

Supreme Court of Florida

No. SC17-563

GWENDOLYN E. ODOM, etc.,
Petitioner,

vs.

R.J. REYNOLDS TOBACCO COMPANY,
Respondent.

September 20, 2018

PARIENTE, J.

The Fourth District Court of Appeal overturned a multimillion dollar noneconomic damages award to an adult child whose mother died of lung cancer after the jury found through special interrogatories that the decedent's addiction to cigarettes was a legal cause of her death. *See R.J. Reynolds Tobacco Co. v. Odom*, 210 So. 3d 696, 698 (Fla. 4th DCA 2016). The conflict issue before us arises from the Fourth District's misapplication of the abuse of discretion standard to the trial court's denial of a motion for remittitur and creation of a bright-line cap on the amount of noneconomic damages a financially independent adult surviving child

may be awarded for the wrongful death of his or her parent.¹ Instead of properly applying the abuse of discretion standard and this Court's well-established precedent, which entitles both a jury's verdict and a trial judge's ruling on a motion for remittitur to great deference, the Fourth District relied on four district court of appeal decisions to hold that the trial court erred in denying the motion for remittitur in this case.² In reaching this holding, the Fourth District made the sweeping statement that "no matter" what the evidence shows, "an adult child who lives independent of the parent during the parent's smoking related illness and

1. We have jurisdiction. *See* art. V, § 3(b)(3), Fla. Const.; *see also Fla. Ins. Guar. Ass'n, v. Devon Neighborhood Ass'n*, 67 So. 3d 187, 189 n.1 (Fla. 2011) ("Misapplication of our precedent provides a basis for express and direct conflict jurisdiction."). Because the Fourth District's creation of a bright-line cap and then reliance on that cap to reverse the damages award in this case is both apparent from the face of the opinion (i.e., express) and irreconcilable with the contrary rule of law and abuse of discretion analysis expressly set forth in our precedent (making the conflict "direct"), we have jurisdiction. Art. V, § 3(b)(3), Fla. Const.

2. Our relevant precedent is cogently set forth in *Bould v. Touchette*, 349 So. 2d 1181, 1184-85 (Fla. 1977), *Lassitter v. International Union of Operating Engineers*, 349 So. 2d 622, 626-27 (Fla. 1976), and *Braddock v. Seaboard Air Line Railroad Co.*, 80 So. 2d 662, 668 (Fla. 1955).

In lieu of this Court's precedent, the Fourth District relied on the following district court of appeal cases to reach its decision in this case: *Philip Morris USA Inc. v. Putney*, 199 So. 3d 465 (Fla. 4th DCA 2016); *R.J. Reynolds Tobacco Co. v. Webb*, 93 So. 3d 331 (Fla. 1st DCA 2012); *MBL Life Assurance Corp. v. Suarez*, 768 So. 2d 1129 (Fla. 3d DCA 2000); *Nat'l R.R. Passenger Corp. v. Ahmed*, 653 So. 2d 1055 (Fla. 4th DCA 1995).

death is not entitled to [a] multi-million dollar compensatory damages award.”

Odom, 210 So. 3d at 701.

For the reasons that follow, we hold that the Fourth District misapplied the abuse of discretion standard when reviewing the trial court’s denial of the motion for remittitur. When the abuse of discretion standard is properly applied, we conclude that the trial court did not abuse its discretion in denying the motion by scrupulously following the standard for determining whether a remittitur is appropriate. We further hold that the Fourth District erred in creating a cap on the amount of noneconomic damages a financially independent adult child may be awarded for the wrongful death of his or her parent in conflict with this Court’s precedent. Neither the Legislature nor this Court has established a cap on the amount of noneconomic damages a survivor may recover in a wrongful death action, and we decline to do so today. Accordingly, we quash the Fourth District’s decision and remand for reinstatement of the judgment.³

3. The jury in this case also found that punitive damages against R.J. Reynolds were warranted. *Odom*, 210 So. 3d at 698. The punitive damages award is not separately challenged, but the effect of the Fourth District’s reversal of the noneconomic damages award was also a reversal of the punitive damages award. *See id.* at 701 (“Because the award of compensatory damages must be vacated, we also vacate the award of punitive damages.” (quoting *Webb*, 93 So. 3d at 339-40)). Although the liability findings would not have been disturbed, the new jury would have been entitled to hear all the evidence upon which an award of punitive damages could be based.

FACTUAL BACKGROUND

Petitioner Gwendolyn Odom brought this *Engle*⁴ progeny action against Respondent R.J. Reynolds, alleging that her mother, Juanita Thurston, died from lung cancer caused by her addiction to cigarettes manufactured by R.J. Reynolds. *Odom*, 210 So. 3d at 698. Thurston was fifty-eight years old when she died and had never married. Odom, who was forty-two years old when Thurston died, sought noneconomic damages as Thurston's surviving daughter under Florida's wrongful death statute.⁵

The uncontroverted evidence presented at trial established “a very close and unique relationship” between Odom and Thurston that endured until Thurston's untimely death. *Odom*, 210 So. 3d at 701. Thurston was just sixteen years old when Odom was born; Odom's biological father was not in the picture. Odom and Thurston were so close that they were described as “more like sisters.”

Throughout Odom's life, Thurston was a constant support to her. After leaving home and moving to South Carolina for college, Odom returned home several months later and moved back in with Thurston. Even after marrying her first husband, Odom continued to live with Thurston for a time. And when

4. *Engle v. Liggett Grp., Inc.*, 945 So. 2d 1246 (Fla. 2006).

5. § 768.21(3), Fla. Stat. (2014).

Odom's first marriage began to deteriorate, while she was pregnant with her first son, Odom moved back in with Thurston. Odom explained what Thurston's support during this time meant to her:

My mother was always there for me. Without my mother, I think I would have been lost at that point. I was going through a troubled marriage, I was pregnant, and she was the one who I could count on.

Even after Odom got remarried and Odom and Thurston no longer lived together, they continued to spend a lot of time together.

In addition to providing unconditional support to Odom, Thurston was very involved with Odom's children. Thurston was present at the birth of Odom's firstborn son, Ahmad. Thurston was always there for Ahmad's football and baseball games, even traveling to different cities to watch him play. She was his biggest fan. Odom described Thurston's relationship with Ahmad as "extremely close." Thurston considered Ahmad to be her son.

Just as Thurston was there to support Odom and Odom's children, Odom was there to support Thurston. Odom was there for Thurston each time Thurston attempted to quit smoking. Odom was also there when Thurston was diagnosed with lung cancer, and supported Thurston through every step of her treatment.

Odom was also there when Thurston's cancer returned. Although Odom felt as if she had been "punched in [the] stomach" and "hit over the head with a hammer all at one time," she remained strong for Thurston. Odom explained the

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.