

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

HOLLIS RINKER, Individually and as Executrix of the Estate of BLAKE RINKER, Plaintiff,	:	DOCKET NO. 11-02,189
	:	
vs.	:	CIVIL ACTION –
	:	MEDICAL
	:	PROFESSIONAL
	:	LIABILITY
JERRY V. LAMBERT, M.D.; THE WILLIAMSPORT HOSPITAL; WILLIAMSPORT HOSPITAL & MEDICAL CENTER; SUSQUEHANNA HEALTH: SYSTEMS, INC.; SUSQUEHANNA HEALTH SYSTEM; SUSQUEHANNA REGIONAL HEALTHCARE ALLIANCE; SUSQUEHANNA PHYSICIAN SERVICES; SUSQUEHANNA HEALTH MEDICAL GROUP; BESTPRACTICES OF PENNSYLVANIA, P.C.; and BESTPRACTICES, INC., Defendants.	:	
	:	
vs.	:	
	:	
ALLEN K. RINKER and ANDREW RINKER, Intervners.	:	MOTION FOR RECONSIDERATION

OPINION AND ORDER

Presently before this Court is a Motion for Reconsideration and a Petition for Intervention filed by the deceased Blake Rinker’s son, Allen Rinker, and joined by another son, Andrew Rinker (collectively “the Rinker sons” or “the sons”). The Rinker sons filed the motion and petition in order to set aside the Court’s June 11, 2013 Order approving the above-captioned parties’ settlement agreement and fund allocation. The Court held oral argument on the sons’ motion and petition on June 12, 2013. At oral argument, the sons were represented by Attorney Joseph Orso, III, while the Estate of Blake Rinker was represented by Attorney Daniel Mathers. At the time of the hearing, the Court did not receive any testimony. At the time of the argument, the parties did not raise any disputed facts. After consideration of the arguments and upon

review of the pertinent case law, the Court GRANTS the Rinker sons' petition for Intervention but DENIES their Motion for Reconsideration and AFFIRMS its June 11, 2013 Order.

I. Brief Factual and Procedural Background

Plaintiff filed the above-captioned matter on behalf of the estate of her deceased husband, Blake Rinker. Plaintiff alleged that the negligent actions taken by Dr. Lambert and Susquehanna Health contributed to the death of her husband. The matter was scheduled to be tried during the undersigned's April 2013 Trial Term. However, before the term began, the parties' agreed to settle and discontinue the case. On May 14, 2013, the Court prematurely approved the parties' settlement agreement.¹ The Court vacated the May 14, 2013 Order on May 15, 2013, and the parties were directed not to distribute any funds.² On June 11, 2013, the Court received the letter from the Pennsylvania Department of Revenue approving the allocation of the settlement funds as all survival benefits. Therefore, by order dated June 11, 2013, the Court approved the parties' settlement agreement and fund allocation.

II. Rinker Sons' Arguments

Presently, the Rinker sons argue that the settlement funds were improperly allocated as survival benefits. The sons argue that some of the funds, such as medical and funeral expenses, should have been allocated as wrongful death benefits. With some of these settlement funds being allocated as wrongful death benefits, the sons also argue that they should receive their intestate share of these funds. The Court does not agree.

III. Discussion

The Rinker sons' arguments require the Court to interpret 42 Pa. C.S. § 8301 (the "Wrongful Death Statute") and its interplay with 42 Pa. C.S. § 8302 (the "Survival Act"). The

¹ This Order was docketed on May 15, 2013.

² This Order was docketed on May 16, 2013.

Wrongful Death Statute delineates the rights associated with a wrongful death action; it provides those individuals allowed to claim damages under wrongful death³ and what damages are recoverable⁴. It is the intent of the Wrongful Death Statute to compensate a decedent's relatives for their loss. *Gillette v. Wurst*, 937 A.2d 430, 436 (Pa. 2007); *Manning v. Capelli*, 411 A.2d 252 (Pa. Super. Ct. 1979). However, the Survival Act provides that a cause of action pertaining to the death of a individual survives the death of that individual; essentially, the Survival Act permits causes of actions that the deceased could have asserted himself but for his own death, loss, or injuries. 42 Pa. C.S. § 8302. *Harvey v. Hassinger*, 461 A.2d 814, 816 (Pa. Super. Ct. 1983). Overall, the wrongful death action arises out of the death and its effect on certain beneficiaries, while the survival action arises out of the injury to the deceased himself. *See* 42 Pa. C.S. § 8301-02; *Harvey*, 461 A.2d at 816.

Of most significance in this matter is how the benefits pass under these statutes.

Wrongful death benefits pass through the laws of intestacy while survival benefits pass through the estate. *See Gillette*, 937 A.2d at 436. Intestate succession is governed by 20 Pa. C.S. § 2101-2114 (the "intestacy statute"). At the time of his death, Mr. Rinker predeceased his wife, Hollis, and his two sons; his sons were not an issue of both Mr. Rinker and Ms. Rinker. Therefore, according to 20 Pa. C.S. § 2102(4), Ms. Rinker would receive one-half of the benefits, and, according to 20 Pa. C.S. §§ 2103(1) and 2104(2), the Rinker sons would receive the remaining half of the benefits in equal shares. Alternatively, if the benefits passed through the estate under the Survival Act, Ms. Rinker would receive all of those benefits pursuant to Mr. Rinker's will.⁵

³ 42 Pa. C.S. § 8301(b).

⁴ 42 Pa. C.S. § 8301(c).

⁵ Mr. Rinker executed a Last Will and Testament on September 5, 2003, devising and bequeathing the entirety of his estate (less debts and funeral expenses) to his wife, Hollis Rinker.

The Rinker sons argue that some of the damages allocated as survival damages should have been allocated as wrongful death damages. In support of their argument, the sons turn to 42 Pa. C.S. § 8301(c), specifying wrongful death damages as “damages for reasonable hospital, nursing, medical, funeral expenses and expenses of administration necessitated by reason of injuries causing death.” The sons argue that Plaintiff claimed damages relating to medical and funeral expenses in her pleadings, and, based upon these pleadings, the sons believe that some of the settlement funds should have been allocated as wrongful death damages. However, case law does not mandate such a result.

According to 20 Pa. C.S. § 3323, a settlement in a survival action must be approved by the Court. *Schuster v. Reeves*, 589 A.2d 731 (Pa. Super. Ct. 1991), *appeal denied*, 600 A.2d 196 (Pa. 1991). Generally, a policy in the law exists favoring wrongful death benefits over survival benefits. *Murray Estate v. Love*, 7 Pa. D. & C.4th 530, 535 (York 1990); *Krause v. B & O R.R.*, 33 Pa. D. & C.3d 458, 470-71 (Somerset 1983). However, this policy is premised upon the “natural preference for compensation of needy dependents for loss over windfall inheritances.” *Krause*, 33 Pa. D. & C.3d at 471. In this case, the Rinker sons are not “needy dependents.” The Rinker sons are both adult males, living in Florida. The sons contact with Mr. Rinker included occasional telephone calls and a yearly birthday and/or Christmas present. In this matter, the individual most in need of compensation for the passing of Mr. Rinker is his widow. Also, the Court notes that the Rinker sons do not claim to have paid any of the medical and/or funeral expenses of Mr. Rinker; these monies were paid out of Mr. Rinker’s estate. Therefore, the Court finds that the policy favoring wrongful death benefits over survival benefits does not apply in this case. The Court finds that the settlement funds shall be allocated as purely survival benefits.

Additionally, the Rinker estate correctly states that the bulk of the settlement agreement consisted of monies that would have been received by Mr. Rinker from his Coast Guard pension and that these damages are properly allocated as survival benefits. The Court agrees. The Court conducted a number of settlement conferences in the above-captioned matter. The Court witnessed that the main portion of damages that the estate wanted to obtain from the defendants was Mr. Rinker's pension. The Court considers these benefits as survival benefits.

Also, the estate argues that allocating all of the proceeds to the survival action fulfills the intent of Mr. Rinker's will. The Court agrees. On September 5, 2003, Mr. Rinker executed a will devising and bequeathing his estate (minus debts and funeral expenses) to Ms. Rinker. Allocating the funds in this matter to the survival action would require the benefits to pass through the estate. Therefore, Mr. Rinker's intention of providing his wife with his remaining estate would be fulfilled by allocating the settlement benefits as survival benefits.

Even if this Court was to conclude that some of the settlement funds should be allocated to the wrongful death claim, the Rinker sons are not eligible to receive these funds. The Wrongful Death Statute lists those individuals who can claim a benefit under the statute; in particular, section (c) of the statute provides:

(b) Beneficiaries. – Except as provided in subsection (d)⁶, the right of action created by this section shall exist only for the benefit of the spouse, *children* or parents of the deceased, whether or not citizens of this Commonwealth or elsewhere. The damages recovered shall be distributed to the beneficiaries in the proportion they would take in the personal estate of the decedent in the case of intestacy....

42 Pa. C.S. § 8301(c) (emphasis added) (footnote added). Both the estate and the sons stipulated that the sons are children of Mr. Rinker. Based upon this stipulation alone, the sons believe that

⁶ Section (d) allows actions to be taken by personal representatives if no beneficiaries exist. 42 Pa. C.S. § 8301(d).

they are entitled to their intestate share of the wrongful death benefits; however, the estate believes that the sons must prove that they suffered a pecuniary loss in order to recover the wrongful death benefits, which they have failed to do. *See Gaydos v. Domabyl*, 152 A. 549, 551-53 (Pa. 1930); *Estate of Wolfe*, 915 A.2d 1197, 1201 (Pa. Super. Ct. 2006), *appeal granted*, 946 A.2d 641 (Pa. 2008), *appeal dismissed*, 962 A.2d 670 (Pa. 2008); *Manning*, 411 A.2d at 256. *See also Short v. Pavlides*, Nos. 516 and 2724, 1999 Phila. Ct. Com. Pl. LEXIS 13, *10-13 (Apr. 16, 1999). The Court agrees with the estate.

When an adult child attempts to recover his intestate portion of the proceeds of his father's wrongful death action, the adult child must suffer a pecuniary loss. *Wolfe*, 915 A.2d at 1200. Our Superior Court has defined a pecuniary loss as:

a destruction of a reasonable expectation of pecuniary advantage from the deceased. It is not a matter of guess or conjecture, but must be grounded on reasonably continuous past acts or conduct of the deceased. The reasonable expectation of pecuniary advantage to one standing in the family relation may be shown in many ways, but more frequently through services, food, clothing, education, entertainment, ***and gifts bestowed; to be reasonable, the services and the gifts must have been rendered with a frequency that begets an anticipation of their continuance; occasional gifts and services are not sufficient on which to ground a pecuniary loss.***

Id. (emphasis in original). The adult child bears the burden of proving a pecuniary loss from the death of his parent. *Id.*

[A]n adult child who had no personal relationship with the decedent, had never received support from the decedent, and had never been given any gifts by the decedent failed to suffer a pecuniary loss and could not share in the proceeds of the wrongful death action. Conversely, where it is demonstrated that the person standing in a family relation with the decedent enjoyed his company and

companionship and had a reasonable expectation of future pecuniary gain from the decedent, that person is entitled to recover in the wrongful death proceeds.

Id. at 1200-01.

In this matter, it is clear to the Court that neither son can show that they suffered a pecuniary loss from Mr. Rinker's death. The sons, now adults, never lived with Mr. and Ms. Rinker. The sons always lived in Florida with their mother. The estate provided that, at most, Mr. Rinker gave Andrew Rinker \$250/year, between birthday and Christmas gifts; the estate provided that Mr. Rinker did not give anything to Alex Rinker within the past ten (10) years, due to his incarceration. Additionally, the estate provided that Mr. Rinker did not pay for either of the sons' education. The record cannot sustain a finding that the sons have suffered a pecuniary loss from Mr. Rinker's death. Mr. Rinker's gifts to Andrew were of an *occasional* nature, offered only on birthdays and holidays, and were not significant enough to establish a pecuniary loss. *C.f. Wolfe*, 915 A.2d at 1203 (where the Court found that a daughter suffered a pecuniary loss from her father's death because her father assisted her with her college expenses, helped her with her car, offered her another car to use during graduate school, provided her with cash and groceries during graduate school, provided her family gifts twice a month, and bought significant furnishings for her home). The Court finds that the Rinker sons suffered no pecuniary loss from their father's death. Further, based upon the facts here, the Court finds that the sons could have had no reasonable expectation of pecuniary advantage. Therefore, any claim the sons assert against Mr. Rinker's wrongful death benefits must fail.

The Court enters the following Order.

ORDER

AND NOW, this 20th day of June, 2013, for the reasons stated above, it is hereby ORDERED and DIRECTED that Allen and Andrew Rinker's Petition to Intervene is GRANTED, but their Motion for Reconsideration of the Court's June 11, 2013 Order is DENIED. The Court's June 11, 2013 Order approving the parties' settlement agreement and fund distribution is hereby AFFIRMED.

BY THE COURT,

Date Richard A. Gray, J.

cc: Daniel K. Mathers, Esq. – Plaintiff's Estate Counsel
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