OH THE INSANITY: AFTER 124 YEARS, IT'S TIME TO AMEND MISSISSIPPI'S SLAYER STATUTE TO ACCOUNT FOR THE INSANE SLAYER

INTRODUCTION

Every jurisdiction in the United States addresses slayer inheritance with all but three states doing so by statute.[1] Yet,

[1] *See* Carla Spivack, *Killers Shouldn't Inherit from Their Victims—or Should They?*, 48 GA. L. REV. 145, 147 n.1 (2013). Missouri, New York, and New Hampshire

many states have failed to address or account for the possibility of an Insane Slayer.[2] This leaves courts with the potentially unsettling task of applying a slayer statute to a fact pattern that was not contemplated by the state legislature at the time of enactment. In Mississippi, the slayer statute is 124 years old, and it has not substantively changed since its enactment. Modern insanity fact patterns were not considered at the time Mississippi's slayer statute was created. The Mississippi legislature's failure to amend the slayer statute to account for modern insanity fact patterns finally reared its ugly head in 2015 in the case of John Armstrong. John, a paranoid schizophrenic, brutally murdered his mother with a crochet-covered brick on August 7, 2010.[3] After admitting to the murder in front of family and police, John was found mentally incompetent to stand trial.[4] In later proceedings, an interesting question presented itself: under Mississippi's slayer statute, should John Armstrong be allowed to inherit from his mother even after murdering her? A majority of courts in the United States that have dealt with this very question agree that the answer is yes.[5] Following that precedent, the Mississippi Supreme Court found Mississippi's slayer statue inapplicable to Insane Slayers because "an insane person lacks the requisite ability willfully to kill another person[.]"[6]

This Comment will explore whether it is good policy to allow an Insane Slayer to inherit from his or her victim, specifically focusing on Mississippi because of the recent Mississippi Supreme

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each use common law rules to deal with the murderous heir. *See* Perry v. Strawbridge, 108 S.W. 641 (Mo. 1908) (holding property cannot be acquired through unlawful means, especially by murder.). *See also* Riggs v. Palmer, 22 N.E. 188, 190 (N.Y. 1889) ("No one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime."); Kelley v. State, 196 A.2d 68, 70 (N.H. 1963) (Court noted that "the murderer should not be compelled to surrender property to which he is entitled apart from the murder, yet he should not be permitted to improve his position by the murder.").

[2] "Insane Slayer" in this Comment means a person who commits murder and is found mentally incompetent to stand trial, not guilty by reason of insanity, or an equivalent verdict, and is a beneficiary of the victim's estate by will or through intestacy.

[3] Estate of Armstrong v. Armstrong, 170 So. 3d 510, 511 (Miss. 2015).

[4] *Id.*

[5] *Id.* at 515.

[6] *Id.* at 516.

Court decision in *Armstrong*. First, this Comment will examine the *Armstrong* case and compare it to decisions in other jurisdictions. Next, this Comment will analyze the Mississippi slayer statute in detail and provide salient details of slayer statutes in other jurisdictions. Finally, this Comment will argue that Insane Slayers should not be allowed to inherit from their victim. This Comment will close by recommending language to amend Mississippi's slayer statute to account for the Insane Slayer.

I. INSANE SLAYER CASES

A. Mississippi and the Majority Approach

On August 7, 2010, Joan Armstrong was contacted by several worried neighbors after they observed her fifty-year-old son, John Armstrong, acting erratically.[7] John suffered from delusions and hallucinations and was diagnosed as a paranoid schizophrenic.[8] After receiving notice of John's behavior, Joan picked John up at his apartment and brought him back to her condominium in Jackson County, Mississippi.[9] Once John and Joan arrived home, Joan had planned to meet with friends at the condominium's swimming pool.[10] Upon learning this information, John became fearful that his mother was abandoning him, so, he went upstairs and found a crochet-covered brick which he then used to repeatedly bludgeon his mother over the head.[11] John then moved Joan's deceased body to the bathroom where he repeatedly stabbed her.[12] Joan's official cause of death was "contusion of [the] brain with subdural and subarachnoid hemorrhage [due to] multiple blunt force injuries [to the] head."[13] The Ocean Springs Police Department found John at the scene covered in Joan's

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[7] *Id.* at 511.

[8] *Id.* John had a long history of mental illness with treatments dating back to 1989. *Id.* at 511 & n.1.

[9] *Armstrong*, 170 So. 3d at 511.

[10] *Id.*

[11] *Id.*

[12] *Id.* John stated to police that he was preparing the body for burial by bleeding her. *Id.*

[13] *Id.* (internal quotation marks omitted). Joan also sustained multiple stab wounds and rib fractures as a result of the attack. *Id.*

blood.[14] John admitted to law enforcement that he had killed Joan and was arrested for the murder of his mother.[15] On May 3, 2011, a Jackson County Grand Jury indicted John for Joan's murder.[16] The circuit court then ordered John to undergo a mental evaluation from the State Hospital at Whitfield to determine whether John was competent to stand trial.[17] On July 20, 2012, Dr. Reb McMichael found that John lacked the mental competence necessary to stand trial.[18] Dr. McMichael further stated that it was unclear whether John could ever become mentally competent.[19] The circuit court committed John to the State Hospital and ordered him to remain there until he was declared mentally competent to stand trial.[20]

John's brother, Terry L. Armstrong, filed a petition in the Chancery Court of Jackson County to probate Joan's will.[21] Joan left her estate in equal parts to all five of her children.[22] Terry later filed a Motion to Declare Devise Void as to John relying on Mississippi's slayer statute.[23] The slayer statute bars any person who willfully causes the death of another from participating in the other's estate and benefiting from the murderous act.[24] Upon request by Terry, John was appointed a guardian *ad litem*.[25] In

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[14] *Id.* at 512.

[15] *Id.* at 511-12. The confession was also overheard by John's sister-in-law. *Id.*

[16] Amended Order Granting Motion to Declare Devise Void at 2, *In re* Estate of Armstrong, No. 2010-2717-JB (Miss. Ch. Ct. Jackson County Mar. 4, 2014). The Grand Jurors found "[t]hat John Reed Armstrong, in Jackson County, Mississippi, on or about August 7, 2010, did willfully, feloniously and without authority of law, kill and murder Joan Armstrong . . ." *Id.* (internal quotation marks omitted).

[17] *Id.*

[18] *Id.*

[19] *Id.* at 2-3. Dr. McMichael noted that he did not believe John would become competent to stand trial at any point in the foreseeable future. *Id* at 3.

[20] *Armstrong*, 170 So. 3d at 511.

[21] *Id.* Terry was appointed executor of Joan's will. He is one of John's four brothers and sisters. *Id.* at 511-12.

[22] *Id.* at 511.

[23] *Id.* at 512. Terry also filed a Motion for Partial Distribution to allow the assets of Joan's estate, exclusive of John's portion, to be distributed to the remaining four children. The chancellor granted Terry's motion distributing eighty percent of the assets of the estate. Agreed Order Granting Rule 54(b) Judgment, Staying Distribution of Estate Assets and Granting Authority to Appeal at 2, *In re* Estate of Armstrong, No. 2010-2717-JB (Miss. Ch. Ct. Jackson County, Feb. 28, 2014).

[24] MISS. CODE ANN. § 91-5-33 (2016).

[25] *Armstrong*, 170 So. 3d at 512. Stacie E. Zorn was appointed to represent John as his guardian *ad litem*. *Id.*

response to the motion, the guardian *ad litem* argued that Terry failed to present any evidence that John "willfully or feloniously caused [or procured] the death of Joan" and that John lacked the requisite intent to commit a willful act due to his mental incapacity.[26] Recognizing that this was a case of first impression in Mississippi, the chancellor entered an order declaring the devise to John void.[27] Relying on *Henry v. Toney*, the chancellor found that "it is not requisite that willful killing shall amount to murder, but is enough that it was willful and without justification in law[.]"[28] The chancellor held that John willfully caused the death of Joan and barred John from participating in Joan's estate.[29] The chancellor concluded her findings by stating that "while it is acceptable under our justice system to allow a killer to escape criminal liability due to his mental illness; it would be a perversion of justice to allow him to benefit from it in this instance, especially in a court of equity."[30]

On appeal, the Mississippi Supreme Court was presented with a key issue: whether an individual charged with murder, but found to be mentally incompetent to stand trial, may be barred from inheriting under the slayer statute? Put differently, does a severe mental disability protect a slayer from falling under the bounds of the Mississippi slayer statute? Like the chancery court, the Mississippi Supreme Court found this to be a case of first impression in Mississippi.[31]

The Mississippi Supreme Court first found that the usual meaning of willful in the civil context is that an "actor has

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[26] *Id.* The guardian *ad litem* also argued that "the matter was not ripe for hearing because there had been no adjudication of [John's] guilt in the criminal matter." *Id.*

[27] *Id. See also* Amended Order Granting Motion to Declare Devise Void at 4, *In re* Estate of Armstrong, No. 2010-2717-JB (Miss. Ch. Ct. Mar. 4, 2014).

[28] *Id.* at 5 (quoting Henry v. Toney, 50 So. 2d 921 (Miss. 1957) (internal quotation marks omitted)).

[29] *Id.* at 6. The chancellor relied on four key facts in her determination: (1) law enforcement discovered John at Joan's home covered in Joan's blood; (2) immediately after the homicide, John admitted to law enforcement that he killed his mother; (3) the Ocean Springs Police Department issued a complaint at the conclusion of their investigation alleging that John "feloniously, willfully, and unlawfully with deliberate design" caused the death of Joan; and (4) the Jackson County Grand Jury indicted John for the willful and felonious murder of Joan. *Id.* at 5-6.

[30] *Id.* at 6.

[31] *Armstrong*, 170 So. 3d at 514.

intentionally done an act of an unreasonable character in disregard of a risk known to him or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow."[32] The court then turned to the key question, holding that the slayer statute requires a finding of willful conduct to bar a person from inheriting from his or her victim.[33] The court analyzed precedent from other states on the issue and found a split, with a majority of states holding that an Insane Slayer is not precluded from inheriting from his or her victim due to their mental condition at the time of the killing.[34] The court concluded that in order for the slayer statute to apply in *Armstrong*, John must have willfully killed his mother.[35] The court stated that "[b]ecause an insane person lacks the requisite ability willfully to kill another person, the slayer statute is not applicable in cases where the killer is determined to be insane at the time of the killing."[36] The court remanded the case back to the chancery court for a determination of John's mental status at the time of the murder.[37] The chancery court was instructed that "all evidence which will throw any light on the issue of whether or not this killing was willful is competent and admissible."[38]

B. Minority Approach

While a majority of courts support the analysis of the Mississippi Supreme Court, some jurisdictions have taken a different approach, holding that slayer statutes do bar Insane

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[32] *Id.* (quoting WILLIAM L. PROSSER, HANDBOOK OF THE LAW OF TORTS § 34 (4th ed. 1971)). The court also stated that "willful is synonymous with intentionally, knowingly, deliberately, and purposely." *Id.* at 516.

[33] *Id.*

[34] *Id.* at 515-16; *see also* Hill v. Morris, 85 So. 2d 847 (Fla. 1956) (holding insane widow lacked capacity to commit crime and therefore was permitted to inherit from her deceased husband); Turner v. Estate of Turner, 454 N.E.2d 1247 (Ind. Ct. App. 1983) (holding equitable doctrine which bars a criminal from benefiting from his wrongdoing is applicable where insane person shot and killed his parents); Ford v. Ford, 512 A.2d 389 (Md. 1986) (holding slayer rule not applicable where killer was not criminally responsible for the murder); *In re* Estate of Vadlamudi, 443 A.2d 1113 (N.J. 1982) (allowing insane slayer to inherit).

[35] *Armstrong*, 170 So. 3d at 516.

[36] *Id.*

[37] *Id.* at 517.

[38] *Id.* (citation and internal quotation marks omitted).

Slayers from benefiting from the victim's estate. Courts in the minority of jurisdictions are fearful that a narrow application of the slayer statute will only serve to harm the victim's family as "recoveries by the slayer are often the only source of funds available to the surviving victims."[39] The difference between the majority and minority analysis hinges on intent.[40] A minority jurisdiction finds intent where the Insane Slayer admits to the murderous act, understands who the victim is, and recognizes that the action will result in the victim's death.[41] This paper will focus attention on two specific cases in states with slayer statutes similar to the one found in Mississippi.

In *Dougherty v. Cole*, the Illinois Appellate Court affirmed a lower court's holding that the Illinois slayer statute applies to an Insane Slayer who is cognizant he is killing a human being.[42] Jack Cole murdered his mother, Jane Cole, while suffering a severe manic episode.[43] Jack was charged with first degree murder, but was ultimately found not guilty by reason of insanity.[44] The administratrix of Jane's estate moved to bar Jack from inheriting from his mother's estate under the Illinois slayer statue.[45] At trial, the lower court determined that the Illinois slayer statute applied

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[39] *In re* Estate of Kissinger, 206 P.3d 665, 668 (Wash. 2009).

[40] In *Armstrong*, the Mississippi Supreme Court reasoned that an insane person lacks the ability to willfully kill and is no more responsible for the crime than the instrument used in the murder. 170 So. 3d at 516. In contrast, the *Kissinger* court reasoned that while some insane slayers may be so delusional as to preclude a finding of intent, insanity alone does not bar application of the slayer statue. An insane slayer who is cognizant that he or she is killing a human being falls within the bounds of the slayer statute. 206 P.3d at 671.

[41] *See* Dougherty v. Cole, 934 N.E.2d 16, 21 (Ill. App. Ct. 2010) (holding slayer statute applied where insane slayer testified he knew the person he stabbed, and he knew when he grabbed the knife he was going to try to kill the victim); Osman v. Osman, 737 S.E.2d 876, 885 (Va. 2013) (holding slayer statute applied where insane slayer admitted he murdered his mother, admitted he intended to kill his mother, and trial clearly demonstrated slayer understood that a repeatedly striking the mother's head against the ground would cause death.).

[42] *Dougherty*, 934 N.E.2d at 22.

[43] *Id.* at 18.

[44] *Id.* A psychiatric evaluation determined that Jack was unable to appreciate the criminality of his actions. *Id.*

[45] *Id.* The Illinois Slayer Statute provides that "[a] person who intentionally and unjustifiably causes the death of another shall not receive any property, benefit, or other interest by reason of the death . . . ." 755 ILL. COMP. STAT. ANN. 5/2-6 (West 2016).

to Insane Slayers and barred Jack from inheriting.[46] The Illinois Appellate Court reasoned that since no exception for mental illness was provided in the state's slayer statute, the statute applied to Jack in the same way it would apply to all other slayers.[47] The court found that Jack knew the person he was attacking was his mother and that he understood when he grabbed the knife he was going to kill.[48] The court held that Jack intentionally and unjustifiably killed Jane and barred Jack from participating in Jane's estate.[49]

Washington's slayer statute prohibits any slayer from receiving any benefit as a result of an unlawful murderous act committed willfully.[50] In *Kissinger v. Hoge*, Joshua Hoge[51] murdered both his step-mother, Pamela Kissinger, and step-brother, James Kissinger, because he believed they had killed his fictional child.[52] Hoge was charged with two counts of murder but was later acquitted by reason of insanity.[53] Pamela's estate moved to disinherit Hoge based on Washington's slayer statute.[54] The Washington Supreme Court held that the murder was unlawful because an insanity defense does not "make an otherwise unlawful

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[46] *Id.* at 21.

[47] *Id.*

[48] *Dougherty*, 934 N.E.2d at 21.

[49] *Id.* at 22.

[50] WASH. REV. CODE ANN. § 11.84.020 (West 2016); WASH. REV. CODE ANN. § 11.84.010 (West 2016). "No slayer . . . shall in any way acquire any property or receive any benefit as the result of the death of the decedent . . . ." WASH. REV. CODE ANN. § 11.84.020 (West 2016). "'Slayer' means any person who participates . . . in the willful and unlawful killing of any other person . . . ." WASH. REV. CODE ANN. § 11.84.010 (West 2016).

[51] Hoge was diagnosed with paranoid schizophrenia, Capgras syndrome, and heard voices since the age of nine. Hoge threatened to kill his mother and spent time in multiple psychiatric hospitals. *In re* Estate of Kissinger, 206 P.3d 665, 666 (Wash. 2009).

[52] *Id.* at 667. Hoge also attempted to kill his step-mother's boyfriend with an ax. When Hoge was finally taken in to custody, he stated that his step-mother's boyfriend was magical because he did not die. *Id.*

[53] *Id.*

[54] *Id.* The Washington slayer statute was amended after *Kissinger*. The only material change to the statute was the inclusion of "abuser[s.]" Under the statute, an abuser is "any person who participates . . . in the willful and unlawful financial exploitation of a vulnerable adult." WASH. REV. CODE ANN. § 11.84.010 (West 2016).

act lawful."[55] The court held that Hoge willfully killed both victims.[56] Like in *Armstrong*, the Insane Slayer admitted to killing both victims and was aware that he was killing another human being.[57] The court barred Hoge from participating in his step-mother's estate.[58]

II. SLAYER STATUTES

A. Mississippi Slayer Statute

The Mississippi slayer statute was originally enacted in 1892 in two separate code sections. One provision covered those who died intestate and the other those who died leaving a last will and testament.[59] Mississippi Code Annotated § 91-5-33 covers deceased persons who die leaving a will. The statute reads in pertinent part:

> If any person shall wilfully cause or procure the death of another in any manner, he shall not take the property, or any part thereof, real or personal, of such other under any will, testament, or codicil. Any devise to such person shall be void and, as to the property so devised, the decedent shall be deemed to have died intestate.[60]

Mississippi Code Ann. § 91-1-25 covers persons who die intestate and states that "[i]f any person wilfully cause or procure the death of another in any way, he shall not inherit the property, real or personal, of such other; but the same shall descend as if the person so causing or procuring the death had predeceased the

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[55] *In re* Estate of Kissinger, 206 P.3d at 670. "The affirmative defense of insanity precludes criminal punishment, but it does not legally authorize a person to kill another human being. Nor does it negate a necessary element of the crime." *Id.*

[56] *Id.* at 671. The Court noted that "[n]ot every homicide committed by the criminally insane is willful and deliberate." *Id.*

[57] *Id.*

[58] *Id.*

[59] *See* 1 R.H. THOMPSON ET AL., THE ANNOTATED CODE OF THE GENERAL STATUTE LAWS OF THE STATE OF MISSISSIPPI §§ 1554, 4502 (1892).

[60] MISS. CODE ANN. § 91-5-33 (West 2016).

person whose death he perpetrated."[61] In the 124 years since enactment, neither statute has substantively changed.[62]

The slayer statutes are "strictly construed and narrow in purpose."[63] The sole purpose of the statute is to prevent a slayer from benefiting from the death of his or her victim.[64] It is not required that the slayer be convicted criminally of murder; all that is required is the slayer act willfully and without justification in law when committing the murderous act.[65] A guilty plea in a criminal trial does not admit a willful killing.[66] In fact, a guilty plea or conviction of manslaughter is not conclusive in a civil proceeding, it is only slight evidence of willfulness, and acts as evidence that a murder occurred.[67]

The plain language of the slayer statutes does not deal directly with insurance proceeds. However, cases regarding claims for insurance proceeds are considered within the statutes' contemplation because of the sheer force of public policy supporting such a finding.[68] Mississippi courts have yet to determine whether the slayer statutes would apply to a case regarding an asset which passes by right of survivorship.[69]

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[61] MISS. CODE ANN. § 91-1-25 (West 2016).

[62] *Id.* The only change to either statute occurred in 1992 when MISS. CODE ANN. § 91-1-25 was amended. When enacted, the statute originally stated: "If any person wilfully cause or procure the death of another in any way, he shall not inherit the property, real or personal, of such other; but the same shall descend as if the person so causing or procuring the death had never been in being." The language was amended in 1992 to instead end by stating, "but the same shall descend *as if the person so causing or procuring the death had predeceased the person whose death he perpetrated.*" *See* 1992 Miss. H.B. 19 (emphasis added).

[63] Estate of Armstrong v. Armstrong, 170 So. 3d 510, 514 (Miss. 2015) (quoting *In re* Estate of Miller, 840 So. 2d 703, 706 (Miss. 2003).

[64] *In re* Estate of Miller, 804 So. 2d 703,706 (Miss. 2003) (quoting 26B C.J.S. DESCENT AND DISTRIBUTION § 57, at 362-63 (2001)). *See also* 26B C.J.S. *Slayer statutes* § 64, at 369-70 (2011).

[65] Henry v. Toney, 50 So. 2d 921, 922-23 (Miss. 1951).

[66] Hood v. Vandevender, 661 So. 2d 198, 201 (Miss. 1995).

[67] *Id.*

[68] Gholson v. Smith, 48 So. 2d 603, 604 (Miss. 1950).

[69] *Vandevender*, 661 So. 2d at 201 n.1. The court noted that it assumed, but did not decide, that the slayer statutes would affect the right of survivorship in the same way it affects insurance proceeds. *Id.*

The burden of proof under the slayer statutes rests on the estate.[70] A party seeking to disinherit a slayer must show by a preponderance of the evidence that the slayer willfully killed his or her victim without justification of law.[71] A heightened standard of proof is not required because "[p]ublic policy weighs heavily against [it]."[72] In civil proceedings to determine whether or not the slayer acted willfully, the Mississippi Supreme Court has stated that "all evidence which will throw any light on the issue of whether or not [the] killing was willful is competent and admissible."[73]

The key word in the slayer statute is willfully.[74] Mississippi courts have routinely stated that willfully, in a civil statute, signifies "knowingly and intentionally doing a thing or wrongful act."[75] In *Armstrong*, the Supreme Court stated that the usual meaning of willfully in torts is that the actor "has intentionally done an act of an unreasonable character in disregard of a risk known to him or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow."[76]

B. Slayer Statutes in Other Jurisdictions

The Restatement of the Law of Restitution provided the early statutory template for many of the slayer statutes found in the United States.[77] Currently, forty-seven states handle murderous heirs by statute.[78] Missouri, New York, and New Hampshire each

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[70] ROBERT A. WEEMS, WILLS AND ADMINISTRATION OF ESTATES IN MISSISSIPPI § 1:15 (3d ed. 2003 & Supp. 2014).

[71] Dill v. S. Farm Bureau Life Ins. Co., 797 So. 2d 858, 866 (Miss. 2001).

[72] *Id.*

[73] *Armstrong*, 170 So. 3d at 517 (*quoting Henry*, 50 So. 2d at 924).

[74] *Id.* at 513.

[75] Turner v. City of Ruleville, 735 So. 2d 226, 229-30 (Miss. 1999); *see also* Raney v. Jennings, 158 So. 2d 715, 718 (Miss. 1963).

[76] *Armstrong*, 170 So. 3d at 514.

[77] Spivack, *supra* note 1, at 155-56; *see also* RESTATEMENT OF THE LAW OF RESTITUTION § 187 cmt. e (1937) ("The rules stated in this Section are applicable where the property is acquired by murder, whether or not the motive of the murderer was to acquire the property.")

[78] Spivack, *supra* note 1, at 147 n.1.

use common law rules to deal with the murderous heir.[79] While all slayer statutes are based off the moral determination that killers should not benefit from their murderous act, the language and format of each slayer statute can vary from state to state. For example, under Arizona's slayer statute, a conviction for either murder or manslaughter conclusively establishes the convicted individual as a slayer and bars the individual from receiving any benefit from the victim's estate.[80] Ohio's slayer statute deals directly with slayers who are found not guilty by reason of insanity and slayers who are deemed mentally incompetent to stand trial by barring them from benefiting from the victim's estate.[81] Ohio does allow an individual who is found not guilty by reason of insanity or mentally incompetent to stand trial to file a complaint within sixty days after being adjudicated.[82] Once the complaint is filed, the court must then determine by a preponderance of the evidence whether the complainant would have been convicted of murder or voluntary manslaughter if he or she was competent to stand trial or not insane at the time of the commission of the offense.[83]

In Wisconsin, when a slayer is barred from participating in the estate, the slayer's inheritance is treated as though it had been disclaimed.[84] Wisconsin also allows a testator to provide in his or her will that the slayer statute shall not be applied if a murder were to occur.[85] In Maryland, a slayer is any person who "feloniously and intentionally kills, conspires to kill, or procures the killing of the decedent."[86] By way of still-applicable common

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[79] *See* Perry v. Strawbridge, 108 S.W. 641 (Mo. 1908) (holding that property cannot be acquired through unlawful means, especially by murder); *see also* Riggs v. Palmer, 22 N.E. 188, 190 (N.Y. 1889) ("No one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime."); Kelley v. State, 196 A.2d 68, 70 (N.H. 1963) (noting that "the murderer should not be compelled to surrender property to which he is entitled apart from the murder, yet he should not be permitted to improve his position by the murder.").

[80] ARIZ. REV. STAT. ANN. § 14-2803 (2018).

[81] OHIO REV. CODE ANN. § 2105.19 (West 2017).

[82] OHIO REV. CODE ANN. § 2105.19(c) (West 2017).

[83] *Id.*

[84] WIS. STAT. ANN. § 854.14(3) (West 2017).

[85] WIS. STAT. ANN. § 854.14(6)(b) (West 2017).

[86] MD. CODE ANN. EST. & TRUSTS § 11-112(a) (West 2016).

law, Maryland not only bars the slayer from participating in the victim's estate, but also the slayer's heirs and representatives.[87]

While each state's slayer statute is unique and applied differently, most of the slayer statutes share common elements. All slayer statutes in the United States apply to inheritance, insurance proceeds, and social security benefits.[88] Most slayer statutes require the killing to be unlawful and intentional.[89] However, a minority of states do remove the intent element and extend the scope of the slayer statute beyond intentional killings.[90] Finally, most slayer statutes bar the slayer from benefiting from the estate, using any power of appointment granted to the slayer, and serving in any representative capacity for the estate.[91]

III. ARGUMENT

Insane Slayers should not be permitted to inherit from their victims. First, the Insane Slayer receives little to no benefit from inheriting from his or her victim. Second, allowing an Insane Slayer to inherit fails to recognize the inferred change in the decedent's intent for the gift after the Insane Slayer's murderous act. Lastly, allowing an Insane Slayer to inherit from his or her victim and benefit from the crime committed defeats the main purpose and intent of the slayer statute.

A. Any Monetary Inheritance Received by the Insane Slayer Will Be Taken by the State to Pay for the Reasonable Cost of Care Provided During the Insane Slayer's Involuntary Commitment

A state legislature may statutorily grant power to state institutions to require involuntarily committed persons or their estates to pay for all or part of the cost of care and treatment

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[87] *See* Hill v. Lewis, 318 A.2d 850, 852 (Md. Ct. Spec. App. 1974) ("It is the settled law of this State . . . that neither a murderer, nor his heirs or representatives, can share in the estate of the person murdered[.]").

[88] Spivack, *supra* note 1, at 156.

[89] *Id.*

[90] *Id.* at 157.

[91] *Id.*

provided to such persons.[92] In Mississippi, any patient in a state mental health institution whose estate is financially able is required to pay for all or part of the cost of care and services received.[93] It is the duty of the director or governing board of the admitting state mental health institution to investigate the financial ability of each patient to pay for the reasonable cost of care.[94] Once a determination is made that no undue hardship will result, the involuntarily committed patient is required to pay for the reasonable cost of actual services rendered.[95] Upon the patient's death, the state may file a claim against the patient's estate for any remaining balance.[96] Before funds may be taken from the estate of the committed individual, the state must prove by a preponderance of the evidence the validity of its claim in a hearing before an impartial judicial officer.[97] Claims against the committed individual are allowed where "such will not prejudice or hinder the patient or his or her dependent or surviving relatives in providing for their legitimate needs and comforts."[98]

In *Chill v. Mississippi Hospital Reimbursement Commission*, the Mississippi Supreme Court upheld a claim by the Mississippi Hospital Reimbursement Commission (MHRC) for sixty-five percent of the total value of a deceased patient's estate.[99] The patient, Robert Covington, had remained in the State Hospital at Whitfield, Mississippi, for over twenty-six years.[100] The MHRC made a claim against Covington's estate for $46,373.72 for the reasonable cost of care rendered to Covington despite the fact that Covington's total estate was only worth $25,000.[101] The chancery court held that the estate was liable for $16,230.80 or thirty-five

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[92] "A state's right to reimbursement for maintenance and treatment of mentally ill persons exists only by virtue of statutory grant of that right." Chill v. Miss. Hosp. Reimbursement Comm'n, 429 So. 2d 574, 580 (Miss. 1983) (citing State v. Morris, 303 S.W.2d 802, 803 (Tex. Civ. App. 1957)).

[93] MISS. CODE ANN. § 41-7-71 (West 2016).

[94] *Id.*

[95] *Id.*

[96] MISS. CODE ANN. § 41-7-79 (West 2016).

[97] *Chill*, 429 So. 2d at 585.

[98] *Id.* at 587.

[99] *Id.* at 582, 587.

[100] *Id.* at 577.

[101] *Id.* at 578-79.

percent of the total claim filed.[102] On appeal, the Mississippi Supreme Court affirmed despite noting the claim would "just about exhaust the assets of the Estate of Ernest B. Covington."[103]

The Insane Slayer will receive little benefit from inheriting from his or her victim because a large percentage of any monetary assets inherited will be used to pay for the reasonable cost of care provided by the state during the Insane Slayer's involuntary commitment. In Mississippi, the average cost per day for a forensic commitment is $434.66.[104] In general, involuntary commitments after commission of a severe criminal offense are long-term and extremely costly. For fiscal year 2015, of the ten patients who were receiving care at a state hospital after successfully pleading a not guilty by reason of insanity defense, five had been committed for longer than ten years.[105] For patients who had been civilly-committed for over a year, eighty-three percent had been receiving treatment and care for fifteen years or more.[106] If the Insane Slayer remains committed for ten years at the current per day cost, the total cost of services rendered will exceed one million dollars. For a five-year commitment, the total cost on average will exceed seven hundred thousand dollars. The large cost of care provided by the State Hospital during the involuntary civil commitment renders any monetary benefit received by the Insane Slayer through inheritance null.

The other potential beneficiaries of the victim's estate are harmed when the state takes monetary assets away from the Insane Slayer to pay for the cost of the Insane Slayer's involuntary commitment. This outcome should be disfavored

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[102] *Chill*, 429 So. 2d at 579.

[103] *Id.*

[104] E-mail from Adam Moore, Director of Communications, Mississippi Department of Mental Health, to author (Oct. 25, 2016, 08:11 AM) (on file with author).

[105] *Id.* It is important to note that not all ten not guilty by reason of insanity patients were charged with murder. The State Hospital was unable to provide details of each patient's charged offense. The length of commitment for patients who successfully pleaded not guilty by reason of insanity can vary wildly depending on the offense charged. Successful not guilty by reason of insanity defenses in murder cases generally produce the longest involuntary commitments because of the risk of danger to the public. A successful not guilty by reason of insanity defense in a murder case will likely lead to a commitment that falls within the eighty-three percent of commitments that last longer than fifteen years.

[106] *Id.*

because it takes property out of the hands of the other beneficiaries of the victim's estate and hands it directly to the state. "[S]ociety prefers to keep real property within the family as most broadly defined, or within the hands of those whom the deceased has designated."[107] The process of taking funds from an Insane Slayer to pay for care is similar to an escheat.[108] The law has never favored an escheat, viewing it solely as a last resort.[109] In Mississippi, the Supreme Court has stated that an escheat to the state is "unnatural[.]"[110] The court has sought to make escheats improbable and almost impossible under the law.[111] The principle underlying the court's view of an escheat is homologous to the principle underlying why an Insane Slayer should not be allowed to inherit. An escheat is a disfavored outcome because it fails to honor the deceased's wishes and takes property out of the hands of the deceased's family. An Insane Slayer should not be allowed to inherit for the same reasons. The funds are inherited by the Insane Slayer and then paid directly to the state. This line of transactions fails to honor the deceased victim's wishes and takes property out of the hands of other potential beneficiaries.

In reply, some commenters will argue the state deserves payment for the services it renders to the involuntarily-committed patient.[112] The high cost of the services and care provided by the state and the overall benefit received by the Insane Slayer requires reimbursement. The Mississippi Supreme Court has stated that because the state must support its mental health services, "it is not unreasonable to require the patient, his family

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[107] United States v. 198.73 Acres of Land, 800 F.2d 434, 435 (4th Cir. 1986).

[108] Normally, an escheat occurs when a decedent dies intestate leaving no heirs eligible to take the decedent's property. The state is then forced to take the property, real or personal, which would otherwise lay dormant. In the case of the Insane Slayer, the state takes the Insane Slayer's inheritance to pay for the slayer's involuntary civil commitment. In both cases, the state is acting to take a large share of a testamentary distribution which would otherwise pass to an eligible heir.

[109] *See* United States v. 198.73 Acres of Land, 800 F.2d 434, 435 (4th Cir. 1986) (citing *In re* Estate of Holmlund, 374 P.2d 393, 396 (Or. 1962)).

[110] State ex rel. Nall v. Williams, 54 So. 951, 952 (Miss. 1911).

[111] *Id.* The Mississippi Supreme Court created a presumption of heirs so strong that it could only be overcome by positive proof and direct evidence. An argument for an escheat had to be grounded on "inquiry, advertisement, personal family knowledge, or the declarations of those from whom the property descended." *Id.*

[112] *See* Chill v. Miss. Hosp. Reimbursement Comm'n, 429 So. 2d 574, 580 (Miss. 1983).

or his estate to pay at least a part of the bill."[113] While this argument is reasonable on its face, it fails to recognize the realities of mental health funding in Mississippi and the United States.

In 2013, $166,000,000 of Mississippi's total budget was controlled by mental health agencies.[114] Eighty-two percent of the funds controlled by mental health agencies came directly from the general fund while another fifteen percent of the funding came from Medicaid, Medicare, and other federal funding programs.[115] In 2013, less than half-of-one percent of Mississippi's available funding for mental health agencies came from payments received from first and third parties.[116] Focusing on Mississippi state hospitals, which is where individuals receive care after a forensic commitment, only half-of-one percent of the total funding for state hospitals came from first and third party payments.[117] In whole in the United States, only about two percent of all funding for state mental health agencies came directly from first and third party payments.[118] Nationwide, approximately ninety percent of all state mental health agency funding for 2013 came directly from Medicaid, Medicare and each state's general fund.[119]

Any benefit the State of Mississippi would receive from allowing Insane Slayers to inherit from their victims would be minuscule when compared to the many other sources of revenue for state mental health funding.[120] The minuscule benefit the state receives would directly harm other potential beneficiaries of the victim's estate while also ignoring the deceased's wishes regarding the property. It is more important to recognize society's goal of keeping property within the family as most broadly defined than it is to agonize over a potential reduction in the half-of-one

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[113] *Id.* at 579.

[114] State Mental Health Agency Revenues, State Fiscal Year 2013, by National Ass'n of State Mental Health Program Directors, Assessment #9, at 11 (Oct. 1, 2014).

[115] *Id.* at 14.

[116] *Id.* at 22.

[117] *Id.* at 14.

[118] *Id.* at 23.

[119] *Id.* at 20.

[120] For example, Mississippi received one-hundred-thirty-seven million dollars from the state general fund and thirty million dollars from federal sources. *See id.* at 11.

percent of funding Mississippi gains from 1st and 3rd party payments each year.

B. Allowing the Insane Slayer to Inherit Does Not Align with the Inferred Change in the Victim's Intent for the Bequest Created by the State's Power to Make a Claim Against the Insane Slayer's Assets

The determination of whether an Insane Slayer should be allowed to inherit from his or her victim must primarily focus on what the deceased victim would want to happen to the property. In any probate proceeding regarding the distribution of a deceased's assets, the paramount consideration is the testator's intent and how the court should effectuate that intent.[121] The core objective of the probate process is, where possible, to distribute the assets of the testator based on the testator's own wishes.[122] The court is not charged with crafting a fair and just distribution. Instead, the "function of [the] Court is . . . to respect the testator's intent."[123] The Mississippi Supreme Court has stated that "[t]he testator's intent is controlling when construing a will."[124] Where an individual has died intestate, the paramount consideration and objective does not change. Intestacy laws were created by state legislatures to honor the deceased's intent by determining what a reasonable person would have intended under the same or similar circumstances.[125] In effect, intestacy statutes attempt to determine distributions based off the probable intent of most testators.[126] A state's slayer statute must seek to accomplish the same goal.

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[121] "The paramount and controlling consideration is to ascertain and give effect to the intention of the testator." Deposit Guaranty Nat'l Bank v. First Nat'l Bank of Jackson, 352 So. 2d 1324, 1327 (Miss. 1977).

[122] *See* Tinnin v. First United Bank of Mississippi, 502 So. 2d 659 (Miss. 1987). "First and foremost, having in mind that the whole idea is to allow the testator to have his way regarding the disposition of his property, we seek and where possible give effect to the testator's intent." *Id.* at 663.

[123] *In re* Estate of Baumgardner v. Ready, 82 So. 3d 592, 602 (Miss. 2012) (citing *In re* Estate of Dedeaux, 584 So. 2d 419, 421 (Miss. 1991)).

[124] *Id.*

[125] *See* John T. Gaubatz, *Notes Toward a Truly Modern Wills Act*, 31 U. MIAMI L. REV. 497, 501 (1977).

[126] *Id.*

The question is, where the deceased has been murdered by an Insane Slayer, how should courts and legislatures determine the deceased's intent? Where the deceased left a will, intent is determined by analyzing the entire will and giving "due consideration and weight to every word in it."[127] However, it is extremely rare that a testator would have a specific provision in his or her will providing for what happens if the Insane Slayer scenario occurs. For a decedent who died intestate, it is effectively impossible to determine the decedent's intent. In both instances, there are no real options for determining the actual intent of a deceased who has died at the hands of an Insane Slayer. The intent problem faced in the insane slayer scenario is similar to the intent problem legislatures faced when creating intestacy statutes. Like intestacy statutes, the intent issues in the insane slayer scenario should be resolved by examining the probable intent of most testators with the goal to meet the wishes of as many people as possible. The primary focus of the intent analysis in the insane slayer scenario must be on whether the reasonably prudent testator's intention for the gift would change if the deceased knew he or she would die at the hands of the beneficiary.

Determining whether a deceased's intent would change in the insane slayer scenario is admittedly a difficult task. Carla Spivack argued that it is "less than clear" that a victim would disinherit the insane killer.[128] Spivack opined that it is "at least as easy and plausible to imagine . . . that such a parent might want the child to have the resources available to finance needed care rather than to be left to the mercies of state institutions or the streets."[129] In contrast, Nili Cohen argued that "[i]t is highly conceivable that if the testator had been asked, she would have expressed an absolute objection to being succeeded by her murderer and would have disinherited him."[130] Cohen believed the deceased's aversion towards the murderous act represented "the real intention of most testators, had it been possible to ask them."[131] Both Spivack and

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[127] *Ready*, 82 So. 3d at 602 (citing Weissinger v. Simpson, 861 So. 2d 984, 987 (Miss. 2003)).

[128] Spivack, *supra* note 1, at 161.

[129] *Id.* at 160.

[130] Nili Cohen, *The Slayer Rule*, 92 B.U. L. REV. 793, 799 (2012).

[131] *Id.*

Cohen are likely correct in their analysis in some shape or form. However, it is likely impossible to determine whether Spivack or Cohen represents the majority belief in the United States.[132] Spivack and Cohen provide two considerations when determining whether a testator's intent would change in the insane slayer scenario: (1) the personal feelings the decedent had towards the Insane Slayer; and (2) the anger and resentment the decedent felt because of the murderous act committed by the Insane Slayer. This paper will submit that a third component predominates the consideration of both the personal feelings of the decedent and the decedent's likely aversion to the murderous act. The reasonably prudent testator would be most influenced by whether the funds inherited would benefit the Insane Slayer in any tangible way. The reasonably prudent testator would acknowledge that if there is no benefit to the Insane Slayer, then there is no reason to allow the Insane Slayer to inherit.

Prior to the murderous act by the mentally disabled beneficiary, the reasonably prudent testator would have intended the devise to be used for the direct benefit of the mentally disabled beneficiary. The reasonably prudent testator would be making the gift under the assumption the gift would benefit the mentally disabled beneficiary in some way. Once the murderous act is committed by the mentally disabled beneficiary, the testator's intent changes because the mentally disabled beneficiary's circumstances also change. After the murderous act, the mentally disabled beneficiary becomes a part of the state mental health system and almost surely faces a long term and costly involuntary civil commitment. Armed with the knowledge that any monetary asset gained by the Insane Slayer would likely pass to the state for reimbursement for the cost of care, the reasonably prudent testator's intent for the gift would change. The reasonably prudent testator would rather the gift pass to other potential beneficiaries, rather than have the gift pass to the Insane Slayer who receives no benefit from the inheritance.

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[132] *See* Adam J. Hirsch, *Text and Time: A Theory of Testamentary Obsolescence*, 86 WASH. U. L. REV. 609, 616 (2009). Hirsch briefly notes that there has been no polling data on the issue of testator intent. Hirsch states that "[i]f polling data confirms that most testators would disinherit their assailants[,] . . . then slayer statutes should again cover the case with a default rule." *Id.* at 623.

In Mississippi, the slayer statute should be amended to create a mandatory disclaimer by the insane slayer because of the inferred change in the reasonably prudent testator's intent. Once the benefit to the Insane Slayer is eliminated, the reasonably prudent testator would rather the Insane Slayer disclaim and allow another friendly party take the devise. The disclaimer by the Insane Slayer can be analogized to a disclaimer filed by an insolvent beneficiary prior to filing for bankruptcy. Where a beneficiary is insolvent, the beneficiary may disclaim any inheritance received to avoid the inheritance passing directly to the beneficiary's creditors.[133] By disclaiming the property, the estate's assets pass to a friendly party instead of a beneficiary's creditors.[134] The disclaimer by the insolvent beneficiary respects the testator's wishes for the property because it allows the estate's assets to directly benefit a beneficiary rather than a creditor of a beneficiary.[135] For example, in *In re Laughlin*, Thomas Laughlin owed a $1,000,000 judgment to a customer regarding liability for the sale of defective tanning machines.[136] Laughlin's father died intestate leaving Laughlin a 25% share of his estate.[137] Laughlin disclaimed his twenty-five percent share to avoid the assets being used to pay the judgment creditor.[138] Laughlin's disclaimer eventually allowed his intestacy share to pass to his mother.[139] Laughlin claimed that everyone in his family knew his father would have wanted his mother to receive the estate's assets.[140] Laughlin disclaimed in an effort to honor his father's wishes for the assets of the estate.[141] The reasoning used by Laughlin, and so many other insolvent beneficiaries, is no different than the reason for creating a mandatory disclaimer on the part of the Insane Slayer within the Mississippi slayer statute. In both cases, the

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[133] *See* Andrew S. Bender, *Disclaimer Law: A Call for Statutory Reform*, 2001 U. ILL. L. REV. 887, 894-95 (2001); *see also* Stephen E. Parker, *Can Debtors Disclaim Inheritances to the Detriment of Their Creditors?*, 25 LOY. U. CHI. L.J. 31, 33-41 (1993).

[134] Andrew S. Bender, *Disclaimer Law: A Call for Statutory Reform*, 2001 U. ILL. L. REV. 887, 894 (2001).

[135] *Id.*

[136] *In re* Laughlin, 602 F.3d 417, 419 (5th Cir. 2010).

[137] *Id.*

[138] *Id.*

[139] *Id.*

[140] *Id.*

[141] *Id.*

beneficiary is presuming the deceased would rather the devise benefit a friendly party rather than benefit a creditor. Creating a mandatory disclaimer in the slayer statute would allow Mississippi to honor the intent of the reasonably prudent testator.

In sum, allowing an Insane Slayer to inherit does not accomplish the reasonably prudent testator's original intent for the devise nor does it recognize the likely change in the reasonably prudent testator's intent after the murderous act. The reasonably prudent testator originally intended the devise be used for the direct benefit of the mentally disabled beneficiary. This original intent is not honored if the Insane Slayer is allowed to inherit because most all the monetary assets received by the Insane Slayer would be paid to Mississippi for the cost of care provided during the Insane Slayer's involuntary commitment. The reasonably prudent testator's intent for the devise changes once the mentally disabled beneficiary's circumstances change because of the murderous act. Allowing the Insane Slayer to inherit ignores this change in intent and fails to meet the goals of the deceased testator. Creating a mandatory disclaimer in the Mississippi slayer statute would avoid and resolve this problem while also not harming the state's financial interests.

C. Allowing the Insane Slayer to Inherit Disregards the Traditional Public Policy Justification for Slayer Statutes

Legal scholars have typically asserted three policy reasons as justification for slayer statutes. First, allowing a slayer to inherit from his or her victim does not honor the inferred change in the victim's intent.[142] Second, the law adheres to the adage that a wrongdoer cannot benefit from his wrongful act.[143] In *Riggs v. Palmer*, Justice Earl stated this maxim perfectly:

> No one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime. These maxims are dictated by public policy, have their

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[142] *See* Cohen, *supra* note 130, at 799; *see also* Hirsch, *supra* note 132, at 616.

[143] *See* RESTATEMENT OF RESTITUTION § 187 (AM. LAW INST. 1937). "The rules stated in this Section are applications of the general principal of equity that a person shall not be permitted to profit by his own wrong." *Id.*

> foundation in universal law administered in all civilized countries, and have nowhere been superseded by statutes.[144]

The third justification, as argued by Mary Louise Fellows, is that slayer statutes are more than a simple matter of equity, slayer statutes are necessary for a "rational property transfer law system" because the slayer "potentially interrupted the normal dispositions of property by interfering with ownership rights, donative freedom, and transfers conditioned on survivorship."[145] In Mississippi, the Supreme Court has stated that "[t]*he sole purpose of a 'slayer statute' is to prevent the slayer from benefitting from the death of the victim or profiting from the wrongdoing*."[146]

With these public policy justifications in place, a more complex question must be considered. Should a state's slayer statute be applied to an Insane Slayer, where the Insane Slayer lacks the *mens rea* required to commit a criminal act and punishing the Insane Slayer will serve no deterrent purpose? In *Armstrong*, the Mississippi Supreme Court stated that "[b]ecause an insane person lacks the requisite ability willfully to kill another person, the [s]layer [s]tatute is not applicable in cases where the killer is determined to be insane at the time of the killing."[147] The Mississippi Supreme Court went on to quote former Chief Justice of New York, Samuel Nelson, who wrote that "self-destruction by a fellow being bereft of reason can with no more propriety be ascribed to the act of his own hand than to the deadly instrument that may have been used by him for the purpose[.]"[148] Others have argued that punishing the Insane Slayer serves no deterrent purpose. The Insane Slayer should avoid punishment because he or she is unable to rationally consider the consequences of the murderous act. Punishing the Insane Slayer for the murderous act by barring the Insane Slayer from participating in the decedent's estate will not deter future

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144 Riggs v. Palmer, 22 N.E. 188, 190 (N.Y. 1889).

145 Mary Louise Fellows, *The Slayer Rule: Not Solely a Matter of Equity*, 71 IOWA L. REV. 489, 494 (1986).

146 *In re* Estate of Miller, 840 So. 2d 703, 706 (Miss. 2003) (quoting 26B C.J.S. DESCENT AND DISTRIBUTION § 57, at 362-63 (2001)).

147 *Armstrong*, 170 So. 3d 510, 516 (Miss. 2015).

148 *Id.* (quoting Manhattan Life Ins. Co. v. Broughton, 109 U.S. 121, 132 (1883)).

conduct by the Insane Slayer nor will it deter other mentally disabled individuals from committing the same crime.

It is true that slayer statutes serve no deterrent purpose where the slayer is insane at the time of the killing. However, this Comment submits that deterrence is not the focus of Mississippi's slayer statute. Mississippi's slayer statute is not founded on principals of criminal law. Instead, the slayer statute is a creature of probate law and is founded on principals of equity, morality, and property law.[149] It is therefore irrelevant whether application of the Mississippi slayer statute will serve to deter future conduct by other Insane Slayers. As the court in *Riggs v. Palmer* stated, the goal of slayer statutes is to stop a slayer from "profit[ing] by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime."[150] *"The sole purpose of a 'slayer statute' is to prevent the slayer from benefitting from the death of the victim or profiting from the wrongdoing."*[151] Therefore, the answer to whether slayer statutes should apply to Insane Slayers is not found in criminal law, or in the idea of deterrence, but instead, the answer can be found by looking to the traditional public policy justifications for slayer statutes.

The traditional public policy justifications for slayer statutes are violated when an Insane Slayer is allowed to inherit from his or her victim. First, if the Insane Slayer inherits from his or her victim, then the Insane Slayer is allowed to take advantage of his wrong in the most basic sense. While this paper did establish under Part II(A) above that Insane Slayers in Mississippi do not benefit financially from inheriting from their victims, the Insane Slayer still violates the universal maxim against unjust enrichment discussed in *Riggs*.[152] Second, the Insane Slayer's murderous act interrupts the rational transfer of property by "interfering with ownership rights, donative freedom, and transfers conditioned on survivorship."[153] Finally, as this paper

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[149] Adam J. Katz, Heinzman v. Mason*: A Decision Based in Equity But Not an Equitable Decision*, 13 QUINNIPIAC PROB. L.J. 441 (1999).

[150] Riggs v. Palmer, 22 N.E. 188, 190 (N.Y. 1889).

[151] *In re* Estate of Miller, 840 So. 2d 703, 706 (Miss. 2003) (quoting 26B C.J.S. DESCENT AND DISTRIBUTION § 57, at 362-63 (2001)).

[152] *See Riggs*, 22 N.E. 188, 190 (N.Y. 1889).

[153] Fellows, *supra* note 145, at 494.

discussed in Part II(B), allowing the Insane Slayer to inherit does not align with the inferred changed in the victim's intent created by the Insane Slayer's murderous act and impending involuntary civil commitment. By applying Mississippi's slayer statute to Insane Slayers, all three traditional public policy justifications for slayer statutes are well served.

IV. RECOMMENDED AMENDMENT TO THE MISSISSIPPI SLAYER STATUTE

Mississippi Code Annotated § 91-5-33

(a) If any person shall willfully cause or procure the death of another in any manner, he shall not take the property, or any part thereof, real or personal, of such other under any will, testament, or codicil. Any devise to such person shall be void and, as to the property so devised, the decedent shall be deemed to have died intestate. This shall not defeat the title of a bona fide purchaser for value of the property so devised, who acquired the same after one year from the probation of the will without notice that the person to whom the same was devised so caused or procured the death of the testator.

(b) If any person under (a) is deemed mentally incompetent to stand trial, the court, on the petition of an interested person, shall determine whether, under the preponderance of evidence standard, the person would be found to have willfully killed the decedent without justification in law. If the court determines that the person willfully killed the decedent without justification in law, regardless of the person's mental state at the moment of the act, then said determination conclusively establishes that person as the decedent's killer for purposes of this section. Said person shall not take the property, or any part thereof, real or personal, of such other under any will, testament, or codicil. Any devise to such person shall pass as if the person disclaimed his or her share.

(c) If any person under (a) is judged not guilty by reason of insanity in a criminal trial for the death of the decedent, the court, on the petition of an interested person, shall determine whether, under the preponderance of evidence standard, the person would be found to have willfully killed the decedent without justification in law. If the court determines that the

person willfully killed the decedent without justification in law, regardless of the person's mental state at the moment of the act, then said determination conclusively establishes that person as the decedent's killer for purposes of this section. Said person shall not take the property, or any part thereof, real or personal, of such other under any will, testament, or codicil. Any devise to such person shall pass as if the person disclaimed his or her share.

Mississippi Code Annotated § 91-1-25

(a) If any person shall willfully cause or procure the death of another in any way, he shall not inherit the property, real or personal, of such other; but the same shall descend as if the person so causing or procuring the death had predeceased the person whose death he perpetrated.

(b) If any person under (a) is deemed mentally incompetent to stand trial, the court, on the petition of an interested person, shall determine whether, under the preponderance of evidence standard, the person would be found to have willfully killed the decedent without justification in law. If the court determines that the person willfully killed the decedent without justification in law, regardless of the person's mental state at the moment of the act, then said determination conclusively establishes that person as the decedent's killer for purposes of this section. Said person shall not take the property, or any part thereof, real or personal, of such other under any will, testament, or codicil. Any devise to such person shall pass as if the person disclaimed his or her share.

(c) If any person under (a) is judged not guilty by reason of insanity in a criminal trial for the death of the decedent, the court, on the petition of an interested person, shall determine whether, under the preponderance of evidence standard, the person would be found to have willfully killed the decedent without justification in law If the court determines that the person willfully killed the decedent without justification in law, regardless of the person's mental state at the moment of the act, then said determination conclusively establishes that person as the decedent's killer for purposes of this section. Said person shall not take the property, or any part thereof, real or personal, of such other under any will, testament, or

codicil. Any devise to such person shall pass as if the person disclaimed his or her share.

CONCLUSION

Mississippi has failed to address or account for the possibility of a mentally disabled or mentally insane slayer in its slayer statute. In light of the Mississippi Supreme Court's decision in *Armstrong*, the Mississippi legislature must amend its current slayer statute to account for the Insane Slayer by creating a mandatory disclaimer on the part of the Insane Slayer. The mandatory disclaimer would not harm the interests of the Insane Slayer, as any monetary inheritance the Insane Slayer would receive from the victim would be taken by the state to pay for the reasonable cost of the Insane Slayer's involuntary commitment. The mandatory disclaimer would have a minimal impact on the state's ability to fund mental health treatment. Finally, the mandatory disclaimer would satisfy the presumed change in the victim's intent for the gift after the Insane Slayer's murderous act.

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