

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREM

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Judge Perry M. Buckner, III, Circuit Court Judge

Opinion No. 5563 (S.C.Ct.App. filed May 23, 2018)

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

APPENDIX TO THE
PETITION FOR WRIT OF CERTIORARI

Joseph Dawson, III
Post Office Box 41367
North Charleston, South Carolina 29423
(843) 207-9004
Attorney for Petitioner Charles Gary

R. Alexander Murdaugh, Esquire
Bert G. Utsey, Esquire
Austin H. Crosby, Esquire
Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.
P.O. Box 457
Hampton, SC 29924
(803) 943-2111
Attorneys for Respondent

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Judge Perry M. Buckner, III, Circuit Court Judge

CASE NO. 2012-CP-25-402

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 Appellant.

RECORD ON APPEAL

Joseph Dawson, III, Esquire
Post Office Box 41367
North Charleston, South Carolina 29423
(843) 207-9004
Attorney for Appellant

R. Alexander Murdaugh, Esquire
Bert G. Utsey, Esquire
Austin H. Crosby, Esquire
Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.
P.O. Box 457
Hampton, SC 29924
Attorneys for Respondent

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SC Court of Appeals

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STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

ANGEL Y. GARY as Personal Representative
of the Estate of BLONDELL M. GARY,

Plaintiff,

vs.

LOWCOUNTRY MEDICAL TRANSPORT,
INC., AMERICAN MEDICAL RESPONSE,
INC., d/b/a. Access2Care, and EUGENE A.
KIRKLAND,

In re: CHARLES GARY, Purported Surviving
Spouse,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2012-CP-25-402

ORDER

FILED
2016 JAN 29 AM 9:52
MYLINDA D. NETTLES,
CLERK OF COURT
HAMPTON COUNTY, S.C.

This matter came before the Court on January 13, 2016 for a hearing on Plaintiff's Petition to Determine Heirship ("the Petition"). Present on behalf of the Plaintiff-Petitioner, Angel Y. Gary as Personal Representative of the Estate of Blondell M. Gary ("The Estate"), was Bert G. Utsey, R. Alexander Murdaugh, and Austin H. Crosby. Present on behalf of the Defendant-Respondent, Charles Gary ("Mr. Gary"), was Joseph Dawson, III.

This Court has subject matter jurisdiction to determine the proper heirs of the Estate pursuant to S.C. Code Ann. § 62-1-302(b) (1976, as amended). Section 62-1-302(b) states that the Circuit Court has concurrent jurisdiction with the Probate Court for "the allocation of settlement proceeds among the parties involved in the estate." See also S.C. Code Ann. § 15-51-42(B) & (C)(2) (1976, as amended). In this case, the Plaintiff has petitioned the Court to make a determination whether Charles Gary is an heir of the Estate because of information learned

during the course of the litigation. As a result, this Court has subject matter jurisdiction to make this determination.

Plaintiff claims that Charles Gary, the purported husband of Blondell Gary, was never validly formally married to Blondell Gary and is unable to establish that a common law marriage existed.

Mr. Gary contends that Plaintiff should be judicially estopped from taking a position contrary to that contained in her pleadings in this and other actions. In support, he relied upon the fact that the Complaint in this case refers to Charles Gary as the husband of the Blondell Gary and that Plaintiff identified Charles Gary as Blondell Gary's surviving spouse in the initial probate filings.

At the hearing, counsel for Plaintiff submitted documents that showed Charles Gary was still married to Doretha Chisholm Gary at the time he allegedly entered into a marriage with Blondell Gary. These documents were the Final Divorce Order and Decree showing that Charles Gary and Doretha Chisholm were not divorced until January 22, 2001 and the Marriage Certificate between Charles Gary and Blondell Gary which shows the date of their purported marriage as November 30, 1999. (Plaintiff's Exhibit 1 & 2).

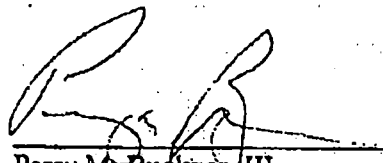
#2
PMB
All marriages contracted while either of the parties remains married to a living spouse are void. Johns v. Johns, 309 S.C. 199, 420 S.E.2d 856 (S.C. App. 1992). The exhibits offered at the hearing make it clear that Charles Gary was still married to Doretha Chisholm Gary when he purportedly married Blondell Gary. As a result, the purported marriage to Blondell Gary was void from its inception.

Further, Mr. Gary did not offer any evidence that he had a valid common law marriage existed between himself and Blondell Gary, other than the fact that the Estate originally thought

he was. Thus, Charles Gary is not an heir of the Estate because he was not validly married to Blondell Gary at the time of her death.

For the reasons set forth above, the Court finds that Charles Gary was not Blondell Gary's husband at the time of her death, that Charles Gary is not an heir of the Estate of Blondell Gary ("the Estate"), and grants the Plaintiff's Petition.

AND IT IS SO ORDERED.



Perry M. Buckner, III
Circuit Court Judge

January 21, 2016
Walterboro, South Carolina

#3

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HAMPTON

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

CASE NO.
2012-CP-25-402

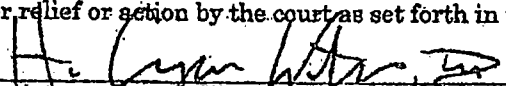
☐ Plaintiff(s),

ORDER OF DISMISSAL

Versus

Low Country Medical Transport, Inc.,
American Medical Response, Inc., d/b/a,
Access2Care, and Eugene A. Kirkland,
☒ Defendant(s).

check box above indicating submitting party

Plaintiff's attorney: Austin H. Crosby, Esquire Peters, Murdaugh, Parker, Eltzroth & Detrick, PA P.O. Box 457 Hampton, SC 29924 P: 803-943-2111/F: 803-943-3943 E: acrosby@pmped.com		Defendant's attorney: H. Cooper Wilson, III (SC #74939) HOOD LAW FIRM, LLC 172 Meeting Street, P.O. Box 1508 Charleston, SC 29401 P: 843-577-4435; F: 843-722-1630 E: info@hoodlaw.com	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTION I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)			
SECTION I: Hearing Information			
Nature of Motion: _____			
Estimated Time Needed: Minutes _____		Court Reporter Needed: YES ☒ / NO ☐	
SECTION II: Motion/Order Type			
☐ Written motion attached ☒ Form Motion/Order - I hereby move for relief or action by the court as set forth in the attached proposed order			
Signature of Attorney for ☐ Plaintiff/ ☒ Defendant 		Date submitted: 11/24/15	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$25			
☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE: _____ DATE: _____	
CLERK'S VERIFICATION			
Collected by: _____ (print name)		DATE FILED	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED-AMOUNT DUE: _____			

Appendix 6

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

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

Plaintiff,

Versus.

Low Country Medical Transport, Inc.,
American Medical Response, Inc., d/b/a,
Access2Care; and Eugene A. Kirkland,

Defendants.

) IN THE COURT OF COMMON PLEAS
)
)

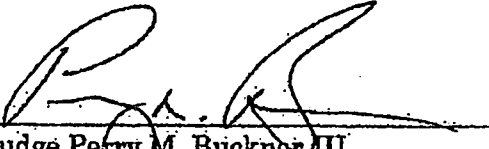
) C/A No. 2012-CP-25-402
)
)
)

ORDER OF DISMISSAL

IT APPEARING that this case has been amicably settled by and between the
parties hereto, obviating the necessity for further litigation;

ON MOTION of Hood Law Firm, LLC, Attorneys for the Defendant American
Medical Response, Inc., d/b/a, Access2Care; with the consent of Erin DuBose Dean,
Esquire, Attorney for Defendants Low Country Medical Transport, Inc. and Eugene
A. Kirkland, and with the consent of Austin H. Crosby, Esquire, Attorney for the
Plaintiff, it is

ORDERED, ADJUDGED, AND DECREED that this case be, and the same is
hereby, dismissed with prejudice and forever ended with each party bearing its own
costs, fees, and expenses.

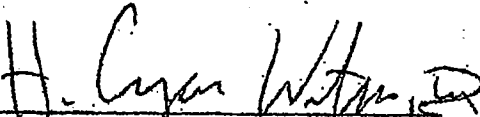

Judge Perry M. Buckner III
Chief Administrative Judge, Fourteenth
Judicial Circuit

November 13
[Signature], 2015
Walterboro, South Carolina

FILED
2015 NOV 30 AM 10:48
CLERK OF COURT
HAMPTON COUNTY, SC

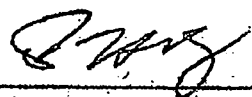
Order of Dismissal
C/A No. 2012-CP-25-102, Hampton CP

WE MOVE FOR DEFENDANT,
American Medical Response, Inc., d/b/a,
Access2Care:


Robert H. Hood (SC #2599)
Robert H. Hood, Jr. (SC #13491)
H. Cooper Wilson, III (SC #74939)

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630
Email: Info@hoodlaw.com

WE CONSENT FOR PLAINTIFF,
Angel Y. Gary, as Personal Representative of
the Estate of Blondell M. Gary:

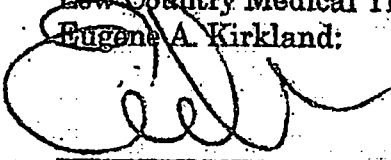

R. Alexander Murdaugh, Esquire
Bert G. Utsey, Esquire
Austin H. Crosby, Esquire

Peters Murdaugh Parker Elzroth & Detrick, PA
P.O. Box 457
Hampton, SC 29924
P: 803-943-2111/F: 803-943-3943
E: amurdaugh@pmped.com
butsey@pmped.com
acrosby@pmped.com

#2
PMB

Order of Dismissal
C/A No. 2012-CP-25-402, Hampton CP

I CONSENT FOR DEFENDANTS,
Low Country Medical Transport, Inc. and
Eugene A. Kirkland:



Erin DuBose Dean, Esquire

Tupper Grimsley & Dean, PA
611 Bay Street
PO Box 2055
Beaufort, SC 29901-2055
P: (843) 524-1116/F: (843) 524-1463
E: erindean@tgdpa.com

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P.B.

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-25-402

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

PLAINTIFF(S)

Low Country Medical Transport, Inc.,
American Medical Response, Inc., d/b/a,
Access2Care, and Eugene A. Kirkland,

DEFENDANT(S)

Submitted by: H. Cooper Wilson, III (SC #74939)
Hood Law Firm, LLC
172 Meeting Street
Charleston, SC 29401

Attorney for: ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☒ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☒ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON
PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

[illegible]

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

ANGEL GARY as Personal
Representative of the Estate of
BLONDELL M. GARY,

Plaintiff,

-versus-

LOWCOUNTRY MEDICAL
TRANSPORT, INC., AMERICAN
MEDICAL RESPONSE, INC., d/b/a
ACCESS2CARE, and EUGENE
A. KIRKLAND

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-25-402

**ORDER APPROVING WRONGFUL
DEATH AND SURVIVAL ACTION
SETTLEMENT**

THIS MATTER CAME BEFORE me on September 1, 2015, upon the calling of the case for trial. Present were R. Alexander Murdaugh and Austin H. Crosby for the Plaintiff; Erin D. Dean for the Defendants Low Country Medical Transport and Eugene Kirkland, Cory Fleming as personal counsel for Hattie Askew, owner of Lowcountry Medical Transport; H. Cooper Wilson for the Defendant American Medical Response, Inc. d/b/a Access2Care. Plaintiff Angel Gary and Ms. Hattie Askew were also present. Defendant Eugene Kirkland was not present at the hearing but counsel presented his signed consent to the settlement which is attached hereto as Court's EXHIBIT A.

Upon the call of the case to trial, counsel for Plaintiff announced that parties have reached a settlement of the case. The terms of the settlement were placed on the record in in open court. Ms. Angel Gary as the duly appointed Personal Representative of the Estate of Blondell Gary was questioned regarding the terms of the settlement and she indicated that she understood the terms and was in agreement of the same for the benefit of the statutory beneficiaries. She

Appendix 12

0040

asked the Court to approve settlement of the wrongful death and survival action.

Upon hearing that the Personal Representative was satisfied with the terms of the settlement, I make the following findings of fact and conclusion of law:

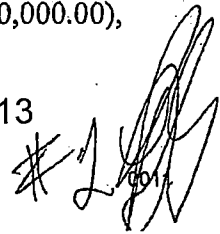
- 1) I find the settlement is fair and reasonable and in the best interest of the statutory beneficiaries;
- 2) That all parties to the action consent to the settlement and the allocation of the Selective policy proceeds as indicated by their respective attorneys and the consent signed by Eugene Kirkland.

It is therefore,

ORDERED, ADJUDGED AND DECREED that Angel Gary, as the duly appointed and qualified Personal Representative of the Estate of Blondell Gary, deceased, and it further appearing that under the conditions set forth in the Petition, said offer is a fair, just and equitable offer of settlement and one which should be approved by this Court, pursuant to §15-51-41, 15-5142 and 62-3-715(24) of the South Carolina Code of Laws, 1976, as amended, it is hereby authorized and directed to accept this offer of compromise and settlement and to execute and deliver a Release of All Claims in favor of the Defendants, their attorneys, heirs, agents, assigns, and employees for any and all claims, expenses, demands, damages for loss of services, grief, sorrow and actions or causes of action which Angel Gary, as the duly appointed Personal Representative of the Estate of Blondell Gary, deceased, may now or hereafter have as a result of the alleged wrongful death of Blondell Gary on or about January 31, 2012, including all claims and causes of action asserted or assertable for the alleged wrongful death under §15-51-10 through §15-51-60, and §15-5-90, all inclusive of the South Carolina Code of Laws, 1976, as amended, as against the Defendants their heirs, agents, assigns and employees. It is further

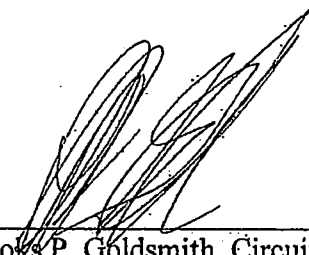
ORDERED, ADJUDGED AND DECREED that the settlement proceeds in the gross amount of Two Million Two Hundred and Fifty Thousand Dollars and no/100 (\$2,250,000.00),

Appendix 13

Handwritten signature and initials, possibly "J. L. [unclear]", in black ink.

shall be distributed as follows:

- a) \$1,331,631.20 shall be apportioned to the wrongful death action. The survival action will be dismissed with prejudice. These apportionments are made pursuant to §15-51-10 through §15-51-60, and §15-5-90, all inclusive, of the South Carolina Code of Laws, 1976; and
- b) \$918,368.88 in attorney's fees & costs.



Brooks P. Goldsmith, Circuit Court Judge

Dated: September 14, 2015

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

ANGEL Y. GARY, AS PR FOR
BLONDELL MARIE GARY,

Plaintiff,

v.

LOWCOUNTRY MEDICAL
TRANSPORT, INC., AMERICAN
MEDICAL RESPONSE, INC., d/b/a
ACCESS2CARE, and EUGENE A.
KIRKLAND;

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2012-CP-25-402

2015 SEP 15 PM 3:31

WILLIAM D. NETTLES
CLERK OF COURT
HAMPTON COUNTY, S.C.

BY _____

CONSENT TO SETTLEMENT

The undersigned hereby acknowledges and directs the payment of \$1,250,000.00 to settle the above-referenced case on his, hers, its behalf and acknowledges that such payment will leave only \$250,000.00 of liability coverage in place for the case of Charles Gary v. Hattie M. Askew, Will Outlaw, and Deboria Outlaw, Ind. and dba Low Country Medical Transport, Low Country Medical Transport, Inc., Eugene A. Kirkland and American Medical Response, Inc. (dba Access2care), civil action no. 2012-CP-07-003595, currently pending in the Court of Common Pleas, Beaufort County, South Carolina. The undersigned further agrees to release and discharge Selective Insurance Company of South Carolina from any and all claims for policy benefits or consequential damages resulting from the investigation, handling, defense, and settlement of both of these lawsuits by virtue of the allocation of \$1,250,000.00 to the wrongful death and survival claim and \$250,000.00 to the related claim in Beaufort County referenced above. The undersigned agrees to sign a formal settlement and release to this effect upon the consummation of the settlement.

Dated: 08/31, 2015

Eugene A. Kirkland
Eugene A. Kirkland

Witness

Appendix 15

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

Angel Y. Gary as PR for Blondell Marie Gary

Plaintiff,

vs.

Lowcountry Medical Transport, Inc., American
Medical Response, Inc., d/b/a. Access2Care, and
Eugene A. Kirkland. In re: Charles Gary,
Purported Surviving Spouse,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2012-CP-25-402

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: R. Alexander Murduagh, Esquire, Bar No. 6996 PO Box 457, Hampton, SC 29924 Phone: Fax (803) 914-2014		Defendant's Attorney: Joseph Dawson, III, Esquire Post Office Box 41367 N. Charleston, SC 29423-1367	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: _____		Court Reporter Needed: ☐ YES / ☐ NO	
Estimated Time Needed: _____			
SECTION II: Motion/Order Type			
☐ Written motion attached ☐ Form Motion/Order			
I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☒ Plaintiff / ☐ Defendant		December 14, 2015 Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ 25.00			
☐ EXEMPT: (check reason)			
☐ Rule to Show Cause in Child or Spousal Support			
☐ Domestic Abuse or Abuse and Neglect			
☐ Indigent Status ☐ State Agency v. Indigent Party			
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief			
☐ Motion for Stay in Bankruptcy			
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)			
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions			
Name of Court Reporter: _____			
☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order.		JUDGE CODE _____	
☐ Other: _____		Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____			
☐ MOTION FEE COLLECTED: \$ _____			
☐ CONTESTED - AMOUNT DUE: \$ _____			

2015 DEC 14 PM 2:08

FILED

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF HAMPTON)

CIVIL ACTION NO.: 2012-CP-25-402

ANGEL Y. GARY AS PR FOR)
BLONDELL MARIE GARY.)

PLAINTIFF,)

V.)

SUMMONS

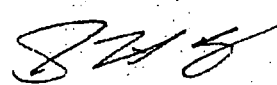
LOWCOUNTRY MEDICAL)
TRANSPORT, INC., AMERICAN)
MEDICAL RESPONSE, INC., D/B/A,)
ACCESS2CARE, AND EUGENE A.)
KIRKLAND, IN RE: CHARLES GARY,)
PURPORTED SURVIVING SPOUSE,)

DEFENDANTS.)

TO: JOSEPH DAWSON, III, ESQUIRE, ATTORNEY FOR CHARLES GARY:

YOU ARE HEREBY SUMMONED and required to answer the petition herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this petition upon the subscriber, at PO Box 457, Hampton, SC 29924, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the petition, judgment by default will be rendered against you for the relief demanded in the petition.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: 

R. Alexander Murdaugh
Bert G. Utsey
Austin H. Crosby
PO Box 457
Hampton, SC 29924
(803) 943-2111

ATTORNEYS FOR PLAINTIFF

December 14th, 2015
Hampton, South Carolina

Appendix 17

IN THE CIRCUIT COURT
CASE NO. 2012-CP-25-402

PETITION TO DETERMINE HEIRSHIP

Plaintiff,
v.

Defendants.

THE PETITIONER WOULD SHOW ONTO THIS HONORABLE COURT AS
FOLLOWS:

1. Blondell M. Gary (hereinafter "Decedent") died on January 31, 2012.
2. On February 15, 2012, the Honorable Francis M. Simon of Beaufort County, South Carolina appointed Angel Gary as Personal Representative of the Decedent's Estate.
3. On November 9, 2012, Angel Gary (Petitioner) commenced this wrongful death action in her capacity as Personal Representative of the Estate of Blondell M. Gary against Lowcountry Medical Transport and American Medical Response.
4. Petitioner thereafter reached a settlement of this wrongful death action and said settlement was approved by the Court.
5. On her Application for appointment as Personal Representative, Petitioner listed Charles Gary as an alleged spouse and potential heir of the Decedent.
6. Since the time of her initial appointment as Personal Representative, the Petitioner has become aware of certain facts that call into question whether Charles Gary was married to the Decedent.

7. Because of the issues as to Charles Gary's claimed heirship, it is necessary for this Court to determine the rightful heirs of the estate pursuant to South Carolina Code § 62-3-705.
8. This court has subject matter jurisdiction to determine the issues contained herein pursuant to South Carolina Code § 62-1-302.

INVALID and VOID MATRIMONY

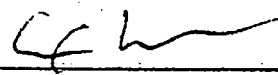
9. The Petitioner is informed and believes that (1) Charles Gary was married to another woman when he unlawfully attempted to marry Blondell Gary, (2) Blondell Gary did not possess the requisite intent to marry Charles Gary, (3) no marriage ceremony ever took place, and (4) that any alleged marriage is void.
10. The Petitioner is informed and believes that the purported Marriage License, as well as, any resulting marriage, is null and void.
11. A license and certificate for marriage was executed on July 31, 1982 between Charles Gary and Doretha Chisholm (See Exhibit A, License and Certificate for Marriage)
12. Charles Gary and Doretha Chisholm were not legally divorced until sometime between December 13, 2000 and January 22, 2001. (See Exhibit B, Final Divorce Decree and Visitation Order)
13. Before Charles Gary was divorced from Doretha Chisholm, he purported to enter into a marriage with Blondell Gary as evidenced by the license and certificate for marriage executed on November 30, 1999. (See Exhibit C, License and Certificate for Marriage between Charles Gary and Blondell M. Young)
14. The Petitioner is informed and believes that the alleged marriage was not consummated by the cohabitation of the Decedent and Charles Gary and should be declared void for want of consent pursuant to S.C. Code § 20-1-530.
15. Any alleged marriage between the parties while Charles Gary had a subsisting marriage is void as a matter of public policy. *Johns v. Johns*, 309 S.C. 199, 420 S.E.2d 856 (1992) citing S.C. Code § 20-1-80 (All marriages contracted while either of the parties has a former wife or husband living shall be void).
16. The Petitioner is informed and believes that the alleged marriage contract, if existing at all, was not entered in good faith and was therefore void.

17. The undersigned attorneys are holding in their trust account net settlement proceeds equal to a spouse's share under the wrongful death statute and seek a determination of heirship from the Court before disbursing same to the appropriate parties.

WHEREFORE, the Petitioner prays for an Order of this Court as follows:

- A. Finding that Charles Gary was not the lawful spouse of the Decedent;
- B. Determining that Angel Y. Gary, Tatanisha G. Whitner, Wade D. McKeithen, and Theodore V. Young are the only rightful heirs of the Decedent;
- C. Authorizing distribution of the net proceeds of the wrongful death settlement to those whom the Court determines to be rightful heirs of Decedent; and
- D. For such other and further relief as this Honorable Court may deem equitable and just.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: 

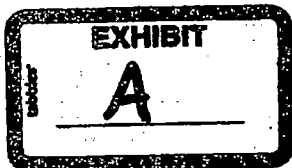
R. Alexander Murdaugh
Bert G. Utsey, III
Austin H. Crosby
PO Box 457
Hampton, SC 29924
(803) 943-2111

ATTORNEYS FOR PLAINTIFF

December 14th, 2015
Hampton, South Carolina

LICENSE AND CERTIFICATE FOR MARRIAGE STATE OF SOUTH CAROLINA COLLETON							
LICENSE NUMBER 38,677		COUNTY COLLETON					
GROOM-NAME (FIRST) Charles (MIDDLE) Cary (LAST)		BIRTHDATE (MONTH, DAY, YEAR) (2a) [REDACTED] (2b) 31		AGE (2c) 31			
(1) BIRTHPLACE (State or foreign country) South Carolina		RACE (4) Black		RESIDENCE (Street and Number) (5a) [REDACTED] (5b) [REDACTED]			
(3) CITY, TOWN OR LOCATION Tennessee		COUNTY (5c) Beaufort		STATE (5d) South Carolina		NO. OF THIS MARRIAGE (1st, 2nd, etc.) 2nd	
(5b) BRIDE-NAME (FIRST) Doretha (MIDDLE) Chisolm (LAST)		BIRTHDATE (MONTH, DAY, YEAR) (8a) [REDACTED] (8b) 27		AGE (8c) 27			
(7) BIRTHPLACE (State or foreign country) South Carolina		RACE (10) Black		RESIDENCE (Street and Number) (11a) [REDACTED] (11b) [REDACTED]			
(9) CITY, TOWN OR LOCATION Tennessee		COUNTY (11c) Beaufort		STATE (11d) South Carolina		NO. OF THIS MARRIAGE (1st, 2nd, etc.) 1st	
(11b) MAIDEN NAME OF BRIDE (If Different From Above) (12) [REDACTED]							
(13) Application for a license was filed with this court at 2:00 P. M. on the 30th day of July, 19 82. These are, therefore, to authorize any person qualified to perform marriage ceremonies to perform the marriage ceremony for the persons above named, and for the so doing this shall be sufficient warrant. Given under my hand and seal at 2:00 P. M. this the 31st day of July, A.D. 19 82.							
[Signature] Signature of Issuing Officer				PROBATE JUDGE FOR COLLETON COUNTY Title of Issuing Officer			
GROOM-Signature (14) Charles Cary				BRIDE-Signature (15) Doretha Chisolm			
I certify that the above named persons were married on (MONTH) DAY (YEAR) 8 - 15 - 82				(16) Place of Marriage Yusamee			
(16a) OFFICIANT-Signature Rev Henry Hays				(17) OFFICIANT-Title Rev.			
(18a) OFFICIANT-Mailing Address Seabrook S.C.				(18b) [REDACTED]			

OHEC 661 REV. 6-71 50M



STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
Family COURT

JUDGEMENT IN A CIVIL CASE

CASE NO. 99-DR-07-1378

Charles Gary

VS Dorothy Chisolm Gary

Plaintiff(s)

Defendant(s)

- ☐ Jury Verdict. This action came before the court for a trial by jury. The issues have been tried and the verdict rendered.
- ☒ Decision by court. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ Action Dismissed. ☐ Rule 12(b), SCRPC ☐ Rule 40 (c) (3), SCRPC
- ☐ Rule 41 (a), SCRPC (Vol. Nonsuit) ☐ Settled
- ☐ Other, Explain: _____
- IT IS ORDERED AND ADJUDGED: ☒ See attached order
- ☐ Statement of Judgement by Court

Dated at Summerville ~~BEAUFORT~~ South Carolina, this 9th day of June 1999

This judgement was entered on the 20 day of July 1999, and a copy mailed first class this 14th day of June 1999, to attorneys of record or to parties (when appearing pro se) as follows:

Hermell Scott, Esq

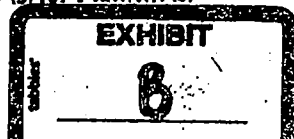
Simoneal S. Stalder, Esq

c.c.c. 7/20/99

Attorney (s) for Plaintiff (s)

Attorney (s) for Defendant(s)

SCRPC Form 4



Michael S. Stalder
Clerk of Court

Appendix 22

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
CHARLES GARY,)
Plaintiff,)
vs.)
DORETHA CHISOLM GARY,)
Defendant.)

IN THE FAMILY COURT
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 98-DR-07-1378

FINAL ORDER

99 JUN 19 PM 2:23
FAMILY COURT
BEAUFORT COUNTY
BEAUFORT, S.C.

DATE OF HEARING : MARCH 23, 1999
PRESIDING JUDGE : NANCY MCLIN
COURT REPORTER : DEBORAH DUBOSE
PLAINTIFF'S ATTORNEY : VERNELL SCOTT
DEFENDANT'S ATTORNEY : SAMUEL S. SVALINA

This action for divorce was commenced by the Plaintiff on September 8, 1998 by the filing of a Summons and Complaint with the Office of the Clerk of Court. The Defendant filed an Answer and Counterclaim on October 26, 1998.

The hearing was held before me on 23rd day of March, 1999. Appearing before me at the appointed time and place was the Plaintiff, Plaintiff's Counsel, Vernell Scott, Esquire, and the Defendant and her counsel, Samuel S. Svalina, Esquire were also present. Prior to the taking of testimony, counsel informed the Court that the parties had reached an agreement between them and desired the Court approve and adopt the agreement as Order.

AGREEMENT

a. The Plaintiff will assume the responsibility and pay for the Sears Charge that is in both of their names. He will be responsible for that debt.

Certified - A True Copy
[Signature]
Clerk of Court
Beaufort County, S.C.

b. There are three automobiles of the marriage, namely a Dodge Van, a Toyota Cressida car and a truck. Plaintiff shall be allowed to retain the truck and the Dodge van. The Plaintiff shall retain the Toyota Cressida. Both parties shall execute all documents necessary to transfer good title to each other.

c. There were three (3) children born of this marriage, namely to wit: April born in November, 1980; Charles II born in October, 1982; and Monaisa Denise born in November, 1992. Plaintiff shall have visitation with the minor children every other weekend and alternating holidays. Plaintiff shall have the children for four (4) weeks during the summer.

d. For the year 1998, the Plaintiff will be allowed to declare two of the children as dependents on his taxes, the Defendant will be allowed to claim one of the children as a dependent. For the remaining years, all of the children shall be claimed as dependents, by the Defendant on her income taxes.

e. Neither party shall make derogatory comments about each other or any other family members around the children. Additionally, there will be no alcohol or illegal substances allowed to be present around any of the children by either party or any of their friends. No paramours shall have overnight visits while in the home of either the Defendant or Plaintiff when the children are present.

f. The Defendant shall be entitled to 37.5% of the Plaintiff's 401K. As of the date (9-8-98) of filing to include any interest earned or money made upon that money as of the date of this order. The Plaintiff shall execute any and all documents necessary in order to ensure that the Defendant can receive the portion of his 401K without any tax consequences.

g. The Defendant will retain the riding lawn mower.

h. Both parties hereby waive any interest each may have in any real property that has been acquired during the marriage or after the marriage and in title in their name.

i. Both parties waive any interest in alimony or support.

j. Child support will be paid pursuant to the South Carolina Child Support Guidelines and shall be paid through the Court with a three (3) percent Court cost to be paid by the Plaintiff. Child Support has been determined to be \$473.48 plus 3% Court costs which shall be paid on a biweekly manner by the Plaintiff. Furthermore, any medical expenses shall be split, 79% to the Plaintiff and 21% to the Defendant.

k. Both parties are mutually restrained from harassing, bothering or molesting either party in any way.

l. Each party shall be responsible for their own attorney fees. *OK*

FINDINGS OF FACTS/CONCLUSIONS OF LAW

Testimony thereafter was taken from the Defendant and the Plaintiff for which the Court makes the following findings of fact:

- a. That this Court has jurisdiction over the parties hereto and the subject matter of this litigation.
- b. Plaintiff and Defendant are citizens and residents of the county of Beaufort, South Carolina and have been so for more than one (1) year prior to the commencement of this action.
- c. That I have received and reviewed the Plaintiff's and Defendant's financial declarations presented at this hearing.
- d. The parties are husband and wife and have been lawfully married on in Beaufort, South Carolina.

August 15, 1982, *OK*

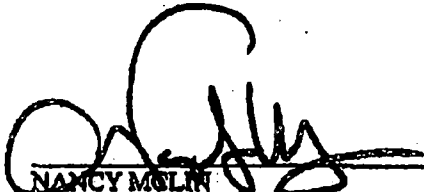
- e. Parties have consented to said agreement, and they request that it be incorporated in the final order of this Court.
- f. It is the intention of the parties to have this Agreement be ratified in a final Order of this Court at a later hearing.
- g. I find that both parties have voluntarily entered into this agreement and believe that this agreement to be fair and equitable.
- h. Considering all factors included in the equitable distribution laws of the State of South Carolina, this Court finds this agreement as stipulated to be fair and equitable to both parties and is in the best interest of the minor children and shall be incorporated into the final order of this Court.
- i. I also find that there was no coercion to enter into this agreement and that both parties were well informed as to financial conditions of the other.

Callery

NOW, IT IS THEREFORE HEREBY ORDERED,

- a. The parties are granted a Decree of Separate Maintenance;
- b. That the Agreement that has been stipulated to this Court is fair and equitable to both parties and is in the best interest of the minor children of the parties and is approved and incorporated as the order of this Court.

IT IS SO ORDERED.


 NANCY MELIN
 PRESIDING JUDGE OF THE FAMILY COURT
 FOR THE FOURTEENTH JUDICIAL CIRCUIT

Summerville
 Summerville, South Carolina
 May 17, 1999
 June 9, 1999

RAIT - Box
AAA - Box
6/19/99

CHILD SUPPORT GUIDELINES 5/94

	Father	Mother
1. Monthly GROSS INCOME	\$ 1,917.00	\$ 500.00
2. Monthly alimony (this action)		
(a.) To be received	+\$ 0.00	+\$ 0.00
(b.) To be paid	-\$ 0.00	-\$ 0.00
3. Other monthly alimony or child support paid (if having priority over this action)	- \$ 0.00	\$ 0.00
4. ADJUSTED MONTHLY GROSS INCOME	\$ 1,917.00	\$ 500.00
COMBINED MONTHLY ADJUSTED GROSS INCOME	\$ 2,417.00	
Number of Children to be Supported in this action:	2	
5. BASIC COMBINED CHILD SUPPORT OBLIGATION (GROSS)	\$ 623.06	
6. Adjustments to Basic Child Support Obligation:		
(a.) Health insurance premium (portion covering children only)	\$ 100.00	\$ 0.00
(b.) Work related child care costs (net of tax credits)	\$ 0.00	\$ 0.00
Total Adjustments to Combined Child Support Ob.	\$ 100.00	\$ 0.00
7. TOTAL COMBINED MO. CHILD SUPPORT OBLIGATION (NET)	\$ 723.06	
8. Proportional share of combined monthly gross income	79.313%	20.687%
9. Gross child support obligation of individual parent monthly.....	\$ 573.48	\$ 149.58
10. Credit for adjustments to basic support obl.	\$ 100.00	\$ 0.00
11. NET CHILD SUPPORT TO BE PAID ON A MONTHLY BASIS	\$ 473.48	\$ 0.00
NET CHILD SUPPORT TO BE PAID ON BIMONTHLY BASIS	\$ 236.74	\$ 0.00
NET CHILD SUPPORT TO BE PAID ON WEEKLY BASIS	\$ 109.27	\$ 0.00
MONTHLY CHILD SUPPORT WITH 3% COURT COSTS ADDED	\$ 487.69	\$ 0.00
BIMONTHLY CHILD SUPPORT WITH 3% COURT COSTS	\$ 243.84	\$ 0.00
WEEKLY CHILD SUPPORT WITH 3% COURT COSTS ADDED	\$ 112.53	\$ 0.00

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
FAMILY COURT

JUDGEMENT IN A CIVIL CASE

CASE NO. 2000-DR-07-661

CHARLES GARY

vs

DORETHA CHISELM GARY

Plaintiff(s)

Defendant(s)

- ☐ Jury Verdict. This action came before the court for a trial by jury. The issues have been tried and the verdict rendered.
- ☒ Decision by court. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

- ☐ Action Dismissed. ☐ Rule 12(b), SCRPC. ☐ Rule 40(c)(3), SCRPC
- ☐ Rule 41(a), SCRPC (Vol. Nonsuit) ☐ Settled
- ☐ Other, Explain: _____

IT IS ORDERED AND ADJUDGED:

☒ See attached order

☐ Statement of Judgement by Court

Dated at BEAUFORT, South Carolina, this 19th day of Jan 2001

S/Jan D. Fender
Judge

This judgement was entered on the 22nd day of January 2001, and a copy mailed first class this 22nd day of Jan 2001, to attorneys of record or to parties (when appearing pro se) as follows:

VERNELL I. SCOTT

C.O.C.

2/6/01

Attorney (s) for Plaintiff (s)

SAMUEL S. SYALINA

Attorney (s) for Defendant(s)

KAREN CULLEN, DEPUTY

Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

CHARLES GARY,

Plaintiff,

vs.

DORETHA CHISOLM GARY,

Defendant.

IN THE FAMILY COURT FOR THE
FOURTEENTH JUDICIAL CIRCUIT

FILE NO.: 2000-DR-07-661

related file: 98-DR-07-1378

**FINAL DIVORCE DECREE and
VISITATION ORDER**

01 JAN 22 PM 4: 58
FAMILY COURT
BEAUFORT COUNTY
S.C.

HEARING DATE:

DECEMBER 13, 2000

PRESIDING JUDGE:

JANE DOWLING FENDER

PLAINTIFF'S ATTORNEY:

VERNELL I. SCOTT, ESQUIRE

DEFENDANT'S ATTORNEY:

SAMUEL S. SVALINA, ESQUIRE

COURT REPORTER:

ROBIN HILD

This action for a Divorce was initiated when Plaintiff filed a Summons and Verified Complaint for Divorce in the Beaufort County Family Court on or about May 19, 2000. The Defendant was properly served. She filed an Answer and Counterclaim by and through her attorney, Samuel Svalina, Esquire. Also present was one corroborating witness for the Plaintiff.

9051
Prior to taking any testimony the Court inquired of the Plaintiff whether there was any possibility of reconciliation, the Court was informed that no reconciliation was possible. The Court reviewed the pleadings, heard the argument of the attorneys, and heard the testimony makes the following findings of fact and conclusions of law:

1. Plaintiff and Defendant are citizens and residents Beaufort County, in the State of South Carolina and have so resided for a period in excess of one year prior to the initiation of this action.
2. The parties were lawfully married to each other on August 15, 1982 in Colleton County, South Carolina; that the parties last lived together as husband and wife in the state of South Carolina on or about August 28, 1998.
3. The issues related to the parties' marital property were resolved pursuant to an Agreement and resulting Order of this Court entitled "Final Order" in matter entitled CHARLES GARY vs. DORETHA CHISOLM GARY, matter number 98-DR-07-1378 and dated June 9, 1999.

Certified - A True Copy

[Signature]
Family Court
Beaufort County, SC

Appendix 29

4. The parties are the parents of three children, one of whom is a minor, to wit: Monalija Denize Gary, whose date of birth is November 5, 1993 and no other children are expected.
5. Plaintiff is entitled to a Divorce, a vinculo matrimonii, from the Defendant on the grounds of having lived separate and apart for more than one year without cohabitation.
6. Defendant is entitled to resume her maiden name of "Doretha Chisolm".

Re: Custody, child support and visitation

7. Defendant will retain custody of the parties' minor child, Monalija Denize Gary, subject to Plaintiff's regularly scheduled visitation privileges.
8. Plaintiff's monthly gross income is one thousand nine hundred and seventeen dollars and Defendant's imputed income is eight hundred and seventy-six dollars per month which amount is based upon the minimum wage of \$5.15 per hour.
9. Plaintiff shall pay child support in the amount of three hundred forty dollars (\$340.00) plus the Court's three percent (3%) administrative fee in the amount of ten dollars and twenty cents (\$10.20) for a total monthly amount of three hundred fifty dollars and twenty cents (\$350.20) per month, said payments shall be paid through the Beaufort County Family Court by wage withholding. (See attached Child Support Worksheet)
10. 9057 Plaintiff is entitled to regularly scheduled visits with the parties minor child as follows: for three months, beginning on Saturday December 16, 2000 Plaintiff shall pick up the parties' child at 10:00 a.m. and return the child at 2:00 p.m.; this temporary visitation schedule shall continue on alternate Saturdays until February 24, 2001.
11. Thereafter, beginning the 9th of March, 2001, Plaintiff shall exercise regularly scheduled visitation will commence as follows:
 - a. Alternating Weekends: every other weekend from Friday at 6:00 p.m. until Sunday at 6:00 p.m.
 - b. Summer visitation: Two weeks selected by Plaintiff with notice to Defendant by certified mail on or before the 15th of May. Failure to give notice as required will result in Defendant selecting the weeks for visitation, but will not result in a denial of visitation.
 - c. Holidays: All Major Holidays are to be alternated by the parents:
 - (1) Christmas

Week one: 6:00 p.m. the day school dismisses for the holidays in the district where the children reside until 2:00 p.m. on Christmas Day. (Odd years with Plaintiff.)

Week two: 2 p.m. on Christmas Day until 6:00 p.m. the day before school reconvenes. (Even years with the Plaintiff)

(2) Thanksgiving: 6:00 p.m. Wednesday until 6:00 p.m. Sunday (Odd years with Plaintiff)

(3) Spring Break: 6:00 p.m. on the day school dismisses until 6:00 p.m. on the day before school reconvenes (Odd years with the Plaintiff)

(4) Mother's Day: 6:00 p.m. Friday until 6:00 p.m. Sunday every year with Defendant.

(5) Father's Day: 6:00 p.m. Friday until 6:00 p.m. Sunday every year with the Plaintiff

d. Telephone:

Initiated by Plaintiff: Each Wednesday, during the week when there is no weekend visitation between 6:30 p.m. and 8:30 p.m. for not to exceed 30 minutes at his expense.

Initiated by Children: As often as the child wishes to call (at the expense of the parent called).

e. Notice: Visiting parent must give 24 hours notice of intention not to visit.

f. Pickup/Delivery for Visitation: Plaintiff will pick up the children from Defendant's home - Defendant is not to exit the home nor is Plaintiff to enter the home the child is to be sent to meet Plaintiff or Plaintiff's designate.

Other: When Plaintiff is unable to pick up the child, Plaintiff may send his sister or his mother to pick up the child for him.

g. Visiting parent is allowed a total of thirty minutes grace period. That is, he may be no more than thirty minutes late in picking up the children or in returning the children to the custodial parent, unless the parties have agreed to a change in the pick up and/or the return time.

h. General information:

(1) All holiday visitation takes precedence over regular weekend visitation. Alternating weekends are reset after each holiday period. (Example: the visiting parent would not have Thanksgiving weekend and the weekend after Thanksgiving).

90F3

- (2) Parents may designate a responsible adult to assist them with the exchange of the children for visitation (bearing in mind the Restrictions listed herein).
- (3) Parents must keep one another informed at all times of their work address(es) and telephone number(s) as well as their home address and telephone number.

7. Mutual Restrictions

- 1. Neither parties may expose the child to violent conduct;
- 2. Neither party may expose the child to non-spouse overnight romantic companions;
- 3. Neither party may expose the child to immoral or illegal activities;
- 4. Neither party may expose the child to sexually explicit materials of any kind;
- 5. Neither party may discuss this case with or in the presence of the child;
- 6. Neither party may make or allow disparaging comments about the other parent or family in the presence of the child;
- 7. Neither party may use or allow vulgar, profane, demeaning or violent language around the child;
- 8. Both parties are restrained from harassing or threatening the other party in any way.

NOW THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT

- 90F.4
- A. Plaintiff is granted a decree of Divorce from the Defendant, a vinculo matrimonii, upon the grounds of living separate and apart for a period in excess of one year,
 - B. The parties are warned that violations of the visitation schedule are punishable by the full force of this Court's contempt powers;
 - C. The prior Order of this Court shall remain in full force and effect with the exception of the child support provisions,
 - D. Plaintiff shall pay child support in the amount of three hundred forty dollars (\$340.00) plus the Court's three percent (3%) administrative fee in the amount of ten dollars and twenty cents (\$10.20) for a total monthly amount of three hundred fifty dollars and twenty cents (\$350.20) per month; and
 - E. Both parties are barred from any and all forms of spousal support.
 - F. Defendant may resume her maiden name of Doretha Chisokn.

AND IT IS SO ORDERED!

Jane D. Fender
The Honorable Jane Dowling Fender
Presiding Judge, 14th Judicial Circuit

Dated: Jan 19, 2001
Beaufort South Carolina

South Carolina Department of Social Services
CHILD SUPPORT OBLIGATION: WORKSHEET A

Charles Gary
Name of Plaintiff

vs. Doretha Chisolm
Name of Defendant

00-DR-07-461
File Number

	Father	Mother	
1. Monthly Gross Income:	<u>1,917</u>	<u>878</u>	
2. Monthly Alimony (This Action)	☐ Imputed	☒ Imputed	
a. To Be Received:	<u>0</u>	<u>0</u>	
b. To Be Paid:	<u>0</u>	<u>0</u>	
3. a. Other Monthly Alimony or Child Support Paid: (If Having Priority Over This Action)	<u>0</u>	<u>0</u>	
b. Adjustment for <u>0</u> <u>0</u> Other Child(ren) in the Home:	<u>0</u>	<u>0</u>	
4. Adjusted Monthly Gross Income:	4(F) <u>1,917</u>	4(M) <u>878</u>	4(C) <u>2,795</u> 4(F) + 4(M) = 4(C)
Number of Children To Be Supported By Order In This Action: 1			
5. Basic Combined Child Support Obligation (Gross): (From Schedule, Using Combined Monthly Adjusted Gross Income (Line 4(C))			6(C) <u>486</u>
6. Adjustments to Basic Child Support Obligation			
a. Health Insurance Premium: (Portion Covering Children Only)	<u>0</u>	<u>0</u>	
b. Child(ren)'s Extraordinary Medical Expenses:	<u>0</u>	<u>0</u>	
c. Work-related Child Care Costs Adjusted For Federal Tax Credit: Actual <u>0</u> x 0.75 =	<u>0</u>	<u>0</u>	
(0.75 adjusts for Federal Tax Credit but does not apply for certain income levels; see instructions)			
Total adjustment to Basic Combined Child Support Obligation:	6(F) <u>0</u>	6(M) <u>0</u>	6(C) <u>0</u>
7. Total Combined Monthly Child Support Obligation: (Net)			7(C) <u>486</u> 6(C) + 6(C) = 7(C)
8. Proportional Share of Combined Monthly Adjusted Gross Income:	8(F) <u>68.84%</u> 4(F) / 4(C) = 8(F)	8(M) <u>31.16%</u> 4(M) / 4(C) = 8(M)	
9. Gross Child Support Obligation of Individual Parent: (Monthly)	9(F) <u>340</u> 7(C) x 8(F) = 9(F)	9(M) <u>146</u> 7(C) x 8(M) = 9(M)	
Complete Items 10-11 for Non-Custodial Parent Only:			
Non-Custodial Parent is: (Check One)	Father ☒	Mother ☐	
10. Credit for Adjustments to Basic Combined Child Support Obligation: (From Item 6(F) or Item 6(M))	10(F) <u>0</u> (Same as Item 6(F))	10(M) <u>0</u> (Same as Item 6(M))	
11. Net Child Support To Be Paid To Custodial Parent:	11(F) <u>340</u> 9(F) - 10(F) = 11(F)	11(M) <u>0</u> 9(M) - 10(M) = 11(M)	
Date: <u>January 8, 2001</u>			
Worksheet Prepared by: <u>Vernell J. Scott</u>			
For: Father ☒ Mother ☐			

Note: If deviation from the Guidelines is necessary, please specify reasons (over).

Diagnostic Information

7

Charles Gary
Name of Plaintiff

vs.

Doratha Chisolm
Name of Defendant**00-DR-07-661**
File Number**Miscellaneous Payment Options:**

	<u>Gross Obligation</u>	<u>3% Fee</u>	<u>Gross Obligation Plus 3% Fee</u>
Monthly	<u>340.00</u>	<u>10.20</u>	<u>350.20</u>
Semi-monthly	<u>170.00</u>	<u>5.10</u>	<u>175.10</u>
Bi-weekly	<u>156.92</u>	<u>4.71</u>	<u>161.63</u>
Weekly	<u>78.46</u>	<u>2.35</u>	<u>80.81</u>

Other Children In the Home:

Father has 0 additional child(ren) in the home for which the calculated deduction is \$0

Mother has 0 additional child(ren) in the home for which the calculated deduction is \$0

Calculation of Work-related Child Care Costs (net of tax credit):

	<u>Father</u>	<u>Mother</u>
Total Monthly Work-related Child Care Cost	<u>0</u>	<u>0</u>
Number of Children with Parent (Present Action)	<u>1</u>	<u>1</u>
Percentage of Costs Included in Obligation	<u>100%</u>	<u>100%</u>
Monthly Child Care Cost Net of Credit	<u>0</u>	<u>0</u>

NOTES:

1. No credit is calculated when the custodial parent's income is below a level at which the credit cannot be utilized for tax purposes. See Child Support Guidelines Handbook for details.
2. No credit is calculated for a parent without custody of a child.

LICENSE AND CERTIFICATE FOR MARRIAGE

STATE OF SOUTH CAROLINA
COLLETON COUNTY

0000031445

LICENSE NUMBER

GROOM-NAME (1) CHARLES (FIRST) GARY (LAST)		BIRTHDATE (MONTH DAY YEAR) (2) [REDACTED]	AGE (2b) 48
BIRTHPLACE (State or foreign country) (3) SOUTH CAROLINA	RACE (4) BLACK	RESIDENCE (Street and Number) (6) [REDACTED]	
CITY, TOWN, OR LOCATION (5a) YEMESSEE	COUNTY (5c) BEAUFORT	STATE (5d) SOUTH CAROLINA	NO. OF THIS MARRIAGE (5f) 340 (2nd, etc.)
BRIDE-NAME (7) BLONDELL (FIRST) MARIE (MIDDLE) YOUNG (LAST)		BIRTHDATE (MONTH DAY YEAR) (8) [REDACTED]	AGE (8b) 43
BIRTHPLACE (State or foreign country) (9) SOUTH CAROLINA	RACE (10) BLACK	RESIDENCE (Street and Number) (11) [REDACTED]	
CITY, TOWN, OR LOCATION (11a) BURTON	COUNTY (11c) BEAUFORT	STATE (11d) SOUTH CAROLINA	NO. OF THIS MARRIAGE (11f) 3 (2nd, etc.)
MAIDEN NAME OF BRIDE (If different from above) (13) BLONDELL MARIE MYERS			

Application for a license was filed with this court at 12:00 P 12TH NOVEMBER 99 M., on the day of . These are, therefore, to authorize any person qualified to perform marriage ceremonies to perform the marriage ceremony for the persons above named and for the so doing this shall be sufficient warrant. Given under my hand and seal

at 8:30A 13TH NOVEMBER 99 M., this the day of , A.D. .
[Signature] JUDGE OF PROBATE COURT

GROOM-Signature (14) <u>Charles Gary</u>	BRIDE-Signature (15) <u>Blondell Young Marie</u>
I certify that the above named persons were married on <u>11-30-99</u> (MONTH) (DAY) (YEAR)	
OFFICIANT-Signature (16) <u>Bishop John D. Jones</u>	Place of Marriage (17) (CITY) (COUNTY) STATE <u>Sheldon Beaufort</u> <u>BEAUFORT</u> <u>SOUTH CAROLINA</u>
OFFICIANT-Mailing Address (18a) <u>Bishop John D. Jones P.O. Box 984 Hardeeville SC 29927</u>	OFFICIANT-Title (18b) <u>Bishop & Pastor</u>

DHEC 0681 (12/1998)

PROBATE JUDGE

ATTEST: A TRUE COPY

Kellie D. Tuten
Clerk, Probate Court
Colleton County, South Carolina
12/10/2014



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF HAMPTON)

CASE NO. 2012-CP-25-402

Angel Y Gary as PR for the Estate of
Blondell Marie Gary,

PLAINTIFF,

vs.

Lowcountry Medical Transport, Inc.,
American Medical Response, Inc.,
d/b/a Access2care, and Eugene A.
Kirkland,

In re: Charles Gary, Purported
Surviving Spouse,

DEFENDANTS

ANSWER/RETURN TO PETITION
TO DETERMINE HEIRSHIP

FILED
JAN 13 PM 2:47
KIM D. NETTLES
CLERK OF COURT
HAMPTON COUNTY, S.C.

Charles Gary (hereinafter "Mr. Gary") hereby answers the Plaintiff's Petition to Determine Heirship, subject to any and all affirmative defenses, qualifications, motions and any other pleadings, as follows:

1. Each and every allegation not specifically admitted herein is denied.
2. Mr. Gary admits the allegations contained in Paragraphs 1, 2, 3, and 4.
3. Mr. Gary denies the allegations as stated in Paragraph 5 and affirmatively alleges that he was unequivocally identified as the surviving spouse and beneficiary of the Estate and that at no time prior to Judge Buckner's November 13, 2015, Consent Order of Dismissal dismissing this case did the Estate challenge Mr. Gary's surviving spousal status it claimed in its Beaufort County Probate Court filings.
4. Mr. Gary denies Paragraphs 6 and 7.

Appendix 36

5. The allegations contained in Paragraph 8 are legal conclusions requiring no Answer.
6. Mr. Gary denies the allegations in Paragraph 9 and 10.
7. Mr. Gary admits Paragraph 11.
8. In response to Paragraphs 12, 13, 14, 15, and 16, Mr. Gary denies the allegations as stated in the Petition.
9. The statement contained in Paragraph 17 requires no Answer.

AFFIRMATIVE DEFENSES

10. The Estate is judicially bound by the admissions in its pleadings that Mr. Gary is the surviving spouse and a beneficiary of the Estate of Blondell M. Gary. Therefore, the Estate is barred by the doctrine of Judicial Estoppel from asserting a position contradictory of, or inconsistent with, its pleadings and the facts which are admitted by the pleadings are taken as true against the Estate for the purpose of the action. See, Postal v. Mann, 308 S.C. 385, 418 S.E.2d 322 (Ct.App.1992); see also, Mr. Gary's Notice of Motion and Motion to Enjoin the Estate, Charles Gary v. Angel Gary as Personal Representative of the Estate Blondell Gary, Case Number 2014-CP-07-2691 attached hereto, which is pending in the Beaufort County Circuit Court.
11. The Estate's claims are barred by the doctrines of waiver, estoppel, unclean hands, and acquiescence. At the time the Estate agreed to the Order Approving Wrongful Death and Survival Action Settlement (Order of Judge Goldsmith, dated September 14, 2015) the Estate identified Mr. Gary as the surviving spouse in its probate filings. Pursuant to S.C. Code Ann. § 15-51-42 (B) and (C) the Personal Representative was required to identify "the statutory beneficiaries of the wrongful

death or survival action" to obtain Court approval of a Wrongful Death settlement. In addition, the Estate consented to the Order of Dismissal of this case with prejudice (Consent Order of Judge Buckner, dated November 13, 2015) without disputing Mr. Gary's status as a beneficiary of the Estate and/or his status as surviving spouse, notwithstanding the Estate's knowledge of the issues it raises in its Petition. Therefore, the Estate's claims are now barred.

12. The Estate's challenge to Mr. Gary status as a beneficiary is barred, because Judge Buckner's November 13, 2015, Consent Order of Dismissal with Prejudice acts as an adjudication on the merits and therefore precludes subsequent litigation just as if the action had been tried to a final adjudication. See, Laughon v. O'Braitis, 360 S.C. 520, 602 S.E.2d 108 (Ct.App.2004), citing, Jones v. City of Folly Beach, 326 S.C. 360, 366, 483 S.E.2d 770, 773 (Ct.App.1997).

WHEREFORE, Mr. Gary prays for the Court to dismiss Plaintiff/Petitioner's Petition to Determine Heirship and enter an Order directing the Petitioner to pay Mr. Gary his spousal share of the settlement proceeds, and to award whatever additional and further relief it deems just and proper.

ATTORNEY FOR CHARLES GARY



JOSEPH DAWSON, III, Esquire

Post Office Box 41367

North Charleston, South Carolina 29423

Telephone: (843) 207-9004

Facsimile: (844) 288-7399

January 12, 2016
North Charleston, SC

CERTIFICATE OF SERVICE

I CERTIFY THAT ON THIS DATE A COPY OF THE FOREGOING WAS SERVED ON
OPPOSING COUNSEL BY MAILING OR HAND-DELIVERY IN THE MANNER PRESCRIBED
BY THE APPLICABLE RULES OF CIVIL PROCEDURE.

THIS 12th DAY OF JANUARY, 2016.



Appendix 38

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-07-2691

CHARLES GARY,)
PLAINTIFF,)

vs.)

ANGEL Y. GARY as Personal)
Representative of the Estate of)
BLONDELL M. GARY)
DEFENDANT)

NOTICE OF MOTION AND MOTION
TO ENJOIN DEFENDANT AND TO
COMPEL DISBURSEMENT OF
SETTLEMENT FUNDS

2015 DEC 14 AM 9:00
JERRI ANN ROSE
BEAUFORT COUNTY
CLERK OF COURT

TO: R. ALEXANDER MURDAUGH, ESQUIRE AND AUSTIN H. CROSBY, ESQUIRE,
ATTORNEYS FOR THE DEFENDANT ANGEL Y. GARY AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF BLONDELL M. GARY

YOU WILL PLEASE TAKE NOTICE that the Plaintiff Charles Gary (Mr. Gary) through his undersigned attorney will move before the presiding judge of the 14th Judicial Circuit, as soon as the Plaintiff may be heard for an Order enjoining the Defendant from taking a position contradictory and/or inconsistent with the pleadings in this case (as well as before the Hampton County Circuit Court and the Beaufort County Probate Court) asserting that Mr. Gary is not a beneficiary of the Estate of Blondell M. Gary,¹ because the Estate is judicially bound by the admissions in its pleadings. See, Postal v. Mann, 308 S.C. 385, 418 S.E.2d 322 (Ct.App.1992).

In addition, the Plaintiff also seeks an Order enjoining and directing the Defendant to disburse settlement funds to the Plaintiff resulting from a Wrongful Death settlement in a case styled Angel Y. Gary as Personal Representative of the Estate of Blondell M. Gary v. Lowcountry

¹ On Friday, December 11, 2015, the Defendant's Counsel informed the Plaintiff's Counsel for the first time that the Estate disputes whether Mr. Gary was the decedent's spouse as the basis for establishing a fee dispute to withhold settlement funds from the Plaintiff.

Medical Transport, Inc., American Medical Response, Inc., d/b/a, Access2Care, and Eugene A. Kirkland, 2012-CP-25-402 (hereinafter "Wrongful Death Case"). Also, the Plaintiff seeks

sanctions, as well as such other further relief this Court may grant based on the following grounds:

1. The Plaintiff, Mr. Gary, is an amputee and paraplegic, who lost the use of his lower body in 2004. On January 31, 2012, Mr. Gary and his wife, the decedent, who was Mr. Gary's sole means of comfort and support were involved in a single ambulance accident, while they were returning home from Mr. Gary's medical appointment. The collision caused severe and serious injuries to Mr. Gary and killed his wife Blondell M. Gary, who died intestate.

2. On February 14, 2012, Angel Y. Gary, Mr. Gary and the decedent's daughter, filed an Application for Appointment as Personal Representative for the Estate of Blondell M. Gary. Estate of Blondell M. Gary, Case Number 12-CP-07-00140. In that matter and on the decedent's Death Certificate, Angel Y. Gary identified Mr. Gary as the spouse of the Decedent Blondell M. Gary. (*See Exhibit "A" Application for Appointment of Personal Representative and Exhibit "B" Death Certificate of Blondell Gary*). To date, Angel Y. Gary has not sought to amend or alter any pleading before the Beaufort County Probate Court to retract this declaration or challenge Mr. Gary's status as a beneficiary. Moreover, as recent as September 3, 2015, a hearing was held on Mr. Gary's Petition for Removal of Angel Y. Gary as Personal Representative for the Estate of Blondell M. Gary, before the Beaufort County Probate Court. (*See Exhibit "C" Notice of Hearing, Petition for Removal of Angel Y. Gary as Personal Representative for the Estate of Blondell M. Gary*). At no time during that hearing or in the Estate's Answer to Mr. Gary's Petition did the Defendant assert that Mr. Gary was not a beneficiary of the Estate.

3. As a result the Estate's injuries and damages, on November 9, 2012, the Estate of Blondell M. Gary filed the Wrongful Death Case. In the Estate's Wrongful Death complaint, the Estate

alleged that "Blondell Gary (hereinafter "Blondell"), on behalf of her husband, Charles Gary, contracted with American Medical Response to provide non-emergency medical transport on the day in question." (*See Exhibit "D" Wrongful Death and Survival Action, Complaint ¶5*).

4. The Defendant has settled the Wrongful Death Case and the matter has been dismissed with prejudice. (*See, Exhibit "E" Order Approving Wrongful Death and Survival Action Settlement, dated September 14, 2015 and Exhibit "F" Order of Dismissal, dated November 13, 2015, and filed November 30, 2015*). The Defendant did not seek to withdraw, alter or amend its pleadings to retract Mr. Gary's status as spouse and beneficiary.

5. Furthermore, Mr. Gary filed this Declaratory Judgment Action, because the Estate claimed that Mr. Gary must and/or intended to compel him to seek recovery of certain damages in the Wrongful Death Case that he is seeking to recovery in his Personal Injury Case and that a justiciable case or controversy exists between the parties.² (*See Exhibit "G" Declaratory Judgment Action Complaint ¶ 12 and ¶ 16*). In its Answer to Mr. Gary's Complaint, the Defendant admitted that it intended to compel Mr. Gary to pursue his Loss of Consortium/Companionship of Spouse cause of action as a beneficiary in the Wrongful Death case. (*See Exhibit "H" Declaratory Judgment Action Answer of Defendant ¶ 7 and ¶ 10*).

6. In addition, Mr. Gary alleged in his Complaint that "Mr. Gary is a beneficiary of the Estate of Blondell M. Gary." (*Exhibit "G" Declaratory Judgment Action Complaint ¶ 1*). He also alleged that Blondell Gary was his wife. (*Exhibit "G" Declaratory Judgment Action Complaint ¶*

4). The Defendant admitted these allegations in its Answer. (*Exhibit "H" Declaratory Judgment*

² Mr. Gary filed a lawsuit on October 16, 2012, as result of his injuries and damages in an action styled Charles Gary v. Hattie M. Askew, Will Outlaw, and Deboria Outlaw, individually and D/B/A Low Country Medical Transport, Low Country Medical Transport Inc., Eugene A. Kirkland, and American Medical Response Inc., (D/B/A Access2Care), 2012-CP-07-3595 (hereinafter "Personal Injury Case"). This matter is on appeal in the South Carolina Court of Appeals, because of an Order on Summary Judgment in favor of Mr. Gary on his Negligence and Loss of Consortium/Companionship of Spouse causes of action.

Action Answer of Defendant ¶ 2 and ¶ 4). The Defendant has not heretofore sought leave of this Court to withdraw, alter, or amend its responsive pleadings on this matter retracting Mr. Gary's beneficiary and/or spousal status.

7. Upon information and belief, the Estate has disbursed settlement funds to all beneficiaries and the Estate's attorneys, but has refused to disburse settlement funds to Mr. Gary, despite the fact that the Wrongful Death Case was dismissed on November 30, 2015. Upon information and belief, the Estate now claims that Mr. Gary is not a beneficiary of the Estate, because his Marriage Certificate with Blondell Gary predates his Final Order of Divorce from his previous wife in 2001.³

8. The Estate has known about the Marriage Certificate in relation to the Final Order of Divorce issue during the pendency of its Wrongful Death Case in Hampton County, the Beaufort County Probate Court proceedings, and this case. However, the Estate has elected to press its claim that Mr. Gary is a beneficiary of the Estate in the Wrongful Death Case to bolster the Estate's potential damages.

9. Under South Carolina law, the Defendant is judicially bound by its pleadings and it cannot contradict its previous position that Mr. Gary is the decedent's spouse and a beneficiary of the Estate. South Carolina law provides that:

It is well settled that parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise. The allegations, statements, or admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the action.

³ Plaintiff's Counsel has attempted to communicate with the Defendant's Counsel regarding the status and payment of settlement funds since the parties resolved a motion/Petition for Removal of Angel Y. Gary as Personal Representative for the Estate of Blondell M. Gary on September 3, 2015. As recent as November 30, 2015, Counsel for Defendant indicated that he needed a signature from the driver of the ambulance who caused the accident before he could disburse the settlement funds. (*See Exhibit "I" email from Joseph Dawson, III, Esq. to R. Alexander Murdaugh, dated December 2, 2015*). The first time Counsel for the Defendant indicated that there was a fee dispute was at 5:45 p.m. on Friday, December 11, 2015, when Counsel for the Estate indicated that all parties have been provided with their portion of the settlement, except Mr. Gary, because the Personal Representative has asserted that Mr. Gary is not a beneficiary.

Postal v. Mann, 308 S.C. 385, 418 S.E.2d 322 (Ct.App.1992).

10. Since the Estate's Wrongful Death Case has been dismissed with prejudice and the Estate has not sought to amend its filings with the Beaufort County Probate Court or this Court, this Court should enjoin the Defendant from asserting Mr. Gary is not a beneficiary of the Estate and the spouse of Blondell M. Gary for the purpose of withholding settlement funds otherwise disbursed to the other beneficiaries. The Estate is judicially bound by its pleadings and the Estate cannot take a position contradictory of, or inconsistent with the pleadings in the Wrongful Death Case (or the other cases) that Mr. Gary is not a beneficiary.

11. Furthermore, the Court should impose sanctions against the Defendant because it has vigorously asserted that Mr. Gary is a beneficiary of the Estate to obtain a favorable settlement in the Wrongful Death Case but now claims Mr. Gary is not entitled to his portion of the settlement, because his beneficiary status is somehow in dispute.

In compliance with Rule 11, SCRPC, Plaintiff's Counsel has communicated with Counsel for the Defendant and has attempted in good faith to resolve the matter contained in the motion. Counsel for the Plaintiff seeks an Order from the Court enjoining the Defendant from taking a position contradictory of, or inconsistent with the pleadings relating to Mr. Gary's status as a beneficiary. Also the Plaintiff seeks an Order directing the Defendant to disburse Mr. Gary his statutory portion of the settlement funds from the Wrongful Death Case settlement and for the Court to impose sanctions on the Defendant and for any further relief as determined by the Court. This motion is based upon the pleadings, South Carolina Rules of Civil Procedure, applicable case law and statutes, and such other matters as may be presented at the hearing on this matter.

CHARLES GARY

A handwritten signature in dark ink, appearing to read "Joseph Dawson, III". The signature is written over a horizontal line and includes a large, stylized initial "J" and a circled "D" at the end.

JOSEPH DAWSON, III, Esquire

Post Office Box 41367

North Charleston, South Carolina 29423

Telephone: (843) 207-9004

Facsimile: (844) 288-7399

December 14, 2015
North Charleston S.C.

STATE OF SOUTH CAROLINA

COUNTY OF: BEAUFORT

IN THE MATTER OF: BLONDELL M. GARY

IN THE PROBATE COURT

CASE NUMBER:

*ONLY COMPLETE IF FILING PETITION FOR
FORMAL TESTACY AND/OR APPOINTMENT

*ANGEL Y. GARY

Petitioner

vs.

Respondent(s) (if applicable)

APPLICATION FOR

(check any that apply)

*PETITION FOR

INFORMAL

FORMAL

☐ PROBATE OF WILL

☒ APPOINTMENT

☐ TESTACY

☐ APPOINTMENT

Applicant/Petitioner: Angel Y. Gary

Address:

Telephone:

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. Give your relationship to the decedent, if any, and your interest in this proceeding.

Daughter

2. Decedent information

Name: Blondell M. Gary

Last Four Digits of Social
Security Number:

Date of Birth:

Date of Death: January 31, 2012

Age at date of death: 57

Domicile at date of death:

Hampton

(county)

SC

(state)

3. Venue for this proceeding is proper in this county because:

☒

Decedent was domiciled in this county at date of death.

☐

Decedent was not domiciled in South Carolina, but property of Decedent was located in this county at date of death.

☐

Decedent has a right to take legal action in this county because:

- 4.a. Names and addresses of devisees in the Will, including dates of birth of minors. If there are no minors, so state.

Name	Date of Birth	Address	Relationship to Decedent

(use additional sheet if necessary)

- 4.b. Names and addresses of intestate heirs who are not devisees, including dates of birth of minors. If there are no minors, so state. Intestate heirs are the persons who would inherit if the decedent left no will.

Name	Date of Birth	Address	Relationship to Decedent
Charles Gary			Spouse
Angel Y. Gary			Daughter
Tatanisha S. Gary			Daughter

(use additional sheet if necessary)

5. Did decedent have any change of marital status or the birth or adoption of any children after execution of this will, if one exists, or has any child of the decedent been born since his death, or is any birth of a child of the decedent anticipated? (This includes illegitimate children.)
- ☒ NO ☐ YES If yes, please explain, on page 3.
6. To the best of your knowledge, was the decedent a patient in a South Carolina Mental Health facility during his/her lifetime?
- ☒ NO ☐ YES If yes, please explain, on page 3.
7. Has a guardian or conservator ever been appointed for this person?
- ☒ NO ☐ YES If yes, please explain on page 3.
8. Has a personal representative of the decedent been appointed prior to this date by a Court in this state or elsewhere?
- ☒ NO ☐ YES If yes, please state details, including name and address of such Personal Representative on page 3.
9. Have you received or are you aware of any demands for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere?
- ☒ NO ☐ YES If yes, please state details, including names and addresses on page 3.
10. Have more than ten years passed since the decedent's death?
- ☒ NO ☐ YES If yes, please state circumstances authorizing tardy probate on page 3.

11. The decedent died with a personal estate of about the value of \$100 and real estate of about the value of \$100. (A full inventory and appraisal, Form #350PC, must be filed within 90 days.) If decedent was non-resident, please attach South Carolina Commission form ET 101.

12. After the exercise of reasonable diligence, are you aware of any unrevoked Will and/or Codicil(s), other than the one(s) attached hereto, relating to property in this State?

☒ NO ☐ YES If yes, please explain on page 3 and then proceed to Section II.

II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the decedent's Will:

- ☐ The original is attached
☐ The original is in the Court's possession
☐ An authenticated copy of a Will probated in another jurisdiction is attached
☐ An authenticated copy of a Will not probated in another jurisdiction is attached
☐ The Will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached

2. Do you believe, to the best of your knowledge, the Will described above was validly executed?

☐ YES ☐ NO If no, please explain on page 3.

3. The date of execution of the Will was: _____
Codicil(s): _____

4. Are you aware of any instrument or document amending or revoking the Will?

☐ NO ☐ YES If yes, please explain on page 3.

5. Have you exercised reasonable diligence to determine there is no instrument or document revoking the Will?

☐ YES ☐ NO If no, please explain on page 3.

6. Do you believe the Will defined in "1" above is the decedent's last Will?

☐ YES ☐ NO If no, please explain on page 3.

COMPLETE EXPLANATION (S) FOR QUESTIONS IN SECTIONS I and II HERE.
(If more space is required, use additional sheet.)

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. The name(s) and address(es) of the proposed Personal Representative(s) is/are:
2. Priority for this appointment is:
 - ☐ named as Primary Personal Representative in Will
 - ☐ named as Alternate Personal Representative in Will
 - ☐ nominee of above Primary Personal Representative in Will
 - ☐ nominee of above Alternate Personal Representative in Will
 - ☐ surviving spouse of decedent who is devisee of decedent or nominee of said spouse
 - ☐ other devisee of decedent, (describe): _____ or nominee of said devisee
 - ☐ surviving spouse of decedent or nominee of said spouse
 - ☒ other heir of decedent (describe): Daughter
 - ☐ creditor (Forty-five days after death must have passed), or nominee of creditor
 - ☐ other (describe): _____
3. List below the names of any other persons, if any, having a prior or equal right of appointment (see priority above).

Charles Gary

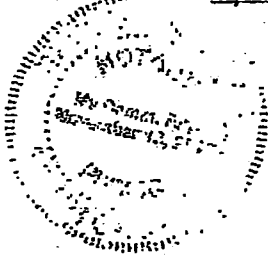
IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 14th day of February, 20 12

Bonnie B. Wallace
Notary Public for South Carolina
My Commission Expires: 11-13-2017



Signature: Angel Y. Gary
Name: Angel Y. Gary
Address: 158 Twickenham Road, Yemassee, SC
29945
E-mail: _____
Telephone (O): 843-575-1505
(H): _____

Signature: _____
Name: _____
Address: _____
E-mail: _____
Telephone (O): _____
(H): _____

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a will be ☐ GRANTED ☐ DENIED informally this _____ day of _____, 20 ____.

Probate Court Judge

ORDER OF FORMAL TESTACY

On hearing of the above petition, this Court finds that the person is deceased, venue is proper, and the proceeding was commenced within appropriate time limits.

The Court further finds that

☐ the decedent died intestate. The heirs are:

☐ the decedent died testate. IT IS HEREBY ORDERED that the Last Will and Testament of the above-named decedent, dated _____, be admitted formally to probate.

Executed this _____ day of _____, 20____

_____, Probate Court Judge

SEE ATTACHED ORDER

ORDER OF APPOINTMENT

IT IS HEREBY ORDERED that the above Application/Petition for appointment be granted upon the filing of a bond as appropriate, qualification, and acceptance.

Executed this _____ day of _____, 20____

_____, Probate Court Judge

02/28/2012 12:27 843 .7752

MARSHELS INC

PAGE 01/01

SOUTH CAROLINA
CERTIFICATION OF VITAL RECORD

DEATH CERTIFICATION

STATE FILE NUMBER: 139-12-003353 AMENDED:

DECEDENT'S NAME: *BLONDELL GARY

SEX: FEMALE

AKA: NA

SOCIAL SECURITY NUMBER: [REDACTED]

ARMED FORCES: NO

DATE OF BIRTH: [REDACTED]

AGE: 56 YEARS

TYPE OF PLACE OF DEATH: OTHER (SPECIFY)

COUNTY OF DEATH: BEAUFORT

NAME AND ADDRESS OF PLACE OF DEATH: [REDACTED]

PLACE OF DISPOSITION: NEW JERUSALEM BAPTIST CHURCH CEMETERY

DISPOSITION LOCATION: YEMASSEE, SOUTH CAROLINA

METHOD OF DISPOSITION: BURIAL

DECEDENT'S RESIDENCE: [REDACTED]

PLACE OF BIRTH: SOUTH CAROLINA

MARITAL STATUS: MARRIED

SURVIVING SPOUSE'S NAME: CHARLES GARY

FATHER'S NAME: RICHARD GREEN

MOTHER'S NAME PRIOR TO FIRST MARRIAGE: VIOLA MYERS

INFORMANT'S NAME: ANGEL GARY

RELATIONSHIP: DAUGHTER

MAILING ADDRESS: [REDACTED]

FUNERAL HOME: MARSHELS WRIGHT-DONALDSON HOME FOR FUNERALS, 1814 GREENE ST., BEAUFORT, SC, 29902-0931

FUNERAL DIRECTOR: WILLIAM HB MARSHIEL

LICENSE NUMBER: 1327

EMBALMER'S NAME: WILLIAM HB MARSHIEL

LICENSE NUMBER: 1327

ACTUAL OR PRESUMED DATE OF DEATH: JANUARY 31, 2012

MANNER OF DEATH: ACCIDENT

ACTUAL OR PRESUMED TIME OF DEATH: 1058

CAUSE OF DEATH - PART I

BLUNT FORCE INJURY OF THE HEAD

VEHICLE VS TREE

OTHER SIGNIFICANT CONDITIONS - PART II:
NA

CORONER CONTACTED? YES

AUTOPSY PERFORMED? YES

AUTOPSY AVAILABLE? YES

DATE OF INJURY: JANUARY 31, 2012

TIME OF INJURY: 1058

INJURY AT WORK? NO

PLACE OF INJURY: HIGHWAY

LOCATION OF INJURY: OLD SHILDON CHURCH ROAD, YEMASSEE, BEAUFORT COUNTY, SC, 29945

HOW THE INJURY OCCURRED?

AN AMBULANCE CARRYING PATIENT AND HIS WIFE RAN OFF THE ROAD AND HIT TREES

CERTIFIER NAME AND TITLE: CORONER J. EDWARD ALLEN

LICENSE NUMBER: NA

CERTIFIER'S ADDRESS: POST OFFICE DRAWER 1228, BEAUFORT, SC, 29901

DATE FILED: FEBRUARY 06, 2012

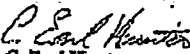
DATE OF ISSUANCE: FEBRUARY 08, 2012

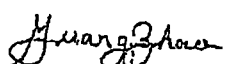
SPECIAL INSTRUCTIONS:

MANNER OF DEATH AMENDED BY DHEC 627 PER J. EDWARD ALLEN, CORONER 2/6/12

SC02005561

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.


 C. Earl Hunter
 Commissioner and State Registrar


 Guang Zhao
 Assistant State Registrar
This copy is not valid unless prepared on an engraved burder displaying the state seal and issuing agency logo.
Revision Dates 08/01/2009

Appendix 50



BEAUFORT COUNTY PROBATE COURT

JUDGE
KENNETH E. FULP, JR.

ASSOCIATE JUDGE
HEATHER R. GALVIN



COURT ADMINISTRATOR
PAT C. GARVIN

COUNTY COURTHOUSE
102 RIBAUT ROAD, BEAUFORT, SC 29902

July 28, 2015

VIA E-MAIL AND US MAIL

Joseph Dawson, III, Esquire
PO Box 41367
North Charleston, SC 29423

Re: Estate of Blondell M. Gary
Probate Court Case Number: 2012ES0700140

Dear Mr. Dawson:

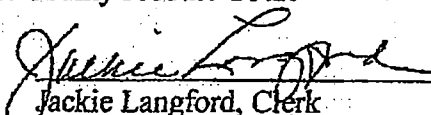
The following items (marked with an "x") are applicable to the above-referenced Estate:

- X 1. Enclosed is a copy of the Order for Hearing.
- X 2. A hearing on Petition for Removal of Personal Representative is scheduled for:
DATE: September 3, 2015
TIME: 9:30 a.m.
PLACE: Beaufort County Probate Court, 102 Ribaut Road, Room 100,
Beaufort, South Carolina
- X 3. Notice of hearing must be given to all interested persons, as defined in S.C. Code §62-1-201(23), *at least 20 days prior to the hearing date.*
- X 4. The hearing will be audio-recorded by the Court. If you wish to secure the services of a court reporter, you may do so at your expense.
- X 5. Please provide the Court with Proof of Notice of Hearing or Certificate of Mailing prior to the hearing.

Very truly yours,

Kenneth E. Fulp, Jr., Judge
Beaufort County Probate Court

By:


Jackie Langford, Clerk

Enclosure

Copies to: Tiffany Provence, Esquire
Austin H. Crosby, Esquire

Appendix 51



STATE OF SOUTH CAROLINA

COUNTY OF: Beaufort

IN THE MATTER OF:

Estate of Blondell M. Gary
(Decedent)

IN THE PROBATE COURT

NOTICE OF HEARING

CASE NUMBER: 2012ES0700140

DATE: September 3, 2015

TIME: 9:30 am

PLACE: Beaufort County Probate Court, 102 Ribaut Road, Room 100, Beaufort, South Carolina

PURPOSE OF HEARING:

Petition for Removal of Personal Representative

Executed this 4th day of August, 2015.

Signature:



Print Name: Joseph Dawson, III, ESQ

Address: Post Office Box 41367

North Charleston, SC 29423

Telephone (Work): (843) 207-9004

(Home):

(Cell):

E-mail: joe@attorneyjosephdawson.com

Relationship to Decedent/Estate:

NOTE: Probate Court recommends that all interested parties be represented by counsel licensed to practice law in South Carolina. If any interested party wishes to represent him/herself, he/she will be required to adhere to the *South Carolina Rules of Civil Procedure* and *South Carolina Rules of Evidence*.

Appendix 52

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF: BEAUFORT

PROOF OF DELIVERY

IN THE MATTER OF:
ESTATE OF BLONDELL M. GARY
(Decedent)

CASE NUMBER: 2012ES0700140

On the 4th day of August, 2015, I mailed or delivered the following document(s):

Notice of Hearing for Petition for Removal of Personal Representative

- ☒ A copy of which is attached hereto and incorporated herein, or
☐ The original of which is on file with the Court.

Delivery was accomplished by the following method (check appropriate box):

- ☐ personal delivery ☒ ordinary first-class mail
☐ certified mail ☐ registered mail
☐ commercial delivery ☐ electronic message (Article 7, Trust matters only)

to each of the following persons at the address shown:

NAME	ADDRESS
CHARLES GARY	
TATANISHA S. GARY	
ANGEL Y. GARY	

SWORN to before me this 4th day of August, 2015
Joseph Dawson
Notary Public for South Carolina
My Commission Expires: 2-6-2024

Signature: Joseph Dawson
Print Name: JOSEPH DAWSON, III, ESQ
Address: POST OFFICE BOX 41367
NORTH CHARLESTON, SC 29423
Telephone (Work): (843) 207-9004
(Home): _____
(Cell): _____
E-mail: JOE@ATTORNEYJOSEPHDAWSON.COM

Relationship to Decedent/Estate: _____

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF BEAUFORT

CASE NUMBER: 2012-ES-07-00140

IN THE MATTER OF: THE ESTATE OF
BLONDELL M. GARY (DECEDENT)

CHARLES GARY,

PETITIONER

vs.

CERTIFICATE OF SERVICE

ANGEL Y. GARY AS PERSONAL REPRESENTATIVE
FOR THE ESTATE OF BLONDELL M. GARY

RESPONDENT

I certify that I served a true and correct copy of the Notice of Hearing for Petition for Removal of Personal Representative and Proof of Delivery of Petitioner on counsel of record Tiffany N. Provence, Esquire and Austin H. Crosby, Esquire by depositing a copy of the same in the United States Mail, postage prepaid, on August 4, 2015, addressed as follows:

R. Alexander Murdaugh, Esquire
Austin H. Crosby, Esquire
Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.
P.O. Box 457
Hampton, SC 29924

Tiffany N. Provence, Esq.
Provence Messervy LLC
300 North Cedar Street, Suite A
Summerville, SC 29483



Joseph Dawson, III, Esq.
Post Office Box 41367
North Charleston, SC 29423

Attorney for Petitioner Charles Gary
Appendix 54

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

ANGEL Y. GARY as Personal
Representative of the Estate of
BLONDELL M. GARY,

Plaintiff,

vs.

LOWCOUNTRY MEDICAL TRANSPORT,
INC., AMERICAN MEDICAL RESPONSE,
INC., d/b/a, Access2Care, and EUGENE
A. KIRKLAND

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2012-CP-25-402**COMPLAINT
WRONGFUL DEATH and SURVIVAL ACTION
JURY TRIAL DEMANDED**

FILED
2012 NOV -9 AM 10:45
HYLAND D. HETTES
CLERK OF COURT, S.C.
HAMPTON COUNTY, S.C.
BY _____

The Plaintiff alleges as follows:

1. Angel Y. Gary, is a citizen and resident of Beaufort County, South Carolina and is the duly appointed Personal Representative of the Estate of Blondell M. Gary. This action is brought on behalf of the Estate of Blondell M. Gary and the beneficiaries of Blondell M. Gary.

2. The Defendant, Lowcountry Medical Transport, Inc. (hereinafter "Lowcountry Medical Transport"), is a domestic corporation with its principal place of business in the County of Hampton, South Carolina. Lowcountry Medical Transport is engaged in the business of providing non-emergency medical transportation services in the counties of Beaufort, Jasper, and Hampton.

3. The Defendant, American Medical Response, Inc. d/b/a Access2Care (hereinafter "American Medical Response"), is a foreign corporation with its principal place of business in the State of Delaware; that American Medical Response is

engaged in the business of providing brokerage services for certain non-emergency medical transportation services that take place in the state of South Carolina.

4. Lowcountry Medical Transport operates as an agent of American Medical Response, and Lowcountry Medical Transport's actions and the manner in which their work is performed is controlled by the principal company, American Medical Response.

5. Blondell Gary (hereinafter "Blondell"), on behalf of her husband, Charles Gary, contracted with American Medical Response to provide non-emergency medical transport on the day in question.

6. American Medical Response owed a non-delegable duty to the passengers riding in Lowcountry Medical Transport's vehicles, to provide a reasonably safe form of transportation.

7. The Defendant, Eugene A. Kirkland, is a resident of Hampton County and employed by Lowcountry Medical Transport; at all times mentioned herein, Eugene Kirkland was working within the scope of his employment as an agent/employee/servant, for both Lowcountry Medical Transport and American Medical Response; he was driving the subject vehicle on the day in question.

8. On or about January 31, 2012, Blondell was a passenger in the subject vehicle travelling north on Old Sheldon Church Road in Beaufort County; Eugene Kirkland recklessly and negligently lost control of the vehicle, left the roadway, and collided with a tree.

9. As a direct and proximate result of the collision, Blondell suffered serious and severe injuries which caused her to endure conscious pain and suffering and resulted in her death.

10. The injuries and damages to the deceased Plaintiff were due to and proximately caused by the negligent and reckless conduct of the Defendants in the following particulars:

**AS TO LOWCOUNTRY MEDICAL TRANSPORT, INC., AMERICAN MEDICAL
RESPONSE, INC. d/b/a ACCESS2CARE, and EUGENE A. KIRKLAND
(Negligence)**

11. Each and every allegation contained in this Complaint which is not inconsistent with this cause of action is hereby incorporated by reference as if repeated verbatim herein.

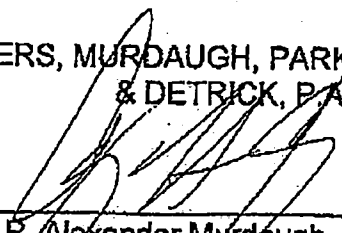
- (a) In failing to keep the subject vehicle under proper control;
- (b) In failing to keep a proper lookout;
- (c) In traveling too fast for conditions existing at that time;
- (d) In operating a vehicle in disregard for the safety of others;
- (e) In failing to exercise that degree of care that a reasonably prudent person would have exercised under the same or similar circumstances; and
- (f) In allowing the vehicle to leave the roadway.

12. As a result of the described acts and omissions of the Defendants, Blondell M. Gary was seriously injured and was forced to experience conscious pain, suffering, and mental anguish prior to her death. The beneficiaries of Blondell have endured and continue to endure grief, sorrow, shock, loss of companionship, wounded feelings, and mental anguish. In addition, the Plaintiff has incurred expenses such as medical bills, funeral expenses and other costs associated with the untimely death of Blondell.

13. The Plaintiff is entitled to judgment against the Defendants, jointly and severally, for both actual and punitive damages; all of which were directly and proximately caused by the Defendants' acts and/or omissions as more fully set forth above, in an amount determined fair and reasonable by a jury.

WHEREFORE, Plaintiff prays for judgment against the Defendants for actual damages, together with punitive damages in an appropriate amount, for the costs and disbursements of this action, and for such other and further relief as the Court may deem just and proper.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: 

R. Alexander Murdaugh
Bert G. Utsey, III
Austin H. Crosby
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
(803) 943-2111: Phone
(803) 943-3943: Fax

ATTORNEYS FOR PLAINTIFF

November 8, 2012
Hampton, South Carolina

FILED

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

ANGEL GARY as Personal
Representative of the Estate of
BLONDELL M. GARY,

Plaintiff,

-versus-

LOWCOUNTRY MEDICAL
TRANSPORT, INC., AMERICAN
MEDICAL RESPONSE, INC., d/b/a
ACCESS2CARE, and EUGENE
A. KIRKLAND

Defendants.

2015 SEP 15 PM 3:31

HATTIE D. NETTLES
CLERK OF COURT
HAMPTON COUNTY, S.C.IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-25-402ORDER APPROVING WRONGFUL
DEATH AND SURVIVAL ACTION
SETTLEMENT

THIS MATTER CAME BEFORE me on September 1, 2015, upon the calling of the case for trial. Present were R. Alexander Murdaugh and Austin H. Crosby for the Plaintiff; Erin D. Dean for the Defendants Low Country Medical Transport and Eugene Kirkland, Cory Fleming as personal counsel for Hattie Askew, owner of Lowcountry Medical Transport; H. Cooper Wilson for the Defendant American Medical Response, Inc. d/b/a Access2Care. Plaintiff Angel Gary and Ms. Hattie Askew were also present. Defendant Eugene Kirkland was not present at the hearing but counsel presented his signed consent to the settlement which is attached hereto as Court's EXHIBIT A.

Upon the call of the case to trial, counsel for Plaintiff announced that parties have reached a settlement of the case. The terms of the settlement were placed on the record in in open court. Ms. Angel Gary as the duly appointed Personal Representative of the Estate of Blondell Gary was questioned regarding the terms of the settlement and she indicated that she understood the terms and was in agreement of the same for the benefit of the statutory beneficiaries. She

asked the Court to approve settlement of the wrongful death and survival action.

Upon hearing that the Personal Representative was satisfied with the terms of the settlement, I make the following findings of fact and conclusion of law:

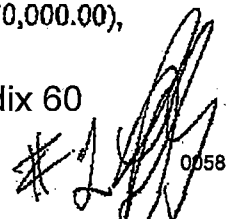
- 1) I find the settlement is fair and reasonable and in the best interest of the statutory beneficiaries;
- 2) That all parties to the action consent to the settlement and the allocation of the Selective policy proceeds as indicated by their respective attorneys and the consent signed by Eugene Kirkland.

It is therefore,

ORDERED, ADJUDGED AND DECREED that Angel Gary, as the duly appointed and qualified Personal Representative of the Estate of Blondell Gary, deceased, and it further appearing that under the conditions set forth in the Petition, said offer is a fair, just and equitable offer of settlement and one which should be approved by this Court, pursuant to §15-51-41, 15-5142 and 62-3-715(24) of the South Carolina Code of Laws, 1976, as amended, it is hereby authorized and directed to accept this offer of compromise and settlement and to execute and deliver a Release of All Claims in favor of the Defendants, their attorneys, heirs, agents, assigns, and employees for any and all claims, expenses, demands, damages for loss of services, grief, sorrow and actions or causes of action which Angel Gary, as the duly appointed Personal Representative of the Estate of Blondell Gary, deceased, may now or hereafter have as a result of the alleged wrongful death of Blondell Gary on or about January 31, 2012, including all claims and causes of action asserted or assertable for the alleged wrongful death under §15-51-10 through §15-51-60, and §15-5-90, all inclusive of the South Carolina Code of Laws, 1976, as amended, as against the Defendants their heirs, agents, assigns and employees. It is further

ORDERED, ADJUDGED AND DECREED that the settlement proceeds in the gross amount of Two Million Two Hundred and Fifty Thousand Dollars and no/100 (\$2,250,000.00),

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#1  0058

shall be distributed as follows:

- a) \$1,331,631.20 shall be apportioned to the wrongful death action. The survival action will be dismissed with prejudice. These apportionments are made pursuant to §15-51-10 through §15-51-60, and §15-5-90, all inclusive, of the South Carolina Code of Laws, 1976; and
- b) \$918,368.88 in attorney's fees & costs.



Brooks P. Goldsmith, Circuit Court Judge

Dated: September 14, 2015

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

ANGEL Y. GARY, AS PR FOR
BLONDELL MARIE GARY,

Plaintiff,

v.

LOWCOUNTRY MEDICAL
TRANSPORT, INC., AMERICAN
MEDICAL RESPONSE, INC., d/b/a
ACCESS2CARE, and EUGENE A.
KIRKLAND,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2012-CP-25-402.

2015 SEP 15 PM 3:31

CLERK OF COURT
HAMPTON COUNTY, S.C.

BY: _____

CONSENT TO SETTLEMENT

The undersigned hereby acknowledges and directs the payment of \$1,250,000.00 to settle the above-referenced case on his, hers, its behalf and acknowledges that such payment will leave only \$250,000.00 of liability coverage in place for the case of Charles Gary v. Hattie M. Askew, Will Outlaw, and Deboria Outlaw, Ind. and dba Low Country Medical Transport, Low Country Medical Transport, Inc., Eugene A. Kirkland and American Medical Response, Inc. (dba Access2care), civil action no. 2012-CP-07-003595, currently pending in the Court of Common Pleas, Beaufort County, South Carolina. The undersigned further agrees to release and discharge Selective Insurance Company of South Carolina from any and all claims for policy benefits or consequential damages resulting from the investigation, handling, defense, and settlement of both of these lawsuits by virtue of the allocation of \$1,250,000.00 to the wrongful death and survival claim and \$250,000.00 to the related claim in Beaufort County referenced above. The undersigned agrees to sign a formal settlement and release to this effect upon the consummation of the settlement.

Dated: 08/31, 2015

Eugene A. Kirkland
Eugene A. Kirkland

Witness
[Signature]

Appendix 62

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF HAMPTON

)

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

) C/A No. 2012-CP-25-402

Plaintiff,

ORDER OF DISMISSAL

Versus

Low Country Medical Transport, Inc.,
American Medical Response, Inc., d/b/a,
Access2Care, and Eugene A. Kirkland,

Defendants.

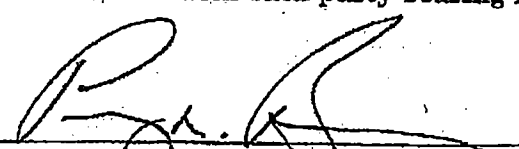
2015 NOV 30 AM 10:47
CLERK OF COURT
HAMPTON COUNTY, S.C.

FILED

IT APPEARING that this case has been amicably settled by and between the parties hereto, obviating the necessity for further litigation;

ON MOTION of Hood Law Firm, LLC, Attorneys for the Defendant American Medical Response, Inc., d/b/a, Access2Care; with the consent of Erin DuBose Dean, Esquire, Attorney for Defendants Low Country Medical Transport, Inc. and Eugene A. Kirkland, and with the consent of Austin H. Crosby, Esquire, Attorney for the Plaintiff, it is

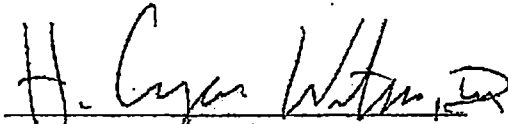
ORDERED, ADJUDGED, AND DECREED that this case be, and the same is hereby, dismissed with prejudice and forever ended with each party bearing its own costs, fees, and expenses.


Judge Perry M. Buckner III
Chief Administrative Judge, Fourteenth
Judicial Circuit

November 13
~~October~~, 2015
Walterboro, South Carolina

Order of Dismissal
C/A No. 2012-CP-25-402, Hampton CP

WE MOVE FOR DEFENDANT,
American Medical Response, Inc., d/b/a,
Access2Care:



Robert H. Hood (SC #2599)
Robert H. Hood, Jr. (SC #13491)
H. Cooper Wilson, III (SC #74939)

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630
Email: Info@hoodlaw.com

WE CONSENT FOR PLAINTIFF,
Angel Y. Gary, as Personal Representative of
the Estate of Blondell M. Gary:



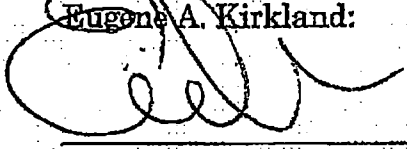
R. Alexander Murdaugh, Esquire
Bert G. Utsey, Esquire
Austin H. Crosby, Esquire

Peters Murdaugh Parker Elzroth & Detrick, PA
P.O. Box 457
Hampton, SC 29924
P: 803-943-2111/F: 803-943-8943
E: amurdaugh@pmped.com
butsey@pmped.com
acrosby@pmped.com

²
MB

Order of Dismissal
C/A No. 2012-CP-25-402, Hampton CP

I CONSENT FOR DEFENDANTS,
Low Country Medical Transport, Inc. and
Eugene A. Kirkland:



Erin DuBose Dean, Esquire

Tupper Grimsley & Dean, PA
611 Bay Street
PO Box 2055
Beaufort, SC 29901-2055
P: (843) 524-1116/F: (843) 524-1463
E: erindean@tgdpa.com

3
P
VB

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
CASE NO. 2014-CP-07- 2691

CHARLES GARY,

PLAINTIFF,

vs.

ANGEL Y. GARY as Personal
Representative of the Estate of
BLONDELL M. GARY

DEFENDANT

COMPLAINT

(Declaratory Judgment Action
Code Ann. § 15-53-10 et seq.)

2014 OCT 20 PM 4:02

The Plaintiff, Charles Gary, complaining of the Defendant above named, alleges and would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. The Plaintiff, Charles Gary is a citizen and resident of Beaufort County, South Carolina, (hereinafter called "Plaintiff" or "Gary"). Mr. Gary is a beneficiary of the Estate of Blondell M. Gary.
2. Angel Y. Gary, is a citizen and resident of Beaufort County, South Carolina and is the appointed Personal Representative of the Estate of Blondell M. Gary (hereinafter "Estate"). The Estate is pending in Beaufort County, South Carolina and this matter is being brought against the Estate.
3. This Court has jurisdiction over the parties and subject matter hereto.

FACTS

4. On or about January 31, 2012, Low Country Medical Transport was operating an ambulance that was transporting Mr. Gary, who is a paraplegic and his wife Blondell Gary to and from their home in Yemassee, South Carolina after Mr. Gary's medical

appointment. Mr. Gary was strapped to a stretcher in the back of the ambulance and his wife, Blondell Gary, was riding in the front passenger seat with her seat belt secured. Low Country Medical Transport's ambulance suddenly and un-expectantly ran off the shoulder of the road and struck a tree causing Mr. Gary to suffer serious injuries and killing Blondell Gary.

5. As a result of Mr. Gary's injuries and damages, on October 16, 2012, he filed a lawsuit against several defendants alleging Negligence, Negligence Per Se, Gross Negligence, Loss of Consortium/Companionship of Spouse, Negligent Infliction of Emotional Distress, in a lawsuit styled Charles Gary v. Hattie M. Askew, Will Outlaw, and Deboria Outlaw, individually and D/B/A Low Country Medical Transport, Low Country Medical Transport Inc., Eugene A. Kirkland, and American Medical Response Inc., (D/B/A Access2Care), 2012-CP-07-3595 (hereinafter "Personal Injury Case").

6. Mr. Gary has obtained an Order on Summary Judgment in his Personal Injury Case against several defendants on his Negligence and Loss of Consortium/Companionship of Spouse causes of action. The Personal Injury Case summary judgment Order is on appeal in the South Carolina Court of Appeals.

7. As a result the Estate's injuries and damages, on November 9, 2012, the Estate of Blondell M. Gary filed a lawsuit against several defendants, alleging a Wrongful Death and Survival causes of action, in a case styled Angel Y. Gary as Personal Representative of the Estate of Blondell M. Gary v. Lowcountry Medical Transport, Inc., American Medical Response, Inc., d/b/a, Access2Care, and Eugene A. Kirkland, 2012-CP-25-402 (hereinafter "Wrongful Death Case").

8. In the Wrongful Death Case, the Estate claims among other things that "the beneficiaries of Blondell have endured and continue to endure grief, sorrow, shock, loss of companionship, wounded feelings, and mental anguish." *Wrongful Death Case complaint* ¶12.

9. The Estate has obtained a Default Judgment against the defendant American Medical Response Inc., d/b/a Access2Care.

10. Upon information and belief, the Estate claims and believes that Mr. Gary must bring his claims for Loss of Consortium/Companionship of Spouse, grief, sorrow, shock, wounded feelings, and mental anguish in the Estate's Wrongful Death Case.

11. Mr. Gary believes he is entitled to recover damages for Loss of Consortium/Companionship of Spouse and certain other damages claimed by the Estate in a separate proceeding under South Carolina law, notwithstanding the claims being recoverable under a wrongful death case.

12. Upon information and belief, the Estate claims that Mr. Gary must and/or intends to compel him to seek recovery of certain damages in the Wrongful Death Case that he is pursuing recovery in his Personal Injury Case.

CAUSE OF ACTION

(Declaratory Judgment Action - S.C. Code Ann. § 15-53-10 et. seq.)

13. The Plaintiff re-alleges each and every allegation of the Complaint, where consistent herewith, as fully as if set forth herein.

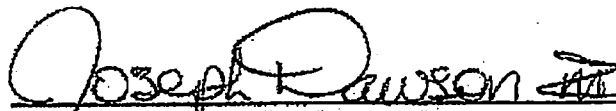
14. Mr. Gary is entitled to recover damages for his Loss of Consortium/Companionship of Spouse and Negligent Infliction of Emotional Distress claims in a separate proceeding from the Wrongful Death Case under South Carolina law.

15. Upon information and belief, the Estate has not pursued a damages hearing and/or trial on the merits in the Wrongful Death Case, because Mr. Gary has refused to seek recovery of certain damages in the Wrongful Death Case that are recoverable in his separate Personal Injury Case.

16. Upon information and belief, the Estate believes Mr. Gary must and/or intends to compel him to participate in developing the damages in the Estate's case that are also recoverable in his separate Personal Injury Case; and therefore, a justiciable case or controversy exists between the parties.

17. Mr. Gary is entitled to have this Court issue a declaratory judgment, wherein the Court declares the rights, status, and other legal relationships of the parties as provided by S.C. Code Ann. § 15-75-20, S.C. Code Ann. § 15-51-10 *et seq.*, Negligent Infliction of Emotional Distress cause of action, and other applicable South Carolina law.

WHEREFORE, the Plaintiff Charles Gary prays that the Court inquire into these matters and Orders that 1) the Plaintiff's Loss of Consortium/Companionship of Spouse and Negligent Infliction of Emotional Distress damages are recoverable in his Personal Injury case, which is a separate proceeding from the Estate's lawsuit, 2) the Estate is not entitled to bring or compel the Plaintiff to bring his Loss of Consortium/Companionship of Spouse and Negligent Infliction of Emotional Distress damages in the Estate's case, without the Plaintiff's consent, and 3) for such other and further relief as this Court may deem proper.

A handwritten signature in black ink, appearing to read "Joseph Dawson, III", is written over a horizontal line.

JOSEPH DAWSON, III, Esquire
Post Office Box 41367
Charleston, South Carolina 29423
Telephone: (843) 207-9004
Facsimile: (843) 207-9005

October 17, 2014
North Charleston S.C.

ATTORNEY FOR CHARLES GARY

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

CHARLES GARY,

Plaintiff,

v.

ANGEL Y. GARY, AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF BLONDELL M. GARY,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-07-2691

ANSWER TO DECLARATORY
JUDGMENT COMPLAINT

TO: JOSEPH DAWSON, III, ESQUIRE, ATTORNEY FOR PLAINTIFF:

The Defendant responds to the Plaintiff's Complaint below. Capitalized terms are defined as in Plaintiff's Complaint.

GENERAL DENIAL

1. Each allegation hereinafter not specifically admitted, explained, or otherwise responded to is denied.

2. Defendant admits paragraphs 1 and 2.

3. The allegations of paragraph 3 state conclusions of law, to which the Defendant is required neither to admit nor to deny. To the extent the Court deems a response necessary, Defendant incorporates by reference her specific defenses set forth below.

4. Defendant admits paragraphs 4, 5, 6, 7, 8, and 9.

5. Answering the allegations of paragraph 10, Defendant admits she claims Mr. Gary must bring his claims for grief, sorrow, shock, wounded feelings, and mental anguish in the Estate's Wrongful Death Case; however, she denies the remaining allegations of paragraph 10.

6. Defendant denies paragraph 11.

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7. Defendant admits paragraph 12.
8. Answering the allegations of paragraph 13, Defendant realleges her responses to the allegations of paragraphs 1-12 as if fully set forth herein.
9. Defendant denies paragraph 14.
10. Defendant admits paragraphs 15 and 16.
11. Defendant denies paragraph 17.

SPECIFIC DEFENSES

12. Plaintiff's Complaint fails to set forth facts sufficient to constitute a cause of action for declaratory relief. Therefore, the Court should dismiss this action pursuant to SCRCP 12(b)(6).

13. There is another action pending between the parties in which the same issues presented in this action can and/or should be litigated. Therefore, the Court should dismiss this action pursuant to SCRCP 12(b)(8).

14. There is another action pending between the parties in which the same issues presented in this action can and/or should be litigated. The other action has been stayed by the Court with consent of Plaintiff and Defendant herein. Therefore, the Court should also stay this action.

15. Plaintiff has failed to join as parties all persons who have or claim an interest which may be affected by the requested declaration as required by S.C. Code Ann. § 15-53-80 (1976, as amended).

16. Plaintiff has failed to join all parties needed for a just adjudication of this action. Therefore, the Court should dismiss this action pursuant to SCRCP 12(b)(7) and 19.

17. The issues presented by this action should be decided in the respective tort actions.

WHEREFORE, Defendant prays for the Court to dismiss Plaintiff's claims, to enter a declaratory judgment in favor of Defendant, and to award whatever additional and further relief it deems just and proper.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: 

R. Alexander Murdaugh
P.O. Box 457
Hampton, SC 29924
(803) 943-2111
amurdaugh@pmped.com

and

Bert G. Utsey, III
P.O. Box 1164
Walterboro, SC 29488
(843) 549-9544
butsey@pmped.com

ATTORNEYS FOR DEFENDANT

Hampton, South Carolina
December 10, 2014

CERTIFICATE OF SERVICE

This is to certify that I, Kristi H. Jarrell, with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., attorneys for the Plaintiff have this date served a true and correct copy of the within *Defendant's Answer to Declaratory Judgment* via U.S. Postal service, first class postage prepaid to:

Joseph Dawson, III, Esquire
P.O. Box 41367
North Charleston, SC 29423

Re: Charles Gary v. Angel Y. Gary as Personal Representative of the Estate of Blondell M. Gary
C/A No.: 2014-CP-07-2691

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

By: Kristi H. Jarrell
Kristi H. Jarrell

Hampton, South Carolina
December 30, 2014

From: Joseph Dawson III joe@attorneyjosephdawson.com
Subject: Gary Estate
Date: December 2, 2015 at 6:14 PM
To: Alex Murdaugh amurdaugh@pmped.com

Thanks for taking my call today and updating me on the status of Mr Gary's settlement funds. Obviously he is anxious to receive his funds immediately and may look to see you regarding this matter.

I will check with you tomorrow to see if you have located Mr Kirkland.

Joseph Dawson, III
Attorney at Law
Post Office Box 41367
North Charleston, SC 29423
Telephone: (843) 207-9004
Fax: (844) 288-7399

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STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

ANGEL Y. GARY as Personal Representative
of the Estate of BLONDELL M. GARY,

Plaintiff,

vs.

LOWCOUNTRY MEDICAL TRANSPORT,
INC., AMERICAN MEDICAL RESPONSE,
INC., d/b/a, Access2Care, and EUGENE A.
KIRKLAND

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2012-CP-25402

SUMMONS
WRONGFUL DEATH and SURVIVAL ACTION
JURY TRIAL DEMANDED

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action,
of which a copy is herewith served upon you, and to serve a copy of your Answer to said
Complaint on the subscribed at their office, P.O. Box 457, Hampton, South Carolina within thirty
(30) days after the service hereof, exclusive of the day of such service; and if you fail to answer
the Complaint within the time aforesaid, judgment by default will be rendered against you for the
relief demanded in this Complaint.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY:

R. Alexander Murdaugh
Bert G. Utsey, III
Austin H. Crosby
P.O. Box 457
Hampton, SC 29924
(803) 943-2111: Phone
(803) 943-3943: Fax

November 8, 2012
Hampton, South Carolina

ATTORNEYS FOR PLAINTIFF

Appendix 76

0074

FILED

2012 NOV -9 AM 10:45

CLERK OF COURT
HAMPTON COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

ANGEL Y. GARY as Personal
Representative of the Estate of
BLONDELL M. GARY,

Plaintiff,

vs.

LOWCOUNTRY MEDICAL TRANSPORT,
INC., AMERICAN MEDICAL RESPONSE,
INC., d/b/a, Access2Care, and EUGENE
A. KIRKLAND

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2012-CP-25-402

**COMPLAINT
WRONGFUL DEATH and SURVIVAL ACTION
JURY TRIAL DEMANDED**

FILED
2012 NOV -9 AM 10:45
KYLEA D. NETTLES
CLERK OF COURT
HAMPTON COUNTY, S.C.

The Plaintiff alleges as follows:

1. Angel Y. Gary, is a citizen and resident of Beaufort County, South Carolina and is the duly appointed Personal Representative of the Estate of Blondell M. Gary. This action is brought on behalf of the Estate of Blondell M. Gary and the beneficiaries of Blondell M. Gary.

2. The Defendant, Lowcountry Medical Transport, Inc. (hereinafter "Lowcountry Medical Transport"), is a domestic corporation with its principal place of business in the County of Hampton, South Carolina. Lowcountry Medical Transport is engaged in the business of providing non-emergency medical transportation services in the counties of Beaufort, Jasper, and Hampton.

3. The Defendant, American Medical Response, Inc. d/b/a Access2Care (hereinafter "American Medical Response"), is a foreign corporation with its principal place of business in the State of Delaware; that American Medical Response is

engaged in the business of providing brokerage services for certain non-emergency medical transportation services that take place in the state of South Carolina.

4. Lowcountry Medical Transport operates as an agent of American Medical Response, and Lowcountry Medical Transport's actions and the manner in which their work is performed is controlled by the principal company, American Medical Response.

5. Blondell Gary (hereinafter "Blondell"), on behalf of her husband, Charles Gary, contracted with American Medical Response to provide non-emergency medical transport on the day in question.

6. American Medical Response owed a non-delegable duty to the passengers riding in Lowcountry Medical Transport's vehicles, to provide a reasonably safe form of transportation.

7. The Defendant, Eugene A. Kirkland, is a resident of Hampton County and employed by Lowcountry Medical Transport; at all times mentioned herein, Eugene Kirkland was working within the scope of his employment as an agent/employee/servant, for both Lowcountry Medical Transport and American Medical Response; he was driving the subject vehicle on the day in question.

8. On or about January 31, 2012, Blondell was a passenger in the subject vehicle travelling north on Old Sheldon Church Road in Beaufort County; Eugene Kirkland recklessly and negligently lost control of the vehicle, left the roadway, and collided with a tree.

9. As a direct and proximate result of the collision, Blondell suffered serious and severe injuries which caused her to endure conscious pain and suffering and resulted in her death.

10. The injuries and damages to the deceased Plaintiff were due to and proximately caused by the negligent and reckless conduct of the Defendants in the following particulars:

**AS TO LOWCOUNTRY MEDICAL TRANSPORT, INC., AMERICAN MEDICAL
RESPONSE, INC. d/b/a ACCESS2CARE, and EUGENE A. KIRKLAND
(Negligence)**

11. Each and every allegation contained in this Complaint which is not inconsistent with this cause of action is hereby incorporated by reference as if repeated verbatim herein.

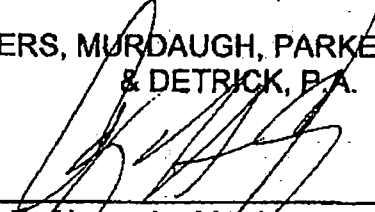
- (a) In failing to keep the subject vehicle under proper control;
- (b) In failing to keep a proper lookout;
- (c) In traveling too fast for conditions existing at that time;
- (d) In operating a vehicle in disregard for the safety of others;
- (e) In failing to exercise that degree of care that a reasonably prudent person would have exercised under the same or similar circumstances; and
- (f) In allowing the vehicle to leave the roadway.

12. As a result of the described acts and omissions of the Defendants, Blondell M. Gary was seriously injured and was forced to experience conscious pain, suffering, and mental anguish prior to her death. The beneficiaries of Blondell have endured and continue to endure grief, sorrow, shock, loss of companionship, wounded feelings, and mental anguish. In addition, the Plaintiff has incurred expenses such as medical bills, funeral expenses and other costs associated with the untimely death of Blondell.

13. The Plaintiff is entitled to judgment against the Defendants, jointly and severally, for both actual and punitive damages; all of which were directly and proximately caused by the Defendants' acts and/or omissions as more fully set forth above, in an amount determined fair and reasonable by a jury.

WHEREFORE, Plaintiff prays for judgment against the Defendants for actual damages, together with punitive damages in an appropriate amount, for the costs and disbursements of this action, and for such other and further relief as the Court may deem just and proper.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: 

R. Alexander Murdaugh
Bert G. Utsey, III
Austin H. Crosby
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
(803) 943-2111: Phone
(803) 943-3943: Fax

ATTORNEYS FOR PLAINTIFF

November 8, 2012
Hampton, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

ANGEL GARY AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
BLONDELL GARY,

Plaintiff(s)

vs.

LOWCOUNTRY MEDICAL TRANSPORT,
INC., AMERICAN MEDICAL RESPONSE,
INC., d/b/a, Access2Care, and EUGENE A.
KIRKLAND

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012-CP-25-402

Submitted By: R. Alexander Murdaugh
Address: P.O. Box 457
Hampton, SC 29924

SC Bar #: 6996
Telephone #: 803-943-2111
Fax #: 803-914-2014
E-mail: amurdaugh@pmped.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intend Case #
20 -CP-
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☒ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature:

Date: November 9, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

SCCA / 234 (04/2012)

Page 1 of 2

0079

LAW OFFICES
PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK

JOHN E. PARKER
CLYDE A. ELTZROTH, JR.
J. PAUL DETRICK
DANIEL E. HENDERSON
MARK D. BALL
RANDOLPH MURDAUGH, IV
RONNIE L. CROSBY
R. ALEXANDER MURDAUGH
BERT G. UTSEY, III
RANDOLPH MURDAUGH, III
GRAHAM E. HOLMES
LEE D. COPE
MATTHEW V. CREECH
LEAGUE B. CREECH
STEVEN D. MURDAUGH
WILLIAM F. BARNES, III
INACTIVE

PROFESSIONAL ASSOCIATION
101 MULBERRY STREET EAST
P.O. BOX 457
HAMPTON, SOUTH CAROLINA
29924-0457

RANDOLPH MURDAUGH, SR.
(1887-1940)
RANDOLPH MURDAUGH, JR.
(1915-1998)
J. ROBERT PETERS, JR.
(1927-2008)

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FACSIMILE
(803) 943-3943
(803) 914-2014
WEBSITE
www.pmped.com

November 8, 2012

Via Hand Delivery

Mylanda Nettles
Hampton County Clerk of Court
P.O. Box 7
Hampton, SC 29924

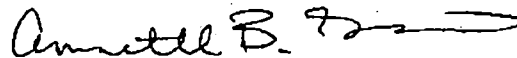
**Re: Angel Y. Gary as PR for Blondell Marie Gary v Low Country Medical
Transport Civil**

Dear Mylanda:

Enclosed are an original and two (2) copies of the Summons and Complaint that needs to be filed in the above mentioned case. I have also attached the required \$150.00 fee. Please file and return via hand delivery with Kassie Buchanan.

With kind regards, I am

Sincerely,



Annette B. Griswold, Legal Secretary to
R. Alexander Murdaugh

RAM/abg

486

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17:09

7102-31-700
P. 006

IN THE PROBATE COURT

COUNTY OF BEAUFORT

IN THE MATTER OF:
BLONDELL M GARY
(Decedent)

CASE NUMBER: 2012 ES-07-00-140

***COMPLETE THIS SECTION ONLY IF FILING PETITION
FOR FORMAL TESTACY AND/OR FORMAL APPOINTMENT**

Pitioner(s)

vs

Respondent(s)

APPLICATION FOR INFORMAL
☐ PROBATE OF WILL
☒ APPOINTMENT

(check any that apply)

*PETITION FOR FORMAL
☐ TESTACY
☐ APPOINTMENT

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1 If this is a formal filing, please explain below or attach pleadings pursuant to SC Rules of Civil Procedure

***NOTE: IF THIS IS A FORMAL PROCEEDING, IN ADDITION TO THIS FORM PETITION, YOU MUST ALSO FILE A SUMMONS (FORM SCCA 401PC) AND PAY THE STATUTORY FILING FEE OF \$150.00. A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.**

If not a formal filing, please indicate N/A. _____

2 Decedent Information.

Full Legal Name (including all known names):	Blondell M. Gary
Date of Birth:	[REDACTED]
Date of Death:	January 31, 2012
Age at date of death:	57

3. Venue for this proceeding is proper in this County because:

☒ Decedent was domiciled in this County at date of death:

Address

☐ Decedent was not domiciled in South Carolina, but property of Decedent was located in this County at date of death:
Address: _____ County _____ State South Carolina

Address: _____ County _____ State South Carolina

☐ Decedent has a right to take legal action in this County because _____

If the above address is the address of a nursing home, a prison, or other residential facility, please give the last address of the Decedent prior to entering the facility: _____

4(a) Names and addresses of beneficiaries (devisees) named in the Will.

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent

(use additional sheet if necessary)

4(b). Names and addresses of intestate heirs who are not devisees (persons who inherit if Decedent left no Will)

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent
Charles Gary	Adult		Spouse
Angel Y. Gary	Adult		Daughter
Tatiana S. Gary	Adult		Daughter
Wade D. McKeithen	Adult		Son

(use additional sheet if necessary)

4(c) Did all of the above persons survive one hundred and twenty (120) hours since the death of Decedent?

☒ YES ☐ NO If no, please explain on page 3

5. Did Decedent have any change of marital status or the birth or adoption of any children after execution of this Will, if one exists, or has any child of the Decedent been born since his/her death, or is any birth of a child of the Decedent anticipated? (This includes illegitimate children.)

☒ NO ☐ YES If yes, please explain on page 3

6. To the best of your knowledge, was the Decedent a patient in a non-private State of South Carolina mental health facility during his/her lifetime?

☒ NO ☐ YES If yes, please explain on page 3.

7. Has a Guardian or Conservator ever been appointed by the Court for this person?

☒ NO ☐ YES If yes, please explain on page 3

8. Has a Personal Representative of the Decedent been appointed prior to this date by a Court in this State or elsewhere?

☐ NO ☒ YES If yes, please state details, including name and address of such Personal Representative on page 3

9. Have you received or are you aware of any Demands for Notice (FORM 111ES) of any probate or appointment proceeding concerning the Decedent that may have been filed in this state or elsewhere?

☒ NO ☐ YES If yes, please state details, including names and addresses on page 3.

Page 2 of 6

FORM 0300ES (1/2014)

Appendix 84

10. Have more than ten (10) years passed since the Decedent's death?

☒ NO ☐ YES If yes, please state circumstances authorizing tardy probate on page 3.

11. The Decedent died with probate personal property having an approximate value of \$34,100.00 and/or probate real estate having an approximate value of \$0.00 (Note: A complete inventory of probate assets with fair market values to be filed after Personal Representative is appointed.)

12. After the exercise of reasonable diligence, are you aware of any unrevoked Will and/or Codicil(s), other than the one(s) attached hereto, relating to property in this State?

☒ NO ☐ YES If yes, please explain on page 3 and then proceed to Section II.

IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the Decedent's Will:

- ☐ The original is attached.
- ☐ The original is in the Court's possession.
- ☐ An exemplified (authenticated) copy of a Will probated in another jurisdiction is attached.
- ☐ An exemplified (authenticated) copy of a Will not probated in another jurisdiction is attached.
- ☐ The Will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached.

2. The execution date of the Will was: _____
Codicil(s): _____

3. Does Decedent's Will refer to a Memorandum (list disposing of tangible personal property)?

☐ NO ☐ YES If yes, attach hereto.

4. To the best of your knowledge, do you believe the Will listed above is the Decedent's validly executed last Will?

☐ YES ☐ NO If no, please explain on page 3.

5. To the best of your knowledge, is any witness to the will an "interested witness" (devisee, spouse of a devisee, or issue of a devisee)?

☐ NO ☐ YES If yes, please explain on page 3.

COMPLETE EXPLANATION(S) FOR QUESTIONS IN SECTIONS I and II HERE.
(If more space is required, use additional sheets.)

#4 Theodore V. Young, Adult Son
#8 Arge Y. Gary was appointed as Personal Representative by the Court on February 16, 2012

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING

1. If the Applicant/Petitioner is not the proposed Personal Representative(s), list name and address of the person you are proposing be appointed as the fiduciary:
2. Priority for appointment of the proposed Personal Representative (whether applicant or nominee) is:
 - ☐ named as Primary Personal Representative in Will
 - ☐ named as Alternate Personal Representative in Will
 - ☐ nominee of above Primary Personal Representative in Will
 - ☐ nominee of above Alternate Personal Representative in Will
 - ☐ surviving spouse of Decedent who is devisee of Decedent or nominee of said spouse
 - ☐ other devisee of Decedent (describe): _____ or nominee of said devisee
 - ☐ surviving spouse of Decedent or nominee of said spouse
 - ☐ other heir of Decedent (describe): _____ or nominee of said heir
 - ☐ creditor (forty-five (45) days after death must have passed) or nominee of creditor, written statement of claim, FORM 371ES, is attached
 - ☒ other (describe): Appointed Personal Representative
3. List below the name(s) of any other person(s), if any, having an equal or higher priority of appointment than the proposed Personal Representative:
None

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this _____ day of _____ 20____	Signature of Applicant/Petitioner: <u>Angel Y. Gary</u> Print Full Name: <u>Angel Y. Gary</u> Address: _____ Telephone (work): _____ (Home): _____ (Cell): _____ Email: _____ Relationship to Decedent/Estate: <u>Daughter/Appointed Personal Representative</u>
Notary Public for South Carolina My Commission Expires: _____	
SWORN to before me this _____ day of _____ 20____	Signature of Co-Applicant/Co-Petitioner: _____ Print Full Name: _____ Address: _____ Telephone (work): _____ (Home): _____ (Cell): _____ Email: _____ Relationship to Decedent/Estate: _____
Notary Public for South Carolina My Commission Expires: _____	

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a Will executed

be informally ☐ GRANTED ☐ DENIED.

Executed this day of 2

Probate Court Judge

☐ For formal probate of Will, see separate order executed

ORDER OF INFORMAL APPOINTMENT

IT IS HEREBY ORDERED that the above Application for Appointment be granted upon the filing of an appropriate bond, if applicable, and upon the signing of the Qualification and Statement of Acceptance of appointment.

- ☐ Fiduciary Bond in the amount of \$ _____
- ☐ Bond waived by Will or Personal Representative nominated by Will
- ☐ Bond not required as Personal Representative is sole heir or sole devisee
- ☐ Bond not required as Personal Representative is state agency, bank, or trust company
- ☐ Bond waivers filed
- ☐ See order dated _____
- ☐ Other: _____

Notice to Creditors

- ☐ Required
- ☐ Not Required

Executed this day of 2

Probate Court Judge

☐ For formal appointment of Personal Representative, see separate order executed

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate. I further submit personally to the jurisdiction of the Court in any proceeding relating to the Estate.

Signature: Angel GaryPrint Full Name: Angel Y. GaryAddress: [REDACTED]Telephone (Work): [REDACTED](Home): [REDACTED](Cell): [REDACTED]Email: [REDACTED]

Signature: _____

Print Full Name: _____

Address: _____

Telephone (Work): _____

(Home): _____

(Cell): _____

Email: _____

Attorney: Tiffany N. Provence, EsqAddress: 300 N. Cedar St. Suite ASummerville, SC 29483Telephone: (843) 871-9500Email: tnprovence@gmail.com

02/28/2012 12:27

843 .7762

MARSHELS INC

PAGE 01/81

DEATH CERTIFICATION

STATE FILE NUMBER: 139-12-003353 AMENDED:

DECEDENT'S NAME: *BLONDELL GARY*

SEX: FEMALE

AKA: NA

SOCIAL SECURITY NUMBER: [REDACTED]

ARMED FORCES: NO

AGE: 56 YEARS

DATE OF BIRTH: [REDACTED]

COUNTY OF DEATH: BEAUFORT

TYPE OF PLACE OF DEATH: OTHER (SPECIFY)

NAME AND ADDRESS OF PLACE OF DEATH: [REDACTED]

PLACE OF DISPOSITION: NEW JERUSALEM BAPTIST CHURCH CEMETERY

DISPOSITION LOCATION: YEMASSEE, SOUTH CAROLINA

METHOD OF DISPOSITION: BURIAL

DECEDENT'S RESIDENCE: [REDACTED]

MARITAL STATUS: MARRIED

PLACE OF BIRTH: SOUTH CAROLINA

SURVIVING SPOUSE'S NAME: CHARLES GARY

FATHER'S NAME: RICHARD GREEN

MOTHER'S NAME PRIOR TO FIRST MARRIAGE: VIOLA MYERS

INFORMANT'S NAME: ANGEL GARY

RELATIONSHIP: DAUGHTER

MAILING ADDRESS: [REDACTED]

FUNERAL HOME: MARSHELS WRIGHT-DONALDSON HOME FOR FUNERALS, 1814 GREENE ST., BEAUFORT, SC, 29902-0931

FUNERAL DIRECTOR: WILLIAM HB MARSHEL

LICENSE NUMBER: 1327

EMBALMER'S NAME: WILLIAM HB MARSHEL

LICENSE NUMBER: 1327

ACTUAL OR PRESUMED DATE OF DEATH: JANUARY 31, 2012

MANNER OF DEATH: ACCIDENT

ACTUAL OR PRESUMED TIME OF DEATH: 1058

CAUSE OF DEATH - PART I

BLUNT FORCE INJURY OF THE HEAD

VEHICLE VS TREE

OTHER SIGNIFICANT CONDITIONS - PART II:

NA

CORONER CONTACTED? YES

AUTOPSY PERFORMED? YES

AUTOPSY AVAILABLE? YES

DATE OF INJURY: JANUARY 31, 2012

TIME OF INJURY: 1058

INJURY AT WORK? NO

PLACE OF INJURY: HIGHWAY

LOCATION OF INJURY: OLD SHILTON CHURCH ROAD, YEMASSEE, BEAUFORT COUNTY, SC, 29945

HOW THE INJURY OCCURRED?

AN AMBULANCE CARRYING PATIENT AND HIS WIFE RAN OFF THE ROAD AND HIT TREES

CERTIFIER NAME AND TITLE: CORONER J. EDWARD ALLEN

LICENSE NUMBER: NA

CERTIFIER'S ADDRESS: POST OFFICE DRAWER 1228, BEAUFORT, SC, 29901

DATE FILED: FEBRUARY 06, 2012

DATE OF ISSUANCE: FEBRUARY 08, 2012

SPECIAL INSTRUCTIONS:

MANNER OF DEATH AMENDED BY DHEC 627 PER J. EDWARD ALLEN, CORONER 2/6/12

SC02005561

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

C. Earl Hunter
C. Earl Hunter
Commissioner and State Registrar

Guang Zhao
Guang Zhao
Assistant State Registrar

This copy is not valid unless prepared on an engraved border displaying the state seal and issuing agency logo.

Revision Date: 08/01/2009

Appendix 89

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

CHARLES GARY

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Plaintiff(s)

2014 OCT 20 PM 4:02

2014-CP-07-

2091

vs.

ANGEL Y. GARY AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
BLONDELL M. GARY

Defendant(s)

Submitted By: Joseph Dawson, III

Address: P.O. Box 41367 North Charleston, SC 29423

SC Bar #: 13570

Telephone #: 843-207-9004

Fax #: 843-207-9005

Other:

E-mail: joe@attorneyjosephdawson.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 - -CP- - -
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☒ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |
- Declaratory
Judgment

Submitting Party Signature:

Joseph Dawson III

Date: 17 OCT 14

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous

0088

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
CASE NO. 2014-CP-07- 2691

CHARLES GARY,
PLAINTIFF,

vs.

ANGEL Y. GARY as Personal
Representative of the Estate of
BLONDELL M. GARY

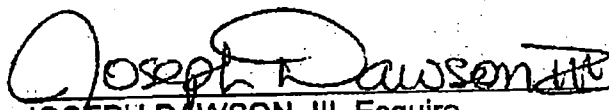
DEFENDANT

SUMMONS

2014 OCT 20 PM 4:02

TO: THE DEFENDANT ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber at P.O. Box 41367, North Charleston, SC 29423, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.



JOSEPH DAWSON, III, Esquire
Post Office Box 41367
North Charleston, South Carolina 29423
Telephone: (843) 207-9004
Facsimile: (843) 207-9005

October 17, 2014
North Charleston S.C.

ATTORNEY FOR THE PLAINTIFF

Appendix 93

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-07- 2691

CHARLES GARY,

PLAINTIFF,

vs.

ANGEL Y. GARY as Personal
Representative of the Estate of
BLONDELL M. GARY

DEFENDANT

COMPLAINT

(Declaratory Judgment Action S.C.
Code Ann. § 15-53-10 et seq.)

2014 OCT 20 PM 4:02

The Plaintiff, Charles Gary, complaining of the Defendant above named, alleges and would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. The Plaintiff, Charles Gary is a citizen and resident of Beaufort County, South Carolina, (hereinafter called "Plaintiff" or "Gary"). Mr. Gary is a beneficiary of the Estate of Blondell M. Gary.
2. Angel Y. Gary, is a citizen and resident of Beaufort County, South Carolina and is the appointed Personal Representative of the Estate of Blondell M. Gary (hereinafter "Estate"). The Estate is pending in Beaufort County, South Carolina and this matter is being brought against the Estate.
3. This Court has jurisdiction over the parties and subject matter hereto.

FACTS

4. On or about January 31, 2012, Low Country Medical Transport was operating an ambulance that was transporting Mr. Gary, who is a paraplegic and his wife Blondell Gary to and from their home in Yemassee, South Carolina after Mr. Gary's medical

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appointment. Mr. Gary was strapped to a stretcher in the back of the ambulance and his wife, Blondell Gary, was riding in the front passenger seat with her seat belt secured. Low Country Medical Transport's ambulance suddenly and un-expectantly ran off the shoulder of the road and struck a tree causing Mr. Gary to suffer serious injuries and killing Blondell Gary.

5. As a result of Mr. Gary's injuries and damages, on October 16, 2012, he filed a lawsuit against several defendants alleging Negligence, Negligence Per Se, Gross Negligence, Loss of Consortium/Companionship of Spouse, Negligent Infliction of Emotional Distress, in a lawsuit styled Charles Gary v. Hattie M. Askew, Will Outlaw, and Deboria Outlaw, individually and D/B/A Low Country Medical Transport, Low Country Medical Transport Inc., Eugene A. Kirkland, and American Medical Response Inc., (D/B/A Access2Care), 2012-CP-07-3595 (hereinafter "Personal Injury Case").

6. Mr. Gary has obtained an Order on Summary Judgment in his Personal Injury Case against several defendants on his Negligence and Loss of Consortium/Companionship of Spouse causes of action. The Personal Injury Case summary judgment Order is on appeal in the South Carolina Court of Appeals.

7. As a result the Estate's injuries and damages, on November 9, 2012, the Estate of Blondell M. Gary filed a lawsuit against several defendants, alleging a Wrongful Death and Survival causes of action, in a case styled Angel Y. Gary as Personal Representative of the Estate of Blondell M. Gary v. Lowcountry Medical Transport, Inc., American Medical Response, Inc., d/b/a, Access2Care, and Eugene A. Kirkland, 2012-CP-25-402 (hereinafter "Wrongful Death Case").

8. In the Wrongful Death Case, the Estate claims among other things that "the beneficiaries of Blondell have endured and continue to endure grief, sorrow, shock, loss of companionship, wounded feelings, and mental anguish." *Wrongful Death Case complaint* ¶12.

9. The Estate has obtained a Default Judgment against the defendant American Medical Response Inc., d/b/a Access2Care.

10. Upon information and belief, the Estate claims and believes that Mr. Gary must bring his claims for Loss of Consortium/Companionship of Spouse, grief, sorrow, shock, wounded feelings, and mental anguish in the Estate's Wrongful Death Case.

11. Mr. Gary believes he is entitled to recover damages for Loss of Consortium/Companionship of Spouse and certain other damages claimed by the Estate in a separate proceeding under South Carolina law, notwithstanding the claims being recoverable under a wrongful death case.

12. Upon information and belief, the Estate claims that Mr. Gary must and/or intends to compel him to seek recovery of certain damages in the Wrongful Death Case that he is pursuing recovery in his Personal Injury Case.

CAUSE OF ACTION
(Declaratory Judgment Action - S.C. Code Ann. § 15-53-10 et seq.)

13. The Plaintiff re-alleges each and every allegation of the Complaint, where consistent herewith, as fully as if set forth herein.

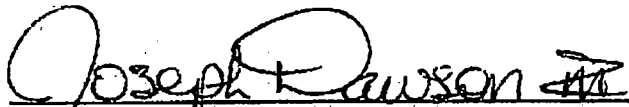
14. Mr. Gary is entitled to recover damages for his Loss of Consortium/Companionship of Spouse and Negligent Infliction of Emotional Distress claims in a separate proceeding from the Wrongful Death Case under South Carolina law.

15. Upon information and belief, the Estate has not pursued a damages hearing and/or trial on the merits in the Wrongful Death Case, because Mr. Gary has refused to seek recovery of certain damages in the Wrongful Death Case that are recoverable in his separate Personal Injury Case.

16. Upon information and belief, the Estate believes Mr. Gary must and/or intends to compel him to participate in developing the damages in the Estate's case that are also recoverable in his separate Personal Injury Case; and therefore, a justiciable case or controversy exists between the parties.

17. Mr. Gary is entitled to have this Court issue a declaratory judgment, wherein the Court declares the rights, status, and other legal relationships of the parties as provided by S.C. Code Ann. § 15-75-20, S.C. Code Ann. § 15-51-10 *et seq.*, Negligent Infliction of Emotional Distress cause of action, and other applicable South Carolina law.

WHEREFORE, the Plaintiff Charles Gary prays that the Court inquire into these matters and Orders that 1) the Plaintiff's Loss of Consortium/Companionship of Spouse and Negligent Infliction of Emotional Distress damages are recoverable in his Personal Injury case, which is a separate proceeding from the Estate's lawsuit, 2) the Estate is not entitled to bring or compel the Plaintiff to bring his Loss of Consortium/Companionship of Spouse and Negligent Infliction of Emotional Distress damages in the Estate's case, without the Plaintiff's consent, and 3) for such other and further relief as this Court may deem proper.



JOSEPH DAWSON, III, Esquire
Post Office Box 41367
Charleston, South Carolina 29423
Telephone: (843) 207-9004
Facsimile: (843) 207-9005

October 17, 2014
North Charleston S.C.

ATTORNEY FOR CHARLES GARY

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF BEAUFORT)

C/A NO.: 2014-CP-07-2691)

CHARLES GARY,)

Plaintiff,)

**ANSWER TO DECLARATORY
JUDGMENT COMPLAINT**

v.)

ANGEL Y. GARY, AS PERSONAL)
REPRESENTATIVE OF THE ESTATE)
OF BLONDELL M. GARY,)Defendant.)
_____)

TO: JOSEPH DAWSON, III, ESQUIRE, ATTORNEY FOR PLAINTIFF:

The Defendant responds to the Plaintiff's Complaint below. Capitalized terms are defined as in Plaintiff's Complaint.

GENERAL DENIAL

1. Each allegation hereinafter not specifically admitted, explained, or otherwise responded to is denied.
2. Defendant admits paragraphs 1 and 2.
3. The allegations of paragraph 3 state conclusions of law, to which the Defendant is required neither to admit nor to deny. To the extent the Court deems a response necessary, Defendant incorporates by reference her specific defenses set forth below.
4. Defendant admits paragraphs 4, 5, 6, 7, 8, and 9.
5. Answering the allegations of paragraph 10, Defendant admits she claims Mr. Gary must bring his claims for grief, sorrow, shock, wounded feelings, and mental anguish in the Estate's Wrongful Death Case; however, she denies the remaining allegations of paragraph 10.
6. Defendant denies paragraph 11.

7. Defendant admits paragraph 12.

8. 'Answering the allegations of paragraph 13, Defendant realleges her responses to the allegations of paragraphs 1-12 as if fully set forth herein.

9. Defendant denies paragraph 14.

10. Defendant admits paragraphs 15 and 16.

11. Defendant denies paragraph 17.

SPECIFIC DEFENSES

12. Plaintiff's Complaint fails to set forth facts sufficient to constitute a cause of action for declaratory relief. Therefore, the Court should dismiss this action pursuant to SCRCF 12(b)(6).

13. There is another action pending between the parties in which the same issues presented in this action can and/or should be litigated. Therefore, the Court should dismiss this action pursuant to SCRCF 12(b)(8).

14. There is another action pending between the parties in which the same issues presented in this action can and/or should be litigated. The other action has been stayed by the Court with consent of Plaintiff and Defendant herein. Therefore, the Court should also stay this action.

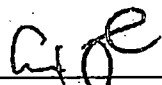
15. Plaintiff has failed to join as parties all persons who have or claim an interest which may be affected by the requested declaration as required by S.C. Code Ann. § 15-53-80 (1976, as amended).

16. Plaintiff has failed to join all parties needed for a just adjudication of this action. Therefore, the Court should dismiss this action pursuant to SCRCF 12(b)(7) and 19.

17. The issues presented by this action should be decided in the respective tort actions.

WHEREFORE, Defendant prays for the Court to dismiss Plaintiff's claims, to enter a declaratory judgment in favor of Defendant, and to award whatever additional and further relief it deems just and proper.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: 

R. Alexander Murdaugh
P.O. Box 457
Hampton, SC 29924
(803) 943-2111
amurdaugh@pmped.com

and

Bert G. Utsey, III
P.O. Box 1164
Walterboro, SC 29488
(843) 549-9544
butsey@pmped.com

ATTORNEYS FOR DEFENDANT

Hampton, South Carolina
December 10, 2014

CERTIFICATE OF SERVICE

This is to certify that I, Kristi H. Jarrell, with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., attorneys for the Plaintiff have this date served a true and correct copy of the within *Defendant's Answer to Declaratory Judgment* via U.S. Postal service, first class postage prepaid to:

Joseph Dawson, III, Esquire
P.O. Box 41367
North Charleston, SC 29423

Re: Charles Gary v. Angel Y. Gary as Personal Representative of the Estate of Blondell M. Gary
C/A No.: 2014-CP-07-2691

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

By: Kristi H. Jarrell
Kristi H. Jarrell

Hampton, South Carolina
December 30, 2014

BEAUFORT COUNTY PROBATE COURT

JUDGE
KENNETH E. FULP, JR.

ASSOCIATE JUDGE
HEATHER R. GALVIN



COURT ADMINISTRATOR
PAT C. GARVIN

COUNTY COURTHOUSE
102 RIBAUT ROAD, BEAUFORT, SC 29902

July 28, 2015

VIA E-MAIL AND US MAIL

Joseph Dawson, III, Esquire
PO Box 41367
North Charleston, SC 29423

Re: Estate of Blondell M. Gary
Probate Court Case Number: 2012ES0700140

Dear Mr. Dawson:

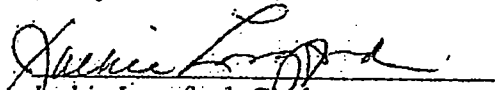
The following items (marked with an "x") are applicable to the above-referenced Estate:

- X 1. Enclosed is a copy of the Order for Hearing.
- X 2. A hearing on Petition for Removal of Personal Representative is scheduled for:
DATE: September 3, 2015
TIME: 9:30 a.m.
PLACE: Beaufort County Probate Court, 102 Ribaut Road, Room 100,
Beaufort, South Carolina
- X 3. Notice of hearing must be given to all interested persons, as defined in S.C. Code §62-1-201(23), *at least 20 days prior to the hearing date.*
- X 4. The hearing will be audio-recorded by the Court. If you wish to secure the services of a court reporter, you may do so at your expense.
- X 5. Please provide the Court with Proof of Notice of Hearing or Certificate of Mailing prior to the hearing.

Very truly yours,

Kenneth E. Fulp, Jr., Judge
Beaufort County Probate Court

By:


Jackie Langford, Clerk

Enclosure

Copies to: Tiffany Provence, Esquire
Austin H. Crosby, Esquire

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JOSEPH DAWSON, III

ATTORNEY AT LAW

POST OFFICE BOX 41367

NORTH CHARLESTON, S.C. 29423-41367

Email: joe@attorneyjosephdawson.com

TELEPHONE
(843) 207-9004

FAX NUMBER
(844) 288-7399

August 4, 2015

R. Alexander Murdaugh, Esquire
Austin H. Crosby, Esquire
Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.
P.O. Box 457
Hampton, SC 29924

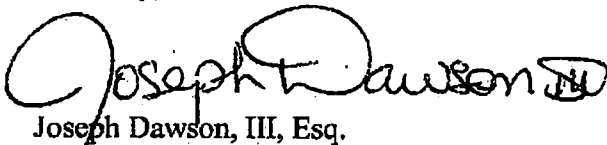
Tiffany N. Provence, Esq.
Provence Messervy LLC
300 North Cedar Street, Suite A
Summerville, SC 29483

RE: In the Matter of the Estate of Blondell Gary
Charles Gary v. Angel Y. Gary as Personal Representative for the Estate of
Blondell M. Gary, Case Number 12-ES-07-00140

Dear Counsellors:

Enclosed please find a copy of the Notice of Hearing, Certificate of Service, and Proof of Service to be filed with the Beaufort County Probate Court in the above-referenced matter.

Sincerely,



Joseph Dawson, III, Esq.

cc: Jackie Lanford, Beaufort County Probate Court

STATE OF SOUTH CAROLINA

COUNTY OF: Beaufort

IN THE MATTER OF:

Estate of Blondell M. Gary
(Decedent)

IN THE PROBATE COURT

NOTICE OF HEARING

CASE NUMBER: 2012ES0700140

DATE: September 3, 2015

TIME: 9:30 am

PLACE: Beaufort County Probate Court, 102 Ribaut Road, Room 100, Beaufort, South Carolina

PURPOSE OF HEARING:

Petition for Removal of Personal Representative

Executed this 4th day of August, 2015.

Signature: 

Print Name: Joseph Dawson, III, ESQ

Address: Post Office Box 41367

North Charleston, SC 29423

Telephone (Work): (843) 207-9004

(Home):

(Cell):

E-mail: joe@attorneyjosephdawson.com

Relationship to Decedent/Estate:

NOTE: Probate Court recommends that all interested parties be represented by counsel licensed to practice law in South Carolina. If any interested party wishes to represent him/herself, he/she will be required to adhere to the *South Carolina Rules of Civil Procedure* and *South Carolina Rules of Evidence*.

STATE OF SOUTH CAROLINA

COUNTY OF: BEAUFORT

IN THE PROBATE COURT

IN THE MATTER OF:
ESTATE OF BLONDELL M. GARY
(Decedent)

PROOF OF DELIVERY

CASE NUMBER: 2012ES0700140

On the 4th day of August, 2015, I mailed or delivered the following document(s):

Notice of Hearing for Petition for Removal of Personal Representative

- ☒ A copy of which is attached hereto and incorporated herein, or
☐ The original of which is on file with the Court.

Delivery was accomplished by the following method (check appropriate box):

- ☐ personal delivery
☐ certified mail
☐ commercial delivery
☒ ordinary first-class mail
☐ registered mail
☐ electronic message (Article 7, Trust matters only)

to each of the following persons at the address shown:

NAME	ADDRESS
CHARLES GARY	
TATANISHA S. GARY	
ANGEL Y. GARY	

SWORN to before me this 4th day of August, 2015

Joseph Dawson
Notary Public for South Carolina
My Commission Expires: 2-6-2024

Signature: Joseph Dawson
Print Name: JOSEPH DAWSON, III, ESQ
Address: POST OFFICE BOX 41367
NORTH CHARLESTON, SC 29423
Telephone (Work): (843) 207-9004
(Home):
(Cell):
E-mail: JOE@ATTORNEYJOSEPHDAWSON.COM
Relationship to Decedent/Estate:

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF: THE ESTATE OF
BLONDELL M. GARY (DECEDENT)

CHARLES GARY,

PETITIONER

vs.

ANGEL Y. GARY AS PERSONAL REPRESENTATIVE
FOR THE ESTATE OF BLONDELL M. GARY

RESPONDENT

IN THE PROBATE COURT

CASE NUMBER: 2012-ES-07-00140

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the **Notice of Hearing for Petition for Removal of Personal Representative and Proof of Delivery** of Petitioner on counsel of record Tiffany N. Provence, Esquire and Austin H. Crosby, Esquire by depositing a copy of the same in the United States Mail, postage prepaid, on August 4, 2015, addressed as follows:

R. Alexander Murdaugh, Esquire
Austin H. Crosby, Esquire
Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.
P.O. Box 457
Hampton, SC 29924

Tiffany N. Provence, Esq.
Provence Messervy LLC
300 North Cedar Street, Suite A,
Summerville, SC 29483



Joseph Dawson, III, Esq.
Post Office Box 41367
North Charleston, SC 29423

Attorney for Petitioner Charles Gary

Appendix 107

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF HAMPTON)

CASE NO.: 2012-CP-25-402

Angel Y. Gary as PR for Blondell Marie Gary,

Plaintiff,)

vs.)

Lowcountry Medical Transport, Inc., American
Medical Response, Inc., d/b/a: Access2Care, and
Eugene A. Kirkland,

Defendant.)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

MYLINDA D. NETTLES
CLERK OF COURT
HAMPTON COUNTY, S.C.

2015 DEC 29 PM 1:54

FILED

Plaintiff's Attorney:

Austin H. Crosby, Bar No. 80161

Address:

PO Box 457

Hampton, SC 29924

Phone: (803) 914-6726 Fax (803) 914-6711

Defendant's Attorney:

Erin D. Dean, Esquire,

P.O. Box 2055, Beaufort, SC 29901

Phone: (843) 524-1116 Fax: (843) 524-1463

Robert H. Hood, Jr., Esquire,

Post Office Box 1508, Charleston, SC 29402

Phone: (843) 577-4435 Fax: (843) 722-1630

☐ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☒ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff/☐ Defendant

December 29, 2015

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$ 25.00**

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE: _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$ _____**

☐ **CONTESTED - AMOUNT DUE: \$ _____**

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

ANGEL Y. GARY AS PR FOR
BLONDELL MARIE GARY.

Plaintiff,

v.

LOWCOUNTRY MEDICAL
TRANSPORT, INC., AMERICAN
MEDICAL RESPONSE, INC., D/B/A,
ACCESS2CARE, AND EUGENE A.
KIRKLAND.

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2012-CP-25-402

PLAINTIFF'S NOTICE OF MOTION AND
MOTION TO AMEND COMPLAINT

MYLINDA D. NEILLES
CLERK OF COURT
HAMPTON COUNTY, S.C.

2015 DEC 29 PM 1:54

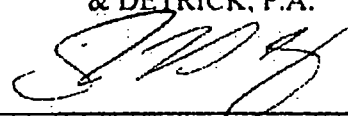
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PLEASE TAKE NOTICE that the Plaintiff, by and through her undersigned attorneys, will move before this Honorable Court, ten (10) days after service of this Notice of Motion and Motion to Amend Complaint or at such time as the Court may appoint, for an Order permitting Plaintiff to amend her Complaint pursuant to Rule 15 of the South Carolina Rules of Civil Procedure.

A copy of said Amended Summons and Complaint is hereto attached.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY:



R. Alexander Murdaugh
Bert G. Utsey, III
Austin H. Crosby
PO Box 457
Hampton, SC 29924
(803) 943-2111

ATTORNEYS FOR PLAINTIFF

December 29, 2015
Hampton, South Carolina

Appendix 109

FILED

2015 DEC 29 PM 1:54

6Y
HALL AND D. NETTLES
CLERK OF COURT
HAMPTON COUNTY, S.C.

STATE OF SOUTH CAROLINA)

COUNTY OF HAMPTON)

ANGEL Y. GARY AS PERSONAL)
REPRESENTATIVE OF THE ESTATE OF)
BLONDELL M. GARY:)

PLAINTIFF,)

VS.)

LOWCOUNTRY MEDICAL TRANSPORT,)
INC., AMERICAN MEDICAL RESPONSE,)
INC., D/B/A, ACCESS2CARE, AND)
EUGENE A. KIRKLAND.)

DEFENDANTS.)

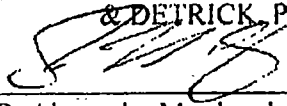
IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2012-CP-25

**AMENDED SUMMONS
WRONGFUL DEATH AND SURVIVAL
ACTION
JURY TRIAL DEMANDED**

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscribed at their office, P.O. Box 457, Hampton, South Carolina within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in this Complaint.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: 
R. Alexander Murdaugh
Bert G. Utsey, III
Austin H. Crosby
P.O. Box 457
Hampton, SC 29924
(803) 943-2111: Phone

ATTORNEYS FOR PLAINTIFF

December 29, 2015
Hampton, South Carolina

Appendix 110

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON
ANGEL Y. GARY AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
BLONDELL M. GARY,

PLAINTIFF,

VS.

LOWCOUNTRY MEDICAL TRANSPORT,
INC., AMERICAN MEDICAL RESPONSE,
INC., D/B/A, ACCESS2CARE, AND
EUGENE A. KIRKLAND

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2012-CP-25

**AMENDED COMPLAINT
WRONGFUL DEATH AND SURVIVAL
ACTION
JURY TRIAL DEMANDED**

BY
HONORABLE JUDGE
JEROME D. HETTLER
CLERK OF COURT
HAMPTON COUNTY, S.C.

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The Plaintiff alleges as follows:

1. Angel Y. Gary, is a citizen and resident of Beaufort County, South Carolina and is the duly appointed Personal Representative of the Estate of Blondell M. Gary. This action is brought on behalf of the Estate of Blondell M. Gary and the beneficiaries of Blondell M. Gary.

2. The Defendant, Lowcountry Medical Transport, Inc. (hereinafter "Lowcountry Medical Transport"), is a domestic corporation with its principal place of business in the County of Hampton, South Carolina. Lowcountry Medical Transport is engaged in the business of providing non-emergency medical transportation services in the counties of Beaufort, Jasper, and Hampton.

3. The Defendant, American Medical Response, Inc. d/b/a Access2Care (hereinafter "American Medical Response"), is a foreign corporation with its principal place of business in the State of Delaware; that American Medical Response is engaged in the business of providing

brokerage services for certain non-emergency medical transportation services that take place in the state of South Carolina.

4. Lowcountry Medical Transport operates as an agent of American Medical Response, and Lowcountry Medical Transport's actions and the manner in which their work is performed is controlled by the principal company, American Medical Response.

5. American Medical Response owed a non-delegable duty to the passengers riding in Lowcountry Medical Transport's vehicles, to provide a reasonably safe form of transportation.

6. The Defendant, Eugene A. Kirkland, is a resident of Hampton County and employed by Lowcountry Medical Transport; at all times mentioned herein, Eugene Kirkland was working within the scope of his employment as an agent/employee/servant, for both Lowcountry Medical Transport and American Medical Response; he was driving the subject vehicle on the day in question.

7. On or about January 31, 2012, Blondell Gary (hereinafter "Blondell"), was a passenger in the subject vehicle travelling north on Old Sheldon Church Road in Beaufort County; Eugene Kirkland recklessly and negligently lost control of the vehicle, left the roadway, and collided with a tree.

8. As a direct and proximate result of the collision, Blondell suffered serious and severe injuries which caused her to endure conscious pain and suffering and resulted in her death.

9. The injuries and damages to the deceased Plaintiff were due to and proximately caused by the negligent and reckless conduct of the Defendants in the following particulars:

**AS TO LOWCOUNTRY MEDICAL TRANSPORT, INC., AMERICAN MEDICAL
RESPONSE, INC. d/b/a ACCESS2CARE, and EUGENE A. KIRKLAND
(Negligence)**

10. Each and every allegation contained in this Complaint which is not inconsistent with this cause of action is hereby incorporated by reference as if repeated verbatim herein.

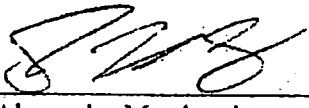
- (a) In failing to keep the subject vehicle under proper control;
- (b) In failing to keep a proper lookout;
- (c) In traveling too fast for conditions existing at that time;
- (d) In operating a vehicle in disregard for the safety of others;
- (e) In failing to exercise that degree of care that a reasonably prudent person would have exercised under the same or similar circumstances; and
- (f) In allowing the vehicle to leave the roadway.

11. As a result of the described acts and omissions of the Defendants, Blondell M. Gary was seriously injured and was forced to experience conscious pain, suffering, and mental anguish prior to her death. The beneficiaries of Blondell have endured and continue to endure grief, sorrow, shock, loss of companionship, wounded feelings, and mental anguish. In addition, the Plaintiff has incurred expenses such as medical bills, funeral expenses and other costs associated with the untimely death of Blondell.

12. The Plaintiff is entitled to judgment against the Defendants, jointly and severally, for both actual and punitive damages; all of which were directly and proximately caused by the Defendants' acts and/or omissions as more fully set forth above, in an amount determined fair and reasonable by a jury.

WHEREFORE, Plaintiff prays for judgment against the Defendants for actual damages, together with punitive damages in an appropriate amount, for the costs and disbursements of this action, and for such other and further relief as the Court may deem just and proper.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: 

R. Alexander Murdaugh
Bert G. Utsey, III
Austin H. Crosby
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
(803) 943-2111: Phone
(803) 943-3943: Fax

ATTORNEYS FOR PLAINTIFF

December 29, 2015
Hampton, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Charles Gary,

Plaintiff,

vs.

Angel V. Gary as PR for Blondell Marie Gary,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-07-2691

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

2015 DEC 29 PM 3:54

Plaintiff's Attorney:

Austin H. Crosby, Bar No. 80161

Address:

PO Box 457

Hampton, SC 29921

Phone: (803) 914-6726 Fax: (803) 914-6711

Defendant's Attorney:

Joseph Dawson, III, Esquire

Post Office Box 41367

N. Charleston, SC 29423-1367

Phone: (843) 207-9004 Fax: (843) 207-9005

☐ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed:

Court Reporter Needed: ☐ YES ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☐ Form Motion Order

I hereby move for relief or action by the court as set forth in the attached proposed order

December 29, 2015

Signature of Attorney for ☐ Plaintiff ☒ Defendant

Date submitted

SECTION III: Motion Fee

☒ **PAID** AMOUNT \$ 25.00

☐ **EXEMPT**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions.

Name of Court Reporter:

☐ Other

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order. JUDGE CODE:

☐ Other

Date:

CLERK'S VERIFICATION

Collected by: Date Filed:

☐ MOTION FEE COLLECTED \$

☐ CONFESTED AMOUNT DUE \$

SCCA 233 (11-2003)

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

CHARLES GARY AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF BLONDELL MARIE GARY,

Plaintiff,

ANGEL Y. GARY AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF BLONDELL MARIE GARY,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2014-CP-07-2691

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION TO AMEND ANSWER TO
DECLARATORY JUDGEMENT
COMPLAINT**

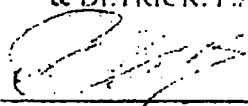
DEC 29 PM 3:54

PLEASE TAKE NOTICE that the Plaintiff, by and through her undersigned attorneys, will move before this Honorable Court, ten (10) days after service of this Notice of Motion and Motion to Amend Answer to Declaratory Judgement Complaint or at such time as the Court may appoint, for an Order permitting Defendant to amend her Answer pursuant to Rule 15 of the South Carolina Rules of Civil Procedure.

A copy of said Amended Answer to Declaratory Judgement Complaint is hereto attached.

PETERS, MURDAUGH, PARKER, FLIZROTH
& DETRICK, P.A.

BY:


R. Alexander Murdaugh
Bert G. Utsey, III
Austin H. Crosby
PO Box 457
Hampton, SC 29924
(803) 943-2111

ATTORNEYS FOR PLAINTIFF

December 29, 2015
Hampton, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

C/A NO.: 2014-CP-07-2691

CHARLES GARY,)

Plaintiff,)

**AMENDED ANSWER TO
DECLARATORY JUDGEMENT
COMPLAINT**

v.)

ANGEL Y. GARY, AS PERSONAL)
REPRESENTATIVE OF THE ESTATE)
OF BLONDELL M. GARY,)

Defendant.)

DATE CANCELLED
2015-07-09 11:35:54

TO: JOSEPH DAWSON, III, ESQUIRE, ATTORNEY FOR PLAINTIFF:

The Defendant responds to the Plaintiff's Complaint below. Capitalized terms are defined as in Plaintiff's Complaint.

GENERAL DENIAL

1. Each allegation hereinafter not specifically admitted, explained, or otherwise responded to is denied.

2. Defendant denies paragraph 1.

3. Defendant admits paragraph 2.

4. The allegations of paragraph 3 state conclusions of law, to which the Defendant is required neither to admit nor to deny. To the extent the Court deems a response necessary, Defendant incorporates by reference her specific defenses set forth below.

5. Defendant denies paragraph 4.

6. Defendant admits paragraphs 5, 6, 7, 8, and 9.

7. Defendant denies paragraphs 10, 11, and 12.

8. Answering the allegations of paragraph 13, Defendant realleges her responses to the

allegations of paragraphs 1-12 as if fully set forth herein.

9. Defendant denies paragraph 14.
10. Defendant admits paragraph 15.
11. Defendant denies paragraphs 16 and 17.

SPECIFIC DEFENSES

12. Plaintiff's Complaint fails to set forth facts sufficient to constitute a cause of action for declaratory relief. Therefore, the Court should dismiss this action pursuant to SCRCP 12(b)(6).

13. There is another action pending between the parties in which the same issues presented in this action can and/or should be litigated. Therefore, the Court should dismiss this action pursuant to SCRCP 12(b)(8).

14. There is another action pending between the parties in which the same issues presented in this action can and/or should be litigated. The other action has been stayed by the Court with consent of Plaintiff and Defendant herein. Therefore, the Court should also stay this action.

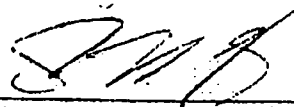
15. Plaintiff has failed to join as parties all persons who have or claim an interest which may be affected by the requested declaration as required by S.C. Code Ann. § 15-53-80 (1976, as amended).

16. Plaintiff has failed to join all parties needed for a just adjudication of this action. Therefore, the Court should dismiss this action pursuant to SCRCP 12(b)(7) and 19.

17. The issues presented by this action should be decided in the respective tort actions.

WHEREFORE, Defendant prays for the Court to dismiss Plaintiff's claims, to enter a declaratory judgment in favor of Defendant, and to award whatever additional and further relief it deems just and proper.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: 

R. Alexander Murdaugh
Bert G. Utsey, III
Austin H. Crosby
P.O. Box 457
Hampton, SC 29924
(803) 943-2111

ATTORNEYS FOR DEFENDANT

December 29, 2015
Hampton, South Carolina

CERTIFICATE OF SERVICE

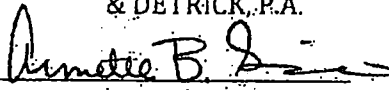
This is to certify that I, **Annette B. Griswold**, with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., Attorneys for the Plaintiff(s), have this date forwarded via facsimile and mailed via the U.S. Postal Service, a true and correct copy of the within ***Plaintiff's Notice of Motion and Motion to Amend Answer to Declaratory Judgement Complaint*** with first class postage prepaid to:

Joseph Dawson, III, Esquire
Post Office Box 41367
N. Charleston, SC 29423-1367

ATTORNEY FOR CHARLES GARY

RE: Charles Gary v. Angel Y. Gary as Personal Representative for the Estate of Blondell Marie Gary
C/A No.: 2014-CP-07-2691

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: 
Annette B Griswold

30
December 28, 2015
Hampton, South Carolina

John A. Roseman

Clerk of Court
Beaufort County SC

2

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

CHARLES GARY,

Plaintiff,

vs.

DORETHA CHISOLM GARY,

Defendant.

IN THE FAMILY COURT FOR THE
FOURTEENTH JUDICIAL CIRCUIT

FILE NO.: 2000-DR-07-661

related file: 98-DR-07-1378

**FINAL DIVORCE DECREE and
VISITATION ORDER**

01 JAN 22 PM 4:58
FAMILY COURT
BEAUFORT COUNTY
S.C.

HEARING DATE:

DECEMBER 13, 2000

PRESIDING JUDGE:

JANE DOWLING FENDER

PLAINTIFF'S ATTORNEY:

VERNELL I. SCOTT, ESQUIRE

DEFENDANT'S ATTORNEY:

SAMUEL S. SVALINA, ESQUIRE

COURT REPORTER:

ROBIN HILD

This action for a Divorce was initiated when Plaintiff filed a Summons and Verified Complaint for Divorce in the Beaufort County Family Court on or about May 19, 2000. The Defendant was properly served. She filed an Answer and Counterclaim by and through her attorney, Samuel Svalina, Esquire. Also present was one corroborating witness for the Plaintiff.

Prior to taking any testimony the Court inquired of the Plaintiff whether there was any possibility of reconciliation, the Court was informed that no reconciliation was possible. The Court reviewed the pleadings, heard the argument of the attorneys, and heard the testimony makes the following findings of fact and conclusions of law:

1. Plaintiff and Defendant are citizens and residents Beaufort County, in the State of South Carolina and have so resided for a period in excess of one year prior to the initiation of this action.
2. The parties were lawfully married to each other on August 15, 1982 in Colleton County, South Carolina; that the parties last lived together as husband and wife in the state of South Carolina on or about August 28, 1998.
3. The issues related to the parties' marital property were resolved pursuant to an Agreement and resulting Order of this Court entitled "Final Order" in matter entitled CHARLES GARY vs. DORETHA CHISOLM GARY, matter number 98-DR-07-1378 and dated June 9, 1999.

4. The parties are the parents of three children, one of whom is a minor, to wit: [REDACTED], whose date of birth is November 5, 1993 and no other children are expected.
5. Plaintiff is entitled to a Divorce, a vinculo matrimonii, from the Defendant on the grounds of having lived separate and apart for more than one year without cohabitation.
6. Defendant is entitled to resume her maiden name of "Doretha Chisolm".

Re: Custody, child support and visitation

7. Defendant will retain custody of the parties' minor child, [REDACTED], subject to Plaintiff's regularly scheduled visitation privileges.
8. Plaintiff's monthly gross income is one thousand nine hundred and seventeen dollars and Defendant's imputed income is eight hundred and seventy-six dollars per month which amount is based upon the minimum wage of \$5.15 per hour.
9. Plaintiff shall pay child support in the amount of three hundred forty dollars (\$340.00) plus the Court's three percent (3%) administrative fee in the amount of ten dollars and twenty cents (\$10.20) for a total monthly amount of three hundred fifty dollars and twenty cents (\$350.20) per month, said payments shall be paid through the Beaufort County Family Court by wage withholding. (See attached Child Support Worksheet)
10. Plaintiff is entitled to regularly scheduled visits with the parties minor child as follows:
for three months, beginning on Saturday December 16, 2000 Plaintiff shall pick up the parties' child at 10:00 a.m. and return the child at 2:00 p.m.; this temporary visitation schedule shall continue on alternate Saturdays until February 24, 2001.
11. Thereafter, beginning the 9th of March, 2001, Plaintiff shall exercise regularly scheduled visitation will commence as follows:
 - a. Alternating Weekends: every other weekend from Friday at 6:00 p.m. until Sunday at 6:00 p.m.
 - b. Summer visitation: Two weeks selected by Plaintiff with notice to Defendant by certified mail on or before the 15th of May. Failure to give notice as required will result in Defendant selecting the weeks for visitation, but will not result in a denial of visitation.
 - c. Holidays: All Major Holidays are to be alternated by the parents:
(1) Christmas

9042

Week one: 6:00 p.m. the day school dismisses for the holidays in the district where the children reside until 2:00 p.m. on Christmas Day. (Odd years with Plaintiff.)

Week two: 2 p.m. on Christmas Day until 6:00 p.m. the day before school reconvenes. (Even years with the Plaintiff)

(2) **Thanksgiving:** 6:00 p.m. Wednesday until 6:00 p.m. Sunday (Odd years with Plaintiff)

(3) **Spring Break:** 6:00 p.m. on the day school dismisses until 6:00 p.m. on the day before school reconvenes (Odd years with the Plaintiff)

(4) **Mother's Day:** 6:00 p.m. Friday until 6:00 p.m. Sunday every year with Defendant.

(5) **Father's Day:** 6:00 p.m. Friday until 6:00 p.m. Sunday every year with the Plaintiff

d. Telephone:

Initiated by Plaintiff: Each Wednesday, during the week when there is no weekend visitation between 6:30 p.m. and 8:30 p.m. for not to exceed 30 minutes at his expense.

Initiated by Children: As often as the child wishes to call (at the expense of the parent called).

a. **Notice:** Visiting parent must give 24 hours notice of intention not to visit.

f. **Pickup/Delivery for Visitation:** Plaintiff will pick up the children from Defendant's home - Defendant is not to exit the home nor is Plaintiff to enter the home the child is to be sent to meet Plaintiff or Plaintiff's designate.

Other: When Plaintiff is unable to pick up the child, Plaintiff may send his sister or his mother to pick up the child for him.

g. Visiting parent is allowed a total of thirty minutes grace period. That is, he may be no more than thirty minutes late in picking up the children or in returning the children to the custodial parent, unless the parties have agreed to a change in the pick up and/or the return time.

h. General information:

(1) All holiday visitation takes precedence over regular weekend visitation. Alternating weekends are reset after each holiday period. (Example: the visiting parent would not have Thanksgiving weekend and the weekend after Thanksgiving).

- (2) Parents may designate a responsible adult to assist them with the exchange of the children for visitation (bearing in mind the Restrictions listed herein).
- (3) Parents must keep one another informed at all times of their work address(es) and telephone number(s) as well as their home address and telephone number.

7. Mutual Restrictions

1. Neither parties may expose the child to violent conduct;
2. Neither party may expose the child to non-spouse overnight romantic companions;
3. Neither party may expose the child to immoral or illegal activities;
4. Neither party may expose the child to sexually explicit materials of any kind;
5. Neither party may discuss this case with or in the presence of the child;
6. Neither party may make or allow disparaging comments about the other parent or family in the presence of the child;
7. Neither party may use or allow vulgar, profane, demeaning or violent language around the child;
8. Both parties are restrained from harassing or threatening the other party in any way.

NOW THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT

- 9054
- A. Plaintiff is granted a decree of Divorce from the Defendant, a vinculo matrimonii, upon the grounds of living separate and apart for a period in excess of one year,
 - B. The parties are warned that violations of the visitation schedule are punishable by the full force of this Court's contempt powers;
 - C. The prior Order of this Court shall remain in full force and effect with the exception of the child support provisions,
 - D. Plaintiff shall pay child support in the amount of three hundred forty dollars (\$340.00) plus the Court's three percent (3%) administrative fee in the amount of ten dollars and twenty cents (\$10.20) for a total monthly amount of three hundred fifty dollars and twenty cents (\$350.20) per month; and
 - E. Both parties are barred from any and all forms of spousal support.
 - F. Defendant may resume her maiden name of Doretha Chisolm.

AND IT IS SO ORDERED!

Jane P. Fender
The Honorable Jane Dowling Fender
Presiding Judge, 14th Judicial Circuit

Dated: Jan 19, 2001
Bessie Fox, South Carolina

South Carolina Department of Social Services
CHILD SUPPORT OBLIGATION: WORKSHEET A

Charles Gary
Name of Plaintiff

vs. Dorothy Chikola
Name of Defendant

02-DR-07-681
File Number

	Father	Mother	
1. Monthly Gross Income:	<u>1,917</u>	<u>878</u>	
	☐ Imputed	☒ Imputed	
2. Monthly Alimony (This Action)			
a. To Be Received:	<u>0</u>	<u>0</u>	
b. To Be Paid:	<u>0</u>	<u>0</u>	
3. a. Other Monthly Alimony or Child Support Paid: (If Having Priority Over This Action)	<u>0</u>	<u>0</u>	
b. Adjustment for <u>0</u> / <u>0</u> Other Child(ren) In the Home:	<u>0</u>	<u>0</u>	
4. Adjusted Monthly Gross Income:	4(F) <u>1,917</u>	4(M) <u>878</u>	4(C) <u>2,795</u> 4(F) + 4(M) = 4(C)
Number of Children To Be Supported By Order In This Action: 1			
5. Basic Combined Child Support Obligation (Gross): (From Schedule, Using Combined Monthly Adjusted Gross Income (Line 4C))			5(C) <u>498</u>
6. Adjustments to Basic Child Support Obligation			
a. Health Insurance Premium: (Portion Covering Children Only)	<u>0</u>	<u>0</u>	
b. Child(ren)'s Extraordinary Medical Expenses:	<u>0</u>	<u>0</u>	
c. Work-related Child Care Costs Adjusted For Federal Tax Credit: Actual <u>0</u> x 0.75 =	<u>0</u>	<u>0</u>	
(0.75 adjusts for Federal Tax Credit but does not apply for certain income levels; see instructions)			
Total adjustment to Basic Combined Child Support Obligation:	6(F) <u>0</u>	6(M) <u>0</u>	6(C) <u>0</u>
7. Total Combined Monthly Child Support Obligation: (Net)			7(C) <u>498</u> 5(C) + 6(C) = 7(C)
8. Proportional Share of Combined Monthly Adjusted Gross Income:	8(F) <u>68.84%</u> 4(F) / 4(C) = 8(F)	8(M) <u>31.16%</u> 4(M) / 4(C) = 8(M)	
9. Gross Child Support Obligation of Individual Parent: (Monthly)	9(F) <u>340</u> 7(C) x 8(F) = 9(F)	9(M) <u>158</u> 7(C) x 8(M) = 9(M)	
Complete Items 10-11 for Non-Custodial Parent Only:			
Non-Custodial Parent is: (Check One)	Father ☒	Mother ☐	
10. Credit for Adjustments to Basic Combined Child Support Obligation: (From Item 6(F) or Item 6(M))	10(F) <u>0</u> (Same as Item 6(F))	10(M) <u>0</u> (Same as Item 6(M))	
11. Net Child Support To Be Paid To Custodial Parent:	11(F) <u>340</u> 9(F) - 10(F) = 11(F)	11(M) <u>0</u> 9(M) - 10(M) = 11(M)	
Worksheet Prepared by: <u>Yarnell J. Scott</u>			
Date: <u>January 9, 2001</u>	For: Father ☒	Mother ☐	

Note: If deviation from the Guidelines is necessary, please specify reasons (over).

DSS Form 27161 (JUL 98) Edition of JAN 99 is obsolete.

Diagnostic Information

7

Charles Gary
Name of Plaintiff

vs.

Dorothy Chisom
Name of Defendant

00-DR-07-321
File Number

Miscellaneous Payment Options:

	<u>Gross Obligation</u>	<u>3% Fee</u>	<u>Gross Obligation Plus 3% Fee</u>
Monthly	<u>340.00</u>	<u>10.20</u>	<u>350.20</u>
Semi-monthly	<u>170.00</u>	<u>5.10</u>	<u>175.10</u>
Bi-weekly	<u>155.92</u>	<u>4.71</u>	<u>161.63</u>
Weekly	<u>78.46</u>	<u>2.35</u>	<u>80.81</u>

Other Children in the Home:

Father has 0 additional child(ren) in the home for which the calculated deduction is \$0

Mother has 0 additional child(ren) in the home for which the calculated deduction is \$0

Calculation of Work-related Child Care Costs (net of tax credit):

	<u>Father</u>	<u>Mother</u>
Total Monthly Work-related Child Care Cost	<u>0</u>	<u>0</u>
Number of Children with Parent (Present Action)	<u>0</u>	<u>1</u>
Percentage of Costs Included in Obligation	<u>100%</u>	<u>100%</u>
Monthly Child Care Cost Net of Credit	<u>0</u>	<u>0</u>

NOTES:

1. No credit is calculated when the custodial parent's income is below a level at which the credit cannot be utilized for tax purposes. See Child Support Guidelines Handbook for details.
2. No credit is calculated for a parent without custody of a child.

LICENSE AND CERTIFICATE FOR MARRIAGE

STATE OF SOUTH CAROLINA COLLETON COUNTY

X 0000031445

LICENSE NUMBER

COUNTY

(1) GROOM-NAME (FIRST) CHARLES (MIDDLE) (LAST) GARY		(2a) BIRTHDATE (MONTH, DAY, YEAR) [REDACTED]		(2b) AGE 49
(3) BIRTHPLACE (State or foreign country) SOUTH CAROLINA		(4) RACE BLACK	(5) RESIDENCE (City, State, Zip) [REDACTED]	
(5b) CITY, TOWN, OR LOCATION YEMESSEE		(5c) COUNTY BEAUFORT	(5d) STATE SOUTH CAROLINA	(6) NO. OF THIS MARRIAGE 3RD (2nd, etc.)
(7) BRIDE-NAME (FIRST) BLONDELL (MIDDLE) MARIE (LAST) YOUNG		(8a) BIRTHDATE (MONTH, DAY, YEAR) [REDACTED]		(8b) AGE 43
(9) BIRTHPLACE (State or foreign country) SOUTH CAROLINA		(10) RACE BLACK	(11) RESIDENCE (City, State, Zip) [REDACTED]	
(11b) CITY, TOWN, OR LOCATION BURTON		(11c) COUNTY BEAUFORT	(11d) STATE SOUTH CAROLINA	(12) NO. OF THIS MARRIAGE 3RD (2nd, etc.)
(13) MAIDEN NAME OF BRIDE (If Different From Above) BLONDELL MARIE MYERS				

Application for a license was filed with this court at 12:00 P M., on the 12TH day of NOVEMBER, 99. These are, therefore, to authorize any person qualified to perform marriage ceremonies to perform the marriage ceremony for the

persons above named and for the so doing this shall be sufficient warrant. Given under my hand and seal at 8:30A M., this the 15TH day of NOVEMBER, A.D. 99.

Signature of Issuing Officer

JUDGE OF PROBATE COURT

Title of Issuing Officer

GROOM-Signature

BRIDE-Signature

(14) I certify that the above named persons were married on

(15) Blondell young Mary
Place of Marriage Sheldon Beaufort
(17) (CITY) (COUNTY) SOUTH CAROLINA

(16) OFFICIANT-Signature

OFFICIANT-Title

(18a) OFFICIANT-Mailing Address

(18b) Bishop & Pastor

(18c) Bishop John D. Jones

DHEC 0881 (12/1998)

PROBATE JUDGE

ATTEST: A TRUE COPY

Clerk, Probate Court
Colleton County, South Carolina

0125

1-7-11

12-1-99

No. 31,445

The State of South Carolina

COUNTY OF COLLETON

IN THE PROBATE COURT

MARRIAGE LICENSE

TO

Charles Gary

AND

Blondell Marie Young

NOTICE

The Law requires that two of these Licenses be returned by party performing the ceremony to I. A. Smoak, III, Probate Judge, within fifteen days, the other to be delivered to contracting parties.

Appendix 128

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON) CASE NO.: 2012-CP-25-00402

ANGEL Y. GARY, AS P.R. OF THE)
ESTATE OF BLONDELL MARIE GARY,)

PLAINTIFF,)

v.)

TRANSCRIPT OF RECORD

LOWCOUNTRY MEDICAL TRANSPORT,)
INC., AMERICAN MEDICAL)
RESPONSE, INC., d/b/a ACCESS2)
CARE, AND EUGENE A. KIRKLAND,)

DEFENDANTS.)

JANUARY 12th, 2016.
COMMENCING AT
HAMPTON COUNTY COURTHOUSE
HAMPTON, SOUTH CAROLINA
BEFORE THE HONORABLE PERRY M. BUCKNER, III, JUDGE.

APPEARANCES:

MR. BERT G. UTSEY, ESQUIRE
MR. AUSTIN CROSBY, ESQUIRE
MR. ALEX MURDAUGH, ESQUIRE
PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK, P.A.
POST OFFICE BOX 457
HAMPTON, SOUTH CAROLINA 29924
Attorneys for the Plaintiff

MR. JOSEPH DAWSON, ESQUIRE
POST OFFICE BOX 41367
CHARLESTON, SOUTH CAROLINA 29434
Attorney for the Defendant

Rebecca H. Hill
Official Court Reporter

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PETITION TO DETERMINE HEIRSHIP

ARGUMENT BY

MR. UTSEY

5

MR. DAWSON

15

MR. UTSEY

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CERTIFICATE OF REPORTER

34

EXHIBITS

NO.

DESCRIPTION

ONE

LICENSE AND MARRIAGE CERTIFICATION

14

TWO

DIVORCE DECREE

10

THREE

1998 FAMILY COURT CASE

29

1 THE COURT: All right. The next matter for hearing is
2 in 2012 at 402 here in Hampton County.

3 When I sounded the roster this morning, Mr. Utsey stood
4 on behalf of the plaintiff and Mr. Dawson stood on behalf
5 for the defendants. Both sides have requested that they
6 have fifteen minutes. Give me a minute to read your
7 petition, which was filed on December 14th, 2015, signed by
8 Richard Alexander Murdaugh and dated December 14, 2015. Let
9 the record reflect that for the plaintiff we have the trio
10 of Richard Alexander Murdaugh, Austin Crosby and Skip Utsey.
11 Mr. Dawson is present for the defendants.

12 Also present in the courtroom is Cooper Wilson, and my
13 favorite lawyer in the Fourteenth Circuit, Erin Dean, who
14 are merely spectators for purposes of the Petition to
15 Determine Heirship. Give me a moment to read the Petition.

16 (Brief pause.)

17 THE COURT: Let the record reflect that I have read the
18 Petition to Determine Heirship, and I have also reviewed
19 Exhibits A, B and C attached to the Petition. Both of the
20 attorneys are now present. Mr. Utsey tells me he is going
21 to argue for the plaintiff; Mr. Dawson for the defendants.
22 Both sides have requested fifteen minutes. Mr. Utsey is the
23 moving party. Your fifteen minutes begin now.

24 MR. UTSEY: Thank you, Your Honor. Your Honor, we
25 represent the Petitioner, who is also the plaintiff in this

1 action. It's the Estate of Blondell Gary, through its
2 Personal Representative, Angel Gary, who was one of
3 Blondell's children. Blondell died as a result of a motor
4 vehicle collision. The present action is a wrongful death
5 action.

6 THE COURT: Although Mr. Dawson was not present -- you
7 don't need to stand up Mr. Dawson. I'm not addressing --
8 just so everybody knows, one person speaks at a time in the
9 courtroom and one person stands at a time. One of the
10 things that I find difficult for lawyers is they think when
11 the judge looks at them then they have to stand up. I think
12 it is rude for people to stand up when another lawyer is
13 talking. I'm going to see that you get your time. Mr.
14 Utsey has the floor.

15 Mr. Utsey, I don't recall you being involved in it, but
16 the underlying case I recall very much, and Mr. Crosby and
17 Mr. Richard Alexander Murdaugh were involved in the
18 underlying case you gave rise to the proceeds that you're
19 holding in trust; isn't that true?

20 MR. UTSEY: That is true, but I did assist in that.
21 There were also two declaratory judgment actions related to
22 both insurance coverage in another matter that I was lead
23 counsel on more or less and ---

24 THE COURT: I see. So you were involved in the
25 underlying action as well?

1 MR. UTSEY: Yes, sir. I've been involved pretty much
2 from day one as well.

3 THE COURT: All right.

4 MR. UTSEY: As you know, the wrongful death action was
5 settled. We have received the settlement proceeds. A
6 question has arisen as to the beneficiaries who would share
7 in those proceeds. That's why there is this petition for
8 heirship, to determine heirship before you today.

9 THE COURT: Let's first begin with the power of the
10 Circuit Court to hear this, Mr. Utsey. Tell me why this
11 matter should be determined by the Circuit Court rather than
12 Probate Court?

13 MR. UTSEY: Well, I don't think it's an either-or,
14 because I don't know that I would ---

15 THE COURT: You don't think it's exclusive
16 jurisdiction?

17 MR. UTSEY: That's correct. Your Honor, if you'd look
18 at two statutes: 62-1-302 under the Probate code and 15-51-
19 42, which is part of the wrongful death act and read those
20 together, you'll see that among other things, there is a
21 concurrent jurisdiction of the two courts with respect to
22 certain aspects of wrongful death action. And those aspects
23 include the determination of the heirs, as I read those two
24 statutes.

25 Obviously, we looked at that pretty hard to determine

1 where this could be filed before filing it. We knew that
2 Mr. Dawson was eager to get a hearing as quickly as possible
3 to resolve this issue, and we certainly wanted to be able to
4 pay the proceeds from the settlement from our trust account
5 to the appropriate heirs as quickly as possible.

6 After looking at it, we concluded that this Court,
7 being the court that approved the wrongful death settlement,
8 would have jurisdiction of this topic and would be the
9 quickest route.

10 THE COURT: So you believe that I have subject matter
11 jurisdiction to determine the issues of your petition
12 pursuant to the Probate Court section 62-1-302?

13 MR. UTSEY: That, and along with the wrongful death
14 action. If you look at 302, subsection b, as in "bravo,"
15 where it talks about the concurrent jurisdiction, it says,
16 "The Probate Court has concurrent jurisdiction with the
17 Circuit Court in matters involved in wrongful death actions
18 of the survival statute actions, and extends" -- and this is
19 the Probate Court's jurisdiction, "and extends only to the
20 approval of settlements and to the allocation of settlement
21 proceeds among the parties involved in this state."

22 What that says, Your Honor, is in order to have
23 concurrent jurisdiction that means both Courts have to have
24 jurisdiction, and while the Probate Court with respect to
25 wrongful death matters is limited to allocation of

1 settlement proceeds -- excuse me, approval of the
2 settlements and to the allocation of settlement proceeds
3 among the parties in the state, it's assumed in that, and
4 implicit in that is that the Circuit Court has jurisdiction
5 over those topics, as well as all other matters related to
6 the wrongful death actions.

7 THE COURT: I noticed you choose the term "wrongful
8 death." Was there a conscious pain and suffering action
9 brought in the underlying matter?

10 MR. UTSEY: Yes, sir. There was a survival action as
11 well. I don't think ---

12 THE COURT: Would you not agree that as to conscious
13 pain and suffering, for over which Angel Gary was, also, I
14 believe, the Personal Representative of the Estate of
15 Blondell Gary, is that a matter that would be exclusively in
16 the Probate Court or do you believe there is concurrent
17 jurisdiction for conscious pain and suffering, which is in
18 the state asset, only in the Probate Court, and not
19 concurrent with the Circuit Court?

20 MR. UTSEY: Again, it's the same statute that refers to
21 both wrongful death actions and survival actions, which
22 would be the conscious pain and suffering.

23 THE COURT: So you think Circuit Court has concurrent
24 jurisdiction with the Probate Court whether we're dealing
25 with wrongful death in the determination of beneficiaries or

1 conscious pain and suffering or survival?

2 MR. UTSEY: Yes, sir, I do.

3 THE COURT: Proceed.

4 MR. UTSEY: Your Honor, Mr. Dawson's client, Charles
5 Gary, alleges that he is the husband of Blondell Gary, the
6 decedent, and therefore is entitled to share in the Estate;
7 she died intestate, based on the fact that they were
8 married.

9 Initially, we did not know whether -- have any reason
10 to question that or know that there was any issue there, but
11 as time went by and we obtained additional information
12 through the litigation of the various cases of wrongful
13 death actions, the DJ actions, etc., we learned of facts
14 that threw that into question..

15 Our client, Angel Gary, as the personal representative,
16 and of course has a fiduciary duty to all of the heirs, all
17 of the beneficiaries, which include herself and three other
18 siblings, or children rather, of Blondell Gary to make sure
19 that they receive their full share, or if Mr. Gary were, in
20 fact, a beneficiary that he receives his share. But the
21 facts that we received indicated that Mr. Gary was not ---

22 THE COURT: Mr. Utsey, stop right there so we can get
23 back. Angel Gary is the daughter of Blondell Gary. Who is
24 her father?

25 MR. UTSEY: Charles Gary.

1 THE COURT: All right. And how many children do you
2 believe came from Charles Gary and Blondell Gary?

3 MR. UTSEY: I understand there are four children of
4 Blondell Gary. Two of whom I believe Charles is the father.

5 THE COURT: (To Mr. Gary in the gallery.) Mr. Gary, you
6 can't stand behind him and raise your hand or try to testify
7 in my Court. I'll be happy if they want to put you on the
8 witness stand and let somebody cross examine you, but don't
9 make hand signals to me while an attorney is talking. I
10 consider that improper and I will not permit it. Proceed,
11 Mr. Utsey.

12 MR. UTSEY: As I understand it, Blondell had four
13 children, two of whom Charles was the father and two, as an
14 aside, and without hopefully not complicating this more, Mr.
15 and Mrs. Gary were previously married some time ago and
16 divorced. And what transpired after that ---

17 THE COURT: What is your understanding of the marital
18 history of Blondell Gary and Charles Gary?

19 MR. UTSEY: They were married at one point and
20 divorced.

21 THE COURT: What years are we talking about?

22 MR. UTSEY: It's been a number of years back, Your
23 Honor. I'm talking decades ago.

24 THE COURT: Were they attached to your Petition?

25 MR. UTSEY: I don't know if we put that in there or

1 not. That really isn't germane to what happened here,
2 other than to explain how two of these children came from
3 that marriage.

4 THE COURT: All right.

5 MR. UTSEY: Then what happened after their divorce is
6 Mr. Gary married a lady named Dorothea Chisholm and he
7 remained married to Dorothea Chisholm until June 19th, 2001.
8 And I have this attached to the Petition, but I was actually
9 going to move to enter into the record, Plaintiff's Exhibit
10 Two, which is a copy of the divorce decree between Charles
11 Gary and Blondell Gary.

12 THE COURT: Mr. Dawson, any objection to enter in the
13 divorce decree?

14 MR. DAWSON: Not the divorce decree, Your Honor.

15 THE COURT: Have Becky mark it. Hand it to her.
16 Without objection.

17 (Whereupon, Plaintiff's Exhibit Number Two, Divorce
18 Decree copy, is marked and received into evidence in the
19 hearing of this case.)

20 THE COURT: Plaintiff's Two, without objection, will be
21 made part of the record in this hearing.

22 MR. UTSEY: And I provided a copy already to Mr.
23 Dawson.

24 THE COURT: Mr. Dawson says he has no objection.
25 Proceed.

1 MR. UTSEY: What's important, Your Honor, is that
2 because he remained married to Mrs. Chisholm until that date
3 in 2001, his marriage to Mrs. Gary, his second marriage to
4 Mrs. Gary, which would be the basis for any claim that he is
5 an heir, or a beneficiary here, was entered into back in
6 1999 while he was married to Mrs. Chisholm.

7 I have as Plaintiff's Exhibit One, a copy of his
8 license and certificate of marriage for the 1999 purported
9 marriage between Charles and Blondell ---

10 THE COURT: Which is attached to the petition. You
11 want to enter it into the record?

12 MR. UTSEY: Yes, sir.

13 THE COURT: Any objection as to Plaintiff's One?

14 MR. DAWSON: Yes, sir.

15 THE COURT: Pardon?

16 MR. DAWSON: Yes, sir. Would you like me to explain
17 it?

18 THE COURT: Yes, sir.

19 MR. DAWSON: I will be happy to. The document I
20 believe he introduced into the record, also has an
21 attestation stamp at the bottom with a date. That date is
22 different than the date that's in the petition that's been
23 filed.

24 THE COURT: Is this a certified copy?

25 MR. UTSEY: It is, Your Honor.

1 THE COURT: Let me see it then. I need to see so I can
2 understand it.

3 MR. DAWSON: And Your Honor, I would ask ---

4 THE COURT: Hold on a second, Mr. Dawson. Let me look
5 at it and then I'll hear from you.

6 All right. I've been handed what is entitled, "License
7 and Certificate for Marriage in Colleton County," signed by
8 then Probate Judge I. E. Smoak, III. It is a certification
9 stamp attested as a true copy by the clerk of the Probate
10 Court in Colleton County. The copy of the certificate was
11 attested to on January 7th, 2016, the License and
12 Certificate of Marriage shows that an application for a
13 marriage license was filed with Colleton County Probate
14 Court at 12 p.m. on November 12th, 1999.

15 The license was issued at, I think, November 15th,
16 1999. There is a signature for the groom and it is signed
17 Charles Gary; the bride is Blondell Young Gary. The bishop
18 was John D. Jones, bishop and pastor, and he shows his
19 address as P.O. Box 984, Hardeeville, South Carolina, 29927,
20 and the place of marriage is shown as Sheldon, Beaufort
21 County. It shows that the above people, that being Charles
22 Gary and Blondell Gary, were married on November 30th, 1999.

23 Having reviewed this document now and cited what I've
24 read from the document, Mr. Dawson, what is the nature of
25 your objection?

1 MR. DAWSON: Your Honor, the only point I was
2 attempting to make ---

3 THE COURT: You have to speak up.

4 MR. DAWSON: I apologize, Your Honor. The point I was
5 attempting to make is the stamp that is at the very bottom
6 of the page is a different stamp, which I will explain when
7 I make my argument, why there is a significance to the two
8 dates by which the Probate Court has attested to the
9 authenticity of these copies.

10 THE COURT: Well, I don't have but one. Do you have
11 two?

12 MR. DAWSON: Your Honor, if you would look at the
13 petition that you were handed in the file, there is an
14 exhibit to that petition on the last page.

15 THE COURT: All right. Let me take a look at it.

16 My Exhibit A that's filed with the clerk does not have
17 an attest at the bottom.

18 MR. DAWSON: Your Honor, if I may speak. Exhibit C --

19 THE COURT: Hold on a second. It does.

20 MR. DAWSON: All right. If I may explain, Your Honor.

21 THE COURT: It has two different attest dates by a
22 clerk and two different clerks.

23 MR. DAWSON: Yes, Your Honor.

24 THE COURT: And that's your objection?

25 MR. DAWSON: My objection is ---

1 THE COURT: That objection is overruled. Plaintiff's
2 Exhibit Number One is admitted into evidence for purposes of
3 this hearing over objection concerning the attest date.
4 I'll certainly listen to you during your argument, Mr.
5 Dawson.

6 MR. DAWSON: Thank you, Your Honor.

7 THE COURT: Give Becky Plaintiff's Number One.

8 (Whereupon, Plaintiff's Exhibit Number One, License and
9 Certificate of Marriage, is marked and received into
10 evidence in the hearing of this case.)

11 THE COURT: All right, Mr. Utsey, go ahead.

12 MR. UTSEY: Our argument is simple, Your Honor.

13 Because Mr. Gary remained married to Mrs. Chisholm at the
14 time he purported to have entered into this marriage with
15 Blondell Gary, that marriage with Ms. Blondell Gary is void
16 and is a nullity. He did not have the capacity to marry
17 her. We cite and support the case of Johns v. Johns. It's
18 420 S.E. 2d, 856, Court of Appeals 1982. I have copies for
19 you and opposing counsel, if I may hand up.

20 THE COURT: Has Mr. Dawson been given a copy?

21 MR. UTSEY: Yes, sir. This case dealt with the
22 identical issue and said that if somebody was still married
23 at the time they purported to have entered or entered into a
24 marriage then the second marriage is void and is a nullity.
25 That is certainly the case here given the dates on Exhibits

1 One and Two.

2 THE COURT: Let the record reflect that Mr. Utsey has
3 handed me 420 S.E. 2d, 856, and Mr. Dawson was given a copy
4 of it, and the title of the case that he's arguing to me is
5 Johns v. Johns. J-O-H-N-S. All right, Mr. Utsey.

6 MR. UTSEY: Your Honor, I don't know how Mr. Dawson may
7 respond. I understand there may be some issue about an
8 argument of common law marriage, I would, since they would
9 have the burden of proof on that, I would rest and defer
10 additional time to respond.

11 THE COURT: All right. You saved yourself three and
12 half minutes. Take a seat. Mr. Dawson, anxious to hear
13 from you.

14 MR. DAWSON: Thank you, Your Honor. It may be
15 beneficial -- I know you do not have in your file the copy
16 of the return/answer that I had provided. I had mailed to
17 the Court and to the parties --

18 THE COURT: Would you like to hand up a copy?

19 MR. DAWSON: I would, Your Honor.

20 THE COURT: Hand it to my law clerk, please. Bring it
21 here and come up to the rostrum. Let the record reflect
22 that Mr. Dawson is handing me, and it's dated October 17th,
23 2014. It's a case number 2012 CP-25-402, entitled
24 "Answer/Return to Petition to Determine Heirship."

25 You tell me when you're ready, Mr. Dawson, unless you

1 want me to read this entire thing as part of your argument.

2 MR. DAWSON: No, Your Honor. I didn't want you to read
3 the entire thing, but I am going to refer to it.

4 THE COURT: If you're going to refer to it, that's
5 fine. Proceed. Your fifteen minutes begin now.

6 MR. DAWSON: Thank you, Your Honor. Obviously, first
7 of all, my arguments today are more on a procedural nature,
8 given the posture of the case. As Your Honor knows, you
9 issued an Order on November 13th of 2015 dismissing this
10 case with prejudice, barring any further actions by all
11 parties.

12 THE COURT: Let me just say this, Mr. Dawson, the
13 dismissal of a tort case for wrongful death or conscious
14 pain and suffering is not also a determination as to the
15 heirs for either survivorship or under the wrongful death
16 statute. So, I don't want you to make an argument that
17 leaves it. I'm told my dismissal of that case is because
18 that case settled.

19 MR. DAWSON: Yes, sir.

20 THE COURT: And as I recall, the case that I dismissed,
21 you were not a party as a lawyer in that case.

22 MR. DAWSON: That's correct, Your Honor.

23 THE COURT: You had nothing to do with that, except
24 that you claim an interest in the proceeds generated by that
25 case on behalf of your client; isn't that correct?

1 MR. DAWSON: That's correct.

2 THE COURT: Happy to hear from you.

3 MR. DAWSON: If I may build on my failed attempt and
4 try another shot at this. The complaint that was filed by
5 the plaintiff in this case alleged certain facts. In those
6 facts, Your Honor, and I'll refer to the attachment of the
7 large body of papers I handed you, is the actual complaint
8 that was filed in this case.

9 In that complaint, Your Honor, in paragraph five, they
10 didn't need to, but chose to, as an allegation -- made the
11 allegation that Blondell Gary, on behalf of her husband,
12 Charles Gary, contracted American Medical Response to
13 provide emergency medical transport to both of them. They
14 both were involved in a common accident, which they alleged
15 in their complaint that he was the husband.

16 Your Honor, you may not know, but in this case, the
17 American Medical Response did not file a timely answer.

18 THE COURT: I'm very aware of that, Mr. Dawson. You
19 may not know since you weren't here that I've heard a number
20 of matters involving that. I'm very aware of that fact.
21 I'm aware of what happened in the tort case and I'm aware of
22 the default. Please proceed.

23 MR. DAWSON: Thank you, Your Honor. With that in mind,
24 Your Honor, Charles Gary has been alleged to be the spouse
25 by the Estate in both the wrongful death case and ---

1 THE COURT: According to Mr. Utsey, that knowledge
2 concerning this marriage came to them afterwards, but
3 regardless of that, tell me why that's important or outcome
4 determinative of this. What is alleged in the pleading for
5 purposes of today's hearing?

6 MR. DAWSON: Your Honor, our position is you cannot
7 take a position inconsistent with admissions and allegations
8 that you have made in pleadings.

9 THE COURT: So you think because there was an
10 allegation in the pleading in the tort case, for which you
11 were not a party, they can't take a different position today
12 regardless of what facts are learned in the interim?

13 MR. DAWSON: Yes, sir. .

14 THE COURT: Tell me what authority you have to cite to
15 me for that position.

16 MR. DAWSON: Yes, sir, Your Honor. In the package that
17 I handed you, I cite to the case of Postal v. Mann, and I
18 will give you the actual citation.

19 THE COURT: All right. Hold on a second.

20 MR. DAWSON: The case is not attached, but in the set
21 of documents I have provided you, it's probably on ---

22 THE COURT: There is no case attached in what you gave
23 me.

24 MR. DAWSON: I apologize, Your Honor. It's a case
25 cited in a motion that I filed in a subsequent action and as

1 part of that motion on page four ---

2 THE COURT: What is the site for the case?

3 MR. DAWSON: I'd be happy to give it Your Honor.

4 Postal v. Mann, 418 S.E. 2d, 322.

5 THE COURT: That's a Court of Appeals case from 1992?

6 MR. DAWSON: Yes, sir.

7 THE COURT: Do you have a copy?

8 MR. DAWSON: I do.

9 THE COURT: Let the record reflect now that Mr. Dawson
10 is handing me a copy of the case which is Postal, P-O-S-T-A-
11 L, versus Mann, M-A-N-N, and it's found in 418 S.E. 2d, 322.
12 Yes, sir, Mr. Dawson.

13 MR. DAWSON: Your Honor, in three different instances,
14 three different cases, two of which I just mentioned and the
15 third being a declaratory judgment filed by Mr. Gary against
16 the Estate. The Estate in all instances has identified Mr.
17 Gary as the spouse and/or has admitted that he is the
18 spouse. In the DJ action I'm referring to in Beaufort
19 County, the issue that was raised was whether or not Mr.
20 Gary was compelled to bring his loss of consortium claim in
21 the Estate case, or whether he could bring that action in
22 his personal injury case.

23 We filed the DJ action, Your Honor, to try and resolve
24 that matter to prevent a potential argument once these cases
25 got resolved of some double recovery. In coordination with

1 the Estate, that action was filed and what was alleged was
2 that Mr. Gary is a beneficiary and the spouse.

3 The reason, Your Honor, why I raise the objection.
4 regard to the marriage certificate is because I believe what
5 is being suggested here is that this issue that's being
6 addressed was somehow discovered late in the game.

7 Your Honor, as a practical matter, the Estate provided
8 me with the license which they obtained back in December of
9 2014, right at the time the DJ action was being filed to
10 determine whether or not Mr. Gary as spouse and beneficiary
11 could bring his claims for loss of consortium and his
12 personal injury case, or whether or not he was compelled to
13 bring those same claims.

14 THE COURT: Wasn't that issue ruled on by the Court?

15 MR. DAWSON: No, sir, it wasn't.

16 THE COURT: I see.

17 MR. DAWSON: So that was pending and had been pending
18 the entire year, Your Honor. What has happened is, this
19 case got settled in September. At no time did any ---

20 THE COURT: September of what year?

21 MR. DAWSON: I'm sorry, Your Honor, in September of
22 2015. As Your Honor knows, there was a jury trial
23 scheduled, but the parties settled the case prior to the
24 jury trial. An Order was entered into approving the
25 settlement, and once again, Your Honor, no question with

1 regards to the issues being raised today. Then, Your Honor,
2 I'm giving you the sequence to make sure I'm being clear --
3 then they came to you and asked you to dismiss this case
4 with prejudice, with full knowledge of all the issues that
5 are being raised today.

6 After the case is settled, and after you've dismissed
7 the case, now, in light of the fact that there was an order
8 approving the settlement, which had to be in the best
9 interest of the beneficiaries, which at that time, Mr. Gary
10 was undisputedly a spouse and beneficiary, the case was
11 settled. After ---

12 THE COURT: Okay. Let's stop right there and let me
13 make sure I understand what you're telling me, Mr. Dawson.

14 MR. DAWSON: Yes, sir.

15 THE COURT: First of all, the reason you objected to
16 Plaintiff's Exhibit One was because of two different
17 attestation dates, but the purpose of that is, is that you
18 questioned the authenticity of the document. You're simply
19 wanting to point out the knowledge you think the plaintiff
20 had for purposes of determining whether or not there was a
21 marriage in Colleton County; is that right?

22 MR. DAWSON: That's correct, Your Honor.

23 THE COURT: All right. Number two, you handed me
24 Postal v. Mann, but you hadn't told me yet what Postal v.
25 Mann has to do in support of your argument. So please

1 explain to me how this case supports your position?

2 MR. DAWSON: Yes, sir. In Postal v. Mann, Your Honor,
3 it stands for the proposition, and I'll read it to you, I
4 will try to read it slowly. "It is well settled that
5 parties are judicially bound," so this is a judicial
6 estoppel argument I'm making, "by their pleadings, unless
7 withdrawn, altered, or stricken by amendment or otherwise.
8 The allegations, statements or admissions contained in a
9 pleading are conclusive as against the pleader and a party
10 cannot subsequently take a position contradictory of or
11 inconsistent with his pleadings and the facts which are
12 admitted by the pleadings are taken as true."

13 THE COURT: Now, that would be true for purposes of an
14 action, but what happens Mr. Dawson if you bring an action
15 and you learn facts, regardless, of course, I realize you're
16 disputing the timing of that.

17 MR. DAWSON: Yes, sir.

18 THE COURT: And you learn facts inconsistent and you
19 settle the case, so there's never been a judicial
20 determination as to those pleadings. Do you think this case
21 addresses the situation we have here or do you think this
22 case was talking about the pleadings that existed in that
23 case?

24 MR. DAWSON: I don't believe this case answered your
25 question. I have a second case that I will cite to you that

1 I believe when you couple Postal with the second case, I
2 believe it will answer your question.

3 THE COURT: All right.

4 MR. DAWSON: In the Answer I filed as an affirmative
5 defense on the third page, I cited two cases, Your Honor.
6 And I will read to you the proposition that the case stands
7 for, and as I said, the case was cited. And it goes to what
8 I attempted to talk about which was the Consent Order of
9 dismissal for prejudice.

10 This says that it acts as an adjudication on the
11 merits, and therefore, precludes subsequent litigation just
12 as if the action had been tried to a final adjudication.

13 Once again, Your Honor, the estate that Mr. Utsey
14 alleged that somehow Mr. Gary says -- no, the estate said he
15 was the spouse. The estate claims through the course of
16 litigation, they discovered new information, but chose not
17 to act on that, Your Honor. For whatever reason, I don't
18 know. But I submit to the Court, that's why I made the
19 point about the stamp, because that's the only indicator I
20 have, other than the conversations, which I'm not going to
21 try and attempt to say I said something, they said something
22 else, because I won't get very far there, but that stamp
23 suggest that they got the information while my DJ action was
24 being filed prior to them filing an answer.

25 THE COURT: And what happened to your DJ action?

1 MR. DAWSON: So when this matter settled in September -

2 --

3 THE COURT: Answer my question. What was the final
4 determination of your declaratory judgment action?

5 MR. DAWSON: It has not been addressed on the merits,
6 Your Honor.

7 THE COURT: So it's never been heard?

8 MR. DAWSON: No, sir, Your Honor.

9 THE COURT: All right.

10 MR. DAWSON: Because, if I may?

11 THE COURT: And you brought that where?

12 MR. DAWSON: I brought that in Beaufort County.

13 Because this case, the underlying Estate case, settled in
14 September, the thought was this issue of whether or not Mr.
15 Gary, as the spouse, had to bring his claims in the Estate
16 case, in essence, was a non-issue. But because this matter
17 was not resolved and my client did not have a check, we did
18 not dismiss that action. So there has been no adjudication;
19 that case is still pending. I have filed ---

20 THE COURT: Now, you started out Mr. Dawson, and you
21 didn't finish. You said you cited two cases. I'm assuming
22 you're referring to Laughon v. O'Braitis and Jones v. City
23 of Folly Beach; is that right?

24 MR. DAWSON: Yes, Your Honor.

25 THE COURT: For the record, he is referring to 602 S.E.

1 2d, Section 108 and 483 S.E. 2d, 770. How do those two
2 cases answer my question to you, Mr. Dawson?

3 MR. DAWSON: Because they alleged Mr. Gary was the
4 spouse, because this Court issued an Order of Dismissal to
5 prejudice with their consent and full knowledge that they
6 have alleged something that they believed to be different.
7 Those two cases stand to the proposition -- it is as if the
8 action had been tried to final adjudication, which would
9 have included a finding that Mr. Gary, as they have alleged,
10 was the spouse.

11 So, Your Honor, I have attempted to indicate where
12 Postal v. Mann says you can't take the position inconsistent
13 with your pleadings. Your Honor, I simply referred to the
14 two other instances where they have made similar allegations
15 and/or admissions throughout the course of the litigation,
16 which they have accepted after filing this petition, have
17 asked to amend those pleadings, but that has occurred
18 obviously since the filing of the petition. And then my
19 citations of these cases here for the proposition that they
20 cannot -- my argument is they cannot, now today, take a
21 position contradictory to the position that they have taken
22 that have been adjudicated to their final adjudication.

23 THE COURT: Now, let me ask you this, Mr. Dawson. Do
24 you admit or deny that -- I assume you represent Charles
25 Gary?

1 MR. DAWSON: I do, Your Honor.

2 THE COURT: Do you admit or deny that he was married to
3 someone else at the time that he purported to marry Blondell
4 Gary, because you haven't told me anything on the
5 substantive issue. Your argument is a matter of law that
6 they can't take an inconsistent position.

7 MR. DAWSON: That's correct.

8 THE COURT: So tell me what your position factually on
9 that.

10 MR. DAWSON: It is inconclusive at this time, Your
11 Honor.

12 THE COURT: So you won't admit or deny it. You're just
13 saying it's inconclusive. Why do you think it's
14 inconclusive?

15 MR. DAWSON: I'd be happy to attempt to answer that,
16 Your Honor. I may have to draw your attention to their
17 petition. What is clear, Your Honor, is there are two
18 different case numbers as it relates to the divorce. They
19 didn't bring that up, Your Honor, but there is a 1998 case
20 that was filed for a divorce and then there is a subsequent
21 2000 case. It is unclear to me, at this point in time, what
22 were the outcomes of those two cases and why there was some
23 discrepancy. Mr. Gary filed for a divorce in 1998 ---

24 THE COURT: Do you have a divorce decree that is
25 earlier than the one Mr. Utsey ---

1 MR. DAWSON: I do not.

2 THE COURT: I see. So why do you think it's unclear
3 absent that you have -- obviously that's a record you could
4 provide the Court. Why do you think the answer to my
5 question is unclear if you don't have a divorce decree
6 terminating the other marriage earlier than the date that
7 Mr. Utsey purports to show me in the exhibits which have
8 been introduced in the evidence during this hearing?

9 MR. DAWSON: Two reasons. One, I have not endeavored
10 to try to understand the discrepancies that I just mentioned
11 to the Court. I have not gone to try and understand --

12 THE COURT: I'm not asking you to. You say you have no
13 other divorce decree.

14 MR. DAWSON: I do not, Your Honor. I do not have that.

15 THE COURT: So the answer is, other than what's been
16 admitted into evidence, you know of no other divorce decree?

17 MR. DAWSON: Not of another divorce decree, I only know
18 of the case ---

19 THE COURT: But you believe it's a matter of law that
20 they can't take an inconsistent position from what was
21 alleged in the underlying tort case?

22 MR. DAWSON: That's correct, Your Honor.

23 THE COURT: Thank you very much.

24 MR. DAWSON: Thank you, Your Honor.

25 THE COURT: Let the record reflect that I'm giving my

1 law clerk a copy of Postal v. Mann, and also Mr. Dawson's
2 Answer and Return to Petition to Determine Heirship, and I'm
3 also giving my law clerk a copy of Johns v. Johns.

4 Mr. Utsey, you reserved three and a half minutes. Mr.
5 Dawson took his entire fifteen. Happy to hear from you on
6 three and a half minutes in reply.

7 MR. UTSEY: Thank you, Your Honor. With respect to the
8 1998 family court matter, that was an act of separate
9 maintenance and support.

10 THE COURT: Not an action for divorce?

11 MR. UTSEY: And I do have the final Order from that, a
12 certified copy, if Your Honor would like me to hand it up?

13 THE COURT: Show it to Mr. Dawson. I don't know if
14 he's seen it.

15 MR. UTSEY: We didn't realize that was going to come up
16 today.

17 THE COURT: Any objection?

18 MR. DAWSON: No, sir.

19 THE COURT: Mark it as Plaintiff's Number Three,
20 without objection.

21 (Whereupon, Plaintiff's Exhibit Number Three, 1998
22 Family Court Order, is marked and received into evidence in
23 the hearing of this case.)

24 MR. UTSEY: I think that should resolve that issue,
25 Your Honor. Secondly, Your Honor ---

1 THE COURT: Mr. Dawson argues, Mr. Utsey, that y'all
2 gave him a copy of this marriage certificate while his
3 declaratory -- he never gave me a date, but he said while
4 his declaratory judgment action was pending, which he
5 brought in Beaufort. How about address that issue for the
6 Court.

7 MR. UTSEY: I can clear the air on that, Your Honor.
8 He had inferred from a 2014 date on the divorce decree that
9 we obtained in 2014; that is not when we obtained it. We
10 ultimately obtained it, I think from Ms. Dean, who was the
11 first one to have located it and apparently ---

12 THE COURT: Who?

13 MR. UTSEY: Erin Dean, who is involved in the case.

14 THE COURT: And Ms. Dean represented who in this case?
15 It was one of the defendants, as I recall?

16 MR. UTSEY: One or more of the defendants, yes, sir.

17 THE COURT: Erin, who did you have?

18 MS. DEAN: Your Honor, I had Lowcountry Medical
19 Transport and Eugene Kirkland.

20 MR. UTSEY: Very well. In any event, I don't think
21 it's ---

22 THE COURT: So a party to the underlying tort case,
23 counsel for the defendant in the underlying tort case,
24 actually provided the divorce decree to you?

25 MR. UTSEY: Before she provided it to us, because I

1 don't know the exact date that we received it from her, she
2 had mentioned something to Mr. Murdaugh about an issue of
3 that divorce not being final at the time of marriage. We
4 had a hearing in Federal Court before Judge Blatt and an
5 insurance declaratory judgment action which named both Mr.
6 Gary and Mrs. Gary, J. R. Murphy filed it, as Mr. Dawson was
7 there along with Mr. Murdaugh and me. Mr. Murdaugh had
8 talked to Mr. Dawson at that time and said is there a
9 problem with this marriage, and Mr. Dawson told them it was
10 not an issue. And so we didn't, at that time, pursue it any
11 further. So even though we were on notice of a possible
12 issue back then, we were told that it was not an issue and
13 that it would not be a problem, and therefore, we didn't
14 pursue it until we obtained later information that showed
15 that it was an issue. (

16 Your Honor, this is important because first of all the
17 Court would have to do something that I haven't found a
18 single other Court has ever done and that is to create a
19 marital relationship and to create the status of a
20 beneficiary or heir by estoppel, which would be to the
21 detriment of every other legitimate clear heir to this
22 estate. Simply because of a pleading that was generated
23 based upon Mr. Gary's representations to the personal
24 representative that he was the husband. He told her, and
25 that's why she believed that they were married, and that's

1 why initially she listed him as her husband and admitted
2 that fact.

3 THE COURT: So your argument in response to Mr. Dawson
4 -- and your time is now up, although I have asked you
5 questions. Your argument in response to Mr. Dawson is that
6 Mr. Dawson's client is the architect of this dilemma by
7 advising the personal representative that he was, in fact,
8 the husband of the decedent; is that correct?

9 MR. UTSEY: That would be part of it. There would be
10 some unclean hands on his part. If I'm out of time, I'm out
11 of time. I do have other comments on the Postal cases and
12 some of the other arguments, but I don't want to abuse my
13 time. Thank you, Your Honor.

14 THE COURT: Your time is up. Thank you very much. All
15 right, everybody take out their pens. This is an
16 interesting issue for the Court. I'm going to ask that both
17 sides submit a proposed order to me and Pumpkin, Becky's got
18 three exhibits; I want you to copy all three for me right
19 now.

20 I'm going to ask, Mr. Dawson, that both you and Mr.
21 Utsey submit proposed orders to me at P.O. Drawer 470,
22 Walterboro, 29488. Please copy opposing counsel on your
23 transmittal of the Orders to the Court. Please include a
24 self-addressed, stamped envelope with sufficient postage
25 affixed thereto for returning the Order. Mr. Dawson, are

1 you in Charleston or Columbia?

2 MR. DAWSON: Charleston, Your Honor.

3 THE COURT: To comply with the seven day time
4 requirement, Mr. Dawson, you can e-mail me your Order. Of
5 course, any transmittal to the Court by e-mail or United
6 States mail, you must copy opposing counsel.

7 My e-mail address is pbucknerj@sccourts.org. Please
8 send my law clerk a working copy. His e-mail address is
9 pbucknerlc@sccourts.org. If you mail in your Order, you
10 must of course, also, in addition to mailing one to me, mail
11 one to my law clerk, Durham Hill at P.O. Drawer 470,
12 Walterboro, 29488, so that he gets a working copy whether by
13 United States mail or e-mail.

14 Any transmittal to the Court, Mr. Utsey, you must copy
15 Mr. Dawson, and Mr. Dawson you must copy Mr. Utsey. I've
16 taken with me the cases, other than the two you cited in
17 your answer, which I don't have copies of, but I have the
18 sites, Mr. Dawson. I've also taken copies of the exhibits
19 with me, so I'll have all of that in front of me when I
20 receive your proposed Orders.

21 I'll expect your Orders within seven days of today, and
22 I ask that you please see that I have it on my desk by e-
23 mail or United States mail. If you e-mail me an Order, you
24 must still snail-mail me your envelope with sufficient
25 postage affixed thereto for the return of your Order.

1 Are there any questions about the proposed Order
2 procedure from counsel for the moving party, Mr. Utsey?

3 MR. UTSEY: No, sir.

4 THE COURT: Any questions about the proposed order
5 procedure from counsel for the responding party, Mr. Dawson?

6 MR. DAWSON: No, Your Honor. Thank you.

7 THE COURT: I look forward to getting your proposed
8 Orders. Thank you so much for your patience and your time.
9 This concludes the hearing in connection with this matter.

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF COLLETON) CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the
 Judicial Department of the State of South Carolina, do
 hereby certify that the foregoing is a true, accurate and
 complete Transcript of Record of the proceedings had in the
 hearing of the captioned case, in the Court of Common Pleas
 Non-Jury for Hampton County, South Carolina, on the 12th day
 of January 2016.

I do further certify that I am neither of kin, counsel,
 nor interest to any party hereto.

April 17, 2016

 Rebecca H. Hill,
 Official Court Reporter

BEAUFORT COUNTY PROBATE COURT

JUDGE
KENNETH E. FULP, JR.

ASSOCIATE JUDGE
HEATHER R. GALVIN



COURT ADMINISTRATOR
PAT C. GARVIN

COUNTY COURTHOUSE
102 RIBAUT ROAD, BEAUFORT, SC 29902
March 18, 2015

Joseph Dawson, III, Esquire
PO Box 41367
North Charleston, SC 29423

Re: Estate of Blondell Gary
Probate Court Case No. 2012ES0700140

Dear Mr. Dawson:

This Court is in receipt of the Summons and Petition for Removal of Personal Representative which you have filed on behalf of Charles Gary. Enclosed is your receipt for the \$150.00 filing fee.

The Summons and Petition must be served on the personal representative in accordance with Rule 4, SCRPC, and proof of service filed with this Court.

By copy of this letter, Randolph Murdaugh, IV, Esquire and Tiffany Provence, Esquire, attorneys for the personal representative, are advised of the statutory restraint on the Personal Representative's authority, by reason of the pending action for removal, under S. C. Code §62-3-611(a):

[A]fter service of the Summons and Petition upon the personal representative and receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration, or preserve the estate.

After the filing of proof of service, further proceedings will be scheduled appropriately.

Thank you for your attention to this matter.

Very truly yours,

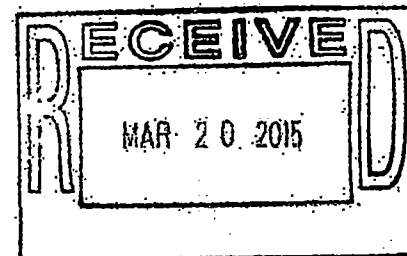
Kenneth E. Fulp, Jr., Judge
Beaufort County Probate Court

By:

Jackie Langford
Jackie Langford, Clerk

Encl.

Copy/w/encl. to: Randolph Murdaugh, IV, Esquire
Tiffany Provence, Esquire.



Ms. Tatanisha S. Gary
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STATE OF SOUTH CAROLINA,

COUNTY OF BEAUFORT

CHARLES GARY

Petitioner,

vs.

ANGEL Y. GARY, PERSONAL
REPRESENTATIVE FOR THE ESTATE
OF BLONDELL GARY

Respondent(s).

IN THE PROBATE COURT

SUMMONS

CASE NO. 2012-ES-07-00-140

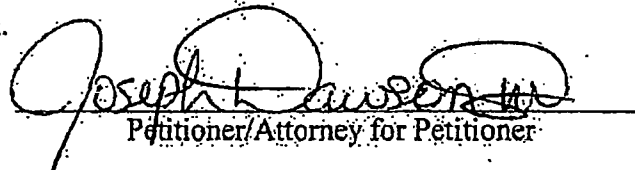
TO THE RESPONDENT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Petition upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Petition, judgment by default will be rendered against you for the relief demanded in the Petition.

North Charleston, South Carolina

Dated: March 17, 2015

Address:


Petitioner/Attorney for Petitioner

JOSEPH DAWSON, III, ESQ
POST OFFICE BOX 41367
NORTH CHARLESTON, SC 29423

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF: BEAUFORT

IN THE MATTER OF:

ESTATE OF BLONDELL M. GARY
(Decedent)

CASE NUMBER: 2012-ES-07-00-140

CHARLES GARY

Petitioner(s)

*PETITION FOR REMOVAL OF
PERSONAL REPRESENTATIVE

vs.

ANGEL Y. GARY AS PERSONAL REPRESENTATIVE
FOR THE ESTATE OF BLONDELL M. GARY

Respondent(s)

I request an Order for the removal of ANGEL Y. GARY, Personal Representative in the estate, because (check all that apply):

- ☒ The Personal Representative intentionally misrepresented material facts on the Application or Petition leading to his/her appointment. Additional Information:
- ☐ The Personal Representative disregarded a Court order. Additional information:
- ☐ The Personal Representative has become incapable of carrying out his/her assigned duties. Additional information:
- ☐ The Personal Representative has mismanaged the estate. Additional Information:
- ☐ The Personal Representative failed to perform a required duty. Additional information:
- ☒ Removal is in the best interests of the estate because:

(Attach additional sheets if necessary.)

Executed this day of , 20

Signature: CHARLES GARY

Print Name: CHARLES GARY

Address: 156 TWICKENHAM ROAD

YEMASSEE, SC 29945

Telephone (Work): _____

(Home): _____

(Cell): _____

Email: _____

Relationship to Decedent/Estate: Spouse

Attorney: JOSEPH DAWSON, III, ESQ.

Address: POST OFFICE BOX 41367

NORTH CHARLESTON, SC 29423

Telephone: (843) 207-9004

Email: JOE@ATTORNEYJOSEPHDAWSON.COM

*NOTE: THIS IS A FORMAL PROCEEDING. IN ADDITION TO A PETITION, YOU MUST ALSO FILE
A SUMMONS (FORM SCCA 401PC) AND PAY THE STATUTORY FILING FEE OF \$150.00.
A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF BEAUFORT

CASE NUMBER: 2012-ES-07-00-140

IN THE MATTER OF: THE ESTATE OF
BLONDELL M. GARY (DECEDENT)

CHARLES GARY,

PETITIONER

vs.

ANGEL Y. GARY AS PERSONAL REPRESENTATIVE
FOR THE ESTATE OF BLONDELL M. GARY

ADDITIONAL INFORMATION IN
SUPPORT OF THE PETITION FOR
REMOVAL OF ANGEL Y. GARY AS
PERSONAL REPRESENTATIVE

As additional information to support the Petitioner, Charles Gary's Petition for Removal of Angel Y. Gary as Personal Representative for the Estate of Blondell M. Gary (hereinafter the "Estate") the Petitioner alleges the following:

1. The Petitioner Charles Gary (Mr. Gary) is an amputee and paraplegic, who lost the use of his lower body in 2004. On January 31, 2012, Mr. Gary and his wife, the decedent, were involved in a single ambulance accident, while they were returning home from Mr. Gary's medical appointment. The collision caused severe and serious injuries to Mr. Gary and killed his wife Blondell M. Gary, who died Intestate. Beaufort County EMS transported Mr. Gary to Beaufort Memorial Hospital. He was later transferred to the Medical University of South Carolina in Charleston, where he remained for three weeks due to multiple injuries and other conditions.
2. On or about February 10, 2012, while Mr. Gary was hospitalized at the Medical University of South Carolina in Charleston, a Renunciation of Rights to Administer and/or Nomination and/or Waiver of Bond form was allegedly presented to Mr. Gary, signed by him, and witnessed by Rose Jones, purporting to renounce his right to serve as Personal Representative and nominating Angel Y. Gary to serve as Personal Representative. See Exhibit "A" - Renunciation of Rights to Administer and/or Nomination and/or Waiver of Bond.
3. Mr. Gary did not sign the Renunciation of Rights to Administer and/or Nomination and/or Waiver of Bond form and did not know nor did he meet Rose Jones at the hospital. The

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Renunciation of Rights to Administer and/or Nomination and/or Waiver of Bond form used to gain appointment as the Personal Representative was obtained without Mr. Gary's knowledge, consent, or recollection. Mr. Gary should have priority of appointment over Angel Y. Gary, his daughter, and therefore, Angel Y. Gary should be removed.

4. As further grounds that removal of Angel Y. Gary is in the best interest of the Estate and Mr. Gary's substitution as Personal Representative, Mr. Gary filed a lawsuit on October 16, 2012, as result of his injuries and damages in an action styled Charles Gary v. Hattie M. Askew, Will Outlaw, and Debora Outlaw, individually and D/B/A Low Country Medical Transport, Low Country Medical Transport Inc., Eugene A. Kirkland, and American Medical Response Inc., (D/B/A Access2Care), 2012-CP-07-3595 (hereinafter "Personal Injury Case"). This matter is on appeal in the South Carolina Court of Appeals, because of an Order on Summary Judgment in favor of Mr. Gary on his Negligence and Loss of Consortium/Companionship of Spouse causes of action.

5. As a result of the Estate's injuries and damages, on November 9, 2012, the Estate of Blondell M. Gary filed a lawsuit against several defendants, alleging a Wrongful Death and Survival causes of action, in a case styled Angel Y. Gary as Personal Representative of the Estate of Blondell M. Gary v. Lowcountry Medical Transport, Inc., American Medical Response, Inc., d/b/a, Access2Care, and Eugene A. Kirkland, 2012-CP-25-402 (hereinafter "Wrongful Death Case"). The Estate has obtained a Default Judgment against the defendant American Medical Response Inc., d/b/a Access2Care.

6. Upon information and belief, Angel Y. Gary has not pursued a damages hearing and/or trial on the merits in the Wrongful Death Case, because Mr. Gary has refused to seek recovery of certain damages in the Wrongful Death Case that are recoverable in his separate Personal Injury Case.

7. Upon information and belief, Angel Y. Gary believes Mr. Gary must and/or intends to compel him to participate in developing the damages in the Estate's case that are also recoverable in his separate Personal Injury Case.

8. Mr. Gary has filed an action in the court of common pleas seeking Declaratory Judgment against Angel Y. Gary, asking the Court to find that Angel Y. Gary cannot compel him to

participate in the Wrongful Death case on matters that he has pending in his Personal Injury case. Mr. Gary believes this conduct will prejudice and/or cause him to forfeit claims he has in his Personal Injury case. Mr. Gary believes this conduct is causing delays in the conclusion of the Wrongful Death case, which is unduly prejudicial to him and the other beneficiaries of the Estate.

9. Therefore, it is in the best interest of the Estate of Blondell M. Gary that Angel Y. Gary be removed as Personal Representative of the Estate, in light of the aforementioned facts and for such other matters as the Court may hear and/or deem proper.

Exh. "A"

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

IN THE MATTER OF: BLONDELL M. GARY

IN THE PROBATE COURT

RENUNCIATION OF RIGHT TO ADMINISTRATION AND/OR
NOMINATION AND/OR WAIVER OF BOND

CASE NUMBER:

The undersigned hereby (check all that apply):

- ☒ renounces his/her right to serve as Personal Representative of the captioned estate.
- ☒ nominates the following person to serve as Personal Representative.
- ☒ I agree to waive bond for the person(s) nominated below:

Name: Angel Y. Gary

Address: 158 Twickenham Road, Yemassee, SC 29945

I understand this is effective only to the extent the law allows for nomination and waiver of bond.

Executed this 10th day of February 2012

Witnessed by:

Rose Jones

Signature: CH HALLS GARY

Name: Charles Gary

Address: 156 Twickenham Rd.
Yemassee, SC 29945

E-mail: _____

Telephone (O): _____

(H): _____

*Must be a disinterested party not related to the decedent, the beneficiary, or the personal representative.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:

BLONDELL GARY

(Decedent)

CHARLES GARY,

Petitioner,

Vs.

ANGEL Y. GARY as Personal
Representative for the Estate of
Blondell Gary,

Respondent.

IN THE PROBATE COURT

CASE NO. 2012-ES-07-0140

ANSWER TO PETITION
FOR REMOVAL OF
PERSONAL REPRESENTATIVE

2015 APR 20 11:11:29

TO: JOSEPH DAWSON, III, ESQUIRE, ATTORNEY FOR THE PETITIONER, CHARLES GARY:

COMES NOW Angel Y. Gary, by and through her undersigned attorneys, who replies to the Petitioner's Petition to Remove and Restrain Personal Representative as follows:

1. Each and every allegation not specifically admitted herein is denied.
2. The Respondent denies intentionally misrepresenting material facts on the Application or Petition and demands strict proof thereof.
3. The Respondent denies that removal is in the best interest of the Estate and demands strict proof thereof.
4. As to the supplement to the Petition labeled "Additional Information in Support of the Petition for Removal of Angel Y. Gary as Personal Representative," the Respondent replies as follows:

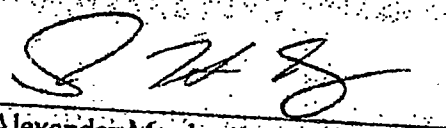
- a. The Respondent admits to paragraph 1 in as much as it describes the accident causing severe injuries and the death of Blondell M. Gary. Respondent is without sufficient information to either admit or deny the remaining allegations in Paragraph 1.
- b. Respondent admits to paragraph 2 in that Petitioner was presented with and executed a Renunciation of Right to Administer and signed a copy of the same as witnessed by Rose Jones. Respondent denies any implication that Petitioner was unable to understand or execute said document, or that the handwriting contained therein is not his, and demands strict proof thereof.
- c. Respondent denies paragraph 3 and demands strict proof thereof.
- d. The Respondent is without sufficient information to either admit or deny the allegations contained in paragraph 4 and therefore denies the same and demands strict proof thereof.
- e. Respondent admits to paragraph 5 inasmuch as an action has been brought on behalf of the Estate but denies obtaining a Default Judgment.
- f. The Respondent denies the allegations contained in paragraph 6 and demands strict proof thereof. Respondent further replies that Petitioner's allegations demonstrate his inherent conflict of interest in this matter.
- g. The Respondent denies the allegations contained in paragraph 7 and demands strict proof thereof. Respondent further replies that Petitioner's concern regarding the Estate's case altering his individual rights further demonstrates his inherent conflict of interest in this matter.
- h. The Respondent admits to Paragraph 8 inasmuch as a Declaratory Judgment has been filed against Angel Y. Gary. The remaining allegations are denied and Respondent

further replies that this allegation again demonstrates conclusively that Petitioner has a conflict of interest in representing the best interest of the Estate in this matter.

i. The Respondent denies the allegations contained in paragraph 9 and demands strict proof thereof.

WHEREFORE, having fully responded to the Petitioner's Petition to Remove and Restrain Personal Representative, the Respondent prays that this Honorable Court deny the Petitioner's Petition to Remove her as Personal Representative, and such other relief as the Court may deem just and proper.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: 

R. Alexander Murdaugh

Bert G. Utsey, III

Austin H. Crosby

PO Box 457

Hampton, SC 29924

(803) 943-2111

ATTORNEYS FOR PLAINTIFF

Hampton, South Carolina
This 16th day of April, 2015.

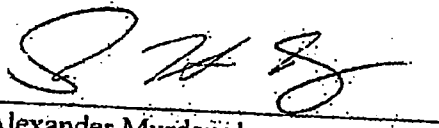
- a. The Respondent admits to paragraph 1 in as much as it describes the accident causing severe injuries and the death of Blondell M. Gary. Respondent is without sufficient information to either admit or deny the remaining allegations in Paragraph 1.
- b. Respondent admits to paragraph 2 in that Petitioner was presented with and executed a Renunciation of Right to Administer and signed a copy of the same as witnessed by Rosé Jones. Respondent denies any implication that Petitioner was unable to understand or execute said document, or that the handwriting contained therein is not his, and demands strict proof thereof.
- c. Respondent denies paragraph 3 and demands strict proof thereof.
- d. The Respondent is without sufficient information to either admit or deny the allegations contained in paragraph 4 and therefore denies the same and demands strict proof thereof.
- e. Respondent admits to paragraph 5 inasmuch as an action has been brought on behalf of the Estate but denies obtaining a Default Judgment.
- f. The Respondent denies the allegations contained in paragraph 6 and demands strict proof thereof. Respondent further replies that Petitioner's allegations demonstrate his inherent conflict of interest in this matter.
- g. The Respondent denies the allegations contained in paragraph 7 and demands strict proof thereof. Respondent further replies that Petitioner's concern regarding the Estate's case altering his individual rights further demonstrates his inherent conflict of interest in this matter.
- h. The Respondent admits to Paragraph 8 inasmuch as a Declaratory Judgment has been filed against Angel Y. Gary. The remaining allegations are denied and Respondent

further replies that this allegation again demonstrates conclusively that Petitioner has a conflict of interest in representing the best interest of the Estate in this matter.

- i. The Respondent denies the allegations contained in paragraph 9 and demands strict proof thereof.

WHEREFORE, having fully responded to the Petitioner's Petition to Remove and Restrain Personal Representative, the Respondent prays that this Honorable Court deny the Petitioner's Petition to Remove her as Personal Representative, and such other relief as the Court may deem just and proper.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: 

R. Alexander Murdaugh
Bert G. Utsey, III
Austin H. Crosby
PO Box 457
Hampton, SC 29924
(803) 943-2111

ATTORNEYS FOR PLAINTIFF

Hampton, South Carolina
This 16th day of April, 2015

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE MATTER OF THE ESTATE OF
BLONDELL M. GARY

IN THE PROBATE COURT
CERTIFICATE OF APPOINTMENT

CASE NUMBER: 2012ES0700140

This is to certify that

ANGEL Y. GARY

is/are the duly qualified

- ☒ PERSONAL REPRESENTATIVE
☐ GUARDIAN
☐ CONSERVATOR
☐ TRUSTEE

In the above matter and that this appointment, having been executed on the 15th day of February, 2012 is now in full force and effect, including authorization to receive all monies, income, principal, interest & dividends of and belonging to said estate.

RESTRICTIONS: NONE

Executed this 15th day of February, 2012

Do not accept a copy of this certificate without
the raised seal of the Probate Court.

Francis M. Simon
FRANCIS M. SIMON, PROBATE COURT JUDGE

Appendix 175

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF: BLONDELL
MARIE GARY,

*ANGEL Y. GARY,

Petitioner,

vs.

*

Respondent if applicable

IN THE PROBATE COURT

CIVIL ACTION NO.: 2012-ES-07-00140

**SUPPLEMENT TO APPLICATION FOR
APPOINTMENT OF
PERSONAL REPRESENTATIVE**

2015 DEC 14 PM 4:04

FILED

- 4.b. Names and addresses of intestate heirs who are not devisees, including dates of birth of minors. If there are no minors, so state. Intestate heirs are the persons who would inherit if the decedent left no will.

Name	Date of Birth	Address	Relationship to Decedent
Angel Y. Gary			Daughter
Tatanisha S. Gary			Daughter
Wade D. McKeithen			Son
Theodore V. Young			Son

Since the filing of the initial application, the Petitioner has become aware of certain facts that call into question whether Charles Gary was married to the Decedent. The Petitioner is therefore filing this supplemental application which removes Charles Gary as an heir. Please see the attached Petition which has been filed in Circuit Court seeking a determination as to the proper heirs.

(Signature Page to Follow)

Appendix 176

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: _____



R. Alexander Murdaugh

Bert G. Utsey

Austin H. Crosby

PO Box 457

Hampton, SC 29924

(803) 943-2111

ATTORNEYS FOR PLAINTIFF

December 14th, 2015
Hampton, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

IN THE COURT OF COMMON PLEAS

CASE NO.: 2012-CP-25-402

Angel Y. Gary as PR for Blondell Marie Gary

Plaintiff,

vs.

Lowcountry Medical Transport, Inc., American
Medical Response, Inc., d/b/a, Access2Care, and
Eugene A. Kirkland. In re: Charles Gary,
Purported Surviving Spouse.

Defendants.

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

R. Alexander Murduagh, Esquire, Bar No. 6996

PO Box 457, Hampton, SC 29924

Phone: Fax (803) 914-2014

Defendant's Attorney:

Joseph Dawson, III, Esquire

Post Office Box 41367

N. Charleston, SC 29423-1367

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES/ ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff/ ☐ Defendant

December 14, 2013

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

Appendix 178

STATE OF SOUTH CAROLINA)

COUNTY OF HAMPTON)

ANGEL Y. GARY AS PR FOR)
BLONDELL MARIE GARY.)

PLAINTIFF.)

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.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2012-CP-25-402

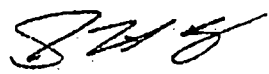
SUMMONS

FILED
2012 DEC 14 PM 2:03
CLERK OF COURT
HAMPTON COUNTY, SOUTH CAROLINA

TO: JOSEPH DAWSON, III, ESQUIRE, ATTORNEY FOR CHARLES GARY:

YOU ARE HEREBY SUMMONED and required to answer the petition herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this petition upon the subscriber, at PO Box 457, Hampton, SC 29924, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the petition, judgment by default will be rendered against you for the relief demanded in the petition.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: 

R. Alexander Murdaugh
Bert G. Utsey
Austin H. Crosby
PO Box 457
Hampton, SC 29924
(803) 943-2111

ATTORNEYS FOR PLAINTIFF

December 14th, 2015
Hampton, South Carolina

STATE OF SOUTH CAROLINA

IN THE CIRCUIT COURT

CASE NO. 2012-CP-25-402

COUNTY OF HAMPTON

Angel Y. Gary as PR for the Estate of
Blondell Marie Gary,

PETITION TO DETERMINE HEIRSHIP

Plaintiff,

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.

THE PETITIONER WOULD SHOW ONTO THIS HONORABLE COURT AS
FOLLOWS:

1. Blondell M. Gary (hereinafter "Decedent") died on January 31, 2012.
2. On February 15, 2012, the Honorable Francis M. Simon of Beaufort County, South Carolina appointed Angel Gary as Personal Representative of the Decedent's Estate.
3. On November 9, 2012, Angel Gary (Petitioner) commenced this wrongful death action in her capacity as Personal Representative of the Estate of Blondell M. Gary against Lowcountry Medical Transport and American Medical Response.
4. Petitioner thereafter reached a settlement of this wrongful death action and said settlement was approved by the Court.
5. On her Application for appointment as Personal Representative, Petitioner listed Charles Gary as an alleged spouse and potential heir of the Decedent.
6. Since the time of her initial appointment as Personal Representative, the Petitioner has become aware of certain facts that call into question whether Charles Gary was married to the Decedent.

7. Because of the issues as to Charles Gary's claimed heirship, it is necessary for this Court to determine the rightful heirs of the estate pursuant to South Carolina Code § 62-3-705.
8. This court has subject matter jurisdiction to determine the issues contained herein pursuant to South Carolina Code § 62-1-302.

INVALID and VOID MATRIMONY

9. The Petitioner is informed and believes that (1) Charles Gary was married to another woman when he unlawfully attempted to marry Blondell Gary, (2) Blondell Gary did not possess the requisite intent to marry Charles Gary, (3) no marriage ceremony ever took place, and (4) that any alleged marriage is void.
10. The Petitioner is informed and believes that the purported Marriage License, as well as, any resulting marriage, is null and void.
11. A license and certificate for marriage was executed on July 31, 1982 between Charles Gary and Doretha Chisholm (See Exhibit A, License and Certificate for Marriage)
12. Charles Gary and Doretha Chisholm were not legally divorced until sometime between December 13, 2000 and January 22, 2001. (See Exhibit B, Final Divorce Decree and Visitation Order)
13. Before Charles Gary was divorced from Doretha Chisholm, he purported to enter into a marriage with Blondell Gary as evidenced by the license and certificate for marriage executed on November 30, 1999. (See Exhibit C, License and Certificate for Marriage between Charles Gary and Blondell M. Young)
14. The Petitioner is informed and believes that the alleged marriage was not consummated by the cohabitation of the Decedent and Charles Gary and should be declared void for want of consent pursuant to S.C. Code § 20-1-530.
15. Any alleged marriage between the parties while Charles Gary had a subsisting marriage is void as a matter of public policy. *Johns v. Johns*, 309 S.C. 199, 420 S.E.2d 856 (1992) citing S.C. Code § 20-1-80 (All marriages contracted while either of the parties has a former wife or husband living shall be void).
16. The Petitioner is informed and believes that the alleged marriage contract, if existing at all, was not entered in good faith and was therefore void.

17. The undersigned attorneys are holding in their trust account net settlement proceeds equal to a spouse's share under the wrongful death statute and seek a determination of heirship from the Court before disbursing same to the appropriate parties.

WHEREFORE, the Petitioner prays for an Order of this Court as follows:

- A. Finding that Charles Gary was not the lawful spouse of the Decedent;
- B. Determining that Angel Y. Gary, Tatanisha G. Whitner, Wade D. McKeithen, and Theodore V. Young are the only rightful heirs of the Decedent;
- C. Authorizing distribution of the net proceeds of the wrongful death settlement to those whom the Court determines to be rightful heirs of Decedent; and
- D. For such other and further relief as this Honorable Court may deem equitable and just.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: _____


R. Alexander Murdaugh
Bert G. Utsey, III
Austin H. Crosby
PO Box 457
Hampton, SC 29924
(803) 943-2111

ATTORNEYS FOR PLAINTIFF

December 14th, 2015
Hampton, South Carolina

LICENSE AND CERTIFICATE FOR MARRIAGE STATE OF SOUTH CAROLINA COLLETON							
LICENSE NUMBER 24,077		COUNTY Geary					
GROOM-NAME (1) Charles		(MIDDLE) Geary		(LAST) Geary		BIRTHDATE (MONTH, DAY, YEAR) (2a)	
(1b) BIRTHPLACE (State or foreign country) South Carolina		RACE (4) Black		RESIDENCE (Street and Number) (5a)		AGE (2b) 31	
(3) CITY, TOWN OR LOCATION Yemassee		COUNTY (3c) Beaufort		STATE (5b) South Carolina		NO. OF THIS MARRIAGE (1st, 2nd, etc.) 2nd	
(3d) BRIDE-NAME Doratha		(MIDDLE) Charles		(LAST) Charles		BIRTHDATE (MONTH, DAY, YEAR) (6a)	
(7) BIRTHPLACE (State or foreign country) South Carolina		RACE (10) Black		RESIDENCE (Street and Number) (11a)		AGE (6b) 27	
(7b) CITY, TOWN OR LOCATION Yemassee		COUNTY (11c) Beaufort		STATE (11d) South Carolina		NO. OF THIS MARRIAGE (1st, 2nd, etc.) 1st	
(11b) Maiden Name of Bride (if different from Above) (12)							
Application for a license was filed with this court at 2:00 P. M. on the 30th day of July, 1982. These are, therefore, to authorize any person qualified to perform marriage ceremonies to perform the marriage ceremony for the persons above named, and for the so doing this shall be sufficient warrant. Given under my hand and seal at 2:00 P. M. this the 31st day of July, A.D. 1982.							
Signature of Issuing Officer <i>[Signature]</i>				PRESTATE JUDGE FOR COLLETON COUNTY Title of Issuing Officer			
GROOM-Signature (14) Charles Geary				BRIDE-Signature (15) Doratha Charles Geary			
I certify that the above named persons were married on (MONTH) (DAY) (YEAR) 8-15-82				(16) Place of Marriage (17) Yemassee COUNTY SOUTH CAROLINA			
OFFICIANT-Signature (18a) Rev. Henry Hays				OFFICIANT-Title (18b) Pastor			
OFFICIANT-Residing Address (19a) Seabrook S.C.							

DMC 681 REV. 5-71 SOM



STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
Family COURT

JUDGEMENT IN A CIVIL CASE

CASE NO. 99-DR-07-1378Charles Garyvs Dorothy Chisolm Gary

Plaintiff (s)

Defendant(s)

- ☐ Jury Verdict. This action came before the court for a trial by jury. The issues have been tried and the verdict rendered.
- ☒ Decision by court. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

- ☐ Action Dismissed. ☐ Rule 12(b), SCRPC ☐ Rule 40 (c) (3), SCRPC
- ☐ Rule 41 (a), SCRPC (Vol. Nonsuit) ☐ Settled
- ☐ Other, Explain: _____

IT IS ORDERED AND ADJUDGED:

☒ See attached order☐ Statement of Judgement by Court

Dated at Summerville ~~Beaufort~~ South Carolina, this 24 day of June 1999

S. Nancy McIn
Judge

This judgement was entered on the 20 day of July, 1999, and a copy mailed first class this 19 day of June, 1999, to attorneys of record or to parties (when appearing pro se) as follows:

Vernell Scott, EsqSamuel S. Stalling, Esqc.o.c. 7/20/99

Attorney (s) for Plaintiff (s)

Attorney (s) for Defendant(s)

SCRPC Form 4



Clerk of Court

Appendix 184

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE FAMILY COURT
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 98-DR-07-1378

CHARLES GARY,

Plaintiff,

vs.

DORETHA CHISOLM GARY,

Defendant.

FINAL ORDER

FAMILY COURT
BEAUFORT COUNTY
BEAUFORT, S.C.

99 JUN 19 PM 2:23

DATE OF HEARING	:	MARCH 23, 1999
PRESIDING JUDGE	:	NANCY MCLEN
COURT REPORTER	:	DEBORAH DUBOSE
PLAINTIFF'S ATTORNEY	:	VERNEL SCOTT
DEFENDANT'S ATTORNEY	:	SAMUEL S. SVALINA

This action for divorce was commenced by the Plaintiff on September 8, 1998 by the filing of a Summons and Complaint with the Office of the Clerk of Court. The Defendant filed an Answer and Counterclaim on October 26, 1998.

The hearing was held before me on 23rd day of March, 1999. Appearing before me at the appointed time and place was the Plaintiff, Plaintiff's Counsel, Vernell Scott, Esquire, and the Defendant and her counsel, Samuel S. Svalina, Esquire were also present. Prior to the taking of testimony, counsel informed the Court that the parties had reached an agreement between them and desired the Court approve and adopt the agreement as Order.

AGREEMENT

- a. The Plaintiff will assume the responsibility and pay for the Sears Charge that is in both of their names. He will be responsible for that debt.

Certified - A True Copy

[Signature]
Clerk of Court
Beaufort County, S.C.

b. There are three automobiles of the marriage, namely a Dodge Van, a Toyota Crossida car and a truck. Plaintiff shall be allowed to retain the truck and the Dodge van. The Plaintiff shall retain the Toyota Crossida. Both parties shall execute all documents necessary to transfer good title to each other.

c. There were three (3) children born of this marriage, namely to wit: [REDACTED]

and [REDACTED]

[REDACTED] Plaintiff shall have visitation with the minor children every other weekend and alternating holidays. Plaintiff shall have the children for four (4) weeks during the summer.

d. For the year 1998, the Plaintiff will be allowed to declare two of the children as dependents on his taxes, the Defendant will be allowed to claim one of the children as a dependent. For the remaining years, all of the children shall be claimed as dependents, by the Defendant on her income taxes.

e. Neither party shall make derogatory comments about each other or any other family members around the children. Additionally, there will be no alcohol or illegal substances allowed to be present around any of the children by either party or any of their friends. No paramours shall have overnight visits while in the home of either the Defendant or Plaintiff when the children are present.

f. The Defendant shall be entitled to 37.5% of the Plaintiff's 401K. As of the date (9-8-98) of filing to include any interest earned or money made upon that money as of the date of this order. The Plaintiff shall execute any and all documents necessary in order to ensure that the Defendant can receive the portion of his 401K without any tax consequences.

g. The Defendant will retain the riding lawn mower.

- h. Both parties hereby waive any interest each may have in any real property that has been acquired during the marriage or after the marriage and in title in their name.
- i. Both parties waive any interest in alimony or support.
- j. Child support will be paid pursuant to the South Carolina Child Support Guidelines and shall be paid through the Court with a three (3) percent Court cost to be paid by the Plaintiff. Child Support has been determined to be \$473.48 plus 3% Court costs which shall be paid on a biweekly manner by the Plaintiff. Furthermore, any medical expenses shall be split, 79% to the Plaintiff and 21% to the Defendant.
- k. Both parties are mutually restrained from harassing, bothering or molesting either party in any way.

l. *Each party shall be responsible for their own attorney fees*

FINDINGS OF FACTS/CONCLUSIONS OF LAW

Testimony thereafter was taken from the Defendant and the Plaintiff for which the Court makes the following findings of fact:

- a. That this Court has jurisdiction over the parties hereto and the subject matter of this litigation.
- b. Plaintiff and Defendant are citizens and residents of the county of Beaufort, South Carolina and have been so for more than one (1) year prior to the commencement of this action.
- c. That I have received and reviewed the Plaintiff's and Defendant's financial declarations presented at this hearing.
- d. The parties are husband and wife and have been lawfully married on in Beaufort, South Carolina.

August 15, 1982,
C/K

- e. Parties have consented to said agreement, and they request that it be incorporated in the final order of this Court.
- f. It is the intention of the parties to have this Agreement be ratified in a final Order of this Court at a later hearing.
- g. I find that both parties have voluntarily entered into this agreement and believe that this agreement to be fair and equitable.
- h. Considering all factors included in the equitable distribution laws of the State of South Carolina, this Court finds this agreement as stipulated to be fair and equitable to both parties and is in the best interest of the minor children and shall be incorporated into the final order of this Court.
- i. I also find that there was no coercion to enter into this agreement and that both parties were well informed as to financial conditions of the other.

Callery

NOW, IT IS THEREFORE HEREBY ORDERED,

- a. The parties are granted a Decree of Separate Maintenance;
- b. That the Agreement that has been stipulated to this Court is fair and equitable to both parties and is in the best interest of the minor children of the parties and is approved and incorporated as the order of this Court.

IT IS SO ORDERED.


 NANCY MELIN
 PRESIDING JUDGE OF THE FAMILY COURT
 FOR THE FOURTEENTH JUDICIAL CIRCUIT

Summers
 Sumner, South Carolina
~~May 17, 1999~~
 June 9, 1999

RAIT - BOK
DAW - BOK
6/19/99

CHILD SUPPORT GUIDELINES 8/94

	Father	Mother
1. Monthly GROSS INCOME	\$ 1,917.00	\$ 500.00
2. Monthly alimony (this action)		
(a.) To be received	+\$ 0.00	+\$ 0.00
(b.) To be paid	-\$ 0.00	-\$ 0.00
3. Other monthly alimony or child support paid (if having priority over this action)	- \$ 0.00	\$ 0.00
4. ADJUSTED MONTHLY GROSS INCOME	\$ 1,917.00	\$ 500.00
COMBINED MONTHLY ADJUSTED GROSS INCOME	\$ 2,417.00	
Number of Children to be supported in this action:	2	
5. BASIC COMBINED CHILD SUPPORT OBLIGATION (GROSS)	\$ 623.06	
6. Adjustments to Basic Child Support Obligation:		
(a.) Health insurance premium (portion covering children only)	\$ 100.00	\$ 0.00
(b.) Work related child care costs (net of tax credits)	\$ 0.00	\$ 0.00
Total Adjustments to Combined Child Support Ob.	\$ 100.00	\$ 0.00
7. TOTAL COMBINED NO. CHILD SUPPORT OBLIGATION (NET)	\$ 723.06	
8. Proportional share of combined monthly gross income	79.313%	20.687%
9. Gross child support obligation of individual parent monthly.....	\$ 573.48	\$ 149.58
10. Credit for adjustments to basic support obl.	\$ 100.00	\$ 0.00
11. NET CHILD SUPPORT TO BE PAID ON A MONTHLY BASIS	\$ 473.48	\$ 0.00
NET CHILD SUPPORT TO BE PAID ON BIMONTHLY BASIS	\$ 236.74	\$ 0.00
NET CHILD SUPPORT TO BE PAID ON WEEKLY BASIS	\$ 109.37	\$ 0.00
MONTHLY CHILD SUPPORT WITH 3% COURT COSTS ADDED	\$ 487.69	\$ 0.00
BIMONTHLY CHILD SUPPORT WITH 3% COURT COSTS	\$ 243.84	\$ 0.00
WEEKLY CHILD SUPPORT WITH 3% COURT COSTS ADDED	\$ 112.83	\$ 0.00

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

FAMILY COURT

CHARLES GARY

vs

DORETHA CHISOLM GARY

JUDGEMENT IN A CIVIL CASE

CASE NO. 2000-DR-07-661

Plaintiff(s)

Defendant(s)

- ☐ Jury Verdict. This action came before the court for a trial by jury. The issues have been tried and the verdict rendered.
- ☒ Decision by court. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

- ☐ Action Dismissed. ☐ Rule 12(b), SCRPC ☐ Rule 40(c)(3), SCRPC
- ☐ Rule 41(a), SCRPC (Vol. Nonsuit) ☐ Settled
- ☐ Other, Explain: _____

IT IS ORDERED AND ADJUDGED:

- ☒ See attached order
- ☐ Statement of Judgement by Court

Dated at BEAUFORT, South Carolina, this 19th day of Jan 2001

5/Jan D. Fender

This judgement was entered on the 22nd day of January, 2001, and a copy mailed first class this 22nd day of Jan 2001, to attorneys of record or to parties (when appearing pro se) as follows:

Vernell J. Scott

C.O.C.

Attorney (s) for Plaintiff(s)

2/6/01

Samuel S. SYALINA

Attorney (s) for Defendant(s)

KAREN CULLEN, DEPUTY
Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

CHARLES GARY,

Plaintiff,

vs.

DORETHA CHISOLM GARY,

Defendant.

IN THE FAMILY COURT FOR THE
FOURTEENTH JUDICIAL CIRCUIT
FILE NO.: 2000-DR-07-661
related file: 98-DR-07-1378

**FINAL DIVORCE DECREE and
VISITATION ORDER**

01 JAN 22 PM 4:58
FAM. CT. CLERK
BEAUFORT COUNTY
S.C.

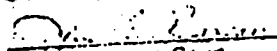
HEARING DATE: DECEMBER 13, 2000
PRESIDING JUDGE: JANE DOWLING FENDER
PLAINTIFF'S ATTORNEY: VERNELL I. SCOTT, ESQUIRE
DEFENDANT'S ATTORNEY: SAMUEL S. SVALINA, ESQUIRE
COURT REPORTER: ROBIN HILD

This action for a Divorce was initiated when Plaintiff filed a Summons and Verified Complaint for Divorce in the Beaufort County Family Court on or about May 19, 2000. The Defendant was properly served. She filed an Answer and Counterclaim by and through her attorney, Samuel Svalina, Esquire. Also present was one corroborating witness for the Plaintiff.

Prior to taking any testimony the Court inquired of the Plaintiff whether there was any possibility of reconciliation, the Court was informed that no reconciliation was possible. The Court reviewed the pleadings, heard the argument of the attorneys, and heard the testimony makes the following findings of fact and conclusions of law:

1. Plaintiff and Defendant are citizens and residents Beaufort County, in the State of South Carolina and have so resided for a period in excess of one year prior to the initiation of this action.
2. The parties were lawfully married to each other on August 15, 1982 in Colleton County, South Carolina; that the parties last lived together as husband and wife in the state of South Carolina on or about August 28, 1998.
3. The issues related to the parties' marital property were resolved pursuant to an Agreement and resulting Order of this Court entitled "Final Order" in matter entitled CHARLES GARY vs. DORETHA CHISOLM GARY, matter number 98-DR-07-1378 and dated June 9, 1999.

Certified - A True Copy



Court
Beaufort County, SC

Appendix 191

4. The parties are the parents of three children, one of whom is a minor, to wit: [REDACTED] and no other children are expected.
5. Plaintiff is entitled to a Divorce, a vinculo matrimonii, from the Defendant on the grounds of having lived separate and apart for more than one year without cohabitation.
6. Defendant is entitled to resume her maiden name of "Doretha Chisolm".

Re: Custody, child support and visitation

7. Defendant will retain custody of the parties' minor child, [REDACTED] subject to Plaintiff's regularly scheduled visitation privileges.
8. Plaintiff's monthly gross income is one thousand nine hundred and seventeen dollars and Defendant's imputed income is eight hundred and seventy-six dollars per month which amount is based upon the minimum wage of \$5.15 per hour.
9. Plaintiff shall pay child support in the amount of three hundred forty dollars (\$340.00) plus the Court's three percent (3%) administrative fee in the amount of ten dollars and twenty cents (\$10.20) for a total monthly amount of three hundred fifty dollars and twenty cents (\$350.20) per month, said payments shall be paid through the Beaufort County Family Court by wage withholding. (See attached Child Support Worksheet)
10. Plaintiff is entitled to regularly scheduled visits with the parties minor child as follows: for three months, beginning on Saturday December 16, 2000 Plaintiff shall pick up the parties' child at 10:00 a.m. and return the child at 2:00 p.m.; this temporary visitation schedule shall continue on alternate Saturdays until February 24, 2001.
11. Thereafter, beginning the 9th of March, 2001, Plaintiff shall exercise regularly scheduled visitation will commence as follows:
- Alternating Weekends: every other weekend from Friday at 6:00 p.m. until Sunday at 6:00 p.m.
 - Summer visitation: Two weeks selected by Plaintiff with notice to Defendant by certified mail on or before the 15th of May. Failure to give notice as required will result in Defendant selecting the weeks for visitation, but will not result in a denial of visitation.
 - Holidays: All Major Holidays are to be alternated by the parents:
 - (1) Christmas

Week one: 6:00 p.m. the day school dismisses for the holidays in the district where the children reside until 2:00 p.m. on Christmas Day. (Odd years with Plaintiff.)

Week two: 2 p.m. on Christmas Day until 6:00 p.m. the day before school reconvenes. (Even years with the Plaintiff)

(2) **Thanksgiving:** 6:00 p.m. Wednesday until 6:00 p.m. Sunday (Odd years with Plaintiff)

(3) **Spring Break:** 6:00 p.m. on the day school dismisses until 6:00 p.m. on the day before school reconvenes (Odd years with the Plaintiff)

(4) **Mother's Day:** 6:00 p.m. Friday until 6:00 p.m. Sunday every year with Defendant.

(5) **Father's Day:** 6:00 p.m. Friday until 6:00 p.m. Sunday every year with the Plaintiff

d. Telephone:

Initiated by Plaintiff: Each Wednesday, during the week when there is no weekend visitation between 6:30 p.m. and 8:30 p.m. for not to exceed 30 minutes at his expense.

Initiated by Children: As often as the child wishes to call (at the expense of the parent called).

e. Notice: Visiting parent must give 24 hours notice of intention not to visit.

f. Pickup/Delivery for Visitation: Plaintiff will pick up the children from Defendant's home - Defendant is not to exit the home nor is Plaintiff to enter the home the child is to be sent to meet Plaintiff or Plaintiff's designate.

Other: When Plaintiff is unable to pick up the child, Plaintiff may send his sister or his mother to pick up the child for him.

g. Visiting parent is allowed a total of thirty minutes grace period. That is, he may be no more than thirty minutes late in picking up the children or in returning the children to the custodial parent, unless the parties have agreed to a change in the pick up and/or the return time.

h. General information:

(1) All holiday visitation takes precedence over regular weekend visitation. Alternating weekends are reset after each holiday period. (Example: the visiting parent would not have Thanksgiving weekend and the weekend after Thanksgiving).

- (2) Parents may designate a responsible adult to assist them with the exchange of the children for visitation (bearing in mind the Restrictions listed herein).
- (3) Parents must keep one another informed at all times of their work address(es) and telephone number(s) as well as their home address and telephone number.

7. Mutual Restrictions

1. Neither parties may expose the child to violent conduct;
2. Neither party may expose the child to non-spouse overnight romantic companions;
3. Neither party may expose the child to immoral or illegal activities;
4. Neither party may expose the child to sexually explicit materials of any kind;
5. Neither party may discuss this case with or in the presence of the child;
6. Neither party may make or allow disparaging comments about the other parent or family in the presence of the child;
7. Neither party may use or allow vulgar, profane, demeaning or violent language around the child;
8. Both parties are restrained from harassing or threatening the other party in any way.

NOW THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT

- 9054
- A. Plaintiff is granted a decree of Divorce from the Defendant, a vinculo matrimonii upon the grounds of living separate and apart for a period in excess of one year;
 - B. The parties are warned that violations of the visitation schedule are punishable by the full force of this Court's contempt powers;
 - C. The prior Order of this Court shall remain in full force and effect with the exception of the child support provisions;
 - D. Plaintiff shall pay child support in the amount of three hundred forty dollars (\$340.00) plus the Court's three percent (3%) administrative fee in the amount of ten dollars and twenty cents (\$10.20) for a total monthly amount of three hundred fifty dollars and twenty cents (\$350.20) per month; and
 - E. Both parties are barred from any and all forms of spousal support.
 - F. Defendant may resume her maiden name of Doretha Chisolm.

AND IT IS SO ORDERED!


The Honorable Jane Dowling Fender
Presiding Judge, 14th Judicial Circuit

Dated: Jan 19, 2001
Beaufort, South Carolina

South Carolina Department of Social Services
CHILD SUPPORT OBLIGATION: WORKSHEET A

Charles Gary
Name of Plaintiff

vs. Dorothy Chisohn
Name of Defendant

00-08-07-001
File Number

	Father	Mother	
1. Monthly Gross Income:	<u>1,917</u>	<u>876</u>	
	☐ Imputed	☒ Imputed	
2. Monthly Alimony (This Action)			
a. To Be Received:	<u>0</u>	<u>0</u>	
b. To Be Paid:	<u>0</u>	<u>0</u>	
3. a. Other Monthly Alimony or Child Support Paid: (If Having Priority Over This Action)	<u>0</u>	<u>0</u>	
b. Adjustment for <u>0</u> / <u>0</u> Other Child(ren) In the Home:	<u>0</u>	<u>0</u>	
4. Adjusted Monthly Gross Income:	(4F) <u>1,917</u>	+ (4M) <u>876</u>	= (4C) <u>2,793</u> (4F) + (4M) = (4C)
Number of Children To Be Supported By Order In This Action: 1			
5. Basic Combined Child Support Obligation (Gross): (From Schedule, Using Combined Monthly Adjusted Gross Income (Line (4C))			(5C) <u>496</u>
6. Adjustments to Basic Child Support Obligation			
a. Health Insurance Premium: (Portion Covering Children Only)	<u>0</u>	<u>0</u>	
b. Child(ren)'s Extraordinary Medical Expenses:	<u>0</u>	<u>0</u>	
c. Work-related Child Care Costs Adjusted For Federal Tax Credit: Actual <u>0</u> x 0.75 =	<u>0</u>	<u>0</u>	
(0.75 adjusts for Federal Tax Credit but does not apply for certain income levels; see instructions)			
Total adjustment to Basic Combined Child Support Obligation:	(6F) <u>0</u>	+ (6M) <u>0</u>	= (6C) <u>0</u> = 7(C) <u>496</u> (5C) + (6C) = 7(C)
7. Total Combined Monthly Child Support Obligation: (Net)			
8. Proportional Share of Combined Monthly Adjusted Gross Income:	(8F) <u>68.64%</u> (4F) / (4C) = (8F)	(8M) <u>31.36%</u> (4M) / (4C) = (8M)	
9. Gross Child Support Obligation of Individual Parent: (Monthly)	(9F) <u>340</u> 7(C) x (8F) = (9F)	(9M) <u>156</u> 7(C) x (8M) = (9M)	
Complete Items 10-11 for Non-Custodial Parent Only:			
Non-Custodial Parent is: (Check One)	Father ☒	Mother ☐	
10. Credit for Adjustments to Basic Combined Child Support Obligation: (From Item 6(F) or Item 6(M))	10(F) <u>0</u> (Same as Item 6(F))	10(M) <u>0</u> (Same as Item 6(M))	
11. Net Child Support To Be Paid To Custodial Parent:	11(F) <u>340</u> (9F) - 10(F) = 11(F)	11(M) <u>0</u> (9M) - 10(M) = 11(M)	
Date: <u>January 8, 2001</u>			
Worksheet Prepared by: <u>Yemali J. Scott</u>			
For: Father ☒ Mother ☐			

Note: If deviation from the Guidelines is necessary, please specify reasons (over).

DSS Form 27161 (JUL 99) Edition of JAN 99 is obsolete.

Diagnostic Information

Charles Gary
Name of Plaintiff

vs.

Doratha Chism
Name of Defendant

00-DR-07-001
File Number

Miscellaneous Payment Options:

	<u>Gross Obligation</u>	<u>3% Fee</u>	<u>Gross Obligation Plus 3% Fee</u>
Monthly	<u>340.00</u>	<u>10.20</u>	<u>350.20</u>
Semi-monthly	<u>170.00</u>	<u>5.10</u>	<u>175.10</u>
Bi-weekly	<u>155.92</u>	<u>4.71</u>	<u>160.63</u>
Weekly	<u>78.46</u>	<u>2.35</u>	<u>80.81</u>

Other Children in the Home:

Father has 0 additional child(ren) in the home for which the calculated deduction is \$0

Mother has 0 additional child(ren) in the home for which the calculated deduction is \$0

Calculation of Work-related Child Care Costs (net of tax credit):

	<u>Father</u>	<u>Mother</u>
Total Monthly Work-related Child Care Cost	<u>0</u>	<u>0</u>
Number of Children with Parent (Present Action)	<u>0</u>	<u>1</u>
Percentage of Costs Included in Obligation	<u>100%</u>	<u>100%</u>
Monthly Child Care Cost Net of Credit	<u>0</u>	<u>0</u>

NOTES:

1. No credit is calculated when the custodial parent's income is below a level at which the credit cannot be utilized for tax purposes. See Child Support Guidelines Handbook for details.
2. No credit is calculated for a parent without custody of a child.

LICENSE AND CERTIFICATE FOR MARRIAGE

STATE OF SOUTH CAROLINA
COLLETON COUNTY

X 0000031445

LICENSE NUMBER

COUNTY

GROOM-NAME (1) CHARLES (FIRST) GARY (LAST)		BIRTHDATE (MONTH, DAY, YEAR) (2a) [REDACTED]	AGE (2b) 48
BIRTHPLACE (State or foreign country) (3) SOUTH CAROLINA	RACE (4) BLACK	RESIDENCE (Street and number) (5) [REDACTED]	
CITY, TOWN, OR LOCATION (6a) YEMESSEE	COUNTY (6b) BEAUFORT	STATE (6c) SOUTH CAROLINA	NO. OF THIS MARRIAGE (7) 3RD (2nd, etc.)
BRIDE-NAME (7) BLONDELL (FIRST) MARIE (MIDDLE) YOUNG (LAST)		BIRTHDATE (MONTH, DAY, YEAR) (8a) [REDACTED]	AGE (8b) 43
BIRTHPLACE (State or foreign country) (9) SOUTH CAROLINA	RACE (10) BLACK	RESIDENCE (Street and number) (11) [REDACTED]	
CITY, TOWN, OR LOCATION (12a) BURTON	COUNTY (12b) BEAUFORT	STATE (12c) SOUTH CAROLINA	NO. OF THIS MARRIAGE (13) 3RD (2nd, etc.)
MARRIAGE NAME OF BRIDE (Last name, first name) (14) BLONDELL MARIE MYERS			

Application for a license was filed with this court at 12:00 P 12TH NOVEMBER 99 M., on the ____ day of ____ . These are,

therefore, to authorize any person qualified to perform marriage ceremonies to perform the marriage ceremony for the

persons above named and for the so doing this shall be sufficient warrant. Given under my hand and seal

at 1130A 15TH NOVEMBER 99 M., this the ____ day of ____, A.D. ____

JUDGE OF PROBATE COURT

GROOM-Signature (15) <u>Charles Gary</u>	BRIDE-Signature (16) <u>Blondell Young Marie</u>
I certify that the above named persons were married on (15a) <u>11-30-99</u> (MONTH) (DAY) (YEAR)	Place of Marriage (16a) <u>Sheldon Beaufort</u> (CITY) (COUNTY) (STATE) SOUTH CAROLINA
OFFICIANT-Signature (18) <u>Bishop John D. Jones</u>	OFFICIANT-Title (18a) <u>Bishop & Pastor</u>
OFFICIANT-Mailing Address (18b) <u>Bishop John D. Jones P.O. Box 984 Hardeeville, SC</u> <u>29927</u>	

DHEC 0681 (12/1988)

PROBATE JUDGE

ATTEST: A TRUE COPY

Kellie D. Tuten
Clerk, Probate Court
Colleton County, South Carolina
12/10/2014



Appendix 197

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Judge Perry M. Buckner, III, Circuit Court Judge

CASE NO. 2012-CP-25-402

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

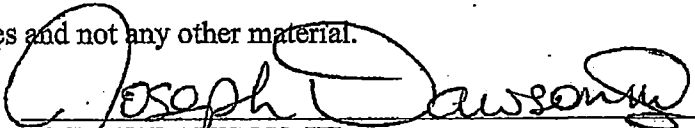
v.

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 Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed
to be included by any of the parties and not any other material.


JOSEPH DAWSON, III

Post Office Box 41367
North Charleston, South Carolina 29423
(843) 207-9004

**ATTORNEY FOR APPELLANT CHARLES GARY,
PURPORTED SURVIVING SPOUSE**

North Charleston, South Carolina
June 1, 2016

RECEIVED
JUN 09 2016
SC Court of Appeals

0196

Appendix 198

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Judge Perry M. Buckner, III, Circuit Court Judge

RECEIVED

JUN 27 2016

Court of Appeals

CASE NO. 2012-CP-25-402

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 Appellant.

FINAL BRIEF OF APPELLANT CHARLES GARY,
PURPORTED SURVIVING SPOUSE

Joseph Dawson, III
Post Office Box 41367
North Charleston, South Carolina 29423
(843) 207-9004

Attorney for Appellant Charles Gary,
Purported Surviving Spouse

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STATEMENT OF ISSUES ON APPEAL

1. Did the lower court err when it failed to find that the Estate was judicially bound by the allegations in the Estate's pleadings; and therefore, estopped from asserting that the Appellant was not the surviving spouse of the decedent and heir of the Estate?
2. Did the lower court err when it failed to find that the consent order of dismissal with prejudice was an adjudication on the merits of the case, which precludes subsequent litigation on whether the Appellant was the surviving spouse of the decedent?

STATEMENT OF THE CASE

The Respondent Angel Y. Gary as Personal Representative of the Estate of Blondell M. Gary (the "Estate") filed a lawsuit on November 9, 2012, against several defendants, alleging Wrongful Death and Survival causes of action in this case (hereinafter "Wrongful Death Case") after Angel Y. Gary, filed an Application for Appointment as Personal Representative for the Estate of Blondell M. Gary on February 14, 2012, Estate of Blondell M. Gary, Case Number 12-CP-07-00140. The Estate obtained a Judgment by Default against one of the defendants, American Medical Response Inc., d/b/a Access2Care pursuant to Rule 55, SCRCP.

The Wrongful Death Case was set for a jury trial on September 1, 2015. The parties settled the case that day and an Order Approving Wrongful Death and Survival Action Settlement was signed by Judge Brooks P. Goldsmith, on September 14, 2015, and filed on September 15, 2015. On November 13, 2015, Judge Perry M. Buckner, III, signed an Order of Dismissal, with the consent of the parties dismissing the case with prejudice. The Order of Dismissal was filed on November 30, 2015.

On December 14, 2015, the Respondent filed a Petition to Determine Heirship challenging whether Charles Gary was an heir and spouse of the decedent. The Appellant served its Answer/Return to the Petition to Determine Heirship on January 12, 2016. The trial court held a motions hearing on January 13, 2016, to decide the Respondent's Petition.

On January 21, 2016, the trial court entered its Order finding that Charles Gary was not Blondell Gary's husband at the time of her death; and therefore, not an heir of the Estate. The Appellant timely filed and served its Notice of Appeal on February 5,

2016.

STATEMENT OF THE FACTS

This appeal challenges whether the Estate should be estopped from taking a position contradictory of and/or inconsistent with its pleadings in the Wrongful Death Case that Mr. Gary is the surviving spouse and an heir of the Estate. After nearly four years of litigation, a settlement with disbursement of funds, and a dismissal with prejudice of the Wrongful Death Case; the Estate claims for the first time that Mr. Gary is not the surviving spouse and an heir of the Estate.

On or about January 31, 2012, Low Country Medical Transport was operating an ambulance that was transporting Mr. Gary, who is a paraplegic and Blondell Gary to and from their home in Yemassee, South Carolina for Mr. Gary's medical appointment. Mr. Gary was strapped to a stretcher in the back of the ambulance and Blondell Gary, was riding in the front passenger seat with her seat belt secured. Low Country Medical Transport's ambulance suddenly and un-expectantly ran off the shoulder of the road and struck a tree causing Mr. Gary to suffer serious injuries and killing Blondell Gary.

On February 14, 2012, Angel Y. Gary, Mr. Gary and the decedent's daughter, filed an Application for Appointment as Personal Representative for the Estate of Blondell M. Gary. (R. pp. 081-086, Estate of Blondell M. Gary, Case Number 12-ES-07-00140). In that matter and on the decedent's Death Certificate, Angel Y. Gary identified Mr. Gary as the spouse of the decedent Blondell M. Gary. (R. pp. 081-086, Application for Appointment of Personal Representative and R. p. 087, Death Certificate of Blondell Gary). The Beaufort County Probate Court appointed Angel Y. Gary as Personal Representative for the Estate.

As a result of the Estate's injuries and damages, on November 9, 2012, the Estate of Blondell M. Gary filed a lawsuit against several defendants, alleging Wrongful Death and Survival causes of action, in a case styled Angel Y. Gary as Personal Representative of the Estate of Blondell M. Gary v. Lowcountry Medical Transport, Inc., American Medical Response, Inc., d/b/a, Access2Care, and Eugene A. Kirkland, 2012-CP-25-402.¹ (R. pp. 074-080, Wrongful Death and Survival Action Complaint). In the Estate's Wrongful Death Case complaint, the Estate alleged that "Blondell Gary (hereinafter "Blondell"), on behalf of her husband, Charles Gary, contracted with American Medical Response to provide non-emergency medical transport on the day in question." (R. p. 076, Wrongful Death and Survival Action, Complaint ¶5). In the Wrongful Death Case, the Estate claimed among other things that "the beneficiaries of Blondell have endured and continue to endure grief, sorrow, shock, loss of companionship, wounded feelings, and mental anguish." (R. p. 077, Wrongful Death and Survival Action Complaint ¶12).

While the Estate's Wrongful Death case and Mr. Gary's Personal Injury case were pending in both Hampton County and Beaufort County Circuit Courts, the Estate's counsel informed Mr. Gary's counsel that Mr. Gary must and/or it intended to compel him to seek recovery of certain damages in the Wrongful Death Case that he was also seeking to recover in his Personal Injury Case. Due to this controversy over damages recoverable

¹ As a result of Mr. Gary's injuries and damages, on October 16, 2012, he filed a lawsuit against several defendants alleging Negligence, Negligence Per Se, Gross Negligence, Loss of Consortium/Companionship of Spouse, and Negligent Infliction of Emotional Distress, in a lawsuit styled Charles Gary v. Hattie M. Askew, Will Outlaw, and Deboria Outlaw, individually and D/B/A Low Country Medical Transport, Low Country Medical Transport Inc., Eugene A. Kirkland, and American Medical Response Inc., (D/B/A Access2Care), 2012-CP-07-3595 (hereinafter "Personal Injury Case").

Mr. Gary has obtained an Order on Summary Judgment in his Personal Injury Case against several defendants on his Negligence and Loss of Consortium/Companionship of Spouse causes of action. The Personal Injury Case Summary Judgment Order is on appeal in the South Carolina Court of Appeals.

in the two cases, Mr. Gary filed a Declaratory Judgment Action against the Estate in the Beaufort County Circuit Court to resolve this dispute, on October 20, 2014. (R. pp. 088-096, Declaratory Judgment Action Complaint).

In the Declaratory Judgment case, Mr. Gary alleged in his Complaint that "Mr. Gary is a beneficiary of the Estate of Blondell M. Gary." (R. p. 092, Declaratory Judgment Action Complaint ¶ 1). He also alleged that Blondell Gary was his wife. (R. p. 092, Declaratory Judgment Action Complaint ¶ 4). Mr. Gary also alleged in his Complaint that the Estate claimed that Mr. Gary must and/or intended to compel him to seek recovery of certain damages in the Wrongful Death Case that he sought to recover in his Personal Injury Case and that a justiciable case or controversy exists between the parties. (R. pp. 093-094, Declaratory Judgment Action Complaint ¶ 7 and ¶ 10). The Estate admitted these allegations in its Answer. (R. pp. 097-100, Declaratory Judgment Action Answer of Defendant ¶ 2, ¶ 4, ¶ 7, and ¶ 10).²

The Wrongful Death Case was set for a jury trial on September 1, 2015. The parties settled the case that day and an Order Approving Wrongful Death and Survival Action Settlement was signed by the Honorable Brooks P. Goldsmith, on September 14, 2015, and filed on September 15, 2015.³ On November 13, 2015, the Honorable Perry

² As recent as September 3, 2015, the parties were present for a hearing on Mr. Gary's Petition for Removal of Angel Y. Gary as Personal Representative for the Estate of Blondell M. Gary, before the Beaufort County Probate Court. (R. pp. 0101-0105, Notice of Hearing, Petition for Removal of Angel Y. Gary as Personal Representative for the Estate of Blondell M. Gary). Mr. Gary filed the petition because he believed (among other things) that Angel Y. Gary was being dilatory in her efforts to resolve the Estate's claims against the defendants in the Wrongful Death Case. Mr. Gary and his daughter Angel Y. Gary, as Personal Representative agreed to dismiss the Petition for Removal, because the Estate notified him at the hearing that the Wrongful Death Case had been settled. The Estate never asserted during that proceeding that Mr. Gary was not a beneficiary of the Estate or that he would not receive his spousal share of the settlement.

³ At the time the Estate agreed to the Order Approving Wrongful Death and Survival Action Settlement, the Estate identified Mr. Gary as the surviving spouse in its probate filings. Pursuant to S.C.

M. Buckner, III, signed an Order of Dismissal, with the consent of the parties dismissing the case with prejudice. The Order of Dismissal was filed on November 30, 2015.

On December 11, 2015, Respondent's counsel informed the Appellant's counsel for the first time that the Estate disputes whether Mr. Gary was the decedent's spouse, and that this contention created a fee dispute regarding his spousal share of the settlement. Respondent's counsel claimed this fee dispute prevented them from disbursing Mr. Gary's spousal share to him. On December 14, 2015, the Respondent filed a Petition to Determine Heirship challenging whether Charles Gary was an heir and spouse of the decedent. (R. pp. 014-033, Petition to Determine Heirship). The Estate claimed that Mr. Gary's November 30, 1999, marriage certificate to the decedent predates his January 22, 2001, Final Divorce Decree to his previous wife; and therefore, the marriage to the decedent was void, despite the Estate's knowledge of this issue during the pendency of its Wrongful Death Case.

Prior to filing the Petition and the dismissal of the Wrongful Death Case, the Estate maintained and contended that Mr. Gary was the surviving spouse of the decedent Blondell M. Gary on the date of her death, which was January 31, 2012, notwithstanding the Estate's knowledge of the issues it raises in its Petition. Accordingly, the Estate continued to press its claim that Mr. Gary was a beneficiary of the Estate in the Wrongful Death Case to bolster the Estate's potential damages. Nevertheless, a hearing was held on the Estate's Petition on January 13, 2016. At the hearing, the Estate admitted that it knew about the Marriage Certificate in relation to the Final Order of Divorce issue during

Code Ann. § 15-51-42 (B) and (C) the Personal Representative was required to identify "the statutory beneficiaries of the wrongful death or survival action" to obtain Court approval of a Wrongful Death settlement.

the pendency of its Wrongful Death Case in Hampton County, the Beaufort County Probate Court proceedings, and the Beaufort County Circuit Court Declaratory Judgment Action.⁴

On January 21, 2016, the trial court issued an Order ruling that because Mr. Gary was still married to his former spouse when he purportedly married the decedent in 1999, his purported marriage to the decedent was void from its inception. (R. pp. 001-003, Order on Petition to Determine Heirship). Mr. Gary contends that this Court should reverse the trial court's January 21, 2016, Order for the following reasons.

LAW / ARGUMENT

I. THE ESTATE IS JUDICIALLY BOUND BY THE ALLEGATIONS IN ITS PLEADINGS; AND THEREFORE, THE TRIAL COURT ERRED WHEN IT FOUND THAT THE APPELLANT WAS NOT THE SURVIVING SPOUSE AND HEIR OF THE ESTATE

A. The Estate admitted in its pleadings that Mr. Gary is the decedent's spouse.

The trial court erred when it failed to exclude all evidence and arguments of the Estate's counsel asserting that the Appellant was not the spouse of the decedent and an heir of the Estate. It is undisputed that the Estate in its Wrongful Death Case complaint alleged that "Blondell Gary (hereinafter "Blondell"), on behalf of her husband, Charles Gary, contracted with American Medical Response to provide non-emergency medical transport on the day in question." (R. p. 076, Wrongful Death and Survival Action,

⁴ Counsel for the Estate stated during the hearing he was not sure when the Estate discovered this issue, but he stated that the attorneys for the Estate and the attorney for Mr. Gary discussed the matter while attending a partial summary judgment hearing in a companion case filed in the Federal District Court styled, Selective Insurance Company of South Carolina v. Charles Gary, Angel Gary as Personal Representative of the Estate of Blondell Gary, 9:12-cv-02774-SB. That hearing occurred on July 8, 2014, which predates the filing of the Declaratory Judgment Action in the Beaufort County Circuit Court.

Complaint ¶5). The Estate maintained this position throughout the Wrongful Death Case, despite knowledge of a possible defect in the decedent and Appellant's marriage license in 1999. See Footnote 4. In fact, the Estate conceded Mr. Gary's marital status before the Beaufort County Probate Court and in the Beaufort County Circuit Court in a Declaratory Judgment action arising out of a dispute over the division of damages for loss of consortium. Under South Carolina law, the Respondent is judicially bound by its pleadings and it cannot contradict its previous position that Mr. Gary is the decedent's spouse and a beneficiary of the Estate. South Carolina law provides that:

It is well settled that parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise. The allegations, statements, or admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the action.

Postal v. Mann, 308 S.C. 385, 418 S.E.2d 322 (Ct.App.1992).

The Estate is judicially bound by the admissions in its pleadings in the Wrongful Death Case and in two other companion cases where it admitted that Mr. Gary is the surviving spouse and a beneficiary of the Estate of Blondell M. Gary. The trial court erred when it considered the 1999 marriage license, the 2001 Divorce Decree, and the arguments of the Estate's counsel contradicting its own pleadings. "Parties are generally bound by their pleadings and are precluded from advancing arguments or submitting evidence contrary to those assertions. . . . Evidence contradicting such pleadings is inadmissible." Johnson v. Alexander, 413 S.C. 196, 775 S.E.2d 697 (2015). "While it is true, as a general rule, that an admission in a pleading is taken as conclusive of the fact admitted, and, so long as it remains in the pleading, evidence to the contrary will be excluded, still

even such an admission, though made under oath, may be withdrawn by leave of the court." Elrod v. All, 243 S.C. 425, 134 S.E.2d 410 (1964). The Estate's admissions have not been withdrawn by leave of the court. Therefore, the Estate should be precluded from asserting a position contradictory of, or inconsistent with, its pleadings and the facts which are admitted by the pleadings are taken as true against the Estate for the purpose of this action.

Conversely, the Respondent claims that all marriages contracted while either of the parties remains married to a living spouse are void. Johns v. Johns, 309 S.C. 199, 420 S.E.2d 856 (Ct.App.1992). The trial court mistakenly relies on Johns as a safe harbor to the Estate's judicial admissions, concluding that res judicata is the basis for the judicial admissions doctrine. Consequently, the trial court found that res judicata is trumped by the public policy against bigamy. The Johns court found:

The application of res judicata will not be applied where it will contravene other important public policies; the courts must weigh the competing public policies. The public policy underlying res judicata may have to yield to other public policies, even in consent orders. *Id.* citing 47 Am. Jur.2d, Judgments § 1090 (1969). Here, the public policy expressed in S.C. Code Ann. § 20-1-80 (1985) overrides the public policy of res judicata. Although the parties' consent order is not void, the marriage it affirms is void. In balancing the relevant public policies (i.e., the public policy of finality of judgments versus the public policy of not recognizing bigamous marriages) the consent order should not be given res judicata effect.

Id.

Even if the trial court correctly concluded that the judicial admissions doctrine is founded in res judicata, Johns is not analogous to the facts and law of this case. The paramour claimant in Johns was asserting spousal rights at the same time her common law husband was married to another woman, which is not present here. In

Johns, Mr. Johns and his paramour began living together in 1983, while Mr. Johns was married to a third party. The parties knew Mr. Johns' divorce would not be final until a year later but they chose to live together as husband and wife and had a child. Mr. Johns and his paramour separated in 1986 and Mr. Johns began living with another woman in 1987. Mr. Johns obtained a divorce from his third party wife in 1988, two years after he separated from his paramour.

In 1989, Mr. Johns and his paramour consented to an Order finding that they were married at common law and legally separated. Thereafter, Mr. Johns' paramour sought a divorce, child custody, increased child support, alimony and attorney fees on the basis of their alleged common law marriage, pursuant to the consent order. On appeal, the Johns Court found that "[a]t the time the parties began residing together in September 1983, and throughout their cohabitation, the respondent was legally married to another woman. Thus, any marriage between the parties while respondent had a subsisting marriage was void as a matter of public policy." Id. Accordingly, the Johns Court found that although the parties' consent order is not void, the marriage it affirms is void because the public policy expressed in S.C. Code Ann. § 20-1-80 (1985) overrides the public policy of res judicata. Id.

The case at bar is distinguishable from the Johns case. First, Mr. Johns' paramour sought costs and remedies against Mr. Johns' under the doctrine of common law marriage for the same time period Mr. Johns was married to another woman. In fact, Mr. Johns' paramour stopped cohabitating with him before he obtained his divorce. Therefore, at no time during their relationship was Mr. John's unmarried. Conversely, Mr. Gary's divorce decree with his former wife occurred in 2001. Blondell M. Gary died on

January 31, 2012, more than a decade after the events alleged by the Respondent in its Petition. The Estate does not allege that Mr. Gary was married to another woman at the time of the decedent's death. Therefore, no public policy conflict exists in this case.

Instead, the pleadings on file with the court clearly show that Mr. Gary had only one wife on the date of the decedent's death (January 31, 2012) and that the Respondent cannot contradict this judicial admission based on its pleadings. Therefore, this Court should find that the trial court erred when it allowed the Respondent to argue and introduce documents that sought to contradict its pleadings.

B. The consent order of dismissal with prejudice is an adjudication on the merits which precludes subsequent litigation.

In addition, the trial court erred when it failed to dismiss the Estate's Petition based on the fact that the Estate consented to an Order of Dismissal with prejudice prior to filing its Petition challenging Mr. Gary's spousal status. The Appellant asserted at the Petition hearing that the trial court should dismiss the Petition as it relates to Mr. Gary, because the Court's earlier dismissal of the underlying case bars subsequent litigation on the issues raised in the Estate's complaint. South Carolina law provides that:

A dismissal 'with prejudice' indicates an adjudication on the merits and, operating as res judicata, precludes subsequent litigation to the same extent as if the action had been tried to a final adjudication. [Citations Omitted]. Where an action has been so dismissed, the judgment operates, in a subsequent action involving the same subject matter, 'so as to conclusively settle not only all matters litigated in the earlier proceedings, but also all matters which might have been litigated therein.'

Nunnery v. Brantley Constr. Co., 289 S.C. 205, 345 S.E.2d 740 (Ct.App.1986)

It is undisputed that the Estate alleged that Mr. Gary was the husband of Blondell

Gary. (R. p. 076, Wrongful Death and Survival Action, Complaint ¶5). Equally, it is undisputed that American Medical Response failed to Answer the Respondent's Complaint within 30 days of service; and therefore, it was held in default. The Estate objected to American Medical Response's motion to answer out of time. Moreover, the Estate did not seek to amend its pleadings to strike the reference that Mr. Gary was the decedent's spouse, over the course of the litigation in the Wrongful Death Case.⁵ South Carolina law is clear:

It is a fundamental principle of jurisprudence that material facts or questions which were directly in issue in a former action, and were there admitted or judicially determined, are conclusively settled by a judgment rendered therein, and that such facts or questions become res judicata and may not again be litigated in a subsequent action between the same parties or their privies, regardless of the form that the issue may take in the subsequent action.

Laughon v. O'Braitis, 360 S.C. 520, 602 S.E.2d 108 (Ct.App.2004).

Again, unlike the Johns Court, there is no public policy conflict here, because there is no allegation that Mr. Gary was married to another woman at the time of the decedent's death. Therefore, the material fact that Mr. Gary was the spouse of the decedent was admitted and judicially determined. That fact is conclusively settled by Judge Buckner's November 13, 2015, Consent Order of Dismissal with Prejudice. Mr. Gary's spousal status becomes res judicata and may not again be litigated in a subsequent action, regardless of the form that the issue may take.

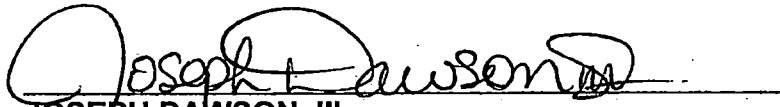
CONCLUSION

This Court should find that the Estate is judicially barred from asserting that Mr.

⁵ It is interesting to note that had the Estate amended its Complaint to strike the reference to Mr. Gary being the decedent's spouse it would have afforded American Medical Response the opportunity to file an Answer removing its default.

Gary is not the surviving spouse of the decedent and an heir of the Estate, because the Estate is bound by its pleadings and it cannot take a position contradictory of, or inconsistent with the pleadings in the Wrongful Death Case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph Dawson, III", written over a horizontal line.

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North Charleston, South Carolina
June 21, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Judge Perry M. Buckner, III, Circuit Court Judge

CASE NO. 2012-CP-25-402

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

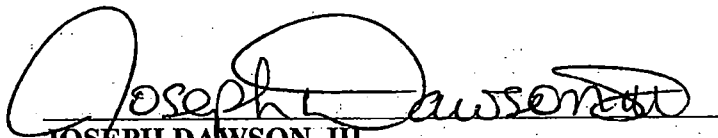
v.

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 Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Appellant complies with Rule
211(b), S.C.A.C.R.


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North Charleston, South Carolina
June 23, 2016

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JUN 27 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Judge Perry M. Buckner, III, Circuit Court Judge

CASE NO. 2012-CP-25-402

Angel Y. Gary as Personal Representative of the Estate of
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v.

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d/b/a Access2care, and Eugene A. Kirkland, In re: Charles Gary, Purported
Surviving Spouse, Defendants,

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

PROOF OF SERVICE

I certify that I have served the **Final Brief of Appellant** on the all counsel of record by
depositing a copy of the same in the United States Mail, postage prepaid, on June 23, 2016,
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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JUL 20 2016

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

SC Court of Appeals

Judge Perry M. Buckner, III, Circuit Court Judge

Appellate Case No. 2016-000222

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.....Appellant.

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COUNTER STATEMENT OF THE ISSUES ON APPEAL

- I. Can a valid marriage be created solely on the basis of estoppel?
- II. Does Charles Gary have unclean hands that would bar the relief he seeks?
- III. Is Angel Gary bound by erroneous statements in earlier pleadings that Charles Gary knew or should have known were incorrect?

COUNTER STATEMENT OF THE CASE

Factual Background

Charles Gary ("Charles") and Doretha Chisholm were married and not divorced until January 22, 2001. (R. pp. 119 - 122). Before their divorce was final, and while Charles was still married to Doretha Chisholm, Charles purportedly married Blondell Gary ("Blondell") on November 30, 1999. (R. p. 125).

On January 31, 2012, Defendant Lowcountry Medical Transport ("LMT"), a franchisee of Defendant American Medical Response, Inc., d/b/a Access2Care ("AMR"), was transporting Charles in a non-emergency ambulance to a medical appointment. Blondell was a passenger in the ambulance. LMT's ambulance ran off the shoulder of the road and struck a tree, injuring Charles and killing Blondell.

On Blondell's death certificate, the coroner identified Charles as the decedent's spouse. There is no evidence Respondent Angel Y. Gary ("Angel"), the daughter of Blondell, had any input on the coroner's act in doing so.¹

On February 15, 2012, Probate Judge Francis M. Simon appointed Angel as Personal Representative for Blondell's Estate (the "Estate") (Certificate of Appointment as Personal Representative). Angel listed Charles as a beneficiary on the initial probate

¹ Appellant inaccurately states that "on the decedent's Death Certificate, Angel Y. Gary identified Charles Gary as the spouse of the decedent, Blondell M. Gary." (Br. of App., p. 2). Again, there is no evidence Respondent had anything to do with this.

documents because she and her counsel were unaware, at that time, of any defect in the alleged marriage between Charles and Blondell.

On March 17, 2015, Charles filed a Petition for Removal of Angel as Personal Representative of the Estate. In paragraph 1 of that Petition, he alleged he was Blondell's spouse. (R. p. 164, ¶ 1). In her Answer to Petition for Removal of Personal Representative, Angel stated she "is without sufficient information to either admit or deny the remaining allegations in Paragraph 1." (R. p. 169, ¶ a). Later, upon learning more about defects in the purported marriage, Angel amended her initial probate filings to remove Charles as a beneficiary. (R. pp. 174 - 175).

Procedural Background

There are several related lawsuits that provide the backdrop of the present appeal. Respondent briefly describes the relevant history of those actions below, in the order in which each was filed.

1. The Selective DJ Action.

On September 25, 2012, Selective Insurance Company of South Carolina ("Selective") filed an interpleader and declaratory judgment action against Charles and Angel in United States District Court regarding issues of bodily injury and underinsured motorists coverage under the insurance policy it issued to LMT (the "Selective DJ Action", Complaint). On November 27, 2012, Selective amended its Complaint in that action before Angel had filed a response. (Selective DJ Action, Amended Complaint).

On December 6, 2012, Angel filed her Answer to the Amended Complaint in the Selective DJ Action and admitted the following allegation by Selective:

On or about January 31, 2012, an employee of Low Country Medical Transport, Inc. ("Low Country") was operating a vehicle owned by Low Country

transporting Charles Gary and his wife, Blondell [sic] Gary, deceased, to and from their home in Yemassee, South Carolina on Old Sheldon Road in Beaufort County, South Carolina.

(Selective DJ Action, Amended Complaint, ¶ 6, and Answer of Angel Gary, ¶ 4).

On July 28, 2014, the United States District Judge held a hearing on Selective's Motion for Summary Judgment. (Selective DJ Action, Order denying S.J.). At that time, Angel's counsel asked Charles' counsel about information they had received suggesting there may be a defect in Charles' and Blondell's marriage but Charles' counsel assured them there was not a problem with the marriage. (R. p. 155, line 1 – p. 157, line 13).

By consent, Angel was dismissed from the Selective DJ Action in light of the settlement discussed hereinafter. (Selective DJ Action, Stipulation of Partial Dismissal).

2. Charles' Tort Action.

On October 16, 2012, Charles filed a negligence action against LMT and AMR alleging damages for his personal injuries and loss of consortium as a result of the subject collision ("Charles' Tort Action"). Charles' Tort Action is still pending and remains unresolved.

3. The Wrongful Death Action.

On November 9, 2012, Angel filed this action (the "Wrongful Death Action") alleging wrongful death and survival causes of action as a result of Blondell's death in the subject collision. Angel claimed that LMT was negligent and was acting as an

agent of AMR at the time of the collision. Angel later obtained an entry of default against AMR but no default judgment was ever entered.²

In her Complaint, Angel alleged: "Blondell Gary (hereinafter "Blondell"), on behalf of her husband, Charles Gary, contracted with American Medical Response to provide non-emergency medical transport on the day in question." (R. p. 76, ¶ 5).³

On December 29, 2015, after becoming aware of a defect in the alleged marriage between Charles and Blondell, Angel filed a Motion to Amend her Complaint. (R. pp. 106 – 112). This motion was not heard before Charles filed the present appeal.

4. Charles' DJ Action.

Charles filed a separate declaratory judgment action against Angel ("Charles' DJ Action") on October 20, 2014. (R. pp. 88 – 96). In that action, he sought a declaration regarding the damages recoverable in the Wrongful Death Action and Charles' Tort Action.

The Complaint in Charles' DJ Action alleged that Charles was a beneficiary of the Estate and, in describing the collision, that Blondell was a passenger in the LMT ambulance and his wife. (R. p. 92, ¶¶ 1 and 4). Angel answered this action on January 2, 2015. In her Answer, she admitted both of these factual allegations. (R. p. 97, ¶¶ 2 and 4). She also raised affirmative defenses directed at perceived procedural defects in Charles' DJ Action. (R. p. 98, ¶¶ 12-17).

² Appellant inaccurately states in his brief that the Estate obtained a "Judgment by Default" against AMR.

³ When Angel originally filed the Complaint in the Wrongful Death Action, neither she nor counsel for the Estate were aware of any defect in the alleged marriage between Charles and Blondell. At that point in the litigation, whether Charles was married to Blondell was not material to the wrongful death or survival claims.

On December 29, 2015, after becoming aware of a defect in the alleged marriage between Charles and Blondell, Angel filed a Motion to Amend her Answer to Charles' DJ Action. (R. pp. 114 - 117). In that motion, she sought to file an Amended Answer that denies the above factual allegations. That motion has not been heard.

5. The Settlement at Issue.

The Wrongful Death Action was set for a jury trial on September 1, 2015 but settled the day of trial. An Order approving the settlement was signed by the trial judge on September 14, 2015. (R. pp. 10 - 12). The Wrongful Death Action was dismissed via an Order of Dismissal on November 13, 2015. (R. pp. 4 - 9).

6. The Petition, Hearing, and Ruling that Led to this Appeal.

On December 14, 2015, Angel filed a Petition to Determine Heirship challenging Charles' alleged status as an heir and spouse of the decedent. The trial court held a hearing on this Petition on January 13, 2016.

At the hearing, Angel introduced without objection the Final Divorce Order and Decree showing that Charles and Doretha Chisholm were not divorced until January 22, 2001. (R. pp. 119 - 124). She also introduced the marriage certificate between Charles and Blondell which shows the date of their purported marriage as November 30, 1999. (R. p. 125).

Charles offered no evidence to refute these documents, nor did he challenge their authenticity.⁴ Furthermore, he made no claim and introduced no evidence that he

⁴ Charles objected to the Probate Court's attestation of the marriage certificate but the trial judge overruled his objection. (R. p. 137, line 7 – p. 140, line 10). He did not appeal from this ruling.

and Blondell had a common law marriage. Charles' sole argument in opposition to the Petition was that Angel should be estopped to deny Blondell's marriage to Charles.

The trial court subsequently entered an Order finding that Charles was not Blondell's husband at the time of her death and, consequently, not an heir or beneficiary of the Estate. (R. pp. 1 - 3).

Charles did not file a Rule 59(e), SCRCP, Motion to Alter or Amend the Order. He instead filed this appeal.

ARGUMENT

A VOID MARRIAGE CANNOT BE MADE VALID THROUGH ESTOPPEL.

Charles' sole basis for challenging the trial court's ruling is that "the Estate should be estopped from taking a position contradictory of and/or inconsistent with its pleadings in the Wrongful Death Case that Mr. Gary is the surviving spouse and an heir of the Estate." (Br. of App., p. 2). Charles offers no evidence he formally married Blondell after his divorce from Ms. Chisholm, nor does he offer any evidence of a common law marriage with Blondell.

In fact, the only evidence in this case conclusively demonstrates that a marriage did not and could not have existed between Charles and Blondell at the time of Blondell's death. The hallmark of the marriage relationship is the mutual consent of two parties who have the capacity to marry, not unlike what is required to establish a contract.

The law views marriage as being merely a civil contract, not differing from any other contract, except that it is not revocable or dissoluble at the will of the parties. The essence of the contract of marriage is the consent of the parties, as in the case of any other contract; and, whenever there is a present, perfect consent to be husband and wife, the contract of marriage is completed. The authorities are practically unanimous to this effect. Marriage is a civil contract

jure gentium, the validity of which the consent of parties able to contract is all that is required by natural or public law.

Campbell v. Moore, 189 S.C. 497, 501, 1 S.E.2d 784, 786 (1939), *quoting Hulett v. Carey*, 66 Minn. 327, 69 N.W. 31 (1896).

To have the capacity to consent to wed, a party must not be already married. All marriages contracted while either of the parties remains married to a living spouse are void. *Johns v. Johns*, 309 S.C. 199, 201, 420 S.E.2d 856, 858 (Ct. App. 1992); *citing* S.C. Code Ann. § 20-1-80 (1976, as amended) ("All marriages contracted while either of the parties has a former wife or husband living shall be void.").

The exhibits submitted at the hearing irrefutably demonstrate that Charles was still married to Ms. Chisholm when he purportedly married Blondell. As a result, his purported marriage to Blondell was void from its inception.

No South Carolina court has ever created a marriage between two people who were not legally married based upon the claim that the conduct of a third party gives rise to an estoppel to deny the marriage. This only makes sense given that marriage is an agreement between the persons to be wed. Such a result is even more absurd when the third party's conduct upon which the estoppel claim is based consists of statements based on information that the third party at the time did not know was false but the party asserting estoppel did.

The closest our appellate courts have come to addressing this argument was in *Johns*, where the Court of Appeals rejected a purported wife's argument that the court should preclude her alleged husband from denying their marriage based on theories of estoppel or *res judicata* because he (not a third party) entered into a consent order that stated they were married.

As to estoppel, the *Johns* court reasoned the alleged husband's conduct could not have misled the purported wife because she knew he was married to another woman when they entered into their relationship. *Johns*, 309 S.C. at 203-04, 420 S.E.2d at 859. In response to the *res judicata* argument, it held:

[T]he public policy expressed in S.C. Code Ann. § 20-1-80 (1985) overrides the public policy of *res judicata*. Although the parties' consent order is not void, the marriage it affirms is void. In balancing the relevant public policies (i.e. the public policy of finality of judgments versus the public policy of not recognizing bigamous marriages) the consent order should not be given *res judicata* effect.

Id. at 203, 420 S.E.2d at 859.

The same result should occur here. Angel is not even a party to the alleged marriage, so any mistaken statements by her should not be considered as a basis for estoppel. Even if they were, they could not have misled Charles, who had full knowledge of his marriage to Ms. Chisholm at the time he allegedly wed Blondell. Finally, the court should not override this State's strong public policy against bigamous marriages based on mistaken comments by Angel that she has since recanted and attempted to correct.

Courts from other jurisdictions have also refused to impose a marriage by estoppel where one of the parties was already married to another.

When one of the parties to the purported marriage seeks to invoke the doctrine of marriage by estoppel in a case against the other party to the marriage, this Court has refused to apply the doctrine when the parties entered into a bigamous marriage, regardless of either party's knowledge of the impediment.

Guzman v. Alvares, 205 S.W.3d 375, 380 (Tenn. 2006).

Charles argues that the present case is distinguishable from the *Johns* case. He bases his argument on the fact that Mr. Johns was married during the entire duration of the relationship at issue. (Br. of App., p. 9). Therefore, Charles reasons, no public

policy conflict exists in the present case because he and Blondell were together for more than a decade after his divorce from Ms. Chisholm in 2001.

The public policy considerations applied in the *Johns* case apply equally in the present case. Simply stated, when a person attempts to marry an individual while still married to another individual, our courts do not recognize a valid marriage. This is precisely what happened in the present case. This is undisputed by Charles and he has offered no evidence of a subsequent common law marriage.

This Court has clearly stated that such a marriage is void from its inception and that *res judicata* will not be applied so rigidly as to defeat the sound ends of justice. *Johns*, 309 S.C. at 203, 420 S.E.2d at 859, citing *Beverly Beach Properties, Inc. v. Nelson*, 68 So.2d 604 (Fla. 1953). A void, bigamous marriage does not “mature” into a valid marriage, particularly based upon erroneous statements by a third party. To find that Charles was married to Blondell, only via estoppel, would violate the well-recognized policy of this State against bigamous marriages.

Charles makes several factual arguments in an effort to suggest Angel somehow misled him during the course of the various actions. However, none of his arguments withstands closer scrutiny. While Charles attempts to make an issue of when his attorney became aware of the defect in the marriage, claiming he did not become aware of the issue until December 11, 2015, he presented no evidence at the hearing regarding this topic. Of course, the real issue is when Charles was aware of the defect. The only real evidence introduced at the hearing on this topic is the fact that Charles was married to Ms. Chisholm when he attempted to marry Blondell; knowledge of his existing marriage is imputed to him.

At the hearing, the attorneys did discuss this issue with the trial judge. While arguments of counsel are not typically considered evidence, to the extent this Court deems it appropriate to consider those arguments as evidence on this topic, they clearly show any delay in Angel's efforts to correct her statements about Charles' and Blondell's relationship were the product of Charles' own conduct.

First, Charles claimed he was Blondell's husband, leading Angel to make her initial factual statements about the marriage in probate filings and in other pleadings.

Second, when Angel became aware of the issue with the purported marriage, her attorneys discussed it with Charles' attorney Joseph Dawson at the July 28, 2014 hearing in the Selective DJ Action, at which time "Mr. Dawson told them it was not an issue. And so [Angel's attorneys] didn't, at that time, pursue it any further. So even though [Angel's attorneys] were on notice of a possible issue back then, [they] were told that it was not an issue and that it would not be a problem, and therefore, [they] didn't pursue it until [they] obtained later information that showed it was an issue." (R. p. 155 – p. 157, line 10).

In other words, while Angel's attorneys learned of a potential beneficiary issue, they did not pursue it earlier because they were informed by Charles' attorney it was not a problem. Additionally, at earlier stages in the litigation, the significance of determining the correct beneficiaries was not as important as pursuing the underlying case against the tortfeasors. This issue did not become significant until the conclusion of the litigation at which time Angel confirmed the defect in the marriage and placed the issue before the trial court to make a determination on heirship.

Charles also bases his argument on the fact that, at the time of the settlement approval, Angel's probate filings identified him as the decedent's surviving spouse. (Br. of App., p. 4). While this is true, upon learning more information about the marriage defects, Angel subsequently amended the probate filings to remove Charles as a beneficiary. (R., pp. 174 - 195).

Charles also makes the assertion that Angel did not seek to amend her Complaint during the course of the litigation in the Wrongful Death Case because that would have afforded AMR the opportunity to file an Answer, thereby relieving it from default. This assertion is false and misleading. AMR's liability in this case was never contingent upon whether Charles was Blondell's spouse. Furthermore, amending the Complaint to strike the reference to Charles being the decedent's spouse would not have altered the status of AMR being in default.

II. CHARLES SHOULD NOT BE PERMITTED TO INVOKE THE EQUITABLE PRINCIPLE OF ESTOPPEL BECAUSE OF HIS UNCLEAN HANDS.

"Under the well settled maxims of equity jurisprudence, a party will not be permitted to invoke the equitable principle of estoppel where she does not come into court with clean hands and seeks to benefit by her own wrong." *Ex parte Nimmer*, 212 S.C. 311, 317, 47 S.E.2d 716, 722 (1948).

Charles comes into this Court with unclean hands. Specifically, he is trying to benefit from his own wrong – attempting to marry Blondell while still married to another woman. No valid reason exists for relieving Charles from his transgression and allowing him to enjoy the fruits of a marriage which is most certainly invalid.

The facts of the present case are analogous to *Ex parte Nimmer*. There, Doris Nimmer, the purported widow of the deceased, attempted to claim the spouse's share of

the decedent's estate. The court found she was still married to her previous husband when she attempted to wed the decedent. She attempted to obtain a divorce in the State of Georgia despite the fact that neither she nor her husband at the time had ever resided there; but the Supreme Court found the Georgia court was without jurisdiction to entertain the proceeding and the divorce was invalid. As a result, her subsequent purported marriage to the decedent was void.

Moreover, the Court found she could not assert the defense of estoppel, reasoning:

To prevent an adjudication that she is not the lawful widow of decedent, appellant invokes the equitable principle of estoppel. Under the well settled maxims of equity jurisprudence, she will not be permitted to do so because she does not come into court with clean hands and seeks to benefit by her own wrong. It is appellant who is asserting a right which could only arise from a valid marriage to decedent. To sustain its validity necessitates recognizing a void Georgia divorce and thereby extending to appellant an immunity from her culpable conduct. No good reason appears why she should be relieved of her transgression and allowed to enjoy the fruits of a marriage which is obviously invalid.

Id. at 321-22, 47 S.E.2d at 721.

Charles' conduct and unclean hands in the present case are even more egregious than in the *Nimmer* case. He knew that he was still married to Doretha Chisholm when he attempted to marry Blondell. There is no evidence that Blondell had any knowledge he was still married when he attempted to marry her. When Angel's counsel first became aware of a potential defect in the marriage between Charles and Blondell, he asked counsel for Charles if this was an issue and was informed it was not. (R. p. 155, lines 3 - 15).

Ironically, Charles is the party claiming estoppel but he was the only person who in fact had the means to know the truth as to the facts in question. Charles never

volunteered this information and, upon being confronted with evidence that he was in a bigamous marriage with Blondell, he offered no evidence to rebut it. Instead, he asks this Court to find that he was married to Blondell only because the personal representative of her estate alleged they were married.

III. ANGEL IS NOT BOUND BY ERRONEOUS STATEMENTS IN PLEADINGS.

Charles relies upon the rule discussed in *Elrod v. All*, 243 S.C. 425, 134 S.E.2d 410 (1964), *Postal v. Mann*, 308 S.C. 385, 418 S.E.2d 322 (Ct. App. 1992) and *Johnson v. Alexander*, 413 S.C. 196, 775 S.E.2d 697 (2015) to argue Angel is prohibited from taking a position contrary to statements (now known to be factually incorrect) in her earlier pleadings in the Selective DJ Action, the Wrongful Death Action, and Charles' DJ Action.⁵ In *Elrod*, the Supreme Court stated:

We consider the pleadings in this case in the light of the general rule, that the parties to an action are judicially concluded and bound by such unless withdrawn, altered or stricken by amendment or otherwise. The allegations, statement or admissions contained in a pleading are conclusive as against the pleader. It follows that a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are to be taken as true against the pleader for the purpose of the action. Evidence contradicting such pleadings is inadmissible.

Elrod v. All, 243 S.C. at 436, 134 S.E.2d at 140.

Each of the cases cited by Charles involved situations where a party sought to bind an adverse party to statements in a pleading that was directed to the party asserting the statements' binding effect. Moreover, each case limited the binding effect of the statement to the action in which it was made. See, e.g., *id.* ("the facts which are

⁵ Charles' argument is not based upon judicial estoppel, which is a separate doctrine, the elements of which Charles has not satisfied. See, e.g., *Cothran v. Brown*, 357 S.C. 210, 215-16, 592 S.E.2d 629, 632 (2004).

admitted by the pleadings are to be taken as true against the pleader *for the purpose of the action*") (emphasis added).

In other words, the rule relied upon by Charles requires that the both the party making the statement (in this case, Angel) and the party asserting the binding effect of the statement (in this case, Charles) be adverse in an action, that the party make the statement in a pleading directed to the party asserting its binding effect, and that the statement be made in the action in which she is sought to be bound (here, the Wrongful Death Action).

The Selective DJ Action did not involve a situation where Charles sued Angel or Angel sued Charles. The statement argued by Charles in that action was made by Angel in response to Selective's Complaint, not in response to a pleading by Charles. As a practical matter, Selective's allegation about Charles' and Blondell's alleged marriage was superfluous to the issues in that case and had no bearing on its potential outcome in any event. Charles is not seeking to bind Angel to that statement in the Selective DJ Action. Therefore, the "judicially bound" rule asserted by Charles simply does not apply to Angel's statement in the Selective DJ Action.

Similarly, while Charles and Angel were adverse in Charles' DJ Action, Charles cannot rely upon Angel's pleadings in that case to bind Angel in the present action. Also, in light of becoming aware of the true facts about the purported marriage between Charles and Blondell, Angel moved to withdraw the statements argued by Charles, which is another basis to remove those statements from operation of the judicially bound rule.

Finally, Charles should not be able to bind Angel to her statements in pleadings addressed to other parties (LMT, AMR, and LMT's driver) in the Wrongful Death Action, an action to which Charles was not a party.⁶ In addition, once again, Angel has moved to withdraw those erroneous statements, which should resolve any argument about application of the judicially bound rule.

As a bottom line, this is not a situation where Charles and Angel were adverse to each other in an action where a contested issue was the validity of Charles' and Blondell's purported marriage. Angel admitted in response to Charles' pleadings that the marriage was valid, Angel did not seek to withdraw the admission upon learning it was incorrect, Charles lacked knowledge about the truth of the statement, and Charles relied upon Angel's admission in litigating the action. Therefore, the reasons for applying the judicially bound rule simply do not exist here.

Lastly, Charles cites *Laughon v. Q'Braitis*, 360 S.C. 520, 602 S.E.2d 108 (Ct. App. 2004) in support of his contention that the Order of Dismissal that followed the settlement of the Wrongful Death Action binds Angel to the allegation that Blondell Gary, on behalf of her husband, Charles Gary, contracted with American Medical Response to provide non-emergency medical transport on the day in question." (R. p. 76, ¶ 5).

Relying upon *Nunnery v. Brantley Constr. Co.*, 289 S.C. 205, 345 S.E.2d 740 (Ct. App. 1986), Charles initially argues that an Order of Dismissal gives him the right to assert *res judicata*. However, Charles is not a party to the Order nor is he a privy of any of the parties who could arguably seek to bind Angel to matters allegedly

⁶ Charles' involvement in the Petition that gave rise to the present appeal is by virtue of his claiming an heirship interest in the Estate, not because he is a party to the action.

adjudicated by it, the threshold requirement for the rule set forth in *Nunnery*. *Id.* at 209, 345 S.E.2d at 744.

In addition, the allegation relied upon by Charles was immaterial to the outcome of the Wrongful Death Action, even if that action had been fully litigated. Specifically, the phrase “her husband” could have been deleted from paragraph 5 of the Wrongful Death Complaint and the remaining allegations would have had equal force against LMT, AMR, and LMT’s driver, the Defendants in this action. Charles claims this allegation was a “material fact” (Br. of App., p. 11) but that simply is not true in the context of Angel’s claims against those Defendants.

Charles’ argument overlooks the full holding of the *Laughon* case, in which this Court stated: “Under the doctrine of issue preclusion, if an issue of fact or law was actually litigated and determined *and necessary to a valid and final judgment*, the determination is conclusive in a subsequent action on that claim or a different claim.” *Laughon*, 360 S.C. at 526, 602 S.E.2d at 114 (emphasis added). The words “her husband” were not necessary to any final judgment in the Wrongful Death Action and therefore cannot form the basis for *res judicata* in light of the Order of Dismissal.

CONCLUSION

For the foregoing reasons, Respondent Angel Y. Gary, as Personal Representative of the Estate of Blondell M. Gary, respectfully requests that this Court affirm the Order of the Circuit Court.

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July 20, 2016

BY:



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Judge Perry M. Buckner, III, Circuit Court Judge

RECEIVED

JUL 20 2016

SC Court of Appeals

Appellate Case No. 2016-000222

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 Appellant.

PROOF OF SERVICE

This is to certify that I, Annette B. Griswold, with the law office of Peters, Murdaugh, Parker,
Eltzroth and Detrick, PA, Attorney for the Respondent, have this date mailed via the U.S. Postal
Service with first class postage prepaid, a true and correct copy of the within

Final Brief of Respondent to:

Joseph Dawson, III, Esquire
Post Office Box 41367
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Attorney for Petitioner, Charles Gary

July 20, 2016

BY:

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Judge Perry M. Buckner, III, Circuit Court Judge

CASE NO. 2012-CP-25-402

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 Appellant.

**FINAL REPLY BRIEF OF APPELLANT CHARLES GARY,
PURPORTED SURVIVING SPOUSE**

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LAW/ARGUMENT

I. RESPONSES TO ARGUMENTS BY THE ESTATE

A. Marriage by Estoppel

The Estate mistakenly believes that Mr. Gary's appeal is based on the concept of marriage by estoppel. After making this unfounded declaration, the Estate concludes that South Carolina courts have never created a marriage based on this legal theory. (Resp't Br. p.6). This declaration and conclusion is a misstatement of the facts and law of this case. The basis of Mr. Gary's claim is the fact that the Estate, through its personal representative Angel Y. Gary ("Angel"), the decedent and Mr. Gary's daughter, represented to four South Carolina courts over four years of litigation, that Mr. Gary is the surviving spouse and a beneficiary of the Estate. In addition, despite knowledge of the alleged defects, the Estate complains of in its Petition, Angel never sought to contradict that position, until after the Wrongful Death Case settled and settlement funds were disbursed to the other beneficiaries.

South Carolina law is clear, "[t]he Estate is judicially bound by the admissions in its pleadings in the Wrongful Death Case and in two other companion cases where it admitted that Mr. Gary is the surviving spouse and a beneficiary of the Estate of Blondell M. Gary." (Appellant Br. p.7); see also, Postal v. Mann, 308 S.C. 385, 418 S.E.2d 322 (Ct.App.1992). Mr. Gary is not asking this Court to find that he is married by estoppel. Rather, Mr. Gary is asking this Court to find that the Estate is judicially bound by its pleadings and it cannot contradict its previous position that Mr. Gary is the decedent's spouse and a beneficiary of the Estate in this case to subvert payment to him. South Carolina law provides that:

It is well settled that parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise. The allegations, statements, or admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the action.

Postal v. Mann, 308 S.C. 385, 418 S.E.2d 322 (Ct.App.1992).¹

The Estate concedes, as it must, that it was aware of the defects it alleges on or before July 28, 2014, when Counsel for the Estate raised this issue to the Appellant's Counsel.² Despite this knowledge and belief, the Estate chose to proceed without amending its pleadings in the Wrongful Death Case and the Declaratory Judgment Action in the United States District Court. Furthermore, the Estate continued to assert its position that Mr. Gary and Blondell were in fact married, and that Mr. Gary was compelled to pursue his loss of consortium claim in the Estate's case. The Estate's persistence with this claim necessitated the filing of a Declaratory Judgment Action in Circuit Court to determine the proper venue for Mr. Gary's loss of consortium claim. Now that the other beneficiaries have been compensated for their loss, the Estate is asserting this claim to avoid paying Mr. Gary his share of the settlement.

B. Misstatement of Facts

Respondent contends that the Appellant has offered no evidence of his status as a beneficiary and surviving spouse. That is incorrect, "allegations in pleadings are

¹ Respondent attempts to marginalize the application of Postal v. Mann, by stating the case does not apply here, because Mr. Gary is not a party to the Wrongful Death Case; and therefore, its admissions in the pleadings are not binding. The fallacy of this argument is the Estate chose to file its Petition under the Wrongful Death Case adding Mr. Gary as a party to that matter. Therefore, this argument lacks merit.

² On July 28, 2014, Co-Counsel for the Estate indicated at the Summary Judgment Hearing in the United States District Court that Angel told him that a relative claimed there was a defect with Mr. Gary's marriage certificate and that Counsel for Lowcountry Medical Transport Inc., had contacted him about this same issue. Co-Counsel for the Estate then asked if the issue had been raised in Mr. Gary's Personal Injury Case, which Counsel for Mr. Gary responded that he was unaware of the problem and that it had not been raised in Mr. Gary's Personal Injury Case.

conclusive against the pleader." Mellon Bank, N.A. v. Carroll, 314 S.C. 468, 445 S.E.2d 466 (1994). Appellant introduced into the record at the Petition to Determine Heirship hearing: 1) the Estate's Wrongful Death Case pleadings; 2) the Estate's Probate Court Application stating that Mr. Gary is a beneficiary; 3) the Decedent's Death Certificate stating that Mr. Gary is the surviving spouse; 4) Mr. Gary's Declaratory Judgment Complaint asserting he was married to Blondell; and 5) the Estate's Answer to Mr. Gary's Declaratory Judgment Complaint. All five of these documents assert and/or admit that Mr. Gary is the surviving spouse and a beneficiary of the Estate. Therefore, the Estate cannot escape the grasp of its own statements.

The Estate misconstrues the Appellant's arguments on appeal. The Estate claims that Mr. Gary's sole argument in opposition to its Petition is that the Estate should be estopped to deny Blondell's marriage to Mr. Gary. (Resp't Br. p.5). To the contrary, Mr. Gary's contention is that Blondell and Mr. Gary's own daughter, who is the Personal Representative of the Estate, knew they remarried twelve years ago, and that they cohabitated for the twelve years before her untimely death. Likewise, Angel made this representation before the Beaufort County Probate Court, Beaufort County Circuit Court, the Hampton County Circuit Court, and the United States District Court over the course of four years of litigation and that she should be judicially bound by these statements.

Estate's Counsel misrepresents what Mr. Gary's Counsel said in a conversation with another attorney in his office. See, Footnote 2. First, "[i]t is well established that counsel's statements regarding the facts of a case and counsel's arguments are not admissible evidence." Ex parte Morris, 367 S.C. 56, 624 S.E.2d 649 (2006). Nevertheless, the Estate's Counsel offers these alleged statements (which were

communicated to someone else) as evidence to support why the Estate waited nearly 18 months before it attempted to correct what it considers to be significant, only after the Wrongful Death Case settled. (Resp't Br. p.10). Counsel for the Estate then quotes what he said during the Petition to Determine Heirship hearing in the Estate's brief. Presumably, this is done because he believes that his statements made during the hearing about what he claims someone else said, should be taken for the truth of the matter asserted. This defies logic and common sense.

The Estate's excuse for waiting to change its position regarding Mr. Gary is that "[a]t that point in the litigation, whether Charles was married to Blondell was not material to the wrongful death or survival claims." (Resp't Br. p.4, Footnote 3).³ To the contrary, South Carolina law mandates its materiality, because it requires the Personal Representative to identify "the statutory beneficiaries of the wrongful death or survival action" prior to Court approval of a Wrongful Death settlement. See, S.C. Code Ann. § 15-51-42. Equally, the Estate's "not material" defense is weak. On one hand, the Estate demanded that Mr. Gary waive his rights in his Personal Injury Case to claim loss of consortium, so that the Estate could make that claim in its case. But on the other hand, the Estate claims he is not the surviving spouse. These contradicting positions cannot be reconciled.

³ The Estate's materiality defense is dubious at best. The parties discussed and agreed that the best way to resolve which case should address the loss of consortium issue was a Declaratory Judgment action. If Mr. Gary's marriage was truly immaterial and in question, then the Estate would not have admitted that the Estate intended to compel Mr. Gary to seek recovery of certain damages in the Wrongful Death Case that he sought to recover in his Personal Injury Case and that a justiciable case or controversy exists between the parties. (R. pp. 093-094, Declaratory Judgment Action Complaint ¶ 7 and ¶ 10). The assertion that Mr. Gary's marriage was not material to the Wrongful Death Case is erroneous in light of the Estate's conduct.

The Estate's explanation for its duplicity and admissions are two-fold. First, the Estate believes this Court should not consider Angel's mistaken statements. (Resp't Br. p.7). Second, the Estate claims that this issue is not as important as pursuing the underlying case against the tortfeasors and that it did not become significant until the conclusion of the litigation. (Resp't Br. p.10). Stated in light of its admissions, the Estate wanted Mr. Gary as a surviving spouse and beneficiary in its Wrongful Death Case to develop its damages, but it did not want him to benefit after it used him. The fact of the matter is that the Estate has known about the Marriage Certificate in relation to the Final Order of Divorce issue during the pendency of its Wrongful Death Case in Hampton County, the Beaufort County Probate Court proceedings, and this case. However, the Estate has elected to press its claim that Mr. Gary is a beneficiary of the Estate in the Wrongful Death Case to bolster the Estate's potential damages. Now that it has achieved its goal, the Estate wants to contradict that position.

C. Unclean Hands

The Estate incorrectly asserts that Mr. Gary is attempting to benefit from his own wrong which in all respects was cured when his divorce was final in 2001, twelve years before Blondell's death. (Resp't Br. p.11).⁴ Rather, it is the Estate that should not benefit from its own misconduct. "The expression 'clean hands' means a clean record with respect to the transaction with the defendants themselves and not with respect to others. [Citation Omitted]. The rule must be understood to refer to some misconduct concerning the matter in litigation of which the opposing party can, in good conscience, complain in

⁴ Respondent attempts to analogize Ex parte Nimmer with the facts of this case, to suggest that Mr. Gary has unclean hands. Ex parte Nimmer, 212 S.C. 311, 47 S.E.2d 716 (1948). However, unlike in Ex parte Nimmer, it is undisputed that Mr. Gary's divorce from his second wife in 2001, was valid in all respects, twelve years before Blondell's death.

a court of equity.” Wachovia Bank, N.A. v. Coffey, 389 S.C. 68, 698 S.E.2d 244 (Ct.App.2010). On September 3, 2015, at a Probate hearing to Remove Angel Y. Gary as Personal Representative, Counsel for the Estate indicated during a pre-hearing conference in the Probate Judge’s conference room that there was no need to proceed with the hearing, because the Wrongful Death Case had settled on September 1, 2015. Estate’s Counsel represented that it would be disbursing settlement funds to Mr. Gary as a beneficiary of the Estate as a result of the settlement after the Settlement and Release Agreements were signed and settlement funds were received. Based on these representations, the parties agreed to dismiss the Petition to Remove the Personal Representative.

From September to November, Mr. Gary’s Counsel sought updates from Counsel for the Estate regarding the status and payment of settlement funds. On or about November 25, 2015, Counsel for Mr. Gary learned that Judge Buckner had signed an Order of Dismissal in the case and that settlement funds had been delivered to the Estate’s Counsel. On December 2, 2015, Counsel for the Estate and Counsel for Mr. Gary spoke to discuss when Mr. Gary could pick up his settlement funds. Counsel for the Estate indicated that the only outstanding issue it needed to resolve before it disbursed settlement funds to Mr. Gary and the other beneficiaries was to obtain a Release from Eugene Kirkland, the driver of the ambulance. Counsel for the Estate indicated that he would call Counsel for Mr. Gary to pick up Mr. Gary’s check when he obtained the signature. (R. p. 73). At no time during that meeting or during the previous three months,

did Counsel for the Estate indicate that it claimed Mr. Gary was not the surviving spouse or that he would not disburse any funds to Mr. Gary.⁵

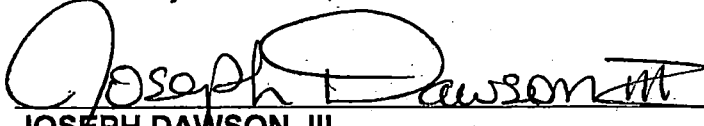
"The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." Straight v. Goss, 383 S.C. 180, 678 S.E.2d 443 (Ct.App.2009). The actions and conduct of the Estate regarding its assertions that Mr. Gary waive his rights to claim loss of consortium in his Personal Injury Case; to the parties consent to dismiss the Petition to Remove Angel under the guise that the matter was moot and that Mr. Gary would receive his spousal share; to waiting until December 11, 2015, after settlement funds were disbursed to the other beneficiaries to claim that Mr. Gary is not a beneficiary of the Estate is unduly prejudicial, inequitable, and unclean.

CONCLUSION

This Court should find that the Estate is judicially barred from asserting that Mr. Gary is not the surviving spouse of the decedent and an heir of the Estate, because the Estate is bound by its pleadings and it cannot take a position contradictory of, or inconsistent with the pleadings in the Wrongful Death Case.

⁵ On Friday, December 11, 2015, the Estate's Counsel informed Mr. Gary's Counsel for the first time that the Estate disputes whether Mr. Gary was the decedent's spouse as the basis for establishing a fee dispute to withhold settlement funds from Mr. Gary.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph Dawson, III". The signature is written over a horizontal line.

JOSEPH DAWSON, III

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**ATTORNEY FOR APPELLANT CHARLES GARY,
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North Charleston, South Carolina
June 21, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Judge Perry M. Buckner, III, Circuit Court Judge

CASE NO. 2012-CP-25-402

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JUN 27 2016

SC Court of Appeals

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

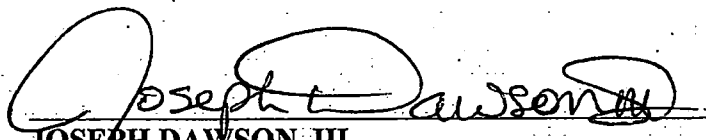
v.

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 Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Reply Brief of Appellant complies with
Rule 211(b), S.C.A.C.R.


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North Charleston, South Carolina
June 23, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM HAMPTON COUNTY JUN 27 2016
Court of Common Pleas

SC Court of Appeals

Judge Perry M. Buckner, III, Circuit Court Judge

CASE NO. 2012-CP-25-402

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 Appellant.

PROOF OF SERVICE

I certify that I have served the **Final Reply Brief of Appellant** on the all counsel of record
by depositing a copy of the same in the United States Mail, postage prepaid, on June 23, 2016,
addressed as follows:

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THE STATE OF SOUTH CAROLINA
In The 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
the Appellant.

Appellate Case No. 2016-000222

Appeal From Hampton County
Perry M. Buckner, III, Circuit Court Judge

Opinion No. 5563
Heard September 19, 2017 – Filed May 23, 2018

AFFIRMED

Joseph Dawson, III, of North Charleston, for Appellant.

Richard Alexander Murdaugh, Bert Glenn Utsey, III, and
Austin Howell Crosby, all of Peters Murdaugh Parker
Eltzroth & Detrick, PA, of Hampton, for Respondent.

LOCKEMY, C.J.: In this action Charles Gary asserts the circuit court erred by determining he was not Blondell Gary's husband at the time of her death and not an heir to her estate. Charles asserts the estate should be estopped from taking a position contradictory to its pleadings in previous cases. We affirm.

FACTS

Though the record is not clear as to dates, it is clear Charles and Blondell were married and that marriage produced two children. Subsequently, Charles married Doretha Chisolm on July 31, 1982. Charles and Doretha finalized their divorce on January 21, 2001. Prior to finalizing their divorce, Charles remarried Blondell on November 30, 1999, and they lived together as husband and wife until Blondell's death.

On February 16, 2012, Blondell and Charles were traveling in an ambulance operated by Lowcountry Medical Transport when the driver "recklessly and negligently lost control of the vehicle, left the roadway, and collided with a tree." Blondell died as a result of her injuries.

Subsequently, Angel Gary, the natural daughter of Charles and Blondell, filed a petition to be appointed the personal representative of her mother's estate. The application requested the "[n]ames and addresses of intestate heirs who are not devisees." Angel indicated Charles Gary was Blondell's spouse and that Blondell had two daughters and two sons. The probate court appointed Angel as the personal representative of her mother's estate.

On November 8, 2012, Angel filed suit on her mother's behalf against Lowcountry Medical Transport. Angel alleged a single cause of action for negligence and requested actual and punitive damages. In her complaint, Angel alleged, "Blondell Gary (hereinafter Blondell), on behalf of her husband, Charles Gary, contracted with [Lowcountry Medical Transport] to provide non-emergency medical transport on the day in question."

The parties entered into a settlement agreement on September 14, 2015, wherein Angel agreed to dismiss the estate's lawsuit against Lowcountry Medical in exchange for \$2,250,000.

On December 14, 2015, Angel Gary filed a petition to determine heirship of her mother's estate. Angel asserted, "Since the time of her initial appointment as

Personal Representative, [she] has become aware of certain facts that call into question whether Charles Gary was married to [Blondell]." Specifically, Angel asserted, "(1) Charles Gary was married to another woman when he unlawfully attempted to marry Blondell Gary, (2) Blondell Gary did not possess the requisite intent to marry Charles Gary, (3) no marriage ceremony ever took place, and (4) that any alleged marriage is void." Angel asserted Charles married Doretha Chisolm on July 31, 1982, and the couple divorced between December 13, 2000, and January 22, 2001. Charles and Blondell's marriage certificate stated the couple was married on November 30, 1999. Accordingly, Angel alleged any marriage was void and Charles was therefore not an heir to Blondell's estate.

Charles denied he was already married when he married Blondell.¹ He also alleged "[t]he Estate is judicially bound by the admissions in its pleadings that Mr. Gary is the surviving spouse and a beneficiary of the Estate of Blondell M. Gary." Charles also asserted "[t]he Estate's challenge to Mr. Gary['s] status as a beneficiary is barred[] because Judge Buckner's November 13, 2015, Consent Order of Dismissal with Prejudice [of the wrongful death suit] acts as an adjudication on the merits and therefore precludes subsequent litigation just as if the action had been tried to a final adjudication."

The circuit court held a hearing on the estate's motion on January 13, 2016. The circuit court found it was "clear that Charles Gary was still married to Doretha Chisolm Gary when he purportedly married Blondell Gary." Accordingly, the

¹ Charles does not argue on appeal any factual basis to prove he was Blondell's common law spouse. In South Carolina, when "there is an impediment to marriage, such as one party's existing marriage to a third person, no common law marriage may be formed, regardless whether mutual assent is present." *Callen v. Callen*, 365 S.C. 618, 624, 620 S.E.2d 59, 62 (2005). "Further, after the impediment is removed, the relationship is not automatically transformed into a common law marriage. Instead, it is presumed that the relationship remains non-marital." *Id.* "For the relationship to become marital, 'there must be a new mutual agreement either by way of civil ceremony or by way of recognition of the illicit relation and a new agreement to enter into a common law marriage.'" *Id.* (quoting *Kirby v. Kirby*, 270 S.C. 137, 141, 241 S.E.2d 415, 416 (1978)). No evidence was presented of a subsequent agreement that Charles and Blondell entered into a common law marriage after Charles's divorce was finalized. Therefore, the only issue to be determined in this appeal is whether the Estate's assertions in the prior cases bind the Estate to its assertion that Charles was Blondell's husband.

circuit court found "the purported marriage to Blondell Gary was void from its inception." The circuit court noted Charles did not offer any evidence of a common law marriage to Blondell, "other than the fact that the Estate originally thought he was [Blondell's spouse]." Accordingly, the circuit court declared Charles was not an heir of Blondell's estate. This appeal followed.

LAW

This court has noted "parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise." *Postal v. Mann*, 308 S.C. 385, 387, 418 S.E.2d 322, 323 (Ct. App. 1992).

The allegations, statements or admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the action.

Id. "Notwithstanding allegations to the contrary in his or her pleadings, a party is not precluded from showing the facts to be as they really are where his or her allegations are due to an honest mistake or ignorance as to the facts." 71 C.J.S. *Pleadings* § 89 (2011).

ANALYSIS

Charles asserts the Estate is judicially bound by its pleadings in the wrongful death action, and cannot take a position contrary to those pleadings to deny his status as an heir to the Estate. We disagree.

This court encountered a similar issue in *Johns v. Johns*. 309 S.C. 199, 420 S.E.2d 856 (Ct. App. 1992). Antoinette Johns, the alleged common law wife of James Johns, sued her purported husband for divorce, custody of the parties' child, an increase in child support, alimony, and attorney's fees. *Id.* at 200-01, 420 S.E.2d at 857. The family court found there was no common law marriage and denied her requested relief because James was married to another woman "[a]t the time the parties began residing together . . . and throughout their cohabitation." *Id.* at 201, 420 S.E.2d at 858.

On appeal, Antoinette argued the issue of common law marriage was established by the doctrine of *res judicata*. *Id.* at 202, 420 S.E.2d at 858. Prior to filing the divorce action, Antoinette and James entered into a consent order "in which the court found they were married at common law and ordered that they were 'legally separated.'" *Id.* at 201, 420 S.E.2d at 858. Antoinette asserted the consent order precluded the family court's subsequent finding that they were never married. *Id.* at 202, 420 S.E.2d at 858.

The court of appeals affirmed the family court's order finding, "[t]he common law marriage was 'void' as a matter of public policy." *Id.* (quoting S.C. Code Ann. § 20-1-80 ("All marriages contracted while either of the parties has a former wife or husband living shall be void.")). This court also found the public policy underlying *res judicata* must yield to the competing public policy expressed by the General Assembly that bigamous marriages are void. *Id.* at 203, 420 S.E.2d at 859. The court therefore determined, "[a]lthough the parties' consent order is not void, the marriage it affirms is In balancing the relevant public policies . . . the consent order should not be given *res judicata* effect." *Id.*

We find the same public policy concerns expressed by this court in *Johns* drive our decision in this case. On one side, we have a marriage which contravened public policy as expressed by the General Assembly. *See* § 20-1-80 (2014). On the other, the doctrine of binding a party to its pleadings exists to protect the integrity of the court process. *See, e.g., Hayne Fed. Credit Union*, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997) (noting the purpose behind the related doctrine of judicial estoppel is to "protect the integrity of the judicial process or the integrity of courts rather than to protect litigants from allegedly improper or deceitful conduct by their adversaries"). While 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. *See Johns*, 309 S.C. at 203, 420 S.E.2d at 859 ("[T]he courts must weigh the competing public policies."); *id.* (finding the public policy of not recognizing bigamous marriages outweighs the public policy favoring finality of judgments).

CONCLUSION

Accordingly the trial court's order is

AFFIRMED.

HUFF and HILL, JJ., concur.

86930

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

JUN 06 2018

SC Court of Appeals

Judge Perry M. Buckner, III, Circuit Court Judge

CASE NO. 2012-CP-25-402

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 Appellant.

APPELLANT'S PETITION FOR REHEARING

Joseph Dawson, III
Post Office Box 41367
North Charleston, South Carolina 29423
(843) 207-9004

Attorney for Appellant Charles Gary

ARGUMENT

Charles Gary respectfully submits that this Court overlooked or misapprehended the legal grounds and reasoning of the lower court's order and that either a rehearing should be granted, or the Opinion vacated, on the following grounds.

I. THE COURT OF APPEALS MISAPPLIED THE JOHNS COURT'S PUBLIC POLICY AGAINST BIGAMOUS MARRIAGES TO THE FACTS OF THIS CASE, BECAUSE THERE IS NO ALLEGATION THAT THE APPELLANT WAS MARRIED TO SOMEONE ELSE AT THE TIME OF THE DECEDANT'S DEATH.

The Court of Appeals misapplied Johns v. Johns, 309 S.C. 199, 420 S.E.2d 856 (Ct.App.1992) to the facts of this case when it held 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." Angel Y. Gary as Personal Representative of the Estate of Blondell M. Gary v. Charles Gary, 2018-Opinion No. 5563 (Ct.App. 2016). In Johns, the Court of Appeals found that "[a]t the time the parties began residing together in September 1983, and throughout their cohabitation, the respondent was legally married to another woman. Thus, any marriage between the parties while respondent had a subsisting marriage was void as a matter of public policy." Johns v. Johns, 309 S.C. 199, 420 S.E.2d 856 (Ct.App.1992). Accordingly, the Johns Court found that although the parties' consent order is not void, the marriage it affirms is void because the public policy expressed in S.C. Code Ann. § 20-1-80 (1985) overrides the public policy of res judicata. Id. Therefore, at no time during their relationship was Mr. John's unmarried.

The case at bar is distinguishable from the Johns case. First, it is undisputed that the Estate in its Wrongful Death Case complaint alleged that "Blondell Gary (hereinafter

"Blondell"), on behalf of her husband, Charles Gary, contracted with American Medical Response to provide non-emergency medical transport on the day in question." (R. p. 076, Wrongful Death and Survival Action, Complaint ¶5). The Estate maintained this position throughout the Wrongful Death Case, despite knowledge of a possible defect in the decedent and Appellant's marriage license in 1999. Blondell M. Gary died on January 31, 2012, more than a decade after the events alleged by the Respondent in its Petition. The Estate does not allege a bigamous marriage at the time of the decedent's death. Rather it argues that a common law marriage was not established. This is not a Johns public policy impediment; therefore, there is no competing public policy to yield to in this case.

On the other hand, South Carolina law is clear, the Respondent is judicially bound by its pleadings and it cannot contradict its previous position that Mr. Gary is the decedent's spouse and a beneficiary of the Estate notwithstanding the factual basis to support common law marriage. South Carolina law provides that:

It is well settled that parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise. The allegations, statements, or admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the action.

Postal v. Mann, 308 S.C. 385, 418 S.E.2d 322 (Ct.App.1992).

The Estate is judicially bound by the admissions in its pleadings in the Wrongful Death Case and in two other companion cases where it admitted that Mr. Gary is the surviving spouse and a beneficiary of the Estate of Blondell M. Gary. This Court correctly noted "... the doctrine of binding a party to its pleadings exists to protect the integrity of the court

process."¹ This Court should protect the integrity of the judicial process here.

There is no public policy conflict in this case. Instead, the pleadings on file with the court clearly show that Mr. Gary had only one wife on the date of the decedent's death (January 31, 2012) and that the Respondent cannot contradict this judicial admission based on its pleadings. Therefore, this Court should find that the trial court erred when it allowed the Respondent to argue and introduce documents that sought to contradict its pleadings.

II. THE COURT OF APPEALS OVERLOOKED THE LEGAL EFFECT OF THE CONSENT ORDER OF DISMISSAL WITH PREJUDICE WHICH WAS AN ADJUDICATION ON THE MERITS WHICH PRECLUDES SUBSEQUENT LITIGATION.

The Court of Appeals overlooked the legal effect of the Consent Order of Dismissal when the circuit court failed to dismiss the Estate's Petition because the Estate consented to an Order of Dismissal with prejudice prior to filing its Petition challenging Mr. Gary's spousal status. The Appellant asserted at the Petition hearing that the trial court should dismiss the Petition as it relates to Mr. Gary because the Court's earlier dismissal of the underlying case bars subsequent litigation on the issues raised in the Estate's complaint. South Carolina law provides that:

A dismissal 'with prejudice' indicates an adjudication on the merits and, operating as *res judicata*, precludes subsequent litigation to the same extent as if the action had been tried to a final adjudication. [Citations Omitted]. Where an action has been so dismissed, the judgment

¹ The Estate claimed that Mr. Gary must and/or it intended to compel him to seek recovery of certain damages in the Wrongful Death Case as the surviving spouse even though he was also seeking to recover the same in his Personal Injury Case. Due to this controversy over damages recoverable in the two cases, Mr. Gary filed a Declaratory Judgment Action against the Estate in the Beaufort County Circuit Court to resolve this dispute, on October 20, 2014. (R. pp. 088-096, Declaratory Judgment Action Complaint). Notwithstanding this dispute, the Estate settled the Wrongful Death case without retracting its claim that Mr. Gary was the surviving spouse and that his damages must be included in its case.

operates, in a subsequent action involving the same subject matter, 'so as to conclusively settle not only all matters litigated in the earlier proceedings, but also all matters which might have been litigated therein.'

Nunnery v. Brantley Constr. Co., 289 S.C. 205, 345 S.E.2d 740 (Ct.App.1986)

It is undisputed that the Estate alleged that Mr. Gary was the husband of Blondell Gary. (R. p. 076, Wrongful Death and Survival Action, Complaint ¶5). Equally, it is undisputed that American Medical Response failed to Answer the Respondent's Complaint within 30 days of service; and therefore, it was held in default. The Estate objected to American Medical Response's motion to answer out of time. Moreover, the Estate did not seek to amend its pleadings to strike the reference that Mr. Gary was the decedent's spouse, over the course of the litigation in the Wrongful Death Case. South Carolina law is clear:

It is a fundamental principle of jurisprudence that material facts or questions which were directly in issue in a former action, and were there admitted or judicially determined, are conclusively settled by a judgment rendered therein, and that such facts or questions become res judicata and may not again be litigated in a subsequent action between the same parties or their privies, regardless of the form that the issue may take in the subsequent action.

Laughon v. O'Braitis, 360 S.C. 520, 602 S.E.2d 108 (Ct.App.2004).

There is no allegation that Mr. Gary was married to another woman at the time of the decedent's death. The Estate judicially admitted that Mr. Gary was the spouse of the decedent at the time of Blondell Gary's death. That fact is conclusively settled by Judge Buckner's November 13, 2015, Consent Order of Dismissal with Prejudice. Mr. Gary's spousal status is the law of the case, whether rightly or wrongly decided and may not again be litigated in a subsequent action, regardless of the form that the issue may take. See Charleston Lumber Co. v. Miller Hous. Corp., 338 S.C. 171, 175, 525 S.E.2d 869, 871 (2000) (an unchallenged ruling, "right or wrong, is the law of this case and

requires affirmance.").

CONCLUSION

For the foregoing reasons, the Appellant Charles Gary respectfully requests that this Court vacate its decision.

Respectfully submitted,


JOSEPH DAWSON, III, Esquire
Post Office Box 41367
North Charleston, South Carolina 29423
(843) 207-9004

**ATTORNEY FOR APPELLANT
CHARLES GARY**

North Charleston, South Carolina
June 5, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Judge Perry M. Buckner, III, Circuit Court Judge

CASE NO. 2012-CP-25-402

RECEIVED

JUN 06 2018

SC Court of Appeals

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

v.

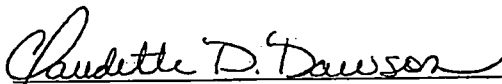
Lowcountry Medical Transport, Inc., American Medical Response, Inc.,
d/b/a Access2care, and Eugene A. Kirkland, In re: Charles Gary, Purported
Surviving Spouse, Defendants,

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

PROOF OF SERVICE

I certify that I have served the Appellant's Petition for Rehearing upon Respondent
Angel Y. Gary as Personal Representative of the Estate of Blondell M. Gary by depositing a copy
of the same in the United States Mail, postage prepaid, on June 6, 2018, addressed as follows:

R. Alexander Murdaugh, Esquire
Bert G. Utsey, Esquire
Austin H. Crosby, Esquire
Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.
P.O. Box 457
Hampton, SC 29924
Attorneys for Respondent



Claudette D. Dawson
Law Office of Joseph Dawson, III, Esquire

JOSEPH DAWSON, III

ATTORNEY AT LAW

POST OFFICE BOX 41367

NORTH CHARLESTON, S.C. 29423-41367

Email: joe@attorneyjosephdawson.com

TELEPHONE

(843) 207-9004

FAX NUMBER

(844) 288-7399

June 5, 2018

RECEIVED

JUN 06 2018

SC Court of Appeals

Honorable Jenny Abbott Kitchings
Clerk of Court
The South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

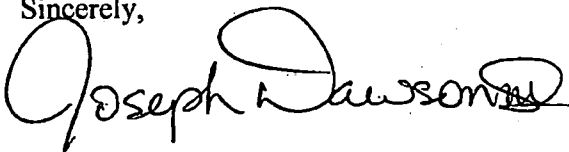
RE: Angel Y. Gary as Personal Representative of the Estate of Blondell M. Gary v.
Lowcountry Medical et. al., Appellate Case No. 2016-000222

Dear Ms. Kitchings:

In accordance with Rules 221 and 240, SCACR, enclosed please find for filing an original and six (6) copies of Respondent's Petition for Rehearing along with the Certificate of Service and check in the amount of \$25.00 for the filing fee. I would appreciate your acknowledging receipt of these documents by date-stamping the extra copies and returning them to me in the enclosed envelope.

By copy of this letter, I am serving all parties with these documents. Should you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,



Joseph Dawson, III, Esq.

cc: R. Alexander Murdaugh, Esq.
Bert G. Utsey, Esq.
Austin H. Crosby, Esq.

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

RECEIVED

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.
R. Alexander Murdaugh, S.C. Bar No. 6996
Bert G. Utsey, III, S.C. Bar No. 10093
Austin H. Crosby, S.C. Bar No. 80161
101 Mulberry Street, East
Post Office Box 457
Hampton, SC 29924
Phone: (803) 943-2111

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.

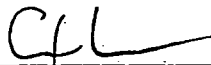
This Court properly considered the argument raised by the Appellant regarding the consent order of dismissal. This Court specifically references the argument in the opinion but chose to not devote much of the opinion to this argument.¹ Similarly, Appellant chose not to elaborate on this issue in their 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.
R. Alexander Murdaugh, S.C. Bar No. 6996
Bert G. Utsey, III, S.C. Bar No. 10093
Austin H. Crosby, S.C. Bar No. 80161
101 Mulberry Street, East
Post Office Box 457
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ATTORNEYS FOR RESPONDENT

June 21, 2018
Hampton, South Carolina

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

RECEIVED

JUN 25 2018

SC Court of Appeals

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

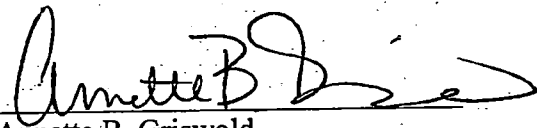
v.

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.

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

PROFESSIONAL ASSOCIATION

OVER 100 YEARS OF LEGAL SERVICE-EST. 1910

JOHN E. PARKER
DANIEL E. HENDERSON
MARK D. BALL
RANDOLPH MURDAUGH, IV
RONNIE L. CROSBY
R. ALEXANDER MURDAUGH
BERT G. UTSEY, III
RANDOLPH MURDAUGH, III
GRAHAME E. HOLMES
LEE D. COPE
MATTHEW V. CREECH
LEAGUE B. CREECH
STEVEN D. MURDAUGH
WILLIAM F. BARNES, III
AUSTIN H. CROSBY
NEIL E. ALGER

RANDOLPH MURDAUGH, SR.
(1887-1940)
RANDOLPH MURDAUGH, JR.
(1915-1998)
J. ROBERT PETERS, JR.
(1927-2008)
J. PAUL DETRICK
(1948-2016)
CLYDE A. ELTZROTH, JR. - RET

June 21, 2018

RECEIVED

JUN 25 2018

SC Court of Appeals

Austin H. Crosby
Direct Dial: (803) 914-6705
Email: acrosby@pmped.com

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 you 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

Appendix 270



U.S. POSTAGE >> PITNEY BOWES
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First Class Mail

LAW OFFICES
PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK
PROFESSIONAL ASSOCIATION
POST OFFICE BOX 457
HAMPTON, SOUTH CAROLINA 29924

RECEIVED
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

Appendix 271

The South Carolina Court of Appeals

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

v.

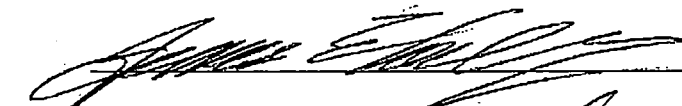
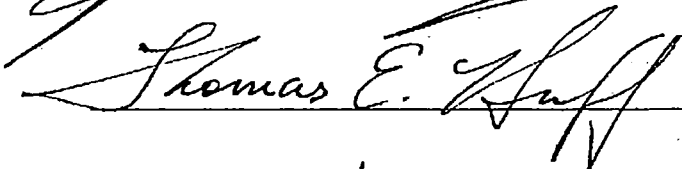
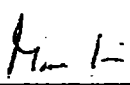
Lowcountry Medical Transport, Inc., American Medical
Response, Inc., d/b/a Access2Care, and Eugene A.
Kirkland, In re: Charles Gary, Purported Surviving
Spouse, Defendants,

Of whom Charles Gary, Purported Surviving Spouse, is
the Appellant.

Appellate Case No. 2016-000222

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C. J.
 J.
 J.

Columbia, South Carolina

FILED

Appendix 272
August 16, 2018

cc:

Joseph Dawson, III, Esquire

Richard Alexander Murdaugh, Esquire

Austin Howell Crosby, Esquire

Bert Glenn Utsey, III, Esquire