

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas
Perry M. Buckner, III, Circuit Court Judge

Appellate Case No. 2016-000222
Case No. 2012-CP-25-402

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JUN 25 2018
SC Court of Appeals

Angel Y. Gary as Personal Representative of the Estate of
Blondell M. Gary,.....Respondent,

v.

Lowcountry Medical Transport, Inc. American Medical Response, Inc.,
d/b/a Access2care, and Eugene A. Kirkland, In re: Charles Gary, Purported
Surviving Spouse, Defendants,

Of Whom Charles Gary, Purported Surviving Spouse, is.....Petitioner.

RESPONDENT'S RETURN TO APPELLANT'S PETITION FOR REHEARING

Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.
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ATTORNEYS FOR RESPONDENT

Pursuant to Rule 240(e), SCACR, the Respondent Angel Y. Gary, as Personal Representative of the Estate of Blondell M. Gary, hereby files the following Return to the Appellant's Petition for Rehearing.

ARGUMENT

I. THIS COURT CORRECTLY APPLIED THE PUBLIC POLICY EXPRESSED IN THE *JOHNS* CASE TO THE PRESENT CASE.

All marriages contracted while either of the parties has a former wife or husband living shall be void. S.C. Code Ann. § 20-1-80. This court has previously held the policy underlying the judicial doctrine of *res judicata* must yield to the public policy established by the General Assembly that bigamous marriages are void. *Johns v. Johns*, 309 S.C. 199, 203, 420 S.E.2d 856, 859 (Ct. App. 1992). The Appellant in this case has presented no evidence of a formal or common law marriage between Charles and Blondell Gary and has failed to distinguish the public policy expressed in the *Johns* case from the present case.

Appellant's argument that the allegations contained in the Complaint establish a marital relationship ignores this Court's ruling that "[w]hile ordinarily the Estate *may* be bound to its previous assertions, we find that policy should yield to the overriding policy against bigamous marriages, as expressed by the General Assembly." *Gary v. Lowcountry Med. Transp.*, Op. No. 5563 at p. 5 (S.C. App., May 23, 2018) (emphasis added); *see Johns*, 309 S.C. at 203, 420 S.E.2d at 859 ("The courts must weigh the competing public policies."; finding the public policy of not recognizing bigamous marriages outweighs the public policy favoring finality of judgments). The Court in the present case, relying upon the *Johns* case, made it abundantly clear that the Estate of Blondell Gary *could* be bound by its previous allegations under some circumstances. However, this is not one of those circumstances. The public policy against bigamous marriages

always outweighs the public policy behind concepts such as judicial estoppel or favoring the finality of judgments.

The Appellant's attempt to distinguish the *Johns* case from the present case is misguided and ignores the holding and intent of that case. Specifically, Appellant argues that because Mr. Johns was legally married to another woman during the entire duration of Mr. and Mrs. Johns' cohabitation that the public policy expressed in that case is different from the factual scenario presented in the present case. It is undisputed that Charles Gary was still married to Doretha Chisholm at the time he attempted to marry Blondell Gary. The law in South Carolina is clear that a marriage contracted while either of the parties has a former wife or husband living shall be void. S.C. Code Ann. §20-1-80. By virtue of the fact that Charles Gary was already married at the time he attempted to marry Blondell Gary, their marriage was void from the inception and there is no argument in favor of (or evidence in the record to substantiate) a subsequent common law marriage. Furthermore, the public policy espoused in the *Johns* case applies to bigamous marriages of any type - not just ones that involve a spouse who is married to another person for the entire duration of their cohabitation.

II. THIS COURT PROPERLY CONSIDERED THE CONSENT ORDER OF DISMISSAL.


This Court properly considered the argument raised by the Appellant regarding the consent order of dismissal. This Court specifically references the argument in the opinion but chose to not devote much of the opinion to this argument.¹ Similarly, Appellant chose not to elaborate on this issue in their Petition for Rehearing. Respondent would rely on the previous

¹ The fact the Court considered arguments related to the Order of Dismissal is also clear from the fact it referenced the policies behind judicial estoppel, one of the necessary elements of which is a final judgment. *See, e.g., Cothran v. Brown*, 357 S.C. 210, 215-16, 592 S.E.2d 629, 632 (2004).

arguments made on this issue in both the briefing and oral argument. Furthermore, Respondent would incorporate the arguments made above with regard to public policy as the same public policy arguments are applicable to this issue.

CONCLUSION

For the reasons stated above, Angel Y. Gary, as Personal Representative for the Estate of Blondell M. Gary, respectfully requests that the Court deny Appellant's Petition for Rehearing.

By: 
Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.
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ATTORNEYS FOR RESPONDENT

June 21, 2018
Hampton, South Carolina

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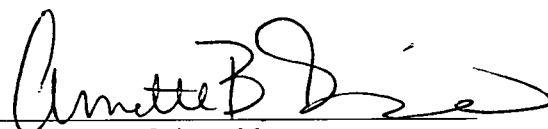
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Of Whom Charles Gary, Purported Surviving Spouse, is..... Petitioner.

**PROOF OF SERVICE FOR
RESPONDENT'S RETURN TO APPELLANT'S
PETITION FOR REHEARING**

I, Annette B. Griswold, do hereby certify that I have caused to be mailed, postage prepaid via United State Postal Service, Respondent's Return to Appellant's Petition for Rehearing in the above referenced matter to Joseph Dawson, III, Esquire, Joseph Dawson, III Attorney at Law, P.O. Box 41367, North Charleston, South Carolina 29423-41367 this 20th day of June, 2018.


Annette B. Griswold
Office of R. Alexander Murdaugh, Esquire
& Austin H. Crosby, Esquire

LAW OFFICES
PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK

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June 21, 2018

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JUN 25 2018

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: *Angel Y. Gary as PR for Blondell Marie Gary v. Lowcountry Medical Transport, Inc., American Medical Response, Inc., d/b/a, Access2Care, and Eugene A. Kirkland Appellate Case No.: 2016-000222*

Dear Ms. Kitchings:

I have enclosed for filing pursuant to Rule 240(e), SCACR, the original and six (6) copies of the Respondent's Return to Appellant's Petition for Rehearing. I would appreciate your acknowledging receipt of these documents by date-stamping the extra copy and returning it to me in the enclosed envelope. By copy of this letter, I am serving counsel for Appellant with these documents and enclose a Proof of Service to that effect. I have also enclosed a check from our firm in the amount of \$25.00 for the filing fee. If you have any questions or need any additional information, please do not hesitate to contact me.

With kind regards, I am

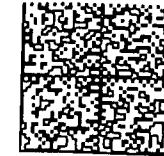
Sincerely,



Austin H. Crosby

AHC/abg
Enclosures

cc: Joseph Dawson, III, Esquire



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