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Recent Decisions

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COMMUNITY PROPERTY: INDUSTRIAL ACCIDENT COMMISSION AWARD: *IN RE SIMONI'S ESTATE* (CAL. 1963)

Joseph and Leola Simoni were husband and wife; Ercole Simoni was their adopted son. During their marriage Joseph was injured in an industrial accident and subsequently received an Industrial Accident Commission award of $3,372.62. This amount was deposited in his name in a Santa Barbara bank. Joseph died intestate one month after this deposit, and his wife was appointed administratrix of his estate.

She filed a petition for distribution of all her husband's assets to her. The son filed a petition alleging that the award by the Industrial Accident Commission was his father's separate property, and that he, therefore, was entitled to share in that portion of deceased's estate.

If the award was the separate property of the husband, the son would be entitled to one-half of it.[1] However, if it was community property, the surviving spouse would be entitled to it all.[2] The issue to be determined by the district court of appeal[3] was whether the amount awarded by the Industrial Accident Commission was community property or the separate property of Joseph Simoni. To arrive at its decision the court looked to the legislative intent behind the enactment of section 163.5 of the California Civil Code.[4]

PRE-163.5 LAW

Prior to 1957, when section 163.5 was added to the Civil Code, damages recovered for personal injuries to either spouse were community property—at least in the absence of an agreement otherwise between the spouses.[5] The cases prior to 1957 proceeded

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[1] CAL. PROB. CODE §§ 220, 221.

[2] CAL. PROB. CODE § 201.

[3] *In re* Simoni's Estate, 220 A.C.A. 343, 33 Cal. Rptr. 845 (1963).

[4] All damages, special and general, awarded a married person in a civil action for personal injuries, are the separate property of such married person.

[5] Zaragosa v. Craven, 33 Cal. 2d 315, 320-21, 202 P.2d 73, 76-77 (1949); McFadden v. Santa Ana Ry., 87 Cal. 464, 25 Pac. 681 (1891); Burton v. Villoria, 138 Cal. App. 2d 642, 292 P.2d 638 (1956).

on the theory that both the cause of action and any recovery of damages were community property.[6] Prior to 1957 the contributory negligence of one spouse was imputed to the other to prevent recovery by either the innocent or the negligent spouse.[7] But in 1957 the Legislature made all damages awarded to a married person in a civil action his or her separate property.[8]

The precise question which confronted the court in the *Simoni* case was whether the award by the Industrial Accident Commission was an award of damages in a civil action as contemplated by the Legislature in enacting section 163.5 of the Civil Code.

RATIONALE

The court thought that an important consideration in determining the intention of the Legislature in enacting section 163.5 was the state of the old law—Was there any criticism of the law? If so, was it well-founded? One court in *Cole v. Rush* stated: "It is a generally accepted principle that in adopting legislation the Legislature is presumed to have had knowledge of existing domestic judicial decisions and to have enacted and amended statutes in the light of such decisions as have a direct bearing upon them."[9]

Prior to 1957 the courts had imputed the contributory negligence of one spouse to the other spouse in order to prevent the negligent spouse from profiting from his or her wrong. This was so because each spouse had a community property interest in a recovery by the other.[10] This principle of imputing contributory negligence to the innocent spouse has been subject to much criticism.[11] In *Self v. Self* the court said: "The hardships created by allowing the contributory negligence of one spouse to be a defense against the other caused criticism [citation], and the injustice of that rule was undoubtedly the basic reason for the legislative change in 1957."[12] Senator Cobey, who drafted the new section 163.5, stated in a letter to Mr. Kleps, the Legislative Counsel, that

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[6] Sanderson v. Niemann, 17 Cal. 2d 563, 569-70, 110 P.2d 1025, 1028 (1941); Johnson v. Hendrick, 45 Cal. App. 317, 187 Pac. 782, 785 (1919); 3 CAL. JUR. *Community Property* §§ 50-53 (10 yr. Supp. 1936).

[7] Kesler v. Pabst, 43 Cal. 2d 254, 256, 273 P.2d 257, 259 (1954); Burton v. Villoria, 138 Cal. App. 2d 642, 644, 292 P.2d 638, 640 (1956).

[8] CAL. CIV. CODE § 163.5.

[9] Cole v. Rush, 45 Cal. 2d 345, 355, 289 P.2d 450, 456 (1955).

[10] Kesler v. Pabst, 43 Cal. 2d 254, 273 P.2d 257 (1954); McFadden v. Santa Ana Ry., 87 Cal. 464, 25 Pac. 681 (1891); Burton v. Villoria, 138 Cal. App. 2d 642, 292 P.2d 638 (1956).

[11] 4 WITKIN, SUMMARY OF CALIFORNIA LAW 2711 (7th ed. 1960).

[12] Self v. Self, 58 Cal. 2d 683, 691, 376 P.2d 65, 70, 26 Cal. Rptr. 97, 102 (1962).

his intention was to outlaw the imputation of the contributory negligence of one spouse to the other.[13]

After a review of many critical decisions, the court in *Simoni* reasoned that the Legislature had knowledge of such decisions and the problems raised by them. Thus it concluded that by enacting section 163.5 of the Civil Code the Legislature intended to eliminate the defense of imputed negligence.[14]

The court also reasoned that since neither contributory negligence nor negligence can be an issue in Industrial Accident Commission proceedings, there would be no object in enacting legislation purporting to eliminate such an issue in those proceedings. Thus section 163.5 of the Civil Code is not applicable to an award by the Industrial Accident Commission.[15]

CONCLUSION

The award by the Industrial Accident Commission was not an award of damages in a civil action within the meaning of section 163.5 of the Civil Code. The award, therefore, was community property, and the decedent's wife was entitled to the entire estate including the Industrial Accident Commission's award.

Many problems have been raised by the enactment of section 163.5. The language of the statute, encompassing "all damages, special or general . . ." would appear to include any recovery awarded to a spouse, whether for pain or suffering, loss of earnings, or medical expenses. Treating the latter two as separate property may give rise to unjust results. For example, a serious accident may convert the husband's future earnings into damages for lost earning capacity. "If the husband collects a large judgment, his wife will have none of her community property rights in money that was a substitute for the husband's chief community asset, his earning capacity."[16] The same rationale would apply to medical expenses; although medical expenses are a community obligation for which community funds are liable, recovery for such medical expenses is the separate property of the injured husband or wife.[17]

In the principal case such harsh results were avoided by treating the award as community property. The wife received her share of her husband's earnings, and the community was reimbursed for medical expenses spent for the injured husband.

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[13] 9 HASTINGS L.J. 291, 295 (1958).
[14] *In re* Simoni's Estate, 220 A.C.A. 343, 347, 33 Cal. Rptr. 845, 848 (1963).
[15] *Ibid.*
[16] 32 STATE BAR J. 508 (1957).
[17] 4 WITKIN, SUMMARY OF CALIFORNIA LAW 2713 (7th ed. 1960).

Although the court in the principal case has departed from the spirit of section 163.5, its decision appears to be at least a partial solution to some of the problems raised by enactment of the section.[18]

Gary Giannini

WRONGFUL DEATH: RIGHTS OF MINORS: *CROSS v. PACIFIC GAS AND ELECTRIC CO.* (CAL. 1964)[1]

Plaintiffs, three minor children, brought an action by and through their guardian *ad litem* for wrongful death for the death of their father, alleging that the defendant was negligent in the maintenance and operation of an electrical line. Suit was commenced nearly six years after the death of the father. The wife of the deceased, an adult heir capable of suing, did not bring an action for wrongful death within the one year statute of limitations.[2] Defendant demurred to the complaint, and dismissal was granted upon the sustaining of the demurrer on the ground that the statute of limitations, having run against the adult heir (mother), also ran against the minor heirs, since the cause of action for wrongful death was a joint and single cause of action.[3]

Upon hearing by the Supreme Court of California, the court in a unanimous decision reversed the judgment on demurrer. The court held that each heir should be regarded as having a personal and separate cause of action. The court reasoned that section 377 of the Code of Civil Procedure (wrongful death) was only procedural. It required the joinder of all heirs, but did not create a joint cause of action. Defendant's argument that section 1431 of the Civil Code applied,[4] and thus the right should be presumed to be joint, was rejected. The presumption that a right created in

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[18] 4 WITKIN, SUMMARY OF CALIFORNIA LAW 2712-13 (7th ed. 1960); 32 STATE BAR. J. 508 (1957); 45 CALIF. L. REV. 779 (1957).

[1] Cross v. Pacific Gas and Electric Co., 60 A.C. 676, 36 Cal. Rptr. 321 (1964).

[2] CAL. CODE CIV. PROC. § 340(3).

[3] Haro v. Southern Pacific R.R. Co., 17 Cal. App. 2d 594, 62 P.2d 441 (1936); Sears v. Majors, 104 Cal. App. 60, 285 Pac. 321 (1930).

[4] CAL. CIV. CODE § 1431. It reads as follows: "An obligation imposed upon several persons, or a right created in favor of several persons, is presumed to be joint, and not several, except in the special cases mentioned in the title on the interpretation of contracts. This presumption, in the case of a right, can be overcome only by express words to the contrary."

favor of several persons is joint can be overcome by express words to the contrary.[5] The court reasoned that the last sentence of section 377 of the Code of Civil Procedure supplied the necessary words to the contrary. It reads: "The respective rights of the heirs in any award shall be determined by the court." These words clearly showed that the right was several and not joint, and thus that the interests of the heirs in an action for wrongful death are separate and not joint.

Having determined that the cause of action of each heir was separate, the court referred to section 352 of the Code of Civil Procedure which suspends the statute of limitations during the minority of the heirs. It decided that the minor heirs had a right of action for the death of their father regardless of the inaction on the part of the adult heir and the running of the statute of limitations as to her. In support of this reasoning, the court referred to *Estate of Riccomi*[6] which held that although the statute provides for a lump sum recovery, the amount is determined by the aggregate loss of all the heirs, and no recovery is allowed for an heir not sustaining a loss. The court also cited *Bowler v. Roos*[7] which decided that the contributory negligence on the part of one of the heirs does not bar recovery for wrongful death by those heirs not guilty of contributory negligence.

The court, although deciding that each heir has a separate cause of action for wrongful death, approved statements in other cases to the effect that the wrongful death action is a joint one, or joint, single and indivisible. By joint, it meant that all the heirs should join or be joined in the action and a lump sum judgment be given; that only one action for wrongful death may be brought, whether or not it is instituted by one or all of the heirs or by the personal representative. The action is indivisible in the sense that there cannot be a series of suits by heirs against the tort-feasor for their individual damages.[8]

The *Cross* decision completely reversed the holdings of *Haro v. Southern Pacific R.R. Co.*[9] and *Sears v. Majors*,[10] on which the demurrer had been based and which held that the running of the statute of limitations as to an adult heir precluded the minor heir from suing for wrongful death on the basis that the cause of action was strictly joint. The *Cross* case, in holding the causes of action

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[5] *Ibid.*
[6] 185 Cal. 458, 197 Pac. 97 (1921).
[7] 213 Cal. 484, 2 P.2d 817 (1931).
[8] Cross v. Pacific Gas and Electric Co., 60 A.C. 676, 36 Cal. Rptr. 321 (1964).
[9] 17 Cal. App. 2d 594, 62 P.2d 441 (1936).
[10] 104 Cal. App. 60, 285 Pac. 421 (1930).

to be several, sets out a more equitable and logical rule, since it protects the minor's cause of action regardless of the inaction of the adult heir who "sleeps on his rights."

The *Cross* decision removes one harsh application of the statute of limitations in regards to minor children, but the reasoning is contradictory to that of the rule allowing in a proper case the addition of new parties after the limitation period of one year has run.[11] Under the old rationale since the action was considered joint for the purpose of the statute of limitations, the statute ran only against the heirs as a class, and thus new parties could be added if one heir brought suit prior to the running of limitation period. The reasoning of the *Cross* case is inconsistent with such a rule. Since each heir is now considered to have a separate cause of action, the statute of limitations would seem to run against individual heirs rather than against the heirs as a class.

The decision protects the rights of the minor heirs in the immediate case and those of similar minors who did not sue while the now overruled law of *Sears* and *Haro* was in effect. The general rule is that a decision of a court of supreme jurisdiction overruling a former decision is retrospective in its operation and the effect is not that the former decision was bad law, but that it never was the law.[12] By operating retrospectively, the *Cross* ruling will allow minor heirs who did not sue because they would have been barred under the previous rule of the running of the statute of limitations on an adult heir, to sue now, if they have not attained their majority. But as to minor heirs who sued and were demurred to on the basis of *Haro* and *Sears,* the decision offers no relief. Although the statute of limitations is considered procedural[13] in California, a demurrer based on the statute of limitations is considered to be a meritorious defense and would constitute a bar to another suit on the same cause of action.[14]

The *Cross* case clearly holds that the interest of minors in an action for wrongful death are separate; but what the effect of this reasoning will be when interjected into situations which have previously always been considered joint will have to await subsequent decisions.

Martin Capriola

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11 Rabe v. Western Union Tel. Co., 198 Cal. 290, 244 Pac. 1077 (1926).

12 County of Los Angeles v. Faus, 48 Cal. 2d 672, 680-81, 312 P.2d 680, 685 (1957).

13 Wohlgemuth v. Meyer, 139 Cal. App. 2d 326, 293 P.2d 816 (1930).

14 RESTATEMENTS, JUDGMENTS § 50 (1942).