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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE 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.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Elaine Mincey, as Personal Representative)
 for the Estate of William Alexander)
 Brunson, Jr.,)
)
 Plaintiff,)
)
 v.)
)
 David Scott Wich and C.J. Wingerter)
 Company, LLC,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2018-CP-10-5710

ORDER APPROVING SETTLEMENT

FILED
 2018 DEC 11 PM 4:00
 CLERK OF COURT

THIS MATTER CAME BEFORE THE COURT on Petition of Elaine Mincey, as Personal Representative of the Estate of William Alexander Brunson, Jr., deceased, for approval of insurance settlements paid by Canal Insurance Company as the primary liability carrier and Liberty Mutual Insurance as the underinsured liability carrier. A hearing was held before this Court on December 4, 2018. After hearing arguments by the Petitioner and counsel for the Petitioner, this Court hereby grants the Petition for Approval of Settlement.

FINDINGS OF FACT

1. Elaine Mincey ("Petitioner") is the duly appointed Personal Representative of the Estate of William Alexander Brunson, Jr., who died on November 12, 2017. This matter came before this Court for approval of the insurance settlements paid by Selective Insurance Company as the primary liability carrier and USAA as the secondary liability and underinsured liability carrier.

#1
 T.L.H.

2. Petitioner is the Decedent's daughter. At the time of his death, the Decedent had a Will dated July 30, 2010, directing distribution of his property, assets, and estate, which Will has been filed with the probate court. The statutory beneficiaries of the Decedent under the laws of South

Carolina (where the Decedent resided at the time of his death) are the Decedent's wife – namely, Patricia Brunson – and the Decedent's children – namely, William Alexander Brunson III, Marian Brunson Lynes, Linda Brunson Raymond, Bruce Dale Brunson, John Michael Brunson, Emma “Elaine” Brunson Mincey, and Katherine Hatch, all of whom are over the age of eighteen.

3. Petitioner has presented claims for wrongful death and survival pursuant to South Carolina law as a result of the collision.

4. The parties have settled the claims against Defendants Wingerter and Wich for Five Hundred Thousand and no/100 Dollars (\$500,000.00) of the available coverage from Selective for these claims. In addition, USAA has agreed to tender the full amount of its available bodily injury coverage for Decedent's claims totaling Fifty Thousand and no/100 Dollars (\$50,000.00). No agreement has been reached between Petitioner and USAA as to payment of the claims made against Decedent's underinsured policy benefits.

5. Petitioner has carefully considered and evaluated this matter and, based on the injuries and damages incurred, believes that the fair and just apportionment of these proceeds is:

- a. Four Hundred Thousand and no/100 Dollars (\$400,000.00) for Decedent's survival claim; and
- b. One Hundred Fifty Thousand and no/100 Dollars (\$150,000.00) for Decedent's wrongful death claim.

6. As such, Petitioner requests Court approval of the survival and wrongful death settlements and apportionments.

7. Petitioner also incurred funeral and burial expenses in the amount of Fifteen Thousand Six Hundred Twenty-Six and 85/100 Dollars (\$15,626.85), undetermined expenses for the estate for

#2
T.L.A.J.

probate fees, and Personal Representative fees as prescribed by the South Carolina Code to be paid out of the survival claim proceeds.

8. Petitioner has hired a probate attorney to assist her with the probate matters, namely Tiffany Provence, of Provence Messervy Law Firm in Charleston, South Carolina. Petitioner is aware of one creditor claim in the amount of \$265.00 presented by Charleston County EMS, but is unaware of any other liens or creditor claims for the Estate. The net proceeds from the Survival claim, totaling Two Hundred Sixty Thousand Three Hundred Forty-Seven and 75/100 Dollars (\$260,347.75) will be used to satisfy any valid debts of the estate, to the extent permitted or required by § 62-3-803, 62-3-804, 62-3-805, and 62-3-806 of the South Carolina Code. Petitioner reserves the right to use a portion of these remaining estate funds to pay any additional and necessary probate attorney fees on behalf of the estate to challenge and negotiate any alleged debts or creditor claims in Probate Court. Petitioner is unaware of any additional creditor claims, however, she reserves her right to challenge and negotiate any alleged debts that may be presented in Probate Court, but ultimately will satisfy any valid debts up to \$260,347.75 with the remaining funds in the estate. These survival net proceeds are to be deposited in an Estate account or in the trust account of the attorney for the Estate until such time as the Estate is closed.

9. The net proceeds to be paid to the statutory beneficiaries to the Wrongful Death claim are Ninety-Eight Thousand One Hundred Four and 78/100 Dollars (\$98,104.78).

10. Petitioner has carefully considered the proposed settlement and believes that the proposed amount is fair and appropriate and requests that this Court approve the same. Petitioner submits that this settlement is in the best interests of the statutory beneficiaries and the beneficiaries of the Estate and that she should be authorized and directed to accept disbursement of the same.

#3
T.L.H.

11. Petitioner has retained William E. Applegate IV of the law firm of Yarborough Applegate LLC. Under the terms of the contingency fee agreement with her attorney for the Decedent's claims, Petitioner has agreed to pay attorney's fees in the amount of One Hundred Eight-Three Thousand Three Hundred Thirty-Three and 34/100 Dollars (\$183,333.34), which is Thirty-Three and One-Third percent (33 1/3%) of the gross recovery, plus pro-rata expenses in the amount of Seven Thousand Nine Hundred Forty-Nine and 13/100 Dollars (\$7,949.13).

12. Petitioner believes that the proposed settlement amount and allocation is fair and appropriate and is in the best interests of the statutory beneficiaries and the beneficiaries of the Estate and that she should be authorized and directed to accept this sum and that she should be authorized and directed to disburse the same.

13. Further, Petitioner is satisfied with the services of her attorneys and believes the fees and expenses are reasonable and that she should be authorized and directed to pay these and that she should be authorized and directed to disburse the same.

14. Petitioner believes that she should be authorized to pay the creditor's claim for Charleston County EMS in the amount of \$265.00 from the survival proceeds.

15. Petitioner has given careful consideration to the matter and has concluded that the aforementioned settlement, under all the circumstances, is fair and just and should be approved and the Petitioner's Petition for Approval of Settlement should be granted.

It is therefore, ORDERED, ADJUDGED and DECREED, that:

(1) This Court hereby grants Petitioner Elaine Mincey's request for approval of the insurance settlements paid by Selective Insurance Company as the primary liability carrier and USAA as the secondary liability and underinsured liability carrier;

Handwritten signature:
T.V.H.S.

(2) This Petitioner Elaine Mincey is hereby permitted to accept the settlement amounts and allocations set forth in Paragraphs 4 and 5 above, that being the same as Paragraphs 8 and 9 of the Petition previously filed in this matter, and she is authorized to execute the appropriate releases with Selective Insurance Company and USAA;

(3) Selective Insurance shall pay a total of \$500,000.00 to Elaine Mincey, as Personal Representative of the Estate of William Alexander Brunson, Jr., deceased, in full and final release of Decedent's claims arising from the automobile collision of November 12, 2017;

(4) USAA shall pay a total of \$50,000.00 to Elaine Mincey, as Personal Representative of the Estate of William Alexander Brunson, Jr., deceased, in full and final release of Decedent's secondary liability (Bodily Injury) claim arising from the automobile collision of November 12, 2017;

(5) The attorney's fees and expenses are reasonable, and therefore, Petitioner shall pay attorney's fees in the amount of One Hundred Eight-Three Thousand Three Hundred Thirty-Three and 34/100 Dollars (\$183,333.34), which is Thirty-Three and One-Third percent (33 1/3%) of the gross recovery, plus pro-rata expenses in the amount of Seven Thousand Nine Hundred Forty-Nine and 13/100 Dollars (\$7,949.13);

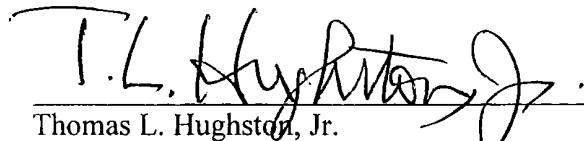
(6) Petitioner is authorized to the creditor's claim for Charleston County EMS in the amount of \$265.00 from the survival proceeds;

(7) Petitioner is authorized to deposit the net proceeds for Decedent's survival claim in an Estate account or in the trust account of the attorney for the Estate until such time as the Estate is closed; and

(8) Petitioner is authorized to disburse the net proceeds for Decedent's wrongful death claim to the statutory beneficiaries.

*\$5
T.L.H. Jr.*

AND IT IS SO ORDERED.


Thomas L. Hughston, Jr.
Presiding Judge, Ninth Judicial Circuit

December 4, 2018
Charleston, South Carolina

#6

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS)
FOURTEENTH JUDICIAL CIRCUIT)
CIVIL ACTION NO. 2018-CP-10-5710)

Elaine Mincey, as Personal Representative)
for the Estate of William Alexander)
Brunson, Jr.,)

Plaintiff,)

v.)

David Scott Wich and C.J. Wingerter)
Company, LLC,)

Defendants.)

ORDER APPROVING SETTLEMENT

THIS MATTER CAME BEFORE THE COURT on Petition of Elaine Mincey, as Personal Representative of the Estate of William Alexander Brunson, Jr., deceased, for approval of insurance settlements paid by Canal Insurance Company as the primary liability carrier and Liberty Mutual Insurance as the underinsured liability carrier. A hearing was held before this Court on December 4, 2018. After hearing arguments by the Petitioner and counsel for the Petitioner, this Court hereby grants the Petition for Approval of Settlement.

FINDINGS OF FACT

1. Elaine Mincey ("Petitioner") is the duly appointed Personal Representative of the Estate of William Alexander Brunson, Jr., who died on November 12, 2017. This matter came before this Court for approval of the insurance settlements paid by Selective Insurance Company as the primary liability carrier and USAA as the secondary liability and underinsured liability carrier.

2. Petitioner is the Decedent's daughter. At the time of his death, the Decedent had a Will dated July 30, 2010, directing distribution of his property, assets, and estate, which Will has been filed with the probate court. The statutory beneficiaries of the Decedent under the laws of South

#1
T.L.H. 8/1

Carolina (where the Decedent resided at the time of his death) are the Decedent's wife – namely, Patricia Brunson – and the Decedent's children – namely, William Alexander Brunson III, Marian Brunson Lynes, Linda Brunson Raymond, Bruce Dale Brunson, John Michael Brunson, Emma “Elaine” Brunson Mincey, and Katherine Hatch, all of whom are over the age of eighteen.

3. Petitioner has presented claims for wrongful death and survival pursuant to South Carolina law as a result of the collision.

4. The parties have settled the claims against Defendants Wingerter and Wich for Five Hundred Thousand and no/100 Dollars (\$500,000.00) of the available coverage from Selective for these claims. In addition, USAA has agreed to tender the full amount of its available bodily injury coverage for Decedent's claims totaling Fifty Thousand and no/100 Dollars (\$50,000.00). No agreement has been reached between Petitioner and USAA as to payment of the claims made against Decedent's underinsured policy benefits.

5. Petitioner has carefully considered and evaluated this matter and, based on the injuries and damages incurred, believes that the fair and just apportionment of these proceeds is:

- a. Four Hundred Thousand and no/100 Dollars (\$400,000.00) for Decedent's survival claim; and
- b. One Hundred Fifty Thousand and no/100 Dollars (\$150,000.00) for Decedent's wrongful death claim.

6. As such, Petitioner requests Court approval of the survival and wrongful death settlements and apportionments.

7. Petitioner also incurred funeral and burial expenses in the amount of Fifteen Thousand Six Hundred Twenty-Six and 85/100 Dollars (\$15,626.85), undetermined expenses for the estate for

probate fees, and Personal Representative fees as prescribed by the South Carolina Code to be paid out of the survival claim proceeds.

8. Petitioner has hired a probate attorney to assist her with the probate matters, namely Tiffany Provence, of Provence Messervy Law Firm in Charleston, South Carolina. Petitioner is aware of one creditor claim in the amount of \$265.00 presented by Charleston County EMS, but is unaware of any other liens or creditor claims for the Estate. The net proceeds from the Survival claim, totaling Two Hundred Sixty Thousand Three Hundred Forty-Seven and 75/100 Dollars (\$260,347.75) will be used to satisfy any valid debts of the estate, to the extent permitted or required by § 62-3-803, 62-3-804, 62-3-805, and 62-3-806 of the South Carolina Code. Petitioner reserves the right to use a portion of these remaining estate funds to pay any additional and necessary probate attorney fees on behalf of the estate to challenge and negotiate any alleged debts or creditor claims in Probate Court. Petitioner is unaware of any additional creditor claims, however, she reserves her right to challenge and negotiate any alleged debts that may be presented in Probate Court, but ultimately will satisfy any valid debts up to \$260,347.75 with the remaining funds in the estate. These survival net proceeds are to be deposited in an Estate account or in the trust account of the attorney for the Estate until such time as the Estate is closed.

9. The net proceeds to be paid to the statutory beneficiaries to the Wrongful Death claim are Ninety-Eight Thousand One Hundred Four and 78/100 Dollars (\$98,104.78).

10. Petitioner has carefully considered the proposed settlement and believes that the proposed amount is fair and appropriate and requests that this Court approve the same. Petitioner submits that this settlement is in the best interests of the statutory beneficiaries and the beneficiaries of the Estate and that she should be authorized and directed to accept disbursement of the same.

#3
T.L.H.J.

11. Petitioner has retained William E. Applegate IV of the law firm of Yarborough Applegate LLC. Under the terms of the contingency fee agreement with her attorney for the Decedent's claims, Petitioner has agreed to pay attorney's fees in the amount of One Hundred Eight-Three Thousand Three Hundred Thirty-Three and 34/100 Dollars (\$183,333.34), which is Thirty-Three and One-Third percent (33 1/3%) of the gross recovery, plus pro-rata expenses in the amount of Seven Thousand Nine Hundred Forty-Nine and 13/100 Dollars (\$7,949.13).

12. Petitioner believes that the proposed settlement amount and allocation is fair and appropriate and is in the best interests of the statutory beneficiaries and the beneficiaries of the Estate and that she should be authorized and directed to accept this sum and that she should be authorized and directed to disburse the same.

13. Further, Petitioner is satisfied with the services of her attorneys and believes the fees and expenses are reasonable and that she should be authorized and directed to pay these and that she should be authorized and directed to disburse the same.

14. Petitioner believes that she should be authorized to pay the creditor's claim for Charleston County EMS in the amount of \$265.00 from the survival proceeds.

15. Petitioner has given careful consideration to the matter and has concluded that the aforementioned settlement, under all the circumstances, is fair and just and should be approved and the Petitioner's Petition for Approval of Settlement should be granted.

It is therefore, ORDERED, ADJUDGED and DECREED, that:

(1) This Court hereby grants Petitioner Elaine Mincey's request for approval of the insurance settlements paid by Selective Insurance Company as the primary liability carrier and USAA as the secondary liability and underinsured liability carrier;

Handwritten:
#4
T.V.H.S.

(2) This Petitioner Elaine Mincey is hereby permitted to accept the settlement amounts and allocations set forth in Paragraphs 4 and 5 above, that being the same as Paragraphs 8 and 9 of the Petition previously filed in this matter, and she is authorized to execute the appropriate releases with Selective Insurance Company and USAA;

(3) Selective Insurance shall pay a total of \$500,000.00 to Elaine Mincey, as Personal Representative of the Estate of William Alexander Brunson, Jr., deceased, in full and final release of Decedent's claims arising from the automobile collision of November 12, 2017;

(4) USAA shall pay a total of \$50,000.00 to Elaine Mincey, as Personal Representative of the Estate of William Alexander Brunson, Jr., deceased, in full and final release of Decedent's secondary liability (Bodily Injury) claim arising from the automobile collision of November 12, 2017;

(5) The attorney's fees and expenses are reasonable, and therefore, Petitioner shall pay attorney's fees in the amount of One Hundred Eight-Three Thousand Three Hundred Thirty-Three and 34/100 Dollars (\$183,333.34), which is Thirty-Three and One-Third percent (33 1/3%) of the gross recovery, plus pro-rata expenses in the amount of Seven Thousand Nine Hundred Forty-Nine and 13/100 Dollars (\$7,949.13);

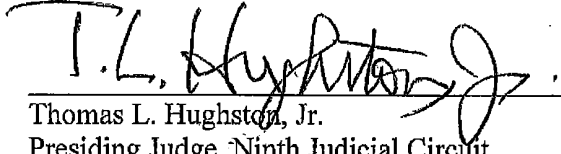
(6) Petitioner is authorized to the creditor's claim for Charleston County EMS in the amount of \$265.00 from the survival proceeds;

(7) Petitioner is authorized to deposit the net proceeds for Decedent's survival claim in an Estate account or in the trust account of the attorney for the Estate until such time as the Estate is closed; and

(8) Petitioner is authorized to disburse the net proceeds for Decedent's wrongful death claim to the statutory beneficiaries.

*\$5
T.L.H.P.*

AND IT IS SO ORDERED.


Thomas L. Hughston, Jr.
Presiding Judge, Ninth Judicial Circuit

December 4, 2018
Charleston, South Carolina

#6

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

JUDGMENT IN A CIVIL CASE
CASE NO. 2018CP1005710

Elaine Mincey et al
PLAINTIFF(S)

David Scott Wich et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Plaintiff's Motion to Intervene is denied. Plaintiff's Motion to Vacate Settlement is denied. Plaintiff's Motion to Remove Personal Representation is denied.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/08/2020 .

Thomas R. Goldstein for Patricia Brunson
C J Wingerter Company LLC
William E. Applegate, IV for Elaine Mincey, Mincey, Elaine as Personal Representative, William Alexander Brunson, Jr, Brunson, William Alexander Jr Estate of David Scott Wich
Reynolds H. Blankenship, Jr. for Elaine Mincey, Mincey, Elaine as Personal Representative, William Alexander Brunson, Jr, Brunson, William Alexander Jr Estate of

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.



Charleston Common Pleas

Case Caption: Elaine Mincey , plaintiff, et al VS David Scott Wich
Case Number: 2018CP1005710
Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2020-12-08 15:17:38 page 3 of 3

ELECTRONICALLY FILED - 2020 Dec 08 4:41 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005710

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
Elaine Mincey, as Personal Representative)	C/A No. 2018-CP-10-05710
for the Estate of William Alexander)	
Brunson, Jr.,)	
)	
Plaintiff,)	
)	
v.)	ORDER DENYING PETITIONER
)	PATRICIA BRUNSON'S MOTION FOR
David Scott Wich and C.J. Wingerter)	RECONSIDERATION
Company, LLC,)	
)	
Defendants.)	
_____)	

This matter previously came before the Court on a Motion to Intervene, Vacate Settlement & Remove Personal Representative filed by Petitioner Patricia Brunson, which the Court denied via Form 4 Order entered on December 8, 2020. Petitioner filed a Motion for Consideration on December 16, 2020, which the Court hereby denies as well.

Before proceeding to the merits, the Court notes that Petitioner complains in her motion to reconsider that the Court did not enter findings in the Order denying Petitioner's motion to intervene, vacate settlement, and remove Plaintiff as personal representative. According to Petitioner, the Court was required to enter findings pursuant to Rule 52, SCRCP, which applies to "actions tried upon the facts without a jury;" that is, bench trials. The hearing on Petitioner's motion was just that, a hearing, not a bench trial. Rule 52 is therefore inapplicable. In any event, the Court hereby addresses in more detail why Petitioner's original motion and this motion to reconsider are without merit.

RELEVANT FACTS

This civil action arose out of a car wreck that caused the death of William Alexander Brunson, Jr., who was the husband of Petitioner Patricia Brunson. Mr. Brunson was also the father of Plaintiff Elaine Mincey from a different relationship. Plaintiff was duly appointed as personal representative of her father's estate by the Charleston County Probate Court, and in that capacity Plaintiff hired William Applegate of Yarborough Applegate to represent the estate in the wreck case.

Plaintiff settled the case with the carriers for the at-fault driver for \$550,000, and petitioned this Court for approval of the settlement. On December 11, 2018, the Honorable Thomas L. Hughston, Jr., entered an Order approving the settlement, with \$400,000 of the proceeds apportioned to the survival claim and \$150,000 apportioned to the wrongful-death claim. According to Petitioner, she first learned of the settlement on March 15, 2019, when she received a check for her share of the proceeds from the wrongful-death claim, which according to law were paid outside of the probate estate. The survival proceeds were administered through the estate.

On February 14, 2020, Petitioner filed her motion to intervene for the purpose of seeking two forms of relief: (1) vacatur of the settlement that approved via the Order entered on December 11, 2018; and (2) removal of Plaintiff as personal representative of the Estate of William Alexander Brunson, Jr. Petitioner disagrees with how the settlement proceeds were apportioned between the survival and wrongful-death claims, arguing that the apportionment resulted in a lower net amount paid to her on account of how her husband's will had been drawn. According to Petitioner, the apportionment was the result of fraud committed by her stepdaughter, Plaintiff.

Plaintiff vehemently denies any fraud or other wrongdoing in settling her father's case.

LAW AND ANALYSIS

Petitioner has moved to intervene for the purpose of seeking two forms of relief that are unavailable to her: (1) vacatur of the settlement that this Court approved via order entered on December 11, 2018; and (2) removal of Plaintiff as personal representative of the Estate of William Alexander Brunson, Jr.

Petitioner bases her motion for vacatur on: (a) her claim that Plaintiff procured the settlement through fraud; and (b) a claim that the Court lacked jurisdiction “for failure to have the necessary parties before the Court.” Neither of these claims has merit.

Likewise, there is no merit in Petitioner’s motion for this Court to remove Plaintiff as the personal representative of her father’s estate. The Court of Common Pleas does not have jurisdiction to do that. Only the Probate Court does.

As a procedural matter, Petitioner claims that the Court lacks subject-matter jurisdiction to resolve this motion unless Judge Hughston, who entered the Order approving the settlement, is the one to resolve it. This argument lacks merit as well.

I. THE COURT HAS SUBJECT-MATTER JURISDICTION AND DOES NOT REQUIRE JUDGE HUGHSTON TO RESOLVE PETITIONER’S MOTION.

By statute, this Court has subject-matter jurisdiction to approve wrongful-death and survival settlements. S.C. Code § 15-51-42(B)–(C). The 2018 order approving settlement here is therefore not void for want of subject-matter jurisdiction.

After filing her motion to intervene, Petitioner raised the argument that the Court lacks subject-matter jurisdiction unless Judge Hughston, who approved the settlement, is the judge who resolves Petitioner’s motion. That is incorrect. While it is true that one Circuit Court judge generally has no authority to overrule another Circuit Court judge, that principle is about one judge’s authority, not the Court’s subject-matter jurisdiction as alleged by Petitioner. See, e.g.,

Coon v. Coon, 364 S.C. 563, 566, 614 S.E.2d 616, 617 (2005) (observing that “[s]ubject-matter jurisdiction is the ‘power to hear and determine cases of the general class to which the proceedings in question belong’”) (quoting Dove v. Gold Kist, 314 S.C. 235, 237–38, 442 S.E.2d 598, 600 (1994)).

Further, the principle is not implicated when a rule or statute grants authority to judges to act upon the prior order of another judge. See, e.g., Dinkins v. Robbins, 203 S.C. 199, 26 S.E.2d 689, 690 (1943) (holding that “the prior order of one Circuit Judge may not be modified by the subsequent order of another Circuit Judge, *except in cases... when it is allowed by rule of court or statute*”) (emphasis added; citation omitted). Rule 60, SCRCP, allows any Circuit Court judge, not just Judge Hughston, to resolve a motion such as Petitioner’s motion here.

Rule 60(a) specifically contemplates situations in which the original trial judge must be the one to resolve the motion for relief from judgment or order. Rule 60(a), SCRCP (providing, in part, regarding clerical mistakes: “The ending of a term of court or departure from the circuit shall not operate to deprive the trial judge of jurisdiction to correct such mistakes. A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion.”). On the other hand, Rule 60(b), SCRCP, simply provides that “*the court* may relieve a party or his legal representative from a final judgment, order, or proceeding for” reasons such as excusable neglect or fraud. Rule 60(b), SCRCP (emphasis added). In this regard, Rule 60 would permit any Circuit Court judge to resolve Petitioner’s Rule 60(b) motion. This is not the type of motion that must be heard by the Circuit Court judge who entered the original order.

This application of Rule 60 makes particular sense here, since Judge Hughston did not consider and resolve the issues that Petitioner raises now. Indeed, Judge Hughston was not even

aware of those issues, so he could not have considered them before he entered the Order approving the settlement.

For these reasons, Petitioner's motion to intervene and vacate the settlement was properly denied.

II. THE COURT CANNOT VACATE THE ORDER APPROVING SETTLEMENT.

Again, Petitioner Brunson is asking the Court to vacate the order approving settlement on the following bases: (1) fraud, pursuant to Rule 60(b)(3), SCRPC; and (2) voidness for lack of personal jurisdiction, pursuant to Rule 60(b)(4), SCRPC. Neither basis has merit.

A. Petitioner's motion was not filed in time to allege fraud under Rule 60(b)(3).

As noted above, the Court entered the order approving settlement on December 11, 2018. Petitioner did not file this motion until more than a year later, on February 14, 2020. Rule 60(b)(3), SCRPC, provides that "[o]n motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for...fraud, misrepresentation, or other misconduct of an adverse party." Rule 60(b) further provides, however, that any motion to vacate a judgment based on fraud, misrepresentation, or other misconduct of an adverse party must be made "not more than one year after the judgment, order or proceeding was entered or taken." The rule provides no exception to this deadline. Accord Coleman v. Dunlap, 306 S.C. 491, 495, 413 S.E.2d 15, 17 (1992) (describing the one-year deadline under Rule 60(b)(1)–(3) as "the absolute time limit").

Without citation to authority, Petitioner argues that the discovery rule applicable to the running of a statute of limitations also applies to the deadline in Rule 60(b)(1)–(3), SCRPC. The discovery rule is statutory, S.C. Code § 15-3-535, and specifically applies to the running of the statute of limitations in personal-injury actions. Id. (referring to S.C. Code § 15-3-530(5)). No

such statute applies to the running of the one-year period under Rule 60(b), SCRPC.¹ Consequently, Petitioner's motion to vacate the Order approving the settlement on the basis of alleged fraud is untimely, and the motion must be denied on that ground.

B. Petitioner was not an indispensable party to the settlement approval, and even if she had been her absence would not render the settlement-approval order void.

In arguing that she was an indispensable party to the settlement approval and has a right to intervene for that reason, Petitioner overlooks that the *only* person allowed to seek court approval of a wrongful death or survival claim is the personal representative of the estate. South Carolina Code section 15-51-42(A) provides: "Only a duly appointed personal representative, as defined in Section 62-1-201(30), shall have the authority to settle wrongful death or survival actions." Since Petitioner was not the personal representative, she had no right to intervene or participate at all. She was certainly not *indispensable*.

Petitioner's absence from the settlement-approval proceeding did not deprive the Court of personal jurisdiction over anyone. "On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding" if "the judgment is void." Rule 60(b)(4), SCRPC.² "A void judgment is one that, from its inception, is a complete nullity and is without legal effect." Belle Hall Plantation Homeowner's Assn. v. Murray, 419 S.C. 605, 617, 799 S.E.2d 310, 316 (2017) (quotation omitted). "The definition of void under

¹ The Court notes that Petitioner admits she received notice of the settlement as early as March 2019 when she received the check for her share the wrongful-death proceeds. This was approximately nine months before the one-year deadline passed under Rule 60(b)(3), SCRPC. Petitioner has provided no explanation for why she did not timely file her motion during those nine months.

² Unlike vacatur under Rule 60(b)(1)–(3), vacatur under Rule 60(b)(4) does not have a one-year deadline for the movant to file for relief.

the rule *only* encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction.” *Id.* (quotation omitted) (emphasis added). “Generally, a person against whom a judgment or order is taken without notice may rightly ignore it and may assume that no court will enforce it against his person or property.” *Id.* at 618, 799 S.E.2d at 316 (quotation omitted).

By statute, this Court has subject-matter jurisdiction to approve wrongful-death and survival settlements. S.C. Code § 15-51-42(B)–(C). The 2018 Order approving settlement is therefore not void for want of subject-matter jurisdiction.

Further, Petitioner Brunson had no statutory or other right to notice of the settlement, notice of the petition for settlement approval, or notice of the settlement-approval hearing. Consequently, there was no failure “to provide proper due process” that could render the order approving settlement void or voidable.

Furthermore, while Petitioner Brunson was a statutory beneficiary of the wrongful-death settlement and apparently a legal heir under her husband’s will for purposes of the survival settlement, the Order approving settlement was not a judgment or order *against* Petitioner Brunson. The Order could be viewed as a judgment against the at-fault driver who caused the wreck that killed Petitioner’s late husband, but it was not an order or judgment against her. Consequently, Petitioner’s claims do not fit any of the scenarios that might render a judgment void pursuant to Rule 60(b)(4).

In sum, even if Petitioner’s assertions about what happened or should have happened with the settlement approval had any factual support—they do not—at best they would fall under Rule 60(b)(1) (“mistake, inadvertence, surprise, or excusable neglect”) or Rule 60(b)(3) (“fraud, misrepresentation, or other misconduct of an adverse party”). As discussed above, however, to

make those arguments Petitioner would have had to file her motion within one year after the Court entered its Order approving the settlement. Petitioner did not meet that deadline, and therefore her arguments are procedurally barred. She cannot get around that procedural problem by misclassifying her claim as one that triggers Rule 60(b)(4). That subsection of the rule does not apply, and the Court has properly denied Petitioner's motion on that basis.

III. THE COURT LACKS JURISDICTION TO REMOVE THE PERSONAL REPRESENTATIVE.

This Court obtains subject-matter jurisdiction over "formal proceedings...for the appointment of general personal representatives" only when such formal proceedings have been removed from the Probate Court upon motion of a party or the Probate Court's own motion. S.C. Code § 62-1-302(d)(1). That has not happened here, so the Court lacks subject-matter jurisdiction to entertain Petitioner Brunson's request to have Plaintiff removed as personal representative in this case. The Probate Court has exclusive subject-matter jurisdiction over the appointment and removal of the personal representative in this matter. Plaintiff's motion to intervene and have the Court remove Plaintiff as personal representative was therefore properly denied.

CONCLUSION

Petitioner Brunson's motion to intervene, vacate the order approving settlement, and remove Plaintiff as personal representative is without any merit and was properly denied. Petitioner's motion to reconsider is also denied.

AND IT IS SO ORDERED.

[signature page follows]



Charleston Common Pleas

Case Caption: Elaine Mincey , plaintiff, et al VS David Scott Wich
Case Number: 2018CP1005710
Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2021-01-13 09:27:18 page 9 of 9

ELECTRONICALLY FILED - 2021 Jan 13 11:35 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005710

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Elaine Mincey, as Personal Representative)
 for the Estate of William Alexander)
 Brunson, Jr.,)
)
 Plaintiff,)
)
 v.)
)
 David Scott Wich and C.J. Wingerter)
 Company, LLC,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2018-CP-10-5710

**PETITION FOR
 SETTLEMENT APPROVAL**

2018 DEC -3
 4:11 PM
 FILED
 CLERK OF COURT
 PH 12:55

The undersigned, as Personal Representative of the Estate of William Alexander Brunson, Jr., deceased, hereby petitions as follows:

1. Elaine Mincey (“Petitioner”) is the duly appointed Personal Representative of the Estate of William Alexander Brunson, Jr. (“Decedent”), who died on November 12, 2017. A copy of the Certificate of Appointment by the Charleston County Probate Court is attached to this Petition as Exhibit “A”. Petitioner hereby petitions this Court for approval of the insurance settlements paid by Selective Insurance Company as the primary liability carrier and USAA as the secondary liability and underinsured liability carrier.

2. At the time of his death, the decedent had a Will dated July 30, 2010, directing distribution of his property, assets, and estate, which Will has been filed with the probate court. The statutory beneficiaries of the Decedent under the laws of South Carolina (where the Decedent resided at the time of his death) are the Decedent’s wife, Patricia Brunson, and his children, William Alexander Brunson III, Marian Brunson Lynes, Linda Brunson Raymond, Bruce Dale

Brunson, John Michael Brunson, Emma "Elaine" Brunson Mincey, and Kathleen M. Hatch, all of whom are over the age of eighteen.

3. On or about November 11, 2017, Decedent and Patricia Brunson were traveling southbound on Highway 17 near Johns Island, South Carolina. At the same time, a commercial pick-up truck, owned by Defendant C.J. Wingerter Company, LLC ("Wingerter") and driven by Defendant David Scott Wich ("Wich"), was traveling northbound on Highway 17 at a high rate of speed. As Mrs. Brunson attempted a left-turn across the intersection of Highway 17 and Main Road, Defendants' vehicle t-boned the Brunsons' vehicle. Decedent was transported by ambulance from the scene to MUSC where he was treated and incurred medical bills totaling at least \$56,786.90. Despite the treatment, Decedent's internal injuries were ultimately too significant and after significant pain and suffering, he died of his injuries during the early morning hours.

4. Both Patricia Brunson and Defendants were found to have contributed to this collision.

5. Petitioner has presented claims for wrongful death and survival pursuant to South Carolina law as a result of the collision.

6. Selective Insurance Company ("Selective") insured the vehicle driven by Defendant Wich and owned by Defendant Wingerter under a Commercial General Liability Policy with coverage limits of One Million and no/100 Dollars (\$1,000,000.00) per occurrence.

7. USAA insured the Brunsons' vehicle under a personal automobile policy with Bodily Injury limits of Fifty Thousand and no/100 Dollars (\$50,000.00) per person and corresponding Underinsured Motorists limits.

8. The parties have settled the claims against Defendants Wingerter and Wich for Five Hundred Thousand and no/100 Dollars (\$500,000.00) of the available coverage from Selective for these claims. In addition, USAA has agreed to tender the full amount of its available bodily injury coverage for Decedent's claims totaling Fifty Thousand and no/100 Dollars (\$50,000.00). No agreement has been reached between Petitioner and USAA as to payment of the claims made against Decedent's underinsured policy benefits.

9. Petitioner has carefully considered and evaluated this matter and, based on the injuries and damages incurred, believes that the fair and just apportionment of these proceeds is:

- a. Four Hundred Thousand and no/100 Dollars (\$400,000.00) for Decedent's survival claim; and
- b. One Hundred Fifty Thousand and no/100 Dollars (\$150,000.00) for Decedent's wrongful death claim.

10. As such, Petitioner requests Court approval of the survival and wrongful death settlements and apportionments.

11. Petitioner also incurred funeral and burial expenses in the amount of Fifteen Thousand Six Hundred Twenty-Six and 85/100 Dollars (\$15,626.85), undetermined expenses for the estate for probate fees, and Personal Representative fees as prescribed by the South Carolina Code to be paid out of the survival claim proceeds.

12. Petitioner has hired a probate attorney to assist her with the probate matters, namely Tiffany Provence, of Provence Messervy Law Firm in Charleston, South Carolina. Petitioner is aware of one ambulance bill in the amount of \$265.00 presented by Charleston County EMS, but no other liens or creditor claims for the Estate. The net proceeds from the Survival claim, totaling Two Hundred Sixty Thousand Three Hundred Forty-Seven and 75/100 Dollars (\$260,347.75) will

be used to satisfy any valid debts of the estate, to the extent permitted or required by § 62-3-803, 62-3-804, 62-3-805, and 62-3-806 of the South Carolina Code. Petitioner reserves the right to use a portion of these remaining estate funds to pay any additional and necessary probate attorney fees on behalf of the estate to challenge and negotiate any alleged debts or creditor claims in Probate Court. Petitioner is unaware of any additional creditor claims, however, she reserves her right to challenge and negotiate any alleged debts that may be presented in Probate Court, but ultimately will satisfy any valid debts up to \$260,347.75 with the remaining funds in the estate. These survival net proceeds are to be deposited in an Estate account or in the trust account of the attorney for the Estate until such time as the Estate is closed.

13. The net proceeds to be paid to the statutory beneficiaries to the Wrongful Death claim are Ninety-Eight Thousand One Hundred Four and 78/100 Dollars (\$98,104.78).

14. Petitioner has carefully considered the proposed settlement and believes that the proposed amount is fair and appropriate and requests that this Court approve the same. Petitioner submits that this settlement is in the best interests of the statutory beneficiaries and the beneficiaries of the Estate and that she should be authorized and directed to accept disbursement of the same.

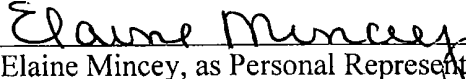
15. Petitioner has retained William E. Applegate IV of the law firm of Yarborough Applegate LLC. Under the terms of the contingency fee agreement with her attorney for the Decedent's claims, Petitioner has agreed to pay attorney's fees in the amount of One Hundred Eight-Three Thousand Three Hundred Thirty-Three and 34/100 Dollars (\$183,333.34), which is Thirty-Three and One-Third percent (33 1/3%) of the gross recovery, plus pro-rata expenses in the amount of Seven Thousand Nine Hundred Forty-Nine and 13/100 Dollars (\$7,949.13). Petitioner

believes these fees and expenses are appropriate and would ask the Court to approve and authorize the payment of the same.

16. Petitioner further requests that the Court allow Petitioner to accept the settlement amount as set forth in Paragraphs 8 and 9, and allow Petitioner to execute the appropriate releases with Selective Insurance Company and USAA.

WHEREFORE, Petitioner prays and requests that she be authorized and directed to accept the settlement offers of Selective Insurance Company and USAA as set forth above and that she be authorized to make the disbursements as set forth herein.

Dated this 30 day of Nov, 2018.


Elaine Mincey, as Personal Representative of the Estate of
William Alexander Brunson, Jr.

2018-CP-10-5710

VERIFICATION

I, Elaine Mincey, as Personal Representative of the Estate of William Alexander Brunson, Jr., hereby affirm that I have read the aforementioned Petition for Settlement Approval, and I hereby affirm and swear that the information set forth therein is accurate. I hereby request that the Court approve the settlement as set forth herein.

Dated: 11-30-18

Elaine Mincey
Elaine Mincey, as Personal Representative of the Estate of William Alexander Brunson, Jr.

Sworn to and subscribed before me:

Amy J. [Signature]
Notary Public in the State of South Carolina

Date: 11/30/18

**My Commission Expires
March 25, 2024**

FILED
2018 DEC -3 PM 12:57
JAMES J. ARMSTRONG
CLERK OF COURT

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE PROBATE COURT

CERTIFICATE OF APPOINTMENT

IN THE MATTER OF:
WILLIAM ALEXANDER BRUNSON, JR.
(Decedent)

CASE NUMBER: 2017ES1002063

This is to certify that

ELAINE B. MINCEY

is/are the duly qualified

- PERSONAL REPRESENTATIVE
- SUCCESSOR PERSONAL REPRESENTATIVE
- SPECIAL ADMINISTRATOR

In the above matter and that this appointment, having been executed on the 5th
day of December, 2017 is now in full force and effect.

RESTRICTIONS:

NONE

Executed this 5th day of December, 2017.



IRVIN G. CONDON, JUDGE OF PROBATE
BY ESTATE CLERK

**Do not accept a copy of this certificate without
the raised seal of the Probate Court.**

EXHIBIT B.

SETTLEMENT PROCEEDS FOR WILLIAM A. BRUNSON, JR.

GROSS SETTLEMENT AMOUNT: **\$ 550,000.00**
*Paid as \$500,000.00 from Selective Insurance Company and
\$50,000.00 from USAA*

ATTORNEYS FEES (33 1/3% total):

Yarborough Applegate LLC	\$ 91,666.67
Savage Law Firm	\$ 91,666.67
TOTAL ATTORNEYS FEES:	\$ 183,333.34

EXPENSES:

Yarborough Applegate LLC	\$ 6,729.13
Savage Law Firm	pending
Held in trust for future costs (balance to be refunded in 60 days)	\$ 1,000.00
TOTAL EXPENSES:	\$ 7,949.13

**OUTSTANDING MEDICAL BILLS to
be paid from Survival
Proceeds:**

Medicare	\$ 0.00
Humana	\$ 0.00
Outstanding medical bill owed to EMS	\$ 265.00
TOTAL LIENS:	\$ 265.00

CLIENT NET RECOVERY: **\$ 358,452.53**
*Paid as \$260,347.75 to the survival claim and \$98,104.78 to the wrongful
death claim.*

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-10-05710

Elaine Mincey, as Personal)
Representative for the Estate of)
William Alexander Brunson, Jr.,)

Plaintiff,)

vs.)

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

Defendants.)

**MOTION TO INTERVENE,
VACATE SETTLEMENT &
REMOVE PERSONAL REPRESENTATIVE
RULE 60, S. C. RULES OF CIV. PROCEDURE
RULE 24, S.C. RULES OF CIV. PROCEDURE**

TO THE PLAINTIFF ABOVE NAMED:

Please take notice that Patricia Brunson, the Surviving Spouse of the Decedent William Alexander Brunson, Jr., who is a statutory beneficiary of the Estate, moves for an Order of the Court authorizing her to intervene and vacate the Order Approving Settlement of the Decedent's wrongful death and survival actions, for lack of jurisdiction for failure to have the necessary parties before the Court and for fraud in procuring a settlement without notice to the moving party/intervenor. This motion is based on the following grounds:

1. The intervening and moving party is the Decedent's surviving spouse, having married him in Charleston County on September 14, 1968.
2. The Decedent and the moving party were happily married until the date of Decedent's death on November 11, 2017.

3. The moving party/intervenor, Patricia Brunson, was operating their automobile on November 11, 2017, when each of them sustained grievous injuries as a result of the negligence, gross negligence, and recklessness of the defendant, David Scott Wich, who was operating his employer's motor vehicle at the date and time of the collision. The moving party/intervenor is still under doctors' care and not expected to recover fully from her injuries.
4. The Decedent succumbed to his injuries shortly after the collision.
5. While the Decedent was hospitalized, the Personal Representative entered a putative Will for Probate, which was prepared and executed by the Decedent's oldest son, who is not licensed to practice law.
6. The moving party/intervenor previously challenged the legality of the Will as well as demanded her Elective Share of the Estate as provided by law.
7. During the time of the moving party/intervenor's incapacity, the Personal Representative took steps hostile to her, including but not limited to, redirecting her mail, opening her mail, removing personal property from the surviving spouse's home, attempting to invade her step-mother's personal financial accounts, and so on.
8. The Personal Representative, Elaine Mincey, is the moving party/intervenor's stepdaughter.
9. The surviving spouse is a statutory beneficiary as well as a putative beneficiary under a previously executed reciprocal Will and by operation of South Carolina law that provides an Elective Share to a surviving Spouse under South Carolina Code § 62-2-201.
10. The Personal Representative acts in a fiduciary capacity to the surviving spouse, Patricia Brunson. § 62-3-703, S. C. Code, ann.: "A personal representative is a fiduciary who shall observe the standards of care described by Section 62-7-804."

11. The Personal Representative has taken acts contrary to the best interests of the moving party/intervenor, Patricia Brunson, and has always acted adversely to her interest.

12. At the time of the putative settlement of the death case, the Personal Representative knew that the Surviving Spouse was in litigation against the Estate and represented by counsel.

13. The Personal Representative furnished no notice to the moving party/intervenor that she had filed suit and/or settled a claim against the at-fault driver, that the case or claim had been settled, or that funds were collected and available for distribution.

14. The Personal Representative concealed these facts from the surviving spouse and intentionally withheld the pleadings from the surviving spouse that would have put her on notice of a pending settlement. The Personal Representative's intentional acts, including her failure to give notice to a statutory beneficiary, deprived the Court of jurisdiction because a necessary and indispensable party, who the Personal Representative knew was represented by separate counsel, was intentionally excluded from the proceedings and thereby prevented from an opportunity to be heard.

15. The moving/intervening party learned that there may have been a settlement when Personal Representative's Counsel mailed a letter on March 15, 2019, enclosing a check, #3534, in the amount of \$49,052.39 with no explanation other than: "Please find enclosed a check for Patricia Brunson for her share of the proceeds in the wrongful death claim in the above matter."

16. The Personal Representative never provided a copy of the pleadings, the amount received or any information about the putative settlement.

17. The Personal Representative never provided notice that she scheduled a Settlement Conference on a pending wrongful death/survival action.

18. Without the participation of the surviving spouse, whose interests were not being protected by the Personal Representative, the Court never acquired jurisdiction over the necessary parties to make a finding that settlement was or was not appropriate.

19. Whatever the amount of the surviving spouse's share is of any wrongful death or survival action cannot be calculated until the pending legal issue over the validity of the putative Will is resolved in the Court of final resort.

20. Because the Personal Representative has taken so many steps adverse to the surviving spouse, she has breached repeatedly her fiduciary responsibility to the surviving spouse and taken affirmative steps to defraud her.

21. Because the Personal Representative is concealing information from the surviving spouse and committing fraud on the Court, she should be removed as Personal Representative and a suitable person or entity substituted in her place who will discharge the duties of the Personal Representative as a proper fiduciary.

22. Because the moving party/intervenor is the surviving spouse of the Decedent and a beneficiary of the Estate, she is entitled to intervene as an unconditional right by rule because she claims an interest relating to the property of the Estate which is the subject of that action, and she is so situated that the disposition of the action has as a practical matter impaired and impeded her ability to protect her interest as a beneficiary, and her interests are not being protected by the Personal Representative who has taken multiple hostile acts toward her.

23. In addition, without the surviving spouse's joinder and participation, the circuit court did not perfect the jurisdiction of the Court. Because the Personal Representative is not protecting her interests and is committing affirmative acts to impair them, the surviving spouse is a proper person for joinder under Rule 19, *South Carolina Rules of Civil Procedure*.

24. The Personal Representative committed a fraud on both her stepmother and the Court by misrepresenting that she was acting in the best interests of the beneficiaries and by intentionally failing to provide notice to the surviving spouse.

WHEREFORE, the moving party/intervenor, Patricia Brunson, moves for an Order of the Court:

- A. Vacating the Order Approving Settlement filed December 11, 2018, for fraud and void for lack of jurisdiction under Rule 60, *South Carolina Rules of Civil Procedure*;
- B. Granting the Surviving Spouse, Patricia Brunson, leave of Court to intervene under Rule 24, *South Carolina Rules of Civil Procedure*;
- C. Joining the moving/intervening party, Patricia Brunson, as a necessary and indispensable party under Rule 19, *South Carolina Rules of Civil Procedure*;
- D. Removing the Personal Representative for fraudulent acts and failure to act in a fiduciary manner and appointing some appropriate person or entity to act as Personal Representative in her stead;
- E. For such other and further relief as the Court deems just and proper.

February 13, 2020

/s/Thomas R. Goldstein
Thomas R. Goldstein, S. C. Bar #2186
BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Post Office Box 71121
Charleston, South Carolina 29415-1121
(843) 554-4291; (843) 554-5566 fax
ATTORNEYS FOR PLAINTIFF

Rule 11 Certificate

I certify that consultation prior to filing this motion would serve no useful purpose.

February 13, 2020

/s/Thomas R. Goldstein
Thomas R. Goldstein, S. C. Bar No. 2186

December 11, 2018; and (2) removal of Plaintiff as personal representative of the Estate of William Alexander Brunson, Jr. As discussed in more detail below, Rule 60(b), SCRCP, prohibits the Court from granting the first form of relief requested by Petitioner—vacatur of the settlement based on Petitioner’s allegation of fraud—because Petitioner did not file her motion within one year after the order approving the settlement was entered. Petitioner’s other basis for vacatur—that the Court lacked jurisdiction “for failure to have the necessary parties before the Court”—is absurd and frivolous. Even if Petitioner were a “necessary party” to the settlement-approval proceeding (she was not), that would not call into question, to any extent whatsoever, the Court’s subject-matter jurisdiction or personal jurisdiction over anyone.

Coincidentally, the second form of relief requested by Petitioner—removal of Plaintiff as the personal representative—does raise a question of the Court’s subject-matter jurisdiction. Except in certain circumstances that are not presented here, the Probate Court has exclusive jurisdiction to appoint and remove personal representatives of the estates of deceased persons. Indeed, the Probate Court appointed Plaintiff as personal representative in this case. See Certificate of Appointment, attached as **Exhibit A**. Consequently, this Court lacks subject-matter jurisdiction to grant the second form of relief that Petitioner requests.

Since none of the relief Petitioner seeks is available to her, there is no reason for her to intervene and re-open this case. The Court should deny her motion in its entirety.

I. THE COURT CANNOT VACATE THE ORDER APPROVING SETTLEMENT.

Again, Petitioner Brunson is asking the Court to vacate the order approving settlement on the following grounds: (1) fraud, pursuant to Rule 60(b)(3), SCRCP; and (2) voidness for lack of jurisdiction, pursuant to Rule 60(b)(4), SCRCP. Neither ground has any merit.

A. Petitioner's motion was not filed in time to allege fraud under Rule 60(b)(3).

As noted above, the Court entered the order approving settlement on December 11, 2018. Petitioner did not file this motion until more than a year later, on February 14, 2020.

Rule 60(b)(3), SCRCPP, provides that “[o]n motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for...fraud, misrepresentation, or other misconduct of an adverse party.” Rule 60(b) further provides, however, that any motion to vacate a judgment based on fraud, misrepresentation, or other misconduct of an adverse party must be made “not more than one year after the judgment, order or proceeding was entered or taken.” The rule provides no exception to this deadline. Consequently, the Court must deny Petitioner’s motion on this basis.

While that is procedurally dispositive of Petitioner’s claim of fraud, Plaintiff respectfully points out that on the merits, all of Petitioner’s allegations that Plaintiff committed some sort of fraud should have been made (a long time ago) in the Probate Court. Petitioner is confused in thinking that the Court of Common Pleas should resolve a dispute over the legality of the decedent’s will and Petitioner’s right to an elective share of the decedent’s estate. These are not issues that should be brought before this Court, regardless of the type of motion in which they are presented. Regardless, Petitioner’s claim of fraud is procedurally barred, and the motion must be denied on this ground.

B. Petitioner was not an indispensable party to the settlement approval, and even if she had been her absence would not render the settlement-approval order void.

In arguing that she was an indispensable party to the settlement approval and has a right to intervene for that reason, Petitioner overlooks that the *only* person allowed to seek court approval

of a wrongful death or survival claim is the personal representative of the estate. Since Petitioner was not the personal representative, she had no right to intervene or participate at all.

Further, in arguing that the settlement-approval order is “void” pursuant to Rule 60(b)(4), SCRCF, Petitioner has confused the difference between the concepts of indispensable party and jurisdiction. There is no merit to Petitioner’s claim that the order approving settlement is void, and her motion must be denied on this ground.

i. Petitioner was not an indispensable party and has no right to intervene since she is not the personal representative of the decedent’s estate.

South Carolina Code section 15-51-42(A) provides: “Only a duly appointed personal representative, as defined in Section 62-1-201(30), shall have the authority to settle wrongful death or survival actions.” Again, Petitioner Brunson was not the personal representative of her late husband’s estate. Plaintiff Mincey was.

Further, until a court has approved such a settlement, there is no statutory or other requirement that the personal representative give notice to statutory beneficiaries or legal heirs that a settlement has been reached; that settlement approval from a court has been requested; or that a settlement-approval hearing has been scheduled. Only after a court has approved the settlement does the personal representative need to notify statutory beneficiaries and legal heirs for the purpose of disbursing the settlement funds according to law.

Since Code section 15-51-42(A) provides that *only* the personal representative can pursue wrongful-death and survival settlements, Rule 24, SCRCF, cannot be interpreted to provide anyone with the right or conditional right to intervene in a wrongful-death or survival settlement proceeding. Likewise, no one who is not the personal representative could possibly be deemed an indispensable party pursuant to Rule 19, SCRCF.

Since Petitioner Brunson was not the personal representative of her late husband's estate, she had no right to be a party to or even receive notice of the settlement-approval proceeding until after it had already happened. Again, if she had wanted to be in charge of her late husband's wrongful-death and survival claims, then she should have gone to the Probate Court in timely fashion to have herself appointed as personal representative. Neither Rule 24 nor Rule 19 provides Petitioner with any right to relief in this Court, and her claim that the order approving settlement is void must be denied.

ii. Even if Petitioner were indispensable or had a right to intervene in the settlement-approval proceeding, her absence would not have deprived the Court of jurisdiction.

“On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding” if “the judgment is void.” Rule 60(b)(4), SCRC.P.¹ “A void judgment is one that, from its inception, is a complete nullity and is without legal effect.” Belle Hall Plantation Homeowner's Assn. v. Murray, 419 S.C. 605, 617, 799 S.E.2d 310, 316 (2017) (quotation omitted). “The definition of void under the rule *only* encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction.” Id. (quotation omitted) (emphasis added). “Generally, a person against whom a judgment or order is taken without notice may rightly ignore it and may assume that no court will enforce it against his person or property.” Id. at 618, 799 S.E.2d at 316 (quotation omitted).

¹ Unlike vacatur under Rule 60(b)(1)–(3), vacatur under Rule 60(b)(4) does not have a one-year deadline for the movant to file for relief.

By statute, this Court has subject-matter jurisdiction to approve wrongful-death and survival settlements. S.C. Code § 15-51-42(B)–(C). The 2018 order approving settlement here is therefore not void for want of subject-matter jurisdiction.

As noted above, Petitioner Brunson had no right to notice of the settlement, notice of the petition for settlement approval, or notice of the settlement-approval hearing. Consequently, there was no failure “to provide proper due process” that could render the order approving settlement void.

Further, while Petitioner Brunson was a statutory beneficiary of the wrongful-death settlement and perhaps a legal heir for purposes of the survival settlement, the order approving settlement was not a judgment or order *against* Petitioner Brunson. The order could be viewed as a judgment against the at-fault driver who caused the wreck that killed Petitioner’s late husband, but it was not an order or judgment against her. Consequently, Petitioner’s claims do not fit any of the scenarios that might render a judgment void pursuant to Rule 60(b)(4).

The reality is that even if Petitioner’s assertions about what happened or should have happened with the settlement approval had any factual support—they do not—at best they would fall under Rule 60(b)(1) (“mistake, inadvertence, surprise, or excusable neglect”) or Rule 60(b)(3) (“fraud, misrepresentation, or other misconduct of an adverse party”). As discussed above, however, to make those arguments Petitioner would have had to file her motion within one year after the Court entered its order approving settlement. Petitioner did not meet that deadline, and therefore her arguments are procedurally barred. She cannot get around that procedural problem by misclassifying her claim as one that triggers Rule 60(b)(4). That subsection of the rule does not apply, and the Court must deny Petitioner’s motion on that basis.

II. THE COURT LACKS JURISDICTION TO REMOVE THE PERSONAL REPRESENTATIVE.

This Court obtains subject-matter jurisdiction over “formal proceedings...for the appointment of general personal representatives” only when such formal proceedings have been removed from the Probate Court upon motion of a party or the Probate Court’s own motion. S.C. Code § 62-1-302(d)(1). That has not happened here, so the Court lacks subject-matter jurisdiction to entertain Petitioner Brunson’s request to have Plaintiff removed as personal representative in this case. The Probate Court has exclusive subject-matter jurisdiction over the appointment and removal of the personal representative in this matter.

CONCLUSION

Petitioner Brunson’s motion to intervene, vacate the order approving settlement, and remove Plaintiff as personal representative is without any merit and must be denied. Petitioner’s request to vacate the settlement is procedurally barred, and the Court lacks subject-matter jurisdiction to remove the personal representative. Petitioner has no right to intervene, and this case should remain closed. The Court should therefore deny the motion in its entirety.

Respectfully submitted,

YARBOROUGH APPEGATE LLC
291 East Bay Street, Floor 2
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s/ Reynolds H. Blankenship, Jr.
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ATTORNEYS FOR PLAINTIFF

December 4, 2020

Exhibit A

Certificate of Appointment

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE PROBATE COURT

CERTIFICATE OF APPOINTMENT

IN THE MATTER OF:
WILLIAM ALEXANDER BRUNSON, JR.
(Decedent)

CASE NUMBER: 2017ES1002063

This is to certify that

ELAINE B. MINCEY

is/are the duly qualified

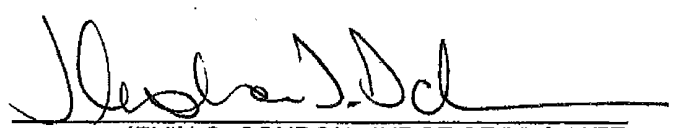
- PERSONAL REPRESENTATIVE
- SUCCESSOR PERSONAL REPRESENTATIVE
- SPECIAL ADMINISTRATOR

In the above matter and that this appointment, having been executed on the 5th day of December, 2017 is now in full force and effect.

RESTRICTIONS:

NONE

Executed this 5th day of December, 2017



IRVIN G. CONDON, JUDGE OF PROBATE
BY ESTATE CLERK

**Do not accept a copy of this certificate without
the raised seal of the Probate Court.**

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-10-05710

Patricia A. Brunson,)
)
Petitioner,)
)
vs.)
)
Estate of W. A. Brunson, Jr.,)
Elaine B. Mincey, P.R.,)
)
Respondents.)
_____)

**REPLY TO PERSONAL
REPRESENTATIVE'S MEMORANDUM**

In reply to the Personal Representative's Memorandum filed December 4, 2020, the surviving spouse, Patricia A. Brunson (who will be represented by her Estate) seeks to correct a misstatement of fact and further explain her right to intervene is grounded upon undisputed facts and undisputable conclusions of law. As set fact in her February 14th motion to intervene.

Facts

1. Patricia and William Brunson were husband and wife having been married since September 14, 1968.
2. William Brunson and Patricia Brunson suffered grievous personal injuries as the result of an automobile accident on November 11, 2017. William Brunson succumbed to his injuries; Patricia Brunson survived, but died on October 27th of this year.
3. While Patricia Brunson lay in the hospital, her stepdaughter, Elaine Mincey, offered for probate an alleged Will that was drawn by her non-lawyer brother, the eldest son of the decedent.

This putative Will left Patricia Brunson \$100.00 and left the entire remainder of the Estate to Patricia Brunson's step-children and one child.

4. Patricia Brunson filed an action in Probate Court disputing the Will on several grounds as well as claimed her Elective Share as provided by South Carolina law. That action is currently pending.

5. While Mrs. Brunson was recovering from her injuries, her step-daughter took several steps hostile to her.

6. While the challenge to the Will was pending, the Personal Representative settled the wrongful death action with the at-fault party for policy limits. (In her December 4th Memorandum, the Personal Representative claims that the surviving spouse seeks to vacate the settlement. This is incorrect. Patricia Brunson's challenge is that she was not provided notice of either the settlement or provided notice of the petition to approve settlement and was thus foreclosed from attending the hearing before Judge Hughston to approve settlement and allocate benefits among the contested beneficiaries, and thus the Personal Representative prevented her from having an opportunity to be heard on the allocation of proceeds between wrongful death and survival actions.)

7. At the time of the settlement hearing, about which she had no notice, the surviving spouse was both a statutory beneficiary and potentially the sole beneficiary depending on how the Court of last resort determines the validity of the Will prepared by the decedent's oldest son. There are three possible outcomes:

A) The Court could determine the Will is valid and Patricia Brunson's is awarded \$100.00.

B) The Court could determine the Will is valid and Patricia Brunson is awarded her Elective share of 1/3rd under the Elective Share statute, § 62-2-201, S. C. Code, ann.

C) The Court could determine the Will is invalid and Patricia Brunson is the sole beneficiary under the parties' previously executed Wills.

Under each of these potential outcomes, she remains a beneficiary of the Estate and was entitled to notice of the potential settlement and the potential allocation of proceeds between wrongful death and survival. Notwithstanding this indisputable point, the Personal Representative never disclosed the settlement or the potential for allocation of proceeds and never afforded the surviving spouse an opportunity to be heard before the Court on the Petition to Approve Settlement. The Personal Representative never provided a copy of the Petition to approve Settlement or informed the Court that a dispute was pending to determine the beneficiaries of the Estate. The Personal Representative deliberately withheld this information from the surviving spouse.

Discussion of Law

The Personal Representative seeks to escape the consequences of her unethical acts by shielding herself under two principles of law: 1. That she is the Personal Representative and is in control, and 2. The surviving spouse missed the one-year statute of limitations for a Rule 60(b) motion. These are slender reeds.

First, the Personal Representative is a fiduciary to her step-mother. § 62-3-703, S. C. Code, ann. The Personal Representative was aware that her step-mother was contesting the validity of the Will and that she was claiming her Elective Share. (The Estate has to date had no fewer than 5 lawyers working against the surviving spouse.) This Court can take judicial knowledge of the extensive litigation between Patricia Brunson and the Estate. The Personal Representative's decision to withhold this information from her step-mother is astonishing because even if the Will offered for probate is ultimately upheld—which seems a dubious proposition since it was prepared

by a beneficiary to advantage himself at the expense of his step mother and executed with no explanation to the decedent of what he was signing—but even if the Court of last resort ultimately upholds the Will as written, the surviving spouse is still a beneficiary under the Will as well as a statutory beneficiary under the wrongful death statute, § 15-51-20, S. C. Code. The assertion that the Personal Representative can represent an adverse party in secret is an astonishing proposition. Moreover, the evidence will show that the Personal Representative misrepresented herself to the at-fault insurance company as representing the surviving spouse, and it was based on this misrepresentation, that the carrier tendered its policy limits.

The Personal Representative's second assertion is equally shocking. She alleges that the surviving spouse missed her 1-year window to challenge the Order, even though it is undisputed that the Personal Representative prevented the surviving spouse from any notice of the intent to settle or from attending the court appearance to approve the formula for allocation of proceeds. It is undisputed that the first opportunity the surviving spouse had to learn of either the settlement or the allocation of proceeds was when she received correspondence from the Estate dated March 15, 2019. After trying for months to resolve the matter, the surviving spouse filed her motion on February 14, 2020, a month before the expiration of the 1-year, 11 months after she discovered the Personal Representative's fraud. (She was not wasting her time over the course of the 11-months; rather her efforts to reach an accord with the Estate failed.) In a Court of Appeals case similar to the one here—a daughter taking advantage of her 88-year old father—the daughter raised the same objection being raised here; that the suit came too late. However, the Court of Appeals applied the universal rule that a time bar does not begin to run until the injured party discovers the fraud or should reasonably have been put on notice of the fraud:

The discovery rule applies to this action. *See* S. C. Code Ann. § 15-3-535 (2005) (applying the discovery rule to causes of action arising under section 15-3-530(5)); *Rumpf v. Massachusetts Mut.*

Life Ins. Co., 357 S.C. 386, 394, 593 S.E.2d 183, 187 (Ct. App. 2004) (stating "[i]n determining when a cause of action arose under section 15-3-530, we apply the `discovery rule'"). According to the discovery rule, the statute of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence that a cause of action might exist. *Abba Equip., Inc. v. Thomason*, 335 S.C. 477, 485, 517 S.E.2d 235, 239 (Ct. App. 1999) The date on which discovery of the cause of action should have been made is an objective question. *Joubert v. S. C. Dep't. of Soc. Servs.*, 341 S.C. 176, 191, 534 S.E.2d 1, 9 (Ct. App. 2000). In *Young v. South Carolina Department of Corrections*, this court stated:

In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist. 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999)

Moore v. Benson, 390 S.C. 153, 700 S.E.2d 273 (Court affirmed finding of fraud against daughter who overreached elderly father to purchase property.)

Conclusion

Based on the foregoing, it is clear that the surviving spouse (now her Estate) is entitled to be heard on the Petition to approve settlement. The surviving spouse is not attempting to set aside the settlement; rather, she asserts that the Personal Representative perpetrated a fraud on both her and on the Court by preventing the surviving spouse the right to be heard on the allocation of proceeds between wrongful death and survival and the identify of beneficiaries. The Personal Representative deceived the Court by withholding material information from the Court; to wit, that there was litigation pending at the time of settlement that has a direct impact on the identity of the Estate's beneficiaries. The surviving spouse has a right to be heard on the merits, and by misleading the Court at the time of the Petition to approve settlement, the Personal Representative has demonstrated, once again, why she is unfit to serve in this capacity.

The surviving spouse respectfully requests that she be given leave to intervene and to be heard on the how the proceeds of settlement should be divided.

Respectfully submitted,

December 6, 2020

/s/ Thomas R. Goldstein
Thomas R. Goldstein, S. C. Bar #2186
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ATTORNEYS FOR PLAINTIFF

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No.: 2018-CP-10-05710

Estate of Patricia A.
Brunson.....Intervenor/Appellant,

In re:

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

vs.

David Scott Wich and C. J. Wingerter Company, L.L. C..... of whom,

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

NOTICE OF APPEAL

The Estate of Patricia A. Brunson appeals the Orders of the Honorable Bentley D. Price dated December 8, 2020, and the Order denying reconsideration dated January 13, 2021.

Appellant received electronic notice of this Order on January 13, 2021.

February 4, 2021

/s/ Thomas R. Goldstein, S.C. Bar No. 2186

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No.: 2018-CP-10-05710

Estate of Patricia A. Brunson..... Intervenor,

In re:

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

vs.

David Scott Wich and C. J. Wingerter Company, L.L. C..... of whom,

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

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent, Estate of William A. Brunson, Jr., by depositing a copy of it in the United States Mail, postage prepaid on February 5, 2021, addressed to its attorney of record, William Applegate at his office at 291 East Bay Street, Floor 2, Charleston, South Carolina, 29401

February 5, 2021

/s/ Thomas R. Goldstein, S. C. Bar # 2186

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1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
 2 COUNTY OF CHARLESTON) CASE NO. 2018-CP-10-05710
 3 ELAINE MINCEY,)
 4 Plaintiff,) Transcript of Record
 5 vs.)
 6 DAVID SCOTT WICH,) Date: December 7, 2020
 7 Defendant.)

8 * * * * *

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10 B E F O R E:

11 The Honorable Bentley Price

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21 Denise J. Lauder, RPR

22 Ninth Judicial Circuit

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A P P E A R A N C E S

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REPRESENTING THE PLAINTIFF:

THOMAS R. GOLDSTEIN, ESQUIRE
P. O. Box 71121
Charleston, SC 29415

REPRESENTING THE DEFENDANT:

WILLIAM APPLGATE, ESQUIRE
Yarborough Applegate Law Firm, LLC
291 East Bay Street, Floor 2
Charleston, SC 29401

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INDEX OF EXHIBITS

9

10 (No exhibits were offered or

11 marked for identification.)

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1 (The following proceedings were had
2 12/7/2020, Charleston County Common Pleas, Judge
3 Bentley Price. The transcript was produced via
4 digital recording.)

5 THE COURT: All right. First up is
6 Elaine Mincey v. David Wich. All right. Whose
7 motion is it to intervene, vacate, and remove PR?

8 MR. GOLDSTEIN: I'm Tommy Goldstein for
9 the potential intervenor, Your Honor.

10 THE COURT: All right.

11 MR. APPEGATE: Morning, Your Honor.

12 THE COURT: Good afternoon. How are
13 you?

14 MR. APPEGATE: Good, thank you.

15 THE COURT: Let me pull it up real
16 quickly.

17 All right. Where is the defendant?

18 MR. GOLDSTEIN: The defendant in the
19 tort case, Your Honor, is Mr. Wich. He's not
20 involved in this application.

21 MR. APPEGATE: Your Honor, just to
22 say, this is a first-time situation for me, but
23 just to make -- it's somewhat of a unique
24 circumstance. This is a case where I represented
25 the personal representative in a case involving an

1 accident. That case was settled a year and a half
2 ago. That case is over and dismissed at this point
3 here.

4 I represented Mr. Brunson and, in fact,
5 his daughter was appointed as a PR of the estate,
6 so I represented the PR of the estate. We filed a
7 personal injury action in that case, settled that
8 case.

9 The -- Mr. Brunson's wife, who was
10 actually the driver and considered an at-fault
11 driver in that accident, was represented in some
12 probate matters and estate matters by
13 Mr. Goldstein.

14 So he's now filed this motion to
15 intervene in the circuit court case, but that case,
16 you know, the personal injury action, that case was
17 precluded -- or concluded, sorry, a year and a half
18 ago.

19 THE COURT: All right.

20 Yes, sir, Mr. Goldstein.

21 MR. GOLDSTEIN: Thank you, Your Honor.
22 Judge, this is my first appearance in circuit court
23 under the new rules, so what is the rule on masks?
24 Am I considered far enough away?

25 THE COURT: Yes, you are. They set it

1 up for that reason.

2 MR. GOLDSTEIN: Okay. Well, I didn't
3 want to be presumptuous.

4 THE COURT: That's all right.

5 MR. GOLDSTEIN: Your Honor, I'm Tommy
6 Goldstein. I represent the surviving spouse in
7 this action. The purpose of the motion to
8 intervene -- and there's a couple of housekeeping
9 matters that I need to address with the court. On
10 October 27th, Patricia Brunson died. On
11 November 12th, I made an application to open an
12 estate. I have not yet received the certificates
13 of appointment.

14 As a matter of fact, when I leave here
15 I'm going to go next door and find out what the
16 hold up is. So I don't know where that leaves us.

17 I'm certainly prepared to go forward if
18 the Court is comfortable with the representation
19 that there is -- I have a case number, and I would
20 be happy to provide that to the Court, but I don't
21 have the official certificates of appointment.
22 They have not been issued by the probate court at
23 this time.

24 The second housekeeping matter is this
25 is, as opposing counsel has correctly identified, a

1 motion brought under Rule 60. And when I filed the
2 motion, I tried to get a copy to Judge Houston, who
3 heard the original petition for settlement. And I
4 was informed that Judge Houston had followed in my
5 footsteps and was -- had undergone a cardiac
6 procedure, and I am not aware of his current
7 availability to hear the matter.

8 So I don't know if Rule 63 is
9 implicated in this matter or not. I don't know if
10 it has to go back before him or if -- if Your Honor
11 can hear it. That's just the nature of the --

12 THE COURT: Well, he's slated to hold a
13 term of court coming up in two weeks so --

14 MR. GOLDSTEIN: Okay. Well, then he's
15 obviously back, so --

16 THE COURT: I assume so. I have not
17 personally spoken to him in several weeks, so I'm
18 not sure what his current status is. Yes, he did
19 have a procedure of which was complicated, but he
20 apparently made a full recovery and I have seen him
21 in the building.

22 MR. GOLDSTEIN: Okay.

23 THE COURT: So I don't know.

24 MR. GOLDSTEIN: All right. Well, I
25 think as a -- I am not trying to judge shop, I

1 don't want to create a false impression, but I
2 think the rules are pretty clear that this is in
3 the nature of asking a circuit court judge to amend
4 an order, and I think it would be required to go
5 back before him, but I'll let you make the call on
6 that.

7 I'm just putting that out there as
8 that's my understanding of the rules.

9 THE COURT: Well, tell me what it is
10 that you are attempting to accomplish.

11 MR. GOLDSTEIN: Opposing counsel is
12 correct. This was an action brought by the
13 personal representative for the death -- both a
14 survival and a wrongful death action for injuries
15 sustained in an automobile accident on November 11,
16 2017.

17 Opposing counsel is also correct that
18 my client, Patricia Brunson, was the driver of that
19 automobile. We, of course, deny that she was at
20 fault and, in fact, have resolved our tort case,
21 which we had to bring separately in light of the
22 conduct of the personal representative.

23 But in the run-up to the case,
24 Mr. Applegate came to my office and urged us to
25 work together for the mutual benefit of our

1 clients, which I told him I could not be more
2 excited to do that. I was in complete agreement
3 with that, and that was the last I heard.

4 Unknown to us, the personal
5 representative concluded the wrongful death and the
6 survival action and, unknown to us, filed a
7 petition with the circuit court for approval of the
8 settlement.

9 The personal representative provided no
10 notice to the surviving spouse of her intent to
11 settle the case and, we have no objection to the
12 case being settled. That's why the defendant is
13 not implicated in this motion.

14 We're not -- counsel mischaracterizes
15 my motion as an attempt to set aside the
16 settlement. I have no intention of challenging the
17 settlement. He did a great job. He got policy
18 limits. What more could he get?

19 This motion is directed toward the
20 personal representative's failure, willful failure
21 we contend, to provide notice of the intent to
22 settle the case in the allocation of proceeds
23 between survival and wrongful death.

24 Now, my client, Patricia Brunson, is a
25 statutory beneficiary under the wrongful death

1 statute. She is a beneficiary under the estate,
2 and her level of taking in the estate is yet to be
3 determined. But she is named in the will.

4 We have brought an action to set the
5 will aside on the ground that the will was prepared
6 by the decedent's oldest son, a beneficiary who
7 drew it to disadvantage his stepmother and
8 advantage himself, and that the will was improperly
9 executed without any explanation, and that
10 Mr. Brunson didn't know what he was signing when he
11 signed the will.

12 But if we fail on that, she made a
13 demand for elective share. So when they went
14 before Judge Houston, they had an obligation to
15 tell Judge Houston, oh, by the way, Judge, there's
16 a surviving spouse, it's a 50-year marriage, she's
17 got her own lawyer, and she's made some claims, but
18 they didn't do that.

19 So what they did is they allocated the
20 proceeds in a manner that provided the minimum
21 amount of payoff to the surviving spouse in a
22 50-year marriage so that they could, once again,
23 advantage the stepchildren over their stepmother.

24 Now, Judge Houston maybe would have
25 approved the settlement as proposed, maybe he

1 wouldn't, but no matter how you slice it, the
2 surviving spouse was entitled to be notified that
3 the case was being settled and that there was a
4 petition filed with the court setting forth an
5 allocation of proceeds between wrongful death and
6 survival. They didn't do that.

7 The first notice we had that the case
8 had been settled and that it was an allocation of
9 proceeds was on March 15, 2019. And I don't think
10 we got the letter on March 15th; that's just what
11 it's dated. But they sent it to me certified mail,
12 and I don't have the green card, so I don't know
13 when I actually got it. It could have been April,
14 for all I know. It doesn't matter.

15 They mailed it on March 15, 2019.
16 Well, when I got that letter, you can imagine, you
17 had to peel me off the roof. And so I began a
18 flurry of telephone calls. And all I got was, talk
19 to Mr. Applegate, talk to the PR, talk to
20 Mr. Applegate, talk to the PR. I am in this case
21 persona non grata.

22 So maybe the -- there's nothing wrong
23 with settling the case, that was proper, but in
24 terms of allocating those proceeds, it was
25 incumbent upon the personal representative to tell

1 the circuit court, oh, by the way, there is a
2 surviving spouse, 50-year marriage, and she has
3 brought an action and we are in litigation with
4 her.

5 And if I were opposing counsel, I
6 wouldn't want Judge Houston to hear this case
7 either because I can't imagine how he will react to
8 that information being withheld from him. I
9 wouldn't do it. But that's the circumstance in
10 which we find ourselves.

11 So I will be happy to answer any
12 questions on it. I filed a brief reply brief,
13 which has two glaring typographical errors in it.
14 I don't know if it made its way to your file yet,
15 but in researching the obligation of the personal
16 representative to provide notice to us, I did find
17 a 2013 case that is not cited in my brief which is
18 Turpin v LeGrand. And that's a Court of Appeals
19 case from 2013. Cert was denied on that case. The
20 citation is 404 SC 581, 745 SE2d 397, 2013.

21 I brought some extra copies if you are
22 interested. That case was very interesting, and
23 that case was similar to this. It was the children
24 bringing an action against the PR for selling
25 property for a profit. In other words, there was

1 real estate in the estate. And the PR said to the
2 kids, hey, I'll buy your interest for X number of
3 dollars.

4 And the kids said, okay, we'll sell it
5 to you for X number of dollars. What the PR didn't
6 tell them was, oh, by the way, I have a deal to
7 sell it for a lot more.

8 So when the children found out about
9 that, kind of like me getting the letter on
10 March 15th, 2019, they brought a lawsuit saying
11 that that was a breach of fiduciary duty. Because
12 they said the PR had an obligation to tell us about
13 this pending deal.

14 And the PR said, no, I had no
15 obligation to you. My deal was with a third party.
16 It was outside of the estate. It's none of your
17 business that I sold the property for a profit.

18 Well, the circuit court disagreed and
19 entered a judgment for \$69,000 against the PR. The
20 Court of Appeals reversed that. They increased the
21 damages to 280,000.

22 And this is what they said about the
23 PR's obligation to disclose. They said, we believe
24 LeGrand -- LeGrand was the PR. We believe LeGrand
25 defines the issue too narrowly. Parties in a

1 fiduciary relationship must fully disclose to each
2 other all known information that is significant and
3 material. And when this duty disclose is
4 triggered, silence may constitute a breach of that
5 duty.

6 Now, that's the Court of Appeals in
7 2013 in a probate case.

8 So maybe the Court decides -- maybe the
9 Court decides that the allocation of proceeds is
10 appropriate, and I lose. That could happen. But
11 I'm entitled to be heard on the merits, and that's
12 what my motion to intervene is. My motion to
13 intervene is simply asking permission to come into
14 the courtroom and be heard on the merits.

15 I will be happy to answer any questions
16 that you have.

17 THE COURT: All right. Mr. Applegate,
18 anything?

19 MR. APPLEGATE: Thank you, Your Honor.
20 I've tried to figure out exactly how to get this in
21 turn, but, Your Honor, I think where -- to start,
22 where counsel is off base is one that -- and we
23 stated this in our brief -- that 15-51-42(a)
24 provides only a duly appointed personal
25 representative that is defined in the code shall

1 have authority to settle wrongful death or survival
2 actions.

3 And despite the case that he cited,
4 which I don't think actually speaks to this issue
5 directly, there is no requirement that any one of
6 the beneficiaries be put on notice of settlement --
7 be put on notice of the hearing.

8 But I don't know that we get to that
9 because, as he stated very clearly from I think
10 nonrelevant facts, but I think interesting facts,
11 that when I took on representation in this case
12 there was a husband and wife, his client being the
13 surviving spouse, I did reach out to him as someone
14 I didn't know and let him know, hey, I'm doing this
15 case.

16 I'm building a case to take -- your
17 client will ultimately be the beneficiary. I want
18 to let you know what I'm doing. You may also have
19 a case. Different kind of facts because his was
20 the driver and the police had found him at fault.

21 But I let him know exactly what was
22 going on. I let him know who the personal
23 representative. One, he had the opportunity to
24 contest who the personal representative was at that
25 time. He didn't do that.

1 Two, I let him know what was going on
2 with the case and tried to get him interested and
3 see if I could help him with his case. That didn't
4 happen; he wasn't interested in that.

5 We ultimately resolved our case. We
6 filed a normal proper procedure and filed a
7 petition to have the settlement approved. Then he
8 was notified of that, and he waited over a year.
9 So period, end of sentence, he didn't file a motion
10 at the appropriate time.

11 I think, importantly, what we need to
12 -- I think what Mr. Goldstein is trying to do is
13 again take another stab of what he's not having
14 success at doing in the probate court. And they
15 have been litigating vigorously in the probate
16 court over the will. That is going on. That is
17 going to be contested, and I guess that will
18 ultimately come to a conclusion.

19 But all we did in this case was settle
20 on behalf of the PR, and that money is now sitting
21 in trust. His client may at the end of the day be
22 the recipient of the lion's share of all the
23 proceeds of that, but that's going to depend on the
24 outcome of the probate court. That has nothing to
25 do with what we're here today.

1 And so, you know, as I laid out the
2 brief, you know, she's not an indispensable party
3 in any way, shape, or form; the rules don't require
4 that she put on notice; and they didn't file this
5 motion timely.

6 So I just -- I would respectfully
7 request that this -- that his motion be denied so
8 that this case can be ultimately dismissed once and
9 for all.

10 THE COURT: All right.

11 MR. GOLDSTEIN: Your Honor, may I -- as
12 the moving party, do I get a short reply?

13 THE COURT: Absolutely.

14 MR. GOLDSTEIN: I don't want to be
15 presumptuous. I will keep it very brief.

16 I'm not sure why counsel thinks that
17 the motion was filed over a year. It was filed
18 11 months after we received notice of the petition
19 for settlement. That's when we got notice. I'm
20 happy to hand up the evidence of that if Your Honor
21 wishes to see it.

22 THE COURT: What are you indicating?

23 MR. GOLDSTEIN: That the -- on
24 March 15, 2019 -- the personal representative sent
25 us a letter, March 15, 2019. Dear, Mr. Goldstein:

1 Please find enclosed a check for Patricia Brunson
2 for her share of the proceeds in the wrongful death
3 claim in the above matter. Tiffany meant to give
4 it to you at the conclusion of Patricia's
5 deposition last week, but you left before she was
6 able to do so. We apologize for not getting it out
7 sooner.

8 Well, I don't know how I left before
9 she did. The deposition was at my client's house.
10 But, anyway, this was sent certified mail. I don't
11 have the green card so I don't know when I actually
12 got it. But my motion is filed February of 2020,
13 which is 11 months from the date that I got this
14 letter.

15 THE COURT: Right. He said it was a
16 year. You're saying 11 months. What's the
17 difference from the 30 days. Are you saying he's
18 alleging it's untimely that it was a year late as
19 opposed to 11 months?

20 MR. GOLDSTEIN: Right. He's saying I
21 was over a year. I'm saying I'm under a year.
22 Here's the evidence.

23 THE COURT: Got you.

24 MR. GOLDSTEIN: So --

25 MR. APPLGATE: And just to clarify,

1 it's from -- the rule is that it's a year from
2 final judgment. So the time was based on the
3 judgment. So I am alleging that, again, they
4 didn't file this motion timely. He filed it
5 14 months after the judgment was entered.

6 He knew about it for ten months. You
7 know, he is counsel. And just to clarify for your
8 own sake, when he talks about personal
9 representative sending him notice, she also has an
10 estate attorney. So that's from the estate
11 attorney sending him correspondence related to the
12 settlement proceeds from the estate.

13 THE COURT: All right.

14 MR. GOLDSTEIN: As to the year, it's in
15 my brief. There's about 5,000 cases that say the
16 discovery rule applies to this action. It was a
17 fraud action. The discovery -- the time begins to
18 run when a person knows or would reasonably should
19 know.

20 The first opportunity that we knew -- I
21 guess counsel is suggesting I sit at my computer
22 all day and watch everything that gets filed in
23 every case.

24 THE COURT: No. What he's alleging is
25 that you had every right to participate and, you

1 know, participate in the initial action and you
2 chose not to. Not until a later date did you come
3 back and say, well, hold on now, I want some of
4 this money.

5 MR. GOLDSTEIN: No. That's exactly --
6 that's 100 percent not what happened.

7 THE COURT: Okay.

8 MR. GOLDSTEIN: What happened was,
9 Mr. Applegate came to my office and said that he
10 was going to file a tort action. And I said,
11 that's splendid. We will join together -- I think
12 if we work together, we can get more money than we
13 could have. But that's neither here nor there.

14 He chose to go it alone. That was his
15 right. He's right. The personal representative
16 has the sole authority to bring the wrongful death
17 action. There is nothing improper about that.

18 What I'm complaining about is once the
19 case got settled and once he huddled up with the PR
20 to decide how to allocate the proceeds of the
21 recovery in a way that disadvantaged the surviving
22 spouse, that's what I was entitled to notice about.
23 Not -- not the settlement of the case. He settled
24 it for policy limits.

25 We had no idea that there was a

1 petition filed with the court to approve an
2 allocation of the proceeds. Remember, the proceeds
3 are wrongful death for which he's the statutory
4 beneficiary and survival. They threw all the money
5 over to survival so they could say, oh, see her
6 share went under the estate so she doesn't get very
7 much. That's what they did. And that's why they
8 didn't give us notice when they were coming down
9 here to ask Judge Houston to approve the
10 settlement.

11 He says the money is sitting in escrow.
12 The money's not setting in escrow. It's all been
13 dispersed. He got his fee which he's entitled to
14 get. I would never interfere with that. I would
15 have agreed with that on minute one.

16 But all the stepchildren got their
17 money and what the 50-year surviving spouse got was
18 \$49,052.39 because they misallocated the proceeds
19 giving her the minimum amount that they thought
20 they could get the Court to approve, and we were
21 foreclosed an opportunity to be heard on the
22 allocation of proceeds.

23 And he said, well, we had an
24 opportunity to get rid of the PR. As soon as we
25 found out about this, we immediately filed an

1 action to get rid of the PR.

2 MR. APPLEGATE: Your Honor, I am sorry
3 to do this, but the confusion and this sort of
4 misrepresentation and confusion of the facts are
5 overwhelming. You know, everything that
6 Mr. Goldstein says is really just incorrect, but
7 the bottom line is, we filed a case and, yes, we
8 settled a case on behalf of Mr. Brunson. Okay.

9 And what he's suggesting here is these
10 facts, there was \$150,000 that was allocated to the
11 wrongful death case and there was \$400,000
12 allocated to the survival case. There are a lot of
13 reasons why that was the case. Because the
14 survival claims in fact merited the payment. He
15 suffered a sort of terrible death.

16 He was a 96-year-old. The wrongful
17 death claim didn't have a lot of value. So it was
18 separated according to the law, the appropriate
19 allocation of the damages. Okay.

20 The only proceeds that have been
21 distributed are the proceeds that were distributed
22 according to the statutory beneficiaries. So he
23 received the lion's share of those, his client did,
24 because that was what was available.

25 The other proceeds are still sitting in

1 a trust. No one has received them because they are
2 still arguing about the validity of the will and if
3 she had a different will. That's, again, kind of
4 beyond my involvement in the case.

5 But, again, those facts were presented
6 to the judge and he approved those with full
7 knowledge of all the facts of his client and of our
8 client.

9 But, importantly, you have a duty, and
10 the rule makes it clear, that when -- you have one
11 year to file any type of motion such as the one
12 that he filed, regardless of whether it has any
13 merit. We don't get to the merits because you have
14 to file it within one year of when the order was
15 filed. It's not notice.

16 This isn't notice to file a lawsuit
17 kind of language. You knew or should have known or
18 whenever you discovered that you had an -- an
19 injury from some sort of medical malpractice
20 situation. This is a court rule that requires him
21 to file any motion within 12 months of the order.
22 There is no discretion there. It's a very clear
23 and straightforward rule.

24 I've been trying to avoid, as I stated
25 in my motion, to get too far into the merits

1 because what is very concerning is that his motion
2 is also filed with multiple just inaccurate
3 statements about what he knew or didn't know at the
4 different times.

5 Again, they are not relevant, which I
6 put in my motion, because, again, the rules are the
7 rules. You must file within one year. If you
8 don't file within one year, we have nothing else to
9 talk about.

10 Beyond that, there is no merit to his
11 claim. And it's unclear exactly what he would want
12 because what we don't even know is if he would --
13 because without knowing what's going to happen with
14 this case. We don't even know that he's not going
15 to be more advantaged than anyone else.

16 But this clearly isn't a case of fraud.
17 It's not a case where any kind of fraud, you know,
18 law or precedent comes into play. This is simply
19 an order was filed approving the settlement. It
20 was appropriate. He was not required to be on
21 notice. His client was not required to be on
22 notice. That's not what the rules require.

23 It was properly done, and he had
24 12 months from that date, December 17, whatever it
25 was, to file a motion. He didn't file it. The

1 case is dismissed. It's over.

2 MR. GOLDSTEIN: Can I mark this
3 March 15th letter and make it Exhibit 1 to the --

4 THE COURT: Absolutely. Pass it on up.

5 MR. GOLDSTEIN: Do I have to put my
6 mask on --

7 THE COURT: Just give it to the deputy
8 there.

9 MR. GOLDSTEIN: Okay. That will be
10 better.

11 THE COURT: All right. Anything
12 further?

13 MR. GOLDSTEIN: I will just say that
14 Mr. Applegate's arguing the merits of the motion.
15 This isn't about merits. This is about whether I'm
16 entitled to get to the merits. That's what this
17 motion is about.

18 THE COURT: I'm going to take it under
19 advisement and I will give you my decision by the
20 end of the day.

21 MR. GOLDSTEIN: Thank you, Your
22 Honor.

23 MR. APPLGATE: Thank you, Your Honor.

24 THE COURT: You are more than welcome.

25 (These proceedings were concluded at

(1 2:59 p.m.)

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1 CERTIFICATE OF REPORTER

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I, Carol Denise Lauder, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 11th day of January, 2021 at Charleston, Charleston County, South Carolina.

S/Carol Denise Lauder, RPR
Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
February 27, 2028



TIFFANY N. PROVENCE, ESQ.
JAMES H. MESSERVY, ESQ.
DAVID CAUSEY, ESQ.
AUTUMN W. HAZY, ESQ.
VIRGINIA S. SPENCER, ESQ.

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Daniel Island Location:
234 Seven Farms Dr., Suite #112
Charleston, SC 29492

PHONE: (843) 871-9500 • WWW.PROVENCEMESSERVY.COM • FAX: (843) 261-7035

March 15, 2019

VIA CERTIFIED MAIL R.R.

Thomas R. Goldstein
Belk, Cobb, Infinger and Goldstein, P.A.
Attorneys at Law
2344 Cosgrove Avenue
Charleston, SC 29405

RE: Estate of W. Brunson, Jr., Elaine B. Mincey, P.R.
Case No.: 2017-ES-10-02063

Dear Mr. Goldstein:

Please find enclosed a check for Patricia Brunson for her share of the proceeds in the wrongful death claim in the above matter. Tiffany meant to give it to you at the conclusion of Patricia's deposition last week but you left before she was able to do so.

We apologize for not getting it out sooner.

Sincerely,

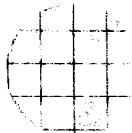
Maureen Strusky
Paralegal to Tiffany Provence, Esq.
Provence Messervy, LLC.

Enclosure as noted

DOCUMENT INCLUDES VISIBLE FIBERS, CHEMICAL REACTIVE PROPERTIES AND FEATURES A FOIL HOLOGRAM

3534

YARBOROUGH APPLGATE LLC
TRUST ACCOUNT
(843) 972-0150
291 EAST BAY STREET, SECOND FLOOR
CHARLESTON, SC 29401



First Citizens
Bank
67-604/539

PAY

*** Forty Nine Thousand Fifty Two ***** 39/100

TO THE
ORDER
OF

Patricia Brunson

DATE

AMOUNT

Dec 14, 2018

\$49,052.39

Settlement-Brunson 17-135


AUTHORIZED SIGNATURE

Security Features Included. Defects on back.

MP

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
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29415-1121
(843) 554 4291
tgoldstein@cobblaw.net

RECEIVED

Jul 28 2021

SC Court of Appeals

CERTIFICATE OF COUNSEL

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] 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]

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: Reynolds Blankenship <reynolds@yarboroughapplegate.com>
Sent: Friday, December 4, 2020 3:10 PM
To: Price, Bentley Law Clerk (Aimee Intagliata); tgoldstein@cobblaw.net; Price, Bentley
Cc: William Applegate (YA); Shene Hawk
Subject: RE: 2018-CP-10-5710, Mincey v. Wich

We understand. Thank you. Have a nice weekend.

Reynolds

Reynolds Blankenship
(843) 972-0150 office
(843) 270-1665 cell

From: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
Sent: Friday, December 4, 2020 2:48 PM
To: Reynolds Blankenship <reynolds@yarboroughapplegate.com>; tgoldstein@cobblaw.net; Price, Bentley <bpricej@sccourts.org>
Cc: William Applegate (YA) <william@yarboroughapplegate.com>; Shene Hawk <shene@yarboroughapplegate.com>
Subject: RE: 2018-CP-10-5710, Mincey v. Wich

Good afternoon,

Judge Price would like you all to attend the Monday hearing at 2:30PM to argue these motions and the concerns about jurisdiction.

Thank you,
Aimee

From: Reynolds Blankenship <reynolds@yarboroughapplegate.com>
Sent: Friday, December 4, 2020 1:22 PM
To: tgoldstein@cobblaw.net; Price, Bentley <bpricej@sccourts.org>; Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
Cc: William Applegate (YA) <william@yarboroughapplegate.com>; Shene Hawk <shene@yarboroughapplegate.com>
Subject: RE: 2018-CP-10-5710, Mincey v. Wich

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Judge Price and Aimee, please see attached our memo in opposition to the petition to intervene and vacate the order approving settlement. We e-filed it earlier, but do not yet have the filed copy back from the Clerk's office yet. I'm adding William Applegate to this email, as he remains lead counsel for plaintiff.

We believe you can hear this on Monday as scheduled. Judge Hughston is not required to hear it, and there is no jurisdictional problem posed by your resolving it.

We are sorry to hear about Ms. Brunson's passing. We consent to her estate being substituted in as the petitioner, and are happy to consider Mr. Goldstein's email to be his motion for substitution. Or, if you prefer we are happy to consent to an oral motion for same to be made at the hearing on Monday.

Reynolds

Reynolds Blankenship
(843) 972-0150 office
(843) 270-1665 cell

From: tgoldstein@cobblaw.net <tgoldstein@cobblaw.net>
Sent: Friday, December 4, 2020 12:41 PM
To: 'Price, Bentley' <bpricej@sccourts.org>; bpricelc@sccourts.org
Cc: Reynolds Blankenship <reynolds@yarboroughhapplegate.com>
Subject: 2018-CP-10-5710, Mincey v. Wich

Judge Price,

I know that this motion is on your roster for next week. The grounds for the motion are set forth fully in the motion, and thus I am happy for the matter to be decided as is, with oral argument, or with additional briefing and no oral argument, or any combination thereof. I see that Reynolds Blankenship filed a Notice of Appearance today, and I am happy to work with him in arriving at a consensus on how the Court will resolve this motion. However, it is important to put a couple of procedural matters before the Court in order that the Court and opposing counsel be fully apprised of what I think are procedural issues.

- 1) I have given this matter some thought, and I think (emphasis on "think" as opposed to "know") that only Judge Hughston can hear this motion because the motion seeks an amendment of his Order. I think (again emphasis on "think" as opposed to "know") even if opposing counsel and I agreed that your Honor can hear the matter, we lack the authority to decide a jurisdictional question. I litigated a similar issue for almost a decade in *Christy v. Christy*, and even though the issue in *Christy* was the power of a successor judge to act following the disability of a judge, the Supreme Court held that a successor judge can only take up the matter *de novo*, which is fine with me because that is the very relief my motion seeks. However, Judge Hughston, as far as I know, is not disabled and thus no matter what opposing counsel and I agree, I don't think we can manipulate jurisdiction.
- 2) The intervenor, Patricia, died on October 27th. I have opened an Estate, and I have a case number, but I have not received the Certificates of Appointment yet. I think I have to substitute the Estate in.
- 3) Mr. Blankenship filed his Notice of Appearance today, and I have no objection if he wants additional time to come up to speed. We might even be able to come to a consensus.

Those are the thoughts of an elderly lawyer, so you can give them whatever weight, if any, you think they deserve, but I did not want to spring them on the Court at the last minute. Although the Friday before the term of Court might qualify as "last minute."

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

From: tgoldstein@cobblaw.net <tgoldstein@cobblaw.net>
Date: Tuesday, December 18, 2018 at 6:28 PM
To: 'Tiffany Provence' <tnprovence@gmail.com>
Subject: RE: Order Approving Settlement

I did call you back. I sure am glad we spoke because I was operating on the wrong week's schedule, and now I realize a brief is due in the Court of Appeals THIS Friday and not next Friday. This is what being 65 looks like, by the way. As to your proposal:

- 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.
- 3) Not sure what you mean her. The estate already collected from her policy--there's nothing more to get except her personal assets. I'm ASSUMING you mean you won't try to make her homeless.
- 4) I'm not entirely clear what is involved here. We'll have to discuss this further.

No one ever suggested you're anything other than an excellent lawyer. I have no doubt that your five times the lawyer I am. I'm not sure what that has to do with anything; I am sure that when you served as probate judge that you didn't decide cases on who has the better lawyer. I understand the pressure to settle the case, but threatening me only makes the case more, not less, difficult to resolve. If you're suggesting I need to settle the case to save myself, then I cannot settle the case. I'd rather evaluate the case, as you say, based on the application of the law to the facts. The reason I have so much difficulty on my side of the table is because the way the children treated their stepmother following the wreck. I've worked very hard to tamp down the emotions and get the case resolved as a purely legal matter. Emotions, however, have run high and made my job more difficult.

-----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

RECEIVED

Jul 28 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE 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.

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
(843) 554 4291
(843) 554 5566 (fax)
tgoldstein@cobblaw.net

From: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
Sent: Friday, January 8, 2021 10:25 AM
To: William Applegate (YA); tgoldstein@cobblaw.net
Subject: RE: Mincey v. Wich, 2018 CP 10 05710

Good morning Mr. Applegate,

Judge Price has reviewed the order and would like you to please e-file the order. Please also have the clerk direct the filing to his queue for signature.

Thank you and have a great day,
Aimee

From: William Applegate (YA) <william@yarboroughapplegate.com>
Sent: Thursday, January 7, 2021 5:02 PM
To: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>; tgoldstein@cobblaw.net
Subject: RE: Mincey v. Wich, 2018 CP 10 05710

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Aimee-

Thanks for your email. While it appears Judge Price may simply want to file a Form 4, I am attaching a proposed order that had already been prepared for his review and use if convenient. Please disregard otherwise. Thank you. William

From: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
Sent: Thursday, January 7, 2021 12:30 PM
To: William Applegate (YA) <william@yarboroughapplegate.com>; tgoldstein@cobblaw.net
Subject: RE: Mincey v. Wich, 2018 CP 10 05710

Good afternoon all,

I spoke with Judge Price and he has indicated you all are welcome to submit briefs. However, he will not change his ruling.

Thank you,
Aimee

From: Price, Bentley Law Clerk (Aimee Intagliata)
Sent: Wednesday, January 6, 2021 5:26 PM
To: 'William Applegate (YA)' <william@yarboroughapplegate.com>; tgoldstein@cobblaw.net
Subject: RE: Mincey v. Wich, 2018 CP 10 05710

Good evening Mr. Applegate,

Not a problem, I will let Judge Price know and forward your proposed order on for his review when received.

Thank you both!
Aimee

From: William Applegate (YA) <william@yarboroughapplegate.com>
Sent: Wednesday, January 6, 2021 4:29 PM
To: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>; tgoldstein@cobblaw.net
Subject: RE: Mincey v. Wich, 2018 CP 10 05710

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Aimee,

My apologies for the delayed response. I agree to have the motion ruled on by the briefs since we have already appeared and argued. I will submit a proposed order for your review consistent with my original motion response. Thank you for your assistance with this matter and let me know if I can do anything else to assist you. William

From: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
Sent: Thursday, December 31, 2020 1:57 PM
To: tgoldstein@cobblaw.net
Cc: William Applegate (YA) <william@yarboroughapplegate.com>
Subject: RE: Mincey v. Wich, 2018 CP 10 05710

Good afternoon,

I will wait to hear from opposing counsel.

Thank you,
Aimee

From: tgoldstein@cobblaw.net <tgoldstein@cobblaw.net>
Sent: Thursday, December 31, 2020 1:52 PM
To: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
Cc: william@yarboroughapplegate.com
Subject: RE: Mincey v. Wich, 2018 CP 10 05710

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I do not mind submitting it on briefs, but if we're going to do that, I'd like to ask for enough time to get the transcript, which I've already ordered.

Tommy

From: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
Sent: Thursday, December 31, 2020 11:26 AM

To: Lisa E. Chapman <LChapman@charlestoncounty.org>; tgoldstein@cobblaw.net
Subject: RE: Mincey v. Wich, 2018 CP 10 05710

Good morning,

Mr. Goldstein, is a hearing requested or would you prefer Judge Price rule on the briefs? Please copy opposing counsel on your reply email.

Thank you!
Aimee

From: Lisa E. Chapman <LChapman@charlestoncounty.org>
Sent: Tuesday, December 29, 2020 9:03 AM
To: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>; tgoldstein@cobblaw.net
Subject: RE: Mincey v. Wich, 2018 CP 10 05710

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Aimee,

Judge Price is not currently scheduled for a motions term in Charleston for the first 6 months of the year.

Sincerely,

Lisa Chapman-Bauknight
Common Pleas Non-Jury Docket Coordinator &
Evidence Custodian
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401
[*Lchapman@charlestoncounty.org](mailto:Lchapman@charlestoncounty.org)
843-958-5049 (Office)
843-958-5020 (Fax)

*Please note my new email address, and update your record accordingly. Thank you.

Court Plus

From: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
Sent: Monday, December 21, 2020 11:12 AM
To: tgoldstein@cobblaw.net; Lisa E. Chapman <LChapman@charlestoncounty.org>
Subject: RE: Mincey v. Wich, 2018 CP 10 05710

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Good morning,

I have added Lisa Chapman, our roster coordinator, onto this email.

Lisa, will you please put this Motion to Reconsider on Judge Price's next Charleston CP week?

Thank you,
Aimee

From: tgoldstein@cobblaw.net <tgoldstein@cobblaw.net>
Sent: Monday, December 21, 2020 11:02 AM
To: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
Subject: Mincey v. Wich, 2018 CP 10 05710

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I forgot to mention that I did file a motion for reconsideration. I mailed a paper copy to opposing counsel. Under the rules, I'm supposed to provide a copy to you all as well, but in these strange times, I don't know if you want digital copies only or if you want a paper copy. I'm attaching a digital copy here. Let me know if you want a paper copy.

Tommy
(843) 554 4291

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**RECEIVED**

**Dec 06 2021**

**SC Court of Appeals**

**CERTIFICATE OF COUNSEL**

I certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

December 2, 2021

/s/Thomas R. Goldstein

Thomas R. Goldstein, S. C. Bar No. 2186

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

P. O. Box 71121

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(843) 554 4291

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[tgoldtein@cobblaw.net](mailto:tgoldtein@cobblaw.net)