

CASE STUDY PREPARED FROM ORIGINAL PUBLISHED OPINION

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Moody v Bedford 1/9/12

Wrongful death claim; Multiple heirs; One-action rule

Corintha Hood died in a head-on collision with a vehicle driven by defendant Bedford. Corisha Brown is her adult daughter. Brown tendered a claim to Permanent General Assurance Corporation, which insured defendants on the date of the accident. Brown's lawyer offered to settle her claim for the full policy limits of \$100,000. Permanent General asked the attorney to provide the names of any and all of Hood's heirs. Gregory Hill of Permanent General stated that he would need to ascertain the identities of all of the decedent's heirs before settling. Brown's lawyer spoke to her and later represented that she was the sole surviving heir, based on his client's statements.

Counsel also represented that by settling with Brown, Permanent General would be settling all claims with all of Hood's surviving heirs. Hill again emphasized that his company could not enter into a settlement until all of the surviving heirs had been identified and made part of the agreement. The lawyer again stated that he understood the carrier's position and represented that Brown was the sole surviving heir. Brown provided a signed declaration under Code of Civil Procedure section 377.32 regarding her right to settle the survival action. Hill wrote a letter to counsel confirming Permanent General's understanding that Brown was the sole surviving heir. Hill enclosed a "release of all claims" with the letter, requiring Brown to execute it as the sole surviving heir.

Plaintiffs are the surviving minor children of the decedent mother and their guardian ad litem, Mr. Moody. After Brown's settlement, they filed a wrongful death action against the defendants. Following two demurrers, defendants

eventually filed a summary judgment motion, arguing that the **one-action rule** precluded multiple wrongful death actions against the same defendant by heirs of a decedent, thus barring the action. The motion was granted by the trial court and this appeal followed.

The Second Appellate District noted that CCP section 377.60 authorizes a wrongful death action by specified persons including the decedent's spouse and children, based upon their pecuniary injury suffered by loss of a relative. Any wrongful death recovery is in the form of a lump sum verdict determined according to each heir's separate interest in the decedent's life, with each heir required to prove his or her own individual loss in order to share in the verdict. (*San Diego Gas & Electric Co. v Superior Court* (2007) 146 Cal.App.4th 1545) The action is one for personal injury to the heir. Thus, in a wrongful death action the "injury" is not the general loss of the decedent, but the particular loss of the decedent to each individual claimant. (*Ruiz v Podolsky* (2010) 50 Cal.4th 838)

Wrongful death actions may be brought by the heirs of the decedent or a personal representative on behalf of the heirs of the decedent. In stating that an action for wrongful death is **joint**, it is meant that all heirs should join or be joined in the action and that a single verdict should be rendered for all recoverable damages; when it is said that the action is **single**, it is meant that only one action for wrongful death may be brought whether, in fact, it is instituted by all or only one of the heirs; and when it is said that it is **indivisible**, it is meant that there cannot be a series of suits by heirs against the tortfeasor for their individual damages. (*Valdez v Smith* (1985) 166 Cal.App.3d 723)

Because there is only a single action for wrongful death, an heir bringing the action should join all known heirs. If an heir refuses to join as a plaintiff, he or she may be named as a defendant, so all heirs are before the court in the same action. (*Adams v Superior Court* (2011) 196 Cal.App.4th 71) Where all the heirs are not joined, and timely objection is made on that ground by defendant, the action should be abated, or, at least, the other heirs should be made parties. Individual heirs cannot file a series of wrongful death suits. (*Cross v Pacific Gas & Elec. Co.* (1964) 60 Cal.2d 690) This is the so-called one action rule. One of its effects is that settlement by only some of the heirs will bar others from prosecuting another action against the same defendant. Heirs who were neither voluntarily nor

involuntarily joined in it must instead seek a remedy against the settling heirs, not the defendant. (Gonzales v Southern Cal. Edison (1999) 77 Cal.App.4th 485)

A wrongful death settlement will not terminate the action if the settlement includes less than all of the named heirs. By settling with less than all of the known heirs, the defendant waives the right to face only a single wrongful death action and the non-settling heirs may continue to pursue the action against the defendant. (Smith v Premier Alliance Ins. Co. (1995) 41 Cal.App.4th 696) Similarly, if the defendant settles an action that has been brought by one or more of the heirs, with knowledge that there exist other heirs who are not parties to the action, the defendant may not set up that settlement as a bar to an action by the omitted heirs. (Gonzales, at p. 489)

On appeal, plaintiffs contend that the one-action rule has no application to this case because Brown did not file a wrongful death lawsuit against the defendants, but instead merely tendered a claim for policy benefits to their insurer. Thus, there was no “one action” for wrongful death that could operate as a bar to their claims against defendants. To determine the applicability of the one-action rule, the Justices of the 2nd DCA referred to the definition of the term “action.”

An “action” is defined as an ordinary proceeding in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense. (CCP section 22) An action means the same thing as a suit. The statutory definition suggests that the action referred to in the one-action rule is a civil suit for wrongful death brought pursuant to Code of Civil Procedure section 377.60. Although the Code refers to “cause of action” the judicially developed one-action rule concerns only “actions” or “suits” (Cross, at p. 694) and not a pre-litigation claim or cause of action.

Brown did not bring a wrongful death suit against the defendants prior to plaintiffs’ suit. Instead, she tendered a claim on her own behalf to defendants’ insurance carrier that the carrier voluntarily settled on defendants’ behalf. As such, that claim and voluntary settlement cannot fairly be characterized as a civil suit or action for wrongful death to which the one-action rule applies. The one-

action rule operates as a procedural protection that arises only after a tortfeasor has been sued in a wrongful death action requiring the joinder of all heirs. Thus for a defendant in a wrongful death action to avail himself or herself of the benefit of that rule, he or she must first have been subjected to potential liability in a previous wrongful death action. Here, defendants had not been subjected to liability in a wrongful death action, which required the joinder of all of the mother's heirs prior to the filing of plaintiffs' suit.

Although the claim process required Brown to be honest with respect to the material representation she made in support of her claim, there is no statutory or decisional procedural requirement that all of mother's heirs be joined in or made part of either the claims or settlement process. **If defendants wanted the procedural protections of the one-action rule to which they now contend they are entitled, they should have required Brown to file a wrongful death action.** Had Brown filed the action before the settlement, Brown would have been under a legal duty to join the minor plaintiffs. If she failed to comply with the wrongful death statute and join the minors, she would have been exposed to liability to them under that statute if they were omitted from a settlement of the action. (*Smith*, at p. 697)

Defendants assert that the public policy in favor of early settlement of disputes militates against requiring a settling claimant to file suit. The Justices disagreed, stating that tortfeasors such as defendants will still be at liberty to settle wrongful death claims without the instigation of litigation; but if they do so, they will not have the procedural protection afforded by the one-action rule. This conclusion, according to the Appellate Court, strikes a fair balance between the rights of heirs to be included in wrongful death claims and rights of alleged tortfeasors to be free from multiple claims for wrongful death. The joinder requirement under CCP section 377.60 provides a reasonable procedural protection for heirs by subjecting the heir who filed the wrongful death lawsuit to liability in the event such potential heirs are not joined in the action and are omitted from the award or settlement. (*Gonzales*, at p. 489; *Smith*, at p. 697)

The minor plaintiffs should not be stripped of their wrongful death claims against defendants based on a private deal worked out between an insurance adjustor and a less than candid heir before any litigation had been commenced.

Accordingly, because defendants were not entitled to raise the one-action rule as a bar to plaintiffs' wrongful death action, the order granting summary judgment and the judgment based on it are reversed. Plaintiffs are awarded their costs on appeal.