

12-0090

IN THE CIRCUIT COURT OF RANDOLPH COUNTY, WEST VIRGINIA

LINDA SWISHER, administratrix of the  
Estate of Thomas R. Swisher, deceased,  
Petitioner,

Petition No. 11-C-94

**ORDER DIRECTING DISTRIBUTION**

On the 27<sup>th</sup> day of September, 2011, came petitioner, in person and by counsel David H. Wilmoth, and came Intervenor, Connie Ellis; children Marshall Swisher and Danielle Richards, each in person and by counsel, Frank P. Bush, Jr.; and came Paige Barrick, in person and *pro se*, for hearing on approval and distribution of the wrongful death proceeds for the heirs and beneficiaries of Thomas R. Swisher as a result of his death on July 5, 2010.

Thereafter the Court heard the testimony of Linda Swisher, petitioner in this matter, and also the testimony of the other heirs, beneficiaries and the Intervenor, as well as the arguments of counsel and the guardian *ad litem* appointed in this matter. Upon consideration of all of which the Court does hereby

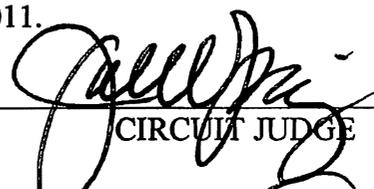
ORDER that the claims of the Intervenor Connie Ellis be and hereby are DENIED, as the Intervenor testified that all money received from payment of the child support arrearage was given to Marshall Swisher and/or Danielle Richards, therefore, the Intervenor could not establish that she was financially dependant on Thomas R. Swisher. This Court does further Order that the children of Thomas R. Swisher, who are not the children of petitioner in this matter, namely, Paige Barrick, Marshall Swisher and Danielle Richards be and hereby are

awarded the sum of \$5,000.00 each. The Court does further ORDER that the amounts and sums to be distributed to the petitioner and the children of Linda Swisher and Thomas R. Swisher, as previously submitted in the petition in this matter be and hereby are APPROVED. This Court does further ORDER that counsel for petitioner and the insurance companies in this matter shall submit to the Court such other documents and Orders as are necessary to complete the record in this matter. This Court does further ORDER that the guardian *ad litem* fee of \$1,400.00 shall be paid by Nationwide Insurance and Progressive Insurance.

There being nothing further, this matter is to be removed from the active docket and placed among the ended files, and the Clerk of this Court is directed to forward a copy of this Order to counsel of record; Heather Weese, guardian *ad litem*; and Paige Barrick at 600

Glenmore Loop Road, Apt. 203, Elkins, WV 26241.

ENTER this 27th day of October, 2011.

  
CIRCUIT JUDGE

*Objections are noted. P.*

**ENTERED**

OCT 27 2011

ORDER BOOK  
NUMBER \_\_\_\_\_ PAGE \_\_\_\_\_  
PHILIP D. RIGGLEMAN, CLERK

Prepared by:  
David H. Wilmoth  
cc: Counsel for Petitioner  
W. Va. State Bar No. 5942  
P.O. Box 933  
427 Kerens Ave.  
Elkins, WV 26241  
(304) 636-9425

cc: Weese  
Barrick  
Bush  
Daugherty/Steele

A TRUE COPY:  
ATTEST:  
PHILIP D. RIGGLEMAN  
CLERK OF THE CIRCUIT COURT  
BY Chawell DEPUTY

**CERTIFICATE OF SERVICE**

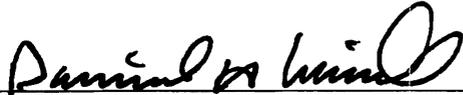
I, David H. Wilmoth, counsel for Petitioner, do hereby certify that on this date I served a true copy of the foregoing **ORDER DIRECTING DISTRIBUTION** upon Heather M. Weese, GAL, Charles Steele, Esq. and Frank P. Bush, Jr., Esq., by depositing a true copy in the United States mail, postage prepaid and certified mail return receipt requested, addressed to as follows:

Heather M. Weese, Esq.  
Law Office of Heather M. Weese, PLLC  
600 South Randolph Avenue, Suite 1  
Elkins, WV 26241

Charles R. Steele, Esq.  
Steele Law Offices  
P. O. Box 1494  
Clarksburg, WV 26302-1494

Mr. Frank P. Bush, Jr., Esq.  
214 Davis Ave.  
P.O. Box 1008  
Elkins, WV 26241

Dated this 19 day of October, 2011.

  
\_\_\_\_\_  
DAVID H. WILMOTH  
W. Va. State Bar No. 5942  
Counsel for Plaintiffs  
Post Office Box 933  
427 Kerens Ave., Suite 3  
Elkins, WV 26241  
(304) 636-9425

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**DOCKET NO. 11-**

Swisher v. Potential Heirs, et al.

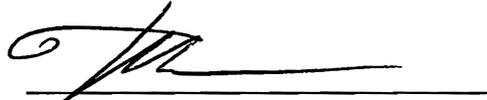
**Connie Ellis, Intervenor Respondent**  
Petitioner

Motion for leave to file Notice of  
Appeal late

Comes the Petitioner, Connie Ellis, by and through counsel and moves the Court for leave to file her Notice of Appeal late. Petitioner's counsel has neglected to file the Notice of Appeal within 30 days of the entry of the final order because the undersigned counsel was not familiar with the recent changes in the WV Rules of Appellate Procedure.

Wherefore the Appellant respectfully requests this honorable Court to grant her leave to file her Notice of Appeal late.

Respectfully submitted,  
Petitioner and Respondent  
By Counsel,



Frank P. Bush, Jr., WV ID # 6178  
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Post Office Box 1008  
Elkins, West Virginia 26241  
Telephone: 304-636-1111  
Facsimile: 304-636-1280