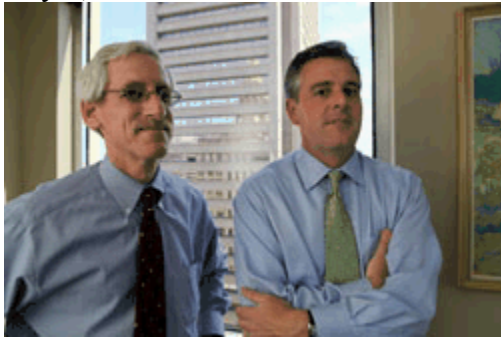


Law

- Drowned boy's estate gets win on appeal
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A jury will decide if a 5-year-old boy endured “conscious pain and suffering” before drowning, unseen, in a Crofton Country Club pool three years ago.

On Monday — which would have been Connor Freed’s 9th birthday — the Court of Special Appeals ordered a trial on his estate’s claim against the company that managed the pool, reversing a lower-court judge.

“We’re happy for our son and the precedent it will set,” said his father, Thomas Freed.

D.R.D. Pool Service Inc. had argued there was no evidence Connor had, in fact, experienced pain or suffering since no one saw him drown.

Anne Arundel County Circuit Judge Nancy Davis-Loomis agreed. Relying on a prior case, she said no “objective measure” justified putting the question to a jury.

Freed and his wife, Debra Neagle Webber, appealed that ruling, and the Court of Special Appeals reversed.

“We felt strong the whole time that we were in the right,” Freed said. “We’ll just have to wait and see what happens” when the issue goes before a jury, he added.

Their day in court

Any damages awarded in the new trial will supplement, not replace, the \$1 million Connor's parents won for their own losses.

The jury had awarded them more than \$4 million, but the judgment was reduced by the state's cap on non-economic damages.

The appeals court rejected their claim that the cap is unconstitutional, setting the stage for a possible high-court appeal.

Even so, the parents' appellate attorney hailed Monday's decision.

"There's nothing more satisfying than this kind of victory, to give these parents their day in court," said Andrew H. Baida, of Rosenberg|Martin|Greenberg LLP in Baltimore.

One of the parents' trial attorneys, H. Briggs Bedigian, noted the day's significance.

"Of all the days ... it comes out on the child's birthday," said Bedigian, of The Law Offices of Wais & Vogelstein in Owings Mills.

The pool service's appellate lawyer, Steven R. Migdal, of Buck, Migdal & Myers in Annapolis, did not return telephone messages seeking comment. A message left at D.R.D. Pool Service's Hunt Valley headquarters also was not returned.

The parents, who established the charitable Connor Cares Foundation for lifeguard education, alleged the company had too few lifeguards on duty and had not sufficiently trained them.

In 2007, an Anne Arundel Circuit Court jury awarded each parent \$2,000,076, with the final \$76 representing Connor's birthday, July 6.

The tragic event occurred June 22, 2006.

Paul Carroll, an adult family friend, took Connor to the pool with two other children.

At about 4:15 p.m., Carroll removed Connor's life jacket so the boy could go to the bathroom.

WHAT THE COURT HELD

Case: Freed et. Al. v. D.R.D. Pool Service Inc., No. 2258 Sept. Term 2007. Reported. Opinion by Salmon, J.

Issue: May a court grant summary judgment in a pain and suffering claim for a drowning in which no one witnessed the death?

Holding: No; the pain and suffering issue is for the jury to decide after hearing medical experts.

Counsel: Andrew H. Baida for appellants; Steven R. Migdal for appellee.

[RecordFax: #9-0706-00 \(22 pages\)](#)

Carroll continued to watch the other children, Brice and Peyton Dameron. A few minutes later, he asked Brice to check on Connor in the bathroom.

Shortly after, Peyton told Carroll “somebody” was floating in the pool, which was occupied by about 35 people. Carroll and another adult walked to the side and saw Connor floating face down.

Connor died without regaining consciousness, according to the appellate court.

Reasonable inference

In pretrial motions, Connor’s estate and the pool service presented deposition testimony from medical experts.

Jerome H. Modell, an intensive-care physician who has studied drowning, said victims endure “tremendous negative pressure” in their chests as their diaphragm struggles to bring in air.

“This causes a great deal of pain and discomfort ... and this process lasts for a minute and a half to two minutes,” he said.

The pool service’s expert, cardiologist H. Brandis Marsh, called it “speculative to assume” that Connor “experienced conscious pain and suffering.”

The judge, in granting summary judgment to D.R.D., said there must “be some objective measure before there is an ability to take to the jury the conscious pain and suffering [issue].”

But the Court of Special Appeals, in a 3-0 decision, said the issue can go before a jury because the parents had produced “evidence from which a reasonable inference could be drawn that [Connor] experienced fear or fright or conscious pain while he was in the process of drowning.”