Refiling Of Wrongful Death Lawsuit By Sister Was OK

by MO Lawyers Media Staff
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Where a woman voluntarily dismissed a wrongful death case involving medical treatment of her mother, the case could be refiled by her sister within the one-year savings statute, the Missouri Court of Appeals' Southern District has ruled.

The defendants argued that only the named plaintiff in the first case could refile, but the Southern District disagreed.

"By the trial court limiting to the first person to file suit the right to pursue a remedy statutorily granted to all beneficiaries within a certain class... the trial court has employed a hyper-technical ready" of the wrongful death statute, wrote Judge Robert S. Barney for the court.

The judgment was reversed in *Denton c. Soonattrukal, et al.,* MLW No. 50923, issued on Oct. 15.

Track of the Law

"If you don't give the savings statute the reading we urged, the original-filing plaintiff can do away with the entire cause of action for the whole class even within the savings period," said Mark A. Kennedy of Poplar Bluff, who represented the plaintiff.

"The Southern District's opinion is clear and well reasoned," said Kennedy. "It follows the track of the law as it has developed as to who the plaintiff is under the wrongful death statute."

Joseph C. Blanton, Jr. of Sikeston, attorney for one of the defendants, said, "We think the statute is clear. With all due respect to the Court of Appeals, the decision is not correct." He said a motion for rehearing or transfer will be filed.

Surviving Children

Ethel Denton died on Nov. 20, 1998, after receiving treatment at Twin Rivers Medical Center in Dunklin County. On Nov. 20, 2001, one of Ethel's daughters, Betty Conley-Denton, filed a wrongful death suit against the hospital and two doctors. Betty filed the suit as a member of a class of plaintiffs consisting of all the surviving children of Ethel. On March 12, 2002, Betty dismissed the case voluntarily and without prejudice.

On March 7, 2003, and within the savings limitation period of one year set out by Sect. 537.100, another daughter, Thelma Denton, filed a wrongful death case against the defendants. She also alleged medical malpractice and asserted that she was a member of a class of plaintiffs who are all of the surviving children of Ethel.

The trial court dismissed the case, agreeing with the defendants' argument that Thelma was not entitled to the benefit of the one year savings provision because she was not the named plaintiff in the original suit. Thelma appealed.

Judge Barney quoted the relevant portions of the wrongful death statute. Section 537.080.1 provides that an action may be brought: "(1) By the spouse or children or the surviving lineal descendants of any deceased children, natural or adopted, legitimate or illegitimate, or by the father or mother of the deceased, natural or adoptive; (2) If there be no person is class (1) entitled to being the action, then by the brother or sister of the deceased, or their descendants. ... (3) If there be no persons in class (1) or (2) entitled to being the action, then by a plaintiff ad litem."

And Sect. 537.100 states: "Every action instituted under section 537.080 shall be commenced within three years after the cause of action shall accrue ... and provided, that if any such action shall have been commenced within the time prescribed in this section, and the plaintiff therein take or suffer a nonsuit, or after a verdict for him the judgment be arrested, or after a judgment for him the same be reversed on appeal or error, such plaintiff may commence a new action from time to time within one year after such nonsuit suffered or such judgment arrested or reversed. ..."

Barney referred to a 1989 case in which a widow voluntarily dismissed a wrongful death suit and refiled within the savings period. She then moved to amend to add her four children, who also moved to intervene as co-plaintiffs. The trial court denied the motions, finding that only the name plaintiff could sue within the savings period. The Southern District reversed, finding specifically that the children were not asserting a "new claim," and that the statute "provides for one indivisible claim for the death of a person which accrues on the date of death."

Barney acknowledged that the 1989 case "can be distinguished factually by this Court in that there has not technically been a joinder of all parties to this litigation, its significance lies in the fact that it rejected the proposition that 'the *only* party with the right to bring a wrongful death action within the one year savings period is the plaintiff in the case filed during the original three-year period.'"

But he said the case made clear that Sect. 537.080 "provides that *only one action*, that is 'one indivisible claim for the [wrongful] death of a person which accrues on the date of death,' may be brought under this section against any one defendant for the death of any one person."

Broad Interpretation

After reviewing prior cases, Barney said that "we discern the thread that runs through the foregoing opinions is that the wrongful death statute should be interpreted in a light which broadly grants the greatest number of beneficiaries, *as limited by the statutorily designated classes* set out in section 537.100, the right to seek compensation for losses suffered as a result of the wrongful death of a relative.

“Accordingly, here, ‘it would seem that only by the most narrow, harsh, and technical construction,’ ... could we say that a surviving child, such as Plaintiff, is barred from bringing a cause of action under the wrongful death act *within* the savings limitation period set out in section 537.100 merely because the surviving child was not the original plaintiff to file suit.

“Driven to its logical conclusion, Defendants’ arguments would allow one member of a class of beneficiaries to institute a wrongful death action one day, non-suit it the next day regardless of the reason, and thereby preclude any other named statutory relative from pursuing her statutory remedy under the wrongful death statute solely because she was not the first plaintiff to file her action.”

He also noted that the wrongful death act is an “entitlement statute,” and that a case is not subject to dismissal because of the failure to join one or more of the potential claimants.

Accordingly, “it is clear that a ‘plaintiff’ does not bring his or her action solely for the benefit of herself when there are other possible beneficiaries within a particular class.”

The “fundamental consideration” was that the “manifest purpose of the wrongful death statute is to provide compensation for the loss of the companionship, comfort, instruction, guidance and counsel, etc., to statutorily designated, and hence a limited number, of relatives of a decedent wrongfully killed by a tortfeasor.

“By the trial court limiting to the first person to file suit the right to pursue a remedy statutorily granted to all beneficiaries within a certain class – even after a non-suit by the first to file, and although the savings provisions of section 537.100 had not yet expired – the trial court has employed a hyper-technical reading of section 537.100.

“We find such an interpretation to be contrary to the manifest purpose of the wrongful death act.

“Furthermore, such a literal interpretation as that espoused by Defendants would tend to diminish by mer procedural hyper-technicality two additional objectives behind the wrongful death statutes, that is ‘ to ensure that tortfeasors pay for the consequences of their actions, and generally to deter harmful conduct which might lead to death.’”

Barney reversed the judgment and remanded to the trial court.

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(The full text of the Southern District’s opinion in *Denton v. Soonattrukal, et al.,* MLW No. 50923, is available from Missouri Lawyers’ Weekly – 15 pages. Call (800)685-2147.)