

**FOURTH DIVISION
DILLARD, P. J.,
MCFADDEN, P.J., and PIPKIN, J.**

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October 23, 2023

In the Court of Appeals of Georgia

A23A1090. TRACY GARNER et al. v. ACADIA HEALTHCARE COMPANY,
INC. et al.

PIPKIN, Judge.

Appellants Tracy Garner, as the conservator of the estate of William Garner, and the estate of William Garner, appeal from the trial court's order granting Appellees'¹ motion to dismiss Appellants' first amended complaint for failure to state a claim for relief. In their first amended complaint, Appellants alleged, among other things, wrongful death and ordinary negligence claims against the owners, operators, and employees of a mental health facility that evaluated William in April 2019. Specifically, Appellants alleged that William had been missing since his discharge from the facility and that Appellees breached a duty of care owed to William to keep

¹Appellants filed suit against Acadia Healthcare Company, Acadia Management Company, Riverwoods Behavioral Health d/b/a Lakeview Behavioral Health Hospital, and William D. Anderson, Jr., hereinafter referred to as "Appellees."

him safe. On appeal, Appellants put forth numerous arguments concerning how the trial court erred in its order dismissing their complaint. However, we need not reach any of these arguments, as we conclude that the trial court properly dismissed Appellants' complaint for lack of standing. Accordingly, we affirm the decision of the trial court.

1. "A motion to dismiss may be granted only where a complaint shows with certainty that the plaintiff would not be entitled to relief under any state of facts that could be proven in support of his or her claim." (Citation and punctuation omitted.) *Curles v. Psychiatric Solutions, Inc.*, 343 Ga. App. 719, 720 (808 SE2d 237) (2017). "We review the trial court's ruling on a motion to dismiss under the de novo standard of review." *Id.* So viewed, the record shows that William Garner, by and through his attorneys, filed the original complaint in July 2021, alleging alter ego/instrumentality; intentional infliction of emotional distress; ordinary negligence, respondeat superior, negligent hiring/retention/supervision; civil conspiracy; breach of fiduciary duty; violations of the Georgia Business Practices Act; punitive damages; bad faith; and general damages, all stemming from William's discharge from Lakeview Behavioral Health and his subsequent disappearance.

On April 18, 2022, a "Suggestion of Death" was filed notifying Appellees that William was "deceased" and that the Forsyth County Probate Court had appointed Tracy Garner to serve as conservator of William Garner's estate. Attached to the

notice, however, was a “Letter of Conservatorship of Missing Individual,” naming Tracy Garner as the conservator over a “missing individual’s estate” - i.e., William Garner. Appellants filed a motion requesting that the estate of William Garner, and Tracy Garner, as conservator, be substituted as party plaintiffs. The trial court granted the motion, and Appellants amended the complaint in July 2022, adding a claim of wrongful death.

Appellees timely answered the amended complaint and asserted in their defenses that Appellants lacked standing to pursue their claims. Appellees also filed a motion to dismiss for failure to state a claim and, in their brief in support, preserved their challenge to Appellants’ standing, arguing that Appellants did not meet the requirements of OCGA § 51-4-5 under Georgia’s wrongful-death statute. Appellants responded, arguing that, while no court had made a formal declaration of William’s death, the presumption of death codified in the probate code at OCGA § 53-9-1 et seq., established their standing to file a wrongful death action. The trial court summarily granted Appellees’ motion to dismiss, and, in a subsequent order, explained that “[t]he Court agreed with every argument put forth by [Appellees] in support of their motion.”

2. Appellants allege that the trial court erred by dismissing the amended complaint. We disagree. It is well-established that the wrongful-death statute is an act in derogation of the common law, which means that, when a court is called upon to

interpret this statute, “the express language of the Act will be followed and no exceptions to the requirements of the Act will be read into the statute by the courts.” (Citation and punctuation omitted.) *Toomer v. Metro Ambulance Svcs., Inc.*, 364 Ga. App. 469, 473 (2) (875 SE2d 479) (2022). *Lovett v. Garvin*, 232 Ga. 747, 748 (208 SE2d 838) (1974) (“Since [the wrongful-death statute] gives a right of action not had under common law, it must be limited strictly to the meaning of the language employed and not extended beyond its plain and explicit terms.”). As this Court has previously noted, “[t]hose instructions sound a lot like what we already do when we interpret statutes: give the statutory text its plain and ordinary meaning, viewed in the context in which it appears[.]” (Citation and punctuation omitted.) *Toomer*, 364 Ga. App. at 473 (2).

The portion of the wrongful death statute relevant to determining whether Appellants have standing to bring this lawsuit is OCGA § 51-4-5,² which states as follows:

(a) When there is no person entitled to bring an action for the wrongful death of a decedent under Code Section 51-4-2 or 51-4-4, *the administrator or executor of the decedent* may bring an action for and may recover and hold the amount recovered for the benefit of the next

²Of course, this is assuming that there are no spouses or children potentially entitled to relief under OCGA § 51-4-2. The record is currently silent on this issue. Indeed, Appellants pled no facts in their amended complaint asserting that no one else is entitled to bring a wrongful death action in this case.

of kin. In any such case the amount of the recovery shall be the full value of the life of the decedent.

(b) When death of a human being results from a crime or from criminal or other negligence, *the personal representative of the deceased person* shall be entitled to recover for the funeral, medical, and other necessary expenses resulting from the injury and death of the deceased person.

(Emphasis supplied). By its plain terms, the statute authorizes an administrator or executor of “the decedent” or the personal representative of “the deceased person” to bring an action for wrongful death. By Appellants’ own admission, the probate court has not yet determined whether William is deceased, see OCGA § 53-9-3 (describing requirements for probate court to “enter an order finding that the missing individual is dead” for the purposes of administration of estates), and the complaint only shows that Appellants were appointed the conservator and estate of a *missing* person.

Appellants argue that this case can still proceed because, under the probate code, a legal presumption of death arises once a person has been missing for a period of four years. See OCGA § 53-9-1 (a). Even assuming that this Court could rely on the rebuttable presumption in the probate code to establish that a death had occurred in this case, this Court cannot create a judicial exception to the statute establishing who may bring a wrongful death action. See *Toomer*, 364 Ga. App. at 473. Accordingly, the rebuttable presumption of death in OCGA § 53-9-1 is of no consequence here because Appellants have not been appointed as the administrator

of a deceased person's estate. And, because of this, Appellants do not have standing to bring a wrongful death action. See *Walden v. John D. Archbold Mem. Hosp., Inc.*, 197 Ga.App. 275, 276-277 (2) (398 SE2d 271) (1990) (the trial court did not err in dismissing negligence and malpractice actions where appellants were neither administrators of decedent's estate, nor otherwise considered "proper parties"), disapproved of on other grounds, *First Christ Holiness Church, Inc. v. Owens Temple First Christ Holiness Church, Inc.*, 282 Ga. 883, 887 (655 SE2d 605) (2008). Likewise, the trial court properly dismissed the remaining claims in Appellants' amended complaint because all claims for relief stem from William's purported death.

Judgment affirmed. Dillard, P. J., concurs and McFadden, P. J., dissents.

A23A1090. ESTATE OF WILLIAM DAVID GARNER et al. v. ACADIA
HEALTHCARE COMPANY, INC. et al.
MCFADDEN, Presiding Judge, dissenting.

I respectfully dissent. The majority affirms the dismissal of the underlying wrongful death complaint on the basis that the applicable statute, OCGA § 51-4-5, authorizes an administrator or executor of a “decedent” or the personal representative of a “deceased person” to bring a wrongful death action, but that the complaint in this case does not allege that there is such a decedent or deceased person and instead “only shows that the Appellants were appointed the conservator and estate of a *missing* person.” (Emphasis in original). But contrary to the majority’s reasoning, the complaint alleges that the action was brought on behalf of a deceased person.

At this stage, that allegation is sufficient.

[B]ecause [we are] reviewing an order on a motion to dismiss, [we are] required to take the allegations in the complaint as true and resolve all doubts in favor of the plaintiff. The well-established test that must be satisfied before a motion to dismiss can be granted is a demanding one: A motion to dismiss for failure to state a claim upon which relief may be granted should not be sustained unless (1) the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof; and (2) the movant establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought. In reviewing such a motion, any doubts regarding the complaint must be construed in favor of the plaintiff.

Wise Bus. Forms v. Forsyth County, ___ Ga. ___ (2) (Case No. S22G0874, decided Sept. 19, 2023) (citations and punctuation omitted).

So construed, the first amended complaint alleged that plaintiff Tracy Garner is the “brother and conservator of the *deceased*, William David Garner[.]” (Emphasis supplied). The complaint further alleged that William was believed to be deceased, that the defendants’ negligence was the proximate cause of his death, and that the plaintiffs sought damages for the value of his life and for his funeral expenses.

Based on the allegations in the complaint and construing all doubts regarding the complaint in favor of the plaintiffs, it shows the action was brought by the conservator and the estate of decedent William Garner. Because the complaint is sufficient to survive the motion to dismiss for failure to state a claim, I would reverse.