

STATE OF MICHIGAN
COURT OF APPEALS

In re Ellen Combs, Deceased.

ELAINE V. HAMILTON, Personal Representative
of the Estate of ELLEN COMBS, Deceased,

Appellee,

v

ELOISE ELSER and LOUISE MICHAEL,

Appellants.

FOR PUBLICATION
July 24, 2003
9:00 a.m.

No. 237358
Branch Probate Court
LC No. 99-030722-DE

Updated Copy
September 13, 2003

Before: Whitbeck, C.J., and White and Donofrio, JJ.

WHITE, J. (*dissenting*).

I respectfully dissent. The statute is ambiguous. While the introductory portion of MCL 600.2922(3) makes clear that only those persons who survive the deceased are entitled to damages, subsection 2922(3) does not clarify whether "the children of the deceased's spouse" refers only to the children of a surviving spouse of the deceased. Because the statute is ambiguous, and the court has the ability to determine which children of a deceased spouse truly suffered loss,¹ and which did not, I would not hold that the children of the deceased's deceased spouse are never proper claimants under subsection 2922(3)(b).

/s/ Helene N. White

¹ In some cases, the relationship between the children of the deceased's deceased spouse may be the deceased's primary familial relationship; e.g., where the deceased has no children of his or her own, or is estranged from those children, and has had a close relationship with his or her deceased spouse's children. Or, even where the deceased has children, the marriage with the deceased spouse may have been long-term and the two families thoroughly integrated to the point where all children related to both spouses as their "parents" until and after the death of the deceased's spouse; or the potential claimants may be minors who had been raised by their natural parent and the deceased, and had continued to live with the deceased after their parent's death.