Roger Williams University Law Review

Volume 6 | Issue 2 Article 20

Spring 2001

2000 Survey of Rhode Island Law: Cases: Tort Law

Stan Pupecki
Roger Williams University School of Law

Vicki J. Bejma
Roger Williams University School of Law

Heather M. Spellman
Roger Williams University School of Law

Tanya J. Zorabedian
Roger Williams University School of Law

Tort Law. *Beattie v. Fleet National Bank*, 746 A.2d 717 (R.I. 2000). In a suit for libel, a statement of opinion can only be defamatory if "it implies the allegation of undisclosed defamatory facts as the basis for the opinion."[1] Here, the alleged defamatory statement was based on disclosed, non-defamatory facts. Thus, the statement was non-defamatory.

In *Beattie v. Fleet National Bank*, the alleged defamatory statement was an opinion based on disclosed, non-defamatory facts (including a seven-page memorandum setting out in detail the basis for the opinion).[2] The Rhode Island Supreme Court has held that one's constitutional liberty includes publishing opinionative statements based on disclosed, non-defamatory facts, regardless of whether or not the statement is justifiable.[3] Thus, the opinionative statement in the present case was non-defamatory and consequently not actionable.

FACTS AND TRAVEL

Fleet Mortgage (Fleet), the defendant, hired Beattie, the plaintiff, to appraise a particular piece of residential real estate.[4] Beattie appraised the property and sent a report to Fleet.[5] A Fleet in-house staff appraiser examined Beattie's report and found several deficiencies, including Beattie's appraisal valuation and methodology.[6] Specifically, Beattie relied on the recent sales prices of colonial-style houses in the area, whereas the property to be appraised was of the raised-ranch style; some of the houses Beattie used as comparables contained much larger square footage than the property in question; some of the homes Beattie relied upon were in different neighborhoods and up to a mile away; and two of the comparable properties Beattie used included water views.[7]

Fleet's in-house staff appraiser then prepared a seven-page memorandum detailing Beattie's report's deficiencies and gave it to Fleet's chief appraiser, Cornwell.[8] Cornwell wrote a letter to

1. Beattie v. Fleet Nat'l Bank, 746 A.2d 717, 722 (R.I. 2000) (quoting Restatement (Second) of Torts § 566 (1976)).
2. *See Beattie*, 746 A.2d at 728.
3. *See id.* at 721.
4. *See id.* at 719.
5. *See id.*
6. *See id.* at 720.
7. *See id.*
8. *See id.*

Beattie dated February 14, 1996, that reiterated the deficiencies outlined in the memorandum, which was sent to Beattie with the letter, and also included four bullet-point statements summarizing Fleet's criticisms of Beattie's report.[9] In the letter, Cornwell asked Beattie to submit information that would vindicate Beattie's appraisal in regard to Fleet's outlined concerns.[10] The last paragraph of the letter that Cornwell wrote included the following statement: "In the aggregate, the data in this report combines to present such a misleading indication of the value of this property as to be considered fraudulent."[11]

Beattie replied to the letter from Fleet on February 24, 1996; however, Fleet decided that the letter failed to justify Beattie's findings.[12] Fleet replied to Beattie's letter of February 24, 1996, with a letter dated March 20, 1996, informing Beattie that Fleet did not agree with Beattie's appraisal or his methodology and that Fleet had removed Beattie from their list of approved real estate appraisers.[13]

Beattie sued Fleet National Bank, Fleet Mortgage and Cornwell for the alleged defamatory statement in the letter dated February 14, 1996.[14] The defendants filed a motion for summary judgment on the grounds that the statement was not defamatory, but rather a derogatory opinion based on disclosed, non-defamatory facts.[15] The Superior Court granted the defendants' motion based on the Rhode Island Supreme Court holding that an opinion based on disclosed non-defamatory facts is not actionable.[16]

ANALYSIS AND HOLDING

The court stated that Beattie had the burden to show that defendants communicated a "false and defamatory" statement about him, and that the question of whether a statement is defamatory is a matter of law.[17] After reviewing prior case law, the court stated that an opinionative statement is only defamatory if it is based on

9. *See id.*
10. *See id.*
11. *Id.*
12. *See id.*
13. *See id.*
14. *See id.*
15. *See id.*
16. *See id.* at 720-21.
17. *Id.* at 721.

undisclosed defamatory facts.[18] Also in *Belliveau,*[19] the court endorsed section 556 of the Restatement of Torts, which states, "[a] defamatory communication may consist of a statement in the form of an opinion, but a statement of this nature is actionable only if it implies the allegation of undisclosed defamatory facts as the basis for the opinion."[20]

In the present case, the court found that the statement made by Cornwell in the letter dated February 14, 1996, was based on facts that were fully disclosed and explained to Beattie in the letter and in the seven-page memorandum.[21] The supreme court cited *Partington v. Bugliosi,*[22] where the Ninth Circuit stated, "when an author outlines the facts available to him, thus making it clear that the challenged statements represent his own interpretation of those facts and leaving the reader free to draw his own conclusions, those statements are generally protected by the First Amendment."[23] Also, the court noted that Cornwell's opinion did not imply that he knew other facts that were defamatory or undisclosed.[24] Cornwell disclosed that the main reason for his opinion rested on the other properties that Beattie selected as comparables: Beattie used colonial homes instead of raised ranch homes, the houses were located in different neighborhoods than the property in question, and in some cases the houses used as comparables were much larger and in others on the waterfront.[25]

Also, Cornwell disagreed with Beattie's valuations of the differences in those properties in comparison to the property in question: for example, Beattie only added $10,000 to the price of a $400,000 dollar property for its waterfront location.[26] The memorandum accompanying the letter laid out the deficiencies in Beat-

18. *See id.* (citing Belliveau v. Rerick, 504 A.2d 1360 (R.I. 1986)). The court stated that in *Belliveau* the alleged defamatory statement was not defamatory because it was based on a four-page summary of the plaintiff's activities, thus the opinion was based on disclosed, non-defamatory facts. *See Beattie,* 746 A.2d at 721.

19. 504 A.2d 1360 (R.I. 1986).

20. *Beattie,* 746 A.2d at 722 (quoting Restatement (Second) of Torts § 566 (1976)).

21. *See id.* at 725.

22. 56 F.2d 1047 (9th Cir. 1995).

23. *Beattie,* 746, A.2d at 725 (quoting *Partington,* 56 F.2d at 1156-57).

24. *See id.*

25. *See id.* at 726.

26. *See id.*

tie's appraisal, which the court stated "provided a largely factual, non-defamatory basis for Cornwell's opining . . . that the data used in Beattie's report combined to present such a misleading indication . . . 'as to be considered fraudulent.'"[27]

The court also stated that the term "fraudulent" that Cornwell used in the letter could not be construed to assert that Beattie had himself committed a fraudulent act, but rather the statement was merely a non-actionable, rhetorical hyperbole.[28]

The court rejected Beattie's argument that there remained an issue of fact to be resolved in regard to whether Cornwell had enough information to state that Beattie's appraisal could be considered fraudulent.[29] The court stated that Beattie's argument was simply not supported by the record.

CONCLUSION

In a suit for libel, a statement of opinion can only be defamatory if "it implies the allegation of undisclosed defamatory facts as the basis for the opinion."[30] The court stated that the trial court justice correctly held that Cornwell's opinionative statement was based on disclosed, non-defamatory facts, and thus the statement was not actionable.

Stan Pupecki

27. *Id.*
28. *See id.* at 727.
29. *See id.* at 728.
30. Beattie v. Fleet Nat'l Bank, 746 A.2d 717, 722 (R.I. 2000) (quoting Restatement (Second) of Torts § 566 (1976)).

Tort Law. *Cain v. Johnson*, 755 A.2d 156 (R.I. 2000). Decedent, who fell from Cliff Walk while walking there after closing time, was a trespasser despite defendants' failure to put decedent on notice of closing time. Because decedent was a trespasser, no liability existed since the defendants were not actually aware of his presence. Defendants had no duty to warn trespassers about the seriously eroded condition existing on the grassy area next to Cliff Walk because those conditions merely constituted a natural condition of land.

FACTS AND TRAVEL

On August 6, 1991, at approximately 2:00 a.m., Michael Cain and his friends walked along Cliff Walk in Newport (City).[1] Per the City's ordinance, Cliff Walk closed at 9:00 p.m. except for the purpose of fishing.[2] The closing time, however, was not posted at the Forty Steps entrance used by Michael and his companions.[3] When Michael reached the area of the Cliff Walk near Salve Regina University, he stepped off the paved area and onto the grassy area towards the edge of the cliff.[4] This area had been apparently well-trodden and was bounded by an eight-inch wall.[5] Michael stepped into a hole directly next to the wall.[6] The hole, which had been created by erosion, was masked by vegetation.[7] The ground gave way beneath Michael's feet.[8] Michael fell to his death on the rocks approximately fifty-three feet below.[9]

Plaintiffs William G. Cain and Mary H. Cain filed a wrongful death action on Michael's behalf against the defendants City of Newport, the State of Rhode Island and Salve Regina University, alleging that Michael had fallen due to the defendants' failure to properly inspect, maintain and repair the Cliff Walk.[10] Much evidence was presented indicating that the defendants had long been aware of the eroded conditions and the consequent hazards ex-

1. *See* Cain v. Johnson, 755 A.2d 156, 158 (R.I. 2000).
2. *See id.* at 159.
3. *See id.* at 170.
4. *See id.* at 158.
5. *See id.* at 162-63.
6. *See id.* at 163.
7. *See id.* at 167.
8. *See id.* at 158.
9. *See id.* at 163.
10. *See id.* at 158.

isting at Cliff Walk.[11] The defendants moved for summary judgment, arguing that because the Cliff Walk had been closed at the time of the accident, Michael had been a trespasser and defendants had only owed him the duty to refrain from willful and wanton conduct after actually discovering him.[12] Summary judgment was granted.[13] The motion justice reconsidered the ruling, but allowed it to stand.[14] Plaintiffs then appealed the grant of summary judgment.[15]

Analysis and Holding

On appeal, a majority of the *Cain* court agreed with the motion judge's ruling that Michael had been a trespasser and therefore the defendants were only obligated to avoid inflicting wanton and willful injury after actually discovering him on the premises.[16] The plaintiffs argued that Michael should not have been considered a trespasser because he had never received sufficient notice that he was a trespasser.[17] In support of their argument, plaintiffs pointed to the fact that the City of Newport had never sought to enforce the ordinance closing the park at 9:00 p.m.[18] Furthermore, the plaintiffs argued, while the Cliff Walk hours were only posted at the beginning and end of the Cliff Walk, there are numerous entrance points along the approximately 18,000 foot Cliff Walk where no hours are posted, including the Forty Steps entrance taken by Michael.[19]

The court rejected this line of reasoning, noting its prior holding in *Bennett v. Napolitano*.[20] In that case, plaintiff, who had been injured in Roger Williams Park, had argued that he should not have been considered a trespasser because the park rangers and city police had never attempted to enforce the city closing ordinances during the ten years that the plaintiff had used the park

11. *See id.* at 166-68.
12. *See id.* at 158.
13. *See id.*
14. *See id.*
15. *See id.*
16. *See id.* at 159.
17. *See id.*
18. *See id.*
19. *See id.*
20. 746 A.2d 138 (R.I. 2000).

after hours.[21] The court disagreed, noting that the rangers and police had had no authority to waive the closing ordinance or give implied consent to use the park after hours.[22] Similarly, the court reasoned that Michael's knowledge or notice of the closing ordinance was irrelevant to the question of whether or not he was a trespasser.[23] Therefore, because Michael was on the path at 2:00 a.m., he was properly considered a trespasser as a matter of law.[24]

The plaintiffs also attempted to persuade the court to adopt the level of care owed to trespassers as enunciated in the Restatement (Second) of Torts section 334 (1965), which imposed liability on landowners for failing to use reasonable care for a trespasser's safety. When that landowner knows, or ought to know, that a particular portion of his or her land is constantly being intruded upon by trespassers.[25] Under that test, Michael would have been owed the duty of reasonable care because there was substantial evidence that the City of Newport knew of after-hours use of the Cliff Walk,[26] and therefore should have anticipated his presence.[27]

The *Cain* majority, however, rejected this invitation to change the duty of care owed to trespassers on land.[28] The court observed that in the 1975 case of *Mariorenzi v. Joseph DiPonte, Inc.*,[29] it had attempted to eliminate the different levels of care owed to trespassers, licensees and invitees in favor of a single standard.[30] However, a mere nineteen years later, the court had restored the distinction between invitees and trespassers, and had since held fast to the position that no duty was owed to a trespasser until he or she was actually discovered in a position of peril.[31] Because

---

21. *See id.* at 141.

22. *See id.* at 142.

23. *See Cain*, 755 A.2d at 160.

24. *See id.*

25. *See id.* at 160 (citing Restatement (Second) of Torts § 334 (1965)).

26. *See id.* at 171-72.

27. *See id.* at 160.

28. *See id.* at 160-61.

29. 333 A.2d 127 (1975).

30. *See Cain*, 755 A.2d at 161 (citing *Mariorenzi*, 333 A.2d at 131 n.2).

31. *See id.* at 160 (citing Tantimoncio v. Allendale Mut. Ins., 637 A.2d 1056, 1061 (R.I. 1994)); Wolf v. Nat'l R.R. Passenger Corp., 697 A.2d 1082, 1086 (R.I. 1997); Zoubra v. New York, New Haven and Hartford R.R. Co., 150 A.2d 643, 644-45 (R.I. 1959)).

Michael had never been discovered, then, the court reasoned that no duty of care had been owed him.[32]

The plaintiffs also attempted to argue that the land where Michael fell had been maintained in an artificial condition, and therefore the defendants were liable regardless of Michael's trespasser status.[33] The Restatement (Second) of Torts section 337 imposes liability on landowners who maintain an artificial condition involving a risk of death or serious bodily harm, where the landowner: 1) fails to exercise reasonable care in warning trespassers; 2) knows or has reason to know of the trespasser's presence in dangerous proximity to the condition; and 3) has reason to believe that the trespasser will not discover it or realize the risk.[34] Although the precise area from which Michael fell had been an unpaved area, the plaintiffs argued, the paved nature of Cliff Walk itself created an artificial condition of land.[35] The court, however, held that the elements of this test for liability were not met here. First, the court held that exact area from where Michael had fallen, the unpaved area, was a natural rather than artificial condition.[36] Even if the paved Cliff Walk created an artificial condition of the land, the risks inherent on a cliff, particularly in the dark, are sufficiently obvious that a trespasser will realize the risk.[37]

The court also considered the argument that City's liability had been limited under Rhode Island General Laws sections 32-6-3 and 32-6-5. Section 32-6-3 limits the liability of landowners who invite or permit their property to be used for recreational purposes.[38] Section 32-6-5 provides that there is no limit upon the liability of a landowner who willfully or maliciously fails to guard or warn against a dangerous condition after discovering a user's peril.[39] The defendant had argued that these limitations on liability applied to the state and municipalities at the time of the accident.[40] The plaintiffs and state argued that these statutes had

32. *See Cain*, 755 A.2d at 162.
33. *See id.*
34. *See id.* (citing Restatement (Second) of Torts § 337)(1986)).
35. *See id.*
36. *See id.* at 163.
37. *See id.*
38. *See* R.I. Gen. Laws § 32-6-3 (1956) (1994 Reenactment).
39. *See id.* § 32-6-5 (1956) (1994 Reenactment).
40. *See Cain*, 755 A.2d at 164.

only applied to private landowners.[41] The court did not decide this since the statutes were inapplicable to this case in any event.[42] Under the statute, there was no duty to a trespasser until discovered in a position of peril. Therefore, since Michael had not been discovered, there had been no duty.[43]

The Concurrence

Associate Justice Flanders wrote a concurring opinion, in which he was joined in part by Justice Goldberg.[44] Flanders agreed that Michael's subjective ignorance that the Cliff Walk was closed did not convert Michael's status to that of an invitee or to a licensee owed a higher duty of care.[45] Flanders, however, pointed out that under Restatement (Second) of Torts (1986) section 335, a landowner is liable for bodily harm to trespassers caused by an artificial condition on the land if that artificial condition is one which the landowner 1) created or maintained; 2) knows it is likely to cause the trespassers death or serious bodily harm; 3) has reason to believe that trespassers will not discover it; and 4) has failed to use reasonable care in warning the trespasser.[46] Under the Comment to section 335, this rule appears to apply to natural conditions of the land.[47] Following this test, Flanders concluded the defendants' mere knowledge of the dangers of the Cliff Walk generally would not have been sufficient to defeat summary judgment.[48] However, if there was any evidence that the defendants had known that trespassers continually intruded on the particular place where Michael fell, and had known about the particular hole in the ground and the hidden danger that it represented, summary judgment should not have been granted.[49]

---

41. *See id.*
42. *See id.*
43. *See id.*
44. *See id.* at 164.
45. *See id.* at 165.
46. *See id.* (citing Restatement (Second) of Torts § 335 (1986)).
47. *See id.* at 166 n.2 (citing Restatement (Second) of Torts § 335 cmt. b (1986)).
48. *See id.*
49. *See id.*

The Dissent

Associate Justice Goldberg wrote a ringing dissent.[50] Goldberg asserted that Michael was not a trespasser.[51] Goldberg noted that the City of Newport and the State had historically treated and developed the area as a public easement.[52] The City of Newport had long expressed its intent not to enforce the closing ordinance and had failed to post the closing hours in a manner which would be apparent to anybody entering.[53] Therefore, Goldberg concluded that the license to use the Cliff Walk had not been revoked.[54] In any event, the City ordinance itself made an exception for fishing.[55] Under the Restatement view, Goldberg noted, where a landowner opens his land to a particular class of persons, it is irrelevant that a particular person does not know of the precise use for which the land is opened; that person remains a licensee.[56] Because Michael was not a trespasser, then, he had been owed the same duty of reasonable care that is owed to a licensee or invitee.[57]

Even if Michael had not been a trespasser, Justice Goldberg felt that the duty of care owed Michael had still been violated. She also argued that the area where Michael had fallen had long been used as a sort of man-made lookout over the water and thus increased the likelihood that a stroller would encounter the hole.[58] Since an eight-inch wall in fact defined that area, Goldberg concluded that Michael had not fallen due to a natural condition of the land.[59] Finally, Goldberg cited the fact that the City and State had been repeatedly placed on notice of the danger of collapse, particularly in the very area from which Michael fell, yet chose to do nothing.[60] Therefore, Goldberg opined that the City and State had had

50. *See id.*
51. *See id.*
52. *See id.* at 170-71.
53. *See id.* at 171-72.
54. *See id.*
55. *See id.* at 171.
56. *See id.* at 172 (citing Restatement (Second) of Torts § 330 (1965)).
57. *See id.* at 172.
58. *See id.* at 168.
59. *See id.*
60. *See id.* at 166-68.

actual notice of the hazards and had been recklessly indifferent towards Michael's safety.[61]

Accordingly, Justice Goldberg concluded, summary judgment should not have been granted to the City. Furthermore, Justice Goldberg noted, because the City could not defend based upon Michael's status as a trespasser, the State could not rely upon that defense either.[62] Because there was evidence that the State had long joined with the City in improving Cliff Walk, there should be a trial to determine whether or not the State, too, was an owner.[63] Salve Regina, however, was a mere abutter who had no liability.[64]

CONCLUSION

The *Cain* majority continued the Rhode Island Supreme Court's earlier line of cases holding that a person using a public park after closing time is a trespasser despite the fact that the public body responsible for its operation fails to make the public aware of the closing time. Additionally, the *Cain* majority rejected another invitation to eliminate the difference in the duty of care owed to invitees, and the duty of care owed to trespassers. Under the standard owed to trespassers, the defendants had no liability unless they were actually aware of the decedent's presence; mere awareness of the after-hours use of the park was not sufficient. Finally, although the paved area of Cliff Walk itself constituted an unnatural condition of land, the duty to warn trespassers of any dangerous and hidden conditions ended when trespassing decedent stepped from that paved area of Cliff Walk. Once the trespassing decedent stepped on the grass near the paved area of Cliff Walk, he was on a natural condition of the land, and the defendants owed him no duty to warn of the seriously eroded condition of that land.

Vicki J. Bejma

---

61. *See id.*
62. *See id.* at 172.
63. *See id.*
64. *See id.* at 173.

Tort Law. *Kiley v. Patterson*, 763 A.2d 583 (R.I. 2000). A participant in a coed softball game does not assume the risk of injury inflicted by the reckless or intentional misconduct of other participants.

FACTS AND TRAVEL

While playing second base in a recreational, coed softball game, Lori Kiley (Kiley) suffered injuries to her knee when a male base runner, Steven Patterson (Patterson), slid into her.[1] Patterson was attempting to reach second base on a ball hit on the ground to third base.[2] In an attempt to break up the potential double play, Patterson aggressively slid into second base with his arms in the air and with one of his feet high enough in the air to strike Kiley's knee.[3] Kiley sued Patterson for her injuries and Patterson moved for summary judgment.[4] Summary judgment was granted to Patterson on the grounds that Kiley had voluntarily assumed the risk of incurring this type of physical contact injury by playing the game of softball.[5] Kiley appealed to the Rhode Island Supreme Court.[6]

ANALYSIS AND HOLDING

On appeal, Kiley argued that the motion justice erred in granting summary judgment for three reasons.[7] First, Kiley argued that the justice improperly applied a deliberate misconduct or recklessness standard instead of an ordinary negligence standard.[8] Second, Kiley argued that even assuming that a recklessness standard applied, there were questions of fact concerning Patterson's slide, and therefore summary judgment should not have been granted.[9] Third, Kiley argued that there was no evidence to justify the trial justice's conclusion that she had assumed the risk of her injury.[10]

---

1. *See* Kiley v. Patterson, 763 A.2d 583, 584 (R.I. 2000).
2. *See id.*
3. *See id.*
4. *See id.*
5. *See id.* at 585.
6. *See id.*
7. *See id.*
8. *See id.*
9. *See id.*
10. *See id.*

The Rhode Island Supreme Court has never considered what standard of care should be applied when determining liability in cases involving co-participants in an athletic event.[11] Therefore, the supreme court had to determine whether to institute a "heightened recklessness or deliberate misconduct standard or one of ordinary negligence."[12] In making its decision, the Rhode Island Supreme Court adopted the rule and policies set forth by the New Jersey Supreme Court in *Crawn v. Campo*.[13] In *Crawn*, the New Jersey Supreme Court held that "the duty of care applicable to participants in informal recreational sports is to avoid the infliction of injury caused by reckless or intentional conduct."[14] The New Jersey Supreme Court justified the imposition of the recklessness standard to promote vigorous participation in athletic events and to avoid a flood of litigation.[15]

The Rhode Island Supreme Court soundly adopted the holding in *Crawn*, adopting the "heightened recklessness-or-intentional-misconduct standard" which effectively "rule[s] out the possibility of any recovery based upon mere negligence."[16] The supreme court found that the trial justice erred in granting summary judgment because material issues of fact existed as to whether Patterson was "merely negligent or whether he acted deliberately or in reckless disregard of injuring Kiley when he slid into her knee . . . with his foot raised high . . . ."[17]

In reviewing the evidence presented to the trial justice, the supreme court found that Kiley had offered evidence to support her claim that Patterson had slid into her knee with his foot held high and in a reckless manner.[18] Kiley also introduced testimony from the softball league's commissioner, John Leistritz, who testified that the league had a specific rule prohibiting the kind of take-out slide performed by Patterson.[19] Therefore, the supreme court found that a reasonable jury could have concluded that Patterson's

---

11. *See id.*
12. *Id.*
13. *See id.* at 586 (citing Crawn v. Campo, 643 A.2d 600, 601, 603-04 (N.J. 1994)).
14. *Id.* (quoting *Crawn*, 643 A.2d at 604).
15. *See id.*
16. *Id.*
17. *Id.* at 587.
18. *See id.* at 586.
19. *See id.*

actions were not only against the league's rules, but perhaps too aggressive and rambunctious for such a recreational coed softball game.[20] The supreme court also found that it could not be concluded as a matter of law that Kiley assumed the risk of her injuries as a result of the "deliberate or reckless misconduct on the part of opposing players acting in violation of league rules."[21]

CONCLUSION

In *Kiley v. Patterson*, the Rhode Island Supreme Court adopted a heightened recklessness or intentional misconduct standard of care for participants engaging in recreational athletic events.

Heather M. Spellman

20. *See id.*
21. *Id.* at 587.

Tort Law. *Sindelar v. Leguia*, 750 A.2d 967 (R.I. 2000). Rhode Island's Wrongful Death Act (Act) clearly and unambiguously describes those entitled to recover under the Act. If a decedent dies with no spouse or children, any amount recovered under the Act will be distributed to the next of kin as if the decedent died intestate, without any inquiry into the nature or quality of the heir's relationship with the decedent. There is no statutory nor public policy mandated "absentee parent" exception to the distribution scheme.

FACTS AND TRAVEL

Virginia L. Sindelar (Sindelar), and Luis G. Leguia (Leguia) were divorced in 1982.[1] They had two children together.[2] Leguia paid child support until the children reached the age of majority, provided health insurance for the children, and contributed to their college educations.[3] Sindelar alleges that other than these contributions, Leguia had no relationship with the children other than visitation rights.[4]

The eldest son, Gregor, was killed in an automobile accident on November 30, 1996, in Rhode Island, at the age of twenty-nine.[5] Gregor was unmarried at the time of his death, had no children and did not leave a will.[6]

Sindelar settled wrongful death claims for Gregor's estate approximating $116,000.[7] Sindelar filed a motion in November 1997 in the probate court attempting to prevent Leguia from receiving part of the wrongful death settlement proceeds.[8] Sindelar argued that Leguia was barred from recovery under Rhode Island's Wrongful Death Act because of Leguia's lack of contact with Gregor.[9] The probate court motion was denied.[10] Sindelar appealed to the Superior Court, where Leguia moved for summary judgment.[11]

---

1. *See* Sindelar v. Leguia, 750 A.2d 967, 968 (R.I. 2000).
2. *See id.* at 969.
3. *See id.*
4. *See id.*
5. *See id.*
6. *See id.*
7. *See id.*
8. *See id.*
9. *See id.*
10. *See id.*
11. *See id.*

The hearing judge granted summary judgment, finding that Leguia was entitled to his share of the settlement without inquiry into the nature of his relationship with his son under the plain language of the Act.[12] Sindelar appealed to the supreme court.[13]

ANALYSIS AND HOLDING

The Rhode Island Supreme Court employed a de novo standard in analyzing the facts of this case and examined the facts in the light most favorable to Sindelar in determining whether or not summary judgment should be granted in favor of Leguia.[14] Sindelar made two arguments to the court.[15]

Summary Judgment Motion

Sindelar first argued that the hearing judge erred in granting summary judgment as there was no discovery and no supporting affidavits filed by Leguia.[16] She asserted that the motion was procedurally defective.[17] The court found Sindelar's argument that the summary judgment motion was procedurally defective without merit.[18] Rule 56(b) of the Superior Court Rules of Civil Procedure allows for a motion for summary judgment "with or without supporting affidavits."[19] Thus, the court reasoned that having no supporting affidavits "simply cannot be error."[20] For summary judgment to be granted, there only need be "no genuine issues of material fact and that judgment for the moving party be appropriate as a matter of law."[21] The court found that there were no genuine issues of material fact in this case.[22] It also found that the record reflected that the trial justice properly disposed of the case as matter of law.[23] The court, therefore, rejected Sindelar's first argument.[24]

---

12. *See id.*
13. *See id.*
14. *See id.*
15. *See id.*
16. *See id.* at 970.
17. *See id.*
18. *See id.*
19. *Id.* (quoting R.I. Super. Ct. R. Civ. P. 56(b)).
20. *Id.*
21. *Id.*
22. *See id.*
23. *See id.*
24. *See id.*

Interpretation of the Wrongful Death Act

Sindelar also argued that the hearing justice incorrectly interpreted the Act.[25] Advocating an "absentee parent" exception to recovery under the Act, she asserted that the General Assembly intended to provide compensation only to a "decedent's heirs at law who possessed a reasonable expectation of pecuniary benefit from the ongoing life of the decedent."[26] Sindelar alleged that since Leguia had no contact with Gregor and had no reasonable expectation of pecuniary benefit from his son, Leguia should not be able to recover under the Act.[27]

The court rejected Sindelar's argument that the hearing justice incorrectly interpreted and applied the Wrongful Death Act.[28] Her argument that the Legislature intended that only those with a reasonable expectation of pecuniary gain from the continued life of the decedent would recover under the Act is based on the Legislature's use of the term "pecuniary damages" in section 10-7-1.1 of the Act.[29]

The court found that the language of section 10-7-2 of the Act was clear and unambiguous.[30] It provides that if a person dies without a spouse or children, the amount recovered in a wrongful death action be distributed equally to those who would take under Rhode Island intestacy law.[31] Here, the next of kin would be Gregor's parents.[32]

The Act recognizes two exceptions to the recovery provision.[33] The first applies to parents who have failed to pay child support and the second applies when one of the parents is the cause of

25. *See id.* at 969.

26. *Id.* at 970.

27. *See id.*

28. *See id.*

29. *See id.*

30. *See id.*

31. *See id.* Section 10-7-2 provides in pertinent part that "if there are no children, the whole shall go to the husband or widow, and, if there is no husband or widow, to the next of kin, in the proportion provided by law in relation to the distribution of personal property left by persons dying intestate . . . ." R.I. Gen. Laws § 10-7-2 (1956) (1997 Reenactment).

32. *See Sindelar*, 750 A.2d at 971.

33. *See id.*

death.[34] Neither of the exceptions applied to this case and the court refused to carve out a new exception.[35]

The court first found that the plain language of the statute was controlling and that nothing in the pecuniary damages section 10-7-1.1 is incompatible with the plain language of section 10-7-2.[36] The court then distinguished the proposed "absentee parent" exception from the "cause of death" exception.[37] In creating the "cause of death" exception, the court "applied this jurisdiction's well settled public policy"[38] in order to conclude "that a tortfeasor should not benefit from his or her own wrongdoing."[39] The court thus determined that the tortfeasor should be "precluded from recovery under the Act, where that tortfeasor's negligence was adjudged the proximate cause of the decedent's death."[40] Unlike the "cause of death" exception, there is here no legislative intent or stated public policy that would require the court to carve out a new exception to the Act.[41] The court concluded that an "absentee parent" exception would have to originate in the Legislature.[42] Therefore, the court rejected Sindelar's second argument, Sindelar's appeal was denied and the summary judgment for Leguia affirmed.[43]

CONCLUSION

Rhode Island's Wrongful Death Act clearly and unambiguously describes those entitled to recover under the Act. There is no statutory nor public policy mandated "absentee parent" exception to the distribution scheme. If a decedent dies with no spouse or children, any amount recovered under the Act will be distributed to the next of kin as if the decedent died intestate, without any

34. *See id.*
35. *See id.*
36. *See id.* at 971-72.
37. *See id.* at 972.
38. *Id.* at 972.
39. *Id.*
40. *Id.*
41. *See id.*
42. *See id.*
43. *See id.* at 973.

inquiry into the nature or quality of the heir's relationship with the decedent.

Tanya J. Zorabedian