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SUPREME COURT OF VIRGINIA
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IN THE

Supreme Court of Virginia

AT RICHMOND

740854

JAMES W. KORMAN, ADMINISTRATOR, etc.,

Plaintiff In Error

v.

ARTHUR J. CARPENTER, JR., COMMITTEE, etc.,

Defendant In Error

APPENDIX

KINNEY, SMITH & BITNER
James W. Korman
2007 North 15th Street
Arlington, Virginia 22216

INDEX TO APPENDIX

	Page
Writ of Error Awarded	1
Amended Motion For Judgment	1
Demurrer To Amended Motion For Judgment	3
Order	4
Notice of Appeal And Assignments Of Error	5

IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

RECORD NO. 740854

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 22nd day of November, 1974.

James W. Korman, Administrator, etc., Plaintiff In Error,

against

Arthur J. Carpenter, Jr., Committee, etc. , Defendant In Error,

From the Circuit Court of Fairfax County

Upon the petition of James W. Korman, administrator of the estate of Katherine Pollard Maddux Houghton, a writ of error is awarded him from a final order entered by the Circuit Court of Fairfax County on the 23rd day of May, 1974, in a certain motion for judgment then therein depending, wherein the said petitioner was plaintiff and Arthur J. Carpenter, Jr., Committee for Alfred B. Houghton, was defendant; no bond being required.

* * * * *

AMENDED MOTION FOR JUDGMENT

Take notice that the Plaintiff will move this Court for judgment against you in the amount of $25,000 for the following, to-wit:

1. That the Plaintiff qualified as the Resident Administrator of the Estate of Katherine Pollard Maddux Houghton before this Court on December 3, 1971; that the Defendant was appointed Committee for Alfred

B. Houghton, a convict, by Order entered May 15, 1973 in Fiduciary No. 19481, in the Circuit Court of Fairfax County, Virginia.

2. That on September 19, 1971, the Plaintiff's decedent, Katherine Pollard Maddux Houghton, and the Defendant's ward, Alfred B. Houghton, were husband and wife and were living separate and apart, having on or about March 23, 1971 executed a "Separation and Property Settlement Agreement", a copy of which is attached hereto and identified as Exhibit 1 and asked to be made a part hereof as though set out in full herein.

3. That on or about September 19, 1971, the Plaintiff's decedent was residing at 1600 Maddux Lane, McLean, Fairfax County, Virginia; that on the date and place aforesaid, the Defendant's ward entered the decedent's residence by force and, without justification or provocation, violently assaulted the Plaintiff's decedent as a consequence of which the Plaintiff's decedent was killed by the shot from a revolver fired by the Defendant's ward; that on or about July 28, 1972, the said Alfred B. Houghton pled guilty to and was convicted of, the second degree murder of the Plaintiff's decedent by the Circuit Court of Fairfax County, Virginia, and sentenced to a term of twenty (20) years in the Virginia State Penitentiary.

4. That as the direct and proximate result of the actions of the Defendant's ward, as aforesaid, the Plaintiff's decedent was killed by the intentional acts of the Defendant's ward, Alfred B. Houghton, husband of the decedent. The decedent leaves surviving her, as statutory beneficiaries pursuant to Section 8-636 of the Code of Virginia, as amended, her parents and two brothers, to-wit: H. Cabell Maddux, Jr., father; Yolanda Alfaro Maddux, mother; and H. Cabell Maddux, III and Fielding

Lewis Maddux, brothers.

5. That as the direct and proximate result of the actions of the Defendant's ward, as aforesaid, the decedent's parents and brothers have suffered, and will continue to suffer, mental anguish and grief for the death of their daughter and sister, respectively, and they now seek damages against the Defendant's ward for solace, according to Statutes made and provided; that the actions of the Defendant's ward resulted in the death of the decedent and, as a consequence thereof, said ward is precluded from sharing in any award which may be forthcoming.

WHEREFORE, the Plaintiff, on behalf of the Estate of Katherine Pollard Maddux Houghton seeks judgment against the Defendant's ward, Alfred B. Houghton, in the amount of $25,000, together with the costs of this proceeding and prays that judgment for said amount be entered against the Defendant and that said judgment be apportioned among the decedent's surviving parents and brothers, according to the Statutes made and provided.

Filed: 9/4/73

* * * * *

DEMURRER TO AMENDED MOTION FOR JUDGMENT

The defendant says that the Amended Motion for Judgment is not sufficient in law for the reasons stated in the attached Memorandum of Points and Authorities and in the Memorandum of Points and Authorities attached to the Demurrer previously filed to the original Motion for Judgment.

WHEREFORE, defendant prays that the action be dismissed.

Filed: 9/28/73

* * * * *

ORDER

This Matter came on for hearing upon the Demurrer of the Defendant to the Amended Motion for Judgment. Upon consideration of the points and authorities submitted by both sides and the argument of counsel; it is hereby;

ADJUDGED, ORDERED and DECREED as follows:

1. On the ground of interspousal immunity the Demurrer to the Amended Motion for Judgment is sustained, in that the decedent could not, had she survived, have brought an action in tort against the Defendant's ward, who was her husband at the time of the shooting which led to her death. Keister v. Keister, 123 Va 157, 96th S.E. 315 (1918).

2. Defendant's contention that the action cannot be maintained because the parents and brothers of the decedent on whose behalf the action has been brought are not proper beneficiaries under Section 6-636 of the Code of Virginia is rejected on the ground that the Defendant's ward is, on the basis of the allegations in the Amended Motion for Judgment, the convicted murderer of the decedent and as such disqualified as a statutory beneficiary in a wrongful death action. His disqualification permits an action to be maintained on behalf of the next class of statutory beneficiaries, namely the parents and siblings of the decedent.

3. In view of the agreement of counsel for both sides that the Amended Motion for Judgment could not be further amended to cure the defect alluded to in Paragraph 1 above, this Order is declared to be final judgment and the action is dismissed with prejudice. Plaintiff shall bear the costs of the litigation.

ENTERED: May 23, 1974.

* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

Comes Now your Plaintiff, James W. Korman, Administrator of the Estate of Katherine Pollard Maddux Houghton, and files this Notice of Appeal and Assignments of Error pursuant to Rule 5:6 of the Rules of the Supreme Court of Virginia, and says as follows:

That the trial Court erred in sustaining Defendant's demurrer to Plaintiff's Motion for Judgment in that:

1. The trial Court found the doctrine of interspousal immunity a bar to the instant wrongful death action, although the Plaintiff is the Administrator of the deceased's estate and the suit is not between spouses.

2. The trial Court applied the common law doctrine of interspousal immunity to bar the instant wrongful death action although every rationale offered by jurists for the rule, (including, but not limited to preservation of family harmony and the possibility of collusive litigation) is totally inappropriate in the instant case.

3. The trial Court applied the doctrine of interspousal immunity although the plain and unequivocal language of the "Married Woman's Acts" permit a woman to "sue and be sued in the same manner and with the same consequences as if she were unmarried". (Virginia Code Section 55-36, 1950, as amended.)

4. The doctrine of interspousal immunity is based on antiquated and outmoded concepts, such as the "one flesh" view of marriage, and therefore should not have been applied in this day, particularly where, as here, it would stand as an impediment to substantial justice.

5. In the case of a heinous and intentional act of wrongdoing, as in the instant case, the trial Court should not have applied the doctrine of interspousal immunity to bar recovery.

Plaintiff states that no transcript or statement of facts, testimony or other incidents of the case are to be filed except for those pleadings and Memoranda of Points and Authorities heretofore filed with the trial Court.

Filed: 6/21/74

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