to his failure to support the child during the mother-to-be's pregnancy:

Roe v. Reeves, 392 S.C. 143, 708 SE2d 778 (2011) (stating "The relationship between an unwed father and his child is deserving of constitutional protection because the father possess an "opportunity no other male possesses to develop a relationship with his offspring" when the child is born... However, this opportunity interest is constitutionally protected only to the extent that the biological father who claims protection wants to make the commitments and perform the responsibilities that give rise to a developed relationship, because it is only the combination of biology and custodial responsibility that the Constitution ultimately protects.")

S.C. Code of Laws § 63-9-310(A)(5)(b) (1976 as amended) (stating that a father's consent to adoption or relinquishment of parental rights for the purpose of adoption is required only if "the father paid a fair and reasonable sum, based on the father's financial ability, for the support of the child or for the expenses incurred in connection with the mother's pregnancy or with the birth of the child, including, but not limited to, medical, hospital, and nursing expenses.")

There are also numerous examples of how other jurisdictions apply mechanisms similar to the language found in Section 15-51-40 to irresponsible fathers seeking a windfall from the wrongful death of their children:

The Estate of Patterson v. Patterson, 798 So.2d 347 (Miss., 2001)(emphasis added) (The father was divested although he argued he did not know the child was his until four days before the child died. The court in *Patterson* stated, "**This case is a classic example of conduct the statutes and case law seek to prevent. A father should not be allowed to receive a windfall simply because he impregnated the child's mother.** [The father] refused to openly treat his son.... as his own or to comply with his duty to provide essential support, until it appeared he might receive a sizable inheritance.");

Williams v. Farmer, 876 So.2d 300 (Miss., 2004) (Where the father of a child was killed ***in utero*** was divested of all wrongful death proceeds because, even though the mother told him he was the child's father, he refused to have contact with her or acknowledge that he was the father of the child. In *Williams*, The father argued was that it would be virtually impossible to comply with the requirements of the statute where the decedent is a fetus, and that he was discouraged from visiting mother by threat from her family members); and

Bullock v. Thomas et al., 659 So.2d 574 (Miss., 1995) (holding that the father of a deceased three-year-old child was not entitled to any wrongful death proceeds because the father failed to prove he had openly the child as his [and] neglected to support the child even though the father in this case: took the child to family gatherings and acknowledged the child was his among certain family members; contributed $100.00 for the purchase of the suit in which the child was buried; and provided the child's mother an average of $100.00 per month to help with expenses).

The Greenville County Probate Court was made aware of these analogous arguments and extra-jurisdictional cases throughout the course of this case, and while they may have impacted the Court's decision, the Court's decision rests firmly upon established South Carolina law, and is in complete accord with the language of S.C. Code Section 15-51-40 (1976 as amended). Thus, despite Appellant's assertions, there is a very strong base of law supporting the Probate Court's decision to limit or deny Appellant's interest in the settlement proceeds derived from Civil Action: 2013-CP-23-04186.

Because uncontroverted evidence supports the fact Appellant did nothing to support Decedent in any way, and because the evidence submitted by Appellant to support his claim that he had "just cause" to refuse to support the child or an "excuse" for not doing so, the Greenville County Probate Court was correct in finding Appellant failed to "reasonably provide support" or provide "reasonable support" as defined in S.C. Code Section 63-5-20, and that Appellant did not otherwise provide for the needs of the decedent during her minority. As such, the Respondent prays this Court affirm the decision of the Greenville County Probate Court divesting Appellant of any and all proceeds (past, present, and future) from the settlement of wrongful death case 2013-CP-23-04186 upon the authority granted to it by the legislature in S.C. Code Section 15-51-40 (1976 as amended).

D. The instant issue is a matter of law, and no credible evidence supports Appellant's contention that Respondent's actions, both as Personal Representative and individually, procured the action or inaction of Appellant, thereby affording Appellant an argument based upon equitable estoppel.

"It is well known that equity follows the law." Smith v. Barr, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct.App.2007). "When providing an equitable remedy, the court may not ignore statutes, rules, and other precedent." Lonchar v. Thomas, 517 U.S. 314, 323, 116 S.Ct. 1293, 134 L.Ed.2d 440 (1996). "[T]he court's equitable powers must yield in the face of an unambiguously worded

statute." Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989).

The law of this case is found in S.C. Code Section 15-51-40 and that code section authorizes the Probate Court to "deny or limit either or both parent's entitlement for a share of the proceeds if the court determines, by a preponderance of the evidence, that the parent or parents failed to reasonably provide support for the decedent as defined in Section 63-5-20 and did not otherwise provide for the needs of the decedent during his or her minority." S.C. Code of Laws § 15-51-40 (1976 as amended). The evidence presented led the Probate Court of Greenville County to divest Appellant of any benefit stemming from the wrongful death of his daughter, both present and future on the authority of S.C. Code of Laws Section 15-51-40. Appellant claims Respondent is equitably estopped from preventing him from receiving $291,788.76. This is, however, Respondent once again blaming someone else for his failures. The argument merely provides a forum for Appellant's conspiratorial beliefs associated with this case and should be disregarded.

Despite Appellant's claims, there has been no "systemic[] exclusion" of the Appellant from paying a few expenses associated with the life of this child. (Appellant's brief at page 16). Respondent has not "conceal[ed] her conflict" from the Appellant (Id. at page 15). There is no need here to unveil "Respondent's machinations in stark relief." (Id. at page 13). Respondent frankly does not have the ability to "conscious[ly] design" a scheme deviant enough to influence her attorney ***and the Court*** to the degree where certain language from expertly drafted Court documents is omitted. (Id. At page 14). Respondent was unaware South Carolina even had a law that could deprive Appellant from any proceeds until the initiation of this litigation. She was too overwhelmed with grief over her deceased child to care. Respondent did, however, seek legal assistance when Appellant began to demand a $291,788.76 financial windfall for doing absolutely

nothing, and she followed the instructions from both statute and Courts so as to properly proceed with her case against the Appellant at every juncture in this case.

As such, the Respondent prays this Court dismiss Appellant's allegation that Respondent was engaged in some elaborate and nefarious scheme to harm Appellant during the same time period she was grieving her daughter's death and advocating for her daughter by pursuing substantial medical malpractice litigation against the negligent physician causing same.

CONCLUSION

For the reasons set forth hereinabove, Respondent prays this Court affirm the Greenville County Probate Court's April 29, 2015 Order entered in the matter of Lauren Murphy as Statutory Beneficiary vs. Mark Collins and The Estate of Tynslee Elizabeth Fields, Deceased, Case No. 2012-ES-23-01718, and deny Appellant any of the settlement proceeds, past, present, and future that are or may be realized in the matter of Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields vs. Bon Secours Health System, Inc., et. al., C.A. No. 2013-CP-23-04186.

Respectfully Submitted,

Charles W. Marchbanks, Jr.

The Marchbanks Law Firm, LLC
S.C. Bar No.: 76935
1225 South Church Street
Greenville, South Carolina 29605
(864) 552-1606 Telephone
(864) 552-1607 Fax
charles.marchbanks@marchbankslawfirm.com

ATTORNEY FOR RESPONDENT

Greenville, South Carolina
August 12, 2015

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 AUG 12 PM 4:10

STATE OF SOUTH CAROLINA	IN THE CIRCUIT COURT
COUNTY OF GREENVILLE	Appeal Greenville County Probate Court
IN THE MATTER	CASE NUMBER: 2015-ES-23-02860 (2012-CP-23-01718)
Tynslee Elizabeth Fields, Deceased (Decedent)	
Mark Collins Appellant.	CERTIFICATE OF MAILING
vs.	
Lauren Murphy (As Statutory Beneficiary) Respondent.	

I hereby certify that the Appellant Brief of Respondent Lauren Murphy in the above-captioned matter has been served on:

Ruth F. Hindman, Esq. RUTH LAW FIRM, LLC 1225 S. Church St Greenville, SC 29605	Jessica Salvini, Esq SALVINI & BENNETT, LLC 101 West Park Ave. Greenville, SC 29601	Jack Read, Esq. The Read Law Firm, LLC 101 West Park Ave. Greenville, SC 29601

by depositing the document in the U.S. Mail, in an envelope addressed to the above with proper postage thereon on the 12th day of August, 2015; that the return address on each envelope was the Marchbanks Law Firm, 1225 South Church Street, Greenville, South Carolina 29605.

Charles W. Marchbanks, Jr.

The Marchbanks Law Firm, LLC
S.C. Bar No.: 76935
1225 South Church Street
Greenville, South Carolina 29605
(864) 552-1606 Telephone
(864) 552-1607 Fax
charles.marchbanks@marchbankslawfirm.com

ATTORNEY FOR RESPONDENT

Greenville, South Carolina
August 12, 2015

THE STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT

APPEAL FROM GREENVILLE COUNTY
PROBATE COURT
DEBORA A. FAULKNER, PROBATE COURT JUDGE

CASE NO.: 2015-CP-23-02860

(2012-ES-23-01718)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSHER
2015 JUL 13 PM 4 52

Lauren Murphy as Statutory Beneficiary.....Respondent.

Mark Collins.....Appellant.

APPELLANT'S BRIEF

JESSICA SALVINI, ESQ.

SALVINI & BENNETT, LLC
101 W. Park Ave.
Greenville, SC 29601
Telephone: (864) 232-5800
Facsimile: (864) 232-5888

Greenville, SC
Dated: July 13, 2015

JOHN M. READ, IV, ESQ.

PILLSBURY & READ, PA
1204-A East Washington Street
Greenville, SC 29601
Telephone: (864) 241-9828
Facsimile: (864) 241-9818

Greenville, SC
Dated: July13, 2015

ATTORNEYS FOR APPELLANT

TABLE OF CONTENTS

Statement of Issues on Appeal. 1

Statement of the Case. 2

Argument. 7

I. Standard of Review. 7

II. Arguments. 8

A. The Greenville County Probate Court erred when it failed to hold that the provisions contained within S.C. Code Section 15-51-40, that purport to limit a statutory beneficiary's claim to proceeds derived from a wrongful death settlement, are inapplicable when a decedent passes within an hour of birth. 8

B. The Greenville County Probate Court erred when it found that the terms "reasonably provide support" or "reasonable support," as those terms are used in S.C. Code Section 15-51-40 and S.C. Code Section 63-5-20, encompass: monetary support for an unborn child; the affirmative attempt to reimburse Medicaid moneys for which Medicaid has not sought reimbursement; burial, funeral, memorial, or legal expenses incurred post-mortem; non-monetary acts by a parent post-mortem; active participation in a lawsuit post-mortem; and/or support for a decedent post-mortem. 9

C. Greenville County Probate Court erred by failing to consider whether "just cause" or "excuse" existed, to justify any alleged failure of Appellant to provide "reasonable support" for his minor child, the decedent. 11

D. The Respondent Personal Representative is estopped from moving to deny the distribution of proceeds to Appellant because her actions, both as Personal Representative and individually, procured the action or inaction of Appellant of which she complains to support her requested denial. 11

Conclusion. 16

TABLE OF AUTHORITIES

Cases **Page**

Hubbard v. Beverly,
197 S.C. 476, 480, 15 S.E.2d 740, 741 (1941) 14

In re Estate of Weeks,
329 S.C. 251, 260, 495 S.E.2d 454, 459. 8

Janasik v. Fairway Oaks Villas Horizontal Prop. Regime,
307 S.C. 339, 344, 415 S.E.2d 384, 387 (1992) 15

Rushing v. McKinney,
633 S.E.2d 917, 370 S.C. 280 (S.C. App., 2006) 15

Southern Dev. Land & Golf Co., v. South Carolina Pub. Serv. Auth.,
311 S.C. 29, 33, 426 S.E.2d 748, 750 (1993) 15

Statutes & Rules

S.C. Code Ann.15-51-40 (1976) 8, 9

S.C. Code Ann.15-51-42 (B) (1976) 13

S.C. Code Ann.62-03-703 (1976) 14

S.C. Code Ann.62-07-803 (1976) 14

S.C. Code Ann.62-07-804 (1976) 14

STATEMENT OF ISSUES ON APPEAL

1) The Greenville County Probate Court erred when it failed to hold that the provisions contained within S.C. Code Section 15-51-40, that purport to limit a statutory beneficiary's claim to proceeds derived from a wrongful death settlement, are inapplicable when a decedent passes within an hour of birth.
2) The Greenville County Probate Court erred when it found that the terms "reasonably provide support" or "reasonable support," as those terms are used in S.C. Code Section 15-51-40 and S.C. Code Section 63-5-20, encompass: monetary support for an unborn child; the affirmative attempt to reimburse Medicaid moneys for which Medicaid has not sought reimbursement; burial, funeral, memorial, or legal expenses incurred post-mortem; non-monetary acts by a parent post-mortem; active participation in a lawsuit post-mortem; and/or support for a decedent post-mortem.
3) Greenville County Probate Court erred by failing to consider whether "just cause" or "excuse" existed, to justify any alleged failure of Appellant to provide "reasonable support" for his minor child, the decedent.
4) The Respondent Personal Representative is estopped from moving to deny the distribution of proceeds to Appellant because her actions, both as Personal Representative and individually, procured the action or inaction of Appellant of which she complains to support her requested denial.

STATEMENT OF THE CASE

In the Fall of 2011, Lauren Murphy (hereinafter referred to sometimes as "Ms. Murphy" or "Respondent") and Mark Collins (hereinafter referred to sometimes as "Mr. Collins" or "Appellant") conceived a child. On June 12, 2012, the minor child, named Tynslee Elizabeth Fields (hereinafter referred to sometimes as "minor child" or "Tynslee") was born. (Probate Court Form 300 filed on or about August 14, 2012). The minor child lived only one hour as a result of being fatally injured at birth. (Id.).

At the time of the minor child's birth and death, Ms. Murphy and Mr. Collins were estranged. (Affidavit of Mark Collins). During the course of Ms. Murphy's pregnancy, she blocked Mr. Collins' cell phone number and/or changed her cell phone number so he could not contact her. (Affidavit of Mark Collins; Plaintiff's Memorandum in Support of Motion to Deny Mark Collins Any and All Proceeds Derived from Settlement of Survival and Wrongful Death Actions). Ms. Murphy did not allow Mr. Collins to attend any future OBGYN appointments; and there were no expenses related thereto as Ms. Murphy was on Medicaid. (Id.; Interested Party Mark Collins' Memorandum in Support of Motion to Compel Disbursement and Response to Motion to Deny Proceeds). Despite knowing Mr. Collins was the minor child's father, as well as Mr. Collins informing Ms. Murphy of his intentions to be a part of their minor child's life, Ms. Murphy claimed Mr. Collins was not the father of the minor child. (Id.) Instead, Ms. Murphy named her former boyfriend, Jeremy Paul Fields (hereinafter referred to sometimes as "Mr. Fields"), the minor child's father. (Id.). Thereafter, Ms. Murphy prohibited Mr. Collins from participating in her pregnancy, the minor child's birth, death and funeral. (Id.).

At the time of the minor child's birth and death, Ms. Murphy maintained Mr. Fields was the minor child's father. As a result, the minor child's death certificate and obituary

announcement indicated Mr. Fields was the minor child's father. (Death Certificate). Upon learning of the minor child's birth and death, Mr. Collins was emotionally devastated. (Affidavit of Mark Collins).

After the minor child's passing, Ms. Murphy contacted Mr. Collins' family and admitted Mr. Collins was the minor child's father. (Id.). Ms. Murphy and Mr. Collins dispute what transpired between them and their families thereafter. However, to establish paternity Mr. Collins took a paternity test to confirm he was the minor child's father.

Ms. Murphy also sought appointment by the Greenville County Probate Court to be the Personal Representative for the Estate of Tynslee Elizabeth Fields. (Form 300 PC filed in the Greenville County Probate Court). Ms. Murphy named Mr. Fields and Mr. Collins the father of the minor child on the form she filed in the Greenville County Probate Court.

On December 3, 2012, a hearing was held in the Greenville County Probate Court to address Ms. Murphy's request to be the Personal Representative of the Estate of Tynslee Elizabeth Fields. (January 30, 2013 Greenville County Probate Court Order). Appearing at the aforementioned hearing, were Ms. Murphy, Mr. Collins and their attorneys of record. (Id.). Mr. Fields was served with notice of the hearing, but he failed to appear. (Id.). The parties acknowledged that Mr. Collins was the father of the minor child. Further, they agreed that Ms. Murphy and Mr. Collins were the only two statutory beneficiaries of the Estate of Tynslee Elizabeth Fields. (Id.). Therefore, Mr. Fields was deemed an unnecessary party. (Id.). Further, Mr. Collins, with the understanding that Ms. Murphy would commence a wrongful death action in the Court of Common Pleas, consented to Ms.

Murphy being named the Personal Representative. (Id.). Thus, the Probate Court granted Ms. Murphy's request. (Id.).

Based thereon, on or about August 2, 2013, Ms. Murphy by and through counsel commenced the matter of *Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields, vs. Bon Secours Health System, Inc., et. al*, Case No. 2013-CP-23-04186, in the Greenville County Court of Common Pleas. Litigation ensued against the defendants named therein.

On or about February 24, 2014, an Order approving a Petition for Approval of Settlement as to Defendants Mercy Obstetrics & Gynecology, P.A., Ragesh Pandya, M.D. was entered by the Greenville County Court of Common Pleas in the litigation in the matter of *Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields, vs. Bon Secours Health System, Inc., et. al*, Case No. 2013-CP-23-04186 (hereinafter referred to as "February 24, 2014 Order"). (Greenville County Court of Common Pleas February 24, 2014 Order approving a Petition for Approval of Settlement as to Defendants Mercy Obstetrics & Gynecology, P.A., Ragesh Pandya, M.D). The February 24, 2014 Order set forth the Circuit Court's approval of a settlement reached between Ms. Murphy, individually, and as the Personal Representative for the Estate of Tynslee Elizabeth Fields, and several of the Defendants named in the pending action (that being, Mercy Obstetrics & Gynecology, P.A., Ragesh Pandya, M.D). (Id.). Specifically, the Circuit Court found that settlement was "proper and in the best interest of the Estate" of Tynslee Elizabeth Fields. (Id.). As a result, the Circuit Court approved the sum of five thousand dollars ($5,000.00) being allocated to the Survival Action (hereinafter referred to as "estate proceeds"), as well as the payment of the sum of Five Hundred Eighty-Three

Thousand, Five Hundred Seventy-Seven Dollars and Fifty-Two Cents ($583,577.52) (hereinafter referred to as "wrongful death proceeds") to the "statutory beneficiaries." (Id.).

The estate proceeds and the wrongful death proceeds were initially placed in trust with the Hughey Law Firm, LLC. Despite inquiries by Mr. Collins, the funds were not disbursed to either Ms. Murphy or Mr. Collins. Rather, on July 2, 2014, Ms. Murphy filed a Petition with the Greenville County Probate Court seeking to deny Mr. Collins any of the proceeds derived or to be derived from the wrongful death action in the matter of *Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields, vs. Bon Secours Health System, Inc., et. al*, Case No. 2013-CP-23-04186. (July 2, 2014 Petition). On July 15, 2014, the Greenville County Probate Court declined to proceed forward with Ms. Murphy's Petition, and instead directed her to address the issue with the Greenville County Court of Common Pleas as the case was still active therein. (July 15, 2014 Correspondence from Greenville County Probate Court).

Ms. Murphy did not take any further action. So, on or about July 29, 2014, Mr. Collins formally demanded disbursement of one half of the wrongful death proceeds being held in trust directly to him as statutory beneficiary. Ms. Murphy objected. As a result, on August 6, 2014, Mr. Collins filed a Motion to Compel in the Greenville County Court of Common Pleas. (August 6, 2014 Motion to Compel). In response, on August 15, 2014, Ms. Murphy filed a Return, along with a Motion to deny Mr. Collins any of the proceeds derived from the wrongful death litigation. (Return to Mark Collins Motion to Compel and Motion to Deny Mark Collins Any and All Proceeds Derived from Settlement of Survival and Wrongful Death Actions).

The Circuit Court held a hearing on September 30, 2014 to address Mr. Collins' Motion to Compel and Ms. Murphy's Motion to Deny Mr. Collins any of the proceeds. (Circuit Court Order on Movant Mark Collins' Motion to Compel Disbursement and Personal Representative Lauren Murphy's Motion to Deny Proceeds). At the conclusion of the hearing, the Circuit Court found that the two statutes that applied to the parties' respective motions conflicted.

> One statute, Section 62-1-302(b), purport[ed] to confer concurrent jurisdiction upon both the Probate and Circuit Court regarding matters of allocation; however, the other, Section 15-51-40, dictates that actions brought to deny proceeds to a statutory beneficiary can only be brought in the Probate Court.

(Circuit Court Order on Movant Mark Collins' Motion to Compel Disbursement and Personal Representative Lauren Murphy's Motion to Deny Proceeds). As a result of the Circuit Court's Order, the parties' respective motions were referred to the Greenville County Probate Court.

Pursuant to the Circuit Court's Order, on November 18, 2014, Ms. Murphy filed a Motion to Deny Mr. Collins the wrongful death and survival settlement proceeds in the Greenville County Probate Court. (Motion to Deny Mark Collins Wrongful Death and Survival Settlement Proceeds). Ms. Murphy sought an order of the Probate Court denying Mr. Collins any of the settlement proceeds derived from the wrongful death litigation because:

> Collins provided no support for Ms. Murphy during her pregnancy; he pursued no relationship with the minor child; he did nothing to grasp the opportunity to assert himself as the father of this child; and no evidence shows Collins suffered from the death of Tynslee, whether it be pecuniary loss, mental shock and suffering, wounded feelings, grief, sorrow or loss of companionship.

(Motion to Deny Mark Collins Wrongful Death and Survival Settlement Proceeds).

In response, Mr. Collins filed a Return opposing Ms. Murphy's motion. (Return in Opposition to Motion to Deny Mark Collins Wrongful Death and Survival Settlement Proceeds). Mr. Collins directed the Probate Court to the statutes controlling the disposition of such proceeds, maintaining that as the only other statutory beneficiary he was entitled to one-half of the proceeds. Further, Mr. Collins asserted there was no basis in law for the Probate Court to deny or limit the proceeds at issue, as the minor child died at birth.

The Probate Court held a hearing on January 9, 2015 to address the parties' respective motions. (April 29, 2015 Greenville County Probate Court Order). Thereafter, the Court took the matter under advisement and invited the parties to submit any additional case law from other jurisdictions on the issues raised in their respective filings. (Plaintiff's Submission to the Court of Case Law from Jurisdictions Other than South Carolina; Respondent's Submission of Applicable Case Law from Other Jurisdictions).

On April 29, 2015, the Probate Court issued an Order as follows:

> [Ms. Murphy] has shown by a preponderance of the evidence that [Mr. Collins], 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 Section 15-51-40 (1976 as amended) and Section 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.
> [Mr. Collins] 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.

(April 29, 2015 Greenville County Probate Court Order)

Mr. Collins filed a timely notice of appeal.

ARGUMENT

I. Standard of Review.

"[T]the circuit court should apply the same standard of review when it considers an appeal from the probate court as an appellate court would apply on appeal. Thus, if

the action is at law, the circuit court should uphold the findings of the probate court if there is any evidence to support them; if the action is equitable, the circuit court may make findings in accordance with its own view of the preponderance of the evidence...." In re Estate of Weeks, 329 S.C. 251, 260, 495 S.E.2d 454, 459 (Ct. App. 1997).

II. Arguments.

A. The Greenville County Probate Court erred when it failed to hold that the provisions contained within S.C. Code Section 15-51-40, that purport to limit a statutory beneficiary's claim to proceeds derived from a wrongful death settlement, are inapplicable when a decedent passes within an hour of birth.

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

Under certain circumstances, the Court may limit a parent's entitlement. However, the statute is not applicable to a situation where a child dies at birth. It states,

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

SC Code 15-51-40 Damages; amount and to whom payable (South Carolina Code of Laws (2014 Edition))

Thus, there was no basis as a matter of law for the Probate Court to limit or deny Mr. Collins' interest in the settlement proceeds derived from Civil Action: 2013-CP-23-04186.

Section 63-5-20 states that a parent must provide reasonable support to provide a living unless the parent has just cause or excuse for failure to do so.

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

SC Code 63-5-20 Obligation to support (South Carolina Code of Laws (2014 Edition.).

The term "reasonable support" is the operative term, which cannot be applied to circumstances where a life has been cut short such that there is no opportunity to provide support for the child.

Likewise, Section 63-5-20 does not provide a no basis as a matter of law for the Probate Court to limit or deny Mr. Collins' interest in the settlement proceeds derived from Civil Action: 2013-CP-23-04186.

The Probate Court's April 29, 2015 Order is contrary to the well-established laws of this State and therefore should be reversed.

B. The Greenville County Probate Court erred when it found that the terms "reasonably provide support" or "reasonable support," as those terms are used in S.C. Code Section 15-51-40 and S.C. Code Section 63-5-20, encompass: monetary support for an unborn child; the affirmative attempt to reimburse Medicaid moneys for which Medicaid has not sought reimbursement; burial, funeral, memorial, or legal expenses incurred post-mortem; non-monetary acts by a parent post-mortem; active participation in a lawsuit post-mortem; and/or support for a decedent post-mortem.

As set forth above,

> "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.

S.C. Code 63-5-20.

The only possible financial measure that has been identified as having been in existence during the decedent's tragically short life of approximately one hour concerns medical expenses. Setting aside the fact that the Respondent intentionally withheld the birth of the decedent from Appellant, all medical expenses associated with the medical care applied were paid by Medicaid and no reimbursement has been sought. The Probate Court has determined that these medical expenses are "usual necessities" for which Appellant should have sought to reimburse Medicaid once he learned of his daughter's birth and immediate death despite the fact that Medicaid is not seeking reimbursement. It is not "usual" to require reimbursement to an insurer who has no legal basis to demand reimbursement, nor is such reimbursement a "necessity" to the deceased. The determination that the reimbursement of Medicaid under the instant facts comprises a "usual necessity" is therefore erroneous and the analysis does not comport with the plain meaning of the statute.

The Probate Court went on to attempt to identify expenses that were incurred by Ms. Murphy before or after the death of the minor child in an attempt to classify them as "unusual necessities". However, the Probate Court's analysis is misplaced and contrary to law.

The terms "usual and unusual necessities" are subject to the sentence which precedes them in the statue, which states that that the measure of "reasonable support" is a "living standard." A parent's living standard is not possible to apply either before the person to whom it is to be applied is born or after the subject person has passed away. Further, the term "necessities," in and of itself, presupposes that the individual for whom the support is to be given needs that support. The needs of such an individual are

summarily extinguished upon his/her passing and have not yet been generated prior to birth. Thus, the Court's determination that Appellant failed to provide reasonable support because of a failure to pay for any costs incurred before or after his daughter's death is also erroneous.

C. Greenville County Probate Court erred by failing to consider whether "just cause" or "excuse" existed, to justify any alleged failure of Appellant to provide "reasonable support" for his minor child, the decedent.

The Probate Court failed to evaluate the issue of whether "just cause" or "excuse" prevented Appellant from providing "reasonable support." This was an error as a matter of law that requires reversal.

The statutory authority recited above states that if "just cause" or "excuse prevents a parent from meeting the legally required financial responsibilities, then he/she cannot be held responsible for that failure. As set forth above, and in the Affidavits submitted to the Probate Court on the hearing of the matter, Ms. Murphy systematically excluded Mr. Collins from participation through lies and deceit. Mr. Collins cannot for this reason be held to have failed in his responsibilities. Regardless, the analysis was never done. Having failed to evaluate the instant action by applying the statute in its entirety including the questions of "just cause" and "excuse," the Probate Court's determination is in error and requires reversal.

D. The Respondent Personal Representative is equitably estopped from moving to deny the distribution of proceeds to Appellant because her actions, both as Personal Representative and individually, procured the action or inaction of Appellant of which she complains to support her requested denial.

The record contains the evidence of the calculated efforts made by Respondent, both individually and in her capacity as Personal Representative, to create the circumstances that would support her attempt to deny the distribution of proceeds to

Appellant.

Prior to her appointment as Personal Representative and her assumption of her continuing fiduciary duty to Appellant, she identified Mr. Fields as Tynslee's father on her death certificate despite her knowledge that Appellant was the true father. (Death Certificate; Respondent's Brief in Support of its Motion to Deny Proceeds).

Subsequent to her Appointment as Personal Representative, Respondent did not seek to contact Appellant at any time. No counsel contacted him. He was not interviewed. His deposition was not taken. The litigation was under the control of Respondent and her counsel.

As explained above, the actions of a parent statutory beneficiary that are taken after the passing of a child have no relevance to a motion to limit or deny proceeds. Nevertheless, Respondent, after having been in control of the litigation and excluding Appellant from it, as submitted that Appellant's failure either to document and memorialize the grief and suffering surrounding Tynslee's death or to proactively press himself further into the malpractice litigation for which he had consented to appoint Respondent as Personal Representative, constitutes grounds for the denial. She states,

> "... evidence simply does not exist to show Collins suffered from the death of Tynslee, whether it be pecuniary loss, mental shock and suffering, wounded feelings, grief, sorrow, or loss of companionship."

(Respondent's Return to Motion and Motion to Deny Proceeds P.4).

Respondent has thus created a set of circumstances where she requires Appellant to prove a negative.

Tellingly, the Order for Approval of the subject partial settlement of the underlying wrongful death actions against certain defendant medical providers, which

was submitted by Respondent to the Circuit Court judge for signature, reads as follows in pertinent part:

> UPON READING the annexed Petition of Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields, and it appearing that Lauren Murphy deems the offer with the Defendants acceptable, advantageous, **and to the best interest of the Estate and the beneficiaries.**
>
> and
>
> IT FURTHER APPEARING in the discretion of this Court that such settlement is proper and **in the best interest of the Estate,** it is
> ORDERED...

(Order Approving Settlement).

The absence of the words "and the beneficiaries" from the second paragraph of the Court's Order, which was drafted by Respondent for signature, reveals the nature of respondent's machinations in stark relief. Respondent left the words, "and the beneficiaries," out of the segment three lines below which contains the Court's actual finding.

Thus, ostensibly, the Court did not find the settlement to be in the best interest of the beneficiaries but, rather, only the Estate. The omission was an attempt by Respondent to avoid a specific finding that would have cemented the acquiescence to distribution in equal shares that she knew was dictated by her fiduciary obligation.

Respondent's additional deviation from established settlement procedure further clarifies the depth of her intent to manipulate the process.

Section 15-51-42 (B) further states,

> It is not necessary that a personal representative be represented by legal counsel for the court to consider the petition and approve the settlement. **If the personal representative is represented by legal counsel, the counsel shall sign a certificate attesting to the fact that he is of the opinion that the settlement is fair and reasonable and in the best interests of the statutory beneficiaries** and,

in a survival action, the estate of the decedent.

Respondent's counsel in the underlying wrongful death action made no such submission to the Court. Thus, by her conscious design, neither the Court, nor counsel gave a written certification that the settlement was in the best interests of the statutory beneficiaries.

Following are the sections of the South Carolina Code of Laws that define the duties, responsibilities and standards to which the Personal Representative is held.

> Section 62-3-703 General duties; relation and liability to persons interested in estate; standing to sue
> (a) A personal representative is a fiduciary who shall observe the standards of care described by Section 62-7-804.
>
> Section 62-7-803 Impartiality
> If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests.
>
> Section 62-7-804 Prudent administration
> A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

As identified above, Respondent, in contravention of all of these referenced statutes, sought to use her position to obviate the Appellant's claim to the subject proceeds so that she could take them undivided.

"The doctrine of estoppel applies if a person, by his actions, conduct, words or silence which amounts to a representation, or a concealment of material facts, causes another to alter his position to his prejudice or injury." Hubbard v. Beverly, 197 S.C. 476, 480, 15 S.E.2d 740, 741 (1941). "Prejudice to the other party is an essential element of

equitable estoppel." Janasik v. Fairway Oaks Villas Horizontal Prop. Regime, 307 S.C. 339, 344, 415 S.E.2d 384, 387 (1992).

> With regard to the party estopped, the elements of equitable estoppel are: (1) conduct amounting to a false representation or concealment of material facts, "or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert;" (2) the intention or expectation that such conduct shall be acted upon by the other party; and (3) actual or constructive knowledge of the real facts.

Southern Dev. Land & Golf Co., v. South Carolina Pub. Serv. Auth., 311 S.C. 29, 33, 426 S.E.2d 748, 750 (1993). "As related to the party claiming the estoppel, the essential elements are: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) reliance upon the conduct of the party estopped, and (3) prejudicial change in position." Id. ; see also Rushing v. McKinney, 633 S.E.2d 917, 370 S.C. 280 (S.C. App., 2006.)

The statutory safeguards that include language about statutory beneficiaries and their best interests are in place to avoid situations precisely like the one before the Court at this time. The Personal Representative has a fiduciary responsibility to serve the best interests of the statutory beneficiaries. If the Personal Representative, as in this case, happens to also be a beneficiary, whose interests conflict with those of another, then the appropriate course of action is for the Personal Representative to make that conflict known and step down.

In this case, Respondent, took the opposite route, instead, using her position to conceal her conflict and to try to ensure that she would receive all of the funds at issue without dividing them. She intentionally breached her fiduciary duty by using her position of confidence to try to achieve an end directly adverse to the interests of Appellant. She first attempted to deceive the Probate Court and interested parties by

claiming that paternity was in question. Then, when that attempt failed, she secured Appellant's consent to her appointment as Personal Representative. She then systematically excluded him from the litigation, failing to provide him with any information about its progress or the prospects of settlement. Finally, she attempted by (1) the careful omission of her attorney's certification that the settlement is in the best interests of the statutory beneficiaries and (2) the surgical omission of specific wording to that same effect within the Court's Order that she drafted, to avoid any official determination that the settlement was in the best interests of Appellant.

In reliance upon the fact that she concealed her conflict of interest and represented the statutory beneficiaries' best interests in the underlying litigation, Appellant took no steps to remove her. He did not document or memorialize parts of his life that would become pertinent upon her surprise attempt to deny proceeds. Because she controlled the litigation, he participated in it only by being prepared to do what was asked of him, yet no one asked anything of him.

The facts referenced above reflect Respondent's manipulation and efforts to divest Appellant of his rightful claim. He has relied to his detriment as set forth above. She was therefore equitably estopped from bringing any Motion to Limit or Deny Proceeds.

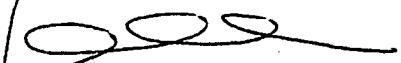
CONCLUSION

For the reasons set forth hereinabove the Greenville County Probate Court's April 29, 2015 Order entered in the matter of *Lauren Murphy as Statutory Beneficiary vs. Mark Collins and The Estate of Tynslee Elizabeth Fields, Deceased*, Case No. 2012-ES-23-01718, which denies Appellant any of the settlement proceeds realized in the matter of *Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee*

Fields vs. Bon Secours Health System, Inc., et. al., C.A. No. 2013-CP-23-04186 should be reversed.

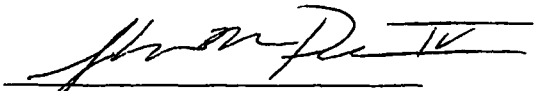
Respectfully Submitted,

Dated: July 13, 2015



JESSICA SALVINI, ESQ.

SALVINI & BENNETT, LLC
101 W. Park Ave.
Greenville, SC 29601
Telephone: (864) 232-5800
Facsimile: (864) 232-5888



JOHN M. READ, IV, ESQ.

PILLSBURY & READ, PA
1204-A East Washington Street
Greenville, SC 29601
Telephone: (864) 241-9828
Facsimile: (864) 241-9818

Dated: July 13, 2015

ATTORNEYS FOR APPELLANT

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT
COUNTY OF GREENVILLE	)	Appeal from Probate Court for Greenville County
IN THE MATTER OF:	)	CASE NUMBER: 2015-ES-23-02860 (2012-ES-23-01718)
Tynslee Elizabeth Fields, Deceased (Decedent)	)	
Mark Collins, Appellant(s), vs. Lauren Murphy (As Statutory Beneficiary) Respondent(s).	)	**CERTIFICATE OF SERVICE**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKERSHAM
2015 JUL 13 PM 4 52

I am a citizen of the United States, my business address is 101 W. Park Avenue, Greenville, SC 29601. I am employed in the City and County of Greenville where this mailing occurs; I am over the age of eighteen (18) years and not a party to the within cause. I served a true copy of the:

APPELLANT'S BRIEF

in this matter on the following person(s) on the date set forth below, via **U.S. Mail and Facsimile**, in a sealed envelope, and addressed to:

Ruth F. Hindman, Esq.
RUTH LAW FIRM, LLC
1225 S. Church St
Greenville, SC 29605
Facsimile: (864) 397-9248

Charles W. Marchbanks, Jr.
THE MARCHBANKS LAW FIRM
1225 S. Church St
Greenville, SC 29605
Facsimile: (864) 552-1607

I certify or declare under penalty of perjury that the foregoing is true and correct.

Executed on **July 13, 2015**, in Greenville, South Carolina.

Lantz K. Stoltzfus, CP
CERTIFIED PARALEGAL

SALVINI & BENNETT, LLC
101 W. Park Avenue
Greenville, SC 29601
Telephone: (864) 232-5800
FAX: (864) 232-5888

STATE OF SOUTH CAROLINA)
)
COUNTY OF Greenville)

IN THE COURT OF COMMON PLEAS

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAULA H. WOKEN SIMER
2015 MAY 1 PM 3 47

Mark Collins
Plaintiff(s) / Appellant(s)

vs.

Laurie Murphy (as Statutory Beneficiary)
Defendant(s) / Respondent

CIVIL ACTION COVERSHEET

~~2015-CP-23-~~ 02860

(Please Print)
Submitted By: Jessica Salvini
Address: 101 W. Park Ave. Greenville, SC 29601

SC Bar #: 69301
Telephone #: 864 232 5500
Fax #: 864 232 5588
Other:
E-mail: jessicasalvini@yahoo.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- Previous Notice of Intent Case # 20___-NI-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Greenville County Probate Court
2015 MAY 1 PM 4: 0

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture-Consent Order (850)
- ☐ Other (899)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript of Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☑ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Commission (990)
- ☐ Employment Security Commission (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Sexual Predator (510)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Foreign Subpoenas (650)
- ☐ Motion to Quash Subpoena in Out-of-County Action (660)

Submitting Party Signature: _____ Date: 5/1/15

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL G. WICKENSIMER
2015 MAY 1 PM 3:47

STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT

COUNTY OF GREENVILLE) Appeal from Probate Court for Greenville County

) CASE NUMBER: 2012-ES-23-01718

IN THE MATTER OF:
Tynslee Elizabeth Fields, Deceased
(Decedent)

2015-CP-23- 02860

Mark Collins
Appellant(s),

vs.

Lauren Murphy (As Statutory Beneficiary)
Respondent(s).

NOTICE OF INTENT TO APPEAL TO CIRCUIT COURT

Pursuant to SCPC 62-1-308, Appellant hereby provides his/her/its Notice of Appellant's Intent to Appeal the Order/Sentence/Decree of the Probate Court dated April 29, 2015. Said Order/Sentence/Decree was received by the Appellant or Appellant's counsel on April 30, 2015. A copy of said Final Order is attached.

Respectfully submitted,

SWORN to before me this 1st day of May 2015.
Bradley Bennett
Notary Public for: SC
My Commission Expires: 10/12/2022

Signature: Mark Collins
Print Name: Mark Collins
Address: 201 Lurey Dr
Greenville, SC 29617
Telephone (Work): 254-5900
(Home): N/A
(Cell): 569-3500
Email: N/A
Relationship to Decedent/Estate: Father and Statutory Beneficiary

Attorneys: Jessica Salvini, Esq.
Bradley Bennett, Esq.
John M. Read, IV, Esq.
Address: 101 W. Park Ave.
Greenville, SC 29601
Telephone: 864-232-5800
Email: Salvini_Bennett@yahoo.com

IMPORTANT:

1. This Notice must be filed with the Probate Court, the Circuit Court, and all parties not in default within ten (10) days after receipt of written notice of the appealed-from order, sentence, or decree of the Probate Court. Parties must comply with requirements set forth in SCPC 62-1-308.

2. This form is not intended for appeals other than appeals to the County Circuit Court. An Appeal to a Court other than the County Circuit Court must follow SCPC 62-1-308(I) and the South Carolina Appellate Court Rules, as applicable.

FORM #356ES (1/2014)
62-1-308

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
COUNTY OF GREENVILLE	)	CASE NO.: 2012-ES-23-01718
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.	)	**ORDER**

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

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

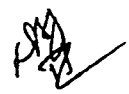
PROCEDURAL BACKGROUND

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 was 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

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 the 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.

20. Later, Murphy made a box of photographs and other memorabilia for Collins. Murphy still has the box, although she says 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

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

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT
COUNTY OF GREENVILLE	)	Appeal from Probate Court for Greenville County
	)	CASE NUMBER: 2012-ES-23-01718
IN THE MATTER OF: Tynslee Elizabeth Fields, Deceased (Decedent) Mark Collins Appellant(s),	)	CERTIFICATE OF SERVICE
vs.	)	
Lauren Murphy (As Statutory Beneficiary) Respondent(s).	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSHMER
2015 MAY 1 PM 3 49

I am a citizen of the United States, my business address is 101 W. Park Avenue, Greenville, SC 29601. I am employed in the City and County of Greenville where this mailing occurs; I am over the age of eighteen (18) years and not a party to the within cause. I served a true copy of the:

NOTICE OF INTENT TO APPEAL IN CIRCUIT COURT

in this matter on the following person(s) on the date set forth below, via Hand Delivery, in a sealed envelope, and addressed to:

Ruth F. Hindman, Esq.
RUTH LAW FIRM, LLC
1225 S. Church St
Greenville, SC 29605

Charles W. Marchbanks, Jr.
THE MARCHBANKS LAW FIRM
1225 S. Church St
Greenville, SC 29605

I certify or declare under penalty of perjury that the foregoing is true and correct. Executed on May 1, 2015, in Greenville, South Carolina.

LANTZ K. STOLTZFUS, CP
CERTIFIED PARALEGAL
SALVINI & BENNETT, LLC
101 W. Park Avenue
Greenville, SC 29601
Telephone: (864) 232-5800
FAX: (864) 232-5888

STATE OF SOUTH CAROLINA	)	
	)	IN THE PROBATE COURT
COUNTY OF GREENVILLE	)	
IN THE MATTER OF: Tynslee Elizabeth Fields, Deceased	)	Case No. 2012-ES-23-01718
Lauren Murphy as Statutory Beneficiary,	)	**RESPONDENT'S SUBMISSION OF APPLICABLE CASE LAW FROM OTHER JURISDICTIONS**
Petitioner,	)	
v.	)	
Mark Collins, and The Estate of Tynslee Elizabeth Fields, Deceased,	)	
Respondent.	)	

INTRODUCTION

On January 9, 2014, this Court heard argument regarding Petitioner's Motion to Deny Mark Collins Wrongful Death and Survival Settlement Proceeds. At the end of argument, the Court requested that counsel search for case law from other jurisdictions whose statutes governing the disbursement of wrongful death proceeds are similar to those at issue in the instant case with regard to the application of the specifically defined "reasonable support" and "living standard" provisions to circumstances involving an infant who dies within minutes of birth.

CASE ANALYSIS

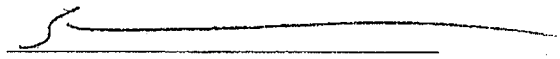
The operative language of the two applicable sections of the South Carolina Code of Laws whose interplay is at issue are set forth below:

> .... [U]pon motion by either parent or any other party of potential interest based upon the decedent having died intestate, the probate court may deny or limit either or both parent's entitlement for a share of the proceeds if the court determines, by a preponderance of the evidence, that the parent or parents **failed to reasonably provide support for the decedent as defined in Section 63-5-20** and did not otherwise provide for the needs of the decedent during his or her minority. SC Code 15-51-40 Damages; amount and to whom payable (South Carolina Code of Laws (2014 Edition.))

> (A) Any able-bodied person capable of earning a livelihood who shall, **without just cause or excuse**, abandon or fail to provide reasonable support to his or her spouse or to his or her minor unmarried legitimate or illegitimate child dependent upon him or her shall be deemed guilty of a misdemeanor and upon conviction shall be imprisoned for a term of not exceeding one year or be fined not less than three hundred dollars nor more than one thousand five hundred dollars, or both, in the discretion of the circuit court. A husband or wife abandoned by his or her spouse is not liable for the support of the abandoning spouse until such spouse offers to return unless the misconduct of the husband or wife justified the abandonment. If a fine be imposed the circuit court may, in its discretion, order that a portion of the fine be paid to a proper and suitable person or agency for the maintenance and support of the defendant's spouse or minor unmarried legitimate or illegitimate child. **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.SC Code 63-5-20 Obligation to support (South Carolina Code of Laws (2014 Edition.))

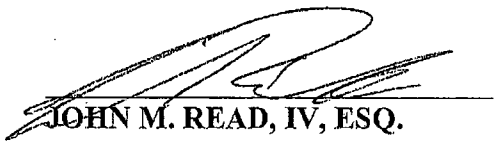
Counsel for Respondent have found no other jurisdictions which utilize terms which would have substantially the same meaning as the specifically defined "reasonable support" and "living standard" which South Carolina applies, along with other criteria, to determine whether to grant a motion to deny proceeds to a parent statutory beneficiary in the context of an infant who perishes at birth. There appears to be no case law which speaks to the question posed by the Court.

Respectfully Submitted,



JESSICA SALVINI, ESQ.

SALVINI & BENNETT, LLC
101 W. Park Ave.
Greenville, SC 29601
Telephone: (864) 232-5800
Facsimile: (864) 232-5888



JOHN M. READ, IV, ESQ.

PILLSBURY & READ, PA
1204-A East Washington Street
Greenville, SC 29601
Telephone: (864) 241-9828
Facsimile: (864) 241-9818

January 27, 2015
Greenville, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	Case No. 2013-CP-23-01186
Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields, Plaintiffs, vs. Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10. Defendants.	)	**PLAINTIFF'S SUBMISSION TO THE COURT OF CASE LAW FROM JURISDICTIONS OTHER THAN SOUTH CAROLINA**

RECEIVED
JAN 23 2015
GREENVILLE COUNTY PROBATE COURT

INTRODUCTION

Ten cases from six (6) States are attached hereto and incorporated herein as Exhibit "A", pages 1-38. For the Court's convenience, an informal summary of the relevant information from each State follows. Additionally included in Exhibit "A", pages 39-42 are South Carolina Code of Laws Sections 63-9-810 and 63-9-820 (1976 as amended) showing our State's interest in having potential fathers affirmatively assume responsibility for children they may have fathered before the birth of the child.

MISSISSIPPI

Bullock v. Thomas *et al.*, 659 So.2d 574 (Miss., 1995)..... Exhibit "A" pp. 1-5

The minor child decedent in *Bullock*, Mario, was killed by an Amtrak train before he turned three years old. Mario's father conceived Mario at a time when he was in a live-in relationship with another woman. Mario's father did not establish paternity before Mario died.

Mario's father was successful in proving he was Mario's biological father, but the trial court denied him any benefits from the wrongful death settlement with Amtrak because he "failed to prove he had openly treated Mario as his child [and] neglected to support Mario." Bullock, 659 So.2d 574 (1995).

Miss. Code Ann. § 91-1-15(3) (1972) provides in pertinent part:

> (3) [T]he natural father of an illegitimate and his kindred shall inherit from and through the illegitimate according to the statutes of descent and distribution if:
>
> (a) The natural parents participated in a marriage ceremony before the birth of the child....
>
> (b) There has been an adjudication of paternity or legitimacy before the death of the intestate; or
>
> (c) There has been an adjudication of paternity after the death of the intestate, based upon clear and convincing evidence, in an heirship proceeding under sections 91-1-27 and 91-1-29.
>
> (d) The natural father of an illegitimate and his kindred shall not inherit:
>
> (i) From or through the child unless the father has openly treated the child as his, and has not refused or neglected to support the child.

Miss. Code Ann. § 91-1-15(3) (1972) (*emphasis added*).

The Mississippi Supreme Court upheld the trial court's decision to divest Mario's father of any benefit even though the trial court Judge found that: (1) the father, on occasion, would take Mario with him and would among certain family members acknowledge him to be his son; (2) the father contributed $100.00 for the purchase of the suit in which Mario was buried; and (3) there was evidence the father provided Mario's mother an average of $100.00 per month to help with expenses. Bullock, 659 So.2d 574 (1995).

The basis for the trial court's denial to the father and the Supreme Court's subsequent affirmation of that decision was that the trial court additionally found that: (1) The father's visits with Mario, most, if not all of the time, included the company of Mario's mother and her other children; (2) the father waited a year to tell his significant other of Mario's existence; (3) there was

no evidence the father had told his other children about Mario; (4) the father was not present for Mario's birth although he was aware the mother was in the hospital; (5) the father did not attend Mario's funeral; (6) while the record is not clear as to whether the father attended Mario's burial, it does state he did not speak to any family members at the burial service; (7) the father did not make arrangements for his other children to attend the funeral of their brother; and (8) regarding support, the Supreme Court held that the trial court's finding that the father failed to support Mario was erroneous, but irrelevant to the ultimate decision as to whether the father was entitled to benefit from Mario's death because he did not openly treat the child as his. Bullock, 659 So.2d 574 (1995).

The Estate of Patterson v. Patterson, 798 So.2d 347 (Miss., 2001)..... Ex. "A" pp. 6-10

The minor child in *Patterson*, Jaquarius, was killed in an automobile collision when he was three years old. Jaquarius's mother and father had a four-month affair while students at Alcorn State University. When the mother became pregnant and told the father the child was his, the father told her that he did not think he was the child's father but that a blood test would show whether he was and that "when the blood tests came back" they would "talk then." Estate of Patterson, 798 So.2d 347 (2001).

The trial court held that the father did not have a right to wrongful death settlement proceeds accessed by the death of Jaquarius, and Jaquarius's half-brothers (previous children of the father) were also divested of any right due to the father's neglect. Estate of Patterson, 798 So.2d 347 (2001).

The lynchpin statute in this case, as with *Bullock v. Thomas* above, states, in relevant part, "The natural father of an illegitimate and his kindred shall not inherit: (i) From or through the child

unless the father has openly treated the child as his, and has not refused or neglected to support the child." Miss.Code Ann. § 91-1-15(3)(d)(i) (1994).

In this case, however, the father argued that he did not know he was the biological father of Jaquarius until four days before the child died. Thus, he argued, he could not be held accountable for not treating the child as his or supporting him. Estate of Patterson, 798 So.2d 347 (2001).

The court's conclusion in the case states, "This case is a classic example of conduct the statutes and case law seek to prevent. A father should not be allowed to receive a windfall simply because he impregnated the child's mother. [The father] refused to openly treat his son, Jaquarius, as his own or to comply with his duty to provide essential support, until it appeared he might receive a sizable inheritance." Estate of Patterson, 798 So.2d 347 (2001) (*emphasis added*).

Williams v. Farmer, 876 So.2d 300 (Miss., 2004) ..... Ex. "A" pp. 11-15

The minor child in *Williams* was killed in utero in an automobile accident and the mother received approximately $150,000.00 in wrongful death proceeds for the loss her child. The parties had intimate relations resulting in mother becoming pregnant. Mother informed father she was pregnant and alleged father refused to have contact with her or acknowledge that he was the father of the child, Asiah. Williams, 876 So.2d 300 (2004).

The father's argument was that it would be virtually impossible to comply with the requirements of the statute where the decedent is a fetus. He claimed he was never "afforded the opportunity to take Asiah to the zoo or to the park as she never had the benefit of breathing her first breath." He further claims that he happily agreed that Asiah was his child and even offered financial assistance during the maternity stage but was refused. Father also states he was

discouraged from visiting mother by threat from her family members. Williams, 876 So.2d 300 (2004).

The trial court found that, although father was the natural father of Asiah, that alone does not automatically entitle him or his children to inherit from her. The trial court stated that Williams' total lack of concern and indifference demonstrated his refusal and neglect to support the child. Thus the Mississippi Supreme Court held that the trial court properly concluded that neither the father nor his children could inherit from or through Asiah. Williams, 876 So.2d 300 (2004).

Estate of McCoy ex rel. Jones v. McCoy, 988 So.2d 929 (Miss. App., 2008)Ex. "A" pp. 16-18

In *McCoy*, the minor child, Jakayla, died in a neighbor's pool right after she had turned two years old. The father was imprisoned one month before Jakayla was born and remained in prison until after she passed. Estate of McCoy, 988 So.2d 929 (2008).

The trial court found that because the father was a prisoner of the State during Jakayla's lifetime, he was prevented from providing support for her. It was noted that he was unemployed throughout the pregnancy but lived with the mother during that time. He did state that he had purchased household items and food for the mother and Jakayla during this time. He also specifically received leave from his prison term to attend Jakayla's wake. The mother took Jakayla to visit the father while he was in prison and sent him pictures of their daughter. Estate of McCoy, 988 So.2d 929 (2008).

The mother stated that the father provided no financial assistance from the beginning of the pregnancy through Jakayla's death, funeral, and burial. The trial court found that the father was entitled to a fifty percent share of the proceeds from the wrongful death claim because prison

prevented him from supporting her and developing a relationship with her. Estate of McCoy, 988 So.2d 929 (2008).

The Mississippi Supreme Court ***REVERSED*** the trial court's decision stating:

> [W]e disagree with the chancellor's finding and conclude that [the father] in fact refused and/or neglected to support Jakayla... [The father] moved in with [the mother] shortly after learning of her pregnancy and did not provide any financial support to [the mother] before or after he went to prison. [The mother] supported Jakayla with no assistance from [the father], and this Court concludes that allowing [the father] to receive any portion of the settlement from the wrongful death action would result in a financial windfall in [the father's] favor. For this reason, we reverse and render the chancellor's finding that [the father] proved that he did not refuse or neglect to support Jakayla.

Estate of McCoy, 988 So.2d 929 (2008) (*emphasis added*).

Alexander v. Alexander, 465 So.2d 340 (Miss., 1985).....Ex. "A" p. 19

This case is included as it provides the basis for the above cases because, in *dicta*, the Mississippi Supreme Court stated, "the natural father of the decedent.... had not supported his illegitimate child and was therefore not a lawful heir..." Alexander, 465 So.2d 340 (1985).

NORTH CAROLINA

Williford v. Williford, 219 S.E.2d 220, 288 N.C. 506 (N.C., 1975).....Ex. "A" pp. 20-21

The age of the minor child in *Williford* at the time of his or her death is unknown. The case further does not mention exactly how the father did not support the child. It is mentioned, however, that the appeal was driven by the father, who was excluded from a wrongful death settlement by the decision of a jury. Relevant to Mark Collins' proposition, however, is the court's analysis: "It is well established that the proceeds of an action brought for wrongful death are not assets of the estate of the deceased and are not 'any part of' his estate. Such proceeds are distributable pursuant to G.S. 28--173, the act authorizing the institution of an action to recover

damages for wrongful death." Williford, 219 S.E.2d 220 (1975) (*emphasis added*). This legal analysis shifts the focus from the law of intestacy.

WISCONSIN

Keithley v. Keithley, 95 Wis.2d 136, 289 N.W.2d 368 (Wis. App., 1980)..... Ex. "A" pp. 22-24

In *Keithley*, mother and father are the divorced parents of Kenneth, a minor who was killed in an automobile accident. The Keithleys accepted $21,000 in settlement of their claim for Kenneth's death but could not agree on a division of the settlement proceeds. Father claimed he was entitled to 50% as a matter of law. The trial court ruled that division should be based upon the actual loss sustained by each parent, considered this a question of fact, and submitted it to the jury. The jury awarded the entire settlement to the mother. Keithley, 95 Wis.2d 136, (1980).

In upholding the verdict on appeal, the Wisconsin Supreme Court opined, "The inflexible 50% Division contended for by [the father] could force an unfair loss on one parent while granting a windfall to the other parent. The differing ages of parents, their marital status, and their relationship with the child must realistically be recognized as bearing upon society and companionship loss." Keithley, 95 Wis.2d 136, (1980) (*emphasis added*).

UTAH

Estate of Scheller v. Pessetto, 783 P.2d 70 (Utah App., 1989)..... Ex. "A" pp. 25-31

The minor child in *Scheller*, Billy Joe, was born out of wedlock on August 10, 1981. He was deprived of oxygen for a period of time during his birth, causing him to suffer cerebral palsy with resultant spastic quadriplegia. As a result of that condition, Billy Joe died at the age of five, leaving an estate which consisted of settlement proceeds from a medical malpractice claim. The

trial court determined Billy Joe's father was not entitled to any proceeds from his estate, and father appealed. Estate of Scheller, 783 P.2d 70 (1989).

Father did not have any contact with Billy Joe during his lifetime and only once paid back-due child support in the amount of $1,250.00 for the first two years of Billy Joe's life. Father was in arrears at the time of Billy Joe's death. Mother argued father could not take from the estate because he did not, pursuant to Utah Code Ann. § 75-2-1-9(1)(b)(ii) (1976), establish a parent-child relationship with Billy Joe in that he failed to support Billy Joe and openly treat Billy Joe as his own. Father pointed out the one-time payment of child support and claimed the mother would not allow him to see his son. Estate of Scheller, 783 P.2d 70 (1989).

Father's claim on appeal centered on arguments that his Constitutional Rights were violated by not being given part of the estate. He argued the Utah statutory scheme violated his Federal equal protection rights, his Federal right to due process, and his equal rights under the Utah Constitution. Estate of Scheller, 783 P.2d 70 (1989).

The analysis of the Utah Supreme Court, however, cited the United States Supreme Court case of *Lehr v. Robertson*, 463 U.S. 248, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983), stating, "Due to the difference in the relationship between the mother and child as compared to the father and child, the court held that the state could accord the mother and father different legal rights." Estate of Scheller, 783 P.2d 70 (1989).

The Utah Court went further stating:

> [M]others and fathers of illegitimate children are not similarly situated. The identity of the mother of an illegitimate child is rarely in doubt. In contrast, the father's identity is frequently unknown... In addition, the mother, because she physically bears the child, automatically is responsible for the child at least to the extent of deciding its immediate future. Further, she bears the physical, emotional and psychological ramifications of pregnancy and must decide whether to abort the child, raise the child alone or give the child up for adoption. If she decides to raise the child, she endures further financial, emotional and psychological

> responsibilities. The putative father who does not support the child or openly treat the child as his own assumes none of these responsibilities.

Estate of Scheller, 783 P.2d 70 (1989) (*emphasis added*).

Also, in regards to the statute affording the court the authority to divest the father of any benefit from a wrongful death settlement, the court states: "We have found nothing to indicate a contrary or broader legislative intent by the Utah legislature in adopting the code. Without hazarding to create legislative intent where none is expressed, it is clear, however, that the statute serves a further purpose of encouraging, albeit for pecuniary purposes, development of an actual familial relationship between a proven father of an illegitimate child and his child." Estate of Scheller, 783 P.2d 70 (1989) (*emphasis added*).

MISSOURI

Glasco *et al.* v. Fire and Cas. Ins. Co., 709 S.W.2d 550 (Mo. App., 1986).... Ex. "A" pp. 32-35

In this case, the child was killed in an automobile accident when she was 20 years old. Her mother and father never married but did live together for four years when the child was four to eight years old. The father interacted with the child during her youth, although she never stayed overnight with him. He testified he gave her money whenever she wanted it but paid no formal support. Glasco, 709 S.W.2d 550 (1986).

The Court's *Glasco* decision discusses the relevant portion of Missouri's Wrongful Death Statute as follows:

> The Missouri Wrongful Death Act, § 537.080(1), RSMo 1979, provides the action may be brought "by the father or mother of the deceased, natural or adoptive." A wrongful death action is a remedy conferred strictly by statute. The statute makes no reference to the marital status as between the parents. Nor does the statute delineate the circumstances under which a biological parent can commence a wrongful death action on behalf of his illegitimate child.

Glasco, 709 S.W.2d 550 (1986).

This case is instructive as it considers an analysis of the following issue:

> The Court states 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. In other words, the claim for wrongful death is vested in both parents and creates an indivisible right."

Glasco, 709 S.W.2d 550 (1986) (*emphasis added*).

However, Missouri has a Statute similar to the apportionment provision found in S.C. Code of Laws 15-51-40:

> Section 537.095.3, RSMo 1979, clearly authorizes the court to "enter a judgment as to ... damages, apportioning them among those persons entitled thereto in proportion to the losses suffered by each as determined by the court." Once 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, 709 S.W.2d 550 (1986) (*emphasis added*).

In *Glasco*, the trial court granted 90%of the settlement award to the deceased child's mother and 10% of the award to the biological father. The appellate court upheld the decision stating:

> The decision of the trial court was within the discretion granted by § 537.095.3, and the determination of losses made by the court was amply supported by the evidence. The 90-10 split cannot be deemed an abuse of discretion since the evidence showed the father failed to support and maintained only minimum contacts with the child from 1972 until her death in 1984.

Glasco, 709 S.W.2d 550 (1986).

MICHIGAN

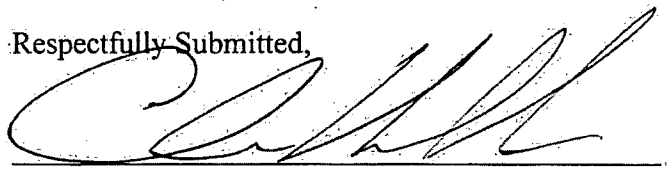
In re Turpening Estate, 671 N.W.2d 567 (Mich. App., 2003) ..... Ex. "A" pp. 36-38

Michigan's Civil Code Section MCL 700.2114(4) provides, "Inheritance from or through a child by either natural parent or his or her kindred is precluded unless that natural parent has openly treated the child as his or hers, and has not refused to support the child." Turpening, 671 N.W.2d 567 (2003).

In *Turpening*, the Michigan Court of Appeals denied a father's right to inherit from his deceased daughter stating, "Respondent presented no evidence he openly treated the decedent as his own when she was a child and the evidence showed that respondent refused numerous times to support the decedent by denying her existence and that she was his child. Therefore, we affirm [a final order denying his petition to determine heirs.]" Turpening, 671 N.W.2d 567 (2003).

The Plaintiff will gladly provide the Court written or oral argument on any of the above if the Court desires.

Respectfully Submitted,



Charles W. Marchbanks, Jr.
The Marchbanks Law Firm, LLC
Attorney for Petitioner
S.C. Bar No.: 76935
1225 South Church Street
Greenville, South Carolina 29605
(864) 552-1606 Telephone
(864) 552-1607 Fax
charles.marchbanks@marchbankslawfirm.com

Greenville, South Carolina
January 23, 2015

Page 574
659 So.2d 574
Matthew BULLOCK, Individually and as Father and Next Friend of Gary Brooks, Matthew Brooks, Jonas Brooks, and Phillip Michael Bullock, Minors
v.
Ricardo THOMAS, a Minor; The Heirs at Law of Mario Thomas, Deceased; and Illinois Central Railroad.
No. 92-CA-00466-SCT.
Supreme Court of Mississippi.
Aug. 3, 1995.

James C. Patton, Jr., Crawley & Ford, Louisville, for appellant.

George H. Ritter, John W. Robinson, III, Wise Carter Child & Caraway, Jackson, Robert M. Jones, Jackson, for appellee.

Before HAWKINS, C.J., and SULLIVAN and McRAE, JJ.

Page 575

SULLIVAN, Justice, for the Court:

Matthew Bullock and Linda Thomas (Linda) began a relationship in 1986 even though Bullock lived with Brenda Brooks during this time. Linda was living with her son Ricardo Thomas (Ricardo) and her daughter Kinshata Thomas (Kinshata) in Canton, Mississippi. Bullock and Linda began having sexual intercourse about three or four months into the relationship. Mario Thomas (Mario) was conceived during this time which was around October, 1987. Mario was born on July 31, 1988 at University Hospital in Jackson, Mississippi.

Mario, Linda, and Kinshata were killed on May 9, 1991 when their automobile was struck by a southbound Amtrak passenger train at the Way Road crossing in Canton, Mississippi. Mario was a minor resident of Madison County, Mississippi. Linda, Mario's mother, was driving the automobile at the time of the accident. Mario's brother, Ricardo, escaped before the collision took place.

Matthew Bullock, individually, and as next friend of Ricardo Thomas, instituted a wrongful death action under Miss.Code Ann. § 11-7-13 (1972) against the Illinois Central Railroad Company and Cecil V. Coker. Bullock alleged he was Mario's natural father, legal heir and statutory wrongful death beneficiary under Miss.Code Ann. § 11-7-13 (1972).

Bullock, however, had not established himself as a wrongful death beneficiary of Mario pursuant to § 11-7-13 because he had not established his right to inherit from Mario under § 91-1-15. Therefore, Bullock, individually, and as father and next friend of Gary Brooks, Matthew Brooks, Jonas Brooks and Phillip Michael Bullock, minors, filed a Petition for Determination of Paternity and to Establish Heirship against Ricardo Thomas, a minor, and the heirs at law of Mario Thomas. In the petition, Bullock alleged he was Mario's natural father, and as such, an heir at law. Consequently, Bullock alleged that his and Brenda Brooks' children (Gary, Matthew, Jonas and Phillip) were the half-blood kindred of Mario. Bullock sought the chancellor's determination that he was Mario's natural thereby father establishing paternity and heirship pursuant to Miss.Code Ann. § 91-1-15(3)(c) and (d)(i).

The chancellor permitted Illinois Central Railroad Company (ICR) to intervene on December 2, 1991. ICR filed an answer in which, among other things, it denied that Bullock was the natural father and/or legal heir of Mario. The court determined that Bullock had established himself as Mario's father, but found that Bullock had failed to prove he had openly

treated Mario as his child. The Court also found he had neglected to support Mario pursuant to the mandate of § 91-1-15 in order for Bullock to be considered Mario's wrongful death beneficiary under § 11-7-13.

Bullock contends on appeal that the trial court erred in finding that he and the minor appellants, Gary Brooks, Matthew Brooks, Jonas Brooks and Phillip Michael Bullock failed to establish their right to inherit from Mario Thomas, deceased, pursuant to Miss.Code Ann. § 91-1-15 (1972).

Ricardo Thomas and the heirs at law of Mario Thomas cross-appeal claiming that the chancellor erred in the finding that Matthew Bullock proved by clear and convincing evidence that he was the natural father of Mario Thomas.

Before Bullock or his children may inherit through Mario, a deceased illegitimate child, Bullock must establish himself as the natural father and legal heir of Mario. Miss.Code Ann. § 91-1-15(3) (1972) provides in pertinent part:

(3) [T]he natural father of an illegitimate and his kindred shall inherit from and through the illegitimate according to the statutes of descent and distribution if:

(a) The natural parents participated in a marriage ceremony before the birth of the child....

(b) There has been an adjudication of paternity or legitimacy before the death of the intestate; or

(c) There has been an adjudication of paternity after the death of the intestate, based upon clear and convincing evidence, in an heirship proceeding under sections 91-1-27 and 91-1-29.

Page 576

(d) The natural father of an illegitimate and his kindred shall not inherit:

(i) From or through the child unless the father has openly treated the child as his, and has not refused or neglected to support the child.

(Emphasis added). Bullock and Linda were never married, nor was there an adjudication of paternity or legitimacy before Mario's death. Thus, subsections (c) and (d) are applicable here. Subsection (c) is the relevant portion of the statute on cross-appeal--i.e., whether the chancellor erred in determining Bullock had established paternity by clear and convincing evidence. The cross-appeal will be addressed first.

Miss.Code Ann. § 91-1-15(3)(c) (1972) states that in order for a putative father to inherit through an illegitimate, he must prove he is the natural father by clear and convincing evidence. In Estate of Robinson v. Gusta, 540 So.2d 30 (Miss.1989), this Court found the evidence that the mother and putative father engaged in sexual intercourse nine months prior to the birth of the alleged natural son of the father, coupled with the fact that there was no evidence the mother had engaged in sexual intercourse with another man during that time frame, plus "any number of implied acknowledgments by Robinson of the fact of paternity, such as his income tax returns and his food stamp applications," sufficed to withstand the clear and convincing evidence standard of establishing paternity. The chancellor found the following in this case:

Although the evidence was conflicting on the issue of paternity, I am of the opinion that Matthew met his burden in this regard and established himself as the father of Mario. I will not attempt to detail the evidence leading to this conclusion. However, I will say that statements made by Linda to her relatives and to the Department of Human Services to the effect that Matthew was Mario's child weighed heavily in favor of the paternity decision. Also, for the benefit of the record, I must state that there was a definite resemblance between the face of Mario as it appeared on a photograph to the countenance of Matthew in the courtroom.

It was wholly uncontradicted that Linda engaged in sexual relations exclusively with Bullock at the time Mario was conceived. Moreover, several witnesses, including members of Linda's family, testified that Mario greatly resembled Bullock. Linda openly claimed to her relatives that Bullock was the natural father of Mario. She also listed him as the father on her DHS assistance application. While the named putative father on a DHS application was not always reliable, it is further support for the chancellor's finding. The chancellor also made his determination after comparing the child's photograph with Bullock's physical appearance. Thus, the chancellor's finding that Bullock proved he was the natural father by clear and convincing evidence is supported by the record. The cross-appeal is without merit.

Miss.Code Ann. § 91-1-15(3)(d) (1972) is the section dealing with Bullock's assignment of error on appeal. Bullock claims that the chancellor erred in determining that (1) Bullock failed to establish that he openly treated Mario as his, and (2) Bullock failed to establish he had not refused or neglected to support Mario. It should be noted that the statute plainly says that Bullock may not inherit from Mario unless he satisfies both requirements--that he openly treated Mario as his and did not refuse or neglect to support Mario.

This Court, in ruling on a chancellor's determination on the issue of whether a father has openly treated an illegitimate child as his own "may only be treated as a finding of fact...." Matter of Estate of Ford, 552 So.2d 1065, 1068 (Miss.1989). This finding will only be reversed if manifestly erroneous or unsupported by substantial evidence in the record. Id., citing Leard v. Breland, 514 So.2d 778, 781 (Miss.1987); Lovett v. E.L. Garner, Inc., 511 So.2d 1346, 1349 (Miss.1987). The chancellor in this case found that Bullock had not openly treated Mario as his child. The chancellor's opinion states the following with regard to whether Bullock openly treated Mario as his child:

Frankly I am not convinced from the evidence that Matthew openly treated Mario as his child, albeit he undoubtedly on occasions acknowledged the child to be

Page 577

his. In my mind, to acknowledge a child from time to time as one's own and to openly treat a child as one's own are not synonymous. I do not doubt the testimony to the effect that Matthew would on occasions take Mario with him and would among certain family members acknowledge him to be his son. However, I do not believe that his time spent with Mario, and for the benefit of the child, was as great as Matthew attempted to establish. The proof shows that most of the time, if not all, when Matthew was with Mario, he was also in the company of Linda and her other children. In other words, the proof does not establish in my mind that Matthew did things alone with Mario based upon any father/son relationship. Frankly, I would surmise that his presence with the child was attributable more to his wanting to be near the child's mother than to Mario himself. Weighing heavily in my conclusion that Matthew did not openly treat Mario as his child is the fact that he waited a year to tell Brenda of Mario's existence. I do not recall any evidence to the effect that he ever told his other children about Mario being their brother. Certainly, there was no evidence that Matthew ever had Mario visit with his other children in his home or elsewhere. Matthew was not present for the birth of Mario, although he admits that he knew that Linda had gone to the hospital to deliver the child. Furthermore, he did not attend the funeral of Mario, albeit he claims to have been outside the church. He did not tell Brenda that he planned to attend Mario's funeral (or be in the vicinity thereof), nor did he speak to any family members during the burial service. The evidence fails to show that Matthew made any arrangements for his children, whom he now claims to be brothers of Mario, to attend Mario's funeral.

Based on the facts elicited in the paternity hearing, the chancellor's findings with regard to this issue were neither manifestly erroneous nor unsupported by the evidence contained in this record. Mario was born on July 31, 1988, but Bullock did not see the child until two days after Linda and the child had returned from the hospital. Bullock said that he tried to get to the hospital when Linda was there for two days delivering Mario, but explained that he did not make it there in time. This explanation was questionable because Bullock possessed a car and was unemployed at the time. Brenda Brooks, Bullock's claimed common law wife, did not find out about Mario for approximately one year after his birth. Bullock attempted to explain away the fact that Brenda did not learn about the child for at least one year by claiming that "it should certainly be understandable in light of his relationship with Ms. Brooks." However, hiding the fact that you have a child from your supposed common law wife is directly contrary to openly treating the child as your own.

Openly treating a child as one's own encompasses more than showing up at the mother's house on occasion to take the mother and the child sightseeing and shopping. The chancellor's determination that Bullock's time with the child was attributable to his desire to be with Linda, more so than his desire to be with Mario himself, was consistent with the fact that Linda was almost always present during the times that Mario and Bullock saw one another. Bullock produced no evidence of a father/son relationship other than the fact that he occasionally took Linda and Mario to lunch or to the zoo. Bullock did not visit Mario on either of his first two birthdays. Furthermore, no evidence was presented showing that Bullock took Mario home to visit with his other children, supposedly Mario's half-brothers.

Finally, the chancellor properly considered the fact that Bullock did not attend Mario's funeral in finding that he did not openly treat Mario as his own. Bullock did not go to Mario's burial either, although he claimed to have been outside the church during the funeral. At most, he gave $100.00 to Linda's aunt to buy Mario a suit in which to be buried. In light of all the facts, this Court finds that the chancellor's conclusion that Bullock failed to openly treat Mario as his own was supported by credible evidence.

The next question is whether the chancellor was wrong in determining that

Page 578

Bullock failed to establish the negative--that he did not refuse or neglect to support Mario. This Court has said that "refusing or neglecting to support a child is qualitatively different from mere failure to support and this is no doubt the reason for the legislative language." Matter of Estate of Ford, 552 So.2d at 1068, citing Department of Welfare of City of New York v. Siebel, 6 N.Y.2d 536, 546, 190 N.Y.S.2d 683, 691, 161 N.E.2d 1, 7 (1959). Again, the chancellor's findings of fact should not be overruled unless manifestly erroneous or unsupported by the record. Id.

The chancellor found that Bullock failed to satisfy this portion of the statute even though "some support trickled down to Mario by virtue of Matthew's relationship with his mother." Although the chancellor stated that "the proof establishes that his contributions were spasmodic and appeared to be more of a gratuity than the fulfillment of a legal obligation," the chancellor concluded that Bullock did present evidence that he made financial contributions for the benefit of Mario. There is no question that Bullock could have done more for Mario, but the statute does not necessarily require more than Bullock showed.

It was uncontradicted that Bullock received only $480.00 a month in the form of a disability check. Further, Bullock stated that he provided Linda money when she needed it for Mario, and that he averaged giving her $100.00 a month. Jerry Dean, Linda's sister, corroborated this testimony to some degree by stating that she was

with Bullock and Linda when Bullock cashed his check and gave Linda some money. Bullock bought Mario his first pair of shoes and a kerosene heater for his use. This was enough to show that Bullock did not refuse or neglect to support Mario. This portion of the chancellor's opinion was manifestly erroneous.

The chancellor's ruling should not be overruled on the overall determination that Bullock failed to satisfy the requirements for the right to inherit from an illegitimate child under § 91-1-15(3)(d)(I). Bullock had to show two things to prevail--(1) that he openly treated Mario as his own, and (2) that he did not refuse or neglect to support Mario. Because the chancellor was correct in his finding that Bullock failed to meet the first requirement, Bullock and his children were properly denied the right to inherit through Mario.

AFFIRMED.

HAWKINS, C.J., DAN M. LEE and PRATHER, P.JJ., and PITTMAN, BANKS, McRAE, JAMES L. ROBERTS, Jr., and SMITH, JJ., concur.

798 So.2d 347

In the Matter of the ESTATE OF Jaquarius Quadrion PATTERSON, Deceased: Dana L. Stanton, Guardian of the Estate of Da'Shun Neneh' Keith McMillian and Dashun N. McMillian

v.

John W. PATTERSON, Jr., Administrator of the Estate of Jaquarius Quadrion Patterson, Deceased.

No. 1999-CA-00524-SCT.
Supreme Court of Mississippi.
January 25, 2001.

J. Elmo Lang, Pascagoula, for Appellants.

[798 So.2d 348]

James W. Nobles, Jr., Jackson, Travis T. Vance, Jr., Vicksburg, for Appellee.

Before PITTMAN, C.J., WALLER and COBB, JJ.

COBB, Justice, for the Court:

STATEMENT OF THE CASE

¶ 1. This is an appeal from a judgment of the Chancery Court of Pike County finding that the wrongful death beneficiary of three-year-old Jaquarius Patterson was the estate of his deceased mother, Quivoria Patterson.

¶ 2. Jaquarius's natural father, Juan McMillian, had never married Quivoria, never acknowledged that Jaquarius was his son, never provided support, nor had any contact with him. Pursuant to Miss. Code Ann. § 91-1-15(3)(d)(i) (1994) in conjunction with Miss.Code Ann. § 11-7-13 (Supp.2000), the chancellor found that Juan McMillian was not an heir at law nor a wrongful death beneficiary of Jaquarius.

¶ 3. Dana L. Stanton, natural mother and Guardian of Da'Shun Neneh' Keith McMillian,[1] aggrieved of the decision, has filed this appeal,[2] raising the following issues:

> I. WHEN THE FATHER WAS NOT AWARE THAT HE WAS THE FATHER OF THE CHILD UNTIL FOUR (4) DAYS PRIOR TO THE CHILD'S DEATH, CAN HE BE HELD ACCOUNTABLE FOR NOT SUPPORTING THE CHILD OR TREATING THE CHILD AS HIS AS PROVIDED UNDER MS. CODE SECTION 91-1-15(3)(D)(i)?
>
> II. UNDER THE WRONGFUL DEATH STATUTE 11-7-13, DOES AN ILLEGITIMATE HALF BROTHER HAVE THE RIGHT TO INHERIT FROM HIS HALF BROTHER?

¶ 4. For the reasons stated below, the judgment of the chancery court is affirmed.

STATEMENT OF THE FACTS

¶ 5. Jaquarius Patterson was born to Juan McMillian and Quivoria Patterson in 1995. Quivoria and Jaquarius were killed in 1998 in an automobile accident.

¶ 6. It is uncontroverted that Juan and Quivoria had an affair lasting approximately four months while the two were students at Alcorn State University. When she became pregnant and told Juan the child was his, he told her that he did not think he was the child's father, but that a blood test would show whether he was, and that "when the blood tests came back" that they would "talk then."

¶ 7. At trial, Juan testified to the following facts which substantiated his total absence from the life of his son Jaquarius. He did not know when Jaquarius was born because he had not

communicated with Quivoria after she told him she was pregnant. Juan never met Jaquarius. He had only seen a photograph of him that Quivoria sent in a Christmas card approximately a year before Jaquarius's death. Juan never responded to the Christmas card. Juan provided Quivoria no support for Jaquarius's birth or medical expenses, food, or clothing. Juan sent no birthday cards or presents. He sent no Christmas gifts. He paid nothing toward Jaquarius's funeral bill. He had not contacted Quivoria or Jaquarius before their deaths, and he never acknowledged the child as his during Jaquarius's lifetime. Following a blood

[798 So.2d 349]

test ordered in a Pike County DHS case[3] Juan McMillian received confirmation only four days before Jaquarius's death that he was his father.

DISCUSSION

I. WHEN THE FATHER WAS NOT AWARE THAT HE WAS THE FATHER OF THE CHILD UNTIL FOUR (4) DAYS PRIOR TO THE CHILD'S DEATH, CAN HE BE HELD ACCOUNTABLE FOR NOT SUPPORTING THE CHILD OR TREATING THE CHILD AS HIS AS PROVIDED UNDER MS. CODE SECTION 91-1-15(3)(d)(i)?

¶ 8. In *Bullock v. Thomas,* 659 So.2d 574, 576 (Miss.1995) this Court stated:

> This Court, in ruling on a chancellor's determination on the issue of whether a father has openly treated an illegitimate child as his own "may only be treated as a finding of fact...." *Matter of Estate of Ford,* 552 So.2d 1065, 1068 (Miss. 1989). This finding will only be reversed if manifestly erroneous or unsupported by substantial evidence in the record. *Id., citing Leard v. Breland,* 514 So.2d 778, 781 (Miss.1987); *Lovett v. E.L. Garner, Inc.,* 511 So.2d 1346, 1349 (Miss.1987)....

See also Draper v. Draper, 658 So.2d 866, 868-69 (Miss.1995) (A chancellor's findings must be sustained, absent a finding of manifest error or abuse of discretion).

¶ 9. Miss.Code Ann. § 11-7-13 (Supp. 2000) clearly provides for inheritance from illegitimates, but the right is tied to Miss. Code Ann. § 91-1-15(3)(d)(i) (1994). The applicable portion of § 11-7-13 reads:

> The provisions of this section shall apply to illegitimate children on account of the death of the natural father and to the natural father on account of the death of the illegitimate child or children, and they shall have all the benefits, rights and remedies conferred by this section on legitimates, if the survivor has or establishes the right to inherit from the deceased under Section 91-1-15.

Miss.Code Ann. § 11-7-13 (Supp.2000)(emphasis added).

¶ 10. Miss.Code Ann. § 91-1-15(3)(d)(i) (1994) is stated in the negative and sets forth two distinct requirements. The statute provides in pertinent part: "The natural father of an illegitimate and his kindred shall not inherit: (i) From or through the child unless the father has openly treated the child as his, and has not refused or neglected to support the child." *Id.* (emphasis added).

¶ 11. In arguing that this section does not apply, Stanton asks this Court to simultaneously (1) acknowledge Juan's freedom to "choose to wait and see", and (2) overlook the fact that by exercising this freedom Juan knowingly and willingly forfeited any benefit, or burden, arising from openly treating Jaquarius as his own and supporting him during his lifetime. Juan cannot have it both ways. Juan was free to choose to

"wait and see," and he did just that. But he also made another choice. Upon receiving the test results proving that he was the father of Jaquarius, who was then almost three years old, Juan continued to refuse to acknowledge his paternity. He did *not* contact Quivoria to "talk then" about it.

¶ 12. We need not dissect the word "then", nor guess at Juan's intentions. We need not speculate as to how long it would have taken Juan to get around to acknowledging

[798 So.2d 350]

that he was Jaquarius's father and providing him support. No case or statute sets forth a definitive number of days, post-paternity testing results, within which a father must acknowledge an illegitimate child for purposes of taking as an heir. Case law, however, does address the meaning of "openly treating a child as one's own" and makes it crystal clear that this requirement *and* the requirement of support must both be met.

¶ 13. In the factually similar case of *Bullock v. Thomas,* 659 So.2d 574 (Miss. 1995), this Court affirmed a chancellor's decision that a father and his children were not statutory heirs of his illegitimate son. There, as in the instant case, the son, almost three years old at the time, and the child's mother were killed in an automobile accident. The chancellor correctly determined that Bullock had failed to meet the requirements of § 91-1-15(3)(d)(i) in that he had not openly treated as his own and had failed to support his illegitimate child, Mario. This Court affirmed the portion of the chancellor's opinion that Bullock did not openly treat the child as his own. Concerning the fact that Bullock knew that Mario's mother had gone to the hospital to deliver the child, this Court noted that, "Mario was born on July 31, 1988, but Bullock did not see the child until two days after Linda and the child had returned from the hospital." *Id.* at 577 (emphasis added). Furthermore, he did not tell his common law wife about Mario until a year after his birth. Bullock occasionally took Linda and Mario to the zoo or to lunch, but did not visit Mario on either of his birthdays. In that case, Justice Sullivan, writing for the Court, even distinguished "acknowledging a child from time to time as one's own" from "openly treating a child as one's own." He reasoned that, "[o]penly treating a child as one's own encompasses more than showing up a the mother's house on occasion to take the mother and the child sightseeing and shopping." *Id.*

¶ 14. In contrast, here Juan did not know Quivoria had gone to the hospital, nor when the baby was born. He did not go to see mother and baby two days, two months or even two years after he was born. Indeed, he had never seen his son. Juan never once even "acknowledged" Jaquarius as his child. Juan's relationship with Jaquarius did not approach that of Bullock; Juan chose no relationship at all.

¶ 15. In another case on point, *Alexander v. Alexander,* 465 So.2d 340, 341 (Miss. 1985), this Court also affirmed the chancellor's judgment denying a father heirship, finding that even though he had established that he was the natural father of the deceased child, he had not proven that he had supported the child.

¶ 16. The burden of proof in this case required Juan McMillian and Da'Shun McMillian, through his mother, Dana Stanton, to prove by clear and convincing evidence not only that Juan was the biological father of Jaquarius, but also that he was entitled to inherit from Jaquarius as heir-at-law and as a wrongful death beneficiary. The uncontradicted proof fails to support the claim that Da'Shun is an heir-at-law of Jaquarius through their common father, Juan. Therefore, we find Issue I to be without merit.

II. UNDER THE WRONGFUL DEATH STATUTE 11-7-13, DOES AN ILLEGITIMATE HALF BROTHER HAVE THE RIGHT TO INHERIT FROM HIS HALF BROTHER?

¶ 17. The wrongful death statute provides for illegitimates to inherit, but that right is tied to Miss.Code Ann. § 91-1-15. Stanton asserts that § 91-1-15(3)(d)(i) is unconstitutional under the equal protection clause of the Fourteenth

[798 So.2d 351]

Amendment as it pertains to Da'Shun. However, Stanton did not raise the constitutional issue in the court below. Further, she did not give the required notice of this issue to the State Attorney General in either the trial court or here. See M.R.C.P. 24(d); M.R.A.P. 44. Therefore, we decline to address this issue. *See Pickens v. Donaldson,* 748 So.2d 684, 691 (Miss.1999)

CONCLUSION

¶ 18. The chancellor correctly applied the law to the undisputed facts. This case is a classic example of conduct the statutes and case law seek to prevent. A father should not be allowed to receive a windfall simply because he impregnated the child's mother. Juan McMillian refused to openly treat his son, Jaquarius, as his own or to comply with his duty to provide essential support, until it appeared he might receive a sizable inheritance. The judgment of the chancery court is affirmed.

¶ 19. AFFIRMED.

PITTMAN, C.J., BANKS, P.J., SMITH, MILLS, WALLER and DIAZ, JJ., concur.

McRAE, P.J., specially concurs with separate written opinion.

EASLEY, J., not participating.

McRAE, Presiding Justice, specially concurring:

¶ 20. I concur with the majority in result only, as the constitutional issue of equal protection under this statute has not been properly raised before this Court. Mississippi's illegitimate children statute, Miss.Code Ann. § 91-1-15 (1994), creates a hierarchy of rights with respect to the natural mother, the child, and the natural father.

¶ 21. Under this statute, if a child dies the mother has to do nothing to inherit from the child. If the father dies, the child must show paternity or that the parents participated in a wedding ceremony before becoming eligible to inherit from the father. A father, however, is required by this statute to prove that "he has openly treated the child as his" to be eligible to inherit from the child. This places an onerous burden on the father, who may or may not know that he is the father, and flies in the face of the constitutional guarantee of equal protection of the laws. For these reasons, the illegitimate children statute, Miss.Code Ann. § 91-1-15 (1994), is constitutionally flawed. As this issue is not properly before us, I specially concur in the result only.

¶ 22. Mississippi's wrongful death statute, Miss.Code Ann. § 11-7-13 (Supp. 2000), provides that illegitimate children and their mothers "shall have all of the benefits, rights, and remedies conferred by this section on legitimates." However, when it comes to illegitimates and their natural fathers, the statute imposes the requirement that the survivor meet the dictates of Miss.Code Ann. § 91-1-15 (1994) before becoming eligible to inherit.

¶ 23. Section 91-1-15(2) grants an unqualified right of inheritance between illegitimate children and their natural mothers. The statute requires no adjudication of paternity or of legitimacy. It sets no standards for the parent-child relationship as a requisite to inheritance, such as openly treating the child as her own and providing support for the child.

¶ 24. The statute further provides that an illegitimate child may establish a right to inherit from his deceased natural father if: 1) his natural parents participated in a wedding ceremony before his birth, even if it was subsequently adjudicated invalid, or, 2) if paternity or legitimacy has been adjudicated prior to the death of the intestate, or, 3) if paternity or legitimacy has been

[798 So.2d 352]

adjudicated after the death of the intestate in an heirship proceeding. Miss.Code Ann. § 91-1-15(3)(a)-(c) (1994).

¶ 25. However, the statute requires the father of an illegitimate child to meet a higher burden before he is eligible to inherit from the child. "The natural father of an illegitimate and his kindred shall not inherit from or through the child unless the father has openly treated the child as his, and has not refused or neglected to support the child." Miss.Code Ann. § 91-1-15(3)(d)(i) (1994). This provision allows for a situation where an illegitimate child would be eligible to inherit from his natural father, while the natural father could not inherit from his illegitimate child. Such are the facts at bar.

¶ 26. The law does not require a child to show that he has openly treated his father as such or displayed affection, etc., as a predicate to inheritance. Presumably, this is because instances of illegitimate children abandoning their natural fathers is not a problem sought to be remedied by these statutes. On the other hand, encouraging fathers to "legitimize" their children is a practice that the state does and should encourage, although it should not be done at the expense of our constitutional protections.

¶ 27. However noble or morally correct the motive, where one citizen is denied a right enjoyed by others under similar circumstances, equal protection is denied. As this issue is not before us, I specially concur in the result only.

Notes:

1. The six-year-old son of Juan McMillian as reflected in guardianship file 98-2461 WM in Jackson County Chancery Court.

2. Juan McMillian did not file an appeal.

3. A paternity case filed in July, 1997, in Pike County Chancery Court, No. 97-0521, to which Juan filed a waiver of service of process and entry of appearance on August 13, 1997.

---

876 So.2d 300
Derrick WILLIAMS
v.
Lisa N. FARMER.

No. 2002-CA-02094-SCT.
Supreme Court of Mississippi.
July 1, 2004.

[876 So.2d 302]

Michael Elias Winfield, Attorney for Appellant.

Omar Lamont Nelson, Dennis C. Sweet, III, Jackson, Attorneys for Appellee.

Before WALLER, P.J., CARLSON and DICKINSON, JJ.

DICKINSON, Justice, for the Court.

¶ 1. This is a case in which a father seeks to recover half the proceeds paid in settlement of the claim for the wrongful death of his illegitimate daughter. Our decision is controlled by statute, which precludes recovery by the father for the death of his illegitimate child.

¶ 2. On February 14, 1996, Derrick Williams filed a complaint against Lisa N. Farmer, seeking to establish himself as an heir of Lisa's unborn daughter, Asiah Farmer. Williams claimed he was entitled to one-half of the funds Farmer received from the wrongful death of Asiah, his illegitimate unborn child. On November 25, 2002, the chancellor entered an order ruling that Williams and his kindred could not inherit from Asiah because Williams had failed to openly treat Asiah as his child and had refused or neglected to provide support. From this order, Williams appealed and upon consideration, we affirm.

STATEMENT OF FACTS

¶ 3. In 1993, Farmer and Williams had intimate relations resulting in Farmer becoming pregnant. Farmer contacted Williams to inform him that she was pregnant. Farmer alleges Williams refused to have contact with her or acknowledge that he was the father of their unborn child, Asiah.

¶ 4. In December 1993, Farmer was involved in an automobile accident with Tommy McAlpin, while he was working for Thames Motor Company. Subsequent to the accident, Asiah died *in utero* and the death certificate was dated January 16, 1994.

¶ 5. In June 1994, Farmer filed suit against Thames Motor Company, McAlpin and others for the injuries Farmer sustained and for the wrongful death of Asiah. Farmer settled her individual claim against said defendants for $150,000.00 and the claim for the wrongful death of Asiah for $150,000.00.

¶ 6. Farmer never informed Williams of said claim until documents pertaining to the release of the claim required his signature. Williams signed a release for the purpose of Farmer settling the wrongful death claims against the defendants. At some point, Williams changed his mind and on February 14, 1996, Williams filed suit against Farmer for one-half of the settlement proceeds and on March 11, 1996, a motion to join Christopher and Eric Davis, Williams's children was filed.

ANALYSIS

¶ 7. The only issues presented to this Court are (1) whether the requirements of Miss.Code Ann. § 91-1-15(3)(d)(i) apply in circumstances where the illegitimate child is a fetus; and (2) whether Farmer should be equitably estopped from asserting Williams and his kindred are not wrongful death beneficiaries of Asiah Farmer. Because the first issue is dispositive of the case, we will not address the second.

¶ 8. The trial court applied Mississippi Code Ann. § 91-1-15 (Rev.1994), which addresses the questions presented to us:

> (3) An illegitimate shall inherit from and through the illegitimate's natural father
>
> [876 So.2d 303]
>
> and his kindred, and the *natural father of an illegitimate and his kindred shall inherit from and through the illegitimate according to the statutes of descent and distribution if:*
>
> * * *
>
> (d) The *natural father of an illegitimate and his kindred shall not inherit:*
>
> (i) *From and through the child unless the father has openly treated the child as his, and has not refused or neglected to support the child.*

(Emphasis added).

> a. WHETHER SECTION 91-1-15(3)(D)(i) OF THE MISSISSIPPI CODE IS APPLICABLE IN CIRCUMSTANCES WHERE THE ILLEGITIMATE CHILD IS A FETUS.

¶ 9. Williams argues that applying § 91-1-15(3)(d)(i) is in direct contravention of the legislative intent in creating Miss.Code Ann. § 11-7-13. (2003) which states in pertinent part:

> if the deceased has no husband, nor wife, nor children, the damages shall be distributed equally to the father, mother, brothers and sisters, or such of them as the deceased may have living at his or her death.... The provisions of this section shall apply to illegitimate children on account of the death of the natural father and to the natural father on account of the death of the illegitimate child or children, and they shall have all the benefits, rights and remedies conferred by this section on legitimates, *if the survivor has or establishes the right to inherit from the deceased under Section 91-1-15.*

(Emphasis added).

¶ 10. This Court has held that "in construing statutes, all statutes *in pari materia* are taken into consideration and the legislative intent is deduced from the consideration as a whole" *Wilbourn v. Hobson,* 608 So.2d 1187, 1200 (Miss.1992) (citing *Allgood v. Bradford,* 473 So.2d 402, 411 (Miss.1985)). It is clear from Miss.Code Ann. § 11-7-13 that in order for a father to be entitled to proceeds from a wrongful death action for an illegitimate child, he must establish his right to inherit from the child under Miss.Code Ann. § 91-1-15, which includes the § 91-1-15(3)(d)(i) requirements. Therefore, Williams's argument is without merit.

¶ 11. In *66 Federal Credit Union v. Tucker* 853 So.2d 104 (Miss.2003), this Court held that Mississippi's wrongful death statute created a cause of action for the death of a fetus who is "quick" in the womb. *Id.* at 112.[1] The question before us now is whether Williams is required to comply with the requirements of Miss.Code Ann. § 91-1-15(3)(d)(i) in order to share in the settlement proceeds from the wrongful death claim of Asiah.

¶ 12. Williams contends that it is virtually impossible to comply with the requirements of the statute where the decedent is a fetus. He contends the he was never "afforded the opportunity to take Asiah to the zoo or to the park as she never had the benefit of breathing her first breath." He further claims that he happily agreed that Asiah was his child, and even offered

financial assistance during the maternity stage, but was refused. Williams also states he was discouraged from visiting Farmer by threat from her family members. However, there is no evidence in the record that substantiates these allegations.

¶ 13. Citing *Bullock v. Thomas,* 659 So.2d 574, 576 (Miss.1995), Farmer correctly

[876 So.2d 304]

contends that Williams has the burden of demonstrating he openly treated the child as his own and did not refuse or neglect to support her. Farmer further contends that the overwhelming and credible evidence of William's lack of involvement or interest in Asiah demonstrates his refusal and neglect to support his child.

¶ 14. The trial court found that, although Williams was the natural father of Asiah, that alone does not automatically entitle him or his children to inherit from her. The trial court, citing *Estate of Patterson v. Patterson,* 798 So.2d 347, 350 (Miss.2001), and *Bullock v. Thomas,* 659 So.2d 574, 577 (Miss.1995), stated that Williams' total lack of concern and indifference demonstrated his refusal and neglect to support the child. The trial court properly concluded that Williams and his children could not inherit from or through Asiah.

¶ 15. Williams argues that the cases the trial court used in support of its judgment are easily distinguished from the case sub judice. Therefore, a brief look at *Estate of Patterson v. Patterson,* 798 So.2d 347, 350 (Miss.2001) and *Bullock v. Thomas,* 659 So.2d 574, 577 (Miss.1995) is warranted.

¶ 16. In *Patterson,* an action was brought by a father to inherit from his illegitimate, three-year old son who died in an automobile accident. This Court held that Miss.Code Ann. § 11-7-13 clearly provides for inheritance from illegitimates, but that the right is tied to Miss.Code Ann. § 91-1-15(3)(d)(i). *Patterson,* 798 So.2d at 349. The father was not aware when his son was born because he did not communicate with the mother after she informed him that she was pregnant. *Id.* at 348. The father never provided support for the birth or medical expenses, food or clothing nor did he contribute toward his son's funeral expenses. *Id.* This Court concluded that "[t]his case is a classic example of conduct the statutes and case law seek to prevent. A father should not be allowed to receive a windfall simply because he impregnated the child's mother. [The father] refused to openly treat his son [ ] as his own or to comply with his duty to provide essential support, until it appeared he might receive a sizable inheritance." *Id.* at 351.

¶ 17. In *Bullock,* it was determined that Bullock was the father but he failed to prove he openly treated the deceased as his child. *Bullock,* 659 So.2d at 575. It was determined "that Bullock's time with the child was attributable to his desire to be with [the mother], more so than his desire to be with [the child] himself" and that was evident in that the mother "was almost always present during the times that [the child] and Bullock saw one another." *Id.* at 577. Also, this Court found instructive the fact that Bullock did not attend the child's funeral. *Id.* This Court held that, even though Bullock proved that he did not refuse or neglect to support the child, he failed to demonstrate that he openly treated the child as his own and therefore was denied the right to inherit.

¶ 18. Williams argues that these cases are distinguishable from the case sub judice in that neither case dealt with the issue of an illegitimate unborn child.

¶ 19. This is a case of first impression. Well-settled principles of statutory interpretation require us to ascertain the legislative intent from the language of the act and to discern and give effect to that intent. *City of Natchez, Miss. v. Sullivan,* 612 So.2d 1087, 1089 (Miss.1992).

¶ 20. It is clear from the language of the statute that fathers are entitled to inherit from their illegitimate children upon showing that the father openly treated the child as his own and has not refused or neglected to support the child. The

[876 So.2d 305]

statute clearly governs situations where the illegitimate child has actually been born and lived for a period of time. However, Williams argues that it is impossible to meet these requirements when the child is an unborn child.

¶ 21. The Appellate Court of Illinois has addressed this issue in the case of *In re Estate of Poole* 328 Ill.App.3d 964, 263 Ill.Dec. 129, 767 N.E.2d 855 (2002), *aff'd,* 207 Ill.2d 393, 278 Ill.Dec. 532, 799 N.E.2d 250 (2003). There, the issue before the court was whether a father of a stillborn fetus was entitled to letters of administration of estate in preference to the maternal grandmother. The grandmother alleged the father was not an "eligible parent" under a statute governing inheritance from an illegitimate child. 767 N.E.2d at 859.

¶ 22. The Illinois court has addressed the issue of whether the father was an eligible parent and was entitled to inherit from his illegitimate child who died *in utero.* The Illinois statute in issue states: "As used in this section, `eligible parent' means a parent of the decedent who, during the decedent's lifetime, *acknowledged the decedent as the parent's child,* established a parental relationship with the decedent, and *supported the decedent as the parent's child.*" *Id.* (emphasis added). The grandmother argued that the father was not an "eligible parent" because the decedent did not have a lifetime so the father could not have acknowledged the decedent as his child, develop a relationship or support the decedent as his child. *Id.* at 859-60. The court stated: "Certainly, the biological father could acknowledge the fetus as his child during the term of the pregnancy." *Id.* at 860. The court further concluded that

> a biological father could acknowledge the viable fetus as his own, establish a relationship with it, and support the fetus through his support of the mother. Conceptually, if the biological father has done these things, he would be as eligible as the mother to inherit from an illegitimate viable fetus.

Id. at 862. The court observed that it appeared the father could qualify as an eligible parent because he resided with the mother before and throughout the pregnancy, provided her with financial and emotional support, and through her, to the unborn child and he held himself out as the father of the unborn child. *Id.* at 860.

¶ 23. The requirements of an eligible parent under the Illinois statute are similar to the requirements under Miss.Code Ann. § 91-1-15(3)(d)(i). The Illinois statute requires a parent to acknowledge the decedent as the parent's child, establish a parental relationship with the decedent and support the decedent as the parent's child. Similarly, in order for a father to inherit from an illegitimate child in Mississippi the father must demonstrate that he openly treated the child as his own and that he did not refuse or neglect to support the child.

¶ 24. It strikes us as inescapable logic that, since this Court, in *66 Federal Credit Union,* established that there is a wrongful death claim for an unborn child, then the requirements of Miss.Code Ann. § 91-1-15(3)(d)(i) should apply under the circumstances.

¶ 25. This Court has held that the standard of review "in ruling on a chancellor's determination on the issue of whether a father has openly treated an illegitimate child as his own `may only be treated as a finding of fact....'" *Patterson,* 798 So.2d at 349 (citation omitted). "This finding will only be reversed if manifestly erroneous or unsupported by substantial evidence in the record." *Id.*

¶ 26. In the case sub judice, it is uncontested that Williams is the father of

[876 So.2d 306]

Asiah. The trial court found that Williams knew that Farmer was pregnant with his child. Williams had no contact with Farmer from 1993 until 1995. Williams did not contribute any support, financial or otherwise to Farmer during her pregnancy or

thereafter. Williams did not seek to be present for her birth. Williams did not know of the death of Asiah for approximately two years because he made no effort to be a father to her. The trial court concluded that "under the facts of this case, it cannot be said that Williams suffered any loss as the result of the demise of Asiah. Any part of the settlement for the death of Asiah received by Williams and his kindred could only be termed a windfall and unjust enrichment."

¶ 27. We find the determination by the trial court to be exactly correct.

CONCLUSION

¶ 28. The wrongful death statute creates a cause of action for the death of a fetus who is "quick" in the womb. This Court finds that Miss.Code Ann. § 91-1-15(3)(d)(i) is applicable in circumstances where the wrongful death claim is for the death of an unborn child, and the trial court's order is affirmed.

¶ 29. AFFIRMED.

SMITH, C.J., WALLER AND COBB, P.JJ., EASLEY, CARLSON, GRAVES AND RANDOLPH, JJ., CONCUR. DIAZ, J., NOT PARTICIPATING.

Notes:

1. The legislature, in the 2004 regular session, passed House Bill 352 amending § 11-7-13 to include the death of an unborn quick child in the wrongful death statute.

---

988 So.2d 929
ESTATE OF Jakayla McCOY by Erika JONES, Petitioner, Appellant
v.
Irvin L. McCOY, Appellee.
No. 2007-CA-00979-COA.
Court of Appeals of Mississippi.
July 22, 2008.
[988 So.2d 930]
W. Howard Gunn, Aberdeen, attorney for appellant.
Christopher James Latimer, John F. Perry, Starkville, attorneys for appellee.
Before LEE, P.J., IRVING and ROBERTS, JJ.
IRVING, J., for the Court.

¶ 1. Erika Jones, in her capacity as administratrix of the estate of her deceased daughter, Jakayla McCoy, filed a petition for the determination of Jakayla's heirs at law wherein she sought to disinherit Jakayla's biological father, Irvin Lael McCoy, because he did not provide any financial support to Jakayla during her lifetime.[1] Following a hearing on the matter, the chancellor ruled that McCoy had not refused or neglected to support Jakayla and that he was thus entitled to inherit from Jakayla's estate. Aggrieved, Jones appeals and argues that the trial court erred in finding that McCoy is entitled to inherit from Jakayla's estate because he failed to prove that he did not refuse or neglect to support Jakayla.

¶ 2. Finding error, we reverse and render.

FACTS

¶ 3. Jones and McCoy began dating in the summer of 2003. Shortly thereafter, Jones informed McCoy that she was pregnant, and the couple moved in together.[2] McCoy was unemployed during the time he lived with Jones, so Jones supported them financially. Jones and McCoy lived together until he went to prison in March 2004 to serve a nine-year sentence for selling cocaine. Jakayla was born the following month on April 1, 2004. McCoy was incarcerated when Jakayla was born, and he remained incarcerated during Jakayla's short life. McCoy did not provide any financial support to Jakayla.

¶ 4. On April 16, 2006, Jakayla drowned in a neighbor's swimming pool. McCoy was notified of Jakayla's death and was allowed to attend her wake. Thereafter, Jones filed a wrongful death lawsuit

[988 So.2d 931]

against the owners of the home where Jakayla had drowned. The neighbors had a one-hundred-thousand-dollar insurance policy and Jones's attorney negotiated a settlement for the full proceeds from the policy to be paid to Jakayla's wrongful death beneficiaries.

¶ 5. In May 2007, a hearing was held to determine Jakayla's wrongful death beneficiaries. Jones testified that she had taken Jakayla to visit McCoy while he was incarcerated and that she and McCoy kept in contact through letters. Jones also stated that she sent him pictures of Jakayla and that she kept McCoy abreast of Jakayla's progress.

¶ 6. McCoy testified that because of his incarceration, he provided no financial assistance to Jakayla prior to her death. However, he stated that he had purchased household items and food during the time he lived with Jones prior to Jakayla's birth.

¶ 7. McCoy testified that he has an inmate account in which his parents and brother make regular deposits.[3] However, he claimed to be unaware of a policy that allows inmates to send money to people outside of the prison. McCoy did not contribute to Jakayla's hospital, funeral, or burial expenses.

ANALYSIS AND DISCUSSION OF THE ISSUE

¶ 8. "[W]hether a father has openly treated an illegitimate child as his own 'may only be treated as a finding of fact....'" *In re Estate of Patterson v. Patterson,* 798 So.2d 347, 349(¶ 8) (Miss. 2001) (quoting *Bullock v. Thomas,* 659 So.2d 574, 576 (Miss.1995)). "This finding will only be reversed if manifestly erroneous or unsupported by substantial evidence in the record." *Id.*

¶ 9. In her only assignment of error, Jones contends that it was error for the court to determine that McCoy could inherit from Jakayla's estate. Jones argues that McCoy failed to prove that he did not refuse or neglect to support Jakayla as required by Mississippi Code Annotated section 91-1-15(3)(a-d) (Supp.2007), which provides in pertinent part that:

(3) An illegitimate shall inherit from and through the illegitimate's natural father and his kindred, and the natural father of an illegitimate and his kindred shall inherit from and through the illegitimate according to the statutes of descent and distribution if:

(a) The natural parents participated in a marriage ceremony before the birth of the child, even though the marriage was subsequently declared null and void or dissolved by a court; or

(b) There has been an adjudication of paternity or legitimacy before the death of the intestate; or

(c) There has been an adjudication of paternity after the death of the intestate, based upon clear and convincing evidence, in an heirship proceeding under Sections 91-1-27 and 91-1-29. However, no such claim of inheritance shall be recognized unless the action seeking an adjudication of paternity is filed within one (1) year after the death of the intestate or within ninety (90) days after the first publication of notice to creditors to present their

[988 So.2d 932]

claims, whichever is less; and such time period shall run notwithstanding the minority of a child....

(d) The natural father of an illegitimate and his kindred shall not inherit:

(i) From or through the child unless the father has openly treated the child as his, and has not refused or neglected to support the child.

Pursuant to section 91-1-15(3), it is clear that in order for McCoy to receive the benefit of inheritance from Jakayla he must prove (1) that he and Jones participated in a marriage ceremony prior to Jakayla's birth, or (2) that there had been an adjudication of legitimacy, or an adjudication of paternity prior to or after Jakayla's death, and (3) that he openly acknowledged Jakayla during her lifetime and did not refuse or neglect to support her. The first prong of this test is not at issue, as Jones does not dispute that McCoy is Jakayla's father.[4] However, Jones argues that McCoy failed to prove that he did not refuse or neglect to support Jakayla.

¶ 10. Jones contends that McCoy did not provide any financial support to Jakayla from the time she informed him that she was pregnant to the time that Jakayla died. Further, Jones argues that McCoy's incarceration did not alleviate his responsibility to financially support Jakayla. She also argues that McCoy could have sent money to support Jakayla from his inmate account.

¶ 11. McCoy argues that although his incarceration prevented him from providing any financial support to Jakayla, he provided non-financial support to her before and after her birth in other ways by: (1) "providing companionship to [Jones] throughout the majority of her pregnancy with Jakayla, and by babysitting Jaqulan,"[5] (2) by allowing Jones and Jakayla to visit him in prison, (3) by requesting that his parents take care of Jakayla, and (4) by asking his mother to purchase an outfit for Jakayla to be pictured in.

¶ 12. The chancellor determined that:

The word "prisoner" is not without strong connotation. Given this, the question before the Court is, not that he didn't support, but that he "refused or neglected" to support which is a much different standard. *Bullock v. Thomas,* 659 So.2d 574 (Miss.1995). If the claimant had been a free man and failed to support the child under the statute thereby evidencing a refusal or neglect, the decision of this Court might be different. It would be inequitable and contrary to the statute based on these circumstances to determine that the claimant's rights as an heir should be denied when he was effectively unable to meet the requirements of this statute.

The Court therefore finds and orders that [McCoy] has met his burden and that he is in fact a known heir, along with [Jones] and Jaqualan [sic] Jones, who is entitled to inherit from the estate of his minor child.

We recognize that "refusing or neglecting to support a child is qualitatively different from mere failure to support." *In re Estate of Ford,* 552 So.2d 1065, 1068 (Miss. 1989). However, we disagree with the chancellor's finding and conclude that McCoy in fact refused and/or neglected to support Jakayla. Even though he was

[988 So.2d 933]

incarcerated during her lifetime, McCoy could have provided some support, albeit meager. McCoy received monetary donations from his family members, and although he claimed to be unaware of a policy that would have allowed him to send Jones money for Jakayla's benefit, the record does not reflect that he made any attempt to support Jakayla even before he began serving his sentence. We find it highly unlikely that the Legislature contemplated the "non-financial support" listed above as "supporting the child."

¶ 13. McCoy moved in with Jones shortly after learning of her pregnancy and did not provide any financial support to Jones before or after he went to prison. Jones supported Jakayla with no assistance from McCoy, and this Court concludes that allowing McCoy to receive any portion of the settlement from the wrongful death action would result in a financial windfall in McCoy's favor. For this reason, we reverse and render the chancellor's finding that McCoy proved that he did not refuse or neglect to support Jakayla.

¶ 14. **THE JUDGMENT OF THE LOWNDES COUNTY CHANCERY COURT IS REVERSED AND RENDERED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLEE.**

LEE AND MYERS, P.JJ., CHANDLER, GRIFFIS, BARNES, ISHEE, ROBERTS AND CARLTON, JJ., CONCUR. KING, C.J., CONCURS IN RESULT ONLY.

Notes:

1. The record refers to McCoy by his middle name, Lael.

2. Jones does not dispute that McCoy is Jakayla's biological father.

3. Milton Martin, chief investigator for the Corrections Investigation Division of the South Mississippi Correctional Institution testified in a deposition prior to the hearing that every inmate is assigned an inmate handbook wherein the procedure for sending money outside of the facility is detailed. Investigator Martin stated that inmates may send up to one hundred dollars per month outside of the facility without in-depth approval.

4. Although Jones acknowledges that McCoy is Jakayla's father, we find nothing in the record indicating that a judicial adjudication of legitimacy or paternity has been made, as required by the statute.

5. Jaqulan Jones is Jones's son from a previous relationship.

Page 340
465 So.2d 340
John Willie ALEXANDER
v.
Dennis Lee ALEXANDER, Heir at Law of Robert Charles Alexander, Deceased.
No. 55358.
Supreme Court of Mississippi.
March 6, 1985.

Page 341

John E. Jackson, McComb, for appellant.

Norman B. Gillis, Jr., Gillis & Gillis, McComb, for appellee.

Before PATTERSON, C.J., and SULLIVAN and ANDERSON, JJ.

PATTERSON, Chief Justice, for the Court:

This is an appeal from the Chancery Court of Pike County, which held neither party claiming to be the father of Robert Charles Alexander was entitled to the proceeds of a proposed settlement for the wrongful death of Alexander.

Although there are other issues in the case, the dispositive one is controlled by Stone v. Stone, 210 So.2d 672 (Miss.1968). That case held the presumption that a child born in wedlock is legitimate may be rebutted by proof that the husband "had no access to his wife at a time when the child could have been begotten." 210 So.2d at 674.

We are of the opinion the credible evidence overwhelmingly supports the court's finding that "During the time of conception John Willie Alexander had no access to the mother and could not be the father [of the decedent]," and that the presumption of John Willie Alexander's fatherhood was thereby rebutted.

The court also found the other claimant, Willie Rhodes, was the natural father of the decedent. However, the court additionally found Rhodes had not supported his illegitimate child and was therefore not a lawful heir of Robert Charles Alexander. Mississippi Code Annotated, Section 91-1-15 (1972). In our opinion the court's findings regarding Rhodes were also based on overwhelming credible evidence. This is stated for the purpose of clarity, since Rhodes has withdrawn his appeal.

For these reasons the judgment is affirmed.

AFFIRMED.

WALKER and ROY NOBLE LEE, P.JJ., and HAWKINS, DAN M. LEE, PRATHER, ROBERTSON, SULLIVAN and ANDERSON, JJ., concur.

Page 220
219 S.E.2d 220
288 N.C. 506
Charles WILLIFORD
v.
Helen Marie WILLIFORD, Administrator of the Estate of Anthony Craig Williford, Deceased.
No. 66.
Supreme Court of North Carolina.
Nov. 5, 1975.

McLeod & McLeod by Max E. McLeod and J. Michael McLeod, Dunn, for plaintiff-appellant.

Bowen & Lytch by R. Allen Lytch, Dunn, for defendant-appellee.

LAKE, Justice.

G.S. 31A--2 provides:

'Acts barring rights of parents.--Any parent who has wilfully abandoned the care and maintenance of his or her child shall lose all right to intestate succession in any part [288 N.C. 508] of the child's estate and all right to administer the estate of the child, except--

(1) Where the abandoning parent resumed its care and maintenance at least one year prior to the death of the child and continued the same until its death; or

(2) Where a parent has been deprived of the custody of his or her child under an order of a court of competent jurisdiction and the parent has substantially complied with all orders of the court requiring contribution to the support of the child.'

It being established by the jury's verdict, which the plaintiff concedes to be supported by the evidence, that the plaintiff abandoned his then minor child, the deceased, and neither of the foregoing exceptions being applicable, it is obvious that the plaintiff is not entitled to a distributive share of the child's estate.

It is well established that the proceeds of an action brought for wrongful death are not assets of the estate of the deceased and are not 'any part of' his estate. Such proceeds are distributable pursuant to G.S. 28--173, the act authorizing the institution of an action to recover damages for wrongful death.

That statute provides:

'The amount recovered in such action is not liable to be applied as assets, in the payment of debts or legacies, except as to burial expenses of the deceased, and reasonable hospital and medical expenses not exceeding five hundred dollars ($500.00) incident to the injury resulting in death * * * But shall be disposed of as provided in the Intestate Succession Act.' (Emphasis added.)

The Intestate Succession Act is Chapter 29 of the General Statutes. G.S. 29--15(3) provides that if there is, as here, no surviving spouse, and if the intestate, as here, is not survived by a child, children or any lineal descendant of a deceased child or children, but is survived by both parents, 'they shall take in equal shares.'

However, G.S. 31A--2, above quoted, which was enacted in 1961, two years after the enactment of the Intestate Succession Act, must be deemed a part of the Intestate Succession Act and [288 N.C. 509] a modification of G.S. 29--15(3), as fully as if it had been written thereinto or specifically designated as an amendment thereto. We think it clear that in the enactment of G.S. 28--173, above quoted, the Legislature intended that the proceeds of a recovery, or settlement, in an action for wrongful death shall be distributed

Page 223

to the same persons, and in the same proportionate shares, as the personal property of the decedent, remaining after the payment of all debts and other claims and expenses of administration, would be distributed if the decedent died intestate.

The case of Avery v. Brantley, 191 N.C. 396, 131 S.E. 721, relied upon by the plaintiff, is factually on all fours with the present case. There this Court held that the father's abandonment of the minor child did not bar him from the right he would have otherwise had to share in the proceeds of a recovery for the wrongful death of the child. However, at that time there was no provision in the law comparable to G.S. 31A--2. This Court correctly held that the statute then in effect, providing that an abandoning parent forfeited 'all rights and privileges with respect to the care, custody and services of such child,' did not apply to the right of such parent to share in the proceeds of recovery for the child's wrongful death. G.S. 31A--2 having been enacted in the meantime, Avery v. Brantley, supra, may no longer be deemed authoritative.

In Smith v. Exterminators, 279 N.C. 583, 184 S.E.2d 296, we held that a father who had abandoned his minor child may not share in the death benefits payable under the Workmen's Compensation Act for the death of such child. That case turned upon the construction of G.S. 97--40 (part of the Workmen's Compensation Act), which provided that where the deceased employee left no dependents, whole or partial, the compensation would be payable to his next of kin 'as herein defined' and provided that the order of priority among such next of kin 'shall be governed by the general law applicable to the distribution of the personal estate of persons dying intestate.' We deemed G.S. 31A--2, above quoted, to be part of such 'general law' applicable to the distribution of the personal estate of one dying intestate. Thus, the father, who had abandoned the deceased during the minority of the latter, was held not entitled to share in the death benefits payable under the Workmen's Compensation Act.

While Smith v. Exterminators, supra, is not squarely in point upon the question now before us, it is our opinion, and [288 N.C. 510] we so hold, that when the Legislature, in G.S. 28--173, provided that the proceeds of an action for wrongful death 'shall be disposed of as provided in the Intestate Succession Act,' and when it provided in G.S. 97--40 that the order of priority among claimants to death benefits payable under the Workmen's Compensation Act 'shall be governed by the general law applicable to the distribution of the personal estate of persons dying intestate,' it had in mind the same law; i.e., the Intestate Succession Act as modified by G.S. Ch. 31A, entitled, 'Acts Barring Property Rights.' It follows that the plaintiff father, having abandoned the deceased when the latter was a minor child, may not now share in the proceeds of the settlement of the claim for wrongful death now in the hands of the administratrix.

No error.

Page 368
289 N.W.2d 368
95 Wis.2d 136
John H. KEITHLEY, Appellant,
v.
Dorothy B. KEITHLEY, Respondent.
No. 79-550.
Court of Appeals of Wisconsin.
Argued Nov. 28, 1979.
Opinion Released Jan. 28, 1980.
Opinion Filed Jan. 28, 1980.

Page 369

[95 Wis.2d 137] Peter L. Hessert, Wausau, argued, for appellant; Tinkham, Smith, Bliss, Patterson, Richards & Hessert, Wausau, on brief.

Douglas J. Klingberg, Wausau, argued, for respondent; Terwilliger, Wakeen, Piehler, Conway & Klingberg, S. C., Wausau, on brief.

Before DONLIN, P. J., and FOLEY and DEAN, JJ.

FOLEY, Judge.

John and Dorothy Keithley are the divorced parents of Kenneth Keithley, a minor who was killed in an automobile accident. The Keithleys accepted $21,000 in settlement of their claim for Kenneth's death but could not agree on a division of the settlement proceeds. John started this action claiming he was entitled to 50% Of the society and companionship and pecuniary loss as a matter of law. The trial court

Page 370

ruled that division should be based upon the actual loss sustained by each parent. The court considered loss to be a fact question and submitted the question to the jury, which awarded the entire settlement to Dorothy. Because we conclude that it is appropriate in a dispute between parents to divide wrongful death proceeds based upon actual loss, and finding credible evidence in the record to support the division made by the jury, we affirm.

For his claim to 50% Of the proceeds, John relies upon three Wisconsin cases in which the supreme court has stated that parents are entitled to recover equally for the wrongful death of their child. Straub v. Schadeberg, 243 Wis. 257, 10 N.W.2d 146 (1943); Hansberry v. Dunn, 230 Wis. 626, 284 N.W. 556 (1939); Munsert v. Farmers Mutual Automobile Insurance Company, 229 Wis. 581, 281 N.W. 671 (1939). None of the cases, however, involved any dispute between the parents as to the division. [95 Wis.2d 138] In each case, the court was concerned with recovery by a parent as against the party causing the child's death. The issue raised here was not raised or decided, and these cases are therefore not precedent on the question of division in a dispute between the parents of a deceased child.

John also contends that the wrongful death statute, sec. 895.04, Stats., requires an equal division. We cannot find this requirement in the language of the statute and will not interpret the statute in this manner because it would cause an unreasonable result. Courts should construe statutes to avoid unreasonable results. Estate of Evans, 28 Wis.2d 97, 135 N.W.2d 832 (1965).

We conclude that in a dispute between parents, the better reasoned rule is to permit division of wrongful death proceeds, whether resulting from an award or settlement, based upon the actual loss suffered by each parent. Wrongful

death damages are not automatically recoverable; the survivors must prove their loss. Peot v. Ferraro, 83 Wis.2d 727, 266 N.W.2d 586 (1978). The purpose of allowing damages is to compensate survivors for their loss. The amount of the damage is a question of fact and is left to the discretion of the jury. Mertens v. Lundquist, 15 Wis.2d 540, 113 N.W.2d 149 (1962). Furthermore, wrongful death damages do not become a part of the decedent's estate, Wurtzinger v. Jacobs, 33 Wis.2d 703, 148 N.W.2d 86 (1967), to be divided simply on the basis of a biological relationship. Courts in other jurisdictions have reached similar conclusions. See, e. g., Sclafani v. Long Island Railroad Company, 268 F.Supp. 765 (E.D.N.Y.1967); Lombardo v. Pollock, 21 Ariz.App. 537, 521 P.2d 636 (1974); Changaris v. Marvel, 231 Cal.App.2d 308, 41 Cal.Rptr. 774 (1964); Mortensen v. Sullivan, 3 Ill.App.3d 332, 278 N.E.2d 6 (1972); Sun Cab Company v. Walston, 15 Md.App. 113, 289 A.2d 804 (1972); Parker v. Chrysler Motors Corporation,[95 Wis.2d 139] 88 Nev. 560, 502 P.2d 111 (1972); Schmoll v. Creecy, 54 N.J. 194, 254 A.2d 525 (1969); Williford v. Williford, 288 N.C. 506, 219 S.E.2d 220 (1975); In re Estate of Cline, 1 Ohio Misc. 28, 202 N.E.2d 736 (1964); Mobil Pipe Line Company v. Goodwin, 492 S.W.2d 608 (Tex.Civ.App.1972); Jordan v. Delta Drilling Company, 541 P.2d 39 (Wyo.1975).

The inflexible 50% Division contended for by John could force an unfair loss on one parent while granting a windfall to the other parent. The differing ages of parents, their marital status, and their relationship with the child must realistically be recognized as bearing upon society and companionship loss. The age, financial situation, health, and relationship of the parents with the child would realistically affect the need for and likelihood of future support and, consequently, pecuniary loss.

In this case, John may not have been able to prove any damage had he been permitted to bring an action on his own. He admitted he had received no financial benefit from his son and did not expect to receive any in the future. He had never lived with his son or even in the same city

Page 371

as his son. He testified that he had only seen his son once in ten years and had only infrequent contacts with his son by either letter or telephone. Conversely, there was testimony from which a jury could find a loss to Dorothy in an amount equal to or greater than the settlement. On these facts, to order half of the settlement to John would deprive Dorothy of a fair recovery for her loss and would allow some recovery to John, who apparently sustained no loss.

Three remaining issues are raised by John and require brief comment. John claims that the trial court erred when it instructed the jury to disregard expert witness testimony that under Wisconsin law the estate of a deceased minor child is divided equally between the parents [95 Wis.2d 140] regardless of whether they are divorced. Since the wrongful death settlement was not a part of the child's estate, Wurtzinger, supra, the trial court was correct in concluding that testimony on intestate succession was irrelevant and should be disregarded by the jury. Sections 904.01 and 904.02, Stats. Decisions on relevance are left to the discretion of the trial court and will be accepted unless there has been an abuse of discretion. Chart v. General Motors Corporation, 80 Wis.2d 91, 258 N.W.2d 680 (1977).

John also claims that the trial court erred in admitting testimony regarding the relationship between Dorothy and her son because it was both irrelevant and highly prejudicial. Although we do find this testimony relevant, John did not object to the admission of this testimony at trial, and we need not consider this objection for the first time on appeal. Schueler v. City of Madison, 49 Wis.2d 695, 183 N.W.2d 116 (1971).

Finally, John contends that the evidence did not support a jury finding that certain burial expenditures made by Dorothy were reasonable. In view of our decision supporting the jury verdict entitling Dorothy to 100% Of the settlement, we need not decide this issue.

Judgment affirmed.

Page 70
783 P.2d 70
In the Matter of the ESTATE OF William "Billy Joe" SCHELLER, Deceased,
v.
Michael PESSETTO, Appellant.
No. 880337-CA.
Court of Appeals of Utah.
Nov. 14, 1989.

Page 71

James E. Morton and Randall L. Skeen, Salt Lake City, for appellant.

Paul T. Kunz, Salt Lake City, for respondent.

Before BENCH, GREENWOOD, and JACKSON, JJ.

OPINION

GREENWOOD, Judge:

Appellant, Michael Pessetto, appeals from the trial court's conclusion that he could not inherit from his illegitimate deceased child because he did not openly treat the child as his own as required by Utah Code Ann. § 75-2-109 (1978). On appeal, Pessetto claims section 75-2-109 is unconstitutional. We affirm.

Pessetto and Respondent, Jolene Scheller (Scheller), are the biological parents of the decedent, William "Billy Joe" Scheller (Billy Joe), who was born out of wedlock on August 10, 1981. During his birth, Billy Joe was deprived of oxygen for a period of time, causing him to suffer cerebral palsy with resultant spastic quadriplegia. As a result of that condition, Billy Joe died at the age of five, leaving an estate which consisted of settlement proceeds of a medical malpractice claim.

During Billy Joe's life, Scheller cared for him in her home and in her mother's home. Pessetto never had any contact with Billy Joe. In 1983, Scheller and the State of Utah commenced a civil paternity action against Pessetto. After trial, Pessetto was found to be Billy Joe's natural father and was ordered to pay $1,250 in back child support for the first two years of Billy

Page 72

Joe's life. Pessetto paid the judgment for child support arrearage, but did not pay support thereafter. Also in 1983, Scheller filed a malpractice action against St. Benedict's Hospital and three physicians, alleging they were negligent in treating Billy Joe. The malpractice action was settled.

On August 14, 1986, Billy Joe died. In December, Scheller filed a petition for formal determination of heirs, seeking a determination that Pessetto was ineligible to inherit from Billy Joe. Scheller claimed that Pessetto could not inherit from Billy Joe because he failed to establish a parent-child relationship within the meaning of Utah Code Ann. § 75-2-109(1)(b)(ii) (1976), by failing to openly treat Billy Joe as his own and refusing to support Billy Joe. Pessetto, however, claimed that he could not find Scheller and Billy Joe, was prevented from seeing Billy Joe, and paid two years of child support. The court found that Pessetto did not refuse to support Billy Joe but paid court-ordered support and nothing more. The court also found that Pessetto did not openly treat Billy Joe as his own. Specifically, the court found that Pessetto made no meaningful effort to find Scheller and Billy Joe and did not ask Scheller at the time of the paternity hearing where he could find Billy Joe, how he was, or how he could visit him. Based on these facts, the court concluded that Pessetto did not openly treat Billy Joe as his

own and therefore could not inherit through Billy Joe. This appeal followed.

On appeal, Pessetto claims that section 75-2-109(1)(b)(ii) (1) violates the equal protection clause of the United States Constitution; (2) violates the due process clause of the United States Constitution both substantively and because the statute is overly vague; [1] and (3) violates the equal rights provision of the Utah Constitution, art IV, § 1. The intestate succession provisions of Utah's probate code state that a child born out of wedlock is the child of the mother. Utah Code Ann. § 75-2-109 (1976). Section 75-2-109(1)(b)(ii) further states that for purposes of intestate inheritance, that child is also the child of the father if:

[t]he paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof, except that the paternity established under this sub-section 1(b)(ii) is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his and has not refused to support the child.

EQUAL PROTECTION

We first consider whether section 75-2-109 violates the equal protection clause of the United States Constitution, which provides that no state shall deny any person within its jurisdiction the equal protection of the law. U.S. Const. amend. XIV, § 1. Pessetto argues that the statute violates equal protection because it permits a mother to inherit from her illegitimate child under all circumstances, but requires a father to meet additional criteria by demonstrating that he has openly treated the child as his own and has not refused to support the child before he may inherit. As a result, Pessetto concludes that the statute illegally discriminates on the basis of gender.

"State laws are generally entitled to a presumption of validity against attack under the Equal Protection Clause." Parham v. Hughes, 441 U.S. 347, 351, 99 S.Ct. 1742, 1745, 60 L.Ed.2d 269 (1979). Statutory schemes which are gender-based are examined on an intermediate level under the fourteenth amendment. See Pusey v. Pusey, 728 P.2d 117, 120 (Utah 1986); Ellis v. Social Servs. Dept., 615 P.2d 1250, 1256 (Utah 1980). Gender-based classifications must serve important governmental objectives and must be substantially related to achieving those objectives in order to withstand judicial scrutiny under the equal protection clause. Craig v. Boren, 429 U.S. 190, 197, 97 S.Ct. 451, 457, 50 L.Ed.2d 397 (1976). The principle underlying that test

Page 73

is that the legislature may not "make overbroad generalizations based on sex which are entirely unrelated to any differences between men and women or which demean the ability or social status of the affected class." Michael M. v. Superior Court, 450 U.S. 464, 469, 101 S.Ct. 1200, 1204, 67 L.Ed.2d 437 (1981) (quoting Parham, 441 U.S. at 354, 99 S.Ct. at 1747). Further, because the equal protection clause does not require that a statute apply equally to all persons or require things "different in fact ... to be treated in law as though they were the same," the Court has upheld statutes where the gender classification reflects the fact that males and females are not similarly situated in some situations. Id. (quoting Rinaldi v. Yeager, 384 U.S. 305, 309, 86 S.Ct. 1497, 1499, 16 L.Ed.2d 577 (1966)).

Applying the above standard, the United States Supreme Court has struck down a statute which permitted a mother to veto the adoption of her children but did not permit the putative father a similar veto right. Caban v. Mohammed, 441 U.S. 380, 387-88, 99 S.Ct. 1760, 1765-76, 60 L.Ed.2d 297 (1979). In Caban, the father had admitted paternity and participated in rearing the children. The Court emphasized that if the father had not come forward to participate in raising the child, nothing in the equal protection clause would prevent the state from denying him the

privilege of vetoing the adoption of the children. Id. at 392, 99 S.Ct. at 1768.

Similarly, in Lehr v. Robertson, 463 U.S. 248, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983), the court stated that "[i]f one parent has an established custodial relationship with the child and the other parent has either abandoned or never established a relationship, the Equal Protection Clause does not prevent a state from according the two parents different legal rights." Id. at 267-68, 103 S.Ct. at 2996-97. In Lehr, a putative father, who had never supported the child and rarely saw her in the two years following her birth, claimed that an adoption order was invalid because he was not given notice of the adoption proceedings. The father claimed that his equal protection rights were violated because he was not within the class of people to whom the statute affords notice of adoption proceedings. The Court held that the father's rights under the equal protection clause were not violated because he never established any custodial, personal, or financial relationship with the child. Due to the difference in the relationship between the mother and child as compared to the father and child, the court held that the state could accord the mother and father different legal rights.

Likewise, in Parham v. Hughes, 441 U.S. 347, 355, 99 S.Ct. 1742, 1747-48, 60 L.Ed.2d 269 (1979), the Court considered whether a statute which prevents a father of an illegitimate child from suing for his wrongful death unless the father acts to identify himself, undertakes his paternal responsibilities and makes the child legitimate, violates the equal protection clause. The Court upheld the statute, stating that it does not discriminate against fathers as a class, but distinguishes fathers who have legitimated their children from those who have not. Id. at 356, 99 S.Ct. at 1748. Thus, according to Caban, Lehr and Parham, a putative father who has not established a relationship with his child is not similarly situated with the mother and may be accorded different legal rights than the mother without violating equal protection. See also In re J.P., 648 P.2d 1364, 1374-75 (Utah 1982).

In this case, we first examine the nature and importance of the governmental interest served by the statute. The state has an important governmental interest in the maintenance of a fair and efficient method of disposition of property at death. Parham, 441 U.S. at 357, 99 S.Ct. at 1748; Lalli v. Lalli, 439 U.S. 259, 265, 99 S.Ct. 518, 523, 58 L.Ed.2d 503 (1978). Because paternal inheritance from an illegitimate child may bear upon the issue of proof and the equities associated with the father's role in the child's life, the statute aids the state in preserving orderly distribution of a child's estate. The Uniform Probate Code includes the provision in question, and was drafted for the purposes of providing efficient estate administration and eliminating

Page 74

outdated discrimination in inheritance laws against " 'half-bloods,' illegitimates, aliens, and females." Wellman and Gordan, Uniformity in State Inheritance Laws: How UPC Article II Has Fared in Nine Enactments, 1976 B.Y.U.L.Rev. 357, 360. We have found nothing to indicate a contrary or broader legislative intent by the Utah legislature in adopting the code. Without hazarding to create legislative intent where none is expressed, it is clear, however, that the statute serves a further purpose of encouraging, albeit for pecuniary purposes, development of an actual familial relationship between a proven father of an illegitimate child and his child. As in Lehr, an established relationship between father and child requires greater constitutional protection than situations where that relationship is absent. We find that the government's stated and implicit statutory objectives are important and valid objectives.

We next determine if there is a rational relationship between the statutory purposes and the statutory means. Pessetto argues that there is a gender-neutral statutory alternative which would similarly require mothers of illegitimate children to prove they have provided support and care. See Orr v. Orr, 440 U.S. 268, 283, 99

S.Ct. 1102, 1113-14, 59 L.Ed.2d 306 (1979). "The relevant inquiry, however, is not whether the statute is drawn as precisely as it might have been, but whether the line chosen by the [legislature] is within constitutional limitations." Michael M., 450 U.S. at 473, 101 S.Ct. at 1206. The statute herein recognizes that mothers and fathers of illegitimate children are not similarly situated. Parham, 441 U.S. at 355, 99 S.Ct. at 1747. The identity of the mother of an illegitimate child is rarely in doubt. Id. at 355, 99 S.Ct. at 1747-48. In contrast, the father's identity is frequently unknown. It is possible, also, as in this case, that the father's identity becomes known only because the mother, or the state, forces the issue by filing a paternity action. In addition, the mother, because she physically bears the child, automatically is responsible for the child at least to the extent of deciding its immediate future. Further, she bears the physical, emotional and psychological ramifications of pregnancy and must decide whether to abort the child, raise the child alone or give the child up for adoption. If she decides to raise the child, she endures further financial, emotional and psychological responsibilities. The putative father who does not support the child or openly treat the child as his own assumes none of these responsibilities.

We conclude that the statute does not violate equal protection. It promotes legitimate state interests of providing efficient estate administration and promoting development of meaningful relationships between illegitimate children and their fathers and is based on situational differences between unmarried mothers and unmarried fathers. While the means chosen is not perfect, it lies within proper equal protection clause limits, which are broader in this instance because the statute addresses only noncompensatory financial interests, [2] and does not interfere with established family relationships.

DUE PROCESS

Pessetto also asserts that section 75-2-109 violates the due process clause because it allows mothers but not fathers to inherit from their illegitimate children and because it is unconstitutionally vague. We address those arguments in the same order.

The fourteenth amendment provides that no state shall deprive any person of life, liberty, or property without due process of law. Our first inquiry is to determine the nature of the private interest that is threatened by the state. Lehr, 463 U.S. at 256, 103 S.Ct. at 2990. In Lehr, the Court examined the extent to which a biological father's biological relationship with his child receives protection under the due process clause. The court stated that

Page 75

when an unwed father demonstrates a full commitment to the responsibilities of parenthood by coming forward to participate in rearing his child, his interest in personal contact with his child is protected by the due process clause. Id. at 261, 103 S.Ct. at 2993. However, "the mere existence of a biological link does not merit equivalent constitutional protection." Id. Only if and when a relationship more enduring than the mere biological connection develops between the parent and child is that father entitled to protection against arbitrary state action as a matter of due process. Id.; see also Caban, 441 U.S. at 414, 99 S.Ct. at 1779 (Stevens, J., dissenting).

In this case, Pessetto never had any contact with Billy Joe during his life. The only contact Pessetto had with Scheller or Billy Joe was during the action to determine paternity, which the state and Scheller initiated. Further, Pessetto's payment of two years of child support was only paid after the court ordered him to pay child support. In addition, the court rejected Pessetto's claim that he tried to contact Billy Joe but was prevented from doing so. As the court noted, Pessetto did not attempt to establish contact with Billy Joe at the paternity hearing. Therefore, because Pessetto established only a biological link with Billy Joe and nothing more,

we hold that he failed to establish entitlement to constitutional due process protections.

Pessetto also claims the language "openly treated the child as his own" is so vague that different people can arrive at different interpretations of the statute, therefore violating due process.

"It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." Grayned v. City of Rockford, 408 U.S. 104, 108, 92 S.Ct. 2294, 2298, 33 L.Ed.2d 222 (1972). Statutory language should be sufficiently clear that people of ordinary intelligence can understand what is required for compliance. Id. at 104, 92 S.Ct. at 2298-99. However, absolute certainty is not necessary. Id. at 111-12, 92 S.Ct. at 2300-01. Furthermore, we will construe statutory language "to avoid constitutional infirmities whenever possible." In re Boyer, 636 P.2d 1085, 1088 (Utah 1981).

In this case, we find the statute sufficiently clear to convey what is expected of a father to openly treat a child as his own. While we have found no cases which specifically construe this language, related language was addressed in Slade v. Dennis, 594 P.2d 898 (Utah 1979). In Slade, the Utah Supreme Court discussed the meaning of "publicly acknowledging a child as his own, receiving it as such with the consent of his wife if he is married and otherwise treating it as if it were a legitimate child," which is found in Utah Code Ann. § 78-30-12 (1987). Id. at 900-01. The court found that those statutory requirements are met if the father has received the child into his home for brief visits, visited the child, and held the child out to the public and his family as his own. Id. at 900. See also T.R.F. v. Felan, 760 P.2d 906, 910 (Utah Ct.App.1988).

We find, similarly, that the statutory language "openly treated the child as his own" conveys a sufficiently definite standard to impart notice and allow a fact finder to reasonably resolve conflicts. A father who has held the child out to the public or his family as his own, developed a custom of visiting the child at the mother's home, or accepted the child into his home for occasional brief visits would satisfy the statutory requirement of openly treating the child as his own. Clearly, a father who has never contacted nor seen his child, and who has only paid child support as reduced to a judgment, has not openly treated the child as his own, even though he may have satisfied the portion of the statute requiring financial support. We, therefore, hold that section 75-2-109 is not unconstitutionally vague.

EQUAL RIGHTS

Lastly, Pessetto claims the statute violates art. IV, § 1 of the Utah Constitution, Utah's equal rights provision, which states: "The rights of citizens of the State of Utah to vote and hold office shall not be denied or abridged on account of sex. Both male and female citizens of this State shall enjoy

Page 76

equally all civil, political and religious rights and privileges." Utah and Wyoming are the only states which included an equal rights provision in their original constitutions. A number of other states adopted equal rights provisions during the 1970's, when the federal equal rights amendment to the U.S. Constitution was being debated, and most patterned their language after the proposed federal amendment. Annotation, Construction and Application of State Equal Rights Amendments Forbidding Determination of Rights Based on Sex, 90 A.L.R.3d 158, 164-66 (1979). Subsequently, the equal rights provisions in those states have been applied with varying standards, ranging from prohibiting any classification on the basis of sex, allowing differentiation only where a "compelling state interest" is found, to permitting discrimination where the classification is reasonably related to a legitimate state interest--that is, the equal protection clause standard discussed earlier. The 1979 A.L.R. article reports that Wyoming had not then applied its provision in any cases, "while the Utah courts have given no force to

that state's provision insofar as sex discrimination is concerned. Thus, the Wyoming and Utah provisions seem to have provided women with no rights that have not also been provided in other states which have no such equal rights provision." Id. at 166-67.

In Stanton v. Stanton, 30 Utah 2d 315, 517 P.2d 1010 (1974), rev'd on other grounds, 421 U.S. 7, 95 S.Ct. 1373, 43 L.Ed.2d 688 (1975), rev'd on other grounds, 552 P.2d 112 (Utah 1976), vacated on other grounds, 429 U.S. 501, 97 S.Ct. 717, 50 L.Ed.2d 723 (1977), rev'd on other grounds, 564 P.2d 303 (Utah 1977), reh'g denied, 567 P.2d 625 (Utah 1977), the Utah Supreme Court upheld a statute which established the age of majority as eighteen for females and twenty-one for males under the state equal rights provision, stating that it is permissible to classify people on the basis of sex if there is a reasonable basis for the classification and it is applied uniformly to those in each class. [3] See also Turner v. Department of Employment Sec., 531 P.2d 870 (Utah 1975), vacated on other grounds, 423 U.S. 44, 96 S.Ct. 249, 46 L.Ed.2d 181 (1975). In Cox v. Cox, 532 P.2d 994 (Utah 1975), the court upheld the maternal preference for custody of young children under the equal rights provision, stating that the law need not "pretend to be unaware of and blindly ignore obvious and essential biological differences." Id. at 996. Cox was reversed, however, in Pusey, 728 P.2d at 117, where the court held that the maternal preference violated both equal protection and Utah's equal rights provision by using gender as the determinative factor in custody cases. However, the court did not state specifically the standard for analysis under the equal rights provision, noting that the maternal preference had been invalidated elsewhere under both an intermediate level of review under equal protection guidelines, and strict scrutiny. Therefore, it appears that prior to Pusey, the standard employed by the Utah Supreme Court for application of the equal rights provision was the same as that used under the Fourteenth amendment. Pusey utilizes a standard which is at least as stringent as the equal protection intermediate review for gender discrimination.

We are mindful of the principle of appellate review mandating a presumption of constitutionality. This principle was discussed in In re Baer, 562 P.2d 614 (Utah 1977), [4] where the court upheld a statute, since repealed, providing wives property rights not similarly granted to husbands, as follows:

It is only when statutes manifestly infringe upon some constitutional provision that they can be declared void. Every

Page 77

reasonable presumption must be indulged in and every reasonable doubt resolved in favor of constitutionality.

Laws must be uniform and classes of persons for or against whom the laws will operate must be established on a rational basis. Such classification must be reasonable and not arbitrary.

Id. at 616. There may be cases where application of a standard more stringent than that used under the equal protection clause would be justified. However, the Utah Supreme Court has not clearly done so to date, and the statute in this case does not affect a fundamental right, such as an established familial relationship. The statute prevents a father of an illegitimate child from inheriting from that child unless he has fulfilled minimum requirements of supporting and acknowledging that child. It is true that a mother, under the statute, could abandon her child at birth and still inherit, and that the intestate succession provisions do not otherwise seek to allow only those who are deserving to inherit. However, we find that our analysis under the equal protection clause applies under the equal rights provision as well. Therefore, we hold that the statute does not violate Utah's constitutional equal rights provision.

BENCH and JACKSON, JJ., concur.

---

1 Because a different result is not urged under the Utah Constitution for either the equal protection nor the due process arguments, we confine our analysis to the federal constitution. See State v. Ashe, 745 P.2d 1255, 1257 n. 2 (Utah 1987).

2 Inheritance from a deceased illegitimate child is more in the nature of a gift or a windfall, rather than financial compensation for such things as labor performed or injuries suffered. See Condemarin v. University Hosp., 775 P.2d 348, 353 (Utah 1989) (the right to be compensated for injuries involves a fundamental interest).

3 In Stanton v. Stanton, 421 U.S. 7, 95 S.Ct. 1373, 43 L.Ed.2d 688 (1975), the United States Supreme Court reversed under the equal protection clause of the fourteenth amendment.

4 Annotation, Construction and Application of State Equal Rights Amendments Forbidding Determination of Rights Based on Sex, 90 A.L.R.3d 158, 167 n. 25 (1979), states that In re Baer upholds the statute under Utah's equal rights provision. However, we are persuaded that the opinion rests on an equal protection analysis. See In re Baer, 562 P.2d at 616.

Page 550
709 S.W.2d 550
Carolyn B. GLASCO and, Geraldine Haney, Respondents,
Alfred Glasco, Appellant,
v.
FIRE AND CASUALTY INSURANCE CO., Respondent.
No. WD 37212.
Missouri Court of Appeals,
Western District.
May 20, 1986.

Page 552

David H. Bony, Lauri J. Laughland, Kansas City, for appellant.

Carl W. Bussey, Colbert & Fields, Kansas City, for respondent.

Before LOWENSTEIN, P.J., and TURNAGE and BERREY, JJ.

LOWENSTEIN, Presiding Judge.

Alfred Glasco, appeals apportionment of a settlement under an uninsured motorist policy in a wrongful death claim on behalf of his daughter Charmaine Glasco. The court awarded the bulk of the settlement to decedent's mother, Carolyn Glasco. Carolyn Glasco cross-appeals claiming the trial court erred in awarding any portion of the settlement to Alfred Glasco because Alfred failed to assert his paternity as to the decedent and suffered no loss that entitled him to any recovery under § 537.080, RSMo 1979. Carolyn and Alfred have never been married. Alfred also claims error in the trial court's failure to award him attorney's fees and in allowing evidence relating to the child's medical expenses.

Charmaine Glasco, the daughter, was severely injured in an automobile accident while riding in an uninsured vehicle on July 28, 1984. She died of those injuries three days later. At the time of the accident, Charmaine lived with her mother and grandmother, Geraldine Haney, in Kansas City, Missouri.

Prior to the accident, Fire and Casualty Insurance Company issued an automobile liability insurance policy to Geraldine, which provided uninsured motorist coverage up to $25,000 for each household member. Carolyn and Geraldine filed an Application for Order Approving Wrongful Death Settlement on April 16, 1985. Alfred intervened. The settlement was for $25,000, the policy limit.

At the settlement hearing the evidence showed Charmaine was born in February, 1964. Carolyn testified to the following: Alfred was Charmaine's father, and his name appeared on Charmaine's birth certificate. At the time of Charmaine's birth, Carolyn lived with her sister and brother-in-law. She and Alfred never married, though they did live together when Charmaine was four to eight years of age. In 1972, Carolyn and Charmaine moved into Geraldine's home and still lived there at the time of Charmaine's death. Charmaine left no surviving spouse or children. Both Carolyn and Charmaine worked at Sears. Charmaine contributed part of her income to the household and helped with household chores. From 1972 on, Carolyn received no child support from Alfred. Nor did he ever have custody of Charmaine.

Carolyn obtained health and life insurance policies on her daughter and paid $66 and $16 monthly premiums respectively on each policy. Charmaine's hospital bill came to approximately $17,500 and the doctor's fee was about $1,790. The health insurance covered 80% of these bills. At the time of the hearing, Carolyn had not been billed for any outstanding balance. The life

insurance policy covered funeral expenses of $5,000.

Alfred's testimony showed he freely admitted Charmaine was his daughter, though he never legitimized her. After Carolyn and Charmaine moved to Geraldine's home, he saw Charmaine when she rode her bicycle to his house. He stated he would see her at the bus stop and drive her home. He also drove Charmaine around town. He testified he gave Charmaine money "[w]henever she wanted it," but he did not depend on Charmaine for income. He stated Charmaine never spent the night at his home. When asked if he disciplined Charmaine, Alfred replied, "I showed her how to live."

The court's judgment and order approved the $25,000 settlement. It found that Carolyn and Alfred were the sole existing persons entitled to sue or join in this wrongful death action. The court found "the biological and non-custodial father, Alfred Glasco, who had minimum contacts with the deceased child, failed to legitimize the deceased child and failed to shoulder responsibility with respect to supervision, support, protection and care of said child."

Page 553

The court also found Geraldine was not entitled to any recovery and she did not appeal this ruling.

Apportionment of the settlement was as follows: Carolyn recovered 90% of the $25,000 or $22,500; Alfred recovered 10% of the $25,000 or $2,500; Carolyn's attorney fees of $7,492.50 were deducted from her recovery. The order also stated "there will be no amount ordered by this Court for" Alfred Glasco's attorney fees.

Carolyn's only point on her cross appeal necessitates that it be addressed first since she claims that Alfred was not entitled to bring a wrongful death action because he failed to assert his paternity and suffered no loss that entitled him to any recovery as delineated by § 537.080, RSMo 1979. Section 537.080 states in relevant part:

Whenever the death of a person results from any act, conduct, occurance, transaction, or circumstance which, if death had not ensued, would have entitled such person to recover damages in respect thereof, the person or party who ... would have been liable if death had not ensued shall be liable in an action for damages ... which ... may be sued for (1) By the spouse or children, natural or adopted, ligitimate or illegitimate, or by the father or mother of the deceased, natural or adoptive.

(Emphasis added).

The evidence at the hearing shows Alfred openly acknowledged Charmaine was his daughter. His name appeared on Charmaine's birth certificate. Moreover, Carolyn readily testified Alfred was the child's father. There simply is no factual dispute concerning whether Alfred failed to assert his paternity as to Charmaine, so the argument that Alfred is foreclosed from joining in the wrongful death action on this ground is not well taken.

The arguments in Carolyn's brief actually go to the finer issue whether Alfred's failure to take affirmative steps to legitimize the child and shoulder responsibility with respect to her upbringing precludes him from entitlement to bring or join in a wrongful death action on behalf of his illegitimate daughter.

Carolyn relies on Cobb v. State Security Insurance Co., 576 S.W.2d 726 (Mo. banc 1979), for the proposition that Alfred is not entitled to bring the action even though he is the biological or natural father of Charmaine. In Cobb, the parents of the deceased child never married. However, the father openly acknowledged the child as his own before and after the marriage. He lived with the mother and the child at the time of the child's death. In addition, the father gave the child support, love and affection. He helped raise and discipline the child and acknowledged responsibility for hospital bills incident to the child's accident. The father in Cobb also

purchased the insurance policy, by which the parents sought recovery under the uninsured motorist provision. Id. at 731-32, 736.

The question before the court in Cobb was whether "the biological father of an illegitimate child, as an insured under an uninsured motorist clause is legally entitled to recover damages for an action of wrongful death of his child." Id. at 732. The court's holding stated:

[W]e are compelled to conclude that when the biological father has openly acknowledged the child as his own, has exercised custody and has shouldered responsibility with respect to supervision, support, protection and care of the child, the biological father has a right to maintain a wrongful death action for the death of his illegitimate child.

Id. at 736 (citations omitted).

At first glance, the holding suggests the biological father of an illegitimate child may maintain a wrongful death action only if he satisfies the elements set out above. If this court followed such an interpretation of the holding, it would have to agree with Carolyn that Alfred was not entitled to join in the wrongful death action under § 537.080. This is because the trial court specifically found Alfred "failed to shoulder responsibility with respect to supervision, support, protection and care of said child."

Page 554

However, a footnote appended to the holding stated:

Under the facts of this case we need not decide whether every biological father, after hurdling the problems of proof, is entitled to commence a wrongful death action absent the above elements. We need not go as far as Moore v. Thunderbird, Inc., supra--that support and contact with the child are concerned with the amount of damages, not the right to recover.

Cobb, supra, at 736 n. 16. Thus, the facts here place this case in the ambit of the footnote, and this court must decide whether Alfred, the biological father, is entitled to commence a wrongful death action even though he failed to shoulder responsibility for Charmaine's upbringing.

The Missouri Wrongful Death Act, § 537.080(1), RSMo 1979, provides the action may be brought "by the father or mother of the deceased, natural or adoptive." A wrongful death action is a remedy conferred strictly by statute. The statute makes no reference to the marital status as between the parents. Higgins v. Gosney, 435 S.W.2d 653, 657 (Mo.1969). Nor does the statute delineate the circumstances under which a biological parent can commence a wrongful death action on behalf of his illegitimate child.

A reading of the statute indicates the natural father is no less a parent than the natural mother. See Wilcox v. Jones, 346 So.2d 1037, 1038 (Fla.Ct.App.1977). "To recognize the right of the natural mother of an illegitimate child to maintain a wrongful death action but in the same breath to refuse to recognize the corresponding right of the natural father, would violate the equal protection clauses of the state and federal constitutions." Id.

The issues of Alfred's support of and contact with the child are properly concerned with proof of paternity and the amount of damages to which he as the biological father may be entitled and not with his basic right to recover under the statute. Moore v. Thunderbird, Inc., 331 So.2d 555, 558 (La.Ct.App.1976). Support and contact issues can be analogized to evidentiary matters in that they go to the weight of the evidence rather than to the admissibility. As the natural father of his illegitimate deceased daughter, Alfred was entitled to maintain a wrongful death action as a matter of law.

Turning to his first point on appeal, Alfred claims error in apportionment of damages. He complains he is entitled to 50% of the recovery rather than the 10% assigned to him by the court. He contends the Missouri Supreme Court has interpreted § 537.080 "to mean that parents of a

deceased child have an equal interest in the recovery," citing Higgins v. Gosney, supra. In essence, Alfred equates the parents' "equal interest in recovery" with an equal division of damages. His argument is without merit.

Higgins v. Gosney, supra, concerned a divorced noncustodial father who brought a wrongful death action on behalf of his son. The mother was killed in the same accident as the son. The defendant claimed the father did not make a submissible case in that he failed to show he suffered any pecuniary loss by failing to provide support for the child. Id. at 657. The court there stated § 537.080 provides that an action for the death of a child "is vested in the parents, each of whom has an equal interest in the recovery.... This is a single recovery for the equal benefit of both parents.... If either parent is deceased, the right of action and the entire recovery vests in the survivor." Id. at 657-58.

The quoted passage stands for the proposition that the "statute creates an indivisible cause of action in favor of the parents ... and allows them a single recovery for their equal benefit." State ex rel. Slibowski v. Kimberlin, 504 S.W.2d 237, 239 (Mo.App.1973). In other words, the claim for wrongful death is vested in both parents and creates an indivisible right.

Section 537.095.3, RSMo 1979, clearly authorizes the court to "enter a judgment as to ... damages, apportioning them among those persons entitled thereto in proportion to the losses suffered by each

Page 555

as determined by the court." (Emphasis added). Once 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. State ex rel. Slibowski, supra, at 241. The decision of the trial court was within the discretion granted by § 537.095.3, and the determination of losses made by the court was amply supported by the evidence. See Farr v. Schoeneman, 702 S.W.2d 512, 515 (Mo.App.1985). The 90-10 split cannot be deemed an abuse of discretion since the evidence showed the father failed to support and maintained only minimum contacts with the child from 1972 until her death in 1984.

Alfred next finds error in the court's failure to order attorney's fees to his lawyer. Section 537.095.4(2) provides the court shall order the claimant to pay the attorney's fees as contracted. At the time the court rendered its judgment there was no evidence of a fee agreement between Alfred and his attorney. By contrast, the terms of the fee contract between Carolyn and her attorney were set out in the application for order approving settlement. Carolyn also testified to the terms of the agreement. As far as this court can discern, the first mention of a contract whereby the attorney would receive one-third of Alfred's recovery appears in his brief. The point is denied.

In his last point, Alfred contends the trial court prejudicially erred in overruling his objection to the introduction of evidence of the child's medical expenses in that it was not shown they were reasonable and necessary. The court made no findings regarding medical expenses. The court based its apportionment of damages on its findings that Alfred "had minimum contacts with the deceased child ... and failed to shoulder responsibility with respect to supervision, support, protection and care of said child." This point is also denied.

The judgment is affirmed in all respects.

GAITAN, J., not a member of the Court when the case was submitted.

671 N.W.2d 567
258 Mich. App. 464

In re ESTATE OF Dawn Marie TURPENING, Deceased.
Bernice A. Turpening, Personal Representative of the Estate of Dawn Marie Turpening, Deceased, Petitioner-Appellee,
v.
Russell Howard, Respondent-Appellant.

Docket No. 239614.
Court of Appeals of Michigan.
Submitted September 9, 2003, at Lansing.
Decided September 16, 2003, at 9:15 a.m.
Released for Publication November 10, 2003.

[671 N.W.2d 568]

Luke J. Roy and Stephanie R. Lang, Lansing, for the petitioner.

Graham A. Teague, Adrian, for the respondent.

Before: SAWYER, P.J., and HOEKSTRA and MURRAY, JJ.

PER CURIAM.

Respondent, decedent's putative father, appeals as of right a final order denying his petition to determine heirs. This case arises out of a dispute between petitioner, decedent's mother, and respondent over the interpretation of MCL 700.2114(4) and respondent's right to inherit from decedent. We affirm.

MCL 700.2114(4) provides, "Inheritance from or through a child by either natural parent or his or her kindred is precluded unless that natural parent has openly treated the child as his or hers, and has not refused to support the child." Statutory interpretation is a question of law that is reviewed de novo. *Miller v. Mercy Mem. Hosp.,* 466 Mich. 196, 201, 644 N.W.2d 730 (2002).

This is a case of first impression. MCL 700.2114(4) and Michigan case law do not define the phrases "openly treated the child as his," or "has not refused to support the child." To determine the statute's intent, the specific language of the statute must be examined. *In re MCI Telecommunications Complaint,* 460 Mich. 396, 411, 596 N.W.2d 164 (1999). In construing a statute, this Court should give every word meaning, and should seek to avoid any construction that renders any part of a statute surplus or ineffectual. *Hoste v. Shanty Creek Management, Inc.,* 459 Mich. 561, 574, 592 N.W.2d 360 (1999). MCL 700.2114(4) has two prongs which must be satisfied in order to be considered a natural parent for intestate succession: (1) respondent must show that he openly held decedent out as his child, and (2) that he did not refuse to support her.

Where the statute provides its own glossary, the terms must be applied as expressly defined. *Tryc v. Michigan Veterans' Facility,* 451 Mich. 129, 136, 545 N.W.2d 642 (1996). "Child" is defined in MCL 700.1103(f) as including and "not limited to an individual entitled to take as a child under this act by intestate succession from the parent whose relationship is involved. Child does not include an individual who is only a stepchild, a foster child, or a grandchild or more remote descendant." Because this definition is inapplicable to the issue at hand, we look to the Child Abuse and Neglect Prevention Act and the Child Protection law which both define "child" as "a person under 18 years of age." MCL 722.602(a); MCL 722.622(d).

Given the lack of guidance under Michigan law, we look to other states' case law interpreting statutes similar to MCL 700.2114(4) for guidance in defining "openly held decedent out as his

child" and "did not refuse to support the child." In *Estate of Scheller v. Pessetto,* 783 P.2d 70, 75

[671 N.W.2d 569]

(Utah App.1989), the court explained that a

> father who has held the child out to the public or his family as his own, developed a custom of visiting the child at the mother's home, or accepted the child into his home for occasional brief visits would satisfy the statutory requirement of openly treating the child as his own.

The Mississippi Supreme Court in *Bullock v. Thomas,* 659 So.2d 574, 575-576 (Miss.1995), noted the father could not inherit from his child unless he satisfied *both* requirements of the statute: (1) that he openly treated the child as his, and (2) he did not refuse or neglect to support the child. *Id.* at 576. The court held that to acknowledge a child from time to time as one's own is not synonymous with openly treating the child as his own. *Id.* at 576-577. Because the father failed to satisfy *both* prongs of the statute the lower court's findings that the father was not an heir were sustained. *Id.* at 578.

Similarly, respondent failed to openly treat the decedent as his own. The first thirty years of her life, he denied he knew of her existence despite evidence to the contrary. Respondent first acknowledged the decedent's existence when she was thirty years old, and then for only a few years of her life. Because respondent never once acknowledged, or visited the decedent when she was a child (i.e., before the decedent reached the age of eighteen) respondent cannot meet the first prong of the statute: that he openly treated the child as his own.

To determine the meaning of the phrase "refused to support the child," petitioner directs our attention to *House v. Campbell,* 628 So.2d 448, 450 (Ala.1993). The court made the distinction between "fail" to and "refuse" to provide support. The court stated, "'refusal' is defined as follows: to deny, decline, reject. 'Fail' is distinguished from 'refuse' in that 'refuse' involves an act of the will, while 'fail' may be an act of inevitable necessity." *Id.* Correspondingly, the probate court in this case found respondent refused to support the decedent. The decedent's grandmother testified at length that she asked respondent on numerous occasions to help the decedent's mother with support of the decedent. Each time respondent denied that the decedent was his child. Following the court's definition of "refuse," which is to deny, the probate court was correct in interpreting respondent's denial as a refusal on his part to support the decedent.

Respondent argues that this definition could be used to circumvent the putative father's right to inherit. We disagree. Respondent contends that unless the natural mother files for child support, there is never an order issued from the court to the putative father to pay support for his child. While this is true, a father is not limited to supporting his child only when a court orders him to do so. This would not have been an issue had respondent acknowledged, rather than denied, that the decedent was his daughter and voluntarily supported her. That is, the finding that respondent refused to support the decedent arises from his failure to acknowledge her as his daughter, not petitioner's failure to obtain a child support order.

In conclusion, we look to the language of the statute, and if it is clear and unambiguous, we are bound to apply it as written. *In re Messer Trust,* 457 Mich. 371, 379-380, 579 N.W.2d 73 (1998). The purpose expressed in MCL 700.1201 states in part, "This act shall be liberally construed and ... include all of the following: (a) To simplify and clarify the law concerning the affairs of decedents, [and] ... (e) To make the law uniform among the various jurisdictions, both within and outside of this state." Statutory language should be construed reasonably, with the purpose of the act kept strictly in mind. *Draprop*

[671 N.W.2d 570]

Corp. v. Ann Arbor, 247 Mich.App. 410, 415, 636 N.W.2d 787 (2001). Here, the statute's meaning is clear that a natural parent is barred from

inheriting except if the natural parent "openly treated the child as his" *and* "has not refused to support the child." *Id.* Respondent presented no evidence he openly treated the decedent as his own when she was a child and the evidence showed that respondent refused numerous times to support the decedent by denying her existence and that she was his child. Therefore, we affirm.

Affirmed. Petitioner may tax costs.

DAVID H. SAWYER, JOEL P. HOEKSTRA, and CHRISTOPHER M. MURRAY, JJ., concur.

Section 63-9-810 State interest; purpose of registry

The State has a compelling interest in promptly providing stable and permanent homes for adoptive children and in preventing the disruption of adoptive placements. It is the purpose of the Responsible Father Registry to provide notice to unmarried biological fathers who affirmatively assume responsibility for children they may have fathered by registering with the Responsible Father Registry.

HISTORY: 2009 Act No. 41, Section 1, eff January 1, 2010.

Section 63-9-820 Registry established; definitions; claims of paternity; promulgation of regulations; unauthorized use

(A) There is established within the Department of Social Services the Responsible Father Registry, which the department shall maintain.

(B) As used in this section:

(1) "Department" means the Department of Social Services.

(2) "Registrant" means an unmarried biological father or a male who claims to be the unmarried biological father of a child.

(3) "Registry" means the Responsible Father Registry as established by this section.

(4) "Unmarried biological father" means a male who is not married to the biological mother of a child of whom he is or claims to be the natural father.

(C) Except as set forth in Section 63-9-730(B), in order to preserve the right to notice of an adoption proceeding or the right to notice of a petition for termination of parental rights, a registrant must file a claim of paternity with the registry. A claim of paternity filed with the registry must not be deemed to be an acknowledgment of paternity, and a claim of paternity filed with the registry, as well as any other information contained in the registry, is not admissible as evidence in any proceeding.

(D) Except for a person who is required to receive notice pursuant to Section 63-9-730(B), an unmarried biological father's failure to file a claim of paternity with the registry constitutes an implied irrevocable waiver of the father's right to notice of any proceedings pertaining to the termination of his parental rights and to the child's adoption. Such waiver includes a waiver of any right of the parent to be named as a party in or served with a summons or any other document prepared in conjunction with a termination of parental rights proceeding or an adoption proceeding.

(E) A claim of paternity must be signed by the registrant and must include:

(1) the registrant's name, address, and date of birth;

(2) the mother's name and, if known, her address and date of birth;

(3) if known, the child's name, place of birth, and date of birth;

(4) if known, the date, county, and state of conception of the child; and

(5) the date the claim is filed.

(F) The claim of paternity may be filed with the registry before or after the birth of the child; however, a claim of paternity filed with the registry is null and void if it is filed on or after the date a petition for termination of parental rights or a petition for adoption is filed.

(G) Only the registrant may file the claim of paternity. No other person may file the claim of paternity on behalf of the registrant. The registrant must notify the registry of any change of address in the manner prescribed by the department. Failure to notify the registry of a change of address in the manner prescribed by the department is deemed to be a waiver of a right to notice or to any other right to which the registrant may be entitled as a result of filing a claim of paternity pursuant to this section, including, but not limited to, notice by publication.

(H) The department shall issue a certificate to the registrant verifying that the claim of paternity, revocation, or change of address has been filed.

(I) No fee may be charged for filing a claim of paternity, a revocation, or a change of address with the registry. No fee may be charged to the department for its searches of the registry. The department may charge a fee for processing searches of the registry to a child-placing agency or an attorney assisting in the adoption or termination of parental rights of a child in accordance with a fee schedule established in the annual appropriations act.

(J) A registrant may at any time revoke a claim of paternity and shall file the revocation with the department in the manner prescribed by the department. The filing of a revocation of a claim of paternity with the registry in the manner prescribed by the department makes the prior claim of paternity filed by the registrant null and void.

(K) Except as set forth in Section 63-9-730(B), no unmarried biological father who fails to file a claim of paternity with the registry is entitled to notice of any adoption proceeding or of any termination of parental rights proceeding concerning the unmarried biological father's child.

(L) An unmarried biological father's failure to file a claim of paternity with the registry is deemed to be a lack of proper diligence under Section 63-9-770(B). An unmarried biological father's lack of knowledge of the biological mother's pregnancy does not excuse an unmarried biological father's failure to file a claim of paternity pursuant to this chapter. An unmarried biological father's sexual intercourse or his consent to artificial insemination with the biological mother is deemed to be notice to the unmarried biological father of the biological mother's pregnancy.

(M)(1) The registry is not available for public inspection and is not subject to disclosure under the Freedom of Information Act pursuant to Chapter 4, Title 30 except that:

(a) the department may file a written request with the registry regarding a child for whom the department has an open case for child welfare services;

(b) the department shall provide the names and addresses of all registrants who have filed a claim of paternity for the child in question upon written request of a child-placing agency or an attorney assisting in the adoption or termination of parental rights of a child. The written request may be filed with the registry before or after the birth of the child and must include:

(i) the mother's name and, if known, her address and date of birth;

(ii) if known, the child's date of birth and place of birth; and

(iii) if known, the date, county, and state of conception of the child.

(2) If a written request is submitted by or to the department pursuant to item (a) or (b) of subsection (M)(1), and no claim of paternity for the registrant is found, the department shall issue a certificate of diligent search verifying that a search of the registry has been conducted and that no claim of paternity regarding that registrant or child was found.

(N) A registrant who has filed a claim of paternity must be served with notice of any adoption proceeding and any termination of parental rights proceeding involving any child identified in the registrant's filed claim of paternity within ten days of receipt of the registrant's name and address by the attorney or child-placing agency pursuant to item (b) of subsection (M)(1).

(O) Should the department issue a certificate of diligent search, the attorney for the requesting party in an adoption proceeding or in a termination of parental rights proceeding shall file the certificate of diligent search with the court in which the proceeding is pending within ten days of receipt of the certificate.

(P) A registrant's claim of paternity shall remain on the registry until nineteen years after the claim of paternity has been filed with the registry, at which time the information may be purged from the registry. A registrant's claim of paternity shall be purged from the registry if the registrant revokes his claim of paternity pursuant to subsection (J).

(Q) The department may promulgate regulations and forms necessary to implement the provisions of this section. The department shall produce and distribute a pamphlet or publication informing the public of the Responsible Father Registry. The pamphlet or publication shall indicate the procedure for registering and the consequences for failure to register.

(R)(1) Any unauthorized use, or attempted unauthorized use, of the registry is expressly prohibited, and any person or organization seeking, receiving, using, or publishing, or attempting to do so, any information contained in the registry in violation of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for not more than thirty days, or both.

(2) A person who knowingly, maliciously, or in bad faith files a false claim of paternity with the registry is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for not more than thirty days, or both.

HISTORY: 2009 Act No. 41, Section 1, eff January 1, 2010.

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)))	IN THE PROBATE COURT
IN THE MATTER OF: Tynslee Elizabeth Fields, Deceased	)))	Case No. 2012-ES-23-01718
Lauren Murphy as Statutory Beneficiary, Petitioner, v. Mark Collins, and The Estate of Tynslee Elizabeth Fields, Deceased, Respondents.	)))))))))))	**RETURN IN OPPOSITION TO MOTION TO DENY MARK COLLINS WRONGFUL DEATH AND SURVIVAL SETTLEMENT PROCEEDS**

COMES NOW, Respondent, Mark Collins (hereinafter referred to as "Mr. Collins" or "Father"), an interested party having a real, material, and substantial interest in the above referenced litigation as a statutory beneficiary of the Estate of Tynslee Fields, who by and through undersigned counsel respectfully submits this Return in opposition to Lauren Murphy's (hereinafter "Ms. Murphy" or "Mother") Motion to deny him any portion of the wrongful death and survival settlement proceeds awarded in the matter of *Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields, vs. Bon Secours Health System, Inc., et. al*, Case No. 2013-CP-23-04186, for the reasons set forth below and to be presented to the Court at the hearing of this matter.

Both Ms. Murphy and Mr. Collins are citizens and residents of Greenville County here in the State of South Carolina. Together, they had a child, Tynslee Elizabeth Fields, who tragically passed away immediately after her birth as the result of medical negligence. This negligence is the subject of the civil action styled *Lauren Murphy, individually, and as Personal*

Representative of the Estate of Tynslee Fields, vs. Bon Secours Health System, Inc., et. al, Case No. 2013-CP-23-04186. Mr. Collins and Ms. Murphy are the only two statutory beneficiaries.

In order to proceed with the described litigation, Ms. Murphy and Mr. Collins agreed that Ms. Murphy would serve as the Personal Representative for Tynslee's estate to represent the interests of the statutory beneficiaries. Tynslee's estate is currently being probated in this Court.

On or about February 24, 2014, the Greenville County Court of Common Pleas entered an ORDER approving a PETITION FOR APPROVAL OF SETTLEMENT AS TO DEFENDANTS MERCY OBSTETRICS & GYNECOLOGY, P.A., RAGESH PANDYA, M.D. (hereinafter "Order") in the referenced case. Within the Petition, Ms. Murphy represented to the Circuit Court, in pertinent part, that "... this settlement is in the best interests of the Estate and the statutory beneficiaries" and the Petition was approved as presented. Accordingly the sum of five thousand dollars ($5,000.00) was allocated to the Survival Action (hereinafter referred to as "estate proceeds"), and the sum of Five Hundred Eighty-Three Thousand, Five Hundred Seventy-Seven Dollars and Fifty-Two Cents ($583,577.52) (hereinafter referred to as "wrongful death proceeds") was allocated to the "statutory beneficiaries." (A copy of the Petition and Order has been submitted to this Court for its review and consideration in the certified filings from the Greenville County Court of Common Pleas.) The estate proceeds and the wrongful death proceeds are currently being held in trust pending this Court's ruling.

Some months after the Circuit Court issued it's Order, Ms. Murphy, despite her position as Personal Representative of the Estate and fiduciary responsibility to Mr. Collins, communicated her intention to deny the disbursement of any proceeds to him. Faced with this knowledge, Mr. Collins then formally requested disbursement of one-half of the proceeds, as required by law and the aforementioned Order. This demand was declined and Ms. Murphy then

attempted to file, with the Probate Court, a Motion to Deny the disbursement of any proceeds to Mr. Collins. The filing was declined and she was directed to the Circuit Court. She did not then seek to file it with the Circuit Court.

Now aware of her intentions, Mr. Collins filed a Motion to Compel Disbursement on August 6, 2014, in the Greenville County Court of Common Pleas in Order to bring the issue to adjudication. Mr. Collins' Motion to Compel, which has been submitted by Ms. Murphy as part of the record for consideration, set forth the grounds and supporting statutory and case law which require the funds to be disbursed to Ms. Murphy and Mr. Collins, in equal shares.

On August 15, 2014, Ms. Murphy filed a Return to Mr. Collins' Motion to Compel, as well as a Motion to Deny him all proceeds derived from the settlement. Both parties filed memoranda setting forth their respective positions.

A hearing was held in the Greenville County Court of Common Pleas on the parties' respective motions. However, the Greenville County Court of Common Pleas referred the matter to the Probate Court. Ms. Murphy, therefore, on November 18, 2014, filed a formal Motion in this Court seeking to deny Mr. Collins any of the wrongful death and survival proceeds. This Return, and the attached documents filed in the Greenville County Court of Common Pleas, which are incorporated herein by reference, are submitted in opposition.

As set forth in the attached documents, the law which applies to this matter provides that Ms. Murphy and Mr. Collins, as the only statutory beneficiaries, are to each receive fifty percent (50%) of the wrongful death and survival settlement proceeds as intestate heirs. These shares are determined by South Carolina's law governing intestacy, which requires the parents to receive equal shares.

Further, the law regarding limitation on a parent's share of the wrongful death and survival settlement proceeds is inapplicable to the case at bar. While under certain circumstances the Court may limit a parent's entitlement to the proceeds at issue herein, the statute is not applicable to a situation where a child dies at birth.

Even if the statutory authority applying to the denial of proceeds somehow found to be applicable, the facts themselves do not support the denial of proceeds. Mr. Collins has included with this Return witness affidavits and argument reflecting same.

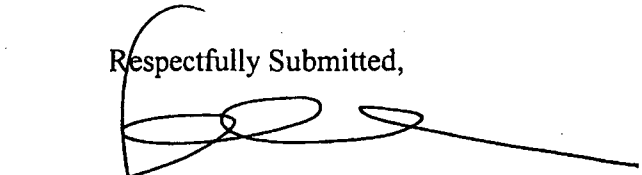
Moreover, Ms. Murphy's position that Mr. Collins somehow waived his Constitutional rights to establish a relationship with his child "in utero" is unsupported by the facts in this case and well-established statutory and case law. Ms. Murphy's misrepresentations and actions subsequent to Mr. Collins' attendance at the initial ultrasound appointment, resulted in Mr. Collins being denied the right to participate further in her pregnancy. Likewise, she excluded him thereafter from both the birth and funeral of his daughter.

For all the foregoing reasons, as well as those set forth in the attached documents, Mr. Collins, respectfully requests this Court enter an Order:

(1) Denying the Motion of Lauren Murphy to Deny the distribution of proceeds to Mr. Collins; and,

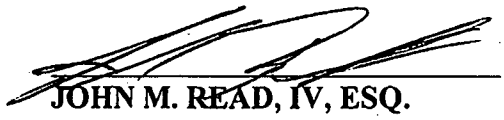
(2) Directing the disbursement of the proceeds in equal shares to each beneficiary parent in accordance with the Order of the Circuit Court approving the settlement in the matter of *Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields, vs. Bon Secours Health System, Inc., et. al*, Case No. 2013-CP-23-04186.

Respectfully Submitted,



JESSICA SALVINI, ESQ.

SALVINI & BENNETT, LLC
101 W. Park Ave.
Greenville, SC 29601
Telephone: (864) 232-5800
Facsimile: (864) 232-5888



JOHN M. READ, IV, ESQ.

PILLSBURY & READ, PA
1204-A East Washington Street
Greenville, SC 29601
Telephone: (864) 241-9828
Facsimile: (864) 241-9818

Greenville, SC
Dated: November 27, 2014

ATTACHMENTS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	Case No.: 2013-CP-23-04186
Lauren Murphy, individually, and as Personal Representative of the Estate Of Tynslee Fields,	)	
Plaintiffs,	)	
vs.	)	
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,	)	NOTICE OF MOTION AND MOTION TO COMPEL
Defendants.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 AUG 6 PM 3 27
A Certified Copy
Paul B. Wickensimer
Clerk of Court C.P. & G.S.
Greenville County, S.C.
Dated

YOU WILL PLEASE TAKE NOTICE that the undersigned, as counsel for Movant, Mark Collins, an interested third-party herein, will move before the Presiding Judge for the Greenville County Court of Common Pleas within ten (10) days hereof, or as soon hereafter as the matter may be heard before the Presiding Judge for the Greenville County Court of Common Pleas, for the relief requested in the attached MOTION TO COMPEL, which is incorporated herein by reference.

This MOTION will be supported by any and all affidavits and/or documents and memorandum that may be filed with the Court prior to and at the hearing of this matter, as well as any and all applicable South Carolina law.

Respectfully Submitted,

JOHN M. READ, IV, ESQ.

PILSBURY & READ, PA
1204-A East Washington Street
Greenville, SC 29601
Telephone: (864) 241-9828
Facsimile: (864) 241-9818

Greenville, SC
Dated: August 6, 2014

ENTERED COMPUTER

Scanned

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	Case No.: 2013-CP-23-04186
Lauren Murphy, individually, and as Personal Representative of the Estate Of Tynslee Fields, **Plaintiffs,**	)	
vs.	)	
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10, **Defendants.**	)	**CERTIFICATE OF SERVICE**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 AUG 6 PM 3:28

I am a citizen of the United States. My business address is 101 W. Park Avenue, Greenville, SC 29601. I am employed in the City and County of Greenville where this mailing occurs; I am over the age of eighteen years and not a party to the within cause. I served a true copy of the:

Notice of Motion and Motion to Compel

in this matter on the following person(s) on the date set forth below, **FAX & U.S. Mail**, in a sealed envelope, postage pre-paid thereon and addressed to:

A. Stuart Hudson, Esq.
HUGHEY LAW FIRM, LLC
P.O. Box 348
Mount Pleasant, SC 29465-0348
Via Facsimile at (888) 884-8311
Attorney for Plaintiffs

A Certified Copy
Paul B. Wickensimer
Clerk of Court C.P & G.S.
Greenville County, SC
Date 11/7/14

Ashby W. Davis, Steven A. Snyder, David L. Williford
DAVIS & SNYDER, P.A.
5 Hawthorne Park Court
Greenville, SC 29615
Via Facsimile at (864) 335-3505
Attorneys for Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc., d/b/a St. Francis Eastside, Upstate OB-GYN, PA and Stephanie Ann Berlet-Dach, D.O.

ENTERED COMPUTER

I certify or declare under penalty of perjury that the foregoing is true and correct. Executed on August 6, 2014, in Greenville, South Carolina.

Ashley Bramlett

ASHLEY BRAMLETT
SALVINI & BENNETT, LLC
101 W. Park Avenue
Greenville, SC 29601
Telephone: (864) 232-5800
Facsimile: (864) 232-5888

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	Case No.: 2013-CP-23-04186
Lauren Murphy, individually, and as Personal Representative of the Estate Of Tynslee Fields,	)	
Plaintiffs,	)	
vs.	)	
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,	)	MOTION TO COMPEL
Defendants.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 AUG 6 PM 3 27

A Certified Copy
Paul B. Wickensimer
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 8/11/14

INTRODUCTION

COMES NOW, Movant, Mark Collins, an interested third-party having a real, material, and substantial interest in the above referenced litigation as a statutory beneficiary of the Estate of Tynslee Fields, who by and through undersigned counsel respectfully requests this Court enter an order requiring the immediate disbursement of the funds the Honorable Letitia H. Verdin awarded to him on February 24, 2014, as is more fully set forth in the ORDER FOR APPROVAL OF SETTLEMENT AS TO DEFENDANTS MERCY OBSTETRICS & GYNECOLOGY, P.A., RAGESH PANDYA, M.D. ONLY, and the PETITION FOR APPROVAL OF SETTLEMENT AS TO DEFENDANTS MERCY OBSTETRICS & GYNECOLOGY, P.A., RAGESH PANDYA, M.D., which is attached hereto as EXHIBIT A and B, respectively, and incorporated by reference.

ENTERED COMPUTER

Scanned

BACKGROUND

On or about February 24, 2014, an ORDER approving a PETITION FOR APPROVAL OF SETTLEMENT AS TO DEFENDANTS MERCY OBSTETRICS & GYNECOLOGY, P.A., RAGESH PANDYA, M.D. was entered by the Greenville County Court of Common Pleas in the litigation in the matter of *Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields, vs. Bon Secours Health System, Inc., et. al*, Case No. 2013-CP-23-04186 (hereinafter "ORDER"). The ORDER sets forth the Circuit Court's approval of a settlement reached between the Plaintiffs and several Defendants (that being, Mercy Obstetrics & Gynecology, P.A., Ragesh Pandya, M.D), finding that settlement "is proper and in the best interest of the Estate" named hereinabove. As a result, the Circuit Court approved the sum of five thousand dollars ($5,000.00) being allocated to the Survival Action (hereinafter referred to as "estate proceeds"), as well as the payment of the sum of Five Hundred Eighty-Three Thousand, Five Hundred Seventy-Seven Dollars and Fifty-Two Cents ($583,577.52) (hereinafter referred to as "wrongful death proceeds") to the "statutory beneficiaries." (See EXHIBIT B.)

The estate proceeds and the wrongful death proceeds are currently being held in trust with the Hughey Law Firm, LLC. On or about July 29, 2014, the Movant formally demanded disbursement of ½ of the proceeds ($291,788.76) directly to him as statutory beneficiary. This demand was declined.

ARGUMENT AND APPLICABLE LAW

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

> ...The amount so recovered **shall be divided among the [statutory beneficiaries]** in those shares as they would have been entitled to if the deceased had died intestate and the amount recovered had been personal assets of his or her estate. SC Code Section 15-51-40 Damages; amount and to whom payable (South Carolina Code of Laws (2014 Edition).

These shares are determined as follows according to South Carolina's laws governing intestacy.

> The part of the intestate estate not passing to the surviving spouse under Section 62-2-102, or the entire estate if there is no surviving spouse, passes as follows:
>
> (1) to the issue of the decedent: if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree then those of more remote degree take by representation;
>
> (2) **if there is no surviving issue, to his parent or parents equally**; SC Code Section 62-2-103 Share of heirs other than surviving spouse.

It is undisputed that the statutory beneficiaries of the Estate of Tynslee Fields are the Plaintiff, Lauren Murphy, and the movant herein, Mark Collins, and the Court found the same in its ORDER which states, in pertinent part:

> The amount of Five Hundred Eighty Three Thousand Five Hundred Seventy Seven Dollars and Fifty-Two Cents are to be paid to the statutory beneficiaries.

(EXHIBIT A – Court Order, p. 3.)

Accordingly, both Ms. Murphy and Mr. Collins are the only parties entitled to the aforementioned proceeds, with each receiving fifty percent (50%) thereof as intestate heirs.

There is no legal basis for the estate proceeds or the wrongful death proceeds not to be disbursed as requested herein. Accordingly, Mr. Collins respectfully requests that this Court enter an Order requiring that the wrongful death proceeds be disbursed forthwith directly to the statutory beneficiaries, Lauren Murphy and Mark Collins, with each receiving one-half (50%) of said proceeds, mores pecifically the sum of Two-Hundred Ninety-One Thousand, Seven Hundred Eighty-Eight Dollars and Seventy-Six Cents ($291,788.76) respectively, in accordance with Judge Verdin's Order.

CONCLUSION

For all the foregoing reasons, Movant Mark Collins, respectfully requests this Court enter an Order in the above referenced matter as set forth herein above.

Respectfully Submitted,

JOHN M. READ, IV, ESQ.

PILSBURY & READ, PA
1204-A East Washington Street
Greenville, SC 29601
Telephone: (864) 241-9828
Facsimile: (864) 241-9818

JESSICA SALVINI, ESQ.

SALVINI & BENNETT, LLC
101 W. Park Ave.
Greenville, SC 29601
Telephone: (864) 232-5800
Facsimile: (864) 232-5888

Greenville, SC
Dated: August 6, 2014

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields,	)	C.A. No. 2013-CP-23-04186
Plaintiff,	)	ORDER FOR APPROVAL OF SETTLEMENT AS TO DEFENDANTS MERCY OBSTEGRICS & GYNECOLOGY, P.A., RAGESH PANDYA, M.D. ONLY
-vs-	)	
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,	)	
Defendants.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 FEB 24 AM 11 24

UPON READING the annexed Petition of Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, and it appearing that Lauren Murphy deems the offer with the Defendants acceptable, advantageous, and to the best interest of the Estate and the beneficiaries and

IT FURTHER APPEARING in the discretion of this Court that such settlement is proper and in the best interest of the Estate, it is

ORDERED, ADJUDGED and DECREED that Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, is hereby authorized to consummate the settlement referred to in the Petition and to execute and deliver to the Defendants an appropriate Release terminating, releasing, and ending all claims and actions asserted or brought under or by virtue of any Federal or South Carolina Statute or by common law in any way arising out of the incident against the Defendants Mercy Obstetrics & Gynecology, PA, Ragesh Pandya only, including their officers, directors, employees, physicians, agents, servants, attorneys, partners and representatives, and all parent, subsidiaries, and related corporations and any of the insured predecessors and successor corporations or entities, and their attorneys, heirs, assigns, executors, administrators, successors, subsidiaries, affiliated companies, parent companies, insiders, and any other indemnitors, including their insured entities. This

copy to Hood Law Firm @ counter / will mail copies

in no way affects the rights of Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields to proceed against the remaining Defendants in this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the attorneys fees and costs itemized in the Petition filed herewith are approved by the Court, and Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, is hereby authorized and required to pay such fees and costs as well as any related medical, federal, and/or state liens, including but not limited to Medicare and/or Medicaid, out of the settlement proceeds, with any balance of said proceeds to be paid in accordance with the law.

AND IT IS SO ORDERED this the 24 day of Feb., 2014.

Presiding Judge, Thirteenth Judicial Circuit

Pickens, South Carolina

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields,	)	C.A. No. 2013-CP-23-04186
Plaintiff,	)	PETITION FOR APPROVAL OF SETTLEMENT AS TO DEFENDANTS MERCY OBSTEGRICS & GYNECOLOGY, P.A., RAGESH PANDYA, M.D., ONLY
-vs-	)	
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,	)	
Defendants.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 FEB 24 AM 11 24

The Petitioner, Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, petitions the Court for approval of a settlement and respectfully shows:

1. That the Petitioner, Lauren Murphy, is the Personal Representative of the Estate of Tynslee Fields, and that the Plaintiff is a citizen and resident of Greenville County, South Carolina.

2. That the Decedent, Tynslee Fields, was at all times a resident of Greenville County, South Carolina, and her Estate is pending in the Probate Court of Greenville County.

3. The basic facts surrounding the death of the decedent and those regarding the liability of the alleged wrongdoer are that the petitioner Lauren Murphy was a patient at the Defendant Bon Secours Health System facility on or about June 12, 2012 for a scheduled induction of labor. Following her delivery, Tynslee Fields died from an injury to her vertebrae. The Plaintiff alleges medical malpractice and the Defendants denied the same.

4. The circumstances leading up to and surrounding said incident have been thoroughly investigated by investigators, adjusters and attorneys representing the Petitioner and similar personnel representing the Defendants, and any of its insured individuals and all parent, subsidiaries, and related corporations and entities. The Petitioner individually and on behalf of the Estate and Mercy Obstetrics & Gynecology, PA,Ragesh Pandya only have arrived at an agreed settlement for the claims against these Defendants in these claims and the Insurers, and any of their insured individuals and all parent,

subsidiaries, and related corporations and entities as a result of the alleged negligent treatment and care. The agreed settlement and compromise contemplates the release, ending and terminating of all claims and actions against Mercy Obstetrics & Gynecology, PA, Ragesh Pandya only, based on causes surviving to the Decedent or Petitioners or any person, in any way arising, asserted or brought under or by virtue of any Federal or State statute, or by common law against these Defendants, including claims of any of their insured individuals and all parent, subsidiaries, and related corporations and entities. This in no way affects the rights of Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields to proceed against the remaining Defendants in this action.

5. That the amount of insurance available is $1,000,000.00.

6. That the Defendants do not admit liability of any sort, but that a settlement was reached as a compromise to avoid and minimize expenses and litigation.

7. That the Petitioner is informed and believes that this settlement is in the best interests of the Estate and the statutory beneficiaries.

8. The parties have agreed to a full, final, and confidential settlement as to these Defendants only, in the amount of Nine Hundred and Seventy Five Thousand Dollars and No Cents ($975,000.00), of which Nine Hundred Seventy Thousand Dollars ($970,000.00) shall be allocated to the Wrongful Death Action, and Five Thousand Dollars ($5,000.00) to the Survival Action.

9. The statutory beneficiaries and heirs at law are Lauren Murphy and Mark Collins.

10. The Petitioner, as the Personal Representative, has agreed to satisfy all related medical bills, liens, federal or state liens, including but not limited to Medicare and/or Medicaid, and to indemnify the Defendants, and their Insurers and attorneys, and all parent, subsidiaries, and related corporations from any and all potential lien holders and other health and long term care providers as further specified in the Release. There will be Three Thousand Three Hundred Thirty-One Dollars and Fifty Cents ($3,331.50) withheld in trust for any medical liens.

10. From the settlement proceeds, the undersigned requests the approval of the Court to pay for legal services rendered by his attorneys in the agreed amount of $325,000.00, as well as costs in the

amount of $13,090.98, in addition to costs associated with the settlement hearing, future probate court fees and continued litigation of which an additional Fifty Thousand Dollars ($50,000.00) will be held in trust in order to finance said litigation against the remaining Defendants if necessary. The amount of Five Hundred Eighty Three Thousand Five Hundred Seventy Seven Dollars and Fifty Two Cents ($583,577.52) are to be paid to the statutory beneficiaries. The undersigned is of the opinion that the total attorneys' fees and costs as well as her personal representative fee and trust amount are fair and reasonable under the circumstances and reflect substantial and fruitful efforts put forth by her attorneys, that such fees and costs should be approved by the Court, and that the undersigned, as Personal Representative, should be authorized to pay such fees and costs out of the settlement proceeds with the balance of the proceeds to be paid in accordance with the law.

11. This Petition is made pursuant to the Wrongful Death Act § 15-51-10 et seq., of the Code of Laws of South Carolina as amended and the Survival Act, § 15-5-90 of the Code of Laws of South Carolina as amended.

WHEREFORE, the Petitioner prays that this Court approve such settlement and authorize the Petitioner, individually and as Personal Representative of the Estate of Tynslee Fields, to receive the stated sum to satisfy any and all related liens and, in return therefore, execute, individually and as Personal Representative of the Estate of Tynslee Fields, a complete full and final release and hold harmless agreement, ending and terminating the matter and barring all claims which have been and/or may in any way be asserted on behalf of, and in any way related to or for the benefit of Tynslee Fields against Defendants Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, only and Petitioners claims against the remaining Defendants are in no way affected by this release.

Lauren Murphy

Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields

Dated: 2/24, 2014

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

C.A. No.: 2013-CP-23-04186

Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields

Plaintiff,

vs.

Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,

Defendants.

VERIFICATION

PERSONALLY appeared before me, Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, who being duly sworn, deposes and says: That she is the Petitioner in the foregoing Petition and that she has read the same and the matters as stated therein are true to the best of her knowledge, except for such matters and things as may be set forth therein on information and belief, and those she believes to be true.

Lauren Murphy

Laruen Murphy individually and as Personal Representative of the Estate of Tynslee Fields

SWORN to before me this 24

day of February, 2014

My Commission Expires: 8/1/16

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF
COUNTY OF GREENVILLE	)	COMMON PLEAS
Lauren Murphy, individually, and as Personal Representative of the Estate Of Tynslee Fields,	)	C.A. No.: 13-CP-23-04186
Plaintiffs,	)	**INTERESTED PARTY MARK COLLINS' MEMORANDUM IN SUPPORT OF MOTION TO COMPEL DISBURSEMENT AND RESPONSE TO MOTION TO DENY PROCEEDS**
v.	)	
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet Dach, D.O., and John and Jane Does 1-10,	)	
Defendants.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 SEP 26 PM 3 49

Scanned

INTRODUCTION

COMES NOW, Movant, Mark Collins, an interested third-party having a real, material, and substantial interest in the above referenced litigation as a statutory beneficiary of the Estate of Tynslee Fields, who by and through undersigned counsel respectfully submits the following memorandum in support of his previously filed Motion to Compel Disbursement of the proceeds secured in the settlement secured in the instant litigation and in response to Personal Representative Lauren Murphy's Motion to Deny Proceeds in same.

BACKGROUND

On or about February 24, 2014, an ORDER approving a PETITION FOR APPROVAL OF SETTLEMENT AS TO DEFENDANTS MERCY OBSTETRICS & GYNECOLOGY, P.A., RAGESH PANDYA, M.D. was entered by the Greenville County Court of Common Pleas in the litigation in the

A Certified Copy
Paul B. Wickensimer
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 11/13/14

ENTERED COMPUTER

matter of *Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields, vs. Bon Secours Health System, Inc., et. al*, Case No. 2013-CP-23-04186 (hereinafter "Order"). The Order sets forth the Circuit Court's approval of a settlement reached between the Plaintiffs and several Defendants (that being, Mercy Obstetrics & Gynecology, P.A., Ragesh Pandya, M.D), finding that settlement "is proper and in the best interest of the Estate" named hereinabove. As a result, the Circuit Court approved the sum of five thousand dollars ($5,000.00) being allocated to the Survival Action (hereinafter referred to as "estate proceeds"), as well as the payment of the sum of Five Hundred Eighty-Three Thousand, Five Hundred Seventy-Seven Dollars and Fifty-Two Cents ($583,577.52) (hereinafter referred to as "wrongful death proceeds") to the "statutory beneficiaries." **(See Exhibits A and B – Petition and Order respectively.)**

The estate proceeds and the wrongful death proceeds are currently being held in trust with the Hughey Law Firm, LLC. On or about July 29, 2014, the Movant formally demanded disbursement of ½ of the proceeds ($291,788.76) directly to him as statutory beneficiary. This demand was declined.

In the original Motion to Compel Disbursement presently before the Court, Mr. Collins set forth the essential grounds and supporting statutory and case law which dictate that the funds at issue be disbursed.

In response to Mr. Collins' Motion to Compel Disbursement, Ms. Murphy has filed a single document with the Court identified as both a Return to Mr. Collins' Motion to Compel and as a Motion to Deny him all proceeds derived from the settlement.

SALIENT FACTS

It is undisputed that the decedent child, Tynslee Fields, is the daughter of the Personal Representative, Lauren Murphy, and the only other statutory beneficiary, Mark Collins. Tynslee tragically passed away during child birth and the circumstances of her death are the subject of this medical negligence litigation.

At the time of Tynslee's conception, Lauren Murphy communicated to Mr. Collins that Tynslee was the child of her union with him. He was attentive and committed to the child from the outset and, despite the fact that they were not married, attended the appointment for the initial ultrasound with hope and anticipation. Shortly thereafter, Ms. Murphy ended her relationship with Mr. Collins, reconciling with an ex-boyfriend, Jeremy Fields. Despite the fact that Mr. Collins continued to express his desire to be a part of the pregnancy and the birth of their child, Ms. Murphy "blocked" his telephone number thereby prohibiting Mr. Collins from calling Ms. Murphy. Ms. Murphy lied to Mr. Collins, telling him that the child had *not*, in fact, been fathered by him. She then excluded him from participating in any way, including financially, with Tynslee's development leading up to the birth and directed him not to attend her funeral after her death.

Afterward, Ms. Murphy recanted, stating that she had lied to Mr. Collins and that the deceased child was actually his; however, she also told him that he could not attend the funeral. Mr. Collins was assaulted with the confirmation that Tynslee was his child, that Ms. Murphy had intentionally given Tynslee another man's last name, that his child was dead and that Ms. Murphy's actions and lies had excluded him from being present for Tynslee's development, birth and tragic death. **(See Exhibits C, D and E – Affidavits of Mark Collins, Cynthia Hopkins and Angela King.)**

ARGUMENT AND CITATION OF AUTHORITY

I. THE COURT HAS ALREADY DECIDED THE ISSUE OF APPORTIONMENT OF THE PROCEEDS IN ACCORDANCE WITH APPLICABLE LAW AND THE PETITION FOR APPROVAL OF SETTLEMENT.

It is undisputed that the only statutory beneficiaries of the Estate of Tynslee Fields are Lauren Murphy, Personal Representative and mother of the deceased child and the movant, Mark Collins, father of the child. As illustrated in the language below excerpted from the Petition for Approval of Settlement, Lauren Murphy, in her individual capacity as well as in her capacity as Personal Representative, identified Mark Collins without reservation as a statutory beneficiary, stated unequivocally that the settlement was in the best interests of both beneficiaries in her Petition for Approval of Settlement as illustrated below from the excerpted language.

> The Petitioner, Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields, petitions the Court for approval of a settlement and respectfully shows:
>
> * * * * * *
>
> 7. That the Petitioner is informed and believes that this settlement is in the best interests of the Estate and the statutory beneficiaries.
>
> 8. The parties have agreed to a full, final, and confidential settlement as to these Defendants only, in the amount of Nine Hundred and Seventy Five Thousand Dollars and No Cents ($975,000.00), of which Nine Hundred Seventy Thousand Dollars ($970,000.00) shall be allocated to the Wrongful Death Action and Five Thousand Dollars ($5,000.00) to the Survival Action.
>
> 9. The statutory beneficiaries and heirs at law are Lauren Murphy and Mark Collins.

The Court, in turn, found, in pertinent part:

> The amount of Five Hundred Eighty Three Thousand Five Hundred Seventy Seven Dollars and Fifty-Two Cents are to be paid to the **statutory beneficiaries**. (**Exhibit A** – Court Order, p. 3.)
>
> * * * * * * * *
>
> ... to be paid in accordance with the law.

As set forth below, the law which applies to this matter, now, at the time of the Petition and at the time that the Order was entered states that Ms. Murphy and Mr. Collins, as the only statutory beneficiaries, each receive fifty percent (50%) of the proceeds as intestate heirs.

> ...The amount so recovered **shall be divided among the [statutory beneficiaries]** in those shares as they would have been entitled to if the deceased had died intestate and the amount recovered had been personal assets of his or her estate. SC Code Section 15-51-40 Damages; amount and to whom payable (South Carolina Code of Laws (2014 Edition).

These shares are determined as follows according to South Carolina's laws governing Intestacy.

> The part of the intestate estate not passing to the surviving spouse under Section 62-2-102, or the entire estate if there is no surviving spouse, passes as follows:
>
> (1) to the issue of the decedent: if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation;
>
> (2) **if there is no surviving issue, to his parent or parents equally**; SC Code Section 62-2-103 Share of heirs other than surviving spouse.

Lauren Murphy, was in possession of all of the facts upon which she has based her Motion to Deny Proceeds at the time that she entered into the subject settlement on behalf of herself, Individually and in her capacity as fiduciary to the statutory beneficiary Mark Collins. As such, and with the full benefit of counsel and knowledge of the applicable law directing the distribution of the funds in equal shares, she made no challenge to the required distribution.

The Personal Representative's representation that "the settlement is in the best interests of ... the statutory beneficiaries" is a statement that the question about allocation of the proceeds has been considered by the Personal Representative and that she is performing her responsibility as fiduciary of those beneficiaries.

Section 15-51-42 of the South Carolina Code governing the approval of settlements of wrongful death or survival actions delineates the components and considerations within the petition which are encompassed by the Order. It states, in pertinent part,

> (B) ... the personal representative shall petition either the probate or the circuit court of this State seeking approval of a proposed settlement. The petition must be verified by the personal representative and shall set forth, in terms satisfactory to the court in which the petition is filed, the basic facts surrounding the death of the decedent, the pertinent facts surrounding the liability of the alleged wrongdoer, the amount of insurance available to pay for damages, the terms of the proposed settlement, **the statutory beneficiaries of the wrongful death or survival action, the heirs at law or appropriate devisees of the estate, the appropriate creditors, the amount of their claims**, and, if the personal representative has retained legal counsel, the terms and provisions of the agreement with respect to attorney's fees and costs.

It further states,

> It is not necessary that a personal representative be represented by legal counsel for the court to consider the petition and approve the settlement. **If the personal representative is represented by legal counsel, the counsel shall sign a certificate attesting to the fact that he is of the opinion that the settlement is fair and reasonable and in the best interests of the statutory beneficiaries and, in a survival action, the estate of the decedent.**

Ms. Murphy herself certified that the settlement was in the best interests of the statutory beneficiaries. By statute she was required to set forth the terms of settlement exhaustively, including naming the statutory beneficiaries, the heirs at law and the amount of their claims. The fact that she did not challenge the statutorily defined proportional distribution of proceeds while fully cognizant of all applicable facts and circumstances that might affect the distribution

means that, as indicated by the language of the order, the funds are to be allocated in equal shares in accordance with the law.

II. THERE IS NO LEGAL OR FACTUAL BASIS TO SUPPORT THE DENIAL OF PROCEEDS TO STATUTORY BENECIARY MARK COLLINS.

a. The Law Regarding Limitation of A Parent's Share of Proceeds Does Not Apply to the Case at Bar.

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

Under certain circumstances, the Court may limit a parent's entitlement. The statute is not applicable to a situation where a child dies at birth. It states,

> .... [U]pon motion by either parent or any other party of potential interest based upon the decedent having died intestate, the probate court may deny or limit either or both parent's entitlement for a share of the proceeds if the court determines, by a preponderance of the evidence, that the parent or parents **failed to reasonably provide support for the decedent as defined in Section 63-5-20** and did not otherwise provide for the needs of the decedent during his or her minority. SC Code 15-51-40 Damages; amount and to whom payable (South Carolina Code of Laws (2014 Edition))

Section 63-5-20 states that a parent must provide reasonable support to provide a living unless the parent has just cause or excuse for failure to do so.

> A) Any able-bodied person capable of earning a livelihood who shall, **without just cause** or excuse, abandon or fail to provide reasonable support to his or her spouse or to his or her minor unmarried legitimate or illegitimate child dependent upon him or her shall be deemed guilty of a misdemeanor ... As used in this section **"reasonable support" means an amount of financial assistance which, when combined with the support the member is reasonably capable of providing for himself or herself, will provide a living standard for the member substantially equal to that of the person owing the duty to support.** It includes both usual and unusual necessities. SC Code 63-5-20 Obligation to support (South Carolina Code of Laws (2014 Edition.)

The term "reasonable support" is the operative term, which cannot be applied to circumstances where a life has been cut short such that there is no opportunity to provide support for the child.

b. Mr. Collins Did Not Fail to Reasonably Support Tynslee.

Ms. Murphy's expenses related to the pregnancy were paid by Medicaid. **(See Exhibit F - Deposition of Lauren Murphy, p. 155.)** In addition, as recited above and identified in his attached Affidavit, Mr. Collins was directed not to participate in Tynslee's funeral by Ms. Murphy. He was not delinquent in any financial responsibility that might be construed.

c. "Just Cause" Prevented Mr. Collins From Participating in the Development of the Child During Ms. Collins' Pregnancy.

The statutory authority recited above states that if "just cause" prevents a parent from meeting the legally required financial responsibilities, then he/she cannot be held responsible for that failure. As set forth above and in the attached Affidavits, Ms. Murphy systematically excluded Mr. Collins from participation through lies and deceit. He cannot for this reason be held to have failed in his responsibilities.

There is no legal basis for the estate proceeds or the wrongful death proceeds not to be disbursed as requested herein. Accordingly, Mr. Collins respectfully requests that this Court enter an Order requiring that the wrongful death proceeds be disbursed forthwith directly to the statutory beneficiaries, Lauren Murphy and Mark Collins, with each receiving one-half (50%) of said proceeds, more specifically the sum of Two-Hundred Ninety-One Thousand, Seven Hundred Eighty-Eight Dollars and Seventy-Six Cents ($291,788.76) respectively, in accordance with Judge Verdin's Order.

CONCLUSION

The Court has already decided this matter. Ms. Murphy, Individually and as Personal Representative, understood all of the circumstances surrounding the allocation of proceeds to the statutory beneficiaries at the time that she petitioned the Court for approval of the settlement. In her petition, she identifies Mr. Collins as the only other statutory beneficiary and states, without reservation that the settlement is in both his and her best interests as such. The Court in turn, granted her petition, ordering that the funds be paid to the beneficiaries in "accordance with the law." The applicable law dictated that the funds be distributed in equal shares to the statutory beneficiaries. Ms. Murphy requested this both individually and as representative of her own interests and those of Mr. Collins.

Even if the Court were to determine that it must entertain Ms. Murphy's arguments regarding apportionment, the law upon which she relies does not apply to the facts and circumstances of this case. The brevity of Tynslee's life renders the term "reasonable support" inapplicable as defined by the cited statute.

Further, even if the Court were to determine that the statute itself applies to these circumstances, Mr. Collins did not fail to financially support Tynslee. The expenses were paid by Medicaid as indicated by Lauren Murphy's deposition testimony.

Finally, even if the Court were to determine that Mr. Collins failed to financially support Tynslee, then the facts reveal that he was prevented from doing so by the lies and actions of Ms. Murphy and cannot, therefore, be penalized for the failure.

For all the foregoing reasons, Movant Mark Collins, respectfully requests this Court enter an Order:

(1) Denying the Motion of Lauren Murphy to Deny the distribution of proceeds to Mr. Collins; and,

(2) Directing the disbursement of the proceeds in equal shares to each beneficiary parent in accordance with the Order of the Circuit Court approving the settlement of this matter.

Respectfully Submitted,

JESSICA SALVINI, ESQ.

SALVINI & BENNETT, LLC
101 W. Park Ave.
Greenville, SC 29601
Telephone: (864) 232-5800
Facsimile: (864) 232-5888

JOHN M. READ, IV, ESQ.

PILLSBURY & READ, PA
1204-A East Washington Street
Greenville, SC 29601
Telephone: (864) 241-9828
Facsimile: (864) 241-9818

Greenville, SC
Dated: September 24, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields,	)	C.A. No. 2013-CP-23-04186
Plaintiff,	)	PETITION FOR APPROVAL OF SETTLEMENT AS TO DEFENDANTS MERCY OBSTEGRICS & GYNECOLOGY, P.A., RAGESH PANDYA, M.D. ONLY
-vs-	)	
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,	)	
Defendants.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 FEB 24 AM 11 24

The Petitioner, Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, petitions the Court for approval of a settlement and respectfully shows:

1. That the Petitioner, Lauren Murphy, is the Personal Representative of the Estate of Tynslee Fields, and that the Plaintiff is a citizen and resident of Greenville County, South Carolina.

2. That the Decedent, Tynslee Fields, was at all times a resident of Greenville County, South Carolina, and her Estate is pending in the Probate Court of Greenville County.

3. The basic facts surrounding the death of the decedent and those regarding the liability of the alleged wrongdoer are that the petitioner Lauren Murphy was a patient at the Defendant Bon Secours Health System facility on or about June 12, 2012 for a scheduled induction of labor. Following her delivery, Tynslee Fields died from an injury to her vertebrae. The Plaintiff alleges medical malpractice and the Defendants denied the same.

4. The circumstances leading up to and surrounding said incident have been thoroughly investigated by investigators, adjusters and attorneys representing the Petitioner and similar personnel representing the Defendants, and any of its insured individuals and all parent, subsidiaries, and related corporations and entities. The Petitioner individually and on behalf of the Estate and Mercy Obstetrics & Gynecology, PA,Ragesh Pandya only have arrived at an agreed settlement for the claims against these Defendants in these claims and the Insurers, and any of their insured individuals and all parent,

EXHIBIT A

subsidiaries, and related corporations and entities as a result of the alleged negligent treatment and care. The agreed settlement and compromise contemplates the release, ending and terminating of all claims and actions against Mercy Obstetrics & Gynecology, PA, Ragesh Pandya only, based on causes surviving to the Decedent or Petitioners or any person, in any way arising, asserted or brought under or by virtue of any Federal or State statute, or by common law against these Defendants, including claims of any of their insured individuals and all parent, subsidiaries, and related corporations and entities. This in no way affects the rights of Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields to proceed against the remaining Defendants in this action.

5. That the amount of insurance available is $1,000,000.00.

6. That the Defendants do not admit liability of any sort, but that a settlement was reached as a compromise to avoid and minimize expenses and litigation.

7. That the Petitioner is informed and believes that this settlement is in the best interests of the Estate and the statutory beneficiaries.

8. The parties have agreed to a full, final, and confidential settlement as to these Defendants only, in the amount of Nine Hundred and Seventy Five Thousand Dollars and No Cents ($975,000.00), of which Nine Hundred Seventy Thousand Dollars ($970,000.00) shall be allocated to the Wrongful Death Action, and Five Thousand Dollars ($5,000.00) to the Survival Action.

9. The statutory beneficiaries and heirs at law are Lauren Murphy and Mark Collins.

10. The Petitioner, as the Personal Representative, has agreed to satisfy all related medical bills, liens, federal or state liens, including but not limited to Medicare and/or Medicaid, and to indemnify the Defendants, and their Insurers and attorneys, and all parent, subsidiaries, and related corporations from any and all potential lien holders and other health and long term care providers as further specified in the Release. There will be Three Thousand Three Hundred Thirty-One Dollars and Fifty Cents ($3,331.50) withheld in trust for any medical liens.

10. From the settlement proceeds, the undersigned requests the approval of the Court to pay for legal services rendered by his attorneys in the agreed amount of $325,000.00, as well as costs in the

amount of $13,090.98, in addition to costs associated with the settlement hearing, future probate court fees and continued litigation of which an additional Fifty Thousand Dollars ($50,000.00) will be held in trust in order to finance said litigation against the remaining Defendants if necessary. The amount of Five Hundred Eighty Three Thousand Five Hundred Seventy Seven Dollars and Fifty Two Cents ($583,577.52) are to be paid to the statutory beneficiaries. The undersigned is of the opinion that the total attorneys' fees and costs as well as her personal representative fee and trust amount are fair and reasonable under the circumstances and reflect substantial and fruitful efforts put forth by her attorneys, that such fees and costs should be approved by the Court, and that the undersigned, as Personal Representative, should be authorized to pay such fees and costs out of the settlement proceeds with the balance of the proceeds to be paid in accordance with the law.

11. This Petition is made pursuant to the Wrongful Death Act § 15-51-10 et seq., of the Code of Laws of South Carolina as amended and the Survival Act, § 15-5-90 of the Code of Laws of South Carolina as amended.

WHEREFORE, the Petitioner prays that this Court approve such settlement and authorize the Petitioner, individually and as Personal Representative of the Estate of Tynslee Fields, to receive the stated sum to satisfy any and all related liens and, in return therefore, execute, individually and as Personal Representative of the Estate of Tynslee Fields, a complete full and final release and hold harmless agreement, ending and terminating the matter and barring all claims which have been and/or may in any way be asserted on behalf of, and in any way related to or for the benefit of Tynslee Fields against Defendants Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, only and Petitioners claims against the remaining Defendants are in no way affected by this release.

Lauren Murphy

Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields

Dated: 2/24, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	C.A. No.: 2013-CP-23-04186
Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields	)	VERIFICATION
Plaintiff,	)	
vs.	)	
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,	)	
Defendants.	)	

PERSONALLY appeared before me, Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, who being duly sworn, deposes and says: That she is the Petitioner in the foregoing Petition and that she has read the same and the matters as stated therein are true to the best of her knowledge, except for such matters and things as may be set forth therein on information and belief, and those she believes to be true.

Lauren Murphy

Lauren Murphy individually and as Personal Representative of the Estate of Tynslee Fields

SWORN to before me this 24

day of February, 2014

My Commission Expires: 8/1/16

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields,	)	C.A. No. 2013-CP-23-04186
Plaintiff,	)	ORDER FOR APPROVAL OF SETTLEMENT AS TO DEFENDANTS MERCY OBSTEGRICS & GYNECOLOGY, P.A., RAGESH PANDYA, M.D. ONLY
-vs-	)	
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,	)	
Defendants.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 FEB 24 AM 11 24

UPON READING the annexed Petition of Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, and it appearing that Lauren Murphy deems the offer with the Defendants acceptable, advantageous, and to the best interest of the Estate and the beneficiaries and

IT FURTHER APPEARING in the discretion of this Court that such settlement is proper and in the best interest of the Estate, it is

ORDERED, ADJUDGED and DECREED that Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, is hereby authorized to consummate the settlement referred to in the Petition and to execute and deliver to the Defendants an appropriate Release terminating, releasing, and ending all claims and actions asserted or brought under or by virtue of any Federal or South Carolina Statute or by common law in any way arising out of the incident against the Defendants Mercy Obstetrics & Gynecology, PA, Ragesh Pandya only, including their officers, directors, employees, physicians, agents, servants, attorneys, partners and representatives, and all parent, subsidiaries, and related corporations and any of the insured predecessors and successor corporations or entities, and their attorneys, heirs, assigns, executors, administrators, successors, subsidiaries, affiliated companies, parent companies, insiders, and any other indemnitors, including their insured entities. This

copy to Hoodchase & [illegible] copies

EXHIBIT B

in no way affects the rights of Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields to proceed against the remaining Defendants in this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the attorneys fees and costs itemized in the Petition filed herewith are approved by the Court, and Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, is hereby authorized and required to pay such fees and costs as well as any related medical, federal, and/or state liens, including but not limited to Medicare and/or Medicaid, out of the settlement proceeds, with any balance of said proceeds to be paid in accordance with the law.

AND IT IS SO ORDERED this the 24 day of Feb., 2014.

Presiding Judge, Thirteenth Judicial Circuit

Pickens, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	Case No.: 2013-CP-23-04186
Lauren Murphy, individually, and as Personal Representative of the Estate Of Tynslee Fields,	)	
Plaintiffs,	)	
vs.	)	**AFFIDAVIT OF MARK COLLINS**
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,	)	
Defendants.	)	

PERSONALLY APPEARED BEFORE ME the undersigned, who first being duly sworn, states as follows.

My name is Mark Collins. I am the movant in the above referenced matter. I am making this affidavit upon my information and belief and in support of my MOTION TO COMPEL and in opposition to Lauren Murphy's RETURN and MOTION seeking to deny me any of the proceeds derived from the settlement of the survival and wrongful death actions.

Lauren Murphy and I were involved in a relationship in the Fall of 2011. We dated for only a few months. During the course of our relationship, Lauren became pregnant. Lauren told me that I was the father. She also told her friends and family that I was the father of the baby. I told Lauren that I wanted to be involved in the pregnancy and that I would always be an active father in our child's life. I can recall lying in bed with Lauren, discussing baby names. When the ultra-sound was scheduled to find out the baby's sex, I attended with Lauren.

Lauren and I had a difficult relationship, which she ended shortly after we learned she was pregnant. By January 2012, we were no longer dating and I began a relationship with my current fiancée, Lisa Fox-Davis. Even though Lauren and I were not involved in a romantic relationship with each other, I told Lauren I would not turn my back on her or our baby. I also explained to

EXHIBIT C

Lisa that Lauren was pregnant and that I was taking an active role in her pregnancy. I told both Lauren and Lisa that when the baby was born, I would be helping Lauren care for the baby. I intended to take an active role in our baby's life, including supporting our baby financially. As a result, if Lauren called me for any reason I would take her call. It did not matter if I was at dinner with Lisa or family or friends, I would answer the phone if it was Lauren. This caused some issues between me and Lisa, but I would not change my position.

During Lauren's pregnancy, I tried to remain in contact with Lauren. However, Lauren "blocked" my number so I could not call. Lauren and Jeremy reconciled and were dating each other again. Lauren told me that she believed Jeremy was the baby's father. When Lauren found out she was pregnant we discussed whether or not Jeremy could be the father. Lauren told me that she did not think Jeremy was the father because he had been diagnosed with testicular cancer in the past. However, after I started dating Lisa, Lauren started insisting Jeremy was the father. She prohibited me from attending any more doctor's appointments.

Lauren did not tell me when she went into labor. Angela King ("Angie"), the mother of my children, called and told me that Lauren was at the hospital. When I learned that Lauren was at the hospital I was torn about whether or not to go. Lauren had not called and asked me to attend the birth and I had no way of calling her because she had "blocked" my number. I did not go to the hospital because I did not want an altercation with Lauren's family or Jeremy Fields.

However, on June 12, 2102, Angie called me again. When Angie called she started telling me how sorry she was to hear that my baby had died during the delivery. Angie had read posts on Facebook about the baby's death. When Angie told me the baby had died I felt like someone had punched me in the stomach. I couldn't stop crying. I had no idea that my baby had died during the delivery. My heart was broken and I didn't know what to do. When Lisa called me I asked her to immediately come home. We (Lisa and I) discussed whether or not I should go to the hospital to see Lauren. However, ultimately I decided not to go that night. Lauren had been through enough and I did not want to add to her pain.

When I did not hear from Lauren, I asked Lisa if I could use her phone to call Lauren so I could find out what had happened during the delivery. Lauren answered the phone, but said she couldn't talk to me. When Lauren called me back she put me on speaker phone and told me Jeremy was listening to our conversation. Lauren told me that the baby was Jeremy's and that I needed to respect their privacy and not cause them anymore pain. She told me not to come to the funeral

and to leave them alone. When I saw the obituary in the newspaper, I saw that Lauren listed Jeremy as the baby's father and had given the baby Jeremy's surname. I was upset, but there was nothing I could do. Lauren was continuing to exclude me from anything having to do with our child.

Approximately two weeks after our baby died, my sister called and told me that Lauren had come to see her and had given her pictures of the baby. My sister told me that Lauren had admitted that she had lied to me when she told me I was not the baby's father and she was sorry she had excluded me from her pregnancy and when the baby had died. Lauren wanted me to call her so we could talk.

When I talked to Lauren she told me that her mother had persuaded her to name Jeremy as the baby's father. Lauren claimed that she had been taking a lot of pain medication and wasn't in her right mind when she told me not to come to the funeral. I was upset, but there was nothing I could do. Since Lauren had named Jeremy as the father, we agreed that I would take a DNA test to verify that I was actually the baby's father. I insisted on paying for half the test.

I took the DNA test, which verified that I was the baby's father. After the DNA test results were received, I am informed and believe that Angie told the Field's family that Jeremy was not the baby's father. Lauren had not told Jeremy about the test results.

I am informed and believe Jeremy had tattooed the baby's name on his forearm. Later, after Jeremy had found out about the DNA test results, he covered the tattoo. Jeremy eventually posted the "before" and "after" of the tattoos on Facebook. This upset Lauren and she posted a comment to Jeremy on Facebook. The comment, which I have attached hereto as Exhibit A, said: "you held my daughter in your arms felt her inside me; I could have given those moments to someone who cherished them...." Lauren was talking about me. Throughout Lauren's pregnancy I had made it clear to Lauren that I was there for her and our unborn child. However, Lauren made the choice to exclude me.

SWORN TO BEFORE ME
THIS 25th DAY OF SEPTEMBER, 2014.

Elizabeth A. Bramlett
NOTARY FOR STATE OF SOUTH CAROLINA
MY ~~COMMISSION EXPIRES:~~ 3/4/24

ELIZABETH A. BRAMLETT
Notary Public, South Carolina
My Commission Expires
March 04, 2024

Mark Collins
Mark Collins

EXHIBIT A

Lauren Murphy
February 27, 2013

You can't change someone or there opinions, learned that the hard way;time to let go and let god; i've over come to much to be brought back down again, no matter what this smile will be on my face,i have to keep pushing through & fighting for justice for my angel; even if i do it completely alone it will be done;

Like · Comment · Share 45

Lauren Murphy
February 27, 2013

Woooow guess you proved again what a selfish individual you are; smh you really got tynslees name covered up??! Your pathetic; you held my daughter in your arms felt her inside me; i could have given those moments to someone who cherished them, your sorry!! & you wonder why i hate you sooooo much!!! I claimed your daughter and would have given and still will give my life for her!! But you on the other hand can rot in hell for this hateful ass shit; stop trying to contact me on tynslee's page and stop texting my phone; your dead to me!!!

Like · Comment · Share 79 48

More posts from February 24 to 27

Lauren Murphy
February 24, 2013

Kenzie ; lol

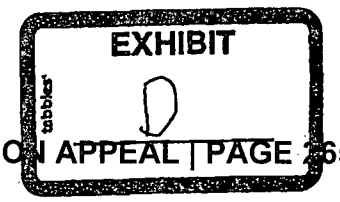
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	Case No.: 2013-CP-23-04186
Lauren Murphy, individually, and as Personal Representative of the Estate Of Tynslee Fields,	)	
Plaintiffs,	)	
vs.	)	**AFFIDAVIT OF CYNTHIA HOPKINS**
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,	)	
Defendants.	)	

PERSONALLY APPEARED BEFORE ME the undersigned, who first being duly sworn, states as follows.

My name is Cynthia Hopkins and I am Mark Collins' sister. I was made aware that in the Fall of 2011 Mark and Lauren Murphy were in a relationship with each other. During that time, Lauren became pregnant and she told Mark that he was the baby's father. However, after Lauren and Mark ended their relationship, Lauren lied to Mark and told him that Jeremy Fields was the baby's father.

On information and belief, the baby died on June 12, 2012. Approximately two weeks after the baby died, Lauren came to see me. Lauren brought me pictures of the baby. Lauren told me that she was sorry. She explained to me that she had lied to Mark when she told him he wasn't the baby's father. She told me that she was sorry that she had lied to him and excluded him during her pregnancy and when the baby died. She asked me to have Mark call her because she felt like they needed to get together to have closure.

Lauren gave me the pictures of the baby and I agreed to tell Mark what she had said to me.



C.H.

SWORN TO BEFORE ME
THIS 24th DAY OF SEPTEMBER, 2014.

Elizabeth A Bramlett
NOTARY FOR STATE OF SOUTH CAROLINA
MY ~~COMMISSION EXPIRES~~ 3/4/24

ELIZABETH A. BRAMLETT
Notary Public, South Carolina
My Commission Expires
March 04, 2024

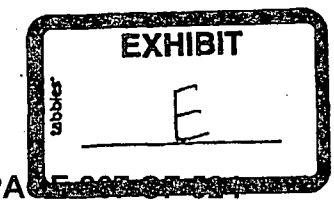
Cynthia Hopkins
Cynthia Hopkins

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	Case No.: 2013-CP-23-04186
Lauren Murphy, individually, and as Personal Representative of the Estate Of Tynslee Fields,	)	
Plaintiffs,	)	
vs.	)	
	)	AFFIDAVIT OF ANGELA KING
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,	)	
Defendants.	)	

PERSONALLY APPEARED BEFORE ME the undersigned, who first being duly sworn, states as follows.

My name is Angela King. Mark Collins and I were previously in a relationship with one another. We have two children together, who are now 12 and 13 years old. Although we were not able to reconcile our relationship, Mark has always been a devoted and loving father to his children. Since their birth, Mark has taken an active role in their lives and he continues to do so to this day. He supports them both financially and emotionally. Regardless of any difficulties Mark and I may have experienced, Mark has always insisted on being a part of their lives. I know Mark to be a person and father who loves and takes responsibility for his children.

In 2011 Mark told me that he and Lauren Murphy were in a relationship with each other and that she was pregnant with his child. I am acquainted with Lauren Murphy and her mother. I know them both personally. Lauren's mother told me that she did not approve of Lauren's and Mark's relationship because of their age difference. After Lauren was pregnant with Mark's baby, Lauren's mother told me that if Lauren and Mark continued in a relationship with each other she would no longer financially support Lauren.



On information and belief, as a result of the pressure that Lauren's family was placing on her to end her relationship with Mark, she ended the relationship and reconciled with her ex-boyfriend, Jeremy Fields. I am informed and believe that Mark tried to stay in contact with Lauren throughout her pregnancy, but Lauren was now with Jeremy. Thus, Lauren had Jeremy participate in her pregnancy. I am also acquainted with the Fields' family.

When Lauren went into the hospital to have the baby, a mutual friend called and told me that Lauren was in labor. I called Mark to let him know what I had been told. When I spoke to Mark he was genuinely surprised to learn that Lauren was in labor. I am informed and believe that Lauren had not told Mark that she was going into labor or that she was at the hospital.

I am informed and believe that Lauren had the baby on June 12, 2012. Later that same day or the following day, I saw that several of Lauren's friends had posted on Facebook their condolences to Lauren because the baby, named Tynslee Elizabeth Fields, had died. I immediately called Mark to tell him I was sorry. Mark was shocked and had no idea that their baby had died or that Lauren had given the baby Jeremy Field's name. Mark was genuinely upset. I have known Mark for a long time and I could tell he was heartbroken. Mark told me he wanted to attend the funeral, but Lauren and her family told him not to come.

I am informed and believe that Lauren named her boyfriend, Jeremy Fields, as the father of the baby on the death certificate. I was informed that after the baby's death, Mark took a DNA test to prove that he was the father. However, even after the results of the DNA test were received, Lauren lied to Jeremy and continued to allow him to believe he was the baby's father. I told Jeremy's sister-in-law that the DNA test proved that Mark was the baby's father. She was shocked and told me they had no idea. I felt like I had to tell someone in the Field's family about the DNA test results because I felt badly for Jeremy. I did not believe it was fair for Lauren to continue to let Jeremy believe that he was the baby's father. I am informed and believe that even though Lauren knew that Mark was the baby's father, she did not tell Jeremy and he tattooed Tynslee's name on his arm.

SWORN TO BEFORE ME
THIS 8th DAY OF SEPTEMBER, 2014.

NOTARY FOR STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES: 3/4/2024

LANTZ K. STOLTZFUS
Notary Public, South Carolina
My Commission Expires
March 04, 2024

ANGELA KING

1 just made a note. You mentioned Medicaid.
2 Are you a Medicaid beneficiary?
3 A. I was, when I was pregnant. I had
4 Medicaid health insurance.
5 Q. You didn't have coverage through
6 Walmart?
7 A. My Blue Cross Blue Shield, I would have
8 had to have paid, like, $300 every visit that I
9 went to, based on what estimates I was given
10 through the first OB-GYN that I had actually seen
11 to confirm my pregnancy.
12 Q. And so did -- is it your understanding
13 that Medicaid paid for your bills in the hospital?
14 A. For the most part, yeah.
15 Q. Has Medicaid, since, sent you a letter
16 or told you that you owe them any money as a result
17 of the --
18 A. Not that I can remember, right now.
19 Q. All right. I want to take one minute.
20 (A recess transpired.)
21 MR. WILSON: I don't have any more
22 questions for you. I thank you for your time.
23 (The deposition concluded at 1:19 p.m.)
24
25

EXHIBIT
F

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No.: 2013-CP-23-04186
	)	
Lauren Murphy, individually, and as Personal Representative of the Estate Of Tynslee Fields,	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,	)	**CERTIFICATE OF SERVICE**
Defendants.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 SEP 26 PM 3 49

I am a citizen of the United States. My business address is 1204-A East Washington Street, Greenville, SC 29601. I am employed in the City and County of Greenville where this mailing occurs; I am over the age of eighteen years and not a party to the within cause. I served a true copy of the:

Interested Party Mark Collins'
Memorandum In Support Of Motion To Compel Disbursement
And Response To Motion To Deny Proceeds

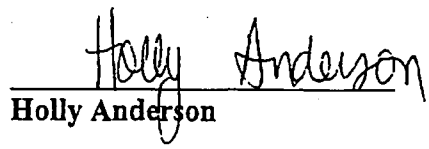
in this matter on the following person(s) on the date set forth below, **FAX & U.S. Mail**, in a sealed envelope, postage pre-paid thereon and addressed to:

Charles Marchbanks
1225 South Church Street
Greenville, SC 29605
Via Facsimile to (864) 552-1607
Attorney for Individual and Personal Representative Lauren Murphy

A. Stuart Hudson, Esq.
HUGHEY LAW FIRM, LLC
P.O. Box 348
Mount Pleasant, SC 29465-0348
Via Facsimile to (888) 884-8311
Attorney for Plaintiffs

Ashby W. Davis, Steven A. Snyder, David L. Williford
DAVIS & SNYDER, P.A.
5 Hawthorne Park Court
Greenville, SC 29615
Via Facsimile at (864) 335-3505
Attorneys for Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc., d/b/a St. Francis Eastside, Upstate OB-GYN, PA and Stephanie Ann Berlet-Dach, D.O.

I certify or declare under penalty of perjury that the foregoing is true and correct. Executed on September __, 2014, in Greenville, South Carolina.



Holly Anderson

PILLSBURY & READ, PA
1204-A East Washington Street
Greenville, SC 29601
Telephone: (864) 241-9828
Facsimile: (864) 241-9818

FILED

NOV 18 2014

GREENVILLE COUNTY PROBATE COURT

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
COUNTY OF GREENVILLE	)	**CASE NO.: 2012-ES-23-01718**
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.	)	**NOTICE OF MOTION AND MOTION TO DENY MARK COLLINS WRONGFUL DEATH AND SURVIVAL SETTLEMENT PROCEEDS**

YOU WILL PLEASE TAKE NOTICE that the undersigned, as counsel for Movant Lauren Murphy, will move before the Presiding Judge for the Probate Court of Greenville within ten (10) days hereof, or as soon hereafter as the matter may be heard, for the relief requested herein.

Movant Mother Lauren Murphy, [hereinafter "Ms. Murphy"] an interested party having a real, material, and substantial interest in the above-referenced litigation as a statutory beneficiary of the Estate of Tynslee Fields, by and through her undersigned counsel, respectfully moves this Court to enter an order denying Mark Collins [hereinafter "Collins"] disbursement of any funds stemming from the partial settlement of Case Number 2013-CP-23-04186 as were awarded generally by the Honorable Letitia H. Verdin.

This Motion is based upon the following:

1. Ms. Murphy is a resident of the State of South Carolina, County of Greenville.

2. Respondent Collins is a resident of the State of South Carolina, County of Greenville.

3. Ms. Murphy is the Mother of decedent Tynslee Elizabeth Fields [hereinafter "Tynslee"] and is one of only two statutory beneficiaries pursuant to S.C. Code of Laws 15-51-20 (1976 as amended).

4. Respondent Collins is the other of the two statutory beneficiaries of Decedent pursuant to Section 15-51-20 (1976 as amended).

5. Decedent's Estate is presently being probated in the Probate Court of the County of Greenville, State of South Carolina.

6. Ms. Murphy, as Personal Representative of Tynslee's Estate, brought Wrongful Death and Survival claims against Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10.

7. On February 24, 2014, an Order for Approval of Settlement of the above Wrongful Death and Survival actions was approved by the Court of Common Pleas as to Defendants Mercy Obstetrics & Gynecology, PA, Ragesh Pandya only (attached hereto and incorporated herein as Movant's Exhibit "A").

8. The settlement was for $975,000.00, of which $970,000.00 was allocated to the Wrongful Death Action and $5,000.00 to the Survival Action (see Petition for Settlement Approval which is attached hereto and incorporated herein as Exhibit "B").

9. On July 2, 2014, Ms. Murphy filed a Petition with this Court seeking to deny Respondent Collins any proceeds from the above settlement (attached hereto and incorporated herein as Movant's Exhibit "C").

10. By letter dated July 15, 2014, this Court referred Ms. Murphy's claim to the Court

of Common Pleas because the underlying case remains active in that jurisdiction (attached hereto and incorporated herein as Movant's Exhibit "D").

11. On August 6, 2014, Collins filed a Motion to Compel in the Court of Common Pleas arguing Ms. Murphy should distribute 50% of the settlement proceeds to him (attached hereto and incorporated herein as Movant's Exhibit "E").

12. On August 15, 2014, Ms. Murphy filed a Return to Collins' Motion to Compel seeking the dismissal of Collins' Motion and a Motion to Deny Mark Collins Any and All Proceeds Derived from Settlement of Survival and Wrongful Death Actions stemming from Tynslee's death (attached hereto and incorporated herein as Movant's Exhibit "F").

13. Collins filed a Memorandum in Support of his Motion to Compel on September 26, 2014, and it is attached hereto and incorporated herein as Movant's Exhibit "G".

14. Ms. Murphy's September 27, 2014 Memorandum in Support of her Motion to Deny Mark Collins Any and All Proceeds Derived from Settlement of Survival and Wrongful Death Actions is also attached hereto and incorporated herein as Movant's Exhibit "H".

15. Now, Ms. Murphy returns to Probate Court with the instant Motion pursuant to S.C. Code of Laws 15-51-40 and the Order of Judge Steven H. John dated November 5, 2014 (attached hereto and incorporated herein as Movant's Exhibit "I").

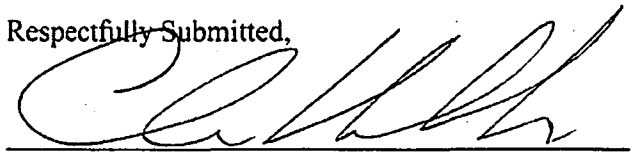
16. The factual and legal grounds for denying Collins the statutory benefit are extensively addressed in documents attached hereto and incorporated herein.

17. Cursorily, Ms. Murphy seeks to exclude Collins from benefitting from Tynslee's death because Collins provided no support for Ms. Murphy during her pregnancy; he pursued no relationship with the minor child; he did nothing to grasp the opportunity to assert himself as the father of this child; and no evidence shows Collins suffered from the death of Tynslee, whether it

be pecuniary loss, mental shock and suffering, wounded feelings, grief, sorrow, or loss of companionship. The presumption in the law that a parent suffers loss upon a child's death states the strength of such presumption is a function of the closeness of the relationship, and Collins had no relationship with Tynslee. Based upon the facts at bar, had Tynslee survived, Ms. Murphy could have offered her for adoption without Collins' relinquishment or consent because, by his own omissions, he neglected Ms. Murphy and Tynslee to the extent that case law supports the deduction that he has waived his Constitutional Right to establishing a relationship with Tynslee. Given that his evasion of Tynslee and Ms. Murphy would divest him of a well-established Constitutional Right, it most certainly has divested him of any right to proceeds from Tynslee's Wrongful Death and Survival claims.

WHEREFORE, Petitioner prays for this Court to inquire into the matters set forth hereinabove and deny any benefits to Respondent, together with such other and further relief as to the Court seems reasonable and proper.

Respectfully Submitted,



Charles W. Marchbanks, Jr.
The Marchbanks Law Firm, LLC
Attorney for Petitioner
S.C. Bar No.: 76935
1225 South Church Street
Greenville, South Carolina 29605
(864) 552-1606 Telephone
(864) 552-1607 Fax
charles.marchbanks@marchbankslawfirm.com

Greenville, South Carolina
November 18, 2914

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields, Plaintiffs, vs. Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10, Defendants.	)	IN THE COURT OF COMMON PLEAS Case No. 2013-CP-23-04186 **PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION TO DENY MARK COLLINS ANY AND ALL PROCEEDS DERIVED FROM SETTLEMENT OF SURVIVAL AND WRONGFUL DEATH ACTIONS**

FILED-CLERK OF COURT
GREENVILLE CO S.C.
PAUL D. WICKENSHIMER
2014 SEP 27 AM 11 17

INTRODUCTION

Movant Lauren Murphy, [hereinafter "Ms. Murphy"] is the mother of Tynslee Fields, [hereinafter "Tynslee"] deceased. Tynslee was born June 12, 2012. Her neck was broken during delivery. She died the same day she was born.

Tynslee's death drove Ms. Murphy to bring the above-captioned action and, while coping with the Post-Traumatic Stress Disorder and clinical anxieties she suffered as a result of this tragedy, Ms. Murphy sacrificed time, energy, and emotion to bring it to a partial resolution. She also pushed through her grief to advocate for a change in delivery procedures that would decrease, if not eliminate, the cause of Tynslee's death.

As a result of Ms. Murphy's efforts on Tynslee's behalf, the partial settlement amounted to $975,000.00. It only covers Defendants Mercy Obstetrics & Gynecology, P.A. and Ragesh Pandya, M.D. This settlement was approved by the Honorable Letitia H. Verdin on February 24, 2014. (*attached hereto and incorporated herein as Exhibit "A" pages 1-2 of 6*).

Mark Collins [hereinafter "Collins"] is the biological father of Tynslee. After abandoning Ms. Murphy during her pregnancy, Collins now asks this court to give him 50% of the proceeds that Ms. Murphy has obtained by advocating on behalf of her deceased daughter.

FACTS

Sometime in July 2010, Ms. Murphy met Collins while working at Wal-Mart. Collins (37yo) was much older than Ms. Murphy (22yo), but despite the age difference, the two became more than coworkers sometime in August of 2011. On October 4, 2011, soon after becoming physically intimate with Collins, Ms. Murphy learned she was pregnant with an estimated date of conception being September 16, 2011. Although Ms. Murphy was involved with a young man named Jeremy Fields prior to becoming intimate with Collins, she ended her relationship with Fields in August of 2011 and given the time of conception, knew Collins was the father. Ms. Murphy notified Collins of her pregnancy immediately.

Initially, Ms. Murphy believed Collins was excited about their relationship and the pregnancy. However, in October 2011, she learned Collins was still being intimate with his former girlfriend, Angela King.

Collins had not initiated any communication or interaction with Ms. Murphy since the beginning of October 2011, and because Jeremy Fields continued to pursue her since their breakup in August, Ms. Murphy reconciled with Mr. Fields in November 2011. Around that time, Ms. Murphy changed cellular telephone carriers and notified Collins of her new contact information.

Ms. Murphy celebrated the Thanksgiving holiday at her father's home with family and friends. Collins did not participate. In fact, as an aside, Ms. Murphy's father has never met Collins.

On November 28, 2011, Ms. Murphy had her first pre-natal visit with her OBGYN, Dr. Pandya. The pregnancy was 12 weeks along. Given Collins' apparent lack of interest and failure

to initiate contact with her, Ms. Murphy chose to list Jeremy Fields as the father because their relationship was getting stronger at the time and Ms. Murphy believed her future was with him.

Collins did not attend Ms. Murphy' second and third OBGYN appointments on November 30, 2011 and December 5, 2011, but did go to a December ultrasound to learn the sex of the baby.

Over the Christmas Holiday, Ms. Murphy spent time with her mother, father, and friends at different points of the holiday. Collins did not participate in any of the Murphy family holiday celebrations and failed to attend a December 27, 2011 OBGYN appointment. He did, however, give Ms. Murphy a necklace with the word "Mom" inscribed as a Christmas present.

Ms. Murphy initiated contact with Collins on New Year's Eve and drove to his house. After this meeting, Collins failed to attend OBGYN appointments on January 2, 2012; January 6, 2012; and January 25, 2012.

In February of 2012, Collins told Ms. Murphy that he planned on buying a comforter set for the baby's nursery with his tax refund money. Collins never followed through, and Ms. Murphy never heard about this again.

From that point forward, Collins failed to attend OBGYN appointments on February 6, 2012; February 22, 2012: March 14, 2012; March 19, 2012; March 28, 2012; April 11, 2012; April 23, 2012; April 30, 2012; May 8, 2012; May 15, 2012; May 22, 2012; May 23, 2012; May 29, 2012; and June 5, 2012. Through this time, Ms. Murphy received no communication from Collins.

June 11, 2012 was Ms. Murphy's due date, and she entered the hospital to be induced on June 12, 2012 at 7:23 A.M. Ms. Murphy did not personally notify Collins as he had shown no material interest in the pregnancy. Ms. Murphy was driven to the hospital by Jeremy Fields. Her mother and father came, along with friend Pamela Raspberry and Jeremy Fields' parents.

Although Collins later admitted he knew Ms. Murphy was in the hospital via Facebook postings, he did not call or come.

Because Collins did not come to the hospital, he was unaware that within three hours of admission, Ms. Murphy was thrashing around in bed with severe pain but did not begin to push until 4:20 P.M. Collins was not present when his daughter Tynslee was born at 4:43 P.M. He was not there when, at 5:05 P.M., Tynslee was transferred to the Special Care Nursery.

Not being present, Collins was oblivious that, for the next 30 or so minutes, Tynslee underwent CPR, had an umbilical venous catheter inserted, was given epinephrine, and generally struggled for her life due to her neck being broken during delivery.

Collins failed to be present when, at 6:09 P.M. on June 12, 2012, doctors told Ms. Murphy Tynslee did not survive. Collins failed to be present when, at 6:42 P.M., Ms. Murphy was taken in a wheelchair to be with Tynslee's body. Unable to eat, Ms. Murphy stayed with her newborn until 9:00 P.M. that night.

Collins failed to be there shortly after 10:00 P.M. when the hospital pastor gave Ms. Murphy a perinatal bereavement packet including a teddy bear, perinatal bereavement support brochures and support group information, pictures of Tynslee, a lock of Tynslee's hair, Tynslee's foot prints, and molds of Tynslee's feet. Collins was neither present as Dr. McKay and the Coroner talked with family, nor when the family told Mr. Field's 6-year-old daughter. Collins was not there when Tynslee was baptized and a sea shell was placed in a bereavement box for her.

Collins was aware, however, that something occurred. He called Ms. Murphy on June 13, 2012 to ask what happened, and despite Ms. Murphy informing Collins as to the events of Tynslee's birth, death, and plans for a funeral, Collins failed to attend Tynslee's funeral on June

16, 2012. Based on Facebook postings, it appeared Collins chose to go to the lake with his family instead of attending. (*attached hereto and incorporated herein as Exhibit "A" page 3 of 6*).

Initially, Ms. Murphy did not know Tynslee's cause of death. Upon learning from the Coroner that Dr. Pandya broke the infant's neck during delivery, Ms. Murphy contacted Collins and arranged a meeting with him at the White Horse Road Jockey Lot to tell him what happened. Collins' response to the information was one focused on a monetary payoff by the Doctor.

Although Collins failed to provide support for Ms. Murphy and Tynslee throughout Ms. Murphy's pregnancy, birth, and Tynslee's death, Ms. Murphy still did not give up on Collins. In July 2012, she arranged to meet him at Gatti Town in Greenville to show him pictures of Tynslee to solidify that he was Tynslee's father. She even requested a DNA test to prove it. Ms. Murphy also hoped to enlist Collins' aid in seeking justice on Tynslee's behalf. He has done nothing.

Collins agreed to do a DNA test, and on the day he gave a sample, he arrived at the facility with his current girlfriend Lisa Fox-Davis and a friend of hers.

Later in July, the DNA results came in showing Collins as Tynslee's father. As soon as Murphy saw this she contacted Collins to meet him and share the DNA results. Collins, however, did not want to meet Ms. Murphy without Lisa Fox-Davis present. He did, eventually agree to meet Ms. Murphy at the Westside Park in Greenville.

Once at Westside Park, Ms. Murphy handed Collins the DNA results and, in response, Collins asked Ms. Murphy to provide him photographs she had of Tynslee. While they were still conversing, the friend of Lisa Fox-Davis who had appeared at the DNA testing facility drove up. Ms. Murphy asked Collins what the girl was doing and Collins said, "I guess Lisa doesn't trust me" and immediately got into his car. Murphy, sobbing and overcome with emotion, pleaded with Collins to stay and talk. Collins started his car and drove away, not saying a word.

Per his request, Ms. Murphy put a copy of all photographs and memorabilia of Tynslee into a memory box for Collins. As of this writing, Ms. Murphy still has this memorabilia. Despite telling Collins he could pick it up at any time, that she would bring it to Collins, or even meet Collins and Lisa Fox-Davis in a public place, Collins has made no effort to obtain them.

Ms. Murphy received no contact from Collins in August 2012 but did text him in September 2012 to invite him to a Memorial Walk in honor of Tynslee's memory. The walk occurred on October 21, 2012. Collins failed to attend, however, he did text Ms. Murphy soon thereafter. He was intoxicated. He asked her to come to his mother's house because he wanted to talk about Tynslee. She did, and on arrival, Collins asked her to take him to her grandmother's house which was Ms. Murphy's residence at the time. Once at Ms. Murphy's residence, Collins merely attempted to have sex with Ms. Murphy. She refused and took him home.

Apparently Collins admitted to at least a part of this to Lisa Fox-Davis, because the next night, Ms. Fox-Davis telephoned Ms. Murphy; cussed at her; put Collins on the telephone; and, while Ms. Fox-Davis remained in the background, Collins told Ms. Murphy he was never going to speak to her again.

Collins did, however, reappear at a December 3, 2012 Probate Court hearing identifying Ms. Murphy as Personal Representative ["PR"] of Tynslee's Estate. At the hearing, Collins consented to Ms. Murphy being PR, and only "request[ed] that the Estate remain open until after the disposition of the civil lawsuit." (*attached hereto and incorporated herein as Exhibit "A" pages 4-5 of 6*).

The stress of losing Tynslee affected Ms. Murphy such that she sought psychotherapy on December 21, 2012 with Crystal Ervin of Cognitive Care, LLC. Clinician Ervin's initial diagnosis of Ms. Murphy was Acute Stress Disorder and a Parent-Child Relational Problem.

Throughout all of 2013, Ms. Murphy and Collins had little to no contact. When they did, it was solely initiated by Ms. Murphy.

On December 6, 2013, Collins posted on Facebook stating, "waat i want for christmas my daddy" (*sic*). (*attached hereto and incorporated herein as Exhibit "A" page 6 of 6)*. Collins' father passed away in April 2011. His public pining for the relationship with his father combined with his entire omission of any postings regarding Tynslee clearly show the nonexistent nature of Collins' relationship with Tynslee. The last time Ms. Murphy directly communicated with Collins was December 12, 2013.

Ms. Murphy filed the above-captioned wrongful death/survival claim on August 2, 2013 with no input, guidance, assistance, or communication from Collins.

A few months after filing, Ms. Murphy returned to Clinician Ervin who diagnosed her with Generalized Anxiety Disorder. And, after a January 20, 2014 session wherein Ms. Murphy expressed concerns with Collins' lack of interest in seeing any pictures of Tynslee, Clinician Ervin diagnosed Ms. Murphy with Post Traumatic Stress Disorder.

Throughout her grief and clinically documented psychopathy secondary to the loss of Tynslee, Ms. Murphy worked for a sense of justice for Tynslee through the instant case. On February 24, 2014, her work with Attorney Stuart Hudson resulted in a partial settlement totaling $975,000.00. Ms. Murphy has additionally contacted the medical board to file a complaint against Dr. Pandya, contacted state representatives and law makers to advocate for a law to protect other newborns, raised money for the March of Dimes in honor of Tynslee, organized a memorial event to honor Tynslee's 2nd birthday, and collected baby blankets to donate in her honor to the GHS NICU. Ms. Murphy is presently talking with the City of Greenville in hopes of arranging a donation of playground equipment to a City Park in Tynslee's memory.

Ms. Murphy provided Collins every opportunity to contribute to and participate in her pregnancy. Ms. Murphy provided Collins every opportunity to develop a relationship with his daughter Tynslee. Even so, Collins: failed to attend Doctor's appointments with Ms. Murphy during her pregnancy save one ultrasound; failed to accurately portray the nature of his on-going romantic relationship with Angela King while knowing Ms. Murphy was pregnant with his child; failed to participate in any Murphy family holidays during her pregnancy; failed, in fact, to have ever met Ms. Murphy's father; failed to purchase a comforter set for Tynslee's nursery as promised; failed to provide any monetary support throughout the pregnancy and birth; failed to initiate communication with Ms. Murphy throughout the pregnancy; failed to attend the birth of his daughter; failed to be present when his daughter died; failed to attend his daughter's funeral, opting instead to vacation at the lake; failed to provide any support or assistance with the instant case; failed to obtain any memorabilia related to his daughter although he superficially requested same; failed to attend a Memorial Walk in honor of Tynslee's memory; failed to assist in advocacy efforts performed by Ms. Murphy on his daughter's behalf; and failed to publicly express any grief stemming from the death of his daughter when openly expressing same for his deceased father.

Collins has again reappeared in Ms. Murphy's life. On August 6, 2014, he demanded 50% of the $975,000.00 awarded as a result of Tynslee's and Ms. Murphy's pain and suffering.

ISSUE

Does a father retain his parental right to wrongful death / survival proceeds resulting from the death of his child when the father provides no support to the mother or the child during pregnancy and the subsequent life of the child?

LAW

Damages recoverable in a wrongful death action include: "(1) Pecuniary loss, (2) mental shock and suffering, (3) wounded feelings, (4) grief and sorrow, (5) loss of companionship, and (6) deprivation of the use and comfort of the intestate's society, the loss of his experience, knowledge, and judgment in managing the affairs of himself and of his beneficiaries...." *Scott v. Porter*, 530 S.E.2d 389, 340 S.C. 158 (S.C. App. 2000).

Additionally, parents of a deceased minor are entitled to a presumption of nonpecuniary damages. *Id.* "It may often be assumed that grief and sorrow will be experienced at the loss of a loved one; however, the strength of such presumption is a function of the closeness of the relationship, and in some cases evidence may be necessary to support claims of loss." *Id.*

"Unlike actual damages in a wrongful death action, actual damages in a survival action are awarded for the benefit of the decedent's estate rather than for the family. Appropriate damages in survival actions include those for medical, surgical, and hospital bills, conscious pain, suffering, and mental distress of the deceased." *Scott v. Porter*, 530 S.E.2d 389, 340 S.C. 158 (S.C. App. 2000) (citing *Bennett v. Spartanburg Ry., Gas & Elec. Co.*, 97 S.C. 27, 81 S.E. 189 (1914); *Croft v. Hall*, 208 S.C. 187, 190, 37 S.E.2d 537, 538 (1946); *Gowan v. Thomas*, 237 S.C. 223, 225, 116 S.E.2d 761, 762 (1960); and *Croft*, 208 S.C. at 193, 37 S.E.2d at 539.

"[U]pon motion by either parent or any other party of potential interest based upon the decedent having died intestate, the probate court may deny or limit either or both parent's entitlement for a share of the proceeds if the court determines, by a preponderance of the evidence, that the parent or parents failed to reasonably provide support for the decedent as defined in Section 63-5-20 and did not otherwise provide for the needs of the decedent during his or her minority." S.C. Code of Laws § 15-51-40 (1976, as amended).

The individual failing to provide support, as defined in S.C. Code of Laws Section 63-5-20, is "Any able-bodied person capable of earning a livelihood who shall, without just cause or excuse, abandon or fail to provide reasonable support to... his or her minor... child dependent upon him or her..." S.C. Code of Laws §63-5-20(A) (1976, as amended).

Any right possessed by a parent to a benefit from a natural child ultimately rests upon a Constitutional foundation. Courts have well-established decisions regarding whether a father has the right to object to the adoption of his natural child when that father does not provide support for the mother during pregnancy.

"The relationship between an unwed father and his child is deserving of constitutional protection because the father possess an 'opportunity no other male possesses to develop a relationship with his offspring' when the child is born." *Roe v. Reeves*, 392 S.C. 143, 708 SE2d 778 (2011).

"However, this opportunity interest is constitutionally protected only to the extent that the biological father who claims protection wants to make the commitments and perform the responsibilities that give rise to a developed relationship, because it is only the combination of biology and custodial responsibility that the Constitution ultimately protects." *Id.*

"[P]arental rights do not spring full-blown from the biological connection between parent and child. They require relationships more enduring. Thus, an unwed father must demonstrate a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child before his interest in personal contact with his child acquires substantial constitutional protection... The mere existence of a biological link does not merit equivalent constitutional protection." *Lehr v. Robertson*, 463 U.S. 248, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983).

This concept is codified in South Carolina regarding a father's right to contest the adoption of his child in stating that a father's consent to adoption or relinquishment of parental rights for the purpose of adoption is required only if "the father paid a fair and reasonable sum, based on the father's financial ability, for the support of the child or **for the expenses incurred in connection with the mother's pregnancy or with the birth of the child, including, but not limited to, medical, hospital, and nursing expenses.**" S.C. Code of Laws §63-9-310(a)(5)(b) (1976 as amended) (emphasis added).

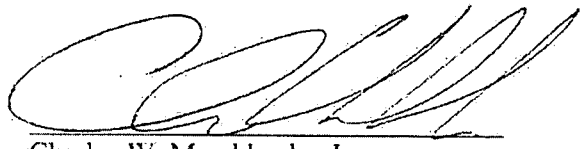
ANALYSIS AND CONCLUSION

In the case before the Court, Collins provided no support for Ms. Murphy whatsoever during her pregnancy. He pursued no relationship with the minor child. He did nothing to grasp the opportunity to assert himself as the father of this child. As such, he has effectively waived the right to any protection from this Court of his right to benefit from Tynslee be it emotional, relational, or monetary.

No evidence shows Collins suffered from the death of Tynslee, whether it be pecuniary loss, mental shock and suffering, wounded feelings, grief, sorrow, or loss of companionship. While it may be presumed a parent suffers loss upon a child's death, case law is clear that the strength of such presumption is a function of the closeness of the relationship. Collins had ***no*** relationship with Tynslee. Awarding Collins 50% of the proceeds from a $975,000.00, solely on the basis that he copulated with the Movant once thereby conceiving a child he neither supported nor knew, would unjustly enrich Collins and create an absurd result. The absurdity is further exacerbated by the fact that, had Tynslee survived, Ms. Murphy could well have offered her for adoption without Collins' relinquishment or consent because, by his own omissions, he waived that right. In the event an adoption had occurred and Tynslee passed after adoptions proceedings

concluded, Collins would have no right to any settlement proceeds, even if he objected. Thus, it stands to reason he has no basis in this case upon which he can object to Ms. Murphy retaining the proceeds stemming from the tragic loss of her child.

WHEREFORE, Plaintiff prays that this Court inquire into the matters set forth hereinabove, deny Collins' Motion to Compel, and deny any and all benefits of the partial settlement referenced herein to Collins, together with such other and further relief as the Court seems reasonable and proper.



Date: September 29, 2014
Greenville, SC

Charles W. Marchbanks, Jr.
S.C. Bar No.: 76935
Attorney for the Plaintiff
1225 South Church Street
Greenville, SC 29605
864-552-1606 Telephone
864-552-1607 Facsimile
Charles.Marchbanks@MarchbanksLawFirm.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	Case No. 2013-CP-23-04186
Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields,	)	
Plaintiffs,	)	**VERIFICATION**
vs.	)	
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,	)	
Defendants.	)	

Personally appeared before me, Lauren Murphy, the Plaintiff in the above-captioned matter, who, being duly sworn, deposes and on oath states:

1. That the Deponent has read the factual statement contained in pages 2 – 8 of the attached PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION TO DENY MARK COLLINS ANY AND ALL PROCEEDS DERIVED FROM SETTLEMENT OF SURVIVAL AND WRONGFUL DEATH ACTIONS;

2. That the aforesaid factual statement was prepared by Deponent's attorney, Charles W. Marchbanks, Jr. based upon information Deponent personally gave to Mr. Marchbanks;

3. That the information contained in the factual statement is true and correct based upon personal knowledge of this Deponent, except for any allegation based upon information and belief and, as to those, this Deponent verily believes the same to be true;

4. That Deponent has authorized Mr. Marchbanks to file the attached pleadings, to present same to the Court, and secure any necessary Orders thereon, and to secure service upon the adverse party of the pleadings as required.

Lauren Murphy

Lauren Murphy

SWORN to before me this the 26 day of September, 2014.

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 06/08/2020

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	
Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields,	C.A. No. 2013-CP-23-04186
Plaintiff,	ORDER FOR APPROVAL OF SETTLEMENT AS TO DEFENDANTS MERCY OBSTEGRICS & GYNECOLOGY, P.A., RAGESH PANDYA, M.D. ONLY
-vs-	
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,	
Defendants.	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 FEB 24 AM 11 21

UPON READING the annexed Petition of Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, and it appearing that Lauren Murphy deems the offer with the Defendants acceptable, advantageous, and to the best interest of the Estate and the beneficiaries and

IT FURTHER APPEARING in the discretion of this Court that such settlement is proper and in the best interest of the Estate, it is

ORDERED, ADJUDGED and DECREED that Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, is hereby authorized to consummate the settlement referred to in the Petition and to execute and deliver to the Defendants an appropriate Release terminating, releasing, and ending all claims and actions asserted or brought under or by virtue of any Federal or South Carolina Statute or by common law in any way arising out of the incident against the Defendants Mercy Obstetrics & Gynecology, PA, Ragesh Pandya only, including their officers, directors, employees, physicians, agents, servants, attorneys, partners and representatives, and all parent, subsidiaries, and related corporations and any of the insured predecessors and successor corporations or entities, and their attorneys, heirs, assigns, executors, administrators, successors, subsidiaries, affiliated companies, parent companies, insiders, and any other indemnitors, including their insured entities. This

copy to Hood law firm @ counter / will mail copies

in no way affects the rights of Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields to proceed against the remaining Defendants in this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the attorneys fees and costs itemized in the Petition filed herewith are approved by the Court, and Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, is hereby authorized and required to pay such fees and costs as well as any related medical, federal, and/or state liens, including but not limited to Medicare and/or Medicaid, out of the settlement proceeds, with any balance of said proceeds to be paid in accordance with the law.

AND IT IS SO ORDERED this the 24 day of Feb., 2014.

Presiding Judge, Thirteenth Judicial Circuit

Pickens, South Carolina

10/16/12

Mornin son ☺ i love you and have a great day at school !!!

1 Like · 1 Comment

Show more 9/7 - 10/16

Show more 6/17 - 9/7

Alex Collins

6/17/12

I'm going to the lake with my dad, my sister, my step mom, my step sister, and my step brother. :^)

1 Like · 1 Comment

Alex Collins shared **Butterfly Kisses & Wishes's photo.**

6/13/12

I think this is true

Butterfly Kisses & Wishes

6/7/12

lův bůttérflý kíśśéś & wíśhéś >>>
kímmý — with Donna H Gillespie and 42 others.

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF GREENVILLE	)	Case No.: 2012-ES-23-01718
Lauren Murphy	)	
	)	
Petitioner,	)	
	)	ORDER
Versus	)	
	)	
Tynslee Elizabeth Fields, Decedent, and her next of kin	)	
	)	
	)	
Respondents.	)	

FILED
JAN 3 0 2013
GREENVILLE COUNTY
PROBATE COURT

On December 3, 2012, the Court heard a motion from Lauren Murphy to be appointed as the Personal Representative of the Estate of Tynslee Elizabeth Fields. Present at the hearing were Lauren Murphy and her attorney, Stuart Hudson of the Hughey Law Firm, LLC, and Mark Collins, represented by Bradley Bennett of Salvini & Bennett, LLC. An additional party to the case, Jeremy Paul Fields, was not present; however, he had been properly served with the affidavit of service putting him on notice of the hearing. Mr. Fields is listed as a party due to initial confusion as to who was the father of Tynslee Elizabeth Fields; however, due to a subsequent DNA test, it was determined that Mark Collins was the father of the child, and therefore Mr. Fields is dismissed from this action. Additionally, the death certificate listing Jeremy Fields as the father shall be changed to indicate Mark Collins as the father of Tynslee Elizabeth Fields.

Mr. Collins does not contest the appointment of Lauren Murphy as the Personal Representative of the Estate; however, he only requests that the Estate remain open until after the disposition of the civil lawsuit. Mr. Collins has consented to a bond waiver and no monies in this matter are to be distributed to Ms. Murphy until a bond or a bond waiver is finalized.

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

#1

12 - 1718

1. Lauren Murphy be appointed as Personal Representative.
2. The South Carolina Department of Health amend the death certificate for Tynslee Elizabeth Fields to reflect that her father is Mark Collins.

IT IS SO ORDERED.

Edward M. Sauvain
Associate Probate Court Judge

January 30, 2013
Greenville, South Carolina

Ent

Like Comment Share

Mark Collins
12/5/13

Happy birthday beth and jay love and miss u guys

2 Likes · 1 Comment

Like Comment Share

Mark Collins
12/6/13

Waat i want for christmas my daddy

11 Likes · 2 Comments

Like Comment Share

Donna Johnson Spearman
11/26/13

Time to go work in the madness.... — with Mark Collins and 5 others.

12 Likes · 4 Comments

Like Comment Share

Kelle Gibson
11/12/13 Lexington, KY

Page 389

530 S.E.2d 389 (S.C.App. 2000)

340 S.C. 158

Lance SCOTT, deceased by and through his Personal Representative, Lynn SCOTT, Respondent,

v.

Jan PORTER, M.D., Richard Bannon, M.D. and Foothills Family Medicine Center, P.A., of whom Jan Porter, M.D. and Foothills Family Medicine Center, P.A. are, Appellants.

No. 3149.

Court of Appeals of South Carolina

April 10, 2000.

Heard Feb. 10, 2000.

Rehearing Denied May 27, 2000

[340 S.C. 159].

Page 390

[Copyrighted Material Omitted]

Page 391

[340 S.C. 162] Harold W. Jacobs, of Nexsen, Pruet, Jacobs & Pollard, of Columbia; Ashby W. Davis and Steven A. Snyder, both of Donnan, Morton, Davis & Snyder, of Greenville, for appellants.

Michael E. Spears, of Spears & Howell; Gerald G. Wilson; and Rodman C. Tullis, all of Spartanburg, for respondent.

HEARN, Chief Judge:

Jan Porter, M.D. (Porter) and Foothills Family Medicine Center, P.A. appeal from a jury verdict finding Porter negligent in the death of her patient, 19-month old Lance Scott. The jury awarded Lynn Scott, Lance's mother and Personal Representative, six hundred thousand dollars in actual damages and 1.5 million dollars in punitive damages in the survival action, and 1.5 million dollars in actual damages and two million in punitive damages in the wrongful death action. Porter raises two issues on appeal: 1) that the verdict should be reversed because of an alleged inflammatory closing argument; and 2) that the damages awarded were the result of passion, partiality, and prejudice. We affirm.

FACTS

In December 1992, Lance Scott, then fourteen months old, experienced two febrile seizures. [1] A CAT scan and EEG performed on Lance revealed no abnormality. After being discharged, Lynn took Lance to a follow-up appointment with a neurologist. The neurologist examined Lance and concluded he was fine. Lance had no significant medical problems until June of 1993.

[340 S.C. 163] On the morning of June 2, 1993, Lance again had a seizure. Lynn accompanied Lance to Mary Black Hospital in an ambulance. At the hospital, Lance became nauseated and threw up several times in the x-ray room. Lab tests revealed Lance's serum sodium level was in the low range. In contrast to the December seizures, these were not the result of a fever. Finding no cause for the seizures, the hospital released Lance and arranged for him to see Dr. Porter in her office that afternoon.

At Dr. Porter's office, Lance went into another seizure. When the seizure did not appear to be subsiding on its own, Porter administered medication to stop it and decided to admit Lance to Spartanburg Regional Hospital.

At Spartanburg Regional Lance was given an IV of one quarter normal saline at 10 ccs an hour per Porter's orders. Spartanburg Regional repeated the same lab work performed earlier in the day at Mary Black Hospital. These tests also revealed Lance's sodium level was low. However, Porter did not believe Lance's low sodium levels were clinically significant.

In the IV room at Spartanburg Regional, Lance had another seizure. The hospital called Porter who approved an anti-seizure drug to be added to Lance's IV. Porter then increased Lance's IV fluid rate to 40 ccs an hour. On its own initiative, the nursing staff at the hospital placed Lance on an apnea bradycardia (AB) monitor which would alert the staff if Lance stopped breathing during a seizure.

Lance did not have any more seizures after approximately 7:00 p.m. However, Lance whined and became restless, pulling at his monitors, sheets and bed. Toward morning Lance was combative and unconsolable. He fought Lynn when she tried to hold him.

Page 392

At some point Lance stated "Mommy, I no feel good. Hold me."

Lynn summoned the nurses and told them she was worried about Lance's behavior and thought he might be on the verge of having another seizure. The nurse assured her Lance's behavior was normal. When Porter arrived to

see Lance around 8:30 a.m., Lance did not seem to recognize his mother. Lynn asked if the medicine could be causing Lance's uncharacteristic combative behavior. Porter indicated it could and

[340 S.C. 164] informed Lynn that Lance would be sent down for a CAT scan sometime that morning and they would know more after that. A student nurse and transport technician later arrived and took Lance for an EEG and CAT scan around 9:15 a.m. Before Lance left the room, the nurses disconnected his AB monitor.

While in the CAT scanner, Lance stopped breathing. Emergency room pediatrician Dr. Lucy Foxworth ran to the CAT scanner, intubated Lance, and put him on a ventilator. Foxworth ordered an arterial blood gas test. When it came back, it also listed Lance's sodium level as unusually low. Foxworth ordered that the sodium test be repeated to check for an error. When the test came back the second time, it showed Lance's sodium level as 120. Foxworth ordered a three percent saline solution for Lance and transferred him to Greenville Memorial's pediatric intensive care unit. By 3:15 that day, Lance's brain had swollen to the point it was too badly damaged for him to survive. Lance remained in a coma until his death on June 18. This lawsuit ensued.

Plaintiff's expert, Dr. Allen Arieff, a specialist in hyponatremia, testifed Lance died as a result of his already low blood sodium level being further diluted by the quarter normal sodium IV solution. This resulted in water passing into his brain causing it to swell. The swelling brain compressed the nerves responsible for breathing. Another expert witness offered by the plaintiff, Dr. Duaine Murphee, concurred.

Arieff stated Porter breached the standard of care by failing to monitor Lance's blood sodium level after placing him on the dilute IV fluid. He further testified Lance could have been saved by simply turning off the IV before he stopped breathing.

The cases were submitted to the jury. [2] The jury found Porter negligent and awarded actual and punitive damages against her and Foothills Family Medicine Center, P.A. in both cases. After the verdicts, Porter moved for a new trial absolute on the ground that the verdict was grossly excessive. The court denied the motion. This appeal results

[340 S.C. 165].

LAW

I. CLOSING ARGUMENT

Porter first argues the verdict should be reversed because of an alleged inflammatory closing argument which invited jurors to send a message which would put Spartanburg on the map and which "heaped abuse and scorn on defendant and her expert witnesses." Specifically, Porter refers to the following portions of the closing argument as being abusive:

Well I would like to know what the jury thinks about the real world because you have seen a real microcosm, a real picture here of what the real world is. And I think it comes from the nurses, and I think it comes from the experts who have been genuine and honest with you. And I think you have seen a sorted (sic) side of that world from another contingent of people. I could sit here and contend with you for a very long period of time to the many different ways you know you've seen.

* * * * * *

I don't know if you have ever heard about it or not, but there was a story about this particular child molester, multiple child molester, (sic) got out of jail and went to this particular neighborhood, and the authorities didn't let anyone know that he moved out of jail and into this quiet little neighborhood. And he took a girl and he did the same thing again. And they call that Megan's Law.

They passed a law as a result of that so that all child offenders from then on would

Page 393

have to give their locations, and people in the neighboring areas would have to know that the child molester was there because who knows what man moves next door to you and has cute little bunnies that attract little children or gives them candy or whatever and maybe you just think he's nice. If you knew he was a child molester, (sic) you would have been told, you wouldn't dare let your child go over there.

Well, we will never forget Megan. Her life ended, but we will never forget her because of Megan's case, Megan's Law. I want to create Lance's Law because of a much bigger reason than just those four things. I want to create Lance's Law so that whatever exotic location doctors are

[340 S.C. 166] teaching each other continuing medical education, whether it's Acapulco, Miami, or wherever and whatever medical school they are in, every time someone on the program will spend thirty minutes to an hour saying, I want to bring you up to date on Lance's Law.

* * * * * *

Let me turn to this chart. I have seen this chart coming all throughout the case and you all have too. Each witness that came up--it seems to be significant to Mr. Davis that he can write down thousands of children that these people have seen, and they all say they have never seen hyponatremia cause cerebral edema in a child. And that's supposed to be a big point somehow or another for you all.

Ladies and gentlemen, isn't the reason that that's (sic) the case is because like Dr. Tecklenburg says, (sic) If you take a thousand residents with a thousand children who had 131 or 130 sodium they're not going to give a quarter normal saline. Yes, very luckily these people are not going to see hyponatremia induced by hypotonic dilute solution of quarter normal saline because every human who's been to medical school knows not to do it.

And if there are a few fools left who would do it, they check it the next morning to see if it's hurt the child, and when they find out that it's lowered they stop it. That's it; that's why you don't see it. It's kind of like you don't see people with scalpels sticking out of their eyeballs coming out of surgery. Doctors don't do that, and that's why they haven't seen it.

Porter argues that plaintiff's counsel's argument "equated Dr. Porter's treatment of decedent with the actions of a serial child molester." Porter also interprets the statement by plaintiff's counsel, "And if there are a few fools left who would do it, they check it the next morning to see if its hurt the child, and when they find out its lowered it[,] they stop it." as equating her to a fool.

We initially note Porter failed to raise a contemporaneous objection to any of the alleged inflammatory comments. The proper course is to immediately object to an improper argument. *SeeMoore v. Florence School Dist. No. 1*, 314 S.C. 335, 339, 444 S.E.2d 498, 500 (1994); *Hawkins v. Pathology Assoc*

[340 S.C. 167]. of Greenville, 330 S.C. 92, 111, 498 S.E.2d 395, 406 (Ct.App.1998).

Despite her failure to object, Porter contends this issue was properly raised by post-trial motion. However, it is clear from the record that although defense trial counsel mentioned plaintiff's counsel's closing argument in his post-trial motion for a new trial, he was not actually objecting to the argument itself. [3] Moreover, even if we were to find that defense trial counsel raised this issue in his post-trial motion, in order to be timely, an objection usually must be made at the earliest possible opportunity. Rule 103(a)(1), SCRE; 4 C.J.S. Appeal & Error § 214 (1993). Ordinarily, if an appellant fails to object the first time a statement is made, he or she waives the right to raise the issue on appeal. *SeeState v. Somerset*, 276 S.C. 220, 221, 277 S.E.2d 593, 594 (1981).

Porter nonetheless relies on *Dial v. Niggel Assoc., Inc.*, 333 S.C. 253, 509 S.E.2d 269 (1998)

Page 394

and *Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 442 S.E.2d 611 (1994) for the proposition that the failure to make a contemporaneous objection is excused when the challenged argument concerns the abuse of a party or witness. She asserts just such a situation occurred in the instant case. However, in reviewing the objectionable statements in context, we do not find the use of the word "sordid" used to describe a "side of the world" in any way heaped abuse and scorn on Dr. Porter or on her expert witnesses. Additionally, we find counsel's statement regarding Megan's law indicates it merely refers to verdicts sending messages.

Finally, the statement regarding "fools", when viewed in the context of the argument, was clearly a reference to the standard of care. Furthermore, in *Dial* our supreme court emphasized the narrowness of its holding in *Toyota. SeeDial*, 333 S.C. at 257, 509 S.E.2d at 271 (providing in dicta that statement "[T]hey have sewed (sic) deceit, deception, lies and

[340 S.C. 168] misconception. And they are the ones trying to trick you." did not rise to the level of a *Toyota* argument when considered in context). Similarly, we hold the allegedly improper statements in this case do not rise to the level of those in *Toyota*.

II. DAMAGES

Porter secondly argues the verdicts were so excessive, they must have resulted from passion, partiality, prejudice, and other improper considerations. We disagree.

We preface our analysis of the damage awards here with the touchstone that "[o]ur Supreme Court has repeatedly stated: 'The proper amounts to be rendered, as actual or punitive damages, are left, under our law, almost entirely to the trial jury and the trial judge.' " *Gasque v. Heublein, Inc.*, 281 S.C. 278, 287, 315 S.E.2d 556, 561 (Ct.App.1984) (citing *Charles v. Texas Co.*, 199 S.C. 156, 18 S.E.2d 719, 729 (1942) as quoting from *Weeks v. Carolina Power & Light Co.*, 156 S.C. 158, 153 S.E. 119, 124 (1930)).

Wrongful Death Action

Damages recoverable in a wrongful death action include: "(1) Pecuniary loss, (2) mental shock and suffering, (3) wounded feelings, (4) grief and sorrow, (5) loss of companionship, and (6) deprivation of the use and comfort of the intestate's society, the loss of his experience, knowledge, and judgment in managing the affairs of himself and of his beneficiaries...." F.P. Hubbard & R.L. Felix, *The South Carolina Law of Torts* 610 (2d ed.1997) (citing *Mishoe v. Atlantic Coast Line R.R.*, 186 S.C. 402, 197 S.E. 97 (1938)).

Moreover, South Carolina law provides that parents such as Lynn 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); *Self v. Goodrich*, 300 S.C. 349, 352, 387 S.E.2d 713, 714-15 (Ct.App.1989); *see also* Felix & Hubbard, *supra*, at 615 ("It may often be assumed that grief and sorrow will be experienced at the loss of a loved one; however,

the strength of such presumption is a function of the

[340 S.C. 169] closeness of the relationship, and *in some cases* evidence *may be* necessary to support claims of loss.") (emphasis added).

In *Self*, a mother brought a wrongful death action against a physician and hospital for medical negligence resulting in the death of her infant son. At the close of her case, the trial judge granted a directed verdict for the defendants because the mother failed to present any evidence of damages. This court reversed, relying partly on *Mock*, holding the mother was entitled to a presumption of nonpecuniary damages such as mental shock, suffering, grief and sorrow, and therefore the issue of damages should have gone to the jury. *Self*, 300 S.C. at 352, 387 S.E.2d at 714-15.

Here, Porter contends there was a dearth of evidence on the issue of Lynn's damages. We first note the record does not contain a directed verdict motion by Porter based on the insufficiency of the evidence. Thus, it does not appear Porter raised this issue during the evidentiary portion of the trial. However, even if the issue is preserved, we find Lynn was entitled to the presumption discussed by this court in *Self*, thereby making the question of damages one of fact for the jury to determine.

Page 395

In addition to this presumption, the record demonstrates Lynn cared greatly for Lance. Porter testified Lynn was a good mother. Nurses' notes indicate Lynn was worried about him. Lynn stayed with Lance in his room all night when he was admitted to Spartanburg Regional. She summoned the nurses the next morning because of her concern for his condition. Lynn witnessed Lance's increasing disorientation to the point he could not recognize her. She saw his combativeness and restlessness during the night as his brain swelled. She cleaned him up when he vomited. When informed of what happened to Lance during the CAT scan, Lynn cried as any caring mother would.

A determination of reasonable compensation for nonpecuniary damages turns on the facts of each case and is usually left to the jury's discretion. Felix & Hubbard, *supra*, at 615. We must bear in mind this case involves a young, loving mother

[340 S.C. 170] who lost her infant child. There is no mathematical formula which can easily establish the value of this kind of loss, and it is not this court's place to do so. *SeeLucht v. Youngblood*, 266 S.C. 127, 137, 221 S.E.2d 854, 859 (1976) (Losses to parents from the untimely death of a child "are intangibles, the value of which cannot be determined by any fixed yardstick. Their loss to the beneficiaries must be estimated by the jury in the exercise of their sound judgment under all the facts and circumstances of the case."). We find the $1.5 million dollars awarded in actual damages is not grossly excessive and was not the product of passion or prejudice or other improper considerations. *SeeKnoke v. South Carolina Dept. of Parks, Recreation and Tourism*, 324 S.C. 136, 142, 478 S.E.2d 256, 258 (1996) (affirming $3,000,000 verdict for parents' grief, shock, and sense of loss in wrongful death of child) (citing *Roberts v. Stevens Clinic Hospital, Inc.*, 176 W.Va. 492, 345 S.E.2d 791 (1986) (finding $3,000,000 appropriate amount for wrongful death of 2 1/2 year old child)).

Survival Action [4]

Unlike actual damages in a wrongful death action, actual damages in a survival action are awarded for the benefit of the decedent's estate rather than for the family. *See* Felix & Hubbard, *supra*, at 622-23 (citing *Bennett v. Spartanburg Ry., Gas & Elec. Co.*, 97 S.C. 27, 81 S.E. 189 (1914); *Croft v. Hall*, 208 S.C. 187, 190, 37 S.E.2d 537, 538 (1946)). Appropriate damages in survival actions include those for medical, surgical, and hospital bills, conscious pain, suffering, and mental distress of the deceased. *SeeGowan v. Thomas*, 237 S.C. 223, 225, 116 S.E.2d 761, 762 (1960); *Croft*, 208 S.C. at 193, 37 S.E.2d at 539.

[340 S.C. 171] There was no evidence of medical or hospital bills other than the $85.00 Porter charged for visiting the hospital room and comforting Lynn after Lance stopped breathing during the CAT scan. However, there was significant circumstantial evidence of Lance's conscious pain and suffering.

The nurses' charts indicate Lance was irritable and slept fretfully from midnight until approximately 5:45 a.m. He vomited. He became combative, pulling at his monitors and fighting his mother. His mother was unable to console him. There is also Lance's own statement, overheard by the nurse: "Mommy, I no feel good. Hold me." This is competent evidence of the demonstrable suffering Lance experienced before the catastrophic event which caused him to stop breathing. Furthermore, Dr. Arieff testified that Lance's brain continued to swell until it was forced through a hole in the base of the skull, where it squeezed the breathing and heartbeat centers of the brainstem, slowing Lance's heart rate, reducing his body temperature to hypothermic levels, and eventually stopping his breathing. This is additional evidence from which the jury could have inferred pain and suffering which preceded Lance's coma and death.

Page 396

See Vereen v. Liberty Life Ins. Co., 306 S.C. 423, 432, 412 S.E.2d 425, 431 (Ct.App.1991) (stating jury could infer conscious pain and suffering from evidence).

We find the award of damages to be in line with such awards in other cases. *SeeNew Prospect Drilling Co. v. First Commercial Trust, N.A.*, 332 Ark. 466, 966 S.W.2d 233 (1998) (affirming $1,000,000 conscious pain

and suffering award based on testimony of one accident witness regarding decedent's condition during period immediately following accident before paramedics arrived); *Holston v. Sisters of the Third Order of St. Francis*, 165 Ill.2d 150, 209 Ill.Dec. 12, 650 N.E.2d 985 (1995) (affirming $1,000,000 conscious pain and suffering and disfigurement award where evidence would allow jury to infer suffering although time period of only several hours elapsed from time when fatal medical negligence occurred to when decedent slipped into coma from which she did not recover). Therefore, we hold the award of six hundred thousand dollars for actual damages was not so excessive as to be a product of prejudice and passion

[340 S.C. 172].

Punitive Damages

Porter contends the punitive damages awards in the wrongful death and survival actions are unsupportable on the record and do not meet the *Gamble* [5] analysis for such awards. We disagree.

In South Carolina, "punitive damages are allowed in the interest of society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future." Moreover, they serve "as a vindication of private rights when it is proved that such have been wantonly, willfully or maliciously violated. Lastly, punitive damages may be awarded only upon a finding of actual damages."

Gamble v. Stevenson, 305 S.C. 104, 110, 406 S.E.2d 350, 354 (1991) (citations omitted). "In order to receive an award of punitive damages, the plaintiff has the burden of proving by clear and convincing evidence the defendant's misconduct was willful, wanton, or in reckless disregard of the plaintiff's rights." *Lister v. NationsBank of Delaware, N.A.*, 329 S.C. 133, 149, 494 S.E.2d 449, 458 (Ct.App.1997). The amount of punitive damages awarded is largely within the jury's discretion, though reviewable by the trial judge. *Gamble*, 305 S.C. at 112, 406 S.E.2d at 355. Moreover, the reviewing trial judge is vested with considerable discretion over this amount, and our review is limited to correction of errors of law. *Lister*, 329 S.C. at 149, 494 S.E.2d at 458.

The factors enunciated in *Gamble* are:

(1) defendant's degree of culpability; (2) duration of the conduct; (3) defendant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) defendant's ability to pay; and finally, (8) "other factors" deemed appropriate.

305 S.C. at 111-12, 406 S.E.2d at 354. The trial judge is not required to make findings of fact for each factor to uphold a punitive damages award. *McGee v. Bruce Hosp. Sys.*, 321 S.C. 340, 346, 468 S.E.2d 633, 637 (1996).

[340 S.C. 173] We find the record demonstrates sufficient evidence of Porter's reckless culpability to support an award of punitive damages. Porter was Lance's admitting physician and primarily responsible for his care. Porter did not order an AB monitor for Lance, nor did she order follow-up sodium tests which by all plaintiff's experts' accounts would have saved Lance's life. Dr. Arieff's testimony was that Lance could have been saved by simply turning off the IV before he stopped breathing. In contrast to Porter's assertion she intended for Lance to go immediately for a CAT scan when informed of his altered mental status, Lance's mother testified Porter told her Lance would go to the CAT scan "sometime" that morning. The totality of the testimony suggested Porter had a disinterested attitude in the midst of what should have been growing concern for her patient. Clearly this is evidence Porter recklessly failed to realize the urgency of Lance's condition and failed to act quickly to save his life and was therefore highly culpable.

Page 397

In examining the record, we find the trial judge properly reviewed the punitive damage awards using the *Gamble* factors. The trial judge stated:

Specifically, the Court finds that the defendant has the ability to pay, that the defendant's degree of culpability was very high, if not 100 percent, that the defendant was aware of her actions. There is no evidence of any past conduct, however the Court feels that this award of punitive damages is likely to deter others from this type of conduct in the future. The Court further finds that the award of punitive damages is reasonably related to the injuries suffered in this particular case.

We concur in the trial judge's assessment of the punitive damages award. Accordingly, for the above reasons, the judgment of the lower court is

AFFIRMED.

STILWELL, J., and MOREHEAD, Acting J., concurring.

Notes:

[1] These are seizures due to a fever.

[2] The record does not indicate trial counsel for Porter made a motion for directed verdict.

[3] Trial counsel stated: "With regard to these damages and with regard to a couple of the comments by

Mr. Spears, I don't think I said anything about objecting or having objected to comments about Meagan's Law. What I am saying, and I hope I made it clear, is that the evidence in this case has to do with allegations of medical negligence and whether or not that's occurred."

[4] Porter's counsel argues in his brief that "there is nothing in the record to support the Six Hundred Thousand Dollars conscious pain and suffering." In oral argument before this Court counsel for Porter repeatedly asserted there was no evidence in the record to support an award of damages in the survival action. If indeed that had been the case, it would have been incumbent upon defense counsel to move for a directed verdict on that ground in order to preserve the issue for appeal. Thus, we construe counsel's argument to be directed to the *amount* of the damages awarded rather than to the lack of any evidence to support an award of actual damages.

[5] *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991).

South Carolina Statutes

Title 15. Civil Remedies and Procedures

Chapter 51. DEATH BY WRONGFUL ACT AND LYNCHING

Article 1. DEATH BY WRONGFUL ACT

Current through 2014 Act No. 324

§ 15-51-40. Damages; amount and to whom payable

In every such action the jury may give damages, including exemplary damages when the wrongful act, neglect, or default was the result of recklessness, wilfulness, or malice, as they may think proportioned to the injury resulting from the death to the parties respectively for whom and for whose benefit such action shall be brought. 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.

Cite as S.C. Code § 15-51-40

South Carolina Statutes

Title 63. South Carolina Children's Code

Chapter 5. LEGAL STATUS OF CHILDREN

Article 1. PARENT-CHILD RELATIONSHIP

Current through 2014 Act No. 324

§ 63-5-20. Obligation to support

(A)

Any able-bodied person capable of earning a livelihood who shall, without just cause or excuse, abandon or fail to provide reasonable support to his or her spouse or to his or her minor unmarried legitimate or illegitimate child dependent upon him or her shall be deemed guilty of a misdemeanor and upon conviction shall be imprisoned for a term of not exceeding one year or be fined not less than three hundred dollars nor more than one thousand five hundred dollars, or both, in the discretion of the circuit court. A husband or wife abandoned by his or her spouse is not liable for the support of the abandoning spouse until such spouse offers to return unless the misconduct of the husband or wife justified the abandonment. If a fine be imposed the circuit court may, in its discretion, order that a portion of the fine be paid to a proper and suitable person or agency for the maintenance and support of the defendant's spouse or minor unmarried legitimate or illegitimate child. 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.

(B)

Any person who fails to receive the support required by this section may petition to a circuit court of competent jurisdiction for a rule to show cause why the obligated person should not be required to provide such support and after proper service and hearing the circuit court shall in all appropriate cases order such support to be paid. Any such petition shall specify the amount of support required. Compliance with the circuit court order shall bar prosecution under the provisions of subsection (A) of this section.

Cite as S.C. Code § 63-5-20

Page 778

708 S.E.2d 778 (S.C. 2011)

392 S.C. 143

Jane ROE and John Roe, Appellants,

v.

Craig REEVES, Victoria A., John Doe, Biological Father and Baby Boy, an infant, Respondents.

No. 26967.

Supreme Court of South Carolina.

May 2, 2011

Heard Dec. 2, 2010.

Rehearing Denied May 18, 2011.

Page 779

Philip J. Temple, Temple, Mann, Briggs & Hill, of Greenville, and Robert Norris Hill, Law Offices of Robert Hill, of Newberry, for Appellants.

Andrea B. Williams, of Greenville, and Mary Alice H. Godfrey, Godfrey Law Firm, of Greenville, for Respondents.

Katherine H. Tiffany, Guardian Ad Litem, of Carter Smith Merriam Rogers & Traxler, of Greenville.

HEARN, Justice.

[392 S.C. 145] In this case, Craig Reeves (Father) claims his consent was necessary prior to another couple adopting his child. The family court agreed, finding that he met the requirements of Section 63-9-310(A)(5)(b) of the South Carolina Code (2010) and awarding him custody of the child. We find that Father did not undertake sufficient good faith efforts to assume parental responsibility and comply with section 63-9-310(A)(5)(b), and hold that his consent to the adoption is not required. Therefore, we reverse the family court and order that custody be immediately returned to the adoptive parents (Appellants).

FACTUAL/PROCEDURAL BACKGROUND

Father began a sexual relationship with Victoria A. (Mother) in July 2007, when he was nineteen years old and she was fifteen.[1] At that time, Mother already had one son from a previous relationship with another man. Mother and Father's relationship was not a stable one. Over the next several months, Mother and Father broke up and reconciled several times. However, in May 2008, Mother, then sixteen years old, discovered she was pregnant with Father's child. She first told him that she was pregnant in July, at which point he was in a relationship with another woman. His response was less than encouraging. He initially texted her, " We dnt hav a baby jstop txtn me and sendin me pics." Approximately twenty-four hours later, apparently in response to another text from Mother, Father texted this: " Go hav an abortion or sumthn get a life stop txtn me damn." [2] Although Father maintains he did not believe Mother when she told him that she was pregnant,[3] he did not undertake any

Page 780

effort to see her or otherwise confirm if she was, in fact, pregnant.

[392 S.C. 146] Shortly after receiving these initial text messages, Mother contacted an adoption agency about placing the child for adoption. She settled on Appellants as the prospective adoptive parents. From that point on, Appellants drove Mother to all of her remaining doctor appointments until the child was born. Additionally, Appellants made regular payments to the adoption agency for an allowance that was distributed to Mother for pregnancy and other miscellaneous expenses. However, Mother's medical expenses were covered by Medicaid. During the term of her pregnancy, Mother lived at home with her mother and other child. Her living expenses were covered by her mother and the food stamps they received, and were supplemented by the payments made by Appellants through the adoption agency.

Father soon learned of Mother's plans to place their child up for adoption. When he found out, he texted her: " If ur putn it w people and ur hapy then f*kn stop begin me 2 cum b there its not gna hapn." Less than a month later, he texted Mother: " Leav me tha f*k alone im nt gna txt u bak and I want nothng 2 do w u so jus get out mx [sic] life already." He made no further effort to inquire about Mother or their unborn child until November of that year when Mother visited Father at his workplace. According to Father, it was only at that time he realized she was indeed pregnant. It was then, some five or six months into Mother's pregnancy, that Father first informed Mother he wanted custody of the child and asked that she stop the adoption. At this point, Mother began having some reservations about whether to proceed with the adoption. She changed her mind about her decision several times and acknowledged that Father expressed at least some desire to raise the child, telling him that she would consider it " if he was serious." When Father asked if he could speak with Appellants about calling off the adoption, she refused to give him their names. However, Father claims Mother told him that he would be able to take the child home from the hospital

when it was born.

[392 S.C. 147] During the remainder of the pregnancy, Father bought some diapers for Mother's other son and made her a one-time offer of $100, which she refused. According to Father, Mother would not accept money for their child, but she would accept things for herself and her other son. In that vein, he paid eleven dollars for a T-shirt and sweat pants for Mother at Old Navy. He did not pay any medical expenses because Mother was receiving Medicaid, nor did he pay living expenses because Mother lived with her mother and received food stamps. He did gratuitously repair Mother's family vehicle, which was owned by her mother.[4]

At this time, Father earned nine dollars per hour plus average monthly commissions of $900 working at an auto parts store. He also had a second job performing automobile repossessions. However, very little of his commissions and none of his income from repossessions were reported on his financial declaration. He had $4,000 in savings [5] and $34,000 in property, which included several cars and motorcycles he planned to sell for cash. Although he appears to own most of his vehicles, his car payments totaled $500 per month, and he listed an additional $80 per month expense just for tires. Like Mother, Father lived at home with his parents. He anticipated that should he have custody of the child, it would stay with him at his parents' house. To that end, he converted some space in his parents' house into a nursery and purchased diapers, clothes, blankets, bottles, and other similar items.

After arranging the adoption, Mother had weekly meetings with the adoption agency to evaluate her progress. During one of these meetings in January 2009, Mother asked about Father's rights as the biological father of the child. One of the agency's employees

Page 781

told Mother what state law requires of a biological father and asked her whether Father had offered her any support. She told the employee of Father's one-time offer of $100, but said that he had made no other offers. The employee expressed her opinion that the offer was not legally sufficient to establish his rights as the father, but she told her

[392 S.C. 148] to let the agency know if he made any more offers. At no point did the agency advise her to not accept any offers from Father; in fact, the agency specifically told her to not hide from Father. Despite this, she told Father the agency told her to refuse his offers of support and that she should not even be speaking to him.

In March 2009, Mother gave birth to a baby boy. Appellants drove Mother to the hospital and spent the night with her there. Mother did not contact Father when she went into labor, but after their son was born she sent him a text message with a picture of the baby, stating that he was " with his parents," referring to Appellants. Father then went to the hospital to see Mother and the child, but hospital staff informed him that Mother was a " no information" patient and would not accept his visit. When Father attempted to get in touch with Mother, she lied and said she was at her father's house. The next day, Mother signed an adoption consent form, and Appellants took the child home.

Very soon thereafter, Father retained an attorney and moved for temporary emergency relief. The family court awarded Appellants temporary custody of the child. Once Father's paternity was established, the court awarded him weekly visitation and ordered him to pay child support.[6] During the period of time prior to the hearing on the issue of Father's consent to the adoption, Father exercised his right to visit the child, but he fell into arrears on his child support. In fact, it was not until the day before the consent hearing that this account was made current. At the hearing, Father testified that he " tried to be there" for Mother, but she refused his help and said he would never see his child. He also believed that Mother was jealous of his new relationship and did not want Father to raise the baby with another woman. On the other hand, Mother testified that she never believed Father was serious about raising their child and he " had his chance to step up ... and he didn't." During the hearing, both Mother and Father acknowledged that they had not been truthful throughout these proceedings. Mother admitted she was untruthful to Father, Appellants, the adoption

[392 S.C. 149] agency, and the guardian ad litem; Father admitted he lied in his deposition to make his relationship with Mother appear more stable. The family court found that Father had undertaken sufficient prompt and good faith efforts to assume parental responsibility as required by section 63-9-310(A)(5)(b). Accordingly, the court found his consent was required for Appellants to adopt the child and ordered that the child be returned into Father's custody. This appeal followed.

ISSUE PRESENTED

Did the family court err in finding Father was required to consent to the adoption of the child?

STANDARD OF REVIEW

" [A]doptions are equitable proceedings, and therefore, the Court has jurisdiction to find facts in accordance with its view of the preponderance of the evidence." *Adoptive Parents v. Biological Parents*, 315 S.C. 535, 542 n. 6, 446 S.E.2d 404, 408 n. 6 (1994) (citing S.C. Const. art. 5, § 5). " This broad scope of review does not require the Court to disregard the findings of the family court judge, who saw and heard the witnesses and was in a better position to evaluate their credibility." *McCann v. Doe*, 377 S.C. 373, 382, 660 S.E.2d 500, 505 (2008).

LAW/ANALYSIS

Appellants argue the family court erred in finding Father undertook a sufficient

Page 782

effort to assume parental responsibility. We agree.

The relationship between an unwed father and his child is deserving of constitutional protection because the father possess an " opportunity no other male possesses to develop a relationship with his offspring" when the child is born. *Abernathy v. Baby Boy*, 313 S.C. 27, 31, 437 S.E.2d 25, 28 (1993).

However, this opportunity interest is constitutionally protected only to the extent that the biological father who claims protection wants to make the commitments and

[392 S.C. 150] perform the responsibilities that give rise to a developed relationship, because it is only the combination of biology and custodial responsibility that the Constitution ultimately protects.

Id. Put differently, it is only " [i]f he grasps that opportunity and accepts some measure of responsibility for the child's future [may he] enjoy the blessings of the parent-child relationship and make uniquely valuable contributions to the child's development." *Lehr v. Robertson*, 463 U.S. 248, 262, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983). Accordingly, section 63-9-310(A)(5)(b), provides,

(A) Consent or relinquishment for the purpose of adoption is required of the following persons:

....

(5) the father of a child born when the father was not married to the child's mother, if the child was placed with the prospective adoptive parents six months or less after the child's birth, but *only if:*

....

(b) the father *paid a fair and reasonable sum*, based on the father's financial ability, for the *support of the child* or for the expenses incurred *in connection with the mother's pregnancy or with the birth of the child*, including, but not limited to, medical, hospital, and nursing expenses.

(emphasis added). In enacting section 63-9-310(A)(5)(b), the General Assembly set the minimum standards an unwed father must meet in a timely fashion to " demonstrate his commitment to the child, and his desire to ' grasp [the] opportunity' to assume full responsibility for his child." [7] *Abernathy*, 313 S.C. at 32, 437 S.E.2d at 29 (quoting *Lehr*, 463 U.S. at 262, 103 S.Ct. 2985). An unwed father must therefore demonstrate a full commitment to the responsibilities of parenthood

[392 S.C. 151] by coming forward to participate in the rearing of his child in order for this relationship to obtain constitutional protection. *Id.* at 31, 437 S.E.2d at 28.

However, we do not always require strict compliance with the literal requirements of section 63-9-310(A)(5)(b). For example, a father's ability to cultivate the sort of relationship we recognized in *Abernathy* can be thwarted by the mother's refusal to accept the father's expressions of interest in and commitment to the child. *Id.* at 32, 437 S.E.2d at 29. We therefore extend the constitutional protection of a father's relationship with his child " not only when he meets the literal requirements of section 63-9-310(A)(5)(b), but also when he undertakes sufficient prompt and good faith efforts to assume parental responsibility and to comply with the statute." *Id.* Otherwise, a father's constitutional right to form a relationship with his child that receives constitutional protection is subject to the whim of the mother. *Id.* at 32-33, 437 S.E.2d at 29.

We begin our analysis by determining whether Mother thwarted Father's efforts to provide for her and their child in order to establish the proper standard under which we will evaluate Father's contributions. In the case before us, we find that Mother has not thwarted Father's attempts to form a relationship with their child as was the case in *Abernathy*. In *Abernathy*, both the mother and father of the child were on active duty in the Navy when they commenced a casual

Page 783

sexual relationship. *Id.* at 29, 437 S.E.2d at 27. In contrast to Father's actions here, when the mother, while she was on leave, informed the father by phone of her pregnancy, he begged her not to consider abortion, and she agreed. *Id.* When the mother returned, the father met her at the airport and offered to support her and the child. *Id.* The mother told him they would discuss the situation when he returned from sea duty; nevertheless, when the father shipped out, he turned over his car and his bank account to the mother. *Id.* While the father was at sea, the mother determined she desired no further involvement with him. *Id.* When he returned, she rebuffed his advances and rejected his offer of marriage. *Id.* She thereafter avoided contact with him, refused his telephone calls, and basically hid away from him. *Id.* When the father later learned of the birth and the pending adoption action, he sought to intervene and assert his

[392 S.C. 152] parental rights. *Id.* at 30, 437 S.E.2d at 27. Under these compelling facts, this Court rightly concluded that literal compliance with the predecessor to section 63-9-310(A)(5)(b) was not necessary. *Id.* at 32-33, 437 S.E.2d at 29.

The facts of this case bear little resemblance to those presented in *Abernathy*. Here, Father not only advised Mother to have an abortion and stop bothering

him when he was initially told of her pregnancy, he also told her several weeks later that if she was happy with giving up the baby for adoption, that was fine with him. It was when Mother was five or six months into her pregnancy and went to visit Father that he told her he wanted to raise the child, and he claims Mother told him that when the child was born, he would be able to take him home from the hospital. It was not until the child was born that Mother prevented Father from seeing the child and went through with the adoption. During her entire pregnancy, the only support Mother refused was Father's one-time offer of $100. Beyond that, the record contains no evidence Mother actually hid herself from Father or refused his assistance. If this is sufficient to constitute thwarting, the exception to literal compliance with the requirements of section 63-9-310(A)(5)(b) has swallowed up the rule.

The situation before us therefore falls far short of the extraordinary factual scenario presented in *Abernathy* which prompted this Court to require less than literal compliance with the statutory provision in question.[8] Given that Father was an adult at the time this child was conceived, we are not persuaded he would have been so easily thwarted in his efforts to assume his parental responsibilities by this sixteen-year-old girl who did not hide from him as in *Abernathy*, but continued to live in the same house throughout her pregnancy and delivery. The Court of Appeals of Kansas summed up an unwed father's obligation as follows:

He must [provide support] regardless of whether his relationship with the mother-to-be continues or ends. He must

[392 S.C. 153] do this 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.

In re Adoption of M.D.K., 30 Kan.App.2d 1176, 58 P.3d 745, 750-51 (2002) (Beier, J., concurring) (emphasis added). The thwarting recognized by this Court in *Abernathy* is far more severe than that referenced in the above-quoted passage from

Adoption of M.D.K. In order for an unwed father to be thwarted, the mother must be more than acrimonious or hostile; she must actively hide and avoid the father's attempts to provide support. However, the situation before us today is more akin to that referenced in *Adoption of M.D.K.*, not what occurred in *Abernathy*. Accordingly, Mother did not sufficiently thwart Father's efforts to establish a relationship with his child such that literal compliance with section 63-9-310(A)(5)(b) is excused.

We turn now to whether Father has complied with the statutory requirements. Section 63-9-310(A)(5)(b) clearly " conditions the necessity of a father's acquiescence in an adoption on his payment of support or financial assistance to the birth mother." *Ex parte Black*, 330 S.C. 431, 435, 499 S.E.2d 229, 231 (Ct.App.1998). 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. Accordingly, a father's attempts to assert his parental rights are insufficient to protect his relationship with the minor child " unless accompanied by a *prompt, good-faith effort* to assume responsibility for either a financial contribution to

[392 S.C. 154] the child's welfare or assistance in paying for the birth mother's pregnancy or childbirth expenses." *Id.* (emphasis added). According to Father, it was only when Mother appeared at his place of work in November 2008 that he realized she was indeed pregnant; moreover, he then ostensibly realized that she had not followed his advice to have an abortion. However, even assuming *arguendo* that Father's initial responses to news of Mother's pregnancy and her decision to place the child for adoption were excusable, his actions to assume parental responsibility beginning in November 2008 were still insufficient to require his consent under our adoption statute. Even taking Father's testimony as true, we find that he did not pay " a fair and reasonable sum ... for the support of the child or for expenses incurred in connection with the mother's pregnancy or with the birth of the child."

First, Father's payments and purchases for Mother's older child and the repairs made to her mother's car are not within the purview of section 63-9-310(A)(5)(b). Payments made to other children in the family or repairs to the vehicle of the grandmother, which was not a necessary support for the pregnancy because the adoptive parents drove Mother to her doctor appointments, are not embraced by the statute and should not be considered. Furthermore, Father's actions in setting up a nursery at his parents' home— when the child already had a place to sleep at Mother's should he not reside with Appellants— and legal fees he incurred to challenge the adoption likewise are not valid considerations under the statute. Similar to the payments for Mother's older child and the repairs to her mother's

vehicle, these expenditures are not for " the support of the minor child" or " expenses incurred in connection with mother's pregnancy or with the birth of the child" as required by section 63-9-310(A)(5)(b).

Father testified he paid eleven dollars for a T-shirt and sweatpants for Mother. This single payment represents the sole expenditure by Father which complies with section 63-9-310(A)(5)(b), assuming these clothing items were related to the pregnancy. He paid no medical expenses for Mother because she was on Medicaid, and did not pay any living expenses because Mother lived with her mother and received food stamps. However, this does not excuse Father from contributing more than eleven dollars towards Mother's pregnancy.

[392 S.C. 155] Simply because she was receiving some government benefits to cover her basic needs does not relieve Father of his obligation to provide for Mother during her pregnancy. Indeed, Appellants contributed regularly to Mother during her pregnancy despite the availability of these benefits. Even if Mother had accepted Father's offer of $100, the resulting $111 contribution would still be inadequate, especially in light of the money Father spent on himself during Mother's pregnancy; the payments Father made for tires on his car alone far exceeded that amount.

The record does not support the conclusion that Father undertook a sufficient effort to make the sacrifices fatherhood demands. Father had the means and opportunity to

Page 785

provide more, but he simply chose not to and to rely on others to provide for Mother. Even though she rebuked some of his efforts, that did not alleviate or in any way mitigate his obligation. *See Adoption of M.D.K.*, 58 P.3d at 750-51 (Beier, J., concurring). The fact that he now wishes to raise his son does not overcome his lack of support and contribution while Mother was carrying his child or after he was born. In short, he did not fully " grasp [the] opportunity" to come forward and demonstrate a full commitment to the responsibilities of parenthood through prompt and good faith efforts. We accordingly hold that Father's contributions were not sufficient compliance with the statute to establish his right to consent to the adoption of this minor child.[9] Although we are not unmindful of the findings of the learned and able family judge in this case, our review of the record compels us to find that Father has not met the requirements imposed by section 63-9-310(A)(5)(b).

CONCLUSION

For the foregoing reasons, we reverse the order of the family court requiring Father's consent to the adoption of this

[392 S.C. 156] child. Appellants are to obtain immediate custody of the child.

TOAL, C.J. and KITTREDGE, J., concur. PLEICONES, J., dissenting in a separate opinion in which BEATTY, J., concurs.

PLEICONES, Justice.

I respectfully dissent. In my opinion, the family court correctly determined Father's consent was required for the adoption of the child because Father demonstrated sufficient and prompt good faith efforts to assume parental responsibility such that his literal compliance with § 63-9-310(A)(5)(b) should be excused.

In appeals concerning adoption proceedings, as in any appeal from family court, this Court may find the facts in accordance with its own view of the preponderance of the evidence. *McCann v. Doe*, 377 S.C. 373, 382, 660 S.E.2d 500, 505 (2008). This broad scope of review does not require the Court to disregard the findings of the family court judge, who saw and heard the witnesses and was in a better position to evaluate their credibility. *Id.*

I disagree with the majority's conclusion that Mother did not thwart Father's attempts to form a relationship with the child because she did not actually hide herself and the only financial support she rejected was Father's " one-time offer of $100." In my opinion, the family court correctly found Mother thwarted Father's attempts to provide financial support based on the adoption agency's advice about birth father's rights. The majority states Father made Mother a one-time offer of $100, which she refused. Father's testimony, however, contradicted this. Father testified he offered Mother money " a lot" but that Mother told him the agency advised her not to accept any offers of support or even speak to him. Father testified Mother would accept money for herself and her other son but wouldn't accept anything " immediately for [the child]." After assessing the credibility of the witnesses, the family court found Mother refused Father's offers of support based on the agency's advice about birth father's rights. Although we may find the facts in accordance with our own view of the preponderance of the evidence, we are not required to disregard the

[392 S.C. 157] findings of the family court, who saw and heard the witnesses and was in a better position to evaluate their credibility.

Further, the majority focuses solely on the financial considerations that are to be made in determining whether a father's consent is required. In doing so, the majority fails to recognize Father's offers of non-financial support. " The United States Supreme Court has recognized that an unwed father may possess a relationship with his child that is entitled to constitutional protection." *Abernathy* at 31, 437 S.E.2d at 28 (citing

Stanley v. Illinois, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972)). However, " parental rights do not spring full-blown from the biological connection between parent and child. They require relationships more enduring." *Id.* (quoting *Lehr v. Robertson*, 463 U.S. 248, 260, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983)). Thus, an unwed father must demonstrate a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child before his interest in personal contact with his child acquires substantial constitutional protection. *Id.* The mere existence of a biological link does not merit equivalent constitutional protection. *Id.*

In my view, the constitutional protection afforded Father by virtue of his demonstrated commitment to the child far outweighs his failure to literally comply with the requirements of the statute. The majority states the facts favorable to Father in this case do not rise to the level of those in *Abernathy*. The *Abernathy* Court considered not only father's offers of financial support, but also took into account the fact that father did not seek legal advice about how to protect his paternal interests because of mother's assurance that she would not place the child for adoption. *Abernathy* at 33, 437 S.E.2d at 29. The Court also noted the father " immediately manifested his willingness to assume sole custody of the child once he discovered adoption proceedings had commenced." *Id.*

Turning to the facts of the present case, once Father realized Mother was actually pregnant, he immediately manifested his willingness to raise the child. Father pleaded with Mother to stop the adoption process, even offering to call Appellants to discuss the matter. Father also relied on Mother's misrepresentations to him on several occasions that

[392 S.C. 158] she would not go through with the adoption. In fact, Father believed he would be able to take the child home from the hospital after its birth. The record also clearly shows that Mother used the adoption process as leverage to try to lure Father back.

The majority focuses on distinguishing the facts of the present case from the " extraordinary factual scenario" presented in *Abernathy*. Although *Abernathy* is the seminal case on this issue, it is not the only case where the Court has determined a father was not required to literally comply with the statute. In *Doe v. Queen*, 347 S.C. 4, 552 S.E.2d 761 (2001), the factual scenario presented certainly did not reach that of *Abernathy*. We nonetheless affirmed the family court's ruling that the father demonstrated sufficient prompt and good faith efforts to assume parental responsibility such that his literal compliance with the statute was excused. In that case, the mother lied to the father and told him she had an abortion after he tried to convince her to keep the child. *Queen* at 6, 552 S.E.2d at 762. The mother also signed a criminal warrant against the father, which resulted in a bond condition that father have no contact with the mother. *Id.* The father was notified of the child's birth in November, approximately two months after the child was born. *Id.* When the adoptive parents requested the father sign the consent forms, the father obtained an attorney, but did not file responsive pleadings until the day of the hearing the next August. *Id.* The father began saving money, prepared a nursery, and arranged for medical insurance for the child. *Id.* We found the father's failure to provide support during the mother's pregnancy was no fault of his own, and that the father's actions subsequent to learning of the child's birth demonstrated sufficient prompt and good faith efforts to assume parental responsibility. *Queen* at 9, 552 S.E.2d at 764. If the father's actions in *Queen* constituted sufficient prompt and good faith efforts to assume parental responsibility, then Father has surely exceeded that standard here. In my view, the father in *Queen* did very little to support his child after learning of its birth. Here, Father exercised regular visitation and paid child support, in addition to preparing a nursery.

Moreover, in focusing on distinguishing the present case from *Abernathy*, the majority fails to recognize the numerous

[392 S.C. 159] cases in our jurisprudence where our courts have determined the father's consent was not required. These cases are, in my opinion, instructive owing to their contrast with the factual scenario under consideration. *See Doe v. Roe*, 369 S.C. 351, 631 S.E.2d 317 (Ct.App.2006)

(father's contributions to mother were insubstantial and inconsistent, mother never refused father's help but, rather, requested it, mother attempted to reach father on several occasions but he avoided her); *Arscott v. Bacon*, 351 S.C. 44, 567 S.E.2d 898 (Ct.App.2002) (mother informed father she had given birth, and even with this direct information from mother, father still did not believe that she had ever been pregnant and had given birth, and father did nothing, despite knowing that mother had a child and he could be the father); *Parag v. Baby Boy Lovin*, 333 S.C. 221, 508 S.E.2d 590 (Ct.App.1998) (father could have sought the exact location of his child and could have made efforts to cultivate a relationship with the child three months prior to taking any action; father never offered any financial support to mother in connection with the expenses of her pregnancy and birth; and father never offered any financial support for the child after learning of his birth); and *Ex parte Black*, 330 S.C. 431, 499 S.E.2d 229 (Ct.App.1998) (assuming unwed father took prompt measures to determine paternity and assert parental rights after biological mother informed father of child's existence, where father failed to offer to support child or assist in medical expenses, his

consent to adoption was not required).

In my opinion, the present case is distinguishable from those cases in which our courts have determined a father's consent was not required. Mother never requested assistance from Father, but rather, told him she did not want to " mess up the adoption" by accepting money from him. After the child's birth, Father showed his commitment to the child by immediately moving for temporary relief, preparing a nursery, regularly exercising his visitation rights, and paying child support. Father also offered to reimburse Appellants for all of their expenses incurred during Mother's pregnancy.

In my opinion, Father timely demonstrated his willingness to develop a relationship with his child and therefore acquired constitutional protection. I would therefore affirm the family

[392 S.C. 160] court's finding that Father's consent was required and find that custody of the child should remain with the Father.

BEATTY, J., concurs.

Notes:

[1] Father and Mother never lived together during their relationship or Mother's subsequent pregnancy.

[2] Father stated in an affidavit to the family court that he offered to pay for an abortion.

[3] During the course of their rocky relationship, Mother would use various excuses in an attempt to win Father back. For example, she told Father that her other son missed him, her cousin was in a car accident, and her grandfather was dying. Father therefore testified he initially believed Mother's pregnancy was another ruse to rekindle their relationship.

[4] Had this work been performed at an automobile repair shop, Father estimated it would have cost approximately $750.

[5] His savings were not reported on his financial declaration, but rather in the report from the guardian ad litem.

[6] Appellants refused to accept money from Father directly and requested that he pay the child support into the court.

[7] Section 63-9-310(A)(5)(a) does not condition the necessity of the unwed Father's consent on financial contributions. That section provides his consent is required where he openly lived with the mother or the child for a period of at least six months immediately preceding the adoption *and* he openly held himself out as the child's father during this time. S.C.Code Ann. § 63-9-310(A)(5)(a). Because the child was placed with Appellants immediately after his birth and Father and Mother never lived together, this section does not apply.

[8] Even if we were to agree with the dissent that the father in *Doe v. Queen*, 347 S.C. 4, 552 S.E.2d 761 (2001), did less to assume parental responsibility than Father in this case, the dissent loses sight of the fact that the father in *Queen* was thwarted and was held to a lower standard. Because Father here was not thwarted, he must literally comply with the statute.

[9] Father argues that his payment of child support per the family court's order is per se reasonable under the statute. Father's argument ignores that he understated his income on his financial declarations and was in arrears on the payments until the day before the hearing. We therefore decline to reach whether, in a proper case, payment of child support is per se reasonable.

Page 248

463 U.S. 248 (1983)

103 S.Ct. 2985, 77 L.Ed.2d 614

Jonathan LEHR, Appellant,

v.

Lorraine ROBERTSON et al.

No. 81-1756.

United States Supreme Court.

June 27, 1983

Argued Dec. 7, 1982.

[103 S.Ct. 2986]*Syllabus*[*]

SYLLABUS

Appellant is the putative father of a child born out of wedlock. Appellee mother of the child married another man (also an appellee) after the child was born. Subsequently, when the child was over two years old appellees filed an adoption petition in the Ulster County, N.Y., Family Court, which entered an order of adoption. Appellant never supported the child or offered to marry appellee mother, did not enter his name in New York's "putative father registry," which would have entitled him to notice of the adoption proceeding, and was not in any of the classes of putative fathers who are required by New York law to receive notice of adoption proceedings. After the adoption proceeding was commenced, appellant filed a paternity petition in the Westchester County, N.Y., Family Court. Appellant learned of the pending adoption proceeding several months later. Shortly thereafter, his attorney sought a stay of the adoption proceeding pending the determination of the paternity action, but by that time the Ulster County Family Court had entered the adoption order. Appellant filed a petition to vacate the adoption order on the ground that it was obtained in violation of his rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The Ulster County Family Court denied the petition, and both the Appellate Division of the New York Supreme Court and the New York Court of Appeals affirmed.

Held:

1. Appellant's rights under the Due Process Clause were not violated. Pp. 2990-2995.

(a) Where an unwed father demonstrates a full commitment to the responsibilities of parenthood by "com[ing] forward to participate in the rearing of his child," *Caban v. Mohammed,* 441 U.S. 380, 392, 99 S.Ct. 1760, 1768, 60 L.Ed.2d 297, his interest in personal contact with his child acquires substantial protection under the Due Process Clause. But the mere existence of a biological link does not merit equivalent protection. If the natural father fails to grasp the opportunity to develop a relationship with his child, the Constitution will not automatically compel a State to listen to his opinion of where the child's best interests lie. Pp. 2990-2994.

[103 S.Ct. 2987] (b) Here, New York has adequately protected appellant's inchoate interest in assuming a responsible role in the future of his child. Under New York's special statutory scheme, the right to receive notice was completely within appellant's control. By mailing a postcard to the putative

Page 249

father registry, he could have guaranteed that he would receive notice of any adoption proceedings. The State's conclusion that a more open-ended notice requirement would merely complicate the adoption process, threaten the privacy interests of unwed mothers, create the risk of unnecessary controversy, and impair the desired finality of adoption decrees, cannot be characterized as arbitrary. The Constitution does not require either the trial judge or a litigant to give special notice to nonparties who are presumptively capable of asserting and protecting their own rights. Pp. 2994-2995.

2. Nor were appellant's rights under the Equal Protection Clause violated. Because he has never established a substantial relationship with his child, the New York statutes at issue did not operate to deny him equal protection. Cf. *Quilloin v. Walcott,* 434 U.S. 246, 98 S.Ct. 549, 54 L.Ed.2d 511. Appellee mother had a continuous custodial responsibility for the child, whereas appellant never established any custodial, personal, or financial relationship with the child. In such circumstances, the Equal Protection Clause does not prevent a State from according the two parents different legal rights. Caban v. Mohammed, supra, distinguished. Pp. ---- - ----.

54 N.Y. 417, 446 N.Y.S.2d 20, 430 N.E.2d 896 (1981), affirmed.

COUNSEL

David J. Freeman argued the cause and filed briefs for appellant.

Jay L. Samoff argued the cause for appellees and filed a brief for appellees Robertson et al. *Robert Abrams,* Attorney General, *pro se, Peter H. Schiff,* and*Robert J. Schack,* Assistant Attorney General, filed a

brief for appellee Attorney General of New York.*

* *Louise Gruner Gans* and *Stanley A. Bass* filed a brief for Community Action for Legal Services, Inc., et al. as *amici curiae* urging reversal.

Elinor Hadley Stillman filed a brief for the National Committee for Adoption, Inc., as *amicus curiae* urging affirmance.

David J. Freeman, White Plains, N.Y., for appellant.

Jay L. Samoff, Kingston, N.Y., for appellees.

Robert Abrams, Atty.Gen., pro se.

Peter H. Schiff and Robert J. Schack, Asst. Attys. Gen., Albany, N.Y., filed a brief for appellee Atty.Gen. of N.Y.

OPINION

STEVENS, Justice.

The question presented is whether New York has sufficiently protected an unmarried father's inchoate relationship with a child whom he has never supported and rarely seen in

Page 250

the two years since her birth. The appellant, Jonathan Lehr, claims that the Due Process and Equal Protection Clauses of the Fourteenth Amendment, as interpreted in *Stanley v. Illinois,* 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972), and *Caban v. Mohammed.* 441 U.S. 380, 99 S.Ct. 1760, 60 L.Ed.2d 297 (1979), give him an absolute right to notice and an opportunity to be heard before the child may be adopted. We disagree.

Jessica M. was born out of wedlock on November 9, 1976. Her mother, Lorraine Robertson, married Richard Robertson eight months after Jessica's birth. [1] On December 21, 1978, when Jessica was over two years old, the Robertsons filed an adoption petition in the Family Court of Ulster County, New York. The court heard their testimony and received a favorable report from the Ulster County Department of Social Services. On March 7, 1979, the court entered an order of adoption. [2] In this proceeding, appellant contends that the adoption order is invalid because he, Jessica's putative father, was not given advance notice of the adoption proceeding. [3]

[103 S.Ct. 2988] The State of New York maintains a "putative father registry." [4] A man who files with that registry demonstrates his

Page 251

intent to claim paternity of a child born out of wedlock and is therefore entitled to receive notice of any proceeding to adopt that child. Before entering Jessica's adoption order, the Ulster County Family Court had the putative father registry examined. Although appellant claims to be Jessica's natural father, he had not entered his name in the registry.

In addition to the persons whose names are listed on the putative father registry, New York law requires that notice of an adoption proceeding be given to several other classes of possible fathers of children born out of wedlock--those who have been adjudicated to be the father, those who have been identified as the father on the child's birth certificate, those who live openly with the child and the child's mother and who hold themselves out to be the father, those who have been identified as the father by the mother in a sworn written statement, and those who were married to the child's mother before the child was six months old. [5] Appellant admittedly

Page 252

was not a member of any of those classes. He had lived with appellee prior to Jessica's birth and visited her in the hospital when Jessica was born, but his name does not appear on Jessica's birth certificate. He did not live with appellee or Jessica after Jessica's birth, he has never provided them with any financial support, and he has never offered to marry appellee. Nevertheless, he contends that the following special circumstances gave him a constitutional right to notice and a hearing before Jessica was adopted.

On January 30, 1979, one month after the adoption proceeding was commenced in Ulster County, appellant filed a "visitation and paternity petition" in the Westchester

[103 S.Ct. 2989] County Family Court. In that petition, he asked for a determination of paternity, an order of support, and reasonable visitation privileges with Jessica. Notice of that proceeding was served on appellee on February 22, 1979. Four days later appellee's attorney informed the Ulster County Court that appellant had commenced a paternity proceeding in Westchester County; the Ulster County judge then entered an

Page 253

order staying appellant's paternity proceeding until he could rule on a motion to change the venue of that proceeding to Ulster County. On March 3, 1979, appellant received notice of the change of venue motion and, for the first time, learned that an adoption proceeding was pending in Ulster County.

On March 7, 1979, appellant's attorney telephoned the Ulster County judge to inform him that he planned to seek a stay of the adoption proceeding pending the determination of the paternity petition. In that telephone conversation, the judge advised the lawyer that he had already signed the adoption order earlier that day.

According to appellant's attorney, the judge stated that he was aware of the pending paternity petition but did not believe he was required to give notice to appellant prior to the entry of the order of adoption.

Thereafter, the Family Court in Westchester County granted appellee's motion to dismiss the paternity petition, holding that the putative father's right to seek paternity "... must be deemed severed so long as an order of adoption exists." App. 228. Appellant did not appeal from that dismissal. [6] On June 22, 1979, appellant filed a petition to vacate the order of adoption on the ground that it was obtained by fraud and in violation of his constitutional rights. The Ulster County Family Court received written and oral argument on the question whether it had "dropped the ball" by approving the adoption without giving appellant advance notice. Tr. 53. After deliberating for several months, it denied the petition, explaining its decision in a thorough written opinion. *In the Matter of the Adoption by Lorraine and Richard Robertson of Jessica Martz*, 102 Misc.2d 102, 423 N.Y.S.2d 378 (1979).

The Appellate Division of the Supreme Court affirmed. *In the Matter of the Adoption of Jessica "XX"*, 77 App.Div.2d 381, 434 N.Y.S.2d 772 (1980). The majority held that appellant's commencement of a paternity action did not give him any

Page 254

right to receive notice of the adoption proceeding, that the notice provisions of the statute were constitutional, and that *Caban v. Mohammed*, 441 U.S. 380, 99 S.Ct. 1760, 60 L.Ed.2d 297 (1979), was not retroactive. [7] Parenthetically, the majority observed that appellant "could have insured his right to notice by signing the putative father registry." 77 App.Div.2d, at 383, 434 N.Y.S.2d 772. One justice dissented on the ground that the filing of the paternity proceeding should have been viewed as the statutory equivalent of filing a notice of intent to claim paternity with the putative father registry.

The New York Court of Appeals also affirmed by a divided vote. *In the Matter of Jessica "XX"*, 54 N.Y.2d 417, 446 N.Y.S.2d 20, 430 N.E.2d 896 (1981). The majority first held that it did not need to consider whether our decision in *Caban* affected appellant's claim that he had a right to notice, because *Caban* was not retroactive. [8] It then rejected the argument that the mother had been guilty of a fraud upon the court. Finally, it addressed what it described as the only contention of substance advanced by appellant: that it was

[103 S.Ct. 2990] an abuse of discretion to enter the adoption order without requiring that notice be given to appellant. The court observed that the primary purpose of the notice provision of § 111-a was to enable the person served to provide the court with evidence concerning the best interest of the child, and that appellant had made no tender indicating any ability to provide any particular or special information relevant to Jessica's best interest. Considering the record as a whole, and acknowledging that it might have been prudent to give notice, the court concluded

Page 255

that the family court had not abused its discretion either when it entered the order without notice or when it denied appellant's petition to reopen the proceedings. The dissenting judges concluded that the family court had abused its discretion, both when it entered the order without notice and when it refused to reopen the proceedings.

Appellant has now invoked our appellate jurisdiction. [9] He offers two alternative grounds for holding the New York statutory scheme unconstitutional. First, he contends that a putative father's actual or potential relationship with a child born out of wedlock is an interest in liberty which may not be destroyed without due process of law; he argues therefore that he had a constitutional right to prior notice and an opportunity to be heard before he was deprived of that interest. Second, he contends that the gender-based classification in the statute, which both denied him the right to consent to Jessica's adoption and accorded him fewer procedural rights than her mother, violated the Equal Protection Clause. [10]

Page 256

The Due Process Claim.

The Fourteenth Amendment provides that no State shall deprive any person of life, liberty, or property without due process of law. When that Clause is invoked in a novel context, it is our practice to begin the inquiry with a determination of the precise nature of the private interest that is threatened by the State. See, *e.g.*, *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895-896, 81 S.Ct. 1743, 1748-1749, 6 L.Ed.2d 1230 (1961). Only after that interest has been identified, can we properly evaluate the adequacy of the State's process. See *Morrissey v. Brewer*, 408 U.S. 471, 482-483, 92 S.Ct. 2593, 2600-2601, 33 L.Ed.2d 484 (1972). We therefore first consider the nature of the interest in liberty for which appellant claims constitutional protection and then turn to a discussion of the adequacy of the procedure that New York has provided for its protection.

I

The intangible fibers that connect parent and child have infinite variety. They are woven throughout the fabric of our society, providing it with strength, beauty, and flexibility. It is self-evident that they are sufficiently vital to merit constitutional protection in appropriate

cases. In deciding whether this is such a case, however, we must consider the broad framework that has traditionally been used to resolve

[103 S.Ct. 2991] the legal problems arising from the parent-child relationship.

In the vast majority of cases, state law determines the final outcome. Cf. *United States v. Yazell*, 382 U.S. 341, 351-353, 86 S.Ct. 500, 506-507, 16 L.Ed.2d 404 (1966). Rules governing the inheritance of property, adoption, and child custody are generally specified in statutory enactments that vary from State to State. [11] Moreover, equally varied state laws governing marriage and divorce affect a multitude of parent-child relationships. The institution

Page 257

of marriage has played a critical role both in defining the legal entitlements of family members and in developing the decentralized structure of our democratic society. [12] In recognition of that role, and as part of their general overarching concern for serving the best interests of children, state laws almost universally express an appropriate preference for the formal family. [13]

In some cases, however, this Court has held that the Federal Constitution supersedes state law and provides even greater protection for certain formal family relationships. In those cases, as in the state cases, the Court has emphasized the paramount interest in the welfare of children and has noted that the rights of the parents are a counterpart of the responsibilities they have assumed. Thus, the "liberty" of parents to control the education of their children that was vindicated in *Meyer v. Nebraska*, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923), and *Pierce v. Society of Sisters*, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925), was described as a "right, coupled with the high duty, to recognize and prepare [the child] for additional obligations." Id., at 535, 45 S.Ct., at 573. The linkage between parental duty and parental right was stressed again in *Prince v. Massachusetts*, 321 U.S. 158, 166, 64 S.Ct. 438, 88 L.Ed. 645 (1944), when the Court declared it a cardinal principal "that the custody, care and nurture of the child reside

Page 258

first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Id.*, at 166, 64 S.Ct., at 442. In these cases the Court has found that the relationship of love and duty in a recognized family unit is an interest in liberty entitled to constitutional protection. See also *Moore v. City of East Cleveland*, 431 U.S. 494, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977) (plurality opinion). "[S]tate intervention to terminate [such a] relationship ... must be accomplished by procedures meeting the requisites of the Due Process Clause." *Santosky v. Kramer*, 455 U.S. 745, 752, 102 S.Ct. 1388, 1393, 71 L.Ed.2d 599 (1982).

There are also a few cases in which this Court has considered the extent to which the Constitution affords protection to the relationship between natural parents and children born out of wedlock. In some we have been concerned with the rights of the children, see, *e.g.*, *Trimble v. Gordon*, 430 U.S. 762, 97 S.Ct. 1459, 52 L.Ed.2d 31 (1977); *Jimenez v. Weinberger*, 417 U.S. 628, 94 S.Ct. 2496, 41 L.Ed.2d 363 (1974); *Weber v. Aetna Casualty*, 406 U.S. 164, 92 S.Ct. 1400, 31 L.Ed.2d 768 (1972). In this case, however, it is a parent who claims that the state has improperly

[103 S.Ct. 2992] deprived him of a protected interest in liberty. This Court has examined the extent to which a natural father's biological relationship with his illegitimate child receives protection under the Due Process Clause in precisely three cases: *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972), *Quilloin v. Walcott*, 434 U.S. 246, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978), and *Caban v. Mohammed*, 441 U.S. 380, 99 S.Ct. 1760, 60 L.Ed.2d 297 (1979).

Stanley involved the constitutionality of an Illinois statute that conclusively presumed every father of a child born out of wedlock to be an unfit person to have custody of his children. The father in that case had lived with his children all their lives and had lived with their mother for eighteen years. There was nothing in the record to indicate that Stanley had been a neglectful father who had not cared for his children. 405 U.S., at 655, 92 S.Ct., at 1214. Under the statute, however, the nature of the actual relationship between parent and child was completely irrelevant. Once the mother died, the children were automatically made wards of the state. Relying in part on a

Page 259

Michigan case[14] recognizing that the preservation of "a subsisting relationship with the child's father" may better serve the child's best interest than "uprooting him from the family which he knew from birth," *id.*, at 654-655, n. 7, 92 S.Ct., at 1214-1215, n. 7, the Court held that the Due Process Clause was violated by the automatic destruction of the custodial relationship without giving the father any opportunity to present evidence regarding his fitness as a parent. [15]

Quilloin involved the constitutionality of a Georgia statute that authorized the adoption of a child born out of wedlock over the objection of the natural father. The father in that case had never legitimated the child. It was only after the mother had remarried and her new husband had filed an adoption petition that the natural father sought visitation rights and filed a petition for legitimation. The trial court found adoption by the new

husband to be in the child's best interests, and we unanimously held that action to be consistent with the Due Process Clause.

Caban involved the conflicting claims of two natural parents who had maintained joint custody of their children from the time of their birth until they were respectively two and four years old. The father challenged the validity of an order authorizing the mother's new husband to adopt the children; he relied on both the Equal Protection Clause and the Due Process Clause. Because this Court upheld his equal protection claim, the majority did not address his due process challenge. The comments on the latter claim by the four dissenting Justices are nevertheless instructive, because they identify the clear distinction between a mere biological

Page 260

relationship and an actual relationship of parental responsibility.

Justice Stewart correctly observed:

"Even if it be assumed that each married parent after divorce has some substantive due process right to maintain his or her parental relationship, cf. *Smith v. Organization of Foster Families*, 431 U.S. 816, 862-863 [97 S.Ct. 2094, 2119, 53 L.Ed.2d 14] (opinion concurring in judgment), it by no means follows that each unwed parent has any such right. *Parental rights do not spring full-blown from the biological connection between parent and child.* They require relationships more enduring." 441 U.S., at 397, 99 S.Ct., at 1770 (emphasis added).[16]

[103 S.Ct. 2993] In a similar vein, the other three dissenters in *Caban* were prepared to "assume that, *if and when one develops,* the relationship between a father and his natural child is entitled to protection against arbitrary state action as a matter of due process." *Caban v. Mohammed*, 441 U.S. 380, 414, 99 S.Ct. 1760, 1779, 60 L.Ed.2d 297 (emphasis added).

Page 261

The difference between the developed parent-child relationship that was implicated in *Stanley* and *Caban*, and the potential relationship involved in *Quilloin* and this case, is both clear and significant. When an unwed father demonstrates a full commitment to the responsibilities of parenthood by "com[ing] forward to participate in the rearing of his child," *Caban*, 441 U.S., at 392, 99 S.Ct., at 1768, his interest in personal contact with his child acquires substantial protection under the due process clause. At that point it may be said that he "act[s] as a father toward his children." *Id.*, at 389, n. 7, 99 S.Ct., at 1766, n. 7. But the mere existence of a biological link does not merit equivalent constitutional protection. The actions of judges neither create nor sever genetic bonds. "[T]he importance of the familial relationship, to the individuals involved and to the society, stems from the emotional attachments that derive from the intimacy of daily association, and from the role it plays in 'promot[ing] a way of life' through the instruction of children as well as from the fact of blood relationship." *Smith v. Organization of Foster Families for Equality and Reform*, 431 U.S. 816, 844, 97 S.Ct. 2094, 2109-2110, 53 L.Ed.2d 14 (1977) (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 231-233, 92 S.Ct. 1526, 1541-1542, 32 L.Ed.2d 15 (1972)).[17]

Page 262

The significance of the biological connection is that it offers the natural father an opportunity that no other male possesses to develop a relationship with his offspring. If he grasps that opportunity and accepts some measure of responsibility for the child's future, he may enjoy the blessings of the parent-child relationship and make uniquely valuable contributions to the child's development. [18] If he fails to do so,

[103 S.Ct. 2994] the Federal Constitution will not automatically compel a state to listen to his opinion of where the child's best interests lie.

In this case, we are not assessing the constitutional adequacy of New York's procedures for terminating a developed relationship. Appellant has never had any significant custodial, personal, or financial relationship with Jessica, and he did not seek to establish a legal tie until after she was two years old. [19] We are concerned only with whether New York

Page 263

has adequately protected his opportunity to form such a relationship.

II

The most effective protection of the putative father's opportunity to develop a relationship with his child is provided by the laws that authorize formal marriage and govern its consequences. But the availability of that protection is, of course, dependent on the will of both parents of the child. Thus, New York has adopted a special statutory scheme to protect the unmarried father's interest in assuming a responsible role in the future of his child.

After this Court's decision in *Stanley*, the New York Legislature appointed a special commission to recommend legislation that would accommodate both the interests of biological fathers in their children and the children's interest in prompt and certain adoption procedures. The commission recommended, and the legislature enacted, a statutory adoption scheme that automatically provides notice to seven categories of

putative fathers who are likely to have assumed some responsibility for the care of their natural children. [20] If

Page 264

this scheme were likely to omit many responsible fathers, and if qualification for notice were beyond the control of an interested putative father, it might be thought procedurally inadequate. Yet, as all of the New York

[103 S.Ct. 2995] courts that reviewed this matter observed, the right to receive notice was completely within appellant's control. By mailing a postcard to the putative father registry, he could have guaranteed that he would receive notice of any proceedings to adopt Jessica. The possibility that he may have failed to do so because of his ignorance of the law cannot be a sufficient reason for criticizing the law itself. The New York legislature concluded that a more open-ended notice requirement would merely complicate the adoption process, threaten the privacy interests of unwed mothers,[21] create the risk of unnecessary controversy, and impair the desired finality of adoption decrees. Regardless of whether we would have done likewise if we were legislators instead of judges, we surely cannot characterize the state's conclusion as arbitrary. [22]

Appellant argues, however, that even if the putative father's opportunity to establish a relationship with an illegitimate child is adequately protected by the New York statutory scheme in the normal case, he was nevertheless entitled

Page 265

to special notice because the court and the mother knew that he had filed an affiliation proceeding in another court. This argument amounts to nothing more than an indirect attack on the notice provisions of the New York statute. The legitimate state interests in facilitating the adoption of young children and having the adoption proceeding completed expeditiously that underlie the entire statutory scheme also justify a trial judge's determination to require all interested parties to adhere precisely to the procedural requirements of the statute. The Constitution does not require either a trial judge or a litigant to give special notice to nonparties who are presumptively capable of asserting and protecting their own rights. [23] Since the New York statutes adequately protected appellant's inchoate interest in establishing a relationship with Jessica, we find no merit in the claim that his constitutional rights were offended because the family court strictly complied with the notice provisions of the statute.

The Equal Protection Claim.

The concept of equal justice under law requires the State to govern impartially. *New York Transit Authority v. Beazer*, 440 U.S. 568, 587, 99 S.Ct. 1355, 1366, 59 L.Ed.2d 587 (1979). The sovereign may not draw distinctions between individuals based solely on differences that are irrelevant to a legitimate governmental objective. *Reed v. Reed*, 404 U.S. 71, 76, 92 S.Ct. 251, 254, 30 L.Ed.2d 225 (1971).[24]

[103 S.Ct. 2996] Specifically,

Page 266

it may not subject men and women to disparate treatment when there is no substantial relation between the disparity and an important state purpose. *Ibid;* Craig v. Boren, 429 U.S. 190, 197-199, 97 S.Ct. 451, 456-457, 50 L.Ed.2d 397 (1976).

The legislation at issue in this case, sections 111 and 111a of the New York Domestic Relations Law, is intended to establish procedures for adoptions. Those procedures are designed to promote the best interests of the child, protect the rights of interested third parties, and ensure promptness and finality. [25] To serve those ends, the legislation guarantees to certain people the right to veto an adoption and the right to prior notice of any adoption proceeding. The mother of an illegitimate child is always within that favored class, but only certain putative fathers are included. Appellant contends that the gender-based distinction is invidious.

As we noted above, the existence or nonexistence of a substantial relationship between parent and child is a relevant criterion in evaluating both the rights of the

Page 267

parent and the best interests of the child. In *Quilloin v. Walcott, supra,* we noted that the putative father, like appellant, "ha[d] never shouldered any significant responsibility with respect to the daily supervision, education, protection, or care of the child. Appellant does not complain of his exemption from these responsibilities...." 434 U.S., at 256, 98 S.Ct., at 555. We therefore found that a Georgia statute that always required a mother's consent to the adoption of a child born out of wedlock, but required the father's consent only if he had legitimated the child, did not violate the Equal Protection Clause. Because, like the father in *Quilloin,* appellant has never established a substantial relationship with his daughter, see p. 2994, *supra,* the New York statutes at issue in this case did not operate to deny appellant equal protection.

We have held that these statutes may not constitutionally be applied in that class of cases where the mother and father are in fact similarly situated with regard to their relationship with the child. In *Caban v. Mohammed,* 441 U.S. 380, 99 S.Ct. 1760, 60 L.Ed.2d 297 (1979), the Court held that it violated the Equal Protection Clause to grant the mother a veto over the adoption of a four-year-old girl and a six-year-old boy, but not to grant a veto to their father, who had admitted

paternity and had participated in the rearing of the children. The Court made it clear, however, that if the father had not "come forward to participate in the rearing of his child, nothing in the Equal Protection Clause [would] preclude[ ] the State from withholding from him the privilege of vetoing the adoption of that child." 441 U.S., at 392, 99 S.Ct., at 1768.

Jessica's parents are not like the parents involved in *Caban*. Whereas appellee had a continuous custodial responsibility for Jessica, appellant never established any custodial, personal, or financial relationship with her. If one parent has an established custodial relationship with the child and the

[103 S.Ct. 2997] other parent has either abandoned[26] or never established

Page 268

a relationship, the Equal Protection Clause does not prevent a state from according the two parents different legal rights. [27]

The judgment of the New York Court of Appeals is

Affirmed.

Justice WHITE, with whom Justice MARSHALL and Justice BLACKMUN join, dissenting.

The question in this case is whether the State may, consistent with the Due Process Clause, deny notice and an opportunity to be heard in an adoption proceeding to a putative father when the State has actual notice of his existence, whereabouts, and interest in the child.

I

It is axiomatic that "[t]he fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.' " Mathews v. Eldridge, 424 U.S. 319, 333, 96 S.Ct. 893, 902, 47 L.Ed.2d 18 (1976), quoting *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62 (1965). As Jessica's biological father, Lehr either had an interest protected by the Constitution or he did not. [1] If the entry of the adoption order in this case deprived Lehr of a constitutionally protected interest, he is entitled to notice and an opportunity to be heard before the order can be accorded finality.

According to Lehr, he and Jessica's mother met in 1971 and began living together in 1974. The couple cohabited for

Page 269

approximately 2 years, until Jessica's birth in 1976. Throughout the pregnancy and after the birth, Lorraine acknowledged to friends and relatives that Lehr was Jessica's father; Lorraine told Lehr that she had reported to the New York State Department of Social Services that he was the father. [2] Lehr visited Lorraine and Jessica in the hospital every day during Lorraine's confinement. According to Lehr, from the time Lorraine was discharged from the hospital until August, 1978, she concealed her whereabouts from him. During this time Lehr never ceased his efforts to locate Lorraine and Jessica and achieved sporadic success until August, 1977, after which time he was unable to locate them at all. On those occasions when he did determine Lorraine's location, he visited with her and her children to the extent she was willing to permit it. When Lehr, with the aid of a detective agency, located Lorraine and Jessica in August, 1978, Lorraine was already married to Mr. Robertson. Lehr asserts that at this time he offered to provide financial assistance and to set up a trust fund for Jessica, but that Lorraine refused. Lorraine threatened Lehr with arrest unless he stayed away and refused to permit him to see Jessica. Thereafter Lehr retained counsel who wrote to Lorraine in early December, 1978, requesting that she permit Lehr to visit Jessica and threatening legal action on Lehr's behalf. On December

[103 S.Ct. 2998] 21, 1978, perhaps as a response to Lehr's threatened legal action, appellees commenced the adoption action at issue here.

The majority posits that "[t]he intangible fibers that connect parent and child ... are sufficiently vital to merit constitutional protection *in appropriate cases*. " *Ante*, at 2990

Page 270

(emphasis added). It then purports to analyze the particular facts of this case to determine whether appellant has a constitutionally protected liberty interest. We have expressly rejected that approach. In *Board of Regents v. Roth*, 408 U.S. 564, 570-571, 92 S.Ct. 2701, 2705-2706, 33 L.Ed.2d 548 (1972), we stated that although "a weighing process has long been a part of any determination of the*form* of hearing required in particular situations, ... to determine whether due process requirements apply in the first place, we must look not to the 'weight' but to the *nature* of the interest at stake ... to see if the interest is within the Fourteenth Amendment's protection...." See, *e.g.*, *Smith v. Organization of Foster Families*, 431 U.S. 816, 839-842, 97 S.Ct. 2094, 2106-2108, 53 L.Ed.2d 14 (1977); *Ingraham v. Wright*, 430 U.S. 651, 672, 97 S.Ct. 1401, 1413, 51 L.Ed.2d 711 (1977); *Meachum v. Fano*, 427 U.S. 215, 224, 96 S.Ct. 2532, 2538, 49 L.Ed.2d 451 (1976); *Goss v. Lopez*, 419 U.S. 565, 575-576, 95 S.Ct. 729, 736-737, 42 L.Ed.2d 725 (1975); *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484 (1972).

The "nature of the interest" at stake here is the interest that a natural parent has in his or her child, one that has long been recognized and accorded constitutional protection. We have frequently

"stressed the importance of familial bonds, whether or not legitimized by marriage, and accorded them constitutional protection." *Little v. Streater*, 452 U.S. 1, 13, 101 S.Ct. 2202, 2209, 68 L.Ed.2d 627 (1981). If "both the child and the [putative father] in a paternity action have a compelling interest" in the accurate outcome of such a case, *ibid*, it cannot be disputed that both the child and the putative father have a compelling interest in the outcome of a proceeding that may result in the termination of the father-child relationship. "A parent's interest in the accuracy and justice of the decision to terminate his or her parental status is ... a commanding one." *Lassiter v. Department of Social Services*, 452 U.S. 18, 27, 101 S.Ct. 2153, 2160, 68 L.Ed.2d 640 (1981). It is beyond dispute that a formal order of adoption, no less than a formal termination proceeding, operates to permanently terminate parental rights.

Lehr's version of the "facts" paints a far different picture than that portrayed by the majority. The majority's recitation,

Page 271

that "[a]ppellant has never had any significant custodial, personal, or financial relationship with Jessica, and he did not seek to establish a legal tie until after she was two years old," *ante*, at 2994, obviously does not tell the whole story. Appellant has never been afforded an opportunity to present his case. The legitimation proceeding he instituted was first stayed, and then dismissed, on appellees' motions. Nor could appellant establish his interest during the adoption proceedings, for it is the failure to provide Lehr notice and an opportunity to be heard there that is at issue here. We cannot fairly make a judgment based on the quality or substance of a relationship without a complete and developed factual record. This case requires us to assume that Lehr's allegations are true--that but for the actions of the child's mother there would have been the kind of significant relationship that the majority concedes is entitled to the full panoply of procedural due process protections. [3]

[103 S.Ct. 2999] I reject the peculiar notion that the only significance of the biological connection between father and child is that "it offers the natural father an opportunity that no other male possesses to develop a relationship with his offspring." *Ante*, at 2993. A "mere biological relationship" is not as unimportant in determining the nature of liberty interests as the majority suggests.

Page 272

"[T]he usual understanding of 'family' implies biological relationships, and most decisions treating the relation between parent and child have stressed this element." *Smith v. Organization of Foster Families, supra*, 431 U.S., at 843, 97 S.Ct., at 2109. The "biological connection" is itself a relationship that creates a protected interest. Thus the "nature" of the interest is the parent-child relationship; how well-developed that relationship has become goes to its "weight," not its "nature." [4] Whether Lehr's interest is entitled to constitutional protection does not entail a searching inquiry into the quality of the relationship but a simple determination of the *fact* that the relationship exists--a fact that even the majority agrees must be assumed to be established.

Beyond that, however, because there is no established factual basis on which to proceed, it is quite untenable to conclude that a putative father's interest in his child is lacking in substance, that the father in effect has abandoned the child, or ultimately that the father's interest is not entitled to the same minimum procedural protections as the interests of other putative fathers. Any analysis of the adequacy of the notice in this case must be conducted on the assumption that the interest involved here is as strong as that of *any* putative father. That is not to say that due process requires actual notice to every putative father or that adoptive parents or the State must conduct an exhaustive search of records or an intensive investigation before a final adoption order may be entered. The procedures adopted by the State, however, must at least represent a reasonable effort to determine the

Page 273

identity of the putative father and to give him adequate notice.

II

In this case, of course, there was no question about either the identity or the location of the putative father. The mother knew exactly who he was and both she and the court entering the order of adoption knew precisely where he was and how to give him actual notice that his parental rights were about to be terminated by an adoption order. [5] Lehr was entitled to due process, and the right to be heard is one of the fundamentals of that right, which "has little reality or worth unless one is informed that the matter is pending and

[103 S.Ct. 3000] can choose for himself whether to appear or default, acquiesce or contest." *Schroeder v. City of New York*, 371 U.S. 208, 212, 83 S.Ct. 279, 282, 9 L.Ed.2d 255 (1962), quoting *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950).

The State concedes this much but insists that Lehr has had all the process that is due to him. It relies on § 111-a, which designates seven categories of unwed fathers to whom notice of adoption proceedings must be given, including any unwed father who has filed with the

State a notice of his intent to claim paternity. The State submits that it need not give notice to anyone who has not filed his name, as he is permitted to do, and who is not otherwise within the designated categories,

Page 274

even if his identity and interest are known or are reasonably ascertainable by the State.

I am unpersuaded by the State's position. In the first place, § 111-a defines six categories of unwed fathers to whom notice must be given even though they have not placed their names on file pursuant to the section. Those six categories, however, do not include fathers such as Lehr who have initiated filiation proceedings, even though their identity and interest are as clearly and easily ascertainable as those fathers in the six categories. Initiating such proceedings necessarily involves a formal acknowledgement of paternity, and requiring the State to take note of such a case in connection with pending adoption proceedings would be a trifling burden, no more than the State undertakes when there is a final adjudication in a paternity action. [6] Indeed, there would appear to be more reason to give notice to those such as Lehr who acknowledge paternity than to those who have been adjudged to be a father in a contested paternity action.

The State asserts that any problem in this respect is overcome by the seventh category of putative fathers to whom notice must be given, namely those fathers who have identified themselves in the putative father register maintained by the State. Since Lehr did not take advantage of this device to make his interest known, the State contends, he was not entitled to notice and a hearing even though his identity, location and interest were known to the adoption court prior to entry of the adoption order. I have difficulty with this position.

Page 275

First, it represents a grudging and crabbed approach to due process. The State is quite willing to give notice and a hearing to putative fathers who have made themselves known by resorting to the putative fathers' register. It makes little sense to me to deny notice and hearing to a father who has not placed his name in the register but who has unmistakably identified himself by filing suit to establish his paternity and has notified the adoption court of his action and his interest. I thus need not question the statutory scheme on its face. Even assuming that Lehr would have been foreclosed if his failure to utilize the register had somehow disadvantaged the State, he effectively made himself known by other means, and it is the sheerest formalism to deny him a hearing because he informed the State in the wrong manner. [7]

[103 S.Ct. 3001] No state interest is substantially served by denying Lehr adequate notice and a hearing. The State no doubt has an interest in expediting adoption proceedings to prevent a child from remaining unduly long in the custody of the State or foster parents. But this is not an adoption involving a child in the custody of an authorized state agency. Here the child is in the custody of the mother and will remain in her custody. Moreover, had Lehr utilized the putative father register, he would have been granted a prompt hearing, and there was no justifiable reason, in terms of delay, to refuse him a hearing in the circumstances of this case.

The State's undoubted interest in the finality of adoption orders likewise is not well served by a procedure that will

Page 276

deny notice and a hearing to a father whose identity and location are known. As this case well illustrates, denying notice and a hearing to such a father may result in years of additional litigation and threaten the reopening of adoption proceedings and the vacation of the adoption. Here, the Family Court's unseemly rush to enter an adoption order after ordering that cause be shown why the filiation proceeding should not be transferred and consolidated with the adoption proceeding can hardly be justified by the interest in finality. To the contrary, the adoption order entered in March, 1979, has remained open to question until this very day.

Because in my view the failure to provide Lehr with notice and an opportunity to be heard violated rights guaranteed him by the Due Process Clause, I need not address the question whether § 111-a violates the Equal Protection Clause by discriminating between categories of unwed fathers or by discriminating on the basis of gender.

Respectfully, I dissent.

Notes:

[*] The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

[1] Although both Lorraine and Richard Robertson are appellees in this proceeding, for ease of discussion the term "appellee" will hereafter be used to identify Lorraine Robertson.

[2] The order provided for the adoption of appellee's older daughter, Renee, as well as Jessica. Appellant does not challenge the adoption of Renee.

[3] Appellee has never conceded that appellant is Jessica's biological father, but for *purposes of analysis in*

this opinion it will be assumed that he is.

[4] At the time Jessica's adoption order was entered, § 372-c of the New York Social Services Law provided:

"1. The department shall establish a putative father registry which shall record the names and addresses of ... any person who has filed with the registry before or after the birth of a child out of wedlock, a notice of intent to claim paternity of the child....

"2. A person filing a notice of intent to claim paternity of a child shall include therein his current address and shall notify the registry of any change of address pursuant to procedures prescribed by regulations of the department.

"3. A person who has filed a notice of intent to claim paternity may at any time revoke a notice of intent to claim paternity previously filed therewith and, upon receipt of such notification by the registry, the revoked notice of intent to claim paternity shall be deemed a nullity *nunc pro tunc*.

"4. An unrevoked notice of intent to claim paternity of a child may be introduced in evidence by any party, other than the person who filed such notice, in any proceeding in which such fact may be relevant.

"5. The department shall, upon request, provide the names and addresses of persons listed with the registry to any court or authorized agency, and such information shall not be divulged to any other person, except upon order of a court for good cause shown."

[5] At the time Jessica's adoption order was entered, subdivisions 2-4 of § 111-a of the New York Domestic Relations Law provided:

"2. Persons entitled to notice, pursuant to subdivision one of this section, shall include:

"(a) any person adjudicated by a court in this state to be the father of the child;

"(b) any person adjudicated by a court of another state or territory of the United States to be the father of the child, when a certified copy of the court order has been filed with the putative father registry, pursuant to section three hundred seventy-two of the social services law;

"(c) any person who has timely filed an unrevoked notice of intent to claim paternity of the child, pursuant to section three hundred seventy-two of the social services law;

"(d) any person who is recorded on the child's birth certificate as the child's father;

"(e) any person who is openly living with the child and the child's mother at the time the proceeding is initiated and who is holding himself out to be the child's father;

"(f) any person who has been identified as the child's father by the mother in written, sworn statement; and

"(g) any person who was married to the child's mother within six months subsequent to the birth of the child and prior to the execution of a surrender instrument or the initiation of a proceeding pursuant to section three hundred eighty-four-b of the social services law.

"3. The sole purpose of notice under this section shall be to enable the person served pursuant to subdivision two to present evidence to the court relevant to the best interests of the child."

[6] Without trying to intervene in the adoption proceeding, appellant had attempted to file an appeal from the adoption order. That appeal was dismissed.

[7] *Caban* was decided on April 24, 1979, about two months after the entry of the order of adoption. In *Caban*, a father who had lived with his two illegitimate children and their mother for several years successfully challenged the constitutionality of the New York statute providing that children could be adopted without the father's consent even though the mother's consent was required.

[8] Although the dissenters in *Caban* discussed the question of retroactivity, see 441 U.S., at 401, 415-416, 99 S.Ct., at 1772, 1780-1781, that question was not addressed in the Court's opinion.

[9] We postponed consideration of our jurisdiction until after hearing argument on the merits. 456 U.S. 970, 102 S.Ct. 2231, 72 L.Ed.2d 843 (1982). Our review of the record persuades us that appellant did in fact draw into question the validity of the New York statutory scheme on the ground of its being repugnant to the Federal Constitution, that the New York Court of Appeals upheld that scheme, and that we therefore have jurisdiction pursuant to 28 U.S.C. § 1257(2).

[10] The question whether the Family Court abused its discretion in not requiring notice to appellant before the adoption order was entered and in not reopening the proceeding is, of course, not before us. That issue was presented to and decided by the New York courts purely as a matter of state law. Whether we might have given such notice had we been sitting at the trial court, or whether we might have considered the failure to give such notice an abuse of discretion had we been sitting as state appellate judges, are questions on which we are not authorized to express an opinion. The only questions we have jurisdiction to decide are whether the New York statutes are unconstitutional because they inadequately protect the natural relationship between parent and child or because they draw an impermissible distinction between the rights of the mother and the rights of the

father.

[11] At present, state legislatures appear inclined to retain the unique attributes of their respective bodies of family law. For example, as of the end of 1982, only eight states had adopted the Uniform Parentage Act. 9A U.L.A. 171 (1983 Supp.)

[12] See Hafen, Marriage, Kinship, and Sexual Privacy, 81 Mich.L.Rev. 463, 479-481 (1983) (hereinafter Hafen).

[13] See *Trimble v. Gordon*, 430 U.S. 762, 769, 97 S.Ct. 1459, 1464, 52 L.Ed.2d 31 (1977) ("No one disputes the appropriateness of Illinois' concern with the family unit, perhaps the most fundamental social institution of our society."). A plurality of the Court noted the societal value of family bonds in *Moore v. City of East Cleveland*, 431 U.S. 494, 505, 97 S.Ct. 1932, 1938, 52 L.Ed.2d 531 (1977) (Opinion of POWELL, J.):

"Out of choice, necessity, or a sense of family responsibility, it has been common for close relatives to draw together and participate in the duties and the satisfactions of a common home.... Especially in times of adversity, such as the death of a spouse or economic need, the broader family has tended to come together for mutual sustenance and to maintain or rebuild a secure home life."

[14] *In re Mark T.*, 8 Mich.App. 122, 154 N.W.2d 27 (1967).

[15] Having "concluded that all Illinois parents are constitutionally entitled to a hearing on their fitness before their children are removed from their custody," the Court also held "that denying such a hearing to Stanley and those like him while granting it to other Illinois parents is inescapably contrary to the Equal Protection Clause." 405 U.S., at 658, 92 S.Ct., at 1216.

[16] In the balance of that paragraph Justice Stewart noted that the relation between a father and his natural child may acquire constitutional protection if the father enters into a traditional marriage with the mother or if "the actual relationship between father and child" is sufficient.

"The mother carries and bears the child, and in this sense her parental relationship is clear. The validity of the father's parental claims must be gauged by other measures. By tradition, the primary measure has been the legitimate familial relationship he creates with the child by marriage with the mother. By definition, the question before us can arise only when no such marriage has taken place. In some circumstances the actual relationship between father and child may suffice to create in the unwed father parental interests comparable to those of the married father. Cf. *Stanley v. Illinois, supra.* But here we are concerned with the rights the unwed father may have when his wishes and those of the mother are in conflict, and the child's best interests are served by a resolution in favor of the mother. It seems to me that the absence of a legal tie with the mother may in such circumstances appropriately place a limit on whatever substantive constitutional claims might otherwise exist by virtue of the father's actual relationship with the children.

Ibid.

[17] Commentators have emphasized the constitutional importance of the distinction between an inchoate and a fully developed relationship. See Comment, 46 Brooklyn L.Rev. 95, 115-116 (1979) ("the unwed father's interest springs not from his biological tie with his illegitimate child, but rather, from the relationship he has established with and the responsibility he has shouldered for his child"); Note, 58 Neb.L.Rev. 610, 617 (1979) ("a putative father's failure to show a substantial interest in his child's welfare and to employ methods provided by state law for solidifying his parental rights ... will remove from him the full constitutional protection afforded the parental rights of other classes of parents"); Note, 29 Emory L.J. 845, 854 (1980) ("an unwed father's rights in his child do not spring solely from the biological fact of his parentage, but rather from his willingness to admit his paternity and express some tangible interest in the child"). See also Poulin, Illegitimacy and Family Privacy: A Note on Maternal Cooperation in Paternity Suits, 70 Nw.U.L.Rev. 910, 916-919 (1976) (hereinafter Poulin); Developments in the Law, 93 Harv.L.Rev. 1156, 1275-1277 (1980); Note, 18 Duquesne L.Rev. 375, 383-384, n. 73 (1980); Note, 19 J. Family L. 440, 460 (1980); Note, 57 Denver L.J. 671, 680-683 (1980); Note, 1979 Wash.U.L.Q. 1029, 1035; Note, 12 U.C.D.L.Rev. 412, 450, n. 218 (1979).

[18] Of course, we need not take sides in the ongoing debate among family psychologists over the relative weight to be accorded biological ties and psychological ties, in order to recognize that a natural father who has played a substantial role in rearing his child has a greater claim to constitutional protection than a mere biological parent. New York's statutory scheme reflects these differences, guaranteeing notice to any putative father who is living openly with the child, and providing putative fathers who have never developed a relationship with the child the opportunity to receive notice simply by mailing a postcard to the putative father registry.

[19] This case happens to involve an adoption by the husband of the natural mother, but we do not believe the natural father has any greater right to object to such an adoption than to an adoption by two total strangers. If anything, the balance of equities tips the opposite way in a case such as this. In denying the putative father relief in *Quilloin*, we made an observation equally applicable here:

"Nor is this a case in which the proposed adoption would place the child with a new set of parents with

whom the child had never before lived. Rather, the result of the adoption in this case is to give full recognition to a family unit already in existence, a result desired by all concerned, except appellant. Whatever might be required in other situations, we cannot say that the State was required in this situation to find anything more than that the adoption, and denial of legitimation, were in the 'best interests of the child.' " 434 U.S., at 255, 98 S.Ct., at 555.

[20] In a report explaining the purpose of the 1976 Amendments to § 111-a of the New York Domestic Relations Law, the temporary state commission on child welfare that was responsible for drafting the legislation stated, in part:

"The measure will dispel uncertainties by providing clear constitutional statutory guidelines for notice to fathers of out-of-wedlock children. It will establish a desired finality in adoption proceedings and will provide an expeditious method for child placement agencies of identifying those fathers who are entitled to notice through the creation of a registry of such fathers within the State Department of Social Services. Conversely, the bill will afford to concerned fathers of out-of-wedlock children a simple means of expressing their interest and protecting their rights to be notified and have an opportunity to be heard. It will also obviate an existing disparity of Appellate Division decisions by permitting such fathers to be petitioners in paternity proceedings.

"The measure is intended to codify the minimum protections for the putative father which *Stanley* would require. In so doing it reflects policy decisions to (a) codify constitutional requirements; (b) clearly establish, as early as possible in a child's life, the rights, interests and obligations of all parties; (c) facilitate prompt planning for the future of the child and permanence of his status; and (d) through the foregoing, promote the best interest of children." App. to Brief for Appellant C-15.

[21] Cf. *Roe v. Norton*, 422 U.S. 391, 95 S.Ct. 2221, 45 L.Ed.2d 268 (1975), *vacating and remanding* 365 F.Supp. 65 (D.Conn.1973). See Poulin 922-932; Barron, Notice to the Unwed Father and Termination of Parental Rights, 9 Family L.Q. 527, 542 (1975).

[22] Nor can we deem unconstitutionally arbitrary the state courts' conclusion that appellant's absence did not distort its analysis of Jessica's best interests. The adoption does not affect Jessica's relationship with her mother. It gives legal permanence to her relationship with her adoptive father, a relationship they had maintained for 21 months at the time the adoption order was entered. Appellant did not proffer any evidence to suggest that legal confirmation of the established relationship would be unwise; he did not even know the adoptive father.

[23] It is a generally accepted feature of our adversary system that a potential defendant who knows that the statute of limitations is about to run has no duty to give the plaintiff advice. There is no suggestion in the record that appellee engaged in fraudulent practices that led appellant not to protect his rights.

[24] In *Reed*, the Court considered an Idaho statute providing that in designating administrators of the estates of intestate decedents, "[o]f several persons claiming and equally entitled to administer, males must be preferred to females." The state had sought to justify the statute as a way to reduce the workload of probate courts by eliminating one class of contests. Writing for a unanimous Court, THE CHIEF JUSTICE observed that in using gender to promote that objective, the legislature had made "the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause." 404 U.S., at 76, 92 S.Ct., at 254. The state's articulated goal could have been completely served by requiring a coin flip. The decision instead to choose a rule that systematically harmed women could be explained only as the product of habit, rather than analysis or reflection, cf. *Califano v. Goldfarb*, 430 U.S. 199, 222, 97 S.Ct. 1021, 1035, 51 L.Ed.2d 270 (1977) (STEVENS, J., concurring in the judgment), or as the product of an invidious and indefensible stereotype, cf. *id.*, at 218, 97 S.Ct., at 1032. Such legislative decisions are inimical to the norm of impartial government.

The mandate of impartiality also constrains those state actors who implement state laws. Thus, the Equal Protection Clause would have been violated in precisely the same manner if in *Reed* there had been no statute and the probate judge had simply announced that he chose Cecil Reed over Sally Reed "because I prefer males to females."

[25] Appellant does not contest the vital importance of those ends to the people of New York. It has long been accepted that illegitimate children whose parents never marry are "at risk" economically, medically, emotionally, and educationally. See E. Crellin, M. Pringle, P. West, Born Illegitimate: Social and Educational Implications 96-112 (1971); cf. T. Lash, H. Sigal, D. Dudzinski, State of the Child: New York City II, at 47 (1980).

[26] In *Caban*, the Court noted that an adoption "may proceed in the absence of consent when the parent whose consent otherwise would be required ... has abandoned the child." 441 U.S., at 392, 99 S.Ct., at 1768.

[27] Appellant also makes an equal protection argument based upon the manner in which the statute distinguishes among classes of fathers. For the reasons set forth in our due process discussion, *supra*, we conclude that the statutory distinction is rational and that appellant's argument is without merit.

[1] The majority correctly assumes that Lehr is in fact Jessica's father. Indeed, Lehr has admitted paternity and sought to establish a legal relationship with the child. It is also noteworthy that the mother has never denied that Lehr is the father.

[2] Under 18 NYCRR § 369.2(b), recipients of public assistance in the Aid to Families with Dependent Children program are required as a condition of eligibility to provide the name and address of the child's father. Lorraine apparently received public assistance after Jessica's birth; it is unclear whether she received public assistance after that regulation went into effect in 1977.

[3] In response to our decision in *Caban v. Mohammed*, 441 U.S. 380, 99 S.Ct. 1760, 60 L.Ed.2d 297 (1979), the statute governing the persons whose consent is necessary to an adoption has been amended to include certain unwed fathers. The State has recognized that an unwed father's failure to maintain an actual relationship or to communicate with a child will not deprive him of his right to consent if he was "prevented from doing so by the person or authorized agency having lawful custody of the child." N.Y.Dom.Rel.Law § 111(1)(d) (as amended by Chap. 575, L. 1980). Thus, even the State recognizes that before a lesser standard can be applied consistent with due process requirements, there must be a determination that there was no significant relationship and that the father was not prevented from forming such a relationship.

[4] The majority's citation of *Quilloin* and *Caban* as examples that the Constitution does not require the same procedural protections for the interests of all unwed fathers is disingenuous. Neither case involved notice and opportunity to be heard. In both, the unwed fathers were notified and participated as parties in the adoption proceedings. See *Quilloin v. Walcott*, 434 U.S. 246, 253, 98 S.Ct. 549, 553, 54 L.Ed.2d 511 (1978); *Caban v. Mohammed*, 441 U.S. 380, 385 n. 3, 99 S.Ct. 1760, 1764 n. 3, 60 L.Ed.2d 297 (1979).

[5] Absent special circumstances, there is no bar to requiring the mother of an illegitimate child to divulge the name of the father when the proceedings at issue involve the permanent termination of the father's rights. Likewise, there is no reason not to require such identification when it is the spouse of the custodial parent who seeks to adopt the child. Indeed, the State now requires the mother to provide the identity of the father if she applies for financial benefits under the Aid to Families with Dependent Children Program. See n. 2, *supra*. The state's obligation to provide notice to persons before their interests are permanently terminated cannot be a lesser concern than its obligation to assure that state funds are not expended when there exists a person upon whom the financial responsibility should fall.

[6] There is some indication that the sponsor of the bill that included the notice requirements of § 111-a believed that a putative father's rights would be protected by the filing of a paternity action. In a letter to the Counsel to the Governor, Senator Pisani stated that a putative father who files with the registry should be expected to keep his address up-to-date because "such a father has elected not to avail himself of his right ... to initiate a paternity proceeding, but rather, has chosen the less involved procedure of filing a 'notice of intent' which will *also* protect his right to notice of subsequent proceedings affecting the child." Brief for Appellee Attorney General at 35a (emphasis added).

[7] In *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972), the Court held that the Constitution forbids a State from removing illegitimate children from their father's custody without notice and an opportunity to be heard. The offensive provision in the Illinois law at issue there was a presumption that an unwed father was not a fit parent. Today the Court indulges in a similar and equally offensive presumption--that an unwed father who has not filed a notice of intent to claim paternity has abandoned his child and waived any right to notice and hearing. This presumption operates regardless of the fact that the father has instituted legal proceedings to establish his rights and obligations.

South Carolina Statutes

Title 63. South Carolina Children's Code

Chapter 9. ADOPTIONS

Article 1. SOUTH CAROLINA ADOPTION ACT

Subarticle 3. CONSENT AND RELINQUISHMENT

Current through 2014 Act No. 324

§ 63-9-310. Persons who must give consent or relinquishment

(A)

Consent or relinquishment for the purpose of adoption is required of the following persons:

(1)

the adoptee, if over fourteen years of age, except where the court finds that the adoptee does not have the mental capacity to give consent, or that the best interests of the adoptee are served by not requiring consent; and either

(2)

the parents or surviving parent of a child conceived or born during the marriage of the parents; or

(3)

the mother of a child born when the mother was not married; and either

(4)

the father of a child born when the father was not married to the child's mother, if the child was placed with the prospective adoptive parents more than six months after the child's birth, but only if the father has maintained substantial and continuous or repeated contact with the child as demonstrated by:

(a)

payment by the father toward the support of the child of a fair and reasonable sum, based on the father's financial ability; and either

(b)

visits by the father to the child at least monthly when the father is physically and financially able to do so, and when the father is not prevented from doing so by the person or agency having lawful custody of the child; or

(c)

regular communication by the father with the child or with the person or agency having lawful custody of the child, when the father is physically and financially unable to visit the child, or when the father is prevented from visiting the child by the person or agency having lawful custody of the child.

The subjective intent of the father, if unsupported by evidence of the acts specified in subitems (a), (b), and (c) of this item (4) of subsection (A) of this section, does not preclude a determination that the father failed to maintain substantial and continuous or repeated contact with the child. In making this determination, the court may not require a showing of diligent efforts by any person or agency having lawful custody of the child to encourage the father to perform the acts. A father of a child born when the father was not married to the child's mother, who openly lived with the child for a period of six months within the one-year period immediately preceding the placement of the child for adoption, and who during the six-months period openly held himself out to be the father of the child is considered to have maintained substantial and continuous or repeated contact with the child for the purpose of this item (4) of subsection (A) of this section; or

(5)

the father of a child born when the father was not married to the child's mother, if the child was placed with the prospective adoptive parents six months or less after the child's birth, but only if:

(a)

the father openly lived with the child or the child's mother for a continuous period of six months immediately preceding the placement of the child for adoption, and the father openly held himself out to be the father of the child during the six months period; or

(b)

the father paid a fair and reasonable sum, based on the father's financial ability, for the support of the child or for expenses incurred in connection with the mother's pregnancy or with the birth of the child, including, but not limited to, medical, hospital, and nursing expenses.

(B)

Consent or relinquishment for the purpose of adoption is required of the legal guardian, child placing agency, or legal custodian of the child if authority to execute a consent or relinquishment has been vested legally in the agency or person and:

(1)

both the parents of the child are deceased; or

(2)

the parental rights of both the parents have been judicially terminated.

(C)

Consent is required of the child placing agency or person facilitating the placement of the child for adoption if the child has been relinquished for adoption to the agency or person.

(D)

If the consent of a child placing agency required by this subsection is not provided to any person eligible under Section 63-9-60 , the agency has an affirmative duty to inform the person who is denied consent of all of his rights for judicial review of the denial.

(E)

Consent or relinquishment for the purpose of adoption given by a parent who is a child is not subject to revocation by reason of the parent's minority.

(F)

Under no circumstances may a child-placing agency or any person receive a fee, compensation, or any other thing of value as consideration for giving a consent or relinquishment of a child for the purpose of adoption and no child-placing agency or person may receive a child for payment of such fee, compensation, or any other thing of value.

However, costs may be assessed and payment made, subject to the court's approval, for the following:

(1)

reimbursements for necessary, actual medical, and reasonable living expenses incurred by the mother and child for a reasonable period of time;

(2)

the fee for obtaining investigations and reports as required by Section 63-9-520 ;

(3)

the fee of the individuals required to take the consent or relinquishment, as required by Section 63-9-340(A) ;

(4)

the fee of a guardian ad litem appointed pursuant to Section 63-9-720 ;

(5)

reasonable attorney's fees and costs for actual services rendered;

(6)

reasonable fees to child-placing agencies; and

(7)

reasonable fees to sending agencies as defined in Section 63-9-2200(2)(b) , the Interstate Compact on the Placement of Children.

The court may approve an adoption while not approving unreasonable fees and costs.

Cite as S.C. Code § 63-9-310

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	Case No. 2013-CP-23-04186
Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields,	)	
Plaintiffs,	)	**AFFIDAVIT OF PAMELA RASBERRY RE: MOTION TO DENY MARK COLLINS ANY AND ALL PROCEEDS DERIVED FROM SETTLEMENT OF SURVIVAL AND WRONGFUL DEATH ACTIONS**
vs.	)	
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,	)	
Defendants.	)	

Comes Now AFFIANT PAMELA RASBERRY, being first duly sworn, under oath, on this 25th day of September 2014, hereby states as follows:

My name is Pamela Rasberry, I have been a friend of Lauren Murphy's mother, Amy Sullivan, since Lauren was 6 months old. I babysat Lauren as a child.

Lauren and I became pregnant around the same time in the fall of 2011. As a result of sharing our pregnancies, Lauren and I became close friends. As a result of our friendship, I have direct and personal knowledge of the following as it pertains to Lauren Murphy's relationship with Mark Collins and Mark Collins' actions during the course of Lauren's pregnancy, delivery and loss of her daughter Tynslee.

The same day Lauren learned she was pregnant, she told me. Lauren did not tell me who the father was, but she did tell me sometime in October that the father was Mark Collins. I did not know Mark Collins at the time.

It is important for the Court to know that while Lauren and I were pregnant, we spent time together at least four times a week, sometimes more. I went to at least two, if not three of her OBGYN visits. I also went to the hospital with her twice when she was concerned she was having problems with her pregnancy. I was at the hospital before Lauren the day she was admitted for the birth of Tynslee. I returned to the hospital the following day to help her go home, and I stayed with her and her family at Lauren's house much of the day due to Lauren's emotional loss.

As much time as Lauren and I spent together during her pregnancy with Tynslee, I never once met Mark Collins in person or spoke to him on the telephone. The first time I personally spoke with him on the telephone was 2-3 months after Tynslee passed.

In that conversation, I asked him why he didn't want to see anything of Tynslee's. He said he wasn't ready. I asked him what was so wrong about Lauren and why he treated her like he did. He said he held a grudge against her because he thought she did not want him to be a part of Lauren's pregnancy and their child. I have no idea how he came to that conclusion.

I witnessed Lauren reach out to Mark Collins frequently during her pregnancy. I was with her when she would call him and/or text him. Many times she would even use my phone to do so because she wanted to keep the communication just between her and Mark, without including Jeremy Fields. She wanted Mark in her life, wanted him in Tynslee's life, and wanted desperately for Mark to be with her through the pregnancy, but he never did. Other than going to one ultrasound to learn the sex of the baby, he never did anything.

After Tynslee died, Lauren apparently talked Mark into doing a DNA test. I went with her to get the results when they were ready. As soon as we got into the car after leaving the DNA testing office, Lauren called Mark. I was sitting in the passenger seat when Lauren made the call to tell Collins he was Tynslee's father. She told him she needed to meet with him because she had the DNA results. While I could not here Collins' response, I could tell he did not want to meet her. After arguing about it for a few minutes, he agreed to meet her at the park at the Westside Park in Greenville.

While I had seen Collins before, this was the first time I met him in person. I stepped away to let them talk. I saw Lauren hand him the DNA results and I saw Collins begin to cry. Not long after we arrived and Lauren showed Collins the result, one of Collins' girlfriend's friends showed up at the Park. I heard Lauren asked Collins what the girl was doing here and Collins said, "I guess Lisa doesn't trust me." Collins immediately got into his car. Lauren continued to try and talk to him as he began to drive away. I even had to pull her out of the middle of the parking lot because she had sat down sobbing, all the while trying to talk to Collins. He drove right past us while we were in the road and didn't say a word.

Lauren loved that man, but he didn't want anything to do with her. Mark Collins did absolutely nothing for Lauren and Tynslee. He deserves absolutely nothing from Lauren and Tynslee.

Under pains and penalties of perjury, FURTHER AFFIANT SAYETH NOT.

Pamela Rasberry

Pamela Rasberry

SWORN to before me this
25th day of September, 2014

Notary Public for South Carolina
My Commission Expires: 06/08/2020

LINDSEY A. DOVE
Notary Public
State of South Carolina
Commission Expires June 8, 2020

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)))	IN THE COURT OF COMMON PLEAS
Lauren Murphy, individually, and as Personal Representative of the Estate Of Tynslee Fields, Plaintiffs, v. Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet Dach, D.O., and John and Jane Does 1-10, Defendants.	))))))))))))))))))	C.A. No.: 13-CP-23-04186 **INTERESTED PARTY MARK COLLINS' MEMORANDUM IN SUPPORT OF MOTION TO COMPEL DISBURSEMENT AND RESPONSE TO MOTION TO DENY PROCEEDS**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. WICKERSHAM
2014 SEP 26 PM 3 49

INTRODUCTION

COMES NOW, Movant, Mark Collins, an interested third-party having a real, material, and substantial interest in the above referenced litigation as a statutory beneficiary of the Estate of Tynslee Fields, who by and through undersigned counsel respectfully submits the following memorandum in support of his previously filed Motion to Compel Disbursement of the proceeds secured in the settlement secured in the instant litigation and in response to Personal Representative Lauren Murphy's Motion to Deny Proceeds in same.

BACKGROUND

On or about February 24, 2014, an ORDER approving a PETITION FOR APPROVAL OF SETTLEMENT AS TO DEFENDANTS MERCY OBSTETRICS & GYNECOLOGY, P.A., RAGESH PANDYA, M.D. was entered by the Greenville County Court of Common Pleas in the litigation in the

matter of *Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields, vs. Bon Secours Health System, Inc., et. al*, Case No. 2013-CP-23-04186 (hereinafter "Order"). The Order sets forth the Circuit Court's approval of a settlement reached between the Plaintiffs and several Defendants (that being, Mercy Obstetrics & Gynecology, P.A., Ragesh Pandya, M.D), finding that settlement "is proper and in the best interest of the Estate" named hereinabove. As a result, the Circuit Court approved the sum of five thousand dollars ($5,000.00) being allocated to the Survival Action (hereinafter referred to as "estate proceeds"), as well as the payment of the sum of Five Hundred Eighty-Three Thousand, Five Hundred Seventy-Seven Dollars and Fifty-Two Cents ($583,577.52) (hereinafter referred to as "wrongful death proceeds") to the "statutory beneficiaries." **(See Exhibits A and B – Petition and Order respectively.)**

The estate proceeds and the wrongful death proceeds are currently being held in trust with the Hughey Law Firm, LLC. On or about July 29, 2014, the Movant formally demanded disbursement of ½ of the proceeds ($291,788.76) directly to him as statutory beneficiary. This demand was declined.

In the original Motion to Compel Disbursement presently before the Court, Mr. Collins set forth the essential grounds and supporting statutory and case law which dictate that the funds at issue be disbursed.

In response to Mr. Collins' Motion to Compel Disbursement, Ms. Murphy has filed a single document with the Court identified as both a Return to Mr. Collins' Motion to Compel and as a Motion to Deny him all proceeds derived from the settlement.

SALIENT FACTS

It is undisputed that the decedent child, Tynslee Fields, is the daughter of the Personal Representative, Lauren Murphy, and the only other statutory beneficiary, Mark Collins. Tynslee tragically passed away during child birth and the circumstances of her death are the subject of this medical negligence litigation.

At the time of Tynslee's conception, Lauren Murphy communicated to Mr. Collins that Tynslee was the child of her union with him. He was attentive and committed to the child from the outset and, despite the fact that they were not married, attended the appointment for the initial ultrasound with hope and anticipation. Shortly thereafter, Ms. Murphy ended her relationship with Mr. Collins, reconciling with an ex-boyfriend, Jeremy Fields. Despite the fact that Mr. Collins continued to express his desire to be a part of the pregnancy and the birth of their child, Ms. Murphy "blocked" his telephone number thereby prohibiting Mr. Collins from calling Ms. Murphy. Ms. Murphy lied to Mr. Collins, telling him that the child had *not*, in fact, been fathered by him. She then excluded him from participating in any way, including financially, with Tynslee's development leading up to the birth and directed him not to attend her funeral after her death.

Afterward, Ms. Murphy recanted, stating that she had lied to Mr. Collins and that the deceased child was actually his; however, she also told him that he could not attend the funeral. Mr. Collins was assaulted with the confirmation that Tynslee was his child, that Ms. Murphy had intentionally given Tynslee another man's last name, that his child was dead and that Ms. Murphy's actions and lies had excluded him from being present for Tynslee's development, birth and tragic death. **(See Exhibits C, D and E – Affidavits of Mark Collins, Cynthia Hopkins and Angela King.)**

ARGUMENT AND CITATION OF AUTHORITY

I. THE COURT HAS ALREADY DECIDED THE ISSUE OF APPORTIONMENT OF THE PROCEEDS IN ACCORDANCE WITH APPLICABLE LAW AND THE PETITION FOR APPROVAL OF SETTLEMENT.

It is undisputed that the only statutory beneficiaries of the Estate of Tynslee Fields are Lauren Murphy, Personal Representative and mother of the deceased child and the movant, Mark Collins, father of the child. As illustrated in the language below excerpted from the Petition for Approval of Settlement, Lauren Murphy, in her individual capacity as well as in her capacity as Personal Representative, identified Mark Collins without reservation as a statutory beneficiary, stated unequivocally that the settlement was in the best interests of both beneficiaries in her Petition for Approval of Settlement as illustrated below from the excerpted language.

> The Petitioner, Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields, petitions the Court for approval of a settlement and respectfully shows:
>
> * * * * * *
>
> 7. That the Petitioner is informed and believes that this settlement is in the best interests of the Estate and the statutory beneficiaries.
>
> 8. The parties have agreed to a full, final, and confidential settlement as to these Defendants only, in the amount of Nine Hundred and Seventy Five Thousand Dollars and No Cents ($975,000.00), of which Nine Hundred Seventy Thousand Dollars ($970,000.00) shall be allocated to the Wrongful Death Action and Five Thousand Dollars ($5,000.00) to the Survival Action.
>
> 9. The statutory beneficiaries and heirs at law are Lauren Murphy and Mark Collins.

The Court, in turn, found, in pertinent part:

> The amount of Five Hundred Eighty Three Thousand Five Hundred Seventy Seven Dollars and Fifty-Two Cents are to be paid to the **statutory beneficiaries.** **(Exhibit A** – Court Order, p. 3.)
>
> * * * * * * * *
>
> … to be paid in accordance with the law.

As set forth below, the law which applies to this matter, now, at the time of the Petition and at the time that the Order was entered states that Ms. Murphy and Mr. Collins, as the only statutory beneficiaries, each receive fifty percent (50%) of the proceeds as intestate heirs.

> …The amount so recovered **shall be divided among the [statutory beneficiaries]** in those shares as they would have been entitled to if the deceased had died intestate and the amount recovered had been personal assets of his or her estate. SC Code Section 15-51-40 Damages; amount and to whom payable (South Carolina Code of Laws (2014 Edition).

These shares are determined as follows according to South Carolina's laws governing Intestacy.

> The part of the intestate estate not passing to the surviving spouse under Section 62-2-102, or the entire estate if there is no surviving spouse, passes as follows:
>
> (1) to the issue of the decedent: if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation;
>
> (2) **if there is no surviving issue, to his parent or parents equally**; SC Code Section 62-2-103 Share of heirs other than surviving spouse.

Lauren Murphy, was in possession of all of the facts upon which she has based her Motion to Deny Proceeds at the time that she entered into the subject settlement on behalf of herself, Individually and in her capacity as fiduciary to the statutory beneficiary Mark Collins. As such, and with the full benefit of counsel and knowledge of the applicable law directing the distribution of the funds in equal shares, she made no challenge to the required distribution.

The Personal Representative's representation that "the settlement is in the best interests of ... the statutory beneficiaries" is a statement that the question about allocation of the proceeds has been considered by the Personal Representative and that she is performing her responsibility as fiduciary of those beneficiaries.

Section 15-51-42 of the South Carolina Code governing the approval of settlements of wrongful death or survival actions delineates the components and considerations within the petition which are encompassed by the Order. It states, in pertinent part,

> (B) ... the personal representative shall petition either the probate or the circuit court of this State seeking approval of a proposed settlement. The petition must be verified by the personal representative and shall set forth, in terms satisfactory to the court in which the petition is filed, the basic facts surrounding the death of the decedent, the pertinent facts surrounding the liability of the alleged wrongdoer, the amount of insurance available to pay for damages, the terms of the proposed settlement, **the statutory beneficiaries of the wrongful death or survival action, the heirs at law or appropriate devisees of the estate, the appropriate creditors, the amount of their claims**, and, if the personal representative has retained legal counsel, the terms and provisions of the agreement with respect to attorney's fees and costs.

It further states,

> It is not necessary that a personal representative be represented by legal counsel for the court to consider the petition and approve the settlement. **If the personal representative is represented by legal counsel, the counsel shall sign a certificate attesting to the fact that he is of the opinion that the settlement is fair and reasonable and in the best interests of the statutory beneficiaries and, in a survival action, the estate of the decedent.**

Ms. Murphy herself certified that the settlement was in the best interests of the statutory beneficiaries. By statute she was required to set forth the terms of settlement exhaustively, including naming the statutory beneficiaries, the heirs at law and the amount of their claims. The fact that she did not challenge the statutorily defined proportional distribution of proceeds while fully cognizant of all applicable facts and circumstances that might affect the distribution

means that, as indicated by the language of the order, the funds are to be allocated in equal shares in accordance with the law.

II. THERE IS NO LEGAL OR FACTUAL BASIS TO SUPPORT THE DENIAL OF PROCEEDS TO STATUTORY BENECIARY MARK COLLINS.

a. The Law Regarding Limitation of A Parent's Share of Proceeds Does Not Apply to the Case at Bar.

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

Under certain circumstances, the Court may limit a parent's entitlement. The statute is not applicable to a situation where a child dies at birth. It states,

> .... [U]pon motion by either parent or any other party of potential interest based upon the decedent having died intestate, the probate court may deny or limit either or both parent's entitlement for a share of the proceeds if the court determines, by a preponderance of the evidence, that the parent or parents **failed to reasonably provide support for the decedent as defined in Section 63-5-20** and did not otherwise provide for the needs of the decedent during his or her minority. SC Code 15-51-40 Damages; amount and to whom payable (South Carolina Code of Laws (2014 Edition))

Section 63-5-20 states that a parent must provide reasonable support to provide a living unless the parent has just cause or excuse for failure to do so.

> A) Any able-bodied person capable of earning a livelihood who shall, **without just cause** or excuse, abandon or fail to provide reasonable support to his or her spouse or to his or her minor unmarried legitimate or illegitimate child dependent upon him or her shall be deemed guilty of a misdemeanor ... As used in this section **"reasonable support" means an amount of financial assistance which, when combined with the support the member is reasonably capable of providing for himself or herself, will provide a living standard for the member substantially equal to that of the person owing the duty to support.** It includes both usual and unusual necessities. SC Code 63-5-20 Obligation to support (South Carolina Code of Laws (2014 Edition.)

The term "reasonable support" is the operative term, which cannot be applied to circumstances where a life has been cut short such that there is no opportunity to provide support for the child.

b. Mr. Collins Did Not Fail to Reasonably Support Tynslee.

Ms. Murphy's expenses related to the pregnancy were paid by Medicaid. **(See Exhibit F - Deposition of Lauren Murphy, p. 155.)** In addition, as recited above and identified in his attached Affidavit, Mr. Collins was directed not to participate in Tynslee's funeral by Ms. Murphy. He was not delinquent in any financial responsibility that might be construed.

c. "Just Cause" Prevented Mr. Collins From Participating in the Development of the Child During Ms. Collins' Pregnancy.

The statutory authority recited above states that if "just cause" prevents a parent from meeting the legally required financial responsibilities, then he/she cannot be held responsible for that failure. As set forth above and in the attached Affidavits, Ms. Murphy systematically excluded Mr. Collins from participation through lies and deceit. He cannot for this reason be held to have failed in his responsibilities.

There is no legal basis for the estate proceeds or the wrongful death proceeds not to be disbursed as requested herein. Accordingly, Mr. Collins respectfully requests that this Court enter an Order requiring that the wrongful death proceeds be disbursed forthwith directly to the statutory beneficiaries, Lauren Murphy and Mark Collins, with each receiving one-half (50%) of said proceeds, more specifically the sum of Two-Hundred Ninety-One Thousand, Seven Hundred Eighty-Eight Dollars and Seventy-Six Cents ($291,788.76) respectively, in accordance with Judge Verdin's Order.

CONCLUSION

The Court has already decided this matter. Ms. Murphy, Individually and as Personal Representative, understood all of the circumstances surrounding the allocation of proceeds to the statutory beneficiaries at the time that she petitioned the Court for approval of the settlement. In her petition, she identifies Mr. Collins as the only other statutory beneficiary and states, without reservation that the settlement is in both his and her best interests as such. The Court in turn, granted her petition, ordering that the funds be paid to the beneficiaries in "accordance with the law." The applicable law dictated that the funds be distributed in equal shares to the statutory beneficiaries. Ms. Murphy requested this both individually and as representative of her own interests and those of Mr. Collins.

Even if the Court were to determine that it must entertain Ms. Murphy's arguments regarding apportionment, the law upon which she relies does not apply to the facts and circumstances of this case. The brevity of Tynslee's life renders the term "reasonable support" inapplicable as defined by the cited statute.

Further, even if the Court were to determine that the statute itself applies to these circumstances, Mr. Collins did not fail to financially support Tynslee. The expenses were paid by Medicaid as indicated by Lauren Murphy's deposition testimony.

Finally, even if the Court were to determine that Mr. Collins failed to financially support Tynslee, then the facts reveal that he was prevented from doing so by the lies and actions of Ms. Murphy and cannot, therefore, be penalized for the failure.

For all the foregoing reasons, Movant Mark Collins, respectfully requests this Court enter an Order:

(1) Denying the Motion of Lauren Murphy to Deny the distribution of proceeds to Mr. Collins; and,

(2) Directing the disbursement of the proceeds in equal shares to each beneficiary parent in accordance with the Order of the Circuit Court approving the settlement of this matter.

Respectfully Submitted,

JESSICA SALVINI, ESQ.

SALVINI & BENNETT, LLC
101 W. Park Ave.
Greenville, SC 29601
Telephone: (864) 232-5800
Facsimile: (864) 232-5888

JOHN M. READ, IV, ESQ.

PILLSBURY & READ, PA
1204-A East Washington Street
Greenville, SC 29601
Telephone: (864) 241-9828
Facsimile: (864) 241-9818

Greenville, SC
Dated: September 24, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields,	)	C.A. No. 2013-CP-23-04186
Plaintiff,	)	PETITION FOR APPROVAL OF SETTLEMENT AS TO DEFENDANTS MERCY OBSTEGRICS & GYNECOLOGY, P.A., RAGESH PANDYA, M.D. ONLY
-vs-	)	
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,	)	
Defendants.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2013 FEB 24 AM 11 24

The Petitioner, Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, petitions the Court for approval of a settlement and respectfully shows:

1. That the Petitioner, Lauren Murphy, is the Personal Representative of the Estate of Tynslee Fields, and that the Plaintiff is a citizen and resident of Greenville County, South Carolina.

2. That the Decedent, Tynslee Fields, was at all times a resident of Greenville County, South Carolina, and her Estate is pending in the Probate Court of Greenville County.

3. The basic facts surrounding the death of the decedent and those regarding the liability of the alleged wrongdoer are that the petitioner Lauren Murphy was a patient at the Defendant Bon Secours Health System facility on or about June 12, 2012 for a scheduled induction of labor. Following her delivery, Tynslee Fields died from an injury to her vertebrae. The Plaintiff alleges medical malpractice and the Defendants denied the same.

4. The circumstances leading up to and surrounding said incident have been thoroughly investigated by investigators, adjusters and attorneys representing the Petitioner and similar personnel representing the Defendants, and any of its insured individuals and all parent, subsidiaries, and related corporations and entities. The Petitioner individually and on behalf of the Estate and Mercy Obstetrics & Gynecology, PA,Ragesh Pandya only have arrived at an agreed settlement for the claims against these Defendants in these claims and the Insurers, and any of their insured individuals and all parent,

EXHIBIT A

subsidiaries, and related corporations and entities as a result of the alleged negligent treatment and care. The agreed settlement and compromise contemplates the release, ending and terminating of all claims and actions against Mercy Obstetrics & Gynecology, PA, Ragesh Pandya only, based on causes surviving to the Decedent or Petitioners or any person, in any way arising, asserted or brought under or by virtue of any Federal or State statute, or by common law against these Defendants, including claims of any of their insured individuals and all parent, subsidiaries, and related corporations and entities. This in no way affects the rights of Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields to proceed against the remaining Defendants in this action.

5. That the amount of insurance available is $1,000,000.00.

6. That the Defendants do not admit liability of any sort, but that a settlement was reached as a compromise to avoid and minimize expenses and litigation.

7. That the Petitioner is informed and believes that this settlement is in the best interests of the Estate and the statutory beneficiaries.

8. The parties have agreed to a full, final, and confidential settlement as to these Defendants only, in the amount of Nine Hundred and Seventy Five Thousand Dollars and No Cents ($975,000.00), of which Nine Hundred Seventy Thousand Dollars ($970,000.00) shall be allocated to the Wrongful Death Action, and Five Thousand Dollars ($5,000.00) to the Survival Action.

9. The statutory beneficiaries and heirs at law are Lauren Murphy and Mark Collins.

10. The Petitioner, as the Personal Representative, has agreed to satisfy all related medical bills, liens, federal or state liens, including but not limited to Medicare and/or Medicaid, and to indemnify the Defendants, and their Insurers and attorneys, and all parent, subsidiaries, and related corporations from any and all potential lien holders and other health and long term care providers as further specified in the Release. There will be Three Thousand Three Hundred Thirty-One Dollars and Fifty Cents ($3,331.50) withheld in trust for any medical liens.

10. From the settlement proceeds, the undersigned requests the approval of the Court to pay for legal services rendered by his attorneys in the agreed amount of $325,000.00, as well as costs in the

amount of $13,090.98, in addition to costs associated with the settlement hearing, future probate court fees and continued litigation of which an additional Fifty Thousand Dollars ($50,000.00) will be held in trust in order to finance said litigation against the remaining Defendants if necessary. The amount of Five Hundred Eighty Three Thousand Five Hundred Seventy Seven Dollars and Fifty Two Cents ($583,577.52) are to be paid to the statutory beneficiaries. The undersigned is of the opinion that the total attorneys' fees and costs as well as her personal representative fee and trust amount are fair and reasonable under the circumstances and reflect substantial and fruitful efforts put forth by her attorneys, that such fees and costs should be approved by the Court, and that the undersigned, as Personal Representative, should be authorized to pay such fees and costs out of the settlement proceeds with the balance of the proceeds to be paid in accordance with the law.

11. This Petition is made pursuant to the Wrongful Death Act § 15-51-10 et seq., of the Code of Laws of South Carolina as amended and the Survival Act, § 15-5-90 of the Code of Laws of South Carolina as amended.

WHEREFORE, the Petitioner prays that this Court approve such settlement and authorize the Petitioner, individually and as Personal Representative of the Estate of Tynslee Fields, to receive the stated sum to satisfy any and all related liens and, in return therefore, execute, individually and as Personal Representative of the Estate of Tynslee Fields, a complete full and final release and hold harmless agreement, ending and terminating the matter and barring all claims which have been and/or may in any way be asserted on behalf of, and in any way related to or for the benefit of Tynslee Fields against Defendants Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, only and Petitioners claims against the remaining Defendants are in no way affected by this release.

Lauren Murphy

Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields

Dated: 2/24, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	C.A. No.: 2013-CP-23-04186
Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields	)	VERIFICATION
Plaintiff,	)	
vs.	)	
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,	)	
Defendants.	)	

PERSONALLY appeared before me, Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, who being duly sworn, deposes and says: That she is the Petitioner in the foregoing Petition and that she has read the same and the matters as stated therein are true to the best of her knowledge, except for such matters and things as may be set forth therein on information and belief, and those she believes to be true.

Lauren Murphy

Laruen Murphy individually and as Personal Representative of the Estate of Tynslee Fields

SWORN to before me this 24

day of February, 2014

My Commission Expires: 8/1/16

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields,	)	C.A. No. 2013-CP-23-04186
Plaintiff,	)	ORDER FOR APPROVAL OF SETTLEMENT AS TO DEFENDANTS MERCY OBSTEGRICS & GYNECOLOGY, P.A., RAGESH PANDYA, M.D. ONLY
-vs-	)	
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,	)	
Defendants.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 FEB 24 AM 11 24

UPON READING the annexed Petition of Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, and it appearing that Lauren Murphy deems the offer with the Defendants acceptable, advantageous, and to the best interest of the Estate and the beneficiaries and

IT FURTHER APPEARING in the discretion of this Court that such settlement is proper and in the best interest of the Estate, it is

ORDERED, ADJUDGED and DECREED that Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, is hereby authorized to consummate the settlement referred to in the Petition and to execute and deliver to the Defendants an appropriate Release terminating, releasing, and ending all claims and actions asserted or brought under or by virtue of any Federal or South Carolina Statute or by common law in any way arising out of the incident against the Defendants Mercy Obstetrics & Gynecology, PA, Ragesh Pandya only, including their officers, directors, employees, physicians, agents, servants, attorneys, partners and representatives, and all parent, subsidiaries, and related corporations and any of the insured predecessors and successor corporations or entities, and their attorneys, heirs, assigns, executors, administrators, successors, subsidiaries, affiliated companies, parent companies, insiders, and any other indemnitors, including their insured entities. This

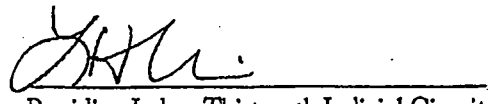
EXHIBIT B

copy to Hood

in no way affects the rights of Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields to proceed against the remaining Defendants in this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the attorneys fees and costs itemized in the Petition filed herewith are approved by the Court, and Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, is hereby authorized and required to pay such fees and costs as well as any related medical, federal, and/or state liens, including but not limited to Medicare and/or Medicaid, out of the settlement proceeds, with any balance of said proceeds to be paid in accordance with the law.

AND IT IS SO ORDERED this the 24 day of Feb., 2014.



Presiding Judge, Thirteenth Judicial Circuit

Pickens, South Carolina

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF GREENVILLE	)	**Case No.: 2013-CP-23-04186**
	)	
Lauren Murphy, individually, and as Personal Representative of the Estate Of Tynslee Fields,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	**AFFIDAVIT OF MARK COLLINS**
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED BEFORE ME the undersigned, who first being duly sworn, states as follows.

My name is Mark Collins. I am the movant in the above referenced matter. I am making this affidavit upon my information and belief and in support of my MOTION TO COMPEL and in opposition to Lauren Murphy's RETURN and MOTION seeking to deny me any of the proceeds derived from the settlement of the survival and wrongful death actions.

Lauren Murphy and I were involved in a relationship in the Fall of 2011. We dated for only a few months. During the course of our relationship, Lauren became pregnant. Lauren told me that I was the father. She also told her friends and family that I was the father of the baby. I told Lauren that I wanted to be involved in the pregnancy and that I would always be an active father in our child's life. I can recall lying in bed with Lauren, discussing baby names. When the ultra-sound was scheduled to find out the baby's sex, I attended with Lauren.

Lauren and I had a difficult relationship, which she ended shortly after we learned she was pregnant. By January 2012, we were no longer dating and I began a relationship with my current fiancée, Lisa Fox-Davis. Even though Lauren and I were not involved in a romantic relationship with each other, I told Lauren I would not turn my back on her or our baby. I also explained to

EXHIBIT 6

Lisa that Lauren was pregnant and that I was taking an active role in her pregnancy. I told both Lauren and Lisa that when the baby was born, I would be helping Lauren care for the baby. I intended to take an active role in our baby's life, including supporting our baby financially. As a result, if Lauren called me for any reason I would take her call. It did not matter if I was at dinner with Lisa or family or friends, I would answer the phone if it was Lauren. This caused some issues between me and Lisa, but I would not change my position.

During Lauren's pregnancy, I tried to remain in contact with Lauren. However, Lauren "blocked" my number so I could not call. Lauren and Jeremy reconciled and were dating each other again. Lauren told me that she believed Jeremy was the baby's father. When Lauren found out she was pregnant we discussed whether or not Jeremy could be the father. Lauren told me that she did not think Jeremy was the father because he had been diagnosed with testicular cancer in the past. However, after I started dating Lisa, Lauren started insisting Jeremy was the father. She prohibited me from attending any more doctor's appointments.

Lauren did not tell me when she went into labor. Angela King ("Angie"), the mother of my children, called and told me that Lauren was at the hospital. When I learned that Lauren was at the hospital I was torn about whether or not to go. Lauren had not called and asked me to attend the birth and I had no way of calling her because she had "blocked" my number. I did not go to the hospital because I did not want an altercation with Lauren's family or Jeremy Fields.

However, on June 12, 2102, Angie called me again. When Angie called she started telling me how sorry she was to hear that my baby had died during the delivery. Angie had read posts on Facebook about the baby's death. When Angie told me the baby had died I felt like someone had punched me in the stomach. I couldn't stop crying. I had no idea that my baby had died during the delivery. My heart was broken and I didn't know what to do. When Lisa called me I asked her to immediately come home. We (Lisa and I) discussed whether or not I should go to the hospital to see Lauren. However, ultimately I decided not to go that night. Lauren had been through enough and I did not want to add to her pain.

When I did not hear from Lauren, I asked Lisa if I could use her phone to call Lauren so I could find out what had happened during the delivery. Lauren answered the phone, but said she couldn't talk to me. When Lauren called me back she put me on speaker phone and told me Jeremy was listening to our conversation. Lauren told me that the baby was Jeremy's and that I needed to respect their privacy and not cause them anymore pain. She told me not to come to the funeral

and to leave them alone. When I saw the obituary in the newspaper, I saw that Lauren listed Jeremy as the baby's father and had given the baby Jeremy's surname. I was upset, but there was nothing I could do. Lauren was continuing to exclude me from anything having to do with our child.

Approximately two weeks after our baby died, my sister called and told me that Lauren had come to see her and had given her pictures of the baby. My sister told me that Lauren had admitted that she had lied to me when she told me I was not the baby's father and she was sorry she had excluded me from her pregnancy and when the baby had died. Lauren wanted me to call her so we could talk.

When I talked to Lauren she told me that her mother had persuaded her to name Jeremy as the baby's father. Lauren claimed that she had been taking a lot of pain medication and wasn't in her right mind when she told me not to come to the funeral. I was upset, but there was nothing I could do. Since Lauren had named Jeremy as the father, we agreed that I would take a DNA test to verify that I was actually the baby's father. I insisted on paying for half the test.

I took the DNA test, which verified that I was the baby's father. After the DNA test results were received, I am informed and believe that Angie told the Field's family that Jeremy was not the baby's father. Lauren had not told Jeremy about the test results.

I am informed and believe Jeremy had tattooed the baby's name on his forearm. Later, after Jeremy had found out about the DNA test results, he covered the tattoo. Jeremy eventually posted the "before" and "after" of the tattoos on Facebook. This upset Lauren and she posted a comment to Jeremy on Facebook. The comment, which I have attached hereto as Exhibit A, said: "you held my daughter in your arms felt her inside me; I could have given those moments to someone who cherished them...." Lauren was talking about me. Throughout Lauren's pregnancy I had made it clear to Lauren that I was there for her and our unborn child. However, Lauren made the choice to exclude me.

SWORN TO BEFORE ME
THIS 25th DAY OF SEPTEMBER, 2014.

Elizabeth A. Bramlett
NOTARY FOR STATE OF SOUTH CAROLINA
MY ~~COMMISSION EXPIRES:~~ 3/4/24

ELIZABETH A. BRAMLETT
Notary Public, South Carolina
My Commission Expires
March 04, 2024

Mark Collins
Mark Collins

EXHIBIT A

Lauren Murphy
February 27, 2013

You can't change someone or there opinions, learned that the hard way;time to let go and let god; i've over come to much to be brought back down again, no matter what this smile will be on my face,i have to keep pushing through & fighting for justice for my angel; even if i do it completely alone it will be done;

Like · Comment · Share 45 4

Lauren Murphy
February 27, 2013

Woooow guess you proved again what a selfish individual you are; smh you really got tynslees name covered up??! Your pathetic; you held my daughter in your arms felt her inside me; i could have given those moments to someone who cherished them, your sorry!! & you wonder why i hate you sooooo much!!! I claimed your daughter and would have given and still will give my life for her!! But you on the other hand can rot in hell for this hateful ass shit; stop trying to contact me on tynslee's page and stop texting my phone; your dead to me!!!

Like · Comment · Share 79 48

More posts from February 24 to 27

Lauren Murphy
February 24, 2013

Kenzie; lol

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF GREENVILLE	)	**Case No.: 2013-CP-23-04186**
	)	
Lauren Murphy, individually, and as Personal Representative of the Estate Of Tynslee Fields,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	**AFFIDAVIT OF CYNTHIA HOPKINS**
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED BEFORE ME the undersigned, who first being duly sworn, states as follows.

My name is Cynthia Hopkins and I am Mark Collins' sister. I was made aware that in the Fall of 2011 Mark and Lauren Murphy were in a relationship with each other. During that time, Lauren became pregnant and she told Mark that he was the baby's father. However, after Lauren and Mark ended their relationship, Lauren lied to Mark and told him that Jeremy Fields was the baby's father.

On information and belief, the baby died on June 12, 2012. Approximately two weeks after the baby died, Lauren came to see me. Lauren brought me pictures of the baby. Lauren told me that she was sorry. She explained to me that she had lied to Mark when she told him he wasn't the baby's father. She told me that she was sorry that she had lied to him and excluded him during her pregnancy and when the baby died. She asked me to have Mark call her because she felt like they needed to get together to have closure.

Lauren gave me the pictures of the baby and I agreed to tell Mark what she had said to me.

EXHIBIT D

C.H.

SWORN TO BEFORE ME
THIS 24th DAY OF SEPTEMBER, 2014.

Elizabeth A Bramlett
NOTARY FOR STATE OF SOUTH CAROLINA
MY ~~COMMISSION EXPIRES~~ 3/4/24

ELIZABETH A. BRAMLETT
Notary Public, South Carolina
My Commission Expires
March 04, 2024

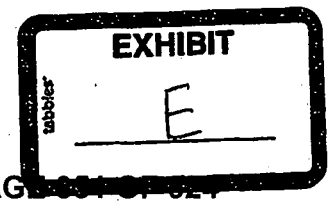
Cynthia Hopkins
Cynthia Hopkins

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	)	**Case No.: 2013-CP-23-04186**
Lauren Murphy, individually, and as Personal Representative of the Estate Of Tynslee Fields,	)	
Plaintiffs,	)	
vs.	)	**AFFIDAVIT OF ANGELA KING**
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,	)	
Defendants.	)	

PERSONALLY APPEARED BEFORE ME the undersigned, who first being duly sworn, states as follows.

My name is Angela King. Mark Collins and I were previously in a relationship with one another. We have two children together, who are now 12 and 13 years old. Although we were not able to reconcile our relationship, Mark has always been a devoted and loving father to his children. Since their birth, Mark has taken an active role in their lives and he continues to do so to this day. He supports them both financially and emotionally. Regardless of any difficulties Mark and I may have experienced, Mark has always insisted on being a part of their lives. I know Mark to be a person and father who loves and takes responsibility for his children.

In 2011 Mark told me that he and Lauren Murphy were in a relationship with each other and that she was pregnant with his child. I am acquainted with Lauren Murphy and her mother. I know them both personally. Lauren's mother told me that she did not approve of Lauren's and Mark's relationship because of their age difference. After Lauren was pregnant with Mark's baby, Lauren's mother told me that if Lauren and Mark continued in a relationship with each other she would no longer financially support Lauren.



On information and belief, as a result of the pressure that Lauren's family was placing on her to end her relationship with Mark, she ended the relationship and reconciled with her ex-boyfriend, Jeremy Fields. I am informed and believe that Mark tried to stay in contact with Lauren throughout her pregnancy, but Lauren was now with Jeremy. Thus, Lauren had Jeremy participate in her pregnancy. I am also acquainted with the Fields' family.

When Lauren went into the hospital to have the baby, a mutual friend called and told me that Lauren was in labor. I called Mark to let him know what I had been told. When I spoke to Mark he was genuinely surprised to learn that Lauren was in labor. I am informed and believe that Lauren had not told Mark that she was going into labor or that she was at the hospital.

I am informed and believe that Lauren had the baby on June 12, 2012. Later that same day or the following day, I saw that several of Lauren's friends had posted on Facebook their condolences to Lauren because the baby, named Tynslee Elizabeth Fields, had died. I immediately called Mark to tell him I was sorry. Mark was shocked and had no idea that their baby had died or that Lauren had given the baby Jeremy Field's name. Mark was genuinely upset. I have known Mark for a long time and I could tell he was heartbroken. Mark told me he wanted to attend the funeral, but Lauren and her family told him not to come.

I am informed and believe that Lauren named her boyfriend, Jeremy Fields, as the father of the baby on the death certificate. I was informed that after the baby's death, Mark took a DNA test to prove that he was the father. However, even after the results of the DNA test were received, Lauren lied to Jeremy and continued to allow him to believe he was the baby's father. I told Jeremy's sister-in-law that the DNA test proved that Mark was the baby's father. She was shocked and told me they had no idea. I felt like I had to tell someone in the Field's family about the DNA test results because I felt badly for Jeremy. I did not believe it was fair for Lauren to continue to let Jeremy believe that he was the baby's father. I am informed and believe that even though Lauren knew that Mark was the baby's father, she did not tell Jeremy and he tattooed Tynslee's name on his arm.

SWORN TO BEFORE ME
THIS 8th DAY OF SEPTEMBER, 2014.

NOTARY FOR STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES: 3/4/2024

LANTZ K. STOLTZFUS
Notary Public, South Carolina
My Commission Expires
March 04, 2024

ANGELA KING

1 just made a note. You mentioned Medicaid.
2 Are you a Medicaid beneficiary?
3 A. I was, when I was pregnant. I had
4 Medicaid health insurance.
5 Q. You didn't have coverage through
6 Walmart?
7 A. My Blue Cross Blue Shield, I would have
8 had to have paid, like, $300 every visit that I
9 went to, based on what estimates I was given
10 through the first OB-GYN that I had actually seen
11 to confirm my pregnancy.
12 Q. And so did -- is it your understanding
13 that Medicaid paid for your bills in the hospital?
14 A. For the most part, yeah.
15 Q. Has Medicaid, since, sent you a letter
16 or told you that you owe them any money as a result
17 of the --
18 A. Not that I can remember, right now.
19 Q. All right. I want to take one minute.
20 (A recess transpired.)
21 MR. WILSON: I don't have any more
22 questions for you. I thank you for your time.
23 (The deposition concluded at 1:19 p.m.)
24
25

EXHIBIT
F

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) 13TH JUDICIAL CIRCUIT

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. WICKENSHAM CLERK

CASE NO.: 2013-CP-23-04186

2014 AUG 15 PM 4 42

Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields,
Plaintiffs,

vs.

Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, P.A. Ragesh Pandya, M.D. Upstate OB-GYN Associates, P.A., Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,
Defendants.

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:	Defendant's Attorney:
A. Stuart Hudson	Ashby W. Davis, Steven A. Snyder, David L. Willford
Address:	Address:
P.O. Box 348, Mount Pleasant, SC 29465	5 Hawthorne Park Court Greenville, SC 29615
Phone: 843-881-8644 Fax 888-884-8311	Phone: 864-335-3500 Fax: 864-335-3505
E-mail: _____ Other: _____	E-mail: _____ Other: _____
Movant Plaintiff's Attorney:	Movant Collin's Attorney:
Charles W. Marchbanks, Jr., Bar No. 76935	Jessica Salvini & John M. Read, IV
Address:	Address:
1225 South Church Street, Greenville, SC 29605	101 W. Park Avenue Greenville, SC 29601
Phone: 864-552-1606 Fax: 864-552-1607	Phone: 864-232-5800 Fax: 864-232-5888
E-mail: _____ Other: _____	E-mail: _____ Other: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Deny Proceeds and Return to Collins' Motion to Compel filed August 6, 2014
Estimated Time Needed: 2 hours Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order
I hereby move for relief/or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant — August 15, 2014 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by:_____ Date Filed: _____ ☐ MOTION FEE COLLECTED: $ _____ ☐ CONTESTED – AMOUNT DUE: $ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 DEC 15 PM 4 42

IN THE COURT OF COMMON PLEAS

Case No. 2013-CP-23-04186

Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields,

Plaintiffs,

vs.

Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,

Defendants.

PLAINTIFF LAUREN MURPHY'S RETURN TO MARK COLLINS' MOTION TO COMPEL

AND

MOTION TO DENY MARK COLLINS ANY AND ALL PROCEEDS DERIVED FROM SETTLEMENT OF SURVIVAL AND WRONGFUL DEATH ACTIONS

Movant Mother Lauren Murphy, [hereinafter "Ms. Murphy"] an interested party having a real, material, and substantial interest in the above-referenced litigation as a statutory beneficiary of the Estate of Tynslee Fields, by and through her undersigned counsel, respectfully requests this Court enter an order denying Mark Collins [hereinafter "Collins"] disbursement of any funds stemming from the partial settlement of Case Number 2013-CP-23-04186 as were awarded generally by the Honorable Letitia H. Verdin, and which are more fully set forth in the ORDER FOR APPROVAL OF SETTLEMENT AS TO DEFENDANTS MERCY OBSTETRICS & GYNECOLOGY, P.A., RAGESH PANDYA, M.D. ONLY, and the PETITION FOR APPROVAL OF SETTLEMENT AS TO DEFENDANTS MERCY OBSTETRICS & GYNECOLOGY, P.A., RAGESH PANDYA, M.D., which are attached hereto as EXHIBITS A and B, respectively, and incorporated herein by reference.

BACKGROUND

On or about September 16, 2011, Collins impregnated Ms. Murphy, leading to Ms. Murphy's nurturing, birthing, witnessing the death of, grieving, and burying Tynslee Elizabeth Fields [hereinafter "Tynslee"].

Ms. Murphy provided Collins notice of the pregnancy on or about October 4, 2011. Collins attended ***one*** doctor's appointment with Ms. Murphy during her pregnancy. Collins was not present at the birth, death, funeral, or burial of the child. Ms. Murphy, in her capacity as Personal Representative of the Estate of Tynslee Elizabeth Fields, instituted survival and wrongful death actions containing claims for herself and for Tynslee. To date, the survival and wrongful death lawsuits have resulted in a partial, yet substantial, settlement. Collins now seeks payment from these proceeds in the amount of Two-Hundred Ninety-One Thousand, Seven Hundred Eighty-Eight Dollars and Seventy-Six Cents ($291,788.76). The amount demanded by Collins constitutes fifty percent (50%) of the collective proceeds from the above claims.

ARGUMENT AND APPLICABLE LAW

Damages recoverable in a wrongful death action include: "(1) Pecuniary loss, (2) mental shock and suffering, (3) wounded feelings, (4) grief and sorrow, (5) loss of companionship, and (6) deprivation of the use and comfort of the intestate's society, the loss of his experience, knowledge, and judgment in managing the affairs of himself and of his beneficiaries...." *Scott v. Porter*, 530 S.E.2d 389, 340 S.C. 158 (S.C. App. 2000).

Additionally, parents of a deceased minor are entitled to a presumption of nonpecuniary damages. *Id.* "It may often be assumed that grief and sorrow will be experienced at the loss of a loved one; **however, the strength of such presumption is a function of the closeness of the**

relationship, and in some cases evidence may be necessary to support claims of loss." *Id.* (emphasis added).

"Unlike actual damages in a wrongful death action, actual damages in a survival action are awarded for the benefit of the decedent's estate rather than for the family. Appropriate damages in survival actions include those for medical, surgical, and hospital bills, conscious pain, suffering, and mental distress of the deceased." *Scott v. Porter*, 530 S.E.2d 389, 340 S.C. 158 (S.C. App. 2000) (citing *Bennett v. Spartanburg Ry., Gas & Elec. Co.*, 97 S.C. 27, 81 S.E. 189 (1914); *Croft v. Hall*, 208 S.C. 187, 190, 37 S.E.2d 537, 538 (1946); *Gowan v. Thomas*, 237 S.C. 223, 225, 116 S.E.2d 761, 762 (1960); and *Croft*, 208 S.C. at 193, 37 S.E.2d at 539.

Since 1996, South Carolina statutory law plainly states the Court has discretion in deciding how to proportionately divide settlement proceeds to individual statutory beneficiaries from the settlement of wrongful death and survival actions such as in the instant case. This is a result of a substantial shift in the law since 1996 after our Supreme Court's interpretation of the previous statute in the 1995 decision of *Ballard v. Ballard*, 443 S.E.2d 802, 314 S.C. 40 (S.C. 1994). In *Ballard*, the father of a child injured as a minor "failed to visit [the child] or contribute to [the child's] support." *Id.* Even though the father provided no support, the Court held on April 25, 1994 that, "the distribution of ... damages among statutory beneficiaries ... is controlled strictly by the share each would take as an heir in intestacy regardless of the proportion of damages suffered by each." *Id.*

Twenty-one (21) months after the *Ballard* decision was published, the South Carolina Senate introduced S.1164, a Bill to amend Section 15-51-40 to permit the Probate Court to deny or limit either or both parent's entitlement to a share of the proceeds if the court determines by a preponderance of the evidence that the parent or parents failed to reasonably support the

decedent and did not provide for the needs of the decedent during his or her minority. *S.1164*, 111th Gen. Assemb., (S.C. 1996). S.1164 was ratified by the legislature and signed by the Governor in less than 100 days. *Id.*

Thus, the current controlling law reads, in pertinent part, "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." S.C. Code of Laws § 15-51-40 (1976, as amended).

The individual failing to provide support, as defined in S.C. Code of Laws Section 63-5-20, is "Any able-bodied person capable of earning a livelihood who shall, without just cause or excuse, abandon or fail to provide reasonable support to... his or her minor... child dependent upon him or her..." S.C. Code of Laws §62-5-20(A) (1976, as amended).

After the conception of the child, after not participating in the Movant's pregnancy save one brief doctor's appointment, after being unaware of the child's birth, and after choosing not to attend the child's funeral, Collins appears only to demand 50% of the settlement proceeds in the instant case.

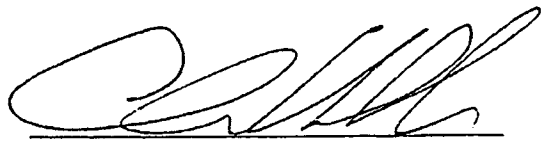
However, evidence simply does not exist to show Collins suffered from the death of Tynslee, whether it be pecuniary loss, mental shock and suffering, wounded feelings, grief, sorrow, or loss of companionship. With the exception of conception and one doctor's visit, Collins played no role. While it may often be presumed a parent suffers significant loss upon the death of a child, case law is clear that the strength of such presumption is a function of the

closeness of the relationship. The fact is, Collins had ***no*** relationship with Tynslee. Awarding him Two-Hundred Ninety-One Thousand, Seven Hundred Eighty-Eight Dollars and Seventy-Six Cents ($291,788.76) on the basis that he copulated with the Movant once resulting in the conception of a child he had nothing to do with creates an absurd result. It is precisely the problem our legislature identified after *Ballard* and addressed in less than 100 days.

Further, the percentage of recovery demanded by Collins does not consider any amount received pursuant to Ms. Murphy's individual claims. Ms. Murphy carried Tynslee to full term, attended to her health and well-being throughout her pregnancy, developed a strong emotional bond with the child during pregnancy, rendered payment for all medical costs associated with her pregnancy and Tynslee's birth, suffered tremendously upon witnessing Tynslee's neck breaking, and grieved immensely at Tynslee's subsequent death.

In contrast, Collins ignored Mother's pregnancy, the child's birth, and the child's death. Yet now he stands before this court with his hand out seeking a windfall.

WHEREFORE, Plaintiff prays that this Court inquire into the matters set forth hereinabove, deny Collins' Motion to Compel, and deny any and all benefits of the partial settlement referenced herein to Collins, together with such other and further relief as the Court seems reasonable and proper.



Date: August 15, 2014
Greenville, SC

Charles W. Marchbanks, Jr.
S.C. Bar No.: 76935
Attorney for the Plaintiff
1225 South Church Street
Greenville, SC 29605
864-552-1606 Telephone
864-552-1607 Facsimile
Charles.Marchbanks@MarchbanksLawFirm.com

EXHIBIT A

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields, Plaintiff, -vs- Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10, Defendants.	)	C.A. No. 2013-CP-23-04186 **ORDER FOR APPROVAL OF SETTLEMENT AS TO DEFENDANTS MERCY OBSTEGRICS & GYNECOLOGY, P.A., RAGESH PANDYA, M.D. ONLY**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 FEB 24 AM 11 24

UPON READING the annexed Petition of Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, and it appearing that Lauren Murphy deems the offer with the Defendants acceptable, advantageous, and to the best interest of the Estate and the beneficiaries and

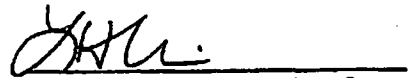
IT FURTHER APPEARING in the discretion of this Court that such settlement is proper and in the best interest of the Estate, it is

ORDERED, ADJUDGED and DECREED that Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, is hereby authorized to consummate the settlement referred to in the Petition and to execute and deliver to the Defendants an appropriate Release terminating, releasing, and ending all claims and actions asserted or brought under or by virtue of any Federal or South Carolina Statute or by common law in any way arising out of the incident against the Defendants Mercy Obstetrics & Gynecology, PA, Ragesh Pandya only, including their officers, directors, employees, physicians, agents, servants, attorneys, partners and representatives, and all parent, subsidiaries, and related corporations and any of the insured predecessors and successor corporations or entities, and their attorneys, heirs, assigns, executors, administrators, successors, subsidiaries, affiliated companies, parent companies, insiders, and any other indemnitors, including their insured entities. This

in no way affects the rights of Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields to proceed against the remaining Defendants in this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the attorneys fees and costs itemized in the Petition filed herewith are approved by the Court, and Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, is hereby authorized and required to pay such fees and costs as well as any related medical, federal, and/or state liens, including but not limited to Medicare and/or Medicaid, out of the settlement proceeds, with any balance of said proceeds to be paid in accordance with the law.

AND IT IS SO ORDERED this the 24 day of Feb., 2014.



Presiding Judge, Thirteenth Judicial Circuit

Pickens, South Carolina

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields,	)	C.A. No. 2013-CP-23-04186
Plaintiff,	)	PETITION FOR APPROVAL OF SETTLEMENT AS TO DEFENDANTS MERCY OBSTEGRICS & GYNECOLOGY, P.A., RAGESH PANDYA, M.D., ONLY
-vs-	)	
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,	)	
Defendants.	)	

The Petitioner, Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, petitions the Court for approval of a settlement and respectfully shows:

1. That the Petitioner, Lauren Murphy, is the Personal Representative of the Estate of Tynslee Fields, and that the Plaintiff is a citizen and resident of Greenville County, South Carolina.

2. That the Decedent, Tynslee Fields, was at all times a resident of Greenville County, South Carolina, and her Estate is pending in the Probate Court of Greenville County.

3. The basic facts surrounding the death of the decedent and those regarding the liability of the alleged wrongdoer are that the petitioner Lauren Murphy was a patient at the Defendant Bon Secours Health System facility on or about June 12, 2012 for a scheduled induction of labor. Following her delivery, Tynslee Fields died from an injury to her vertebrae. The Plaintiff alleges medical malpractice and the Defendants denied the same.

4. The circumstances leading up to and surrounding said incident have been thoroughly investigated by investigators, adjusters and attorneys representing the Petitioner and similar personnel representing the Defendants, and any of its insured individuals and all parent, subsidiaries, and related corporations and entities. The Petitioner individually and on behalf of the Estate and Mercy Obstetrics & Gynecology, PA,Ragesh Pandya only have arrived at an agreed settlement for the claims against these Defendants in these claims and the Insurers, and any of their insured individuals and all parent,

subsidiaries, and related corporations and entities as a result of the alleged negligent treatment and care. The agreed settlement and compromise contemplates the release, ending and terminating of all claims and actions against Mercy Obstetrics & Gynecology, PA, Ragesh Pandya only, based on causes surviving to the Decedent or Petitioners or any person, in any way arising, asserted or brought under or by virtue of any Federal or State statute, or by common law against these Defendants, including claims of any of their insured individuals and all parent, subsidiaries, and related corporations and entities. This in no way affects the rights of Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields to proceed against the remaining Defendants in this action.

5. That the amount of insurance available is $1,000,000.00.

6. That the Defendants do not admit liability of any sort, but that a settlement was reached as a compromise to avoid and minimize expenses and litigation.

7. That the Petitioner is informed and believes that this settlement is in the best interests of the Estate and the statutory beneficiaries.

8. The parties have agreed to a full, final, and confidential settlement as to these Defendants only, in the amount of Nine Hundred and Seventy Five Thousand Dollars and No Cents ($975,000.00), of which Nine Hundred Seventy Thousand Dollars ($970,000.00) shall be allocated to the Wrongful Death Action, and Five Thousand Dollars ($5,000.00) to the Survival Action.

9. The statutory beneficiaries and heirs at law are Lauren Murphy and Mark Collins.

10. The Petitioner, as the Personal Representative, has agreed to satisfy all related medical bills, liens, federal or state liens, including but not limited to Medicare and/or Medicaid, and to indemnify the Defendants, and their Insurers and attorneys, and all parent, subsidiaries, and related corporations from any and all potential lien holders and other health and long term care providers as further specified in the Release. There will be Three Thousand Three Hundred Thirty-One Dollars and Fifty Cents ($3,331.50) withheld in trust for any medical liens.

10. From the settlement proceeds, the undersigned requests the approval of the Court to pay for legal services rendered by his attorneys in the agreed amount of $325,000.00, as well as costs in the

amount of $13,090.98, in addition to costs associated with the settlement hearing, future probate court fees and continued litigation of which an additional Fifty Thousand Dollars ($50,000.00) will be held in trust in order to finance said litigation against the remaining Defendants if necessary. The amount of Five Hundred Eighty Three Thousand Five Hundred Seventy Seven Dollars and Fifty Two Cents ($583,577.52) are to be paid to the statutory beneficiaries. The undersigned is of the opinion that the total attorneys' fees and costs as well as her personal representative fee and trust amount are fair and reasonable under the circumstances and reflect substantial and fruitful efforts put forth by her attorneys, that such fees and costs should be approved by the Court, and that the undersigned, as Personal Representative, should be authorized to pay such fees and costs out of the settlement proceeds with the balance of the proceeds to be paid in accordance with the law.

11. This Petition is made pursuant to the Wrongful Death Act § 15-51-10 et seq., of the Code of Laws of South Carolina as amended and the Survival Act, § 15-5-90 of the Code of Laws of South Carolina as amended.

WHEREFORE, the Petitioner prays that this Court approve such settlement and authorize the Petitioner, individually and as Personal Representative of the Estate of Tynslee Fields, to receive the stated sum to satisfy any and all related liens and, in return therefore, execute, individually and as Personal Representative of the Estate of Tynslee Fields, a complete full and final release and hold harmless agreement, ending and terminating the matter and barring all claims which have been and/or may in any way be asserted on behalf of, and in any way related to or for the benefit of Tynslee Fields against Defendants Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, only and Petitioners claims against the remaining Defendants are in no way affected by this release.

Lauren Murphy

Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields

Dated: 4/24, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	C.A. No.: 2013-CP-23-04186
Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields	)	VERIFICATION
Plaintiff,	)	
vs.	)	
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,	)	
Defendants.	)	

PERSONALLY appeared before me, Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, who being duly sworn, deposes and says: That she is the Petitioner in the foregoing Petition and that she has read the same and the matters as stated therein are true to the best of her knowledge, except for such matters and things as may be set forth therein on information and belief, and those she believes to be true.

Lauren Murphy

Lauren Murphy individually and as Personal Representative of the Estate of Tynslee Fields

SWORN to before me this 24th

day of February, 2014

My Commission Expires: 8/1/16

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) 13TH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. WICKENSIMER
2014 AUG 15 PM 4 42

Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields,
Plaintiffs,

vs.

Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,
Defendants.

CERTIFICATE OF SERVICE

Docket No. 2013-CP-23-04186

I, Lindsey A. Dove, hereby swear and affirm that I have served a true copy of the "Plaintiff Lauren Murphy's Return to Mark Collins' Motion to Compel" and "Motion to Deny Mark Collins Any and All Proceeds Derived from Settlement of Survival and Wrongful Death Actions" in the above-captioned matter on the 15 day of August 2014 by First Class Mail to the following addresses:

A. Stuart Hudson
Attorney for Plaintiff
P.O. Box 348
Mount Pleasant, SC 29465

Ashby W. Davis, Steven A. Snyder, David L. Willford
Attorneys for Defendants
5 Hawthorne Park Court
Greenville, SC 29615

Jessica Salvini & John M. Read, IV
Attorneys for Movant Collins
101 West Park Avenue
Greenville, SC 29601

Date: August 15, 2014

Lindsey A. Dove
Legal Assistant to Marchbanks Law Firm

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE) 13th JUDICIAL CIRCUIT

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2016 PM 3 26

LAUREN MURPHY et al.,
Plaintiff,) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**

vs.

BON SECOURS HEALTH SYSTEM INC et al.,
Defendant.) Docket No. 2013-CP-23-04186

Plaintiff's Attorney:	Defendant's Attorney:
A. Stuart Hudson Address: P.O. Box Mount Pleasant, SC 29465 Phone: 843-881-8644 Fax 888-884-8311	Ashby W. Davis, Steven A. Snyder, David L. Willford Address: 5 Hawthorne Park Court Greenville, SC 29615 Phone: 864-335-3500 Fax: 864-335-3505
Movant's Attorney: Jessica Salvini & John M. Read, IV. Address: 101 W. Park Avenue Greenville, SC 29601 Phone: (864) 232-5800 Fax: (864) 232-5888	

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Compel
Estimated Time Needed: 1 Hour Court Reporter Needed: ☒ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant 8.6.2014 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____ Judge Signature: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____

☐ MOTION FEE COLLECTED: $ _____

☐ CONTESTED – AMOUNT DUE: $ _____

Custodial Parent (if applicable): _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	Case No.: 2013-CP-23-04186
Lauren Murphy, individually, and as Personal Representative of the Estate Of Tynslee Fields,	)	
Plaintiffs,	)	
vs.	)	
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,	)	**NOTICE OF MOTION AND MOTION TO COMPEL**
Defendants.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 AUG 6 PM 3:27

YOU WILL PLEASE TAKE NOTICE that the undersigned, as counsel for Movant, Mark Collins, an interested third-party herein, will move before the Presiding Judge for the Greenville County Court of Common Pleas within ten (10) days hereof, or as soon hereafter as the matter may be heard before the Presiding Judge for the Greenville County Court of Common Pleas, for the relief requested in the attached MOTION TO COMPEL, which is incorporated herein by reference.

This MOTION will be supported by any and all affidavits and/or documents and memorandum that may be filed with the Court prior to and at the hearing of this matter, as well as any and all applicable South Carolina law.

Respectfully Submitted,

JOHN M. READ, IV, ESQ.

PILSBURY & READ, PA
1204-A East Washington Street
Greenville, SC 29601
Telephone: (864) 241-9828
Facsimile: (864) 241-9818

Greenville, SC
Dated: August 6, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	Case No.: 2013-CP-23-04186
Lauren Murphy, individually, and as Personal Representative of the Estate Of Tynslee Fields,	)	
Plaintiffs,	)	
vs.	)	
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,	)	MOTION TO COMPEL
Defendants.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 AUG 6 PM 3 27

INTRODUCTION

COMES NOW, Movant, Mark Collins, an interested third-party having a real, material, and substantial interest in the above referenced litigation as a statutory beneficiary of the Estate of Tynslee Fields, who by and through undersigned counsel respectfully requests this Court enter an order requiring the immediate disbursement of the funds the Honorable Letitia H. Verdin awarded to him on February 24, 2014, as is more fully set forth in the ORDER FOR APPROVAL OF SETTLEMENT AS TO DEFENDANTS MERCY OBSTETRICS & GYNECOLOGY, P.A., RAGESH PANDYA, M.D. ONLY, and the PETITION FOR APPROVAL OF SETTLEMENT AS TO DEFENDANTS MERCY OBSTETRICS & GYNECOLOGY, P.A., RAGESH PANDYA, M.D., which is attached hereto as EXHIBIT A and B, respectively, and incorporated by reference.

BACKGROUND

On or about February 24, 2014, an ORDER approving a PETITION FOR APPROVAL OF SETTLEMENT AS TO DEFENDANTS MERCY OBSTETRICS & GYNECOLOGY, P.A., RAGESH PANDYA, M.D. was entered by the Greenville County Court of Common Pleas in the litigation in the matter of *Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields, vs. Bon Secours Health System, Inc., et. al*, Case No. 2013-CP-23-04186 (hereinafter "ORDER"). The ORDER sets forth the Circuit Court's approval of a settlement reached between the Plaintiffs and several Defendants (that being, Mercy Obstetrics & Gynecology, P.A., Ragesh Pandya, M.D), finding that settlement "is proper and in the best interest of the Estate" named hereinabove. As a result, the Circuit Court approved the sum of five thousand dollars ($5,000.00) being allocated to the Survival Action (hereinafter referred to as "estate proceeds"), as well as the payment of the sum of Five Hundred Eighty-Three Thousand, Five Hundred Seventy-Seven Dollars and Fifty-Two Cents ($583,577.52) (hereinafter referred to as "wrongful death proceeds") to the "statutory beneficiaries." (See EXHIBIT B.)

The estate proceeds and the wrongful death proceeds are currently being held in trust with the Hughey Law Firm, LLC. On or about July 29, 2014, the Movant formally demanded disbursement of ½ of the proceeds ($291,788.76) directly to him as statutory beneficiary. This demand was declined.

ARGUMENT AND APPLICABLE LAW

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

> ...The amount so recovered **shall be divided among the [statutory beneficiaries]** in those shares as they would have been entitled to if the deceased had died intestate and the amount recovered had been personal assets of his or her estate. SC Code Section 15-51-40 Damages; amount and to whom payable (South Carolina Code of Laws (2014 Edition).

These shares are determined as follows according to South Carolina's laws governing intestacy.

> The part of the intestate estate not passing to the surviving spouse under Section 62-2-102, or the entire estate if there is no surviving spouse, passes as follows:
>
> (1) to the issue of the decedent: if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree then those of more remote degree take by representation;
>
> (2) **if there is no surviving issue, to his parent or parents equally**; SC Code Section 62-2-103 Share of heirs other than surviving spouse.

It is undisputed that the statutory beneficiaries of the Estate of Tynslee Fields are the Plaintiff, Lauren Murphy, and the movant herein, Mark Collins, and the Court found the same in its ORDER which states, in pertinent part:

> The amount of Five Hundred Eighty Three Thousand Five Hundred Seventy Seven Dollars and Fifty-Two Cents are to be paid to the statutory beneficiaries.

(EXHIBIT A – Court Order, p. 3.)

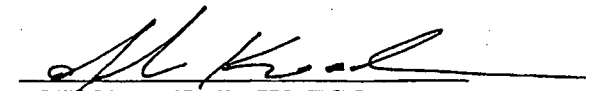
Accordingly, both Ms. Murphy and Mr. Collins are the only parties entitled to the aforementioned proceeds, with each receiving fifty percent (50%) thereof as intestate heirs.

There is no legal basis for the estate proceeds or the wrongful death proceeds not to be disbursed as requested herein. Accordingly, Mr. Collins respectfully requests that this Court enter an Order requiring that the wrongful death proceeds be disbursed forthwith directly to the statutory beneficiaries, Lauren Murphy and Mark Collins, with each receiving one-half (50%) of said proceeds, mores pecifically the sum of Two-Hundred Ninety-One Thousand, Seven Hundred Eighty-Eight Dollars and Seventy-Six Cents ($291,788.76) respectively, in accordance with Judge Verdin's Order.

CONCLUSION

For all the foregoing reasons, Movant Mark Collins, respectfully requests this Court enter an Order in the above referenced matter as set forth herein above.

Respectfully Submitted,



JOHN M. READ, IV, ESQ.

PILSBURY & READ, PA
1204-A East Washington Street
Greenville, SC 29601
Telephone: (864) 241-9828
Facsimile: (864) 241-9818

JESSICA SALVINI, ESQ.

SALVINI & BENNETT, LLC
101 W. Park Ave.
Greenville, SC 29601
Telephone: (864) 232-5800
Facsimile: (864) 232-5888

Greenville, SC
Dated: August 6, 2014

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields,	)	C.A. No. 2013-CP-23-04186
Plaintiff,	)	ORDER FOR APPROVAL OF SETTLEMENT AS TO DEFENDANTS MERCY OBSTEGRICS & GYNECOLOGY, P.A., RAGESH PANDYA, M.D. ONLY
-vs-	)	
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,	)	
Defendants.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 FEB 24 AM 11 24

UPON READING the annexed Petition of Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, and it appearing that Lauren Murphy deems the offer with the Defendants acceptable, advantageous, and to the best interest of the Estate and the beneficiaries and

IT FURTHER APPEARING in the discretion of this Court that such settlement is proper and in the best interest of the Estate, it is

ORDERED, ADJUDGED and DECREED that Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, is hereby authorized to consummate the settlement referred to in the Petition and to execute and deliver to the Defendants an appropriate Release terminating, releasing, and ending all claims and actions asserted or brought under or by virtue of any Federal or South Carolina Statute or by common law in any way arising out of the incident against the Defendants Mercy Obstetrics & Gynecology, PA, Ragesh Pandya only, including their officers, directors, employees, physicians, agents, servants, attorneys, partners and representatives, and all parent, subsidiaries, and related corporations and any of the insured predecessors and successor corporations or entities, and their attorneys, heirs, assigns, executors, administrators, successors, subsidiaries, affiliated companies, parent companies, insiders, and any other indemnitors, including their insured entities. This

copy to Hood Law Firm @ counter / will mail copy

in no way affects the rights of Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields to proceed against the remaining Defendants in this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the attorneys fees and costs itemized in the Petition filed herewith are approved by the Court, and Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, is hereby authorized and required to pay such fees and costs as well as any related medical, federal, and/or state liens, including but not limited to Medicare and/or Medicaid, out of the settlement proceeds, with any balance of said proceeds to be paid in accordance with the law.

AND IT IS SO ORDERED this the 24 day of Feb., 2014.

Presiding Judge, Thirteenth Judicial Circuit

Pickens, South Carolina

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields,	)	C.A. No. 2013-CP-23-04186
Plaintiff,	)	PETITION FOR APPROVAL OF SETTLEMENT AS TO DEFENDANTS MERCY OBSTEGRICS & GYNECOLOGY, P.A., RAGESH PANDYA, M.D. ONLY
-vs-	)	
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,	)	
Defendants.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 FEB 24 AM 11 24

The Petitioner, Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, petitions the Court for approval of a settlement and respectfully shows:

1. That the Petitioner, Lauren Murphy, is the Personal Representative of the Estate of Tynslee Fields, and that the Plaintiff is a citizen and resident of Greenville County, South Carolina.

2. That the Decedent, Tynslee Fields, was at all times a resident of Greenville County, South Carolina, and her Estate is pending in the Probate Court of Greenville County.

3. The basic facts surrounding the death of the decedent and those regarding the liability of the alleged wrongdoer are that the petitioner Lauren Murphy was a patient at the Defendant Bon Secours Health System facility on or about June 12, 2012 for a scheduled induction of labor. Following her delivery, Tynslee Fields died from an injury to her vertebrae. The Plaintiff alleges medical malpractice and the Defendants denied the same.

4. The circumstances leading up to and surrounding said incident have been thoroughly investigated by investigators, adjusters and attorneys representing the Petitioner and similar personnel representing the Defendants, and any of its insured individuals and all parent, subsidiaries, and related corporations and entities. The Petitioner individually and on behalf of the Estate and Mercy Obstetrics & Gynecology, PA,Ragesh Pandya only have arrived at an agreed settlement for the claims against these Defendants in these claims and the Insurers, and any of their insured individuals and all parent,

subsidiaries, and related corporations and entities as a result of the alleged negligent treatment and care. The agreed settlement and compromise contemplates the release, ending and terminating of all claims and actions against Mercy Obstetrics & Gynecology, PA, Ragesh Pandya only, based on causes surviving to the Decedent or Petitioners or any person, in any way arising, asserted or brought under or by virtue of any Federal or State statute, or by common law against these Defendants, including claims of any of their insured individuals and all parent, subsidiaries, and related corporations and entities. This in no way affects the rights of Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields to proceed against the remaining Defendants in this action.

5. That the amount of insurance available is $1,000,000.00.

6. That the Defendants do not admit liability of any sort, but that a settlement was reached as a compromise to avoid and minimize expenses and litigation.

7. That the Petitioner is informed and believes that this settlement is in the best interests of the Estate and the statutory beneficiaries.

8. The parties have agreed to a full, final, and confidential settlement as to these Defendants only, in the amount of Nine Hundred and Seventy Five Thousand Dollars and No Cents ($975,000.00), of which Nine Hundred Seventy Thousand Dollars ($970,000.00) shall be allocated to the Wrongful Death Action, and Five Thousand Dollars ($5,000.00) to the Survival Action.

9. The statutory beneficiaries and heirs at law are Lauren Murphy and Mark Collins.

10. The Petitioner, as the Personal Representative, has agreed to satisfy all related medical bills, liens, federal or state liens, including but not limited to Medicare and/or Medicaid, and to indemnify the Defendants, and their Insurers and attorneys, and all parent, subsidiaries, and related corporations from any and all potential lien holders and other health and long term care providers as further specified in the Release. There will be Three Thousand Three Hundred Thirty-One Dollars and Fifty Cents ($3,331.50) withheld in trust for any medical liens.

10. From the settlement proceeds, the undersigned requests the approval of the Court to pay for legal services rendered by his attorneys in the agreed amount of $325,000.00, as well as costs in the

amount of $13,090.98, in addition to costs associated with the settlement hearing, future probate court fees and continued litigation of which an additional Fifty Thousand Dollars ($50,000.00) will be held in trust in order to finance said litigation against the remaining Defendants if necessary. The amount of Five Hundred Eighty Three Thousand Five Hundred Seventy Seven Dollars and Fifty Two Cents ($583,577.52) are to be paid to the statutory beneficiaries. The undersigned is of the opinion that the total attorneys' fees and costs as well as her personal representative fee and trust amount are fair and reasonable under the circumstances and reflect substantial and fruitful efforts put forth by her attorneys, that such fees and costs should be approved by the Court, and that the undersigned, as Personal Representative, should be authorized to pay such fees and costs out of the settlement proceeds with the balance of the proceeds to be paid in accordance with the law.

11. This Petition is made pursuant to the Wrongful Death Act § 15-51-10 et seq., of the Code of Laws of South Carolina as amended and the Survival Act, § 15-5-90 of the Code of Laws of South Carolina as amended.

WHEREFORE, the Petitioner prays that this Court approve such settlement and authorize the Petitioner, individually and as Personal Representative of the Estate of Tynslee Fields, to receive the stated sum to satisfy any and all related liens and, in return therefore, execute, individually and as Personal Representative of the Estate of Tynslee Fields, a complete full and final release and hold harmless agreement, ending and terminating the matter and barring all claims which have been and/or may in any way be asserted on behalf of, and in any way related to or for the benefit of Tynslee Fields against Defendants Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, only and Petitioners claims against the remaining Defendants are in no way affected by this release.

Lauren Murphy

Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields

Dated: 2/24, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	C.A. No.: 2013-CP-23-04186
Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields	)	VERIFICATION
Plaintiff,	)	
vs.	)	
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10,	)	
Defendants.	)	

PERSONALLY appeared before me, Lauren Murphy, individually and as Personal Representative of the Estate of Tynslee Fields, who being duly sworn, deposes and says: That she is the Petitioner in the foregoing Petition and that she has read the same and the matters as stated therein are true to the best of her knowledge, except for such matters and things as may be set forth therein on information and belief, and those she believes to be true.

Lauren Murphy

Laruen Murphy individually and as Personal Representative of the Estate of Tynslee Fields

SWORN to before me this 24

day of February, 2014

My Commission Expires: 8/1/16

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	Case No.: 2013-CP-23-04186
Lauren Murphy, individually, and as Personal Representative of the Estate Of Tynslee Fields, **Plaintiffs,**	)	
vs.	)	
Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Eastside, Mercy Obstetrics & Gynecology, PA, Ragesh Pandya, MD, Upstate OB-GYN Associates, PA, Stephanie Ann Berlet-Dach, D.O., and John and Jane Does 1-10, **Defendants.**	)	**CERTIFICATE OF SERVICE**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2016 AUG 6 PM 3 28

I am a citizen of the United States. My business address is 101 W. Park Avenue, Greenville, SC 29601. I am employed in the City and County of Greenville where this mailing occurs; I am over the age of eighteen years and not a party to the within cause. I served a true copy of the:

Notice of Motion and Motion to Compel

in this matter on the following person(s) on the date set forth below, **FAX & U.S. Mail**, in a sealed envelope, postage pre-paid thereon and addressed to:

A. Stuart Hudson, Esq.
HUGHEY LAW FIRM, LLC
P.O. Box 348
Mount Pleasant, SC 29465-0348
Via Facsimile at (888) 884-8311
Attorney for Plaintiffs

Ashby W. Davis, Steven A. Snyder, David L. Williford
DAVIS & SNYDER, P.A.
5 Hawthorne Park Court
Greenville, SC 29615
Via Facsimile at (864) 335-3505
Attorneys for Bon Secours Health System, Inc., Bon Secours St. Francis Health System, Inc., d/b/a St. Francis Eastside, Upstate OB-GYN, PA and Stephanie Ann Berlet-Dach, D.O.

I certify or declare under penalty of perjury that the foregoing is true and correct. Executed on August 6, 2014, in Greenville, South Carolina.

Ashley Bramlett

ASHLEY BRAMLETT
SALVINI & BENNETT, LLC
101 W. Park Avenue
Greenville, SC 29601
Telephone: (864) 232-5800
Facsimile: (864) 232-5888

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
COUNTY OF GREENVILLE	)	Case No.: 12-ES-23-01718
IN RE: Tynslee Elizabeth Fields, Lauren Murphy as Statutory Beneficiary, Petitioner, vs. Mark Collins, and the Estate of Tynslee Elizabeth Fields, Deceased, Movant(s).	)	NOTICE OF MOTION AND MOTION TO STAY DISBURSEMENT OF PROCEEDS

FILED
JUL 23 2014
GREENVILLE COUNTY
PROBATE COURT

INTRODUCTION

COMES NOW the Movant, Mark Collins, who by and through undersigned counsel respectfully requests this Court enter an order in the above referenced matter staying the disbursement of any estate proceeds, that is the sum of one thousand, six hundred and sixty-eight dollars and fifty cents ($1,668.50), as well as the wrongful death proceeds in the amount of five hundred and eighty-three thousand, five hundred and seventy-seven dollars and fifty-two cents ($583,577.52) until such time as a final disposition is rendered by this Court in this action.

ARGUMENT

On or about February 24, 2014, an ORDER approving a PETITION FOR APPROVAL OF SETTLEMENT AS TO DEFENDANTS MERCY OBSTETRICS & GYNECOLOGY, P.A., RAGESH PANDYA, M.D. was entered by the Greenville County Court of Common Pleas in the pending litigation in the matter of *Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields, vs. Bon Secours Health System, Inc., et. al,* Case No. 2013-CP-23-04186 (hereinafter "ORDER"). The ORDER, and the PETITION FOR APPROVAL OF SETTLEMENT AS TO

DEFENDANTS MERCY OBSTETRICS & GYNECOLOGY, P.A., RAGESH PANDYA, M.D. is attached hereto as EXHIBITS A and B, respectively.

The ORDER sets forth the Circuit Court's approval of a settlement reached between the Plaintiffs and several Defendants (that being, Mercy Obstetrics & Gynecology, P.A., Ragesh Pandya, M.D), finding that settlement "is proper and in the best interest of the Estate" named hereinabove. The Circuit Court allocated five thousand dollars ($5,000.00) to the Estate of Tynslee Fields for the survival action and the sum of five hundred and eighty-three thousand, five hundred and seventy-seven dollars and fifty-two cents ($583,577.52) to the "statutory beneficiaries" for the wrongful death claim. See EXHIBIT B.

It is undisputed that the only statutory beneficiaries are the mother, Lauren Murphy, who also serves as Personal Representative, and the Movant, Mark Collins, father of the deceased. Accordingly, each are entitled to fifty percent (50%) of aforementioned proceeds. However, on or about July 2, 2004, the Personal Representative, Lauren Murphy filed an action in this Court, in her capacity as statutory beneficiary, seeking to deny the Movant, Mark Collins, his share of any proceeds arising from either the wrongful death or survival action. The aforementioned Petition is pending.

The proceeds from both the wrongful death and survival action are currently being held in trust with the Hughey Law Firm, LLC. The Movant is informed and believes the Hughey Law Firm, LLC, is seeking to transfer the proceeds for both the survival action and the wrongful death claim to the attorney for the Estate of Tynslee Fields, Ruth Hindman.

Lauren Murphy bears the dual capacities of both Personal Representative and statutory beneficiary. She has filed adversarial pleadings seeking to deny the payment of any and all proceeds to statutory beneficiary Movant, Mark Collins. His concern, therefore, is that the

funds, without specific direction from the Court otherwise, could be disbursed in such a fashion as to deny, as a practical matter, his interest in the proceeds as a statutory beneficiary. In the event of a premature transfer of these proceeds, or a portion thereof, to the Personal Representative, the Movant would have no recourse but to attempt to bring an action against her to recover his portion thereof; litigation that would most likely be fruitless as the Movant is informed and believes that she is judgment proof.

Accordingly, the Movant respectfully requests this Court issue an Order that protects his interest in the proceeds identified hereinabove, by staying any disbursements.

CONCLUSION

For all the foregoing reasons, by and through counsel, Movant Mark Collins, respectfully requests this Court enter an order in the above referenced matter staying the disbursement of any of the referenced proceeds for the reasons stated herein above.

Respectfully Submitted,

JESSICA SALVINI, ESQ.
BRADLEY BENNETT, ESQ.

SALVINI & BENNETT, LLC
101 W. Park Ave.
Greenville, SC 29601
Telephone: (864) 232-5800
Facsimile: (864) 232-5888

JOHN M. READ, IV, ESQ.

PILSBURY & READ, PA
1204-A East Washington Street
Greenville, SC 29601
Telephone: (864) 241-9828
Facsimile: (864) 2419818

Greenville, SC
Dated: July 23, 2014

STATE OF SOUTH CAROLINA.	)	
	)	IN THE PROBATE COURT
COUNTY OF GREENVILLE	)	
	)	
IN THE MATTER OF: Tynslee Elizabeth Fields	)	
	)	
Lauren Murphy as Statutory Beneficiary.	)	SUMMONS
	)	
Petitioner.	)	
	)	
vs.	)	CASE NO. 2012-ES-23-01718
	)	
Mark Collins, and the Estate of Tynslee Elizabeth Fields, Deceased.	)	
	)	
Respondent(s).	)	

TO THE RESPONDENT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Petition upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Petition, judgment by default will be rendered against you for the relief demanded in the Petition.

Greenville, South Carolina

Charles W. Marchbanks, Jr.
Petitioner/Attorney for Petitioner

Dated: July 2, 2014

Address: 1225 South Church Street
Greenville, SC 29605

RECEIVED
JUL 02 2014
GREENVILLE COUNTY
PROBATE COURT

SCCA 401PC (9/11)

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
COUNTY OF GREENVILLE	)	**CASE NO.: 2012-ES-23-01718**
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.	)	**PETITION TO DENY RESPONDENT WRONGFUL DEATH PROCEEDS**

Petitioner, complaining of Defendants, would show:

1. Petitioner, a resident of the State of South Carolina, County of Greenville, is the Mother of Tynslee Elizabeth Fields, Deceased, and is one of only two statutory beneficiaries of Decedent pursuant to S.C. Code of Laws 15-51-20 (1976 as amended).

2. Respondent Collins, a resident of the State of South Carolina, County of Greenville, is the Father of Tynslee Elizabeth Fields, Deceased, and is one of only two statutory beneficiaries of Decedent pursuant to S.C. Code of Laws 15-51-20 (1976 as amended).

3. Respondent Estate is presently being probated in the Probate Court of the County of Greenville, State of South Carolina;

4. On or about June 12, 2012, Mother was induced into labor by the hospital and Tynslee Elizabeth Fields suffered fatal injuries during her delivery.

5. Petitioner in her capacity as Personal Representative of the Estate of Tynslee Elizabeth Fields, instituted a civil lawsuit with multiple, individual claims.

6. That lawsuit resulted in a substantial settlement.

7. Respondent Collins provided no support for the Decedent and completely failed to otherwise provide for the needs of Decedent.

8. Petitioner is informed and believes Respondent should be denied his share of the settlement proceeds under S.C. Code of Laws 15-51-40 (1976 as amended).

RECEIVED
JUL 02 2014
GREENVILLE COUNTY
PROBATE COURT

9. Petitioner is informed and believes she is entitled to an Order of this Court denying Respondent said benefits.

10. The portion of the settlement normally disbursed to Respondent in his capacity as Father and statutory heir of Decedent is presently being held in trust pending a decision of this Court as to whether Respondent's right for a share in the proceeds should be denied or limited.

WHEREFORE, Plaintiff prays that this Court inquire into the matters set forth hereinabove and deny the benefits of the Defendant, together with such other and further relief as to the Court seems reasonable and proper.

Respectfully Submitted,

Charles W. Marchbanks, Jr.
The Marchbanks Law Firm, LLC
Attorney for Petitioner
S.C. Bar No.: 76935
1225 South Church Street
Greenville, South Carolina 29605
(864) 552-1606 Telephone
(864) 552-1607 Fax
charles.marchbanks@marchbankslawfirm.com

Greenville, South Carolina
July 2, 2914

VERIFICATION

The undersigned, being sworn, states: That the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief.

SWORN to before me this 2nd day of July, 20 14

Notary Public for South Carolina

My Commission Expires: 7-30-19

Signature: Lauren Murphy

Name: Lauren Murphy

Address: 100 Buttercup Way, Apt 17
Taylors, SC 29687

E-mail:

Telephone (O):

(H):

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
COUNTY OF GREENVILLE	)	CASE NO (S).: 12-ES-23-01718
IN RE: Tynslee Elizabeth Fields	)	
Lauren Murphy,	)	
Petitioner,	)	**NOTICE OF MOTION & MOTION TO STAY DISBURSEMENT OF ESTATE ASSETS/FUNDS & TO EXTEND DEADLINE FOR PARTIES TO EITHER WAIVE OR POST BOND**
vs.	)	
Tynslee Elizabeth Fields, Decedent, and her Next of Kin, Mark Collins, et.al.	)	
Respondents	)	

2014 APR 24 PM 3:
Greenville County Probate Court

INTRODUCTION

COMES NOW undersigned counsel who respectfully request this Court enter an order in the above referenced estate staying the disbursement of any estate assets or proceeds, as well as to grant the parties an additional thirty (30) days to either waive or post bond in this matter for the reasons stated herein below.

ARGUMENT

On information and belief, a settlement has been reached in litigation pending in the matter of *Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields, vs. Bon Secours Health System, Inc., et. al*, Case No. 2013-CP-23-04186. Respondent, Mark Collins, an heir of the estate, has not been made aware of the terms and provisions of the Petition for Settlement in the matter of *Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields, vs. Bon Secours Health System, Inc., et. al*, Case No. 2013-CP-23-04186, or the Order of the Greenville County Court of Common Pleas approving the same. Further, on information and belief, the settlement proceeds obtained in the

matter of *Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields, vs. Bon Secours Health System, Inc., et. al.* Case No. 2013-CP-23-04186, and any ancillary matters related thereto, will comprise the entire estate of the decedent. Accordingly, to protect the interests of the Mr. Collins, an heir of the estate, additional time is required for Mr. Collins to obtain and review the Petition for Settlement so that he has a clear understanding of the terms and provisions of the Petition for Settlement, and his rights pursuant thereto. Based thereon, Mr. Collins seeks an order of this Court staying the disbursement of any settlement proceeds that may be transferred to the estate as a result of any settlement being reached in the matter of *Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields, vs. Bon Secours Health System, Inc., et. al*, Case No. 2013-CP-23-04186.

As a result of the aforementioned, Mr. Collins does not have the necessary information to either waive the bond requirement necessary for the estate to proceed forward or demand that bond be posted. Accordingly, Mr. Collins respectfully requests this Court grant him a thirty (30) day extension within which to investigate this matter so that he may make an informed decision as to whether or not it is necessary to post bond.

CONCLUSION

For all the foregoing reasons, by and through counsel, Mr. Collins respectfully requests this Court enter an order in the above referenced estate staying the disbursement of any estate assets or proceeds, as well as to grant the parties an additional thirty (30) days to either waive or post bond in this matter for the reasons stated herein.

Respectfully Submitted,

JESSICA SALVINI, ESQ.
BRADLEY BENNETT, ESQ.

SALVINI & BENNETT, LLC
101 W. Park Ave.
Greenville, SC 29601
Telephone: (864) 232-5800
Facsimile: (864) 232-5888

JOHN M. READ, IV, ESQ.

PILLSBURY & READ, PA
1204-A East Washington Street
Greenville, SC 29601
Telephone: (864) 241-9828
Facsimile: (864) 241-9818

Greenville, SC
Dated: June 24, 2014

filed 10/4/12

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	ESTATE DIVISION
COUNTY OF GREENVILLE	)	Case No.: 2012-~~CP~~-23-01718 ES
	)	
Lauren Murphy	)	
	)	
Petitioner,	)	
	)	**SUMMONS**
Versus	)	
	)	
Tynslee Elizabeth Fields, Decedent and her next of kin	)	
	)	
Respondents,	)	

TO THE ABOVE NAMED RESPONDENTS:

YOU ARE HEREBY SUMMONED and required to answer the Petitions in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Petitions on the subscriber A. Nathan Hughey, Esquire, at this office at the address below, within thirty (30) days after the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN NOTICE FURTHER that if you fail to appear and defend and fail to answer the Petitions as required by the Summons within thirty (30) days after the service hereof, exclusive of the day of service, judgment by default will be entered against you for the relief demanded in the Petitions.

HUGHEY LAW FIRM, LLC

D. Nathan Hughey (SC Bar No.: 68409)
A. Stuart Hudson (SC Bar No.: 71691)
767 Coleman Boulevard, Unit 2
Post Office Box 348
Mount Pleasant, SC 29465-0348
Telephone: (843) 881-8644
Facsimile: (888) 884-8311
nhughey@hugheylawfirm.com
shudson@hugheylawfirm.com

Attorneys for the Petitioner

9/4, 2012
Mount Pleasant, South Carolina

12 - 1718

STATE OF SOUTH CAROLINA)
COUNTY OF: GREENVILLE)
IN THE MATTER OF: Tynslee Elizabeth Fields)

IN THE PROBATE COURT

CASE NUMBER:

APPLICATION FOR (check any that apply) **PETITION FOR**

INFORMAL — FORMAL

☐ PROBATE OF WILL — ☐ TESTACY
☐ APPOINTMENT — ☒ APPOINTMENT

Applicant/Petitioner: Lauren Murphy
Address: 350 Fairforest Way, Apt. 8302, Greenville, SC 29607
Telephone: 864-434-7922

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. Give your relationship to the decedent, if any, and your interest in this proceeding.

Mother

2. Decedent Information

Name: Tynslee Elizabeth Fields
Last Four Digits of Social Security Number: *30-2-300
Date of Birth: 6/12/2012
Date of Death: 6/12/2012
Age at date of death: 1 Hour
Domicile at date of death: Greenville (county) South Carolina (state)

3. Venue for this proceeding is proper in this county because:

☒ Decedent was domiciled in this county at date of death.
☐ Decedent was not domiciled in South Carolina, but property of Decedent was located in this county at date of death.
☐ Decedent has a right to take legal action in this county because:

4.a. Names and addresses of devisees in the will including dates of birth of minors. If there are no minors, so state.

Name	Date of Birth	Address	Relationship to Decedent

(use additional sheet if necessary)

4.b. Names and addresses of intestate heirs who are not devisees, including dates of birth of minors. If there are no minors, so state. Intestate heirs are the persons who would inherit if the decedent left no will.

Name	Date of Birth	Address	Relationship to Decedent
Lauren Murphy	6/11/1989	350 Forest Way, Apt. 8302, Greenville, SC 29607	Mother
Mark Collins		201 Luray Dr., Greenville, SC 29617	Father
~~Jeremy Paul Fields~~		~~350 Fairforest Way, Apt. 8302 Greenville, SC 29607~~ (see order of 1-30-2013)	~~Father~~

(use additional sheet if necessary)

5. Did decedent have any change of marital status or the birth or adoption of any children after execution of this will, if one exists, or has any child of the decedent been born since his death, or is any birth of a child of the decedent anticipated? (This includes illegitimate children.)

☒ NO ☐ YES If yes, please explain, on page 3.

6. To the best of your knowledge, was the decedent a patient in a South Carolina Mental Health facility during his/her lifetime?

☒ NO ☐ YES If yes, please explain, on page 3.

7. Has a guardian or conservator ever been appointed for this person?

☒ NO ☐ YES If yes, please explain on page 3.

8. Has a personal representative of the decedent been appointed prior to this date by a Court in this state or elsewhere?

☒ NO ☐ YES If yes, please state details, including name and address of such Personal Representative on page 3.

9. Have you received or are you aware of any demands for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere?

☒ NO ☐ YES If yes, please state details, including names and addresses on page 3.

10. Have more than ten years passed since the decedent's death?

☒ NO ☐ YES If yes, please state circumstances authorizing tardy probate on page 3.

11. The decedent died with a personal estate of about the value of $0.00 and real estate of about the value of $0.00. (A full inventory and appraisement, Form #350PC, must be filed within 90 days.) If decedent was non-resident, please attach South Carolina Commission form ET 101.

12. After the exercise of reasonable diligence, are you aware of any unrevoked will and/or codicil(s), other than the one(s) attached hereto, relating to property in this State?

☒ NO ☐ YES If yes, please explain on page 3 and then proceed to Section II.

II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

12 - 1718

1. Regarding the decedent's will:

- ☐ The original is attached
- ☐ The original is in the Court's possession
- ☐ An authenticated copy of a will probated in another jurisdiction is attached
- ☐ An authenticated copy of a will not probated in another jurisdiction is attached
- ☐ The will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached

2. Do you believe, to the best of your knowledge, the will described above was validly executed?

☐ Yes ☐ NO If no, please explain on page 3.

3. The date of execution of the will was: _____

codicil(s): _____

4. Are you aware of any instrument or document amending or revoking the will?

☐ NO ☐ YES If yes, please explain on page 3.

5. Have you exercised reasonable diligence to determine there is no instrument or document revoking the will?

☐ YES ☐ NO If no, please explain on page 3.

6. Do you believe the will defined in "1" above is the decedent's last will?

☐ YES ☐ NO If no, please explain on page 3.

COMPLETE EXPLANATION (S) FOR QUESTIONS IN SECTIONS I and II HERE.
(If more space is required, use additional sheet.)

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. The name(s) and address(es) of the proposed Personal Representative(s) is/are:

   Lauren Murphy, 350 Forest Way, Apt. 8302, Greenville, SC 29607

2. Priority for this appointment is:
   - ☐ named as Primary Personal Representative in will
   - ☐ named as Alternate Personal Representative in will
   - ☐ nominee of above Primary Personal Representative in will
   - ☐ nominee of above Alternate Personal Representative in will
   - ☐ surviving spouse of decedent who is devisee of decedent or nominee of said spouse
   - ☐ other devisee of decedent, (describe):_____ or nominee of said devisee
   - ☐ surviving spouse of decedent or nominee of said spouse
   - ☒ other heir of decedent (describe): Mother
   - ☐ creditor (Forty-five days after death must have passed), or nominee of creditor
   - ☐ other (describe): _____

3. List below the names of any other persons, if any, having a prior or equal right of appointment (see priority above).

   Mark Collins

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 14th day of August, 20 12

Notary Public for South Carolina
My Commission Expires: 6-17-2014

Signature: Lauren Murphy
Name: Lauren Murphy
Address: 350 Forest Way, Apt. 8302
Greenville, SC 29607
E-mail: Carolinachc4@gmail.com
Telephone (O):
(H): 864-434-7922

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a will be ☐ GRANTED ☐ DENIED informally this _____ day of _____, 20 _____.

_____, Probate Court Judge

ORDER FOR HEARING ON FORMAL PETITION

IT IS HEREBY ORDERED that a hearing on this matter be set for:

DATE: _____

TIME: _____

PLACE: _____

Pursuant to Section 62-1-401, the petitioner is ordered to give notice of this hearing to all interested persons at least twenty (20) days prior to the hearing.

Executed this day of , 20 .

_____
, Probate Court Judge

ORDER OF FORMAL TESTACY

On hearing of the above petition, this Court finds that the person is deceased, venue is proper, and the proceeding was commenced within appropriate time limits.

The Court further finds that

☐ the decedent died intestate. The heirs are:

☐ the decedent died testate. IT IS HEREBY ORDERED that the Last Will and Testament of the above-named decedent, dated, , be admitted formally to probate.

Executed this day of , 20 .

_____
, Probate Court Judge

SEE ATTACHED ORDER

ORDER OF APPOINTMENT

IT IS HEREBY ORDERED that the above application/petition for appointment be granted upon the filing of a bond as appropriate, qualification and acceptance.

Executed this 30th day of Jan., 2013 .

Edward M. Sauvain, Associate Probate Court Judge

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate.

Signature: Lauren Murphy
Name: Lauren Murphy
Address: 350 Forest Way, Apt. 8302
Greenville, SC 29607
E-mail: Carolinachc4@gmail.com
Telephone (O):
(H): 864-434-7922

Signature:
Name:
Address:

E-mail:
Telephone (O):
(H):

Attorney:
Address:

E-mail:
Telephone (O):

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF GREENVILLE	)	
	)	**CERTIFICATE OF APPOINTMENT**
IN THE MATTER OF:	)	
TYNSLEE ELIZABETH FIELDS	)	CASE NUMBER: 2012ES2301718
(Decedent)	)	

This is to certify that

LAUREN MURPHY

is the duly qualified

☒ **PERSONAL REPRESENTATIVE**
☐ SUCCESSOR PERSONAL REPRESENTATIVE
☐ SPECIAL ADMINISTRATOR

in the above matter and that this appointment, having been executed on the **30th day of January, 2013**, is now in full force and effect, including authorization to receive all monies, income, principal, interest & dividends of and belonging to said estate.

RESTRICTIONS:

EXECUTED: July 15, 2014

Debora A. Faulkner

DEBORA A. FAULKNER
PROBATE COURT JUDGE

Do not accept a copy of this certificate without the raised seal of the Probate Court.

FORM #141ES (1/2014)
62-1-305, 62-3-103

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Tynslee Elizabeth Fields, Deceased and Lauren Murphy,	)	
Appellant	)	
v.	)	Case No. 15-CP-23-02860
Mark Collins,	)	
Respondent.	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on September 10, 2015, before The Honorable Perry H. Gravely, Courtroom No. 6, Greenville County Courthouse, 305 East North Street, Greenville, South Carolina, attended by counsel, as follows:

APPEARANCES:

Jessica Salvini, Esq.
John Read, Esq.
... Appearing for Appellant

Charles W. Marchbanks, Esq.
... Appearing for Respondent

Deborah Garrison
Circuit Court Reporter – 13th Judicial Circuit
P O Box 27145
Greenville, South Carolina 29616
dgarrison@sccourts.org

1 THE COURT: Please be seated. Next
2 is Mark Collins versus Lauren Murphy.
3 JESSICA SALVINI: We have a reply brief,
4 an extra copy, (tendering).
5 THE COURT: Thank you. All right.
6 I'll be glad to hear from you for the
7 Appellant.
8 JOHN REED: Thank you, Your Honor, Jack
9 Reed for the appellant, Mark Collins; and
10 Jessica Salvini, as well, co-counsel.
11 In gathering the -- you may need some
12 history on the case. It's an appeal from the
13 Probate Court involving the proceeds derived
14 from a wrongful death settlement involving
15 the death of a minor child. The child, an
16 infant, Tynslee Fields, who died within
17 minutes of her birth. So it's a sensitive
18 sort of case, Judge, and we will endeavor to
19 be as sensitive as we can while we are
20 describing the legal posture that we are in
21 right now.
22 Factually -- I guess I will start with a
23 brief recitation of the facts. In 2012, the
24 appellate, our client, and the respondent,
25 Lauren Murphy, were in a relationship. As a

1 result of their union -- it was a serious
2 relationship -- she became pregnant, and they
3 were excited to have the child.
4 Mr. Collins has two other children.
5 He knows what it means to be a dad. He's
6 heavily involved with those children.
7 As the pregnancy progressed, they
8 separated from each other and they each
9 became engaged or began relationships with
10 other people. Prior to that time, he
11 attended the ultrasound ob-gyn appointment
12 with her to find out the sex of the child,
13 Tynslee Fields. He expressed his interest in
14 a continuing relationship with the child.
15 However as they split, she then told
16 him that she did not believe that he was in
17 fact the father, that the father was the
18 gentleman -- these are facts that are in the
19 record, uncontroverted. That the father was
20 in fact a gentleman named Jeremy Fields, who
21 was a previous boyfriend.
22 He was not included in the
23 continuing, uh, pregnancy. So in 2012,
24 Tynslee was born. At the time of her birth,
25 and this is uncontroverted as well, she did

1 not inform him. He did not know that was
2 happening.
3 Tynslee, after about an hour of
4 serious medical emergency care, passed away
5 as a result of the negligence of the
6 physicians who were delivering. That
7 negligence was clear and became the subject
8 of a lawsuit, which was the underlying action
9 which gave rise to a wrongful death settle-
10 ment; the division of proceeds about which we
11 are here today.
12 After Tynslee's passing, Ms. Murphy
13 despite acknowledging otherwise, listed
14 Tynslee's name as Tynslee Fields on the death
15 certificate. Then in the application to
16 appoint a PR, she listed both Mr. Fields and
17 Mr. Collins as possible fathers.
18 Prior to the time that she was
19 appointed as PR, they agreed to a paternity
20 test and he was in fact determined to be what
21 she knew, which was the father of Tynslee.
22 THE COURT: When you say "he" ---
23 JOHN REED: I'm sorry. Mark
24 Collins.
25 THE COURT: Okay.

1 JOHN REED: He was represented by
2 counsel and they acquiesced to her being
3 appointed as Personal Representative of the
4 Estate for purposes of pursuing the wrongful
5 death case. In the wrongful death case, she
6 was represented by Nathan Hughey's firm.
7 They settled fairly quickly for a medical
8 malpractice case, within months instead of
9 years, for a significant sum; I believe the
10 policy limits.
11 The, uh, -- after that happened,
12 there was some time that passed between the
13 settlement and the distribution.
14 We filed a Motion in the Circuit
15 Court to compel the distribution based on
16 that irregularity. We did some wrangling in
17 the Circuit Court because that Motion to
18 compel distribution was met with a Motion to
19 deny the proceeds. That Motion to deny the
20 proceeds, we're going to go through that law
21 here in a minute as to what the case is here
22 about today. That's what the case that is
23 being appealed is about.
24 That Motion to deny the proceeds was
25 then -- the entire matter was kicked down to

1 the Probate Court because of a jurisdictional
2 question. So there Judge Faulkner heard the
3 Motion to deny the proceeds. That had been
4 filed by ---
5 THE COURT: The Motion to deny the
6 proceeds, you mean?
7 JOHN REED: I'm sorry. That -- I
8 was trying to go through the facts before we
9 actually got to the actual law, Judge.
10 THE COURT: Okay.
11 JOHN REED: But what they're
12 saying is that under the law, although in a
13 wrongful death settlement the parents are
14 determined to be legally the statutory
15 beneficiaries and should be divided, uh,
16 fifty-fifty, that under certain circumstances
17 -- which is where the parent, one parent or
18 the other parent, fails to provide for the
19 reasonable support as defined by another
20 statutory provision, then that parent can be
21 denied proceeds upon Motion by the other
22 parent.
23 THE COURT: All right. Gotcha.
24 JOHN REED: Yes, sir. So that --
25 that said, uh, this appeared to us to be a

1 fairly clear issue because based on the law
2 and the plain meaning of the statute, uh, the
3 -- we thought that Motion to deny any
4 proceeds settlement to Mr. Collins should be
5 denied. Obviously that is what we -- but it
6 seemed pretty clear from the statute.
7 However, that was granted by the
8 Probate Court and that Order is up there
9 before you. We think that that Order is in
10 direct contravention of the plain meaning of
11 the statute and we will go through our
12 reasons, in brief, for you.
13 The, uh, -- all right. I will read
14 to you from our Reply, Judge, the rule on
15 statutory construction, (reading): *"When a*
16 *statute's terms are clear and unambiguous on*
17 *their face, there is no room for statutory*
18 *construction and the court must apply the*
19 *statute according to its literal meaning. In*
20 *interpreting a statute, words must be given*
21 *their plain and ordinary meaning without*
22 *resource to subtle or forceful instruction to*
23 *limit or expand the statute's operation."*
24 In construing a statute -- and that
25 was *S.C. State Ports Authority v. Jasper*

1 *County.*
2 (Reading): *"In construing a*
3 *statute, this court will reject an*
4 *interpretation when such interpretation leads*
5 *to an absurd result that could not have been*
6 *intended by the legislature."*
7 That is the overarching principle
8 that covers these issues in front of us, Your
9 Honor.
10 So applying that overarching
11 principle to the law that is applied with
12 regard to wrongful death settlement proceeds,
13 the division of the proceeds are governed
14 initially by 15-51-40. That states,
15 (reading): *"The amounts so recovered shall*
16 *be divided among the parties in those shares*
17 *that they would have been entitled to if the*
18 *deceased had died intestate."*
19 Now, that means that they would have
20 taken fifty-fifty in the situation. That's
21 what the law says.
22 However upon -- and this is also 15-
23 51-40, (reading): *"Upon Motion by either*
24 *parent or any other party of potential*
25 *interest based upon the decedent having died*

1 *intestate, the probate court may deny or*
2 *limit either or both parent's entitlement to*
3 *share of proceeds if the court determines by*
4 *a preponderance of the evidence that the*
5 *parent or parents failed to reasonably*
6 *provide support for the decedent as defined*
7 *in Section 63-5-20, or otherwise did not*
8 *provide for the decedent during his/her*
9 *lifetime."*
10 So 63-5-20 defines "reasonable
11 support." It defines it in this way, it
12 says, (reading): "*Any able-bodied person*
13 *capable of earning a livelihood shall,*
14 *without just cause or excuse, abandon or fail*
15 *to provide reasonable support to his or her*
16 *legitimate or illegitimate child, depending*
17 *upon it, shall be guilty of a misdemeanor.*
18 *As used in this section, "reasonable support"*
19 *means an amount of financial assistance which*
20 *when combined with the support of the member*
21 *is reasonably capable of providing for him or*
22 *herself will provide a living standard for*
23 *the member substantially equal to that of the*
24 *person owing the duty to support, including*
25 *both usual and unusual necessities."*

1 So given that, the rules of
2 statutory construction and given the statutes
3 that we apply, we then look to the findings
4 of the court itself. The court issued a
5 twenty-page Order, Your Honor, which speaks
6 about multiple disputed facts that actually
7 in my estimation are not even relevant to
8 what the court would be applying, should be
9 applying in this case given that they refer
10 to prenatal and postmortem expenses and
11 alleged responsibilities. That is what is
12 the puzzling thing about the Order, because
13 this -- the statute refers to what he would
14 be responsible for with regard to the minor
15 child. It doesn't have anything to do with
16 her.
17 I'll point out in conclusions -- in
18 the conclusions of law from Judge Faulkner's
19 Order, on page eighteen, she says, -- and
20 this is, (reading): "I find.." -- and the
21 conclusions of law are one, two, three, four
22 and then two, three. There is a typo: two,
23 three, four. So I'm looking at the second
24 two, which states (reading): *"I find that*
25 *Collins failed to pay anything towards the*

1 *reimbursement of Tynslee's medical expenses*
2 *incurred during her minority."*
3 Now, it is uncontroverted that there
4 was nothing to repay with regard to Tynslee's
5 medical expenses incurred during her
6 minority. Medicaid paid for these, and no
7 one has asked for reimbursement.
8 It's an impossibility for him to pay
9 for those medical expenses. It doesn't make
10 any sense, it's an absurd result. That can't
11 be what the legislature meant.
12 Moreover, it's an impossibility --
13 and I want to go -- I want to speak in terms
14 of the standard and no evidence. There is no
15 evidence that there is anything for him to
16 pay, there is no evidence in the record that
17 there is something that is he is supposed to
18 pay.
19 Now, the next number three is
20 troubling as well. It states that,
21 (reading): *"I find that Collins failed to*
22 *pay or attempt to pay or reimburse others who*
23 *paid for Tynslee's unusual necessities. I*
24 *find these unusual necessities to include her*
25 *burial, funeral, memorial or legal expenses*

1 *since birth. I further find that Collins has*
2 *neither offered nor expended any time, except*
3 *for the time and expenses association with*
4 *his receipt of the settlement proceeds in*
5 *further of legal actions on Tynslee's behalf,*
6 *seeking justice from the professionals*
7 *responsible for the tragedy that caused his*
8 *daughter's death."*
9 Now, setting aside even the question
10 of just cause or excuse and the fact that he
11 was eliminated from his daughter's brief life
12 by the fact that he wasn't told about her
13 birth, there is no -- "unusual necessities"
14 are being defined here as postmortem
15 expenses. So -- and I point this out in my
16 reply brief, that this creates an absurd
17 result. The -- he can't -- (pause).
18 I'll read from it. This is the
19 definition of a forced statutory
20 construction, Your Honor, to achieve this
21 absurd result, (reading): *"The court would*
22 *expand the plain meaning of the words "during*
23 *his or her minority" to compass both prenatal*
24 *and postmortem expenses."* And you'll see
25 that from the rest of the Orders, she talks

1 about support that he should have given
2 during pregnancy.
3 In order to do so, though, the court
4 first had to ignore the fact that minority
5 only encompasses that time period between
6 birth and death, which is measured here in
7 minutes. During which he had no opportunity
8 -- nor is there anything to repay.
9 It then ignored the nature of
10 "necessities" as things that are required by
11 those individuals who are -- they have to be
12 both born and living.
13 That's the foundation of it, Your
14 Honor. I know you've got a lot of paper in
15 front of you. I'll wait to reply to Mr.
16 Marchbanks for anything else.
17 THE COURT: Mr. Marchbanks, I will
18 be glad to hear form you.
19 CHARLES MARCHBANKS: Thank you,
20 Your Honor, may it please the court. I have
21 a couple of just little housekeeping issues
22 in regards to some of Mr. Read's comments
23 there.
24 Primarily, in regards to his
25 recitation of the facts of the case, I would

1 like to discuss the factual findings, a
2 couple of the factual findings of the Court
3 in its Order that is now for review, and
4 additionally the standard of review for this
5 case.
6 In regards to the facts of the case,
7 if Your Honor looks to the record on appeal,
8 Volume One as was provided to the court, on
9 page twenty-three ---
10 THE COURT: Okay.
11 CHARLES MARCHBANKS: This is
12 generally under the heading of Findings of
13 Fact. It begins on page twenty-two and
14 follows over onto page twenty-three. Item
15 number two on page twenty-three goes kind of
16 along with what Mr. Read said. Collins did
17 ask Murphy if Fields could be the father.
18 However this is the caveat which was left
19 out, (reading): "Murphy told him no because
20 Fields suffered with testicular cancer some
21 time ago. Collins appeared to be very
22 accepting of the fact that he was the father
23 and promised Murphy to always *"be an active*
24 *father in our child's life."* The
25 initialized wording there came from an

1 affidavit from Collins, and this was early on
2 in the pregnancy.
3 So the court found that Mr. Collins
4 found that he was this child's father from
5 the earliest point in the pregnancy. I just
6 wanted that to be clear, that even though the
7 parties split and Murphy did identify Jeremy
8 Fields as the possible father in some later
9 documents, that did not change Mr. Collins'
10 knowledge that he was the biological father
11 of this child.
12 The other issue that I'd kinda of
13 like to deal with on kind of a threshold
14 basis is the standard of review in these
15 types of cases, which I believe is addressed
16 very clearly in the *University of Southern*
17 *California v. Moran;* I'm not sure if you have
18 a copy of that, so I will hand this up to the
19 court -- (tendering).
20 THE COURT: Thank you.
21 CHARLES MARCHBANKS: If you look
22 at the second page of that case, the USC
23 case, it talks about the standard of review.
24 It says an appeal from the Probate Court is
25 governed by the Probate Code. It requires

1 that the appeal be in Circuit Court. The
2 Probate Code further instructs the Circuit
3 Court to hear and determine the appeal
4 according to the rules of law and its use in
5 the statute. "According to the rules of law"
6 means according to the rules governing
7 appeals, which was found in a previous case
8 *in re: Howard.*
9 If there is neither a statute nor a
10 rule expressing or prescribing a different
11 standard of review, the Circuit Court applies
12 the same standard as the appellate court
13 would were the appeal taken directly there.
14 On the following page, or the
15 following column, *"Standard of review of*
16 *cases originating in probate court depends on*
17 *the underlying cause of action is at law or*
18 *in equity?"*
19 An issue regarding statutory
20 interpretation, which is what we have here
21 today, is a question of law. But the Circuit
22 Court may not disturb the Probate Court's
23 findings of fact unless a review of the
24 record discloses there is just no evidence to
25 support it.

1 This is not an equitable issue.
2 This is an issue at law. We would submit to
3 the court that the proper standard of review
4 in this case is to accept the Probate Court's
5 findings of fact as they are in addressing
6 these matters of law.
7 THE COURT: Let me stop you there.
8 Mr. Read, what do you contend the standard of
9 review is?
10 JOHN REED: Your Honor, we stated
11 the same standard for you in our ---
12 THE COURT: You sent both of them.
13 You didn't ---
14 JOHN REED: Did I?
15 THE COURT: Yes. I guess you gave
16 it to me so that I could choose between them.
17 JOHN REED: Well, then we are
18 preserving both standards, Your Honor!
19 THE COURT: You agree with him on
20 whether it would be an action in law ---
21 JOHN REED: We agree that if it
22 is, then we're prepared to -- thank you, Your
23 Honor.
24 THE COURT: All right. Thank
25 you, Mr. Marchbanks.

1 CHARLES MARCHBANKS: Yes, sir.
2 Thank you, Your Honor. Now, along these
3 lines, as far as some of the facts that were
4 argued and that were in dispute at the trial
5 court level, there's conflicting facts even
6 within Collins' documents which he submitted
7 to the Probate Court.
8 I think it's important for the Court
9 to recognize that at different points in
10 their brief they will say that the child died
11 within an hour of birth, or that the child
12 died at birth. It appears that kind of lack
13 of definiteness of the facts depends on which
14 argument they're using in their brief.
15 That said, regardless of the facts
16 that are in dispute, there are two facts that
17 are very clear, two facts that are
18 irrefutable in any way. That is that Mr.
19 Collins provided absolutely no support and
20 that he had no relationship with this child
21 whatsoever.
22 Now, in regards to some of the
23 issues that Mr. Read discussed about
24 postmortem expenses, so on and so forth, one
25 of the things that I think is very important

1 to recognize is that the court, the Probate
2 Court, based its holdings on two separate
3 prongs. The statutory prong that we're
4 arguing here today is certainly very strongly
5 considering in the basis of the main ruling
6 by the Probate Court, but there's also case
7 law as it pertains to wrongful death
8 lawsuits. The case law that pertains to the
9 wrongful death lawsuits, specifically the
10 *Scott v. Porter* case, 1996, that is included
11 in your tabs, talks about all of the items
12 that somebody may be able to access as far as
13 damages are concerned in a wrongful death
14 case. It talks about a presumption that
15 South Carolina has in regards to parents of a
16 deceased child, the mother of a deceased
17 child. But it mentions in that case that
18 there are some instances where proof of a
19 relationship may be required but for the
20 parent can be entitled to that presumption.
21 So what we have operating here with
22 the Probate Court Order is the Probate Court
23 -- it appears to me was very careful in
24 looking at both concepts as far as what
25 constitutes wrongful death damages and,

1 additionally, how that should be applied
2 through these filtering statutes. And one of
3 the items that is certainly damage accessible
4 to an individual suffering from the result of
5 a wrongful death situation is funeral
6 expenses, burial expenses and those sorts of
7 items.
8 That said, that -- if you take that
9 in conjunction with what the definition of
10 support supplied by the statutes, I think
11 certain aspects of it, there are only certain
12 ways that a child can be supported while its
13 alive. When the child is alive, before birth
14 is excluded and after death is excluded as
15 they argue it. However, there is not
16 necessarily an absurd result that is going to
17 automatically occur if those things are
18 considered.
19 Now, one of the things that the
20 Probate Court did not include -- there was a
21 small reference in its Order to some extra-
22 jurisdictional case law that was argued
23 thoroughly to the Probate Court during the
24 trial process. There is one mention of it in
25 the Probate Court's Order, and that is that

1 when you deal with Medicaid and Medicare, the
2 facts that a father feels like he doesn't
3 have to make any contributions because there
4 is government assistance that is picking up
5 the tab is no excuse for a father not doing
6 whatever he can to support his child.
7 In fact, the lines of case deal with
8 adoptions. And the case law, the factual
9 scenario is almost identical in so many ways
10 to this particular case. In those cases, the
11 fathers are divested of their Constitutional
12 rights to have a relationship with their
13 child based on the fact that they did not
14 contribute anything during the pregnancy and
15 right at the birth of the child.
16 Part of our position in this, on
17 appeal certainly, is that if a father can
18 lose his Constitutional right because he
19 fails to support his child, he fails to have
20 a relationship with child. If he can be
21 divested of that, then how is it that he's
22 entitled to some money at the end of the day?
23 Section 15-51-40 was amended in
24 1996. Prior to 1996, it did not have any of
25 this language about the Probate Court having

1 the authority to limit or deny proceeds to a
2 parent. After that was added, the wrongful
3 death statute falls in line with so many
4 other historically-sound areas of law that
5 require fathers to take on the responsibility
6 of their children. Up until 1996, a father
7 in this situation could completely ignore his
8 child and still take half. So he could avoid
9 all responsibility for his child for all the
10 costs, put all the finances, costs and
11 responsibilities on the State -- 'let the
12 State pay for it, I don't have to' -- and
13 still reap the benefit of a financial
14 windfall at the edge of a tragedy; which is,
15 I submit to the court, how Mr. Collins sees
16 this case.
17 Now, certainly ---
18 THE COURT: Looking at the statute
19 here, it says "during his or her minority".
20 What period of time is that in this case?
21 CHARLES MARCHBANKS: Your Honor,
22 this is a very -- very good question, because
23 what Mr. Read is saying is that he wants the
24 court to read that strictly, "during the
25 child's minority." Well, this child had a

1 minority. I know some cases read, they state
2 that the child died at birth. This child
3 didn't. The child had a minority, and by the
4 strict reading of this statute that child was
5 alive for a period of time.
6 THE COURT: Either at birth or
7 within the hours of labor.
8 CHARLES MARCHBANKS: That is
9 correct, Your Honor. And during that time --
10 during that time period, and we will again
11 come back around to this, if the Court will
12 give me a little leave to take a little
13 circle here and then I will come right back
14 to that. One of the things that they've
15 argued in their brief to this court is -- if
16 you look at appellant's reply brief,
17 appellant's reply brief page number two, the
18 first paragraph is not equivalent --
19 parallels what Mr. Read was arguing a few
20 minutes ago. It says, (reading): "*This*
21 *construction of course generates absurd*
22 *results. If these facts are applied to the*
23 *action of Ms. Murphy…*" -- okay -- "*during the*
24 *child's brief life, Ms. Murphy would likewise*
25 *be subject to the divestment of the proceeds*

1 *had the appellant filed a Motion seeking the*
2 *same"*, because they say that Ms. Murphy
3 failed to provide any financial assistance as
4 identified in this statute. Your Honor, I
5 have an issue with this argument being
6 included here, a significant issue.
7 Effectively what they are arguing or what
8 they are bringing up is something that was
9 not brought up at trial. This has not been
10 brought up in any of their pleadings. There
11 was no opportunity for us to outline exactly
12 what support the mother did provide. There
13 was no reason to, because this case isn't
14 about Ms. Murphy.
15 This case is about the failings of
16 Mr. Collins and what Mr. Collins did not do.
17 He didn't step up as a father. He knew that
18 he was the father, he did not avail himself
19 of the child, the Responsible Father
20 Registry, which is a clear indication from
21 our Legislature that society has a vested
22 interest in fathers stepping up and taking
23 responsibility for their children. That is
24 why that registry was established. That's
25 why Title IV D of the Social Security Act was

1 established. There are decades and decades
2 of law that has been nothing but saying
3 either a father steps up and takes
4 responsibility for his children or there are
5 consequences that he may suffer.
6 THE COURT: What generally can a
7 father do up until the time of birth except
8 possibly go to an ultrasound?
9 CHARLES MARCHBANKS: Well, Your
10 Honor, he testified that he wanted to provide
11 the child some bedding and comforters for the
12 child's nursery. I think that there is
13 evidence that he made that offer to Ms.
14 Murphy, but he never did it. He never
15 provided anything.
16 If we want a strict read of that
17 statute, the statute says "must provide
18 reasonable support up to the standard of
19 living which he is accustomed to." That is
20 a pretty vague definition.
21 Now, his child while alive
22 absolutely could have benefited from a
23 blanket, from a hat, for something for her
24 comfort while she was suffering. In Mr.
25 Collins' home, I'm sure he gets in a bed, he

1 covers up with nice bedclothes. Those are
2 things that babies have when they are in the
3 hospital, newborn. Even though we are
4 talking about a very small period of time
5 there is one thing is absolutely clear, he
6 didn't do anything -- nothing -- until he
7 learned that there was a wrongful death law
8 suit or a medical malpractice claim. Then
9 what Mr. Collins did was to show back up with
10 his hand out, which is why he is here today,
11 *"I want my money."* That's what this case is
12 about.
13 Let me be sure that I've hit
14 everything, Your Honor. I'm sorry, this is a
15 little ---
16 THE COURT: I realize that it's a
17 very technical case, a very stressful and
18 emotionally charged case for all parties.
19 CHARLES MARCHBANKS: One other
20 item, Your Honor, just in housekeeping that
21 I did want to point out or the court's
22 consideration. In the appellant's initial
23 brief, they had pretty extensive argument on
24 equitable estoppel, wherein they argued
25 numerous facts and allegations that were

1 never under consideration at trial. In
2 addition there was mentioned on the record
3 and in the pleadings -- not in the pleadings
4 but on the record of the trial court, there
5 was mention of a collateral estoppel
6 argument. There has never been any mention
7 of an equitable estoppel argument. There is
8 nothing in their pleadings. I again say that
9 is not an argument that is ripe for appeal,
10 that's something that was not addressed by
11 the trial court. No evidence either way in
12 regards to an equitable estoppel dispute that
13 existed at the trial court level.
14 THE COURT: I see the basic issue
15 is to determine whether the Probate Court had
16 any evidence to support their interpretation
17 of 15-51-40 and properly apply it to the
18 facts.
19 CHARLES MARCHBANKS: That's
20 correct. Thank you, Your Honor.
21 THE COURT: Which is a huge --
22 just kinda thinking out loud here.
23 JOHN REED: And, Your Honor, we do
24 want to reiterate that in my reply, which I
25 put in for lesser purposes but just to

1 demonstrate how absurd the result would be in
2 this situation. They are saying that he's --
3 that there's an accident of biology. Right?
4 To which he is entitled wrongful death
5 proceeds. They are utterly minimizing one
6 hundred percent the father's side of this,
7 and what that is worth. How do you actually
8 -- how do you actually put into numbers when
9 you're excluded from the child's birth,
10 because nobody tells you. Your child is
11 given another name and then you're told that
12 you didn't do anything or didn't do enough
13 during that child's brief life, and that
14 you're just here for a handout. I think -- I
15 hesitant to get into the facts of this case
16 because I'm not sure that all -- I think
17 there were a thousand irrelevant things that
18 were identified in that Order as being
19 "facts" that are -- that are -- that drive
20 the court's determination at the Probate
21 level; those being usual and unusual
22 necessities -- they want to bring it straight
23 down to the legal, uh, to the legal level,
24 which is where we should be, which is why we
25 have the statute here, uh, which is why we

1 have the plain meaning of the rule, the
2 overarching plain meaning of how we interpret
3 these statutes. It's why we don't talk about
4 extra jurisdictional case law in adoptions
5 and Constitution and amendments and
6 legislature history and in the Social
7 Security Act. We don't have to do that.
8 What we've got in front of us is the law and
9 it isn't -- isn't it much easier and much
10 more -- doesn't it -- isn't it much easier
11 just to say, 'hey, this is reasonable
12 support.' It can actually be no support in a
13 situation like this. Isn't that -- that's
14 where we are in this brief. Construction
15 generates a service to go around your elbow
16 to get to somewhere else to try to figure out
17 a way to deny the proceeds based on the idea
18 that he didn't provide enough care
19 prenatally? He was excluded. And when in
20 postmortem, he was excluded. He didn't have
21 an opportunity to do it while his child was
22 alive.
23 The cases that he references, by the
24 way, also have to do with children that are
25 seven, nine, seventeen years old. Prenatal.

1 Yeah, those are the option cases.
2 I just want to say for the record
3 that there is no evidence because -- uh,
4 there is no evidence that there was anything
5 for him to pay; that's what you will find in
6 the record.
7 And when I reference that she failed
8 to provide any financial assistance as
9 identified in the statute, if there was
10 something to pay, and this is the standard
11 before the court, that evidence would be in
12 this record; it's not.
13 THE COURT: Thank you. I don't
14 mean to cut you out but I think you have
15 given me appropriate information. I
16 understand your positions. Obviously I need
17 to reviews the materials that you have
18 submitted and carefully review the record. I
19 will let you know my decision. Thank you.
20 (HEARING CONCLUDED)
21
22
23
24
25

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF GREENVILLE)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 13th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the hearing in the above-caption matter held on September 10, 2015, before The Honorable Perry H. Gravely;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Deborah Garrison

Deborah Garrison

Greenville, South Carolina
April 20, 2016