

Supreme Court Ends the “Denney Era” – WDA Does Not Allow Lost Future Earnings

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The Wrongful Death Act, an age-old act in Michigan, originally derived from the Death Act of 1848, is a prime example of the fine balance and interplay of statutory construction and interpretation principles at work and the ramifications that may ensue if incorrectly interpreted. This is particularly true where significant statutory amendments have occurred.

Throughout its history, future lost earning capacity damages were not recoverable under the Wrongful Death Act; that is, until the Court of Appeals expanded the categories of damages available under the current version of the act to include such damages, as set forth in *Denney v Kent Co Rd Comm*, 317 Mich App 727 (2016). However, the *Denney* Court overlooked *Baker v Slack*, 319 Mich 703 (1948), which held that an earlier version of the act did not provide for future lost earning capacity damages.

The apparent conflict between *Denney* and *Baker* was not addressed until recently by the Michigan Supreme Court in *Daher v Prime Healthcare Servs-Garden City, LLC*, ___ Mich ___; ___ NW3d ___ (2024) (Docket No. 165377). On July 30, 2024, the Court released a *unanimous* decision overruling *Denney*, clarifying that *Baker* is still good law, and holding that the Wrongful Death Act does not allow for the recovery of lost future earnings.

More specifically, the issue before the Court was “whether the wrongful death act (WDA), MCL 600.2922, allows recovery of damages for lost future earnings absent a showing that a beneficiary is entitled to those earnings as financial support.”

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The *Daher* decision is a rare win nowadays for the defendants and even more rare in a 7-0 vote by the current justices. But the Court’s reasoning and analysis is sound, and with that, the “*Denney* era” comes to its rightful end.

While the Wrongful Death Act does not allow for lost future earnings, “loss of financial support” is a category of recoverable damages as it is specifically listed in the WDA, MCL 600.2922(6). The distinction between the two can be extreme: all of the earnings the decedent would have made versus the financial support the decedent provided.

While not specifically addressed in *Daher*, this decision theoretically also puts an end to claims of “fright and shock of impending death” in wrongful death lawsuits which

The Wrongful Death Act serves as a “filter” through which the underlying action or claim proceeds, and, so, it controls which damages are available. In *Daher*, the underlying action involved a medical malpractice claim wherein the Plaintiffs alleged that the Defendants committed medical malpractice by failing to diagnose and treat bacterial meningitis in their minor son, the decedent, which allegedly led to his untimely death. The Plaintiffs sought the decedent’s lost future earnings, which were estimated at a value between 11 and 19 million dollars. The Defendants moved for summary disposition, which the trial court denied. The Defendants then sought leave to appeal. But the Court of Appeals affirmed in a published opinion relying on *Denney* in its holding that lost future earnings are recoverable under the Wrongful Death Act.

The Michigan Supreme Court rejected the holdings of the Court of Appeals in this case and in *Denney*, reasoning that based on the lengthy statutory history of the act, its context, and the plain language of the Wrongful Death Act, it is clear that future lost earning capacity damages are *not* recoverable under the act. The addition of the word “including” in the 1971 amendment is not limited to a term of enlargement as it may also be used as a term of limitation. For to allow such an expansion of damages, such as lost future earnings, would abrogate common law. And when the Legislature combined the survival act and the death act into one in 1939, it made a clear choice to allow only death act damages. The effect of this action was that the Legislature revived the common-law rule barring recovery of lost future earnings and, in short, the Court clarified that *Baker* had not been superseded by intervening changes in the law.

Therefore, the Court overruled *Denney* and *Thorn v Mercy Mem Hosp Corp*, 281 Mich App 644 (2008) (which *Denney* relied heavily on), along with *Palomo v Dean Transp, Inc* ___ Mich App ___; ___ NW3d ___ (2023) (Docket No. 357285), to the extent that they hold damages for lost earnings are recoverable under the Wrongful Death Act.

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