

IN THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF MISSISSIPPI

CASE NO. 2008-CA-00690

JOHN CLAYTON KABBES

APPELLANT

VERSUS

JOHN BAXTER BURNS

APPELLEE

Appeal From the Chancery Court of
the First Judicial District of Hinds County, Mississippi

APPELLANT'S PRINCIPAL BRIEF

ORAL ARGUMENT NOT REQUESTED

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IN THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF MISSISSIPPI

CASE NO. 2006-CA-01388

JOHN CLAYTON KABBES

APPELLANT

VERSUS

JOHN BAXTER BURNS


APPELLEE

CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons and entities as described in Rule 28(a)(1) have an interest in the outcome of this case. These representations are made in order that the Justices for the Supreme Court of Mississippi may evaluate possible disqualification or recusal.

1. Appellant John Clayton Kabbes;
2. L. Breland Hilburn, attorney at law, C. Louis Clifford IV, of Ware Clifford PLLC, and Patrick J. Schepens, of Eaves Law Firm, attorneys for the appellant;
3. Appellee John Baxter Burns;
4. J. Kevin Watson of Watson and Jones, attorneys for appellee John Baxter Burns;
5. Lynn Macon, Executrix of the Estate of Martha Thomas Kabbes Burns;
6. A.M. Edwards III of Wells, Moore, Simmons and Hubbard, PLLC, attorney for Lynn Macon;
7. James H. Herring of Herring, Long & Crews, PC, attorney for the Estate of Martha Thomas Kabbes Burns.
8. Honorable Denise Owens, Hinds County Chancery Court Judge.
9. Honorable Stuart Robinson Sr. retired Hinds County Chancery Court Judge.

Respectfully submitted, this the 2nd day of September, 2008.



Patrick J. Schepens
Attorney for the Appellant

STATEMENT REGARDING ORAL ARGUMENT

Appellant John Clayton Kabbes does not believe oral argument would be useful for the resolution of this appeal. The consideration of the issues in this matter will not be significantly aided by oral argument because the facts and legal arguments are adequately presented in the briefs and record. However, should the Court determine that oral argument would be useful to clarify some matter raised, John Clayton Kabbes stands ready to abide by this Court's instruction.

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STATEMENT OF THE ISSUES

- I. Whether the Chancellor erred in her determination that the proceeds in the registry of the Court are wrongful death proceeds.
- II. Whether the Chancellor erred in her determination that the Antenuptial Agreement between Martha Kabbes Burns and John Burns had no bearing on the settlement of the wrongful death claim?

STATEMENT OF THE CASE

I. NATURE OF THE CASE

This is an appeal following the Chancery Court of Hinds County denial of John Kabbes' motion to reconsider his petition for enforcement of the antenuptial agreement entered into between John Burns and Martha Kabbes Burns. The central issue of this case is the disbursement of a settlement for a doubtful claim, and whether John Burns, who is a wrongful death beneficiary and an heir at law, is able to partake in the recovery from the settlement of the wrongful death claim in the face of the provisions set out in the antenuptial agreement and in the face of the finding of the chancery court's decree authorizing settlement of a doubtful claim.

II. COURSE OF PROCEEDINGS IN THE COURT BELOW AND STATEMENT OF RELEVANT FACTS

The underlying basis of this appeal stems from a lawsuit filed by John Kabbes, on behalf of the wrongful death beneficiaries, of Martha Kabbes Burns in the Circuit Court of the First Judicial District of Hinds County. On July 18, 2002 Martha Kabbes Burns died as a result of a one-vehicle accident which occurred in Foster, Green County, Alabama. Subsequent to the accident, a suit was filed in the Circuit Court of the First Judicial District of Hinds County on behalf of the wrongful death beneficiaries of Mrs. Burns against General Motors Company, Michelin North America Inc. [Michelin], and Brakes Plus, Inc., d/b/a Scotty's Tire & Automotive.

Defendant Michelin answered the wrongful death claim, wherein it denied and contested all liability for the accident and death. In lieu of continued litigation the plaintiffs were able to settle their dispute as to defendant Michelin and on June 30, 2004 a petition was filed in the Chancery Court of the First Judicial District of Hinds County to determine heirs and for authority to settle a doubtful claim. [R. 39-46]. In the petition, the petitioner John Kabbes, the wrongful death beneficiaries, and the heirs at law agreed that any liability as to Michelin "is doubtful" and

any claims against Michelin “cannot be readily collected.” [R. 42]. The petition to settle a doubtful claim filed by John Kabbes was joined in by Martha Kabbes Burns’ daughters Carmen K. Goforth and Lila K. Strode, and Martha Kabbes Burns’ husband John Burns. [R. 47-52].

On June 30, 2004 a decree was entered wherein the chancery court found that “the claim against [Michelin] is very doubtful and the claim against [Michelin] is one that is not readily collectible.” [R. 59]. The court thereafter, found in light of the doubtful nature of the wrongful death beneficiaries claim, the proposed settlement was in the best interest of the estate and therefore should be accepted. [R. 59].

Prior to the petition to settle a doubtful claim John Kabbes filed in the Chancery Court of Hinds County on May 10, 2004 his Petition for Enforcement of Antenuptial Agreement and for Damages, wherein he sought to have the court enforce the antenuptial agreement entered into by John Burns (husband) and Martha Kabbes Burns (wife). [R. 23]. Approximately six months after joining in the petition to settle a doubtful claim and approximately six months after the chancery court found the wrongful death claim to be doubtful, Appellee John Baxter Burns on January 12, 2005 filed his Motion to Dismiss the Petition for Enforcement of Antenuptial Agreement and for Damages requesting that the deposited funds be paid over to him.

On March 7, 2006 Chancellor Denise Owens issued an Order, over the objection of John Kabbes, declaring the remaining proceeds being held by the registry of the Court to be wrongful death proceeds, and declaring that the Antenuptial Agreement dated March 7, 1990 between Marth Kabbes Burns and John Burns had no bearing on the settlement of the wrongful death claim. [R. 62]. The remaining \$ 47,858.74, on deposit with the court, was ordered to be paid to John Burns.

In response, on March 15, 2006 John Kabbes filed a motion to reconsider which was denied by Chancellor Owens on March 25, 2008. From that order Appellant John Clayton

Kabbes now appeals the Order denying his Motion to Reconsider and granting appellee's Motion to Dismiss the Petition for Enforcement of Antenuptial Agreement and for Damages. [R. 93].

SUMMARY OF THE ARGUMENT

The primary issue is a matter of first impression for this Court. More specifically, the issue for this Court to determine is when a civil action seeking damages for wrongful death is settled and a court approving the wrongful death settlement finds the claim to be “doubtful” and no liability is adjudicated on the part of the defendants, do the proceeds from that settlement become part of the wrongful death estate and pass under the terms of the wrongful death statute or do the funds pass as if the funds are a part of the decedent’s estate.

The Appellant, John Kabbes, has at all times in this litigation disputed John Burns’ right to recover any proceeds from the settlement on the grounds that John Burns freely entered into an antenuptial agreement wherein he relinquished any and all claims against the Estate of Martha Thomas Kabbes Burns. Accordingly, the only way John Burns is entitled to partake in any of the proceeds from the settlement is if the proceeds pass through the wrongful death estate. However, under the plain language of the wrongful death statute, which must be strictly construed upon appeal, no wrongful death estate is established unless it is proven or stipulated to by all the parties that a wrongful act or omission occurred. In the present case when Chancellor Robinson approved the settlement his decree made no such finding in fact the court found “the claim against [Michelin] is very doubtful and the claim against [Michelin] is one that is not readily collectible.” [R. 59]. The wrongful death statute is very clear that the distribution provided under the statute is followed only if a wrongful act or omission occurs. Since there was no finding by Chancellor Robinson that a wrongful act or omission occurred the proceeds of the settlement pass through the Estate of Martha Kabbes Burns which John Burns is prohibited from partaking in by way of the antenuptial agreement.

At issue as well is the force and effect of the antenuptial agreement, should this Court find the proceeds of the settlement pass according to the distribution set forth in the wrongful

death statute, the Appellant John Kabbes disputes the finding of Chancellor Owens that the antenuptial agreement has no bearing on the settlement of the wrongful death claim. Antenuptial agreements are valid binding contracts in Mississippi and are interpreted according to ordinary contract laws. Furthermore, while the wrongful death statute allows recovery of a number of different types of damages, the Mississippi Supreme Court has recently held “*these damages are not due to the same claimants.*” *River Region Med. Corp. v. Patterson*, 975 So.2d 205, 208 (Miss. 2007)(emphasis in original)(quoting *Long v. McKinney*, 897 So.2d 160 (Miss. 2004)). The Court went on to explain that damages for the decedent’s pain and suffering, medical bills, and funeral expenses, to name a few, belong to the decedent’s estate and are recoverable by the estate. While the damages of loss of society and companionship are unique to each beneficiary and pass directly to each beneficiary.

Accordingly, Chancellor Owens’ decision that the antenuptial agreement has no bearing on the wrongful death claim was in error as the antenuptial agreement clearly limits the recovery to which John Burns would be entitled. Although John Kabbes is adamant that John Burns is not entitled to recover *any* of the sums from the settlement, should this Court find the proceeds of the settlement to be wrongful death proceeds the recent instructions from the Mississippi Supreme Court clearly show that under no circumstances would John Burns be able to fully participate in an equal share of the proceeds of the settlement. Rather, John Burns would only be able to receive those sums which the court determines represent his individual recovery for his loss of society and loss of companionship, as all other damages recoverable under the wrongful death statute pass through the Estate of Martha Thomas Kabbes Burns which John Burns is prohibited from partaking in by the antenuptial agreement. Therefore, should this Court find the settlement proceeds pass under the wrongful death statute this Court should remand the case to the Chancery Court of Hinds County for a hearing to determine what portion, if any, of the proceeds

are to compensate John Burns for his individual loss, and what portion of the proceeds compensate the estate for losses which John Burns is not entitled to partake.

ARGUMENT

I. STANDARDS OF REVIEW

A. MOTION TO DISMISS

When considering a motion to dismiss on appeal a *de novo* standard of review is applied. *Scaggs v. GPCH-GP, Inc.*, 931 So.2d 1274, 1275 (Miss. 2006). Upon consideration of a motion to dismiss, “the allegations in the complaint must be taken as true and the motion should not be granted unless it appears beyond doubt that the plaintiff will be unable to prove any set of facts in support of his claim.” *Lang v. Bay St. Louis/Waveland Sch. Dist.*, 764 So.2d 1234 (Miss. 1999).

B. CONSTRUCTION OF AN ANTENUPTIAL AGREEMENT

In Mississippi antenuptial agreements are “enforceable just as any other contract. *Mabus v. Mabus*, 890 So.2d 806, 818 (Miss. 2003). The Mississippi Supreme Court has instructed that “[i]t is not now and never has been the function of this Court to relieve a party to a freely negotiated contract of the burdens of a provision which becomes more onerous than had originally been anticipated.” *Estate of Hensley v. Estate of Hensley*, 524 So.2d 325, 328 (Miss. 1988). Upon review of a chancellor’s construction of an antenuptial agreement “[t]his Court will not disturb the chancellor’s opinion when supported by substantial evidence, unless the chancellor abused his discretion, was manifestly wrong, clearly erroneous, or an erroneous legal standard was applied.” *Holloman v. Holloman*, 691 So.2d 897, 898 (Miss. 1996).

II. THE CHANCELLOR ERRED IN HER DETERMINATION THAT THE PROCEEDS ON DEPOSIT IN THE COURT’S REGISTRY WERE WRONGFUL DEATH PROCEEDS.

On June 30, 2004, John Kabbes filed a petition in the chancery court of Hinds County Mississippi for authority to settle a doubtful claim. [R. 39-46]. In his petition, John Kabbes clearly laid out to the chancery court the basis for which a wrongful death action had been filed

on behalf of the heirs of Martha Kabbes Burns. However, the petition alleges that the defendant Michelin:

[C]ontends and was prepared to prove, among other things, that the tire in question was not defective, that the alleged tire incident was caused by improper use or under inflation or overloading, and that the sole and proximate cause of the accident and death were the negligence of the deceased in failing to utilize seat belts and in grabbing the door handle and opening the door to the Suburban during the accident.

[R. 41]. Furthermore, the petitioner, John Kabbes, along with the other wrongful death beneficiaries who joined in the petition, submitted to the chancery court that “[t]hey are convinced that liability as to Michelin and any claim that the tire was negligently or defectively designed, manufactured, sold or distributed is doubtful. [R. 42]. The petition to settle a doubtful claim and allegations contained therein, filed by John Kabbes, was joined in by both his sisters, Carmen Goforth and Lila Strode, and the Appellee, John Burns. [R. 47-52]. In fact in his joinder John Burns stated under oath his intent to “join in the petition, adopt the allegations, averments and facts stated therein as my own and pray for the relief requested therein.” [R. 52].

Thereafter, on June 30, 2004 a decree was signed which adopted much of the language contained in the petition and restated the petitioners allegations that the claim was “doubtful.” [R. 57]. In fact the court stated that after a holding a hearing on the petition “[t]he Court finds and concludes that liability as to Michelin and that the tire at issue was negligently or defectively designed, manufactured, sold or distributed are extremely doubtful.” [R. 58]. As the chancery court specifically found that no wrong was committed on the part of Michelin, no wrongful death estate was created, and accordingly, the proceeds of the settlement passed through the Estate of Martha Thomas Kabbes Burns. As such, under the terms of the antenuptial agreement executed by John Burns, and the disclaimer of any and all rights in the Estate of Martha Thomas Kabbes Burns, John Burns was not and is not entitled to any of the proceeds which necessarily were distributed through the heirs of Estate of Martha Thomas Kabbes Burns.

A. THERE CAN BE NO WRONGFUL DEATH ESTATE WITHOUT A “WRONG”

The wrongful death statute allows the statutory heirs to recovery damages whenever the death of any person “shall be caused by any real, wrongful or negligent act or omission.” MISS. CODE ANN. § 11-7-13. Therefore, in order to recover under the wrongful death statute the “plaintiff must prove that the wrongful conduct proximately caused the death.” *In re England v. England*, 846 So. 2d 1060, 1068 (Miss. Ct. App. 2003). Pursuant to the wrongful death statute only when a death is caused by a wrongful or negligent act or omission the damages for a married woman “shall be distributed to the husband and children.” MISS. CODE ANN. § 11-7-13. However, the wrongful death estate and distribution provided by the statute cannot come into existence unless and until it is proven, or stipulated to, that a wrongful act or omission proximately caused the decedent’s injuries.

In fact the Mississippi Supreme Court has previously instructed in a similar case that “[b]ased on the language of the wrongful death statute, in order to recover any damages for wrongful death, the heirs were required to prove that the negligence or wrongful acts . . . caused the death.” *Wilks v. American Tobacco Co.*, 680 So.2d 839, 842 (Miss. 1996). In *Wilks* the family of the decedent brought a wrongful death action against various tobacco companies for the death of Anderson Smith, who suffered from lung cancer. After a trial on the issue the jury returned a verdict which found the death of Anderson Smith was not proximately caused by his lung cancer, and judgment was entered for the defendants. *Id.* The Court thereafter held “the entire claim under this statute must fail where the heirs failed to prove by a preponderance of the evidence that Smith’s death was caused by ATC’s product.” *Id.* (see also *Berryhill v. Nichols*, 158 So. 470, 471 (Miss. 1935) “[i]t is essential as an element of liability under our wrongful death statute . . . that the negligence complained of shall be the proximate cause, or at least a directly contributing cause, of the death which is the subject of the suit.”)

In the case at bar there was never an adjudication of any wrong on the part of the defendant Michelin. In fact the opposite is true. All of the heirs at law and wrongful death beneficiaries joined in a petition which asserted any claim against and any liability as to Michelin was doubtful. Furthermore, the chancery court, after holding a hearing on the issue, specifically found liability as to Michelin was extremely doubtful. [R. at 53-61].

The wrongful death statute, being in derogation of the common law, is strictly construed upon appellate review. *Pannell v. Guess*, 671 So.2d 1310, 1313 (Miss. 1996). Accordingly, before the wrongful death estate comes into existence all the elements of a claim for wrongful death must be met. In short, in order for the wrongful death estate to come into existence, the plaintiff must prove, or all beneficiaries must stipulate that: 1.) a person died; 2.) a wrongful or negligent act or omission occurred; 3.) the wrongful act or omission caused the death; and 4.) the decedent would have been able to maintain an action for damages had death not ensued. MISS. CODE ANN. § 11-7-13. In the present case there was neither a stipulation amongst the beneficiaries that the proceeds were wrongful death proceeds, nor was there a finding in the decree for settlement of a doubtful claim that the proceeds were wrongful death proceeds.

The fifth paragraph of the wrongful death statute contains the distribution of “damages for the injury and death of a married woman.” MISS. CODE ANN. § 11-7-13. As the wrongful death statute must be strictly construed in order for the wrongful death distribution to take effect it must be established that the proceeds are for the “injury *and* death.” *Id.* (emphasis added). Here there were no findings that the settlement was for the death of Martha Kabbes Burns, in fact the chancery court found any wrongful death claim to be extremely doubtful. Furthermore, by joining in the petition to settle a doubtful claim, John Burns (who was represented by counsel) freely and voluntarily waived his right to recover under the wrongful death statute. As the decree granting the petition to settle a doubtful claim does not contain any finding that the proceeds

were wrongful death proceeds, a primary element of a wrongful death claim, (i.e.) that a wrongful or negligent act occurred was not established and accordingly no wrongful death estate created, thus the proceeds must pass through the Estate of Martha Thomas Kabbes Burns, and it was error for the chancery court to grant John Burns' motion to dismiss the petition for enforcement of the antenuptial agreement.

B. THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI LACKED AUTHORITY TO FIND THE PROCEEDS ON REGISTRY WITH THE COURT TO BE WRONGFUL DEATH PROCEEDS

In the March 7, 2006 order Chancellor Owens, over the opposition of John Kabbes, found the proceeds being held by the court were wrongful death proceeds. [R. 62]. Chancellor Owens' order was issued almost two years after the decree had been signed by Chancellor Robinson which specifically found any liability on Michelin's part to be extremely doubtful. At the time Chancellor Owens signed the March 7, 2006 order the Chancery Court of Hinds County, Mississippi lacked any authority to decree the proceeds to be wrongful death proceeds, as the issue was settled by Chancellor Robinson.

The Mississippi Court of Appeals has stated the question of whether recovery for a decedent's injuries is accomplished under the wrongful death statute or the survival statute is "a fact question properly resolved by a trier of fact." *In re England*, 846 So.2d at 1068-69. As this case involves a settlement of a doubtful claim in order for John Burns to have protected his right to be a wrongful death beneficiary either all the heirs at law had to stipulate that the recovered proceeds were in fact wrongful death proceeds, or John Burns needed a judicial determination that a wrong was committed by the defendant and that the proceeds were wrongful death proceeds. In the present case it is undisputable that John Kabbes has objected at all times to John Burns recovering any of the funds. [R. 90-91.] Therefore, the only way John Burns could have protected his interest was to petition the chancery court for a determination that the recovered

proceeds were wrongful death proceeds. However, by joining in the petition to settle a doubtful claim, John Burns did the exact opposite he alleged to the chancery court that the claim for wrongful death was doubtful. In doing so John Burns freely and voluntarily waived any right to receive any funds recovered from the settlement.

When Chancellor Owens' issued her March 7, 2006 order which found the proceeds on deposit with the chancery court to be wrongful death proceeds, Chancellor Owens was in essence overruling the prior decision of Chancellor Robinson which found any liability on the part of Michelin to be doubtful. No citation is necessary for the proposition that a chancellor does not have appellate authority to overrule a previous decision of another chancellor. If John Burns had an issue with the assertion that the claim against Michelin was doubtful, he should not have joined in the petition. However, in joining with the petition to settle a doubtful claim John Burns waived any claim he may have had that the proceeds from the settlement were wrongful death proceeds. Accordingly, since no wrong was stipulated to or adjudicated by Chancellor Robinson the proceeds necessarily passed through the Estate of Martha Thomas Kabbes Burns which John Burns is prohibited from partaking in by the terms of the antenuptial agreement.

III. THE CHANCELLOR ERRED IN HER DETERMINATION THAT THE ANTENUPTIAL AGREEMENT HAD NO BEARING ON THE SETTLEMENT OF THE WRONGFUL DEATH CLAIM

In her March 7, 2006 order, Chancellor Owens further found the Antenuptial Agreement between Martha Kabbes Burns and John Baxter Burns, dated May 7, 1990 had no bearing on the settlement of the wrongful death claim which was clear error. [R. at 62]. The Chancellor upheld her decision when she denied John Kabbes' motion to reconsider her March 7, 2007 order. In so finding the Chancellor disregarded a valid and binding legal contract, as well as, the law surrounding the distribution of funds under the Mississippi wrongful death statute.

A. THE ANTENUPTIAL AGREEMENT BETWEEN MARTHA KABBES BURNS AND JOHN BURNS IS VALID AND BINDING

In Mississippi antenuptial agreements are “enforceable just as any other contract. *Mabus v. Mabus*, 890 So.2d 806, 818 (Miss. 2003). However, antenuptial agreements “must be fair in the execution, and a duty of full disclosure shall be imposed.” *Smith v. Smith*, 656 So.2d 1143, 1147 (Miss. 1995). The agreement entered into between Martha Kabbes Burns and John Burns was fairly executed, and there was full disclosure of each other’s financial worth and condition. In fact, John Burns has at no time during the litigation surrounding the death of Martha Kabbes Burns contested the validity of the antenuptial agreement. Accordingly, the March 7, 1990 antenuptial agreement should be interpreted just as any other contract, the first rule of which being to follow the intent of the parties. *Id.*

In section two of the antenuptial agreement Martha Kabbes Burns and John Burns contracted and agreed as follows:

Each of the parties hereto agree that on the death of the other, the surviving party will not have and will not in any way assert any claim, interest, estate or title of any kind or nature whatsoever in or to any property, real, personal, or mixed, of which the other party may die seized or possessed.

[R. 28]. In so contracting John Burns relinquished any right to recover many of the damages allowed pursuant to the Mississippi wrongful death statute. When read *in toto* there is no question but that it was the intent of both contracting parties to require all funds regardless of the source to go to their respective children in the event of their demise.

B. THE ANTENUPTIAL AGREEMENT PROHIBITS JOHN BURNS FROM PARTAKING IN AN EQUAL DIVISION OF THE PROCEEDS OF THE SETTLEMENT

Under the Mississippi wrongful death statute allowable damages include “all the damages of every kind to the decedent and all damages of every kind to any and all parties interested in the suit.” MISS. CODE ANN. § 11-7-13. The foregoing statutory language has been held to include “funeral and medical expenses of the decedent, the present net cash value of the life

expectancy of the decedent, the loss of society and companionship of the decedent, the pain and suffering experienced by the deceased between the time of the injury and the subsequent demise, and punitive damages.” *Gatlin v. Methodist Med. Ctr.*, 777 So.2d 1023, 1030-31 (Miss. 2000)(citations omitted). However, it has recently been reiterated that while there are several types of damages which may be pursued “*these damages are not due to the same claimants.*” *River Region Med. Corp. v. Patterson*, 975 So.2d 205 (Miss. 2007)(emphasis in original)(quoting *Long v. McKinney*, 897 So.2d 160 (Miss. 2004)). The Court went on to instruct that the “estate is entitled to recover funeral costs and final medical expenses” while the beneficiaries are “entitled to recover for their *respective* claims of loss of society and companionship.” *Id.*(emphasis in original). Likewise, damages which are intended to compensate the decedent for her individual loss such as lost wages, and the pain and suffering experienced between the time of injury and subsequent demise would be recovered through the estate. *Id.*

This division comports with the underlying purpose of the wrongful death statute to allow recovery for dual wrongs: one wrong suffered by the decedent, and one wrong suffered by the beneficiaries. *Edward Hines Yellow Pine Trustees v. Stewart*, 100 So. 12 (Miss. 1924). However, in the case at bar, John Burns, through the antenuptial agreement, has freely and voluntarily waived any and all right to assert any claim or interest against any property of Martha Kabbes Burns or her Estate. In doing so at a bare minimum John Burns relinquished any right to partake in any recovery for: medical or funeral expenses of Martha Kabbes Burns; any lost wages or lost earnings suffered by her; any pain and suffering experienced by her between the moment the incident occurred and the moment of her demise; and any recovery for her loss of enjoyment of life.

However, the chancery court ignored the fundamental distinction between the two forms of damages recoverable in a wrongful death action in its March 7, 2006 order directing the

payment of \$47,858.74 to John Burns. [R. 62]. In so ordering the chancery court made no finding as to what portion of the proceeds on deposit with the court's registry reflected compensation for the lost earnings of Martha Kabbes Burns, her medical and funeral expenses, any pain and suffering experienced by her prior to her death, and her loss of enjoyment of life. Under the explicit terms of the antenuptial agreement John Burns has no right or standing to make any claim or receive any money which is meant to compensate Martha Kabbes Burns, or her Estate, for damages suffered personally by Martha Kabbes Burns. Rather, John Burns, in the event this Court finds the chancery court did not err in declaring the sums wrongful death proceeds, can only recover whatever portion of the \$47,858.74 which is declared to compensate him for his loss of companionship and loss of society. Although chancellors are granted wide discretion they still are required to follow the law as written and this Court is not bound by the chancellor's decision where it is manifestly wrong and/or follows the wrong legal standard. In the present case the chancellor wholly disregarded a valid and binding antenuptial agreement *in toto* when at a minimum the antenuptial agreement serves as a bar from John Burns partaking in an equal recovery of the proceeds.

Accordingly, if this Court finds the chancery court did not err in declaring the sums recovered to be wrongful death proceeds, this cause must be remanded to the chancery court for a determination as to what amount, if any, of the \$47,858.74 on deposit with the court is compensation to John Burns for his loss of society and companionship, and what amount, if any, of the \$47,858.74 on deposit with the court is compensation to the Estate of Martha Thomas Kabbes Burns for her pain and suffering, medical expenses, funeral expenses, and loss of enjoyment of life which John Burns is prohibited from receiving under the terms of the antenuptial agreement.

CONCLUSION

The Chancery Court of Hinds County erred in its determination that the proceeds of the settlement of a doubtful claim were wrongful death proceeds. Based on Chancellor Robinson's decree no wrongful act or omission was found on the part of Michelin and there was never a stipulation by all the wrongful death beneficiaries that the proceeds were for Martha Kabbes Burns wrongful death. As such a necessary element needed to establish a wrongful death – a wrongful act or omission – was never established and the proceeds of the settlement necessarily passed through the Estate of Martha Thomas Kabbes Burns which John Burns is prohibited from partaking in under the terms of the antenuptial agreement.

In the alternative, should this Court find that the proceeds of the settlement were in fact wrongful death proceeds despite Chancellor Robinson's decree, the Chancery Court of Hinds County further erred in its determination that the antenuptial agreement has no bearing on the settlement of the wrongful death claim. The law in Mississippi is clear that while many damages are recoverable under the wrongful death statute the damages recoverable are not owed to all of the beneficiaries equally, rather some are owed to the estate and others are owed directly to the beneficiaries. In this case there has never been a judicial determination of what portion of the settlement proceeds are intended to compensate the Estate of Martha Thomas Kabbes Burns and what portion of the settlement proceeds are intended to compensate John Burns. The antenuptial agreement voluntarily entered into by John Burns prohibits him from receiving any monies which are intended to compensate the Estate of Martha Thomas Kabbes Burns. Therefore, in the event this Court finds the proceeds to be wrongful death proceeds it should remand this case to the Chancery Court of Hinds County for a hearing to determine what portion of the proceeds are intended to compensate the Estate of Martha Kabbes Burns and what portion of the proceeds are intended to compensate John Burns individually.

Respectfully Submitted, this the 2nd day of September, 2008.

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BY: 
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CERTIFICATE OF SERVICE

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SO CERTIFIED this the 2nd day of September, 2008.


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