

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.

APPELLANT'S FINAL REPLY BRIEF

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SC Court of Appeals

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STATEMENT OF ISSUES ARGUED IN REPLY

- I. LIKE THE GREENVILLE COUNTY CIRCUIT COURT, RESPONDENT ERRS IN ITS APPLICATION OF THE STANDARD OF REVIEW IN ITS BRIEF.**
- II. THE RESPONDENT AND THE GREENVILLE COUNTY CIRCUIT COURT BOTH ERR IN THE APPLICATION OF THE LAW IN THIS CASE.**

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ARGUMENTS IN REPLY

I. LIKE THE GREENVILLE COUNTY CIRCUIT COURT, RESPONDENT ERRS IN ITS APPLICATION OF THE STANDARD OF REVIEW IN ITS BRIEF.

A. STANDARD OF REVIEW

Respondent and the Greenville County Circuit Court consistently state a similar but incorrect version of two similar standards of review.

Initially, Respondent misquotes *In the Matter of Howard* in its brief by inserting a reasonableness standard. *In the Matter of Howard* states, “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.” Howard, Matter of, 434 S.E.2d 254, 257, 315 S.C. 356, 361 (1993) (citations omitted) (emphasis added).

Critically, this language is also found in other Probate Court appeals such as *In re Estate of Pallister*, 363 S.C. 437, 611 S.E.2d 250 (2005) and *In re Estate of Weeks*, 495 S.E.2d 454, 329 S.C. 251 (Ct. App., 1997). In fact, this holding was followed by the South Carolina Court of Appeals as recently as June 15, 2016, “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. Sullivan v. Brown (In re Estate of Kay) Opinion No. 5414 (Ct. App., 2016) citing Neely v. Thomasson, 365 S.C. 345, 349-50, 618 S.E.2d 884, 886 (2005) (emphasis added).

Cases not arising from the specific jurisdiction of Probate Court follow a Standard of Review found in *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976) stating “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).

In the Matter of Howard triggers a reasonableness standard, but does so further into its Standard of Review. Its application or reasonableness does not relate to the Probate Court's findings of fact, however, but to the Probate Order *in toto*. "[I]f there is any evidence in this case that reasonably supports the factual findings of the probate judge, his order must be affirmed." Howard, at 258, 362 (1993).

B. ARGUMENT

Because this issue is rooted in the jurisdiction of Probate Court, Appellant asserts that the correct Standard of Review calls for the Circuit Court not to disturb *any* Probate Court Finding of Fact. As is discussed in Appellant's Brief, the Circuit Court significantly and materially altered the Findings of Fact of the Greenville County Probate Court in this case. In fact, Respondent continues to do so in his brief by stating that:

- "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;"
- "Ms. Murphy did not allow Mr. Collins to attend any future OBGYN appointments;" and
- "Ms. Murphy prohibited Mr. Collins from participating in her pregnancy, the minor child's birth, death and funeral."

(Respondent's Brief p. 2)

Although Respondent presents these allegations in his Brief as fact, the Probate Court did not find them as such. (ROA p. 12)

The Findings of Fact by the Probate Court are more than reasonably supported the evidence in this case and show by 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). As these factual findings are not to be disturbed on appeal and because they are reasonably supported by the evidence in this case, the Circuit Court's reversal of the Greenville County Probate Court in this case must be vacated and the Probate Court's Order reinstated.

II. THE RESPONDENT AND THE GREENVILLE COUNTY CIRCUIT COURT BOTH ERR IN THE APPLICATION OF THE LAW IN THIS CASE.

A. STANDARD OF REVIEW

As previously discussed, "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." Howard, Matter of, 434 S.E.2d 254, 257, 315 S.C. 356, 361 (1993) (internal citations omitted).

Further, "if there is any evidence in this case that reasonably supports the factual findings of the probate judge, his order must be affirmed." Howard, at 258, 362 (1993).

Appellant asserts the threshold issue as discussed above is dispositive. That said, looking past the threshold to the controlling law of the case results in the same outcome.

B. CONTROLLING LAW

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.

S.C. Code § 15-51-40 (1976 as amended).

Referenced in Section 15-51-40 is S.C. Code Section 63-5-20(A) which defines

“reasonable support” as follows:

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.

S.C. Code § 63-5-20 S.C. Code of Laws (1976 as amended).

In regards to the construction and interpretation of the above states, “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) (emphasis added).

C. ARGUMENT

In the event this Court determines analysis is required beyond the threshold, *supra*, and finds the controlling law of the case South Carolina unambiguous, Appellant asserts that Respondent obfuscates the time restriction found in Section 15-51-40 with the lack thereof in Section 63-5-20.

It is uncontroverted that Respondent did not otherwise provide for the needs of the decedent during her minority as required in Section 15-51-40. Respondent provided nothing.

Section 63-5-20, however, has no time limitation. In fact, “reasonable support” is defined as “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 of Laws § 63-5-20 (1976 as amended). Thus, the South Carolina Legislature’s definition of reasonable support contains no time restriction. With this definition integrated into Section 15-51-40, the Probate Court was not constrained to the one-hour of life wherein the Decedent should have received support.

This clean and concise analysis leads to the conclusion that the Order of the Greenville County Circuit Court should be vacated and the Probate Court’s Order reinstated.

If this Court determines analysis beyond the threshold is required and finds the controlling law of the case ambiguous, Appellant’s Brief sets forth numerous avenues for this Court to follow. Even if this law is not used, however, it cannot be ignored. The

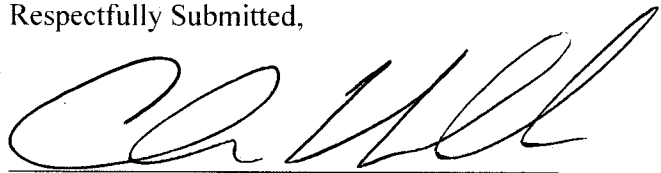
extra-jurisdictional and analogous law provided in Appellant's Brief shows that public policy has a compelling interest in preventing others situated similarly as Respondent from reaping a windfall under facts such as these.

Regardless of the path chosen, the intended purpose of the language contained in Code Sections 15-51-40 and 63-5-20 is to prevent an unwed father who does not embrace his paternity from the receipt of a windfall. In this case, Respondent's participation consisted of merely procreating with the mother of the deceased. Beyond that, he contributed nothing. The intended purpose of these statutes is to prevent him from reaping financial reward for merely conceiving a child.

CONCLUSION

For the reasons stated herein above, Appellant respectfully requests this Court vacate the decision of the Greenville County Circuit Court and reinstate the Order of the Probate Court of Greenville County.

Respectfully Submitted,



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Greenville, South Carolina
September 27, 2016

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PERRY H. GRAVELY, CIRCUIT COURT JUDGE

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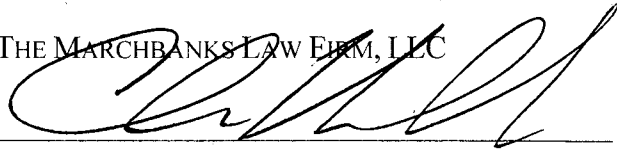
Mark Collins, and The Estate of Tynslee Elizabeth Fields, Defendants,

Of Whom Mark Collins is the Respondent.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Reply Brief of Appellant complies with Rule 211(b),
SCACR.

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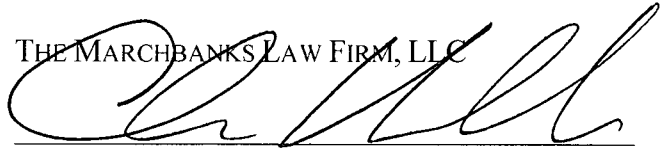
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Of Whom Mark Collins is the Respondent.

PROOF OF SERVICE

I certify that I have served the Appellant's Final Reply Brief on Respondent Mark Collins by mailing a copy of it via first class mail on September 27, 2016, addressed to his attorneys of record, Jessica Salvini and John M. Read, IV, at their respective offices at 101 W. Park Ave. Greenville, SC 29601.

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September 27, 2016

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**Re: In the Matter of Tynslee Elizabeth Fields, Deceased,
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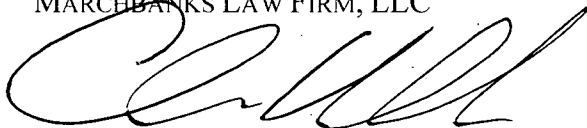
Dear Sir or Madam:

Please find enclosed for filing the original plus one copy of Appellant's Motion Requesting Permission, as well as Appellant's Final Reply Brief in the above-captioned case.

Thank you in advance for your consideration. Should you have any questions, please feel free to contact me directly at 864-552-1606.

Sincerely,

MARCHBANKS LAW FIRM, LLC

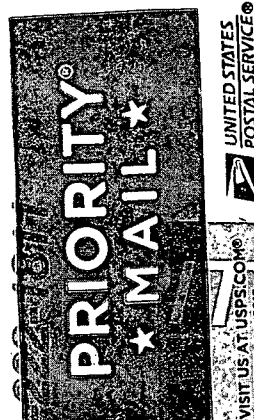


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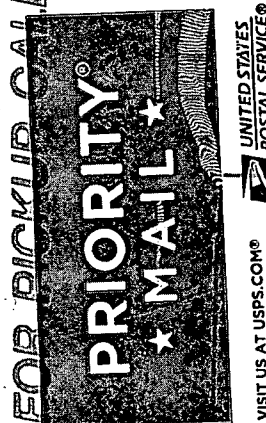
Enclosures

cc: Paul B. Wickensimer (without enclosures)
Jessica Salvini, Esq. (with enclosures)
Jack Read, Esq. (with enclosures)

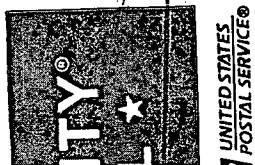
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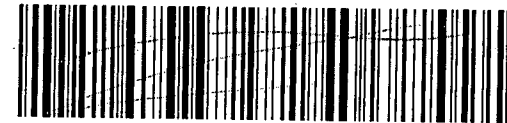
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