

## In Wrongful Death Suits, Things are Not Always What They Seem

The Superior Court's opinion in *Brittain v. Hope Enterprise Foundation* reminds us of the importance in making a proper inquiry into the standing of the parties to bring wrongful death claims (which often arise in medical malpractice matters). In *Brittain*, the underlying action was relatively straight forward. Patricia Brittain brought a wrongful death and survival action as administrator of the estate of Barbara Ann Maines stemming from the death of 31-year-old Maines.

Maines was a resident of Hope Group Home who suffered from cerebral palsy and was unable to walk or speak. She was a passenger in a van operated by a Hope employee, William Birt, who collided with a vehicle operated by Heather Peters. Maines subsequently died from a lacerated liver that was allegedly not timely reported. The jury found that Hope and Birt were negligent and awarded Patricia Brittain, in her capacity as the administrator of Barbara's estate, a total in the amount \$3,018,628.86 in damages. The award consisted of \$2,018,628.86 in wrongful death damages for medical bills, funeral expenses and loss of services to benefit Sharon Moyer (represented to be Barbara's mother) and \$1,000,000 for survival damages to Barbara's Estate. The jury also awarded \$100,000 in punitive damages against Hope only.

Subsequently, a hearing was held before the Trial Court at which time the Court anticipated wrapping up pending matters including the calculation of delay damages. At the same hearing, the plaintiff's counsel argued that he was entitled to a new trial on the issue of punitive damages only, and the Trial Court disagreed. However, immediately after the hearing, the plaintiff's counsel handwrote a praecipe directing the prothonotary to enter judgment in favor of Brittain and Barbara in their individual capacities, despite the fact that the verdict was entered only in favor of the estate and Brittain as administrator of the estate. The plaintiff's praecipe also requested that judgment be entered against two non-parties to the suit, Selective Insurance Company of America (Selective) and The Hope Foundation. Additional procedural machinations ensued. During this time, the defense uncovered a Petition for Probate that was filed in Columbia County. The wrongful death matter had been tried in Luzerne County. In the Petition for Probate, it was asserted that Brittain was Barbara's sister, despite the fact that during trial in Luzerne County, it was asserted that Brittain was Barbara's aunt. The defense also alleged that it learned that Barbara's mother, Sharon Moyer, had renounced her right to administer Barbara's estate because she was not competent. Barbara's siblings likewise had renounced. There was no evidence that counsel or a guardian for Sharon Moyer had ever been appointed. Defense counsel also advised the Court that while Sharon Moyer had been identified as Barbara's biological mother at trial, she was identified in the Application for Letters of Administration as Barbara's sister. Further, Marcella Rheppart and Leslie Gross were identified as Barbara's sisters in the Application for Letters of Administration, yet they were her aunts. Edward Maines, apparently Barbara's uncle, likewise was represented as her brother in the Application for Letters of Administration. In short, it appeared that Sharon Moyer, as the biological mother, was the only individual entitled to the wrongful death award.

Subsequent to these revelations, the defense filed an Emergency Application representing that they had discovered evidence strongly suggesting that Brittain misrepresented material facts in her Application for the Letters of Administration that, if proven, would establish none of Barbara's living family members, including Sharon Moyer, identified by Brittain at trial as Barbara's mother, had legal standing to assert a wrongful death claim under Pennsylvania's Wrongful Death Statute. The defense discovered in reviewing documents filed in the Orphan's Court in Snyder County that Barbara had been legally adopted by her maternal grandmother, Madeline Maines, which had the effect of terminating Sharon Moyer's parental rights. Madeline Maines had died. Consequently, the defense was able to argue that no one had standing to

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recover the \$2,000,000 in wrongful death damages.

**Comment:** This case depicts the importance of learning as soon as possible whether the plaintiff, who has brought a wrongful death action, has a right to bring it and whether there are any surviving heirs which permit it to move forward. This is an investigation that our firm conducts at the outset with all wrongful death actions. As the aforementioned case highlights, things are not always what they seem.

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