

Making Wrongful Death Claims Against Nursing Homes

RESIDENTS' BILL OF RIGHTS MAKES SPECIFIC MENTION ONLY OF INJURY CLAIMS

BY MICHAEL A. D'AMICO

All residents of nursing homes in Connecticut are protected by a bill of rights specifically enumerated in Connecticut General Statutes §19a-550. This statute allows for both compensatory and punitive damages for its violation. No one disputes that a lawsuit may be filed for damages under this statute that results in injury from which the resident survives. Typically this would be an allegation of poor quality care in violation of C.G.S. §19a-550(b)(10). But what about an injury that results in death?

C.G.S. §19a-550(e) does not mention death; rather it refers only to injury. It has been argued in a wrongful death case that punitive damages are not available under C.G.S. §19a-550 as the wrongful death statute, C.G.S. §52-555, provides the sole means of recovery and therefore punitive damages allowed under a separate statute are unavailable. Several decisions by the superior courts have confused the issue.

In *Oberman v. Hillcrest Healthcare*, 2005 Conn. Super. LEXIS 2812, the court held that the wrongful death statute is the exclusive remedy and struck counts under the bill of rights. In *Paul Hebert, Executor of the Estate of Lorraine Hebert v. Frontier of Northeast Connecticut*, 2004 Conn. Super. LEXIS 229, the court held that a violation of the bill of rights may not be pleaded except as seeking damages limited under the wrongful death statute. Meanwhile, in *Mary Morgan, Administratrix v. Tolland County Health Care*, 1996 Conn. Super. LEXIS 638, the court struck the claims under the nursing home bill of rights, holding that the wrongful death statute is the exclusive remedy. And in *Sheryl Fritz, Administrator of the Estate of John Fritz v. Veterans Memorial Medical Center*, 1998 Conn. Super. LEXIS 3238, the court struck the claims under the bill of rights and held that the wrongful death statute provides the exclusive remedy. This is an important difference as punitive damages under §19a-550 may not be limited to attorney fees and costs.

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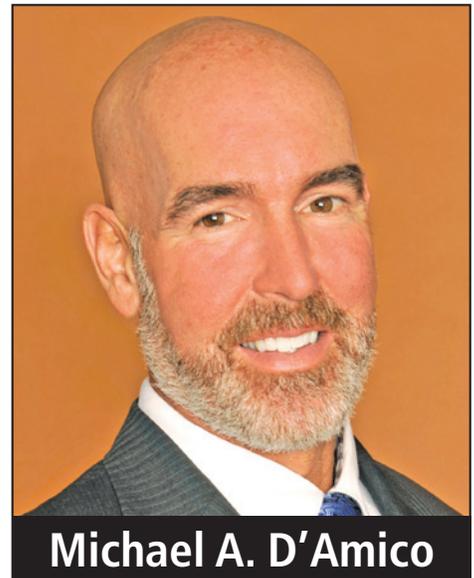
At common law, one could not recover for death. "It is a singular fact that by the common law the greatest injury which one man can inflict upon another, the taking of his life, is without private remedy. By a strange fiction the extremity of the wrong precludes redress." *Ladd v. Douglas Trucking*, 203 Conn. 187, 192 (1987), citing *Goodsell v. Hartford & New Haven Railroad*, 33 Conn. 51, 55 (1865). This common-law defect was rectified in Connecticut with the passage of the wrongful death statute, now codified as C.G.S. §52-555. So the argument goes that damages are only available in a claim of wrongful death as allowed and specified in this statute and no other. In *Ladd*, the Connecticut Supreme Court then held that a claim for post-mortem loss of spousal consortium was not allowed as such a claim did not fall within the "just damages" stated in C.G.S. §52-555. More specifically, the Supreme Court held that the damages available under the wrongful death statute were personal to the victim and did not create a claim for losses suffered by another. In response to *Ladd*, the legislature then passed C.G.S. §§52-555a and 52-555b authorizing a loss of spousal consortium in a wrongful death claim.

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Underlying Rights

So if C.G.S. §52-555 is the sole means of recovery for damages caused by a wrongful death, then may a resident of a nursing home claim punitive damages under an entirely separate statute, C.G.S. §19a-550, which does not specifically mention death?

Enter the Connecticut Supreme Court case of *Gionfriddo v. Avis Rent-A-Car*, 192 Conn. 280 (1984). In *Gionfriddo*, Avis rented a car to a person who then drove drunk and caused the death of Kim Marie Gionfriddo. The fiduciary of Gionfriddo's estate then sued Avis for wrongful death and sought, in



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part, double or treble damages under C.G.S. §14-295. The Supreme Court in deciding that double or treble damages under C.G.S. §14-295 were recoverable under the wrongful death statute focused on the underlying rights of the decedent. Because the decedent would have been allowed to seek double or treble damages had she lived, then the wrongful death statute allowed these same damages as "just damages" under the wrongful death statute.

By analogy, because a nursing home resident would be allowed to recover punitive damages under §19a-550 had she lived, then her estate may recover the same punitive damages under a claim for her wrongful death. This is precisely what Superior Court Judge Kevin Dubay recently and correctly decided in *Ingebord Jasinski, Administratrix for the Estate of Anna Jablonski v. Ledgecrest Healthcare Center*.

One practice tip: Be sure to phrase the count of the complaint under C.G.S. §19a-550 seeking punitive damages as an alternative theory of liability within a count under C.G.S. §52-555. Of course, a claim for punitive damages under §19a-550 must be based on misconduct that is willful or reckless. ■