

**IN THE COURT OF APPEALS 10/15/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 94-CA-01030 COA**

**IN RE: THE ESTATE OF VANDERBILT NMN DUCK, SR., DECEASED:**

**SINGING RIVER HOSPITAL SYSTEM**

**APPELLANT**

**v.**

**VANDERBILT DUCK, JR., ADMINISTRATOR OF THE ESTATE OF VANDERBILT  
NMN DUCK, SR., DECEASED**

**APPELLEE**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND  
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. WILLIAM H. MEYERS

COURT FROM WHICH APPEALED: CHANCERY COURT OF JACKSON COUNTY

ATTORNEY FOR APPELLANT:

BRETT K. WILLIAMS

ATTORNEY FOR APPELLEE:

W. HARVEY BARTON

NATURE OF THE CASE: APPEAL OF MOTION TO DISBURSE LAWSUIT PROCEEDS AND  
EXCLUDE CREDITORS

TRIAL COURT DISPOSITION: MOTION GRANTED

BEFORE BRIDGES, P.J., BARBER, AND MCMILLIN, JJ.

BARBER, J., FOR THE COURT:

The administrator of the estate of Vanderbilt Duck, Sr. entered a motion in the Chancery Court of Jackson County to disburse the proceeds of an asbestosis lawsuit settlement. The chancery court granted the motion to allow disbursement of the proceeds to the heirs of Duck. The court, following the provisions of section 85-3-19 of the Mississippi Code, precluded disbursement of any of the proceeds to the estate's creditors. The Singing River Hospital System (Singing River) appeals

to this Court submitting only one issue, whether section 85-3-19 should be construed to allow creditors' claims for last illness and burial expenses to be paid from the asbestosis lawsuit settlement.

### FACTS

Vanderbilt Duck, Sr. died in November of 1989. He was survived by six children who were his only heirs. Prior to his death, Duck received \$6,163.04 in medical care from Singing River. The bill for these services had not been paid at the time of his death and was not paid by the estate because it had insufficient assets to satisfy the claim. Prior to his death, however, Duck had filed an asbestosis lawsuit against several manufacturers of asbestos alleging an asbestosis-related illness as a result of his exposure to their products. After Duck's death, the asbestosis claim was continued by the administrator of his estate, and a significant settlement was received in August of 1994. The administrator moved to disburse the settlement proceeds to Duck's heirs, to the exclusion of the estate's creditors, in accordance with the provisions of section 85-3-19 of the Mississippi Code. The cause of Duck's death and the last illness treatment provided by Singing River were unrelated to the asbestosis claim.

### ISSUE

I. WHETHER PROCEEDS FROM THE ASBESTOSIS SETTLEMENT SHOULD PASS TO THE HEIRS OF DUCK FREE FROM THE CLAIMS OF SINGING RIVER HOSPITAL SYSTEM, PURSUANT TO SECTION 85-3-19 OF THE MISSISSIPPI CODE.

### ANALYSIS

Singing River argues that section 85-3-19 of the Mississippi Code should be construed to permit creditors of an estate to recover last illness and burial expenses from lawsuit proceeds received by a debtor's heirs as a result of pre-death actions filed by the debtor. According to Singing River, section 85-3-19, which provides that proceeds of a civil action that is begun during the life of an injured party and continued after his death by the administrator of his estate shall pass to his heirs free from all liabilities, is inconsistent "with the overall statutory scheme" in Mississippi. Singing River bases its argument on several Mississippi statutes which provide that proceeds from a lawsuit are exempt from the claims of creditors only to a limited degree. *See* Miss. Code Ann. § 11-37-13 (1972) (allowing creditors of estate to recover last illness and burial expenses from proceeds of wrongful death action)

; *Id.* § 85-3-17 (providing that \$10,000 of personal injury recovery is exempt from creditors of injured party). The essence of Singing River's argument is that since some Mississippi statutes shield only a portion of lawsuit proceeds received by a debtor from the claims of his creditors, the total exemption from creditors' claims provided by section 85-3-19 is inconsistent with the intent and purpose of comparable Mississippi statutes.

In analyzing Singing River's argument that section 85-3-19 is "inconsistent" and therefore in need of judicial construction, this Court is guided by the rules of statutory interpretation as established by the Mississippi Supreme Court. In *Marx v. Broom*, our supreme court made it clear that "[w]hen the language used by the legislature is plain and unambiguous ... and where the statute conveys a clear and definite meaning . . . the [c]ourt will have no occasion to resort to the rules of statutory interpretation." *Marx v. Broom*, 632 So. 2d 1315, 1318 (Miss. 1994); *see also Clark v. State ex rel. Miss. State Medical Ass'n*, 381 So. 2d 1046, 1048 (Miss. 1980) (holding that where statute is plain and unambiguous there is no room for construction). Additionally, the Mississippi Supreme Court has also stated that "[t]he courts cannot restrict or enlarge the meaning of an unambiguous statute." *Marx*, 632 So. 2d at 1318.

Singing River does not allege that the meaning of section 85-3-19 is unclear or ambiguous. Rather, Singing River argues that the statute is inconsistent with the "intent and spirit" of the "overall statutory scheme" in Mississippi. This section is clearly not an instance of legislation in need of judicial construction. While Singing River may have valid arguments for the modification of section 85-3-19 in light of the other exemption statutes, such arguments are not for this Court to consider and should be directed to the legislature of the State of Mississippi. The statutes cited by Singing River have each been enacted by the legislature to address a specific situation. It is not within this Court's scope of review to second guess the legislature's purpose or motive behind the enactment of a statute that is clear and unambiguous. The Mississippi Supreme Court has been extremely clear on this point stating that "[a]bsent ambiguity this Court will not attempt to construe the language of a statute. When the language is plain, it will be enforced as written." *In re AB, Jr.*, 663 So. 2d 580, 581 (Miss. 1985). Accordingly, this assignment of error is without merit, and the order of the Chancery Court of Jackson County is affirmed.

**THE JUDGMENT OF THE CHANCERY COURT OF JACKSON COUNTY IS AFFIRMED.  
COSTS ARE ASSESSED AGAINST SINGING RIVER HOSPITAL SYSTEM.**

**FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., COLEMAN, DIAZ, KING, McMILLIN,  
PAYNE, AND SOUTHWICK, JJ., CONCUR.**