

Maryland's Medical Malpractice Landscape After McQuitty

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In last year's *McQuitty v. Spangler* decision, the Maryland Court of Appeals illuminated Maryland's wrongful death statute and its implications for future medical malpractice claims. Considering the underlying dispute for the third time, the court determined whether the "definition of wrongful act" under Maryland's wrongful death statute "precludes beneficiaries from maintaining a wrongful death action when the decedent obtained a personal injury judgment predicated on the same underlying facts during his lifetime." *Spangler v. McQuitty*, 449 Md. 33, 39, 141 A.3d 156, 160 (2016).



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McQuitty also clarifies "whether a decedent's release of one joint tort-feasor in a personal injury action for any and all future claims in connection with the tortious conduct, also precludes the decedent's beneficiaries from pursuing a wrongful death action against all joint tort-feasors based on the same underlying facts." *Id.* at 39-40, 141 A.3d at 160.

The *McQuitty* court ultimately concluded that judgment on the merits in a "decedent's personal injury action during his or her lifetime does not bar a subsequent wrongful death action by the beneficiaries." *Id.* at 40, 141 A.3d at 160. It also held that, if the language of the release reveals an intent to discharge only one joint tort-feasor, "the release does not preclude a subsequent wrongful death action against other tort-feasors that were not parties to the release." *Id.*

The underlying facts of the alleged negligence are relatively simple, but the procedural history is rather complicated (the procedural history of all three cases has been simplified for purposes of this article). Peggy and Gary McQuitty filed suit on behalf of their minor child, Dylan, against Mrs. McQuitty's physician, who allegedly failed to secure her informed consent prior to the delivery, leading Mrs. McQuitty to suffer a "complete placental abruption" and causing severe injuries to Dylan, who developed cerebral palsy as a result.

The defendants were Mrs. McQuitty's obstetrician and primary care physician, Dr. Donald Spangler and his practice. Co-defendant Dr. Harrold Elberfeld, Dr. Spangler's partner, settled before trial. *Id.* at 40-41, 141 A.3d at 160-61.

After trial a jury returned a verdict for Dylan and awarded over \$13 million in damages, a large portion of which included future medical expenses. Defendants made a motion for remittitur and a motion for judgment notwithstanding the verdict (JNOV).

The circuit court granted the motion for JNOV, but this was reversed by the Court of Appeals in what would become *McQuitty I*, 410 Md. 33, 976 A.2d 1020, 1039 (2009). The case was remanded to address the motion for remittitur, and the circuit court's final judgment was affirmed by the Court of Appeals in *McQuitty II*, 424 Md. 527, 529-30, 36 A.3d 928,929-30 (2012).

Before *McQuitty II*, Dylan passed away, and his parents were named as personal representatives of his estate. 449 Md. at 41, 141 A.3d at 161. Three months after the judgment was satisfied in March 2012, Dylan's parents filed a wrongful death action under the Maryland wrongful death statute "to recover damages based upon the same underlying facts in the personal injury action regarding Dr. Spangler's failure to obtain informed consent." *Id.* at 42, 141 A.3d at 162-63.

The petitioners' motion to dismiss was granted by the circuit court, *id.*, and reversed by the Court of Special Appeals, *id.* at 45, 141 A.3d at 163 (*McQuitty III*).

Maryland's Wrongful Death Statute

McQuitty III addresses whether, "under the definition of 'wrongful act', in Cts. & Jud. Proc. 3-901(e), a wrongful death action is derivative, or independent of, a decedent's prior personal injury claim, where the decedent obtained a judgment based on the same underlying facts." *Id.* at 48, 141 A.3d at 165.

The Maryland wrongful death statute "allows the maintenance of an action 'against a person whose wrongful act causes the death of another.'" *Id.* at 48, 141 A.3d at 165 (quoting Md. Cts. & Jud. Proc. 3-902(a)). A wrongful act is an "act, neglect, or default including a felonious act which would have entitled the party injured to maintain an action and recover damages if death had not ensued." *Id.* (quoting Cts. & Jud. Proc. 3-901(e)). At issue in *McQuitty III* was the meaning of the phrase "if death had not ensued." *Id.* at 49, 141 A.3d at 165.

Because the ambiguous language of Maryland's wrongful death statute was subject to interpretation, Maryland's highest court analyzed the legislative history as well as the evolution of the statute's jurisprudence. The purpose of the statute, the highest court determined, "allows the decedent's beneficiaries or relatives to recover damages for loss of support or other benefits that would have been provided, had the decedent not died as a result of another's negligence." *Id.* at 53, 141 A.3d at 168.

Plus, the court clarified that the language of "death had not ensued" is not a procedural or jurisdictional prerequisite to a subsequent wrongful death action; rather, it spoke to the nature of the injury. *Id.* at 64, 141 A.3d at 174.

After a lengthy analysis, Maryland's highest court reiterated its stance of the minority view of wrongful death actions, providing that a wrongful death action presents a new and independent cause of action "which does not preclude a subsequent action brought by the decedent's beneficiaries, although the decedent obtained a personal injury judgment based essentially on the same underlying facts during his or her lifetime." *Id.* at 40, 141 A.3d at 165. The majority view considers a wrongful death action to be derivative of a personal injury claim.

The court dismissed the potential negative implications of this minority approach. Notably, the court discussed the impact on *res judicata*, the potential for double recovery, and policy considerations. Acknowledging that on its face *res judicata* appeared to be a defense, "because it is undisputed that Dylan possessed a viable claim against Petitioners from the outset of his personal injury action, any

potential res judicata defense fails.” Id. at 67, 141 A.3d at 176.

The court further notes that, “in addition to having a viable claim at the outset, the only conditions precedent to bringing a wrongful death action include: 1) that death ensued as a result of a wrongful act by a tort-feasor(s), 2) that the beneficiaries have standing to sue, and 3) that the action is within the statutory limitations period.” Id. (citations omitted).

Because the nature of damages in a wrongful death action (i.e., the damages are only incurred after the decedent’s death) are distinguishable from the damages incurred in a personal injury action (i.e., damages incurred by the decedent before death), the court dismissed that potential for double recovery as it is “generally not at risk.” Id. at 68, 141 A.3d at 177.

The court did not find credible evidence that the impact of this case could increase the number of lawsuits, the value of personal injury cases, and render settlements more difficult, as raised by Petitioners. Id. at 70, 141 A.3d at 178.

Implications on Releases

The court also considered “whether a decedent’s release of one joint-tortfeasor in a personal action for any and all future claims in connection with the tortious conduct also precluded the decedent’s beneficiaries from pursuing a wrongful death action against all joint tort-feasors based on the same underlying facts.” Id. at 39-40, 141 A.3d at 160.

The petitioners argued that the “covenant not to sue” within paragraph eight of the Elberfeld release was not limited to only that settling physician; rather, it was “an attestation that Respondents ‘will not maintain any potential action for wrongful death.’” Id. at 71, 141 A.3d at 179.

Moreover, because the Elberfeld release purportedly extinguished all future claims of wrongful death beneficiaries, known or unknown, relying on a previous Maryland Court of Appeals’ ruling, it would serve as a bar to the parents’ wrongful death action here.

The court rejected this argument. It stated “we are not persuaded that the Elberfeld release was a general release because ‘the covenant not to sue’ in paragraph eight did not clearly define the recipient at the time the covenant was made.” Id. at 75, 141 A.3d at 179. McQuitty III further determined, “[t]he release unambiguously reveals that the clearly defined recipient was Dr. Elberfeld, which did not constitute a release of all joint tort-feasors.” Id.

Accordingly, “[b]ecause the release was a covenant between Dylan and Dr. Elberfeld, and the language of the release unambiguously revealed an intent to release only Dr. Elberfeld, the release does not preclude Respondents’ wrongful death action against Petitioners.” Id. at 71, 141 A.3d at 178-79.

Concluding Thoughts

From a practical standpoint, it remains to be seen what impact McQuitty III will have on the landscape of medical malpractice claims within Maryland.

Because the decision leaves open the potential wrongful death beneficiary claims, will the decision lead to an influx of new cases? Will this decision disincentivize defendant healthcare providers from settling cases and therefore hinder the progress of settlements? Will settlements be higher because of the

potential for future cases?

Medical malpractice cases may involve multiple parties. Releases have become so commonplace and routine that practitioners recycle the same releases, without changing the language proposed.

Nonetheless, McQuitty III reminds practitioners to be mindful and diligent about the language incorporated into their releases and to be clear about the parties to be released. Most importantly, it reminds practitioners to ensure that the release includes language foreclosing the possibility of future claims brought by wrongful death beneficiaries and clearly identifying the parties whose claims will be foreclosed.

Yet, even if practitioners are diligent about incorporating more specific language, McQuitty III does not seem to address what language will be sufficient to foreclose future claims. Following the spirit of the decision, will this lead to related litigation challenging the sufficiency of this language? Because of these lingering concerns, will McQuitty III prompt the need for legislative action to address? But, given the competing interests, will the judiciary and the legislature be on the same page?

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