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# Recent Developments

## *Carolina Freight Carriers Corp. v. Keane*: WHERE CHILD HAS NOT REACHED HIS TWENTY-SECOND BIRTHDAY WRONGFUL DEATH RECOVERY AVAILABLE TO PARENTS

In *Carolina Freight Carriers Corp. v. Keane*, 311 Md. 335, 534 A.2d 1337, the Court of Appeals of Maryland, in a case of first impression, interpreted the age limitation set forth in § 3-904(e)(1) of Maryland's Wrongful Death Act to include children who are 21 years old but have not yet reached their twenty-second birthday. The Act allows recovery of solatium damages for the death of an unmarried, non-minor child who was "21 years old or younger" at the time of death. By examining the legislative history of the Act, the court concluded that the language of § 3-904(e)(1) was not meant to preclude recovery unless the child had already reached his twenty-second birthday.

Gregory Thomas Keane was born on March 11, 1962. On November 7, 1983, while unmarried and residing with his parents, he was killed in a head on collision caused by the negligence of Carolina Freight Carriers Corporation (Carolina). Gregory's parents subsequently brought an action under the Maryland Wrongful Death Act. The jury found Carolina guilty of negligence and awarded the Keanes solatium damages in the amount of \$220,000 for the loss of their son.

The defendant, Carolina, moved for judgment notwithstanding the verdict, or in the alternative, a partial new trial on the issue of solatium damages. *Keane* at 337, 534 A.2d at 1338. Carolina contended that the language of the Act precluded the Keanes from recovering because Gregory was 21 years, 7 months and 28 days old at the time of his death and, thus, he was not within the class of persons contemplated by the Act. In essence, "Gregory was too old." *Id.* at 337-38, 534 A.2d at 1338-39. Granting the motion, the trial court entered judgment in favor of Carolina. On appeal, the court of special appeals

reversed and reinstated judgment in favor of the Keanes.

The Court of Appeals of Maryland granted certiorari and affirmed the decision of the court of special appeals. Relying on *Kaczorowski v. City of Baltimore*, 309 Md. 505, 512, 525 A.2d 628, 631 (1987), the court evaluated the meaning of the phrase, "21 years old or younger," by examining several sources which guide statutory construction. *Kaczorowski* suggests that legislation generally has a central purpose or goal and, therefore, the court shall look to legislative intent, as "controlled by the context in which [it] appears" and "as read in the light of other external manifestations of that purpose." *Id.* at 514, 525 A.2d at 632.

The Wrongful Death Act, in its first draft, was enacted to provide recovery for pecuniary loss suffered by a spouse, parent or child of a person killed by the wrongful act, neglect or default of another. *McKeon v. State, Use of Conrad*, 211 Md. 437, 442, 127 A.2d 635, 637 (1956). That first act permitted recovery for the pecuniary loss of a child for the period from death until the time that the child would have reached the age of majority. *Coughlan v. B. & O. R.R. Co.*, 24 Md. 84, 107-8. (1866). Through time, the Act was modified several times to enlarge the list of persons that were entitled to recover, but it was not until 1969 that the Act was drastically amended to include the recovery of solatium damages. Essentially, these damages include mental anguish, emotional pain and suffering, loss of society, companionship, comfort, protection, marital care, parental care, filial care, attention, advice, counsel, training, guidance or education. Md. Cts. & Jud. Proc. Code Ann. § 3-904(e)(1). (1984 Repl. Vol., 1987 Cum. Supp.)

Once solatium damages were recoverable, the legislature attempted to establish parameters for recovery while continuing to expand coverage to reflect the purpose of the Act. At various times, the limitations upon recovery were based on the decedent's residence, educational status or partial dependency. *Keane* at 342,

534 A.2d at 1341. The court noted, however, that "[t]he educational provision that was in the introductory version of H.B. 461 tends to suggest that recovery up to the age of 22 and perhaps beyond was within the legislative intent." *Id.* at 344, 534 A.2d at 1342.

"One who enters first grade at age six is likely to graduate from college at an age beyond the twenty-first birthday and even older, if graduate school is contemplated." *Id.* The court rationalized that substitution of the educational provision by the "21 years old or younger" requirement, was probably based on the elitist implications that are inherent by the inclusion of an educational provision. It was obvious to the *Keane* court that all of these modifications were designed to expand, not limit, the coverage of the Wrongful Death Act by adding to the categories of persons whose deaths were recoverable and by enlarging the types of damages for which recovery could be had. *Id.*

Consistent with *Kaczorowski*, the court then examined the language of § 3-904(e)(1) and interpreted it in light of the purpose for which it was drafted. The court began its analysis by noting that the word, "or" in "21 years old or younger" serves to establish a contrasting or an opposing relationship. *Keane v. Carolina Freight Carriers*, 70 Md. App. 298, 302, 520 A.2d 1142, 1144 (1987). Thus, these terms represent two distinct groups - the set of people who are "21 years old" and the set of people who are "younger." The latter of these groups needs little explanation. It simply encompasses those who have not yet reached their twenty-first birthday and, therefore, are "younger" than 21 years old.

As this is the only plausible interpretation of the term, "younger", the court held that the phrase, "21 years old" must include all persons from the date of their twenty-first birthday to the eve of their twenty-second birthday. To hold to the contrary would be completely illogical as it would include, at most, a 24-hour period (the day of a person's twenty-first birth-

day). In looking to the statutory language of the Act coupled with a legislative history fraught with expansive modifications, the court concluded that the legislature could not have intended such a narrow reading of the Act.

Consistent with the legislative history, the court in *Keane*, has expanded the parameters of the Maryland Wrongful Death Act to include yet another category of persons for whose death, recovery may be allowed. The court now permits an award of solatium damages for the loss of an unmarried, non-minor child as long as that child has not reached his twenty-second birthday. Although the impact of this decision is somewhat limited, it espouses the court's policy to continually modify the provisions of the Act so that a broad remedial purpose may be achieved.

—Natascha Sethi

***Attorney Grievance Commission v. Winters*: DISBARMENT WARRANTED WHERE ATTORNEY'S CRIMINAL ACTIVITY IS NOT SUBSTANTIALLY RELATED TO HIS DRUG ADDICTION**

An impaired mental condition or addiction to alcohol or drugs may be a mitigating factor in imposing a discretionary sanction, even where an attorney's conduct would otherwise warrant disbarment. In *Attorney Grievance Commission v. Winters*, 309 Md. 658, 526 A.2d 55 (1987), however, the Court of Appeals of Maryland held that an attorney's state convictions for filing fraudulent state income tax returns, conspiring to violate income tax laws, and possessing and distributing cocaine, warranted disbarment where the attorney's criminal activity was not substantially the result of his drug addiction or mental disorder.

In 1975, Richard M. Winters was admitted to the Maryland Bar. In 1978, while his trial practice was substantially expanding, Mr. Winters experimented with cocaine. He determined that cocaine enhanced his ability to work harder and longer. Several months later, Winters acknowledged his drug addiction, when he "changed his practice of using a standard dosage and consumed whatever amount of cocaine he had available." *Id.* at 660, 526 A.2d at 56.

Winters continued to practice law and in cases where his clients paid him cash for his legal services, he intentionally failed to report this as income on his taxes. Winters used this unreported income to purchase additional cocaine, which he began to consume openly. *Id.*

In 1983, Winters was charged and found guilty, in the Circuit Court for Anne Arundel County, of conspiracy to violate Maryland income tax laws and of unlawfully and wilfully filing fraudulent income tax returns for 1979 and 1980. Also, he was charged and found guilty, in federal court for the possession and distribution of cocaine.

Based on these convictions, Maryland's Attorney Grievance Commission, filed a petition for disciplinary action against Winters. The petition alleged violation of the Code of Professional Responsibility Disciplinary Rules 1-102(A). In particular, the petition alleged: 1) violating a Disciplinary Rule; 2) engaging in illegal conduct involving moral turpitude; 3) engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; 4) engaging in conduct that is prejudicial to the administration of justice; and 5) engaging in any other conduct that adversely reflects on his fitness to practice law. *Id.* Pursuant to Rule BV9b, the matter was referred to the Circuit Court for Montgomery County for an evidentiary hearing, at which time Winters was suspended from the practice of law in Maryland. That court then filed comprehensive findings of fact and conclusions of law with the Court of Appeals of Maryland. The court of appeals concluded that disbarment was the appropriate sanction in this case.

To begin its analysis, the court of appeals noted that Winters' "serious criminal conduct would normally call for disbarment." *Id.* at 662, 526 A.2d at 57 (citing *Attorney Grievance Commission v. Osburn*, 304 Md. 179, 498 A.2d 276 (1985)). In *Osburn*, this court held that convictions for filing fraudulent state income tax returns and for conspiracy to violate income tax laws warranted disbarment. Moreover, the Standards for Imposing Lawyer Sanctions Rule under 5.11, adopted by the American Bar Association in February of 1986 stated that disbarment is generally appropriate when "a lawyer engages . . . in the sale, distribution or importation of controlled substances." *Winters*, at 662, 526 A.2d at 57. Winters argued, however, that "compelling extenuating circumstances" existed for imposing a sanction less severe than disbarment. *Id.* at 663, 526 A.2d at 57. He asserted that his impaired mental condition, caused by cocaine addiction and a "Narcissistic Personality Disorder" was responsible to a "substantial degree" for the conduct which caused his convictions. *Id.*

Although rejecting Winter's argument, the court of appeals first recognized that "cases indicate that impaired mental condition or addiction to alcohol or drugs may be a mitigating factor in imposing a disci-

plinary sanction, even where an attorney's conduct would otherwise warrant disbarment as a matter of course." *Id.* (citing *Attorney Grievance Commission v. Haupt*, 306 Md. 612, 614-16, 510 A.2d 590, 591-92 (1986); *Attorney Grievance Commission v. Willemain*, 305 Md. 665, 679-80, 506 A.2d 245, 252-53 (1986)). The court stated further, however, that "we have imposed sanctions short of disbarment *only* when the mental impairment or addiction is 'to a substantial degree' responsible for the attorney's improper conduct." *Winters* at 663, 526 A.2d at 57.

When comparing the instant case to ones involving attorneys with alcohol addictions, the court restated what they had previously said in *Attorney Grievance Commission v. Willemain*, 297 Md. 386, 395, 466 A.2d 1271, 1275 (1983):

We have looked at the shortcomings of attorneys in a somewhat different light where we have concluded that the acts giving rise to the charges against an attorney have resulted to a substantial extent from the physical and mental maladies the attorney was suffering, particularly where alcoholism was involved.

*Id.* at 664, 526 A.2d at 58.

In the evidentiary hearing, moreover, the court of appeals stated that "Mr. Winters has convinced the court that neither his clients nor his practice ever suffered any adverse consequences as a result of his criminal activity." *Id.* The court further stated that "the Court cannot understand how it can logically find that Mr. Winters did properly and competently function as an attorney, while addicted to cocaine, and at the same time find that his addiction and personality disorder caused his criminal activity." *Id.* at 664-5, 526 A.2d at 58.

The court further opined that,

this is not a case where the Respondent suffered a substantial lack of capacity such that he lost control over every aspect of his life. The Respondent instead asserts that he "selectively" lost control over particular portions of his life and the drug addiction is used by Respondent as an attempt to explain away those matters which have led to severe personal consequences, to wit: multiple criminal convictions. It is the finding of this Court that the Respondent was fully able to function in his law practice, in other aspects of his personal life and to stop using cocaine when he decided to do so. Hence, his drug addictions and per-