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DOMESTIC RELATIONS

Homicide of a Child: Amend Right of Parents to Recover in Tort

CODE SECTION:	O.C.G.A. § 19-7-1 (amended)
BILL NUMBER:	HB 203
ACT NUMBER:	612
SUMMARY:	The Act amends the Code provision relating to the right of parents to recover in tort for the homicide of a child. If the parents are married and living together they shall divide any judgment equally; but if they are divorced, separated, or living apart, either parent may file a motion prior to trial requesting the judge to apportion any judgment amounts. If no motion is filed, the judgment shall be divided equally. Each parent may present evidence at a post-judgment hearing held to decide the motion for apportionment. The judge shall fairly determine each parent's share, considering each parent's relationship with the deceased child. The judge's decision shall be reversed only on a showing of abuse of discretion.
EFFECTIVE DATE:	July 1, 1987

History

HB 203 revises the Georgia law governing parental recovery for the homicide of a child by parents who are divorced, separated, or living apart. Previously, courts had difficulty deciding whether and how to divide judgments between parents who no longer were married and living together.¹ Formerly O.C.G.A. § 19-7-1(c) provided only that “[s]uch a judgment shall be divided between the parents by the judgment.”² The section offered no further guidance to courts on how to divide the judg-

1. See, e.g., *Ramos v. Ramos*, 173 Ga. App. 30, 32, 325 S.E.2d 415, 418 (1984) (although affirming the trial court, the court of appeals stressed that the lower court erred in relying upon the principle that a parent's right of recovery for a child's wrongful death can never be defeated by a showing of nonsupport).

2. O.C.G.A. § 19-7-1(c)(2)(C) (1982). Subsection (c) is but one part of the Code section relating to the exercise of parental powers over children. O.C.G.A. § 19-7-1 (1982).

ment equitably.

Inevitably, the state's appellate courts were called on to provide answers to those questions not answered explicitly in the Code.³ In 1984, the Georgia Supreme Court decided in *Sapp v. Solomon*⁴ that the father of a child born out of wedlock could not recover for the wrongful death of that child unless he showed that he had provided financial support for the child in a manner reasonable under the circumstances. Later that year, in *Ramos v. Ramos*,⁵ the Georgia Court of Appeals held that a noncustodial parent who failed to support a deceased child had not forfeited the right to recover for the child's death when it could be shown that the noncustodial parent was financially and emotionally unable to support the child. The court of appeals opinion emphasized that the decision in *Sapp* involved the putative father of a child born out of wedlock.⁶ *Sapp*, therefore, is factually distinguishable from *Ramos* because the latter case involved parents who were married when the child was born. Nevertheless, *Ramos* follows the *Sapp* rule requiring a court to decide whether a noncustodial parent's failure to provide financial support is reasonable under the circumstances.⁷ *Ramos* and *Sapp* represent a reasonable, but not comprehensive, attempt by the state's appellate courts to make fair distribution of judgment amounts to the separated, divorced, or living apart parents of a child victim of homicide.

Although the former O.C.G.A. § 19-7-1(c) did not explicitly mandate it, the cases appear to require the trial court to divide equally the proceeds of judgments between parents who are divorced, separated, or living apart in those cases where neither parent failed to support the deceased child.⁸ HB 203 provides the courts with needed guidance.

HB 203

The Act provides the courts with necessary authority and guidelines to make an equitable division of judgment amounts in wrongful death cases involving a child homicide victim when the child's parents are divorced, separated, or living apart.

As enacted, the Act replaces the old subsection (c) of O.C.G.A. § 19-7-1 with a new subsection (c) permitting a trial court judge to apportion

3. See, e.g., *Ramos v. Ramos*, 173 Ga. App. 30, 325 S.E.2d 415 (1984); *Sapp v. Solomon*, 252 Ga. 532, 314 S.E.2d 878 (1984) (both cases involved a custodial parent's assertion that the other estranged parent was not entitled to recover for the wrongful death of a child whom the parent failed to support).

4. 252 Ga. 532, 314 S.E.2d 878 (1984).

5. 173 Ga. App. 30, 32, 325 S.E.2d 415, 418 (1984).

6. *Id.* at 31, 325 S.E.2d at 418.

7. *Id.* at 33, 325 S.E.2d at 419.

8. *Id.* at 32, 325 S.E.2d at 418; *Sapp v. Solomon*, 252 Ga. at 533, 314 S.E.2d at 879. *But see id.* at 534, 314 S.E.2d at 880, (Gregory, J., dissenting) ("All these questions [concerning how judgments should be divided] are best left to the legislature.").

fairly any judgment amounts in a suit for the homicide of the child of parents who are divorced, separated, or living apart.⁹ The judge may not apportion the judgment unless one of the parents enters a pre-trial motion for apportionment. If no motion is filed, the judgment must be divided equally.¹⁰ The Act further provides that a judgment shall not be divided automatically; the judge must conduct a post-judgment hearing at which each parent may present evidence regarding his or her relationship with the deceased child.¹¹ The judge must then award a percentage of the judgment to each parent. The judge's decision cannot be disturbed on appeal absent an abuse of discretion.¹²

When it was introduced, HB 203 did not contain specific standards for the judge to consider when deciding apportionment amounts.¹³ As introduced, the bill permitted the judge to apportion the judgment according to unstated and undefined "equitable principles."¹⁴ The House Judiciary Committee submitted a committee substitute which replaced the vague phrases "equitable principles" and "the equities" with a listing of factors which the judge is to use in determining the apportionment.¹⁵ The enacted substitute bill provides that the judge shall consider each parent's relationship with the deceased child, including such factors as which parent had custody and control of the child, which parent provided the most financial support, and any other pertinent factors.¹⁶

The committee substitute passed the House without further changes and was approved by the Senate without amendment. The Act provides guidance to courts seeking to determine the appropriate award for parents of a child homicide victim when the parents are divorced, separated, or living apart. The new law makes it possible to compensate fairly a parent who provided the only support of a deceased child. The former law had the potential of unfairly permitting a parent to benefit from the homicide of a child, even though that parent was unwilling to acknowledge or support the child when the child was alive.¹⁷

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9. O.C.G.A. § 19-7-1(c) (Supp. 1987).

10. O.C.G.A. § 19-7-1(c)(2)(C) (Supp. 1987).

11. O.C.G.A. § 19-7-1(c)(6) (Supp. 1987).

12. *Id.*

13. HB 203, as introduced, 1987 Ga. Gen. Assem.

14. HB 203, as introduced, 1987 Ga. Gen. Assem.

15. HB 203 (HCS), 1987 Ga. Gen. Assem.

16. O.C.G.A. § 19-7-1(c)(6) (Supp. 1987).

17. *See Ramos v. Ramos*, 173 Ga. App. 30, 31, 325 S.E.2d 415, 417 (1984).