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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 Mary-

land 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