NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

SANDRA RENEE LAUGHLIN, ADMINISTRATRIX OF THE ESTATE OF MICHAEL LAUGHLIN, ON BEHALF OF THE ESTATE OF MICHAEL LAUGHLIN,	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY	
APPEAL OF: BERNADETTE DWYER, HEIR TO THE ESTATE OF MICHAEL LAUGHLIN,	
Appellant	No. 1921 WDA 2012

Appeal from the Order of November 7, 2012,
in the Court of Common Pleas of Allegheny County,
Civil Division at No. GD-12-010821

BEFORE: FORD ELLIOTT, P.J.E., ALLEN and COLVILLE*, JJ.

MEMORANDUM BY COLVILLE, J.: FILED: November 6, 2013

This is an appeal from an order entered on November 7, 2012, in the Court of Common Pleas of Allegheny County. We affirm.

The trial court summarized the background underlying this matter as follows.

> On January 12, 2012 the decedent, Michael J. Laughlin was struck by a car while a pedestrian in downtown Pittsburgh. Two days later he died intestate, at the age of 61.

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*Retired Senior Judge assigned to the Superior Court.

His wife, Sandra Renee McLaughlin, was appointed administratrix of his estate, and she retained a law firm (Goodrich & Geist, P.C., hereinafter "counsel for the estate") to pursue a wrongful death and survival claim.

Counsel for the estate determined that the driver of the vehicle that struck decedent did not have automobile liability insurance, but that decedent and his wife maintained a policy with State Farm Mutual Automobile Insurance Company that provided Uninsured Motorist benefits in the amount of $150,000.

Counsel for the estate, after filing a lawsuit, performing an investigation and entering into settlement negotiations, ultimately obtained an offer from State Farm to settle for the policy limits of $150,000.00.

Counsel for the estate obtained from the Pennsylvania Department of Revenue, Inheritance Tax Division, the Commonwealth's approval to a proposed allocation of the net settlement proceeds of 20% to the survival claim and 80% to the wrongful death claim.

Counsel for the estate thereafter prepared a Motion to Approve Settlement of Wrongful Death and Survival Action, and gave timely notice to the potential wrongful death heirs (except Ann Margaret Laughlin) that the Motion to Approve would be presented to [the trial court] for approval on September 25, 2012.

Counsel for the estate received notice from three of the four emancipated adult children that they objected to the proposed distribution of settlement proceeds as set forth in the Motion to Approve. In particular, the three adult children [Appellant] Bernadette Dwyer [("Appellant")], Michelle Sorensen, and Matthew Laughlin, objected to the proposal that the balance of the wrongful death proceeds (after distribution of the wife's share) be distributed only to [decedent's] minor daughter, [Lea Elizabeth Laughlin,] and not to them as well.

Accordingly, when the Motion to Approve was presented to [the trial court] in open court on September 25, 2012, counsel for the estate asked that [the court] not act upon the Motion to Approve at that time. Counsel for the estate requested that [the court] simply issue a rule to show cause and thereby schedule an

> evidentiary hearing that would allow any potential wrongful death heir to present evidence as to why he or she should participate in the wrongful death distribution. And, in fact, [the court] entered such a rule to show cause by Order dated September 25, 2012, where [the court] scheduled the evidentiary hearing for November 5, 2012. Counsel for the estate then effected service of [the] Order of September 25, 2012 on all potential wrongful death heirs (apparently even Ann Margaret Laughlin, who now apparently goes by the name of Ann Strobel). Thus, all potential wrongful death heirs had timely notice of the evidentiary hearing set for November 5, 2012, and all had the opportunity to show a right to participate in the wrongful death proceeds.

Trial Court Opinion, 01/25/13, at 1-3 (citations and footnote omitted).

Appellant, Jeanine Muncuso,[1] and Lea Laughlin testified at the hearing. The court later entered an order wherein it "determined that the wrongful death recipients in the within matter shall be Sandra Renee Laughlin and Lea Elizabeth Laughlin only." Trial Court Order, 11/07/12. Appellant timely filed a notice of appeal.

In her brief to this Court, Appellant asks us to consider the following questions:

> 1. Whether Appellant [ ] is entitled to a share of a wrongful death settlement that arose from the death of her father where she received pecuniary support from her father prior to his death.
>
> 2. Whether the trial court should have allowed Michelle Rae Sorenson, heir to the Estate of Michael Laughlin, to testify via telephone at trial when she lived in Wisconsin and was not available to testify in court.

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[1] Ms. Muncuso is Lea Laughlin's mother.

Appellant's Brief at 5.

We initially observe that Appellant presents two questions in the "Statement of Questions Involved" portion of her brief, but the "Argument" portion of her brief is not divided into two parts, in violation of Pa.R.A.P. 2119(a). The argument Appellant provides in support of her second issue is located at pages 13 to 14 of her brief. This argument is undeveloped and unsupported by citation to pertinent legal authority, again in violation of Pa.R.A.P. 2119(a). Furthermore, while Appellant offered to have Michelle Rae Sorenson testify by phone at the hearing, she did not object when opposing counsel declined the offer, nor did she raise the argument she offers on appeal. N.T., 11/05/12, at 30. For these reasons, we find Appellant's second issue to be waived. ***See Jacobs v. Chatwani***, 922 A.2d 950, 963 (Pa. Super. 2007) (finding that the appellant waived a seven line undeveloped argument); Pa.R.A.P. 302(a) ("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal.").

Regarding Appellant's first issue, she claims that the trial court erred by determining that she failed to prove that she should receive a share of the wrongful death proceeds. This Court has explained the law in this area as follows.

> We begin our discussion with an examination of the seminal decision in this area, ***Gaydos v. Domabyl***, 301 Pa. 523, 152 A. 549 (1930). Therein, a widow was negligently killed, and the intestate heirs entitled to share in the proceeds of her wrongful death action included one emancipated adult child who did not live at home, one emancipated adult child who was incapacitated and lived in a state institution, three adult children who lived at home with the widow, and two minor children who lived at home. The issue presented was whether any or all of the

children were entitled to share in the proceeds of the wrongful death action. The Court held that a person can recover a portion of the wrongful death proceeds if they are a child or spouse of the deceased and if they stand in a family relation to the deceased. Once a person qualifies as standing in a family relation to the decedent, the person shares in the wrongful death proceeds in accordance with his intestate share.

The ***Gaydos*** Court continued that a family relation "exists between parent and child when a child receives from a parent services or maintenance or gifts with such reasonable frequency as to lead to an expectation of future enjoyment of these services, maintenance, or gifts." ***Id.*** at 529, 152 A. at 551. The Court expressly stated that "those affected by such death need not reside at the same home or under the same roof as the deceased. They may reside elsewhere and still be within the family relation." ***Id.*** Nevertheless, the Court made it clear that before recovery will be permitted by one in a family relation, that person must suffer a pecuniary loss, which is defined as follows:

> Pecuniary loss has been defined to be a destruction of a reasonable expectation of pecuniary advantage from the deceased. It is not a matter of guess or conjecture, but must be grounded on reasonably continuous past acts or conduct of the deceased[.]
>
> The reasonable expectation of pecuniary advantage to one standing in the family relation may be shown in many ways, but more frequently through services, food, clothing, education, entertainment, **and gifts bestowed; to be reasonable, the services and gifts must have been rendered with a frequency that begets an anticipation of their continuance; occasional gifts and services are not sufficient on which to ground a pecuniary loss[.]**

Id. at 530, 152 A. at 552 (citations omitted; emphasis added). The Court further ruled, "An adult, if damaged, may recover as well as a minor" and that while a minor child is presumed to suffer pecuniary loss, an adult child must provide evidence of a pecuniary loss. ***Id.*** at 532, 152 A. at 553. The Court explicitly rejected the contention that once a child reaches the age of

twenty-one, he or she cannot share in the wrongful death proceeds.

Clear pronouncements that guide our decision in this matter can be distilled from the holding of ***Gaydos***: 1) an adult child suffering pecuniary loss from the death of a parent can recover his or her intestate portion of the proceeds of the wrongful death action; 2) the adult child is not required to live at home to recover those proceeds; and 3) pecuniary loss can be established by the existence of gifts and services from the decedent to the adult child if those gifts or services are rendered with sufficient frequency that it is reasonably certain that they would have continued had the parent not died.

Pursuant to the holding in ***Gaydos***, we have held that an adult child who had no personal relationship with the decedent, had never received support from the decedent, and had never been given any gifts by the decedent failed to suffer a pecuniary loss and could not share in the proceeds of the wrongful death action. ***Manning v. Capelli***, 270 Pa.Super. 207, 411 A.2d 252 (1979); ***see also Hodge v. Loveland***, 456 Pa.Super. 188, 690 A.2d 243 (1997) (where half-siblings had suffered no pecuniary loss, they could recover no portion of wrongful death proceeds resulting from death of infant child; proceeds awarded to child's mother); ***accord Armstrong v. Berk***, 96 F.Supp. 182 (E.D.Pa.1951) (children who lived apart from parent and received no support from parent did not establish pecuniary loss).

Conversely, where it is demonstrated that the person standing in a family relation with the decedent enjoyed his company and companionship and had a reasonable expectation of future pecuniary gain from the decedent, that person is entitled to recover in the wrongful death proceeds. Therefore, in ***Berry v. Titus***, 346 Pa.Super. 376, 499 A.2d 661 (1985), we reversed an order of the orphans' court refusing to award the decedent's mother any proceeds of a wrongful death action where the child was fourteen years old when killed and continued to enjoy a familial relationship with his mother prior to his death even though he did not reside with her.

In re Estate of Wolfe, 915 A.2d 1197, 1199-1201 (Pa. Super. 2006) (footnote omitted).

The only evidence that Appellant presented at the hearing in support of her position that she is entitled to receive a portion of the wrongful death proceeds was her testimony. The trial court found Appellant's testimony to be incredible. Trial Court Opinion, 01/25/13, at 4-5. That court was charged with the duty of determining Appellant's credibility, and this Court cannot reverse that determination absent an abuse of discretion. ***See In re Estate of Zeevering***, 2013 WL 5366989, 2 (Pa. Super. 2013) ("Because the orphans' court sits as the finder of fact, it determines the credibility of the witnesses and, on review, this Court will not reverse its credibility determinations absent an abuse of discretion.").

> An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the judgment is the result of partiality, prejudice, bias or ill-will, as shown by the evidence of record, discretion is abused. We emphasize that an abuse of discretion may not be found merely because the appellate court might have reached a different conclusion, but requires a showing of manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support as to be clearly erroneous.

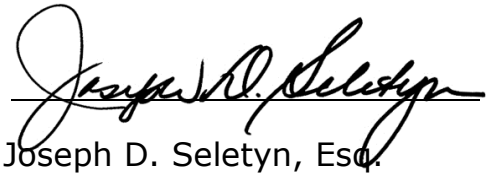
Eichman v. McKeon, 824 A.2d 305, 312 (Pa. Super. 2003) (citation omitted).

Appellant has failed to demonstrate that the court's credibility determination was manifestly unreasonable or based upon partiality, prejudice, bias or ill-will. Furthermore, the record supports the court's determination. In fact, in its opinion, the trial court provided record-based

reasons in support of its credibility determination. Trial Court Opinion, 01/25/13, at 4-5. For these reasons, Appellant's issue fails, and we affirm the court's order.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 11/6/2013