

JEFFREY BIRKMIRE

v.

JENNIFER M. ZEPPIERI

Appellant

: IN THE SUPERIOR COURT OF
: PENNSYLVANIA:
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: No. 802 WDA 2025

Appeal from the Order Entered May 29, 2025
 In the Court of Common Pleas of Erie County
 Juvenile Division at No: NS202300679,
 PACSES Case Number 696302294

BEFORE: STABILE, J., LANE, J., and BENDER, P.J.E.

OPINION BY STABILE, J.:

FILED: OCTOBER 1, 2026

Appellant, Jennifer Zeppieri ("Mother"), appeals from the May 29, 2025, order requiring her to pay monthly child support to Appellee, Jeffrey Birkmire ("Father"). We vacate and remand.

Mother and Father have one minor child together, H.B., born in 2009. H.B. resides primarily with Father, and prior to this action, Mother did not have a support obligation. On December 12, 2022, Mother's oldest child, A.H., was hit by a car and killed while she was on the way to her school bus stop. Mother, acting in her own capacity and as the administratrix of the estate of A.H., filed a wrongful death and survival action (the "Underlying Action") against the driver and the school bus company. The Underlying Action settled for \$1,690,000.00. After attorneys' fees and payments to various creditors, Mother received \$1,001,508.47 (the "Settlement Proceeds"). Of that, she used \$300,000.00 to purchase a house and a car, and the remainder was put

into two trust accounts from which Mother receives a monthly income of \$1,940.11. The issue before us is whether the Settlement Proceeds constitute income to Mother for purposes of child support.

Father filed this action for child support on October 16, 2024. After these hearings, the trial court found that the Settlement Proceeds were income under Rule 1910.16-2(a)(8)(iii) of the Pennsylvania Rules of Civil Procedure.¹ The court calculated Mother's monthly income and support obligation as follows:

The settlement was finalized in 2024. [Mother's] additional minor child, H.B., will turn eighteen (18) in June of 2027. Therefore, the court finds it appropriate to annualize the one (1) million-dollar settlement over four (4) years due to the unique circumstances of this case. This results in a monthly net income of \$21,836.23, which also includes [Mother's] social security disability benefit of \$1,002.90 per month. [Father] was held to his recurring social security retirement benefit of \$1,480.00 per month, wages of \$24.00/hour at 40 hours weekly for 26 weeks, unemployment compensation of \$501.00 per week for 26 weeks, and was given the child tax credit of \$2,000.00 annually. This results in a monthly net income of \$4,081.57. Using the above incomes and annualizing [the Settlement Proceeds] over four (4) years, the basis support guidelines set [Mother's] child support obligation at \$2,712.01/month. The court further finds that a downward deviation is warranted.

Testimony revealed that [Mother] used the cash portion of [the Settlement Proceeds] to purchase a middle-class home so that H.B. would have a nice place to stay when she visited. Mother lives alone with her dog and three (3) cats which [H.B.] enjoys. [Mother's] purchase of this modest home equalizes the living conditions with that of [Father] so that the standard of living is

¹ Monthly gross income includes: "other entitlements to money or lump sum awards, without regard to source, including: [...] (iii) insurance compensation or settlements[.]" Pa. R.C.P. No. 1910.16-2(a)(8)(iii).

the same at both residences, middle-class. [Mother] further utilized the [Settlement Proceeds] to purchase an Apple laptop for H.B. as well as paying for her activity fees, prom/dance dresses, and hair styling . H.B. also participates in the academic decathlon at high school and plans to attend college. [Mother] intends to use part of the remainder of [the Settlement Proceeds] to assist H.B. in her pursuit of higher education.

Consequently, this court finds that a downward deviation in the amount of \$406.80/month is appropriate[.] [...] Therefore, the court orders a support order in the amount of \$2,305.15 per month for one minor child, effective 10/14/24, date of file.

Trial Court Opinion and Order, 5/29/25, at 4 (pagination ours).

Mother filed this timely appeal on May 29, 2025. She presents two questions:

- I. Whether the lower court committed an abuse of discretion in categorizing [the Settlement Proceeds] as the sole beneficiary of an estate as income?
- II. Whether the lower court committed an abuse of discretion in annualizing the principal amount of money in a trust over the length of time until [H.B.] turns eighteen?

Mother's Brief at 3.

We review Mother's arguments according to the following standard:

When evaluating a support order, this Court may only reverse the trial court's determination where the order cannot be sustained on any valid ground. We will not interfere with the broad discretion afforded the trial court absent an abuse of the discretion or insufficient evidence to sustain the support order. An abuse of discretion is not merely an error of judgment; if, in reaching a conclusion, the court overrides or misapplies the law, or the judgment exercised is shown by the record to be either manifestly unreasonable or the product of partiality, prejudice, bias or ill will, discretion has been abused. In addition, we note that the duty to support one's child is absolute, and the purpose of child support is to promote the child's best interests. [...] To the extent the issues involve interpretation and application of the

Rules of Civil Procedure, which are questions of law, we employ a de novo standard of review and plenary scope of review.

C.H.Z. v. A.J.Y., 262 A.3d 604, 607 (Pa. Super. 2021).

Mother's first argument is that the trial court erred in treating the Settlement Proceeds as income because Mother' received the Settlement Proceeds as an inheritance from her late daughter's estate. She cites **Humphreys v. DeRoss**, 790 A.2d 281 (Pa. 2002), where our Supreme Court addressed "the issue of how the receipt of an inheritance affects child support obligations of a payor." **Id.** at 282.² There, the support payee filed a support modification petition, alleging a change in circumstances based on the payor's receipt of a cash distribution from his mother's estate. **Id.** at 283. Our Supreme Court disagreed: "Considering that inheritance is one of the most common means by which wealth is transferred, it defies logic that the legislature would not have clearly provided for inheritance within the statutory definition of income if that were its intent." **Id.** at 285.

Father "does not challenge the principle of **Humphreys**[,] but claims Mother never proved the Settlement Proceeds passed through the estate of A.H. Rather, according to Father, Mother's attorneys disbursed the Settlement Proceeds to her. Father's Brief at 7-8.

² The **Humphreys** Court applied then-extant 23 Pa.C.S.A. § 4302, whose language is substantially similar to Rule 1910.16-2(a)(8).

To resolve this issue, we begin with a consideration of the nature of the Underlying Action which, as we noted above, was filed as a wrongful death and survival action. Our Supreme Court has addressed the distinction between those two actions:

An action for wrongful death may be brought by the personal representative of those persons entitled to receive damages for wrongful death under the statute. Wrongful death damages are established for the purpose of compensating the spouse, children, or parents of a deceased for pecuniary loss they have sustained as a result of the death of the decedent. The damages recoverable in a wrongful death action include the present value of the services the deceased would have rendered to the family, had she lived, as well as funeral and medical expenses.

A survival action, on the other hand, is brought by the administrator of the decedent's estate in order to recover the loss to the estate of the decedent resulting from the tort. The measure of damages awarded in a survival action include the decedent's pain and suffering, the loss of gross earning power from the date of injury until death, and the loss of his earning power—less personal maintenance expenses, from the time of death through his estimated working life span.

These two actions are designed to compensate two different categories of claimants the spouse and/or members of the decedent's family for wrongful death of the decedent, and the decedent herself through the legal person of her estate.

Kiser v. Schulte, 648 A.2d 1, 4 (Pa. 1994) (citations omitted) (emphasis added).

In other words, the survival action portion of the underlying lawsuit was brought by A.H.'s estate—in this case, with Mother filing the lawsuit as the

administratrix. The purpose of the survival suit was to compensate A.H. for her own damages.

With these legal principles in mind, we consider the evidence of record, beginning with the July 9, 2024, court order approving the settlement in the Underlying Action. That order, which appears in the certified record of this action as part of page 7 of Plaintiff's Exhibit 1, admitted into evidence during the April 3, 2025, *de novo* hearing, evidences a settlement in the amount of \$1,690,000.00. Order, 7/9/24, at ¶ 1. After attorneys' fees and satisfaction of other debts and expenses, the payout was \$1,001,508.48. *Id.* at ¶ 2. The order also provides: "100% of the gross settlement **to the estate will be deemed survival damages.**" *Id.* at ¶ 3 (emphasis added).

The same exhibit contains an inheritance tax return. The return evidences that A.H.'s estate contained \$1,000,183.23—the amount of the settlement payout above, less funeral expenses. N.T. Hearing, 4/3/25, Plaintiff's Exhibit 1, at page 2. The inheritance tax return describes the estate value as "Proceeds of Survivor action; see attached Order of Court." *Id.* at page 4. The inheritance tax return also lists the taxable distributions—to Mother—of the "entire residuary estate." *Id.* at page 6.

To summarize, a survival action is brought by a decedent's estate to compensate the decedent for the decedent's damages as per our Supreme Court's opinion in *Kiser*. Mother was prosecuting the survival action in the Underlying Lawsuit as the administratrix of A.H.'s estate. The trial judge

presiding over the Underlying Action confirmed in the order approving the settlement that the Settlement Proceeds were entirely attributable to the survival action. An inheritance tax filing indicates that the Settlement Proceeds were the only asset of the estate of A.H., and that they were distributed to Mother. The facts of this case, viewed in light of the applicable law, confirm that Mother received the Settlement Proceeds as an inheritance from the estate of A.H. Thus, in ***Humphreys***, as in the instant matter, the support defendant received a cash distribution from an estate. That Mother received a disbursement check from her attorneys does not change these facts and is not surprising, given that Mother's attorneys were handling all of these interrelated matters for her. The trial court did not acknowledge the import of the settlement order or the inheritance tax filing, nor did the court analyze these facts under ***Humphreys***. In concluding that the Settlement Proceeds were income, the trial court erred by overriding the applicable law.

Given our resolution of Mother's first argument, we need not address the second. We observe, however, that while the corpus of an estate is not income under ***Humphreys***, Mother acknowledges that the income from the trusts she created with her inheritance is not exempt under ***Humphreys***.³ The ***Humphreys*** Court reasoned that an upward deviation in support may be

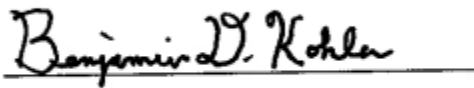
³ Likewise, Rule 1910.16-2(a)(5) governs income from an interest in an estate or trust.

warranted based on the assets of a party and/or the best interests of the involved children. ***Humphreys***, 790 A.2d at 287-88.

For the foregoing reasons, we vacate the May 29, 2025, support order and remand for further proceedings consistent with this opinion.

Order vacated. Case remanded. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 10/1/2026