

FROM THE COURTS

Assessment, Calculation of Wrongful Death Damages to Distributees

by Shana De Caro
and Michael V. Kaplen

Issues raised in the column, *The Need To Identify Distributees in Defending Malpractice Death Cases*, NYLJ, March 20, 2023, require further elucidation and clarification to understand the full extent of damages to which an adult child may be entitled following the death of a parent. While we respect the opinions and perspectives of our colleague, we believe these issues must be explored further for accuracy, clarity, and a full interpretation and comprehension of this important issue.

Assessment and calculation of wrongful death damages to distributees is nuanced, fact specific, and not always as simple as it might appear on first examination. This is especially true when considering the damages recoverable for services provided by decedent to an adult distributee and his/her children.

The recoverable damages of decedent's next of kin are governed by EPTL 5-4.3(a). "The damages awarded to the plaintiff may be such sum as the jury... deems to be fair and just compensation for the pecuniary injuries resulting from the decedent's death to the persons for whose benefit the action is brought."

The damages recoverable by a child for the loss of guidance and support provided by the decedent to his or her grandchildren, and even great grandchildren may be recoverable in a wrongful death action since these services and support flow from, through, and under the obligations, responsibilities, and relationship of the child with his or her own children.

The essence of wrongful death damages to any distributee is based upon plaintiff's reasonable expectancy of future assistance or support by the decedent frustrated by the decedent's death. *Hart v. El. & Elec., Inc.*, 146 A.D.3d 756 (2nd Dept. 2017). This is not always an easy calculation, either as to the actual pecuniary loss, or the types of harm included in this calculation. That expectation may encompass the guidance and support provided by a grandparent to his or her grandchildren and may be included in the calculation of pecuniary loss sustained by the adult, child distributee.

Distributees may be entitled to wrongful death damages even after they have attained majority and are no longer minors requiring the usual care and services of a parent. Adult children distributees are entitled to increased expenditures required to continue the services decedent provided as well as the compensable personal losses, such as loss of guidance. *Bacchus-Sirjuu v. Hollis Women's Ctr.*, 196 A.D.3d 670 (2nd Dept. 2021).

Some types of damages are simple to compute, as in the loss of particular services, however, some, such as loss of guidance, must be left to a jury to evaluate and determine.

A wrongful death award for adult children may be based upon the dece-



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The assessment of wrongful death damages is not as straightforward as one may expect.

dent's age, character, earning capacity, life expectancy and the circumstances of the distributees. *Motelson v. Ford Motor Co.*, 101 A.D.3d 957 (2nd Dept. 2012); see *Greveling v. State of New York*, 132 A.D.3d 1332 (4th Dept. 2015).

Where a decedent was not a wage earner, pecuniary injuries may be calculated, in part, from the "increased expenditures required to continue the services she provided, as well as the compensable losses of a personal nature, such as loss of guidance." *Gonzalez v. New York City Housing Authority*, 77 N.Y.2d 663 (Ct. Apps 1991). Increased expenditures may take many forms. It is not limited to loss of income, especially true where the decedent was not a wage earner.

The variety of services depends on the nature of the relationship and services the decedent actually provided during his/her life and could reasonably be expected to continue, but for his/her death. In *Ramos v. La Montana Moving & Storage*, 247 A.D.2d 333 (1st Dept. 1998), plaintiff had a claim for pecuniary injuries where the proof established that "decedent regularly provided babysitting services to the three infant children of his daughters, imparted family, cultural and language traditions to these grandchildren, taught the grandchildren the Spanish language, provided regular counseling and guidance to his daughters and son, and provided emergency financial assistance to one of his daughters."

In *Clark v. Weinstein*, 23 A.D.3d 1054 (4th Dept. 2005), the court found decedent's adult daughter was a distributee entitled to recover for the voluntary assistance provided by decedent directly to her including voluntary assistance provided to grandchildren. "[D]ecedent's daughter was legally obligated to provide support for her children despite the fact that her parents were awarded custody of them (see *Matter of Modica v. Thompson*, 300 A.D.2d 662, 663, 755 N.Y.S.2d 86 (2002)).

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CITY OF DORAL NOTICE OF PUBLIC HEARING

All residents, property owners and other interested parties are hereby notified of a **COUNCIL ZONING MEETING** on **April 26, 2023 beginning at 6:00 PM** to consider a modification to the Midtown Doral Planned Unit Development (PUD) Phase II Master Development Agreement (MDA) and Pattern Book. The City Council will consider this item for **FIRST READING**. The meeting will be held at the **City of Doral, Government Center, Council Chambers located at 8401 NW 53rd Terrace, Doral, Florida, 33166**.

The City of Doral proposes to adopt the following Ordinance:

ORDINANCE No. 2023-13

AN ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING A MODIFICATION TO THE MIDTOWN DORAL PLANNED UNIT DEVELOPMENT (PUD) PHASE II MASTER DEVELOPMENT AGREEMENT AND PATTERN BOOK TO INCREASE APPROVED RESIDENTIAL UNITS FROM 675 TO 734, INCREASE CLUBHOUSE AMENITY SPACE FROM 47,000 SQUARE FEET TO 58,052 SQUARE FEET, AND REDUCE COMMERCIAL GROSS LEASEABLE AREA FROM 93,000 SQUARE FEET TO 61,064 SQUARE FEET; AND PROVIDING FOR AN EFFECTIVE DATE

HEARING NO.: 23-04-DOR-09

APPLICANT: Century Midtown Properties, LLC, Century Town Center 1, LLC, and Century Town Center 2, LLC

PROJECT NAME: Midtown Doral PUD Phase II

PROPERTY OWNERS: Century Midtown Properties, LLC, Century Town Center 1, LLC, and Century Town Center 2, LLC

LOCATION: Generally located east of NW 107 Avenue and situated to the north and south of NW 82 Street.

FOLIO NUMBER: 35-3008-000-0033, 35-3008-000-0036 and 35-3008-000-0038

SIZE OF PROPERTY: ±8.8 acres

FUTURE LAND USE MAP DESIGNATION: Community Mixed Use (CMU)

ZONING DESIGNATION: Planned Unit Development (PUD)

REQUEST: The Applicant requests a modification to Phase II of Midtown Doral Planned Unit Development (PUD) proposing an updated development program comprising of a 58,052 square foot clubhouse, 61,064 square feet of gross leasable commercial use, and 734 dwelling units. This will allow for an additional 59 dwelling units, an increase of 11,052 square feet of clubhouse amenity space, and a reduction of 31,936 square feet of gross leasable area of commercial use.

Location Map



Inquiries regarding the item may be directed to the Planning and Zoning Department at 305-59-DORAL. The application file may be examined at the City of Doral Planning and Zoning Department located at 8401 NW 53 Terrace, Doral, FL 33166.

Pursuant to Section 286.0105, Florida Statutes if a person decides to appeal any decisions made by the City Council with respect to any matter considered at such meeting or hearing, they will need a record of the proceedings and, for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law. In accordance with the Americans with Disabilities Act, any person who is disabled and who need special accommodations to participate in this meeting because of that disability should contact the Planning and Zoning Department at 305-59-DORAL no later than three (3) business days prior to the proceeding.

Connie Diaz, MMC
City Clerk
City of Doral