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IN THE  
COURT OF APPEALS OF INDIANA

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Edna Martin Christian Center,  
Inc., and Edna Martin Holdings  
LLC,

*Appellants-Defendants,*

v.

Jeremiah Smith, as Personal  
Representative for the Estate of  
Johnny T. Purchase, Deceased,

*Appellee-Plaintiff.*

January 30, 2023

Court of Appeals Case No.  
22A-CT-1420

Appeal from the Marion Superior  
Court

The Honorable Timothy Wayne  
Oakes, Judge

Trial Court Cause No.  
49D02-2104-CT-11761

**Altice, Chief Judge.**

## Case Summary

[1] In this case of first impression, we are called upon to decide whether the personal representative of an estate may properly assert a claim for emotional distress damages for the benefit of the decedent’s minor dependent children and nondependent adult children in a wrongful death action. In accordance with Ind. Code § 34-23-1-1, Indiana’s general wrongful death statute (GWDS), we hold that such a claim is not permitted.

[2] Edna Martin Christian Center, Inc. (Martin Christian Center), and Edna Martin Holdings, LLC (Martin Holdings) (collectively, the Martins), bring this interlocutory appeal, arguing that the trial court erred in denying their motion to dismiss a claim against them and all other defendants for intentional infliction of emotional distress in a wrongful death action that was initiated by Jeremia Smith as personal representative of the estate of Johnny T. Purchase (the Estate). The Martins contend that dismissal was required under Indiana Trial Rule 12(B)(6) because emotional distress damages are not recoverable under the GWDS. The Martins also maintain that the Estate failed to set forth any facts that would support an allegation that they engaged in extreme and outrageous conduct with the intent to emotionally harm the Estate.

[3] We reverse and remand for further proceedings consistent with this opinion.

## **Facts and Procedural History**

[4] On January 12, 2021, Purchase was on the premises of New Bridge Apartments (New Bridge) in Indianapolis—which is managed by TBH Realty and Management (TBH)—working as an independent contractor for the Martins.

Purchase was canvassing the area and distributing flyers with information about Martin Christian Center, which provides civic outreach services in conjunction with B4U Fall, Inc. (B4U), and Big Homies of America (Big Homies). While at New Bridge, Purchase was shot and killed by a tenant or visitor on the premises. When the shooting occurred, Purchase was unmarried and the father of six nondependent adult children and one dependent child.

[5] On April 7, 2021, the Estate filed a complaint against the Martins, Big Homies, B4U, and TBH (collectively, the Defendants) alleging various claims against them. Count I of the complaint alleged that as a result of New Bridge’s and TBH’s negligence in failing to provide adequate security that would have protected Purchase from violence by tenants or visitors, Purchase’s adult surviving children were entitled to damages for the loss of love and companionship of their father, medical and burial expenses, estate administration costs, and attorneys’ fees. Count I further alleged that Purchase’s surviving dependent child was entitled to damages that included “the loss of his father’s earnings and future support.” *Appellants’ Appendix Vol. 2* at 29.

[6] Count II asserted a wrongful death claim against Martins and B4U for failing to warn and protect Purchase about “foreseeable dangers that he would encounter while working for . . . [the] Defendants.” *Id.* at 30. And Count III—the subject of this interlocutory appeal—asserted a claim for intentional infliction of emotional distress against the Defendants. More particularly, the Estate alleged that

44. Purchase was shot and killed due to Defendants['] breach of the duties they owed Purchase, including negligently failing to exercise reasonable care for . . . Purchase's safety, including not sending him into an apartment community that was known to include repeated acts of violence and crime, including gun violence; and that was known to lack tenant background checks and reference checks, and an appropriate level of staffing and security for the conditions in and near the apartment community; and by failing to train Purchase to protect him from foreseeable dangers he would encounter at [New Bridge] and by failing to warn Purchase of foreseeable dangers that he would encounter at [New Bridge].

45. *The Defendants' conduct constitutes extreme and outrageous conduct that goes beyond all possible bounds of decency.*

46. As a direct and proximate result of Defendants' acts and omissions, the surviving children of Decedent Purchase . . . suffered damages, *including, but not limited, to the loss of love and companionship of their father, and severe pain, suffering, and mental and emotional anguish, and a loss of enjoyment of life, which will continue into the future.*

*Id.* at 31 (emphases added).

[7] On July 21, 2021, TBH filed a motion to dismiss Count III pursuant to T.R. 12(b)(6). TBH alleged that the "Estate's claim for damages as a result of TBH'S alleged intentional infliction of emotional distress cannot survive in conjunction with his wrongful death cause of action as the wrongful death statute provides the Estate's exclusive avenue for recovery." *Appellants' Appendix Vol. 2* at 37. TBH asserted that under the GWDS, damages other than medical, hospital, funeral, and burial expenses "inure to exclusive benefit of Decedent's alleged

dependent.” *Id.* at 39. TBH pointed out that the GWDS does not contemplate a similar recovery for the decedent’s adult children. The motion to dismiss also asserted that the intentional infliction of emotional distress claim is not permitted under the GWDS in a wrongful death action brought by an estate’s personal representative. Finally, TBH claimed that “despite the above,” its motion to dismiss should be granted because the Estate failed to allege any facts that TBH engaged in alleged extreme and outrageous conduct with the intent to emotionally harm the Estate. *Id.* at 37.

[8] The Martins subsequently joined in the motion to dismiss on January 11, 2022, claiming that Count III should be dismissed as to all the Defendants. Following a hearing, the trial court summarily denied the motion to dismiss on January 17, 2022. We accepted jurisdiction on July 15, 2022, and this interlocutory appeal by the Martins ensued.

## Discussion and Decision

### I. Standard of Review

[9] A motion to dismiss under T.R. 12(B)(6) tests the legal sufficiency of the plaintiff’s claim, not the facts supporting it. *Bellwether Props., LLC v. Duke Energy Ind., Inc.*, 87 N.E.3d 462, 466 (Ind. 2017). Dismissal under T.R. 12(B)(6) is proper if it appears to a certainty on the face of the complaint that the complaining party is not entitled to any relief. *Id.* A plaintiff is not entitled to any relief when an allegation is made that is not recognized in the law as a basis for recovery. *See Mourning v. Allison Transmission, Inc.*, 72 N.E.3d 482, 487 (Ind.

Ct. App. 2017). This court reviews a trial court’s decision on a T.R. 12(B)(6) motion to dismiss de novo, giving no deference to the trial court’s decision. *See Bellwether*, 87 N.E.3d at 466. We take the alleged facts in the complaint to be true and consider the allegations in the light most favorable to the nonmovants, drawing every reasonable inference in their favor. *Id.*

## II. Martins’ Claims

[10] The Martins maintain that the trial court erred in denying their motion to dismiss because emotional distress damages are not recoverable under the GWDS. The Martins assert that the GWDS limits potential recoverable damages to reasonable medical, hospital, funeral, and burial expenses “which inure to the exclusive benefit of the decedent’s estate, and other damages which inure to the exclusive benefit of the dependent children, if any.” *Appellants’ Brief* at 10. The Martins contend that none of Purchase’s children are entitled to emotional distress damages under the GWDS because there is no cognizable claim for intentional infliction of emotional distress in a wrongful death action brought by an estate’s personal representative.

[11] We initially observe that wrongful death statutes are purely statutory and in derogation of common law. *Chamberlain v. Parks*, 692 N.E.2d 1380, 1384 (Ind. Ct. App. 1998), *trans. denied*. At common law, there was no tort liability for killing another “because personal injury actions did not survive the injured party’s death.” *Ed Wiersma Trucking Co. v. Pfaff*, 643 N.E.2d 909, 911 (Ind. Ct. App. 1994), *adopted by* 678 N.E.2d 110 (Ind. 1997).

[12] The purpose of our wrongful death statutes is to compensate surviving dependents for pecuniary losses but not for loss of life. *Franciscan ACO, Inc., v. Newman*, 154 N.E.3d 841, 848 (Ind. Ct. App. 2020), *trans. denied*. Pecuniary loss is the foundation of a wrongful death action, and this loss can be determined in part from the assistance that the decedent would have provided through money, services, or other material benefits. *Id.* Only those damages prescribed by the applicable wrongful death statute are recoverable, as the wrongful death statutes are to be strictly construed against the expansion of liability. *Durham v. U-Haul Int'l*, 745 N.E.2d 755, 758-59 (Ind. 2001); *see also Franciscan*, 154 N.E.3d at 848.

[13] As the Martins point out, Indiana has three wrongful death statutes. The GWDS permits a personal representative of a decedent's estate to recover damages on behalf of surviving spouses, dependent children or next of kin, and service providers such as funeral homes. Ind. Code § 34-23-1-1; *see also Estate of Sears v. Griffin*, 771 N.E.2d 1136, 1138 (Ind. 2002). Damages include—but are not limited to—reasonable medical, hospital, funeral and burial expenses and lost earnings of the decedent resulting from the wrongful act or omission. I.C. § 34-23-1-1. Those damages inure to the exclusive benefit of the estate for the payment of those expenses, and the remainder of the damages inure to the benefit of the widow or widower and to the dependent children. *Id.* In short, only a decedent's estate and dependents are entitled to potential damages under the GWDS. Indeed, nothing in the GWDS permits recovery for damages by nondependents. *See, e.g., Chamberlain*, 692 N.E.2d at 1383 (holding that “it is

the intent and purpose of the legislature to permit recovery only to those who were financially dependent on the decedent”).

[14] The GWDS is distinguishable from the Adult Wrongful Death Statute (AWDS), I.C. § 34-23-1-2, and the Child Wrongful Death Statute (CWDS), I.C. § 34-23-2-1, because the GWDS applies only if the decedent is survived by a spouse or dependents, whereas the AWDS and CWDS apply only if the decedent was unmarried and had no dependents. *See* I.C. § 34-23-1-1, and I.C. § 34-23-2-1; *see also* *SCI Propane, LLC v. Frederick*, 39 N.E.3d 675, 679 (Ind. 2015); *Ind. Patient’s Comp. Fund v. Patrick*, 929 N.E.2d 190, 191 (Ind. 2010). More specifically, the CWDS permits parents or guardians to obtain damages for the wrongful death of unmarried children with no legal dependents and who were under twenty years of age (or under twenty-three and still in school). I.C. § 34-23-2-1. Recoverable damages under the CWDS include those for loss of the child’s services, love and companionship, and the expenses of health care and hospitalization, the child’s funeral, and burial. *Id.*

[15] The AWDS on the other hand governs actions for the wrongful death of unmarried adult persons with no dependents. I.C. § 34-23-1-2. Damages under the AWDS may include, but are not limited to, reasonable medical, hospital, funeral, burial expenses, and the loss of the adult person’s love and companionship. I.C. § 34-23-1-2(c)(3)(A), (B); *see also* *Patrick*, 929 N.E.2d at 191. Damages for medical, hospital, funeral, and burial expenses inure to the exclusive benefit of the adult person’s estate for the payment of those expenses. I.C. § 34-23-1-2(d). The remainder of the damages inure to the exclusive benefit



of “a nondependent parent or nondependent child of the adult person.” *Id.* Under the AWDS, “the damages may not include damages awarded for a person's grief or punitive damages.” I.C. § 34-23-1-2(c)(2)(A), (B).

[16] Taking the facts pleaded in the Estate’s complaint as true, Purchase was unmarried with one dependent child and six adult nondependent children at the time of his death. Therefore, the personal representative’s claims exist exclusively under the GWDS. Dependent children may recover damages that include “loss of love, care, and affection” that are tied to pecuniary losses under the GWDS. I.C. § 34-23-1-1. However, damages for “loss of life,” “grief,” and “wounded feelings” are excluded from recovery. *Challenger v. Wrecker Mfg., Inc. v. Estate of Boundy*, 560 N.E.2d 94, 99 (Ind. Ct. App. 1990).

[17] With this backdrop in mind, we find *Patrick*, which determined that “damages for emotional distress are not available under the [AWDS],” 929 N.E.2d at 190, instructive here. In *Patrick*, the father of his deceased unmarried son who had no dependents brought a medical malpractice action—individually and as personal representative of his son’s estate—against a physician and hospital, alleging his son received negligent treatment following an automobile accident. After settling with both healthcare providers, father, individually and as personal representative of his son’s estate, filed a petition for payment of excess damages with the Indiana Patient’s Compensation Fund (the Fund), seeking emotional distress damages. The Fund moved for summary judgment on father’s claim, arguing that the AWDS precludes recovery for emotional distress damages. The trial court denied summary judgment and awarded

father \$600,000 on his emotional distress claim. This court affirmed the trial court's award, but our Supreme Court subsequently reversed, determining that

Damages under [the AWDS] may include, but are not limited to, reasonable medical, hospital, funeral, and burial expenses necessitated by the wrongful act or omission that caused the adult person's death, and loss of the adult person's love and companionship. I.C. § 34-23-1-2(c)(3)(A)-(B).

. . .

The Fund readily acknowledges that the AWDS entitles Father to recover actual pecuniary damages and \$300,000 in non-pecuniary damages. *Though Father recognizes that he does not have a claim for emotional distress under the AWDS, and he is correct to do so, he contends that he was entitled to bring a claim for his own emotional distress under the [Medical Malpractice Act].*

*Id.* at 191, 192 (emphasis added). In rejecting father's claim, the *Patrick* Court relied on *Chamberlain v. Walpole*, 822 N.E.2d 959 (Ind. 2005), in support of its determination that father could not recover emotional distress damages from the Fund.

[18] In *Chamberlain*, the plaintiff's father died following surgery and the plaintiff sued for various non-pecuniary damages including loss of love, affection, and extreme mental anguish. *Id.* at 961-62. The plaintiff conceded that he could not recover non-pecuniary damages for his father's death under the AWDS. *Id.* at 961. Nonetheless, the plaintiff asserted that he could recover such damages pursuant to Indiana's medical malpractice act. He asserted that

“because the medical malpractice act creates a claim independent of the AWDS,” which includes claims for loss of consortium and other similar claims, he could pursue a medical malpractice claim for loss of his father’s love, care, and affection. *Id.* at 961-62. Rejecting that argument, the *Chamberlain* Court acknowledged that the medical malpractice act only allows a claimant to use the procedures in that act to pursue a claim directly that would be pursued under the AWDS and the Survival Statute, respectively. *Id.* at 963 (citing *Community Hosp. of Anderson v. McKnight*, 493 N.E.2d 775 (Ind. 1986)). Indeed, the *Patrick* Court emphasized the holding in *Chamberlain* that “the medical malpractice act does not enlarge the scope of damages that can be sought against health providers.” *Patrick*, 929 N.E.2d at 193. In light of *Chamberlain*, the *Patrick* Court held that father could not pursue a derivative claim for emotional distress under the medical malpractice act. The *Patrick* Court further stated:

The plaintiff in *Chamberlain* argued that he could assert a ‘derivative claim’ for damages. Father asserts that he has an independent claim for damages for the negligent infliction of emotional distress. It was Son who was the victim of the medical malpractice; therefore, any claim in Father’s own right is a derivative claim. As discussed above, any derivative claim that Father has depends upon the AWDS.

*Because claims for emotional distress are not allowed under the AWDS, Father may not bring this type of derivative claim under the [Medical Malpractice Act].*

*Id.* at 194 (emphasis added); *see also Estate of Sullivan*, 777 F.Supp. 695, 701 (N.D. 1991) (observing that when an action is brought under the GWDS, a “review of Indiana case law does not disclose any cases in which negligent infliction of emotional distress had been held to be a proper element of damages in a wrongful death action”).

[19] In light of these pronouncements and construing the facts that the Estate pleaded as true for the purposes of the motion to dismiss and this appeal, Smith’s claims as personal representative of the Estate exist exclusively under the GWDS because Purchase had a dependent child at the time of his death, and only the damages prescribed therein are recoverable. *See Franciscan*, 154 N.E.3d at 848; *see also Durham v. U-Haul Int’l*, 745 N.E.2d 755, 759 Ind. 2001). The GWDS allows the Estate to recover damages including the reasonable medical, hospital, funeral, and burial expenses, and lost earnings of the decedent, and permits dependent children to recover potential damages for loss of love, care, and affection. I.C. § 34-23-1-1; *see also Franciscan*, 154 N.E.3d at 847-48 (citing *Estate of Sears ex rel. Sears v. Griffin*, 771 N.E.2d 1136, 1138 (Ind. 2002)). Those damages to which dependent children are entitled, however, must be tied to pecuniary losses, and those that are related to loss of life, grief, and wounded feelings are not recoverable. *See id.*; *see also Challenger*, 560 N.E.2d at 99. And as in *Patrick* where the Court held that emotional distress damages are disallowed under the AWDS, we adhere to that same rationale here and conclude that the Estate’s claim for intentional infliction of emotional distress is not permitted under the GWDS.

[20] Moreover, although the plaintiff in *Patrick* sought to bring a separate claim for emotional distress as an individual, Purchase’s children are not proper parties here, as only the Estate set forth the causes of action. And, because only statutorily prescribed damages are allowable under our wrongful death statutes, to permit the Estate to advance a separate claim for emotional distress damages would result in an improper expansion of liability. *See Franciscan*, 154 N.E.3d at 848; *see also Durham*, 745 N.E.2d at 759. In short, a claim for intentional infliction of emotional distress, and any resulting damages, is not permitted under the GWDS.

[21] Because the Estate failed to state a claim upon which relief can be granted in Count III of the complaint, we conclude that the trial court erred in denying the Martins’ motion to dismiss in accordance with T.R. 12(B)(6).<sup>1</sup> Thus, we reverse and remand with instructions that the trial court grant the Martins’ motion to dismiss Count III and for further proceedings consistent with this opinion.

[22] Reversed and remanded.<sup>2</sup>

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<sup>1</sup> Because we reverse for the reasons set forth above, we need not address the Martins’ alternative argument that dismissal of Count III is warranted because the Estate failed to set forth any facts that would support an allegation that they engaged in extreme and outrageous conduct with the intent to emotionally harm the Estate.

<sup>2</sup> Following the close of briefing, the Estate filed a motion to strike portions of the Martins’ Reply Brief alleging, among other things, that the Martins falsely represented the Estate’s position in this appeal and that they had raised new issues on appeal in violation of Ind. Appellate Rule 46(C). Upon reviewing the motion

Brown, J. and Tavitas, J., concur.

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and the Martins' response thereto, we deny the Estate's motion to strike contemporaneously with the issuance of this opinion.