

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Jul 28 2021

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley Price, Circuit Court Judge

Case No.: 2018-CP-10-05710
Appellate Tracking No.: 2021-000141

Estate of Patricia A. BrunsonIntervenor/Appellant,

In re:

Elaine Mincey as Personal Representative for the Estate of
William Alexander Brunson, Jr.,Plaintiff/Respondent,

vs.

David Scott Wich and C. J. Wingerter Company, L.L.C.,Defendants.

MOTION TO WITHDRAW INITIAL BRIEF AND
SUBSTITUTE A CORRECTED BRIEF
AND HOLD BRIEFING IN ABEYANCE

Thomas R. Goldstein, S C. Bar No.: 2186
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29415-1121
(843) 554 4291
(843) 554 5566 (fax)
tgoldstein@cobblaw.net

As authorized by Rule 240 of the *South Carolina Rules of Civil Procedure*, the Appellant moves for an Order of the Court authorizing the Appellant to withdraw her Initial Brief and Designation of Contents of Record on Appeal and be given leave of Court to file an amended Initial Brief and Designation of Contents of Record on Appeal. This motion is based on the following grounds:

In her Initial Brief, the Appellant identified March 15, 2019, as the date she received the Circuit Court Order Approving Settlement filed December 11, 2018. After filing the Initial Brief, Respondent's counsel located and produced a redacted December 18, 2018, e-mail transmitting the December 11, 2018, Order Approving Settlement that is the subject matter of this case. (The redacted e-mail and the redacted response along with an unredacted version of the first e-mail are attached here as an Exhibit and incorporated by this reference.) The transmission of the Order on December 18th is 92 days earlier than the date set forth in Appellant's initial brief identifying the transmission date as March 15, 2019. Since receiving this redacted notice, Appellant's counsel located an unredacted version of the December 18th e-mail transmitting the Order, but to date has been unable to obtain an unredacted version of counsel's response of the same date. (Counsel has made a request for the unredacted document to be supplied and is currently awaiting a response as to whether opposing counsel will or will not do this.)

The Appellant having been made aware of the inaccurate statement in her Initial Brief, the Appellant respectfully asks for leave of court to withdraw the Initial Brief and to be granted a short period of time to correct the inaccuracy and resubmit the Brief and a modified Designation of Contents of Record on Appeal. In the meantime, Appellant requests that the Respondent's briefing deadline be held in abeyance pending the Court's permission to allow the Appellant to file a corrected, amended Initial Brief.

Respectfully submitted,

July 27, 2021



Thomas R. Goldstein, S. C. Bar No. 2186
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CERTIFICATE OF COUNSEL

SC Court of Appeals

I certify tht prior to filing this motion, I consulted with opposing counsel who does not oppose the requested relief.

July 27, 2021



Thomas R. Goldstein, S. C. Bar 2186

EXHIBIT

1) Immediately (as in tomorrow) disburse \$49k wrongful death payment to your client and commit to making no arguments over contributory negligence, etc.

2) Acknowledge your client's elective share despite our belief that it was improperly plead and filed and release to her upon closing of the estate her 1/3 share of the survival proceeds from this settlement (which will be approximately \$75k-\$80k based on creditors, costs of this litigation, etc.)

[REDACTED]
[REDACTED] funds related to her receipt of her own settlement
proceeds [REDACTED]

4) In exchange, your client will drop all litigation and make no further claims against the estate. Since she currently has received her fair share under the Elective Share (pursuant to the SC Code calculations) and can't provide a single witness to state this will is invalid, this really isn't much of a concession.

[REDACTED] This is a fair outcome for everyone in which your client stands to receive \$124k from this estate, [REDACTED]

[REDACTED] Should she not accept, we will spend significant funds from the settlement approval to defend the Decedent's last will which (even if she prevails) dramatically reduces her Elective Share.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Sincerely,

Tiffany Provence

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

----- Forwarded message -----

From: tgoldstein@cobblaw.net
Date: Dec 18, 2018, 6:28 PM -0500
To: Tiffany Provence <tnprovence@gmail.com>
Subject: RE: Order Approving Settlement

[Redacted]

1) There is no contributory negligence in South Carolina; it's comparative negligence. This is important because it means Patricia recovers provided she is 50% or less at fault. Under contributory, she would be barred if she were 1% at fault. As for the disbursement, I probably have no objection to that, but I'd like to see the proposed settlement statement.

2) I can't see how I could disagree with #2.

[Redacted]

[Redacted]

[Redacted]

-----Original Message-----

From: Tiffany Provence <tnprovence@gmail.com>
Sent: Tuesday, December 18, 2018 5:53 PM
To: <tgoldstein@cobblaw.net> <tgoldstein@cobblaw.net>
Subject: Order Approving Settlement

Per our conversation, please find attached a copy of the Order approving Settlement we received from Yarborough Applegate and which is currently being filed with the Probate Court. I was unsure if my staff was able to get it to you before we closed. I apologize if you've received it twice. I am open to and wish to discuss resolving this matter but need a return call by 9:00 am tomorrow as I will be in mediation all day tomorrow and Columbia on Thursday. You can call my cell (843-200-6587) this evening or first thing in the morning.

What I am proposing is quite simple. I will seek my client's approval to:

From: Tiffany Provence <tnprovence@gmail.com>
Sent: Tuesday, December 18, 2018 5:53 PM
To: <tgoldstein@cobblaw.net>
Subject: Order Approving Settlement
Attachments: 20181207_Order approving settlement.pdf

Per our conversation, please find attached a copy of the Order approving Settlement we received from Yarborough Applegate and which is currently being filed with the Probate Court. I was unsure if my staff was able to get it to you before we closed. I apologize if you've received it twice. I am open to and wish to discuss resolving this matter but need a return call by 9:00 am tomorrow as I will be in mediation all day tomorrow and Columbia on Thursday. You can call my cell (843-200-6587) this evening or first thing in the morning.

What I am proposing is quite simple. I will seek my client's approval to:

- 1) Immediately (as in tomorrow) disburse \$49k wrongful death payment to your client and commit to making no arguments over contributory negligence, etc.
- 2) Acknowledge your client's elective share despite our belief that it was improperly plead and filed and release to her upon closing of the estate her 1/3 share of the survival proceeds from this settlement (which will be approximately \$75k-\$80k based on creditors, costs of this litigation, etc.)
- 3) Support and not make any argument that could prevent her from making her own claim against the allegedly at fault driver by you or William (or whomever you choose) and not seek any claw back of funds related to her receipt of her own settlement proceeds. We will also agree not to sue her as the at fault driver per the accident report.
- 4) In exchange, your client will drop all litigation and make no further claims against the estate. Since she currently has received her fair share under the Elective Share (pursuant to the SC Code calculations) and can't provide a single witness to state this will is invalid, this really isn't much of a concession.

I can't express enough how badly this case needs to be resolved. This is a fair outcome for everyone in which your client stands to receive \$124k from this estate, primarily from an accident where the estate could have sued her! She then has the opportunity to receive another \$300k+ according to William Applegate's assessment. Should she not accept, we will spend significant funds from the settlement approval to defend the Decedent's last will which (even if she prevails) dramatically reduces her Elective Share.

Please please review all the correspondence I've sent you on the law that controls this case. Please please call me before 9:00 tomorrow so that I don't have to file this stack of nasty motions that will damage her right to recover from the other driver. I desperately hope to hear from you. I know this is our first case working with one another but I can promise you that I am a good attorney and I am trying my best to make this a palatable outcome for all as opposed to dragging this family through needless litigation when no-one can identify what we are fighting for.

Sincerely,

Tiffany Provence

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In re:

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vs.

David Scott Wich and C. J. Wingerter Company, L.L.C.,Defendants.

PROOF OF SERVICE

I certify that I have served the Motion for Leave to Withdraw Initial Brief and hold briefing in abeyance on the Respondent, Estate of Brunson, by depositing a copy of it in the United States mail, postage prepaid on July 28, 2021, addressed to the Estate’s attorney of record, Reynolds Blankenship, 291 East Bay Street, Suite 2, Charleston, S. C. 29401 and also by providing a copy by electronic means.



/s/ Thomas R. Goldstein

Thomas R. Goldstein, S C. Bar No.: 2186
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29415-1121
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(843) 554 5566 (fax)
tgoldstein@cobblaw.net

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)
Dale T. Cobb, Jr.

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

July 27, 2021

Hon. Jenny A. Kitchings
Clerk of Court
South Carolina Court of Appeals
P. O. Box 11629
Columbia, S. C. 29211

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Re: Estate of Patricia A. Brunson, Intervenor, Case No.: 2018-CP-10-05710
Appellate Case No. 2021 000141

Dear Ms. Kitchings,

I enclose an original and seven copies of the Appellant's Motion to Withdraw her Initial Brief and for leave to file a corrected brief and hold further briefing in abeyance pending the Court's decision. By copy of this letter, I am providing a copy to opposing counsel along with a self-addressed, stamped envelope for your convenience in returning a clocked copy. I will also attempt to file a copy electronically. With kind regards, I am

Very truly yours,


Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

TRG/

enclosure: Motion to Withdraw Initial Brief with proof of service, Return envelope, check No.: 13692

cc:

Reynolds Blankenship
Robin Hatch, Personal Representative