

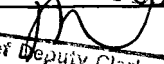
047

IN THE  
SUPREME COURT FOR THE  
STATE OF FLORIDA

FILED  
SOL WIFE

AUG 14 1985

CLERK, SUPREME COURT

By   
Chief Deputy Clerk

CASE: 67-398

NANCY C. VILDIBILL, as Personal  
Representative of the Estate of  
Steven Allen Paul, deceased.

Petitioner-Appellant,

v.

EDDIE JOHNSON, AAA COOPER TRANSPORTTION,  
INC., and TRANSPORTATION INSURANCE COMPANY

Respondent-Appellee.

UPON CERTIFICATION FROM THE  
UNITED STATES COURT OF APPEALS  
TO THE SUPREME COURT OF FLORIDA

BRIEF OF APPELLANT



TODD R. STERN, ESQUIRE  
PAUL ANTINORI, JR., ESQUIRE  
Antinori & Thury, P.A.  
601 East Twiggs Street  
Tampa, FL 33602  
(813) 223-2786  
Attorneys for Petitioner-  
Appellant

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS	2
TABLE OF CITATIONS	3
STATEMENT OF ISSUES	4
STATEMENT OF THE CASE	5
SUMMARY OF ARGUMENT	7
ARGUMENT	8
I. FLORIDA'S WRONGFUL DEATH ACT ALLOWS THE ESTATE OF A SINGLE ADULT TO RECOVER FOR LOSS OF NET ACCUMULATION OF ESTATE WHEN THE ADULT IS SUR- VIVED BY PARENTS.	
a. THE FLORIDA LEGISLATURE, BY AMENDING THE FLORIDA STATUTE 768.21, INTENDED THAT THE ESTATE OF A SINGLE ADULT RECOVER FOR THE WRONGFUL DEATH OF THE ADULT EVEN THOUGH THE ADULT WAS SURVIVED BY PARENTS.	
CONCLUSION	17
CERTIFICATE OF SERVICE	18

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE</u>
<u>Capiello v. Goodnight</u> 357 So.2d 255(2d DCA 1978)	16
<u>Chamberlain v. Florida Power Corp.</u> 198 So.486(S.C. Fla. 1940)	12
<u>Devin v. Hollywood,</u> 351 So.2d 1002(4 DCA 1976)	12
<u>Henderson v. Insurance Company of North America,</u> 347 S.Ct. 690(4 DCA 1977)	16
<u>Marks v. DeCastillo,</u> 386 So.2d 1259(3rd DCA 1980)	10
<u>McKibben v. Mallory,</u> 293 So.2d 48(S.C. Fla. 1974)	14, 17
<u>State v. Beardsley,</u> 94 So. 660(S.C. Fla. 1922)	13
<u>State v. Gale Distributors, Inc.,</u> 349 So.2d 150(S.C. Fla. 1977)	13
<u>Tyson v. Lanier,</u> 156 So.2d 833(S.C. Fla. 1963)	12
<u>White v. Clayton,</u> 323 So.2d 573(S.C. Fla. 1975)	10, 16
<u>State v. Webb,</u> 398 So.2d 820(S.Ct. Fla. 1981)	14

STATEMENT OF ISSUES

I.

FLORIDA'S WRONGFUL DEATH ACT ALLOWS THE ESTATE OF A SINGLE ADULT TO RECOVER FOR LOSS OF NET ACCUMULATION OF ESTATE WHEN THE ADULT IS SURVIVED BY PARENTS.

a. THE FLORIDA LEGISLATURE, BY AMENDING THE FLORIDA STATUTE 768.21, INTENDED THAT THE ESTATE OF A SINGLE ADULT RECOVER EVEN THOUGH THE ADULT WAS SURVIVED BY PARENTS.

STATEMENT OF THE CASE

A. Statement of Facts

On January 26, 1982, in Hillsborough County, Tampa, Florida, Steven Allen Paul was killed instantly when his automobile collided with a Mack Tractor driven by Appellee, EDDIE JOHNSON and owned by Appellee, AAA COOPER TRANSPORTATION, INC. (R.12). At the time of his death, Steven Allen Paul was just over twenty-five (25) years of age; his date of birth being December 3, 1956 (R.13). Steven Allen Paul was survived by his natural mother, NANCY C. VILDIBILL and his natural father, Charles Eugene Paul, Sr., neither of whom were dependent upon him for support and services <sup>1</sup>. (R.13) Steven Allen Paul was an unmarried person leaving no survivors dependent upon him partly or wholly for support or services nor any survivors otherwise entitled to recover under Florida's Wrongful Death Act.<sup>2</sup> NANCY C. VILDIBILL as personal representative of Steven Allen Paul's estate brought an action on behalf of Steven Paul's estate for loss to the estate occasioned by Steven Paul's death. The Complaint alleges

- 
1. Any blood relative can sue in his own right for loss of support and services under Florida's Wrongful Death Act.
  2. If Steven Allen Paul had been killed some two months earlier, before he reached the age of twenty-five (25), his parents could have recovered in their own right for mental pain and suffering because of the loss of their son. Fla. Sta. 768.21(4)(1981). However, since Steven Allen Paul was over twenty-five (25) years of age on the date of his death he was considered an adult under Florida's Wrongful Death Act. His parents are not entitled to claim any damages individually for his death Fla. Sta. 768.21(4).

"that the Estate of STEVEN ALLEN PAUL, deceased, has been damaged by the loss of net accumulations beyond the decedent's death for the remainder of his life expectancy" (R.13). Net accumulations is that part of the decedent's net income that the decedent probably would have retained as savings and left as part of his estate if he had lived his normal life expectancy, Fla. Sta.768.28(5)(1981).

B. Proceedings Below:

This Complaint was filed in the Circuit Court for Hillsborough County, Florida (R.11) and subsequently removed by Appellee to the Middle District of Florida, Tampa Division. The District Court had original jurisdiction because of diversity of citizenship (R.1-4). The Appellee subsequently filed a Motion for Summary Judgment (R.31-33). The parties agreed that there were no issues of material fact but disagreed whether Fla. Sta. 768.21(6)(a)(2) allowed recovery for net accumulation under the facts of this case. Appellee argued that the claim for loss of net accumulations of estate was barred because the decedent was survived by his parents. Appellant argued that if the parents had no right to recovery in their own right for pain and suffering or support and services they were not survivors under the Act and the estate was therefore entitled to recover net accumulations. The parties filed legal memoranda on the issue (R.34-39; 71-77).

On July 25, 1984, the Honorable Elizabeth A. Kovachevich granted Appellee's Motion for Summary Judgment (R.80-81). The Trial Court held:

"The law is very clear in Florida that net accumulations can only be recovered only when there is a surviving spouse or lineal descendent". (Emphasis added)

The Summary Judgment disposed of all issues in the case. Appellant filed a timely Notice of Appeal (R.84). After consideration of Briefs submitted by the parties, the Eleventh Circuit Court of Appeals scheduled Oral Argument in Atlanta, Georgia on May 21, 1985. Thereafter the Eleventh Circuit held that the issue presented in this appeal "involves a question of Florida law which is determinative of the cause, but which is unanswered by controlling precedent of the Supreme Court of Florida" and certified the following question to this Honorable Court for resolution:

Whether an adult decedent's estate may recover loss of net accumulations where the decedent is survived only by parents who were not dependent upon him for support or services, and who are not otherwise entitled to recover damages for his death in their own right.

#### SUMMARY OF ARGUMENT

The Florida Wrongful Death Act was amended in 1981. The amendment allowed the estate of an adult to recover net accumulations if there are no "survivors" as defined by Fla. Sta. 768.18(1). The amendment creates an ambiguity in the definition of parent as a "survivor" under the Act. When the amendment is read in pari materia with all of the other provisions of the Act,

it becomes apparent that a parent is not a "survivor" if the parent has no individual right to damages. Accordingly, because STEVEN ALLEN PAUL'S parents have no individual right to damages, they are not "survivors" under the Act and therefore STEVEN ALLEN PAUL'S estate can recover net accumulations under Fla. Sta. 768.21(6)(a)(2). To construe the statute differently creates an absurd and illogical result. If the 1981 amendment allows the estate to recover for damages when the adult has no survivors, the Florida Legislature surely intended that the estate can recover when the decedent is survived by parents who have no right to recover individual damages under the Act.

The legislative intent of the 1981 amendment is clear. The amendment was enacted to remedy past cases where an adult was killed by the negligence of another and the blood relatives of the decedent were provided no cause of action under the Act. The amendment now fills that gap in the Florida Wrongful Death Act allowing the estate to recover if there are no blood relatives who can receive damages in their own right.

#### ARGUMENT

- I. FLORIDA' WRONGFUL DEATH ACT ALLOWS THE ESTATE OF A SINGLE ADULT TO RECOVER FOR LOSS OF NET ACCUMULATION OF ESTATE WHEN THE ADULT IS SURVIVED BY PARENTS.
  - a. THE FLORIDA LEGISLATURE, BY AMENDING THE FLORIDA STATUTE 768.21, INTENDED THAT THE ESTATE OF A SINGLE ADULT RECOVER FOR THE WRONGFUL DEATH OF THE ADULT EVEN THOUGH THE ADULT WAS SURVIVED BY PARENTS.



In 1981, the Florida Legislature enacted an amendment to Florida's Wrong Death Act. Prior to the amendment, the estate of an individual wrongfully killed could only recover for the loss of net accumulations of estate in two instances: if the decedent was survived by a spouse or survived by lineal descendants, Fla. Sta. 768.21(6)(a)(1979); White v. Clayton, 323 So.2d 573(S.C. Fla. 1975); Marks v. DeCastillo, 386 So.2d 1259(3rd DCA 1980). The legislative intent was clear. "The purpose of the Act is to provide recovery to those who need it, specifically the surviving spouse, children, or dependents of the decedent, White, supra at 575.

The 1981 amendment significantly expanded the scope of remedies allowed under the Act. Specifically, recovery of net accumulations of estate is no longer confined to a surviving spouse or lineal descendent, but now allows the estate to recover in the absence of a surviving spouse or lineal descendent. The scope of the 1981 amendment is so expansive that it allows the estate to recover net accumulations if the decedent has no surviving relatives. The net accumulations statute including the 1981 amendment now reads:

Loss of prospective net accumulations of an estate, which might reasonably have been expected but for wrongful death may also be recovered:

1. If the decedent's survivors include a surviving spouse or lineal descendent, or;
2. If the decedent is not a minor child as defined in 768.18(2) and does not have survivors as defined in 768.18(1).

The underlined portion is the 1981 amendment, Fla. Sta.

768.21(6)(a)

The personal representative of STEVEN ALLEN PAUL'S estate has brought this action, to recover net accumulations of estate under Subsection (2) of Fla. Sta. 768.21(6)(a). Both Appellant and Appellee agree that STEVEN ALLEN PAUL was not a minor at the time of his death. The point of contention is whether STEVEN ALLEN PAUL'S parents can be considered "survivors" within the meaning of Fla. Sta. 768.12(6)(b), when his parents have absolutely no right to recover for damages on their own behalf.

If Appellee's interpretation of 768.21(6)(b) is accepted STEVEN ALLEN PAUL has been killed without civil remedy by his survivors or estate. His wrongful death goes unrecognized by the civil law of Florida. If Appellee's interpretation is accepted the death of a single non-dependent adult, survived by parents would be the only factual situation in Florida where a death could occur without a civil remedy; and merely because the single non-dependent adult happened to be survived by parents <sup>3</sup>.

3. With the 1981 amendment, the survivors of a deceased adult or the estate would always have a remedy under Act. If the adult was survived by a spouse, lineal descendents, or any dependent blood relative, the survivors recover individually. In addition, if the adult is survived by a surviving spouse, lineal descendents, non-dependent relatives or no relatives at all, the estate recovers for loss of net accumulations. If Appellee's interpretation is accepted, the death of an adult, survived by non-dependent parents is the only instance where the estate or the survivors have no remedy.

- A.
- a. THE FLORIDA LEGISLATURE, BY AMENDING FLORIDA STATUTE 768.21, INTENDED THAT THE ESTATE OF A SINGLE ADULT RECOVER FOR THE WRONGFUL DEATH OF THE ADULT EVEN THOUGH THE ADULT WAS SURVIVED BY PARENTS.

When the Florida legislature expanded the right of an estate to recovering net accumulations by amending Fla. Sta. 768.21(6)(a) in 1981, it allowed the estate itself to recover damages if the decedent was not a minor child, and "does not have survivors as defined in 768.18(1)". Fla. Sta. 768.18(1) defines "survivors" as "the decedent's spouse, minor children, parents and when wholly or partly dependent upon the decedent for support or services, any blood relative". The language of Fla. Sta. 768.18(1) is ambiguous. One cannot tell from the clear meaning of the statute whether the parent must be dependent to be considered a "survivor" or whether the parent is considered a "survivor" by the mere fact of their existence. Where a statute is ambiguous the primary guide to statutory interpretation is to determine the purpose of the legislature. Tyson v. Lanier, 156 So.2d 833(S.C. Fla. 1963); Devin v. Hollywood, 351 So.2d 1022(4 DCA 1976); Englwood Water District v. Tate, 334 So.2d 626(2nd DCA 1976). The purpose of the Wrongful Death Act was to create a statutory scheme so that blood relatives could recover damages for the death of a relative occasioned by the negligent acts of another. There was no right of action at common law. Chamberlain v. Florida Power Corp., 198 So. 486(S.C. Fla.

1940). Construing a parent as a "survivor" under Fla. Sta. 768.18(1) without providing any remedy for the parent is completely inopposite to the legislative intent.

Rules of statutory construction require that Fla. Sta. 768.18(1) be construed in pari materia with the entire statute to determine legislative intent and meaning. State v. Gale Distributors, Inc., 349 So.2d 150(S.C. Fla. 1977); Wilensley v. Fields, 267 So.2d 1(S.C. Fla. 1972); State v. Beardsley, 94 So. 660(S.C. Fla. 1922). Fla. Sta. 768.21(4) is the only portion of the Wrongful Death Act which discusses what it means to be a parent "survivor". "Each parent of a deceased minor child may also recover for pain and suffering from the date of injury". It was fully anticipated by the Florida Legislature when creating the Wrongful Death Act that parents were survivors because they were able to recover for pain and suffering for the death of a minor child. It was also anticipated that parents would be "survivors" just as any other blood relative who were dependent upon their child for support. Fla. Sta. 768.21(1). When the definition for "survivors" under the Act is analyzed in pari materia with Fla. Sta. 768.21(1) and (4) the definition of a parent "survivor" must mean that a parent have some independent basis to recover in their own right. Accordingly, when the legislature defined parent as "survivors" under the Act the legislature obviously meant parents who could recover for pain and suffering because the deceased was a minor child (768.21(4)) or parents who could recover because they were dependent upon the child for support or services (768.18(1)). Simply because an

argument can be made that a parent can be construed as a "survivor" under the Act by the mere fact they exist does not necessarily mean this Court should adopt such as interpretation. "Legislative intent is the polestar by which this Court must be guided, and this intent must be given effect even though it may contradict the strict letter of the statute" State v. Webb, 398 So.2d 820(S.C. Fla. 1981). Similarly, where it is clear that the sense of the whole legislation may not be preserved if a word is isolated and given its strict, even if proper meaning, the primary rule of giving effect to the legislative intent will be followed. 49 Fla. Jur 2d Statutes sec. 119.

Florida Courts have long held that Florida Statutes will never be construed to produce absurdities, McKibben v. Mallory, 293 So2d. 48(S.C. Fla. 1974). When faced with two separate statutory interpretations of a statute the interpretation that achieves an illogical result will never be adopted, Good Samaritan Hospital Association v. Simon, 370 So.2d 1174(4 DCA 1978). If, as Appellee argued at the trial level, the construction of Fla. Sta. 768.21(6)(a)(2) should be construed in pari materia with Fla. Sta. 768.18(1) to the exclusion of the rest of the statute and the obvious meaning of the legislature, the amended portion of the statute is absurd and illogical. This interpretation would mean that parents of an adult cannot recover damages in their own right, yet the estate of the adult cannot recover for loss net accumulations, because the parents exist. If the same adult has left no parents and no other blood

relatives his estate would be able to recover damages for loss of net accumulations (which would then escheat to the State of Florida). If the adult leaves no parents but some distant remote blood relative the estate would be able to recover for loss of net accumulation. In the first situation the estate is prevented from any recovery because the adult was survived by parents. Preventing the estate from recovering in this instance is an absurdity. This construction would countenance the wrongful death of an adult without any civil remedy. This would be the only instance under Florida Law where a human being is killed, by the negligence of another and neither the estate nor the survivors are entitled to damages.

In the instance where an adult dies leaving no survivors, the non-existence of survivors allows recovery, but makes recovery meaningless; the lack of survivors means recovery escheats to the state. In the instance where the adult is only survived by a distant blood relative (not considered a survivor under the Act) who perhaps has little or no contact with the decedent during his lifetime and in all likelihood with no reasonable expectation of inheritance, the distant blood relative on behalf of the estate would be entitled to collect net accumulations, resulting in a windfall. What did the Florida Legislature intend when enacting the amended net accumulation statute? It is quite obvious that the legislature amended the statute so that an adult's estate could recover if there were no "survivors" who could recover in their own right. The motivation for this amendment is poignantly demonstrated by an entire body

of case law before the 1981 amendment, which allowed the wrongful death of an adult to pass without remedy, leaving the non-dependent blood relatives no recourse under Florida Law. The cases are legion. White v. Clayton, 323 So.2d 573(S.C. Fla. 1975) (sisters of adults sought net accumulations for wrongful death. No recovery provided to the estate or any blood relatives) Henderson v. Insurance Company of North America, 347 So.2d 690(4 DCA 1977). (Adult children of decedent brought an action through estate for net accumulations. No recovery allowed to adult children or the estate). Gillien v. Kitching, 354 So.2d 900(3d DCA 1978) (The brother and sister of the decedent brought action through estate for net accumulations. No recovery allowed by the estate or blood relative. Capiello v. Goodnight, 357 So2d. 255(2d DCA 1978) (adult children of decedent sought recovery through estate for net accumulations. Adult children not entitled to recovery individually or through the estate). In all of the cases cited above the wrongful deaths were occasioned by the negligence of another, but the blood relatives and the estate had no remedies under Florida's Wrongful Death Act. Under the 1981 amendment, the estate in each of the cases cited above would be entitled to recovery for loss of net accumulations of estate.

The obvious intent of the 1981 amendment was to correct the gap in the Wrongful Death Act that countenanced the killing of an adult without any corresponding civil remedy under the Act. This is most vividly illustrated by the language of the amendment allowing the estate of an adult to collect loss of net accumula-

tions even though there are no blood relatives. Allowing an estate to recover without any blood relatives and correspondingly to disallow an estate to recover merely because the decedent is survived by parents (who have no independent basis for recovery) is illogical and contrary to the Legislature's intent in expanding the remedies available under the Wrongful Death Act. "In construing a statute, we will consider its history, the evil to be corrected, and the purpose intended by the legislature, McKibben, supra at 52. The obvious intent of the 1981 amendment is that the estate may recover damages for itself so long as there are no "survivors" who would be entitled to recover damages in their own right.

This is a case of first impression in Florida. There are no cases that construe the 1981 amendment to Fla. Sta. 768.21(6)(a)(2). Additionally, the actual Senate bill passed by the Florida Legislature amending Fla. Sta. 768.21(6) does not explicitly state the legislature's intent. Chapter 81-183, Florida Session Laws. When the Florida Legislature revamped its Wrongful Death Act in 1972 the Florida Supreme Court commented that, "the intent and purpose of the legislature in effecting changes to the previous Wrongful Death Acts was to correct the harsh result and inequity which oft times were wrought by the old Act", McKibben, supra at 54. The cases that have subsequently reviewed the law of net accumulations under the 1972 Act demonstrated the need for remedial legislation in the area of wrongful death where no blood relatives could recover in their own right. The purpose of the legislature when passing the 1981



amendment is clear and serves a legitimate and humanitarian purpose, viz. it leaves no wrong without remedy. If no relatives of the decedent can sue for damages in their own right the estate at least will be entitled to loss of net accumulations.

CONCLUSION

This is a case of first impression in the State of Florida. Lack of case precedent requires the Court rely on the Florida Legislature's intent in amending the Wrongful Death Act and the rules of statutory construction. Utilizing these interpretative tools the Court will conclude that STEVEN ALLEN PAUL'S parents were not "survivors" as defined in Fla. Sta. 768.21(1) and therefore the Estate of STEVEN ALLEN PAUL is free to recover loss of net accumulations of estate under Florida's Wrongful Death Act. The Certified Question should be answered in the affirmative.

Respectfully submitted:

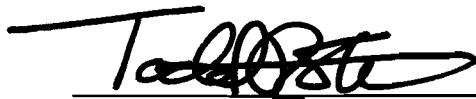


---

TODD R. STERN, ESQUIRE  
PAUL ANTINORI, JR., ESQUIRE  
Antinori & Thury, P.A.  
601 East Twiggs Street  
Tampa, FL 33602  
(813) 223-2786

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served this 13th day of August, 1985, upon: Gwynne A. Young, Esquire, P.O. Box 3239, Tampa, FL 33601; Joseph F. Kinman, Esquire, P.O. Box 3324, Tampa, FL 33601.



---

TODD R. STERN, ESQUIRE  
PAUL ANTINORI, JR., ESQUIRE  
Antinori & Thury, P.A.  
601 East Twiggs Street  
Tampa, FL 33602  
(813) 223-2786