

STATE OF MICHIGAN  
COURT OF APPEALS

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In re WALTER D. BALENGER.

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WALTER D. BALENGER, Deceased, HARRY  
BALENGER, MIKE BALENGER, GREG  
BALENGER, DEBBIE VARGO, ANNA  
NICKELL, SCOTT BALENGER and TRICIA  
BALENGER,

Appellees,

v

WENDY BALENGER, Personal Representative of  
the Estate of WALTER D. BALENGER,  
Deceased,

Appellant.

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Before: Whitbeck, P.J., and Davis and Gleicher, JJ.

PER CURIAM.

Appellant appeals as of right from the trial court's distribution of wrongful death settlement proceeds. We affirm.

Appellant, decedent's widow, first argues that the trial court erred when it held that her loss of society and loss of companionship from decedent's death was minimal and that she was not entitled to damages from the instant distribution of proceeds because she had been adequately compensated from previous distributions. We disagree.

We review a trial court's distribution of settlement proceeds in a wrongful death action under the clearly erroneous standard. *Burgess v Clark*, 215 Mich App 542, 547; 547 NW2d 59 (1996). A decision is clearly erroneous if this Court is left with a definite and firm conviction that a mistake was made. *Id.* A claim for loss of society and loss of companionship compensates the claimant for the actual destruction of the claimant's relationship with the decedent. *McTaggart v Lindsey*, 202 Mich App 612, 616; 509 NW2d 881 (1993). A party claiming damages is entitled to receive an amount the trier of fact deems fair and equitable under the circumstances. MCL 600.2922(6). "The only reasonable means of measuring the actual destruction caused is to assess the type of relationship the decedent had with the claimant in

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terms of objective behavior as indicated by the time and activity shared and the overall characteristics of the relationship.” *McTaggart, supra* at 616, citing *In re Claim of Carr*, 189 Mich App 234, 238, 239; 471 NW2d 637 (1991).

The evidence adduced below established that appellant’s relationship with decedent diminished after they separated in 2002. Prior to their separation, appellant was decedent’s primary caregiver. According to her, the stress of doing everything for decedent without help from decedent’s family caused her to suffer emotionally and physically. On her initiative, she and decedent separated as a result. Appellant does not dispute that following her separation from decedent she did not see or take care of decedent in the same manner as she did when they lived together as husband and wife. Even though appellant argues that the separation did not have a negative impact on the quality of the marital relationship, other testimony suggests otherwise, including her nearly immediate entry into a new romantic relationship with someone else. Thus, any determination on this matter would be a question of credibility. This Court has repeatedly held that because the trial court is in a superior position to assess the credibility of witness, it will not disturb a trial court’s findings absent clear evidence of a mistake. *MacIntyre v MacIntyre*, 267 Mich App 449, 459; 705 NW2d 144 (2005); *Fletcher v Fletcher (After Remand)*, 229 Mich App 19, 28; 581 NW2d 11 (1998).

Appellant also argues that the trial court wrongly held that she had suffered no financial loss because decedent had no opportunity to provide any additional financial support to her other than his workers’ compensation benefits. We again disagree.

The Wrongful Death Act, in relevant part MCL 600.2922(6), provides that “the court or jury may award damages as the court or jury shall consider fair and equitable, *under all the circumstances*,” including a variety of enumerated such circumstances, one of which is “damages for the loss of financial support . . . of the deceased” (emphasis added). Appellant did not work during the last several years of the marriage and she was supported by the decedent’s workmen’s compensation awards. The trial court noted that the decedent had no earning ability at the time they married, and in fact the family went into significant debt through the course of the marriage. The trial court noted, significantly, that appellant was receiving Social Security benefits for herself and for their daughter as a result of the decedent’s death. As a consequence, appellant is receiving considerably more income now than she had been during the decedent’s lifetime. The trial court concluded that appellant had “not suffered a financial loss that would warrant compensation from a wrongful death settlement.”

We find this proper. We recognize that older cases, such as *Wavle v Michigan United Railways Co*, 170 Mich 81; 135 NW 914 (1912), might suggest otherwise, but *Wavle* appears based on Compiled Laws 1897, §§ 6308-6309, under which the court had no discretion to consider “all the circumstances,” as the court does under the Wrongful Death Act. Under MCL 600.2922(6), the trial court is empowered to consider essentially any facts and circumstances it deems relevant. The trial court here, after considering the whole picture, appears to have been of the view that, if anything, appellant *benefited* financially from the decedent’s death: in effect, losing a small source of income and gaining a significantly larger one, and therefore not suffering a compensable financial loss. We find nothing in the record to suggest that this was erroneous.

Appellant also argues that the trial court erred when it considered distributions appellant received in prior settlement hearings for loss of society and loss of companionship from decedent's estate as a justification for not awarding her damages for loss of society and loss of companionship in the instant matter. However, the broad language of MCL 600.2922(6) suggests that the trial court did not err when it declined to award petitioner additional settlement proceeds. See *Halloran v Bhan*, 470 Mich 572, 577; 683 NW2d 129 (2004). Again, the plain language of MCL 600.2922(6) empowers the trial court to consider all circumstances that underlie a particular case when awarding damages. It was not error for the trial court to consider the previous distributions awarded to petitioner in its determination of an equitable distribution of the settlement proceeds. See *Nastal v Henderson & Assoc Investigations, Inc*, 471 Mich 712, 720; 691 NW2d 1 (2005).

Affirmed.

/s/ William C. Whitbeck

/s/ Alton T. Davis

/s/ Elizabeth L. Gleicher