

10-1976

Martin v. Security Services, Inc., 314 So.2d 765 (Fla. 1975)

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Recommended Citation

Nancy A. Daniels, *Martin v. Security Services, Inc.*, 314 So.2d 765 (Fla. 1975), 4 Fla. St. U. L. Rev. 394 (1976).

<https://ir.law.fsu.edu/lr/vol4/iss3/6>

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is afforded procedural safeguards . . . [and should] help reduce the great waste of judicial resources required to process frivolous attacks on guilty plea convictions that are encouraged, and are more difficult to dispose of, when the original record is inadequate."⁵² The decision in *Williams* fails to allay the fear that these goals are not being fulfilled. It does not require the trial court to build a record. Yet to do so would require only a few moments of the judicial schedule and would alleviate factual problems which could develop on appeal. To compel the inquiry would cause minimal expense and delay, and could prevent potential burdens on the system. Mr. Justice England's comment that, despite his reservations, the *Williams* decision is "presently practical and constitutionally permitted,"⁵³ may prove to be only half true.

RICHARD W. EPSTEIN

Torts—WRONGFUL DEATH—FLORIDA'S WRONGFUL DEATH ACT IS CONSTITUTIONAL AND PERMITS PUNITIVE DAMAGES.—*Martin v. Security Services, Inc.*, 314 So. 2d 765 (Fla. 1975).

United Securities, Inc., [hereinafter United Securities] a security guard business, hired David D. Turner, provided him with pistol and uniform, and assigned him to guard the University Club apartment complex in Jacksonville, Florida. On October 21, 1972, Turner entered Joyce Atchley's home, adjacent to the complex, telling her that he needed to use her telephone. While inside, Turner allegedly assaulted Mrs. Atchley, attempted to rape her, and shot and killed her with the pistol provided him by United Securities.

Subsequently it was discovered that Turner was a heavy drinker with a history of psychiatric problems. On June 27, 1973, Beverly Martin, administratrix of Atchley's estate, sued United Securities in separate survival and wrongful death actions. She alleged that United Securities had been grossly negligent in hiring Turner and entrusting him with a pistol, and prayed for punitive damages.¹ Martin later amended her complaint to comply with Florida's new Wrongful Death Act [hereinafter the Act], which had become effective July 1,

52. *McCarthy v. United States*, 394 U.S. 459, 472 (1969).

53. 316 So. 2d at 275 (England, J., concurring).

1. Brief for Appellant at 2-3, *Martin v. Security Services, Inc.*, 314 So. 2d 765 (Fla. 1975).

1972.² The Act consolidated survival actions for personal injuries and wrongful death actions, but Martin discovered that it had eliminated the survival action for the decedent's pain and suffering and substituted the survivors' pain and suffering as an element of damage.³ She alleged in her amended complaint that this elimination was not sufficiently denoted in the Act's title, making the law unconstitutional.⁴ She also charged that the new Act had removed the possibility of recovering punitive damages for a negligently caused death. She alleged this was unconstitutional because punitive damages had formerly been available to plaintiffs suing under the survival statute.⁵

A Duval County Circuit Court upheld the Act and denied her claim for punitive damages.⁶ In another case, a Dade County Circuit Court certified the issue of the constitutionality of the new Act to the Florida Supreme Court.⁷ The cases were consolidated and brought before the court.⁸ In *Martin v. United Security Services, Inc.*,⁹ the

2. FLA. STAT. §§ 768.16-27 (1975).

3. FLA. STAT. § 768.20 (1975) provides in relevant part: "When a personal injury to the decedent results in his death, no action for the personal injury shall survive, and any such action pending at the time of death shall abate."

But §§ 768.21(2), (3), and (4) give surviving spouses, minor children of decedents, and parents of deceased minor children the right to recover for their "mental pain and suffering from the date of injury." No such element of damages was available to those parties, with the exception of parents of deceased minor children, under the old Wrongful Death Act. Fla. Laws 1953, ch. 28280; Fla. Laws 1907, ch. 5648.

4. FLA. CONST. art. III, § 6 provides: "Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title."

The title to the new Act was:

"AN ACT relating to wrongful death action; amending chapter 768, Florida Statutes, by adding sections 768.16, . . . 768.20, 768.21 . . . ; providing for a right of action on behalf of the survivors and the estate by the personal representative of a decedent whose death is caused by the wrongful act, negligence, default, or breach of contract or warranty of any person; repealing sections 768.01, 768.02, and 768.03, Florida Statutes; providing an effective date."

Fla. Laws 1972, ch. 72-35.

5. In *Kluger v. White*, 281 So. 2d 1 (Fla. 1973), the Supreme Court of Florida held that the legislature cannot abolish a formerly available right of access to the courts without providing a reasonable alternative unless there is an overpowering public necessity. See note 50 and accompanying text *infra*.

6. *Martin v. United Security Services, Inc.*, No. 73-5851 (Fla. Cir. Ct. Duval County, Oct. 26, 1973).

7. *Mobley v. American Bankers Ins. Co.*, No. 73-9065 (Fla. Cir. Ct. Dade County, 1973) (exact date cannot be ascertained).

8. In both cases, jurisdiction vested in the court pursuant to FLA. CONST. art. V, § 3(b)(1), which provides:

The Supreme Court . . . [s]hall hear appeals from final judgments of trial courts imposing the death penalty and from orders of trial courts and decisions of district courts of appeal initially and directly passing on the validity of a state statute . . . or construing a provision of the state or federal constitution.

9. 314 So. 2d 765 (Fla. 1975).

court found that the attack on the title of the statute "[u]pon first impression . . . appears to have merit";¹⁰ nonetheless the court upheld the Act. It did, however, allow Martin to recover punitive damages.¹¹

Prior to the enactment of the new law, three death statutes existed in Florida. One of these statutes was the Survival Act, first enacted in 1828.¹² That statute permitted the administrator of a decedent's estate to recover damages for the decedent's injuries.¹³ Claims for the decedent's pain and suffering were available to administrators in actions brought under this statute. Thus the basis of the survival action was the injury the *decedent* had suffered prior to death.

A second act, the old Wrongful Death Act,¹⁴ allowed *survivors* to recover damages for injuries which *they* had suffered as a result of the decedent's death.¹⁵ The Supreme Court of Florida reasoned in one

10. *Id.* at 770.

11. *Id.* at 767. See notes 38-41 and accompanying text *infra*.

12. FLA. STAT. § 46.021 (1975).

13. At common law, there was no survival action; the controlling maxim was that the action died with the person. See Smedley, *Wrongful Death—Bases of the Common Law Rules*, 13 VAND. L. REV. 605 (1960). Florida's first survival act, effective from 1828-1951, provided:

All actions for personal injuries shall die with the person, to-wit: Assault and battery, slander, false imprisonment, and malicious prosecution; all other actions shall and may be maintained in the name of the representatives of the deceased.

Fla. Laws 1828, § 30. A 1951 revision which expanded the action provided:

No action for personal injuries and no other action shall die with the person, and all actions shall survive and may be instituted, maintained, prosecuted and defended in the name of the personal representative of the deceased

Fla. Laws 1951, ch. 26541, § 1. The statute received its present wording in 1967:

No cause of action dies with the person. All causes of action survive and may be commenced, prosecuted and defended in the name of the person prescribed by law.

Fla. Laws 1967, ch. 67-254, § 2, *codified at* FLA. STAT. § 46.021 (1975).

14. Fla. Laws 1953, ch. 28280; Fla. Laws 1907, ch. 5648; Fla. Laws 1913, ch. 6487, *as amended*, Fla. Laws 1963, ch. 63-469, § 1 (all preceding statutes expressly repealed and replaced by the new Wrongful Death Act. Fla. Laws 1972, ch. 72-35).

15. Similarly, there was no remedy at common law for wrongful death. England first passed a wrongful death statute in 1846, Lord Campbell's Act, which still exists. An Act for compensating the Families of Persons killed by Accidents, 9 & 10 Vict., c. 93 (1846); 23 HALSBURY'S STATUTES OF ENGLAND 780 (1970). The stated purpose of Lord Campbell's Act was to compensate dependents of the deceased for their loss. Juries were authorized to give "such Damages as they may think proportioned to the Injury resulting from such Death . . ." 9 & 10 Vict., c. 93 (1846). Florida first passed a wrongful death statute in 1883 (Fla. Laws 1883, ch. 3439), modeled upon Lord Campbell's Act. The Florida statute specified classes of survivors eligible to recover damages, but did not specify which items of damage were recoverable. Courts were largely confused by the statute. See, e.g., *Stokes v. Liberty Mut. Ins. Co.*, 213 So. 2d 695 (Fla. 1968); *Sinclair Ref. Co. v. Butler*, 190 So. 2d 313 (Fla. 1966). The Supreme Court of Florida in one case pointed out numerous defects in the statute, but noted that the "inequalities of the Act should be resolved by legislation and not by judicial pronouncement." *Ellis v. Brown*, 77 So. 2d 845, 849-50 (Fla. 1955).

case that two separate rights were violated in a decedent's tortious death: first, the common law right of the decedent to be secure in both person and property; and second, the statutory right of the decedent's family to his or her companionship, services, support, and estate.¹⁶

The remedy for violation of the decedent's right was the survival suit; the remedy for violation of the survivor's right was the wrongful death suit. The elements of damages recoverable under the survival action were those which would have been available to the *decedent*: decedent's pain and suffering,¹⁷ medical expenses,¹⁸ loss of earnings between the time of the injury and the death,¹⁹ funeral expenses,²⁰ and punitive damages.²¹ Damages recoverable under the Wrongful Death Act were different since they involved the *survivors'* injuries and not the decedent's. They included loss of support for widows, minor children, and dependents;²² loss of services;²³ loss of consortium;²⁴ and personal representatives' claims for loss of future estate.²⁵ A third act, the Wrongful Death of a Minor Act, allowed parents to recover for losses they had suffered as a result of their child's death.²⁶

The existence of these three separate death statutes caused considerable confusion to litigants and to courts.²⁷ There were also defects

For a discussion of the common law rules regarding wrongful death, see Smedley, *Wrongful Death—Bases of the Common Law Rules*, 13 VAND. L. REV. 605 (1960).

16. *Ake v. Birnbaum*, 25 So. 2d 213, 220 (Fla. 1946).

17. *Id. Accord*, *Nimnicht v. Ostertag*, 225 So. 2d 459 (Fla. 1st Dist. Ct. App.), *cert. denied*, 232 So. 2d 179 (Fla. 1969); *Smith v. Laskey*, 222 So. 2d 773 (Fla. 4th Dist. Ct. App. 1969).

18. *Ake v. Birnbaum*, 25 So. 2d 213, 220 (Fla. 1946).

19. *Ellis v. Brown*, 77 So. 2d 845, 846-47 (Fla. 1955).

20. *Sinclair Ref. Co. v. Butler*, 190 So. 2d 313, 318-19 (Fla. 1966).

21. *Atlas Properties, Inc. v. Didich*, 226 So. 2d 684 (Fla. 1969).

22. *Seaboard Air Line R.R. v. Martin*, 56 So. 2d 509 (Fla. 1952) (widows could recover); *Triay v. Seals*, 109 So. 427 (Fla. 1926) (minor children); *Dina v. Seaboard Air Line Ry.*, 106 So. 416 (Fla. 1925) (widows); *Duval v. Hunt*, 15 So. 876 (Fla. 1894) (dependents).

23. *Seaboard Air Line R.R. v. Martin*, 56 So. 2d 509 (Fla. 1952) (widow could recover for lost services); *Lithgow v. Hamilton*, 69 So. 2d 776 (Fla. 1954) (widower could recover).

24. *Legare v. United States*, 195 F. Supp. 557 (S.D. Fla. 1961); *Lithgow v. Hamilton*, 69 So. 2d 776 (Fla. 1954); *Florida Cent. & P.R.R. v. Foxworth*, 25 So. 338 (Fla. 1899).

25. *Ellis v. Brown*, 77 So. 2d 845, 849 (Fla. 1955) (adult's death); *Hooper Constr. Co. v. Drake*, 73 So. 2d 279 (Fla. 1954) (minor's death). *Accord*, *Threets v. Hardison*, 255 So. 2d 267 (Fla. 1971); *Miami Dairy Farms v. Tinsley*, 155 So. 850 (Fla. 1934); *Cudahy Packing Co. v. Ellis*, 140 So. 918 (Fla. 1932).

26. Fla. Laws 1963, ch. 63-469, § 1, *amending* Fla. Laws 1913, ch. 6487, § 1 (repealed 1972). *See, e.g.*, *Meeks v. Johnston*, 95 So. 670 (Fla. 1923); *Seaboard Air Line Ry. v. Moseley*, 53 So. 718 (Fla. 1910); *Gresham v. Courson*, 177 So. 2d 33 (Fla. 1st Dist. Ct. App. 1965).

27. For a critical discussion of Florida's three acts, see Alpert, *The Florida Death Acts*, 10 U. FLA. L. REV. 153 (1957).

in the laws: together they allowed a multiplicity of suits and a duplication of judicial effort. Few standards were established for damages recoverable under the statutes; there was a hierarchy of beneficiaries in the Wrongful Death Act that, in some cases, precluded recovery by surviving minor children.²⁸ The Law Revision Commission²⁹ was assigned the task of reform; the new Act was designed to "correct the harsh results and inequities which often times were wrought by the old act . . . [and] to consolidate the wrongful death statutes of Florida into one cohesive scheme"³⁰ The new Act merged the two wrongful death actions and the portion of the survival action which allowed recovery for decedent's personal injuries into one lawsuit. Thus after the enactment of the new statute, two death acts existed: the new Wrongful Death Act, and the survival statute, which preserved any actions other than those for personal injuries which the decedent may have brought prior to his death.

The *Martin* court, in upholding the new Wrongful Death Act, did not deny that the statute had eliminated the decedent's claim for pain and suffering.³¹ But it rationalized the elimination of the decedent's action, calling the new right of the survivors to recover for their own pain and suffering a "reasonable alternative."³² The legislative intent, according to the court, was that "any recovery should be for the living and not for the dead."³³ In addition, the court noted that

28. In *Citrola v. Eastern Air Lines, Inc.*, 264 F.2d 815 (2d Cir. 1959), two \$10,000 awards to minor children of an airline passenger killed in a Jacksonville crash were "deleted" by the appellate court. That court found that children of deceased were not entitled to recover separately for the death of their father because under the Act the widow was the only person with standing to sue. In *Randolph v. Clack*, 113 So. 2d 270 (Fla. 2d Dist. Ct. App. 1959), the court found that since the deceased father of minor children was survived by a second wife, his children by a former wife could not maintain a wrongful death action of their own. However, the Supreme Court of Florida in 1971 allowed a decedent's first wife to intervene in a wrongful death action filed by his second wife. *Garner v. Ward*, 251 So. 2d 252 (Fla. 1971). The court recognized that previous decisions in which the statute had been "applied literally," had led to "harsh results." *Id.* at 255. After a lengthy discussion, the court concluded that "[w]hen the statutes are examined entire, the conclusion cannot be reasonably reached that these class priorities were intended by the legislature to be applied where the fundamental family relationships have been legally destroyed through divorce or adoption, or step-relationships have been created." *Id.* at 256.

29. The Florida Law Revision Commission was created by the 1967 legislature, its functions being to examine state laws and decisions for defects and anachronisms, to recommend needed reforms, and to conduct surveys as requested by the legislature. See FLA. STAT. § 13.96 (1975).

30. *McKibben v. Mallory*, 293 So. 2d 48, 54 (Fla. 1974).

31. To do so would have contravened the clear language of FLA. STAT. § 768.20 (1975). See note 3 *supra* for the relevant text of § 768.20.

32. 314 So. 2d at 771.

33. *Id.* at 769. The court cites the recommendations of the Law Review Commission as authority for its interpretation of the legislative intent. See Florida Law

the "new item of damage is much more susceptible of proof, since the party claiming damage for the pain and suffering is available to testify."³⁴ The court also noted that the survival statute still preserves other actions which the decedent may have brought or was bringing prior to his or her death.³⁵ As to the alleged defect in the title of the new Act, the court took a wrist-slapping approach, saying: "There is no question that the title could have been more explicitly drawn to include a reference by section number to the survival action statute . . ." ³⁶ It went on, though, to find the "general description of matters germane both to . . . the survival act, and to . . . the Wrongful Death Act"³⁷ to be sufficient notice of the new limitation on the survival statute.

Having disposed of the first challenge to the new Act, the court considered whether the Act contemplated recovery of punitive damages. After deciding that the decedent's action for personal injuries had been metamorphosed into an action by survivors claiming their damages, the court considered whether the right to punitive damages had also been transferred to the survivors. The court had not previously allowed punitive damages under the old wrongful death statutes; these statutes were thought to be compensatory only. *Atlas Properties, Inc. v. Didich* established the right to punitive damages in suits under the survival statute,³⁸ but the court in an earlier case, *Florida East Coast R.R. Co. v. McRoberts*,³⁹ specifically disallowed a claim for punitive damages in a wrongful death case because of the exclusively compensatory nature of wrongful death actions.⁴⁰ Nonetheless, the *Martin* court allowed punitive damages under the new Act, advancing the policy arguments of *Atlas Properties* which had been decided under the survival statute.⁴¹

Revision Comm'n, Recommendations and Report on Florida's Wrongful Death Statutes, at 41-42, Item 8 (Dec. 1969).

34. 314 So. 2d at 771.

35. *Id.* at 770 n.18.

36. *Id.* at 770.

37. *Id.* at 771.

38. 226 So. 2d 684 (Fla. 1969). In *Atlas*, the court discussed the policy reasons for allowing punitive damages—largely the inequity that would result if "a [tortfeasor] can be punished only for his malicious and reckless actions when they maim another but not for those same despicable actions when they kill the victim." *Id.* at 688.

39. 149 So. 631 (Fla. 1933).

40. The court stated that "[p]unitive damages are damages over and above such sum as will compensate a person for his actual loss." 149 So. at 632. The law permits punitive damages "as punishment to the wrongdoer, for the purpose of deterring him and others committing similar violations of the law, from such wrongdoing in the future." *Id.* at 632.

41. 314 So. 2d at 771-72. See note 38 *supra*.

The court's decision was unfortunate in several respects. First, it did not sufficiently address the defect in the title of the Act. While several cases on defective titles reveal a common judicial attitude of deference to legislative wording of statutes,⁴² there are also several cases in which courts, insisting that constitutional requirements for titles be met, have invalidated statutes with incomplete, misleading, or ambiguous titles.⁴³ One such court stated: "The provision of the constitution mentioned is mandatory, and it is the duty of the court to enforce it."⁴⁴ The Supreme Court of Florida had been calling wrongful death and survival actions "separate and distinct" for years;⁴⁵ yet in *Martin* it said that a title introducing an Act "relating to wrongful death" would be understood to embrace an action eliminating a provision of the survival act.

Second, the court apparently failed to consider the fact that the Act entirely eliminates survival actions for decedent's pain and suffering when there are no eligible survivors to whom the Act grants corresponding rights and remedies. In *Martin*, for example, Mrs. Atchley did not leave survivors who were eligible to recover for their own pain and suffering under the Act. Her sole survivor was an adult son; only minor children are permitted to recover under the Act.⁴⁶ There

42. Asserting that the words "providing for a right of action *on behalf of the survivors and the estate*" are sufficiently "germane to the subject of both acts," the court cites at 314 So. 2d at 771: *Smith v. City of St. Petersburg*, 302 So. 2d 756 (Fla. 1974); *Shepard v. Thames*, 251 So. 2d 265 (Fla. 1971); *Stokes v. Galloway*, 54 So. 799 (Fla. 1911). Other cases have applied the "general description of matters germane test." *See, e.g., King Kole, Inc. v. Bryant*, 178 So. 2d 2 (Fla. 1965); *Spencer v. Hunt*, 147 So. 282 (Fla. 1933); *State ex rel. Terry v. Vestel*, 88 So. 477 (Fla. 1921); *Butler v. Perry*, 66 So. 150 (Fla. 1914). An even more lenient standard for judging titles was used in *State ex rel. Buford v. Daniel*, 99 So. 804 (Fla. 1924), also cited by the court; in order to satisfy the constitution in these cases, titles need only "reasonably lead to an inquiry into the body [of the Act]." *Id.* at 807.

43. *Shepard v. Thames*, 251 So. 2d 265 (Fla. 1971); *Copeland v. State*, 76 So. 2d 137 (Fla. 1954); *Boyer v. Black*, 18 So. 2d 886 (Fla. 1944); *Williams v. Dormany*, 126 So. 117 (Fla. 1930); *Webster v. Powell*, 18 So. 441 (Fla. 1895). The standard used in *State v. Florida State Turnpike Authority*, 80 So. 2d 337 (Fla. 1955), for example, was that "when each of [the provisions] and the title are placed side by side it is clear each is so closely associated with the title that no one could have read the one and have been led to believe that the others would not appear in the law." *Id.* at 342.

44. *Webster v. Powell*, 18 So. 441, 442 (Fla. 1895).

45. *See* note 16 and accompanying text *supra*. Other cases insisting on the dichotomy between the two types of actions are: *Parker v. City of Jacksonville*, 82 So. 2d 131 (Fla. 1955); *Shiver v. Sessions*, 80 So. 2d 905 (Fla. 1955); *Epps v. Railway Express Agency, Inc.*, 40 So. 2d 131 (Fla. 1949).

46. Section 768.21 of the Act allows only surviving spouses, minor children, and parents of decedents to recover damages for pain and suffering. FLA. STAT. § 768.21 (2), (3), (4) (1975). *See* note 3 *supra*. A thorough discussion of the calculation of damages under the new Act is found in Wilcox & Melville, *Damages under Florida's New Wrongful Death Act*, 26 U. MIAMI L. REV. 737 (1972).

was, then, no remedy for the son's pain and suffering; thus there was no "reasonable alternative" to an action for his mother's pain and suffering. The nonavailability of a substitute action could produce undesirable results. First, it may lead to a "premium on death"⁴⁷ where defendants are required to respond in lesser amounts for damages than they would have had their victims lived. In addition, it makes the unchanged language of the survival statute misleading. That statute still states that "[n]o cause of action dies with the person. All causes of action survive and may be commenced, prosecuted, and defended in the name of the person prescribed by law."⁴⁸ Yet actions for decedents' personal injuries do not survive in any form when there are no survivors eligible to recover for their losses under the new Wrongful Death Act.

Third, because the substitution of the survivors' action for pain and suffering is not in all cases an adequate alternative to an action for the decedent's claim for pain and suffering, the Act unconstitutionally eliminates the formerly available right of access to the courts.⁴⁹ The court in *Kluger v. White*⁵⁰ held that when a right of access to the courts has been provided by statutory or common law, the legislature cannot abolish the right without providing a reasonable alternative—unless it can show an "overpowering public necessity."⁵¹ The *Martin* court did not require such a showing because the court did not acknowledge that the substitution of the survivors' pain and suffering action was not in all cases a "reasonable alternative." To comply with *Kluger*, the court should have required a showing of overpowering public necessity by the legislature before it could properly eliminate decedents' claims for pain and suffering.

Fourth, the court's allowance of punitive damages in the suit runs counter to the compensatory objective of wrongful death statutes. The court grafted the punitive concept onto the new Act without statutory authority for doing so, citing two law review articles as support.⁵² Furthermore, the court's language in allowing punitive damages was

47. The "premium on death" argument was used by the court in *Ellis v. Brown*, 77 So. 2d 845, 849 (Fla. 1955), in its plea to the legislature to amend the first wrongful death statute. See note 14 *supra*. The *Atlas Properties* court used the same argument as a rationale for allowing punitive damages in survival suits. 226 So. 2d at 687-88. See note 38 *supra*.

48. FLA. STAT. § 46.021 (1975). See note 1 and accompanying text *supra*.

49. FLA. CONST. art. I, § 21 provides: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."

50. 281 So. 2d 1 (Fla. 1973).

51. *Id.* at 4.

52. McClelland & Truett, *Survival of Punitive Damages in Wrongful Death Cases*, 8 U. SAN FRAN. L. REV. 585 (1974); Holthus, *Punitive Damages in Wrongful Death*, 20 CLEV. ST. L. REV. 301 (1971). But punitive damages are rejected as being unrelated

broad,⁵³ insuring that the punishment aspect would be a permanent part of Florida's new wrongful death scheme.

Martin demonstrates that in its attempt to legitimize a statute that provides one means of redress for the violation of two separate rights, the court has had to bend, stretch, and ignore the basic theories behind both the survival and wrongful death statutes. The concept behind the survival statute, to preserve all causes of action, was brushed aside in the court's apparent willingness to allow the elimination of the action for the decedent's pain and suffering. The concept of wrongful death actions—to allow survivors to be compensated for their losses—was enlarged to include punitive damages. Consolidation of two remedial statutes into one resulted in judicial constriction of the survival action with a correlative expansion of the wrongful death concept.

The legislature could reconcile the inconsistencies resulting from the court's interpretation of the Act by reintroducing it with a new title and a provision guaranteeing that a reasonable alternative to the action for decedent's pain and suffering be, in fact, available before the action abates.⁵⁴ Additionally, the new Act should clarify whether punitive damages are allowable and set standards for their recovery if they are. By retitling the act "An Act consolidating Wrongful Death and Survival actions, and eliminating the decedent's action for pain and suffering when there are living survivors eligible to recover for their pain and suffering," the legislature could satisfy its responsibility for accurately titling acts. More importantly, revision of the title would make it clear that the new Act creates a hybrid between the wrongful death and the survival action, and the anomaly of allowing punitive damages in a purely compensatory action would be eliminated. Finally, the new provision in the Act would insure that a reasonable alternative would be available to survivors before the decedent's action could be allowed to abate. Although the 1972 Wrongful Death Act goes a long way toward effecting reform in the wrongful death/survival area, the flaws revealed by the *Martin* case show that more revision is necessary before reform is complete.

NANCY ANN DANIELS

to the losses suffered by survivors in Anderson, *A Model State Wrongful Death Act*, 1 HARV. J. LEGIS. 28 (1964).

53. "[P]unitive damages may be claimed when one or more of the elements of compensatory damages recoverable under Section 768.21 of the new Wrongful Death Act are established." 314 So. 2d at 772.

54. The Act could be revised to provide that "when a personal injury to the decedent results in his or her death, an action for this personal injury shall survive to the personal representative if there are no survivors eligible under the terms of this Act to recover for their mental pain and suffering"