

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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NICEO WELCH, Personal Representative of the  
Estate of LESLIE DEAN WELCH, Deceased,

UNPUBLISHED  
June 21, 1996

Plaintiff-Appellant,

v

No. 176862  
LC No. 92-002728-NI

DAVID FORREST NOACK and EDWARD A.  
MARKS,

Defendants-Appellees.

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Before: O'Connell, P.J., and Sawyer and G.R. Corsiglia,\* JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court judgment entered after a jury trial in this wrongful death action. Plaintiff claims that the trial court erred in refusing to instruct the jury on "hedonic damages" to compensate for the decedent's loss of enjoyment of life. We affirm.

Plaintiff's decedent was killed in an automobile accident on February 11, 1992. The decedent's vehicle collided with a vehicle driven by defendant David Noack and owned by defendant Edward Marks. The decedent was plaintiff's father, and was forty-six years old at the time of the accident. In his complaint, plaintiff alleged that the decedent's next of kin were deprived of the decedent's society and companionship, deprived of the care and valuable services which he performed, and suffered pecuniary injury as a result of his death. Plaintiff also alleged that the decedent's estate had incurred medical, hospital, funeral and burial expenses, and that the decedent had conscious pain and suffering during the period between his injury and death.

At trial, plaintiff sought all damages that were fair and equitable under the circumstances, relying on MCL 600.2922; MSA 27A.2922. The jury instruction on damages requested by plaintiff included an element of damage for "hedonic damages," as compensation for a loss of enjoyment of life. The trial

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\* Circuit judge, sitting on the Court of Appeals by assignment.

court refused to submit the hedonic damages issue to the jury, and the jury returned a verdict in plaintiff's favor without an award of hedonic damages.

This Court will not reverse on the basis of an erroneous jury charge except where the failure to reverse would be inconsistent with substantial justice. *Winiemko v Valenti*, 203 Mich App 411, 418; 513 NW2d 181 (1994). The determination whether an instruction is accurate and applicable to a case is in the sound discretion of the trial court. *Rice v ISI Mfg, Inc*, 207 Mich App 634, 637; 525 NW2d 533 (1994). There is no error requiring reversal if, on balance, the theories and the applicable law were adequately and fairly presented to the jury. *Id.*

The trial court did not err in refusing to instruct the jury on hedonic damages because such damages are not recoverable in a wrongful death action. The wrongful death act, MCL 600.2922(6); MSA 27A.2922(6), provides in pertinent part:

In every action under this section the court or jury may award damages as the court or jury shall consider fair and equitable, under all the circumstances including reasonable medical, hospital, funeral, and burial expenses for which the estate is liable; reasonable compensation for the pain and suffering, while conscious, undergone by the deceased person during the period intervening between the time of the injury and death; and damages for the loss of financial support and the loss of the society and companionship of the deceased.

An action for wrongful death exists not as “a cause of action which survives” the decedent, but as “a new action . . . which can be brought, not for the benefit of the estate, but solely for the benefit of the beneficiaries named in the statute.” *Endykiewicz v State Hwy Comm*, 414 Mich 377, 387; 324 NW2d 755 (1982) (quoting *Lincoln v Detroit & M R Co*, 179 Mich 189, 195-196; 146 NW 405 [1914]). Although the deceased person, had he lived, would have been able to maintain an action for damages for the injuries received, damages different from those which the decedent himself might have received are recoverable in the wrongful death action. *Endykiewicz, supra* at 387. The wrongful death act is the exclusive remedy for injuries which result in death. MCL 600.2922(1); MSA 27A.2922(1); *Endykiewicz, supra* at 387. The statute gives no intimation that the decedent's loss of enjoyment of life is a proper element of compensatory damages, and no case in Michigan has allowed such damages in the context of a wrongful death action.<sup>1</sup>

Moreover, the beneficiaries under the wrongful death statute may recover for the loss of society and companionship of the deceased. MCL 600.2922(6); MSA 27A.2922(6). A claim for loss of society and companionship under the wrongful death act addresses compensation for the destruction of family relationships that results when one family member dies. *McTaggart v Lindsey*, 202 Mich App 612, 616; 509 NW2d 881 (1993). Because a portion of the decedent's loss of enjoyment of life may be the society and companionship of the survivors, it would be double compensation to allow damages for both the decedent's loss of enjoyment of life and the beneficiaries' loss of society and companionship. The trial court did not err in refusing to instruct

the jury on hedonic damages because such damages are not recoverable in a wrongful death action.

Affirmed.

/s/ Peter D. O'Connell

/s/ David H. Sawyer

/s/ George R. Corsiglia

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<sup>1</sup>In a personal injury action, the recovery may include compensation for the loss of enjoyment of life. See *Berger v Weber*, 411 Mich 1, 35; 303 NW2d 424 (1981) (Levin, J., *dissenting*); *Pierce v New York C R Co*, 409 F2d 1392 (CA 6, 1969); *Gowdy v United States*, 271 F Supp 733 (WD Mich, 1967), rev'd 412 F2d 525 (CA 6, 1969), cert den 396 US 960; 90 S Ct 437; 24 L Ed 2d 425 (1969). Similarly, the loss of the opportunity to survive has been recognized in a wrongful death action arising out of medical malpractice. See *Falcon v Memorial Hosp*, 436 Mich 443; 462 NW2d 44 (1990), rev'd in part on other grounds 437 Mich 926; 467 NW2d 25 (1991).