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# A (Not-So) “Minor” Application of the “Spousal Standing” Exception to Georgia’s Wrongful Death Act

Kelly N. LaFleur\*

## I. INTRODUCTION

The death of a loved one is a tragedy, especially when allegations of wrongdoing exist surrounding the death, and the decision to bring a lawsuit is a deeply personal matter. But who bears the burden of making that decision—the deceased’s spouse, their child, or another loved one? The answer may depend on the court’s application of equitable principles to preserve the claim.

Georgia’s Wrongful Death Act<sup>1</sup> grants a decedent’s surviving spouse the right to pursue a wrongful death claim.<sup>2</sup> In the event there is no surviving spouse, that right is granted to the decedent’s “child or children, either minor or sui juris[.]”<sup>3</sup> Nevertheless, under certain circumstances, Georgia’s courts have applied equitable exceptions to authorize a decedent’s children to bring an action in cases where the surviving spouse is unwilling or unable to do so.<sup>4</sup> The application of these

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\*Before all else, I would like to thank my husband, Kenneth LaFleur, for his unwavering support each and every day. Kenny, thank you for always believing in me and for helping me believe in myself. You are my biggest cheerleader, and I would not be where I am today without your love, patience, and encouragement. To my family, thank you for supporting me in every new adventure, for teaching me to be resilient, and for pushing me to be my best self. To my friends, thank you for giving me somewhere to call “home” in a place so far from my own. Finally, I would like to extend a special thank you to Professor Pamela Wilkins for her guidance and wisdom in shaping this Note, and for offering invaluable mentorship from my first week of law school and beyond.

1. O.C.G.A. ch. 51-4 (2023).

2. O.C.G.A. § 51-4-2(a) (2022).

3. *Id.*

4. *See, e.g.*, *Blackmon v. Tenet Healthsystem Spalding, Inc.*, 284 Ga. 369, 667 S.E.2d 348 (2008); *Emory Univ. v. Dorsey*, 207 Ga. App. 808, 429 S.E.2d 307 (1993); *Brown v. Liberty Oil & Ref. Corp.*, 261 Ga. 214, 403 S.E.2d 806 (1991).

equitable principles created a spousal standing exception to the Wrongful Death Act, allowing someone other than the decedent's surviving spouse to pursue a wrongful death claim to benefit the decedent's children.<sup>5</sup>

However, in *Hamon v. Connell*,<sup>6</sup> the Supreme Court of Georgia addressed whether equitable principles permit an *adult* child to pursue a claim under the Wrongful Death Act where the deceased's surviving spouse allegedly refuses to do so.<sup>7</sup> In its analysis, the court examined previous applications of the spousal standing exception to determine whether its application was rooted in the minority status of the decedent's children or the dependency of the children on the deceased.<sup>8</sup> Further, the court analyzed the text of the Wrongful Death Act to determine if it contained language signifying that the Georgia General Assembly intended only to include minor or sui juris children.<sup>9</sup> Ultimately, the court authorized the spousal standing exception to the Wrongful Death Act to include adult children, rather than simply minor or sui juris children.<sup>10</sup> Thus, *Hamon* clarified that the statutory language applies to *all* surviving children, and no distinction may be drawn between minor and adult children when applying equitable principles to the right of recovery for wrongful death claims.<sup>11</sup>

## II. FACTUAL BACKGROUND

James Isaac Dickens, Jr. (Mr. Dickens) passed away on February 15, 2018, following a brainstem stroke.<sup>12</sup> Mr. Dickens was survived by his wife and daughter. At the time of his death, Mr. Dickens was still married to, but had long been estranged from his wife, Lisa Dickens.<sup>13</sup>

Following her father's death, Diane Dickens Hamon (Hamon) filed a medical malpractice action seeking damages against William Clark Connell, M.D. and South Georgia Emergency Medical Associates, P.C. (collectively Appellees) in the Thomas County Superior Court.<sup>14</sup> Hamon filed the claim for the wrongful death of her father in both her individual

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5. *Hamon v. Connell*, 315 Ga. 760, 761–62, 883 S.E.2d 785, 787 (2023).

6. 315 Ga. 760, 883 S.E.2d 785.

7. *Id.* at 760, 883 S.E.2d at 786.

8. *Id.* at 765, 883 S.E.2d at 789.

9. *Id.*

10. *Id.* at 765–66, 883 S.E.2d at 789.

11. *Id.*

12. *Id.* at 761, 883 S.E.2d at 786; see Complaint at 15, *Hamon v. Connell*, No. SUCV2020000083 (Ga. Super. Ct. Feb. 10, 2020).

13. *Hamon*, 315 Ga. at 761, 883 S.E.2d at 786. “The trial court’s order states that Lisa Dickens was estranged from Hamon, as well as [Mr.] Dickens, but no such allegation appears in the complaint.” *Id.* at 762 n.3, 883 S.E.2d at 787.

14. *Id.* at 760, 883 S.E.2d at 786.

capacity as Mr. Dickens's sole surviving child and in a representative capacity for her mother, Lisa Dickens.<sup>15</sup>

In her complaint, Hamon alleged that Lisa Dickens elected not to pursue a claim for damages related to Mr. Dickens's death.<sup>16</sup> Hamon contended that Lisa Dickens's refusal to bring the wrongful death claim harmed her by blocking her access to file a claim and pursue recovery for her father's death.<sup>17</sup> Hamon insisted she had no choice but to bring the action within the statute of limitations<sup>18</sup> to preserve the wrongful death claim.<sup>19</sup> The complaint also asserted that Hamon intended to file a motion to add Lisa Dickens as an indispensable party to the claim; however, Lisa Dickens was never made a party to the action.<sup>20</sup>

The Appellees filed a Motion for Judgment on the Pleadings in Thomas County Superior Court on March 5, 2020.<sup>21</sup> In their motion, the Appellees argued that Hamon lacked the proper standing to pursue a wrongful death claim on her own.<sup>22</sup> Specifically, the Appellees asserted that the Wrongful Death Act gave Lisa Dickens, as Mr. Dickens's surviving spouse, the exclusive right to bring a wrongful death claim for Mr. Dickens's death.<sup>23</sup>

In response, Hamon asked the trial court to exercise its equitable powers to allow her to pursue the wrongful death action since Lisa Dickens refused to do so.<sup>24</sup> Hamon claimed that if the court dismissed the claim, she would be left with no right to recover for the wrongful death of her father. Hamon emphasized the court's ability to exercise equitable

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15. *Id.*

16. Complaint, *supra* note 12, at 1.

17. Brief of Appellant Diane Dickens Hamon at \*7, *Hamon*, 315 Ga. 760, 883 S.E.2d 785 (No. S22G0405).

18. Georgia's two-year limitation of action for a wrongful death claim is the public policy of the state. *Taylor v. Murray*, 231 Ga. 852, 854, 204 S.E.2d 747, 749 (1974). The limitation bars the institution of such litigation after a lapse of the two-year period, and the period cannot be extended by the legislatures of foreign states. *Id.*; *see also* O.C.G.A. § 9-3-33 (2015) (“[A]ctions for injuries to the person shall be brought within two years after the right of action accrues[.]”).

19. *Hamon*, 315 Ga. at 761, 883 S.E.2d at 787.

20. *Id.* at 761, 883 S.E.2d at 786–87. “[Hamon] moved to join [Lisa] Dickens as an indispensable party to the suit . . . . The record does not contain a ruling on [Hamon]’s motion.” *Connell v. Hamon*, 361 Ga. App. 830, 831 n.2, 863 S.E.2d 744, 746 (2021).

21. *See* Memorandum of Law in Support of Defendants’ Motion for Judgment on the Pleadings, *Hamon*, No. SUCV2020000083 [hereinafter Defendants’ Motion].

22. *Hamon*, 315 Ga. at 761, 883 S.E.2d at 787.

23. *Id.*; Defendants’ Motion, *supra* note 21, at 2.

24. Plaintiff’s Response and Opposition to Defendants’ Motion for Judgment on the Pleadings at 1–2, *Hamon*, No. SUCV20200000983.

powers to allow a non-spouse to bring a wrongful death action when no other alternatives exist to preserve the child's right to recovery.<sup>25</sup>

The trial court issued an order on October 2, 2020, denying the Appellees' motion.<sup>26</sup> In its order, the trial court noted that the Court of Appeals of Georgia had previously recognized equitable exceptions to the "spousal standing" rule in favor of a decedent's surviving children.<sup>27</sup> Accordingly, the court applied principles of equity to protect Hamon's right to recover, concluding that Lisa Dickens's apparent refusal to bring the action as Mr. Dickens's surviving spouse left Hamon "with no other recourse or adequate remedy to recover from the parties that she alleges caused her father's death but to file her own wrongful death action'["<sup>28</sup> Therefore, the trial court held that Hamon, as the decedent's surviving adult child, fit under the spousal standing exception and was the proper party to bring the wrongful death action.<sup>29</sup>

The Appellees sought review of the trial court's order and filed an Application for Interlocutory Appeal on October 14, 2020.<sup>30</sup> The Court of Appeals of Georgia issued its decision on October 18, 2021, reversing the denial of the Motion for Judgment on the Pleadings.<sup>31</sup> The court of appeals held that the lower court "impermissibly expanded the scope of the equitable exception" in applying equitable principles "[to grant Hamon], an adult, standing to bring a wrongful death action where the surviving spouse, albeit estranged, elected not to do so."<sup>32</sup> The court of appeals reasoned that "no Georgia statute or case gives adult children a right to file a wrongful death action to recover damages for the death of a parent even if a surviving spouse declines to exercise his or her right to bring such an action."<sup>33</sup> Further, the court of appeals determined that prior cases where Georgia's courts applied equitable principles to permit a child under similar circumstances to pursue a wrongful death action only applied to minor children.<sup>34</sup> Thus, the court concluded that Hamon

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25. *Id.*

26. Order Denying Defendants' Motion for Judgment on The Pleadings, *Hamon*, No. SUCV2020000083.

27. *Hamon*, 315 Ga. at 761, 883 S.E.2d at 787.

28. *Id.* (citation omitted).

29. *Id.* at 762, 883 S.E.2d at 787.

30. Brief of Appellants Winston Clark Connell, M.D. and South Georgia Emergency Medicine Associates, P.C. at 3, *Connell*, 361 Ga. App. 830, 863 S.E.2d 744 (No. A21A0925).

31. *Connell*, 361 Ga. App. 830, 831, 863 S.E.2d 744, 746.

32. *Id.* at 837, 863 S.E.2d at 750.

33. *Id.* at 838, 863 S.E.2d at 751.

34. *Id.* at 834, 863 S.E.2d at 748.

lacked standing to bring the wrongful death claim and rejected the trial court's use of equitable powers to protect Hamon's claim.<sup>35</sup>

Hamon filed a petition for certiorari to the Supreme Court of Georgia to address whether she had the right as a surviving adult child, under equitable principles, to pursue a claim under the Wrongful Death Act, when Mr. Dickens's widow allegedly refused to do so.<sup>36</sup>

The Supreme Court of Georgia unanimously reversed the court of appeals, concluding that the trial court properly denied the motion for judgment on the pleadings.<sup>37</sup> The Supreme Court of Georgia held that nothing in the language of previous cases or in the equity statutes themselves suggested that only minor children may benefit from the equitable principles at issue.<sup>38</sup>

### III. LEGAL BACKGROUND

#### A. *The Wrongful Death Act*

In Georgia, wrongful death claims exist only to the extent permitted by statute, as no cause of action for wrongful death existed at common law.<sup>39</sup> Actions for wrongful death are statutory in origin, and the right to bring an action is granted solely by reason of the survivor's relationship to the deceased.<sup>40</sup>

Section 4424 of the 1910 Code of Georgia<sup>41</sup> permitted "[a] widow, or, if no widow, a child or children" to "recover for the homicide of the husband or parent[.]"<sup>42</sup> Georgia's courts construed this language to imply a dependency requirement on behalf of the child, holding that "unless a child was dependent upon the [decedent], he had no right to recover in damages for the homicide of the [parent]."<sup>43</sup> Therefore, in the absence of a surviving spouse, the right to bring an action for a parent's wrongful

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35. *Id.* at 838–39, 863 S.E.2d at 751.

36. *Hamon*, 315 Ga. at 760, 883 S.E.2d at 786.

37. *Id.*

38. *Id.* at 765–66, 883 S.E.2d at 789.

39. *Tolbert v. Maner*, 271 Ga. 207, 208, 518 S.E.2d 423, 425 (1999).

40. *Burns v. Brickle*, 106 Ga. App. 150, 152, 126 S.E.2d 633, 635 (1962). The statutory right to bring a wrongful death action inures only to the decedent's spouse and children who are living at the time the action accrues. *Tolbert*, 271 Ga. at 207, 518 S.E.2d at 424.

41. GA. CODE ANN. § 4424 (1910).

42. *Id.* The current Wrongful Death Act defines "[h]omicide" as including "all cases in which the death of a human being results from a crime, from criminal or other negligence, or from property which has been defectively manufactured, whether or not as the result of negligence." O.C.G.A. § 51-4-1(2) (1978).

43. *Peeler v. Cent. of Ga. Ry. Co.*, 163 Ga. 784, 789–90, 137 S.E. 24, 26–27 (1927).

death was confined to minor children dependent upon the deceased.<sup>44</sup> In 1924, the Georgia General Assembly amended the statute to include a right of recovery for sui juris<sup>45</sup> children in addition to minor children.<sup>46</sup> However, the child's dependency upon the deceased parent remained an implied requirement in Georgia's courts up until the Supreme Court of Georgia's decision in *Peeler v. Central of Georgia Railway Company*.<sup>47</sup>

In *Peeler*, the Supreme Court of Georgia considered the legislative purpose of the amendment to the Wrongful Death Act.<sup>48</sup> The court determined that inserting the words "minor or sui juris" into the statute was an explicit declaration by the General Assembly to change the then-existing law.<sup>49</sup> Therefore, the court reasoned that the amendment meant the statute permitted recovery to "all children without regard to actual dependency, or the dependency which might be implied from minority[.]"<sup>50</sup> The added provision entitling a child—whether minor or sui juris—to recover damages for the homicide of their parent made the child's dependency upon such parent in any respect wholly immaterial.<sup>51</sup>

Under the current state of the law, the Wrongful Death Act proscribes who has standing to bring a wrongful death claim,<sup>52</sup> who may release such claims,<sup>53</sup> and how the proceeds of such claims are to be held and divided.<sup>54</sup> Typically, the right to bring a wrongful death action belongs to the surviving spouse.<sup>55</sup> O.C.G.A. § 51-4-2(a)<sup>56</sup> provides:

44. *Id.* at 790, 137 S.E. at 27.

45. Sui juris refers to one "[o]f full age and capacity." *Sui juris*, BLACK'S LAW DICTIONARY (11th ed. 2019). In Latin, sui juris means "of one's own right; independent[.]" *Id.*

46. 1924 Ga. Laws 60. Section 4424 of the 1926 Code of Georgia permitted "[a] widow, or, if no widow, a child or children, minor or sui juris," to "recover for the homicide of the husband or parent[.]" GA. CODE ANN. § 4424 (1926).

47. 163 Ga. 784, 137 S.E. 24.

48. *Id.* at 785–88, 137 S.E. at 24–26.

49. *Id.* at 789–90, 137 S.E. at 26–27. *See also* *Wausau Ins. Co. v. McLeroy*, 266 Ga. 794, 796, 471 S.E.2d 504, 506 (1996) (explaining that when the General Assembly amends a statute, "we must presume that the legislative addition of language to the statute was intended to make some change in the existing law.").

50. *Peeler*, 163 Ga. at 790, 137 S.E. at 27.

51. *Id.*

52. O.C.G.A. §§ 51-4-2(a)–(b) (2022); O.C.G.A. § 51-4-4 (2022); O.C.G.A. § 51-4-5 (1985).

53. O.C.G.A. § 51-4-2(c) (2022).

54. O.C.G.A. § 51-4-2(d) (2022).

55. O.C.G.A. § 51-4-2(a).

56. *Id.*

The surviving spouse or, if there is no surviving spouse, a child or children, either minor or sui juris, may recover for the homicide of the spouse or parent the full value of the life of the decedent, as shown by the evidence.<sup>57</sup>

In other words, a decedent's surviving spouse is granted the exclusive right to pursue a wrongful death claim.<sup>58</sup> That right is then granted to the decedent's children in the event there is no surviving spouse.<sup>59</sup> In the event the decedent leaves no surviving spouse, child, or parent, an "administrator or executor of the decedent may bring an action" and "recover[] for the benefit of the next of kin."<sup>60</sup>

The individual with the statutory right to bring a wrongful death action possesses a fiduciary obligation to the other heirs.<sup>61</sup> Therefore, the Wrongful Death Act does not vest in the surviving spouse all of the rights to a claim.<sup>62</sup> Georgia case law alludes to a good faith duty of the surviving spouse to assert and prosecute claims when doing so is in the interest of the surviving children.<sup>63</sup> In a wrongful death claim, the surviving spouse acts as the children's representative and owes them the duty to act prudently in asserting, prosecuting, and settling the claim and to act in the utmost good faith.<sup>64</sup> The failure to act accordingly could subject the spouse to liability for breach of duty as a representative.<sup>65</sup>

The Supreme Court of Georgia has consistently acknowledged that the scope of the Wrongful Death Act and the rights created thereunder must be "limited strictly to the meaning of the language employed and not extended beyond plain and explicit terms."<sup>66</sup> Being in derogation of common law, "the scope of the Wrongful Death Act must be limited in strict accordance with the statutory language used therein, and such language can never be extended beyond its plain and ordinary meaning."<sup>67</sup>

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57. *Id.*

58. *Id.*

59. *Id.*

60. O.C.G.A. § 51-4-5(a) (1985).

61. *Leanhart v. Knox*, 351 Ga. App. 268, 270–71, 830 S.E.2d 545, 548 (2019). Any amount recovered shall be equally divided among the surviving spouse and the children. O.C.G.A. § 51-4-2(d)(1).

62. *Brown*, 261 Ga. at 215, 403 S.E.2d at 807.

63. *Connell*, 361 Ga. App. at 836, 863 S.E.2d at 750.

64. *Home Ins. Co. v. Wynn*, 229 Ga. App. 220, 222, 493 S.E.2d 622, 625 (1997).

65. *Leanhart*, 351 Ga. App. 268, 271, 830 S.E.2d at 548.

66. *Lovett v. Garvin*, 232 Ga. 747, 748, 208 S.E.2d 838, 840 (1974).

67. *Tolbert*, 271 Ga. at 208, 518 S.E.2d at 425.



However, under certain circumstances, Georgia's courts have applied equitable principles to allow someone other than the decedent's surviving spouse to pursue a wrongful death claim to benefit the decedent's children.<sup>68</sup> Principles of equity permit trial courts to depart from the statutory scheme and authorize others to bring a wrongful death action when it is equitable to do so.<sup>69</sup>

### *B. Equitable Powers of the Court*

Georgia's courts have long applied equitable principles to protect the rights of a party who may be otherwise remediless.<sup>70</sup> Georgia's Constitution vests general equitable powers in the superior courts.<sup>71</sup> Georgia's Constitution provides in pertinent part:

The superior courts shall have jurisdiction in all cases, except as otherwise provided in this Constitution. They shall have exclusive jurisdiction over trials in felony cases, except in the case of juvenile offenders as provided by law; in cases respecting title to land; and in divorce cases. They shall have concurrent jurisdiction with the state-wide business court in equity cases. A superior court by agreement of the parties may order removal of a case to the state-wide business court as provided by law. The superior courts shall have such appellate jurisdiction, either alone or by circuit or district, as may be provided by law.<sup>72</sup>

To invoke the equity jurisdiction of a court, a party must first identify some legally cognizable wrong or injury that needs to be remedied.<sup>73</sup> Under O.C.G.A. § 23-1-3,<sup>74</sup> “[e]quity jurisdiction is established and allowed for the protection and relief of parties where, from any peculiar circumstances, the operation of the general rules of law would be deficient in protecting from anticipated wrong or relieving for injuries done.”<sup>75</sup> O.C.G.A. § 23-4-20<sup>76</sup> provides that “[a]ny person who may not bring an action at law may complain in equity and every person who is

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68. *Hamon*, 315 Ga. at 762, 883 S.E.2d at 787.

69. *Id.* at 762–65, 883 S.E.2d at 787–89; *Brown*, 261 Ga. at 215–16, 403 S.E.2d at 807–08.

70. *Allen v. Allen*, 260 Ga. 777, 778 n.2, 400 S.E.2d 15, 16 (1991) (explaining that when equitable powers were conferred upon superior courts, the legislature adopted the whole system of English jurisprudence, common law, and chancery).

71. *Brown*, 261 Ga. at 215–16, 403 S.E.2d at 808.

72. GA. CONST. art. VI, § 4, para. 1.

73. *Williford v. Brown*, 299 Ga. 15, 18, 785 S.E.2d 864, 868 (2016).

74. O.C.G.A. § 23-1-3 (1933).

75. *Id.*

76. O.C.G.A. § 23-4-20 (1933).

remediless elsewhere may claim the protection and assistance of equity to enforce any right recognized by the law.”<sup>77</sup>

Although equity seeks to do complete justice, it must do so within the parameters of the law.<sup>78</sup> A court of equity has no more right than a court of law to act on its own notion of what is just in a particular case.<sup>79</sup> Where rights are defined and established by existing legal principles, they may not be changed or unsettled in equity.<sup>80</sup> Nevertheless, a trial court has broad discretion to fashion an equitable remedy based upon the exigencies of the case, and an appellate court will sustain the trial court’s action where such discretion has not been abused.<sup>81</sup>

Although the Wrongful Death Act dictates that the deceased’s surviving spouse must bring the action, Georgia’s courts have fashioned equitable exceptions to allow other persons to maintain an action on the minor child’s behalf where the surviving spouse declines to pursue the wrongful death claim.<sup>82</sup>

### C. “Equitable Exceptions” to the Wrongful Death Act

While Georgia case law has recognized exceptions to the traditional standing hierarchy of the Wrongful Death Act, no prior decision broadly permitted a decedent’s adult child to override the surviving spouse and pursue a claim in the spouse’s absence unless “the surviving spouse is the alleged wrongdoer.”<sup>83</sup> Courts have applied the spousal standing exception to allow a decedent’s child to bring a wrongful death claim, despite the existence of a surviving spouse, when the child has no other remedy at law.<sup>84</sup> Another category of cases where courts have applied the spousal standing exception to allow someone other than the surviving

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77. *Id.*

78. *Dolinger v. Driver*, 269 Ga. 141, 143, 498 S.E.2d 252, 254 (1998). Under O.C.G.A. § 23-1-7, “[e]quity seeks to do complete justice. Hence, having the parties before the court rightfully, it will proceed to give full relief to all parties in reference to the subject matter of the action, provided the court has jurisdiction for that purpose.” O.C.G.A. § 23-1-7 (1933).

79. *Dolinger*, 269 Ga. at 143, 498 S.E.2d at 254.

80. *Id.*

81. *Tafel v. Lion Antique Cars & Inv. Inc.*, 297 Ga. 334, 339, 773 S.E.2d 743, 747 (2015) (quoting *Barngrover v. City of Columbus*, 292 Ga. 486, 489, 739 S.E.2d 377, 379 (2013)).

82. *Blackmon*, 284 Ga. at 371, 667 S.E.2d at 349.

83. *Connell*, 361 Ga. App. at 834–35, 863 S.E.2d at 748–49; *see also Belluso v. Tant*, 258 Ga. App. 453, 455, 574 S.E.2d 595, 598 (2002) (“[I]t is within the equitable powers of the superior court to permit the prosecution of the wrongful death action by a parent when the surviving spouse is the alleged wrongdoer.”).

84. *Blackmon*, 284 Ga. at 370–71, 667 S.E.2d at 349; *Dorsey*, 207 Ga. App. at 810, 429 S.E.2d at 308; *Brown*, 261 Ga. at 216, 403 S.E.2d at 808.

spouse to bring the action involve situations where the surviving spouse's wrongdoing is alleged to have caused the decedent's death.<sup>85</sup>

### 1. The "Unwilling" Spouse

Georgia's courts routinely cite three cases when applying the spousal standing exception to circumstances where the surviving spouse is unwilling to bring a claim and the child is left without an adequate remedy at law: *Brown v. Liberty Oil & Refining Corp.*,<sup>86</sup> *Emory University v. Dorsey*,<sup>87</sup> and *Blackmon v. Tenet Healthsystem Spalding, Inc.*<sup>88</sup>

The Supreme Court of Georgia first applied an equitable exception to the exclusive requirement of spousal standing to bring a wrongful death action in *Brown v. Liberty Oil & Refining Corp.*<sup>89</sup> In *Brown*, the Supreme Court of Georgia applied equitable principles to allow the decedent's children to pursue a wrongful death action after the surviving spouse refused to do so.<sup>90</sup> Although the decedent had a surviving spouse, the surviving spouse abandoned the children and could not be located.<sup>91</sup> The court found that the circumstances demanded the exercise of general equitable powers to preserve the minor children's rights.<sup>92</sup> Therefore, the Supreme Court of Georgia held that the trial court should have allowed these minors, who had no remedy at law, to maintain an action for the wrongful death of their mother.<sup>93</sup> The decision in *Brown* established the spousal standing exception and overturned prior case law which held that a decedent's children had no right to pursue a wrongful death claim when the decedent left a surviving spouse.<sup>94</sup>

Two years after *Brown*, the Court of Appeals of Georgia applied *Brown's* equity-based exception to allow the adoptive parents of the decedent's child to pursue a wrongful death action after the surviving spouse left the state.<sup>95</sup> In *Emory University v. Dorsey*, the court of appeals considered whether a decedent's minor child maintained the right to

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85. *Belluso*, 258 Ga. App. at 455, 574 S.E.2d at 597–98; *McIver v. Oliver*, 353 Ga. App. 106, 108–09, 836 S.E.2d 535, 537–38 (2019).

86. 261 Ga. 214, 403 S.E.2d 806.

87. 207 Ga. App. 808, 429 S.E.2d 307.

88. 284 Ga. 369, 667 S.E.2d 348.

89. *Connell*, 361 Ga. App. at 834, 863 S.E.2d at 748.

90. *Brown*, 261 Ga. at 215–16, 403 S.E.2d at 807–08.

91. *Id.* at 214, 403 S.E.2d at 807.

92. *Id.* at 216, 403 S.E.2d at 808.

93. *Id.*

94. *Id.* The holding in *Brown* overturned prior case law that held a decedent's children did not have a right to pursue a wrongful death claim when the decedent left a surviving spouse. *Id.*

95. *Dorsey*, 207 Ga. App. at 810, 429 S.E.2d at 308.

bring a wrongful death claim where the decedent's surviving spouse was not the child's parent or guardian, possessed no blood or legal relationship with the child, and left the state with no intention of filing a wrongful death claim.<sup>96</sup> The court of appeals reasoned that the child was left without an adequate remedy at law because the surviving spouse left the state shortly after the decedent's death with no intention of pursuing a wrongful death claim.<sup>97</sup> Thus, the court of appeals held that the superior court properly exercised its equitable powers by allowing the minor child to bring the action for the wrongful death of his mother.<sup>98</sup>

Later, in *Blackmon v. Tenet Healthsystem Spalding, Inc.*, the Supreme Court of Georgia revisited and restated the rule from *Brown*, permitting the spousal standing exception to allow a minor child to bring a wrongful death action where the surviving spouse was incarcerated.<sup>99</sup> In *Blackmon*, the grandmother, acting as the legal guardian, brought a wrongful death claim in a representative capacity for the minor child for the death of the child's mother.<sup>100</sup> The supreme court held that the representative was authorized to pursue the claim on the minor child's behalf even though the decedent left a surviving spouse because the surviving spouse was incarcerated with no intention of bringing a claim on the child's behalf.<sup>101</sup>

## 2. The "At-Fault" Spouse

The other category of cases where Georgia's courts applied equitable exceptions to permit someone other than the decedent's surviving spouse to bring a wrongful death action involve circumstances in which the decedent's death was caused by the criminal conduct of the surviving spouse.<sup>102</sup>

Wrongful death laws do not contemplate the absurd result and "legal impossibility" of a wrongdoer suing themselves to recover for the wrongful death of a spouse.<sup>103</sup> The Supreme Court of Georgia has determined that, in enacting the Wrongful Death Act, the Georgia General Assembly did not intend that a wrongdoer should be allowed to

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96. *Id.* at 808, 429 S.E.2d at 308. The action was brought by the decedent's parents, as executors of the decedent's estate and as the adoptive parents of the decedent's minor child. *Id.*

97. *Id.* at 810, 429 S.E.2d at 308.

98. *Id.*

99. *Blackmon*, 284 Ga. at 370–71, 667 S.E.2d at 349.

100. *Id.* at 369, 667 S.E.2d at 348.

101. *Id.* at 370–71, 667 S.E.2d at 349.

102. *Connell*, 361 Ga. App. at 834–35, 863 S.E.2d at 748–49.

103. *Carringer v. Rodgers*, 276 Ga. 359, 364, 578 S.E.2d 841, 844–45 (2003).

profit from his or her wrong.<sup>104</sup> Furthermore, the legislature did not intend that a wrongdoer render oneself immune from civil liability by holding the exclusive right to bring a cause of action as the surviving spouse.<sup>105</sup> Such circumstances would completely subvert the very purpose of the wrongful death laws.<sup>106</sup>

The Supreme Court of Georgia recognized that the surviving spouses had effectively forfeited their rights to bring a wrongful death action since legislative policy does not permit a wrongdoer to “benefit from his own wrong.”<sup>107</sup> Accordingly, Georgia’s courts have permitted other individuals, including a child, parent, or administrator of the estate, to pursue a wrongful death action under equitable principles when the surviving spouse was the wrongdoer.<sup>108</sup> The Supreme Court of Georgia has held that such cases are controlled by the rationale in *Brown* because “[o]therwise, like the minor children in *Brown*, [the individual] would have no available remedy at law, and the alleged wrongdoer would go unpenalized.”<sup>109</sup>

As such, case law has evolved to recognize narrow exceptions to the standing hierarchy, but no decision prior to *Hamon v. Connell* broadly permitted a decedent’s adult child to override the decision of the decedent’s surviving spouse and pursue a wrongful death claim in the spouse’s absence.<sup>110</sup>

#### IV. COURT’S RATIONALE

In *Hamon v. Connell*, Justice McMillian delivered the opinion of the court with all other Justices concurring.<sup>111</sup> Here, the Supreme Court of Georgia found that under the framework of *Brown v. Liberty Oil & Refining Corp.*, the exercise of equitable powers would allow Hamon to bring the wrongful death claim as the sole surviving adult child of her deceased father.<sup>112</sup>

In reaching this conclusion, the court analyzed the text of the Wrongful Death Act and reasoned that there is no basis for drawing a distinction between a minor child and an adult child.<sup>113</sup> In its analysis, the court

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104. *Belluso*, 258 Ga. App. at 455, 574 S.E.2d at 597–98.

105. *Carringer*, 276 Ga. at 364–65, 578 S.E.2d at 845.

106. *Id.* at 365, 578 S.E.2d at 845.

107. *Belluso*, 258 Ga. App. at 456, 574 S.E.2d at 598.

108. *Hamon*, 315 Ga. at 764 n.9, 883 S.E.2d at 789.

109. *Belluso*, 258 Ga. App. at 456, 574 S.E.2d at 598.

110. *Hamon*, 315 Ga. at 762–63, 883 S.E.2d at 787.

111. *Id.* at 760, 883 S.E.2d at 786.

112. *Id.* at 766, 883 S.E.2d at 790.

113. *Id.* at 765–66, 883 S.E.2d at 789.

utilized the presumption that when the General Assembly amends a statute, the legislative addition of language is intended to change the existing law.<sup>114</sup> The court noted that the statute was amended to add a right of recovery for sui juris children in addition to minor children and therefore, permitted recovery to “all children without regard to actual dependency, or the dependency which might be implied from minority.”<sup>115</sup> Thus, the use of the same language in the statute supports that no distinction is drawn between minor and adult children with regard to the right of recovery for wrongful death.<sup>116</sup> With those principles in mind, the court concluded that the language of the Wrongful Death Act permits recovery to all children on the same terms.<sup>117</sup>

Additionally, the court discussed the prior cases where an individual other than the surviving spouse was authorized to bring a claim for wrongful death.<sup>118</sup> The court noted that although *Brown* and its progeny each involved minor children, nothing in the language of those cases or the equity statutes themselves suggested that *only* minor children may benefit from the equitable principles at issue.<sup>119</sup> None of the prior cases based the application of equitable principles on the child’s status as a minor.<sup>120</sup> While the cases recognized the children as minors, there is no indication the courts’ analyses turned on that fact.<sup>121</sup>

Notably, the court questioned whether *Brown* was rightly decided, given the statutory text of the Wrongful Death Act.<sup>122</sup> The court recognized that the text expressly limits a child’s right to pursue a wrongful death claim when there is no surviving spouse.<sup>123</sup> The court mentioned that the three-decade statutory stare decisis effect of *Brown* would be difficult to overcome.<sup>124</sup> Nevertheless, the court still applied the framework from *Brown* because the parties did not explicitly ask the court to overrule *Brown*.<sup>125</sup>

Ultimately, the Supreme Court of Georgia reiterated the spousal standing exception from *Brown*: the application of equitable principles is necessary to preserve a party’s rights where they have “no remedy at

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114. *Id.* at 765, 883 S.E.2d at 789 (citing *McLeroy*, 266 Ga. at 796, 471 S.E.2d at 506)

115. *Id.* (quoting *Peeler*, 163 Ga. at 790, 137 S.E. at 27)

116. *Id.* at 765–66, 883 S.E.2d at 789.

117. *Id.*

118. *Id.* at 762–65, 883 S.E.2d at 787–89.

119. *Id.* at 765, 883 S.E.2d at 789.

120. *Id.*

121. *Id.*

122. *Id.* at 764 n.8, 883 S.E.2d at 788.

123. *Id.*

124. *Id.*

125. *Id.*

law.”<sup>126</sup> The decision in *Hamon* clarified that there is no basis for drawing a distinction between minor and adult children with regard to the right of recovery for wrongful death.<sup>127</sup>

#### V. IMPLICATIONS

While the application of equitable principles is hardly a new issue for courts in the State of Georgia, the implications of the Supreme Court of Georgia’s decision in *Hamon v. Connell* signals significant changes in the spousal standing exception to the Wrongful Death Act. Georgia’s courts have not yet addressed whether a sui juris child has standing to prosecute a wrongful death claim when there is a surviving spouse who declines to bring a wrongful death action, regardless of whether the spouse is estranged from the deceased.<sup>128</sup> However, following the precedent established in *Hamon*, all children—minor or adult, sui juris or dependent—may have standing, which was previously unavailable to them, to bring a wrongful death action where the decedent left a surviving spouse.<sup>129</sup>

Alternatively, one might question whether this is an expansion of the Wrongful Death Act at all, or whether it is just a straightforward application of precedent to slightly different facts. Either way, this application of the spousal standing exception may lead to issues between the adult child and the surviving spouse, estranged or not. What if the surviving spouse is unwilling to bring a claim due to emotional reasons but their children insist on bringing the claim themselves? The surviving spouse may elect not to bring a wrongful death action in order to avoid the emotional strain of litigation in the wake of the death of their significant other.<sup>130</sup> The issue of whose rights take precedence—the spouse who lost their significant other or the child who lost their parent—may arise in the future, and lower courts will be left to decide which party is permitted to seek relief for the wrongful death of their loved one.

Since the Supreme Court of Georgia explicitly expressed concern regarding whether the decision in *Brown* was rightly decided, *Hamon* is not the end of this spousal standing discussion.<sup>131</sup> The court’s skepticism regarding the decision in *Brown* invites future cases to explicitly ask to overrule *Brown* and its progeny. If this occurs, the Supreme Court of Georgia would be forced to reevaluate the *stare decisis* effect of overruling

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126. *Id.* at 765, 883 S.E.2d at 789 (quoting *Brown*, 261 Ga. at 216, 403 S.E.2d at 808).

127. *Id.*

128. *Connell*, 361 Ga. App. at 835, 863 S.E.2d at 749.

129. *Hamon*, 315 Ga. at 765–66, 883 S.E.2d at 789.

130. *Brown*, 261 Ga. at 216, 403 S.E.2d at 808 (Hunt, J., concurring).

131. *Hamon*, 315 Ga. at 764 n.8, 883 S.E.2d at 788.

decades-long precedent—something it specifically expressed hesitations about in *Hamon*.

Additionally, this application of equity to the standing hierarchy may result in courts reading a provision into the Wrongful Death Act that was not included or intended by the Georgia General Assembly. If the legislature intended for the rights of a decedent's child to override the decision of a surviving spouse to bring a wrongful death claim in any circumstance, then the legislature would have included that language when it established, and later amended, the statute.

As the right to make revisions or amendments to a statute is placed in the hands of the legislature, rather than the courts, the General Assembly may need to address and resolve this issue.