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Wrongful Death—Siblings as Beneficiaries Under Wyoming's Wrongful Death Statutes. *Wetering v. Eisele*, 682 P.2d 1055 (Wyo. 1984).

Daniel Ray Wetering died on May 17, 1982, when his motorcycle slammed into a school bus. The bus was approaching from the opposite direction, and when the bus driver, Sylvia Eisele, turned left into Wetering's path, Wetering had no time to avoid crashing into the bus. There were no other injuries. Wetering was twenty-one years old, and he left surviving his father, mother, one brother, and four sisters.¹

The deceased's father, Darel Lloyd Wetering, was appointed Administrator of the Estate,² and he subsequently filed a wrongful death claim against Laramie County School District No. 1 and the State of Wyoming. The complaint alleged that Daniel Ray Wetering's death was the direct result of the wrongful and negligent act of an employee of the defendants. Claiming damages were the decedent's father, mother, brother and four sisters.³

The defendants filed a Motion to Strike the siblings as claimants, arguing that Wyoming's wrongful death statutes⁴ limit recovery to the decedent's spouse, children and parents.⁵ The District Court of Laramie County granted the defendants' motion.⁶

The Wyoming Supreme Court reversed, stating that the siblings in this case were entitled to recover for wrongful death. The court held that

1. *Wetering v. Eisele*, 682 P.2d 1055, 1057 (Wyo. 1984). See also Brief of Appellant at 5, *Wetering v. Eisele*, 682 P.2d 1055 (Wyo. 1984) [hereinafter Brief of Appellant].

2. The claim was filed in accordance with the Wyoming Governmental Claims Act, WYO. STAT. § 1-39-113 (Supp. 1984).

3. Brief of Appellant, *supra* note 1, at 3.

4. WYO. STAT. § 1-38-101 (Supp. 1984) provides:

Whenever the death of a person is caused by wrongful act, neglect or default such as would have entitled the party injured to maintain an action to recover damages if death had not ensued, the person who would have been liable if death had not ensued is liable in an action for damages, even though the death was caused under circumstances as amount in law to murder in the first or second degree or manslaughter. If the person liable dies, the action may be brought against the executor or administrator of his estate. If he left no estate within the state of Wyoming, the court may appoint an administrator upon application.

WYO. STAT. § 1-38-102 (Supp. 1984) provides:

(a) Every such action shall be brought by and in the name of the personal representative of the deceased person.

(b) If the deceased left a husband, wife, child, father or mother, no debt of the deceased may be satisfied out of the proceeds of any judgment obtained in any action brought under the provisions of this section.

(c) The court or jury, as the case may be, in every such action may award such damages, pecuniary and exemplary, as shall be deemed fair and just. Every person for whose benefit such action is brought may prove his respective damages, and the court or jury may award such person that amount of damages to which it considers such person entitled, including damages for loss of probable future companionship, society and comfort.

(d) Every such action shall be commenced within two (2) years after the death of the deceased person.

5. Brief of Appellant, *supra* note 1, at 3.

6. *Wetering*, 682 P.2d at 1057.

every claimant's right to damages is governed by the Wyoming intestacy statute.⁷ Wetering's siblings prevailed in court only because their brother had neither a wife nor children.⁸

BACKGROUND

The Statute

The Wyoming wrongful death statutes were enacted in 1871⁹ in the wake of Parliament's passage of Lord Campbell's Act in 1846,¹⁰ and similar stateside laws designed to provide a remedy for families of wrongfully killed persons.¹¹ Wrongful death compensation was unknown at common law,¹² so these statutes were formulated to redress the inequity of it being more profitable for a tortfeasor to kill his victim than merely injure him.¹³

The 1871 acts remained basically intact through the years,¹⁴ and featured such key elements as:

- (1) permitting a cause of action if the victim, had he lived, would have been able to sue for damages,
- (2) vesting the cause of action in the name of a personal representative,
- (3) distributing a lump sum award according to intestacy laws,
- (4) protecting the award from creditors' claims,
- (5) establishing a two-year Statute of Limitations, and
- (6) instructing the jury to award "fair and just compensation."¹⁵

The only significant alterations in this typical statutory scheme¹⁶ occurred in 1973, when the Wyoming legislature:

- (1) eradicated the reference to the intestacy laws as a tool for disseminating damages,
- (2) allowed "every person for whose benefit such action is brought" to prove his or her respective damages,

7. *Id.* at 1062.

8. WYO. STAT. § 2-4-101 (Supp. 1984) provides that if there is no spouse, children, nor descendants of children, then the decedent's father, mother, brothers and sisters share in the decedent's intestate estate.

9. LAWS OF WYOMING, 1871, at 88. See also subsequent codifications of the laws listed in Annot., WYO. STAT. §§ 1-38-101 to -102 (Supp. 1984).

10. Lord Campbell's Act (Fatal Accidents Act), 1846, 9 & 10 Vict., ch. 93; see also W. PROSSER AND W. KEETON, THE LAW OF TORTS § 127, at 945 (W. Keeton ed. 1984).

11. I SPEISER, RECOVERY FOR WRONGFUL DEATH § 1.9, at 29 (2d ed. 1975).

12. *Barker v. Bolton*, 1 Camp. 493, 170 Eng. Rep. 1033 (1808). For a history of common law development, see generally Smedley, *Wrongful Death—Bases of the Common Law Rules*, 13 VAND. L. REV. 605 (1960).

13. W. PROSSER, LAW OF TORTS § 127, at 902 (4th ed. 1971).

14. See *supra* note 9.

15. See, e.g., WYO. STAT., §§ 1-1065, -1066 (1957).

16. For a comparison of the various provisions of each statute, see generally, Comment, *Wrongful Death Damages in North Carolina*, 44 N.C.L. REV. 402 (1966).

(3) exempted from creditors' claims only those damages awarded to the decedent's husband, wife, child (or children), father, or mother, and

(4) quantified recoverable compensation as including loss of pecuniary services, and loss of "future companionship, society and comfort."¹⁷

The Case Law

Defining the beneficiary class in Wyoming wrongful death suits was relatively simple until 1973. Since the intestacy statute expressly provided the structure for award distribution, prior to 1973 one finds a pronounced dearth of case law directly on point. One Wyoming case did interpret the statutes as creating a new cause of action,¹⁸ as opposed to the right existing in a survival statute.¹⁹ Other noteworthy cases designated damage awards as independent of the decedent's estate and his debts,²⁰ declared that an action could be brought only by the decedent's personal representative for the benefit of those entitled to share in an intestate's personal estate,²¹ extinguished and then revived the right of action upon the death of the tortfeasor,²² and limited the personal representative's role to that of a mere trustee for the survivors.²³

The first meaningful discussion of sibling eligibility for wrongful death awards in Wyoming was by Justice Blume in *Coliseum Motel Co. v. Hester*.²⁴ The opinion surveyed the history and current state of wrongful death actions, and held that wrongful death creates an independent cause of action for the benefit of the survivors. The court further asserted that judgments should completely compensate for loss of companionship as well as for pecuniary loss. While recognizing the intestacy statute boundaries existing in Wyoming, Justice Blume suggested that compensation should be doled out according to the facts of each case.²⁵ Thus, Blume advocated, siblings should be allowed to recover under the proper circumstances.

17. 1973 Wyo. Sess. Laws, ch. 139. "An act to amend section 1-1066 of the statutes relating to wrongful death actions; and *modifying* distribution of proceeds of judgment from such actions." (Emphasis added).

18. *Coliseum Motor Co. v. Hester*, 43 Wyo. 298, 304, 3 P.2d 105, 108 (1931).

19. See, e.g., *Fitzgerald v. Hale*, 247 Iowa 1194, 78 N.W.2d 509 (1956).

20. *Tuttle v. Short*, 42 Wyo. 1, 18, 288 P. 524, 529 (1930). The 1973 amendment protects from creditors' claims only those awards to the decedent's husband, wife, child, father, or mother.

21. *Ashley v. Read Constr. Co.*, 195 F. Supp. 727, 728 (D. Wyo. 1961).

22. *Tuttle*, 42 Wyo. at 18, 28 P. at 529, *overruled in part*, *Parsons v. Roussalis*, 488 P.2d 1050 (Wyo. 1971).

23. *Coliseum*, 43 Wyo. at 311, 3 P.2d at 108.

24. *Id.*

25. *Id.* at 319, 3 P.2d at 111-12. Justice Blume stated:

But it has been recognized by the courts that, except, perhaps, under exceptional circumstances, collateral or remoter relatives should not be considered, or considered only to a limited extent, in this connection. . . . In *Kelley v. Irr. & O. Co.*, 30 Idaho 778, 168 P. 1076, 1078, the court said: "A rule which bars collateral heirs, in all cases, from recovering damages for loss of society and companionship does not strike me as just or sensible, and we find no basis for such a rule in the statute. . . . Each case must stand on its particular facts."

The keystone case in enumerating the wrongful death beneficiary class in view of the 1973 statutory amendments was *Jordan v. Delta Drilling Company*.²⁶ The Wyoming Supreme Court held that an illegitimate child is a "person" within the meaning of the phrase, "every person for whose benefit such action is brought."²⁷ The court thus interpreted "every person" as an open-ended class. Justice and the community's sense of values would dictate who could share in wrongful death awards. The list of whose claims were to be insulated from creditors would not determine the full beneficiary class.²⁸ Similarly, the court recognized that the 1973 amendment evidenced clear legislative intent to repudiate any analogy to intestacy laws.²⁹

The court abruptly retreated from the liberal statutory construction characterizing *Jordan* in the second major post-1973 amendment case, *Saffels v. Bennett*.³⁰ The court held that an ex-wife, owed alimony payments by the decedent, did not qualify as a wrongful death claimant. The court declared that the *Jordan* holding was to be interpreted very narrowly.³¹ It proclaimed that the history of subsection (b) of section 1-38-102 of the Wyoming statutes reflected legislative intent to limit "every person" beneficiaries to spouses, parents and children of the deceased.³² Finally,

26. 541 P.2d 39 (Wyo. 1975).

27. *Id.* at 48. "An illegitimate child is a 'person' within the scope of § 1-1066. . . ."

28. *Id.* at 42-43. The court stated:

Nor can we say that the language of § 1-1066(b) requires distribution under the laws of intestacy. It states only that when a decedent leaves a husband, wife, child, father or mother, any wrongful death action recovery shall not be liable for any debts of the deceased. The qualifications of the person for whom recovery is sought are those which may establish to the jury an entitlement to a fair and just award of damages. No more. We cannot amend the law to add more that what is clearly said and enlarge, stretch, expand or extend a statute to matters not falling within its express provisions.

29. *Id.* at 43. The court stated:

The legislature, by amendment deleting any reference to the laws of distribution of a decedent's estate, has eliminated any question of a relationship between heirship and entitlement to damages. Generally, when the legislature, by amendment, has deleted an express provision of a statute, the presumption is that a change was intended.

30. 630 P.2d 505 (Wyo. 1981).

31. *Id.* at 509. The court stated:

The *Jordan* case simply held that an illegitimate child was within the class of person for whom the action for wrongful death could be brought. The illegitimate child is a child within the words used in § 2-14-202(b) . . . and the intent to include an illegitimate child within those to be benefitted by the act is there expressed. There is no such expression with reference to a divorced wife.

Note the court's switch from identifying an illegitimate child as a "person" in *Jordan* to a "child" in *Saffels*.

32. *Saffels v. Bennett*, 630 P.2d 505, 509 (1975). The court said:

The legislative history of § 1-38-102(b) reflects the intention of the legislature to not stray from the traditional rule of beneficiary dependence to the extent propounded by appellant and suggested in the dissent hereto. As originally introduced, subsection (b) provided: "If the deceased left a husband, wife, child, father, mother, brother, sister, or child or children of a deceased child, no debt of the deceased may be satisfied out of the proceeds of any judgment obtained in any action brought under the provisions of this section."

The House Judiciary Committee recommended deletion of the words

after some semantical discussion of the meaning of "every person,"³³ the court voiced fears of an endless parade of claimants if "every person" were assigned its literal meaning.³⁴

THE PRINCIPAL CASE

In *Wetering*, the Wyoming Supreme Court held that this decedent's siblings were valid wrongful death claimants. The district court had grounded its holding on dictum in *Saffels* restricting the meaning of "every person,"³⁵ while disregarding the expansive beneficiary class created in *Jordan*. Faced with such contradictory precedent, the Wyoming Supreme Court felt compelled to discuss, and finally disapprove of, conflicting language in both *Saffels* and *Jordan*.³⁶

The defendants in the instant case brandished the strict statutory construction line of *Saffels*, and asserted that the House Judiciary Committee's deletion of siblings in subsection (b) of section 1-38-102 of the Wyoming statutes mandates their exclusion from recovery.³⁷ The plaintiffs wielded the invitation extended to anyone to prove his or her damages found in *Jordan*, and attempted to define "every person" as members of a distinct class of blood kin entitled to recover.³⁸

The *Wetering* court found neither precedent nor counsels' arguments persuasive. The court first recognized the inconsistencies between its two earlier progeny, then apologetically stated that it "overwrote" in both instances.³⁹ Proceeding from a clean slate, then, the court employed statutory construction⁴⁰ and the legislative history of the creditor claim portion of the wrongful death statutes⁴¹ to facilitate its decision.

After noting Wyoming's tradition (prior to 1973) of utilizing intestacy statutes to delineate wrongful death beneficiaries, the court pronounced that "when the legislature dropped from the wrongful death act in 1973 the identification of those persons for whose benefit the action was brought it must have assumed the application of the statute providing for intestate descent and distribution."⁴²

Major weight was placed on case law ascribing to the legislature knowledge of the existing state of the law, thereby requiring statutory

"brother, sister, or child or children of a deceased child," and the bill was so amended.

The legislative intention thus expressed was to limit the recipients of benefits to be derived from the statute.

33. *Id.* at 510.

34. *Id.*

35. *Wetering*, 682 P.2d at 1057.

36. *Id.* at 1062.

37. Brief of Appellees at 4-5, *Wetering v. Eisele*, 682 P.2d 1055 (Wyo. 1984).

38. Brief of Appellants, *supra* note 1, at 7, 10.

39. *Wetering*, 682 P.2d at 1059.

40. *Id.* at 1061.

41. *Id.* at 1061-62.

42. *Id.* at 1061.

construction in harmony with the existing law.⁴³ The existing law referred to was use of the probate code to define the wrongful death beneficiary class. Also persuasive to the court was that full force and effect must be appointed to all language of the statutes. Finding that the legislature intended that the beneficiary class could include others besides the deceased's spouse, children, or parents, the court concluded that judgments should be distributed according to the probate code.⁴⁴ Thus, claimants cannot recover unless their compensation is directed by the intestacy statute.

ANALYSIS OF THE COURT'S OPINION

The result in *Wetering* is desirable, but the court's reasoning is marred by contradictions and fears of establishing progressive, yet logical, legal precedent. The court's bewildering resort to the probate code defies legislative intent, and ignores modern notions of reasonably complete relief for the wrongful death of a loved one. Unfortunately, this case exemplifies the court's continued failure to interpret the 1973 amendment in a consistent or coherent manner.

Initially, *Jordan* defined the beneficiary class as including any person who could prove damages.⁴⁵ Analogy to the probate code was expressly renounced.⁴⁶ Next, *Saffels* foreclosed recovery to anyone but the spouse, children, or parents of the decedent.⁴⁷ There was no mention of the probate code. Finally, *Wetering* re-adopted the intestacy laws' framework for determining who can recover for wrongful death.⁴⁸

The implementation of the probate code, which injects a large dose of certainty into naming wrongful death beneficiaries, belies a court exasperated with its record. Numerous jurisdictions rely on intestacy laws for guidance in wrongful death actions, but few if any have done so in such an inconsistent fashion.⁴⁹

Statutory Construction

At least three inconsistencies in the statutory construction in *Wetering* strengthen the impression of a court surrendering to the security of the probate code. First, the court assumed the legislature was aware of the existing state of the law.⁵⁰ It then assumed the legislature erred in

43. *Id.*

44. *Id.*

45. *Jordan v. Delta Drilling Co.*, 541 P.2d 39, 42-43 (Wyo. 1975).

46. *Id.* at 42.

47. *Saffels*, 630 P.2d at 509.

48. *Wetering*, 682 P.2d at 1061.

49. Comment, *supra* note 16, at 423. See generally 2 SPEISER, RECOVERY FOR WRONGFUL DEATH § 10.1, at 122 (2d ed. 1975).

50. *Wetering*, 682 P.2d at 1061. The court said: "When the legislature adopts a statute it is presumed to have done so with full knowledge of the existing state of law with reference to the subject matter of the statute."

1973 when it deleted references to the probate code.⁵¹ Second, the court supposed that the legislature intended a change by its 1973 amendment,⁵² but held that the legislature did not mean to alter the class of beneficiaries.⁵³ Third, the court said it could not find a provision which would transform the old rule of intestacy-statute dependence,⁵⁴ while ignoring the fact that the legislature by deleting its reference rejected the probate code.⁵⁵ One wonders how much more explicitly the legislature must act to have its intent effectuated.

The court erred in presuming that the legislature removed the probate code reference while intending to retain its effect.⁵⁶ The proper statutory construction would give effect to the statute itself, without assuming the legislature inadvertently omitted the probate code reference.⁵⁷ Legislative purpose is the primary consideration in ascertaining the meaning of a statute,⁵⁸ and withdrawal of the probate code analogy should have invoked the presumption that the legislature intended a change.⁵⁹ Besides, over-narrow meanings should not be applied to statutes in disregard of obvious legislative intent for a broader reading of the statute.⁶⁰ Finally, the court construed the wrongful death statutes and the intestacy statute *in pari materia*,⁶¹ yet this was inappropriate in light of a clear legislative mandate.⁶²

51. *Id.* The court stated: "We are satisfied, however, that when the legislature dropped from the wrongful death act in 1973 the identification of those persons for whose benefit the action was brought it must have assumed the application of the statute providing for intestate descent and distribution."

52. *Id.* The court said: "We further must assume that the legislature did not intend futile acts and that its amendment of the statute indicated some change in the existing law was intended."

53. *Id.* The court stated: "[T]he legislature did not intend to change the persons for whose benefit an action in wrongful death could be maintained."

54. *Id.* at 1061-62. The court said: "Since no provision which has the effect of adjusting that rule can be found in the statute, the reference to every person for whose benefit such action is brought must continue to invoke the intestacy provisions of the probate code."

55. *Jordan*, 541 P.2d at 42.

56. *Albany County Weed and Pest Dist. v. Board of County Comm'rs*, 592 P.2d 1154, 1157 (Wyo. 1979); *Brown v. State*, 590 P.2d 1312, 1314 (Wyo. 1979).

57. *Wyoming Dep't of Educ. v. Barber*, 649 P.2d 681, 684-85 (Wyo. 1982); *People v. Fremont Energy Corp.*, 651 P.2d 802, 807 (Wyo. 1982). See also 1A SANDS, SUTHERLAND STATUTORY CONSTRUCTION § 22.32, at 186 (4th ed. 1972).

58. *State v. Stovall*, 648 P.2d 543, 545 (Wyo. 1982); *Sanches v. Sanches*, 626 P.2d 61, 62 (Wyo. 1981).

59. *DeHerrera v. Herrera*, 565 P.2d 479, 483 (Wyo. 1971); *Kosmicki v. Swick*, 468 P.2d 818, 821 (Wyo. 1970).

60. *People v. Platte Pipe Line Co.*, 649 P.2d 208, 212 (Wyo. 1982); *Nimmo v. State*, 603 P.2d 386, 390 (Wyo. 1979).

61. "Upon the same matter or subject. Statutes *in pari materia* are to be construed together. 'Statutes *in pari materia*' are those relating to the same person or thing or having a common purpose." BLACK'S LAW DICTIONARY 711 (5th ed. 1979).

All portions of an act must be read *in pari materia*, *Haddenham v. City of Laramie*, 648 P.2d 551 (Wyo. 1982), but the wrongful death statutes and the intestacy statutes are in different acts.

62. *In re Parental Rights of SCN*, 659 P.2d 568, 573 (Wyo. 1983); *Wyoming In-Stream Flow Comm. v. Thompson*, 651 P.2d 778, 782 (Wyo. 1982).

History and Policy

The court failed to appreciate the significance of legislative inaction since 1973. This should have indicated to the court that the legislature indeed intended abolition of the probate code as a reference in wrongful death actions, and that it was pleased with the results of the amendment. One can assume that the legislature would have amended the statute after *Jordan* if it really meant to retain use of the probate code.⁶³

The court should have drawn guidance from the Wyoming statutes' progressive framework for compensating, within reason, every person's loss of future companionship, society, and comfort.⁶⁴ The inclusion of these damages evidences clear legislative intent to create a compensation right independent of pecuniary damages.⁶⁵ If there are two types of damages, in all likelihood there are two main types of claimants: those who would seek damages for pecuniary loss or pecuniary loss and loss of companionship, and those who would seek damages for loss of companionship only. Siblings generally would be included in this latter class.

A broad interpretation of "every person for whose benefit such action is brought" comports with modern trends and policies. For example, the decedent's siblings are included the statutes of nine states.⁶⁶ Laws which designate the beneficiary class as "next of kin" unanimously denote siblings as members of the class.⁶⁷ Other statutes, which define the beneficiary class as "heirs" or "heirs at law," generally have been construed to include siblings.⁶⁸

Although in the past drafters of wrongful death statutes have been quite timid in providing compensation,⁶⁹ today courts and legislatures appear willing to liberally construe statutes to effect the action's overall purpose of dispensing relief to injured parties.⁷⁰ Other cases exemplifying the modern trend and the common law maxim, "for every wrong, a remedy,"

63. *Smith v. City of Detroit*, 388 Mich. 637, 650, 202 N.W.2d 300, 304 (1972).

64. WYO. STAT. § 1-38-102 (Supp. 1984).

65. *Id.*

66. SPEISER, *supra* note 49, § 10.18. *See generally*, Annot., 31 A.L.R. 3d 379 (1980).

67. *Id.*

68. *Id.* Some states employ a tiered recovery system akin to that established by Wyoming's intestacy statute. *See* OKLA. STAT. tit. 12, § 1055 (1971); *see also* Comment, *Recovery for Wrongful Death*, 34 OKLA. L. REV. 659 (1981); *see* MO. REV. STAT. § 537.080 (1979); *see also* Comment, *Missouri's New Wrongful Death Statute—Highlights of Some Significant Changes*, 45 MO. L. REV. 476 (1980).

69. W. PROSSER, *supra* note 13, § 127.

70. *See, e.g.*, *Crystal v. Hubbard*, 44 Mich. 297, 324 N.W.2d 869 (1982), in which the siblings of a decedent killed in an auto accident were allowed to recover. The court held that the statute, allowing recovery by next of kin, which was defined as a class entitled to inherit personal property of decedent had he died intestate, was intended by the legislature to apply to a broad class of potential heirs, including siblings. The court did not limit recovery to actual heirs at law, in light of fundamental notions of distributive justice, the legislature's adoption of lost companionship as a measure of damages, the legislature's acquiescence in prior judicial expressions of the standard adopted, and arbitrary results which a contrary interpretation would produce.

have awarded loss of consortium damages to unmarried cohabitants,⁷¹ and wrongful death damages to parents of a stillborn fetus.⁷² In contrast, the *Wetering* decision seems regressive and contrary to modern policy.

The Court's Surmountable Concerns

The Wyoming Supreme Court in *Wetering* may have been motivated by some legitimate yet surmountable concerns. The court appeared unduly result-oriented while restricted by a fear of opening the floodgates of litigation.⁷³

Without retreating to intestacy guidelines, however, the court could have designated only blood kin eligible for recovery. Or the court might have delivered a limited holding applicable only to siblings, while also certifying the validity of claims by spouses, children and parents of the decedent. Or the court could have trusted juries to discard silly claims,⁷⁴ allowing "every person" an opportunity to "prove his respective damages."

The court also may have been leery of legislating by judicial decree. This is a valid concern, but avoidable by the proper use of statutory interpretation, which ascribes the statute its literal meaning. Besides, reinstating the probate code as a reference after it was deleted by the legislature resembles an unexcusable exercise of judicial legislation.

The prospect of unreasonably large monetary awards,⁷⁵ also may have prompted the court to tightly circumscribe the class of beneficiaries. Astronomical jury awards arguably are not congruous with the requirement that awards be "fair and just."⁷⁶ Yet, outrageous judgments can be prevented by the good sense of juries which set the awards, and by an appellate courts' prerogative to trim excessive jury awards. Another approach involves legislative action, whereby non-pecuniary loss could be limited to a maximum amount.⁷⁷

Whatever the court's apprehensions, it did succeed in making the wrongful death beneficiary class extremely easy to ascertain. The intestacy

71. *Bulloch v. United States*, 487 F. Supp. 1078 (D.N.J. 1980). See also Comment, *Extending Consortium Rights to Unmarried Cohabitants—Bulloch v. U.S.*, 129 U. PA. L. REV. 911 (1981).

72. *Salazar v. St. Vincent Hosp.*, 95 N.M. 150, 619 P.2d 826 (1980). See also Comment, *Wrongful Death and the Stillborn Fetus: A Common Law Solution to a Statutory Dilemma*, 43 U. PITT. L. REV. 819 (1981-82).

73. See *Saffels v. Bennett*, 630 P.2d 505, 510 (Wyo. 1981).

74. *Id.* at 513 (Raper, J., dissenting).

75. See, e.g., *Spangler v. Helm's New York—Pittsburgh Motor Express*, 396 Pa. 482, 153 A.2d 490 (1959) (award of \$46,059 for loss of mother's companionship, comfort, society, guidance, solace, and protection). Very few jurisdictions use special verdicts, so it is difficult to determine how much of an award is not compensating pecuniary loss. Large general verdicts, however, do provide an indication that loss of companionship can be recompensed handsomely. See *Jeffrey v. United States*, 381 F. Supp. 505 (D. Ariz. 1974) (\$135,000 for death of eight-year-old son); *Metropolitan Dade County v. Dillon*, 305 So. 2d 36 (Fla. Dist. Ct. App. 1974) (\$900,000 for death of six-year-old daughter).

76. WYO. STAT. § 1-38-102(c) (Supp. 1984).

77. See, e.g., KAN. STAT. ANN. § 60-1903 to -1904 (1976). For a discussion supporting the Kansas approach, see Comment, *Damages for Wrongful Death in Kansas: Some Problems, Questions and Answers*, 17 WASHBURN L.J. 73 (1977).

statute⁷⁸ is very explicit. It can, however, lead to unfortunate results. For example, suppose a decedent left surviving his parents, an estranged wife, and a child. Whether the wife opts to sue or not, the parents have no right of recovery.⁷⁹ In the instant case, the fact that the decedent may have been married does not mean the siblings did not also suffer a loss. The *Wetering* decision thus can expand the beneficiary class from that delineated in *Saffels*. Collateral relatives now have a chance to recover, if there is no spouse or children. Clearly, it can also contract the beneficiary class defined in *Saffels*. Meanwhile, only legislative amendment or radical judicial adjusting can resurrect the beneficiary class outlined in *Jordan*. This would re-align Wyoming wrongful death law with modern perceptions of compensation.

CONCLUSION

The overall purpose of the Wyoming wrongful death statutes, the early case law, the structure of the act itself, the proper statutory interpretation, and the modern policy illustrate that the Wyoming legislature intended to provide a complete remedy for damages. Use of the probate code to focus "every person" into a quantifiable group was unwarranted and unwise. The statutes now cannot operate as intended. The court should have ruled that "every person" who could prove loss of a strong emotional bond with the decedent is entitled to "loss of companionship" damages. Justice would be administered according to circumstances, while claims from the likes of the decedent's business partner or mailman would be readily discarded. The statutes must be amended or the judiciary must re-examine this case before the wrongful death remedy functions properly in Wyoming.

CHARLES A. ARMGARDT

78. WYO. STAT. § 2-4-101 (Supp. 1984).

79. *Id.*