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ILLINOIS LAW MANUAL

CHAPTER IV

STATUTORY CAUSES OF ACTION

A. WRONGFUL DEATH ACT

1. Introduction

Prior to the enactment of the Wrongful Death Act in 1853, the common law did not provide a cause of action for the family of a person killed by a wrongful act. LiPetri v. Turner Constr. Co., 36 Ill. 2d 597, 600 (1967). The Wrongful Death Act permits family members to recover for “pecuniary injuries” suffered by them when a spouse’s or nextof-kin’s death was caused by the wrongful act, neglect, or default of another. Mio v. AlbertoCulver Co., 306 Ill. App. 3d 822 (1999); Poole v. Clausen, 328 Ill. App. 3d 964 (2002). Pecuniary injuries include loss of society and loss of consortium. Bullard v. Barnes, 112 Ill. App. 3d 384 (1983); Drews v. Global Freight Lines, Inc., 144 Ill. 2d 84 (1991). A Wrongful Death Act action does not survive the decedent’s own action for injuries, but is an independent action for the decedent’s relatives to recover their financial loss suffered as a result of the death. (See Chapter IV, Section B, Survival Act for action in which family can recover on behalf of decedent.)

2. Statutory Language

The Wrongful Death Act generally provides monetary compensation for the benefit of a decedent’s surviving spouse and/or next of kin when a wrongful act causes the death. The Wrongful Death Act created the following cause of action:

Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then and

in every such case the person who or company or corporation which would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amounts in law to a felony.

740 ILCS 180/1.

The Wrongful Death Act grants a right of recovery and provides defenses in the following section:

Every such action shall be brought by and in the names of the personal representatives of such deceased person, and, except as otherwise hereinafter provided, the amount recovered in every such action shall be for **the exclusive benefit of the surviving spouse and next of kin** of such deceased person and in every such action the jury may give such damages as they shall deem a fair and just compensation with reference to the pecuniary injuries resulting from such death, to the surviving spouse and next of kin of such deceased person.
(Emphasis added.)

740 ILCS 180/2.

“Next of kin” for purposes of the Wrongful Death Act are blood relatives of a decedent who would have taken the decedent’s property by intestacy. Estate of Finley, 151 Ill. 2d 95 (1992); Mio v. Alberto-Culver Co., 306 Ill. App. 3d 822 (1999); Booker v. Lal, 312 Ill. App. 3d 170 (2000); Glenn

v. Johnson, 198 Ill. 2d 575 (2002). For example, in Illinois, if a decedent dies without a will and there is no surviving spouse or descendant, but there is a surviving parent and/or sibling, the decedent's estate will be distributed to the parents and siblings in equal parts. 755 ILCS 5/2-1(d). Therefore, a parent may be able to recover for the wrongful death of a child or an adult child.

3. Elements of a Wrongful Death Action

If death results from a tortious injury, the Wrongful Death Act creates a cause of action in the name of the personal representative for the benefit of the widow and next of kin for their pecuniary injuries. 740 ILCS 180/1, 180/2. The personal representative must prove three elements:

- 1) a duty of the defendant to the decedent;
- 2) breach of that duty; and
- 3) pecuniary damages to persons designated in the Act.

Vaughn v. Granite City Steel Division of National Steel Corp., 217 Ill. App. 3d 46, 50 (1991). Glenn v. Johnson, 198 Ill. 2d 575 (2002).

a. Pecuniary Injuries

In calculating "pecuniary injuries" resulting from an adult's wrongful death, a jury may consider the money, goods, and services the decedent might reasonably have been expected to contribute to the surviving spouse and next of kin had he or she lived. A court will instruct a jury that it may consider the following factors in determining the pecuniary loss to a next of kin:

- 1) The money, goods, and services the decedent customarily contributed in the past;
- 2) The money, goods, and services the decedent was likely to have contributed in the future;
- 3) The age of the decedent;

- 4) The sex of the decedent;
- 5) The health of the decedent;
- 6) The physical and mental characteristics of the decedent;
- 7) The habits of the industry, sobriety, and thrift of the decedent;
- 8) The occupational abilities of the decedent;
- 9) The grief, sorrow and mental suffering of the next of kin;
- 10) The relationship between the lineal next of kin and the decedent.

IPI 31.01, 31.02, 31.03, 31.04, 31.05, 31.06.

If the decedent leaves surviving children, the jury may also consider what instruction, moral training, and superintendence of education he might reasonably have been expected to give his children had he lived. See Hall v. Gillins, 13 Ill. 2d 26 (1958); Kaiserman v. Bright, 61 Ill. App. 3d 67 (1978).

The broad interpretation of pecuniary injuries under the Wrongful Death Act also grants a spouse a right to recover for loss of consortium. Elliot v. Willis, 92 Ill. 2d 530 (1982); Glenn v. Johnson, 198 Ill. 2d 575 (2002). The principle of consortium is unique to a marriage partner. Consortium includes society, guidance, companionship, felicity, and sexual relations. Elliot, 92 Ill. 2d 530. Thus, in determining the pecuniary value of a spouse, a court will instruct a jury that the society, companionship, and conjugal relationship are factors that it may consider. Id. at 541. Similarly, loss of society falls under the broad definition of pecuniary injuries. Loss of society is available for non-marital next of kin. Hall, 13 Ill. 2d 26. Pecuniary damages for mental anguish are not recoverable. Kaiserman, 61 Ill. App. 3d 67.

b. Rebuttable Presumption of Pecuniary Damages

Different presumptions of pecuniary loss apply depending on the relationship between the decedent and the beneficiary. Where a decedent leaves a direct lineal heir or a spouse, there is a presumption that the lineal heir or spouse has suffered some substantial pecuniary loss by reason of the death. Hall v. Gillins,

13 Ill. 2d 26 (1958); Estate of Finley, 151 Ill. 2d 95 (1992).

Parents are entitled to a presumption of pecuniary injury in the loss of a child's society. Defendants may rebut this presumption by presenting evidence that a parent and child were estranged. If a jury finds that there has been loss of society, the jury should deduct the parent's projected child-rearing expenses from the amount for loss of society. Bullard v. Barnes, 102 Ill. 2d 505 (1984); Gabriel v. Illinois Farmers Ins. Co., 171 Ill. App. 3d 663 (1988); Jefti v. State, 49 Ill. Ct. Cl. 63 (1996). Parents are also entitled to a presumption of their loss of society in the wrongful death of an adult child and a stillborn child where the adult child is not survived by a wife or children. Stephens v. Trinity Med. Ctr., 292 Ill. App. 3d 165, 170 (1997); Ballweg v. City of Springfield, 114 Ill. 2d 107, 120, (1986); Estate of Finley, 151 Ill. 2d 95 (1992); Jones v. Chicago Osteopathic Hosp., 316 Ill. App. 3d 1121 (2000).

Siblings are not entitled to a presumption of pecuniary injury. Estate of Finley, 151 Ill. 2d 95 (1992); Jones v. Chicago Osteopathic Hosp., 316 Ill. App. 3d 1121 (2000). In order to recover, a sibling must prove a loss of society. Id. Adult children are also entitled to a presumption of substantial pecuniary injury for the loss of society of a deceased parent. Cooper v. Chicago Transit Authority, 153 Ill. App. 3d 511 (1987); Adams v. Turner, 198 Ill. App. 3d 353 (1990).

4. Comparative Fault

The Wrongful Death Act is a statutory cause of action and, therefore, comparative fault does not automatically apply. The Act requires contributory negligence to bar any beneficiary whose negligence contributed to the death from any recovery. Haist v. Wu, 235 Ill. App. 3d 799, 813 (1992); 740 ILCS 180/2.

5. Punitive Damages Not Generally Available Under Wrongful Death Act

Punitive damages are typically not recoverable in an action based on the Wrongful Death Act. Mattyasovszky v. West Town Bus Co., 61 Ill. 2d 31, 34 (1975). However, there is an exception to the general rule. In National Bank of Bloomington v. Norfolk Western Railroad Co., 73 Ill. 2d 160 (1978), the court held that, where a statute expressly provides that punitive damages are available and that punitive damages are available after the death of the injured party, the Wrongful Death Act does not prevent recovery of punitive damages. One such statute is the Public Utilities Act. (For further discussion of actions that survive death, see Section B, The Survival Act.)

6. Statute of Limitations

The Wrongful Death Act specifically provides that all actions shall be commenced within two years after the death of the decedent. A minor may commence an action within two years after reaching 18 years of age. 740 ILCS 180/2.