

No. 1-11-2158

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JASON HALL, as Special Administrator of the Estate of Jean Soapes, Deceased,)	
)	
)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 CR 8588
)	
UNITED SECURITY and YVES AUXILA,)	Honorable
)	Randy A. Kogan,
Defendants-Appellants)	Judge Presiding.

PRESIDING JUSTICE ROBERT E. GORDON delivered the judgment of the court.
Justices Garcia and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* When plaintiff files a complaint for only wrongful death, the defendants are not required to include Medicare as a payee on a settlement draft because the damages claimed by plaintiff would not be subject to a Medicare lien.

¶ 2 Jason Hall ("plaintiff") brought a wrongful death action against defendants claiming defendant Yves Auxila negligently caused the death of Hall's mother Jean Soapes (decedent).

The parties executed a settlement agreement and plaintiff made a motion in the trial court to

1-11-2158

dismiss the case with prejudice, pursuant to the settlement agreement. Defendants then moved to include Medicare as a payee on the settlement draft. The trial court granted the dismissal order and denied defendants' motion to include Medicare on the draft. Defendants appeal, claiming that the failure to include Medicare on the settlement draft leaves it vulnerable to a suit from the federal government for recovery of monies paid by Medicare for medical expenses. We affirm.

¶ 3

BACKGROUND

¶ 4 Plaintiff claimed in his complaint that defendant Auxila was an agent and employee of defendant United Security, and was attempting to load decedent, an invalid, into a vehicle when one of the vehicle's doors closed on decedent's leg which, as a result of later complications, was a cause of decedent's death. Decedent died intestate and her son was appointed as special administrator of decedent's estate.

¶ 5 After the parties settled the case, plaintiff filed a motion asking the trial court to dismiss the case with prejudice. Before the trial court ruled, defendants filed a motion asking the trial court to include Medicare as a payee on the settlement draft. Defendants argue in their motion that federal law requires that any payment made by Medicare to cover a beneficiary, which is later found to be the responsibility of a third party, must be repaid to Medicare by that third party. If the United States government brings suit to compel repayment, it may recover twice the amount owed by the third party.

¶ 6 In this case, defendants do not know whether decedent made a claim and received funds from Medicare towards the payment of medical expenses. All defendants know on the Medicare issue is that decedent was Medicare eligible.

1-11-2158

¶ 7 The trial court granted plaintiff's motion to dismiss the case with prejudice and denied defendants' motion to include Medicare as a payee on the settlement draft. The court denied defendants' motion because the complaint alleges only a wrongful death claim, and Medicare would have no potential liens on any damages paid under the wrongful death statute. Defendants refused to pay the settlement amount because of their continued fear that they would be subject to a suit from the United States government for double damages due to failure to repay Medicare for any medical expenses that they paid. Defendants appeal the denial of their motion.

¶ 8 ANALYSIS

¶ 9 Defendants argue that they will be subject to a suit by the United States government for double damages arising out of possible unreimbursed Medicare expenses if Medicare is not included on the settlement draft. We find defendants' argument unpersuasive.

¶ 10 I. Standard of Review

¶ 11 The issue in this case is whether the trial court properly interpreted the Wrongful Death Act (740 ILCS 180/0.01 et seq. (West 2008)) to find that Medicare need not be listed as a payee on the settlement draft. As a case of statutory interpretation, we review the trial court's decision *de novo*. *MD Electrical Contractors, Inc. v. Abrams*, 228 Ill. 2d 281, 286 (2008). *De novo* consideration means we perform the same analysis that a trial judge would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011).

¶ 12 II. Wrongful Death Act

¶ 13 The Wrongful Death Act creates a cause of action for the survivors of a decedent to recover damages from the party which negligently or wrongfully caused the decedent's death.

1-11-2158

740 ILCS 180/1 (West 2008). The damages are limited to the survivors' "grief, sorrow, and mental suffering" that result from the decedent's death. 740 ILCS 180/2 (West 2008); *Smith v. Mercy Hospital & Medical Center*, 203 Ill. App. 3d 465, 481-82 (1990) (holding that the legislature clearly intended for survivors to be compensated for their loss resulting from the death of the decedent); *Cooper v. Chicago Transit Authority*, 153 Ill. App. 3d 511, 517-18 (1987) (holding that the Wrongful Death Act only allows for recovery of pecuniary losses). The Illinois Appellate Court for the Third District has held that adult children may recover pecuniary damages under the Wrongful Death Act for the loss of a parent's "guidance, love and affection." *In re Estate of Keeling*, 133 Ill. App. 3d 226, 228 (1985). This court has followed that holding and allows adult children to recover pecuniary losses for the death of parents. *Cooper*, 153 Ill. App. 3d at 518.

¶ 14 The Survival Act, 755 ILCS 5/27-6 (West 2008), on the other hand, preserves causes of action on behalf of decedents that would otherwise be rendered moot upon the death of the decedent. In other words, the Wrongful Death Act covers injuries suffered by the next of kin because of and after the decedent's death, whereas the Survival Act allows for the recovery of damages for injury sustained by the deceased up to the time of death. *Wyness v. Armstrong World Industries*, 131 Ill. 2d 403, 410 (1989). The Survival Act does not create a cause of action; rather, it allows a representative of the decedent to continue an existing cause of action after the decedent's death. *Wyness*, 131 Ill. 2d at 410-11 (citing *National Bank of Bloomington v. Norfolk & W. R. Co.*, 73 Ill. 2d 160, 172 (1978)). Litigants may bring wrongful death and survival actions simultaneously. *Wyness*, 131 Ill. 2d at 410.

1-11-2158

¶ 15 Plaintiff in the case at bar did not bring simultaneous wrongful death and survival claims. In a typical Survival Act claim, the representatives of the decedent would have a cause of action for medical expenses and pain and suffering of the decedent up to the date of death. *Murphy v. Martin Oil Co.*, 56 Ill. 2d 423, 431 (1974).

¶ 16 III. Medicare Has No Possible Claim

¶ 17 Defendants argue that they could be liable for twice the amount of any Medicare costs paid by Medicare. Title 42, section 411.24 of the Code of Federal Regulations allows the federal government to recover conditional payments made by Medicare on behalf of beneficiaries that are later determined to be the responsibility of third parties. 42 C.F.R. 411.24(b) (West 2008). The government may file a lawsuit against a responsible third party if such third party does not make the repayment voluntarily, and if the government succeeds, it may recover two times the amount it paid to the beneficiary. 42 C.F.R. 411.24(c)(2) (West 2008).

¶ 18 However, although defendants rightfully assert that the United States government may recover double damages from parties which fail to timely repay any Medicare payments, they have absolutely no reason to believe that they may be liable for any such payments. Plaintiff's complaint alleged three counts of wrongful death and nothing else. The only available damages to plaintiff, administrator of decedent's estate, would be those based on the pecuniary loss to himself and decedent's other survivors. *Cooper*, 153 Ill. App. 3d 517-18. The damages are for "the exclusive benefit" of plaintiff and the other survivors of decedent, based on the loss of their mother. 740 ILCS 180/2. Plaintiff does not allege any type of survival claim that would entitle plaintiff to damages owed to decedent.

1-11-2158

¶ 19 The trial court was aware of this fact and found that, because this was only a wrongful death suit, "there are no liens applicable to this matter." The nature and distinction of wrongful death claims and survival actions are so well-known under the law that very little case law exists on the issue at bar. Defendants cite only to federal precedent which the defendants use to interpret and define the scope of the federal Medicare legislation. Defendants cite no cases that involve wrongful death claims.

¶ 20 This Court decided a case that involved survival actions and a wrongful death claim in *Morris v. William L. Dawson Nursing Center*, 299 Ill. App. 3d 1107 (1998). However, the issue of that case was distinguishable from the issue in the case at bar. In *Morris*, the Court addressed whether siblings of a decedent could receive wrongful death payments when the decedent was survived by grandchildren. *Morris*, 299 Ill. App. 3d, 1109. In the statement of facts, the Court stated that all Medicare liens had been paid as part of the damages allocated to the survival action, which the trial court clearly delineated from the wrongful death damages. *Morris*, 299 Ill. App. 3d at 1108. In the case at bar, defendants claim that the settlement funds could be subject to a Medicare lien, but because the only claims are under the Wrongful Death Act, no possible Medicare lien could exist.

¶ 21 We are deciding this case based on the narrow issue that a Medicare lien cannot attach to a wrongful death claim. Therefore, we need not decide whether Medicare should be a payee on all settlement drafts in negligence cases, other than wrongful death, or where there is no evidence that Medicare made any payments to the injured person.

1-11-2158

¶ 22

CONCLUSION

¶ 23 Medicare liens do not apply to actions under the Wrongful Death Act. Therefore, the trial court properly dismissed defendants' motion to include Medicare on defendants' settlement draft.

¶ 24 Affirmed.