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Recent Developments: Colorado v. Bertine: Automobile Inventory Exception to the Fourth Amendment Warrant Rule

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Keane v. Carolina Freight Carriers Corp.: RECOVERY UNDER WRONGFUL DEATH STATUTE ALLOWED WHERE CHILD HAS NOT REACHED HIS TWENTY-SECOND BIRTHDAY

In *Keane v. Carolina Freight Carriers Corp.*, 70 Md. App. 298, 520 A.2d 1142 (1987), a case of first impression, the Court of Special Appeals of Maryland allowed recovery under Maryland's Wrongful Death Statute to the parents of a child who had passed his twenty-first (21st) birthday but had not reached his twenty-second (22nd).

Gregory Keane, son of Michael E. Keane and Catherine Patricia Keane, was killed in an automobile accident caused by the negligence of Carolina Freight Carriers Corporation (Carolina). At the time of his death Gregory was 21 years, 7 months, and 28 days old.

The jury returned verdicts in favor of the Keanes for mental anguish and emotional pain and suffering. Carolina made a motion for judgment notwithstanding the verdict, based on the theory that Gregory was too old to permit his parents recovery under the Wrongful Death Statute. The trial court granted the motion and the Keanes appealed.

The Maryland Wrongful Death Statute provides in pertinent part:

> *Damages if unmarried child, who is not minor, dies.*—For the death of an unmarried child, who is not a minor child, the damages awarded under subsection (c) are not limited or restricted by the "pecuniary loss" or "pecuniary benefit" rule but may include damages for mental anguish, emotional pain and suffering, loss of society, companionship, comfort, protection, care, attention, advice, counsel, training or guidance where applicable if:
>
> (1) The child is 21 years old or younger; or
>
> (2) A parent contributed 50 percent or more of the child's support.

Md. Cts. & Jud. Proc. Code Ann. Section 3-904(e) (1984).

The court of special appeals disagreed with the trial court's interpretation of the statutory construction of the Wrongful Death Statute. "[T]he cardinal rule of construction of a statute is to effectuate the actual intention of the legislature." *Keane*, at 301, 520 A.2d at 1144, (quoting *Schweitzer v. Brewer*, 280 Md. 430, 438, 374 A.2d 347 (1977)). In determining the legislative intent the court looked to the language of the statute itself. When the language of the statute is plain and clear the court will give effect to the statute as it stands. In addition, "[r]esults that are unreasonable, illogical or inconsistent with common sense should be avoided whenever possible consistent with the statutory language." *Id.* at 302, 520 A.2d at 1144, (quoting *Schweitzer v. Brewer*, 280 Md. 430, 438-39, 374 A.2d 347 (1977)).

The trial court based their interpretation of the statute on a line of criminal cases and held that since Gregory Keane had passed his twenty-first (21st) birthday the Keanes could not recover under the statute. In so doing, the court erred in that criminal cases apply a different set of rules of statutory construction than civil cases, those being strict construction in favor of the defendant. In addition, there were numerous civil cases on point which the court could have looked to for authority.

The court of special appeals determined that since the statute specifically stated it covered a child who is not a minor, it was "obvious that the legislature intended to permit recovery for the death of certain unmarried adult children." *Id.* at 302, 520 A.2d at 1144. Carolina argued that recovery was limited to children under twenty-one (21) since the legislature had used the age of twenty-one (21) in granting rights to individuals in the past, such as the right to buy liquor. The court rejected this argument because "the clear purpose of the statute was to compensate the parents of certain unmarried non-minor children even though the children themselves are given no legal rights." *Id.* at 304, 520 A.2d at 1145.

In looking at the language of the statute, the trial court thought that the phrase "21 years old or younger" should be interpreted as a single entity. The court of special appeals concluded that the word "or" was a "disjunctive conjunction [which] serves to establish a relationship of contrast or opposition," and does not alter or limit the meaning of the phrase "21 years old." *Id.* at 302, 520 A.2d at 1144, (quoting *In Re John R.*, 41 Md. App. 22, 25, 394 A.2d 818 (1978)).

The task then turned to defining what was meant by the term "21 years old." The court found that the term had a common and ordinary meaning. That being; a person is thought of as being a certain age until he reaches his next birthday. *E.g.*, *Covell v. State*, 143 Tenn. 571, 227 S.W. 41 (1921); *People v. Cooper*, 207 Misc. 845, 143 N.Y.S.2d 855, 857 (1955). Since Gregory Keane had not reached his twenty-second (22nd) birthday the court ruled he was still twenty-one (21) years old under the plain and clear meaning of the phrase when he was killed.

The Court of Special Appeals of Maryland in interpreting Maryland's Wrongful Death Statute looked to the legislative intent and the plain and clear meaning of the statute. *Keane* makes it clear that parents of a non-minor child who has passed his twenty-first (21st) birthday but has not reached his twenty-second (22nd) birthday is considered to be twenty-one (21) years old, and the parents may recover for emotional pain and suffering under the Wrongful Death Statute.

—Adam J. Sevel

Colorado v. Bertine: AUTOMOBILE INVENTORY EXCEPTION TO THE FOURTH AMENDMENT WARRANT RULE

In *Colorado v. Bertine*, 475 U.S. ____, 107 S. Ct. 738 (1987), the United States Supreme Court held that police officers may open closed containers while conducting a routine inventory search of an impounded vehicle.

A Boulder City police officer arrested Steve Bertine for driving while under the influence of alcohol. After Bertine was taken into custody and before a tow truck arrived to take the car to an impoundment lot, another officer conducted an inventory search of the van's contents. Directly behind the front seat, the officer found a backpack. Inside the backpack the officer discovered various containers holding controlled substances, cocaine paraphernalia and a large amount of cash. After the inventory was conducted, the van was towed to an impoundment lot and the contraband was taken to the station. At that time Bertine was charged with unlawful possession of cocaine with the intent to dispense, sell and distribute, unlawful possession of methaqualone and driving while under the influence.

Prior to his charges on the drug offenses, Bertine moved to suppress the evidence found during the inventory search on the ground that the search of the closed backpack and containers exceeded the permissible scope of a search under the Fourth Amendment. The state trial court determined that the search did not violate Bertine's right under the Fourth Amendment of the Federal Constitution. However, the court did grant Bertine's motion to suppress, holding that the inventory search violated the United States Constitution. On the State's interlocutory appeal, the Supreme Court of Colorado affirmed but premised its ruling on the United States Constitution. *Arkansas v. Sanders*, 442 U.S. 753 (1979), *United States v. Chadwick*, 433 U.S. 1 (1977).

The U.S. Supreme Court reversed the Colorado court's decision holding that the

Fourth Amendment does not prohibit a state from proving criminal charges with evidence discovered during an inventory search. In reaching its decision, the Court found the facts of the case to be controlled by principles governing inventory searches of automobiles and of an arrestee's personal effects as set forth in *South Dakota v. Opperman*, 428 U.S. 364 (1976) and *Illinois v. Lafayette*, 462 U.S. 640 (1983), rather than searches of closed trunks and suitcases conducted solely for the purpose of investigating criminal conduct. *Chadwick, Sanders.*

Inventory searches are not subject to the warrant requirement because they are conducted by the government as part of a community caretaking function, totally divorced from the detection, investigation or acquisition of evidence relating to the violation of a criminal statute. *Cady v. Dombrowski*, 413 U.S. 433 (1973). Moreover, neither the policies behind the warrant requirement nor the concept of probable cause are implicated in an inventory search because they relate to the detection, investigation and acquisition of evidence in a criminal procedure. Since no claim was made in *Bertine* that procedures instituted were a subterfuge for a criminal investigation, the Court's analysis centered upon the reasonableness of the routine caretaking functions.

In order to justify an intrusion on a constitutionally protected right, governmental and societal interests must outweigh the protected right. Automobile inventory searches have been recognized as a means of: (1) the protection of the owner's property while it remains in police custody; (2) the protection of the police against claims or disputes over lost or stolen property and (3) the protection of police from potential danger. 475 U.S. at ____, 107 S.Ct. at 741.

In *Bertine*, Chief Justice Rehnquist found that strong governmental interests are served by protecting an owner's property while the property is in police custody and insuring against lost or stolen property. Further, the police who were acting in accordance with standard caretaking procedures did not act in bad faith. 475 U.S. at ____, 107 S.Ct. at 742. In his dissent, Justice Marshall contended that the search *was* unconstitutional because department regulations gave police discretion to choose between impounding the van or parking and locking it in a public place. But according to the majority, the exercise of discretion was exercised according to standardized criteria on the basis of something other than suspicion of criminal conduct.

The dissent, as well as the Supreme Court of Colorado, expressed the view that the police, before investigating a container, should weigh the strength of an individual's privacy interest against the possibility that the container might serve as a repository for valuable items. In addition, the dissent maintained that Bertine's expectation of privacy in his backpack and its contents outweighed the governmental interests since the intrusive search had gone into an intimate area of personal affairs. The Court rejected these contentions, stating that a single function standard is essential to guide police officers who have only limited time and expertise to reflect on and balance the societal and individual interests evidenced in the specific circumstances they confront. See *New York v. Belton*, 453 U.S. 454 (1981).

This case distinguishes constitutional inventory searches from unconstitutional ones. *Bertine* also indicates that inventory searches will be valid so long as they are conducted according to standardized procedures and on the basis of something other than the suspicion of criminal activity. *Bertine* follows a trend of other Supreme Court decisions which hold that the legitimate governmental interests outweigh individual Fourth Amendment interests.

– William J. Morrison

California Federal Savings & Loan Ass'n. v. Guerra, Director, Department of Fair Employment and Housing: STATE MANDATED BENEFITS FOR PREGNANT EMPLOYEES HELD NOT DISCRIMINATION UNDER TITLE VII

The United States Supreme Court has upheld a California state statute which requires employers to provide female employees unpaid pregnancy leave of up to four months. The employer's original action in the United States District Court for the Central District of California challenged the validity of the statute with respect to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.* The court granted the employer's motion for summary judgment, stating that the California statute was pre-empted by Title VII and was therefore "inoperative under the Supremacy Clause of the United States Constitution." 33 EPD ¶34,227, 34 FEP Cases 562 (1984). The United States Court of Appeals for the Ninth Circuit reversed, based on a finding that the California statute was neither inconsistent with nor unlawful under Title VII. Rather, the court found the statute furthered the goal of equal employment opportunity for women. *California Federal Savings & Loan Ass'n. v. Guerra*, 758 F.2d 390 (1985). The Supreme Court granted certiorari, and in a 6-to-3 decision affirmed the decision of the court of appeals.

Lillian Garland, a receptionist at a Los Angeles based savings and loan, lost her job after taking three months' pregnancy leave. Garland filed a complaint with the Department of Fair Employment and Housing, which charged the bank with violating § 12945(b)(2) of the Fair Employment and Housing Act, CAL. GOV'T CODE ANN. § 12900 *et seq.* Section 12945 (b)(2) requires an employer to grant an employee leave for a reasonable period of time on account of pregnancy. The Fair Employment and Housing Commission had construed this section as providing pregnant workers a qualified right to be reinstated to the position they held prior to their absence. Before the scheduled hearing took place, however, the bank, joined by the California Chamber of Commerce and a local trade union (both represented numerous employers throughout the State of California), filed this action in district court seeking a declaration that § 12945(b)(2) is inconsistent with and preempted by Title VII, and an injunction against its enforcement. Title VII prohibits employment discrimination on the basis of sex. The district court granted summary judgment for petitioners, but the court of appeals reversed. Justice White delivered the opinion of the Court.

In concurring with the decision on appeal, Justice Marshall first discussed whether the California statute was preempted by Title VII. There are three ways in which federal law may supersede state law: in express terms; by inference where there is no room for supplementary state regulation; and when state law conflicts with federal law. The Court dismissed the first and second alternatives as inapplicable to the situation at hand, but concluded that the third basis for preemption was at issue in the case herein. Sections 708 and 1104 are the two sections of the 1964 Civil Rights Act which the majority analyzed with respect to preemption. Because both sections provide a liberal construction concerning state regulation of employment discrimination, the Court concluded that Congress recognized the importance attached to state antidiscrimination laws and in no way intended to displace them. Therefore, it was held that § 12945(b)(2) is not pre-empted by Title VII.

The Court next discussed the Pregnancy Discrimination Act of 1978 ("PDA"), 42 U.S.C. § 2000e(k), which amended Title VII with respect to the definition of sex discrimination. The Act specifies that sex discrimination includes discrimination on the basis of pregnancy. The petitioners argued that the California statute provides "special treatment" for pregnant employees, and is therefore rejected by the language