

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

PERRY H. GRAVELY, CIRCUIT COURT JUDGE

CASE NO.: 2016-000536

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SC Court of Appeals

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.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the Greenville County Circuit Court erred in its application of the Standard of Review when it reversed the decision of the Probate Court of Greenville County 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.
- II. Whether the Greenville County Circuit Court erred when it found the Probate Court of Greenville County did not properly apply the applicable law 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.
- III. Whether the Greenville County Circuit Court wrongly reversed the decision of the Probate Court of Greenville County 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 when it determined there was South Carolina precedent governing this case and thus did not apply Appellant's extra-jurisdictional law from other states and or case law applicable in South Carolina and United States paternal consent adoption cases.

STATEMENT OF THE CASE

In the Fall of 2011, Lauren Murphy (hereinafter referred to as “Ms. Murphy” or “Appellant”) and Mark Collins (hereinafter referred to as “Mr. Collins” or “Respondent”) 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. (R. pp. 400-405). 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. (R. pp. 260-264). 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. (Id.; R. pp. 276-326). Ms. Murphy did not allow Mr. Collins to attend any future OBGYN appointments; and there were no expenses related thereto as Ms. Murphy received benefits through Medicaid. (Id.; R. pp. 327-353). Despite knowing that Mr. Collins was the minor child’s father as well as having received Mr. Collins assurance 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.) Rather, Ms. Murphy named her former boyfriend, Jeremy Paul Fields (hereinafter referred to as “Mr. Fields”), as 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. (R. p. 523). Upon learning of the minor child’s birth and death, Mr. Collins was emotionally devastated. (R. pp. 260-264).

After the minor child’s passing, Ms. Murphy contacted Mr. Collins’ family and admitted that 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. (R. pp. 400-405). 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. (R. pp. 400-406). 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 agreed that Ms. Murphy and Mr. Collins were the only two statutory beneficiaries of the Estate of Tynslee Elizabeth Fields, and therefore, Mr. Fields was 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 on behalf of the Estate of Tynslee Elizabeth Fields, 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”). (R. pp. 45-46). 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. (R. pp. 392-395). 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. (R. p. 522).

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, that is the sum of Two Hundred Ninety-One Thousand, Seven Hundred Eighty-Eight Dollars and Seventy-Six Cents (\$291,788.76) directly to him as statutory beneficiary. Ms. Murphy objected. As a result, on August 6, 2014, Mr. Collins filed a Motion to Compel the disbursement of the proceeds in the Greenville County Court of Common Pleas. (R. pp. 371-387). 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. (R. pp. 354-370).

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. (R. pp. 32-39). 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.

(Id.). 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. (R. pp. 272-275). 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.

(Id.).

In response, Mr. Collins filed a Return opposing Ms. Murphy's motion. (R. pp. 221-271). 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. (R. pp. 12-31). 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. (R. pp. 168-220; R. pp. 165-167).

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) [sic] (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.

(R. pp. 12-31)

Mr. Collins filed a timely notice of appeal to the Greenville County Circuit Court. Both Ms. Murphy and Mr. Collins submitted briefs and a hearing was held in the Greenville County Court of Common Pleas on September 10, 2015. (R. pp. 407-437).

During Mr. Collins appeal to the Circuit Court, an additional settlement was approved by the Circuit Court 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 in the amount of Twenty Thousand Dollars (\$20,000.00). The approval of the aforementioned settlement proceeds resolved the aforementioned matter in its entirety. As a result of 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 the total proceeds at issue in this case is Six Hundred Thirty-Five Thousand, Three Hundred Four Dollars and fifty-one cents (\$635,304.51).

On December 28, 2015, the Circuit Court issued a ruling reversing the decision of the Probate Court. (R. pp. 5-11). In doing so, the Circuit Court found that the “underlying cause of action [was] an action at law.” (Id.) As a result, the Circuit Court found that:

[I]n an appeal 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” and “if there is any evidence in [the] case that reasonably supports the factual findings of the probate judge, [the] order must be affirmed.”

(Id.)

The Circuit Court applied this standard of review. (Id). It also determined that “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.” (Id.). The Circuit Court relied on S.C. Code Section 15-51-40, which provides in pertinent part:

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.

(Id.).

Since it is undisputed that the statutory beneficiaries of the Estate of Tynslee Fields are Ms. Murphy and Mr. Collins, the Circuit Court next turned to the circumstances in which the Probate Court may limit a statutory beneficiary’s entitlement. In doing so, the Circuit Court considered

S.C. Code Section 15-51-40 and S.C. Code Section 63-5-20. The Circuit Court found and held that these statutes clearly governed the issue in this case.

Applying well-established South Carolina statutory law, the Circuit Court found and held that South Carolina law required the Court to make a determination of whether or not Mr. Collins provided “reasonable support for the needs of his daughter...” during her “minority.” (Id.). “Tynslee’s minority was a period that consisted of mere minutes to hours...during which time emergency medical care was being administered.” (Id.). Thus, the Circuit Court found that due to the circumstances surrounding Tynslee’s short life and her death, Mr. Collins “was unable to provide the more usual means of attention and support to his minor child during her brief life.” (Id.). In making this determination, the Circuit Court considered the Probate Court’s findings that “burial expenses, funeral, memorial and legal expenses and time spent in pursuit of the wrongful death action constituted ‘unusual necessities’ under S.C. Code Section 63-5-20(a) [sic]....” However, the Circuit Court found that none of the aforementioned expenses were incurred “within the statutorily-defined relevant time period under S.C. Code Section 15-51-40.” (Id.). The Circuit Court also found that the medical expenses incurred for Tynslee were paid by “Medicaid and/or the hospital....” (Id.). Thus, “[w]here there is no evidence of a debt, there cannot be evidence of failure to pay the debt.” (Id.).

Ultimately, the Circuit Court issued an order on December 28, 2015, in which it reversed the Probate Court’s April 29, 2015 order and directed that the Mr. Collins receive one-half of the settlement proceeds at issue in this case as a statutory beneficiary of the Estate of Tynslee Elizabeth Fields.

On January 6, 2016, Ms. Murphy filed a Motion for Reconsideration of the Circuit Court's December 28, 2015 Order. Ms. Murphy asserted the Circuit Court did not apply the appropriate standard of review. The Circuit Court denied Ms. Murphy's motion, finding and holding:

[T]he 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.

(R. pp. 3-4).

Ms. Murphy filed her notice of appeal with this Court and this appeal ensued.

ARGUMENTS

I. THE GREENVILLE COUNTY CIRCUIT COURT DID NOT ERR IN ITS APPLICATION OF THE STANDARD OF REVIEW WHEN IT REVERSED THE DECISION OF THE PROBATE COURT OF GREENVILLE COUNTY 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.

A. STANDARD OF REVIEW

It is undisputed that the instant case is a matter at law. Further, it was tried before the Probate Court of Greenville County without a jury.

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). “When reviewing an action at law, on appeal of a case tried without a jury, the appellate court's jurisdiction is limited to correction of errors at law. The appellate court will not disturb the judge's findings of fact as long as they are reasonably supported by the evidence.” See *Epworth Children's Home v. Beasley*, 365 S.C. 157, 164, 616 S.E.2d 710, 714 (2005).

B. ARGUMENT

The issues raised 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 are those of a matter at law. Thus, the Circuit Court applied the following standard of review when it considered the Probate Court's order divesting Respondent of his interest in the wrongful death and estate proceeds at issue in this matter:

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).

This standard of review was established by the Supreme Court's ruling in the *Matter of Howard*, 315 S.C. 356, 361-62, 434 S.E.2d 254 (S.C. 1993). In the *Matter of Howard*, the Supreme Court addressed the standard of review to be applied by the Circuit Court when considering appeals from the Probate Court.

The *Matter of Howard* was an action in which the personal representative and the heirs of a decedent's estate engaged in litigation in the Probate Court regarding whether claims against the estate should be disallowed. The Probate Court, considering the applicable statute pertaining to claims filed against a decedent's estate, allowed the claims in part. The parties to the litigation

appealed the Probate Court's decision to the Circuit Court and it reversed. *See Matter of Howard*, 315 S.C. 356, 359, 434 S.E.2d 254, 256 (1993).

The primary issue in the *Matter of Howard* was whether the Circuit Court applied the correct standard of review when it reversed the Probate Court's order. In the *Matter of Howard*, the Circuit Court "appl[ied] the 'substantial evidence' standard of appellate review, [when it] modified the probate court's decision. *Matter of Howard*, 315 S.C. at 359. On review, the *Howard* Court found and held that the Circuit Court erred when it applied the "substantial evidence" standard of review. *Id.* at 360. In doing so, the Court held:

Appeal from the probate court is governed by the provisions of the Probate Code. The Code provides that a final order or decree of the probate court may be appealed to the circuit court. The circuit court must hear and determine the appeal "according to the rules of law." As used in this statute, the phrase "according to the rules of law" means according to the rules governing appeals.

Id. (citations omitted). "[I]f there is neither a statute nor a rule of court expressly prescribing a different standard of review, the circuit court must apply the same standard that ... the Court of Appeals would apply were the appeal taken directly to either of them." *Id.* at 361. As a result thereof, the following standard of review is to be applied by the Circuit Court when reviewing a decision of the Probate Court:

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.

Id. at 361-62.

Applying the aforementioned standard of review to the issues in the *Matter of Howard* the Court first determined if the action was one at law or equity. The *Matter of Howard* involved claims for money based on the Probate Code provision permitting persons or entities to make

claims against the decedent's estate – a matter at law. Thus, the *Howard* Court applied the standard for determining matters of law and held: “if there is any evidence in this case that *reasonably* supports the factual findings of the probate judge, his order must be affirmed.” *Id.* at 362 (emphasis added).

It is undisputed in the instant case that the issue before the Circuit Court was a matter of law. Thus, the Circuit Court applied the appropriate standard of review established by the *Matter of Howard*. However, Appellant argues on appeal that the Circuit Court in this matter abused its discretion, claiming the Circuit Court “interject[ed] a reasonableness standard into the Standard of Review” because it found there “was no evidence...that reasonably supports the factual findings of the probate judge....” (Initial Brief of Appellant at p. 12). Appellant's argument is meritless.

The standard of review applied by the Circuit Court in the instant case is well-established. In matters 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” and “if there is any evidence in [the] case that reasonably supports the factual findings of the probate judge, [the] order must be affirmed.” *Matter of Howard*, 315 S.C. at 361-62. This standard is applied in every matter of law, regardless if the issue is a claim for money, a distinction the Appellant appears to try to make herein. “When reviewing an action at law, on appeal of a case tried without a jury, the appellate court's jurisdiction is limited to correction of errors at law. The appellate court will not disturb the judge's findings of fact as long as they are reasonably supported by the evidence.” *See Epworth Children's Home v. Beasley*, 365 S.C. 157, 164, 616 S.E.2d 710, 714 (2005). There is no distinction to be made. *See Golini v. Bolton*, 326 S.C. 333, 338-39, 482 S.E.2d 784, 787 (Ct. App. 1997); *Smith v. McCall*, 324 S.C. 356, 357, 477 S.E.2d 475, 475 (Ct. App. 1996) (Determination of elective share is a matter at law and probate court's ruling shall not be disturbed if there is any

evidence that reasonably supports the factual findings of the probate judge); *Martin v. Skinner*, 286 S.C. 527, 335 S.E.2d 252 (Ct.App.1985) (Circuit Court's determination of the validity of a Will is a case at law and probate court's ruling shall not be disturbed if there is any evidence that reasonably supports the factual findings of the probate judge).

Applying this standard of review, the Circuit Court determined the applicable South Carolina statutory provisions and considered the clear and unambiguous language of the statutes, in light of the facts of this case. In doing so, the Circuit Court found this case involves a dispute over the wrongful death and estate proceeds resulting from the death of the parties' infant child. It determined that applicable South Carolina statutory law provides that wrongful death proceeds are to be divided equally between the statutory beneficiaries. *See* S.C. Code Section 15-51-40. The Circuit Court found there are two undisputed statutory beneficiaries, the Appellant and Respondent; and as the parents, they are to share equally in their minor child's estate. S. C. Code Section 62-2-103. The Circuit Court also correctly found that "there are only certain circumstances in which the Probate Court may limit a statutory beneficiary's entitlement" to the wrongful death and estate proceeds. (R. pp. 5-11). Statutorily, the Probate Court may only limit or deny a parent's entitlement for a share in 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 Section 15-51-40 (emphasis added). The Circuit Court considered the provisions of South Carolina Code Section 63-5-20, which directed the Circuit Court to the relevant time period to make its determination of whether Respondent provided reasonable support for his minor child. The statutory time period was during her minority. It was undisputed that the parties' minor child's life spanned mere minutes to hours, where she underwent emergency care. The Circuit Court

considered and rejected the Probate Court's findings 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 Section 63-5-20(A),..." and since Respondent did not provide for and or contribute to these expenses he should be divested of his interest in the proceeds. In doing so, the Circuit Court applied the plain and unambiguous language of S.C. Code Section 15-51-40, which defined the relevant time period. None of the aforementioned expenses were incurred during that time period. There was no evidence that supported the findings of the Probate Court in light of the applicable statutes; and the Circuit Court correctly found the same in accordance with the appropriate standard of review. Thus, the Circuit Court's order herein should be affirmed.

II. THE GREENVILLE COUNTY CIRCUIT COURT DID NOT ERR WHEN IT FOUND THE PROBATE COURT OF GREENVILLE COUNTY DID NOT PROPERLY APPLY THE APPLICABLE LAW IN THIS CASE.

A. STANDARD OF REVIEW

See supra.

B. ARGUMENT

South Carolina statutory and supporting case law are clear on the manner in which wrongful death and estate proceeds are to be distributed. That is, they are to be divided equally to the statutory beneficiaries. S.C. Code Section 15-51-40.

Section 15-51-40 provides in pertinent part:

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.

According to South Carolina's laws governing intestacy, in the event of a death of a minor child the entire estate passes as follows: "...if there is no surviving issue, to his parent or parents equally..." S.C. Code Section 62-2-103.

In the instant case, it is undisputed that Appellant and Respondent are the parents of the deceased minor child, Tynslee Elizabeth Fields. Thus, pursuant to well-established statutory law, Appellant and Respondent are to divide equally the proceeds at issue in this case.

Either statutory beneficiary had the right to seek to limit or divest the other of the proceeds at issue in this matter. The Appellant herein filed such a motion seeking to limit or divest the Respondent of the wrongful death and estate proceeds. The Probate Court's authority to grant such a request however, is governed by South Carolina Code Section 15-51-40, which provides as follows:

[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 Section 15-51-40.

South Carolina Code Section 63-5-20 is referenced in the aforementioned statute and provides that a parent must provide "reasonable support" unless the parent has just cause or excuse for failure to do so. It specifically 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 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.

South Carolina Code Section 63-5-20. Thus, there is clear, unambiguous statutory law governing the Appellant's request and this case.

Even though “[t]he cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible,” “[t]he plain language of a statute is considered the best evidence of the legislature's intent.” *Perry v. Bullock*, 409 S.C. 137, 140, 761 S.E.2d 251, 253 (2014). “Where the statute’s language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” *Gay vs. Ariail*, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009); *see also C. Prop. & Cas. Ins. Co. Guar. Ass'n v. Brock*, 410 S.C. 361, 367, 764 S.E.2d 920, 922 (2014). “When interpreting a statute, courts must presume the legislature did not intend to do a futile act.” *State v. Sweat*, 379 S.C. 367, 377, 665 S.E.2d 645, 651 (Ct. App. 2008). “A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous. ...” *Id.* (quoting *Matter of Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995)). “Courts are constrained to avoid a statutory construction that would have the effect of reading a provision out of a statute.” *Steinke v. S.C. Dep't of Labor, Licensing & Regulation*, 336 S.C. 373, 396, 520 S.E.2d 142, 154 (1999). Further, “[i]n construing a statute, [courts]...are constrained to avoid an absurd result.” *Roche v. Young Brothers Inc.*, 332 S.C. 81, 504 S.E.2d 314.

The Circuit Court herein correctly interpreted and applied the terms and provisions of Section 15-51-40 and Section 63-5-20(A) to the instant matter. The plain and unambiguous language of Section 15-51-40 specifically provides that the Probate Court may only limit or divest a parent’s entitlement to wrongful death and estate proceeds *if* it finds by the preponderance of the evidence: 1) that a parent failed to reasonably provide support for the decedent as defined in Section 63-5-20 *and* 2) did not otherwise provide for the needs of the decedent during his or her minority. *See* S.C. Code Section 15-51-40. Thus, in the instant matter the Probate Court was required to make both findings before it could divest Respondent of the proceeds herein.

In applying Section 15-51-40, the legislature specifically referenced the definition contained in Section 63-5-20 for what constitutes “reasonable support” for a minor child. In addition, the legislature specifically provided that the relevant time period for determining whether a parent failed to provide “reasonable support” for a deceased child was during his or her minority – not before or after.

The Circuit Court did not err when it applied the aforementioned statutes to the facts of the instant case. It is undisputed that the parties’ minor child lived only minutes to hours. During those precious moments of the parties’ minor child’s life, she was receiving emergency medical care. The Circuit Court correctly found that there was no ability for the Respondent “to provide the more usual means of attention and support to his minor child during her very brief life.” (R. pp. 5-11). Section 63-5-20 specifically provides that the court is to consider whether there was “just cause or excuse” that prevented a person from providing reasonable support for their minor child. In the instant case, the minor child only survived a short period of time. Thus, Respondent was not able to provide the minor child with financial support during her minority.

Appellant argues that Respondent should have been required to provide for the minor child while “Appellant was pregnant, while Tynslee was alive, or upon her passing.” (Initial Brief of Appellant at p. 19). This however, is contrary to the plain language of the statute and would ultimately be an absurd result. The time frame prior to and after their minor child’s birth is specifically excluded by the relevant statutes. The statute specifically provides that a parent’s obligation to reasonably support their minor child is during his or her minority. Thus, the Circuit Court correctly found and held that the Probate Court erred when it found that expenses related to Appellant’s pregnancy, the burial, funeral, memorial and legal expenses and time spent in litigation were not “unusual necessities” as set forth in Section 63-5-20 as those expenses occurred prior to

and or after the minor child's minority. To hold otherwise, would be a misinterpretation of the applicable statutes.

Appellant's argument urges this Court to ignore the plain and unambiguous language set forth in the statutes and should be rejected.

III. THE GREENVILLE COUNTY CIRCUIT COURT DID NOT ERR WHEN IT REVERSED THE DECISION OF THE PROBATE COURT OF GREENVILLE COUNTY IN THE MATTER OF *TYNLEE ELIZABETH FIELDS, DECEASED; LAUREN MURPHY AS STATUTORY BENEFICIARY VS. MARK COLLINS, AND THE ESTATE OF TYNLEE ELIZABETH FIELDS, DECEASED*, CASE NO. 2012-ES-23-01718, DETERMINING THERE WAS SOUTH CAROLINA PRECEDENT GOVERNING THIS CASE AND THUS DID NOT APPLY APPELLANT'S EXTRA-JURISDICTIONAL LAW FROM OTHER STATES AND OR CASE LAW APPLICABLE IN SOUTH CAROLINA AND UNITED STATES PATERNAL ADOPTION CASES.

A. STANDARD OF REVIEW

See Supra.

B. ARGUMENT

Contrary to Appellant's claim, South Carolina Code of laws *specifically* provides for how damages associated with a wrongful death action are to be divided. As set forth *supra*, South Carolina Code Section 15-51-40 states the statutory beneficiaries are to share in the proceeds derived from a wrongful death action in those shares as provided for by South Carolina intestacy laws. In the instant case, the intestacy laws provide Appellant and Respondent are to share equally in the proceeds. *See* South Carolina Code Section 62-2-103; *supra*.

Section 15-51-40 also sets forth under what circumstances either statutory beneficiary may seek to limit or divest the other beneficiary(ies) of their interest in the wrongful death proceeds. A beneficiary seeking such relief shall file a motion with the Probate Court. Upon receiving such a request, the Probate Court is required to find the following:

- 1) The parent or parents failed to reasonably provide support for the decedent as defined in Section 63-5-20;

AND

- 2) The parent or parents failed to provide for the needs of the decedent during her minority.

S.C. Code Section 15-51-40.

The language of statute 15-51-40 “is plain, unambiguous, and conveys a clear, definite meaning....” *Gay v. Ariail*, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009). The relevant time period identified by the legislature when making a determination as to whether a statutory beneficiary should be divested of his or her share of wrongful death proceeds is during a decedent’s “minority.” The act also explicitly states that the court must find: a failure to “reasonably provide support” and a failure to provide “for the needs of the decedent.” Nothing in Section 15-51-40 gives rise to doubt or uncertainty. The Probate Court was not permitted to go “beyond the borders of the act itself” to consider a time period not prescribed by the statute. *The Lite House, Inc. vs. J.C. Roy Co., Inc.*, 419 S.E.2d 817, 309 S.C. 50 (S.C. App. 1992). By considering, finding and imposing a time period prior to and after the decedent’s minority, the Probate Court issued an order divesting Respondent of his interests in the wrongful death and estate proceeds contrary to South Carolina law. The Circuit Court correctly found the same when it reversed the Probate Court’s order in the instant case.

Further, the direct, clear and specific language of Section 15-51-40 provides that the Court is to consider the statutory beneficiary’s support of the decedent during her minority. The statute does not permit the Court to consider the non-pecuniary losses to either statutory beneficiary at the loss of a minor child in making its determination to divest a statutory beneficiary of the

proceeds derived from a wrongful death action. Appellant's claim that evidence of the closeness of a relationship between the Respondent in the instant case and the decedent is required before Respondent may receive any portion of the wrongful death and or estate proceeds is thus contrary to the law. Appellant's reliance on *Scott Ex. Rel. Scott vs. Porter*, 340 S.C. 158, 530 S.E.2d 389 (S.C. App. 2000) in support of her argument that South Carolina law requires a finding that "a wrongful death claim is only actionable by one who is a designated beneficiary at the time of a child's death; and evidence of the closeness of a relationship is required before a statutory beneficiary is entitled to receive wrongful death benefits" is misplaced. (Appellant's brief p. 21-22).

Scott Ex. Rel. Scott, was an action in which a doctor appealed a jury verdict finding her negligent in the death of a minor child. *Id.* On appeal, this Court considered two issues: 1) whether the closing argument was inflammatory requiring reversal and 2) whether the damages awarded were the result of "passion, partiality, and prejudice." *Id.* at 389. In considering the damages issue, this Court considered whether the jury's award was excessive. In doing so, this Court recognized that a jury's award in a wrongful death action can 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 intestacy's society, the loss of his experience knowledge, and judgment in managing the affairs himself and of his beneficiaries." *Id.* at 394. This Court also found that "[a] determination of reasonable compensation for nonpecuniary damages turns on the facts of each case...and is left to the jury's discretion." *Id.* at 395. This Court re-iterated that there is no mathematical formula by which a court can determine the value of the loss of a child to a parent. The Court considered the testimony and evidence that was presented to the jury for its consideration in making its award of damages. *Id.* at 394-95. The

evidence considered by the jury in awarding damages, and reviewed by this Court for reasonableness, was during the decedent's minority, saving the mental anguish and grief a parent experiences at the loss of child. There was no consideration by the jury or this Court of: the mother's pregnancy, the number of pre-natal doctor's visits, the difficulty of the mother's pregnancy or the cost of the burial, funeral, memorial or legal expenses. The relevant time period to be considered was during the decedent's minority. The nonpecuniary damages awarded, such as mental shock, grief and sorrow, at the loss of a child were reviewed for reasonableness.

In the instant case, the reasonableness of the amount awarded to the statutory beneficiaries is not at issue. The amount at issue was agreed upon in a settlement(s) approved by the Circuit Court; and does not include any itemization for the non-pecuniary losses suffered by either the Appellant or Respondent, such as their grief and mental anguish suffered at the loss of their child. The settlement was obtained on behalf of both Appellant and Respondent, as it was obtained for the benefit of both statutory beneficiaries. In its determination to divest Respondent of any of the wrongful death proceeds, the Probate Court erred by including a time frame prior to and after the decedent's minority. It ignored the evidence of Respondent's grief; and it placed a greater weight on the Appellant's relationship to the decedent because she carried and birthed the decedent. The evidence before the Probate Court was that neither Appellant nor Respondent were able to form a relationship with the decedent during her minority because during her short life she was treated by medical professionals.

Appellant urges this Court to ignore the unambiguous language of the statutes and consider extra-jurisdictional case law and South Carolina case law governing relinquishment of parental rights in adoption cases. However, to do so would be to circumvent well-established law.

After the South Carolina Supreme Court's decision in *Ballard vs. Ballard*, 314 S.C. 40, 443 S.E.2d 802 (1994), our legislature amended Section 15-51-40 to specifically provide for when a statutory beneficiary's interest in wrongful death proceeds could be limited and or wholly divested. In *Ballard*, the Supreme Court affirmed an award of wrongful death proceeds to unwed parents in equal shares, despite their relationship to their minor child, because the statute provided for the statutory beneficiaries to share in those proceeds equally. The issue before the *Ballard* Court was whether the father should be divested of any of the proceeds because he failed to visit and or support his minor child prior to his death. The *Ballard* Court affirmed the award to both parents, as the plain language of the statute required it to do so.

Post-*Ballard*, the South Carolina legislature amended Section 15-51-40 to provide for when a statutory beneficiary can be divested (or limited) of his or her share in wrongful death actions. The legislature specifically provided such divestment shall only occur when a statutory beneficiary: failed to reasonably provide support for the decedent as defined in Section 63-5-20, and failed to provide for the needs of the decedent during her minority. The Probate Court's order in the instant matter ignored the plain language of the statute; and the court had "...no right to impose another meaning." *Gay*, 381 S.C. at 345. The Circuit Court found and held the same. Accordingly, the decision of the Circuit Court should be affirmed herein.

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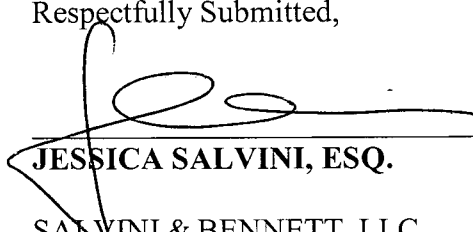
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CONCLUSION

For the reasons stated herein above, Respondent respectfully requests this Court affirm the decision of the Greenville County Circuit Court.

Respectfully Submitted,



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Greenville, SC
Dated: August 29, 2016

ATTORNEYS FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

PERRY H. GRAVELY, CIRCUIT COURT JUDGE

CASE NO.: 2016-000536

In the matter of Tynslee Elizabeth Fields, Deceased,
Lauren Murphy, as statutory beneficiary, Appellant,

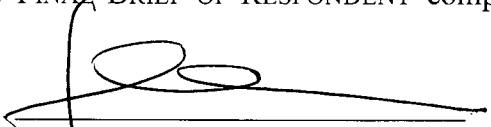
v.

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

Of Whom Mark Collins is the Respondent.

CERTIFICATE OF COUNSEL

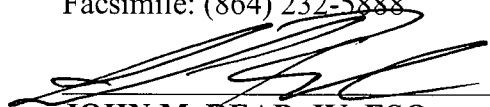
The undersigned certified that this FINAL BRIEF OF RESPONDENT complies with Rule 211(b), SCACR.



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Greenville, SC
Dated: August 29, 2016

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

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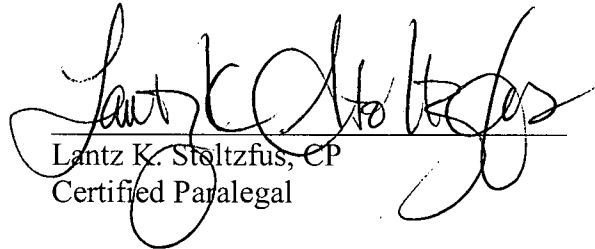
Mark Collins, and The Estate of Tynslee Elizabeth Fields, Defendants,

Of Whom Mark Collins is the Respondent.

PROOF OF SERVICE

I certify that I have served the FINAL BRIEF OF RESPONDENT by depositing a copy of it in the United States Mail, postage prepaid, on August 29, 2016 addressed to: Charles W. Marchbanks, Jr., The Marchbanks Law Firm, 1225 S. Church Street, Greenville, SC 29605; Ruth Hindman DiPasquale, Ruth Law Firm, 1225 S. Church Street, Greenville, SC 29605.

August 29, 2016



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September 9, 2016

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SEP 12 2016

SC Court of Appeals

SENT VIA U.S. MAIL ONLY

Clerk of Court
The South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201-3769

IN THE MATTER OF: *Tynslee Elizabeth Fields, Deceased*
Lauren Murphy v. Mark Collins
Appellate Case No. 2016-00536

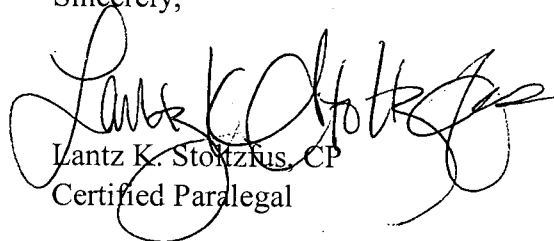
Dear Clerk of Court:

Pursuant to the letter dated September 1, 2016, please find enclosed the FINAL BRIEF OF RESPONDENT along with our (fourteen bound copies and the unbound original) with the corrected caption. Out of an abundance of caution, we also corrected the caption on our CERTIFICATE OF COUNSEL and our PROOF OF SERVICE. Further, the below listed counsel will receive a corrected copy by mail.

If you have any questions or concerns, please do not hesitate to call me. I appreciate your kind assistance in this matter.

Thank you for your patience in this matter.

Sincerely,



Lantz K. Stoltzfus, CP
Certified Paralegal

Encls.

cc: Charles W. Marchbanks, Jr., Esq.
Ruth H. DiPasquale, Esq.
Jack Read, Esq. (via email only)