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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

RECEIVED
AUG 22 2018
SC Court of Appeals

Mark Collins, Respondent,

v.

Lauren Murphy as Statutory Beneficiary, Appellant.

**RESPONDENT MARK COLLINS'
PETITION FOR REHEARING**

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Attorneys for Respondent

August 21, 2018

NOW INTO COURT, comes the Respondent Mark Collins, who submits the following Petition for Rehearing pursuant to Rule 211 of the S.C. Rules of Appellate Practice, based on the following grounds, to wit:

The Court of Appeals has reversed the Circuit Court's decision and affirmed the probate court's decision where the Probate Court found that that Collins failed to provide reasonable support to his unborn child despite (1) the presence of unrefuted evidence that he attended the first ultrasound appointment and had communicated to Murphy his intention to meet his fatherly obligations and (2) Murphy's subsequent intentional and pre-meditated successful prevention of Collins' participation in both her pregnancy and in the funeral and burial of their child. In other words, the probate court found it unreasonable that Collins did not (1) provide monetary support to Murphy during the pregnancy from which Murphy excluded him or (2) provide monetary support related to the birth of their child of which she did not inform him and (3) provide monetary support related to the funeral and burial of their child from which she also excluded him. The Probate Court issued these finding with no reference to the fact that Murphy prevaricated and obfuscated regarding the actual identity of Tynslee's father throughout the pregnancy and afterward in her early filings with the Probate Court. Despite these circumstances, the Probate Court failed to apply any "just cause or excuse" analysis to the facts as required under § 63-5-20.

Respondent, Mark Collins hereby states with particularity the points that the Court of Appeals has overlooked or misapprehended.

III. B. I Reasonable Support – Pre-natal and Birth-related Expenses)

The Court of Appeals notes that "[n]either the probate court nor the circuit court found Collins was obligated to contribute to pre-natal care." Therefore, insofar as the Court of

Appeals bases its findings upon facts related to failure to pay for pre-natal expenses, such findings lack a legally cognizable basis.

The Court of Appeals agreed with the probate court that “pre-natal and birth-related medical expenses were usual necessities, none of which Collins paid or offered to pay, even after his paternity was established.” The Court of Appeals predicates this finding upon: (1) the idea that Collins has a responsibility to provide some sort medical payments for the portion of medical care for which Medicaid had paid despite the fact that no reimbursement to Medicaid was sought or required and (2) that a provision within the minor settlement documents that references a reservation of \$3,331.50 that was designated to pay for potential medical liens serves as evidence of Collins’ failure to provide reasonable support.

With regard to the Medicaid related finding, the Court of Appeals here misapprehends and overlooks the fact that it is not possible for Collins to reimburse Medicaid where no reimbursement is sought. Further, the Court of Appeals has overlooked the fact that the minor settlement documents listed Collins as a statutory beneficiary. Collins and Murphy had agreed that Murphy would serve as Personal Representative of the Estate and of Collins in her fiduciary capacity and as the only other statutory beneficiary. At the time that the settlement was agreed upon, both Murphy and Collins possessed an equal interest in both the proceeds of the suit and of the costs. Collins, therefore, did, in fact meet his responsibility for 1/2 of the medical lien. If the proceeds were distributed according to the statute, the funds would come from him and Murphy equally as a matter of agreement and of the law.

Also, although the Court of Appeals notes that the Circuit Court applied the just cause analysis in its reversal of the Probate Court’s decision, the Court of Appeals has overlooked the question of the Probate Court’s failure to apply a “just cause” analysis to the provision or non-

provision of support related to prenatal and birth-related expenses where the father has been explicitly prevented from addressing them by the parent moving to divest the other of proceeds derived from a wrongful death settlement.

III. B. I Reasonable Support – Funeral and Burial Expenses

The Court of Appeals has misapprehended the law as plainly set forth in § 15-51-40, which states that the probate court may deny a parent’s entitlement if the court determines that the parent has “failed to reasonably provide support ... and did not otherwise provide for the needs of the decedent **during his or her minority.**” S.C. Code Ann. §15-51-40 (Supp. 2017).

The Court construes statutes in a manner inconsistent with its plain meaning by interpreting the specific phrase “during his or her minority” to encompass a period of time beyond the natural life of the minor. The Court has applied this misapprehension to conclude that burial and funeral expenses fall under the applicable statutes description of necessities required to be provided by Mr. Collins despite his exclusion from the event and its planning.

S.C. Code Ann. §15-320 defines minority as follows:

(a) All references to minors in the law of this State shall after February 6, 1975, be deemed to mean **persons** under the age of eighteen years except in laws relating to the sale of alcoholic beverages; provided, however, that any person performing any act or receiving any property, rights or responsibilities pursuant to an instrument executed prior to February 6, 1975, shall have his majority or minority determined by the law relating to majority or minority in existence at the time of the execution of such instrument. SC Code 15-1-320 References to minors in State laws mean persons under age of 18 years; exceptions; presumption that minors were persons under age of 21 in certain wills, trusts and deeds (South Carolina Code of Laws (2018 Edition)).

A “person” is defined as, “**a human being considered as capable of having rights** and of being charged with duties.... Black’s Law Dictionary, 2nd Ed.

No court in South Carolina has deemed funeral and burial expenses to be necessities as referenced in the applicable statute. No court in South Carolina has expanded the definition of

child support to include responsibility for expenses incurred posthumously. This interpretation directly conflict with the explicit statutory language that requires that the referenced necessities be incurred during the child’s minority. Further, as above, the Court of Appeals has overlooked the question of the Probate Court’s failure to apply a “just cause” analysis to the provision or non-provision of support with regard to the funeral and burial expenses as well.

III. B. ii. Needs of Decedent

The court misapprehends the proper application of “just cause” to the “second element” of the § 15-51-40 test. The plain language of the statute and the applicable rules of statutory construction require that the two elements be read together and that the “just cause” provision be applied to both. Moreover, where, as here, the provision of the referenced support for the child is impossible, it is not a question whether “just cause” excused the action. It is simply an impossibility.

WHEREFORE, the Respondent Mark Collins respectfully prays that this Honorable Court will grant his Petition for Rehearing, and reverse its ruling for the reasons set forth above.

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Respectfully Submitted,



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Dated: August 21, 2018

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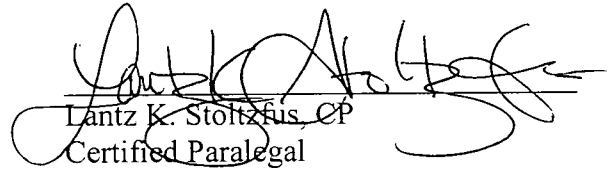
v.

Lauren Murphy as Statutory Beneficiary, Appellant.

PROOF OF SERVICE

I certify that I have served the RESPONDENT MARK COLLINS' PETITION FOR REHEARING by depositing a copy of it in the United States Mail, postage prepaid, on August 21, 2018 addressed to: Charles W. Marchbanks, Jr., The Marchbanks Law Firm, 1225 S. Church Street, Greenville, SC 29605.

August 21, 2018


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Clerk of Court
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1220 Senate Street
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Lauren Murphy v. Mark Collins
Appellate Case No. 2016-00536

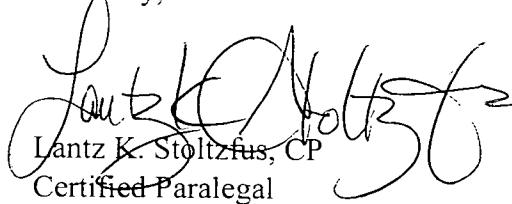
Dear Clerk of Court:

Enclosed please find for filing the original and six copies of RESPONDENT MARK COLLINS' PETITION FOR REHEARING along with our PROOF OF SERVICE in the above-referenced matter. Also, please find the enclosed check in the amount of \$25.00 for the Clerk's fee.

Please do not hesitate to contact our office if you have any questions regarding this filing.

Thank you for your kind assistance in this matter.

Sincerely,


Lantz K. Stoltzfus, CP
Certified Paralegal

Encls.

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

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UNITED STATES US

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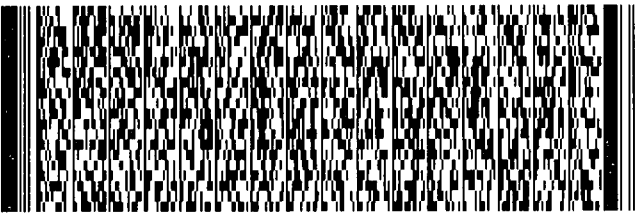
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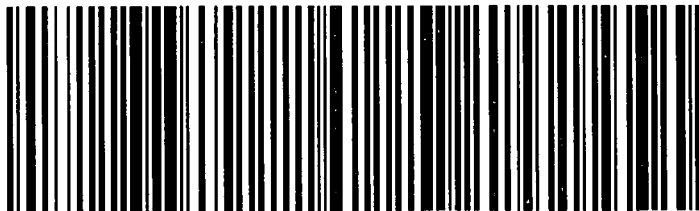
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SC Court of Appeals

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