

IN THE SUPREME COURT, STATE OF WYOMING

CAROL THOMPSON, CLERK

2014 WY 28

OCTOBER TERM, A.D. 2013

February 25, 2014

IN THE MATTER OF THE
WRONGFUL DEATH OF DANIEL P.
SORAN, II, DAN SORAN, PERSONAL
REPRESENTATIVE:

DAN SORAN, LYNETTE SORAN and
SARAH SORAN,

Appellants
(Plaintiffs),

S-13-0098

v.

LAURA SORAN,

Appellee
(Plaintiff).

*Appeal from the District Court of Laramie County
The Honorable Thomas T.C. Campbell, Judge*

Representing Appellants:

Thomas B. Jubin of Jubin & Zerga, LLC, Cheyenne, WY, and Michael L. Weiner of Yaeger, Jungbauer & Barczak, PLC, Saint Paul, MN. Argument by Mr. Jubin.

Representing Appellee:

Scott W. Meier, Lucas Buckley, and Traci L. Lacock of Hathaway & Kunz, P.C., Cheyenne, WY. Argument by Mr. Meier.

Before KITE, C.J., and HILL, VOIGT*, BURKE, and DAVIS, JJ.

****Justice Voigt retired effective January 3, 2014.***

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HILL, Justice.

[¶1] This case involves a wrongful death claim brought on behalf of the beneficiaries of Daniel P. Soran, II (Decedent). Decedent's father, in his capacity as personal representative, settled the wrongful death claim with the applicable liability insurance companies for \$400,000. Thereafter, a dispute arose between the beneficiaries as to how the settlement proceeds should be distributed, with Decedent's allegedly estranged wife, Laura Soran, on one side, and Decedent's parents and sister on the other side. Following a bench trial on distribution of the damages, the district court awarded Laura Soran 75% of the settlement proceeds and divided the remainder of the proceeds among Decedent's parents and sister. Decedent's parents and sister appeal, contending that the court erred in imposing on them the burden to disprove Laura Soran's damages and that the court's distribution was clearly erroneous in light of the evidence. We reverse and remand for proceedings consistent with the direction herein.

ISSUES

[¶2] Decedent's parents and sister, Appellants, present the issues for our review as follows:

1. The trial court erred as a matter of law, in imposing the burden upon other beneficiaries to disprove the estranged wife's claim to wrongful death damages.
2. When distributing settlement proceeds to wrongful death beneficiaries, the trial court's decision to award 75% of these proceeds to the estranged wife was clearly erroneous where the evidence proved a clear and unquestionable mutual intent to end the marriage, and where the estranged wife failed to prove the loss of a future relationship with the decedent.

FACTS

[¶3] On February 19, 2011, Decedent died of injuries sustained in an automobile accident. Decedent was survived by his wife, Laura Soran, by his parents, Dan and Lynette Soran, and by his sister, Sarah Soran. Robert A. Curran was the driver of the vehicle in which Decedent was a passenger when he died, and Decedent's father, Dan Soran, in his capacity as wrongful death personal representative, settled with Curran's insurance providers for the sum of \$400,000. A dispute arose between Decedent's beneficiaries as to how the settlement proceeds should be distributed. On October 18, 2011, Dan Soran, again in his personal representative capacity, filed a Rule 67 motion to

deposit the settlement proceeds for holding by the clerk of court until such time as their proper distribution among Decedent's survivors could be determined.

[¶4] On February 4, 2013, a bench trial was held to determine distribution of the settlement proceeds. Decedent's parents and sister were represented on one side of the dispute, and they framed the dispute in their pretrial memorandum as follows:

The remaining dispute lays between, on the one hand, Daniel's estranged wife Laura Soran, and on the other, Daniel's immediate family, consisting of his father, mother, and sister (respectively Dan, Lynn and Sarah Soran). Daniel's parents and sister collectively dispute the portion claimed by Laura, based on evidence that the marriage between Daniel and Laura was irretrievably broken, and that Daniel had unquestionably planned to divorce Laura. In addition to presenting evidence showing the extremely close, loving and ongoing relationship between Daniel and his parents and sister, an additional focus at trial will be on the extensive evidence documenting Daniel's intent to end his marriage to Laura, refuting her damage claims.

[¶5] Decedent's wife, Laura Soran, was represented on the other side of the dispute, and she described the dispute as follows in her pretrial memorandum:

Laura Soran claims that she has significant damages resulting from the death of her husband, Daniel P. Soran, II. Laura Soran's damages include economic damages of loss of support as well as non-economic damages resulting from the loss of care[,] comfort and society of Decedent.

On information and belief, the other wrongful death beneficiaries claim that they have damages resulting from the death of Decedent and further claim that Laura Soran and Decedent's marriage would have ended in divorce and that, therefore, Laura Soran's damages in this matter are limited to the care, comfort, society and support that Laura Soran would have received prior to any divorce.

Laura Soran denies that her marriage would have ended in divorce.

[¶6] At trial, Decedent's parents and sister submitted evidence of their close relationship with Decedent. They also presented evidence, through testimony and exhibits, including copies of text messages, and divorce documents, that Decedent and his wife were living separately within their home, that Decedent's wife was making plans

to move from the home, and that Decedent and his wife had divided property, had found new homes for their pets, and were planning to divorce. Laura Soran, on the other hand, testified that she felt Decedent had a drinking problem, that the actions she had taken toward divorce in the months before Decedent's death were intended to force him to get help, and that she was not certain that she and Decedent would ultimately have divorced. She also testified concerning the economic loss she suffered as a result of Decedent's death and the loss she suffered as a result of losing the companionship of Decedent, who she described as her best friend.

[¶7] On February 25, 2013, the district court issued its order distributing the settlement proceeds. The court ordered Decedent's wife, Laura Soran, to receive a 75% share of the settlement proceeds, Decedent's parents to each receive a 10% share, and Decedent's sister to receive a 5% share. Decedent's parents and sister timely filed a notice of appeal.

STANDARD OF REVIEW

[¶8] The parties' claims to distribution of the wrongful death settlement proceeds were tried to the court, and we therefore apply the following standard of review:

Following a bench trial, this court reviews a district court's findings and conclusions using a clearly erroneous standard for the factual findings and a *de novo* standard for the conclusions of law. *Piroschak v. Whelan*, 2005 WY 26, ¶ 7, 106 P.3d 887, 890 (Wyo. 2005).

The factual findings of a judge are not entitled to the limited review afforded a jury verdict. While the findings are presumptively correct, the appellate court may examine all of the properly admissible evidence in the record. Due regard is given to the opportunity of the trial judge to assess the credibility of the witnesses, and our review does not entail re-weighing disputed evidence. Findings of fact will not be set aside unless they are clearly erroneous. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.

Piroschak, ¶ 7, 106 P.3d at 890. Findings may not be set aside because we would have reached a different result. *Harber v. Jense [Jensen]*, 2004 WY 104, ¶ 7, 97 P.3d 57, 60 (Wyo. 2004). Further,

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