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MARCIA M. WALDRON

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UNITED STATES COURT OF APPEALS

21400 UNITED STATES COURTHOUSE
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June 5, 2012

RECEIVED

JUN 8 2012

S.C. SUPREME COURT

Mr. Daniel E. Shearouse
Supreme Court of South Carolina
Supreme Court Building
P.O. Box 11330
Columbia, SC 29201

RE: Lavona Hill v. Bert Bell/Pete Rozelle NFL Player Retirement Plan, et al.
C. A. No. 10-4577
(E. D. Pa. No. 2-09-cv-04051)
Certification Order Pursuant to South Carolina Appellate Court Rule 244

Dear Mr. Shearouse:

Enclosed please find a certified copy of an Order Certifying a Question of Law submitted to South Carolina Appellate Court Rule 244. The certification, which was filed as of June 1, 2012, was issued by the Honorable Marjorie O. Rendell, Julio M. Fuentes, and Thomas M. Hardiman, Circuit Judges. Also enclosed is a CD containing the docket sheet for the Court of Appeals, the briefs and appendices filed and presented to this Court, the order certifying the question of law. The certification was initiated by this Court sua sponte.

Should you need anything further in regard to this matter or require documents in a different format, please feel free to call the case manager assigned to this case at 267-299-4928 or Chief Deputy Patricia Dodszuweit at 267-299-4903.

Very truly yours,

Marcia M. Waldron

Marcia M. Waldron, Clerk

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

RECEIVED

No. 10-4577

JUN 8 2012

S.C. SUPREME COURT

LAVONA HILL

v.

BERT BELL/PETE ROZELLE NFL PLAYER RETIREMENT PLAN;
RETIREMENT BOARD OF THE BERT BELL NFL PLAYER RETIREMENT PLAN

v.

BARBARA H. SULLIVAN,

Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 09-cv-04051)
District Judge: Honorable Berle M. Schiller

Submitted May 24, 2012
Before: RENDELL, FUENTES and HARDIMAN, *Circuit Judges*.

(Filed: June 1, 2012)

CERTIFICATION ORDER

This matter came before the United States Court of Appeals for the Third Circuit
on December 10, 2010, on appeal from a judgment of the United States District Court for

the Eastern District of Pennsylvania. Following a bench trial, the District Court held that Appellee Lavona Hill was entitled to benefits under the Employee Retirement Income Security Act (ERISA) of 1974, Pub. L. No. 93-406, 88 Stat. 829 (codified as amended at 29 U.S.C. §§ 1001–1461). Having read the parties’ briefs, this Court believes the appeal raises a serious, unanswered question of South Carolina law regarding the viability of the “putative spouse” or “putative marriage” doctrine.

A. Relevant Facts Found By The District Court

1. On March 15, 1979, retired National Football League (NFL) running back Thomas Sullivan (Thomas) married Lavona Hill (Hill) in Maryland. Thomas and Hill separated around 1983 but never divorced.

2. On March 15, 1986, Thomas and Barbara Sullivan (Barbara) purported to marry in South Carolina. In 1991, Thomas indicated on pension forms submitted to the NFL that Barbara was his current spouse, and Barbara provided a notarized statement in support of that submission. Thomas died on October 10, 2002.

3. Following Thomas’s death, Barbara filed a claim with the Bert Bell/Pete Rozelle NFL Player Retirement Plan (Plan), which provides benefits to a player’s “surviving Spouse” and defines that term according to “applicable state law.” The Plan began paying Barbara benefits in November 2002. Four years later, Hill contacted the Plan to request benefits. After investigation, in May 2007 the Plan suspended payments to Barbara pending a court order directing to whom the benefits should be paid. Hill

failed to obtain that order, and the Plan resumed distributing benefits to Barbara.

B. Procedural History

In August 2009, Hill sued the Plan in state court, and the Plan promptly removed the case to the District Court. The Plan filed an interpleader counterclaim against Hill and Barbara. The Plan has deposited \$2,700 per month with the Court since November 2009 and will continue to pay that monthly sum to the victor in this lawsuit. Following a bench trial, the District Court found Barbara and Thomas's marriage void under South Carolina law and held that Hill was entitled to the benefits.

C. Reasons For Certification

One South Carolina court has recognized the existence of a "putative spouse" or "putative marriage" doctrine, but South Carolina courts have yet to squarely consider whether the "putative spouse" theory is implemented in their own jurisdiction. Specifically, in *Lovett v. Lovett*, 494 S.E.2d 823 (S.C. Ct. App. 1997), *cert. denied* (July 2, 1998), the South Carolina Court of Appeals considered a marriage that was void because the appellant had been married eight times before her marriage to the decedent, and there was no record of a divorce or annulment for several of those marriages. *Id.* at 824. The Court was presented with the question, *inter alia*, of whether the appellant was entitled to an elective share of the decedent's estate as the "surviving spouse" as defined by S.C. Code Ann. § 62-2-802. The Court wrote:

We recognize that some jurisdictions have adopted the "putative marriage doctrine." Under this theory, a spouse who believed in good faith that he or

she was validly married, and who had participated in a ceremonial marriage, is allowed the civil effects of a valid marriage even though the marriage is found to be void due to an impediment.

Id. at 826. But the Court found the appellant had not preserved the issue and thus declined to consider it. *Id.* We read *Lovett* to suggest that the existence of the putative spouse doctrine is an open question in South Carolina.

In *Grabois v. Jones*, 77 F.3d 574 (2d Cir. 1996) (order), the United States Court of Appeals for the Second Circuit, considering an ERISA case, certified the question of the viability of the putative spouse doctrine in New York to that state's highest court. *Id.* at 576. The Second Circuit opined "that the unsettled question here presented may not arise with sufficient frequency to justify the acceptance of this certification." *Id.* at 577. It nevertheless certified the question

because . . . for individuals . . . who are involved in disputes of this sort, the stakes are very high. Moreover, the resolution of this question is important so that benefit fund administrators, confronted with circumstances such as those presented here, may have a clearly settled rule in cases involving competing claims of entitlement.

Id. at 577-78.

We also note that on one previous occasion, the United States Court of Appeals for the Fourth Circuit declined to certify the present question to the South Carolina Supreme Court. *Boyd v. Waterfront Emp'rs ILA Pension Plan*, No. 98-1456, 1999 WL 496265 (4th Cir. July 13, 1999) (per curiam). There, the Fourth Circuit distinguished between ERISA cases like *Boyd*, in which a plan's trustees had made a discretionary decision

regarding the award of benefits, and those like *Grabois*, in which a plan filed an interpleader complaint. *Id.* at *3.

In light of the foregoing, we believe that our review of the District Court's November 4, 2010, judgment and memorandum implicates an unsettled question of South Carolina law. Because the Plan filed an interpleader complaint in this case, we are not concerned with evaluating a trustee's exercise of discretion, and we review the District Court's ruling on this question of law under a plenary standard. See *Estate of Schwing v. Lilly Health Plan*, 562 F.3d 522, 524–25 (3d Cir. 2009). Further, we agree with the *Grabois* Court's analysis of the propriety of certification. In the spirit of comity and federalism, we deem it appropriate for the South Carolina Supreme Court to rule on this important question of state law instead of having this federal court, which rarely has occasion to apply South Carolina law, do so.

NOW THEREFORE, the following question of law is certified to the Supreme Court of South Carolina for disposition pursuant to 3d Cir. L.A.R. 110.1 and Rule 244 of the South Carolina Appellate Court Rules:

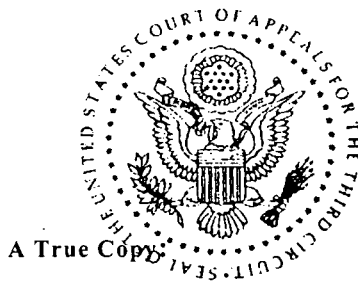
Does South Carolina recognize the “putative spouse” or “putative marriage” doctrine?

This Court shall retain jurisdiction of and stay the appeal pending resolution of this certification.

By the Court,

/s/ Marjorie O. Rendell
Presiding Circuit Judge

DATED: June 1, 2012



Marcia M. Waldron

Marcia M. Waldron, Clerk

**General Docket
Third Circuit Court of Appeals**

Court of Appeals Docket #: 10-4577 Nature of Suit: 3791 Employee Retirement Lavona Hill v. Bert Bell/Pete Rozelle NFL Pla, et al Appeal From: United States District Court for the Eastern District of Pennsylvania Fee Status: Paid	Docketed: 12/10/2010			
Case Type Information: 1) civil 2) private 3) Federal question				
Originating Court Information: District: 0313-2 : 2-09-cv-04051 Court Reporter: Joan Carr Trial Judge: Berle M. Schiller, U.S. District Judge Date Filed: 09/04/2009 <table style="width: 100%;"><tr><td style="width: 33%;">Date Order/Judgment: 11/04/2010</td><td style="width: 33%;">Date Order/Judgment EOD: 11/05/2010</td><td style="width: 33%;">Date NOA Filed: 12/06/2010</td></tr></table>		Date Order/Judgment: 11/04/2010	Date Order/Judgment EOD: 11/05/2010	Date NOA Filed: 12/06/2010
Date Order/Judgment: 11/04/2010	Date Order/Judgment EOD: 11/05/2010	Date NOA Filed: 12/06/2010		
Prior Cases: None				
Current Cases: None				

LAVONA HILL Plaintiff - Appellee	David B. Sherman, Esq. Direct: 215-665-1100 Email: dsherman@solomonsherman.com Fax: 215-665-8471 [Retained] Solomon, Sherman & Gabay 1628 John F. Kennedy Boulevard Suite 2200 Philadelphia, PA 19107-0000 Lawrence Solomon, Esq. Direct: 215-665-1100 Email: lsolomon@solomonsherman.com Fax: 215-665-8471 [COR NTC Retained] Solomon, Sherman & Gabay 1628 John F. Kennedy Boulevard Suite 2200 Philadelphia, PA 19107-0000
v.	

BERT BELL NFL PLAYER RETIREMENT
BOARD

Defendant - Non-Participating

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BERT BELL/PETE ROZELLE NFL PLAYER
RETIREMENT PLAN

Defendant - Non-Participating

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v.

BARBARA H. SULLIVAN
Third Party - Appellant

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Email: rvance@vancelf.com
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[COR NTC Retained]

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LAVONA HILL












v.

BERT BELL/PETE ROZELLE NFL PLAYER RETIREMENT PLAN; RETIREMENT BOARD OF
THE BERT BELL NFL PLAYER RETIREMENT PLAN

v.

BARBARA H. SULLIVAN,
Appellant

12/10/2010		CIVIL CASE DOCKETED. Notice filed by Appellant Barbara H. Sullivan in District Court No. 2-09-cv-04051. (JK)
12/10/2010		RECORD available on District Court CM/ECF. (JK)
12/23/2010		ECF FILER: NON PARTICIPATION LETTER on behalf of Attorney James C. Bailey, Esq. for Appellees Bert Bell/Pete Rozelle NFL Player Retirement Plan and Bert Bell NFL Player Retirement Board. Certificate of Service dated 12/23/2010.--[Edited 12/23/2010 by CLW] SEND TO MERITS PANEL--[Edited 12/23/2010 by CLW] (JHE)
01/05/2011		ECF FILER: ENTRY OF APPEARANCE from Lawrence Solomon, Esquire on behalf of Appellee(s) Lavona Hill. (LS)
01/05/2011		ECF FILER: DISCLOSURE STATEMENT on behalf of Appellee Lavona Hill, filed. (LS)
01/06/2011		FOLLOW UP LETTER to Robert T. Vance, Jr., Esq. for Barbara H. Sullivan requesting the following document(s): Appearance Form on or before 01/20/2011. Disclosure Statement on or before 01/20/2011. Information Statement on or before 01/20/2011. Concise Summary on or before 01/20/2011. Transcript Purchase Order on or before 01/20/2011. (CLW)
01/20/2011		ECF FILER: ENTRY OF APPEARANCE from Robert T Vance Jr on behalf of Appellant(s) Barbara Sulllivan. (RTV)
01/20/2011		ECF FILER: Concise Summary of the Case filed by Appellant Barbara H. Sullivan, received. (RTV)
01/20/2011		ECF FILER: DISCLOSURE STATEMENT on behalf of Appellant Barbara H. Sullivan, filed. (RTV)
01/20/2011		ECF FILER: CIVIL INFORMATION STATEMENT on behalf of Appellant Barbara H. Sullivan, filed. (RTV)

09/29/2011		FOLLOW UP LETTER to Robert T. Vance, Jr., Esq. for Barbara H. Sullivan requesting the following document(s): Transcript Purchase Order on or before 10/13/2011. (CLW)
10/06/2011		ECF FILER: Transcript Purchase Order Form (Part 1) filed by Appellant Barbara H. Sullivan advising this court that transcripts are already on file in the District Court. (RTV)
10/06/2011		BRIEFING NOTICE ISSUED. Brief on behalf of Appellant Barbara H. Sullivan due on or before 11/15/2011. Appendix due on or before 11/15/2011. (CLW)
11/16/2011		ECF FILER: Motion filed by Appellant Barbara H. Sullivan for Extension of Time to file Brief and Joint Appendix until/for December 30, 2011. Certificate of Service dated 11/16/2011. (RTV)
11/21/2011		ORDER (Clerk) granting Motion Appellant Barbara H. Sullivan for Extension of Time to File Brief and Appendix. Appellant's brief and appendix must be filed and served on or before December 30, 2011, filed. (CLW)
12/29/2011		ECF FILER: Motion filed by Appellant Barbara H. Sullivan for Extension of Time to file Brief for Appellant and Joint Appendix until/for 1/17/12. Certificate of Service dated 12/29/2011. (RTV)
12/29/2011		ORDER (Clerk) granting Motion by Appellant for Extension of Time to File Brief and Appendix. Appellant's brief and appendix must be filed and served on or before January 17, 2012. No further extensions will be granted, filed. (CLW)
01/17/2012		ECF FILER: ELECTRONIC BRIEF with Volume I of Appendix attached on behalf of Appellant Barbara H. Sullivan, filed. Certificate of Service dated 01/17/2012 by ECF. (RTV)
01/17/2012		ECF FILER: ELECTRONIC JOINT APPENDIX on behalf of Appellant Barbara H. Sullivan, filed. Certificate of service dated 01/17/2012 by ECF. (RTV)
02/03/2012		ECF FILER: ELECTRONIC BRIEF on behalf of Appellee Lavona Hill, filed. Certificate of Service dated 02/03/2012 by US mail. (LS)
02/06/2012		HARD COPY RECEIVED from Appellee Lavona Hill - Brief. Copies: 10. (SJB)
02/08/2012		NON COMPLIANCE Order issued to Appellant Barbara H. Sullivan regarding the brief and appendix filed on 01/17/2012. Please open the attachment for the full text of the Order. Compliance due by 02/13/2012. (MCW)
02/15/2012		HARD COPY RECEIVED from Appellant Barbara H. Sullivan - Brief with Volume I of Appendix attached. Copies: 10. (KEL)
02/15/2012		HARD COPY RECEIVED from Appellant Barbara H. Sullivan - Joint Appendix. Copies: 4. Volumes: 2 (Volume I attached to Brief). (EAF)
02/15/2012		COMPLIANCE RECEIVED. Hard copies of brief/joint appendix

volume I and joint appendix volume II on behalf of Appellant. (MCW)

02/16/2012



NON COMPLIANCE Order issued to Appellant Barbara H. Sullivan regarding the appendix volume II filed on 01/17/2012. Please open the attachment for the full text of the Order. Compliance due by 02/21/2012. (EAF)

02/20/2012



ECF FILER: ELECTRONIC ADDENDUM to APPENDIX on behalf of Appellant Barbara H. Sullivan containing Joint Appendix Volume II Addendum with Table of Contents, filed. Certificate of Service dated 02/20/2012 by ECF. (RTV)

02/20/2012

COMPLIANCE RECEIVED. Received Appellant's Addendum to Appendix with Joint Appendix Voume II with Table of Contents; awaiting hard copies. (EAF)

02/21/2012

HARD COPY RECEIVED from Appellant Barbara H. Sullivan - JOINT Addendum to Appendi Vol II. Copies: 4. (MKH)

02/21/2012

HARD COPY RECEIVED from Appellant Barbara H. Sullivan - Addendum to Appendix Volume II. Copies: 4. (MS)

02/29/2012



Calendared for Thursday, 05/24/2012. (TLW)

05/07/2012



Submit Notification for Thursday, 05/24/2012. (TLW)

05/24/2012

SUBMITTED on Thursday, May 24, 2012. Panel: RENDELL, FUENTES and HARDIMAN, Circuit Judges. (TLW)

06/01/2012



ORDER (RENDELL, FUENTES and HARDIMAN, Circuit Judges) Requesting Certification of State Law to the Supreme Court of South Carolina pursuant to Third Circuit LAR Misc. 110. Marjorie O. Rendell, Authoring Judge. (SMW)

06/05/2012



CLERK'S LETTER to Supreme Court of South Carolina requesting certification of state law pursuant to South Carolina Court Rule 244. CD containing copies of this Court's docket, the briefs and appendices filed in this Court, and the Court's certification order has been transmitted. (PD)

U.S. Court of Appeals Third Circuit
601 Market St., Rm. 21400
Philadelphia, PA 19106-1790

Mr. Daniel E. Shearouse
Supreme Court of South Carolina
Supreme Court Building
P.O. Box 11330
Columbia, SC 29201

