

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

PAUL HARD,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 2:13-CV-922-WKW
)	
ROBERT BENTLEY and)	
LUTHER JOHNSON STRANGE, III)	
)	
Defendants,)	
)	
PAT FANCHER, RICHARD I.)	
LOHR, II, and BEASLEY, ALLEN,)	
CROW, METHVIN, PORTIS AND)	
MILES, P.C.,)	
)	
Intervenor-Defendants.)	

ORDER

Before the court is a motion to intervene for limited purposes, filed by Richard I. Lohr, II, the Administrator of the Estate of David Fancher (“the Estate”), and the law firm of Beasley, Allen, Crow, Methvin, Portis and Miles, P.C. (“Beasley Allen”). (Doc. # 74.) A brief narration of the posture of this case is in order.

Plaintiff Dr. Paul Hard and David Fancher obtained a marriage license under the laws of Massachusetts and had a ceremony there. They subsequently made a life together in Alabama. David Fancher died in a tragic accident in Alabama in

August 2011. Mr. Lohr brought a wrongful death suit on behalf of the Estate that eventually settled. Meanwhile, Dr. Hard brought this action seeking, among other things, declaratory relief that the laws of Alabama preventing the recognition of same-sex marriage violate the U.S. Constitution and injunctive relief directing Mr. Lohr to distribute any proceeds to which Dr. Hard would be entitled under Alabama law as the surviving spouse of David Fancher. (*See* Compl. at 16–17.)

Under Alabama law, the proceeds of wrongful death litigation are distributed according to Alabama’s law of intestate succession. *See* Ala. Code § 6-5-410(c). The proper distribution of the settlement funds depends upon whether Dr. Hard is the surviving spouse under Alabama law. *See* Ala. Code §§ 43-8-41–43-8-42. Hence, Intervenor-Defendant Pat Fancher, David Fancher’s mother, has a competing claim to the settlement funds, and she opposes Dr. Hard’s request for recognition as the surviving spouse. There are pending cross-motions for summary judgment filed by the Attorney General, Ms. Fancher, and Dr. Hard.

Mr. Lohr was formerly a named defendant in this action, but was dismissed voluntarily by Dr. Hard. (Doc. # 7.) Since the wrongful death suit settled, Beasley Allen has been holding the settlement proceeds in trust until this court determines whether Dr. Hard is the surviving spouse under Alabama law. (*See* Doc. # 74-2 (Letter from Beasley Allen to the attorneys for Paul Hard and Pat Fancher).)

Earlier this month, Dr. Hard received an amended death certificate for David Fancher from the Alabama Center for Health Statistics recognizing Dr. Hard as the surviving spouse. The certificate was issued by the State of Alabama following a ruling from the United States District Court for the Southern District of Alabama that found that Alabama's laws prohibiting the recognition of same-sex marriage offend the Due Process and Equal Protection Clauses of the U.S. Constitution. *Searcy v. Strange*, No. CIV.A. 14-0208-CG-N, 2015 WL 328728, at *1 (S.D. Ala. Jan. 23, 2015).¹ Upon receipt of the amended death certificate, Dr. Hard's attorney requested that Beasley Allen release the share of funds due him as surviving spouse pursuant to Alabama Code § 43-8-41(2). (Doc. # 74-3.)

Hence, Beasley Allen and Mr. Lohr jointly request to intervene in this action for the limited purpose of paying the funds into the court's registry to be held pending this court's decision concerning Dr. Hard's entitlement to a spousal share under Alabama law. (Doc. # 74, at ¶ 6.)

"On timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or

¹ On January 16, 2015, the United States Supreme Court granted certiorari in a consolidated appeal from the United States Court of Appeals for the Sixth Circuit. *DeBoer v. Snyder*, ___ S. Ct. ___, No. 14-571, 2015 WL 213650, at *1 (Jan. 16, 2015). The Supreme Court thereby manifested its intention to resolve for lower courts the question whether the Fourteenth Amendment requires a state to license marriages between two people of the same sex, or to recognize a marriage between two people of the same sex that is obtained lawfully in another state, or both. Notwithstanding this indication that binding guidance would be coming from the Supreme Court, the Southern District of Alabama proceeded to rule on the question in *Searcy v. Strange*.

fact.” Fed. R. Civ. P. 24(b). Upon consideration of the motion to intervene (Doc. # 74) and Rule 24(b), it is ORDERED that the motion is GRANTED and that Mr. Lohr and Beasley Allen are JOINED as Intervenor-Defendants for the limited purpose of paying the settlement proceeds into this court’s registry.

It is further ORDERED that the Clerk of the Court is DIRECTED to receive from Beasley Allen the settlement proceeds in the sum of \$552,956.69 and to place these funds in an appropriate interest-bearing account until further order of the court.

DONE this 24th day of February, 2015.

/s/ W. Keith Watkins

CHIEF UNITED STATES DISTRICT JUDGE