

STATE OF MICHIGAN
IN THE SUPREME COURT

In Re ESTATE OF CLIFFMAN

**ELMER CARTER, PHILIP CARTER,
DAVID CARTER & DOUG CARTER,**

Appellants

vs

**BETTY WOODWYK & VIRGINIA
WILSON**

Appellees.

Supreme Court No. 151998

Court of Appeals No. 321174

Allegan County Probate Court
File No. 13-38358-DE

Kenneth Puzycki (P45404)
**LAW OFFICE OF KENNETH A.
PUZYCKI, PLLC**
Attorneys for Appellants
380 Garden Ave.
Holland, MI 49424
616-738-0088

Kenneth B. Breese (P27177)
Kenneth M. Horjus (P52766)
CUNNINGHAM DALMAN, P.C.
Attorneys for Appellees
321 Settlers Road
Holland, MI 49422
616-772-9717

Shaheen I. Imami (P54128)
Attorneys for *Amicus Curiae* State Bar
of Michigan's Probate and Estate Planning Section
800 W. Long Lake Rd., Ste. 200
Bloomfield Hills, MI 48302
616-248-865-8810

**APPELLEES' SUPPLEMENTAL BRIEF IN OPPOSITION
TO APPELLANTS' APPLICATION FOR LEAVE TO
APPEAL**

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JURISDICTIONAL STATEMENT

Appellees relies on the Jurisdictional Statement provided by Appellants, Elmer Carter, Philip Carter, David Carter, and Doug Carter, as well as MCR 7.303(B)(1). Appellees believe that the decision rendered in *In Re Combs*, 257 Mich App 622; 669 NW2d 313 (2003) should be upheld.

JUDGMENT BEING APPEALED AND RELIEF SOUGHT

This appeal arises out of a Petition by Appellees Betty Woodwyk and Virginia Wilson (collectively "Appellees") to preclude Appellants, Elmer Carter, Philip Carter, David Carter, and Doug Carter, (collectively "Appellants") arising out the death of Gordon Cliffman.

On March 21, 2014, the Allegan County Probate Court granted Appellees' Petition for Declaratory Relief and entered an order denying Appellants the right to file claims against the proceeds of a wrongful death settlement pursuant to MCL 600.2922. In its decision, the Probate Court relied on *In Re Combs*, 257 Mich App 622; 669 NW2d 313 (2003). On June 9, 2015, the Court of Appeals affirmed the decision of the Probate Court based on the authority in *In re Combs*.

APPELLEE'S STATEMENT OF QUESTIONS PRESENTED

Issue No. 1

Whether the Court of Appeals correctly interpreted MCL 600.2922(3) of the Wrongful Death Act to bar the step children of a pre-deceased's spouse from seeking a share of the proceeds from the wrongful death settlement or recovery.

The Appellants Answers: "No"

The Probate Court Answers: "Yes"

The Court of Appeals Answers: "Yes"

Appellees Answers: "Yes"

Issue No. 2

Whether MCL 600.2922(3) is ambiguous in the use of the term "spouse."

The Appellants Answers: "Yes"

The Probate Court Answers: "No"

The Court of Appeals Answers: "No"

Appellees Answers: "No"

STATEMENT OF FACTS

This appeal involves application of the Michigan Wrongful Death Act set forth in MCL 600.2922. That section defines, in part, the pool of applicants that may seek a share of wrongful death recovery or settlement proceeds. The Probate Court and the Court of Appeals concluded that Appellants were barred from seeking a share of the wrongful death settlement proceeds pursuant to *In Re Combs*, 257 Mich App 622; 669 NW2d 313 (2003).

Appellants claim that *In Re Combs* was wrongly decided and should be overruled. Appellees assert that the term "spouse" is used in MCL 600.2922(3)(b) is unambiguous and that *In Re Combs* should be upheld.

It is undisputed that Gordon Cliffman married Betty Carter in 1976. (Appellants' Application for Leave to Appeal at 10.) At the time Betty Carter was divorced and had six children from a previous marriage. *Id.* Gordon Cliffman never adopted any of Betty Carter's children. Betty Carter died in 1996. All of the children are currently adults. *Id.*

Gordon Cliffman was involved in a serious motor vehicle accident which caused injuries that eventually claimed his life. *Id.* Settlement in the amount of \$300,000 was approved by the Probate Court on December 18, 2013. *Id.* at 10-11.

ARGUMENT

It is asserted that the phrase "children of the decedent's spouse" is ambiguous. Focus of this argument is on the phrase "decedent's spouse." No one has argued that the term "decedent's" is ambiguous, but that the term "spouse" is. This term is an ordinary term used in everyday language. This author could find no variation in any dictionary source which defined the term "spouse" as anything other than a married person.

As argued previously, marriage, under Michigan law, terminates at death. The argument, then, is that if there is no marriage there can be no spouse.

The Michigan Probate and Estate Planning Section argue at length that this statutory phrase should be read *in pari materia* with the Estates and Protected Individuals Code, PA 386 of 1998, MCL 700.1101 *et seq.* (hereinafter "EPIC"). Where a statute is clear and unambiguous, the doctrine of *in pari material* should not be invoked. *Vorhies v Judge of Recorder's Court*, 220 Mich 155, 189 NW2d 1006 (1922).

CONCLUSION

Because the phrase "decedent's spouse" is clear and unambiguous it should be given its plain meaning. The doctrine of *in pari materia* should not be invoked. *In Re Combs* should be upheld, and the Motion for Leave to Appeal should be denied.

Respectfully submitted,

CUNNINGHAM DALMAN, P.C.
Attorneys for Appellees

Date: May 4, 2016

/s/ Kenneth B. Breese
Kenneth B. Breese (P27177)
Kenneth M. Horjus (P52766)