

9-1-1993

TORTS Wrongful Death: Designate Guardian for Children in Wrongful Death Recoveries

Robert W. Griner

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Law Commons](#)

Recommended Citation

Robert W. Griner, *TORTS Wrongful Death: Designate Guardian for Children in Wrongful Death Recoveries*, 10 GA. ST. U. L. REV. (1993).
Available at: <https://readingroom.law.gsu.edu/gsulr/vol10/iss1/27>

This Peach Sheet is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact mbutler@gsu.edu.

TORTS

Wrongful Death: Designate Guardians for Children in Wrongful Death Recoveries

CODE SECTION: O.C.G.A. § 51-4-2 (amended)
BILL NUMBER: SB 173
ACT NUMBER: 509
SUMMARY: This Act designates who controls wrongful death recoveries intended to benefit a surviving child. For awards less than \$15,000, the natural guardian shall hold and use the money for the benefit of the child. A guardian of the property shall be appointed to hold and use awards of \$15,000 or more for the benefit of the child.
EFFECTIVE DATE: July 1, 1993

History

In the past, wrongful death awards intended to benefit surviving children have been left under the control of the surviving parent.¹ However, there have been reports of abuse, where the surviving parent misspent the amount recovered.² Under these circumstances, the parent has violated the fiduciary duty to the child, leaving the child with no recourse other than suing the parent.³ This option was limited by the ability of the parent to actually satisfy a judgment financially and by the general hesitance of children to sue a parent.⁴ This bill was proposed to protect children by preventing the improper use of the award, and when applicable to provide a source of recovery for the children other than the parent.⁵

SB 173

The Act amends Code section 51-4-2(d) by distinguishing recoveries less than \$15,000 from those equal to or greater than \$15,000.⁶ The

-
1. 1986 Ga. Laws 10 (formerly found at O.C.G.A. § 51-4-2(d)(2) (Supp. 1992)).
 2. Telephone Interview with Sen. Stephen B. Farrow, Senate District No. 54 (Apr. 5, 1993) [hereinafter Farrow Interview]. This legislation was originally proposed to Sen. Farrow by the Georgia State Bar Fiduciary Section. *Id.*
 3. *Id.*
 4. *Id.*
 5. *Id.*
 6. O.C.G.A. § 51-4-2(d)(1) (Supp. 1993).

natural guardian of the child is to hold and use recoveries less than \$15,000 for the benefit of the child and is to be accountable for the use of the award.⁷ For amounts of \$15,000 or more, a guardian of the property of the child is to hold the money and be accountable for its use.⁸

Since, under Georgia law, the surviving parent becomes the natural guardian of the children,⁹ he or she controls all wrongful death awards under \$15,000.¹⁰ While there appears to be no substantive change from the previous Code provision when awards fall below this threshold amount,¹¹ this may not necessarily be true.¹² The definitive substantive changes occur with awards equal to or greater than \$15,000, which are now to be administered by a court-appointed guardian of the property who must be bonded and report annually to the probate court.¹³ The annual reporting requirement allows the court to exercise a degree of discretion over the use of the award and the bond requirement establishes a source from which the child may recover in the event of mismanagement of the award.¹⁴ While the surviving parent will frequently serve as both natural guardian and guardian of the property,¹⁵ there will also be instances where the natural guardian will be unable to acquire bonding and will therefore be unable to serve as guardian of the property.¹⁶ The threshold amount of \$15,000 was selected because it is the minimum amount of automobile liability insurance required under Georgia law and many wrongful deaths may arise out of a motor vehicle collision and because it is not practical to incur the cost of a bond on amounts less than \$15,000.¹⁷

The original version of the bill required appointment of a guardian of the property without respect to the amount of the wrongful death

7. *Id.*

8. *Id.*

9. *Id.* § 29-4-2 (Supp. 1993); Telephone Interview with Rep. Cathy Cox, House District No. 160 (Apr. 5, 1993) [hereinafter Cox Interview]. Rep. Cox sponsored the House floor substitute that became the final version of the bill. *Id.*

10. O.C.G.A. § 51-4-2(d)(1) (Supp. 1993).

11. Cox Interview, *supra* note 9. The surviving parent will continue to control the award and is not required to be bonded or to report annually to the probate court. *Id.*

12. Telephone Interview with Tom Jones, member of the Fiduciary Section of the State Bar of Georgia (Apr. 14, 1993). A natural guardian may be subject to some of the same obligations imposed on a guardian of the property, depending on the interpretation of the Act by the individual probate judge. *Id.*

13. O.C.G.A. § 29-4-12 (Supp. 1993); Cox Interview, *supra* note 9.

14. *Id.*

15. Farrow Interview, *supra* note 2.

16. Cox Interview, *supra* note 9.

17. *Id.*

award.¹⁸ The requirement for a guardian of the property could be waived if the natural guardian, a court appointed guardian ad litem, and the court determined that the waiver was in the best interest of the child.¹⁹ The House Committee on the Judiciary offered a substitute that contained the language distinguishing recoveries based on the amount of the award and deleting the waiver provision.²⁰ Because of this particular expansion, the Committee substitute failed to pass.²¹ A potential conflict with Code section 29-4-2 was created and legislators agreed to support a floor substitute which went back to the previous \$15,000 threshold and the floor substitute passed the House and was agreed to by the Senate.²² A floor substitute deleting the expanded application to all estates but retaining the categories based on \$15,000 was then offered and passed.²³

Robert W. Griner

18. SB 173, as introduced, 1993 Ga. Gen. Assem.

19. *Id.*

20. SB 173 (HCS), 1993 Ga. Gen. Assem. The rights of the child were considered too crucial to be waivable. Cox Interview, *supra* note 9.

21. Cox Interview, *supra* note 9.

22. *Id.*

23. O.C.G.A. § 51-4-2(d)(1) (Supp. 1993); SB 173 (HFS), 1993 Ga. Gen. Assem.; Cox Interview, *supra* note 9. The waiver provision did not reappear in the final version. See SB 173, as passed, Ga. Gen. Assem.