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Diana Behrens v. Raleigh Hills Hospital, Inc. : Brief of Appellants

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

DIANA BEHRENS, individually)
and as Guardian ad Litem of)
NATHAN ALAN BEHRENS,)

Plaintiffs and)
Appellants.)

vs.)

Case No. 13093

RALEIGH HILLS HOSPITAL, INC.,)

Defendant and)
Respondent.)

APPEAL FROM THIRD DISTRICT COURT
THE HONORABLE G. HAL TAYLOR

APPELLANTS' BRIEF

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Defendant and)
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APPELLANTS' BRIEF

STATEMENT OF THE NATURE OF THE CASE

This is an interlocutory appeal from the denial of appellants' Motion to Amend Their Complaint to Include Punitive Damages.

DISPOSITION IN LOWER COURT

Appellants' Motion to Amend their Complaint was denied by Honorable G. Hal Taylor, Third Judicial District Judge, Salt Lake County, Utah, on

RELIEF SOUGHT

Appellants seek to have the order denying their right to amend their complaint to include punitive damages overruled allowing them to amend so that the action may continue.

FACTS

Alan Robert Behrens was a patient of respondent Raleigh Hills Hospital. While in their facility, he caused his death by cutting his wrists. At the time his life seeped away, he was in

an "intensive care unit" being cared for by an "intensive care" staff. Diana, his widow, brought an action against respondent on behalf of herself and her infant child, Nathan Alan Behrens. In February 1980 the action was tried before a jury and the defendant was found liable in the amount of \$100,000. Having second thoughts about denying one of the respondent's jury instructions, the trial court overturned the jury verdict.

Thereafter, appellants moved the court to allow them to amend their complaint and ask for punitive damages. The appellants asked for such an amendment because the facts brought forth at trial demonstrated respondent's total lack of professional competence in treating and caring for the deceased. Appellants' motion was denied. From this denial the appellants appeal.

Detoxification requires intensive care. A person is undergoing great physical and psychological pressures. A person's pulse, breathing, and blood pressure can be racing so fast as the depressing effect of alcohol leaves the body that medication is required to maintain the vital signs within livable limits. Many, as the decedent Alan Robert Behrens, have ulcers and other physical ailments. Psychologically, a person's world has often crumbled: his work, his wife, and his self-image. In addition to the physical and psychological problems, alcohol is itself a depressant. All this acts upon a person during detoxification.

These difficulties with detoxification lead to a higher risk of suicide for those undergoing detoxification. A person

undergoing detoxification is depressed and depression distinctly relates to suicide. (Tr. Dr. Gary Mills Stephenson, P43-L22)

The seriousness of this problem is such that anyone competent to detoxify a person should search into the mental state of a patient, and if that patient were too intoxicated to evaluate, then assume the worst until such evaluation could be made. (Tr. Dr. Michael Decaria, P4-L13).

Decedent Alan Robert Behrens died because respondent Raleigh Hills Hospital failed to treat him competently. A review of the medical records, which are part of the record on this appeal, indicate an evaluation of Alan Robert Behrens' mental state was never made. Alan Robert Behrens was not observed constantly while in detoxification by Raleigh Hills Hospital. Other institutions such as the Veterans' Administration Hospital and Salt Lake Detoxification Center, which have greatly different funding, do observe their patients either through windows or on television monitors while they undergo detoxification. The only observation of Alan Robert Behrens' mental state was made by a fellow roommate, Neldon McDonald. Alan Robert Behrens told Neldon McDonald of his urge to commit suicide. Neldon McDonald responded by staying with Alan Robert Behrens and remaining up with him during the night in prayer. This episode was reported to Raleigh Hills Hospital. (Tr. Neldon McDonald, P20-L19) Raleigh Hills Hospital did nothing. Alan Robert Behrens died from a razor given to him by a nurse at Raleigh Hills Hospital. On the day he cut himself, the patients and staff were

having a party. The nurse, Diana Brown, could hardly be bothered by Alan Robert Behrens' request for a razor and gave it to him in passing. While she was at the party, Alan Robert Behrens lost his life.

The issue of consequence to the body of law of the State of Utah and other states is the inequity of withholding punitive damages from victims in wrongful death actions.

POINT I.

PROPRIETY OF PUNITIVES IN THIS CASE

The acceptance of punitive damages by the courts was established early in the English Common Law. The Restatement, 2nd, Torts, §908(1) defines punitive damages as:

"Punitive damages are damages, other than compensatory or nominal damages, awarded against a person to punish him for his outrageous conduct and to deter him and others like him from similar conduct in the future."

The Utah Supreme Court elaborated upon this definition in Powers v. Taylor, 14 U2d 152, 379 P2d 380 (1963):

"Whether such damages are allowable is not dependent upon the classification of the wrongful act, nor upon the nature of the injury, but upon the manner and the intent with which it is done. If the wrongful act by which one injures another is done willfully and maliciously, our law allows imposition of punitive damages as a punishment to defendant for such conduct and as a warning to him and others against this."

Punitive damages are assessed not to measure the damage to the plaintiff but to measure the action of the defendant.

Terry v. Zions Cooperative Merchantile Institution, 605 P2d 314
(1979), the court stressed this point:

"The purpose of a punitive or exemplary damage award is not to compensate the party harmed but rather to punish the wrongdoer, to deter him from similar acts in the future, and to provide fair warning to others similarly situated that such conduct is not tolerated."

If you apply this definition to the instant case, the allowance of punitive damages is decided not by the loss to appellant Diana Behrens and her son but by the conduct of defendant. The appellant may win or lose this argument before the trier of fact, but justice should allow them their day in court.

POINT II

THE RELATIONSHIP OF PUNITIVE DAMAGES TO UTAH'S WRONGFUL DEATH STATUTE.

The wrongful death statutes arose from Lord Cambell's Act, 9 & 10, VICT. Chapter 93 (passed in England in 1846). The English courts have apparently not allowed punitive damages with that statute. 94 ALR 386. Courts in the United States have been likewise stubborn in allowing punitive damages in wrongful death actions.

The Utah wrongful death statute, UCA 78-11-7, states,

"In every action under this and the next preceding section, such damages may be given as under all the circumstances of the case may be just."

The Utah Supreme Court has not interpreted this section of the statute in regard to punitive damages. This is a case of first impression for this jurisdiction.

The Court in Jones v. Carvell, #16753 filed January 6, 1982 (Citation not yet assigned), held that Utah's wrongful death statute is compelled to follow the direction of the Utah Constitution or be unconstitutional.

"A wrongful death cause of action was established by the Utah Territorial Legislature in 1874, Ch. 11 (1874), Laws of the Territory of Utah, 9, II, Compiled Laws of Utah, §2961 (1888). The present standard for the determination of damages was enacted in 1884. Laws of the Territory of Utah (1888). Indeed, the matter was of such importance at the time of statehood given the general uncertainty of the law, at least in other states, that the framers of the Utah Constitution provided for a judicial remedy by Article 16, §5, of the Constitution which states that a 'right of action to recover for injuries resulting in death, shall never be abrogated, and the amount recoverable shall not be subject to any statutory limitation'

"Under present statutory law, the right to sue for the wrongful death of a child is established by Utah Code Annotated, 1953, §78-11-6, §78-11-7, which addresses the nature of recoverable damages and provides that '... such damages may be given under all the circumstances of a case as may be just.' Unlike wrongful statutes in some other states, Utah statutory law does not limit damages to economic or 'pecuniary' losses from a child's death."

The court is required to interpret Utah's wrongful death statute in accordance with Utah's Constitution. In Millett v. Clark Clinic Corp., 69 P2d 934 (Utah, 1980), the court stated,

"It is to be observed, moreover, that statutory enactments are to be so construed as to render all parts thereof relevant and meaningful, and that interpretations are to be avoided which render some part of a provision nonsensical or absurd.."

The court must review the statute in the light which produces a harmonious blend with the definition of punitive damages. Punitive damages cannot be defined as having the

purpose of punishing a defendant and deterring that defendant and others from future outrageous conduct if, at the same time, the wrongful death statute exculpates such a defendant by the virtue of the fact that he has killed his victim rather than maimed him. In Gavica v. Hanson, 608 P2d 861 (Idaho, 1980), the Idaho Supreme Court faced the identical dilemma. The Idaho wrongful death statute states,

"IC. §5-311, Action for Wrongful Death--When the death of a person, not being a person provided for in §5-310-Idaho Code, is caused by the wrongful act or neglect of another, his heirs and personal representative may maintain an action for damages against the person causing the death; or if such person be employed by another person who is responsible for his conduct, and also against such other person. In every action under this and the preceding section, such damages may be given as under all the circumstances of the case may be just."

The Idaho Supreme Court acknowledged the dichotomy and met it squarely,

"The precise issue then to be decided is whether the statutory language 'such damages may be given as under all the circumstances of the case may be just' permits proof and allowances of punitive damages."

The Idaho Supreme Court decided the case stating:

"Thus, while the wrongdoer may be liable for punitive damage if he injures another, it is argued that punitive damages should nevertheless be withheld if the wrongdoer so injures another as to cause death. We find no logic in such a conclusion. If wrongful conduct is to be deterred by the award of punitive damages, that policy should not be thwarted because the wrongdoer succeeds in killing his victim. To hold otherwise would violate the precept that this court should avoid a statutory interpretation which produces an absurd result."

Hartman v. Meier, supra. See also State of South Dakota v. Brown, 144 Cal. Reporter 758, 576 P2d 473 (Cal. 1978); James v. Carnation Co., 278 OR 65, 562 P2d 1192 (Oregon, 1977), Blondheim v. State, 84 Wash. 2d 874, 529 P2d 1096 (Wash. 1975).

"As is well stated in 1 Speiser, Recovery for Wrongful Death §3.4 at 135 (1975): 'Insofar as logic and symmetry in law are concerned, it is difficult to understand why a person injured by a drunken driver may recover punitive damages, but why the survivors of the estate of one killed by such a driver may not--because of non-specific wording of a wrongful death statute. The nature and quality of the wrongful act should dictate whether its perpetrator should be compelled to respond in more than compensatory damages--not the fortuitous circumstance whether he happens to injure or to kill his victim.'"

CONCLUSION

The issue before the court is not whether the Supreme Court should award punitive damages to appellants. Appellants argue that punitive damages scream out from the facts. The issue is whether punitive damages can be allowed at all in a wrongful death action. If the wrongful death statute is interpreted as limiting the damages allowed in wrongful death actions, then the statute is unconstitutional. Insofar as the statute is ambiguous, it must be interpreted in the light which will produce a harmonious result with the existing body of law. It should not be better to maim than to kill. The court must decide whether the definition of punitive damages, now well established in Utah a sham by interpreting the wrongful death statute in such a way as to produce an absurd and ridiculous result. It is up to this Court to determine the meaning of "just".

DATED March 4, 1982.

Respectfully submitted,

JAMES E. HAWKES

CERTIFICATE OF MAILING

I certify that I mailed two copies of the foregoing Brief to Robert F. Orton, attorney for Respondent, 68 South Main Street, Fifth Floor, Salt Lake City, Utah 84101, U. S. mail, postage prepaid, March 5, 1982.

Hazel Sykes