

**IN THE COURT OF CLAIMS OF OHIO**

CYNTHIA STARLING, Indv, etc.

Plaintiff

v.

OHIO DEPARTMENT OF  
DEVELOPMENTAL DISABILITIES

Defendant

Case No. 2019-00747JD

Judge Dale A. Crawford

DECISION

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{¶1} Plaintiff, Cynthia Starling, as an individual and on behalf of the Estate of Nicholas Starling, filed a Complaint against Defendant, Ohio Department of Developmental Disabilities (ODDD), alleging claims for negligence, battery, medical negligence, and wrongful death. The Court held a bench trial on liability and damages. After presentation of the evidence, the Court issued a finding that Plaintiff had not proven her claims by a preponderance of the evidence, and as such entered judgment for Defendant on all claims. Plaintiff appealed this Court’s decision on the negligence and medical negligence claims to the Tenth District Court of Appeals. The Tenth District affirmed this Court’s judgment on the medical negligence claim, but reversed this Court’s judgment on the negligence claim, finding it was against the manifest weight of the evidence. Accordingly, the Tenth District remanded to this Court to enter judgment in favor of Plaintiff on the negligence claim and proceed with a determination of damages. Therefore, after entering judgment in favor of Plaintiff on the negligence claim, the Court will now address Plaintiff’s damages.

{¶2} “A survival action brought to recover for a decedent’s own injuries before his or her death is independent from a wrongful-death action seeking damages for the injuries that the decedent’s beneficiaries suffer as a result of the death, even though the same nominal party prosecutes both actions.” *Peters v. Columbus Steel Castings Co.*, 115

Ohio St.3d 134, 2007-Ohio-4787, 873 N.E.2d 1258, ¶ 7. Plaintiff, Cynthia Starling, has a claim for wrongful death damages on behalf of herself, as mother of decedent, Nicholas (Nick) Starling, and a survivorship claim on behalf of the Estate of Nicholas Starling for the pain and suffering he experienced, due to ODDD's negligence, from the time of his injury until the time of his death. Plaintiff did not submit evidence of economic loss, so the only portion of wrongful death and survivorship damages remaining is compensatory non-economic damages.

### **Wrongful Death Claim**

{¶3} The parents of a decedent are “rebuttably presumed to have suffered damages by reason of the wrongful death.” R.C. 2125.02(A)(1). “The jury, or the court if the civil action for wrongful death is not tried to a jury, may award damages authorized by division (B) of this section, as it determines are proportioned to the injury and loss resulting to the beneficiaries described in division (A)(1) of this section by reason of the wrongful death.” R.C. 2125.02(A)(2). The Court may consider “all factors existing at the time of the decedent’s death that are relevant to determination of damages suffered by reason of the wrongful death.” R.C. 2125.02(A)(3)(b)(i). R.C. 2125.02(B) provides:

Compensatory damages may be awarded in a civil action for wrongful death and may include damages for the following:

- (1) Loss of support from the reasonably expected earning capacity of the decedent;
- (2) Loss of services of the decedent;
- (3) Loss of the society of the decedent, including loss of companionship, consortium, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, and education, suffered by the surviving spouse, dependent children, parents, or next of kin of the decedent;
- (4) Loss of prospective inheritance to the decedent’s heirs at law at the time of the decedent’s death;
- (5) The mental anguish incurred by the surviving spouse, dependent children, parents, or next of kin of the decedent.

Compensatory damages are intended to make injured parties whole for the wrong done to them by a defendant. *Fantozzi v. Sandusky Cement Prods. Co.*, 64 Ohio St.3d 601, 612, 597 N.E.2d 474 (1992). But non-economic compensatory damages have no given calculus to arrive at a determination and as such are “a matter solely for the determination of the trier of fact because there is no standard by which such pain and suffering may be measured.” *Id.* Some damages are inherently “subjective in nature in that they are less easily quantifiable, less tangible, or unliquidated, *i.e.*, pain and suffering, loss of society, mental anguish, etc. \* \* \* How much should a grieving parent be awarded to compensate for the loss of a son or daughter?” *Betz v. Timken Mercy Medical Ctr.*, 96 Ohio App.3d 211, 219–20, 644 N.E.2d 1058 (5th Dist.1994).

{¶4} ODDD took the position that the Tenth District Court of Appeals did not explicitly reverse on the wrongful death claim and as such wrongful death damages should not be awarded. However, the Tenth District remanded with instructions to enter judgment against ODDD on the negligence claim and proceed to a determination of damages. Accordingly, the Court finds that Plaintiff is entitled to wrongful death damages because ODDD’s negligence proximately caused Nick’s death.

{¶5} Nick was a loved and caring 28-year-old man, who was developmentally disabled since birth and diagnosed with an impulse control disorder, paranoia, schizophrenia, and autism. Nick also suffered from other comorbidities including, obesity, sleep apnea, hypertension, and type 2 diabetes. The loss of a person with disabilities is inherently different than a person without disabilities. This is a difficult reality, but it must be analyzed to develop the proper award. Disabilities can affect interpersonal relationships, especially factors such as loss of services and society. Plaintiff accepted the responsibility of caring for Nick his entire life and while there is testimony Nick assisted where he could, Plaintiff’s duty was to guide and protect Nick, not the other way around. Plaintiff was undoubtedly proud to be Nick’s mom, but she did not enjoy a fully reciprocal relationship. Plaintiff even had to quit working full time to care for Nick’s well-being. However, even though the support may not be the same, the disability does not make the loss less. Parents who have children with disabilities may suffer loss the same as parents of children without disabilities.

{¶6} While these conditions were relevant factors present at the time of death, they alone are not determinative of the calculation of damages. Wrongful death damages are viewed through the mind of the decedent's loved ones and is derived from the decedent's presence in their life. Nick was Plaintiff's constant companion in life. As a single mother, Plaintiff and Nick had lived together most of Nick's life. They loved spending time together, riding bikes, playing with blocks, eating meals, shopping, and watching Nick's favorite movies. They were also active in church together where Plaintiff enjoyed watching Nick participate in plays, choir, and other activities. However, ODDD argues that this relationship had recently changed because Nick was moved into its facility. Contrary to ODDD's belief that this could somehow affect Plaintiff's loss, the Court does not find this persuasive. Individuals have to make difficult decisions when it comes to loved ones with disabilities. For example, spouses or children often must make the difficult decision to place a spouse or parent suffering from Alzheimer's into an assisted living facility. Moreover, some parents must rely on facilities earlier in life or even for the child's entire life. Facilities, such as Heinzerling Community,<sup>1</sup> exist to assist families of children with severe or profound disabilities. In some cases, utilizing a facility because an individual cannot adequately be a caregiver, symbolizes a greater love because they are willing to set aside their own pride to put their loved one in a facility that is best equipped to care for them. It is a decision that bares its own level of mental anguish. Plaintiff did not put Nick in ODDD's facility and walk away; evidence shows putting Nick in the facility was not permanent and Plaintiff spoke with and visited Nick as often as she could. Plaintiff intended to entrust ODDD with Nick in a short-term capacity, not lose him forever.

{¶7} This is the constant love, and unexpected loss, that serves as the basis of Plaintiff's mental anguish. The mental anguish that comes with the loss of her only son.

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<sup>1</sup> "Over 60 years ago, Otto and Mildred Heinzerling dedicated themselves to caring for an often overlooked population—children with severe and profound developmental disabilities. Today, we continue to honor their vision by providing children and adults with compassionate, respectful care in a loving and comfortable home environment. The mission of Heinzerling Community is to provide a loving and nurturing environment that enriches the development, education and quality of life of individuals with severe or profound developmental disabilities." Heinzerling Community, *Welcome Home*, [www.heinzerling.org](http://www.heinzerling.org) (accessed Feb. 2, 2023).

Plaintiff is still trying to figure out what her life looks like without Nick. Plaintiff's initial suffering was so intense she had to be admitted to the hospital and she was unable to bring herself to hold a funeral. Plaintiff has since attended pastoral counseling at her church. However, the reality is that Plaintiff will no longer be able to speak with Nick, receive his simple notes expressing his love, or receive a new piece of his beautiful artwork. Plaintiff's suffering is simply ongoing.

{¶8} Nick was a significant source of Plaintiff's happiness and emotional well-being, and as such she endures immensely because of his death. Therefore, the Court will award Plaintiff \$400,000.00 in wrongful death damages.

### **Survivorship Claim**

{¶9} Under the general survival statute, R.C. 2305.21, a decedent's claim for personal injuries survives and passes to the personal representative, who may bring an action for the estate's benefit. *Shinaver v. Szymanski*, 14 Ohio St.3d 51, 55, 471 N.E.2d 477 (1984). "Human pain and suffering" is the most difficult portion of compensatory damages to determine because the determination is "susceptible of no mathematical or rule of thumb computation, and no substitute for simple human evaluation has been authoritatively suggested. *McCombs v. Ohio Dep't. of Dev. Disabilities*, 2022-Ohio-1035, 187 N.E.3d 610, ¶ 28, quoting *Flory v. New York RR. Co.*, 170 Ohio St. 185, 190, 163 N.E.2d 902 (1959). "Rather, the finder of fact makes a 'human evaluation' of all the facts and circumstances involved." *Id.* ¶ 29, quoting *Kelly v. Northeastern Ohio Univ. College*, 10th Dist. Franklin No. 07-AP-945, 2008-Ohio-4893, ¶ 8.

{¶10} Nick certainly experienced pain and suffering between the incident and time of his death. After the incident, Nick was in enough pain that he reported to the emergency room. Nick was diagnosed with a tibial plateau fracture and released with specific aftercare instructions, including wearing a leg immobilizer and seeking medical attention if symptoms worsened. However, Nick did not need surgery. While Plaintiff testified that she believed Nick was upset and in pain, Dr. Yaffe testified that the medical records and nursing notes indicate he was not experiencing significant or increased pain or distress. Nick was able to sleep. He refused pain medication and did not wear the immobilizer. Moreover, Nick was not guarding his leg and the nurses were able to

conduct the required medical assessments every four hours without significant issue. Nick remained in this condition for four days after the incident, before he passed away in his sleep. Therefore, the Court will award the Estate of Nicholas Starling \$25,000.00 in pain and suffering.

**Conclusion**

{¶11} Based on the foregoing, the Court awards Four Hundred Thousand Dollars (\$400,000.00) in wrongful death damages and Twenty-Five Thousand Dollars (\$25,000.00) in survivorship damages. Thus, the total amount of damages in this case amounts to Four Hundred and Twenty-Five Thousand Dollars (\$425,000.00). A separate Entry based on this Decision will be filed contemporaneously.

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DALE A. CRAWFORD  
Judge

[Cite as *Starling v. Ohio Dept. of Dev. Disabilities*, 2023-Ohio-799.]

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JUDGMENT ENTRY

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**IN THE COURT OF CLAIMS OF OHIO**

{¶12} The Court has considered the evidence and, for the reasons set forth in the Decision filed concurrently herewith, judgment is rendered in favor of Plaintiff in the amount of \$425,025.00, which includes the filing fee paid by Plaintiff. Court costs are assessed against Defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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DALE A. CRAWFORD  
Judge

Filed February 3, 2023  
Sent to S.C. Reporter 3/16/23