

# Court of Claims of Ohio

The Ohio Judicial Center  
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Columbus, OH 43215  
614.387.9800 or 1.800.824.8263  
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BROOKE FRALEY-ARPAN, etc.

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2012-03140

Judge Dale A. Crawford

## DECISION

{¶1} Plaintiff, Brooke Fraley-Arpan (Brooke), brings this action for wrongful death against Defendant, Ohio Department of Rehabilitation and Correction, on behalf of herself, the estate of the deceased, Brandon Copas (Copas), and next of kin. The issues of liability and damages were bifurcated. Following a trial on the issue of liability, the Court found that Defendant's breach of the standard of care by not sending Copas to an outside facility within two hours of his presentation to the infirmary was the proximate cause of Copas' death. The case then proceeded to trial on the issue of damages.

## Findings of Fact

{¶2} The story of Copas and his family history is a complicated one. Copas was conceived when Brooke was only fourteen years old, and after he was born, he and Brooke both lived with his great-grandmother Willa Roe (Willa) in her trailer in Washington Courthouse, Ohio. Copas referred to Willa as "mom" and to Brooke as "mommy." Brooke eventually married Copas' biological father, Mark Copas (Mark), and had another child, Bethany Copas (Bethany). Brooke and Mark divorced and Brooke subsequently married Bill Arpan (Bill). Brooke met Bill in Columbus, Ohio while

she was working as an exotic dancer. Brooke had twins, Will Arpan (Will) and Thea Arpan (Thea), with Bill. When she was twenty-one, Brooke moved to Columbus while Copas stayed in Washington Courthouse with Willa.

{¶3} Brooke's marriage to Bill ended when Bill was shot during the commission of an armed robbery. After Bill's death, Brooke moved back to Willa's. When Copas was twelve years old, Brooke was charged in connection with an incident where she spanked Copas for being disrespectful to Willa. As a result of the charge, Brooke gave formal guardianship rights over to Willa. That same night, Brooke moved to Hillsboro to be with her biological mother and father.

{¶4} Brooke eventually married Brian Fraley (Brian) and had a son, Joey Fraley (Joey). Brooke's marriage to Brian was filled with domestic violence charges against both parties. However, through a divorce and a second marriage, Brooke and Brian were married for a total of ten years. All this time, Copas continued to live with Willa.

{¶5} After her marriage to Brian, Brooke married David Deatley (David). She had her youngest son with David, Max Arpan (Max). This relationship was also filled with abuse, and similar to Brooke's relationship with Brian, she also divorced and remarried David.

{¶6} In October 2006, Willa passed away from natural causes. The death of Willa strongly affected Copas and, as a result of drinking excessively while mourning the loss, he caused an automobile accident which resulted in the death of his best friend, Larry Forsha and seriously injured a passenger in another vehicle. Consequently, Copas was charged with aggravated vehicular manslaughter and sentenced to nine years at Warren Correctional Institution (WCI). While in prison, Brooke and Copas' siblings would visit Copas on occasion. The parties also exchanged occasional correspondence.

{¶7} On April 5, 2011, about halfway through his sentence, Copas was assaulted by fellow inmate Jeffrey Benner (Benner). Benner struck Copas two times in the head, which caused Copas to lock up and fall to the ground, hitting his head. Copas was sent to the WCI infirmary and examined by nurses, and at 4:09 a.m. on April 6, 2011, Copas was found unresponsive and determined to be dead. He was twenty-seven years old, and left behind Brooke, full sister Bethany, and half siblings Will, Thea, Joey, and Max.

{¶8} On the day of his death, Brooke was visited at her home by her estranged ex-husband, Mark. Mark notified Brooke that Copas was gone. After being informed of Copas' death, Brooke called Bethany to come home immediately. When Bethany arrived at the house, her father and stepmother were there along with a long-time family friend, Bradley Jordan (Bradley). As the other children continued to return home, each were informed of Copas' death.

### **Conclusions of Law**

{¶9} An action for wrongful death is not about the value of one's life. Rather it is about the value of one's life to others expressed in inexact monetary amounts. R.C. 2125.02 provides, in part:

(A)(2) The jury, or the court if the civil action for wrongful death is not tried to a jury, may award damages authorized by division (B) of this section, as it determines are proportioned to the injury and loss resulting to the beneficiaries in division (A)(1) of this section by reason of the wrongful death and may award reasonable funeral and burial expenses incurred as a result of the wrongful death. \* \* \*

\* \* \*

(B) Compensatory damages may be awarded in a civil action for wrongful death and may include damages for the following:

(1) Loss of support from the reasonably expected earning capacity of the decedent;

(2) Loss of services of the decedent;

(3) Loss of the society of the decedent, including loss of companionship, consortium, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, and education, suffered by the surviving spouse, dependent children, parents, or next of kin of the decedent;

(4) Loss of prospective inheritance to the decedent's heirs at law at the time of the decedent's death;

(5) The mental anguish incurred by the surviving spouse, dependent children, parents, or next of kin of the decedent.

{¶10} Pursuant to R.C. 2125.02(A)(3)(b)(i), the “court may consider all factors existing at the time of the decedent’s death that are relevant to a determination of the damages suffered by reason of the wrongful death.”

{¶11} Plaintiff is not seeking an award under sections R.C. 2125.02(A)(2), and thus, the Court will not award any damages for funeral and burial expenses. Plaintiff is also not seeking nor was there any evidence to support damages under R.C. 2125.02(B)(1), (2) or (4). Therefore, the Court must only consider the pain and suffering experienced by Copas and any compensatory damages pursuant to R.C. 2125.02(B)(3) and (5).

### **Pain and Suffering of Copas**

{¶12} Plaintiff seeks compensatory damages for Copas’ conscious pain and suffering that he endured in connection with his wrongful death. “Physical or bodily pain and suffering in consequence of a wrong occasioning an injury to the person is a proper element of damages[.]” See *Flory v. New York C.R. Co.*, 170 Ohio St. 185, 189, 163 N.E.2d 902 (1959).

{¶13} Plaintiff presented the testimony of Dr. Bernhard Zunkeler from the liability trial as it pertained to the pain and suffering Copas endured before his death. Dr. Zunkeler testified that Copas had pain because he complained of headaches. He also stated that a picture of Copas sitting upright with his head forward was probably an attempt to alleviate intracranial pressure.

{¶14} Defendant’s medical expert from the liability trial, Dr. Patrick McCormick, testified that three separate pain assessments were taken of Copas while in the infirmary, all of which indicated no pain or a very low level of pain. Dr. McCormick stated that at both 1:00 p.m. and 3:00 p.m., Copas’ pain, on a scale from zero to ten, was at a zero. At 11:00 p.m., Copas’ score was one-half. Dr. McCormick further testified that people suffering the brain injuries like Copas’ injuries are generally quiet, asleep, somnolent, and tend not to complain of pain. Dr. McCormick also stated that generally, if patients with Copas’ type of injury were unstimulated, they would fall back asleep.

{¶15} Copas was admitted to the infirmary at 12:50 p.m. on April 5, 2011. Ten minutes later, his pain was assessed at zero. Only ten hours later did his score move into the positive, and only by half a point. The Court finds that these reported levels of

pain indicate that Copas did not suffer substantive conscious pain between the time he was admitted into the infirmary and the time of his death. Furthermore, Plaintiff has not presented any evidence to show that even if Defendant had transferred Copas to an outside medical facility within a reasonable time after the fight, Copas' pain levels would have been different. The Court cannot speculate as to the amount of pain and suffering, if any, was proximately caused by Defendant's negligence. Accordingly, the Court awards no damages for Copas' pain and suffering prior to his death.

### **Loss of Services and Society of Copas**

{¶16} Brooke, as the parent of Copas, is rebuttably presumed to have suffered damage as a result of the wrongful death of her son. See R.C. 2125.02(A)(1). The next of kin, the siblings of Copas, while not presumed to have suffered damages as a result of the wrongful death, may recover for their loss of society and mental anguish. See *Ramage v. Central Ohio Emergency Services Inc.*, 64 Ohio St.3d 97, 592 N.E.2d 828 (1992); *Wise v. Timmons*, 64 Ohio St.3d 113, 592 N.E. 2d 840 (1992); and *In re Estate of Payne*, 10th Dist. Franklin No. 04AP-1176, 2005-Ohio-2391.

{¶17} Before there can be a loss of society, there must have been a "society" before it was allegedly lost. It appears to the Court that Plaintiff, in its presentation of its case, has exaggerated the quality of the past relationship between Copas, Brooke, and his siblings before his death. Copas' long-time friend, Bradley, described the relationship Copas had with his mother as a "typical mother and son relationship." Brooke's sister, Brandy Donahoo, testified that Brooke did not treat Copas any different from her other children. However, the relationship between Brooke and Copas was indeed different from her other children and was anything but a typical mother-son relationship.

{¶18} As stated, Copas was born when his mother was fifteen and was living with Willa. Shortly after Copas was born, his mother left Copas to be raised by Willa. While Brooke visited Copas occasionally, she never seriously attempted to make him part of her family. Brooke practically abandoned her parental responsibilities to Copas shortly after he was born by leaving him with Willa. This led to Copas, when given the choice on multiple occasions, choosing to stay with Willa rather than live with Brooke. Furthermore, Brooke legally abandoned her parental responsibilities by giving Willa guardianship over Copas after she assaulted Copas when he was twelve years old.

{¶19} This Court has determined that the extent and quality of the relationship between Brooke and Copas prior to his death was marginal. Leaving Copas to be raised by his great-grandmother; striking him severely enough that a court required her to formally give up guardianship; not knowing her son was convicted of a felony and violated conditions of his probation; not knowing that her son was failing in school and ultimately dropped out of high school near the beginning of his junior year; and visiting her son in prison only seven times in the three years prior to his death and not visiting at all for at least six months before his death, indicates to this Court that the quality of the relationship “lost” was poor.

{¶20} It also appears to the Court that the siblings had a limited relationship with Copas prior to his death. While Will testified that he fished and fixed cars with Copas when the family visited, the relationship seemed sporadic and distant. Bethany testified that she did things with Copas when they visited as a family but the Court is not convinced that the occasional contact between them gives rise to a meaningful relationship. Bethany further testified that she only visited Copas in prison one time because she did not want him to get too sad when she left. This does not sound like the actions of a meaningful relationship. Likewise, Thea testified that she looked to Copas for advice, especially after he went to prison, but the relationship did not seem extensive. The other siblings did not testify.

{¶21} Accordingly, the Court finds that the loss of society, while it existed, was not very significant on the part of Brooke or Copas’ siblings.

### **Mental Anguish**

{¶22} The Court finds that Brooke and Copas’ siblings suffered some mental anguish and emotional distress as a proximate cause of the wrongful death. It appears that some of the siblings had a more emotional relationship with Copas after he went to prison. Will testified that he would visit and correspond with Copas while he was in prison. Thea testified similarly. Bethany also testified that she would correspond with Copas when he was incarcerated, but only visited him once during that time. Based on this testimony, the Court finds that Copas’ siblings are entitled to damages for the mental anguish they suffered because of his death. However, because the Court only heard from three of the siblings, it cannot find that the remaining siblings suffered any mental anguish.

{¶23} The more difficult finding deals with the mental anguish suffered by Brooke. Because of the unusual facts in this case, it is difficult for the Court to separate the real from the feigned emotional distress. In its thirty years on the bench, the Court has never experienced such malingering and exaggeration as it has with Brooke. Her testimony was not credible. Defendant's expert, Dr. John Fabian, found that his forensic consultations with Brooke and his testing via the MMPI-2 and SIMS (Structured Inventory of Malingering Symptomology) showed that Brooke was clearly malingering, exaggerated symptoms, and exhibited traits of a personality disorder, probably as a result of the chaos in her life. Dr. Fabian is board-certified in both Clinical Psychology and Forensic Psychology, and conducted a forensic analysis, rather than a clinical analysis, of Brooke. Plaintiff's expert, Dr. Esther Battle, appears to have allowed her opinions to be swayed by her clinical approach. Dr. Battle, by her own admission, violated her professional psychological ethics by allowing Brooke to take part of her testing documents home to complete. In addition, when Dr. Battle received the results of the MMPI-2 she gave to Brooke, she disregarded the portion which could be interpreted as malingering and failed to report the results to the parties in this case. Based on the expert testimony, the Court finds Dr. Fabian's opinions regarding the malingering and exaggeration more credible than the testimony of Dr. Battle.

{¶24} It is uncontested that Brooke has had serious stressors in her life which clearly have affected her emotional stability. Both experts agreed that Brooke has endured many difficulties in her past. These difficulties include:

- a. Getting pregnant at age fourteen and having Copas at age fifteen;
- b. Giving up her first born child to be raised by her grandmother;
- c. Being married six times to four men;
- d. Admitting to assaulting Copas, resulting in Brooke giving over guardianship
- e. to Willa;
- f. Being charged with various crimes, including domestic violence and being involved in several domestic violence incidents as a victim and perpetrator;
- g. Having her son convicted of vehicular manslaughter and sent to prison for
- h. nine years;
- i. Finding the only meaningful employment as an exotic dancer;
- j. Being present at the trial of Benner, who was ultimately convicted of
- k. murdering Copas;

- l. Having a former husband, and possibly her one best love, killed while committing an armed robbery;
- m. Having her son Will sent out of state to a boot camp because he was
- n. involved in drugs and alcohol and what she perceived to be a bad relationship;
- o. and;
- p. Having a miscarriage in 2011.

{¶25} With all of these stressors, it is understandable why Brooke was diagnosed by Dr. Fabian with a personality disorder and an anti-personality disorder. Although understandable, the Court must determine only the mental anguish and emotional distress that Brooke has endured because of Copas' death and not the totality of all her past experiences. This Court is aware that Defendant must accept Brooke and Copas' next of kin as it finds them. However, it is their burden to prove, by a preponderance of the evidence, the damages caused by Defendant's negligence. The Court cannot speculate.

{¶26} It is difficult for the Court to distinguish between the actual mental anguish proximately caused from the exaggerated symptoms produced to get external gain. The Court watched Brooke testify on direct examination for two and one half hours, crying the entire time without any visible tears. Because of Brooke's exaggeration and malingering, the Court has reduced the amount of money that it is awarding to the estate for the emotional distress suffered by Brooke.

{¶27} Accordingly, the Court awards \$350,000.00 as total damages for the loss of society and emotional distress of Brooke and Copas' siblings. Pursuant to R.C. 2125.03, the Probate Court shall allocate this amount as it deems appropriate. This Court, although it has no authority to do so, suggests that the amount be split into two, one-half to Brooke and one-half to the siblings.

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DALE A. CRAWFORD  
Judge

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## JUDGMENT ENTRY

{¶28} This case was tried to the Court on the issue of Plaintiff's damages. The Court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of Plaintiff in the amount of \$350,000.00. Court costs are assessed against Defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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DALE A. CRAWFORD  
Judge

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