FLORIDA

LUKS, SANTANIELLO PARTNERS
PREVAIL IN PRECEDENT SETTING DECISION IN THE FIRST DISTRICT COURT OF APPEAL INTERPRETING THE WRONGFUL DEATH ACT

Tallahassee Managing Partner Dale Paleschic, Senior Managing Appellate Partner Daniel Weinger, and Senior Associate Alec Masson recently prevailed in a precedent setting appeal in the First District Court of Appeal in Hamblen v. Pilot Travel Centers, LLC, Case No. 1D19-1613 (Fla. 1st DCA February 26, 2021). The appeal turned on the resolution of an issue of first impression involving an interpretation of section 768.24 of Florida's Wrongful Death Act. That statute provides that "[a] survivor's death before final judgment shall limit the survivor's recovery to lost support and services to the date of his or her death."

The underlying wrongful death case was brought by the father as the sole survivor of his deceased daughter, who died in an automobile accident. At trial he sought recovery for pain and suffering but not for lost support and services. The jury returned a net verdict of $1,700,000.00 after assigning the substantial majority of fault on two non-party Fabre Defendants. Thereafter, the trial court entered "Final Judgment". A timely motion for new trial was filed and ultimately denied by the trial court. Shortly after Defendant's appeal had commenced, it was discovered that the decedent's father had passed away while Defendant's motion for new trial was still pending.

We filed a motion to set aside the final judgment under Florida Rule of Civil Procedure 1.540(b), arguing that although the trial

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court originally entered a "Final Judgment", the judgment was not truly "final" until such time as the trial court ruled on the timely filed motion for new trial. Because the decedent's father passed away while the motion for new trial was still pending, his death occurred before "final judgment" and, under section 768.24, his recovery was limited to lost support and services to the date of the decedent's death. In addition to making statutory interpretation arguments, Defendant argued that its position was consistent with the underlying "philosophy of the [Wrongful Death] Act [which] is to afford recovery [of mental pain and suffering damages to] the living rather than the dead." Fla. Clarklift, Inc. v. Reutimann, 323 So. 2d 640, 641 (Fla. 2d DCA 1975). The trial court agreed, set aside the final judgment and, because there was no claim for lost support and services, entered a new final judgment in the amount of $0.

In a unanimous decision, the First District Court of Appeal affirmed. In so doing, the district court rejected the Estate's argument that the language in section 768.24 has the same effect as an abatement and, accordingly, abatement law should govern. To that end, the Estate claimed that under abatement law, the right to recovery for those damages beyond lost support and services became final at the latest when the trial court entered the order titled "Final Judgment" and arguably as far back as when the jury first returned the verdict. Unpersuaded, the First District Court of Appeal, while acknowledging that the meaning of "final judgment" in the Wrongful Death Act had never been decided, agreed with Messrs. Paleschic, Weinger, and Masson that the term "abatement" was conspicuously absent from section 768.24 even though it was used in other sections of the Wrongful Death Act. If the legislature intended abatement law to govern section 768.24, it would have said as much.

The First District went on to agree with our arguments that although the phrase "final judgment" is not expressly defined under the Wrongful Death Act, the principle that a judgment is not truly final until at least such time as the trial court rules on timely filed motions for new trial and/or motions for rehearing is so well-settled that to reach any different result under section 768.24 would create an inconsistency in the law that would only lead to confusion. Accordingly, the First District Court of Appeal affirmed the trial court's entry of a new final judgment in the amount of $0.