

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY

Court of Common Pleas
The Honorable John C. Hayes, III

C/A No. 15-CP-46-1827

Appellate Case No. 2016-001558

Willie Bell, individually and on behalf of the Estate of
Emma M. Davis as its duly appointed Personal Representative,

Appellant,

v.

McGowan, Hood, and Felder, LLC and Chad McGowan,

Respondents.

APPELLANT'S MOTION TO CERTIFY
TO THE SOUTH CAROLINA SUPREME COURT

**TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE
SOUTH CAROLINA SUPREME COURT AND RESPONDENTS MCGOWAN,
HOOD, and FELDER, LLC and CHAD MCGOWAN**

Appellant Willie Bell hereby moves for this Court, pursuant to Rule 204(b), SCACR, to
certify this matter to the South Carolina Supreme Court for review. The grounds for this motion
are as follows:

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1. This action involves a case against lawyers for malpractice, fraudulent misrepresentation, negligent misrepresentation, and conflicts of interest. The underlying case which gave rise to the claims against the lawyers involved the medical malpractice of a doctor and a hospital which lead to the death of Emma Davis.

2. Emma M. Davis died on February 11, 2010, from complications that occurred while undergoing a medical procedure for a pacemaker at the Piedmont Medical Center in Rock Hill, South Carolina. At the time of her death, Ms. Davis was not married and had one adopted son, Appellant Willie Bell. Ms. Davis died intestate and thus, her estate should have passed to her adopted son, Appellant Willie Bell, under S.C. Code § 62-2-103, which governs intestate distribution, stating that if there is no surviving spouse, the estate passes to "the issue of the decedent." Appellant Willie Bell was the only statutory heir for a wrongful death claim.

3. After Ms. Davis's death, some of her relatives contacted Respondents and a meeting was arranged for a few days later to discuss a potential case against the doctors and the hospital. Although Ms. Davis's relatives knew where Appellant Willie Bell lived and how to contact him, Appellant Willie Bell was not asked to go the meeting.

4. Ms. Davis had a boyfriend, Andrew Strong, with whom she lived but had never married. Mr. Strong had not been adjudicated a common-law spouse prior to Ms. Davis's death, nor was he adjudicated a common law spouse after her death.

4. Respondents began representing the Estate of Emma Davis and/or Tanisha Gilmore, the Personal Representative of the Estate, and Andrew Strong.¹ Respondents filed a lawsuit against the doctors and hospital, with plaintiffs being Tanisha Gilmore as the Personal

¹ The issue of the identity of Respondents' clients is a part of the appeal of this matter.

Representative and Andrew Strong, whom Respondents claimed was a common law husband, despite the fact that no adjudication pursuant to S.C. Code § 62-2-802 had been made (or even sought). Respondents set forth claims for wrongful death, a survival action (later dismissed), and loss of consortium. Appellant Willie Bell, the only son, was not mentioned in that lawsuit.

5. Ultimately, Respondents obtained a settlement for the wrongful death/loss of consortium case in the amount of Two Million Two Hundred Thousand Dollars (\$2,200,000.00).

Respondents filed a Joint Petition for Approval of Settlement in the Court of Common Pleas in York County asserting that Gilmore "is the duly appointed personal representative" even though at that time, the Estate had been dismissed and Gilmore discharged. In the same Joint Petition, Respondents also asserted that Strong was the "sole heir and beneficiary of the Estate of Emma Davis," even though no determination of heirs had been made by the Probate Court. That determination was made illegally and *solely* by Mr. McGowan. While Strong received all of the settlement proceeds, the only son, Appellant Willie Bell, received none.²

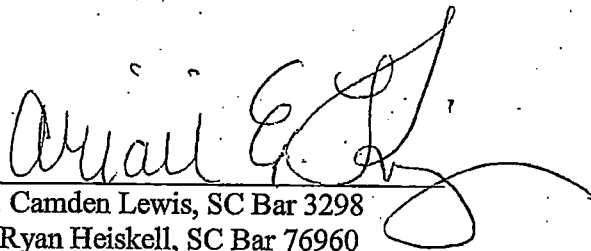
6. If Strong is not the common-law husband of Ms. Davis, he should not get the proceeds from either a wrongful death or loss of consortium claim. In this appeal, Respondents have claimed that a person claiming to be a common law spouse of a decedent for purposes of a loss of consortium claim.³ However, a loss of consortium can only be asserted by a spouse (not a friend or significant other) for damages for "the value of the injured spouse's services, society,

² Appellant did bring an action against Gilmore and Strong and received some monies, but not the amount he was entitled to as Appellant is the only heir and beneficiary under the law and Strong is merely a friend who was not entitled to any proceeds of the settlement.

³ Respondents have apparently conceded that, in order to recover under the Wrongful Death Act, a person claiming to be a spouse must be adjudicated under S.C. Code 62-2-802. However, to any extent that Respondents claim adjudication is not required under the Wrongful Death Act, that issue must also be determined by the appellate courts.

and companionship in an action for loss of consortium as well as medical expenses incurred on behalf of the injured spouse.” *Gosnell v. Dorchester Sch. Dist. No. 2*, 301 S.C. 21, 23–24, 389 S.E.2d 865, 866 (1990). Those damages are similar to those in a wrongful death case, which 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, including the loss of his experience, knowledge, and judgment in managing the affairs of himself and of his beneficiaries.” *Self v. Goodrich*, 300 S.C. 349, 351, 387 S.E.2d 713, 714 (Ct.App.1989). Respondents’ claim that adjudication is not required for loss of consortium (especially involving a death) is contradictory to the probate law and the public policy underlying wrongful death and consortium. To waive the adjudication requirement would simply allow non-married couples to claim a common-law marriage in order to recover under consortium when they would not qualify to recover under wrongful death.

7. Rule 204(b), SCACR provides that “[c]ertification is normally appropriate where the cases involves an issue of significant public interest or a legal principle of major importance.” Here, there is “a legal principle of major importance,” to wit: whether a putative common law spouse, seeking damages under loss of consortium (in a death case) and/or wrongful death action must be adjudicated a common law spouse pursuant to S.C. Code § 62-2-802(b)(4). This issue is relevant to personal injury, medical malpractice and countless other actions, and the legal profession needs a clear and final determination on the applicable procedure. Thus, certification and transfer to the Supreme Court is appropriate.



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May 26, 2017

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IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY

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The Honorable John C. Hayes, III

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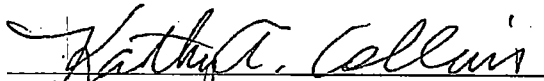
McGowan, Hood, and Felder, LLC and Chad McGowan,

Respondents.

PROOF OF SERVICE

I, Kathy A. Collins, Legal Assistant with the law firm of Lewis Babcock L.L.P., do hereby certify that I served the foregoing Appellant's Motion to Certify to the South Carolina Supreme Court by mailing a copy of same, first-class postage prepaid, to opposing counsel to the following address:

Lovic A. Brooks, III, Esq.
Steven G. Janik, Esq.
JANIK, L.L.P.
1122 Lady Street, Suite 1025
Columbia, SC 29201


Kathy A. Collins

Columbia, South Carolina
May 26, 2017.

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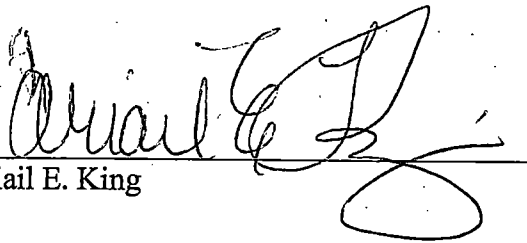
PROOF OF SERVICE

I, Ariail E. King, an employee of the law firm of Lewis Babcock L.L.P., do hereby certify that I served the foregoing Appellant's Motion to Certify to the South Carolina Supreme Court by mailing a copy of same, first-class postage prepaid, to opposing counsel to the following addresses:

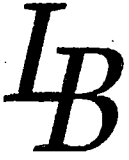
Whitney Harrison, Esquire
McGowan, Hood & Felder, LLC
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S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Columbia, South Carolina
May 30, 2017



Ariail E. King



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The Honorable Daniel E. Shearouse
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Willie Bell, individually and on behalf of the Estate of Emma M. Davis as its
duly appointed Personal Representative v. McGowan, Hood and Felder, LLC
and Chad McGowan
Appellate Case No.: 2016-001558

Dear Mr. Shearouse:

Enclosed for filing please find a Certificate of Service indicating Appellant's Motion to Certify to the South Carolina Supreme Court, filed May 26, 2017, has been served on Whitney Harrison, as counsel for Respondent. While Mr. Janik and Mr. Brooks were served on May 26, 2017, Ms. Harrison was inadvertently omitted. In addition, a copy was provided to the Court of Appeal, as indicated on the Certificate.

Should you have any questions, please do not hesitate to call.

Sincerely,


Ariail E. King

Enclosures

cc w/ enc.: Whitney Harrison, Esq.
S.C. Court of Appeals
Steven G. Janik, Esq. (w/o enclosure)
Lovic A. Brooks, III, Esq. (w/or enclosure)



Lewis Babcock L.L.P.

P. O. Box 11208
Columbia, SC 29211



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