

Wrongful Death Recoveries in the Era of the Modern Family

By Philip Sieff and Patricia Yoedicke

When a loved one dies through the fault of another, Minnesota’s wrongful death statute provides a right of recovery to the decedent’s family. Some people – even some in the legal community – are surprised to learn that the distribution of that recovery does not follow the bright-line rules of Minnesota’s inheritance laws. Instead, Minnesota’s wrongful death law allows far more discretion. This provides a creative opportunity for cooperative families, but the lack of bright line rules can also result in strife.

Minnesota’s basic wrongful death law is simple. Minn. Stat. § 573.02 gives a right of recovery “for the exclusive benefit of the surviving spouse and next of kin, proportionate to the pecuniary loss severally suffered by the death.” Pecuniary loss includes not just financial loss, but also loss of the advice, comfort, assistance, and protection the decedent would have provided. “Next of kin” includes the decedent’s issue, parents, parents’ issue, grandparents and descendants of grandparents. In most cases only close next of kin can establish a genuine loss.

The procedure entails two stages. The first – the case against the tortfeasor – results in the establishment of an undifferentiated pot of money, either awarded by a jury or received in settlement. The second is the distribution phase, where the decision on how to divide the pot is made by the court. No money can be distributed without a court order. If a family is in agreement, the court will usually accept that agreement. If not, the court must determine which next of kin suffered a genuine loss, and in what proportion.

The opportunities for creativity – and for generosity – start with determining who is a surviving “spouse.” Arguably this could include a same sex spouse. For intestacy purposes, that was the decision of a Hennepin County Probate Court in August 2012. The court allowed a man to inherit as a spouse, though his California marriage to the male decedent wasn’t legally recognized under Minnesota’s Defense of Marriage Act. The decision may have been impacted by the fact that the decedent’s parents, who would have been his heirs in the absence of a spouse, wanted the assets to go to the man their son had chosen in marriage.

There are similar opportunities for generosity in determining who is a “next of kin.” For example, where a family was in agreement, the authors have seen a judge approve a settlement for a sibling who was no longer part of the minor decedent’s family because there had been a termination of parental rights with respect to that sibling.

One challenge faced by cooperative families is how to handle distributions to minors. The law mandates strict protections for children’s recoveries. Options include U.S. securities, annuities, structured settlements, and FDIC insured deposits, but these carry the

disadvantage of a low rate of return in today’s climate. More investment leeway may be obtained with a trust, but for smaller recoveries, the costs of administration can be prohibitive. Another option is to establish a conservatorship with a surety bond for the parent approved by the court.

Where the minor was not dependent upon the decedent for financial support – for example, where the decedent was a young child – courts will sometimes allow flexibility in the distribution. For example, the court may determine that distributing the entire amount of a small recovery to the parents outright, without tying up part of it until siblings reach age 18, creates the greatest benefit for the entire family.

Most families can agree on a split. But an unfortunate few find themselves contemplating a nightmare right out of Dickens. One Minnesota opinion reports that the decedent’s widow, faced with her in-laws’ demands for a larger allocation, asked her attorney, “Why don’t I just put a gun to my head?”

Fortunately, allocations are “special proceedings” listed on “Appendix A” to Minnesota’s Rules of Civil Procedure. Therefore the civil rules don’t automatically apply, and the process may be tailored to the needs of this type of case.

One “starting point” – and only a starting point – for deciding the allocation is the “Support Years Formula,” in which the court determines the number of years of support from the decedent lost by each claimant, and divides the recovery proportionately. (Minor children may be assumed to receive support until age 21.) But the court also considers each claimant’s relationship with the decedent, among other factors. The main lesson from reported cases is: don’t be greedy! Courts have upheld the denial of any distribution at all to an estranged adult child, as well as to the demanding in-laws mentioned above.



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