No. 125,787

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

CANDICE WHITE,
Appellee,

v.

BRYAN KOERNER,
Appellant.

SYLLABUS BY THE COURT

1.

The Kansas Wrongful Death Act, K.S.A. 60-1901 et seq., does not prohibit an heir who has negligently contributed to the death of the decedent from participating in apportionment proceedings.

2.

The admission of evidence regarding settlement agreements for the purpose of proving liability is generally prohibited. K.S.A. 60-452.

3.

The Kansas Wrongful Death Act, K.S.A. 60-1901 et seq., does not prohibit the district court from considering an heir's actions when calculating that heir's loss for the purpose of apportioning the recovery from a wrongful death lawsuit pursuant to K.S.A. 60-1905.

Appeal from Johnson District Court; RHONDA K. MASON, judge. Opinion filed July 28, 2023. Reversed and remanded with directions.

Brett Votava, of Votava Nantz & Johnson, LLC, of Kansas City, Missouri, for appellant.

Brant A. McCoy and *Jason R. Covington*, of Jones, McCoy & Covington, P.A., of Overland Park, for appellee.

Before BRUNS, P.J., CLINE and HURST, JJ.

HURST, J.: In a tragic turn of events, Candice White and Bryan Koerner's adult son died by suicide in Koerner's home. White later filed a wrongful death action against her ex-husband Koerner, which Koerner's home insurer agreed to settle without his consent. Koerner denied—and continues to deny—any liability or negligence related to their son's death. After the settlement agreement was approved by the district court, over Koerner's objection, he sought to participate in the apportionment of the settlement funds and recover some amount of the proceeds. The district court denied Koerner's request and prohibited him from participating in the apportionment, reasoning that Koerner's negligence had been determined by settlement and that allowing him to participate would permit him to profit from his own wrongdoing. The district court thereafter awarded 100% of the settlement funds to White.

On appeal, Koerner argues that the district court erred in prohibiting him from participating in the apportionment of the settlement funds. Finding Koerner's arguments availing, this court reverses the district court's judgment, reverses the district court's determination that Koerner cannot participate in apportionment of the settlement proceeds, and remands for a new apportionment hearing consistent with this opinion. The district court erred in relying upon the settlement agreement to determine Koerner had admitted or been determined negligent in his son's death. Moreover, even if Koerner had been properly found to negligently contribute to his son's death, the Kansas Wrongful

Death Act, K.S.A. 60-1901 et seq. (the Act), does not disallow recovery by an heir who has negligently contributed to the death of the decedent.

FACTUAL AND PROCEDURAL BACKGROUND

This court need only recount and consider a limited set of facts material to this dispute, and those are undisputed by the parties. White and Koerner were married when their son Parker was born, but the couple subsequently divorced. In October 2019, when their son was a teenager, he moved out of White's home and began living with Koerner. About two years later, when Parker was 19 years old, he died by suicide in Koerner's house using a firearm he took from Koerner's bedroom. At the time of his death, Parker was unmarried and had no children.

White later filed a wrongful death action against Koerner. Koerner's homeowners insurer at the time of his son's death agreed to settle White's claim without Koerner's consent. The settlement agreement expressly provided "that this settlement is a complete compromise of doubtful and disputed claims and that the payment set out herein is not to be construed as an admission of liability on the part of those herein released, by whom liability is expressly denied." The settlement agreement further provided that neither payment nor the negotiation of the agreement shall be construed as admissions of liability and that no wrongdoing shall be implied by the agreement. At every stage of the litigation below, Koerner denied—and continues to deny—any liability or negligence related to his son's death.

After obtaining an agreement from the insurer to settle, White filed a Petition for Settlement Approval and Apportionment of Settlement with the district court seeking approval of the settlement agreement. In response, Koerner filed an answer wherein he admitted that White and the insurer reached a settlement but denied that he and White agreed on apportionment of the proceeds and denied "any liability." White and Koerner

each filed competing memoranda addressing whether Koerner should be permitted to participate in the apportionment of the funds disbursed as a result of the settlement agreement. The district court conducted a hearing concerning approval of the settlement agreement, but the parties also presented argument about whether Koerner should be permitted to participate in the future apportionment of the settlement funds. In its journal entry approving the settlement agreement, the district court noted that "[Koerner] has and continues to deny any and all liability concerning the death of [Parker] and there is no finding of liability or negligence by [Koerner]."

The district court later entered a written order addressing apportionment in which it prohibited Koerner from participating in the apportionment of the settlement funds. The court reasoned:

> "It is a bedrock principle of law that one must not be able to profit from one's wrongdoing. If [Koerner] is able to seek apportionment of the settlement proceeds, he would be benefitting from his own alleged wrongdoing. Although [Koerner] denies wrongdoing, he entered into a contract with his insurance company and bestowed upon his insurance company the authority to settle any claims made against him. His insurance carrier settled this claim based on that potential liability. [Koerner] should not be allowed to profit from a settlement made by his insurance company to settle allegations of negligence made against him."
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> . . . .
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> "The issue of [Koerner]'s negligence has been resolved by settlement; while [Koerner] denies negligence, and the Court does not find [Koerner] to be negligent at this point, it simply will not re-address the issue by allowing [Koerner] to assert an interest in the settlement proceeds. [Koerner]'s motion to participate and receive an apportion of the settlement proceeds is **DENIED**."

The district court thereafter conducted the apportionment hearing without Koerner and awarded 100% of the settlement funds to White, less her attorney fees. Koerner now

appeals the district court's decision prohibiting him from participating in the apportionment of the settlement funds.

DISCUSSION

On appeal, Koerner makes three arguments: (1) The district court erred in relying upon the settlement agreement to exclude him from participating in the apportionment hearing; (2) even if the district court had properly found Koerner negligent in the death of his son, it still erred in prohibiting him from participating in the apportionment hearing; and (3) if the case is reversed and remanded, the district court is prohibited from determining or considering Koerner's alleged negligence or liability in his son's death when apportioning the settlement funds. The district court interpreted and relied on the Act when it prohibited Koerner from participating in the apportionment of the settlement proceeds. This court therefore exercises unlimited review over the district court's decision. *Nauheim v. City of Topeka*, 309 Kan. 145, 149, 432 P.3d 647 (2019) ("Statutory interpretation presents a question of law subject to de novo review."); *Siruta v. Siruta*, 301 Kan. 757, 761, 348 P.3d 549 (2015). When interpreting a statute, this court first attempts to determine the Legislature's intent through the statutory language, giving common words their ordinary meaning. *Nauheim*, 309 Kan. at 149. "When a statute is plain and unambiguous, an appellate court should not speculate about the legislative intent behind that clear language, and it should refrain from reading something into the statute that is not readily found in its words." *In re M.M.*, 312 Kan. 872, 874, 482 P.3d 583 (2021).

The Act provides a mechanism by which heirs of a decedent may maintain an action for damages. Under the Act, "[i]f the death of a person is caused by the wrongful act or omission of another, an action may be maintained for the damages resulting therefrom if the former might have maintained the action had such person lived." K.S.A. 2022 Supp. 60-1901(a). The action may be filed "by any one of the heirs at law of the

deceased who has sustained a loss by reason of the death" and "shall be for the exclusive benefit of all of the heirs who has sustained a loss regardless of whether they all join or intervene" in the suit. K.S.A. 60-1902. Thus, the Act provides the exclusive mechanism by which an heir may recover damages for their loss. The statute includes a nonexhaustive list of recoverable damages, including: (1) mental anguish, suffering, or bereavement; (2) loss of society, companionship, comfort, or protection; (3) loss of marital care, attention, advice, or counsel; (4) loss of filial care or attention; (5) loss of parental care, training, guidance, or education; and (6) reasonable funeral expenses for the deceased. K.S.A. 60-1904.

Important to this appeal, the Act provides for the apportionment of recovered funds among the decedent's heirs: "The net amount recovered in any such action . . . shall be apportioned by the judge upon a hearing, with reasonable notice to all of the known heirs having an interest therein, such notice to be given in such manner as the judge shall direct." K.S.A. 60-1905. The Act further provides that "[t]he apportionment shall be in proportion to the loss sustained by each of the heirs, and all heirs known to have sustained a loss shall share in such apportionment regardless of whether they joined or intervened in the action." K.S.A. 60-1905.

I. THE DISTRICT COURT ERRED IN DETERMINING THAT THE SETTLEMENT AGREEMENT RESOLVED OR ESTABLISHED KOERNER'S NEGLIGENCE

In its order prohibiting Koerner from participating in the apportionment, the district court somehow found that both "[t]he issue of [Koerner's] negligence has been resolved by settlement" and that "the Court does not find [Koerner] to be negligent at this point." The court explained that Koerner could not participate in the apportionment because if he did the court would be required to either find him negligent in his son's death and award him nothing, or find he was not negligent and then be forced to "set aside the settlement agreement, since the settlement agreement is predicated on settling a

claim related to [Koerner]'s negligence." The court provided no legal authority for this assertion that it would have to set aside the settlement agreement if it later found Koerner did not negligently cause his son's death—and this court is not aware of any authority requiring such result.

Koerner has not been found liable for, or negligent in, the unfortunate death of his son. Nor has Koerner admitted any liability or negligence associated with his son's death. Moreover, the settlement agreement entered into by White (as Releasor) disclaimed any liability or implied liability of Koerner or the insurer (as Releasees). The Settlement Agreement provided:

> "Releasors agree and acknowledge that payment of the sums specified in this Agreement are accepted by them as a full and complete compromise of claims against Releasees and that neither payment by these individuals or entities of the sums of money described above nor the negotiation of this Agreement (including all statements, admissions, or communications by the parties and or their representatives) shall be construed as admissions by them and that no past or present wrongdoing on Releasees' part shall be implied by such payment or negotiation."

Not only did the settlement agreement expressly disclaim any implication of liability, but settlement agreements are generally inadmissible to prove liability. K.S.A. 60-452 ("Evidence that a person has, in compromise . . . furnished or offered or promised to furnish money . . . to another who has sustained or claims to have sustained loss or damage, is inadmissible to prove his or her liability for the loss or damage of any part of it."); *Hess v. St. Francis Regional Med. Center*, 254 Kan. 715, 721, 869 P.2d 598 (1994); see *Ettus v. Orkin Exterminating Co.*, 233 Kan. 555, 567, 665 P.2d 730 (1983). "In addition to promoting settlement efforts, the purpose behind [K.S.A. 60-452] is to protect the defendant from an improper inference of liability." *Ettus*, 233 Kan. at 567; see also *Hess*, 254 Kan. at 721 ("K.S.A. 60-452 is concerned with possible prejudice to a party on the issue of liability. . . . The public policy behind [K.S.A. 60-452] is to promote

settlement."). It is a fundamental legal principle that entering into a settlement agreement does not prove liability or create an admission or inference of liability. To find otherwise would undermine the ability of insurers to settle claims without the insured's approval and would significantly diminish the incentive to settle claims.

The district court therefore erred in relying on the settlement agreement to establish Koerner's alleged negligence, and using such to exclude him from participating in the apportionment hearing.

II. THE DISTRICT COURT ERRED IN PROHIBITING KOERNER FROM PARTICIPATING IN THE APPORTIONMENT HEARING REGARDLESS OF HIS ALLEGED NEGLIGENCE

Even if the district court had properly found Koerner negligent in the death of his son, the district court erred by excluding him from participating in the apportionment of the settlement proceeds. The Kansas Wrongful Death Act does not disallow recovery by an heir who has negligently contributed to the death of the decedent. It is uncontested that White and Koerner are their son's only heirs because Parker did not leave a surviving spouse or child. K.S.A. 59-507; *Osborn v. Anderson*, 56 Kan. App. 2d 449, 454, 431 P.3d 875 (2018). The Act provides that any wrongful death action "shall be for the exclusive benefit of *all* of the heirs who has sustained a loss regardless or whether they all join or intervene" in the wrongful death suit. (Emphasis added.) K.S.A. 60-1902. The plain and unambiguous language of the statute does not limit or prohibit recovery by an otherwise entitled heir who negligently contributed to the death of the decedent. Even if this court believes such a result is counterintuitive or that the Legislature might not have anticipated such a scenario when it enacted the statute, this court is "still bound by the statutory language as written." *Siruta*, 301 Kan. at 764; see *Johnson v. McArthur*, 226 Kan. 128, 129-35, 596 P.2d 148 (1979) (explaining that K.S.A. 60-1901 et seq. is plain and unambiguous, and in such cases courts "must give effect to the intention of the legislature as expressed, rather than determine what the law should or should not be").

Both parties rely heavily on *Siruta* in advancing their contrary claims. In *Siruta*, a minor child was killed in a one-car rollover crash in which the child's mother was driving and the father was asleep in the passenger seat. The father later brought a wrongful death action against the mother, alleging that her negligence was the proximate cause of their child's death. At trial, the mother argued that neither party was negligent in causing the accident or, if she was negligent, the father was also negligent as a result of their joint driving decisions. The jury ultimately found both parties equally at fault for the accident that lead to their child's death. 301 Kan. at 760.

Although factually distinguishable from the present case, on appeal the mother in *Siruta* asserted a claim similar to White's claim here. In *Siruta*, the mother argued that the district court should have barred the father's wrongful death action against her because, if the father succeeded and was awarded damages, the mother—as an heir—would share in the father's award and therefore profit from her own negligence. 301 Kan. at 763. The Kansas Supreme Court rejected this argument for two reasons. First, the court observed that "[a] wrongful death action is purely a statutory creation, and the statutory language *does not disallow recovery by an heir who has negligently contributed to the death of the decedent*." (Emphasis added.) 301 Kan. at 763. Second, the court was not convinced that the mother would actually recover any damages. The Act "leaves the apportionment decision to the judge, and nothing in the statutory language prohibits the judge from using discretion in calculating the relative 'loss' sustained by each of the heirs." 301 Kan. at 764. The court explained that "[t]here is nothing preventing a judge from considering any of [the mother]'s actions in causing her own loss or from fashioning an award tailored in some other way to the peculiar facts of this case and the losses sustained by the heirs at law." 301 Kan. at 764. The court therefore did "not believe that [the mother] would necessarily receive, merely because of her status as an heir at law, any portion of the damages she was ordered to pay as a defendant." 301 Kan. at 765.

The Kansas Supreme Court's guidance in *Siruta* supports the result demanded by the plain language of the statute. 301 Kan. at 763 (explaining "the statutory language [of the Act] does not disallow recovery by an heir who has negligently contributed to the death of the decedent"). Moreover, the court decided *Siruta* more than eight years ago, and yet the Legislature has made no changes to the Act undermining that decision, which suggests legislative acquiescence. See *State v. Spencer Gifts*, 304 Kan. 755, 765-66, 374 P.3d 680 (2016).

The district court erroneously interpreted the holding of *Siruta* when it stated in its order that *Siruta* "does not stand for the idea that [Koerner] has a right to the [apportionment] of the settlement funds under Kansas law, but rather that [White] can still bring claims against [Koerner], even if [Koerner] is simultaneously an heir at law." While the *Siruta* court did make a finding consistent with the district court's interpretation when it held that "[a] wrongful death action under K.S.A. 60-1901 et seq. can be brought against an alleged tortfeasor who is an heir at law of the decedent," that was not the end of the analysis. 301 Kan. 757, Syl. ¶ 1. The court addressed the mother's argument and explained that "the statutory language does not disallow recovery by an heir who has negligently contributed to the death of the decedent." 301 Kan. at 763. The district court's determination that an heir who has negligently contributed to the death of the decedent is categorically prohibited from recovering any portion of the proceeds from a wrongful death action is simply inconsistent with the plain language of the statute and the Kansas Supreme Court's guidance in *Siruta*, and it must therefore be reversed.

Moreover, as explained by the court in *Siruta*, permitting Koerner to participate in the apportionment of the settlement funds would not necessarily result in a tortfeasor recovering damages from himself as the defendant. First, unlike in *Siruta*, Koerner has not been found negligent in or liable for the death of his son. Second, as described above, the Act provides for bifurcated proceedings with two independent steps in which wrongful death claims are resolved. In the first step, the substance of the underlying

action—the action for wrongful death—is litigated (or, as here, settled). Only after that does the district court move to the second step, which is apportionment of the recovery from the first step among all of the decedent's heirs who have sustained a loss.

Here, Koerner did not seek to join White's wrongful death suit—the first step—as a party plaintiff or to otherwise intervene. Rather, Koerner simply sought to participate in the second step—apportionment of the settlement funds—after the underlying litigation had been resolved (i.e., the second step in a wrongful death action). "[T]he statutory provisions regarding apportionment of the ultimate award make clear that the 'exclusive benefit' language pertains to apportionment of damages. Apportionment must occur *after* the substance of the action has been litigated and damages have been awarded to the named plaintiff(s)." 301 Kan. at 763. Accordingly, as in *Siruta*, this court is not required to view Koerner as a plaintiff in a manner that he would necessarily recover damages from himself as a wrongdoer. See 301 Kan. at 763. This court does not pass judgment on what the appropriate outcome would be if Koerner had intervened in the underlying litigation—the first step—rather than the apportionment hearing—the second step. But under the circumstances, Koerner is not prohibited in participating in the apportionment hearing simply because his homeowners insurer settled a claim levied against him without his participation or admission of liability.

III. THE DISTRICT COURT IS NOT PROHIBITED FROM CONSIDERING EVIDENCE OF AN HEIR'S ACTIONS IN CAUSING THEIR LOSS WHEN CALCULATING PROPORTIONAL LOSS FOR THE PURPOSE OF APPORTIONING THE SETTLEMENT FUNDS

Koerner argues that, upon remand, the district court is categorically prohibited from determining or considering his alleged negligence or liability in his son's death when apportioning the settlement funds:

> "The purpose of K.S.A. 60-1905 is apportionment of proceeds between heirs—not determination of liability, fault, or causation.

. . . .

> "[T]he time to determine whether Koerner was causally negligent in Parker's death was *before* the settlement was approved when the underlying matter could still be litigated. Once the settlement is approved, the die is cast.
>
> ". . . There can be no adjudication of the issue in the apportionment phase because the District Court is limited in its function to only that authority granted by K.S.A. 60-1905."

Koerner's argument is unavailing.

When apportioning settlement proceeds in a wrongful death proceeding, the district court is charged with calculating the loss sustained by each heir claiming a portion. K.S.A. 60-1905 authorizes the district court to hear evidence to calculate the portion due to each heir according to the proportion of

> "the loss sustained by each of the heirs, and all heirs known to have sustained a loss shall share in such apportionment regardless of whether they joined or intervened in the action; but in the absence of fraud, no person who failed to join or intervene in the action may claim any error in such apportionment after the order shall have been entered and the funds distributed pursuant thereto."

In *Siruta*, the Kansas Supreme Court expressly stated that "[*t*]*here is nothing preventing a judge from considering any of* [*an heir*]*'s actions in causing* [*their*] *own loss* or from fashioning an award tailored in some other way to the peculiar facts of th[e] case and the losses sustained by the heirs at law." (Emphasis added.) 301 Kan. at 764. Therefore, contrary to Koerner's assertion, determining whether Koerner's actions caused his own loss is part of calculating Koerner's proportional loss for purposes of apportioning the settlement funds. Though the same issue could have been litigated in the underlying wrongful death action—the first step—there is nothing in the Act preventing the issue from being determined in the apportionment hearing—the second step—for the limited

purpose of calculating Koerner's proportional loss. See, e.g., *Sedlock v. Overland Park Medical Investors, LLC*, No. 19-2614-DDC, 2021 WL 1056516, at *5-6 (D. Kan. 2021) (unpublished opinion) (where the district court heard evidence during the apportionment proceedings, after a settlement agreement was reached, that one of the decedent's siblings had suffered no loss from the decedent's death but two others had suffered a loss). Just as the district court can hear evidence concerning the heirs' respective pecuniary and non-pecuniary damages, "nothing in the statutory language prohibits the judge from using discretion in calculating the relative 'loss' sustained by each of the heirs." *Siruta*, 301 Kan. at 764.

At the new apportionment hearing, the district court can hear and consider evidence from both parties concerning their damages and loss, and nothing inherent in the bifurcated process limits the district court from hearing any and all arguments and evidence that can be used to calculate and apportion each heir's loss. The Legislature has conferred broad discretion on the district court to hear evidence necessary to make these determinations. See, e.g., *Schmidt v. American Family Mutual Insurance Co., S.I.*, No. 21-1036-DDC, 2022 WL 1538695, at *4 (D. Kan. 2022) (unpublished opinion) (where the district court determined that the decedent's spouse was entitled to 100% of the settlement proceeds while the decedent's children received none). Therefore, it is not at all certain that, upon remand, Koerner will receive any portion of the settlement funds. See *Siruta*, 301 Kan. at 764-65.

CONCLUSION

The district court erred in excluding Koerner from the apportionment proceedings. First and foremost, the court erred in finding that the settlement agreement demonstrated that Koerner was in any way negligent in or liable for his son's death. Second, the district court erred in finding that, if Koerner was negligent in or liable for his son's death, he was prohibited from participating in the apportionment of the settlement funds from White's

wrongful death suit. The district court's award of 100% of the settlement proceeds to White is vacated, its judgment excluding Koerner from the apportionment hearing is reversed, and the case is remanded for a new apportionment hearing in which Koerner shall be permitted to participate.

Reversed and remanded with directions.