

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

NOV 26 2018

S.C. SUPREME COURT

---

APPEAL FROM GREENVILLE COUNTY  
Debora A. Faulkner, Probate Court Judge  
Perry H. Gravely, Circuit Court Judge

---

CASE NO.: 2016-000536

---

Mark Collins, ..... Petitioner,

Versus

Lauren Murphy as Statutory Beneficiary, ..... Respondent.

---

**PETITION FOR WRIT OF CERTIORARI**

---

JOHN M. READ, ESQ.  
S.C. Bar No. 12569  
THE READ LAW FIRM  
101 W. Park Ave.  
Greenville, SC 29601  
Telephone No. (864) 501-5110

JESSICA SALVINI, ESQ.  
S.C. Bar No. 69301  
SALVINI & BENNETT, LLC  
101 W. Park Ave.  
Greenville, SC 29601  
Telephone No. (864) 232-5800  
Facsimile No. (864) 232-5888

Attorneys for Petitioner

November 19, 2018  
Greenville, SC

**CERTIFICATION OF COUNSEL**

Undersigned counsel certifies that the Petitioner submitted a Petition for Rehearing to the S.C. Court of Appeals on August 21, 2018, which Petition was denied by the S.C. Court of Appeals on October 18, 2018.

### **QUESTION PRESENTED FOR REVIEW**

1. Did the South Carolina Court of Appeals err in finding and ruling that S.C. § 15-51-40 (Supp. 2017) precluded an unwed father's right to share in the proceeds of a wrongful death action received as the result of the death of his infant child approximately one hour after her birth because the record supported a finding that he failed to reasonably support or otherwise provide for the needs of the child?

## STATEMENT OF THE CASE

In 2011, Lauren Murphy (hereinafter referred to as “Ms. Murphy”) and Mark Collins (hereinafter referred to as “Mr. Collins”) conceived a child. On June 12, 2012, the minor child, named Tynslee Elizabeth Fields (hereinafter referred to sometimes as “minor child” or “Tynslee”) was born. (R. pp. 400-405). The minor child lived only one hour as a result of being fatally injured approximately one hour after her birth. (Id.).

At the time of the minor child’s birth and death, Ms. Murphy and Mr. Collins were estranged. (R. pp. 260-264). During the course of Ms. Murphy’s pregnancy, she blocked Mr. Collins’ cell phone number and/or changed her cell phone number so he could not contact her. (Id.; R. pp. 276-326). Ms. Murphy did not allow Mr. Collins to attend any future OBGYN appointments; and there were no expenses related thereto as Ms. Murphy received benefits through Medicaid. (Id.; R. pp. 327-353). Despite knowing that Mr. Collins was the minor child’s father, as well as having received Mr. Collins assurance of his intentions to be a part of their minor child’s life, Ms. Murphy claimed Mr. Collins was not the father of the minor child. (Id.) Rather, Ms. Murphy named her former boyfriend, Jeremy Paul Fields (hereinafter referred to as “Mr. Fields”), as the minor child’s father. (Id.). Thereafter, Ms. Murphy prohibited Mr. Collins from participating in her pregnancy, the minor child’s birth, death and funeral. (Id.).

At the time of the minor child’s birth and death, Ms. Murphy maintained Mr. Fields was the minor child’s father. As a result, the minor child’s Death Certificate and Obituary Announcement indicated Mr. Fields was the minor child’s father. (R. p. 523).

After the minor child’s passing, Ms. Murphy contacted Mr. Collins’ family and admitted that Mr. Collins was the minor child’s father. (Id.). Ms. Murphy and Mr. Collins dispute what

transpired between them and their families thereafter. However, to establish paternity Mr. Collins took a paternity test to confirm he was the minor child's father.

Ms. Murphy also sought appointment by the Greenville County Probate Court to be the Personal Representative for the Estate of Tynslee Elizabeth Fields. (R. pp. 400-405). Ms. Murphy named Mr. Fields the father of the minor child on the form she filed in the Greenville County Probate Court.

On December 3, 2012, a hearing was held in the Greenville County Probate Court to address Ms. Murphy's request to be the Personal Representative of the Estate of Tynslee Elizabeth Fields. (R. pp. 400-406). Appearing at the aforementioned hearing, were Ms. Murphy, Mr. Collins and their attorneys of record. (Id.). Mr. Fields was served with notice of the hearing, but he failed to appear. (Id.). The parties agreed that Ms. Murphy and Mr. Collins were the only two statutory beneficiaries of the Estate of Tynslee Elizabeth Fields, and therefore, Mr. Fields was an unnecessary party. (Id.). Further, Mr. Collins, with the understanding that Ms. Murphy would commence a wrongful death action in the Court of Common Pleas on behalf of the Estate of Tynslee Elizabeth Fields, consented to Ms. Murphy being named the Personal Representative. (Id.). Thus, the Probate Court granted Ms. Murphy's request. (Id.).

Based thereon, on or about August 2, 2013, Ms. Murphy by and through counsel commenced the matter of *Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields, vs. Bon Secours Health System, Inc., et. al*, Case No. 2013-CP-23-04186, in the Greenville County Court of Common Pleas. Litigation ensued against the defendants named therein.

On or about February 24, 2014, an Order approving a Petition for Approval of Settlement as to Defendants Mercy Obstetrics & Gynecology, P.A., Ragesh Pandya, M.D. was entered by the

Greenville County Court of Common Pleas in the litigation in the matter of *Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields, vs. Bon Secours Health System, Inc., et. al*, Case No. 2013-CP-23-04186 (hereinafter referred to as “February 24, 2014 Order”). (R. pp. 45-46). The February 24, 2014 Order set forth the Circuit Court’s approval of a settlement reached between Ms. Murphy, individually, and as the Personal Representative for the Estate of Tynslee Elizabeth Fields, and several of the Defendants named in the pending action (that being, Mercy Obstetrics & Gynecology, P.A., Ragesh Pandya, M.D). (Id.). Specifically, the Circuit Court found that settlement was “proper and in the best interest of the Estate” of Tynslee Elizabeth Fields. (Id.). As a result, the Circuit Court approved the sum of five thousand dollars (\$5,000.00) being allocated to the Survival Action (hereinafter referred to as “estate proceeds”), as well as the payment of the sum of Five Hundred Eighty-Three Thousand, Five Hundred Seventy-Seven Dollars and Fifty-Two Cents (\$583,577.52) (hereinafter referred to as “wrongful death proceeds”) to the “statutory beneficiaries.” (Id.).

The estate proceeds and the wrongful death proceeds were initially placed in trust with the Hughey Law Firm, LLC. On July 2, 2014, Ms. Murphy filed a Petition with the Greenville County Probate Court seeking to deny Mr. Collins any of the proceeds derived or to be derived from the wrongful death action in the matter of *Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields, vs. Bon Secours Health System, Inc., et. al*, Case No. 2013-CP-23-04186. (R. pp. 392-395). On July 15, 2014, the Greenville County Probate Court declined to proceed forward with Ms. Murphy’s Petition, and instead directed her to address the issue with the Greenville County Court of Common Pleas, as the case was still active therein. (R. p. 522).

Ms. Murphy did not take any further action. So, on or about July 29, 2014, Mr. Collins formally demanded disbursement of one half of the wrongful death proceeds being held in trust, that is the sum of Two Hundred Ninety-One Thousand, Seven Hundred Eighty-Eight Dollars and Seventy-Six Cents (\$291,788.76) directly to him as a statutory beneficiary. Ms. Murphy objected. As a result, on August 6, 2014, Mr. Collins filed a Motion to Compel the disbursement of the proceeds in the Greenville County Court of Common Pleas. (R. pp. 371-387). In response, on August 15, 2014, Ms. Murphy filed a Return, along with a Motion to deny Mr. Collins any of the proceeds derived from the wrongful death litigation. (R. pp. 354-370).

The Circuit Court held a hearing on September 30, 2014 to address Mr. Collins' Motion to Compel and Ms. Murphy's Motion to Deny Mr. Collins any of the proceeds. (R. pp. 32-39). At the conclusion of the hearing, the Circuit Court found that the two statutes that applied to the parties' respective motions conflicted.

One statute, Section 62-1-302(b), purport[ed] to confer concurrent jurisdiction upon both the Probate and Circuit Court regarding matters of allocation; however, the other, Section 15-51-40, dictates that actions brought to deny proceeds to a statutory beneficiary can only be brought in the Probate Court.

(Id.).

As a result of the Circuit Court's Order, the parties' respective motions were referred to the Greenville County Probate Court.

Pursuant to the Circuit Court's Order, on November 18, 2014, Ms. Murphy filed a Motion to Deny Mr. Collins the wrongful death and survival settlement proceeds in the Greenville County Probate Court. (R. pp. 272-275). Ms. Murphy sought an order of the Probate Court denying Mr. Collins any of the settlement proceeds derived from the wrongful death litigation because:

Collins provided no support for Ms. Murphy during her pregnancy; he pursued no relationship with the minor child; he did nothing to grasp the opportunity to assert himself as the father of this child; and no evidence shows Collins suffered from the death of

Tynslee, whether it be pecuniary loss, mental shock and suffering, wounded feelings, grief, sorrow or loss of companionship.

(Id.).

In response, Mr. Collins filed a Return opposing Ms. Murphy's motion. (R. pp. 221-271). Mr. Collins directed the Probate Court to the statutes controlling the disposition of such proceeds, maintaining that as the only other statutory beneficiary he was entitled to one-half of the proceeds. Further, Mr. Collins asserted there was no basis in law for the Probate Court to deny or limit the proceeds at issue, as the minor child died at birth.

The Probate Court held a hearing on January 9, 2015 to address the parties' respective motions. (R. pp. 12-31). Thereafter, the Court took the matter under advisement and invited the parties to submit any additional case law from other jurisdictions on the issues raised in their respective filings. (R. pp. 168-220; R. pp. 165-167).

On April 29, 2015, the Probate Court issued an Order as follows:

[Ms. Murphy] has shown by a preponderance of the evidence that [Mr. Collins], an able bodied man who is and was working full time, failed to provide reasonable support as set forth in S.C. Code of Laws Section 15-51-40 (1976 as amended) and Section 63-5-20(a) [sic] (1976 as amended), such that his right to receive any portion of the proceeds received in Civil Action: 2013-CP-23-04186 is denied.

[Mr. Collins] is hereby divested of any proceeds received from any future settlement or verdict in any matter wherein his claim is based upon his relationship with Decedent. (R. pp. 12-31).

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

During Mr. Collins' appeal to the Circuit Court, an additional settlement was approved by the Circuit Court in the matter of *Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields, vs. Bon Secours Health System, Inc., et. al*, Case No. 2013-CP-23-

04186 in the amount of Twenty Thousand Dollars (\$20,000.00). The approval of the aforementioned settlement proceeds resolved the aforementioned matter in its entirety. As a result of the litigation in the matter of *Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields, vs. Bon Secours Health System, Inc., et. al*, Case No. 2013-CP-23-04186 the total proceeds at issue in this case is Six Hundred Thirty-Five Thousand, Three Hundred Four Dollars and fifty-one cents (\$635,304.51).

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

[I]n an appeal at law, “the circuit court may not disturb the probate court’s findings of fact unless a review of the record discloses there is no evidence to support them” and “if there is any evidence in [the] case that reasonably supports the factual findings of the probate judge, [the] order must be affirmed.” (Id.).

The Circuit Court applied this standard of review. (Id.) It also determined that “South Carolina statutory and supporting case law are clear on the manner in which wrongful death proceeds are to be distributed. That is, they are to be divided equally to the statutory beneficiaries.” (Id.). The Circuit Court relied on S.C. Code § 15-51-40, which provides in pertinent part:

The amount so recovered shall be divided among the [statutory beneficiaries] in those shares as they would have been entitled to if the deceased had died intestate and the amount recovered had been personal assets of his or her estate. (Id.).

Since it is undisputed that the statutory beneficiaries of the Estate of Tynslee Fields are Ms. Murphy and Mr. Collins, the Circuit Court next turned to the circumstances in which the Probate Court may limit a statutory beneficiary’s entitlement. In doing so, the Circuit Court considered S.C. Code § 15-51-40 and S.C. Code § 63-5-20. The Circuit Court found and held that these statutes clearly governed the issue in this case.

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

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

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

[T]he South Carolina Court of Appeals has confirmed the following standard of review:

On appeal from an action at law, the circuit court and the appellate court may not disturb the probate court's findings of fact unless a review of the record discloses that no evidence supports them. Questions of law may, however, be decided by this court without deference to the lower court.

Estate of Patterson v. Palmetto Bank, 374 S.C. 116, 119, 646 S.E.2d 885, 887 (Ct. App; 2007) (citations omitted).

The December 28, 2015 Order of this Court found that there was no "evidence...that reasonably supports the factual finds of the probate judge" and that the probate judge did not properly apply the applicable law.

(R. pp. 3-4).

Ms. Murphy filed her notice of appeal with the South Carolina Court of Appeals challenging the Circuit Court's interpretation of §15-51-40. On August 8, 2018, the S.C. Court of Appeals ruled that there was evidence supporting the finding of the Probate Court that Mr. Collins failed to reasonably support or otherwise provide for the needs of his infant child, despite her short life and inaccessibility to either parent. Therefore, it reversed the order of the Circuit Court and reaffirmed the ruling the Probate Court divesting Mr. Collins his statutory share of the proceeds received from the wrongful death action.

Mr. Collins filed a Petition for Rehearing on August 21, 2018, which Petition was denied on October 18, 2018. Mr. Collins now files the instant Petition for a Writ of Certiorari.

#### **ARGUMENT IN SUPPORT OF PETITION**

**THE APPELLATE COURT ERRED IN RULING THAT S.C. § 15-51-40 (Supp. 2017) PRECLUDES AN UNWED FATHER'S RIGHT TO SHARE IN THE PROCEEDS OF A WRONGFUL DEATH ACTION RECEIVED AS THE RESULT OF THE DEATH OF HIS INFANT CHILD BECAUSE HE FAILED TO REASONABLY SUPPORT OR OTHERWISE PROVIDE FOR THE NEEDS OF THE CHILD DURING HER ONE HOUR OF LIFE WITHOUT JUST CAUSE.**

The Court of Appeals wrongly reversed the Circuit Court's decision and affirmed the Probate Court's decision where the Probate Court found that that Mr. Collins failed to provide reasonable support to his unborn child because Mr. Collins did not: (1) provide monetary support

to Ms. Murphy during the pregnancy from which Ms. Murphy excluded Mr. Collins or (2) provide monetary support related to the birth of their child of which she did not inform him and (3) provide monetary support related to the funeral and burial of their child from which she also excluded him. The Court of Appeals misapprehended the law as plainly set forth in § 15-51-40, which states that the Probate Court may deny a parent's entitlement if the court determines that the parent has "failed to reasonably provide support ... and did not otherwise provide for the needs of the decedent **during his or her minority.**" S.C. Code Ann. §15-51-40 (Supp. 2017) (emphasis added).

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

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

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

A "person" is defined as, "**a human being considered as capable of having rights** and of being charged with duties..." Black's Law Dictionary, 2<sup>nd</sup> Ed. (emphasis added).

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

child support to include responsibility for expenses incurred posthumously. This interpretation directly conflicts with the explicit statutory language that requires that the referenced necessities be incurred during the child's **minority**.

Further, the Court of Appeals overlooked the question of the Probate Court's failure to apply a "just cause" analysis to the provision or non-provision of support. The Probate Court issued its findings with no reference to the fact that Ms. Murphy prevaricated and obfuscated regarding the actual identity of Tynslee's father throughout the pregnancy and afterward in her early filings with the Probate Court. Despite these circumstances, the Probate Court failed to apply any "just cause or excuse" analysis to the facts as required under § 63-5-20.

The Court of Appeals notes that "[n]either the probate court nor the circuit court found Collins was obligated to contribute to pre-natal care." (R. pp. 607). Therefore, insofar as the Court of Appeals bases its findings upon facts related to failure to pay for pre-natal expenses, such findings lack a legally cognizable basis.

The Court of Appeals also agreed with the Probate Court that "pre-natal and birth-related medical expenses were usual necessities, none of which Collins paid or offered to pay, even after his paternity was established." (R. pp. 608). The Court of Appeals predicates this finding upon: (1) the idea that Mr. Collins has a responsibility to provide some sort medical payments for the portion of medical care for which Medicaid had paid despite the fact that no reimbursement to Medicaid was sought or required and (2) that a provision within the minor settlement documents that references a reservation of \$3,331.50 that was designated to pay for potential medical liens serves as evidence of Mr. Collins' failure to provide reasonable support.

Further, with regard to the Medicaid related finding, the Court of Appeals misapprehended and overlooked the fact that it is not possible for Mr. Collins to reimburse Medicaid where no

reimbursement is sought. The Court of Appeals did not consider the fact that the minor settlement documents listed Mr. Collins as a statutory beneficiary. Mr. Collins and Ms. Murphy had agreed that Ms. Murphy would serve as Personal Representative of the Estate and of Mr. Collins in her fiduciary capacity and as the only other statutory beneficiary. At the time that the settlement was agreed upon, both Ms. Murphy and Mr. Collins possessed an equal interest in both the proceeds of the suit and of the costs. Mr. Collins, therefore, did, in fact meet his responsibility for 1/2 of the medical lien. If the proceeds were distributed according to the statute, the funds would come from him and Ms. Murphy equally as a matter of agreement and of the law.

Also, although the Court of Appeals notes that the Circuit Court applied the “just cause” analysis in its reversal of the Probate Court’s decision, the Court of Appeals overlooked the question of the Probate Court’s failure to apply a “just cause” analysis to the provision or non-provision of support related to prenatal and birth-related expenses where the father has been explicitly prevented from addressing them by the parent moving to divest the other of proceeds derived from a wrongful death settlement.

//

//

//

//

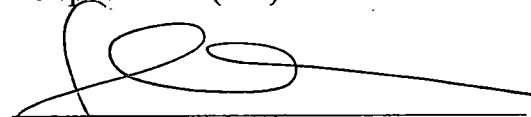
**CONCLUSION**

WHEREFORE, the Petitioner respectfully prays that this Honorable Court would grant his Petition for Writ of Certiorari, review this matter, and reverse the ruling of the Appellate Court, thereby affirming the Circuit Court's interpretation of S.C. Code § 15-51-40.



---

JOHN M. READ, ESQ.  
S.C. Bar No. 12569  
THE READ LAW FIRM  
101 W. Park Ave.  
Greenville, SC 29601  
Telephone No. (864) 501-5110



---

JESSICA SALVINI, ESQ.  
S.C. Bar No. 69301  
SALVINI & BENNETT, LLC  
101 W. Park Ave.  
Greenville, SC 29601  
Telephone No. (864) 232-5800  
Facsimile No. (864) 232-5888

November 19, 2018  
Greenville, SC

Attorneys for Petitioner

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

---

APPEAL FROM GREENVILLE COUNTY  
Debora A. Faulkner, Probate Court Judge  
Perry H. Gravely, Circuit Court Judge

---

**RECEIVED**

NOV 26 2018

S.C. SUPREME COURT

---

CASE NO.: 2016-000536

---

Mark Collins, ..... Petitioner,

Versus

Lauren Murphy as Statutory Beneficiary, ..... Respondent.

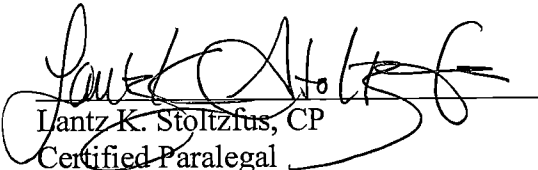
---

**PROOF OF SERVICE**

---

I certify that I have served the PETITIONS FOR WRIT OF CERTIORARI by depositing a copy of it in the United States Mail, postage prepaid, on November 19, 2018 addressed to: Charles W. Marchbanks, Jr., The Marchbanks Law Firm, 1225 S. Church Street, Greenville, SC 29605.

November 19, 2018

  
Iantz K. Stoltzfus, CP  
Certified Paralegal

SALVINI & BENNETT, LLC  
101 W. Park Ave.  
Greenville, SC 29601  
Tel. (864) 232-5800; Fax (864) 232-5888