

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

THE ESTATE OF RONALD H. WHITE, JR.,)
by LYNN WHITE, Administratrix of the) C.A. No. 05C-07-031 (JTV)
Estate of Ronald H. White, Jr., LYNN WHITE,)
individually; JAMIE AMOSS; a minor child, by)
her next friend, Tina Piguart; KATHRYN)
DESANTIS, a minor child, by her next friend)
Kathleen Desantis; RONALD H. WHITE, SR.,)
and SHIRLEY M. SMITH,)
)
Plaintiffs,)
)
v.)
)
BRIAN K. PUSEY and PEPSI-COLA BOT-)
TLING COMPANY OF SALISBURY, MARY-)
LAND, a Maryland corporation; PEPSI-COLA)
BOTTLING COMPANY OF SALISBURY,)
n/k/a NEW LIFE HORIZONS, INC.; NEW)
LIFE HORIZONS, INC., a Delaware corpor-)
ation; PBV OF SALISBURY., L.L.C., a)
Delaware Limited Liability Company; PEPSI)
BOTTLING VENTURES, L.L.C., a Delaware)
Limited Liability Company,)
)
Defendants.)

Submitted: August 18, 2006

Decided: November 30, 2006

Scott E. Chambers, Esq., Schmittinger & Rodriguez, Dover, Delaware. Attorney
for Plaintiff Jamie N. White.

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Robert J. Taylor, Esq., Barros, MaNamara, Malkiewicz & Taylor, Dover, Delaware. Attorney for Plaintiffs the Estate of Ronald H. White, Jr. And Jamie Amoss.

Gregory A. Morris, Esq., Liguori, Morris & Yiengst, Dover, Delaware. Attorney for Plaintiffs Ronald H. White, Sr., and Shirley M. Smith.

Keith E. Donovan, Esq., Morris, James, Dover, Delaware. Attorney for Plaintiff Kathryn Desantis.

David S. Eagle, Esq., Klehr, Harrison, Harvey, Branzburg & Ellers, Wilmington, Delaware. Attorney for Defendant Pepsi Bottling Ventures.

Michael J. Johnson, Esq., and George T. Lees, III, Esq., Rawle & Henderson, Wilmington, Delaware. Attorneys for remaining Defendants.

Upon Consideration of
Motion For Judgment on Pleadings
GRANTED

VAUGHN, President Judge

OPINION

Before the Court is a motion for judgment on the pleadings pursuant to Superior Court Civil Rule 12(c). This is a wrongful death action stemming from a car crash. Defendants argue that the deceased's parents are not entitled to any recovery for mental anguish from the death of their son because Delaware's wrongful death statute bars recovery to parents of a victim when the victim has a surviving spouse and children. The plaintiff parents argue the court should deny the motion because

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much of the alleged negligence occurred in Maryland and, therefore, Maryland's wrongful death statute should control.

This is an action brought by the Estate of Ronald H. White, Jr., his wife, two daughters, a step-daughter and his parents against Brian K. Pusey ("Pusey"), the driver in the crash that caused Ronald H. White, Jr.'s death; Pepsi-Cola Bottling Company of Salisbury, Maryland, now known as New Life Horizons, Inc., PBV of Salisbury, LLC and Pepsi Bottling Ventures, LLC.

Pusey, Pepsi-Cola Bottling Company of Salisbury, Maryland, now known as New Life Horizons, Inc., and Pepsi Bottling Ventures LLC ("PBV") argue the Court should declare that Ronald H. White, Jr.'s parents, Ronald H. White Sr. and Shirley M. Smith, are not entitled to any recovery for mental anguish because there is both a surviving spouse and children of the deceased. They argue Delaware's wrongful death statute bars such recovery to parents in such instances.

Ronald H. White, Sr. and Shirley M. Smith counter that they are entitled to recovery because they allege that wrongful acts – including vehicle inspection and maintenance and employee supervision – took place in Salisbury, Maryland. They assert that since wrongful acts of negligence occurred in Maryland, Maryland substantive law controls this issue and they are entitled to recovery under Maryland's wrongful death statute.

Rule 12(c) provides:

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not

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excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonably opportunity to present all material made pertinent to such a motion by Rule 56.

Requests for judgments on the pleadings should not be granted where the pleading raises any material issues of fact.¹

Delaware's wrongful death statute, 10 *Del. C.* § 3724(c), provides damages to the "beneficiaries proportioned to the injury resulting from the wrongful death." When mental anguish is claimed, it is applicable to "parents and persons standing in *loco parentis* to the deceased at the time of the injury which caused the death of the deceased (if there is no surviving spouse, children, or persons to whom the deceased stood in *loco parentis*).² When there is a surviving spouse or child of the deceased person, a parent of the deceased may not recover damages based on mental anguish resulting from the death.³

In this case, the deceased, Ronald H. White, Jr., has a surviving spouse, two biological daughters and a step-daughter to whom he stood *in loco parentis*.

The plaintiff parents request the motion be denied because (1) a dispute of material fact exists; (2) Maryland law controls; and (3) the plaintiffs' complaint presents a mixed question of law and fact.

¹ *Fagnani v. Integrity Fin. Corp.*, 167 A.2d 67 (Del. 1960).

² 10 *Del. C.* § 3724(d)(5).

³ *Sach v. Kent Gen. Hosp.*, 518 A.2d 695 (Del. Super. 1986).

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In support of these contentions, the plaintiff parents argue that the second count of the complaint alleges a dispute of fact, namely that negligence took place in Maryland by Pepsi-Cola Bottling Company of Salisbury, Maryland, and Pepsi-Cola Bottling Company of Salisbury, Maryland, now known as New Life Horizons, Inc. That negligence includes failure to inspect, repair or maintain defective brakes on the vehicle involved in the collision and negligence in hiring and supervision of the defendant driver when they should have known he was an incompetent driver.

Additionally, they argue that the motion should not be granted because their complaint presents a mixed question of law and fact and that through discovery they will be able to demonstrate in greater detail while the defendants' motion should not be granted.

Having considered the plaintiff parents' contentions, I conclude that the Delaware wrongful death statute applies and that their contention that Maryland law applies must be rejected. Applying the principles set forth in *The Travelers Indemnity Co. v. Lake*,⁴ Delaware law should control in this case because it has the most significant relationship to the issues presented here. Pursuant to Section 145 of the Second Restatement, the local law of the state which "has the most significant relationship to the occurrence and the parties under the principles stated in § 6" will govern the rights of litigants in a tort suit.⁵

Section 6 considerations include: the needs of the interstate and international

⁴ 594 A.2d 38 (Del. 1991).

⁵ *Id.* at 47.

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systems; the relevant policies of the forum; the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue; the protection of the justified expectations; the basic policies underlying the particular field of law; certainty, predictability and uniformity of result; and ease in the determination and application of the law to be applied.

Courts also should consider the following factors: the place where the injury occurred; the place where the conduct causing the injury occurred; the domicile, residence, nationality, place of incorporation and place of business of the parties; and the place where the relationship, if any, between the parties is centered. These should be evaluated according to their relative importance with respect to the particular issue.⁶

In this case, although negligence is alleged to have occurred in Maryland, the most significant event compelling this action – the crash that caused the death of the deceased – occurred in Millsboro, Delaware. Additionally, the plaintiffs and defendants reside or are based in a plurality of states: Delaware, Maryland, Pennsylvania and New Hampshire, with most, in fact, residing or being based in Delaware. The administratrix of Ronald H. White, Jr.’s estate, his wife, lives in Longneck, Delaware. Only one of the plaintiffs – the deceased’s minor daughter – lives in Maryland. While the defendant driver is a Maryland resident and his employer was based in Maryland, where some of the negligence is alleged to have occurred, those factors are not sufficient to persuade the Court that Maryland has the

⁶ *Id.*

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most significant relationship to the occurrence of events and parties in this action.

Since the Delaware wrongful death statute applies, the parents cannot recover for mental anguish. Judgment on the pleadings is ***granted*** as to the parent's claim for mental anguish.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

President Judge

oc: Prothonotary
cc: Order Distribution
File