

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Connie Ellis v. Linda Swisher

230 W. Va. 646 (2013) · No. No. 12-0090 · Decided April 12, 2013

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the denial of Connie Ellis’s claim to a share of wrongful-death settlement proceeds arising from the death of her former spouse. The court held that her receipt of monthly payments toward a child-support arrearage, which she passed on to their adult children, did not establish that she was financially dependent on the decedent or otherwise equitably entitled to recover under West Virginia Code § 55-7-6(b).

CASE DETAILS

|                       |                                                                                                                                                                                                                       |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Appeals of West Virginia                                                                                                                                                                             |
| WRITING FOR THE COURT | Per Curiam                                                                                                                                                                                                            |
| JURISDICTION          | West Virginia                                                                                                                                                                                                         |
| DECIDED               | April 12, 2013                                                                                                                                                                                                        |
| DOCKET                | No. 12-0090                                                                                                                                                                                                           |
| DISPOSITION           | affirmed                                                                                                                                                                                                              |
| PROCEDURAL POSTURE    | Connie Ellis, an intervenor below, appealed the Randolph County Circuit Court's denial of her claim to a share of wrongful-death settlement proceeds based on an unpaid child-support arrearage owed by the decedent. |
| STANDARD OF REVIEW    | The final order and ultimate disposition are reviewed for abuse of discretion; underlying factual findings are reviewed for clear error; and questions of law are reviewed de novo.                                   |
| PRECEDENTIAL VALUE    | published, precedential opinion of the Supreme Court of Appeals of West Virginia                                                                                                                                      |
| PARTIES               | Connie Ellis v. Linda Swisher, as Administratrix of the Estate of Thomas R. Swisher                                                                                                                                   |

TOPICS

- wrongful death
- statutory interpretation
- appellate procedure
- standard of review
- estate administration

## PRACTICE AREAS

wrongful death

probate

appellate procedure

statutory interpretation

## QUESTIONS PRESENTED

1. Whether receipt of payments toward an established child-support arrearage, without evidence that the former spouse personally relied on those payments, established financial dependence under West Virginia Code § 55-7-6(b).
2. Whether the equitable-entitlement language in West Virginia Code § 55-7-6(b) authorized an award of wrongful-death proceeds to Ellis despite her failure to establish financial dependence.
3. Whether the circuit court applied the proper standard and correctly denied Ellis a share of the wrongful-death settlement proceeds.

## HOLDINGS

1. A circuit-court final order and ultimate disposition are reviewed for abuse of discretion, underlying factual findings are reviewed under a clearly erroneous standard, and questions of law are reviewed de novo.
2. An ex-spouse's receipt of payments toward a child-support arrearage does not, by itself, establish the financial dependence required for recovery under West Virginia Code § 55-7-6(b); on the facts presented, Ellis was not entitled to wrongful-death settlement proceeds because she did not retain or rely on the payments for her own support.
3. Wrongful-death proceeds are for the benefit of the beneficiaries designated by the Wrongful Death Act and may not be obtained or administered as general estate assets to satisfy an outstanding debt of the decedent's estate.
4. The equitable-entitlement language in § 55-7-6(b) gives courts flexibility to consider otherwise excluded persons whose circumstances support recovery, but it does not authorize courts to disregard the statute's beneficiary requirements or award proceeds solely because a child-support arrearage exists.

## KEY QUOTATIONS

*“Money recovered in an action by an administrator . . . for causing the death of his decedent by wrongful act, neglect, or default, does not constitute general assets of the estate of such decedent in the hands of the administrator to be administered. . . . Such money belongs to the particular persons who by law are entitled thereto.”* (Syllabus Point 2)

*“Given this Court’s longstanding recognition that a wrongful death action is for the benefit of the decedent’s beneficiaries rather than his creditors, we would be abandoning over a century of unwavering precedent if we determined that wrongful death damages could be obtained, under the facts of this case, to satisfy an outstanding child support arrearage.”* (Section III)

## FACTUAL BACKGROUND

Thomas R. Swisher died intestate on July 5, 2010, after a head-on motorcycle collision. His administratrix collected \$300,000 in liability and underinsured-motorist insurance proceeds in a wrongful-death action. Swisher's former spouse, Connie Ellis, had been receiving \$125 monthly payments toward a child-support arrearage, but she testified that she gave all of those payments to the parties' adult children rather than using them for herself. The circuit court therefore found that Ellis was not financially dependent on Swisher when he died.

## PROCEDURAL HISTORY

Thomas R. Swisher's administratrix collected \$300,000 in insurance proceeds arising from his fatal motor-vehicle accident and sought court approval of the wrongful-death settlement and its distribution. Ellis intervened and asserted that she was entitled to a share because the decedent had been paying her \$125 per month toward a child-support arrearage. The circuit court awarded proceeds to the surviving spouse and children but denied Ellis's claim, finding that she had not shown financial dependence on the decedent. The Supreme Court of Appeals of West Virginia affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Walker v. West Virginia Ethics Commission, 201 W. Va. 108, 492 S.E.2d 167 (1997)
- Thompson & Lively v. Mann, 65 W. Va. 648, 64 S.E. 920 (1909)
- Bond v. City of Huntington, 166 W. Va. 581, 276 S.E.2d 539 (1981)
- Stone v. CSX Transportation, Inc., 10 F. Supp. 2d 602, 604 (S.D. W. Va. 1998)
- McClure v. McClure, 184 W. Va. 649, 403 S.E.2d 197 (1991)
- Trail v. Hawley, 163 W. Va. 626, 259 S.E.2d 423 (1979)
- White v. Gosiene, 187 W. Va. 576, 420 S.E.2d 567 (1992)
- Rice v. Ryder, 184 W. Va. 255, 400 S.E.2d 263 (1990)