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ATTORNEYS AT LAW

APPELLATE PRACTICE POINTER **Minor Child's Damages Under Florida's Wrongful Death Statute**

Under Florida's wrongful death statute, minor children of the decedent may "recover for lost parental companionship, instruction and guidance and for mental pain and suffering from the date of injury." § 768.21(3), Fla. Stat. (2002). The statute defines a minor as a person under twenty-five years of age. *Id.*; § 768.18(2), Fla. Stat. (2002). The statute, however, does not expressly provide the length of time for which a minor may recover damages.

In Bellsouth Telecommunications, Inc. v. Meeks, No. SC02-1033 (Fla. Oct. 16, 2003), one of the decedent's survivors was his twenty-four year old son. The defendant moved for summary judgment on the ground that any damages awarded under the wrongful death statute to the son should be calculated only for the time until the son reached twenty-five, the statutory age of majority. The trial court granted the motion for summary judgment. The First District Court of Appeal reversed, and certified the question of the correct measure of damages under section 768.21(3) as a question of great public importance.

The Florida Supreme Court held that the damages recoverable by a minor child under section 768.21(2) should be calculated based on the joint life expectancies of the minor child and the deceased parent. In reaching this decision, the court relied on several rules of statutory construction and noted that other portions of the wrongful death statute did not contain a limitation of damages in light of the period of minority. The court observed that its decision comported with the accepted construction of wrongful death damages as reflected by the standard jury instructions.

For more information, please contact Tom Warner at 561.650.0331, or visit www.carltonfields.com.