

20-6672

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

ADAM L. COLEMAN - PETITIONER

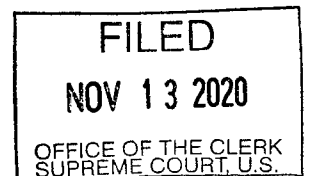
V.S.

EPHRAIM MCDOWELL REGIONAL MEDICAL CENTER -RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

KENTUCKY SUPREME COURT

PETITION FOR WRIT OF CERTIORARI



ADAM L. COLEMAN

402 WEST BROADWAY APT #1

DANVILLE, KY 40422

PHONE: (859)-691-1560

QUESTION(S) PRESENTED

- I. Can a state pass legislation that jeopardizes legal representation of a Wrongful Death or Medical Malpractice asserted claim that would otherwise be guaranteed to any U.S. citizen under the Equal Protections Clause found in Amendment XIV?
- II. Can a court appointed administrator or executor of the estate represent a Wrongful Death claim while acting “Pro se” if he or she is the only heir entitled to the estate, and then should a court be made to determine so case by case for who is the beneficiary as it is not known?
- III. Where state legislation enacts a new law with considerable amounts of constitutional challenges present, is there an exception to an Unauthorized Practice of Law - where it is “allowed” to preserve statute of limitations, if otherwise the same person who is statutorily allowed to prosecute a wrongful death action files suit?
- IV. Should a person be able to recover for Wrongful Death damages past the age of majority?
- V. When a clearly established constitutional right is recognized to be violated by the determination of such state supreme court by prior former case,

and its citizen presents such a decision from a lower court to a court of appeals, should that verdict be reversed regardless of legal representation, and should it only be based upon a valid U.S. citizenship that everyone is protected by the Equal Protection Clause as well as those fundamentally “given” and non-disputable U.S. Constitutional rights?

VI. If other U.S. States recognize a cause of action for recovery of wrongful death past the age of majority, should not all the states in their adoption of their own state constitution be included such right; especially whereas state age determinations defeat its purpose by undermining the relationship at any age as one that is not “harmed” or “deprived of”: Loss of Companionship, Loss of Financial Support or even love itself?

VII. Where a state’s statute does not specifically state otherwise to its designated beneficiaries and administrator of the estate, that one must obtain a lawyer to prosecute a Wrongful Death claim rather than a(n) administrator can prosecute a Wrongful Death action; should a s state statute be more precise and clear to even the common citizen?

VIII. If all U.S. States were allowed to determine age distinctions for what is to be considered age of majority, then by so being associated, Wrongful Death would be a pleasure of those wrongdoers with no punishment. Should a state be excluded from making age – CONTINUED ON NEXT PAGE

and its citizen presents such a decision from a lower court to a court of appeals, should that verdict be reversed regardless of legal representation, and should it only be based upon a valid U.S. citizenship that everyone is protected by the Equal Protection Clause?

VI. If other U.S. States recognize a cause of action for recovery of wrongful death past the age of majority, should not all the states in their adoption of their own state constitution be included such right; especially whereas state age determinations defeat its purpose by undermining and relationship at any age as one that is not “harmed” or “deprived of”: Loss of Companionship, Loss of Financial Support or even love itself?

VII. Where a state’s statute does not specifically state otherwise to its designated beneficiaries and administrator of the estate, that one must obtain a lawyer to prosecute a Wrongful Death claim rather than a(n) administrator can prosecute a Wrongful Death action; should a state statute be more precise and clear to even the common citizen?

VIII. If all U.S. States were allowed to determine age distinctions for what is to be considered the age of majority, then by so being associated, Wrongful Death would be a pleasure of those wrongdoers. Should a state be excluded from making age

determinations for Wrongful Death, and if not may it rather focus its emphasis on the relationship to the decedent that those specially identified as beneficiaries or administrator of the estate had to the decedent?

IX. Should a state court avoid passing a new precedent that is otherwise presumptively discriminatory against its citizens of that state by assuming that each estate has more than one beneficiary available, without first determining by a matter of law to those beneficiaries to whom they may be entitled, or to those who choose to waive their rights to an estate?

LIST OF PARTIES

All parties are as listed on the cover-page and are as follows:

PETITIONER-

ADAM L. COLEMAN

RESPONDENT –

EPHRAIM MCDOWELL REGIONAL MEDICAL CENTER

RELATED CASES

CASE NO. 18-CI-00074 – BOYLE CIRCUIT COURT / STATE TRIAL COURT

CASE NO. 2019-CA-0577 – KENTUCKY COURT OF APPEALS

CASE NO. 2019-SC-0457 – KENTUCKY SUPREME COURT / STATE COURT

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	
STATEMENT OF THE CASE.....	
REASONS FOR GRANTING THE WRIT.....	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A -ORDER OF KENTUCKY SUPREME COURT DENYING REVIEW
APPENDIX B -DECISION OF KENTUCKY COURT OF APPEALS
APPENDIX C -DECISION OF BOYLE CIRCUIT / STATE TRIAL COURT
APPENDIX D- PETITIONERS EVIDENCE IN SUPPORT OF WRIT

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

COMMONWEALTH OF KENTUCKY, CABINET FOR HEALTH AND FAMILY SERVICES,
EX REL.... 566 S.W.3d 202 (Ky. 2018) pgs. (6, 10)

Perkins v. Northeastern Log Homes 808 S.W.2d 809 (1991) pg. (7)

Howard Frank v. Superior Court of Ariz., 150 Ariz. 228, 722 P.2d 955 (1986) pg. (9)

Harper v. Tipple, 21 Ariz. 41, 44, 184 P. 1005, 1006 (1919) pg. (11)

Giuliani v. Guiler, Ky., 951 S.W. 2d 318 (1997) pg. (11)

Stiglitz v. Schardien 40 S.W. 2d pg. (12)

STATUTES AND RULES

KRS 411.130

RCA 3.020

KRS 216C

SCR 3.460

OTHER:

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A/B to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 8/13/2020.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

STATEMENT OF THE CASE

In 2017, Petitioner Adam L. Coleman filed a wrongful death action for damages related his late mother Linda Coleman. Before knowingly been made aware of Kentucky's new legislative law that had been passed earlier on in that year (KRS 216C). The named petitioner then had to file "pro se" because of the recent constitutional challenge that was on appeal at that time (COMMONWEALTH OF KENTUCKY, CABINET FOR HEALTH AND FAMILY SERVICES, EX REL... 566 S.W.3d 202 (Ky. 2018). KRS 216C established what was known as the Kentucky Medical Review Board Panels. The Medical Review Board Panels also formerly known as the MRP Act, required any Medical Malpractice asserted claims to first forego a series of procedures before a lawsuit could be filed in court. Mainly those reasons where why the Kentucky Supreme Court deemed them unconstitutional pursuant to Section 14 of Kentucky's Constitution for the Right to a Speedy Trial and the Right to Due Process without unnecessary delays. For the Medical Review Panels process, one must come up with at least \$3000.00 to pay for the panelist serving to hear the complaint. The statute itself also failed to disclose, when an issued "opinion" would have to be given if at all.

Understanding the type of evidence that would be given by a Medical Review Board Panel, the evidence itself in a form of an opinion is just that of an opinion and mere so a waste of time to its respected judges and those who were and are in the current the medical category of being considered "Medically Frail". With the

Medical Review Board Panels not having stated an official timeframe for an opinion to be issued, that clearly in itself “could” violate a person’s statute of limitations all at the discretion of its panelist and the affordability to even come up with \$3000.00 to even file the complaint to being with.

The statute of limitations in the state of Kentucky is one-year from the date of death to file action for “Wrongful Death”. I ask even myself, is even one-year long enough time to gather evidence about something so tragic as the two-words combined, let alone forgetting the fact of death and grieving to pursue such claim.

Having known across the state of Kentucky about these jeopardizing factors of the Medical Review Board Panels, evidence suggests and can be proven that attorneys in the field of Medical Malpractice and Wrongful Death where more probable to not take on cases at the time because of former case that was on appeal challenging constitutionality. When seeking an answer, to why and how I could get any help at all if even attorneys where unlikely to help due to state legislative errors in the enactment of MRP Act; it became but one answer and one job of myself to pursue.

Kentucky gives the authority to prosecute a “Wrongful Death” claim under KRS 411.130. That power is solely invested in the administrator or executor of the estate to do so, however the statute is vague in itself and mentions nothing about the requirements needed if any for representation of any legal existing claim.

Perkins v. Northeastern Log Homes 808 S.W.2d 809 (1991) would reason that:

“In drafting our constitutional protections in §§14, 54 and 241, our founding fathers were protecting the jural rights of the individual citizens of Kentucky against the power of the government to abridge such rights, speaking to their rights as they would be commonly understood by those citizens in any year, not just in 1891.”

BACKGROUND

Adam L. Coleman’s mother the named decedent Linda Coleman, underwent hospitalization at Ephraim McDowell Regional Medical after being admitted for “Hospital Acquired Pneumonia” in 2017. After having been admitted she obtained bedsores, both the petitioner and his other sibling Ashley Coleman confronted medical staff at Ephraim McDowell Regional Medical Center, but nothing was done and the bedsores went untreated leading to Sepsis.

Both Adam and his sister Ashley Coleman both witnessed and saw the negligence that took place. Both the petitioner and his sister at that present time where college students. Each of us would take shifts sitting with our mother, helping her when we could and advising her to press the “nurse help button” on her bed, at times we needed sleep. There were times where we observed her to press it three to four times and no one would come if at all sometimes.

After Linda, became septic it became evident that she was going to die and needed to be transported to another Medical Facility to be made comfortable as Ephraim McDowell Regional Medical Center continued to cause injuries. For evidentiary purposes Ephraim McDowell Regional Medical Center never

documented any injuries that involved their facility or their medical staff. Luckily the new medical facility that she was transported to UK Chandler Hospital- Lexington, KY documented the “bedsores” with pictures upon arrival via transport by EMS. It was documented the exact location, size and measurement of the bedsores she obtained from Ephraim McDowell Regional Medical Center. The rest of the proof lay within her death certificate in the numerical list of the causes of death which contained the first two causes as “pneumonia” and “sepsis”.

The decedent was just fifty-five at the time of death. It’s surreal to even think, that a person could sustain such injuries from a hospital where the person was both in the ICU- Intensive Care Unit and the Critical Care Unit and yet obtain these types of injuries. All of these injuries related and caused by Ephraim McDowell Regional Medical Center, were completely preventable.

REASONS FOR GRANTING THE PETITION

It should not only matter as a fact of principle as it should matter to the legal proof that the events, injuries sustained, and death of the decedent is all substantial and compelling. The evidence described has remained undisputed and unquestioned throughout all Kentucky courts. For that reason alone, Federal Civil Procedure Rule 56 should have applied. Furthermore, the basis of the petitioners’ appeal to the Kentucky Court of Appeals was to request a re-decision of the lower court after the Kentucky Supreme Court had deemed the Medical Review Board Panels “unconstitutional” for their stated reasons. At that time and having had two prior Kentucky courts deem the MRP Act unconstitutional, it should have become evident

that any allowance of it in any court proceeding would ultimately violate any person's constitutional rights. This verdict should have been overturned due to Ephraim McDowell Regional Medical Centers attempt in a lower-court to cause a constitutional infringement of the petitioners rights. Ephraim McDowell Regional Medical Centers motion to Hold, Boyle Circuit Court Case No. 18-CI-00074 into abeyance until compliance of the Medical Review Board Panels or until the Kentucky Supreme Court deemed them "unconstitutional", was the prime example of what the Kentucky Supreme Court wanted to prevent from happening as stated in their elaborate opinions published from the former *Commonwealth, Cabinet for Health & Family Services, ex rel. Meir v. Claycomb* 566 S.W.3d 202 (Ky. 2018) case.

In continuation of this case the Kentucky Supreme Court did not disclose why it's justices choose to grant the petitioners motion for discretionary review on 8/11/20 and then deny it on 8/12/20. What is evident alone is the argument on the consideration of an "Unauthorized Practice of Law". In granting to conditionally review this writ of certiorari, the listed questions as mentioned above will directly coincide with considerations of an unauthorized practice of law along with who may and who may not be able to represent a decedent if legislative error should occur with the potential to jeopardize legal representation known otherwise. Many precedents have become before a court with questions in regards to recovery for wrongful death past the age of majority, the most notable have been *Howard Frank v. Superior Court of Ariz.*, 150 Ariz. 228, 722 P.2d 955 (1986) citing:

"It is irrelevant that parents are not entitled to the services of their adult-children; they continue to enjoy a legitimate and protectable expectation of consortium beyond majority arising from the very bonds of the family relationship. Surely nature recoils from the suggestion that the society, companionship, and love which compose filial consortium automatically fade upon emancipation; while common sense and experience teach that the elements of consortium can never be commanded against a child's will at any age. The filial relationship, admittedly intangible, is ill-defined by reference to the ages of the parties and ill-served by arbitrary age distinctions. Some filial relationships will be blessed with mutual caring and love from infancy through death while others will be bereft of those qualities. Therefore, to suggest as a matter of law that compensable consortium begins at birth and ends at the age of eighteen is illogical and inconsistent with common sense and experience. Human relationships cannot and should not be so neatly boxed.

"The law does not fly in the face of nature, but rather acts in harmony with it."
Harper v. Tipple, 21 Ariz. 41, 44, 184 P. 1005, 1006 (1919).

And further citing precedent in dissenting opinion Judge, Combs from Kentucky stated the following:

"I dissent from the majority opinion as I believe that the loss of consortium of an adult child is a logical and proper extension of the reasoning of Giuliani v. Guiler, Ky., 951 S.W. 2d 318 (1997). Loss of financial support needed by dependent children was not the only factor considered in Giuliani. The deprivation of love,

companionship, and affection was certainly a major component of loss of consortium claim weighed in that case. That loss is in no way mitigated by the fact that a child has attained the age of majority. Indeed, the bond of love established over a lifetime of association is only enhanced by the passing of time, rendering the loss perhaps even more painful. I would recognize this natural extrapolation of Guiliani and hold a claim for loss of parent's consortium by an adult child to be a cognizable cause of action in Kentucky."

For the reason an unauthorized practice of law must be made an exception is *Stiglitz v. Schardien* 40 S.W. 2d:

- I. "Citizens possesses political as well as pecuniary and personal rights which may be subject of action to prevent operation of unconstitutional legislation."
- II. "Where legislative act infringes constitutional right of citizen and taxpayer, and voter, he may invoke processes of court to prevent performance of duty attempted to be imposed by such void act."

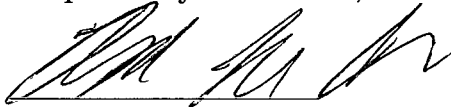
In *Stiglitz v. Schardien* 40 S.W. 2d it is known that a person does not have to be of legal profession to bring forth any constitutional challenge to a pre-existing law. It is a fundamental right and not one that should be taken away. In further support is RCA 3.020 where the petitioner in this case has

not made known of held out to be a practicing attorney. No connection has been made to verify that requirements of proof outside of opinion has tied petitioner to an Unauthorized Practice of Law. As a final consideration of state identified unauthorized practices of law the respondent has not and did not file complaint/adversary opinion pursuant to SCR 3.530(6). Instead only the counsel for the respondent has mentioned via previous court motions in an attempt to intimidate the petitioner from proceeding otherwise.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



ADAM L. COLEMAN

DATE: 12/12/20

Kathryn L. Phillips ID# 608042

NOTARY PUBLIC

COMMISSION EXPIRES
09/20/2022