

February 2005

## **DEATH OF A NURSING HOME RESIDENT – WHAT ARE THE RIGHTS?**

The rights that are available to a nursing home resident that dies in the nursing home were decided in the recent case of Knowles v. Beverly Enterprises, 29 Fla. L. Weekly S788 (Fla. Dec. 16, 2004). That case arose as a result of injuries received by a nursing home resident as a result of bed sores suffered during the resident's life. The resident died from unrelated causes and a motion for summary judgment was made when an attempt was made to bring an action under Fla. Stat. 400.023(1) and 400.022 for violation of the Patient's Bill of Rights. The trial court granted a summary judgment under Fla. Stat. 400.023(1), which provides:

Any resident whose rights as specified in this part are deprived or infringed upon shall have a cause of action against any licensee responsible for the violation. The action may be brought by the resident or his or her guardian, by a person or organization acting on behalf of a resident with the consent of the resident or his or her guardian, or ***by the personal representative of the estate of the deceased resident when the cause of death resulted from the deprivation or infringement of the decedent's rights.*** (emphasis by the Court.)

The case then went to trial on a common law negligence theory and the jury returned a verdict for the defendant.

The sole issue before the Supreme Court was whether a cause of action could be brought under the above-cited statute by the personal representative for the injuries suffered during the decedent's lifetime when the decedent died from

an unrelated cause. The Supreme Court held that such a cause of action could not be brought under the statute. The Supreme Court concluded that the unambiguous highlighted language provided that the personal representative could only bring a cause of action under that statute when the cause of death resulted from the violation of the decedent's rights.

The holding of the Supreme Court seems to fly in the face of Fla. Stat. 46.021, which clearly provides that all causes of action survive the death of a person. A stinging dissent by Justice Lewis reviews the legislative history of Fla. Stat. 46.021, the Florida Wrongful Death Act, and the Nursing Home Bill of Rights, Fla. Stat. 400.023.

The dissent points out that the consistent holdings of the Supreme Court have been that the 1973 amendment of the Florida Wrongful Death Act merely merged survival actions for personal injuries which caused death with wrongful death actions while leaving in existence survival actions in which the tort in question did not cause death. These holdings, the dissent points out, are directly contrary to the decision in the instant case in which the Court holds that no survival action exists when a nursing home resident dies from a cause unrelated to the wrongful act. Such a holding, the dissent points out, is particularly strange in consideration of the fact that the legislative history of the Nursing Home Act which added the highlighted section was specifically designed to increase rather than decrease the rights of residents. At Page S796, the dissent puts it as follows:

It is extraordinarily twisted that the Legislature's

attempt to shield the elderly from abuse through an expansion of the right of estates to file actions for conduct causing death is today used as a weapon against the survival rights of former nursing home residents' estates. The 1986 amendment of section 400.023(1) was never intended to restrict actions or complaining parties under the Nursing Home Residents' Rights Act; indeed, the legislative history of the Act reflects that the provision interpreted by this Court today was designed with the opposite goals in mind.

The majority opinion points out that while a cause of action cannot be brought under Fla. Stat. 400.023(1) by the personal representative where the person dies from causes unrelated to the violation of rights, an action for ordinary negligence is not cut off. The Court ignores that by its opinion important statutory rights of survival are indeed eliminated by the Court's seemingly strained interpretation of the statutory amendment, the effect of which is to eliminate a survival action that the legislature clearly intended to retain.

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