

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

S.C. SUPREME COURT

CASE NO.: 2016-000536

Mark Collins, ... Petitioner,

Versus

Lauren Murphy as Statutory Beneficiary, ... Respondent.

APPENDIX
VOLUME II

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INDEX

Volume I

Court of Appeals Order granting Appellant permission to order the transcript of the September 10, 2015 Circuit Court Appeal Hearing outside of the filing deadline filed April 14, 2016	1
Greenville County Court Order on Lauren Murphy's Motion for Reconsideration filed February 9, 2016	3
Greenville County Circuit Court Order filed December 28, 2015 in the matter of Mark Collins Appellant v. Lauren Murphy Respondent, Case Number 2015-CP-23-02860	5
Greenville County Probate Court Order filed April 29, 2015 in the matter of the Estate of Tynslee Elizabeth Fields, Case No. 2012-ES-23-01718	12
Greenville County Court of Common Pleas filed November 5, 2014 Order on Movant Mark Collins' Motion to Compel Disbursement and Personal Representative Lauren Murphy's Motion to Deny Proceeds entered in the matter of Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields v. Bon Secours Health System, Inc., et al., Case No. 2013-CP-23-04186	32
Return to Respondents' Motion to Stay Disbursement of Estate Assets/Funds & to Extend Deadline filed on June 27, 2014 in the Greenville County Probate Court in the matter of the Estate of Tynslee Elizabeth Fields, Case No. 2012-ES-23-01718	40
Greenville County Court of Common Pleas filed February 24, 2014 Order for Approval of Settlement as to Defendant Mercy Obstetrics & Gynecology, P.A., Ragesh Pandya, M.D. Only, and the Petition for Approval of Settlement as to Defendants Mercy Obstetrics & Gynecology, P.A., Ragesh Pandya, M.D. entered in the matter of Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields v. Bon Secours Health System, Inc., et al., Case No. 2013-CP-23-04186	45
Appellant Lauren Murphy's Motion to the Court of Appeals to Order the Transcript of the September 10, Circuit Court Appeal hearing outside of the time limit to request the transcript filed April 12, 2016	47
Appellant Lauren Murphy's Notice of Appeal filed with the Court of Appeals on March 11, 2016	50
Motion for Reconsideration filed with the Circuit Court on January 6, 2016 by Lauren Murphy as Statutory Beneficiary	80
Respondent Lauren Murphy's Brief filed with the Court of Appeals on August 12, 2015	92
Appellant Mark Collins' Appellate Brief filed with the Circuit Court on July 13, 2015	120

Notice of Intent to Appeal to Circuit Court filed by Mark Collins on May 1, 2015	141
Respondent’s Submission of Applicable Case Law from Other Jurisdictions filed on January 27, 2015 in the Greenville County Probate Court on in the matter of the Estate of Tynslee Elizabeth Fields, Case No. 2012-ES-23-01718	165
Plaintiff’s Submission to the Court of Case Law Jurisdictions Other than South Carolina filed on January 23, 2015 in the Greenville County Probate Court on in the mater of the Estate of Tynslee Elizabeth Fields, Case No. 2012-ES-23-01718	168
Return in Opposition to Motion to Deny Mark Collins Wrongful Death And Survival Settlement Proceeds filed in the Greenville County Probate Court on November 24, 2014 in the matter of the Estate of Tynslee Elizabeth Fields, Case No.: 2012-ES-23-01718	221
Motion to Deny Mark Collins Wrongful Death and Survival Settlement Proceeds filed in the Greenville County Probate Court on November 18, 2014 in the matter of the Estate of Tynslee Elizabeth Fields, Case No. 2012-ES-23-01718	272
Plaintiff’s Memorandum in Support of Motion to Deny Mark Collins Any and All Proceeds Derived from Settlement of Survival and Wrongful Death Actions filed September 27, 2014 in the Greenville County Court of Common Pleas in the matter of Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields v. Bon Secours Health System, Inc., et. al., Case No. 2013-CP-23-04186	276
Interested Party Mark Collins’ Memorandum in Support of Motion to Compel Disbursement and Response to Motion to Deny Proceeds filed September 26, 2014 in the Greenville County Court of Common Pleas in the matter of Lauren Murphy, individually, and as Personal Representative of the Estate of Tynslee Fields v. Bon Secours Health System, Inc., et. al., Case No. 2013-CP-23-04186.	327
Return to Mark Collins’ Motion to Compel and Motion to Deny Mark Collins Any and All Proceeds Derived from Settlement of Survival and Wrongful Death Actions filed August 15, 2014 in the Greenville County Court of Common Pleas 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	354
Motion to Compel filed August 6, 2014 in the Greenville County Court of Common Pleas 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.....	371
Notice of Motion and Motion to Stay Disbursement of Proceeds filed July 23, 2014 in the Greenville County Probate Court in the matter of the Estate of Tynslee Elizabeth Fields, Case No. 2012-ES-23-01718.....	389
Summons and Petition to Deny Respondent Wrongful Death Proceeds filed on July 2, 2014 in	

the Greenville County Probate Court in the matter of the Estate of Tynslee Elizabeth Fields, Case No. 2012-ES-23-01718.....	392
---	-----

Notice of Motion and Motion to Stay Disbursement of Estate Assets/Funds & to Extend Deadline for Parties to Either Waive of Post Bond filed on June 24, 2014 in the Greenville County Probate Court in the matter of the Estate pf Tynslee Elizabeth Fields, Case No. 2012-ES-23-01718	396
--	-----

Summons and Form 300 PC filed October 4, 2012 by Lauren Murphy in the Greenville County Probate Court.....	399
--	-----

Greenville County Probate Court Certificate of Appointment of Lauren Murphy as the Personal Representative for the Estate of Tynslee Elizabeth Fields filed July 15, 2014	406
---	-----

Transcript of the September 10, 2015 appellate hearing before the Circuit Court in the matter of Mark Collins Appellant v. Tynslee Elizabeth Fields, Deceased and Lauren Murphy Respondent	407
--	-----

Volume II

Transcript of the January 9, 2015 Hearing in the Greenville County Probate Court in the matter of the Estate of Tynslee Elizabeth Fields, Case No. 2012-ES-23-01718	438
---	-----

Correspondence dated July 15, 2014 from the Greenville County Probate Court regarding the Summons and Petition to Deny Respondent Wrongful Death Proceeds filed July 2, 2014 in the Greenville County Probate Court in the matter of the Estate of Tynslee Elizabeth Fields, Case No. 2012-ES-23-01718.....	522
---	-----

Death Certificate for Tynslee Elizabeth Fields issued August 2, 2012	523
--	-----

Certificate of Appellant	524
--------------------------------	-----

Appellant’s Final Brief to the South Carolina Court of Appeals, dated on August 29, 2018	525
--	-----

Final Brief of Respondent to the South Carolina Court of Appeals, filed on August 31, 2016 ..	562
---	-----

Appellant’s Final Reply Brief to the South Carolina Court of appeals, dated September 27, 2016	589
--	-----

South Carolina Court of Appeals Opinion No. 5587 on May 22, 2018 hearing, filed on August 8, 2018	601
---	-----

Respondent Mark Collins’ Petition for Rehearing, dated August 21, 2018	611
--	-----

South Carolina Court of Appeals Order denying Respondent Mark Collins’ Petition for Rehearing, filed October 18, 2018.....	617
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22 INDEX OF EXAMINATION

23 PAGE

24 COLLOQUY BETWEEN THE COURT AND

25 COUNSEL.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX OF EXHIBITS

PAGE

THERE WERE NO EXHIBITS INTRODUCED.

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(In the following transcript, a dash [--]
is used to indicate an unintentional or
purposeful interruption in a sentence, or to
indicate halting speech or an unfinished
sentence in dialogue.)

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1 THE COURT:

2 This is in the matter of the Estate of
3 Tynslee Elizabeth Fields. The file
4 number is 12-1718. We're here today on
5 a Notice of Motion and Motion to Stay
6 Disbursement of Proceeds. The
7 Petitioner in this matter is Lauren
8 Murphy, who is also the Personal
9 Representative in this matter. This
10 case concerns the distribution of not
11 only survival proceeds, but also
12 wrongful death proceeds. Representing
13 the Petitioner Ms. Murphy is Charles
14 Marchbanks, who is present. The
15 Respondent is Mark Collins, who is
16 present, and Ms. Jessica Salvini and
17 John Read represent him. And we have
18 met in chambers to discuss the process
19 for today, and what we're going to do is
20 we're going to proceed with legal
21 argument unless there is a need to take
22 testimony. We are also going to note
23 for the record that all of the documents
24 provided to This Court from the Circuit
25 Court are entered for the record not as

1 an exhibit but because it has become a
2 part of our official record that it will
3 be relevant to today's argument and will
4 be adopted as it was submitted in the
5 Circuit Court. Okay. Unless there's
6 anything else I'm ready for, Mr.
7 Marchbanks, for you to argue your
8 Motion.

9 MR. MARCHBANKS:

10 Thank you, Your Honor. May it please
11 The Court, the Motion before The Court
12 today pertains to either limiting or
13 denying Mark Collins' take of a
14 settlement, a wrongful death settlement,
15 involving the death of infant Tynslee
16 Elizabeth Fields. My client, Lauren
17 Murphy, is the biological mother of
18 Tynslee. Mark Collins is the biological
19 father. As the evidence in the record
20 that The Court has now adopted shows
21 there is some dispute amongst the facts
22 of some of the details of the case that
23 we may need to get into on a factual
24 basis, but for the purposes of the
25 argument that we have we submit to The

1 Court that Ms. Murphy became pregnant in
2 September of 2011. She notified Mr.
3 Collins of her pregnancy, and Mr.
4 Collins, with the exception of attending
5 one gender-reveal ultrasound
6 appointment, did not interact with Ms.
7 Murphy during the course of the
8 pregnancy. He did not interact with Ms.
9 Murphy during the course of the birth.
10 He did contact Ms. Murphy upon learning
11 of the death of the child. He did not
12 attend the funeral of the child. Did
13 not attend a memory walk set for the
14 child. During that time period Mr.
15 Collins additionally did not provide any
16 financial support to Ms. Murphy
17 throughout the course of the pregnancy,
18 nor did he provide any support for the
19 unborn child in regards to funeral
20 expenses, nursery, those types of
21 things. I think what is in the record
22 in Affidavits and statements and the
23 pleadings certainly covers that in much
24 greater detail, but for the purposes of
25 the legal argument I will limit the

1 facts to that for now. We are moving
2 This Court to deny or reduce Mr.
3 Collins' take of a wrongful death
4 lawsuit that Ms. Murphy filed, that Ms.
5 Murphy involved herself in, contracted
6 with attorneys and worked for a
7 considerable length of time to reach a
8 settlement. The settlement that was
9 reached was a partial settlement against
10 certain defendants, but not against all
11 of the defendants in the case. And I
12 think it's important that the record
13 show that there is still an outstanding
14 defendant. Ms. Murphy settled the claim
15 against Mercy OB-GYN, Dr. Ragesh Pandya
16 of Upstate OB-GYN. There is still a
17 pending claim at this point in time
18 against Bon Secours Health System and
19 Bon Secours St. Francis Health System
20 doing business as St. Francis Eastside.
21 The settlement amount -- the initial
22 settlement amount was \$975,000. Ms.
23 Murphy petitioned for approval of that
24 settlement in the Circuit Court, and
25 that settlement was approved by the

1 Circuit Court on -- let's see, February
2 24th, 2014. At that point in time Ms.
3 Murphy sought to divest Mr. Collins of
4 any interest in the settlement amount by
5 filing a Motion with the Probate Court
6 here in Greenville County. The Probate
7 Court seeing the size of the settlement
8 directed the determination be done by
9 Circuit Court. Circuit Court -- we went
10 and had a hearing in Circuit Court a few
11 months ago, and Circuit Court asked that
12 Probate Court -- they believed Probate
13 Court has original jurisdiction over
14 this specific issue and asked for a
15 determination to be made here. So that
16 is why we are here. And the basis of
17 our argument is, as I stated, found in
18 the Wrongful Death Act, South Carolina
19 Code 15-51-40. And in part, the
20 relevant part of what code section
21 states is, "On Motion by either parent
22 or any other party of potential interest
23 based on the decedent having died
24 intestate" -- which this being a minor
25 child obviously did -- "the Probate

1 Court may limit or deny either or both
2 parents entitlement for a share of the
3 proceeds if The Court determines by a
4 preponderance of the evidence that the
5 parent or parents failed to reasonably
6 provide support for the decedent as
7 defined in 63-5-20 and did not otherwise
8 provide support for the needs of the
9 decedent during his or her minority."

10 Now, the Code Section
11 63-5-20, as The Court knows,
12 specifically goes to the Children's Code
13 in the State of South Carolina, and that
14 references and requires a parent to
15 provide financial assistance for a
16 member of the family substantially equal
17 to that of the person owing the duty to
18 support. And it further states that
19 this includes both usual and unusual
20 necessities. Now, there is in our
21 opinion, and our position is that these
22 two Code Sections, both 15-51-40 and 63-
23 5-20 include child support as would be
24 ordered by Family Court for a minor
25 child. It is also very clear that the

1 language that is contained within these
2 statutes is quite vague. And whereas
3 this specific law prior to 1996 was
4 actually very strictly construed, and it
5 was very clear and evident what a court
6 had to do with this sort of a situation,
7 in 1996 a bill was introduced into the
8 South Carolina State Senate that added
9 the language in this statute that truly
10 I think muddled the water. It added the
11 language that a person must provide
12 reasonable support and otherwise provide
13 for the need of the decedent during his
14 or her minority. And effectively that
15 change clearly demonstrates that the
16 legislative intent of that amendment was
17 to open the door for a factual
18 determination in a situation -- in a
19 wrongful death situation that involves a
20 minor, and that particular amendment
21 spanned Workers' Comp, it spanned
22 wrongful death, it spanned the intestacy
23 statute in Probate Court. Where certain
24 language was added to that clear-cut
25 50/50 split or each statutory

1 beneficiary takes an equal amount, it
2 clearly muddied the water. It muddied
3 the water such that it effectually makes
4 it a situation to where it becomes a
5 factual issue. And in this particular
6 case what we have is the factual issue
7 of a mother who has been through an
8 utter nightmare with the gestation,
9 birth, death of an infant at the hands
10 of a negligent ob-gyn. And I'm certain
11 that The Court is aware of the facts of
12 what The Court needs to be aware of as
13 far as the facts of the baby's death,
14 but baby was effectively -- there's no
15 other way to say it. The ob-gyn
16 basically took the baby's life. And she
17 suffered through the death of the child,
18 sitting with the child in NICU while it
19 survived for the brief period of time
20 that the child survived, burying her
21 daughter, and throughout all of this
22 time had no contact from the biological
23 father. In fact, the biological father
24 in this case, Mark Collins, only took a
25 test, a DNA test, to determine whether

1 or not he was the actual biological
2 father of this child until after he
3 learned of the negligence of the ob-gyn.
4 And so after ignoring this child, after
5 ignoring Ms. Murphy for that entire
6 period of time, he stands here today
7 asking for one-half of the proceeds of a
8 settlement, gross settlement amount of
9 \$975,000. We submit that would create
10 an unfair windfall; he would be unjustly
11 enriched; it would be an absurd result.
12 The unfortunate aspect of this
13 particular law and this particular
14 amendment, and the statute was amended
15 in 1996, is there has been no case law
16 proceeding or after 1996 to guide a
17 court in how to make a determination in
18 a situation like this.

19 THE COURT:

20 Do you have any legislative history of
21 why it was amended?

22 MR. MARCHBANKS:

23 Well, Your Honor, I do not have -- I
24 looked into the legislative history.
25 However, the -- it's not specifically

1 stated in the legislative history as to
2 exactly why or what the intent of the
3 legislature is or was at that time. I
4 will state that in 1995 there was a
5 Supreme Court decision by the name of
6 Ballard versus Ballard. The cite on
7 that case is 443 S.E. 2nd 802. And in
8 Ballard, that -- in that particular case
9 the father was negligent towards the
10 child, did not support the child at all.
11 Now this was an older child. But he
12 failed to support the child. There was
13 a significant settlement in that case.
14 The mother of the child petitioned for
15 the father not to take any of the
16 benefits subsequent to the child's
17 death, and in Ballard versus Ballard
18 based on the old law, The Court said,
19 well, you know, there's nothing we can
20 do. They split it 50/50. Now 21 months
21 after the Ballard decision was published
22 was when the Senate introduced this
23 bill. And that's Senate bill 11-64.
24 And that is the -- that is the bill that
25 eventually led to the amendment of 15-

1 51-40, which was subsequent to the
2 Ballard decision. And effectively what
3 we're saying, Your Honor, is that
4 amendment opened the door to
5 interpretation. That amendment allows
6 for This Court specifically, because it
7 says on Motion to the Probate Court. It
8 allows for the Probate Court to make a
9 determination as to whether or not each
10 beneficiary should take an equal amount
11 or if any beneficiary should be denied
12 any particular amount. Now, given that
13 there are no -- I've been unable to
14 locate any specific case law that would
15 be prejudicial or that would give The
16 Court guidance in -- in figuring out how
17 to approach a situation like this, I
18 began to explore court decisions that
19 dealt with fathers who never had a
20 chance to pay child support, unwed
21 fathers who never had a chance to pay
22 child support and a court's
23 determination as to whether or not they
24 could benefit from a relationship with
25 the child. And in doing that, and I

1 present it to The Court in a number of
2 places in the submissions that I made to
3 The Court, a couple of cases that deal
4 with oddly enough adoption. And those
5 cases would be Rowe versus Reeves, Rowe
6 versus Reeves being 392 South Carolina
7 143. And that's a South Carolina Court
8 of Appeals opinion. No, that's a
9 Supreme Court of South Carolina opinion.
10 And then Lehr versus Robertson.

11 THE COURT:

12 Could you spell Lehr for me?

13 MR. MARCHBANKS:

14 L-e-h-r.

15 THE COURT:

16 Okay.

17 MR. MARCHBANKS:

18 And Lehr versus Robertson, Your Honor,
19 is a United States Supreme Court case
20 463 U.S. 248.

21 THE COURT:

22 Now, these are both concerning adoption
23 cases?

24 MR. MARCHBANKS:

25 Yes, Your Honor, and I know that that's

1 -- that there's nothing precedential
2 there, but I believe that they're
3 instructive. The basis for my argument
4 as to why they are instructive is
5 because these cases follow a line of
6 decisions where the United States
7 Supreme Court has determined that an
8 unwed father has a constitutional right
9 to have a relationship with their child.
10 However, that constitutional right if he
11 neglects the mother and neglects the
12 child during the pregnancy then the
13 child can be put up for adoption without
14 his consent. So effectively in this
15 particular case what we have, and one of
16 the reasons that I so firmly believe
17 that this would create an absurd result,
18 is because -- and this a hypothetical
19 situation, but in the event Ms. Murphy
20 was not in a position in the event
21 Tynslee survived, and in the event Ms.
22 Murphy was not in a position to raise
23 Tynslee, the facts of this case -- these
24 cases support the fact that she could
25 have put Tynslee up for adoption and not

1 had to get his consent to do that at
2 all. He divested himself of the benefit
3 that stems from fatherhood by his
4 failure to act. And how is it that if
5 he divest himself by his failure to act
6 of a constitutional right how is it that
7 he can stand here today and say, "But
8 I'm still entitled to" -- I think a net
9 of - "\$250,000." The -- the other, even
10 though this is not specifically -- this
11 does not specifically deal with the
12 statute, the Wrongful Death Statute, as
13 -- when it comes to beneficiaries there
14 is -- there is instruction as to how
15 wrongful death damages should be
16 distributed, and for that I'm looking to
17 South Carolina Court of Appeals case
18 Scott versus Porter, which is 340 South
19 Carolina 158. And one of the things
20 that Scott versus Porter does a very
21 good job in doing is outlining what
22 damages are recoverable in a wrongful
23 death action. And it specifically
24 states pecuniary loss, mental shock and
25 suffering, wounded feelings, grief and

1 sorrow, loss of companionship,
2 deprivation of the use and comfort of
3 the intestate society, the loss of his
4 experience, knowledge and judgment in
5 managing the affairs of himself and his
6 beneficiaries. Now, Scott goes on and
7 states that South Carolina law provides
8 that parents are entitled to a
9 presumption of nonpecuniary damages.
10 And that seems to fix it. However, The
11 Court goes on and says that it may often
12 be assumed that grief and sorrow will be
13 expected at the loss of a loved one.
14 However, the strength of such
15 presumption is the function of the
16 closeness of the relationship, and in
17 some cases evidence may be necessary to
18 support the claim of loss.

19 THE COURT:

20 What year was that case?

21 MR. MARCHBANKS:

22 This case, 2000.

23 THE COURT:

24 Was that an adoption case, too?

25 MR. MARCHBANKS:

1 No, Your Honor, this is a case that
2 simply dealt with wrongful death
3 damages.

4 THE COURT:

5 Okay.

6 MR. MARCHBANKS:

7 Specific to the loss of a minor child.
8 And so overall what we have is a law
9 that says in some cases in a wrongful
10 death for somebody to benefit from that
11 they're really going to have show that
12 they suffered loss. We have cases that
13 have facts very similar to the case at
14 bar where fathers were divested of a
15 constitutional right based on very, very
16 similar facts. And we have the
17 controlling law in this situation, the
18 one law that does control, states
19 reasonable support and other support as
20 may be provided. But again I'm not
21 quoting it word for word, but it doesn't
22 specifically state, you know, pursuant
23 to the Child Support Statute. It's very
24 vague. It's very ambiguous. And it is
25 our belief and our position that based

1 on the vagueness of the controlling law
2 and by following the instruction of the
3 interpretation of the Wrongful Death
4 statute, and applying analogous logic
5 and structure from how a father divest
6 himself of a constitutional right, the
7 conclusion that This Court we ask to
8 reach is if he's done enough to divest
9 himself of the constitutional right he's
10 done enough to divest himself of a
11 little bit of money. And that's all I
12 have at this particular time, Your
13 Honor, unless you have questions from
14 the bench.

15 THE COURT:

16 I don't think I have any at this time.

17 MR. MARCHBANKS:

18 All right. Thank you.

19 THE COURT:

20 Ms. Salvini.

21 MS. SALVINI:

22 Thank you, Your Honor. May it please
23 The Court. What happened in this case
24 was horrible. No parents should suffer
25 the death of a child ever, but The Court

1 has to look at the law before it. And
2 it is not vague and ambiguous. We do
3 not stipulate to the facts that Mr.
4 Marchbanks announced to The Court
5 regarding what he said and she said
6 because they both have a different story
7 to tell The Court, which was set forth
8 in the Affidavits that were presented to
9 Circuit Court. And as The Court is
10 aware these parties dated over the
11 course of approximately three and a half
12 to four months. Ms. Murphy became
13 pregnant during that time. While they
14 were together they were excited about
15 the pregnancy. They talked about baby
16 names. Ms. Murphy was staying over at
17 Mr. Collins' house five out of seven
18 days of the week. She knew that he was
19 a good father. He has two other
20 children, one of which lives with him on
21 a full-time basis, and he is actively
22 involved on a daily basis with his other
23 child. As things sometimes do and
24 relationship don't work out they broke
25 up, and I think The Court saw in the

1 Affidavits that she was seeing somebody
2 else, he saw somebody else, and then
3 they had a disagreement about what
4 happened during the course of her
5 pregnancy. Thereafter -- because
6 remember he was present at the
7 ultrasound that determined the sex of
8 the baby. Where the Affidavits before
9 The Court show is that she then told him
10 that he wasn't the father, and they had
11 a back and forth about whether he was
12 and whether he wasn't. She told him to
13 stay away, and to give her her privacy,
14 and to allow who she was staying with,
15 the new father, which she knew he
16 wasn't, to be there with her. What The
17 Court's not hearing about is the fact
18 that Mr. Collins was denied the right to
19 go to the hospital and hold and touch
20 his daughter before she was cremated;
21 about the fact that he had learn about
22 her death from the mother of his other
23 child who happened to see it posted on
24 Facebook. He had to hear from his
25 sister and receive from his sister

1 pictures of his dead daughter from Ms.
2 Murphy because she showed up at the
3 house to say, "I am so sorry that I
4 excluded Mark and I lied to him, and we
5 need to grieve together." He was denied
6 the right to go to the funeral, but all
7 of that is irrelevant. This Court is
8 not charged with taking a yardstick and
9 measuring how many tears each one of
10 them have cried. It's not charged with
11 trying to determine what Mr. Collins
12 should have done during the course of
13 the next six months or five months after
14 they broke up whether, or not he gave
15 her money or demanded to come to the
16 house to see what the nursery looked
17 like, or whether or not he had to file
18 something in court to be able to name
19 his child, because as The Court is aware
20 she put another man's name on his child,
21 on Mr. Collins' child, and then admitted
22 later that she lied about it. So what
23 type of grief does that place on Mr.
24 Collins who has never been able to have
25 closure? It doesn't matter. It's

1 irrelevant. What matters is the law.
2 And what's before The Court is that
3 these statutory beneficiaries they
4 agreed she's the mother, he's the
5 father. He agreed that she could serve
6 as the Personal Representative and
7 represent his interest. If you look at
8 the Circuit Court Order what it says is
9 that she has considered the settlement,
10 and she finds it to be in the best
11 interest of both the statutory
12 beneficiaries. It wasn't until
13 thereafter that she decided that she was
14 not going to agree that it was in Mr.
15 Collins' best interest. Instead what
16 she's directing The Court to do is to
17 say, "Court take a look at 15-51-40, and
18 it's vague," but it's not. It's very
19 clear. Mr. Marchbanks cited for The
20 Court the Ballard case. If you take a
21 look at that case what got the
22 legislature and The Court upset about
23 what occurred and the fact that The
24 Court's hands were tied was the fact
25 that it was an elementary school age

1 child. That's not what we have here.
2 We have a child who lived approximately
3 an hour after she was born. And this is
4 not a situation where she lived for that
5 hour and Ms. Murphy was holding her and
6 they were bonding. This is a situation
7 where the ob-gyn effectively hurt this
8 child so badly that nurses and doctors
9 were working around the clock hoping to
10 save her. Neither parent would have
11 been entitled to touch that child
12 because the doctors were trying
13 desperately to do something. And he was
14 precluded from being there just to be
15 able to be a part of whatever life she
16 had. If you look at 15-51-40 and the
17 amendment that was made to the statute,
18 and you read it in its entirety, you're
19 going to see that it is very clear on
20 its face. Under certain circumstances,
21 and I want to read it specifically
22 because the construction is there, "Upon
23 Motion by either parent or any other
24 party of potential interest based on the
25 decedent having died intestate the

1 Probate Court may deny or limit either
2 or both parents' entitlement for a share
3 of the proceeds if The Court determines
4 by a preponderance of the evidence," and
5 this is where it's specific, "that the
6 parent or parents failed to reasonably
7 provide support for the decedent as
8 defined in Section 63-5-20 and" --
9 there's an "and" there -- "and did not
10 otherwise provide for the needs of the
11 decedent during his or her minority."
12 It's very specific. It says "decedent."
13 And I'm pointing that out because in Mr.
14 Marchbanks' Motion he specifically said,
15 "Ms. Murphy seeks to exclude Collins
16 from benefiting from Tynslee's death
17 because Collins provided no support."
18 Not for the decedent, but for Ms. Murphy
19 during her pregnancy. That's not what
20 the statute provides. The statute
21 provides that it has to be for the
22 decedent. It was a legal impossibility
23 for him to do so. What Mr. Marchbanks
24 and Ms. Murphy is asking The Court to do
25 is to find some ambiguity in a statute

1 that is very clear. We have a case here
2 that is horrible. This is an infant
3 child that did not live. There is no
4 way possible that Mr. Collins could have
5 supported this child. We don't need to
6 go any further and look at 63-5-20,
7 although I am going to address it, but
8 specifically because there was no
9 possible way for him to support his
10 child. She lived for a year -- I mean
11 for an hour, and during that hour she
12 was in the care of doctors. What Ms.
13 Murphy is asking The Court to do is to
14 find that in cases in which a couple is
15 not married, whether that be same sex
16 now or otherwise, the father is required
17 to support the mother during the
18 pregnancy. That's what she's asking
19 This Court to find. And to what extent?
20 Is The Court going to issue an Order
21 that says, yes, she's correct that then
22 requires every father who is not married
23 to a woman, but who wants to be involved
24 in the child's life, to go down to
25 Family Court to have a hearing about

1 what type of support he is going to
2 provide for his unborn child? No. And
3 that's not what those adoption cases
4 even provide, and they concede that they
5 don't have any precedence. Fathers of
6 illegitimate children are not required
7 to do that. That would require the
8 Family Court, if we go down this
9 slippery slope, to issue rulings to
10 decide what type of care is to be
11 provided and whether or not mothers who
12 are pregnant have the right to smoke or
13 drink or take Xanax, any prescription
14 medication, whether or not fathers of
15 unborn children are allowed to show up
16 at doctor's appointments and tell the
17 mother that she can or cannot do this or
18 that. That's not the case. The only
19 other alternative is for them asking The
20 Court to decide minority because the
21 statute is very clear "and did not
22 otherwise provide for the needs of the
23 decedent during his or her minority." I
24 mean Ms. Murphy is asking This Court to
25 essentially decide the question that has

1 been the subject of many disputes and
2 still today. When did this child become
3 a minor? She is saying it's in utero.
4 So does that mean that upon conception
5 when a woman has a right to choose
6 whether or not to have the child or to
7 abort the child that then -- then that
8 period of time is excluded because at
9 the current precedent that we have in
10 our law a woman has a right to abort
11 that child? I mean we're going back to
12 that argument. Does it mean that the
13 morning after pill is now something that
14 has to be addressed between two
15 individuals who become sexually intimate
16 with each other? I mean that is where
17 we are headed with what Ms. Murphy is
18 asking The Court to do. In this case
19 Mr. Collins agreed that Ms. Murphy would
20 serve as his representative, and she had
21 a fiduciary duty to do so. During the
22 course of this litigation no one asked
23 to take Mr. Collins' deposition about
24 how he was feeling or dealing with the
25 grief of losing a child. Do you want to

1 know why? She was representing his best
2 interest. She was deposed. She agreed
3 that she would do so. That's why he
4 indicated that he would agree that she
5 could serve as the Personal
6 Representative. It is not correct that
7 what happened was that upon her death he
8 suddenly was involved to say, "I need to
9 be a part of a lawsuit." That's not
10 what happened. She came to his sister's
11 house and said, "We need to grieve
12 together." And, yes, a lawsuit had
13 started several months later I believe.
14 And they agreed because she gave his
15 daughter someone else's name that there
16 would have to be a DNA test because we
17 had to open an estate. And they agreed
18 to take it. And he agreed to pay for
19 half. Everyone knew this was his child
20 when they saw those pictures. That's
21 what's set forth in the Affidavit. She
22 represented his interest in this lawsuit
23 on the wrongful death action. If you
24 take a look at the case that was cited
25 by Mr. Marchbanks there was the Scott

1 versus Porter case. What we have here
2 it's clear-cut in this wrongful death
3 action that these individuals during the
4 course of the birth of this child harmed
5 irreparably her in such a way that she
6 couldn't survive. This case in Scott
7 versus Porter talks about the fact
8 specifically that our Supreme Court --
9 and it's cited Lucht versus Youngblood,
10 266 South Carolina 127, and it's 1976
11 case but it has been essentially our
12 precedent, "losses to parents from the
13 untimely death of a child are
14 intangibles, the value of which cannot
15 be determined by any fixed yardstick."
16 She agreed to represent him in this
17 lawsuit. She said she would do so, and
18 he trusted her to do so. And when she
19 entered into the settlement agreement
20 she indicated that she thought it was
21 not only best for her, but best for him.
22 That's what that Court Order from the
23 Circuit Court says. They paid out the
24 maximum in that settlement that they
25 could under the policy because of what

1 happened to that child during the course
2 of the birth. She represented his
3 interest in that lawsuit. He was never
4 asked otherwise. I also want to point
5 out to The Court that essentially what
6 is happening in this instance is not a
7 windfall to Mr. Collins. The statute is
8 clear, the legislature considered it. I
9 mean we're not talking about a child who
10 was any age whatsoever. If you take a
11 look at the Affidavits that were
12 presented what Ms. Murphy is asking The
13 Court to do is come up with some type of
14 tests when a child dies at birth, and
15 it's a legal impossibility for the other
16 parent to support or even become a part
17 of that child's life, because they
18 didn't live, so then develop some type
19 of factors that would then warrant
20 whether or not the other parent received
21 a half, one-half as the statute
22 provides, of the proceeds. And if you
23 look at what she's pointed out whether
24 or not the parents spent Christmas with
25 the other parent's family, whether or

1 not the parent purchased a comforter or
2 a crib, whether or not the other parent
3 had a relationship with the in-laws, my
4 point is specifically from her
5 Affidavits that she put and what her
6 statements are in her Motion before The
7 Court the tears that were cried and how
8 many days of mourning were experienced
9 by each, the Court cannot measure those
10 things. I mean if This Court issues a
11 ruling that either substantially
12 decreases the portion that Mr. Collins
13 receives or denies him wholly any of the
14 proceeds, essentially The Courts is
15 saying when this type of circumstance
16 happens unless the father demonstrates
17 that he has tried every possible way to
18 spend time with her or her family or
19 give her money or buy something, he's
20 not entitled to anything, that his
21 feelings don't matter whatsoever, but
22 that those feelings have to be
23 considered and we're going to figure out
24 how to measure them. I submit to The
25 Court that the reason you don't see that

1 in this statute is because The Court is
2 not going to do that test. There is no
3 way to do it. It's impossible. It's
4 impossible. It would be requiring
5 fathers to come before The Court to say,
6 "I just want it on record that's my
7 baby, and I want to be a part of its
8 life, help me. Make her do something.
9 Make her let me do what? Go to every
10 doctor's appointment. I get a say in
11 the name. I need a Court Order that
12 says I get to decide what this baby's
13 first name is, and I want to make sure
14 what the surname is." That's not the
15 law in this state or in any state that
16 I'm aware of. When this child is born,
17 yes, it becomes incumbent upon a father
18 to step up, and if he doesn't or if the
19 mother precludes it, then they go down
20 to Family Court and fight about it. But
21 this child did not survive. And even if
22 we -- if The Court decides to take the
23 next step and take a look at 63-5-20
24 that talks about support, that statute
25 still directs The Court to consider

1 facts as to whether or not the father
2 was precluded from supporting or was
3 somehow denied the right to be a part of
4 that child's life. And I submit those
5 facts are here, but we don't even need
6 to get there because the statute is
7 clear on its face. I'm just going to
8 ask Mr. Read to address one additional
9 point regarding that statute.

10 THE COURT:

11 Okay. Can I ask you a couple of
12 questions before you do that?

13 MS. SALVINI:

14 Yes, ma'am.

15 THE COURT:

16 And this may be something that Mr.
17 Marchbanks might need to answer for me.
18 The medical bills for this child's
19 delivery and the one hour that the child
20 lived, were there no bills because of
21 the negligence of the doctor so there
22 was never like a payment made, or do
23 you?

24 MR. MARCHBANKS:

25 I'll address that.

1 THE COURT:

2 Okay.

3 MR. MARCHBANKS:

4 The child was on Medicaid.

5 THE COURT:

6 Medicaid.

7 MS. SALVINI:

8 Uh-huh.

9 MR. MARCHBANKS:

10 Yeah, which is specifically addressed in
11 some of the case law that I presented.

12 THE COURT:

13 So is it -- so then I can assume that
14 Mr. Collins never made any payment to
15 the hospital of any type for the one
16 hour after he learned he was the father?
17 Is there money owed? Is there something
18 -- there was nothing like that?

19 MS. SALVINI:

20 Medicaid covered all the bills. I
21 believe that we actually submitted a
22 portion of Ms. Murphy's deposition
23 testimony for The Court to attach to our
24 filing in which she confirmed under oath
25 that Medicaid paid for those bills and

1 even I believe during the course of her
2 pregnancy.

3 THE COURT:

4 Was Mr. Collins working at the time?
5 Did he have an income?

6 MS. SALVINI:

7 He was working. Uh-huh. In fact,
8 that's how they met was at work.

9 THE COURT:

10 And had he done anything in terms of --
11 have the Medicaid people asked him for
12 reimbursement or anything like that
13 since he's been listed as the father, or
14 there's not been anything like that?

15 MS. SALVINI:

16 They have not done so, Your Honor.

17 THE COURT:

18 And he hasn't volunteered to say, "Hey,
19 I had a job. You know let me," or
20 anything like that?

21 MS. SALVINI:

22 Under the advice of counsel because he
23 came to us pretty quickly --

24 THE COURT:

25 Okay.

1 MS. SALVINI:

2 -- after we had the DNA test, and there
3 had to be a decision about who was going
4 to serve as the Personal Representative,
5 we did not advise him to do that all. I
6 told him to just see how this lawsuit
7 goes.

8 THE COURT:

9 Okay.

10 MS. SALVINI:

11 Because we assumed, which I do believe
12 that there was a mention in the
13 settlement about some -- there was a
14 small portion of medical bills that were
15 paid after the settlement. I'd have to
16 double check and take a look at that.
17 And we had agreed to that.

18 THE COURT:

19 I would assume with the facts as they
20 played out that the hospital would not
21 be seeking, but, you know, I didn't
22 know. The other question I had for you,
23 Ms. Salvini, is in the 15-51-40, it does
24 say -- let's see. "The Probate Court
25 may deny or limit." So it says the

1 Probate Court can deny or limit, and I'm
2 focusing on the word "limit." It
3 doesn't give any factors that would
4 allow me or the Probate Court to say
5 maybe this shouldn't be 50/50, maybe it
6 should be 60/40, maybe it should be
7 70/30. There are no factors given
8 there, it just says the Probate Court
9 may limit. Is there any case law or
10 argument that you would like to make in
11 terms of what does that essentially
12 mean? Does that mean it's
13 discretionary? Does it mean that I have
14 to look at some objective factors? What
15 does that word mean in your estimation?
16 MS. SALVINI:
17 And I respectfully disagree with The
18 Court's initial reading --
19 THE COURT:
20 Okay.
21 MS. SALVINI:
22 -- of the statute. And I don't know of
23 any case law that I could cite to the
24 Court --
25 THE COURT:

1 Okay.

2 MS. SALVINI:

3 -- at this time. But it does -- it does
4 say The Court may deny or limit, and
5 there are no specifics about the
6 limitations.

7 THE COURT:

8 Correct.

9 MS. SALVINI:

10 However, in order for The Court to even
11 get there it gives The Court guidance
12 and the specific factor, the primary
13 factor that The Court has to find, and
14 that is whether or not the parent or
15 parents failed to reasonably provide
16 support for the decedent as defined in
17 the Family Court statute and did not
18 otherwise provide for the needs of the
19 decedent during his or her minority,
20 which that specific factor is the
21 primary factor. The Court can't even
22 get to whether or not there should be a
23 limit and what to consider as a limit
24 until The Court gets to the first factor
25 which is whether or not --

1 THE COURT:

2 Sure.

3 MS. SALVINI:

4 -- a parent reasonably failed to provide
5 support, and the statute by its very
6 nature, by -- it's an "and" and
7 indicates minority. And in order for
8 The Court to get there The Court has to
9 find that the child actually lived.

10 THE COURT:

11 So to take a little reading of the
12 statute, that's what you're arguing, I
13 never get to that point?

14 MS. SALVINI:

15 Yes.

16 THE COURT:

17 If you read the statute, the plain
18 language, I don't get to that point
19 because of the other factors in the
20 statute that talk about support and the
21 inability -- or the ability -- or the
22 failure to provide support?

23 MS. SALVINI:

24 I mean The Court has to find
25 specifically by a preponderance of the

1 evidence that the parent failed to --

2 THE COURT:

3 Correct.

4 MS. SALVINI:

5 -- reasonably provide support and --

6 THE COURT:

7 Correct.

8 MS. SALVINI:

9 -- did not otherwise provide support
10 during the minority before The Court
11 could go on to the next question as to
12 whether or not there should be a
13 limitation or a denial.

14 THE COURT:

15 Okay. So if you look just at that --
16 that clause the minority that this child
17 had was one hour.

18 MS. SALVINI:

19 Yes, ma'am.

20 THE COURT:

21 I mean technically.

22 MS. SALVINI:

23 Technically.

24 THE COURT:

25 And for that one hour -- and your client

1 eventually learned he was the father at
2 some point. I think it was after -- I
3 don't know how soon after the birth that
4 he realized he was the biological
5 father. I don't remember from the
6 Affidavit.

7 MS. SALVINI:

8 He was told before, and that's -- they
9 were together, and then after they broke
10 up she maintained he was the father, and
11 that's why he went to the ultrasound.
12 It was after that that then it became a
13 dispute, I guess, between the parties as
14 to whether or not he was the father
15 because she was claiming that Mr. Fields
16 was the father.

17 THE COURT:

18 So after the child was born when did he
19 know he was the father, your client?

20 MS. SALVINI:

21 He already knew that he was the father
22 before.

23 THE COURT:

24 They did a DNA before the baby was --

25 MS. SALVINI:

1 They did not do a DNA before. He
2 believed that he was the father.

3 THE COURT:

4 Okay.

5 MS. SALVINI:

6 Because of what she represented to him.

7 THE COURT:

8 Okay. But at some point after it was
9 confirmed with a DNA test?

10 MS. SALVINI:

11 We had to, yes, Your Honor.

12 THE COURT:

13 Okay.

14 MS. SALVINI:

15 Because of the opening of the estate.

16 THE COURT:

17 And how long after the birth did that
18 -- was that done?

19 MS. SALVINI:

20 I believe that it was done shortly
21 thereafter, maybe several weeks. I want
22 to say maybe three.

23 THE COURT:

24 Okay.

25 MS. SALVINI:

1 I'd have to double check, but --

2 THE COURT:

3 All right..

4 MS. SALVINI:

5 But it was done after. It was done
6 after the child had died they did a DNA
7 because she had given the child someone
8 else's surname.

9 THE COURT:

10 So if we're looking literally at the
11 plain language of this statute the
12 minority of this child was one hour?

13 MS. SALVINI:

14 Yes, ma'am.

15 THE COURT:

16 During that one hour did your client
17 provide any support for that child
18 either -- during that one hour we know
19 he didn't, and he know the reasons why,
20 you know, he was prohibited from coming.

21 MS. SALVINI:

22 Right.

23 THE COURT:

24 After he learned or confirmed or he
25 knew, did he do anything to pay any

1 money, do anything that would have
2 amounted to support for that short
3 minority?

4 MS. SALVINI:

5 Okay. So I'm going to -- I'm going to
6 answer in two parts.

7 THE COURT:

8 Okay.

9 MS. SALVINI:

10 The first -- the first position that I'm
11 taking in respect to that, Your Honor,
12 is it was a legal impossibility for him
13 to pay anything. Medicaid covered the
14 hospital bills. As far as whether or
15 not The Court is asking me if he paid
16 for the funeral or if he made donations
17 or anything to that --

18 THE COURT:

19 No, no, no, no, no, no.

20 MS. SALVINI:

21 -- I mean, no. I mean he did not give
22 her any money nor did he offer to give
23 her any money.

24 THE COURT:

25 Well, let me just ask you this: When

1 you say it's a legal impossibility, are
2 you telling me that I'm a parent of a
3 child that the bills are being paid by
4 Medicaid, I can't call the Medicaid
5 office and say, "I have a job. The
6 state doesn't need to pay my child's
7 healthcare. I want to pay the bills"?
8 I mean is there -- are you saying they
9 would have prohibited him from -- from
10 paying any support legally to "No, sir,
11 I know you're working. You're making
12 money. Medicaid is for indigent people,
13 but we aren't going to take your money"?

14 MS. SALVINI:

15 No, but I think the facts that are
16 before The Court don't warrant that, and
17 let me tell The Court why.

18 THE COURT:

19 Uh-huh.

20 MS. SALVINI:

21 She, on the Birth Certificate, named
22 someone else, and told him that he was
23 not to come to the funeral and that he
24 needed to respect her privacy, and that
25 she was -- she was hurting enough and

1 did not want to have to essentially deal
2 with him. Before there was a DNA test
3 Jeremy Fields was named as the father.
4 and was involved in everything. He
5 respectfully precluded. So at the time
6 that he retained my office, and our
7 position was that until we come into
8 Probate Court -- because she had opened
9 an estate. I mean we did the DNA test
10 if my recollection is correct -- and it
11 has been a couple of years now -- but
12 after the estate was already opened and
13 we were contesting the fact that even on
14 the initial filing of the Probate papers
15 she had named Mr. Fields. So there was
16 no ability for him, and nor would I have
17 advised him, to go down to the Medicaid
18 office and say, "She's wrong. I'm the
19 dad. This child has passed away, but
20 you've got to do something about this so
21 that I can pay this bill, because I'm
22 responsible and I'm working."

23 THE COURT:

24 Right.

25 MS. SALVINI:

1 I just wouldn't advise him to do that.
2 I don't want him to be blamed for the
3 course of action that I or my law
4 partner took in this case.

5 THE COURT:

6 I'm just asking this because if we're
7 taking literal meanings and the plain
8 meanings of the statute --

9 MS. SALVINI:

10 Yes, ma'am.

11 THE COURT:

12 -- and this statute talks about the
13 denying or limiting a parent's right to
14 inherit if they did not do certain
15 things during the child's minority.

16 MS. SALVINI:

17 Uh-huh.

18 THE COURT:

19 Okay. So this child had an hour before
20 she died tragically. So I'm looking
21 then the statute says, "Okay. Did he
22 support, do anything?" And, of course,
23 he wasn't there, but he later learned or
24 confirmed by DNA testing that he was the
25 father.

1 MS. SALVINI:

2 Yes, ma'am.

3 THE COURT:

4 So for that one hour of time his
5 daughter was incurring medical bills
6 that were -- that were submitted to the
7 state to be paid because the child was
8 determined to be an indigent patient.
9 And he learns about it, and he's got a
10 job. And had they been married or maybe
11 had he stepped up maybe the child
12 wouldn't qualify as an indigent child.
13 I don't know. I don't know what he
14 makes. I don't know anything about
15 that. He's got other children. I
16 assume they're not on Medicaid. So if
17 I'm looking literally at the statute
18 without going down any slippery slopes,
19 here's the minority. Was support paid?

20 MS. SALVINI:

21 And let me ask some more questions.

22 (Conferring with client.)

23 THE COURT:

24 Okay.

25 MS. SALVINI:

1 So both of his current children are on
2 Medicaid because he doesn't earn enough
3 and neither does his child's mother, so
4 that may alleviate some concerns that
5 This Court may have. His two other
6 minor children, which are with the same
7 woman, are on Medicaid. But -- and I
8 see where The Court is headed in terms
9 of that one hour, but however, whatever
10 was incurred -- and I don't know what
11 was billed to Medicaid, was addressed in
12 the wrongful death suit, which would
13 then reimburse Medicaid anything that
14 would have occurred during the course --
15 at least that's I would assume. I don't
16 have that before me.

17 THE COURT:

18 Right.

19 MS. SALVINI:

20 But if The Court's decision is that
21 there was an hour of life, and he should
22 have taken the steps to do that, The
23 Court would essentially be punishing him
24 for the advice that his counsel gave him
25 because we did not advise him to do

1 that. You know he did not have those
2 funds. He works at Walmart. He doesn't
3 have a high school education. He has
4 two other children who are on Medicaid.
5 Yes, he earned a living, and he -- he is
6 providing for his family, and he has his
7 own home. I just don't -- I know where
8 The Court is headed with that, but I
9 don't know how The Court at that point
10 is using that one hour of, "Okay. What
11 should he have done within that one
12 hour?"

13 THE COURT:

14 Well, what I'm doing is I'm -- I'm just
15 engaging in some argument to try to
16 figure out how we apply these statutes
17 in this very, very unique set of facts.
18 If we open the statute up to
19 interpretation, you know, he wants it
20 opened up to did he help her during the
21 pregnancy and did he help pay the
22 funeral bill? He didn't come to the
23 funeral. All of these things he wants
24 me to open it up maybe and look at that.
25 You're saying I don't need to do that.

1 I've got a statute that clearly says
2 that parents inherit unless I find by
3 the preponderance of the evidence that a
4 parent didn't provide support, and in
5 this case this child didn't live. There
6 was no opportunity for him to provide
7 support. He was faced with a woman who
8 had another man involved, had another
9 man on the Birth Certificate. So if I
10 open it up for him I'm opening it for
11 you to, you know, make all of those
12 arguments which are sound and good. If
13 I don't open it up either way, and I
14 just look at this statute, then it tells
15 me, "Okay. I've got two parents. I
16 have a decedent whose minority was one
17 hour. I know the mother went through
18 hell, so we don't have to worry about
19 it." I'm looking at this father. What
20 did he do for that hour of that child's
21 life to enhance that child's life,
22 support the child, pay the child's
23 medical bills, buy -- -- you know, buy a
24 coffin? What did he do when he found
25 out for sure he was that child's

1 biological father? What did he do in
2 the nature of support retroactively? He
3 doesn't have to show up. What did he do
4 in terms of support under this
5 definition or it talks about "reasonably
6 provides support and did not otherwise
7 provide for the needs of the decedent
8 during his or her minority." This
9 minority was a tiny spot in time, and it
10 may be arguably unreasonable for him to
11 have done that, but we know that the
12 child lived for an hour. We know at
13 some point he got a DNA test, and he
14 knew he was the dad. We know the child
15 had a Medicaid bill. That's the only
16 type of financial support that could
17 reasonably be paid because there's no
18 child support. The child incurred a
19 medical bill directly for --
20 unfortunately. And I'm surprised they
21 even turned in a bill to Medicaid
22 frankly for what happened, but. So I'm
23 trying to focus on if we're not going to
24 open this statute up for him to talk
25 about prior to the birth and all that

1 because it's not relevant, then I'm
2 going to have to -- and you don't want
3 me to open it up because you -- you
4 know, your client was not listed on the
5 Birth Certificate. He was prevented
6 from coming in, you know. So I just
7 look at the words, look at the words,
8 and what they mean, "Did the parent
9 support the child or the decedent during
10 his or her minority." That's what it's
11 asking me. Did they provide reasonable
12 support, by the preponderance of the
13 evidence, for the minority of the child?
14 And so that's why I'm asking because
15 we're going to have to when I decide
16 this case either go down that road where
17 it's just the plain words, these facts,
18 apply the facts, this is the result. Or
19 because the facts are so unusual do we
20 need to open it up and say, well,
21 reasonably provide for the needs because
22 of this particular situation where this
23 child only lives an hour do we say that
24 involves making sure the child had
25 proper medical care? Does that mean the

1 child -- you know, should he have done
2 that? And like you said it would
3 require fathers to go down and say, "I
4 need to do this while the child is in
5 utero," which is, you know, an absurd
6 result. So that's why I'm asking you
7 because if I don't go down a road where
8 we can open it up a little bit for
9 interpretation, pull in some of these
10 cases where it talks about a father's
11 constitutional right, and what their
12 obligations are once they know they have
13 a child, if I just limit it narrowly to
14 this statute and don't look anywhere
15 else, then I'm confronted with support
16 during the child's minority. So I mean
17 I'm just -- I'm going to let you argue
18 it or -- I'm going to let Mr. Marchbanks
19 address it, but I'm just sort of
20 thinking out loud so that you-all can
21 kind of tell me what you think the law
22 should be on that.

23 MS. SALVINI:

24 I have some thoughts, but I'm going to
25 let Mr. Read --

1 THE COURT:

2 Okay.

3 MS. SALVINI:

4 -- address it because he has --

5 THE COURT:

6 Okay. Thank you, Mr. Read.

7 MR. READ:

8 Yes, ma'am, thank you for hearing. With
9 regard to the question about that hour,
10 and the question about when he knew for
11 sure that he was the father, he was
12 joined as a statutory beneficiary in
13 this lawsuit, and as part of the
14 wrongful death action those with
15 Medicaid proceeds or what Medicaid paid
16 is included and considered in part of
17 that. So that would have been his
18 participation within that lawsuit would
19 have been that thing that closes the
20 door, and that's the only thing he
21 possibly could have done to have a role
22 such that it fulfilled that statute, and
23 I think it fulfills it. I think that
24 connects the dots, Your Honor, because
25 that's what it is. And --

1 THE COURT:

2 And so what you're saying is those bills
3 that came a part of the list of damages
4 and --

5 MR. READ:

6 That's correct.

7 THE COURT:

8 -- because they became a part of that,
9 then the amount of the settlement took
10 all of that into consideration?

11 MR. READ:

12 It would have to, Your Honor.

13 THE COURT:

14 And -- okay. All right.

15 MR. READ:

16 And the next -- the next point I would
17 like to raise, Your Honor, is that as
18 we're going through the statute I want
19 to retread a little bit of ground if I
20 can.

21 THE COURT:

22 Sure.

23 MR. READ:

24 When we're talking about the question
25 about whether the standard that The

1 Court is applying under 15-51-40, and
2 we're saying that -- I will restate it,
3 "If The Court determines by a
4 preponderance of the evidence that
5 parent or parents fails to reasonably
6 provide support for the decedent as
7 defined in 63-5-20," -- which I'm going
8 to get down to in just a second, and I
9 know that's been hit on for just -- for
10 a moment, but "and did not otherwise
11 provide for the needs of the decedent
12 during his or her minority." The point
13 here is that if that first is a legal
14 impossibility you don't even get to the
15 question about whether the minority --
16 what "minority" actually is because you
17 have to be able to satisfy that first
18 part. The effort should show that they
19 failed to reasonably provide support as
20 defined in 63-5-20 in order -- if that's
21 an impossibility it would be an
22 impossibility for them to do both, and
23 both is what's required in the statute.
24 Do you see what I'm saying, Your Honor?
25 THE COURT:

1 Uh-huh.

2 MR. READ:

3 So you don't get to the ambiguity that
4 it's talking about.

5 THE COURT:

6 So what you're saying is -- and you can
7 construe this -- they have to meet both
8 of those rather than an "or"?

9 MR. READ:

10 Most assuredly.

11 THE COURT:

12 So you're just saying that they have to
13 have met both of those exceptions in
14 this statute, one being the Family Court
15 statute and the other being "did not
16 otherwise provide for"?

17 MR. READ:

18 That's correct.

19 THE COURT:

20 Okay.

21 MR. READ:

22 During the minority, and that's the
23 ambiguity that they've seized on to say
24 that This Court has to jump into that
25 hole. But This Court doesn't have to

1 jump into that hole because we've got
2 clear law on the one side connected by
3 an "and" to this alleged ambiguity about
4 what a "minority" is.. And, Your Honor,
5 past that if we actually -- and I know
6 we've -- we have trod around the actual
7 63-5-20 that it says to apply. First
8 off, in subsection (a), it states that
9 any able-bodied person capable of
10 earning a livelihood who shall without
11 just cause -- and we've talked about
12 that here for a while. So that's
13 another -- I believe the just cause
14 situation is being excluded, number one,
15 from the -- from the process. Being
16 told that you're not the father, the
17 systematic exclusion from the inclusion
18 in the child's development I guess is
19 what you would say in utero, would be
20 just cause. Exclusion from the birth.
21 We have in their own Affidavit -- it's
22 not an Affidavit, but it is a brief, I
23 guess, written that Ms. Murphy has
24 verified. This is a reading from
25 Plaintiff's Memorandum in Support of the

1 Motion to deny Mr. Collins proceeds.
2 And if I look at page three of 12 it
3 states that Ms. Murphy did not
4 personally notified Mr. Collins as he
5 had shown no material interest in the
6 pregnancy. And what she's talking about
7 is her due date and entering the
8 hospital and being induced. So she
9 actually prevented him from being there
10 and participating in that day. That's
11 "just cause" if we're talking about that
12 hour again, which we've also talked
13 about being satisfied by his inclusion
14 in the lawsuit.

15 THE COURT:

16 Does that Affidavit at that point does
17 she believe he's the father, or does she
18 believe the other guy is the father?

19 MR. READ:

20 What she believed and what she says, I
21 think, are very different things in this
22 case, Your Honor.

23 THE COURT:

24 Okay.

25 MR. READ:

1 She says -- well, she was driven to the
2 hospital by Mr. Fields, who was her
3 live-in boyfriend at the time. So
4 whatever she believed, Mr. Fields was
5 present throughout this process instead
6 of Mr. Collins. So the exclusion is
7 therefore complete. Now -- and we can
8 get into the just cause question, but I
9 just wanted to draw The Court's
10 attention to the "and" question to the
11 point that he was involved in the
12 lawsuit she did have a fiduciary
13 responsibility. She was representing
14 his interests; his damages were part of
15 the lawsuit as well, and that the
16 Medicaid question would have been folded
17 into that. And then if The Court takes
18 it down to the just cause question,
19 which we've been speaking about
20 directly, we thought -- or briefly now
21 it's directly I guess, Your Honor, that
22 that also would justify The Court's
23 decision in favor of the Respondent Mr.
24 Collins.

25 THE COURT:

1 Thank you. All right.

2 MS. SALVINI:

3 I just want to point out one other thing
4 before Mr. Marchbanks address, but if
5 The Court is going to even go down the
6 path of looking at that one hour then
7 The Court is charged with looking at 63-
8 5-20 (a) despite the argument about the
9 "and." And essentially what The Court
10 has to find if you take a look at that
11 statute is the definition of what
12 "reasonable support" would be during the
13 course of that hour. And, again, I'm
14 going to assert the argument of a legal
15 impossibility because in reading that it
16 says, "reasonable support means amount
17 of financial assistance, which when
18 combined with the support of the member
19 is reasonably capable of providing for
20 himself or herself," and this is where I
21 want The Court to focus in on, "will
22 provide a living standard for the member
23 substantially equal to that of the
24 person owing the duty to support it."
25 There's no living standard here, Your

1 Honor. It was one hour of being -- and
2 I -- I do not want to hurt the parents
3 by going through this, but of being
4 essentially tubes forced in anything to
5 keep her from dying. There is no living
6 standard for The Court to get to, and if
7 The Court is looking at Medicaid, well;
8 his own children are on Medicaid. I
9 mean if The Court is looking to whether
10 or not he offered to go down to the
11 office and say, "I'll help reimburse,"
12 well, a lawsuit was started, and he was
13 joined in that lawsuit that would
14 address that. But there is no living
15 standard here even if you get down to
16 that definition, and that is where The
17 Court would have to go.

18 THE COURT:

19 Right. And I'm -- I'm doing that
20 because I know that there's been some
21 argument that I don't need to go out and
22 look at all these extraneous factors, I
23 just need to stick to the words of the
24 statute. So if I get to that question
25 despite the "and," it does talk about

1 providing for the needs of the decedent
2 during his or her minority. It doesn't
3 say at the same time. You know so
4 that's why I'm looking at this period of
5 time and what he did, if anything, to
6 pay for the treatment that the doctors
7 were trying to do to save her life. You
8 know did he, "This is my daughter.
9 These people were trying to help her
10 live. I have a job. Let me see, as
11 this child's father, what I can do, even
12 if it's not but a 100 bucks," you know.
13 Or does he say, "It's Medicaid. I don't
14 have to. You know my other two children
15 are on Medicaid. I'm not going to -- I
16 don't have to do that." You know I'm
17 looking at the only type of support that
18 could have been paid and that is paying
19 for the medical care. You know there's
20 no standard of living, you're right.
21 It's like providing health insurance for
22 a child, it is also a part of child
23 support, you know. It's something that
24 factors in to the amount, the amount you
25 have to pay, all of that. So that's the

1 only need this little girl had, so if
2 I'm sticking strictly to this, and this
3 is only if we get to that because of the
4 "and," that's why I'm looking at it.
5 And I understand that would be an
6 unusual thing if someone did that and
7 said, "Well, okay, I'm going to go down
8 to the Medicaid office and do what I can
9 do to help defray some of the costs that
10 the state paid for my daughter." And so
11 I have to ask the question because it is
12 pertinent, I believe, to what my job is,
13 which is to determine what level of
14 support, if any, was paid.

15 MS. SALVINI:

16 Yes, ma'am, and I think that our -- that
17 our position is that this lawsuit
18 commenced. That's where -- that's where
19 we're headed. It's not a matter of --
20 there was not -- there was not a
21 conscious thought by Mr. Collins that
22 "My other kids are on Medicaid, and I
23 don't need to pay anything."

24 THE COURT:

25 Right.

1 MS. SALVINI:

2 I think it was -- it was more of the
3 position of a lawsuit was going to
4 commence that was going to address the
5 hospital if there is any hospital bills
6 and what occurred as a result of the
7 death of this -- the child.

8 THE COURT:

9 Right. Okay.

10 MS. SALVINI:

11 And I think that we're focused in
12 primarily on The Court maintaining the
13 integrity of the statute itself is
14 because it specifically talks about the
15 support for the decedent. And
16 everything that Mr. Marchbanks has
17 raised is support for a mother who was
18 pregnant.

19 THE COURT:

20 Okay. Thank you. Mr. Marchbanks.

21 MR. MARCHBANKS:

22 Well, first of all, Your Honor, I want
23 to kind of go back, and I made some
24 notes throughout the course of their
25 argument, and just touch on a couple of

1 things. I think initially Ms. Salvini's
2 recitation of the facts does at least
3 give me pause and make me wonder if this
4 isn't a case because the facts even
5 though there are some -- there are some
6 points that we agree on, there is a
7 skeletal version of things that we agree
8 on, which I tried to touch on, there is
9 obviously, based on what Ms. Salvini
10 discussed as far as the facts, there's a
11 lot of disagreement in some of the
12 things that she brought up. And she
13 said that she didn't agree with what I
14 did, so clearly there's -- there's a
15 factual issue involved. The -- now, the
16 other thing that she touched on that I
17 want to mention is, you know, she stated
18 that nobody asked Mr. Collins to be
19 deposed during the process of the civil
20 lawsuit, nobody sought him out, nobody
21 did whatever. Well, I would just like
22 to point out that, you know, while my
23 client didn't, she was being represented
24 by an attorney in Charleston who never
25 felt it reasonably important to depose

1 Mr. Collins. No defense lawyer in the
2 case, as you may imagine, with the
3 number of defendants and the type of
4 defendants that are involved here, you
5 know, there's a slew of defense
6 attorneys, in looking at the facts of
7 the case nobody determined that his
8 input was necessary or even required.

9 THE COURT:

10 Well, was his damages included in the
11 settlement?

12 MR. MARCHBANKS:

13 Well, and when it comes to that, you
14 know, the lawsuit -- his damages -- the
15 lawsuit, the Plaintiff in the lawsuit is
16 Lauren Murphy, individually, and the
17 estate of Tynslee, of which she is
18 Personal Representative. Okay?

19 THE COURT:

20 Uh-huh.

21 MR. MARCHBANKS:

22 And that circles back to Ms. Salvini's
23 statement that she, being the Personal
24 Representative, signed a Petition
25 stating that this settlement is in the

1 best interest of all the statutory
2 beneficiaries, which is fine because in
3 essence what they're hinting at there,
4 although they don't want to get
5 completely into it, I don't think, is a
6 collateral estoppel argument. What
7 they're hinting at is that since Ms.
8 Murphy made the determination that this
9 settlement of this lawsuit was in the
10 best interest of all statutory
11 beneficiaries she's already concluded
12 and The Court should, you know, hold her
13 to it that she meant him, too. Okay.
14 But the issue is all the statutory
15 beneficiaries that is something that
16 obviously has to be done in the
17 settlement of that suit, which involves
18 a different set of facts, it involves
19 different law altogether than what we're
20 doing here today. It's a whole
21 different issue. So effectively -- and
22 then as a matter of fact the very last
23 line of the Order, Judge Verdin states,
24 you know, and the remainder of the
25 proceeds after all of the debts and

1 legal fees and everything are taken out,
2 she instructs that the remainder of the
3 proceeds are to be distributed in
4 accordance with law. Well, that's what
5 we're here for today is to determine how
6 the law should help us and instruct us
7 in determining where these proceeds
8 should go. So I don't know that that
9 really comes into play here. I think
10 we're going through -- Ms. Murphy has
11 been going through the proper channels
12 and the proper procedures to have this
13 addressed in an upfront and aboveboard
14 manner. Now, that said, the other thing
15 that is interesting to me is how all of
16 a sudden we are reading 15-51-40 in its
17 entirety, and now we're engaged in the
18 discussion of the "and" and the "did not
19 otherwise provide for the needs of the
20 decedent during his or her minority." I
21 find it's interesting that we're
22 discussing that today, yet that was left
23 out of every brief that they submitted
24 to The Court.

25 THE COURT:

1 It's probably because I asked about it.
2 It's my little insertion into this
3 debate.

4 MR. MARCHBANKS:

5 And I appreciate The Court asking about
6 that, because I believe that phrase, as
7 I stated before, is critically
8 important. I do believe that that is
9 what muddies the water in 15-51-40, and
10 I additionally believe that not only
11 does that get us over at least to the
12 Child Support Statute -- or I say Child
13 Support Statute, it's not a Child
14 Support Statute, it's 63-5-20, the
15 obligation to support statute. You know
16 one way or the other both of these
17 statutes are statutes that can be
18 interpreted 20 different ways. The
19 obligation to support statute may be the
20 basis upon which a child support
21 calculation is made, but nowhere in this
22 statute does it specifically delineate
23 exactly how a person needs to support
24 the child. It just says they have to.
25 And it says that if they don't they

1 could suffer consequences for that. You
2 know here you have a situation where,
3 you know, The Court has asked a few
4 times, you know, regarding after he
5 found out he was the father what did he
6 do? He had done nothing. And the whole
7 idea of, you know -- the whole idea of
8 -- you know, putting him in a situation
9 where he was advised by his attorneys
10 not to do anything, you know, that falls
11 short with me because well before he --
12 any Probate document was filed, well
13 before he sought out legal counsel this
14 child had passed. This child had been
15 buried. And during that time and before
16 he was told, which may have been
17 correctly told, you know, "Wait. Wait.
18 You don't need to do anything. Let's
19 figure out this thing shakes out before
20 you do anything," well before he was
21 told, to me if it's a legal
22 impossibility, for what? He's this
23 child's father. He has an obligation.
24 He has an obligation to support this
25 child whether that be emotionally,

1 financially, in any way shape or form
2 that he possibly could, he has an
3 obligation. These statutes are written
4 because he has an obligation as the
5 child's father, and he did nothing.
6 Now, my concern, and, again, now -- and
7 they've broadened this out in, you know,
8 are we going to take back in utero. You
9 know that's an interesting argument.
10 Well, let me ask you this: One of the
11 things that I'm curious about, if we're
12 going to broaden it out like that, is
13 this society needs fathers to step up.
14 Our overarching -- one of our biggest
15 overarching problems in our country and
16 in our state and our community is
17 fathers who do not support, who do not
18 participate, and are not involved in the
19 lives of their children and in the lives
20 of their children's mothers.

21 THE COURT:

22 So you're doing a public policy argument
23 now?

24 MR. MARCHBANKS:

25 Amen.

1 THE COURT:

2 Okay.

3 MR. MARCHBANKS:

4 Because if this case awards him 250,000
5 some odd dollars that's going to send a
6 message to any unwed father out there
7 that, "Hey, if something happens, if my
8 child suffers, I don't have to do
9 anything. If my child passes away I
10 don't have to do anything, and I can
11 still make a lot of money."

12 THE COURT:

13 But, Mr. Marchbanks, this is a very
14 unusual fact pattern. The typical case
15 that comes in here under this statute is
16 one in which a child had lived and was
17 injured in a car accident or killed in a
18 car accident and they never paid child
19 support.

20 MR. MARCHBANKS:

21 Uh-huh.

22 THE COURT:

23 And they come in here, and they'll say,
24 "Yeah, I never paid child support, but,"
25 and otherwise -- and did not otherwise,

1 they'll say, I never paid child support,
2 but that child lived with me or lived
3 with my family or I visited that child
4 and brought, you know, tangible items,
5 clothes, diapers. I didn't pay child
6 support the way we've already -- you
7 know, looked at this statute is, okay.
8 They didn't pay child support, and they
9 didn't visit. They didn't pay -- bring
10 toys at Christmas. They didn't -- they
11 didn't do either one. So that has been
12 the common or routine interpretation of
13 this when we're trying to determine
14 whether to limit or deny an inheritance
15 is did they pay child support and if
16 they didn't, do they have a sufficient
17 evidence to say, "I didn't, but I did X,
18 Y, Z. I bought her a car when she was
19 17. I did this. I did this. I did
20 this." So that's how that has been at
21 least applied in situations where a
22 child lives. In this one, as we've been
23 talking about, we have a tiny little bit
24 of time, and the child support analogy
25 here I don't think can come into play

1 unless you consider child support, and I
2 haven't looked at the definition, to
3 also include providing, you know,
4 healthcare or, you know, medical care,
5 or -- you know, I don't know. I'm just
6 trying to reach -- I'm trying to look at
7 it in the way the legislature intended,
8 and I'm trying to figure that out in
9 this very unusual set of circumstances.
10 And I apologize for interrupting you,
11 but I just.

12 MR. MARCHBANKS:

13 I think that's a very good point. And I
14 think -- and a lot of times, you know,
15 it seems like you see -- even if child
16 support wasn't paid there is the
17 potential for a recovery to some degree
18 because the parent did do some things.
19 You know in this particular case we are
20 dealing with a very limited amount of
21 time that the child was alive. And just
22 to -- you know, just to keep it as
23 absolutely narrow as possible in the
24 very limited amount of time that the
25 child died or lived Mr. Collins did

1 nothing. You know there's -- there's no
2 and, there's no this, that or that or
3 and this. It's zero. He contributed
4 nothing. Now, the -- now he had plenty
5 -- he had plenty of opportunity. He had
6 plenty of time to step up in between the
7 time throughout this whole thing. And
8 in regards to Medicaid -- and I'm going
9 to go back to an analogous case, and I
10 point that out. I certainly don't want
11 to mislead anybody, but in the analogous
12 case of Rowe versus Reeves on page 784 -
13 - or on page South Carolina -- it's 392
14 South Carolina 154 is the exact cite of
15 this particular phrase. The very last
16 sentence, I believe, of that page says
17 that the father paid no medical expenses
18 because she was on Medicaid and did not
19 pay any living expenses because the
20 mother lived with her mother and
21 received food stamps. "However, this
22 does not excuse father from contributing
23 more than \$11 towards the mother's
24 pregnancy." Now, again, that's an
25 analogous case, but the reason those

1 cases intrigue me is because the facts
2 are so similar. And the analysis that
3 the courts go through in those cases
4 overlay this perfect. So, again, we're
5 in a situation where a father, if he has
6 divested his constitutional right to
7 have a relationship with his child, how
8 in the world does he have a right to
9 benefit from the child's death?

10 THE COURT:

11 Ms. Salvini or Mr. Read, do you want to
12 just address anything before we wrap it
13 up?

14 MS. SALVINI:

15 Your Honor, I just want to point The
16 Court back to Ms. Murphy's Petition that
17 she filed, and specifically she set
18 forth in there asking The Court to
19 consider denying Mr. Collins any of the
20 proceeds or substantially limiting that,
21 not because of what happened during that
22 hour because she didn't point out what
23 she thought he should have done, but
24 because she's asserting that he should
25 have financially supported her and

1 that's contrary to the law. I mean Mr.
2 Marchbanks wants The Court to take a
3 leap and adopt, which you can see does
4 not -- has no precedential value, the
5 adoption case law and statutes that just
6 don't apply here. They just don't. And
7 if The Court goes down that path to say
8 that somehow in the reading of a statute
9 that's plain in its language that he
10 should have been providing support for
11 the mother the law doesn't support that
12 at all. We're talking about the
13 decendent. This is a he said/she said.
14 I mean of course there are the facts.
15 Everybody is going to say, you know,
16 that they're wrong. They're going to
17 argue about what happened after that, I
18 think they were together like I said
19 four or maybe five months, what happened
20 in the last portion of her pregnancy.
21 But the law simply just does not -- does
22 not support that finding by The Court
23 whatsoever.

24 THE COURT:

25 Okay. I'm going to take this of course

1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF GREENVILLE)

4 I, DONNA B. FRIDDLE, a Notary Public, duly
5 commissioned and qualified in and for the
6 State of South Carolina, do hereby certify
7 that the Probate Court hearing was taken
8 before me on January 9, 2015 at 10:18 A.M.;
9 that said hearing was transcribed under my
10 direction; and that this transcript is a true
11 record of said proceedings. I further
12 certify that I am not of kin or counsel to
13 the parties in this case, am not in the
14 regular employ of counsel for any of said
15 parties, nor am I interested in the results
16 of this case.

17 IN WITNESS WHEREOF, I have hereunto set my
18 hand and affixed my official seal this
19 _____ day of _____, 2015.

20 _____

21 Notary Public for South Carolina

22 My Commission Expires: 01/30/16



Office of the Probate Court

Debora A. Faulkner
Probate Judge for Greenville County
Greenville, South Carolina

www.greenvillegoorgia.org/probate

July 15, 2014

Mr. Charles W. Marchbanks, Jr.
Attorney at Law
1225 South Church Street
Greenville, SC 29605

RE: Estate of Tynslee Elizabeth Fields, Deceased
Probate Court File No. 2012ES2301718

Dear Mr. Marchbanks:

We are returning the Petition to Deny Respondent Wrongful Death Proceeds. Upon review, Judge Sauvain advises it appears a Motion would be filed in the Court which is hearing the Wrongful Death action.

If you have any questions, please call.

Sincerely yours,

Judicial Assistant
Estate Division
(864) 467-7179

Enclosure

Estate Division • 301 University Ridge, Suite 1200, • Greenville, SC 29601 • (864) 467-7170
Protective Proceedings Division • 301 University Ridge, Suite 5600, • Greenville, SC 29601 • (864) 467-7404
Mental Health Division • 301 University Ridge, Suite 5600, • Greenville, SC 29601 • (864) 467-7083
Marriage License Division • 301 University Ridge, Suite 5600, • Greenville, SC 29601 • (864) 467-7171

CASE NO.: 2016-000536 | RECORD ON APPEAL | PAGE 522

STATE OF SOUTH CAROLINA
CERTIFICATION OF VITAL RECORD

DEATH CERTIFICATION

STATE FILE NUMBER: 139-12-018635 AMENDED

DECEDENT'S NAME: *TYNLEE ELIZABETH FIELDS*

AKA's: NA

ARMED FORCES: NO

DATE OF BIRTH:

TYPE OF PLACE OF DEATH: HOSPITAL - INPATIENT

NAME AND ADDRESS OF PLACE OF DEATH: ST. FRANCIS EASTSIDE, GREENVILLE, SC 29615

PLACE OF DISPOSITION: THOMAS MCAFEE CREMATION CENTER

DISPOSITION LOCATION: GREENVILLE, SOUTH CAROLINA

METHOD OF DISPOSITION: CREMATION

DECEDENT'S RESIDENCE: 350 FAIRFOREST WAY APT:8302, GREENVILLE, GREENVILLE COUNTY, SC 29607

PLACE OF BIRTH: SOUTH CAROLINA

SURVIVING SPOUSE'S NAME: NA

FATHER'S NAME: JEREMY PAUL FIELDS

MOTHER'S NAME PRIOR TO FIRST MARRIAGE: LAUREN ELIZABETH MURPHY

INFORMANT'S NAME: JEREMY PAUL FIELDS

MAILING ADDRESS: 350 FAIRFOREST WAY APT:8302, GREENVILLE, SC, 29607

FUNERAL HOME: THOMAS MCAFEE FUNERAL HOME, 639 N. MAIN ST/PO BOX 527, GREENVILLE, SC, 29601

FUNERAL DIRECTOR: TIME COX

EMBALMER'S NAME: ANDREW KUKLINSKI

ACTUAL OR PRESUMED DATE OF DEATH: JUNE 12, 2012

ACTUAL OR PRESUMED TIME OF DEATH: 1756

CAUSE OF DEATH - PART I

DISRUPTION OF CERVICAL VERTEBRAE C5-C6

BIRTH TRAUMA

SEX: FEMALE

SOCIAL SECURITY NUMBER: NA

AGE: 2 HOURS

COUNTY OF DEATH: GREENVILLE

MARITAL STATUS: NEVER MARRIED

RELATIONSHIP: FATHER

LICENSE NUMBER: 1543

LICENSE NUMBER: 3432

MANNER OF DEATH: ACCIDENT

OTHER SIGNIFICANT CONDITIONS - PART II:

NA

CORONER CONTACTED? YES

AUTOPSY PERFORMED? YES

AUTOPSY AVAILABLE? YES

DATE OF INJURY: JUNE 12, 2012

TIME OF INJURY: 0510

INJURY AT WORK? NO

PLACE OF INJURY: HOSPITAL

LOCATION OF INJURY: 701 GROVE ROAD, GREENVILLE, GREENVILLE COUNTY, SC, 29605

HOW THE INJURY OCCURRED?

SHOULDER DYSTOCIA WITH BIRTH TRAUMA

CERTIFIER NAME AND TITLE: CHIEF MED. EXAM MICHAEL E. WARD, LICENSE NUMBER: NA
MD

CERTIFIER'S ADDRESS: 890 W. PARIS ROAD SUITE 110, GREENVILLE, SC 29605

DATE FILED: JUNE 19, 2012

DATE OF ISSUANCE: AUGUST 02, 2012

SPECIAL INSTRUCTIONS:

CAUSE OF DEATH AMENDED BY: DHEC 627 PER MICHAEL WARD, ME 7/24/12. INJURY INFO AMENDED BY: DHEC 627 PER MICHAEL WARD, ME 7/24/12. MANNER OF DEATH AMENDED BY: DHEC 627 PER MICHAEL WARD, ME 7/24/12. .

SC02351871

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

Catherine Templeton
Catherine Templeton
Director and State Registrar

Guang Zhao
Guang Zhao
Assistant State Registrar

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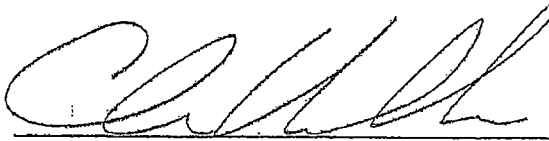
CASE NO.: 2016-000536 | RECORD ON APPEAL | PAGE 523

ANY ALTERATION OR ERASURE VOID THIS CERTIFICATE

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.

August 9, 2016



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

PERRY H. GRAVELY, CIRCUIT COURT JUDGE

CASE NO.: 2016-000536

In the Matter of Tynslee Elizabeth Fields, Deceased,
Lauren Murphy as Statutory Beneficiary, Appellant,

v.

Mark Collins, and The Estate of Tynslee Elizabeth Fields, Defendants,
Of Whom Mark Collins is the Respondent.

APPELLANT'S FINAL BRIEF

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TABLE OF CONTENTS

Statement of Issues on Appeal	1
Statement of the Case.....	2
Argument	7
I. Standard of Review.....	7
II. Arguments.....	8
A. The Greenville County Circuit Court wrongly reversed the decision of the Probate Court of Greenville County because the reversal was based upon the Court's erroneous application of the standard of review in this case which altered and omitted relevant evidence from the record, thereby eroding the factual findings relied upon by the Probate Court in reaching its decision to divest Respondent of the proceeds from the settlement of Civil Action: 2013-CP-23-04186.....	8
B. The Greenville County Circuit Court wrongfully reversed the decision of the Probate Court of Greenville County when it erred in finding the Probate Court did not properly apply the applicable law in this case.	13
C. The Greenville County Circuit Court wrongly reversed the Probate Court of Greenville County because, absent South Carolina precedent, it failed to expressly utilize persuasive authority such as: (a) South Carolina law pertaining to damages in a wrongful death claim; (b) extra-jurisdictional law specific to the issue at bar and (c) analogous South Carolina and United States law pertaining to paternal consent in adoption cases	20
Conclusion	30

TABLE OF AUTHORITIES

Cases	Page
<u>Ballard v. Ballard</u> 443 S.E.2d 802, 314 S.C. 40 (S.C. 1994)	14
<u>Bass v. Isochem</u> 617 S.E.2d 369, 365 S.C. 454 (2005)	21
<u>Bennett v. Sullivan’s Island Bd. of Adjustment</u> 313 S.C. 455, 458, 438 S.E.2d 273, 274 (Ct.App.1993).....	20
<u>Bradley v. Doe</u> 649 S.E.2d 153, 374 S.C. 622 (S.C. App., 2007).....	21
<u>Broadhurst v. City of Myrtle Beach Election Comm’n,</u> 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000)	16
<u>Doe v. S.C. Dep’t of Soc. Servs. (In re Doe)</u> 407 S.C. 623, 757 S.E.2d 711 (S.C., 2014)	21
<u>Estate of Patterson v. Patterson</u> 798 So.2d 347 (Miss., 2001).....	25
<u>Estate of Scheller v. Pessetto,</u> 783 P.2d 70 (Utah App., 1989)	24
<u>Gay v. Ariail</u> 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009)	16, 20
<u>Golini v. Bolton</u> 326 S.C. 333, 482 S.E.2d 784 (Ct.App.1997).....	21
<u>Hitachi Data Sys. Corp. v. Leatherman</u> 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992)	16, 20
<u>Hodges v. Rainey,</u> 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)	16
<u>In re Adoption of M.D.K.</u> 30 Kan.App.2d 1176, 58 P.3d 745, 750-51 (2002).....	28
<u>In re Estate of Hyman</u> 362 S.C. 20, 25, 606 S.E.2d 205, 207 (Ct. App. 2004).....	8

<u>In re Estate of Pallister,</u> 363 S.C. 437, 447, 611 S.E.2d 250, 256 (2005)	8, 13
<u>In re Thames</u> 344 S.C. 564, 568, 544 S.E.2d 854, 856 (Ct. App. 2001).....	8
<u>In re Estate of Weeks</u> 329 S.C. 251, 262, 495 S.E.2d 454, 460 (Ct. App. 1997).....	8
<u>In The Matter of Howard,</u> 434 S.E.2d 254, 315 S.C. 356 (S.C., 1993)	8, 9, 13
<u>Keithley v. Keithley</u> 95 Wis.2d 136, 289 N.W.2d 368 (Wis. App., 1980)	25
<u>Lehr v. Robertson,</u> 463 U.S. 248, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983).....	24, 27
<u>Lester v. S.C. Workers' Comp. Comm'n.</u> 334 S.C. 557, 561, 514 S.E.2d 751, 752 (1999)	20
<u>The Lite House, Inc. v. J.C. Roy Co., Inc.</u> 419 S.E.2d 817, 309 S.C. 50 (S.C. App., 1992).....	21
<u>Mid-State Auto Auction of Lexington, Inc. v. Altman</u> 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996)	16
<u>Mishoe v. Atlantic Coast Line R.R.</u> 186 S.C. 402, 197 S.E. 97 (1938)	22
<u>Mock v. Atlantic Coast Line R.R. Co.</u> 227 S.C. 245, 259, 87 S.E.2d 830, 836 (1955)	22
<u>Roe v. Reeves,</u> 392 S.C. 143, 708 S.E. 2d 778 (2011)	27, 28
<u>Scott Ex Rel. Scott v. Porter</u> 340 S.C. 158, 530 S.E.2d 389 (S.C. App., 2000).....	22
<u>Silva v. Silva</u> 333 S.C. 387, 509 S.E.2d 483 (Ct.App.1998).....	21
<u>Sloan v. S.C. Bd. of Physical Therapy Exam'rs.</u> 370 S.C. 452, 468, 636 S.E.2d 598, 606-07 (2006)	16
<u>Smith v. Atl. Coast Line R. Co.</u> 47 S.E.2d 725 (1948)	22, 24

<u>South Carolina Farm Bureau Mut. Ins. Co. v. Mumford</u> 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct.App.1989).....	16
<u>State v. Morgan</u> 352 S.C. 359, 367, 574 S.E.2d 203, 207 (Ct.App.2002).....	21
<u>Townes Assocs., Ltd. v. City of Greenville</u> 266 S.C. 81, 221 S.E.2d 773 (1976)	8
<u>Unisun Ins. Co. v. Schmidt,</u> 339 S.C. 362, 529 S.E.2d 280 (2000)	21
<u>University of Southern Cal. v. Moran,</u> 617 S.E.2d 135, 365 S.C. 270 (SC, 2005)	7
<u>Williams v. Farmer,</u> 876 So.2d 300 (Miss., 2004)	25
<u>Williams v. Morris</u> 320 S.C. 196, 464 S.E.2d 97 (1995)	21
<u>Wimberly v. Barr,</u> 359 S.C. 414, 597 S.E.2d 853 (Ct. App.2004).....	8
 <u>Statutes</u>	
Miss. Code of Laws § 91-1-15(3) (1972)	24
S.C. Code of Laws § 15-51-40 (1976 as amended)	15, 17
S.C. Code of Laws § 43-5-580(b) (1976 as amended)	17
S.C. Code of Laws Section 62-2-103(2) (1976 as amended)	5
S.C. Code of Laws § 63-5-20 (1976 as amended)	16, 18
S.C. Code of Laws § 63-17-470 (1976 as amended)	17
 <u>Legislation and Treatise</u>	
S.1164, 111th Gen. Assemb., (S.C. 1996)	15
F.P. Hubbard & R.L. Felix, The South Carolina Law of Torts 610 (2d ed.1997)	22

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

A. The Greenville County Circuit Court wrongly reversed the decision of the Probate Court of Greenville County because the reversal was based upon the Court's erroneous application of the standard of review in this case which altered and omitted relevant evidence from the record, thereby eroding the factual findings relied upon by the Probate Court in reaching its decision to divest Respondent of the proceeds from the settlement of Civil Action: 2013-CP-23-04186.

B. The Greenville County Circuit Court wrongfully reversed the decision of the Probate Court of Greenville County when it erred in finding the Probate Court did not properly apply the applicable law in this case.

C. The Greenville County Circuit Court wrongly reversed the Probate Court of Greenville County because, absent South Carolina precedent, it failed to expressly utilize persuasive authority such as: (a) South Carolina law pertaining to damages in a wrongful death claim; (b) extra-jurisdictional law specific to the issue at bar; and (c) analogous South Carolina and United States law pertaining to paternal consent in adoption cases.

STATEMENT OF THE CASE

This matter is a dispute between Appellant Lauren Murphy and Respondent Mark Collins regarding the distribution of funds derived from the settlement of the wrongful death lawsuit regarding their daughter, Tynslee Elizabeth Fields. (ROA p. 356-360). Although the references to these parties in the record of the case varies and alternates throughout the record of the case, with each party at some point being referred to as Appellant, Respondent, Petitioner, or Movant, for purposes of clarity, this document consistently refers to Lauren Murphy as "Appellant" and Mark Collins as "Respondent." Brackets herein indicate when a party's identifying term is altered from the record.

On June 12, 2012, Appellant gave birth to Tynslee Fields [hereinafter "Tynslee" or "Decedent"]. (ROA p. 17, Item 12). Tynslee's neck was broken by the OBGYN during delivery. (ROA p. 18, Item 16). She died the same day. (ROA p. 17, Item 12). This action began with Tynslee's death.

On July 15, 2014, the Greenville County Probate Court Order appointed Appellant the Personal Representative of Tynslee's Estate. (ROA p. 406). On or about August 2, 2013, Appellant 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 [hereinafter "Case No. 2013-CP-23-04186"], in the Greenville County Court of Common Pleas. (ROA p. 45). Litigation ensued against the defendants named therein and a partial settlement was reached as to Defendants Mercy Obstetrics & Gynecology, P.A. and Ragesh Pandya, M.D. (ROA pp. 45-46).

On or about February 24, 2014, the Order approving the settlement as to Defendants Mercy Obstetrics & Gynecology, P.A. and Ragesh Pandya, M.D. was entered

by the Greenville County Court of Common Pleas. (ROA pp. 45-46). The Circuit Court approved the sum of Five Thousand dollars (\$5,000.00) being allocated to the survival action, 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. (ROA pp. 45-46). Both amounts were placed in trust with the firm handling the medical malpractice claim, the Hughey Law Firm, LLC.

On July 2, 2014, Appellant filed a Petition with the Greenville County Probate Court seeking to deny Respondent any proceeds derived or to be derived from the wrongful death action. (ROA pp. 392-395).

The Greenville County Probate Court declined to adjudicate Appellant's Petition on July 15, 2014, directing her to address the issue with the Greenville County Court of Common Pleas as the case was still active therein. (ROA p. 522).

On or about August 6, 2014, Respondent filed a Motion to Compel Distribution in the Greenville County Court of Common Pleas. (ROA pp. 371-388). Appellant filed a Return on August 15, 2014, along with a Motion to Deny Respondent any proceeds from the wrongful death litigation. (ROA pp. 354-370).

The Circuit Court heard Respondent's Motion to Compel and Appellant's Motion to Deny Respondent proceeds on September 30, 2014. (ROA pp. 32-39).

After reviewing the file but before hearing the merits of the case, the Circuit Court found conflict between the two statutes applicable to the parties' respective motions. (ROA p. 37). One statute, Section 62-1-302(b), conferred concurrent jurisdiction upon both the Probate and Circuit Court regarding matters of allocation;

however, the other, Section 15-51-40, expressly stated that actions brought to deny proceeds to a statutory beneficiary may only be brought in the Probate Court. Based upon the language of Section 15-51-440, the Circuit Court ordered the parties to take the matter up in Probate Court. (ROA p. 38).

The Circuit Court further ordered that: the settlement proceeds being held by the Hughey Law Firm, LLC be disbursed to the Attorney for Tynslee's Estate, Ruth Hindman DiPasquale; Attorney DiPasquale administrate that account pursuant to the Court's Order; and the funds be placed into an interest-bearing account which could only be drawn upon at the direction of a final Court Order stating how the proceeds should be distributed. (ROA pp. 38-39).

Subsequent to the Circuit Court's Order, The Hughey Law Firm, LLC released the settlement funds to Attorney DiPasquale, and Attorney DiPasquale deposited the settlement proceeds into an interest-earning account with BNC Banking.

Appellant filed a Motion to Deny Respondent all proceeds with Greenville County Probate Court on November 18, 2014, (ROA pp. 272-294) and Respondent timely filed a Return to Appellant's Motion (ROA pp. 221-271).

The Greenville County Probate Court convened a hearing on January 9, 2015 wherein the Court received documented evidence from the parties, took in testimony in the form of Affidavits, and heard oral arguments of counsel. (ROA pp. 12-31).

Appellant sought to exclude Respondent from benefitting from Tynslee's death because Respondent did nothing to grasp the opportunity to assert himself as Tynslee's father. (ROA p. 30, Item 4). By his own admission, he provided no support for Appellant during her pregnancy, provided nothing for the child during the course of her life,

provided nothing towards the expenses of Tynslee's funeral or burial, and did not pursue a relationship with the minor child. (ROA pp. 28, 29). Further, evidence was shown suggesting that Respondent did not suffer from Tynslee's death, whether it was pecuniary loss, mental shock and suffering, wounded feelings, grief, sorrow, or loss of companionship. (ROA p. 18, Item 15).

Appellant additionally argued that, had Tynslee survived, Appellant could have placed her for adoption absent Respondent's relinquishment or consent because the evidence was clear that Respondent neglected Appellant and Tynslee to the extent such that adoption case law would support finding Respondent waived his Constitutional Right to have a relationship with his biological daughter. (ROA pp. 285-287). Appellant maintained that if Respondent's failures cleared the threshold divesting him of a well-established Constitutional Right, he should not have a right to money from Tynslee's wrongful death claim. (ROA pp. 286-287).

Respondent countered with the argument that S.C. Code Sections 15-51-40 and 53-5-20 did not apply because Tynslee lived for such a short period of time and, as such, Respondent did not have the opportunity to provide support for her. Respondent averred the controlling statute in the case was Section 62-2-103(2) of the South Carolina Intestacy Statute. (ROA p. 224). Therefore, Respondent argued, Appellant and Respondent should divide the proceeds of Tynslee's wrongful death settlement equally. (ROA p. 224).

The Probate Court took the matter under advisement and invited the parties to submit case law from other jurisdictions on the issues regarding their respective positions. (ROA pp. 518-519). Appellant submitted extra-jurisdictional case law for the

consideration of the Court on January 23, 2015. (ROA pp. 168-220). Respondent submitted a statement to the Court on January 27, 2015 that no applicable extra-jurisdictional case law could be located. (ROA pp. 165-167).

On April 29, 2015, the Probate Court issued an Order finding Appellant had shown, by a preponderance of the evidence, that Respondent, an able-bodied man who is and was working full time, failed to provide reasonable support as set forth in S.C. Code of Laws Section 15-51-40 (1976 as amended) and Section 63-5-20(A) (1976 as amended), such that: (a) his right to receive any portion of the proceeds received in Civil Action: 2013-CP-23-04186 was denied and (b) he was divested of any proceeds received from any future settlement or verdict in any matter wherein his claim is based upon his relationship with Decedent. (ROA pp. 12-31).

Respondent appealed the Probate Court's decision to the Circuit Court, and Circuit Court considered the briefs of the parties and heard oral argument on the issues at a hearing on September 10, 2015. (ROA pp. 407-437).

Subsequent to the Circuit Court hearing but prior to issuing its ruling, the Circuit Court approved the final settlement of Civil Action: 2013-CP-23-04186 for twenty thousand and no/100 dollars (\$20,000.00) against the last remaining Defendant in the case. As such, Civil Action: 2013-CP-23-04186 was dismissed, with prejudice, on October 15, 2015. This final settlement amount, combined with the release of funds from the initial settlement being held by the Hughley Law Firm, LLC for continuing litigation, plus the funds already existing in trust created the sum total of all proceeds to be gained from the underlying claim in this matter, Six Hundred Thirty-Five Thousand, Three Hundred Four and 51/100 dollars (\$635,304.51).

Regarding the issue of the distribution of proceeds, the Circuit Court issued an Order on December 28, 2015 reversing the decision of the Probate Court, stating, in part, “Due to Tynslee’s short life and the circumstances surrounding her death..., [Respondent] being unaware that he was Tynslee’s father, was unable to provide the more usual means of attention and support to his minor child during her brief life. There is no evidence which reasonably supports the application of the statute in this regard.” (ROA pp. 5-11).

Appellant filed a Motion to Reconsider with the Circuit Court on December 28, 2015 requesting the Court review its findings of fact in light of the applicable standard of review. (ROA pp. 80-84). The Circuit Court denied Appellant’s Motion on February 4, 2016. (ROA pp.3-4).

Appellant filed her Notice of Appeal to the South Carolina Court of Appeals on March 11, 2016. (ROA p. 50).

ARGUMENT

I. Standard of Review.

“The standard of review applicable to cases originating in the probate court depends upon whether the underlying cause of action is at law or in equity. An issue regarding statutory interpretation is a question of law.” University of Southern Cal. v. Moran, 617 S.E.2d 135, 365 S.C. 270 (SC, 2005) (emphasis added) citing In re Estate of Hyman, 362 S.C. 20, 25, 606 S.E.2d 205, 207 (Ct. App. 2004); In re Thames, 344 S.C. 564, 568, 544 S.E.2d 854, 856 (Ct. App. 2001) and Wimberly v. Barr, 359 S.C. 414, 597 S.E.2d 853 (Ct. App. 2004).

“If the proceeding in the probate court is in the nature of 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 there is no evidence to support them.” In re Estate of Pallister, 363 S.C. 437, 611 S.E.2d 250 (SC, 2005) (emphasis added) citing Matter of Howard, 315 S.C. 356, 361, 434 S.E.2d 254, 257 (1993); Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976); In re Estate of Weeks, 329 S.C. 251, 262, 495 S.E.2d 454, 460 (Ct. App. 1997).

“The standard of review at law is the same whether the facts are found by a jury or the judge sitting without a jury.” In The Matter of Howard, 434 S.E.2d 254, 315 S.C. 356 (S.C., 1993).

II. Arguments.

- A. The Greenville County Circuit Court wrongly reversed the decision of the Probate Court of Greenville County because the reversal was based upon the Court’s erroneous application of the standard of review in this case which altered and omitted relevant evidence from the record, thereby eroding the factual findings relied upon by the Probate Court in reaching its decision to divest Respondent of the proceeds from the settlement of Civil Action: 2013-CP-23-04186.

The standard of review applicable to cases originating in Probate Court is stated above.

The Circuit Court, however, cites language from the 1993 South Carolina Supreme Court decision of *The Matter of Howard*, that is found not under the heading, “STANDARD OF REVIEW” but under the heading “CLAIMS FOR MONEY” that states, “The proceeding in this case involves claims for money due. Ordinarily, such claims are triable at law with an attendant right to trial by jury. (ROA p. 8) Therefore, if there is any evidence in this case that reasonably supports the factual findings of the probate judge, his order must be affirmed.” The Matter of Howard, 434 S.E.2d 254, 315 S.C. 356 (S.C., 1993). (internal citations omitted) (emphasis added).

Regardless of which standard is applied, it is clear the Circuit Court abused its discretion by altering and/or overlooking significant findings of fact made by the Probate Court.

The variance between the factual findings of Probate Court and the Circuit Court are evident where the Circuit Court found, "The parties were never married, but continued their relationship for several more months during which time they attended the medical appointment for the ultrasound to determine the child's sex." (ROA pp. 6-7). The Probate Court, however, found that, "Soon after the pregnancy announcement, the relationship between [Respondent] and [Appellant] deteriorated." (ROA p. 16, Item 4). "In December, 2011, despite alleging he was prohibited from attending any doctor's appointments with [Appellant], it is undisputed that [Respondent] attended the first-trimester ultrasound with [Appellant] for the purpose of determining the sex of the child." (ROA p. 17, Item 7).

Of significant concern to Appellant is that the Circuit Court's ruling reversing the Order of the Probate Court expressly states, "Due to Tynslee's short life and the circumstances surrounding her death, [Respondent] being unaware that he was Tynslee's father, was unable to provide the more usual means of attention and support to his minor child during her brief life." (ROA p. 10) (emphasis added).

Given that the Circuit Court relied on Respondent not knowing he was Tynslee's father in its decision to reverse the Probate Court, the import of the difference in these findings is substantial. The Circuit Court appears to draw the conclusion that after the ultrasound appointment of December 2011, Respondent no longer felt responsible for the child. Contrarily, because the parties' relationship deteriorated before Respondent

attended the ultrasound, it is clear Respondent's motive for going was not to be with Appellant but because he knew the child was his.

Further, the following findings of fact by the Probate Court relevant to the above discussion left unconsidered by the Circuit Court are as follows:

- a. "After sharing the news [of their pregnancy] with [Respondent], [Appellant] shared the news that she and [Respondent] were expecting a baby with her family and her friends. [Respondent's] sister was also aware of the news as well as Angela King, mother of [Respondent's] other 2 children." (ROA p. 16, Item 2).
- b. "In an Affidavit submitted to the Probate Court, [Respondent] alleged that he promised [Appellant] to always be an active father in [their] child's life." (ROA p. 16, Item 2).
- c. "In the same Affidavit, [Respondent] states he told [Appellant] that even though the parties' relationship had ended, but he would not turn his back on her or their child." (ROA p. 16, Item 4).
- d. "[Appellant] intensified her relationship with [her previous boyfriend] and tells [Respondent] she believes [her previous boyfriend] is the baby's father. [Respondent] claims [Appellant] prohibited him from going to any doctor's appointments and blocked his telephone calls. This was in November, 2011." (ROA p. 16, Item 5).
- e. "On November 28, 2011, [Appellant] had her first pre-natal visit. At the visit, she listed [her previous boyfriend] as the child's father. She alleges that she did this since [Respondent] was out of the picture, and she felt her future was with [her previous boyfriend]." (ROA p. 16, Item 6).
- f. "In December, 2011, despite alleging he was prohibited from attending any doctor's appointments with [Appellant], it is undisputed that [Respondent] attended the first-trimester ultrasound with [Appellant] for the purpose of determining the sex of the child. Later [Respondent] gave [Appellant] a necklace with the word *Mom* for Christmas in December, 2011." (ROA p. 17, Item 7).
- g. "In February, 2012, [Respondent] promised to purchase a comforter for the baby which he never did." (ROA p. 17, Item 9).
- h. "[Appellant] had seventeen (17) prenatal appointments with the last one being on June 5. [Respondent] did not attend or inquire about any of these appointments." (ROA p. 17, Item 9).

- i. “[Respondent] became engaged to [another woman] and suggested several times that [his fiancée] did not trust him. As such, he became indifferent to [Appellant] and the pregnancy.” (ROA p. 17, Item 9).
- j. “On June 12, Angela King called [Respondent] expressing her sorrow over [Tynslee’s] death. This was the first time [Respondent] knew of the baby’s death. Ms. King learned of it via *Facebook*. [Respondent] became concerned and called [] his fiancée, to discuss whether he should go to the hospital. He decided not to go to the hospital.” (ROA p. 17, Item 11).
- k. **“On June 16, [Respondent] did not attend [Tynslee’s] funeral. He went to the lake with his family.”** (ROA p. 18, Item 15) (emphasis added).
- l. “At some point after the baby’s death, the Coroner informed [Appellant] that [Tynslee’s] neck had been broken during delivery.” (ROA p. 18, Item 16).
- m. “With this knowledge, Murphy visited [Respondent’s] sister, gave her pictures of the baby, and apologized for lying to [Respondent] about [her previous boyfriend] being [Tynslee’s] father.” (ROA p. 18, Item 17).
- n. “[Appellant] arranged a meeting with [Respondent] in July, 2012. At some point after discussing the possibility of recovering against the medical providers, [Respondent] agreed to have a DNA test. He paid for one half of the test.” (ROA p. 18, Item 18).
- o. “The DNA test conclusively established [Respondent] as Tynslee’s father. At a meeting arranged by Appellant, [Appellant] presented the test results to [Respondent]. He did not offer any denial or challenge the results. After seeing the results, [Respondent] asked if he could have some photographs of Tynslee. Then [Respondent’s] fiancée, drove up and [Respondent] left immediately without further discussion.” (ROA p. 18, Item 19).
- p. “[Appellant] made a box of photographs and other memorabilia for [Respondent]. [Appellant] still has the box, although she says has made it available to [Respondent]. [Respondent] has not alleged that he desired photographs of Tynslee.” (ROA p. 19, Item 20).
- q. “In September, 2012, [Appellant] sent a text to [Respondent] inviting him to a Memorial Walk for Tynslee set for October 21, 2012. After the text, [Respondent] called [Appellant], put her on *speaker phone* and told her he was never going to speak to her again. [Respondent’s fiancée] was present with [Respondent] listening to the conversation.” (ROA p. 19, Items 21 & 22) (emphasis in original).

- r. "The next meeting between [Appellant] and [Respondent] was on December 3, 2012, at the Probate Court hearing on the appointment of a Personal Representative for Tynslee." (ROA p. 19, Item 23).
- s. "After Tynslee's death, [Appellant] was diagnosed with Acute Stress Disorder, a Parent-Child Relational Problem, and later a Generalized Anxiety Disorder. In January, 2014, she was diagnosed by the clinician with Post Traumatic Stress Disorder." (ROA p. 19, Item 23).
- t. "[Appellant], alone, undertook to vindicate Tynslee's death by initiating an action to become Personal Representative, by engaging counsel to file suit against the individuals and entities responsible for her death. After reaching a settlement with some of the Defendants, she appeared in Circuit Court with her attorneys. She has filed a complaint with the Medical Board against the doctor, contacted state lawmakers to advocate for laws to protect other newborns, worked with March of Dimes, organized a memorial event to honor Tynslee's 2nd birthday, and collected baby blankets to donate in Tynslee's honor to the GHS NICU. She is also inquiring into the establishment of a park in memory of Tynslee. The record does not show that [Respondent] participated in or initiated any event to memorialize Tynslee." (ROA p. 19, Item 25).

In its response to Appellant's Motion to Reconsider the Court's December 28, 2015 Order reversing the Probate Court, the Circuit Court rationalized the above inconsistencies as follows, "The December 28, 2015 Order of this Court found that there was **no 'evidence... that reasonably supports the factual findings of the probate judge...'**" (ROA p. 4) (emphasis added).

Here, the Circuit Court interjects a reasonableness standard into the Standard of Review. Appellant contends this is an abuse of discretion as the Standard of Review states that while the Order of the Probate Court must be upheld "if there is any evidence in this case that reasonably supports the factual findings of the probate judge, the appellate 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." The Matter of Howard, 434

S.E.2d 254, 315 S.C. 356 (S.C., 1993). (internal citations omitted); In re Estate of Pallister, 363 S.C. 437, 611 S.E.2d 250 (SC, 2005) (emphasis added)

In the instant case, there is substantial evidence to reasonably support the findings of fact by the Probate Court. The evidence comes from varied sources, including disinterested parties. In fact, certain very relevant findings of the Probate Court listed above are supported by the Respondent's own sworn testimony.

As such, Appellant requests this Court vacate the Circuit Court's Order reversing the Order of the Probate Court on the grounds that the Circuit Court abused its discretion by, contrary to the standard of review, altering and/or omitting significant findings of fact the Probate Court utilized to formulate its decision to divest Respondent of the proceeds from the settlement of Civil Action: 2013-CP-23-04186 and reinstate the Order of the Probate Court.

B. The Greenville County Circuit Court wrongfully reversed the decision of the Probate Court of Greenville County when it incorrectly found the Probate Court did not properly apply the applicable law in this case.

On April 29, 2014, the Probate Court of Greenville County completely divested Respondent of any and all proceeds from the partial settlement of wrongful death case Civil Action: 2013-CP-23-04186 by way of its authority pursuant to S.C. Code of Laws Section 15-51-40 (1976 as amended). (ROA p. 12-31). On December 28, 2015, the Circuit Court reversed the Probate Court's Decision because, "Due to Tynslee 's short life and the circumstances surrounding her death, [Respondent] being unaware that he was Tynslee's father, was unable to provide the more usual means of attention and support to his minor child during her brief life. There is no evidence which reasonably supports the application of the statute in this regard." (ROA p. 10). The Circuit court

further explained in its Order on Appellant's Motion for Reconsideration, that, "The December 28, 2015 Order of this Court found that there was no 'evidence... that reasonably supports the factual findings of the probate judge' and that the probate judge did not properly apply the applicable law." (ROA p. 4).

The Circuit Court, however, based its reversal of the Probate Order on a misinterpretation of the plain language of South Carolina Code Sections 15-51-40 and 63-5-20(A).

South Carolina statutory law states the Probate Court has discretion to decide how to proportionately divide settlement proceeds to individual statutory beneficiaries from the settlement of wrongful death and survival actions. This is a result of a substantial change to the law in 1996 after the South Carolina Supreme Court's interpretation of the previous statute in the 1995 decision of *Ballard v. Ballard*, 443 S.E.2d 802, 314 S.C. 40 (S.C. 1994). In *Ballard*, the father of a child injured as a minor "failed to visit [the child] or contribute to [the child's] support." *Id.* Even though the father provided no support, the Court held on April 25, 1994 that, "the distribution of . . . damages among statutory beneficiaries . . . is controlled strictly by the share each would take as an heir in intestacy regardless of the proportion of damages suffered by each." *Id.*

Twenty-one (21) months after *Ballard* was published, the South Carolina Senate introduced S.1164, a Bill to amend Section 15-51-40 to permit the Probate Court to deny or limit either or both parent's entitlement to a share of the proceeds if the court determines by a preponderance of the evidence that the parent or parents failed to reasonably support the decedent and did not provide for the needs of the decedent during

his or her minority. S.1164, 111th Gen. Assemb., (S.C. 1996). S.1164 was ratified by the legislature and signed by the Governor in less than 100 days. Id.

Currently, S.C. Code of Laws, Section 15-51-40, in total, reads as follows:

In every such action the jury may give damages, including exemplary damages when the wrongful act, neglect, or default was the result of recklessness, wilfulness, or malice, as they may think proportioned to the injury resulting from the death to the parties respectively for whom and for whose benefit such action shall be brought. The amount so recovered shall be divided among the before-mentioned parties in those shares as they would have been entitled to if the deceased had died intestate and the amount recovered had been personal assets of his or her estate. **However, upon motion by either parent or any other party of potential interest based upon the decedent having died intestate, the probate court may deny or limit either or both parent's entitlement for a share of the proceeds if the court determines, by a preponderance of the evidence, that the parent or parents failed to reasonably provide support for the decedent as defined in Section 63-5-20 and did not otherwise provide for the needs of the decedent during his or her minority.**

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

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

“reasonable support” as follows:

Any able-bodied person capable of earning a livelihood who shall, without just cause or excuse, abandon or fail to provide reasonable support ... to his or her minor unmarried legitimate or illegitimate child dependent upon him or her shall be deemed guilty of a misdemeanor... As used in this section “reasonable support” means an amount of financial assistance which, when combined with the support the member is reasonably capable of providing for himself or herself, will provide a living standard for the member substantially equal to that of the person owing the duty to support. It includes both usual and unusual necessities.

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

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

“Once the legislature has made [a] choice, there is no room for the courts to impose a

different judgment based upon their own notions of public policy.” South Carolina Farm Bureau Mut. Ins. Co. v. Mumford, 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct.App.1989). “All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and **that language must be construed in light of the intended purpose of the statute.**” Broadhurst v. City of Myrtle Beach Election Comm’n, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000) (emphasis added). In ascertaining legislative intent, “a court should not focus on any single section or provision but should consider the language of the statute as a whole.” Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). “Where the statute’s language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” Gay v. Ariail, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009). “A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers.” Sloan v. S.C. Bd. of Physical Therapy Exam’rs, 370 S.C. 452, 468, 636 S.E.2d 598, 606–07 (2006). In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose. Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

In its Order of December 28, 2015, the Circuit Court stated,

The Probate Court found that the burial, funeral, memorial and legal expenses and time spent in pursuit of the wrongful death action constituted “unusual necessities” under S.C. Code § 63-5-20(a) which, if not provided by the statutory beneficiary, would justify the divestment of proceeds. This Court finds that none of these were incurred within the statutorily-defined relevant time period under S.C. Code § 15-51-40. Therefore, evidence of the failure to pay these expenses is not evidence which reasonably supports the findings by the Probate Court.

(ROA p. 10).

This finding by the Circuit Court incorrectly intermingles Section 15-51-40 and Section 63-5-20(A).

The relevant language of Section 15-51-40 contains two prongs. Effectively, the Probate Court may deny or limit entitlement to proceeds if the Court determines, by a preponderance of the evidence, that:

- (a) the parent or parents failed to reasonably provide support for the decedent as defined in Section 63-5-20; and
- (b) did not otherwise provide for the needs of the decedent during his or her minority. S.C. Code of Laws 15-51-40 (1976 as amended).

Examining the two prongs in reverse order, it is uncontroverted that Respondent failed to provide Tynslee anything during her minority. As the language in Section 15-51-40 does not provide for a parent to be excused from this requirement due to just cause, there is no interpretation to be had. It would simply be an absurd result to state the Respondent met the test of the second prong.

Regarding the first prong, Section 63-5-20(A) expressly omits any reference to S.C. Code of Laws Sections 63-17-470 (*Child Support Proceedings and Awards*) and 43-5-580(b) (*Enforcement of Support Obligations of Absent Parents*), both of which have long been recognized in our State as the "Child Support" Code Sections. By expressly omitting these two Code Sections, the Legislature substantially broadens the definition of support. As such, Appellant would have had to provide Decedent support that accords only with the language of this statute "both usual and unusual necessities substantially

equal to the standard of living enjoyed by Appellant.” S.C. Code § 63-5-20 S.C. Code of Laws (1976 as amended).

Another omission from Section 63-5-20’s definition of “reasonable support” is the time-restrictive phrase “during the child’s minority” that is found in Section 15-51-40. With the time restriction removed, the definition of “reasonable support” becomes more expansive and can include pre-natal and post-mortem expenses. As such, the Circuit Court was incorrect in ruling that the burial, funeral, memorial and legal expenses, and time spent in pursuit of the wrongful death action could not constitute “unusual necessities” under S.C. Code § 63-5-20(a) on the grounds that none of these expenses were incurred within the statutorily-defined relevant time period under S.C. Code § 15-51-40. Usual and unusual necessities are considered by Section 63-5-20(A), which does not have the time restriction of Section 15-51-40.

Also unlike Section 15-51-40, Section 63-5-20(A) contains language that states an able-bodied person capable of earning a livelihood may be excused from violating the statute if he or she has just cause or excuse. While there is no specific mention in the Circuit Court’s Order pertaining to this language in Section 63-5-20(A), the Circuit Court justifies its reversal of the Probate Court Order by stating, “Due to Tynslee’s short life and the circumstances surrounding her death, [Respondent] being unaware that he was Tynslee’s father, was unable to provide the more usual means of attention and support to his minor child during her brief life. There is no evidence which reasonably supports the application of the statute in this regard.” (ROA p. 10).

Effectively, the Circuit Court excuses Respondent from his failure to provide “reasonable support” for Tynslee because she only lived for a short time. There is,

however, no language in Section 15-51-40 or Section 63-5-20 that requires a child to live a minimum period of time before the statutes become applicable. Respondent simply has no excuse for providing nothing to Tynslee whether that be while Appellant was pregnant, while Tynslee was alive, or upon Tynslee's passing.

The intent of the Legislature in adding the language that a parent could be divested of his or her interest in a minor wrongful death settlement was to ensure parents who did not contribute anything to a child did not receive any benefit from the death of that child. **Courts must construe the language of Sections 15-51-40 and 63-5-20(A) to be consistent with this purpose.**

The Circuit Court's reversal of the Probate Court's decision is contrary to the intent of the Legislature. It effectively finds the language added to Section 15-51-40 moot.

The Circuit Court would not be required to resort to subtle or forced construction in these statutes' application to uphold the Order of the Probate Court; it simply needed to straightforwardly apply the plain language contained therein. The plain language of the statutes, when read together, call for a father as disengaged as Respondent to lose his interest in a minor wrongful death settlement. To interpret these statutes any differently produces the absurd result of applying a statute in a way the Legislature did not intend.

As such, Appellant requests this Court vacate the Circuit Court's Order reversing the Order of the Probate Court on the grounds that the Circuit Court misinterpreted the controlling statutory law in this case by applying it in a way that is contrary to the legislative intent of the statute and reinstate the Order of the Greenville Probate Court

divesting Respondent of the proceeds from the settlement of Civil Action: 2013-CP-23-04186.

C. The Greenville County Circuit Court wrongly reversed the Probate Court of Greenville County because, absent South Carolina precedent, it failed to expressly utilize persuasive authority such as: (1) South Carolina law pertaining to damages in a wrongful death claim; (2) extra-jurisdictional law specific to the issue at bar; and (3) analogous South Carolina and United States law pertaining to paternal consent in adoption cases.

“Where the statute’s language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” Gay v. Ariail, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009). “If the statute is ambiguous, however, courts must construe the terms of the statute.” Lester v. S.C. Workers’ Comp. Comm’n, 334 S.C. 557, 561, 514 S.E.2d 751, 752 (1999). “In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose.” Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

“Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law.” Bennett v. Sullivan’s Island Bd. of Adjustment, 313 S.C. 455, 458, 438 S.E.2d 273, 274 (Ct.App.1993). “We will reject a statutory interpretation when to accept it would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention.” Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 529 S.E.2d 280 (2000).

“If the language of an act gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent beyond the borders of the act itself.” The Lite House, Inc. v. J.C. Roy Co., Inc., 419 S.E.2d 817, 309 S.C. 50 (S.C. App., 1992)

citing Bradley v. Doe, 649 S.E.2d 153, 374 S.C. 622 (S.C. App., 2007) citing State v. Morgan, 352 S.C. 359, 367, 574 S.E.2d 203, 207 (Ct.App.2002).

“When there is no case on point in South Carolina, our courts may look to other states to determine if the issue has been decided and if the decision is persuasive authority.” Bass v. Isochem, 617 S.E.2d 369, 365 S.C. 454 (2005) citing Williams v. Morris, 320 S.C. 196, 464 S.E.2d 97 (1995); Silva v. Silva, 333 S.C. 387, 509 S.E.2d 483 (Ct.App.1998); Golini v. Bolton, 326 S.C. 333, 482 S.E.2d 784 (Ct.App.1997).

When no case is “directly on point in South Carolina or other jurisdictions”, the Court may look to “cases in analogous contexts.” Doe v. S.C. Dep’t of Soc. Servs. (In re Doe), 407 S.C. 623, 757 S.E.2d 711 (S.C., 2014).

Because this is a matter of first impression for this Court, there are three areas of law the Court may use for guidance in rendering a decision that comports with long-standing South Carolina law and public policy: 1. South Carolina Law as it pertains to damages associated with a wrongful death lawsuit; 2. Extra-jurisdictional case law from other states with similar statutes; and 3. Paternal rights of an absent father in consent and relinquishment adoption cases.

1. South Carolina law states a wrongful death claim is only actionable by one who is a designated beneficiary at the time of a child’s death; and evidence of the closeness of a relationship is required before a statutory beneficiary is entitled to receive wrongful death benefits.

In the South Carolina Court of Appeals 2000 decision of *Scott Ex Rel. Scott v. Porter*, the Court, citing Hubbard & R.L. Felix, *The South Carolina Law of Torts*, stated, “Damages recoverable in a wrongful death action include: (1) Pecuniary loss, (2) mental shock and suffering, (3) wounded feelings, (4) grief and sorrow, (5) loss of

companionship, and (6) deprivation of the use and comfort of the intestate's society, the loss of his experience, knowledge, and judgment in managing the affairs of himself and of his beneficiaries....” Scott Ex Rel. Scott v. Porter, 340 S.C. 158, 530 S.E.2d 389 (S.C. App., 2000) (citing F.P. Hubbard & R.L. Felix, *The South Carolina Law of Torts* 610 (2d ed.1997) (citing Mishoe v. Atlantic Coast Line R.R., 186 S.C. 402, 197 S.E. 97 (1938)).

“Moreover, South Carolina law provides that parents [] are entitled to a presumption of nonpecuniary damages.” Mock v. Atlantic Coast Line R.R. Co., 227 S.C. 245, 259, 87 S.E.2d 830, 836 (1955). In *Scott*, the Court again cites Hubbard & Felix, *The South Carolina Law of Torts* parenthetically stating that, “It may often be assumed that grief and sorrow will be experienced at the loss of a loved one; however, the strength of such presumption is a function of the closeness of the relationship, and in some cases evidence may be necessary to support claims of loss.” Scott Ex Rel. Scott v. Porter, 340 S.C. 158, 530 S.E.2d 389 (S.C. App., 2000).

Our Supreme Court drew a bright line rule in 1948 stating, “There can be no recovery under [the South Carolina Wrongful Death Statute] unless at the time of the decedent's death there are one or more of the designated beneficiaries in existence.” Smith v. Atl. Coast Line R. Co., 47 S.E.2d 725 (1948) (emphasis added).

In the matter presently before the Court, Respondent had no relationship with Tynslee whatsoever. In fact, Respondent was not legally Tynslee's father at the time of her death.

Because Respondent's paternity had not been established at the time of Tynslee's death there is no parental relationship on which a claim of loss may be supported. Further, given the complete absence of any connection or relationship between Tynslee

and Respondent, previous South Carolina decisions regarding damages in wrongful death actions support the assertion that Respondent is not entitled to any damages or proceeds from the settlement of Civil Action: 2013-CP-23-04186. The application of this rule to the language of Section 15-51-40 would set forth a bright line for Probate Courts to follow in future determinations of settlement proceed entitlement, and, much like South Carolina's Responsible Father Registry, encourage unwed fathers to assertively pursue legal paternity and take responsibility for their children. S.C. Code Section 63-9-820 (S.C. Code of Laws, 1976 as amended)

2. Extra-jurisdictional case law from other states with similar statutes supports the conclusion that an unwed father who is absent during the mother's pregnancy loses his right to wrongful death settlement funds.

There are numerous examples of how other jurisdictions address irresponsible fathers seeking a windfall from the wrongful death of their children.

Even the U.S. Supreme Court's adoption decision of *Lehr v. Robertson* (discussed more fully in the next section) has been relied upon to divest a father from his claim to wrongful death benefits. In the case of the *Estate of Scheller v. Pessetto*, the father argued his Constitutional Rights were violated by not being given part of his child's wrongful death estate, but the Court, citing *Lehr*, disagreed because, "If one parent has an established custodial relationship with the child and the other parent has either abandoned or never established a relationship, the Equal Protection Clause does not prevent a state from according the two parents different legal rights." *Estate of Scheller v. Pessetto*, 783 P.2d 70 (Utah App., 1989) citing *Lehr v. Robertson*, 463 U.S. 248, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983).

The two cases below originate from Mississippi. The Mississippi statute that most closely comports with S.C. Law is Miss. Code Ann. § 91-1-15(3) (1972). It provides in pertinent part:

- (3) [T]he natural father of an illegitimate and his kindred shall inherit from and through the illegitimate according to the statutes of descent and distribution if:
 - (a) The natural parents participated in a marriage ceremony before the birth of the child...
 - (b) There has been an adjudication of paternity or legitimacy before the death of the intestate; or
 - (c) There has been an adjudication of paternity after the death of the intestate, based upon clear and convincing evidence, in an heirship proceeding under sections 91-1-27 and 91-1-29.
 - (d) The natural father of an illegitimate and his kindred shall not inherit:
 - (i) From or through the child unless the father has openly treated the child as his, and has not refused or neglected to support the child.

Miss. Code Ann. § 91-1-15(3) (1972) (*emphasis added*).

The Mississippi statute includes the adjudication of paternity requirement found in *Smith v. Atl. Coast Line R. Co.*, 47 S.E.2d 725 (1948), the relationship component found in South Carolina wrongful death and adoption law, and the support requirement of S.C. Code Sections 15-51-40 and 63-5-20(A).

In applying this statute on July 1, 2004, the Mississippi Supreme Court divested the father of wrongful death benefits owed for a child who was killed in utero because, even though the mother told him he was the child's father, he refused to have contact with her or acknowledge that he was the father of the child. The father argued in vain that it would be virtually impossible to comply with the requirements of the statute where the

decedent is a fetus and that he was discouraged from visiting mother by threat from her family members. Williams v. Farmer, 876 So.2d 300 (Miss., 2004).

Three years' prior, the Court ruled in *The Estate of Patterson v. Patterson* that the natural father of three-year-old J.P. was not entitled to his portion of J.P.'s death benefit. The father argued he should not be divested of the benefit because he not know J.P. was his child until four days before the J.P. died. The court stated, "This case is a classic example of conduct the statutes and case law seek to prevent. A father should not be allowed to receive a windfall simply because he impregnated the child's mother. The Estate of Patterson v. Patterson, 798 So.2d 347 (Miss., 2001)(emphasis added).

In dealing with a case involving an older child, the Wisconsin Supreme Court wrote the following statement that is not specific to a child of any given age. The Court said, "The inflexible 50% Division contended for by [the father] could force an unfair loss on one parent while granting a windfall to the other parent. The differing ages of parents, their marital status, and their relationship with the child must realistically be recognized as bearing upon society and companionship loss." Keithley v. Keithley, 95 Wis.2d 136, 289 N.W.2d 368 (Wis. App., 1980)

The instant case presents a perfect example of conduct our Legislature sought to prevent by adding language to S.C. Code Section 12-51-40 in 1996. Respondent should not be allowed to receive a windfall simply because he impregnated Appellant. Respondent's lack of a relationship with the child must realistically be recognized as bearing upon society and companionship loss. Therefore, Appellant prays that this Court vacate the decision of the Circuit Court overruling the Greenville County Probate Court's

Order and divest Respondent of any and all proceeds derived from the settlement of Civil Action: 2013-CP-23-04186.

3. In consent and relinquishment adoption cases, the South Carolina and United States Supreme Courts have consistently held that an unwed father who is absent during the mother's pregnancy loses his Constitutional Right to have a relationship with his child.

There is no better placed to find examples of analogous fact patterns very similar to the case at bar where Courts have divested a father of his Constitutional Right to a relationship with his child due to his failure to support the child during the mother-to-be's pregnancy.

The United States Supreme Court in the adoption case of *Lehr v. Robertson*, where the Court divested an unwed father of, **not just money, but his Constitutional Right** to have a relationship with his two-year-old child due to his failures in supporting and developing a relationship with his child. While the child in *Lehr* was two-years-old, the Court made the following statement that applies to a child of *any* age:

“[M]others and fathers of illegitimate children are not similarly situated. The identity of the mother of an illegitimate child is rarely in doubt. In contrast, the father's identity is frequently unknown... In addition, the mother, because she physically bears the child, automatically is responsible for the child at least to the extent of deciding its immediate future. Further, she bears the physical, emotional and psychological ramifications of pregnancy and must decide whether to abort the child, raise the child alone or give the child up for adoption. If she decides to raise the child, she endures further financial, emotional and psychological responsibilities. The putative father who does not support the child or openly treat the child as his own assumes none of these responsibilities.”

Lehr v. Robertson, 463 U.S. 248, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983)(emphasis added).

In 2011, the South Carolina Supreme Court found that an unwed father was divested of his Constitutional Right to have a relationship with his child due to his actions **while the child's mother was pregnant** in the decision of *Roe v. Reeves*, stating, "The relationship between an unwed father and his child is deserving of constitutional protection because the father possess an 'opportunity no other male possesses to develop a relationship with his offspring' when the child is born... However, this opportunity interest is constitutionally protected only to the extent that the biological father who claims protection wants to make the commitments and perform the responsibilities that give rise to a developed relationship, because it is only the combination of biology and custodial responsibility that the Constitution ultimately protects." *Roe v. Reeves*, 392 S.C. 143, 708 SE2d 778 (2011). "Put differently, **it is only if he grasps that opportunity and accepts some measure of responsibility for the child's future may he enjoy the blessings of the parent-child relationship** and make uniquely valuable contributions to the child's development." *Roe v. Reeves*, 392 S.C. 143, 708 S.E.2d 778 (S.C., 2011) (emphasis added) citing *Lehr v. Robertson*, 463 U.S. 248, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983).

In *Roe v. Reeves*, "[The father] paid no medical expenses for Mother because she was on Medicaid, and did not pay any living expenses because Mother lived with her mother and received food stamps... Simply because she was receiving some government benefits to cover her basic needs does not relieve Father of his obligation to provide for Mother **during her pregnancy**." *Roe v. Reeves*, 392 S.C. 143, 708 S.E.2d 778 (S.C., 2011) (emphasis added).

The Court continued, "Even in the most acrimonious of situations, a father-to-be can fund a bank account in the mother-to-be's name. He can have property or money delivered to the mother-to-be by a neutral third party. He can – and must – be as creative as necessary in providing material assistance to the mother-to-be during the pregnancy and, the law thus assumes, to the child once it is born. He must not be deterred by the mother-to-be's lack of romantic interest in him, even by her outright hostility. If she justifiably or unjustifiably wants him to stay away, he must respect her wishes but be sure that his support does not remain equally distant." Roe v. Reeves, 392 S.C. 143, 708 S.E.2d 778 (S.C., 2011) citing In re Adoption of M.D.K., 30 Kan.App.2d 1176, 58 P.3d 745, 750-51 (2002).

The application of the reasoning in these analogous consent and adoption cases above to cases such as the instant matter would provide more than a modicum of consistency to South Carolina law. In other words, if South Carolina will not allow an unwed father who did not provide support to the pregnant mother of his child to avail himself of his Constitutional Right to establish a relationship with his child, it should not allow an unwed father who did not provide support to the pregnant mother of his child to avail himself of funds derived from a wrongful death settlement.

The facts of this case as established by the Probate Court show Appellant provided Respondent opportunities to contribute to and participate in her pregnancy, Tynslee's life, and the grieving for Tynslee's death. (ROA pp. 15-20). Appellant provided Respondent opportunities to develop a relationship with his daughter Tynslee. Even so, Respondent:

- a. Failed to attend doctor's appointments with Appellant during her pregnancy save one ultrasound;

- b. Failed to accurately portray the nature of his on-going romantic relationship with his ex-girlfriend while knowing Appellant was pregnant with his child;
- c. Failed to participate in any of Appellant's family holidays during her pregnancy;
- d. Failed, in fact, to have ever met Appellant's father;
- e. Failed to purchase a comforter set for Tynslee's nursery as promised;
- f. Failed to provide any monetary support throughout the birth, life and death of his daughter;
- g. Failed to initiate communication with Appellant throughout the pregnancy;
- h. Failed to attend the birth of his daughter;
- i. Failed to be present when his daughter died;
- j. Failed to attend his daughter's funeral, opting instead to vacation at the lake;
- k. Failed to provide any support or assistance with the underlying wrongful death case;
- l. Failed to obtain any memorabilia related to his daughter although he superficially requested same;
- m. Failed to attend a Memorial Walk in honor of Tynslee's memory;
- n. Failed to assist in advocacy efforts performed by Appellant on his daughter's behalf; and
- o. Failed to publicly express any grief stemming from the death of his daughter when openly expressing same for his deceased father. (Id.)

(ROA pp. 15-20).

Even overlooking all of the details of Respondent's failures, two simple facts are irrefutable:

- a. Respondent provided no support for Tynslee before she was born, no support during her short life, and no support after her death.
- b. Further, Respondent had no relationship with this child.

(ROA. pp 12-31).

Had Tynslee survived and Appellant placed her for adoption, well-established South Carolina law supports the conclusion that Respondent would not be in a position to contest the adoption because he squandered away his Constitutional Right to have a relationship with Tynslee. For the law to contrarily say that he should still retain a right to funds from Tynslee's wrongful death settlement would be absurd.

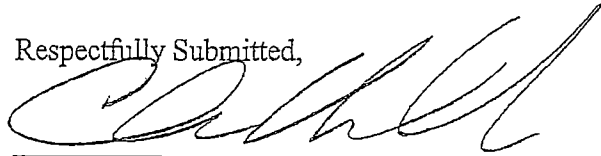
Therefore, Appellant prays that this Court vacate the Circuit Court's decision overruling the Greenville County Probate Court's Order, reinstate the Order of the Probate Court, and divest Respondent of all proceeds derived from the settlement of Civil Action: 2013-CP-23-04186.

CONCLUSION

For the reasons set forth hereinabove, Appellant prays this Court vacate the December 28, 2015 decision of the Circuit Court and reinstate the Greenville County Probate Court's April 29, 2015 Order, entered in the matter of Lauren Murphy as Statutory Beneficiary vs. Mark Collins and The Estate of Tynslee Elizabeth Fields, Deceased, Civil Action: 2012-ES-23-01718, and deny Respondent any of the settlement proceeds, past, present, and future that are or may be realized 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., Civil Action: 2013-CP-23-04186.

Respectfully Submitted,



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August 29, 2016

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

PERRY H. GRAVELY, CIRCUIT COURT JUDGE

CASE NO.: 2016-000536

In the Matter of Tynslee Elizabeth Fields, Deceased,
Lauren Murphy as Statutory Beneficiary, Appellant,

v.

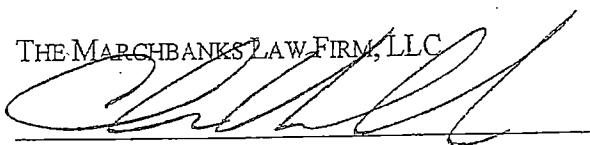
Mark Collins, and The Estate of Tynslee Elizabeth Fields, Defendants,

Of Whom Mark Collins is the Respondent.

PROOF OF SERVICE

I certify that I have served the Appellant's Final Brief on Respondent Mark Collins by mailing a copy of it via first class mail on August 29, 2016, addressed to his attorneys of record, Jessica Salvini and John M. Read, IV, at their respective offices at 101 W. Park Ave. Greenville, SC 29601.

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Greenville, South Carolina
August 29, 2016

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

PERRY H. GRAVELY, CIRCUIT COURT JUDGE

RECEIVED

AUG 31 2016

SC Court of Appeals

CASE NO. 2016-000536

Mark Collins

Respondent

v.

Lauren Murphy as Statutory Beneficiary

Appellant

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

	Page
Statement of Issues on Appeal.....	1
Statement of Facts.....	2
Arguments.....	9
I. THE GREENVILLE COUNTY CIRCUIT COURT DID NOT ERR IN ITS APPLICATION OF THE STANDARD OF REVIEW WHEN IT REVERSED THE DECISION OF THE PROBATE COURT OF GREENVILLE COUNTY IN THE MATTER OF <i>TYNLEE ELIZABETH FIELDS, DECEASED; LAUREN MURPHY AS STATUTORY BENEFICIARY VS. MARK COLLINS, AND THE ESTATE OF TYNLEE ELIZABETH FIELDS, DECEASED</i> , CASE NO. 2012-ES-23-01718	
A. Standard of Review	9
B. Argument.....	10
II. THE GREENVILLE COUNTY CIRCUIT COURT DID NOT ERR WHEN IT FOUND THE PROBATE COURT OF GREENVILLE COUNTY DID NOT PROPERLY APPLY THE APPLICABLE LAW IN THIS CASE.	
A. Standard of Review	14
B. Argument.....	14
III. THE GREENVILLE COUNTY CIRCUIT COURT DID NOT ERR WHEN IT REVERSED THE DECISION OF THE PROBATE COURT OF GREENVILLE COUNTY IN THE MATTER OF <i>TYNLEE ELIZABETH FIELDS, DECEASED; LAUREN MURPHY AS STATUTORY BENEFICIARY VS. MARK COLLINS, AND THE ESTATE OF TYNLEE ELIZABETH FIELDS, DECEASED</i> , CASE NO. 2012-ES-23-01718, DETERMINING THERE WAS SOUTH CAROLINA PRECEDENT GOVERNING THIS CASE AND THUS DID NOT APPLY APPELLANT'S EXTRA-JURISDICTIONAL LAW FROM OTHER STATES AND OR CASE LAW APPLICABLE IN SOUTH CAROLINA AND UNITED STATES PATERNAL ADOPTION CASES.	
A. Standard of Review	18

B. Argument.....	18
Conclusion.....	23
Certificate of Counsel	24

TABLE OF AUTHORITIES

Cases	Page
<u>Ballard vs. Ballard</u> 314 S.C. 40, 443 S.E.2d 802 (1994), ...	22
<u>C. Prop. & Cas. Ins. Co. Guar. Ass'n v. Brock</u> 410 S.C. 361, 367, 764 S.E.2d 920, 922 (2014)	16
<u>Epworth Children's Home v. Beasley</u> 365 S.C. 157, 164, 616 S.E.2d 710, 714 (2005)	10, 12
<u>Estate of Patterson v. Palmetto Bank</u> 374 S.C. 116, 119, 646 S.E.2d 885, 887 (Ct. App; 2007).....	9, 10
<u>Gay vs. Ariail</u> 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009)	16, 19, 22
<u>Golini v. Bolton</u> 326 S.C. 333, 338-39, 482 S.E.2d 784, 787 (Ct. App. 1997)	12
<u>The Lite House, Inc. vs. J.C. Roy Co., Inc.</u> 419 S.E.2d 817, 309 S.C. 50 (S.C. App. 1992).....	19
<u>Martin v. Skinner</u> 286 S.C. 527, 335 S.E.2d 252 (Ct.App.1985).....	13
<u>Matter of Howard</u> 315 S.C. 356, 361-62, 434 S.E.2d 254 (S.C. 1993).....	10-12
<u>Perry v. Bullock</u> 409 S.C. 137, 140, 761 S.E.2d 251, 253 (2014)	16
<u>Roche v. Young Brothers Inc.</u> 332 S.C. 81, 504 S.E.2d 314.....	16
<u>Scott Ex. Rel. Scott vs. Porter</u> 340 S.C. 158, 530 S.E.2d 389 (S.C. App. 2000).....	20
<u>Smith v. McCall</u> 324 S.C. 356, 357, 477 S.E.2d 475, 475 (Ct. App. 1996).....	12
<u>State v. Sweat</u> 379 S.C. 367, 377, 665 S.E.2d 645, 651 (Ct. App. 2008).....	16

Steinke v. S.C. Dep't of Labor, Licensing & Regulation.

336 S.C. 373, 396, 520 S.E.2d 142, 154 (1999) 16

Statutes

S.C. Code Section 15-51-40..... 5-8, 13-19,
22

S.C. Code Section 62-2-103..... 13, 14, 18

S.C. Code Section 63-5-20..... 8, 13, 15-17,
19, 22

S.C. Code Section 63-5-20(A)..... 6, 8, 14, 16

STATEMENT OF ISSUES ON APPEAL

- I. Whether the Greenville County Circuit Court erred in its application of the Standard of Review when it reversed the decision of the Probate Court of Greenville County in the matter of *Tynslee Elizabeth Fields, Deceased; Lauren Murphy as Statutory Beneficiary vs. Mark Collins, and the Estate of Tynslee Elizabeth Fields, Deceased*, Case no. 2012-ES-23-01718.
- II. Whether the Greenville County Circuit Court erred when it found the Probate Court of Greenville County did not properly apply the applicable law in the matter of *Tynslee Elizabeth Fields, Deceased; Lauren Murphy as Statutory Beneficiary vs. Mark Collins, and the Estate of Tynslee Elizabeth Fields, Deceased*, Case no. 2012-ES-23-01718.
- III. Whether the Greenville County Circuit Court wrongly reversed the decision of the Probate Court of Greenville County in the matter of *Tynslee Elizabeth Fields, Deceased; Lauren Murphy as Statutory Beneficiary vs. Mark Collins, and the Estate of Tynslee Elizabeth Fields, Deceased*, Case no. 2012-ES-23-01718 when it determined there was South Carolina precedent governing this case and thus did not apply Appellant's extra-jurisdictional law from other states and or case law applicable in South Carolina and United States paternal consent adoption cases.

STATEMENT OF THE CASE

In the Fall of 2011, Lauren Murphy (hereinafter referred to as “Ms. Murphy” or “Appellant”) and Mark Collins (hereinafter referred to as “Mr. Collins” or “Respondent”) 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 at 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). Upon learning of the minor child’s birth and death, Mr. Collins was emotionally devastated. (R. pp. 260-264).

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 and Mr. Collins 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. Despite inquiries by Mr. Collins, the funds were not disbursed to either Ms. Murphy or Mr. Collins. Rather, 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 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 Section 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 Section 15-51-40 and S.C. Code Section 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 the 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 this Court and this appeal ensued.

ARGUMENTS

I. THE GREENVILLE COUNTY CIRCUIT COURT DID NOT ERR IN ITS APPLICATION OF THE STANDARD OF REVIEW WHEN IT REVERSED THE DECISION OF THE PROBATE COURT OF GREENVILLE COUNTY IN THE MATTER OF *TYNLEE ELIZABETH FIELDS, DECEASED; LAUREN MURPHY AS STATUTORY BENEFICIARY VS. MARK COLLINS, AND THE ESTATE OF TYNLEE ELIZABETH FIELDS, DECEASED*, CASE NO. 2012-ES-23-01718.

A. STANDARD OF REVIEW

It is undisputed that the instant case is a matter at law. Further, it was tried before the Probate Court of Greenville County without a jury.

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). “When reviewing an action at law, on appeal of a case tried without a jury, the appellate court’s jurisdiction is limited to correction of errors at law. The appellate court will not disturb the judge’s findings of fact as long as they are reasonably supported by the evidence.” See *Epworth Children’s Home v. Beasley*, 365 S.C. 157, 164, 616 S.E.2d 710, 714 (2005).

B. ARGUMENT

The issues raised in the matter of *Tynslee Elizabeth Fields, Deceased; Lauren Murphy as Statutory Beneficiary vs. Mark Collins, and the Estate of Tynslee Elizabeth Fields, Deceased*, Case No. 2012-ES-23-01718 are those of a matter at law. Thus, the Circuit Court applied the following standard of review when it considered the Probate Court’s order divesting Respondent of his interest in the wrongful death and estate proceeds at issue in this matter:

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).

This standard of review was established by the Supreme Court’s ruling in the *Matter of Howard*, 315 S.C. 356, 361-62, 434 S.E.2d 254 (S.C. 1993). In the *Matter of Howard*, the Supreme Court addressed the standard of review to be applied by the Circuit Court when considering appeals from the Probate Court.

The *Matter of Howard* was an action in which the personal representative and the heirs of a decedent’s estate engaged in litigation in the Probate Court regarding whether claims against the estate should be disallowed. The Probate Court, considering the applicable statute pertaining to claims filed against a decedent’s estate, allowed the claims in part. The parties to the litigation

appealed the Probate Court's decision to the Circuit Court and it reversed. *See Matter of Howard*, 315 S.C. 356, 359, 434 S.E.2d 254, 256 (1993).

The primary issue in the *Matter of Howard* was whether the Circuit Court applied the correct standard of review when it reversed the Probate Court's order. In the *Matter of Howard*, the Circuit Court "appl[ied] the 'substantial evidence' standard of appellate review, [when it] modified the probate court's decision. *Matter of Howard*, 315 S.C. at 359. On review, the *Howard* Court found and held that the Circuit Court erred when it applied the "substantial evidence" standard of review. *Id.* at 360. In doing so, the Court held:

Appeal from the probate court is governed by the provisions of the Probate Code. The Code provides that a final order or decree of the probate court may be appealed to the circuit court. The circuit court must hear and determine the appeal "according to the rules of law." As used in this statute, the phrase "according to the rules of law" means according to the rules governing appeals.

Id. (citations omitted). "[I]f there is neither a statute nor a rule of court expressly prescribing a different standard of review, the circuit court must apply the same standard that ... the Court of Appeals would apply were the appeal taken directly to either of them." *Id.* at 361. As a result thereof, the following standard of review is to be applied by the Circuit Court when reviewing a decision of the Probate Court:

The rules governing appeals at law and in equity are well settled. If the proceeding in the probate court is in the nature of an action at law, the circuit court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them. The standard of review at law is the same whether the facts are found by a jury or the judge sitting without a jury. On the other hand, if the probate proceeding is equitable in nature, the circuit court, on appeal, may make factual findings according to its own view of the preponderance of the evidence.

Id. at 361-62.

Applying the aforementioned standard of review to the issues in the *Matter of Howard* the Court first determined if the action was one at law or equity. The *Matter of Howard* involved claims for money based on the Probate Code provision permitting persons or entities to make

claims against the decedent's estate – a matter at law. Thus, the *Howard* Court applied the standard for determining matters of law and held: “if there is any evidence in this case that *reasonably* supports the factual findings of the probate judge, his order must be affirmed.” *Id.* at 362 (emphasis added).

It is undisputed in the instant case that the issue before the Circuit Court was a matter of law. Thus, the Circuit Court applied the appropriate standard of review established by the *Matter of Howard*. However, Appellant argues on appeal that the Circuit Court in this matter abused its discretion, claiming the Circuit Court “interject[ed] a reasonableness standard into the Standard of Review” because it found there “was no evidence...that reasonably supports the factual findings of the probate judge....” (Initial Brief of Appellant at p. 12). Appellant's argument is meritless.

The standard of review applied by the Circuit Court in the instant case is well-established. In matters 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.” *Matter of Howard*, 315 S.C. at 361-62. This standard is applied in every matter of law, regardless if the issue is a claim for money, a distinction the Appellant appears to try to make herein. “When reviewing an action at law, on appeal of a case tried without a jury, the appellate court's jurisdiction is limited to correction of errors at law. The appellate court will not disturb the judge's findings of fact as long as they are reasonably supported by the evidence.” *See Epworth Children's Home v. Beasley*, 365 S.C. 157, 164, 616 S.E.2d 710, 714 (2005). There is no distinction to be made. *See Golini v. Bolton*, 326 S.C. 333, 338-39, 482 S.E.2d 784, 787 (Ct. App. 1997); *Smith v. McCall*, 324 S.C. 356, 357, 477 S.E.2d 475, 475 (Ct. App. 1996) (Determination of elective share is a matter at law and probate court's ruling shall not be disturbed if there is any

evidence that reasonably supports the factual findings of the probate judge); *Martin v. Skinner*, 286 S.C. 527, 335 S.E.2d 252 (Ct.App.1985) (Circuit Court's determination of the validity of a Will is a case at law and probate court's ruling shall not be disturbed if there is any evidence that reasonably supports the factual findings of the probate judge).

Applying this standard of review, the Circuit Court determined the applicable South Carolina statutory provisions and considered the clear and unambiguous language of the statutes, in light of the facts of this case. In doing so, the Circuit Court found this case involves a dispute over the wrongful death and estate proceeds resulting from the death of the parties' infant child. It determined that applicable South Carolina statutory law provides that wrongful death proceeds are to be divided equally between the statutory beneficiaries. *See* S.C. Code Section 15-51-40. The Circuit Court found there are two undisputed statutory beneficiaries, the Appellant and Respondent; and as the parents, they are to share equally in their minor child's estate. S. C. Code Section 62-2-103. The Circuit Court also correctly found that "there are only certain circumstances in which the Probate Court may limit a statutory beneficiary's entitlement" to the wrongful death and estate proceeds. (R. pp. 5-11). Statutorily, the Probate Court may only limit or deny a parent's entitlement for a share in the proceeds "if the court determines, by a preponderance of the evidence, that the parent or parents failed to reasonably provide support for the decedent as defined in Section 63-5-20 and did not otherwise provide for the needs of the decedent during his or her minority." S.C. Code Section 15-51-40 (emphasis added). The Circuit Court considered the provisions of South Carolina Code Section 63-5-20, which directed the Circuit Court to the relevant time period to make its determination of whether Respondent provided reasonable support for his minor child. The statutory time period was during her minority. It was undisputed that the parties' minor child's life spanned mere minutes to hours, where she underwent emergency care. The Circuit Court

considered and rejected the Probate Court's findings that the "burial, 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),..." and since Respondent did not provide for and or contribute to these expenses he should be divested of his interest in the proceeds. In doing so, the Circuit Court applied the plain and unambiguous language of S.C. Code Section 15-51-40, which defined the relevant time period. None of the aforementioned expenses were incurred during that time period. There was no evidence that supported the findings of the Probate Court in light of the applicable statutes; and the Circuit Court correctly found the same in accordance with the appropriate standard of review. Thus, the Circuit Court's order herein should be affirmed.

II. THE GREENVILLE COUNTY CIRCUIT COURT DID NOT ERR WHEN IT FOUND THE PROBATE COURT OF GREENVILLE COUNTY DID NOT PROPERLY APPLY THE APPLICABLE LAW IN THIS CASE.

A. STANDARD OF REVIEW

See supra.

B. ARGUMENT

South Carolina statutory and supporting case law are clear on the manner in which wrongful death and estate proceeds are to be distributed. That is, they are to be divided equally to the statutory beneficiaries. S.C. Code Section 15-51-40.

Section 15-51-40 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.

According to South Carolina's laws governing intestacy, in the event of a death of a minor child the entire estate passes as follows: "...if there is no surviving issue, to his parent or parents equally..." S.C. Code Section 62-2-103.

Even though “[t]he cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible,” “[t]he plain language of a statute is considered the best evidence of the legislature’s intent.” *Perry v. Bullock*, 409 S.C. 137, 140, 761 S.E.2d 251, 253 (2014). “Where the statute’s language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” *Gay vs. Ariail*, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009); *see also C. Prop. & Cas. Ins. Co. Guar. Ass’n v. Brock*, 410 S.C. 361, 367, 764 S.E.2d 920, 922 (2014). “When interpreting a statute, courts must presume the legislature did not intend to do a futile act.” *State v. Sweat*, 379 S.C. 367, 377, 665 S.E.2d 645, 651 (Ct. App. 2008). “A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous. ...” *Id.* (quoting *Matter of Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995)). “Courts are constrained to avoid a statutory construction that would have the effect of reading a provision out of a statute.” *Steinke v. S.C. Dep’t of Labor, Licensing & Regulation*, 336 S.C. 373, 396, 520 S.E.2d 142, 154 (1999). Further, “[i]n construing a statute, [courts]...are constrained to avoid an absurd result.” *Roche v. Young Brothers Inc.*, 332 S.C. 81, 504 S.E.2d 314.

The Circuit Court herein correctly interpreted and applied the terms and provisions of Section 15-51-40 and Section 63-5-20(A) to the instant matter. The plain and unambiguous language of Section 15-51-40 specifically provides that the Probate Court may only limit or divest a parent’s entitlement to wrongful death and estate proceeds *if* it finds by the preponderance of the evidence: 1) that a parent failed to reasonably provide support for the decedent as defined in Section 63-5-20 *and* 2) did not otherwise provide for the needs of the decedent during his or her minority. *See* S.C. Code Section 15-51-40. Thus, in the instant matter the Probate Court was required to make both findings before it could divest Respondent of the proceeds herein.

In applying Section 15-51-40, the legislature specifically referenced the definition contained in Section 63-5-20 for what constitutes "reasonable support" for a minor child. In addition, the legislature specifically provided that the relevant time period for determining whether a parent failed to provide "reasonable support" for a deceased child was during his or her minority – not before or after.

The Circuit Court did not err when it applied the aforementioned statutes to the facts of the instant case. It is undisputed that the parties' minor child lived only minutes to hours. During those precious moments of the parties' minor child's life, she was receiving emergency medical care. The Circuit Court correctly found that there was no ability for the Respondent "to provide the more usual means of attention and support to his minor child during her very brief life." (R. pp. 5-11). Section 63-5-20 specifically provides that the court is to consider whether there was "just cause or excuse" that prevented a person from providing reasonable support for their minor child. In the instant case, the minor child only survived a short period of time. Thus, Respondent was not able to provide the minor child with financial support during her minority.

Appellant argues that Respondent should have been required to provide for the minor child while "Appellant was pregnant, while Tynslee was alive, or upon her passing." (Initial Brief of Appellant at p. 19). This however, is contrary to the plain language of the statute and would ultimately be an absurd result. The time frame prior to and after their minor child's birth is specifically excluded by the relevant statutes. The statute specifically provides that a parent's obligation to reasonably support their minor child is during his or her minority. Thus, the Circuit Court correctly found and held that the Probate Court erred when it found that expenses related to Appellant's pregnancy, the burial, funeral, memorial and legal expenses and time spent in litigation were not "unusual necessities" as set forth in Section 63-5-20 as those expenses occurred prior to

and or after the minor child's minority. To hold otherwise, would be a misinterpretation of the applicable statutes.

Appellant's argument urges this Court to ignore the plain and unambiguous language set forth in the statutes and should be rejected.

III. THE GREENVILLE COUNTY CIRCUIT COURT DID NOT ERR WHEN IT REVERSED THE DECISION OF THE PROBATE COURT OF GREENVILLE COUNTY IN THE MATTER OF *TYNLEE ELIZABETH FIELDS, DECEASED; LAUREN MURPHY AS STATUTORY BENEFICIARY VS. MARK COLLINS, AND THE ESTATE OF TYNLEE ELIZABETH FIELDS, DECEASED*, CASE NO. 2012-ES-23-01718, DETERMINING THERE WAS SOUTH CAROLINA PRECEDENT GOVERNING THIS CASE AND THUS DID NOT APPLY APPELLANT'S EXTRA-JURISDICTIONAL LAW FROM OTHER STATES AND OR CASE LAW APPLICABLE IN SOUTH CAROLINA AND UNITED STATES PATERNAL ADOPTION CASES.

A. STANDARD OF REVIEW

See Supra.

B. ARGUMENT

Contrary to Appellant's claim, South Carolina Code of laws *specifically* provides for how damages associated with a wrongful death action are to be divided. As set forth *supra*, South Carolina Code Section 15-51-40 states the statutory beneficiaries are to share in the proceeds derived from a wrongful death action in those shares as provided for by South Carolina intestacy laws. In the instant case, the intestacy laws provide Appellant and Respondent are to share equally in the proceeds. *See* South Carolina Code Section 62-2-103; *supra*.

Section 15-51-40 also sets forth under what circumstances either statutory beneficiary may seek to limit or divest the other beneficiary(ies) of their interest in the wrongful death proceeds. A beneficiary seeking such relief shall file a motion with the Probate Court. Upon receiving such a request, the Probate Court is required to find the following:

1) The parent or parents failed to reasonably provide support for the decedent as defined in Section 63-5-20;

AND

2) The parent or parents failed to provide for the needs of the decedent during her minority.

S.C. Code Section 15-51-40.

The language of statute 15-51-40 “is plain, unambiguous, and conveys a clear, definite meaning....” *Gay v. Ariail*, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009). The relevant time period identified by the legislature when making a determination as to whether a statutory beneficiary should be divested of his or her share of wrongful death proceeds is during a decedent’s “minority.” The act also explicitly states that the court must find: a failure to “reasonably provide support” and a failure to provide “for the needs of the decedent.” Nothing in Section 15-51-40 gives rise to doubt or uncertainty. The Probate Court was not permitted to go “beyond the borders of the act itself” to consider a time period not prescribed by the statute. *The Lite House, Inc. vs. J.C. Roy Co., Inc.*, 419 S.E.2d 817, 309 S.C. 50 (S.C. App. 1992). By considering, finding and imposing a time period prior to and after the decedent’s minority, the Probate Court issued an order divesting Respondent of his interests in the wrongful death and estate proceeds contrary to South Carolina law. The Circuit Court correctly found the same when it reversed the Probate Court’s order in the instant case.

Further, the direct, clear and specific language of Section 15-51-40 provides that the Court is to consider the statutory beneficiary’s support of the decedent during her minority. The statute does not permit the Court to consider the non-pecuniary losses to either statutory beneficiary at the loss of a minor child in making its determination to divest a statutory beneficiary of the

proceeds derived from a wrongful death action. Appellant's claim that evidence of the closeness of a relationship between the Respondent in the instant case and the decedent is required before Respondent may receive any portion of the wrongful death and or estate proceeds is thus contrary to the law. Appellant's reliance on *Scott Ex. Rel. Scott vs. Porter*, 340 S.C. 158, 530 S.E.2d 389 (S.C. App. 2000) in support of her argument that South Carolina law requires a finding that "a wrongful death claim is only actionable by one who is a designated beneficiary at the time of a child's death; and evidence of the closeness of a relationship is required before a statutory beneficiary is entitled to receive wrongful death benefits" is misplaced. (Appellant's brief p. 21-22).

Scott Ex. Rel. Scott, was an action in which a doctor appealed a jury verdict finding her negligent in the death of a minor child. *Id.* On appeal, this Court considered two issues: 1) whether the closing argument was inflammatory requiring reversal and 2) whether the damages awarded were the result of "passion, partiality, and prejudice." *Id.* at 389. In considering the damages issue, this Court considered whether the jury's award was excessive. In doing so, this Court recognized that a jury's award in a wrongful death action can include "(1) pecuniary loss, (2) mental shock and suffering, (3) wounded feelings, (4) grief and sorrow, (5) loss of companionship, and (6) deprivation of the use and comfort of the intestacy's society, the loss of his experience knowledge, and judgment in managing the affairs himself and of his beneficiaries." *Id.* at 394. This Court also found that "[a] determination of reasonable compensation for nonpecuniary damages turns on the facts of each case...and is left to the jury's discretion." *Id.* at 395. This Court re-iterated that there is no mathematical formula by which a court can determine the value of the loss of a child to a parent. The Court considered the testimony and evidence that was presented to the jury for its consideration in making its award of damages. *Id.* at 394-95. The

evidence considered by the jury in awarding damages, and reviewed by this Court for reasonableness, was during the decedent's minority, saving the mental anguish and grief a parent experiences at the loss of child. There was no consideration by the jury or this Court of: the mother's pregnancy, the number of pre-natal doctor's visits, the difficulty of the mother's pregnancy or the cost of the burial, funeral, memorial or legal expenses. The relevant time period to be considered was during the decedent's minority. The nonpecuniary damages awarded, such as mental shock, grief and sorrow, at the loss of a child were reviewed for reasonableness.

In the instant case, the reasonableness of the amount awarded to the statutory beneficiaries is not at issue. The amount at issue was agreed upon in a settlement(s) approved by the Circuit Court; and does not include any itemization for the non-pecuniary losses suffered by either the Appellant or Respondent, such as their grief and mental anguish suffered at the loss of their child. The settlement was obtained on behalf of both Appellant and Respondent, as it was obtained for the benefit of both statutory beneficiaries. In its determination to divest Respondent of any of the wrongful death proceeds, the Probate Court erred by including a time frame prior to and after the decedent's minority. It ignored the evidence of Respondent's grief; and it placed a greater weight on the Appellant's relationship to the decedent because she carried and birthed the decedent. The evidence before the Probate Court was that neither Appellant nor Respondent were able to form a relationship with the decedent during her minority because during her short life she was treated by medical professionals.

Appellant urges this Court to ignore the unambiguous language of the statutes and consider extra-jurisdictional case law and South Carolina case law governing relinquishment of parental rights in adoption cases. However, to do so would be to circumvent well-established law.

After the South Carolina Supreme Court's decision in *Ballard vs. Ballard*, 314 S.C. 40, 443 S.E.2d 802 (1994), our legislature amended Section 15-51-40 to specifically provide for when a statutory beneficiary's interest in wrongful death proceeds could be limited and or wholly divested. In *Ballard*, the Supreme Court affirmed an award of wrongful death proceeds to unwed parents in equal shares, despite their relationship to their minor child, because the statute provided for the statutory beneficiaries to share in those proceeds equally. The issue before the *Ballard* Court was whether the father should be divested of any of the proceeds because he failed to visit and or support his minor child prior to his death. The *Ballard* Court affirmed the award to both parents, as the plain language of the statute required it to do so.

Post-*Ballard*, the South Carolina legislature amended Section 15-51-40 to provide for when a statutory beneficiary can be divested (or limited) of his or her share in wrongful death actions. The legislature specifically provided such divestment shall only occur when a statutory beneficiary: failed to reasonably provide support for the decedent as defined in Section 63-5-20, and failed to provide for the needs of the decedent during her minority. The Probate Court's order in the instant matter ignored the plain language of the statute; and the court had "...no right to impose another meaning." *Gay*, 381 S.C. at 345. The Circuit Court found and held the same. Accordingly, the decision of the Circuit Court should be affirmed herein.

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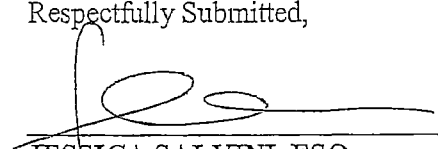
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CONCLUSION

For the reasons stated herein above, Respondent respectfully requests this Court affirm the decision of the Greenville County Circuit Court.

Respectfully Submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

PERRY H. GRAVELY, CIRCUIT COURT JUDGE

CASE NO.: 2016-000536

In the Matter of Tynslee Elizabeth Fields, Deceased,
Lauren Murphy as Statutory Beneficiary, Appellant,

v.

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

Of Whom Mark Collins is the Respondent.

APPELLANT'S FINAL REPLY BRIEF

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TABLE OF CONTENTS

Statement of Issues Argued in Reply.....	2
I. LIKE THE GREENVILLE COUNTY CIRCUIT COURT, RESPONDENT ERRS IN ITS APPLICATION OF THE STANDARD OF REVIEW IN ITS BRIEF.	
II. THE RESPONDENT AND THE GREENVILLE COUNTY CIRCUIT COURT BOTH ERR IN THE APPLICATION OF THE LAW IN THIS CASE.	
Table of Authorities	3
Arguments in Reply	4
Conclusion	9

STATEMENT OF ISSUES ARGUED IN REPLY

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

TABLE OF AUTHORITIES

Case Law

<u>Broadhurst v. City of Myrtle Beach Election Comm'n</u> 342 S.C. 373, 537 S.E.2d 543 (2000)	7
<u>Epworth Children's Home v. Beasley</u> 365 S.C. 157, 616 S.E.2d 710 (2005)	5
<u>In The Matter of Howard</u> 315 S.C. 356, 434 S.E.2d 254 (1993)	4, 5, 6
<u>In re Estate of Pallister</u> 363 S.C. 437, 611 S.E.2d 250 (2005)	4
<u>In re Estate of Weeks</u> 495 S.E.2d 454, 329 S.C. 251 (Ct. App., 1997)	4
<u>Sullivan v. Brown (In re Estate of Kay)</u> Opinion No. 5414 (Ct. App., 2016)	4
<u>Neely v. Thomasson</u> 365 S.C. 345, 349-50, 618 S.E.2d 884, 886 (2005)	4
<u>Townes Associates, Ltd. v. City of Greenville</u> 266 S.C. 81, 221 S.E.2d 773 (1976)	4

Statutes

S.C. Code § 15-51-40 (1976 as amended)	6, 7, 8, 9
S.C. Code § 63-5-20 (1976 as amended)	6, 7, 8, 9

ARGUMENTS IN REPLY

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

A. STANDARD OF REVIEW

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

Initially, Respondent misquotes *In the Matter of Howard* in its brief by inserting a reasonableness standard. *In the Matter of Howard* states, “If the proceeding in the probate court is in the nature of an action at law, the circuit court may not disturb the probate court’s findings of fact unless a review of the record discloses there is no evidence to support them.” Howard, Matter of, 434 S.E.2d 254, 257, 315 S.C. 356, 361 (1993) (citations omitted) (emphasis added).

Critically, this language is also found in other Probate Court appeals such as *In re Estate of Pallister*, 363 S.C. 437, 611 S.E.2d 250 (2005) and *In re Estate of Weeks*, 495 S.E.2d 454, 329 S.C. 251 (Ct. App., 1997). In fact, this holding was followed by the South Carolina Court of Appeals as recently as June 15, 2016, “On appeal from an action at law, the circuit court and the appellate court may not disturb the probate court’s findings of fact unless a review of the record discloses that no evidence supports them. Sullivan v. Brown (In re Estate of Kay) Opinion No. 5414 (Ct. App., 2016) citing Neely v. Thomasson, 365 S.C. 345, 349-50, 618 S.E.2d 884, 886 (2005) (emphasis added).

Cases not arising from the specific jurisdiction of Probate Court follow a Standard of Review found in *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976) stating “When reviewing an action at law, on appeal of a case tried

without a jury, the appellate court's jurisdiction is limited to correction of errors at law. The appellate court will not disturb the judge's findings of fact as long as they are reasonably supported by the evidence." See Epworth Children's Home v. Beasley, 365 S.C. 157, 164, 616 S.E.2d 710, 714 (2005).

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

B. ARGUMENT

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

- "During the course of Ms. Murphy's pregnancy, she blocked Mr. Collins' cell phone number and/or changed her cell phone number so he could not contact her;"
- "Ms. Murphy did not allow Mr. Collins to attend any future OBGYN appointments;" and
- "Ms. Murphy prohibited Mr. Collins from participating in her pregnancy, the minor child's birth, death and funeral."

(Respondent's Brief p. 2)

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

The Findings of Fact by the Probate Court are more than reasonably supported the evidence in this case and show by preponderance of the evidence that Respondent, an able-bodied man who is and was working full time, failed to provide reasonable support as set forth in S. C. Code of Laws, §15-51-40 (1976 as amended) and §63-5-20(a) (1976 as amended). As these factual findings are not to be disturbed on appeal and because they are reasonably supported by the evidence in this case, the Circuit Court's reversal of the Greenville County Probate Court in this case must be vacated and the Probate Court's Order reinstated.

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

A. STANDARD OF REVIEW

As previously discussed, "the circuit court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them." Howard, Matter of, 434 S.E.2d 254, 257, 315 S.C. 356, 361 (1993) (internal citations omitted).

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

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

B. CONTROLLING LAW

In every such action the jury may give damages, including exemplary damages when the wrongful act, neglect, or default was the result of

recklessness, wilfulness, or malice, as they may think proportioned to the injury resulting from the death to the parties respectively for whom and for whose benefit such action shall be brought. The amount so recovered shall be divided among the before-mentioned parties in those shares as they would have been entitled to if the deceased had died intestate and the amount recovered had been personal assets of his or her estate. However, upon motion by either parent or any other party of potential interest based upon the decedent having died intestate, the probate court may deny or limit either or both parent's entitlement for a share of the proceeds if the court determines, by a preponderance of the evidence, that the parent or parents failed to reasonably provide support for the decedent as defined in Section 63-5-20 and did not otherwise provide for the needs of the decedent during his or her minority.

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

Referenced in Section 15-51-40 is S.C. Code Section 63-5-20(A) which defines "reasonable support" as follows:

Any able-bodied person capable of earning a livelihood who shall, without just cause or excuse, abandon or fail to provide reasonable support ... to his or her minor unmarried legitimate or illegitimate child dependent upon him or her shall be deemed guilty of a misdemeanor ... As used in this section "reasonable support" means an amount of financial assistance which, when combined with the support the member is reasonably capable of providing for himself or herself, will provide a living standard for the member substantially equal to that of the person owing the duty to support. It includes both usual and unusual necessities.

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

In regards to the construction and interpretation of the above states, "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." Broadhurst v. City of Myrtle Beach Election Comm'n, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000) (emphasis added).

C. ARGUMENT

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

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

Section 63-5-20, however, has no time limitation. In fact, “reasonable support” is defined as “an amount of financial assistance which, when combined with the support the member is reasonably capable of providing for himself or herself, will provide a living standard for the member substantially equal to that of the person owing the duty to support. It includes both usual and unusual necessities.” S.C. Code of Laws § 63-5-20 (1976 as amended). Thus, the South Carolina Legislature’s definition of reasonable support contains no time restriction. With this definition integrated into Section 15-51-40, the Probate Court was not constrained to the one-hour of life wherein the Decedent should have received support.

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

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

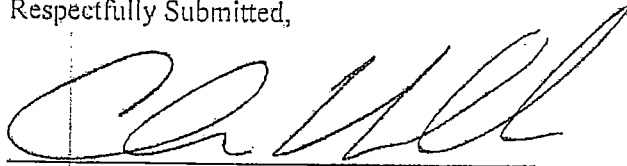
extra-jurisdictional and analogous law provided in Appellant's Brief shows that public policy has a compelling interest in preventing others situated similarly as Respondent from reaping a windfall under facts such as these.

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

CONCLUSION

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

Respectfully Submitted,



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Greenville, South Carolina
September 27, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

PERRY H. GRAVELY, CIRCUIT COURT JUDGE

CASE NO.: 2016-000536

In the Matter of Tynslee Elizabeth Fields, Deceased,
Lauren Murphy as Statutory Beneficiary, Appellant,

v.

Mark Collins, and The Estate of Tynslee Elizabeth Fields, Defendants,
Of Whom Mark Collins is the Respondent.

CERTIFICATE OF COUNSEL

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

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Greenville, South Carolina
September 27, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

PERRY H. GRAVELY, CIRCUIT COURT JUDGE

CASE NO.: 2016-000536

In the Matter of Tynslee Elizabeth Fields, Deceased,

Lauren Murphy as Statutory Beneficiary, Appellant,

v.

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

Of Whom Mark Collins is the Respondent.

PROOF OF SERVICE

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

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Greenville, South Carolina
September 27, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

In the Matter of Tynslee Elizabeth Fields, Deceased;
Lauren Murphy, as statutory beneficiary, Appellant,

v.

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

Of Whom Mark Collins is the Respondent.

Appellate Case No. 2016-000536

Appeal From Greenville County
Debora A. Faulkner, Probate Court Judge
Perry H. Gravely, Circuit Court Judge

Opinion No. 5587
Heard May 22, 2018 – Filed August 8, 2018

REVERSED

Charles W. Marchbanks, Jr., of The Marchbanks Law
Firm, of Greenville, for Appellant.

Jessica Ann Salvini, of Salvini & Bennett, LLC, and John
Magruder Read, IV, of The Read Law Firm, both of
Greenville, for Respondent.

HILL, J.: This appeal concerns the scope of S.C. Code § 15-51-40 (Supp. 2017) as it relates to an unwed father's right to share in the proceeds of the settlement of a

wrongful death action arising out of a child's tragic death during delivery. Because we find evidence supporting the finding of the probate court that the father failed to reasonably support or otherwise provide for the needs of the child, we reverse the order of the circuit court and reaffirm the ruling of the probate court.

I.

Lauren Murphy and Mark Collins met in July 2011 while working together at Wal-Mart. They were both unmarried, but dating other people. They became romantically involved in August 2011, around the time Murphy ended her relationship with Jeremy Fields. Their intimate relationship continued until early October 2011, when Murphy informed Collins she was pregnant. According to Collins, Murphy told him at the time she "did not think" Fields was the father because of a previous health diagnosis Fields had received. Collins assured Murphy he would be an active father.

The pair soon broke up, however. Murphy reunited with Fields, and Collins pursued another relationship. Murphy then advised Collins that Fields was her child's father, and listed Fields as the father at her initial pre-natal doctor's visit in November 2011.

In December 2011, Collins and Murphy attended the first trimester ultrasound together. Although the evidence is conflicting, Collins claims he desired to continue supporting Murphy's pregnancy, but she blocked his calls and prohibited him from attending further medical appointments. It is undisputed Collins did not attend any more appointments. Nor did he pay or offer to pay for any pre-natal care, although there is evidence Murphy was covered by Medicaid.

On June 12, 2012, Murphy delivered a baby girl, Tynslee. Tragically, Tynslee died about an hour after her birth. Murphy listed Fields as the father on Tynslee's birth and death certificates, and in the obituary. Collins, unaware Murphy had gone to the hospital, learned of Tynslee's death from his sister.

In July, Murphy and Collins met and agreed to split the cost of a DNA paternity test, which ultimately proved Collins was Tynslee's father. After being appointed personal representative for Tynslee's estate, Murphy brought a wrongful death and survival action against Tynslee's medical providers for malpractice. Murphy listed both Fields and Collins as Tynslee's possible father in her August 2012 petition to be appointed personal representative, although Fields was later dismissed.

In February 2014, the circuit court approved partial settlement of the wrongful death and survival action. Murphy then petitioned to deny Collins any interest in the wrongful death proceeds, relying on § 15-51-40, which governs allocation of the

proceeds in a wrongful death action, and authorizes a parent to move to deny or limit another parent's interest in the proceeds. The probate court granted the petition, ruling in a thoughtful written order that the greater weight of evidence established Collins had failed to provide Tynslee reasonable support or otherwise provide for her needs within the meaning of §15-51-40.

Collins appealed the probate court order. The circuit court reversed the probate court, reasoning the statute required Collins only to provide reasonable support during Tynslee's minority, which it interpreted as the time between her birth and death. Given the brevity of Tynslee's life, Collins' uncertainty at the time he was her father, and finding Tynslee's medical costs had been borne by Medicaid, the circuit court found there was no evidence supporting the ruling of the probate court. The circuit court succinctly ruled:

Pursuant to the statute, the period of time relevant to the Court's determination of whether Appellant Collins provided reasonable support for the needs of his daughter was during her "minority." In this case, Tynslee's minority was a period that consisted of mere minutes to hours between her birth and her death, during which time emergency medical care was being administered.

The Probate Court found that the burial, funeral, memorial and legal expenses and time spent in pursuit of the wrongful death action constituted "unusual necessities" under S.C. Code § 63-5-20([A]) which, if not provided by the statutory beneficiary, would justify the divestment of proceeds. This court finds that none of these were incurred within the statutorily-defined relevant time period under S.C. Code § 15-51-40. Therefore, evidence of the failure to pay these expenses is not evidence which reasonably supports the findings of the Probate Court.

Murphy appeals this ruling, challenging the circuit court's interpretation of § 15-51-40.

II.

Because a proceeding under § 15-51-40 is an action at law, we must affirm the probate court's factual findings unless no evidence supports them. *In re Howard*, 315 S.C. 356, 361, 434 S.E.2d 254, 257 (1993). We are free to decide questions of law de novo. *See Neely v. Thomasson*, 365 S.C. 345, 350, 618 S.E.2d 884, 886 (2005). Statutory construction is a question of law, *Sparks v. Palmetto Hardwood, Inc.*, 406 S.C. 124, 128, 750 S.E.2d 61, 63 (2013), which we may approach with no deference due the probate or circuit court; but we are bound by the probate court's findings of fact if any evidence supports them.

III.

A. Development of S.C. Code § 15-51-40 since 1994

Before we journey into the meaning of § 15-51-40, we take a step back and view the statute in context, revisiting its telling recent history. As of our supreme court's decision in *Ballard v. Ballard*, 314 S.C. 40, 443 S.E.2d 802 (1994), the statute read in pertinent part as follows:

In every such action the jury may give such damages . . . as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought. And the amount so recovered shall be divided among the before-mentioned parties in such 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.

S.C. Code Ann. § 15-51-40 (1976).

In *Ballard*, a mother obtained a wrongful death settlement arising out of her 18-year-old daughter's death. *Ballard*, 314 S.C. at 41, 443 S.E.2d at 802. Mother petitioned to bar Father from sharing in the proceeds, on the ground they had been divorced for three years, during which time Father had not visited daughter or contributed to daughter's support. *Id.* Our supreme court affirmed the trial court's denial of Mother's petition, holding §15-51-40

allow[s] a total recovery equal to those damages proved to have been sustained by the statutory beneficiaries in a wrongful death action; the distribution of those damages among the statutory beneficiaries, however, is controlled

strictly by the share each would take as an heir in intestacy regardless of the proportion of damages suffered by each.

Id. at 42, 443 S.E.2d at 803.

Less than three months after *Ballard* was decided, the General Assembly amended § 15-51-40 by adding the following sentence to the end of the statute:

However, in the event of a wrongful death of a minor, upon motion by either parent, the probate court may deny or limit either parent's entitlement for a share of the proceeds if the court determines, by a preponderance of the evidence, that the parent has refused to reasonably support the decedent as defined in Section 20-7-40 and has otherwise not provided for the needs of the decedent.

1994 S.C. Acts 470, sec. 2, § 15-51-40 (1994).

In 1996, this final sentence was amended to its current form, which reads:

However, upon motion by either parent or any other party of potential interest based upon the decedent having died intestate, the probate court may deny or limit either or both parent's entitlement for a share of the proceeds if the court determines, by a preponderance of the evidence, that the parent or parents failed to reasonably provide support for the decedent as defined in Section 63-5-20 and did not otherwise provide for the needs of the decedent during his or her minority.

S.C. Code Ann. § 15-51-40 (Supp. 2017). As we shall later see, the comparative wording of these amendments bears on resolution of this appeal.

B. Elements of S.C. Code § 15-51-40

We are mindful that "statutory interpretation begins (and often ends) with the text of the statute in question. Absent an ambiguity, there is nothing for a court to construe, that is, a court should not look beyond the statutory text to discern its meaning." *Smith v. Tiffany*, 419 S.C. 548, 555–56, 799 S.E.2d 479, 483 (2017) (citations omitted). The plain language of § 15-51-40 allows the probate court, upon motion, to deny or limit wrongful death proceeds a parent would otherwise be entitled to for

the wrongful death of a decedent if the court determines two elements by the greater weight of the evidence: that the parent (1) failed to reasonably provide support for the decedent as defined in S.C. Code § 63-5-20, *and* (2) did not otherwise provide for the needs of the decedent during his or her minority.

i. Reasonable Support

To construe the first element, we must consider the language of § 63-5-20(A):

Any able-bodied person capable of earning a livelihood who shall, without just cause or excuse, abandon or fail to provide reasonable support to his or her . . . minor unmarried legitimate or illegitimate child dependent upon him or her shall be deemed guilty of a misdemeanor As used in this section "reasonable support" means an amount of financial assistance which, when combined with the support the member is reasonably capable of providing for himself or herself, will provide a living standard for the member substantially equal to that of the person owing the duty to support. It includes both usual and unusual necessities.

S.C. Code Ann. § 63-5-20(A) (Supp. 2017).

The probate court found Tynslee's pre-natal and birth-related medical expenses were usual necessities, none of which Collins paid or offered to pay, even after his paternity was established. The circuit court disagreed, finding there was no necessity to pay the medical expenses because they were covered by Medicaid, there was no evidence of any unpaid medical bills, and Medicaid has not sought reimbursement.

We agree with the probate court. Collins is able-bodied and capable of earning a livelihood; he works for a major corporation. Although the record is silent about whether Collins had health insurance benefits that could have covered his child's medical expenses, that silence results from Collins' own: he never spoke up to ask what he could do to contribute, content to rely on Medicaid. The "reasonable support" § 63-5-20 speaks of is the obligation of the parent—not the government—to provide financial assistance to one's child. The law imposes a duty on parents to pay their children's reasonable and necessary medical expenses, *see Trident Reg'l Med. Ctr. v. Evans*, 317 S.C. 346, 352, 454 S.E.2d 343, 346 (Ct. App. 1995), and a parent's duty of support does not vanish just because public assistance appears. *See* S.C. Code § 63-3-530(A)(14) (2010) (empowering the family court "to order support

of a spouse or child, or both, irrespective of whether they are likely to become a public charge").

The record is not entirely mute, though. In her wrongful death settlement petition, Murphy agreed to satisfy any outstanding medical bills and Medicaid liens, and to withhold \$3,331.50 in trust to pay them. The order of the circuit court granting her petition, and approving the settlement, required Murphy, individually and as personal representative of Tynslee's estate, to pay any such liens out of the settlement proceeds. From this we infer and find there were outstanding medical expenses Tynslee incurred that Collins did not pay. *See Patton v. Miller*, 420 S.C. 471, 484, 804 S.E.2d 252, 259 (2017) (describing breadth of a Medicaid lien and noting "a child's representative who seeks damages for a child's medical expenses that were paid by Medicaid or some other insurer is almost certainly under a legal duty to reimburse the actual payor for at least part of the recovery").

Neither the probate court nor the circuit court found Collins was obligated to contribute to pre-natal care. We note, though, that the family court may order child support to include "the providing of necessary shelter, food, clothing, care, medical attention, expenses of confinement, *both before and after the birth*, the expense of educating his or her child and other proper and reasonable expenses." S.C. Code Ann. § 63-3-530 (A)(15) (2010) (emphasis supplied). And, our supreme court has held an unwed father's consent to adoption of a child placed with the prospective adoptive parents six months or less after birth was not necessary where father contributed only \$11 to Mother during her pregnancy. *See Roe v. Reeves*, 392 S.C. 143, 154–55, 708 S.E.2d 778, 784 (2011). Rejecting father's excuse that Medicaid covered Mother, the court observed "[s]imply because she was receiving some government benefits to cover her basic needs does not relieve Father of his obligation to provide for Mother during her pregnancy." *Id.* at 155, 708 S.E.2d at 784.

The circuit court concluded Collins' failure to contribute to Tynslee's burial, funeral, memorial and legal expenses was immaterial to the § 15-51-40 determination because they were not incurred during Tynslee's minority. We find the circuit court's view too narrow. To illustrate, we need only consider the funeral and burial costs. The circuit court did not dispute the probate court's characterization of these expenses as necessities, and neither do we. We confirm and hold Tynslee's funeral and burial expenses are necessities her parents were obligated to provide. *See In re Terrell*, 357 N.E.2d 1113, 1116 (Ohio Ct. App. 1976) ("The providing of a decent burial for a deceased minor child is no less a necessity arising out of the parent-child relationship than is the providing of food, shelter, clothing and other needs of a child while the child is alive. The public interest requires that a parent assume

responsibility not only for a minor child's needs while that child is living, but also for the funeral expenses of a minor child. Therefore, we conclude that a father's duty to support a minor child includes an obligation to pay such child's reasonable funeral expenses in the event of the child's death prior to reaching the age of majority." (citation omitted)); *Rose Funeral Home v. Julian*, 176 Tenn. 534, 144 S.W.2d 755, 757 (1940) ("We have little hesitation in concluding that the funeral expense incident to the burying of a minor child is to be classed as a necessity for which the parents of such child are liable."). *See also Jewell v. Jewell*, 255 S.W.3d 522, 523 (Ky. Ct. App. 2008); *Jones v. Jones*, 883 So. 2d 207, 213 (Ala. Civ. App. 2003).

The circuit court erred in reading into § 63-5-20(A) a requirement that the necessities be incurred during the child's minority. We hold the term "minority" as used in § 15-51-40 does not limit or affect the duty § 63-5-20 imposes on parents to provide for their child's necessities. To rule otherwise would insulate a parent from liability not only for a minor child's funeral and burial expenses, but also for pre-natal care. Such a result would undercut the clear legislative intent to the contrary expressed in similar statutes addressing parental support obligations. *See* S.C. Code § 63-3-530 (2010); S.C. Code Ann. § 63-9-310(A)(5)(b) (Supp. 2017) (noting unwed father's consent to or relinquishment of child for adoption required when, inter alia, "the father paid a fair and reasonable sum, based on the father's financial ability, for the support of the child or for expenses incurred in connection with the mother's pregnancy or with the birth of the child, including, but not limited to, medical, hospital, and nursing expenses."). Statutes addressing similar subjects should be similarly construed. *See Beaufort Cty. v. S.C. State Election Comm'n*, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011) ("[I]t is well settled that statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result."). The legislature meant to parallel, not distort, the parental support obligations found in other statutes. We do not think by amending § 15-51-40 as it did, the legislature meant to endorse some notion that a parent has no legal obligation of support for a child's expenses except those incurred after birth but before death, a notion that has no support in our statutory law nor in the reality of how responsible parents act. We therefore hold the probate court correctly found the greater weight of the evidence showed Collins failed to reasonably support Tynslee.

ii. *Needs of Decedent*

This brings us to the second element: whether Collins failed to "otherwise provide for the needs" of Tynslee during her minority. The circuit court found that, due to Tynslee's short life and Collins' lack of certainty during it that he was her father,

there was no evidence he failed to provide for her needs while she was alive. To reach this conclusion, the circuit court reached beyond the plain language of § 15-51-40 and implied an exception excusing Collins from compliance. In essence, the circuit court transported § 63-5-20's "just cause or excuse" provision to the second element of the § 15-51-40 test.

We understand how the circuit court could have arrived at this result, but find the route unwarranted. And this is where the significance of the 1994 and 1996 amendments to § 15-51-40 enacted in the wake of *Ballard* comes into view, and how the mischief the changes aimed to avoid spotlights legislative intent. The 1994 amendment stated that upon motion a parent could be divested of wrongful death proceeds "in the event of the wrongful death of a minor" if the parent failed to provide reasonable support and "has otherwise not provided for the needs of the decedent." Note the 1994 amendments applied only in the event of a minor's wrongful death, and did not limit the parent's obligation to provide for his child's needs to the period of minority. The 1996 amendments, however, expanded the divestment provision from "minor" decedents to any "decedent having died intestate." It retained the reasonable support element incorporating § 63-5-20, but recast the second element to require proof that the parent "did not otherwise provide for the needs of the decedent during his or her minority."

The 1996 amendment fixed a potential problem embedded in the 1994 amendment, which applied only to minor decedents. If the decedent was an adult, the 1994 amendment did nothing to strip an absent and non-supporting parent's right to share the wrongful death proceeds, the same windfall the statute allowed in *Ballard*.

The 1996 revision closed this loophole, but the circuit court's interpretation would reopen it. Using the circuit court's construction, if the father of an adult child whom he had not supported had died intestate by wrongful death, § 15-51-40 would not bar or limit the father's right to the wrongful death settlement proceeds as long as he could show that, during the child's minority, he had no knowledge he was the father.

We therefore hold § 15-51-40's final phrase, "did not otherwise provide for the needs of the decedent during his or her minority," means what it says, and contains no exception excusing compliance, including lack of knowledge of paternity. See *Roschen v. Ward*, 279 U.S. 337, 339 (1929) ("[T]here is no canon against using common sense in construing laws as saying what they obviously mean.") (Holmes, J.). When, as here, the words of the statute are plain and reflect legislative intent unambiguously, we must enforce them according to their terms. See *Cabiness v. Town of James Island*, 393 S.C. 176, 192, 712 S.E.2d 416, 425 (2011). It was up to the General Assembly to weigh a father's interest in these situations and strike the

balance. A father may suffer profound loss in such circumstances, but § 15-51-40 nevertheless limits the father's right to compensate for the loss out of wrongful death proceeds. Because evidence supports the probate court's finding Collins did not provide for Tynslee's needs during her life, however brief, we uphold the probate court's ruling as to the second element of § 15-51-40.

We reverse the order of the circuit court and affirm the probate court's ruling denying Collins any interest in the wrongful death proceeds.

REVERSED.

SHORT and THOMAS, JJ., concur.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

PERRY H. GRAVELY, CIRCUIT COURT JUDGE

CASE NO.: 2016-000536

Mark Collins, ... Respondent,

v.

Lauren Murphy as Statutory Beneficiary, ... Appellant.

**RESPONDENT MARK COLLINS'
PETITION FOR REHEARING**

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Attorneys for Respondent

August 21, 2018

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

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

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

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

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

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

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

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

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

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

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

The Court of Appeals has misapprehended the law as plainly set forth in § 15-51-40, which states that the probate court may deny a parent's entitlement if the court determines that the parent has "failed to reasonably provide support ... and did not otherwise provide for the needs of the decedent **during his or her minority.**" S.C. Code Ann. §15-51-40 (Supp. 2017). The Court construes statutes in a manner inconsistent with its plain meaning by interpreting the specific phrase "during his or her minority" to encompass a period of time beyond the natural life of the minor. The Court has applied this misapprehension to conclude that burial and funeral expenses fall under the applicable statutes description of necessities required to be provided by Mr. Collins despite his exclusion from the event and its planning.

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

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

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

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

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

III. B. ii. Needs of Decedent

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

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

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Respectfully Submitted,


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Dated: August 21, 2018

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The South Carolina Court of Appeals

In the Matter of Tynslee Elizabeth Fields, Deceased,

Lauren Murphy, as statutory beneficiary, Appellant,

v.

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

Of Whom Mark Collins is the Respondent.

Appellate Case No. 2016-000536

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.

Paul E. Spivey, Jr.

J.

Paul W. Thomas

J.

D. Hanlin

J.

Columbia, South Carolina

FILED

October 18, 2018

cc:

Jessica Ann Salvini, Esquire
John Magruder Read, IV, Esquire
Charles W. Marchbanks, Jr., Esquire
The Honorable Debora A. Faulkner

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

CASE NO.: 2016-000536

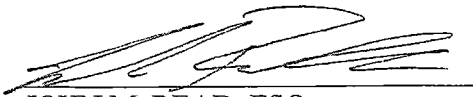
Mark Collins, ... Petitioner,

Versus

Lauren Murphy as Statutory Beneficiary, ... Respondent.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Appendix complies with South Carolina Rules of Appellate Procedure, Rules 242(e) and 267(d).



JOHN M. READ, ESQ.

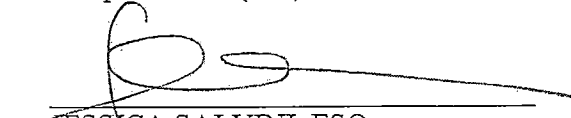
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