

WASHINGTON CASE UPDATE

The Ability to Bring a Wrongful Death Claim in Washington

From the desk of Kyle Riley: Does Washington recognize a common law wrongful death claim?

Claims Pointer: No, Washington does not recognize a common law wrongful death claim. Therefore, the claimant must meet the criteria in the Washington wrongful death statute in order to bring a wrongful death claim. If the claimant does not meet the beneficiary requirements as prescribed by the wrongful death statute, RCW 4.20.020, the claimant does not have standing to bring the claim.

case in point...

Vernon v. Aacres Allvest, LLC, 333 P.3d 534 (Wash. Ct. App. 2014).

Earl Vernon ("Earl") had a brother, Henry David Vernon ("David"), who was severely disabled. Because of his disabilities, David was completely dependent on others for his health and personal care needs. In 2009, David lived in a home under the care and supervision of Aacres Allvest, LLC ("Aacres"). On the morning of July 29, 2009, an Aacres staff member found David lying unresponsive on his bedroom floor. Emergency personnel transported David to the hospital where he was pronounced dead. The cause of David's death was "exogenous hyperthermia."

Earl, as David's legal guardian, filed suit against Aacres under the Abuse of Vulnerable Adults Act. Earl alleged that Aacres was responsible for David's death because Aacres negligently allowed him to sleep in an upstairs bedroom with closed windows and doors during a record heat wave knowing that David's medication made it difficult for him to control his body temperature.

Aacres moved for summary judgment arguing that Earl's claims must be dismissed because he lacked standing to bring suit under Washington's wrongful death and general survival statutes. In response, Earl contended that damages for David's pain and suffering and for funeral expenses should be available under the wrongful death and general survival statutes. Alternatively, Earl argued that the trial court should recognize a common law wrongful death cause of action which would allow him to recover both economic and noneconomic damages.

The trial court granted Aacres summary judgment motion and dismissed each of Earl's claims. The trial court concluded that Earl lacked standing to file a lawsuit because he was not one of the listed beneficiaries that could bring a lawsuit under Washington's wrongful death statute. Earl appealed on behalf of David and his estate.

Washington's wrongful death statute creates a right of action to recover damages when a person's death

is caused by the wrongful act, neglect, or default of another. See RCW 4.20.020. However, the court advised, the statute limits those individuals who may bring a wrongful death action. Essentially, under RCW 4.20.020, the Legislature has created a two-tier system of beneficiaries for purposes of a wrongful death action. Spouses and children of the decedent are the "first tier" beneficiaries while the decedent's parents and siblings constitute "second tier" beneficiaries. Second tier beneficiaries are entitled to recover for the decedent's wrongful death only if two requirements are met: (1) there are no first tier beneficiaries; and (2) if the second tier beneficiary can demonstrate that he or she was dependent upon the deceased for support.

Here, Earl was not dependent on David, and therefore he could not meet one of the two requirements for a second tier beneficiary to successfully bring a wrongful death claim under the statute. Nevertheless, Earl argued that Washington courts should conclude that the state's wrongful death statute should not preclude a *common law* wrongful death claim.

The court rejected Earl's argument based on a prior Washington Supreme Court case, *Philippides v. Bernard*, 151 Wash.2d 376 (2004), where the supreme court was asked to interpret a separate statute governing actions for injury or death of children and which also contained a requirement that parents who bring an action on behalf of an adult child must show that they are dependent on that child for support. In that case, the Court concluded that adopting a common law cause of action would create a direct conflict with the existing statutory scheme. Comparing the present case to that of *Philippides*, the court held that it could not recognize a common law wrongful death claim because doing so would conflict with the existing wrongful death statutory framework. Therefore, Earl's claims were dismissed because he could not meet both requirements of a "second tier" beneficiary under the wrongful death statute, and the court declined to recognize a common law claim for wrongful death.



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