

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

JAMES R. SHOEMAKER, D.O., ET AL.,

Appellant/Cross-Appellee,

v.

Case No. 5D12-2485

SONIA SLIGER, ETC., ET AL.,

Appellee/Cross-Appellant.

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Opinion filed May 30, 2014

Appeal from the Circuit Court
for Orange County,
John M. Kest, Judge.

Dinah S. Stein, and Jedidiah Vander Klok,
of Hicks, Porter, Ebenfeld & Stein, P.A.,
Miami, and Jim Smith and Kevin Bledsoe,
of Smith, Schoder & Bledsoe, LLP,
Daytona Beach, and Mark Hicks, Jedidiah
Vander Klok, and Dinah Stein, of Hicks,
Porter, Ebenfeld & Stein, P.A., Miami, for
Appellant/Cross-Appellant.

David J. Sales, of David J. Sales, P.A.,
Jupiter, and Stephen J. Knox, of Morgan
and Morgan, P.A., Orlando for
Appellee/Cross-Appellant.

PER CURIAM.

This court previously rendered a per curiam opinion affirming as to all issues presented in this appeal. Two of the issues raised in the cross-appeal filed by Sonia Sliger, as Personal Representative of the Estate of Stephen Sliger, were whether the

statutory cap on wrongful death non-economic damages found in section 766.118, Florida Statutes (2007), is unconstitutional and whether the trial court erred in reducing the award of damages to the statutory cap required by that statute. When this court rendered its per curiam opinion, the Florida Supreme Court had not yet rendered its decision in Estate of McCall v. United States, 134 So. 3d 894 (Fla. 2014), wherein the court held that the statutory cap on wrongful death non-economic damages provided in section 766.118 is unconstitutional because it violates the Equal Protection Clause of the Florida Constitution.¹ After McCall was rendered, Sliger filed a motion to recall the mandate previously issued by this court. This court granted that motion so we could reconsider this particular issue in light of the decision in McCall.

Pursuant to McCall, we withdraw our previous opinion and substitute this opinion in its place, and we reverse that part of the judgment under review that reduces the award of wrongful death non-economic damages to Sliger pursuant to section 766.118. We remand this case to the trial court to enter an amended judgment in accordance with the jury verdict without any reduction under section 766.118. We affirm as to all other issues raised by the parties.

AFFIRMED in part; REVERSED in part; REMANDED.

TORPY, C.J., SAWAYA and COHEN, JJ., concur.

¹ Art. I, § 2, Fla. Const.