

SUPREME COURT OF PENNSYLVANIA

Taylor v. Extendicare Health Facilities, Inc.

147 A.3d 490 (Pa. 2016) · No. 19 WAP 2015 · Decided September 28, 2016

SUMMARY

This is a dissenting opinion by Justice Donohue in the Pennsylvania Supreme Court case concerning whether the Federal Arbitration Act preempts Pennsylvania's requirement that wrongful-death and survival actions be consolidated. The dissent argues that consolidation is a substantive condition of the statutory wrongful-death cause of action and that severance would impermissibly deprive wrongful-death beneficiaries of their statutory and constitutional rights. Justice Todd joined the dissent.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Justice Donohue; Justice Todd
JURISDICTION	Pennsylvania
DECIDED	September 28, 2016
DOCKET	19 WAP 2015
DISPOSITION	other
PROCEDURAL POSTURE	The nursing-facility defendants appealed the Superior Court's order affirming the Court of Common Pleas order. The dissent addresses whether the Federal Arbitration Act required severance of the wrongful-death claim from the survival claim so that the survival claim could proceed to arbitration.
PRECEDENTIAL VALUE	nonprecedential_dissent
PARTIES	Extendicare Health Facilities, Inc. d/b/a Havencrest Nursing Center, Extendicare Holdings, Inc., Extendicare Health Facility Holdings, Inc., Extendicare Health Services, Inc., Extendicare REIT, Extendicare, L.P., Extendicare, Inc. v. Daniel E. Taylor and William Taylor, as co-executors of the Estate of Anna Marie Taylor, deceased

TOPICS

[arbitration](#)[civil procedure](#)[statutory interpretation](#)[federalism](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Federal Arbitration Act preempts Pennsylvania Rule of Civil Procedure 213(e) and the consolidation requirement embodied in the Pennsylvania Wrongful Death Act.
2. Whether severing the wrongful-death action from the survival action would unlawfully deprive wrongful-death beneficiaries of their statutorily created cause of action.
3. Alternatively, whether the wrongful-death and survival claims should remain consolidated even if Rule 213(e) is preempted.

HOLDINGS

1. The dissent would hold that the FAA does not and cannot preempt Rule 213(e), because the consolidation requirement is substantive and is a condition of maintaining the statutory wrongful-death cause of action rather than merely a procedural rule favoring judicial efficiency.
2. The dissent would hold that severance would unconstitutionally deprive the wrongful-death beneficiaries of a protected property interest by preventing them from maintaining their statutory cause of action.
3. Even if Rule 213(e) were preempted, the dissent would require the wrongful-death and survival claims to remain consolidated because the consolidation requirement would remain in 42 Pa.C.S.A. § 8301.

KEY QUOTATIONS

“The mandate is a substantive requirement imposed by the legislature to prevent a duplication of damages as a result of the statutorily created cause of action.” (at 494)

“To my knowledge, the United States Supreme Court has never concluded that the FAA is powerful enough to deprive a state court plaintiff of the substantive right to bring a statutory cause of action, nor would it.” (at 496)

“Accordingly, I would hold that the FAA does not, indeed cannot, preempt Rule 213(e).” (at 497)

FACTUAL BACKGROUND

After Anna Marie Taylor's death, her estate pursued a survival action and her statutory beneficiaries pursued a wrongful-death action arising from the same alleged negligence. Pennsylvania law permits both actions but requires their consolidation to prevent duplicate recovery. The Extendicare defendants sought arbitration of the survival claim, raising the question whether the FAA displaced Pennsylvania's consolidation requirement and thereby required severance of the two claims.

PROCEDURAL HISTORY

The Court of Common Pleas of Washington County entered an order on November 20, 2013. The Superior Court affirmed that order on April 2, 2015, at No. 2028 WDA 2013. Extendicare appealed to the Supreme Court of Pennsylvania. This text is Justice Donohue's dissent from the Supreme Court majority's conclusion that the FAA required severance of the wrongful-death action from the survival action.

DISPOSITION

other

REMAND INSTRUCTIONS

The dissent would reject severance and require the wrongful-death and survival claims to proceed in a consolidated judicial proceeding.

CASES CITED

- Tulewicz v. Se. Pa. Transp. Auth., 606 A.2d 427, 431 (Pa. 1992)
- Kiser v. Schulte, 648 A.2d 1, 4 (Pa. 1994)
- Pezzulli v. D'Ambrosia, 26 A.2d 659, 661-62 (Pa. 1942)
- Frazier v. Oil Chem. Co., 179 A.2d 202, 204-05 (Pa. 1962)
- Rich v. Keyser, 54 Pa. 86, 90 (1867)
- Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 (1983)
- Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ., 489 U.S. 468, 478-79 (1989)
- Southland Corp. v. Keating, 465 U.S. 1, 10 (1984)
- AT&T Mobility LLC v. Concepcion, AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 343 (2011)
- Societe Internationale Pour Participations Industrielles Et Commerciales, S.A. v. Rogers, 357 U.S. 197, 209 (1958)
- Martinez v. State of Cal., 444 U.S. 277, 281-82 (1980)
- Logan v. Zimmerman Brush Co., 455 U.S. 422, 428 (1982)
- Tulsa Pro. Collection Servs. v. Pope, 485 U.S. 478, 485 (1988)
- Preston v. Ferrer, 552 U.S. 346, 359 (2008)