

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: September 8, 2017)

DONALD F. LACKEY, JR., et al.	:	
	:	
	:	C.A. No. PC-12-0110
v.	:	C.A. No. PC-12-0899
	:	C.A. No. PC-12-6040
	:	C.A. No. PC-13-0583
WALTER KIDDE PORTABLE EQUIPMENT, INC., et al.	:	

Consolidated with

TINA JANIK, et al.	:	
	:	
v.	:	C.A. No. PC-12-2886
	:	
WALTER KIDDE PORTABLE EQUIPMENT, INC., et al.	:	

Consolidated with

TINA JANIK, et al.	:	
	:	
v.	:	C.A. No. KC-13-0127
	:	
ARMAND J. DESVOYAUX, et al.	:	

DECISION

LANPHEAR, J. These matters came on for hearing on August 30, 2017 on Defendant Walter Kidde Portable Equipment, Inc.’s Motion for Summary Judgment. After hearing thereon and review of the memoranda and law submitted by counsel, the Court will preliminarily decide one contested, discrete issue upfront, that is, whether the parents of the injured adult Plaintiffs are entitled to recover for loss of society (or consortium) of their children.

I

The Statute

Prior to 2010, the statute governing such loss stated:

“Whenever the death of an unemancipated minor shall be caused by the wrongful act, neglect or default of another person, the parent or parents of the minor may recover damages against the person for the loss of the minor’s society and companionship.” G.L. 1956 § 10-7-1.2.

As recovery for the loss of society of an adult child was restricted at common law, this statute was construed so as to prevent recovery for losses of society of adult children. This statute was the statute in effect on the date of the house fire which is the subject of this dispute, February 2010. Several people who perished were the adult children of Plaintiffs herein.

In June 2010, § 10-7-1.2 was amended to allow recovery for loss of society for one’s child, without any age restriction: “Whenever the death of a son or daughter shall be caused by the wrongful act, neglect, or default of another person, the parent or parents of the son or daughter may recover damages against the person for the loss of the son’s or daughter’s society and companionship.” The law was amended by P.L. 2010, ch. 232 and 240. Each of the acts stated that, “This act shall take effect upon passage.”

Plaintiffs commenced these various actions thereafter, with the first suit being filed in January 2012. All suits were instituted after the statute had been amended to allow for the loss of adult children.

II

Analysis

Defendant Walter Kidde Portable Equipment, Inc. (Kidde) contends that retroactive application is disfavored as the statute is substantive, rather than procedural. Compare Solas v. Emergency Hiring Council of State of R.I., 774 A.2d 820 (R.I. 2001) with Malinou v. Miriam

Hospital, 24 A.3d 497 (R.I. 2011). Plaintiffs assert that the statute in effect as of the date of the filing of the complaints should be applied as the statute is remedial.

As the parties appear to be forwarding distinct arguments, the general rule from a legal encyclopedia frames the difference.

“Procedural laws apply both prospectively and retroactively unless there is legislative expression to the contrary. Even if the law does not explicitly provide for retroactive application, it may be applied retroactively only if it is merely procedural rather than substantive. Similarly, remedial legislation should be applied retroactively. . . . [R]emedial statutes constitute an exception to the general rule that statutes are not to be given a retroactive operation to the extent that they do not impair vested rights.” Am. Jur. 2d Statutes § 239 (footnotes omitted).

Black’s Law Dictionary provides three definitions for “remedial”:

1. Affording or providing a remedy;
2. Intended to correct, remove, or lessen a wrong, fault or a defect (a remedial statute);
3. Of or involving a means of enforcing an existing substantive right.

Logically, the purpose of the amendment to the statute was to expand the rights of parents to recover for losses for all of their children. As an amendment to an existing right, the right to recover previously existed, and the parents’ remedies were simply being expanded by the removal of procedural limitations.

Neither the amendment to § 10-7-1.2(b) nor the original statute created an independent cause of action, as the right to recover for loss of society is “inextricably linked to the [impaired party’s] underlying claims because their success depends on the success of those underlying claims.” Malinou, 24 A.3d at 511¹ (quoting Desjarlais v. USAA Ins. Co., 824 A.2d 1272, 1277 (R.I. 2003)).

¹ While Malinou deals with the same statute, there are several distinctions. First, the plaintiffs were unsuccessful with their underlying claims at summary judgment. Second, summary

Finally, but most importantly, the precise words of the statute must be considered, giving meaning to the plain language of the law. The legislature used the words “[w]henver the death” in crafting amended § 10-7-1.2(b). Each of the acts state they are to “take effect upon passage.” P.L. 2010, ch. 232, 240. The harm had already occurred. The words of the public laws confirm that the ability of parents to recover for the loss of their adult children should commence when the statute passes, even if the wrong had already occurred. The statute is clear.

III

Conclusion

For the reasons stated, the Court will not grant summary judgment on the basis that the statute limited recovery only to unemancipated minors. While the Court decides this issue at the outset, it reserves on all other issues concerning summary judgment and will issue another decision or order accordingly.

judgment was afforded on the loss of society claim before the statute was ever amended, based solely on the statute affording relief for unemancipated minors.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Donald F. Lackey, Jr., et al. v. Walter Kidde Portable Equipment, Inc., et al.
Consolidated with
Tina Janik, et al. v. Walter Kidde Portable Equipment, Inc., et al.
Consolidated with
Tina Janik, et al. v. Armand J. Desvoyaux, et al.

CASE NO: PC-12-0110; PC-12-0899; PC-12-6040; PC13-0583
Consolidated with
PC-12-2886
Consolidated with
KC-13-0127

COURT: Providence County Superior Court
Kent County Superior Court

DATE DECISION FILED: September 8, 2017

JUSTICE/MAGISTRATE: Lanphear, J.

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