

## **APPENDIX TABLE OF CONTENTS**

### **OPINIONS AND ORDERS**

Order of the Supreme Court of Illinois Denying Petition for Appeal (September 30, 2020).....	1a
Order of the Appellate Court of Illinois Granting Appellee's Motion to Dismiss Appeal (February 20, 2020) .....	3a
Order of the Circuit Court of Cook County Probate Division (July 3, 2019).....	5a
Order of the Circuit Court of Cook County (July 3, 2019) .....	7a
Order of the Circuit Court of Cook County Probate Division (January 15, 2019) .....	9a

### **REHEARING ORDER**

Order of the Appellate Court of Illinois Denying Petition for Rehearing (April 6, 2020) .....	13a
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### **OTHER DOCUMENTS**

Motion to Dismiss Appeal (December 30, 2019) .....	15a
Petition to Appeal as a Matter of Right Pursuant to Supreme Court Rule 317, or Alternatively, Petition for Leave to Appeal Pursuant to Supreme Court Rule 315 (May 12, 2020).....	31a

**ORDER OF THE SUPREME COURT OF ILLINOIS  
DENYING PETITION FOR APPEAL  
(SEPTEMBER 30, 2020)**

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**SUPREME COURT OF ILLINOIS  
SUPREME COURT BUILDING  
200 EAST CAPITOL AVENUE  
SPRINGFIELD, IL 62701-1721  
(217) 782-2035**

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Michael Anthony Steigmann  
Law Office of Michael Steigmann  
190 S. LaSalle St., Suite 2100  
Chicago IL 60603

First District Office  
160 North LaSalle Street, 20th Floor  
Chicago IL 60601-3103  
(312) 793-1332  
TDD: (312) 793-6185

In re: In re Estate of Basavapunnamma K. Rao, etc.  
(Padma Rao, petitioner, v.  
Midland Trust Company, respondent).  
Leave to appeal, Appellate Court, First District.  
125994

The Supreme Court today DENIED the Petition for Appeal as a Matter of Right or, in the alternative, Petition for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 11/04/2020.

Very truly yours,

/s/ Carolyn Taft Grosboll

Clerk of the Supreme Court

ORDER OF THE APPELLATE COURT OF  
ILLINOIS GRANTING APPELLEE'S MOTION  
TO DISMISS APPEAL  
(FEBRUARY 20, 2020)

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IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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IN RE THE ESTATE OF  
BASAVAPUNNAMMA K. RAO,

*Deceased.*

PADMA RAO,

*Petitioner-Appellant,*

v.

MIDLAND TRUST COMPANY,

*Respondent-Appellee.*

---

No. 1-19-1427

Appeal from the Circuit Court of  
Cook County, Illinois, County  
Department, Probate Division

2013 P 6243

Honorable James P. MURPHY, Judge Presiding.

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THIS CAUSE coming to be heard on Appellee,  
Midland Trust Company's Motion to Dismiss Appeal,

notice having been given and the Court being fully advised in the premises:

IT IS HEREBY ORDERED that said motion is GRANTED.

or

~~IT IS HEREBY ORDERED that said motion is DENIED.~~

/s/ Robert E. Gordon

/s/ Jesse G. Reyes

/s/ Eileen O'Neill Burke

ORDER ENTERED FEB 20 2020  
APPELLATE COURT FIRST DISTRICT

Mark R. Singler  
(mark.singler@fmslawgroup.com)  
Kathryn T. McCarty  
(kathryn.mccarty@fmslawgroup.com)  
Attorneys for Midland Trust Company,  
Successor Supervised Administrator  
FMS Law Group LLC  
200 W. Monroe St., Suite 750  
Chicago, Illinois 60606  
312-332-6381  
Firm ID: 56304

ORDER OF THE CIRCUIT COURT  
OF COOK COUNTY PROBATE DIVISION  
(JULY 3, 2019)

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IN THE CIRCUIT COURT OF COOK COUNTY,  
ILLINOIS, COUNTY DEPARTMENT,  
PROBATE DIVISION

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ESTATE OF BASAVAPUNNAMMA K. RAO,

*Deceased.*

---

Case No. 2013 P 6243

Before: Honorable James P. MURPHY,  
Judge Presiding.

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This matter coming to be heard before this Court upon the presentation of the PETITION TO SETTLE CAUSE OF ACTION-WRONGFUL DEATH, due notice being provided to all interested Parties, the Court having jurisdiction and being fully advised of all matters herein;

IT IS HEREBY ORDERED:

1. The Settlement Order entered by Judge Thomas V. Lyons, II on August 23, 2018 in the Law Division Proceedings (Cook County Case Number 2014 L 12745), settling the Cause of Action for \$2,100,000.00, is hereby approved;
2. The Distribution Order entered by Judge Thomas V. Lyons, II on September 10, 2018 in the Law

Division Proceedings (Cook County Case Number 2014 L 12745), is hereby approved; and

3. The payout of the Settlement proceeds pursuant to the terms of the Distribution Order entered by Judge Thomas V. Lyons, II on September 10, 2018 in the Law Division Proceedings (Cook County Case Number 2014 L 12745), is hereby authorized and approved.

4. Midland Trust Company as the Successor Supervised Administrator of the Estate is hereby authorized to execute any and all documents reasonable and necessary to effectuate the Settlement Order and Distribution Orders, including but not limited to any Releases.

Entered:

/s/ James P. Murphy  
Judge's No. 1933

Entered: July 3, 2019

Dorothy Brown, Clerk of the Circuit Court

FMS Law Group LLC  
Attorneys for MTC, Succ. Supervised Adm  
200 W. Monroe St., Suite 750  
Chicago, Illinois 60606  
312-332-6381  
Firm ID: 56304

**ORDER OF THE CIRCUIT COURT  
OF COOK COUNTY  
(JULY 3, 2019)**

---

**IN THE CIRCUIT COURT OF COOK COUNTY,  
ILLINOIS**

---

**ESTATE OF BASAVAPUNNAMMA K. RAO,**

*Deceased*

---

**No. 2013 P 6243**

**Before: Honorable James P. MURPHY,  
Judge Presiding.**

---

This matter coming before the Court related to the PETITION TO SETTLE CAUSE OF ACTION – WRONGFUL DEATH, the Court being fully advised of all matters and having separately approving the Petition to Settle Cause of Action-Wrongful Death, approving the Settlement Order dated August 23, 2018 and Distribution Order dated September 10, 2018 in Cook County, Case # 2014 L 12745, upon the oral motion of Padma Rao, over the objection of Midland Trust Company as the Court-appointed Successor Supervised Administrator of the Estate related to the inclusion of Rule 304(a) language:

It is hereby Ordered:

1. There is no just reason for delaying either enforcement or appeal or both of the separate order

approving the Settlement Order and Distribution Order;

2. Midland Trust Company is directed to establish an Estate subaccount to receive any Settlement proceeds resulting from the Settlement in Case # 2014 L 12745 per the Distribution Order.

Entered:

/s/ James P. Murphy  
Judge's No. 1933

Entered July 3, 2019

Dorothy Brown, Clerk of the Circuit Court

Attorney No.: 56304

Name: FMS Law Group LLC

Atty. for: MTC, Succ. Supervised Adm

Address: 200 W. Monroe St., #750

City/State/Zip: Chicago, IL 60606

Telephone: 312-332-6381

**ORDER OF THE CIRCUIT COURT  
OF COOK COUNTY PROBATE DIVISION  
(JANUARY 15, 2019)**

---

**IN THE CIRCUIT COURT OF COOK COUNTY,  
ILLINOIS, COUNTY DEPARTMENT-  
PROBATE DIVISION**

---

**IN RE THE ESTATE OF  
BASAVAPUNNAMMA K. RAO,**

*Deceased*

---

Case No. 2013 P 6243

Before: Honorable Kent DELGADO, Judge Presiding.

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This matter coming to be heard before this Court upon presentation of the MEMORANDUM OUTLINING PROPOSED ESTATE ADMINISTRATION of Midland States Bank, not individually, but solely as Successor Supervised Administrator with Will Annexed of the Estate of Basavapunnamma K. Rao, Deceased, the Court having jurisdiction and being fully advised;

IT IS HEREBY ORDERED; over the objection of Padma Rao, individually/heir/legatee:

1. The Memorandum Outlining Estate Administration (“Memorandum”) filed by Midland Trust Company (“Midland”), not individually, but solely as Successor Supervised Administrator with Will Annexed of the Estate of Basavapunnamma K. Rao (“Basa”), Deceased (“Estate”) is hereby accepted;

2. Midland, as Successor Supervised Administrator is hereby authorized to proceed with the administration of the Estate as outlined in the Memorandum; and Midland has no Conflict of Interest;
3. Midland, as Successor Supervised Administrator, is hereby specifically authorized to collect and secure custody of any and all Estate assets, including, but not limited to: Chase Checking Account Number: \*\*\*\*\*6814 and Chase Savings Account Number \*\*\*\*\*2280;
4. Midland, as Successor Supervised Administrator, is hereby authorized to: coordinate the preparation and filing of the 2017 IRS Form 7004 (Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns; and the 2017 Illinois Form IL-505-B (Automatic Extension Payment for 2017); and to pay any filing fees from the Estate associated thereto;
5. Midland, as Successor Supervised Administrator is hereby authorized to coordinate the preparation and filing of the: 2017 IRS Form 1041; and 2017 Illinois Form IL 1041; and to pay any filing fees and tax/interest due the IRS or State of Illinois from the Estate associated thereto;
6. No other distributions of Estate assets shall be made without prior Court approval;
7. Midland, as Successor Supervised Administrator is hereby authorized to expend Estate assets in an amount not to exceed \$1,000.00 for the preparation and filing of the 2017 IRS and Illinois extensions and income tax returns, upon presentation of voucher;

8. Padma Rao is hereby directed to provide Midland: copies of Basa's final individual IRS and Illinois income tax returns; any and all fiduciary Estate income tax returns; and any Estate Tax returns within seven (7) days from entry of this Order, or no later than January 22, 2019;

9. Padma Rao is hereby directed to provide Midland an Inventory of Estate assets as of Basa's Date of Death, within seven (7) days from entry of this Order, or no later than January 22, 2019;

10. ~~Padma Rao is hereby directed to provide Midland with any and all Estate Accountings from her date of appointment to the date of her removal, if any, within seven (7) days, or no later than January 22, 2019. In the event no Estate Accountings have been prepared, then Padma Rao shall be directed to prepare and provide an Estate Accounting from the date of her appointment to the date of her removal within thirty (30) days from entry of this Order, or no later than February 14, 2019;~~

11. Midland, as the Successor Supervised Administrator, is hereby authorized to proceed with the investigation of the Law Division matter to independently investigate whether the proposed settlement is fair, reasonable, and in the best interests of the Estate;

12. Padma Rao's Petition to Clarify this Court's December 19, 2018 Ruling and Supplement related thereto is denied in part and approved in part as follows: Paragraph A and B of the wherefore provisions are denied pursuant to Circuit Court rules 12.15 and 6.5; and Paragraph C is granted as to Padma Rao having standing as an heir and legatee as to any Petition filed before the Probate Court.

Entered:

/s/ Kent A. Delgado  
Judge's No. 2185

Dated: January 15, 2019

FMS Law Group LLC  
Attorneys for: MSB, Succ Spvsd Admin  
200 W. Monroe St., Suite 750  
Chicago, Illinois 60606  
(312) 332-6381  
Firm ID: 56304

**ORDER OF THE APPELLATE COURT OF ILLINOIS  
DENYING PETITION FOR REHEARING  
(APRIL 6, 2020)**

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**IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT**

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**IN RE ESTATE OF BASAVAPUNNAMMA K. RAO,**

*Deceased.*

**PADMA RAO,**

*Petitioner-Appellant,*

**v.**

**MIDLAND TRUST COMPANY,**

*Respondent-Appellee.*

---

**No. 1-19-1427**

**Appeal from the Circuit Court of Cook County**

**No. 2013 P 6243**

**Honorable James P. MURPHY, Judge Presiding.**

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This cause coming forth on Respondent-Appellee's Petition for Rehearing, the Court being fully advised in the premises;

**IT IS HEREBY ORDERED** that the Petition for Rehearing is **DENIED**.

/s/ Robert E. Gordon

/s/ Eileen O'Neill Burke

/s/ Jesse G. Reyes

**MOTION TO DISMISS APPEAL  
(DECEMBER 30, 2019)**

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IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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ESTATE OF BASAVAPUNNAMMA K. RAO,

*Deceased.*

---

PADMA RAO,

*Appellant,*

v.

MIDLAND TRUST COMPANY,

*Appellee.*

---

No. 1-19-1427

Appeal from the Circuit Court of Cook County,  
County Department, Probate Division

Trial Judge: James P. Murphy  
Circuit Court No. 2013 P 6243

Dates of Orders:

May 22, 2019 (original order allowing Midland Trust  
Company to withdraw Motion to Vacate)

July 2, 2019 (order denying motion for  
reconsideration of May 22, 2019 order)

July 3, 2019 (order approving settlement  
order/distribution order)

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NOW COMES Appellee, Midland Trust Company, not individually, but solely as the Court-appointed Successor Supervised Administrator with Will Annexed of the Estate of Basavapunnamma K. Rao, Deceased, by and through its attorneys, FMS Law Group LLC, and moves this Court to dismiss the appeal of Appellant, Padma Rao, as beneficiary in the above manner, stating in support thereof as follows:

## **BACKGROUND FACTS**

### **Probate Proceedings**

1. This Appeal arises from a decedent's estate probate proceeding, the Estate of Basavapunnamma K. Rao, Deceased (the "Estate"), in the Circuit Court of Cook County, Probate Division, Case No. 2013 P 624 ("Probate Proceedings").
2. On October 17, 2013, Basavapunnamma K. Rao ("BK") died unmarried (C.41) and was survived by two (2) adult heirs, namely, her daughter and the Appellant in this matter, Padma Rao ("Padma"), and her daughter, Anita Rao ("Anita"). (C.65)
3. On November 25, 2013, in the Probate Proceedings, BK's Will dated February 29, 1980 was admitted to probate and Padma was appointed as Independent Administrator with Will Annexed of the Estate. (C.62-63)

### **Lawsuit in Law Division Proceedings**

4. On or about December 8, 2014, Padma, as Independent Administrator with Will Annexed of the Estate, filed a lawsuit alleging medical malpractice (“Lawsuit”) against NorthShore University Health-System (“Northshore”) and four employee physicians of Northshore in the Circuit Court of Cook County, Law Division, Case No. 2014 L 12745 (“Law Division Proceedings”).<sup>1</sup> The Probate Court was informed of the existence of the Lawsuit in the Law Division Proceedings on or about August 12, 2015. (C.271)

5. On August 23, 2018, after the culmination of mediation with retired judge Michael Panter (“Judge Panter”) and ongoing pre-trial conferences with Judge Thomas V. Lyons, II (“Judge Lyons”), who was the presiding judge overseeing the Lawsuit in the Law Division Proceedings, Judge Lyons entered an Order (“Settlement Order”), which stated in part, that: (i) Padma, acting as Independent Administrator of the Estate, agreed to accept the Defendants’ offer of a \$2.1 Million settlement (“Settlement”); and (ii) the Law Division Court, “knowing and understanding the allegations of this case and the likely evidence in this case, finds said settlement offer to be fair and reasonable.” (C.356)

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<sup>1</sup> Appellee, Midland Trust Company, not individually, but solely as the Court-appointed Successor Supervised Administrator with Will Annexed of the Estate of Basavapunnamma K. Rao, Deceased, respectfully requests that this Court take judicial notice of the pleadings, orders, papers and proceedings in the Law Division Proceedings (Circuit Court of Cook County, Law Division, Case No. 2014 L 12745). Illinois Rule of Evidence 201; 735 ILCS 5/8-1002.

6. On September 5, 2018, the remaining Parties to the Lawsuit appeared before Judge Lyons on the original scheduled trial date. During the September 5, 2018 hearing, Padma submitted an *ex parte* communication to Judge Lyons, which stated that “I did not and do not assent to settlement. I wish to go to trial.” (C.359; Page 5, Lines 9-24)

7. It was also during the September 5, 2018 hearing that Padma first alleged that she was not able to settle the Lawsuit due to BK’s Hindu beliefs. (C.361: Page 13, Lines 6-24; C.363: Page 21; Lines 13-21) Judge Lyons quickly admonished Padma for alleging she previously raised religious beliefs as a reason for objecting to the Settlement and confirmed that at no point during the Law Division Proceedings and specifically during the pre-trial conferences, either in his chambers or in open court, was religion, and particularly Hinduism, ever mentioned by Padma. (C.362-364) After a lengthy discussion on the record, Judge Lyons ordered that the terms of the August 23, 2018 Settlement of \$2.1 Million would stand and instructed the Parties to return on September 10, 2018 for presentation of the proposed Petition for Distribution pursuant to the August 23, 2018 Settlement Order. (C.368)

8. On September 10, 2018, Judge Lyons entered a detailed, three (3) page Distribution Order (“Distribution Order”) which, in part: (i) approved the total Settlement of \$2.1 Million and found that the Settlement was fair and reasonable; (ii) approved attorney fees and costs of Karlin, Fleisher & Falkenberg in the amount of \$771,447.81; (iii) approved the Survival Act Claim and distribution to the Estate in the amount of \$1,012,223.44; (iv) approved the Wrongful Death Claim

and distribution of the Wrongful Death proceeds in the negotiated amount of \$221,430.13 to Padma; (v) approved the Wrongful Death Claim and distribution of the Wrongful Death proceeds in the amount of \$94,898.62 to Anita; (vi) dismissed the Lawsuit, with prejudice, as all matters between the Estate, Padma, Anita and the Defendants had been fully compromised, settled and adjourned; and (vii) approved of Padma withdrawing as Independent Administrator of the Estate to allow a Bank to substitute in on behalf of the Estate to execute any Release documents to finalize the Settlement and Lawsuit. (C.378-380)

9. On October 10, 2018, in the Law Division Proceedings, Padma, as Independent Administrator with Will Annexed, filed a Motion to Vacate on behalf of the Estate (“Motion to Vacate”). Based on Padma’s allegation of BK’s alleged religious objections to settlement, Padma’s Motion to Vacate sought to vacate the following Orders related to the \$2.1 Million Settlement: August 22, 2018; August 23, 2018 Settlement Order; September 5, 2018; and September 10, 2018 Distribution Order. (C.612-616)

10. On October 29, 2018, in the Law Division Proceedings, Padma, as Independent Administrator with Will Annexed, filed her Plaintiff’s Memorandum in Support of the Motion to Vacate. (C.307-337)

#### **Removal of Padma as Administrator / Appointment of MTC as Successor Administrator**

11. On November 29, 2018, on the petition of BK’s other daughter, Anita, in the Probate Proceedings (C.338-346), the Estate was converted to Supervised Administration and modified Padma’s role from

Independent to Supervised Administrator with Will Annexed. (C.473)

12. On December 19, 2018, the Probate Court found Padma to be incapable and unsuitable to act as the Administrator of the Estate and removed Padma as Supervised Administrator with Will Annexed for engaging in waste and mismanagement of the Estate. (C.562)

13. As a result, also on December 19, 2018, the Probate Court appointed Midland Trust Company (“MTC”) as Successor Supervised Administrator with Will Annexed. (C.561)

**Approval of Settlement of the  
Lawsuit in the Probate Proceedings**

14. On January 15, 2019, the Probate Court ordered MTC, as Successor Supervised Administrator with Will Annexed, to investigate whether the \$2.1 Million Settlement of the Lawsuit in the Law Division Proceedings was fair, reasonable and in the best interests of the Estate. (C.661, ¶11)

15. On April 2, 2019, MTC, under seal for confidentiality purposes, provided all interested parties and a courtesy copy to the Probate Court of its detailed *Report to the Court and Request for Direction* (“Report to Court”), which Report to Court: (a) concluded that the \$2.1 Million Settlement is fair, reasonable, and in the best interests of the Estate and that the Settlement should be approved by the Probate Court; and (b) sought direction and authority from the Probate Court to withdraw the Motion to Vacate, with prejudice, filed in the Law Division Proceedings

by Padma, as the former Independent Administrator with Will Annexed.

16. On April 11, 2019, the Probate Court entered an Order granting Padma 28 days (*i. e.*, until May 9, 2019) to respond or otherwise plead to the Report to the Court. (C.667)

17. Because Padma had failed to file a responsive pleading to the Report to the Court by the May 9, 2019 deadline, on May 16, 2019, MTC filed its *Petition for Ruling on Report to the Court and Request for Direction* (“Petition for Ruling”), to be presented to the Probate Court for approval on May 22, 2019 (C.685-686), seeking an Order: (a) denying any request by Padma for extension of time to file a response to the Report to Court; (b) striking any responsive pleading filed after the May 9, 2019 deadline; (c) approving and accepting MTC’s Report; and (d) directing MTC as to the outstanding issues outlined in the Report. (C.677-682)

18. On May 22, 2019, over the objection of MTC, the Probate Court entered an Order giving Padma leave to file her Response and Objection to MTC’s Report to Court, *instanter*. Notwithstanding Padma’s filed Response and Objection to MTC’s Report to Court, after a full oral argument, in the best interests of the Estate, the Probate Court entered an Order authorizing MTC, as Successor Supervised Administrator with Will Annexed, to withdraw the Motion to Vacate filed by Padma, as former Independent Administrator with Will Annexed, that was still pending in the Law Division Proceedings. (C.767)

19. On May 30, 2019, Padma filed her *Motion to Reconsider Ruling on Midland Trust Request for*

*Direction* (“Motion to Reconsider”), requesting that the Probate Court direct MTC to proceed on the Motion to Vacate in the Law Division Proceedings. (C.768-770)

20. On July 2, 2019, in the Probate Proceedings, again after a full oral argument, the Probate Court entered an Order denying the Motion to Reconsider “for the reasons on the record.” (C.1218) The July 2, 2019 Order entered by the Probate Court provided MTC the authority as the Successor Supervised Administrator, to proceed to withdraw the Motion to Vacate in the Law Division Proceedings.

21. On July 3, 2019, in the Law Division Proceedings, MTC was granted leave to withdraw the pending Motion to Vacate, with prejudice, for the reasons stated on the record, and the Settlement Order and the Distribution Order were ratified for the reasons also stated on the record. (C.1293)

22. Also on July 3, 2019, in the Probate Proceedings, the Probate Court entered an Order approving the Settlement Order and the Distribution Order, approving and authorizing the payout of the Settlement proceeds pursuant to the Distribution Order, and authorizing MTC to execute any and all documents reasonable and necessary to effectuate the Settlement Order and Distribution Order. (C.1220)

### **Notice of Appeal**

23. This Appeal followed. On July 11, 2019, Padma, as beneficiary in the above matter, filed her Amended Notice of Appeal (“Appeal”) (C.1228-1229), which seeks the following relief:

- (a) Reversal and vacating paragraphs 1 and 2 of the July 3, 2019 Order approving the Settlement Order entered in the Law Division Proceedings and approving the Distribution Order entered in the Law Division Proceedings;
- (b) Reversal and vacating prior orders necessary to bring about this July 3, 2019 Order approving the settlement and distribution, including paragraph 2 of the July 2, 2019 Order regarding the denial of Padma’s Motion to Reconsider the May 22, 2019 Order allowing MTC to withdraw the Motion to Vacate Settlement;
- (c) Reversal of the July 2, 2019 Order regarding denial of Padma’s Motion to Reconsider as to the May 22, 2019 Order allowing MTC to withdraw the Motion to Vacate, with the Appellate Court directing the trial court to direct MTC to proceed in the Motion to Vacate as requested by Padma; and
- (d) Reversal of the May 22, 2019 Order allowing MTC to withdraw the Motion to Vacate, with the Appellate Court directing the trial court to direct MTC to proceed in the Motion to Vacate as requested by Padma.

## ARGUMENT

### Padma's Appeal Must Be Dismissed for Lack of Standing

24. “The doctrine of standing requires that a party, either in an individual or representative capacity, have a real interest in the action brought and in its outcome. The purpose of the doctrine is to ensure that courts are deciding actual, specific controversies and not abstract questions or moot issues.” *In re Estate of Wellman*, 673 N.E. 2d 272, 276, 174 Ill.2d 335, 220 Ill.Dec. 360 (Ill., 1996). Standing is not simply a procedural technicality but rather an aspect or component of justiciability. *Id.*

25. In the context of wrongful death and survival actions, Illinois law has long made clear that, under both wrongful death and survival actions, “the cause of action must be brought by and in the name of the representative or administrator of the decedent’s estate. *Will v. Northwestern University*, 378 Ill.App.3d 280, 289 (1st Dist. 2007). “It is to this administrator that the right of action accrues and it is this administrator who possesses the sole right of action or control over the suit; the beneficiaries or heirs have neither a right of action nor any control.” *Id.* and cases cited therein.

26. In the *Will* case, Linda Will (“Linda”) and George Wheeler, Tr., as co-administrators of the estate of their deceased son, Rashidi Wheeler (“Rashidi”), filed a wrongful death and survival action arising from the death of Rashidi, a football player at Northwestern University (“Northwestern”), during practice. The trial court directed the acceptance of the \$16 million settlement over the objections of co-adminis-

trator Linda, who objected because the settlement did not include non-monetary items which she, alone, insisted upon. Linda, both individually and as co-administrator, and Rashidi's brothers, members of Rashidi's estate and in their individual capacities, appealed, contending that the trial court did not have authority to direct acceptance of the settlement over co-administrator Linda's objection. *Id.* at 282-291.

27. The *Will* Court, noting that wrongful death and survival actions "must be brought by and in the name of the representative or administrator of the decedent's estate" and do "not create an individual right in a beneficiary to bring suit", dismissed the appeal with respect to Linda, individually, and Rashidi's two brothers for lack of standing, finding that none of them were parties of record to the underlying causes of action in their individual capacities, as the underlying causes of action (wrongful death and survival) must be brought by and in the name of the representative or administrator of the decedent's estate. *Id.* at 289-290.

28. In fact, in the Law Division Proceedings, in her Motion to Strike (and Response to) Anita Rao's Motion for Sanctions and Rule to Show Cause, Padma herself relied on the *Will* case to argue that the Court should strike Anita's Motion for Sanctions on the basis that Anita, as a non-party to the Lawsuit, lacked standing:

"Anita Rao was not a party to the instant medical malpractice lawsuit. She has no divisible or independent cause of action. Only Dr. Rao, as the administrator of the Estate, has the power to control the action. Anita Rao lacks standing in this lawsuit. As

such, any court filing by her in this case was without any authority and should be stricken. The Estate requests that this Court strike the appearance and Sanctions Motion filed by Anita Rao.” (C.1092-1093)

**A. Padma, Individually, Lacks Standing to Bring This Appeal, as She Was Not a Party to the Underlying Cause of Action**

29. Likewise, here, *Padma*, individually, was not a party to the instant medical malpractice Lawsuit. Padma, individually, has no divisible or independent cause of action. The Lawsuit was filed against Defendants for wrongful death and survival claims by Padma, not individually, but solely as the then/former Independent Administrator with Will Annexed of the BK's Estate. However, Padma filed her Appeal in this cause, individually, as “beneficiary” of BK's Estate.

30. As in *Will*, Padma, as an individual and/or as a beneficiary of BK's Estate, had no justiciable right to bring suit against the Defendants and, thus, was not a party to the underlying causes of action because she did not have divisible or independent causes action. And, ultimately, if Padma in her individual capacity and/or as beneficiary of BK's Estate, was not a party to the underlying causes of action, then Padma, in her individual capacity and/or as beneficiary of BK's Estate, cannot be a party to the instant Appeal. Standing is a jurisdictional requirement. As Padma, individually, lacks standing to file this Appeal, her Appeal must be dismissed.

**B. Padma Lacks Standing to Bring This Appeal, as She Is *Not* the Representative of BK's Estate and Filed Her Appeal in Her Capacity as Beneficiary of BK's Estate**

31. Moreover, under *Will*, Padma has no standing to be a party to the instant Appeal as a representative of BK's Estate, as: (a) Padma is no longer the representative of BK's Estate after the Probate Court removed her for waste and mismanagement as Administrator of BK's Estate on December 19, 2018 (prior to entry of the May 22, 2019, July 2, 2019, and July 3, 2019 Orders that are the subject of this Appeal); and (b) in any event, Padma filed her Appeal solely in her capacity as "beneficiary" of BK's Estate.

32. Thus, to the extent that Padma is attempting to appeal the May 22, 2019, July 2, 2019, and July 3, 2019 Orders in her capacity as former Administrator of BK's Estate, she lacks standing to do so. As stated above, standing is a jurisdictional requirement. As Padma lacks standing to file this Appeal, her Appeal must be dismissed.

WHEREFORE, Appellee, Midland Trust Company, not individually, but solely as the Court-appointed Successor Supervised Administrator with Will Annexed of the Estate of Basavapunnamma K. Rao, Deceased, moves for entry of an order dismissing this Appeal with prejudice.

Respectfully submitted,

/s/

---

One of the attorneys for Appellee,  
Midland Trust Company, not individually,  
but solely as the Court-appointed Successor  
Supervised Administrator with Will Annexed  
of the Estate of Basavapunnamma K. Rao,  
Deceased

December 30, 2019

Mark R. Singler

(mark.singler@fmslawgroup.com)

Kathryn T. McCarty

(Kathryn.mccarty@fmslawgroup.com)

FMS Law Group LLC

200 W. Monroe St., Suite 750

Chicago, Illinois 60606

312-332-6381

*Attorneys for:*

*Appellee, Midland Trust Company, not individually,  
but solely as the Court-appointed Successor Successor  
Supervised Administrator with Will Annexed of the Estate  
of Basavapunnamma K Rao, Deceased*

## VERIFICATION

Under penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters, the undersigned certifies as aforesaid that he verily believes the same to be true.

*Attorneys for:*

*Appellee, Midland Trust Company, not individually, but solely as the Court-appointed Successor Supervised Administrator with Will Annexed of the Estate of Basavapunnamma K Rao, Deceased*

By: \_\_\_\_\_

Its: Trust Officer

Subscribed and sworn to before me this 30th day of December, 2019.

/s/ Mark R. Singer

Notary Public

Mark R. Singler

(mark.singler@fmsslawgroup.com)

Kathryn T. McCarty

(Kathryn.mccarty@fmsslawgroup.com)

FMS Law Group LLC

200 W. Monroe St., Suite 750

Chicago, Illinois 60606

312-332-6381

*Attorneys for:*

*Appellee, Midland Trust Company, not individually,  
but solely as the Court-appointed Successor Super-  
vised Administrator with Will Annexed of the Estate  
of Basavapunnamma K Rao, Deceased*

**PETITION TO APPEAL AS A MATTER OF RIGHT  
PURSUANT TO SUPREME COURT RULE 317,  
OR ALTERNATIVELY,  
PETITION FOR LEAVE TO APPEAL PURSUANT  
TO SUPREME COURT RULE 315  
(MAY 12, 2020)**

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IN THE SUPREME COURT OF ILLINOIS

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ESTATE OF BASAVAPUNNAMMA K. RAO,

*Deceased.*

PADMA RAO,

*Petitioner,*

MIDLAND TRUST COMPANY,

*Respondent.*

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Appeal from the First District

Case No. 19-1427

Date of Order April 6, 2020

Appeal from Cook County Cir. Ct.

No. 2013 P 6243

Hon. James P. Murphy

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Michael Steigmann  
Law Office of Michael Steigmann  
190 S. LaSalle #2100  
Chicago, Illinois 60091  
ARDC 6226169 [michael@steigmann.com](mailto:michael@steigmann.com)  
(312) 833-5945

**ORAL ARGUMENT REQUESTED  
IF PETITION GRANTED**

**Prayer to Appeal as a Matter of Right under Rule 317,  
or Alternatively, for Leave to Appeal Under Rule 315**

Now comes petitioner Dr. Padma Rao and respectfully petitions this Court to appeal this matter as of right pursuant to Supreme Court Rule 317, or alternatively, petitions this Court for leave to appeal this matter pursuant to Supreme Court Rule 315.

**Judgment Below**

The Appellate Court overturned the trial court's standing finding and granted Appellee Midland Trust Company's Motion to Dismiss the Appeal for lack of standing on February 20, 2020. (A 1). The Appellate Court denied petitioner Dr. Rao's Petition for Rehearing on April 6, 2020. (A 2).

**Points Relied Upon for  
Review of Judgment of the Appellate Court**

In this matter, the First District reversed the trial court's standing ruling (A 3-4 ¶ 12) to hold that Estate beneficiary and heir Dr. Rao — who is the daughter of the deceased — had no standing to challenge the trial court's decision to approve a \$2.1 million settlement as requested by the Estate Administrator for Survival Act and wrongful death claims. The First District's decision conflicts with numerous other appellate districts and holdings by this Court regarding the standing of an heir in a Probate action, and also denies Dr. Rao her procedural due process rights to be heard and protect her property interests in her wrongful death and Estate claims.

**A.** A conflict exists between this decision and the Second District's decision of *In Re Estate of Cappetta*, which held that claimants of a decedent's Estate had standing to argue that the trial court erred in approving a \$1.7 million settlement as requested by the Estate Administrator. 315 Ill.App.3d 414, 424-5 (2nd Dist. 2000) (vacating settlement). The court held that the Salvation Army and Shriner's Hospital had standing even just as beneficiaries of an Estate claimant because of their direct and substantial interest in the Estate distribution, and the court rejected the attempt to dismiss them for lack of standing. *Id.* The Second District then reversed the trial court's settlement approval because the Estate Administrator had not gotten sufficient input or consent from all interested parties. *Id.* at 429.

*Cappetta* cited another Second District decision, *In re Estate of Lilly*, which likewise allowed an Estate beneficiary to appeal the trial court's approval of a wrongful death settlement proposed by the Estate Administrator. 41 Ill.App.3d 348, 352-54 (2nd Dist. 1976). *Lilly* also reversed the trial court's settlement approval because the Estate Administrator there was conflicted and the settlement amount was modest. *Id.* at 353. Both *Lilly* and *Cappetta* allowed estate beneficiaries the standing to successfully petition to vacate a settlement, in direct conflict with the First District's holding here.

The decision here also conflicts with the Second District's decision of *In Re Estate of Wallen*, in which the court reversed to allow a creditor to dispute improper Estate Administrator actions in the trial court. 262 Ill.App.3d 61 (2nd Dist. 1994). The court stated that "the administrator is the representative

of the decedent and all those interested in the estate, such as creditors, heirs, legatees, and devisees; he is a fiduciary to those interested in the estate.” *Id.* at 72.

**B.** A conflict exists between this decision and the Third District’s decision of *In Re Estate of Lay*, which reversed the dismissal for lack of standing as to a party who met the definition of an interested person under the Probate Act in its section 1-2.11 (755 ILCS 5/1-2.11). 2018 Ill Ap (3d) 170378 ¶¶ 14-18. That statute mandates: “Interested person” in relation to any particular action, power or proceeding under this Act means one who has or represents a financial interest, property right or fiduciary status at the time of reference which may be affected by the action, power or proceeding involved, including without limitation an heir, legatee, creditor.” 755 ILCS 5/1-2.11. *Lay* held that its party “has standing in this case if she has something financial to gain if she prevails.” *Id.* at ¶ 18. Because heir and legatee Dr. Rao also has standing in this matter under *Lay* and section 1-2.11 of the Probate Act, the First District’s contrary decision here is in conflict.

The decision here also conflicts with a Third District holding that two children entitled to differing compensation from a parent’s death must both have standing to assert their competing interests. *Knobloch v. Peoria & Pekin Union Railway Co.*, 118 Ill.App.3d 205, 207-8, (3rd Dist. 1983). Because the same situation occurs in this matter with differing compensation due to the deceased’s two daughters under the wrongful death claim from their different circumstances, the standing decision here directly conflicts with *Knobloch*.

Moreover, a conflict exists with the Third District's decision of *Estate of Venturelli v. Granville Nat. Bank*, where the Estate creditor was able to assert that the executor was negligent in estate management. 54 Ill. App.3d 997 (3rd Dist. 1977). The court stated, "It is well established that an executor is the representative of the decedent and all those interested in the estate, such as creditors, heirs, legatees." *Id.* at 1002.

In addition, the decision conflicts with the Third District case of *Trompeter Constr. v. First Fed. Sav. & Loan*, which held that parties to the record have an absolute right of appeal and may do so if they consider themselves aggrieved by the judgment, and whether they were actually so aggrieved has no bearing upon their right to appeal. 62 Ill.App.3d 173, 175 (3rd Dist. 1978). *Trompeter* ruled that "it is clear that defendant First Federal is a party of record to the proceedings below, and that defendant First Federal is therefore bound by the decree of the circuit court. Therefore, First Federal has a right to appeal from the circuit court's determination." *Id.* at 176. As Dr. Rao was a party of record and participated in the trial court proceedings, the *Trompeter* holding allows Dr. Rao standing to appeal and conflicts with the decision here.

C. A conflict exists between this decision and the Fourth District's decision of *In Re Estate of Thomson*, where the court reversed and held that the beneficiaries must be heard in the trial court on their claims that the Estate Administrator breached his fiduciary duties to these beneficiaries in his estate administration. 139 Ill. App.3d 930, 940 (4th Dist. 1986). Moreover, numerous Fourth District cases have allowed an Estate beneficiary to object to Estate

attorney and administrator fees. *See In Re Estate of Weeks*, 490 Ill.App.3d 1101, 1110-3 (4th Dist. 2011); *In Re Estate of Thorp*, 282 Ill.App.3d 612, 619-20 (4th Dist. 1996); *In re Estate of Parlier*, 40 Ill.App.3d 840 (4th Dist. 1976).

**D.** A conflict exists between this decision and two Illinois Supreme Court decisions. In *In re Estate of Powell*, this Court held that the beneficiary of a wrongful death action has standing to contest the improper attorney actions of the wrongful death plaintiff's attorney. 2014 IL 115997 ¶¶ 16-20. Under *Powell*, wrongful death beneficiary Dr. Rao also has standing to contest the improper attorney settlement requested for approval by the Estate Administrator, and thus the First District's contrary decision here is in conflict. In *In re Estate of Wellman*, this Court held that standing requires that a party have a real interest in the action brought and in its outcome. 174 Ill.2d 335, 344 (1996). Thus under *Wellman*, and in conflict with the First District's decision, Dr. Rao has standing to contest the settlement here for which Dr. Rao has an enormous monetary and personal interest.

**E.** A conflict exists between this decision and decisions of the United States Supreme Court and this Court which hold that Dr. Rao is entitled to procedural due process in this case, so that she is not deprived of her property as Estate heir and wrongful death beneficiary without first having standing to be heard. The due process clause of the fourteenth amendment prohibits state action that deprives any person of life, liberty, or property without due process of law. U.S. Const., amend. XIV, § 1. The fundamental requirements of due process are notice of the proceeding and an opportunity to present any objections. *People v. Car-*

*dona*, 2013 IL 11407646 ¶ 15. The due process clause requires that the opportunity to be heard occur “at a meaningful time and in a meaningful manner.” *Lyon v. Department of Children & Family Services*, 209 Ill.2d 264, 277 (2004), quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). The Constitution requires some kind of a hearing before the State deprives a person of liberty or property. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). *Zinermon* lists numerous property rights for which due process requires a hearing before the State may act to compromise them, including: utility service cut-off, student suspension, forfeiture of prisoner’s goodtime credits, and welfare benefit termination. 494 U.S. at 127-8.

This Court has repeatedly held that a wrongful death beneficiary such as Dr. Rao has a direct property interest in the wrongful death action, and thus procedural due process requires Dr. Rao to have standing and be heard regarding the Probate Court’s oversight of such action and approval of a settlement compromising Dr. Rao’s property rights in the action. In *Powell*, this Court held, “A wrongful death action is brought for the exclusive benefit of the beneficiaries who are the true parties in interest.” (2014 IL 115997 at ¶ 22), and the amount recovered in the action shall be for the “exclusive benefit of the surviving spouse and next of kin” of the deceased. *Id.* at ¶ 16, quoting 740 ILCS 180/2. *Powell* further stated that since a wrongful death action is indisputably brought for the benefit of a child of the deceased such as Dr. Rao, the wrongful death attorney owes Dr. Rao a fiduciary duty. *Id.* at ¶ 19, citing *DeLuna v. Burciaga*, 857 N.E.2d 229 (Ill. 2006). Accordingly, because Dr. Rao has a direct property interest in the wrongful death

action, she must have standing and the opportunity to be heard regarding the oversight and compromise of the action in order to satisfy her procedural due process rights under *Cardona*, *Lyon*, *Mathews*, and *Zinermon*.

Dr. Rao also has a property interest as an heir and beneficiary of the Estate that entitles her to procedural due process rights to be heard and protect this interest. The cases above of *Cappetta*, *Wallen*, *Thomson*, and *Venturelli* all hold that Estate beneficiaries and creditors such as Dr. Rao have a property interest in the Estate. Thus once again, Dr. Rao as heir and legatee must have standing and the opportunity to be heard to protect her interest in the Estate in order to satisfy her procedural due process rights under *Cardona*, *Lyon*, *Mathews*, and *Zinermon*.

**F.** This matter is of great general importance, as Estate beneficiaries deserve to have their rights as to the Estate heard and protected as they proceed through the judicial system. The idea that an Estate beneficiary has no recourse to protect herself from improper Estate Administration, even when the Estate Administrator owes the beneficiary a fiduciary duty, is anathema to our ideals of fairness and due process under Illinois law. This court should ensure there is a uniform body of Illinois law that Estate beneficiaries do have the right to be heard and their rights and property protected.

**G.** This Court's exercise of supervisory authority is appropriate here where the Appellate Court reversed the trial court's standing decision in a one-sentence dismissal order that fails to conform to the decision requirements of Supreme Court Rule 23.

H. As the trial court here held that Dr. Rao had standing but denied allowing the Motion to Vacate Settlement to proceed on the merits, should this Court exercise its supervisory authority to allow Dr. Rao to also present her arguments on the merits as well as standing in the interests of judicial economy, then Dr. Rao would welcome that opportunity.

### **Statement of Facts**

Appellant Dr. Rao was Estate Administrator in this matter, and then was replaced as administrator by Midland Trust Company (Midland) on December 19, 2018. (C 561). On January 14, 2019, Dr. Rao filed a Petition to Clarify which requested an Order stating:

“Padma Rao has standing to address this Court regarding its supervision of Midland Trust, including the Court’s direction and approval of distributions, as well as, objecting and presenting evidence as to any petition brought before this Court to approve any purported settlement in the Law Division action.”

(C 644, 647 ¶ C). The Court granted Dr. Rao’s Petition request in an Order stating: “Paragraph C is granted as to Padma Rao having standing as an heir and legatee as to any Petition filed before the Probate Court.” (A 3-4 ¶ 12) (C 661).

On April 2, 2019, Midland filed under seal a Report to the Court and Request for Direction. (C 662). In its Report, Midland sought authority from the Probate Court to approve a \$2.1 million settlement in the Law Court and its Distribution Order, as well as withdraw a Motion to Vacate filed in the Law

Court proceedings that had been previously filed on behalf of the Estate by prior Estate Administrator Dr. Rao. (C 662-4).

The Law Court action at issue included both Survival and Wrongful Death causes of action. (A 5) (C 626). The deceased was widowed and her only two heirs were daughters Dr. Rao and Anita Rao. (A 7) (C 628). After deduction for fees and costs, the Law Court's Distribution Order from the settlement directs \$221,430 to Dr. Padma Rao for the Wrongful Death case, and directs a Survival Act settlement amount of \$1,012,223 to the Estate of Rao for distribution in probate. (A 7) (C 628).

The Probate Court allowed Dr. Rao to file a response opposing Midland's Request for Direction and to withdraw the Motion to Vacate. (C 667). Dr. Rao's Response in Opposition incorporated the Motion to Vacate and affidavit in support. (C 693-694). Dr. Rao's Response supporting the Motion to Vacate is the subject of the merits of this appeal and is restated here very briefly. By early August 2018, Dr. Rao as Independent Administrator had told her lawyers multiple times that it was the wishes of decedent -- and thus Dr. Rao as well -- to have a jury trial, as it was against the beliefs of decedent to settle with people she thought were wrongdoers. (C 695). But decedent's and Dr. Rao's wishes were ignored in August 2018, when Dr. Rao as Independent Administrator was cajoled, pressured, and made to participate in a process she did not want, never consented to, and tried desperately to exit. (C 695-96). When the purported Law Court settlement was offered by defendants, the trial court told Dr. Rao she should take it and if she did not accept the offer, a third party

would be appointed as administrator instead of Dr. Rao to determine if the settlement was fair. (C 696). Dr. Rao as Independent Administrator said to the judge. “I feel I am being railroaded. Do I really have a choice here?” and also told the judge that settlement is contrary to decedent’s wishes and beliefs. (C 696). Unfortunately, Dr. Rao’s own lawyer at the time acted against her and decedent’s wishes by entering into a purported settlement which Dr. Rao has refused to approve or condone ever since. (C 696), The Motion to Vacate argues that the purported settlement was invalid as coerced and also not in the best interests of the Estate because it conflicts with decedent’s wishes, and thus it must be vacated. (C 696-700).

The Probate Court granted Midland’s request to withdraw the Motion to Vacate (C 779). The court then denied Dr. Rao’s Motion to Reconsider after full briefing and approved the Law Division Settlement as requested by Midland (C 1218 and 1220), with Rule 304(a) language allowing for immediate appeal. (C 1221). Dr. Rao appealed, requesting that the Probate Court at least allow the Motion to Vacate Settlement to proceed to a resolution on the merits, as the Motion to Vacate presents a genuine legal issue on a crucial matter of adherence to the decedent’s wishes. (C 1222-23; 1228-29). As Dr. Rao pursues this appeal, Dr. Rao’s portion of all settlement proceeds have been deposited with the Clerk of the Circuit Court of Cook County for return if successful. (A 8).

On December 30, 2019, Midland filed a Motion to Dismiss the appeal asserting that Dr. Rao lacked standing in the Probate Court to contest that Probate Court’s approval of the proposed settlement. (A 9). On February 13, 2020, Dr. Rao filed her Response to

the Motion to Dismiss. (A 21), and Dr. Rao's Motion for Extension of Time to file the Response *Instanter* was granted on February 18, 2020. (A 29). On February 20, 2020, the First District granted the Motion to Dismiss in a one-sentence dismissal order. (A 1).

On March 12, 2020, Dr. Rao filed a Petition for Rehearing, requesting both that the decision be vacated and that the Appellate court issue a decision in compliance with Supreme Court Rule 23. (A 30). The First District denied the Petition for Rehearing on April 6, 2020. (A 2).

### **Argument for Appeal as a Matter of Right Under Supreme Court Rule 317**

Rule 317 in relevant part states: "Appeals from the Appellate Court shall lie to the Supreme Court as a matter of right in cases \* \* \* in which a question under the Constitution of the United States or of this state arises for the first time in and as a result of the action of the Appellate Court." In this matter, the constitutional question of Dr. Rao's procedural due process rights under the fourteenth amendment arose for the first time on appeal, as a result of the Appellate Court's reversal of the trial court's finding that Dr. Rao has standing in this matter as heir to be heard and protect her property interests. As shown above, Dr. Rao has established property interests as an Estate heir and wrongful death claimant under Illinois law as held in *Cappetta, Wallen, Thomson, Venturelli, and Powell*. Under the holdings in *Cardona, Lyon, Mathews, and Zinermon*, the Constitution requires some kind of a hearing before the State deprives a person of property, with the opportunity to be heard in a meaningful manner and present any

objections. The appellate court's reversal on the standing issue, with its denial of Dr. Rao's opportunity to be heard on her property interest as heir and wrongful death claimant, has newly implicated this due process constitutional concern which must now be addressed by this Court pursuant to Rule 317.

The Rule 317 issue here is very similar to *Dept. of Public Aid Ex Rel. Cox v. Miller*, 146 Ill.2d 399 (1992). In *Miller*, the Department of Public Aid brought a paternity action on behalf of a minor to secure future support for this child who came from a non-marital relationship. *Id.* at 400-1. The father moved to dismiss based on a prior settlement agreement in a paternity action by the child's mother that directed a lump-sum payment. *Id.* The circuit court denied the father's motion because the settlement order failed to make statutorily mandated findings regarding the best interests and financial security of the child, and the court then authorized an interlocutory appeal pursuant to Rule 308. *Id.* The appellate court reversed the trial court, holding that the applicable statute preserved the finality of the settlement, and that there was a presumption that the prior court thought the settlement was in the best interest of the child at the time. *Id.* at 402-3.

Under these facts in *Miller*, this Court granted the Rule 317 appeal as of right for when a constitutional question is raised. *Id.* at 401. Rule 317 applied because the appellate court's reversal of the trial's court's finding required this Court to consider a constitutional question: "The issue we decide is whether a settlement order and dismissal entered in a paternity action bar a subsequent action brought by or on behalf of the illegitimate minor for support. We hold

that it does not.” *Id.* at 403. As this Court discussed, this issue implicated constitutional equal protection guarantees for non-marital children, and the Court relied upon the U.S. Supreme Court case of *Gerhardt v. Estate of Moore*, 486 U.S. 1050 (1988), to make its decision. *Id.* at 409-10. Likewise in this matter, the appellate court’s reversal and new ruling has implicated constitutional due process concerns as shown above with *Mathews* and *Zinermon*, and thus Rule 317 applies to this matter as well and allows Dr. Rao to appeal as a matter of right.

This Court also allowed a Rule 317 petition in *In Re Application of Rosewell* on the ground that the appellate court’s decision reversing the trial court’s findings then raised for the first time a constitutional question regarding the separation of powers. 97 Ill.2d 434, 436 (1983). The circuit court issued an order removing certain tax-delinquent parcels from a judgment and order of sale because other civil actions for the delinquent taxes were pending. The appellate court reversed, holding that the Scavenger Act’s provisions for sale of property that had been tax delinquent for five years were mandatory. *Id.*

The *Rosewell* appellants were then granted appeal under a Rule 317 Petition that the appellate court’s decision had raised a new constitutional question, as appellants asserted that the decision “would sanction an unconstitutional interference by the legislature with the judiciary’s authority to decide cases.” *Id.* at 439. As in *Rosewell*, Dr. Rao has an appeal as a matter of right here under Rule 317, where the appellate court’s reversal of the trial court’s finding on standing has now sanctioned an unconstitutional interference with Dr. Rao’s due process rights. *See also Pavlakos*

*v. Department of Labor*, 111 Ill.2d 257 (1985) (Court allowed Rule 317 Petition to address equal protection and due process claims).

In summary, a constitutional question has newly arisen here from the Appellate Court's reversal of the trial court's finding on standing, which Dr. Rao asserts has denied her procedural due process under *Cardona*, *Lyon*, *Mathews*, and *Zinermon* as to her property interests. These property interests as an heir and wrongful death claimant are established under Illinois law in *Cappetta*, *Wallen*, *Thomson*, *Venturelli*, and *Powell*, and thus are entitled to due process protection. Pursuant to the express language of Rule 317 and this Court's Rule 317 precedents of *Miller*, *Rosewell*, and *Pavlakos*, this Petition for Appeal as a Matter of Right should be granted.

**Argument, in the Alternative,  
for Leave to Appeal Under Supreme Court Rule 315**

In the alternative, this Court should grant leave to appeal under Rule 315 as a matter of sound judicial discretion. As shown below, the decision here conflicts with numerous precedents of other appellate districts as well as this Court, and thus the Court should accept this appeal to ensure that this conflict does not continue and that there is a uniform body of law in this extremely important area of probate doctrine and procedure.

**I. The Decision Here Directly Conflicts with the Second District's Standing Decision in *In re Estate of Cappetta*, As Well As Numerous Other Decisions in the Second, Third and Fourth Districts**

A direct conflict exists between this decision and the Second District's decision of *In Re Estate of Cappetta*, which held that Estate claimants had standing to argue that the trial court erred in approving a \$1.7 million settlement as requested by the Estate Administrator. 315 Ill.App.3d at 424-5. The Second District reasoned that beneficiaries Salvation Army and Shriners Hospital had standing to file a separate appeal, even just as beneficiaries of a separate estate that was also a claimant in the Cappetta Estate. *Id. Cappetta* held that even as beneficiaries one-step removed, the Salvation Army and Shriners Hospital still had standing from their direct, immediate, and substantial interest in the subject matter, which would be prejudiced by the judgment or benefited by its reversal. *Id. Cappetta* is exactly on point regarding the standing issue herein, and Dr. Rao's claim to standing is even stronger in this case as a direct Estate heir. Thus the First District's decision is irreconcilable with *Cappetta*'s holding.

Moreover, the Second District had previously allowed an Estate beneficiary to appeal the trial court's approval of a wrongful death settlement proposed by the Estate Administrator in *In re Estate of Lilly*, which is precisely the standing that Dr. Rao is seeking here. 41 Ill.App.3d at 352-54. The importance of allowing such standing can be seen in *Lilly*, where otherwise the Estate beneficiary there would have had no recourse to vacate a settlement in a wrongful

death action in which the decedent's estate was administered by the same law firm that represented the defendant insurer — an obvious conflict of interest that unsurprisingly produced a very low settlement. But despite such manifest injustice that occurred in *Lilly*, the First District's decision here now disagrees with the Second District that the *Lilly* beneficiaries are entitled to any relief. Dr. Rao is seeking the same type of relief granted in *Lilly*, that the Rao Estate's malpractice attorney had a conflict of interest from his contingency agreement to seek a "quick score" settlement that did not adhere to the wishes of decedent as required under the law. As shown by *Cappetta* and *Lilly*, some checks and balances on the Estate Administrator are necessary, or otherwise a manifest injustice to the heirs could easily take place.

*Cappetta* also cited the Second District's decision of *Wallen*, in which the Second District reversed to allow a creditor to dispute improper Estate Administrator actions in the trial court. 262 Ill.App.3d at 72. *Wallen* held that the administrator is the representative of the decedent and all those interested in the estate such as heirs, and is a fiduciary to all those interested in the estate. *Id. See also In Re Estate of Pine*, 141 Ill. App. 3d 750, 771 (2nd Dist. 1986) (beneficiaries had action against executor for mismanagement of Estate funds). This Court should resolve this immense conflict between the First and Second Districts regarding whether Estate beneficiaries have any recourse to correct improper actions by the Estate Administrator.

The decision here also conflicts with Third and Fourth District precedents. In *Lay*, the Third District

reversed the dismissal for lack of standing as to a party who met the definition of an interested person under the Probate Act in its section 1-2.11. (755 ILCS 5/1-2.11). 2018 Ill Ap (3d) 170378 ¶¶ 14-18. Because Dr. Rao as heir also has standing in this matter under *Lay* and section 1-2.11 “has something financial to gain if she prevails” (*id.*), the First District’s decision is in conflict. The decision here also conflicts with *Knobloch*, in which two children entitled to differing compensation from a parent’s death must both have standing to assert their competing interests. 118 Ill.App.3d at 207-8. The same situation occurs in this matter with differing compensation due to the deceased’s two daughters under the wrongful death claim.

In the Fourth District case of *In Re Estate of Thomson*, the court reversed and held that the beneficiaries must be heard in the trial court on their claims that the Estate Administrator breached his fiduciary duties to the beneficiaries in his estate administration. 139 Ill. App.3d at 940 (4th Dist. 1986). The Third District decided likewise in *Estate of Venturelli v. Granville Nat. Bank*, where the creditor was able to assert that the executor was negligent in estate management. 54 Ill.App.3d at 1002. These decisions both conflict with the First District’s holding here that beneficiaries have no standing to assert that an Estate Administrator is improperly carrying out its duties. In addition, numerous Fourth District cases have allowed an Estate beneficiary to object to Estate attorney and administrator fees, and conflict with the decision here that beneficiaries have no standing to protest any court decision regarding the administrator. *See Weeks*, 490 Ill.App3d 1101; *Thorp*,

282 Ill.App.3d 612; *Parlier*; 40 Ill. App.3d 840. Lastly, the decision here also conflicts with *Trompeter*, which holds that Dr. Rao has a right to appeal as a party of record who participated in the proceedings below and is bound by the decree. 62 Ill.App.3d at 176.

As shown above, the decision here is contrary to an enormous amount of precedents in the Second, Third and Fourth Districts, and is expressly directly in conflict with the stated holding in *Cappetta*. This court should resolve this conflict and ensure there is a uniform body of Illinois law regarding the rights of Estate beneficiaries to be heard and have their property protected from improper actions by Estate Administrators.

## **II. The Decision Here Conflicts With This Court's Holdings in *Powell* and *Wellman***

In *Powell*, this Court held that the beneficiary of a wrongful death action has standing to contest the improper attorney actions of the wrongful death plaintiff's attorney. 2014 IL 115997 ¶¶ 16-20. Because this is precisely what beneficiary Dr. Rao is also attempting in this matter, Dr. Rao must have standing in court pursuant to *Powell*, and thus the First District's contrary decision here is in conflict. In *Wellman*, this Court held that standing requires that a party have a real interest in the action brought and in its outcome. 174 Ill.2d at 344. As further analyzed in *Cappetta* and other precedents above, there is no question that beneficiary Dr. Rao has an enormous monetary and personal real interest in the settlement here, and thus the First District's decision here is also in conflict with *Wellman*.

The First District here apparently relied upon Midland's Motion to Dismiss citation to the wrongful death action appeal in *Will v. Northwestern University*, 378 Ill.App.3d 280 (1st Dist. 2007), a case which did not involve the Probate Court or Estate administration. In *Will*, where some of the wrongful death beneficiaries were minors, the trial court held that it had a duty to prevent the rejection of settlement offers which, in the minors' best interests, should be accepted. *Id.* at 285. *Will* held that beneficiaries lacked standing on appeal of a law division case where they had no participation or standing in the law division trial court in their individual capacities in the case that was on appeal, and thus they could not be parties to that same appeal. *Id.* at 290. *Will* itself is arguably in conflict with the standing holding in *Knobloch* and other cases above.

But now the First District with this decision has greatly expanded the *Will* holding to find that Estate beneficiaries also have no standing even in probate court to dispute any of the Estate Administrator's actions there. This new holding is in conflict with this Court's precedents in *Powell* and *Wellman* as well as all the other precedents above from the Second, Third and Fourth Districts such as *Cappetta*, *Knobloch* and *Lay*. The First District's novel finding that an Estate beneficiary has no recourse to protect herself from improper Estate Administration is anathema to our ideals of fairness and due process under Illinois law. The First District's new doctrine is a serious departure from the uniform body of Illinois law that Estate beneficiaries do have the right to be heard in probate court with their rights and property protected there, and this Court should take this appeal to pre-

vent the continuation of such a stark conflict in this extremely important area of the law.

### **III. The Decision Here Conflicts With Illinois and U.S. Supreme Court Precedents Holding That Dr. Rao Has a Constitutional Right to Standing and Procedural Due Process on Her Property Rights Here**

The decision here that Dr. Rao has no standing to obtain procedural due process and protect her interest in her Estate and wrongful death claims is utterly baseless. As to her status as a wrongful death beneficiary, this Court in *Powell* held that Dr. Rao is the true party in interest in the wrongful death action, and that the amount recovered is for her exclusive benefit, and that the prosecuting attorney owes her a fiduciary duty. (12 N.E.3d at 20-21). As stated above in *Cardona*, *Lyon*, *Mathews*, and *Zinermon*, the Constitution requires some kind of a hearing before the State deprives a person of property, with the opportunity to be heard in a meaningful manner and present any objections. Accordingly, Dr. Rao must have standing here to obtain her procedural due process rights and be heard to present any objections in order to protect her property interest in her wrongful death claim before such claim is compromised.

The contrary idea that Dr. Rao is helpless to have any protection for her wrongful death claim is antithetical to her constitutional procedural due process rights as well as common sense. The resulting scenario that Dr. Rao is entirely at the mercy of an attorney or administrator who might have completely different interests is utterly inimical to the fourteenth amendment and its due process guarantee. One only need

look at the *Lilly* case, where the wrongful death beneficiaries were completely taken advantage of until reversal after an appeal by the beneficiaries, to see the necessity of the constitutional procedural due process guarantee to ensure that Dr. Rao's property interest in her wrongful death claim is properly protected under her Fourteenth Amendment rights.

Likewise, the idea that Dr. Rao has no protectable property interest in the Estate as an heir and beneficiary is also absurd. *Cappetta, Wallen, Thomson, Lay, and Venturelli* all hold that Estate beneficiaries and creditors such as Dr. Rao have a property interest in the Estate, and the Probate Act itself states likewise in its section 1-2.11 definition of an interested person. Moreover, these cases also show why the Estate beneficiary needs due process rights to protect her property from administrators who are negligent, corrupt, compromised, or otherwise do not properly perform their duties regarding the Estate property. Accordingly, under *Cardona, Lyon, Mathews, and Zinermon*, procedural due process requires that Dr. Rao as heir must have standing and the right to be heard and present objections to protect her interest in the Estate property.

#### **IV. Rule 23 Precludes Dismissal of an Appeal in a One-Sentence Order Under Any Circumstances, But Particularly When a Trial Court's Express Standing Finding Is Being Overruled in the Dismissal Order**

This Court's exercise of supervisory authority is appropriate here where the First District ignored the decision requirements of Supreme Court Rule 23. The Appellate Court's one-sentence dismissal fails to

conform to the requirements of Rules 23 (c)(i), (ii) and (iii) for summary orders. Moreover, the Appellate Court's finding here that the trial court erred in granting Dr. Rao her standing is not even among the eight circumstances listed in Rule 23(c) where a limited summary order may be utilized. Instead, at a minimum, a written order is required under Rule 23 (b) to support the First District's decision overruling the trial court's finding and holding that Dr. Rao lacks any standing here.

The Illinois Constitution at Article VI, Section 6 states: "Appeals from final judgments of a Circuit Court are a matter of right." As one court commented: "Everyone is entitled to know why a court does what it does — the litigants, the attorneys, the public at large, reviewing courts, and legal history in general." *Hoult v. Kuhne-Simmons Co.*, 64 Ill.App.3d 476, 478 (4th Dist. 1978). Dr. Rao, the trial court, this Court, and all Illinois litigants deserve more respect than was accorded by the First District in this matter with its one-sentence Order in violation of Rule 23 that overturned the trial court's finding on standing.

WHEREFORE, Appellant Dr. Rao requests that this Petition to Appeal as a Matter of Right under Rule 317 be granted, or alternatively, that her Petition for Leave to Appeal under Rule 315 be granted.

Respectfully submitted,  
Padma Rao  
By: /s/ Michael Steigmann  
One of her attorneys

Michael Steigmann  
Law Office of Michael Steigmann  
190 S. LaSalle #2100  
Chicago, Illinois 60091  
ARDC 6226169  
michael@steigmann.com  
(312) 833-5945