

No. 19-543

In The
Supreme Court of the United States

JEFFREY WILLS LUSK,

Petitioner,

v.

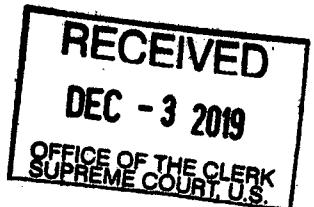
CROWN POINTE CARE CENTER et al.,

Respondents.

On Petition For Writ Of Certiorari
To The Tenth District Court Of Appeals
For The State Of Ohio

REPLY BRIEF IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI

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pro se



RELATED CASES

- *In the Matter of the Estate of Dorothy Jean Ross Lusk*, No. 580770, Probate Court of Franklin County, Ohio. Judgment entered Jan. 14, 2019.

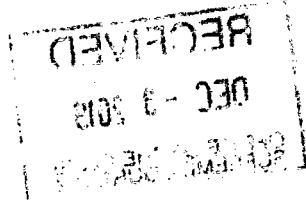


TABLE OF CONTENTS

| | Page |
|---|----------|
| RELATED CASE | i |
| ARGUMENT | 2 |
| I. Respondent argues the following <i>lies</i> :..... | 2 |
| (1) Petitioner's Case does not involve federal laws (42 U.S.C. § 483)..... | 2 |
| (2) Petitioner is not the Sole Beneficiary of decedent's Estate | 2 |
| (3) Petitioner's Appeal is not based upon his Estate survival action | 2 |
| (4) Statutory beneficiaries are the same as Estate beneficiaries | 2 |
| (5) 28 U.S.C. §1254(1), 28 U.S.C. §1257(a), U.S.Sup.Ct.R.10(b)(c), U.S. Const. amend. I, and Ruling decedent's Estate is a "person", do not confer Jurisdiction | 2 |
| II. The right to self-representation is not defeated by the cause of action of the underlying case. 28 U.S.C. §1654 does not bar an executor and sole beneficiary of an estate from representing the estate <i>pro se</i> in a survival action, or any other type of action, where no other interests are at stake. Respondent intentionally attempts to mislead this Court by stating the lie that Petitioner is not the Sole Beneficiary of decedent's Estate | 7 |

TABLE OF CONTENTS – Continued

| | Page |
|---|------|
| III. Self-representation of one's own interests does not constitute the unauthorized practice of law. Decision of Tenth District Court of Appeals for the state of Ohio does not rest on adequate state grounds that preclude granting of the petition for writ of Certiorari | 9 |
| CONCLUSION..... | 10 |

APPENDIX

| | |
|--|--------|
| Magistrate's Order Denying Motion to Intervene, Probate Court of Franklin County, Ohio, (Nov. 2, 2018) | App. 1 |
| Magistrate's Order and Judgment Entry, Probate Court of Franklin County, Ohio, (Jan. 14, 2019) | App. 3 |

TABLE OF AUTHORITIES

| | Page |
|---|----------|
| CASES | |
| <i>Bass v. Leatherwood</i> , 788 F.3d 228 (6th Cir. 2015) | 1, 8 |
| <i>Guest v. Hansen</i> , No. 08-4642 (2d Cir. 2010) | 1 |
| <i>Heath v. Teich</i> , 10th Dist. No. 06AP-1018, 2007-Ohio-2529 | 9 |
| <i>In the Matter of the Estate of Dorothy Jean Ross Lusk</i> , No. 580770, Probate Court of Franklin County, Ohio (App.1) | 4, 8 |
| <i>Rodgers v. Police</i> , 819 F.3d 205 (5th Cir. 2016) | 1 |
| <i>Rowland v. California Men's Colony</i> , 506 U.S. 194 (1993) | 1, 5, 10 |
| CONSTITUTION | |
| U. S. Const. amend. I | 5 |
| STATUTES | |
| Freedom from Abuse, Neglect, and Exploitation, 42 CFR § 483.12 | 3 |
| 28 U.S.C. § 1254(1) | 5 |
| 28 U.S.C. § 1257(a) | 5 |
| Appearance Personally or by Counsel, 28 U.S.C. § 1654..... <i>passim</i> | |
| Ohio Revised Code § 2125.02 | 5 |
| Survival of Actions, Ohio Revised Code § 2305.21..... | 4 |

TABLE OF AUTHORITIES – Continued

| | Page |
|---|------|
| RULES | |
| Supreme Court Rule 10(b)(c)..... | 5 |
| Supreme Court Rule 15.2..... | 3 |
| OTHER AUTHORITIES | |
| Respondents' Appendix 1. Petitioner's Complaint in the Court of Common Pleas of Franklin County, Ohio (April 6, 2018) | 3, 4 |

This request for review arises from the precedential Decision of the Tenth District Court of Appeals for the state of Ohio that an estate is a “person”, thereby, Petitioner may not represent decedent’s Estate *pro se* because he would be representing another “person” other than himself, the Estate’s Executor and Sole Beneficiary. This ruling is in direct contradiction of this Court’s ruling in *Rowland v. California Men’s Colony*, 506 U.S. 194 (1993), that a “person” is defined uniquely as a “human being”, which pursuant to the Supremacy Clause triggers this Court’s jurisdiction.

Further, the Decision created a conflict with the unified Decisions of the United States Courts of Appeals for the Second, Fifth, and Sixth Circuits¹ on this issue, all ruling that the executor and sole beneficiary of an estate without creditors may represent the estate *pro se*, which created the unnecessary need to forum shop in the future.

Since the underlying Case has never been adjudicated on its merits, Respondents’ self-appointed attempt to adjudicate the Case in its Opposition to persuade this Court to Deny review is inappropriate, and inaccurate on its face. Respondents conveniently omitted the Affidavits of Merit attached to Petitioner’s Complaint, which included the Franklin County Coroner’s Verdict that the injuries inflicted on decedent by Respondents (that they covered-up) caused decedent’s

¹ See *Bass v. Leatherwood*, 788 F.3d 228 (6th Cir. 2015), *Guest v. Hansen*, No. 08-4642 (2d Cir. 2010), and *Rodgers v. Police*, 819 F.3d 205 (5th Cir. 2016).

death. Decedent did not fall, she was dropped, and Respondents lied about the incident ever happening. The Coroner's investigation and subsequent Forensic investigation were never allowed to be introduced into evidence due to the Case being Dismissed on grounds other than on its merits. Thus, there is no Decision on its merits to review, and certainly not the Respondents unfounded and biased opinion and mischaracterization of what happened and interpretation of the Complaint.

ARGUMENT

I. Respondent argues the following *lies*:

- (1) Petitioner's Case does not involve federal laws (42 U.S.C. § 483)**
- (2) Petitioner is not the Sole Beneficiary of decedent's Estate**
- (3) Petitioner's Appeal is not based upon his Estate survival action**
- (4) Statutory beneficiaries are the same as Estate beneficiaries**
- (5) 28 U.S.C. §1254(1), 28 U.S.C. §1257(a), U.S.Sup.Ct.R.10(b)(c), U.S. Const. amend. I, and Ruling decedent's Estate is a "person", do not confer Jurisdiction**

At page 2 of its Brief In Opposition, Respondents push the falsehood (lie) that Petitioner – although the non-movant here – “provided no specific [F]ederal laws

governing care of the elderly in his complaint or in any subsequent proceedings in the state courts of Ohio". Paragraphs 20 and 21 of Petitioner's Complaint, found in Respondents' Brief in Opposition page App. 8, states violations of 42 C.F.R. 483 et seq., which impeaches Respondents' false (lie) statement. Petitioner's specific inclusion of 42 C.F.R. 483 et seq. in his original Complaint triggers this Court's jurisdiction because it arises from Petitioner's original cause of action, and because a federal statute that creates a cause of action conferring jurisdiction to state courts does not oust federal courts of jurisdiction. The courts have concurrent jurisdiction.

At page 3 of its Brief In Opposition, Respondents push the falsehood (lie) that Petitioner is not the Sole Beneficiary of decedent's Estate. Respondents intentionally attempt to mislead this Court on this issue. This is an intentional misuse of their obligation set forth in Supreme Court Rule 15.2 to address any misstatement of fact or law in the petition.

Wrongful death actions benefit statutory beneficiaries. Survival actions benefit estate beneficiaries. Estate beneficiaries have no involvement in a wrongful death action. The Probate Court of Franklin County, Ohio Ruled that Petitioner was appointed Executor *pro se* of decedent's Estate September 9, 2016, the Estate was classified as an Estate for Right of Action only (no creditors), decedent's Will named Petitioner as *Sole Beneficiary*, and made no provision for her daughter, Barbara L. Proctor, pursuant to *ITEM III* of decedent's Will, which states:

"In making this, my Last Will and Testament, I have considered my Daughter, BARBARA LUSK PROCTOR, and have intentionally made no provision for the said BARBARA LUSK PROCTOR herein."

See, *In the Matter of the Estate of Dorothy Jean Ross Lusk*, No. 580770, Probate Court of Franklin County, Ohio. App. 1. This is *prima facie* evidence that impeaches Respondents' lie that Petitioner is not the Sole Beneficiary of decedent's Estate.

Ohio law recognizes separate actions for wrongful death and survivorship claims. Causes of action for injuries to person or property survive the death of the person entitled to bring such an action. Ohio Rev. Code § 2305.21. A representative of the decedent (executor) may bring such an action in the name of the decedent (not estate), as if the decedent had lived. The *damages* secured as a result of a survival action lawsuit would be *received* by the decedent's estate, with distribution made according to the decedent's *will* (estate beneficiaries). If decedent had no will, distribution would be made through the law of descent and distribution (statutory beneficiaries).

Petitioner filed a wrongful death and *survival action*, which are separate actions. See Respondents' Brief In Opposition as follows: para. 15. at App. 7, para. 20 and 21 at App. 8, para. 25 at App. 9, and para. 36 at App. 11.

A claim for wrongful death is brought for the exclusive benefit of the surviving spouse, children, parents of the decedent and other next of kin. Ohio Rev.

Code § 2125.02(A). The surviving spouse, children and parents are rebuttably presumed to have suffered damages by reason of the wrongful death, but *adult* children do not enjoy the same rebuttable presumption. They must prove damages. Thus, adult children are potential statutory beneficiaries until a recovery is made and they prove damages at a hearing in Probate Court. Therefore, all statutory beneficiaries do not have a right to prosecute wrongful death claims, only potentially benefit from them, as such, the personal representative is the only party allowed by statute to prosecute wrongful death claims, and is the only named plaintiff a trier of fact could adjudicate. Thus, the personal representative does not represent the statutory beneficiaries, and does not conduct the unauthorized practice of law by prosecuting wrongful death claims *pro se*.

Respondents argue 28 U.S.C. §1254(1), 28 U.S.C. §1257(a), U.S. Sup. Ct. R. 10(b)(c), U.S. Const. amend. I, and Ruling decedent's Estate is a "person", do not confer Jurisdiction of Petitioner's request for review. By the language of those Statutes and Rules, the facts of this matter are consistent with conferring jurisdiction. The fact the Tenth District Court of Appeals for the state of Ohio made the precedential ruling an estate is defined as a "person", triggers jurisdiction, as its Ruling is in direct contradiction of this Court's Ruling in *Rowland v. California Men's Colony*, 506 U.S. 194 (1993), that a "person" is defined uniquely as a "human being".

Self-representation of one's own interests, codified at 28 U.S.C. §1654, is a federal statute of the United States drawn into question by not being followed by the Tenth District Court of Appeals for the state of Ohio in this matter, which denied Petitioner his right under said statute to self-representation of his own interests, which said action is repugnant to the aforementioned statute. That violation triggers the jurisdiction of this Court.

Further, Petitioner has the First Amendment to the U.S. Constitution Right to petition the Government for a redress of grievances in all courts of the land, and when his Case was Dismissed for reasons other than on its merits, this right was violated. Allowing only the filing of a Case only to Dismiss it for unlawful reasons, violates the intent of the right. That violation triggers the jurisdiction of this Court.

The question presented by Petitioner should be decided by this Court, and could, if so desired, be the vehicle to require all courts in the land to follow federal appellate decisions with the same facts, instead of only having to follow this Court's decisions.

The cases cited by Respondents to argue that 28 U.S.C. §1654 does not apply to Petitioner's case are all regarding criminal cases for defendants or regarding multiple parties at interest, which none apply to this matter, where only one party has an interest at stake.

There exists no good reason why decisions of U.S. Circuit Courts of Appeals on the same issues should not be followed by all courts in the land, when federal

courts follow state court decisions on the same issues. After all, is it fair to say federal justices are not at least equal to state justices in their ability to administer justice? Is it just to have two different standards of review for the same identical issue just because you are in two different buildings? That is not the intent of our founders when they created the court system for our country.

II. The right to self-representation is not defeated by the cause of action of the underlying case. 28 U.S.C. §1654 does not bar an executor and sole beneficiary of an estate from representing the estate *pro se* in a survival action, or any other type of action, where no other interests are at stake. Respondent intentionally attempts to mislead this Court by stating the lie that Petitioner is not the Sole Beneficiary of decedent's Estate.

At page 8 of its Brief In Opposition, Respondents push the falsehood (lie) that Petitioner is not the Sole Beneficiary of decedent's Estate he seeks to represent, and that his request for review involves his wrongful death action. Respondents do not understand, or do not wish to understand, the difference between the statutory beneficiaries of a wrongful death proceeding and the estate beneficiaries of a survival proceeding.

Petitioner has never anywhere in the Record argued 28 U.S.C. §1654 permits prosecution of wrongful death claims by a *pro se* executor of an estate with multiple beneficiaries, or even only one beneficiary, as an

estate has nothing to do with a wrongful death proceeding. An estate is involved in survival proceedings. This distinction, which Respondents assert the Petitioner has refused to acknowledge since the inception of his Case, is solely the distinction Respondents refuse to acknowledge, and go so far as to state lies to push the lie forward. See, *In the Matter of the Estate of Dorothy Jean Ross Lusk*, No. 580770, Probate Court of Franklin County, Ohio. App. 1. This is *prima facie* evidence that impeaches Respondents' lie that Petitioner is not the Sole Beneficiary of decedent's Estate.

At page 9 of its Brief In Opposition, Respondents push the falsehood (lie) that Petitioner's Case is unlike *Bass v. Leatherwood*, 788 F.3d 228 (6th Cir. 2015), which involved only beneficiaries of the estates they wished to represent and thus the only individuals with an interest in the outcome of the case. Petitioner is the only individual with an interest in the outcome of his survival action, being the Executor and Sole Beneficiary of decedent's Estate without creditors, as determined by the Probate Court of Franklin County, Ohio. Which impeaches Respondents' argument otherwise.

III. Self-representation of one's own interests does not constitute the unauthorized practice of law. Decision of the Tenth District Court of Appeals for the state of Ohio does not rest on adequate state grounds that preclude granting of the petition for writ of Certiorari.

At page 12 and 13 of its Brief In Opposition, Respondents push the falsehood (lie) that the Tenth District Court of Appeals for the state of Ohio decided a question of federal law based upon state law ground that is independent of the federal question and adequate to support the judgment. Nothing of the kind took place. The Court defined decedent's Estate to be a "person", based upon a dictionary definition, not any state of Ohio statutory or common law, to justify ruling Petitioner would then be representing another "person" other than himself. Thus, justifying its Decision to Dismiss Petitioner's Appeal based upon the threshold issue of claiming they did not have jurisdiction to hear the Appeal, and ruling Petitioner was guilty of the unauthorized practice of law. Their ruling was contrary to their own decision in *Heath v. Teich*, 10th Dist. No. 06AP-1018, 2007-Ohio-2529, which they justified by claiming it was only *dictum* in *Heath* that it was permissible to represent an estate *pro se* as its sole beneficiary. Defining an estate to be a "person" is a violation of the Supremacy Clause, whereby, the Court refused

to follow this Court's definition of a "person" in *Rowland v. California Men's Colony*, 506 U.S. 194 (1993), as being a human being, which triggers jurisdiction by this Court.

CONCLUSION

For the foregoing reasons, as well as those contained in the Petition for Certiorari, the Court should grant a writ of certiorari.

Respectfully submitted,

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November 27, 2019

App. 1

**IN THE PROBATE COURT OF
FRANKLIN COUNTY, OHIO
ROBERT G. MONTGOMERY, JUDGE**

**In the Matter of the Estate of :
Dorothy Jean Ross Lusk : Case No. 580770**

MAGISTRATE'S ORDER
DENYING MOTION TO INTERVENE

(Filed Nov. 2, 2018)

This Magistrate's Order is issued pursuant to Civ.R. 53(D)(2). Any motion to set aside this Order shall comply with Civ.R. 53(D)(2)(b).

This matter comes before the court upon the August 6, 2018, motion of Jeffrey Wills Lusk, pro se executor of the estate of Dorothy Jean Ross Lusk, which asks that this court intervene in an appellate case to "enforce the statutory right of Executor to represent said Estate *pro se*."

Mr. Lusk was appointed executor *pro se* September 9, 2016. The estate was classified as an estate for Right of Action only. The decedent's will named Mr. Lusk, her son, as sole beneficiary, making no provision for her daughter, Barbara L. Proctor. Mr. Lusk initiated a *pro se* wrongful death case as executor, now the subject of Tenth District Court of Appeals Case No. 18-AP-07549.

The court notes that R.C. 2125.02(A)(1) requires a wrongful death action to be brought "for the exclusive

App. 2

benefit of the surviving spouse, the children, and the parents of the decedent" and "the other next of kin of the decedent." "[T]he spouse, children, and parents of the decedent" are "rebuttably presumed to have suffered damages," while the other "next of kin must prove their damages." *In re Estate of Payne*, 10th Dist. Franklin No. 04AP-1176, 2005-Ohio-2391, ¶ 7.

Mr. Lusk's request for the probate court to intervene in an appeal to the Tenth District Court of Appeals is beyond the jurisdiction of this court. As such, Mr. Lusk's motion is DENIED. Mr. Lusk is advised to seek the assistance of legal counsel to complete the estate.

IT IS SO ORDERED.

/s/ Kelly A. Green

Kelly A. Green, Magistrate

**PROBATE COURT OF
FRANKLIN COUNTY, OHIO
ROBERT G. MONTGOMERY, JUDGE**

**IN THE MATTER OF THE ESTATE OF :
DOROTHY JEAN ROSS LUSK : CASE NO. 580770**

**JUDGMENT ENTRY DENYING MOTION
TO SET ASIDE MAGISTRATE'S ORDER**

(Filed Jan. 14, 2019)

This matter is before the court upon the Motion filed November 9, 2018, requesting that the court set aside the Magistrate's Order Denying Motion to Intervene filed November 2, 2018.

Any party may file a motion with the court to set aside a magistrate's order. Civ.R. 53(D)(2)(b). The motion shall state the moving party's reasons with particularity and shall be filed not later than ten days after the magistrate's order is filed. *Id.* The pendency of a motion to set aside does not stay the effectiveness of the magistrate's order, though the magistrate or the court may, by order, stay the effectiveness of a magistrate's order. *Id.*

On September 9, 2016, the court appointed Jeffrey Wills Lusk ("Mr. Lusk") the pro se administrator of the estate of Dorothy Jean Ross Lusk for right of action. On August 6, 2018, Mr. Lusk moved this court to "intervene in Tenth District Court of Appeal Case Number: 18-AP-07549 forthwith to enforce the statutory right of Executor to represent said Estate *pro se*."

App. 4

A probate court is a court of limited jurisdiction, its proceedings restricted to those actions which are permitted by statute and by the Constitution. *State ex rel. Lee v. Trumbull Cty. Probate Court*, 83 Ohio St.3d 369, 372, 1998-Ohio-51, 700 N.E.2d 4; *Cain v. Panitch*, 10th Dist. Franklin No. 16AP-758, 2018-Ohio-1595, ¶ 20. The court has statutory jurisdiction to grant letters testamentary, and it appointed Mr. Lusk the executor of this estate pursuant to that authority. R.C. 2101.24(A)(1)(b).

However, while R.C. 2101.24(A)(1)(c) gives this court jurisdiction to direct the conduct of an executor, neither the Ohio Revised Code nor the Ohio Constitution grants this court the much broader authority to direct a superior court's rulings with regard to an executor. A court of appeals is the wrong venue to argue that a trial court intervene—in other words, Mr. Lusk's argument would not be made at the appellate court level by a trial court. Mr. Lusk's request is beyond the scope of the court's jurisdiction.

Accordingly, upon independent review and careful consideration, the Executor's Motion to Set Aside Magistrate's Order Denying Executor's Motion to Intervene is not well taken and is **DENIED**. The Magistrate's Order Denying Motion to Intervene issued November 2, 2018, is **ADOPTED** and **AFFIRMED**.

App. 5

IT IS SO ORDERED.

1-14-19 /s/ Robert G. Montgomery
Robert G. Montgomery,
Judge