

**COURT OF COMMON PLEAS OF PHILADELPHIA  
CIVIL DIVISION**

**Estate of Alicia M. Harmon, Deceased  
130902596**

**OPINION SUR DECREE**

**O'KEEFE, ADM. J.**

**February 20, 2014**

The Petitioner is Nicole Harmon, mother of the decedent and the Administrator of the Estate of Alicia M. Harmon, Deceased. On September 23, 2013, Petitioner filed a Petition to Settle Wrongful Death and Survival Action. In her Petition, Petitioner requests that the wrongful death proceeds be distributed solely to her as decedent's mother. The Petition did not include a distribution to decedent's father, a wrongful death beneficiary under Pennsylvania law.

***Facts and Procedural History***

The decedent is Alicia M. Harmon. Alicia died on December 24, 2011, at the age of twenty-five. Alicia died due to blunt impact head trauma she suffered as a result of being struck by a motor vehicle. Alicia was struck by a vehicle driven by Henry Smith Jr. while a pedestrian. Alicia died intestate, survived only by her mother, father and younger sister.

Prior to the filing of a lawsuit, Petitioner settled with Nationwide Insurance on behalf of their insured, Henry Smith Jr., for Ninety Thousand Dollars (\$90,000.00). The Petitioner then filed the instant petition to have settlement approved.

The current dispute involves whether Alicia's father, the Respondent William Smith, is entitled to receive wrongful death proceeds as a beneficiary under the Wrongful Death Act. 42 Pa.C.S.A. §8301(b). Petitioner, the mother of decedent, asserts that the Respondent is ineligible due to forfeiture under 20 Pa.C.S.A. §2106(b).

Pursuant to the Wrongful Death Act, both parents are entitled to take equal shares of the wrongful death benefits. 42 Pa.C.S.A. §8301(b). Petitioner asserts that Respondent forfeited his right to take under the Wrongful Death Act because he failed to perform his duty to support his daughter and deserted her. A hearing was held on December 18, 2013 to hear evidence in this case.

### ***Dependent Child***

The forfeiture statute provides that a parent's share may be forfeited "previous to the death of the parent's *minor* or *dependent* child." 20 Pa.C.S.A. §2106(b) (emphasis added). The Superior Court discussed the requirements for forfeiture stating:

The elements of a forfeiture based on failure to support are easily discerned from the plain language of the statute: (1) **the decedent must be a minor or dependent child**; (2) the parent must owe some duty of support to the decedent; (3) the parent must have failed to perform any duty of support for the decedent for at least a year prior to the decedent's death; and (4) the parent's failure must be willful. The petitioner must produce evidence of all of these elements to make a prima facie case of forfeiture. *In re Estate of Teaschenko, Jr.*, 574 A.2d 649, 651 (Pa. Super. 1990).

The Superior Court further examined the purpose of the statute to “protect minor or dependent children who are not legally competent to effectuate a will.” *Id.* For these reasons, the Superior Court has held that “where the decedent is not a ‘minor or dependent child’ at the time of death, the forfeiture provisions of §2106(b) are inapplicable.” *In re Kistner*, 858 A.2d 1226, 1229 (Pa. Super. 2004)

The decedent in this case, Alicia Harmon, was twenty five years old at the time of death. The decedent was not a minor and based on the evidence produced at the hearing was also not a dependent child. The Petitioner, the decedent’s mother, testified that her daughter lived on her own, had owned her own apartment, was employed and supported herself when she was working. (N.T. 12/18/13, 21:25-23:22) Petitioner produced no evidence that Alicia was dependent on her mother or either of her parents at the time of her death.

The forfeiture provision is designed to “prevent a parent, who has failed to carry out his or her duty of support, from gaining a windfall from a minor or dependent child’s death.” *In re Estate of Moyer*, 758 A.2d 206, 211 (Pa. Super. 2000). This concern is not applicable, where, as here, the decedent was 25 years old and living on her own and supporting herself. The alleged violations of the Respondent’s duty of support toward the decedent while she was a minor occurred seven years prior to decedent’s death. Whether the Respondent failed to perform his duty to support the decedent while she was a minor is not in issue.

### ***Duty to Support***

In order to successfully prove parental forfeiture, the child must be a minor or dependent child and the allegedly forfeiting parent must have failed to perform the duty to support or deserted the child in the last year of the child’s life. For the duty of support, “the parent must

have failed to perform ‘any’ duty of support.” *In re Estate of Teaschenko*, 574 A.2d 649 (Pa. Super. 1990). A parent does not forfeit her interest in her child's estate merely by failing to perform her duties fully; rather, the parent must completely fail to perform any duty of support before a court will find forfeiture under this statute. *Id.* at 650-51. Second, the parent must have willfully failed to perform any duty of support. *Id.* At the very least, the term willfully implies that the parent is aware of the duty to support, has the capacity to perform that duty, and makes no attempt to do so. *Id.*

There is less guidance for how to demonstrate desertion in order to prove forfeiture. Pennsylvania courts have stated that the plain meaning of desertion is “abandonment” and “with the intention of creating a permanent separation.” *Winslow Estate*, 13 Fiduc. Rep. 2d 221 (Pa. Com. Pl. 1993) The statute provides that either the duty to support or desertion must have occurred within “one year or upwards” previous to the child’s death. 20 Pa.C.S.A. §2106(b).

At the hearings held in this case, the witnesses provided conflicting testimony about the support William Smith provided to Alicia while she was alive. The Petitioner, Alicia’s mother testified that her father did not participate in raising Alicia from the age of twelve onward. (N.T. 12/18/13, 21:2-22) William Smith, by comparison, testified that “when Nicole and I were living together, I did support and take care of her and my children.” (N.T. 12/18/13, 28:13-16)

On the issue of whether or not William Smith had been in contact with Alicia in the year prior to her death, the parties also expressed disagreement. The Petitioner, Alicia’s mother, was not confident as to how often the decedent and Respondent had interacted when he was incarcerated, but did testify that “she had been to see you (William Smith) but I don’t believe it was every year.” (N.T. 12/18/13 24:14-23)

William Smith testified that he had maintained contact with Alicia through visits she made to him in prison during his first incarceration between 1998 and 2008. He also testified that once he was released in 2008, and before returning to prison for the second time in 2010, “we went to the movies, we went out to dinner, we had cookouts. We even took our kids out to the park several times. All this occurred when I was released in 2008 until the time I was incarcerated, until 2010.” (N.T. 12/18/13, 31:3-18) Finally, the Respondent testified that while incarcerated for the second time in 2010 through 2011, Alicia visited him in prison “[a]nd she was talking about having dinner over my house, Christmas, and she was inviting everyone over. She was hoping I would be home by then so I could come spend the Christmas holiday with her.” (N.T. 12/18/13, 31:21-32:4)

Although the frequency of the visits are disputed, based on the testimony offered in this case it is clear that Alicia visited her father while in prison at some point between the years 1998 and 2008. Additionally, in the period before he returned to prison for the second time, in 2008 through 2010, William Smith testified that he and his daughter “had a wonderful relationship. I saw her quite frequently. She visited me and my girlfriend at our house.” (N.T. 12/18/13, 29:12-16) Most importantly, within the relevant one-year period prior to her death, William Smith offered testimony that Alicia visited him in prison and expressed a desire to continue their contact. (N.T. 12/18/13, 29:19-23, 31:3-32:4) As a result of this testimony, I am convinced that attempts to maintain a relationship were taking place and that William Smith interacted with his daughter over the course of the year preceding her death.

For these reasons, I hold that in addition to failing to demonstrate that the decedent was a minor or dependent child as required by the forfeiture statute, the Petitioner has not shown a failure to perform the duty of support or desertion in the last year of the child’s life. Rather, the

testimony of the Respondent indicates that he and the decedent interacted within the final year of her life.

*Conclusion*

Therefore, because Petitioner failed to demonstrate that the decedent was a dependent and also failed to demonstrate that Respondent failed to support or deserted the decedent upwards of a year prior to her death, this Court holds that William Smith has not forfeited his rights and interests in Alicia Harmon's estate. An appropriate Order will be entered.

BY THE COURT:

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J.