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IN THE
SUPREME COURT FOR THE
STATE OF FLORIDA

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

REPLY BRIEF OF APPELLANT
NANCY C. VILDIBILL

FILED
SID J. WHITE
OCT 4 1985
CLERK, SUPREME COURT
By Chief Deputy Clerk

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

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REPLY ARGUMENT

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 FOR THE WRONGFUL DEATH OF THE ADULT EVEN THOUGH THE ADULT WAS SURVIVED BY PARENTS.

There is no longer any doubt that the 1981 Florida Legislature, when amending Florida Statute 768.21(6), intended parents of an adult child to recover net accumulations of estate. Through the diligence of Amicus Curiae, previously unknown transcripts from the Senate Commerce Committee (Appendix 5, Schmidt's Amicus Curiae brief) are now before this Court that demonstrates the legislature intended parents recover net accumulations of estate. In discussing why the 1981 amendment should be enacted, Senator Steinberg, the co-author of the 1981 amendment stated: "In Florida, today, if you are a single individual over 21 years of age and you are wrongfully killed by another ... your parents, your brothers and sisters or your family members have no right to collect one dollar in damages for that loss of life other than the funeral bills."

Senator Steinberg used the example of a 22 year old college honor student (at the time of the amendment a 22 year old was considered an adult under Florida's Wrongful Death Act) killed by the negligence of another. The 22 year old was survived by his parents and an only child. Using this example, Senator Steinberg stated "there was no compensation in Florida for their loss of a

loved one. This bill was designed to cure some of those problems" (page 3, Senate Committee Commerce Notes). The committee also heard testimony from Mrs. Elizabeth Duff, the mother of a 25 year old single man who was wrongfully killed by a drunk driver. This death occurred before the 1981 amendment. Mrs. Duff testified that she could not believe that there was no remedy under Florida Law for her son's death. Members of the committee asked how Mrs. Duff's situation would change if they passed the 1981 amendment. Senator Steinberg replied "under the amendment -- the bill as amended, there would be a claim now for the loss of value for the prospective estate of this individual, something that did not exist at the time her son was killed" (page 15, Senate Commerce Committee Notes). After receiving the explanation on the practical application of the 1981 amendment, the Senate Commerce Committee unanimously approved the 1981 amendment, which passed both houses of the legislature without any change or modification. The examples used to explain the amendment exactly parallel the facts of this case. Obviously, parents can recover net accumulations of estate for the death of their adult children.

This Court can easily construe the 1981 amendment in accordance with the obvious intent of the legislature. It takes no flights of fancy or straining of the legal imagination to arrive at such a result. The Florida Legislature, in creating the 1981 amendment, clearly construed "survivors" to mean any individuals who could recover in their own behalf. If an individual can recover on his own behalf there is not necessarily a reason to

collect net accumulations. If no individuals can recover in their own behalf, such as the parents of an adult, net accumlations fills the gap. This construction is reasonable, logical and accomplishes what the legislature intended.

This appeal was conceived because of the ambiguity created by the 1981 amendment. The statutes in question are anything but clear. A reading of Florida Statute 768.18 and 768.21(6) leaves real doubt whether parents are "survivors" by their mere existence or because they are dependant upon the decedent for support or services. Under Appellant's interpretation, the estate of the adult is disqualified from collecting net accumulations simply because the parents exist even though they have no right to recover individual damages. We already know this is not what the legislature intended. Furthermore, accepting this interpretation is absurd. An estate with no survivors can collect net accumulations (which would escheat to the State) but an estate with only parents as survivors cannot collect net accumulations. It is a long standing rule in Florida that statutes will never be construed to produce absurdities McKibben v. Mallory, 293 So.2d 48(S.C. Fla. 1974). When faced with two separate statutory interpretations of a statute the interpretation that achieves a illogical result will never be adopted Good Samaritan Hospital v. Simmon, 370 So.2d 1174(41 DCA 1978). Further, it is a cardinal rule of statutory construction that all subparts of a statutory scheme be read in pari materia with each other and should harmonize accomplishing a uniform and logical result. When the entire Wrongful Death Act is read in pari materia, the definition of a

parent "survivor" is clearly an individual who has some individual cause of action for the wrongful death. There is no logic to Appellee's argument. The statute must be construed in Appellant's favor to conform with legislative intent and avoid an absurd result.

Appellee's brief is conspicuously silent regarding the Florida Legislature's intent in passing the 1981 amendment. This is because the construction the Appellee urges on the Court is indefensible when analyzed in light of legislative intent. Appellant urges on this Court a blind, mechanistic construction which this Court need not follow.

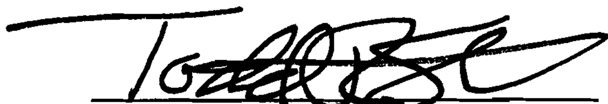
Assuming arguendo that a literal interpretation of the statute would mean that parents were "survivors" under the Wrongful Death Act. Since the intent of the legislature is now known, this Court should apply that intent even if it is directly contrary to the literal wording of the statute. "It is a fundamental rule of statutory construction that the legislative intent is the polestar which the 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, 389 So.2d 820, 824(Fla. 1981). This Court has from time to time departed from the plain meaning of a statute when a literal interpretation of the statute would lead to an illogical result or one not intended by the law makers. Parker v. State, 406 So.2d 1089, 1091(Fla. 1982). There is no justification for this Court to accept the mechanistic construction urged by Appellee, especially when the legislature's intent is known and the statute can easily be construed to

accomplish that intent.

Since the writing of Appellee's brief, it has come to the undersigned's attention that in 1985 the Florida Legislature once again amended subsection 2 of Florida's statute 768.21(6) relating to net accumulations of estate. The statute now permits loss of net accumulations of estate "if the decedent is not a minor child as defined in Section 768.18(2), there are no lost support and services recoverable under Subsection (1) and there is a surviving parent". While this new section does not add any additional remedy that was not previously available to parents under the 1981 amendment, the 1985 amendment does clarify the remedies available to the parent. "The mere change of [statutory] language does not necessarily indicate an intent to change the law for the intent may be to clarify what was doubtful and to safegaurd against misapprehension as to the existing law. State Ex Rel. Szabo Food Service Inc. v. Dickinson, 286 So.2d 529(S.C. 1973). The 1985 amendment merely clarifies the existing law at the time of the death of Steven Allen Paul. However, the 1985 amendment is useful in demonstrating what the legislature has intended since 1981, that parents recover net accumulations for the death of their adult child. A clarifying statute can be utilized by this Court to construe its predecessor statute. State v. Lanier, 464 So.2d 1192, 1193(Fla. 1985). In sum, while the 1981 amendment does allow NANCY C. VILDIBILL as the natural mother of Steven Allen Paul to recover net accumulations of estate for his wrongful death, the 1985 amendment should be used to clarify any doubt in favor of the Appellee and act as a clear signal that the

legislature was clarifying the existing law. Furthermore, assuming arguendo, tha the 1985 amendment creates a new item of damages available to survivor under the Act, the 1985 amendment is remedial in nature, addressed to the measure of damages and does not change any substantative right to sue for wrongful death. The 1985 amendment is remedial and should be retroactively applied. Adams v. Wright, 408 So.2d 391(Fla. 1981). US v. Blue Sea Line, 553 F.2d 445(5th Cir. 1977).

In sum, this Court is faced with two separate interpretations of a statute. Appellee's interpretation is illogical, unreasonable and absurd. Appellant's interpretation is logical, reasonable and supported by legislative intent. This Court should answer the Certified Question in the affirmative.



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 30th day of September, 1985, upon: Gwynne A. Young, Esquire, P.O. Box 3239, Tampa, FL 33601; Joseph F. Kinman, Esquire, P.O. Box 3324, Tampa, FL 33601; and Douglas W. Abruzzo, Esquire, Suite 804, 215 South Monroe Street, Tallahassee, FL 32301.

TODD R. STERN, ESQUIRE
PAUL ANTINORI, JR., ESQUIRE