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IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHER MARIANA ISLANDS

ANA DLG. FLORES as personal
representative of the Estate of PEDRO TAKAI
DELEON GUERRERO II; and his heirs,
PEDRO TAKAI DELEON GUERRERO I,
ELENA M. DELEON GUERRERO, NIEVES
M. DELEON GUERRERO, and ANA M.
DELEON GUERRERO,

Plaintiffs,
vs.

DONALD RALPH HAZELWOOD,
NATION UNION INSURANCE CO., and
SALTWATER HILLBILLY, INC., dba
HAMILTON'S BAR,

Defendants.

Civil Case No: 00-0332E

**ORDER GRANTING
DEFENDANT'S MOTION
FOR PARTIAL JUDGMENT
ON THE PLEADINGS**

I. PROCEDURAL BACKGROUND

This matter came before the Court on June 28, 2001 at 3:30 p.m. in courtroom 223 A on Defendant DONALD RALPH HAZELWOOD'S (hereinafter HAZELWOOD) Motion for Partial Judgment on the Pleadings. John D. Osborn, Esq. appeared on behalf of Defendant HAZELWOOD. Robert Tenorio Torres, Esq. appeared on behalf of Defendant HAMILTON'S BAR (hereinafter HAMILTON). Eric S, Smith, Esq. appeared on behalf of the Estate of PEDRO TAKAI DELEON GUERRERO II (hereinafter PEDRO, JR.).

FOR PUBLICATION

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II. ISSUE PRESENTED FOR REVIEW

The issue presented before this Court is whether the Commonwealth allows recovery for pain and suffering on the behalf of a deceased victim.

III. FACTS

PEDRO, JR. was involved in an automobile accident on July 9, 2000. The accident happened around 10:49 p.m. Defendant HAZELWOOD was heading northbound on Beach Road Garapan by the Mobil gas station in Garapan. Decedent PEDRO, JR., while driving his automobile on the same road was struck by HAZELWOOD’S automobile. PEDRO, JR. suffered extensive internal and external injuries as a result of the accident. PEDRO, JR. eventually died as a result of the injuries that he sustained.

PEDRO, JR.’S estate (hereinafter ESTATE) brought suit. As part of their claim, the ESTATE is seeking recovery for pain and suffering covering the time between the accident and PEDRO, JR.’S eventual death.

IV. ANALYSIS

1. Distinctions Between Wrongful Death and Survival Actions

Tortious death is compensated under wrongful death and survival statutes. Survival statutes and wrongful death statutes generally recognize two distinct rights of action. It is important to layout the distinctions between these two actions at the outset. In general, a wrongful death statute provides a cause of action for the decedent’s surviving family for losses they sustain as a result of the decedent’s death. In contrast, a survival statute preserves the decedent’s own cause of action for personal injury and death. Sposato v. Electronic Data System, Corp., 188 F.3d 1146, 1149 (9th Cir. 1999).

Both actions are enforced by a personal representative but the wrongful death action is for the exclusive benefit of the surviving spouse, the children, and other next of kin, whereas the action under the survival statute is for the benefit of the decedent’s estate. Conscious pain and

1 suffering, medical expenses, and loss of earnings up until the date of death are allocated under
2 the survival statute, while the loss of benefit to the survivors is allocated to the action under the
3 wrongful death statute. 22 Am. Jur. 2D Death § 92 (1989).

4 In addition to the statutory differences between the two causes of action, variations exist
5 regarding the damages recoverable under a survival statute. Recovery for pain and suffering is
6 one of the most common variations among the many survival statutes. Most states do afford
7 damages for a decedent's pain and suffering. Evangelista v. Mobil Oil Mariana Islands, Inc.,
8 Civ. No. 97-0652(t) (N.M.I. Super. Ct. May 19, 1999) (Decision and Order on Defendant's
9 Motion for Partial Judgment on the Pleadings) However, some states do not allow recovery. *See*
10 Cal. Civ. Proc. Code § 377.34 (West 1999).

11 The analysis must now shift to the relevant CNMI statute to determine whether the statute
12 is a survival statute, which would allow recovery for PEDRO, JR.'S pre death pain and suffering
13 or a wrongful death statute, which would deny recovery.

14 **2. CNMI Provides for a Wrongful Death Action**

15 **a. Statutory Authority**

16 The relevant statute is as follows:

17 **Liability in Action for Wrongful Death; Proceedings.**

18 (a) When the death of a person is caused by the wrongful act, neglect or default such
19 as would have entitled the party injured to maintain an action and recover damages
20 in respect thereof if death had not ensued, the person or corporation which would have
21 been liable if death had not ensued, or the administrator or executor of the estate
22 of that person, as the administrator or executor, is liable to an action for damages
23 notwithstanding the death of the person injured . . .

24 7 CMC § 2101

25 “[A] basic principle of [statutory] construction is that the language must be given its plain
26 meaning.” Commonwealth v. Hasinto, 1 N.M.I. 377, 382 (1990) Here, a plain reading of the
27 statute would indicate that it is a wrongful death statute and not a survival statute because the
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1 statute is actually titled as “Liability in Action for *Wrongful Death*.” (emphasis added) Given
2 this language, the Court can only conclude that the statute was only intended to provide relief
3 based upon wrongful death.

4 **b. Historical Perspective**

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6 7 CMC § 2101 sets forth a cause of action for wrongful death which is patterned after
7 “Lord Campbell’s Act.” Yichitaro v. Lotius, 3 T.T.R. 3 (Tr. Div. 1965); Flowers v. Hyatt
8 Regency, Civ. No. 83-205 (N.M.I. Super. Ct. Aug. 11, 1983) (Decision and Order on
9 Defendant’s Motion to Dismiss); Ito v. Macro Energy, Inc., 4 N.M.I. 46, N.M.I 63 (1993). Under
10 Lord Campbell’s Act, “damages are limited to the pecuniary benefits which the beneficiaries
11 might reasonable be expected to have derived from the deceased had his life not been
12 terminated.” Id at 63 *citing* Yichitaro v. Lotius, 3 T.T.R. 3, 17 (Tr. Div. 1965)

14 Thus, Lord Campbell’s Act speaks of the benefits that the beneficiaries may have
15 received from the “deceased had his life not been terminated.” Accordingly, the Act that the
16 CNMI wrongful death statute is patterned after is a wrongful death statute and not a survival
17 statute because the statute makes no mention of the benefits that the deceased may have been
18 awarded.

19
20 **c. Relevant CNMI Case Law**

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22 The CNMI courts have addressed this same issue in two previous cases. In Flowers v.
23 Hyatt Regency, Civ. No. 83-205 (N.M.I. Super. Ct. Aug. 11, 1983) (Decision and Order on
24 Defendant’s Motion to Dismiss), the court held that there is “clearly no survival of a cause of
25 action for the deceased.” Flowers v. Hyatt involved a women who drowned in the swimming
26 pool of the Hyatt Regency. Id at 693.

1 In paragraph 5, Count 1 of the complaint it stated that “. . . plaintiff brings this action
2 individually.” Id at 696.

3 The court reasoned that the plain reading of the CNMI wrongful death statute “. . . leads
4 unalterably to the conclusion that the action must be brought in the name of the personal
5 representative and shall be for the exclusive benefit of the listed beneficiaries. . .” Id at 696.

6 Next, the court in Evangelista v. Mobil Oil Mariana Islands, Inc., Civ. No. 97-0652(t)
7 (N.M.I. Super. Ct. May 19, 1999) (Decision and Order on Defendant’s Motion for Partial
8 Judgment on the Pleadings), held that a claim for pain and suffering does not survive the death of
9 the victim. Id. at 5. Evangelista involved an automobile accident that resulted in the death of
10 one of the occupants of the automobile. The other two living passengers brought suit.

11 As part of their suit, the surviving passengers attempted to recover for the pain and
12 suffering of the deceased occupant. The court reasoned that the legislature did not “. . . provide
13 for a claim of pain and suffering to survive after the victim was dead.” Id at 5.

14 Similarly, the present case involves a claim for recovery for pain and suffering by the
15 estate of the deceased. As previously discussed, the plain meaning of 7 CMC § 2101 and the
16 relevant CNMI case law demonstrates that the CNMI does not have a survival statute. Rather, 7
17 CMC § 2101 is a wrongful death statute. Accordingly, the ESTATE cannot look to the
18 Commonwealth statutes for aid in bringing their claim. Without a statute, the ESTATE must
19 look toward the common law for relief.

20 **d. No Common Law Rule Allowing Survivability of a Deceased Cause of Action**

21 In the Commonwealth, the rules of the common law as expressed in the Restatement of
22 the Law as approved by the American Law Institute serve as the applicable rules of decision, in
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1 the absence of written or local customary law to the contrary. 7 CMC § 3401.

2 The language of the Restatement is clear on this point. At early common law all causes
3 of action based upon a tort “terminated on the death of either the tortfeasor or the injured party.”
4 Restatement (Second) of Torts § 900 (1977). Accordingly, the common law rule regarding
5 survivability of claims prevents the ESTATE of PEDRO, JR. from bringing a claim because any
6 claim “terminated” at the death of PEDRO, JR..

8 _____ While the Court acknowledges that the Commonwealths treatment of the survivability of
9 claims does not follow the modern trend, and may even be considered harsh, the Court declines
10 to immerse itself within the arena occupied by the Commonwealth legislature and to engage in
11 judicial legislation. This Court will give, as it must, deference to the Commonwealth legislature.
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13 14 V. CONCLUSION

15 For the foregoing reasons, Defendant HAZELWOOD’S Motion for Partial Judgment on
16 the Pleadings is **GRANTED**.

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20 So ORDERED this 5th day of July 2001.

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23 /s/
24 DAVID A. WISEMAN, Associate Judge

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Order Granting Partial Judgment on the pleadings