

No. 81195-4

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

BY RONALD R. CARPENTER

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JOSIE ARMANTROUT, personal representative of the Estate of
KRISTEN ARMANTROUT; JOSIE ARMANTROUT and WARREN
ARMANTROUT, husband and wife, and the marital community
composed thereof;

Plaintiffs/Petitioners,

vs.

ROBERT CARLSON, M.D. and JANE DOE CARLSON, husband and
wife, and the marital community composed thereof;

Defendants,

and

CASCADE ORTHOPAEDICS, a partnership;

Defendant/Respondent.

FILED
SUPREME COURT
STATE OF WASHINGTON
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BRIEF OF AMICUS CURIAE
WASHINGTON STATE ASSOCIATION FOR JUSTICE FOUNDATION

Bryan P. Harnetiaux
WSBA No. 5169
517 E. 17th Avenue
Spokane, WA 99203
(509) 624-3890

George M. Ahrend
WSBA #25160
P.O. Box 2149
Moses Lake, WA 98837
(509) 764-8426

On Behalf of
Washington State Association for Justice Foundation

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I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Washington State Association for Justice Foundation (WSAJ Foundation) is a not-for-profit corporation organized under Washington law, and a supporting organization to the Washington State Association for Justice (WSAJ). WSAJ Foundation is the new name for the Washington State Trial Lawyers Association Foundation (WSTLA Foundation), a supporting organization of the Washington State Trial Lawyers Association (WSTLA), now renamed WSAJ. These name changes were effective January 1, 2009.

WSAJ Foundation, which now operates the amicus curiae program formerly operated by WSTLA Foundation, has an interest in the rights of plaintiffs under the civil justice system, including an interest in the rights of beneficiaries under Washington's wrongful death statutes, RCW 4.20.010-.020.¹

II. INTRODUCTION AND STATEMENT OF THE CASE

This appeal involves whether parents of an adult child who died in 2003 may qualify as wrongful death beneficiaries under RCW 4.20.020 by proof they were dependent on services having substantial economic value provided by their child. The parents, Josie and Warren Todd Armantrout, individually and as personal representatives of the Estate of Kristen Armantrout (Armantrouts), brought this medical negligence action against

¹ WSAJ Foundation filed an amicus curiae memorandum under its former name in support of review in this case. See Washington State Trial Lawyers Association Foundation Amicus Curiae Memorandum In Support of Review (March 17, 2008). That submission focused on whether the criteria for review under RAP 13.4(b) were met.

a partnership doing business as Cascade Orthopaedics (Cascade) and others for the wrongful death of their 18-year old daughter Kristen (Kristen or decedent). The action was commenced in 2004, pursuant to RCW 4.20.010-.020. The underlying facts are drawn from the Court of Appeals opinion, the briefing of the parties, trial court Instruction No. 14 and the completed Special Verdict Form. See Armantrout v. Carlson, 141 Wn.App. 716, 170 P.3d 1218 (2007), *review granted*, 164 Wn.2d 1024 (2008); Cascade Br. at 5-15 & Appendix, Tab 1; Armantrouts Br. at 1-11; Armantrouts Pet. for Rev. at 2-8; Cascade Ans. to Pet. for Rev. at 1-4; Armantrouts Supp. Br. at 2; Instruction No. 14 (CP 92), and Special Verdict Form (CP 100-102).²

For purposes of this brief, the following facts are relevant: At trial, Armantrouts presented evidence that they were “dependent upon the deceased person for support,” as required by RCW 4.20.020. This evidence sought to establish that Armantrouts were in need of substantial financial support, and that Kristen provided such support by making direct monetary contributions *and* by performing services having economic value. The question whether Armantrouts were substantially financially dependent upon Kristen for support was submitted to the jury. The trial court instructed the jury as follows:

The plaintiff has the burden of proving that Kristen Armantrout’s mother and father were substantially financially dependent upon her for support. Substantial financial dependence requires a showing of a need or necessity for

² Both Instruction No. 14 and the completed Special Verdict Form are reproduced in Cascade Br. at Appendix, Tab 1.

support on the part of the parents and an agreement by Kristin [sic] to provide such support. In determining whether Josie and Todd Armantrout were substantially financially dependent on Kristen, you should consider the extent of Kristen's financial contributions to her parents and whether or not such support was likely to continue for a period of time. *The support may include money, services, or other material benefits, but may not include everyday services a child would routinely provide her parents. You may not consider emotional support Kristin [sic] may have provided her parents.*

Substantial financial dependence may be partial, but must be based on current financial contributions, not the promise of future contributions or services.

Instruction No. 14 (CP 92) (emphasis added). The jury returned a verdict for Armantrouts on their wrongful death claim. See Special Verdict Form (CP 100-102).³

Cascade appealed, challenging, inter alia, whether the provision of services by Kristen to her parents could properly be considered in determining whether the parents were “dependent upon the deceased person for support” (or dependent for support), as required by RCW 4.20.020. The Court of Appeals strictly construed the dependent for support requirement, concluding that the services provided did not constitute financial support under RCW 4.20.020. See Armantrout, 141 Wn.App. at 727-31. It held:

... the longstanding test of “financial” dependence or support is limited to the providing of income or money, not services with an economic value. While such a rule may not still be justified in present-day society, that is the rule the legislature has left in place, as our courts have consistently held. We also note that the legislature has had the opportunity to modify the standard

³ The Special Verdict Form included an interrogatory to the jury regarding whether the parents were “substantially financially dependent” on Kristen for support.

but has chosen to leave in place the existing statute and its interpretive decisions.

Id. at 730 (footnote omitted). The court reversed the verdict for Armantrouts, and remanded for a new trial. Id. at 731-33.

Armantrouts petitioned this Court for review, raising the following issue:

Whether the provision of services which have an economic or pecuniary value may be considered by the trier of fact when determining whether a parent was financially dependent upon his or her adult child in order to maintain an action for wrongful death under RCW 4.20.020 (App. 24) when there are no "first tier" beneficiaries[?]

Armantrouts Pet. for Rev. at 2 (issue 1). This Court granted review.

III. ISSUE PRESENTED

Under RCW 4.20.020, may a second tier beneficiary prove that he or she was "dependent upon the deceased person for support" by evidence that the decedent performed needed services of substantial economic value, or is evidence of support limited to monetary contributions?

IV. SUMMARY OF ARGUMENT

The issue before the Court, regarding whether services performed by a decedent having substantial economic value may qualify as financial support under RCW 4.20.020, is one of first impression. As a remedial statute, RCW 4.20.020 must be liberally construed. Properly construed, a decedent's provision of services of economic value to a second tier beneficiary may serve to establish the substantial financial support that the statute requires in order to pursue a wrongful death claim. Moreover, this interpretation is fair and sensible in rejecting a technical distinction

between those decedents who contribute money and those who instead perform services having economic value. A contrary interpretation unjustly favors those who make direct monetary contributions, while discounting equally valuable contributions by those who roll up their sleeves and provide the needed support themselves.

V. ARGUMENT

Introduction

This argument is confined to the legal question whether a decedent's provision of needed services of substantial economic value may qualify as a basis for establishing a second tier beneficiary was dependent upon the decedent for support, as required by RCW 4.20.020. For purposes of this brief, it is assumed the evidence presented at trial was otherwise sufficient to create a question of fact for the jury on the issue.

A. Overview Of Washington Wrongful Death And Survival Statutes, And The Dependent For Support Requirement For Second Tier Beneficiaries.

Armantrouts commenced this action under RCW 4.20.010-.020. These statutes allow parents of an adult child, as "second tier" beneficiaries, to recover for the child's death if they were dependent upon the child for support. See generally *Philippides v. Bernard*, 151 Wn.2d 376, 385-86, 88 P.3d 939 (2004) (involving claims for wrongful death of a child under RCW 4.24.010, but recognizing that several Washington wrongful death and survival statutes have a similar dependent for support requirement for second tier beneficiaries, including RCW 4.20.020).

Other statutes having a similar dependent for support requirement are RCW 4.20.046 (survival statute) and RCW 4.20.060 (special survival statute).⁴

The current wrongful death and survival statutes are modern versions of predecessor statutes, some of which date back over a hundred years. For example, RCW 4.20.010 and RCW 4.20.020, the statutes involved in this appeal, are traceable to Rem. Rev. Stats. §§ 183 and 183-1, respectively. See Mitchell v. Rice, 183 Wash. 402, 48 P.2d 949 (1935) (quoting and interpreting these statutes). Similarly, RCW 4.20.060, the special survival statute, derives from Rem. & Bal. Code § 194, succeeded by Rem. Rev. Stat. § 194. See Bortle v. Northern Pac. R. Co., 60 Wash. 552, 111 Pac. 780 (1910) (interpreting Rem. & Bal. Code § 194); Mitchell, 183 Wash. at 404 (quoting and interpreting Rem. Rev. Stat. § 194).

Throughout the history of these wrongful death and survival statutes, second tier beneficiaries have been required to prove they were dependent on the decedent for support in order to qualify for relief. With one exception, these statutes have not defined what dependent for support means, and it has been necessary for the courts to resolve this issue.⁵ Over

⁴ The current versions of RCW 4.20.010, .020, .060, RCW 4.20.046 and RCW 4.24.010 are reproduced in the Appendix to this brief. RCW 4.20.020 was amended slightly in 2007 in a manner not relevant to the question before the Court. See Laws of 2007, ch. 156 §29 (adding “state registered domestic partner” to list of potential beneficiaries).

⁵ In the case of RCW 4.24.010, although it does not define “support,” the Legislature has nevertheless indicated that with respect to minor children, a cause of action by a parent is permitted “if the mother or father has had significant involvement in the child’s life, including but not limited to, emotional, psychological, or financial support.” Laws of 1998, ch. 237 §1; see also Philippides, 151 Wn.2d at 383-85 (interpreting this 1998 law).

the years, dependent for support provisions have been interpreted to require that: 1) dependency exist at the time of death, see Mitchell, 183 Wash. at 403; 2) there be a substantial dependency on the beneficiary's part based on need, coupled with a recognition of that need by decedent, see Bortle, 60 Wash. at 554; and 3) the support provided must be financial. See id. at 556 (requiring "substantial financial recognition"); Masunaga v. Gapasin, 57 Wn.App. 624, 628, 790 P.2d 171 (confirming "dependence means *financial* dependence," and rejecting emotional support as an additional basis for meeting the dependent for support requirement), *review denied*, 115 Wn.2d 1012 (1990).

What has not been determined previously by this Court, or the Court of Appeals prior to this case, is whether the financial support necessary under the dependent for support requirement may also be established by proof the decedent provided services having economic value. While there have been two cases where the trial court allowed evidence regarding such services, the appeal in these cases was not resolved on this basis, and the appellate court did not rule definitively on the legitimacy of establishing support in this manner. See Cook v. Rafferty, 200 Wash. 234, 239-40, 93 P.2d 376 (1939) (affirming judgment for parents for wrongful death of daughter based upon daughter's monetary contributions to the expenses of the household and hands-on care for her parents); cf. Masunaga, 57 Wn.App. at 628-29 (concluding

gratuitous services of decedent son insufficient to meet support requirement).

While Cook may be read as suggesting the dependent for support requirement can be met with proof that the decedent provided the beneficiaries with services of economic value, it does not identify this issue or discuss it. At the very least, the issue remains an open question. See Berschauer/Phillips v. Seattle Sch. Dist., 124 Wn.2d. 816, 824, 881 P.2d 986 (1994) (recognizing prior opinion where legal theory not discussed is not binding in case where theory properly raised).

This case presents the clear opportunity to address and resolve the question. The threshold inquiry is what rule of construction applies to statutes of this nature.

B. RCW 4.20.020 Should Be Liberally Construed To Effectuate Its Remedial Purpose.

In determining that the dependency requirement of RCW 4.20.020 does not include support based upon a decedent providing services of economic value, the Court of Appeals below strictly construed this provision:

Wrongful death actions in Washington are strictly statutory. We only liberally construe these remedial statutes once the proper beneficiaries have been determined.

Armantrout, 141 Wn.App. at 727 (footnotes omitted that cite to Tait v. Wahl, 97 Wn.App. 765, 987 P.2d 127 (1999)).

The second sentence of the above quote applies a rule of construction out of keeping with this Court's more recent pronouncements

that wrongful death statutes should be liberally construed to effectuate their remedial purpose.⁶ In Tait, the Court of Appeals strictly construed RCW 4.20.020, invoking the same principle of construction. See 97 Wn.App. at 769-70 (interpreting RCW 4.20.020). Tait relied upon Masunaga v. Gaspin, *supra*, for this principle. See Tait at 770. Masunaga, in turn, relied upon Roe v. Ludtke Trucking, Inc., 46 Wn.App. 816, 818-19, 732 P.2d 1021 (1987) (involving RCW 4.20.020). See Masunaga, 57 Wn.App. at 631 (interpreting RCW 4.24.010).⁷

Significantly, both Masunaga and Roe cite to this Court's decision in Whittlesey v. Seattle, 94 Wash. 645, 163 Pac. 193 (1917), in support of strict construction regarding the intended beneficiaries in wrongful death statutes. See Masunaga, 57 Wn.App. at 631; Roe, 46 Wn.App. at 819. Whittlesey did indeed embrace this rule, in refusing to interpret Rem. Code §183 as allowing a wrongful death action by the widower husband when only widows were listed in the statute. See 94 Wash. at 647. However, what Court of Appeals opinions from Roe through Armantrout have overlooked is that this Court has all but abandoned the Whittlesey

⁶ The first sentence of the quote from Armantrout in the main text involves a separate and distinct legal precept. Because wrongful death statutes are strictly statutory, this Court has rejected the notion that gaps in these statutes may be filled by common law remedies. See Huntington v. Samaritan Hosp., 101 Wn.2d 466, 469-70 n.1, 680 P.2d 58 (1984) (confirming wrongful death actions are strictly statutory); Philippides, 151 Wn.2d at 388-90 (refusing to provide common law wrongful death remedy for parents of adult child on whom they were not dependent for financial support). This principle is not at issue in this case, and for this reason Cascade's reliance upon Philippides is unavailing. See Cascade Supp. Br. at 1-2. The Court here is performing its interpretive function.

⁷ The rule of construction stated in Tait, Masunaga, and Roe is also referenced in Schumacher v. Williams, 107 Wn.App. 793, 797 & n.4, 28 P.3d 793 (2001) (citing Roe), *review denied*, 145 Wn.2d 1075 (2002).

approach, and embraced a broad rule of liberal construction of wrongful death and survival statutes.

An early indicator that the rule of strict construction announced in Whittlesey might not stand up is seen in Mitchell v. Rice, *supra*, where the Court was reviewing the sufficiency of the evidence of dependency in the context of inconsistent jury verdicts. Without referencing Whittlesey, the Court noted that the dependent for support requirement should be interpreted in light of the statute's remedial character:

The degree of dependency required by the rule announced in the cases cited above is to be substantial. But "substantial" is a term having relation to the circumstances of the plaintiff. Also, we must not lose sight of the fact that the statute upon which the right of action is based is remedial in character. It creates a right of action not existing at common law and should not, in its application, be so limited by construction as to partially defeat its purpose.

Mitchell, 183 Wash. at 407.

The force of Whittlesey was perhaps next eroded in Cook v. Rafferty, *supra*, where the Court stated, without reference to Whittlesey, that the then-current wrongful death and survival statutes "being remedial in their nature, are liberally construed," in connection with its assessment of the dependent for support requirement. *See* 200 Wash. at 240.

More recently, in Armijo v. Wesselius, 73 Wn.2d 716, 440 P.2d 71 (1968), the Court reexamined and distanced itself from the Whittlesey approach:

Respondents cite Whittlesey v. Seattle, 94 Wash. 645, 163 Pac. 193 (1917), for the rule that remedial statutes which are in derogation of the common law are to be strictly construed as to

their classes of beneficiaries. It is contended that this rule forecloses Toni Marie's chances of becoming a beneficiary under RCW 4.20.020, presumably on the theory that a strict construction of the words "child or children" would not include illegitimates. Respondents' contention, however, is not persuasive. Whether done liberally or strictly, judicial interpretation is necessary even under respondents' rule; illegitimate children are not *necessarily* excluded under the terms of RCW 4.20.020. This being so, we must still engage in a process of weighing and balancing competing values, and it appears to us that social policy considerations favoring inclusion of illegitimate children as beneficiaries should be given effect. As stated in 3 J. Sutherland, *Statutory Construction*, §7205 (3d ed. 1943):

[M]any of the decisions in the past [construing wrongful death statutes], and a few of the later ones as well, have crippled the operation of this legislation by employing a narrow construction on the basis that these statutes are in derogation of the common law. However, it may now safely be asserted that the better and modern authorities are in agreement that the objectives and spirit of this legislation should not be thwarted by a technical application.

73 Wn.2d at 720.⁸

The liberal construction applied in Armijo was reaffirmed by this Court in Klossner v. San Juan County, 93 Wn.2d 42, 46-48, 605 P.2d 330 (1980) (applying rule of liberal construction, but nonetheless holding that an unadopted stepchild does not come within the definition of "child" under RCW 4.20.020 and RCW 4.20.060). The dissent in Klossner also applied the rule of liberal construction of wrongful death statutes in reaching a different conclusion. See id., 93 Wn.2d at 48-49 (Dolliver, J., dissenting).

⁸ In Armijo, the dissent unsuccessfully invoked the rule of construction in Whittlesey. See Armijo, 73 Wn.2d at 726-27 (Hill, J., dissenting).

The Court of Appeals below erred in applying a strict construction lens in determining that the Armantrouts could not prove financial support by evidence decedent provided services of economic value. Court of Appeals cases supporting this view should be disapproved. See Schumacher, 107 Wn.App. at 797; Tait, 97 Wn.App. at 769-70; Masunaga, 57 Wn.App. at 631; Roe, 46 Wn.App. at 819. The Court should apply the rule of liberal construction in resolving this issue.

C. Properly Construed, The Only Fair And Sensible Interpretation Of RCW 4.20.020's Dependent For Support Requirement Is That Financial Support May Be Shown By Proof Of Either Direct Monetary Contributions Or The Rendering Of Services Having Economic Value.

In concluding that the financial support required to be shown in order to be a second tier beneficiary under RCW 4.20.020 cannot consist of services of economic value, the Court of Appeals noted that “[i]n discussing the requisite financial support, Washington cases have never suggested that financial support could include the types of services the Armantrouts received from their daughter.” Armantrout, 141 Wn.App. at 728. There is a simple reason for this – until this case, no Washington appellate court had decided this issue. See §A, supra. The fact that prior precedent has focused on monetary contributions does not foreclose consideration of provision of services of economic value as another method of demonstrating the beneficiaries were dependent upon the decedent for financial support. See Berschauer/Phillips, supra, 124 Wn.2d at 824 (limiting stare decisis application to issues previously decided).

The Court should now hold that financial support may be proven by evidence decedent provided necessary services of economic value. The required liberal construction, see §B, supra, dictates that financial support reasonably encompass services of economic value provided by a decedent. This is because under the teaching of Armijo, it cannot be said that economic support of this kind is “*necessarily* excluded by the terms of RCW 4.20.020.” See 73 Wn.2d at 720.

Cascade argues that this interpretation is not sustainable because the ordinary meanings of the word “financial” and its root word “finance” do not include services of economic value. See Cascade Supp. Br. at 4-5 (referencing dictionary definitions). Resort to this crabbed interpretation based on the language in this Court’s opinions is misguided, as there is no indication the Court chose this language in order to rule out other equivalent forms of economic support.

The proper inquiry is whether there is any legitimate reason to distinguish between direct monetary contributions and the provision of services having economic value. There is not. The teachings in Armijo compel this result in furtherance of the Court’s call for an interpretation grounded in “common sense humanity.” See 73 Wn.2d at 719. Under Cascade’s view of support, an adult child who pays money directly to the parents in order for them to acquire needed services qualifies the parents as second tier beneficiaries, but if that same adult child instead rolls up his or her sleeves and performs those services the parents are ineligible. This

is neither sensible nor humane. This approach unjustly favors those parents whose adult children use cash resources to provide the necessary support.

Cascade contends that the failure of the Legislature to amend RCW 4.20.020 in 2008, to allow provision of services of economic value as a means of proving support, militates against the Court interpreting the statute to permit this method of proof. See Cascade Supp. Br. at 8-9 & Appendix (reproducing proposed Substitute Senate Bill 6696). The Court of Appeals also found legislative inaction significant. See Armantrout, 141 Wn.App. at 730. This argument should be rejected. Washington courts will generally not speculate as to why the Legislature rejected a proposed amendment. See In re Pers. Restraint of Andress, 147 Wn.2d 602, 611, 56 P.3d 981 (2002).⁹

The proper interpretation of dependent for support allows parents to establish their status as second tier beneficiaries either by proof that the decedent made direct monetary contributions or provided services of economic value, or a combination thereof.¹⁰

⁹ This unwillingness to speculate may apply with "added force" when there are other provisions of the proposed amendment that the Legislature might have found objectionable. Andress, 147 Wn.2d at 611. Substitute Senate Bill 6696 §1 would also have allowed parents of an adult child to bring a wrongful death claim under RCW 4.20.020 as second tier beneficiaries "if the parents have had significant involvement in the adult child's life."

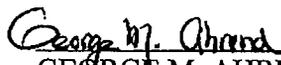
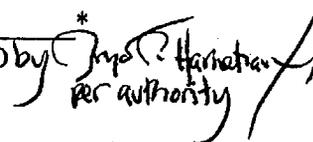
¹⁰ Under this analysis, support based upon monetary contributions would also be established where the decedent paid a provider directly to perform the needed services.

VI. CONCLUSION

The Court should adopt the analysis set forth in this brief and resolve this appeal accordingly.

DATED this 20th day of April, 2009.

 *
BRYAN P. HARNETIAUX


GEORGE M. AHREND by  *
per authority

On Behalf of WSAJ Foundation

*Document to be transmitted for filing by email; signed original retained by counsel.

APPENDIX

RCW 4.20.010

Wrongful death — Right of action.

When the death of a person is caused by the wrongful act, neglect or default of another his personal representative may maintain an action for damages against the person causing the death; and although the death shall have been caused under such circumstances as amount, in law, to a felony.

[1917 c 123 § 1; RRS § 183. FORMER PARTS OF SECTION: 1917 c 123 § 3 now codified as RCW 4.20.005. Prior: 1909 c 129 § 1; Code 1881 § 8; 1875 p 4 § 4; 1854 p 220 § 496.]

RCW 4.20.020

Wrongful death — Beneficiaries of action.

Every such action shall be for the benefit of the wife, husband, state registered domestic partner, child or children, including stepchildren, of the person whose death shall have been so caused. If there be no wife, husband, state registered domestic partner, or such child or children, such action may be maintained for the benefit of the parents, sisters, or brothers, who may be dependent upon the deceased person for support, and who are resident within the United States at the time of his death.

In every such action the jury may give such damages as, under all circumstances of the case, may to them seem just.

[2007 c 156 § 29; 1985 c 139 § 1; 1973 1st ex.s. c 154 § 2; 1917 c 123 § 2; RRS § 183-1.]

RCW 4.20.046

Survival of actions.

(1) All causes of action by a person or persons against another person or persons shall survive to the personal representatives of the former and against the personal representatives of the latter, whether such actions arise on contract or otherwise, and whether or not such actions would have survived at the common law or prior to the date of enactment of this section: PROVIDED, HOWEVER, That the personal representative shall only be entitled to recover damages for pain and suffering, anxiety, emotional distress, or humiliation personal to and suffered by a deceased on behalf of those beneficiaries enumerated in RCW 4.20.020, and such damages are recoverable regardless of whether or not the death was occasioned by the injury that is the basis for the action. The liability of property of spouses or domestic partners held by them as community property to execution in satisfaction of a claim enforceable against such property so held shall not be affected by the death of either or both spouses or either or both domestic partners; and a cause of action shall remain an asset as though both claiming spouses or both claiming domestic partners continued to live despite the death of either or both claiming spouses or both claiming domestic partners.

(2) Where death or an injury to person or property, resulting from a wrongful act, neglect or default, occurs simultaneously with or after the death of a person who would have been liable therefor if his or her death had not occurred simultaneously with such death or injury or had not intervened between the wrongful act, neglect or default and the resulting death or injury, an action to recover damages for such death or injury may be maintained against the personal representative of such person.

[2008 c 6 § 409; 1993 c 44 § 1; 1961 c 137 § 1.]

RCW 4.20.060

Action for personal injury survives to surviving spouse, state registered domestic partner, child, stepchildren, or heirs.

No action for a personal injury to any person occasioning death shall abate, nor shall such right of action determine, by reason of such death, if such person has a surviving spouse, state registered domestic partner, or child living, including stepchildren, or leaving no surviving spouse, state registered domestic partner, or such children, if there is dependent upon the deceased for support and resident within the United States at the time of decedent's death, parents, sisters, or brothers; but such action may be prosecuted, or commenced and prosecuted, by the executor or administrator of the deceased, in favor of such surviving spouse or state registered domestic partner, or in favor of the surviving spouse or state registered domestic partner and such children, or if no surviving spouse or state registered domestic partner, in favor of such child or children, or if no surviving spouse, state registered domestic partner, or such child or children, then in favor of the decedent's parents, sisters, or brothers who may be dependent upon such person for support, and resident in the United States at the time of decedent's death.

[2007 c 156 § 30; 1985 c 139 § 2; 1973 1st ex.s. c 154 § 3; 1927 c 156 § 1; 1909 c 144 § 1; Code 1881 § 18; 1854 p 220 § 495; RRS § 194.]

RCW 4.24.010

Action for injury or death of child.

A mother or father, or both, who has regularly contributed to the support of his or her minor child, and the mother or father, or both, of a child on whom either, or both, are dependent for support may maintain or join as a party an action as plaintiff for the injury or death of the child.

This section creates only one cause of action, but if the parents of the child are not married, are separated, or not married to each other damages may be awarded to each plaintiff separately, as the trier of fact finds just and equitable.

If one parent brings an action under this section and the other parent is not named as a plaintiff, notice of the institution of the suit, together with a copy of the complaint, shall be served upon the other parent: PROVIDED, That notice shall be required only if parentage has been duly established.

Such notice shall be in compliance with the statutory requirements for a summons. Such notice shall state that the other parent must join as a party to the suit within twenty days or the right to recover damages under this section shall be barred. Failure of the other parent to timely appear shall bar such parent's action to recover any part of an award made to the party instituting the suit.

In such an action, in addition to damages for medical, hospital, medication expenses, and loss of services and support, damages may be recovered for the loss of love and companionship of the child and for injury to or destruction of the parent-child relationship in such amount as, under all the circumstances of the case, may be just.

[1998 c 237 § 2; 1973 1st ex.s. c 154 § 4; 1967 ex.s. c 81 § 1; 1927 c 191 § 1; Code 1881 § 9; 1877 p 5 § 9; 1873 p 5 § 10; 1869 p 4 § 9; RRS § 184.]