

STATE OF MICHIGAN
COURT OF APPEALS

DAWN M. HOPP, Personal Representative of the
Estate of VERA ANGELINE HUNN,

UNPUBLISHED
October 15, 1996

Plaintiff-Appellee,

v

No. 181323
LC No. 91-114949

BLUE CROSS BLUE SHIELD OF MICHIGAN,

Defendant,

and

ST. JOHN HOSPITAL,

Defendant-Appellant.

Before: Gribbs, P.J., and Young and W. J. Caprathe,* JJ.

PER CURIAM.

In this wrongful death action, defendant St. John Hospital appeals as of right the order of distribution of settlement proceeds. We affirm.

Plaintiff's decedent was hospitalized at St. John Hospital on February 13, 1990, and released on March 21, 1990. Decedent was again hospitalized on April 18, 1990. She died on July 21, 1990. On August 8, 1990, St. John mailed a patient statement of account, which was addressed to decedent at her home address. The statement was a billing for over \$127,000 for the hospitalization period of February 13 through March 21, 1990. According to plaintiff, prior to decedent's final hospitalization, the claims for the previous hospitalization that she had submitted to Blue Cross Blue Shield of Michigan (BCBS) were denied. The wrongful death action, brought against BCBS only, was premised on this denial: plaintiff claimed that decedent's death was caused by BCBS's failure to pay the medical and hospital bills.

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

Plaintiff and BCBS settled the wrongful death claim for \$70,000. Plaintiff's proposed distribution included \$24,442.30 for fees and costs to her counsel and \$506.65 for outstanding medical bills to providers other than St. John Hospital. It was proposed that the remaining amount be distributed among decedent's children. St. John Hospital objected to the distribution, demanding that it receive the remainder as payment for the outstanding amount owed it for the February through March 1990 hospitalization. The trial court determined that St. John Hospital was not entitled to any of the settlement proceeds because it had not brought a timely claim against the estate.

St. John Hospital argues that the trial court's decision was erroneous. As the issues before this Court involve issues of statutory interpretation, our review is de novo. *Heinz v Chicago Rd Investment Co*, 216 Mich App 289, 295; 549 NW2d 47 (1996). However, this issue is moot because we affirm the trial court's decision for a different reason. See *Glazer v Lamkin*, 201 Mich App 432, 437; 506 NW2d 570 (1993).

The primary goal in the interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *Heinz, supra* at 295. Where the plain and ordinary meaning of the language of a statute is clear, judicial construction is not necessary or permitted; however, if reasonable minds could differ as to the meaning of a statute, judicial construction is appropriate. *Id.* "Where a term is not defined in a statute, resort to dictionary definitions is appropriate to construe statutory language according to common and approved usage." *Lumley v Univ of Mich Bd of Regents*, 215 Mich App 125, 130; 544 NW2d 692 (1996).

The wrongful death statute provides:

Whenever the death of a person . . . shall be caused by wrongful act, neglect, or fault of another, and the act, neglect, or fault is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages, the person who or the corporation which would have been liable, if death had not ensued, shall be liable to an action for damages [MCL 600.2922(1); MSA 27A.2922(1).]

Those who are entitled to damages include certain surviving family members and any devisees under a will or beneficiaries of a trust. MCL 600.2922(3); MSA 27A.2922(3). Finally, as to distribution of damages, the statute requires the court to order payment from the proceeds of the reasonable, medical, hospital, funeral, and burial expenses of the decedent for which the estate is liable." MCL 600.2922(3); MSA 27A.2922(3).

St. John Hospital asserts that it is entitled to the outstanding amount for decedent's February through March hospitalization as "reasonable medical . . . expenses of the decedent for which the estate is liable." It is clear that the wrongful death statute provides for damages associated with the death of a person that was caused by a wrongful act, neglect, or fault of another. As this Court recognized in *Huhn v DMI, Inc*, 207 Mich App 313, 317; 524 NW2d 254 (1994), "damage" means "loss, injury, or deterioration, caused by the negligence, design, or accident of one person to another" and

“damages” means “a compensation in money for a loss or damage.” Black’s Law Dictionary (5th ed), p 351.

Plaintiff’s wrongful death action against BCBS alleged that, due to BCBS’s conduct, decedent was unable to pay medical and hospital expenses and was not able to obtain complete care and treatment, and she suffered pain, humiliation, emotional distress, unpaid medical and hospital bills, grief and despair, which led to her death. BCBS’s conduct did not cause decedent’s hospitalization in early 1990, and therefore the expenses related to that hospitalization clearly did not constitute “damages” which could be assessed against BCBS as contemplated by the wrongful death statute. We therefore find that the trial court’s order of distribution was not erroneous.

Affirmed.

/s/ Roman S. Gibbs

/s/ Robert P. Young, Jr.

/s/ William J. Caprathe