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DAMAGES OF MINOR CHILD IN DEATH OF PARENT

by Ted Babbitt

In Bellsouth Telecommunications, Inc. v Meeks, 28 F.L.W. S775 (Fla. Oct. 16, 2003), the Supreme Court decided the question of the length of time that a minor child can recover mental pain and suffering as a result of the death of a parent. That case came to the Supreme Court as a result of a certified question raised by the Fifth District in Meeks v Florida Power & Light Co., 816 So.2d 1125 (Fla. 5th DCA 2002). That question asked:

“Are the damages recoverable by a minor child pursuant to §768.21(3), Florida Statutes, limited to the period of minority?”

The Supreme Court answered the question in the negative.

The case presented an ideal question for the decision answered by the Court. The plaintiff was the 24 year old son of the decedent and thus would have had very limited pain and suffering damages if the question were answered in the affirmative since the period of minority ends at age 25. The trial court granted a summary judgment for the defendant and the Fifth District reversed. The Supreme Court approved the Fifth District’s decision pointing out that the Legislature specifically has stated:

“It is the public policy of the state to shift the losses resulting when wrongful death occurs from the survivors of the decedent to the wrongdoer. Sections 768.16-768.26 *are remedial and shall be liberally construed.*” (Emphasis by the Court).

The Court notes that subsection (3) of the Statute gives no express guidance as to the length of time that a minor child can recover damages but a review of the remaining sections of the same statute is persuasive that the legislative intent was to extend the period of damages beyond minority. For example, §768.21(1) expressly provides that a minor child's damages for loss of support and services may be limited to the period of minority in the jury's discretion yet no such discretionary limitation is provided in subsection (3) of the same statute.

The Court also pointed out that the Second District in Gross Builders, Inc. v Powell, 441 So.2d 1142 (Fla. 2nd DCA 1983) has expressly held that under subsection (4) of the same statute a parents' damages for the death of a minor child are not limited to the period of minority of the child because they can be suffered for the parents' entire life.

On the other hand, it is expected that during a child's life a parent will die from natural causes. Thus, the Court concluded that the joint life expectancies of both the parent and the child should be considered by the jury in determining the extent of damages of a child for the loss of a parent. At Page 776 the Court holds:

“Gross Builders held that parents' damages should not be measured based on the remaining minority years of the child, but should be calculated based on the life expectancies of the parents. *Id.* at 1143-44. The court reached this conclusion because the evidence in *Gross Builders* indicated the parents' pain and suffering could be lifelong. *Id.* at 1144. Similarly, in this case Kevin Meeks' pain and suffering could be lifelong. Thus, under *Gross*

Builders' rationale, Kevin's damages should be calculated based on his life expectancy. However, because it would be expected that a child would lose his or her parents due to natural causes during the child's lifetime, a child's pain and suffering damages related to a parent's premature death should be limited by the parent's normal life expectancy. This is, in fact, the measure of damages indicated by the district court below."

Justice Anstead wrote a short concurring opinion pointing out that the decedent had a 28 year old daughter only a few years older than the appellee who received nothing under the Wrongful Death Act despite this minor difference in ages. In light of the Court's interpretation of the statute which gives these damages to a minor child throughout the parents' normal life expectancy, the legislative intent of the Legislature is obviously inconsistent. Despite this inconsistency, it is settled that in Florida a minor child, as defined by the Wrongful Death Statute, is entitled to recover mental pain and suffering as a result of the death of the parent for the period of the normal life expectancy of the deceased parent.