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Crucial Chapter 400 Case Law Update: Implications of *Youngblood v. Halifax Convalescent Center*

On January 23, 2004, the Fifth District Court of Appeal released its Opinion in the above matter which reversed the defense verdict obtained and remanded the case back to the trial court for a new trial. The case was reversed and remanded for three reasons: 1) Trial Court erred by allowing the Defendant to peremptorily challenge the only two African American persons on the venire; 2) The Trial Court erred in striking the Plaintiff's Chapter 400 claims pursuant to *Knowles* since the Plaintiff could recover damages unrelated to the cause of death of the nursing home resident; and 3) Trial Court erred in directing a verdict for the Defendant at the close of the evidence on the issue of punitive damages.

Obviously, reversing a case because of errors in picking a jury applies to any case. However, the remaining two reasons directly affect Chapter 400 nursing home cases in Florida and have far reaching implications. The Fifth District Court of Appeal extended an olive branch to plaintiffs' lawyers in Florida by certifying conflict with the Fourth District Court of Appeal's decision in *Knowles*. Essentially, the Fifth District held that the Personal Representative of a deceased resident could bring a cause of action regardless of the cause of death of the resident. This is in direct contravention to the language of the statute. Further, although the Court did not expand the law on punitive damages, it did cite to a 1986 case (*Payton Health Care v. Estate of Campbell*) that affirmed a punitive damage award based on expert testimony that the nursing care was an "outrageous deviation from the acceptable standard." Thus, trial courts may be reluctant to grant Summary Judgment or direct a verdict in favor of a Defendant on punitive damages when the Plaintiff's expert simply testifies that the care was "outrageous."

In *Youngblood*, Plaintiff appealed a Defense Verdict in favor of Delta Health Group. Delta had purchased Halifax Convalescent Center on February 1, 1998. On July 7, 1998, Plaintiff filed suit only against Halifax alleging negligence and deprivation of resident's rights pursuant to Chapter 400. The next day, on July 8, 1998, the resident was transferred to another nursing facility. On January 18, 2000, the resident died and her daughter continued the litigation as her mother's Personal Representative and at that time, joined Delta in the lawsuit similarly alleging Common Law Negligence claims and Deprivation of Rights claims which caused the resident's death.

Halifax settled prior to trial and the Trial Court granted Delta's Motion for Summary Judgment as to the Chapter 400 claims because there was no evidence that *Youngblood's*

cause of death resulted from any violation of her Chapter 400 resident's rights. The case then proceeded to trial only on Common Law Negligence claims.

Procedurally, *Youngblood* is similar to *Knowles*. In *Knowles*, a lawsuit was filed against the nursing home well after the resident died. In *Youngblood*, the Plaintiff joined Delta after the resident died. In *Knowles*, Plaintiff agreed there was no evidence the nursing home had caused the resident's death. In *Youngblood*, Plaintiff also admitted that the violation of the resident's rights did not cause her death. However, one major difference is that in *Youngblood*, a lawsuit for violation of the resident's rights was commenced during the lifetime of the resident.

What does this all mean? Since Chapter 400.023(1) Florida Statute was amended on May 15, 2001, to allow Personal Representatives to bring a cause of action regardless of the cause of death of the resident, the ruling in *Youngblood* only affects those cases where the cause of action accrued prior to May 15, 2001. Because of the passage of time, the holding in *Youngblood* will hopefully affect only a limited number of cases throughout the state. However, it will not impact any of the cases under the jurisdiction of the Fourth District Court of Appeal. That jurisdiction includes the following counties: Broward, Palm Beach, Martin, St. Lucie, Indian River and Okeechobee. Any cases in the above counties where the cause of action accrued prior to May 15, 2001 must follow the *Knowles* decision.

In contrast, all cases under the jurisdiction of the Fifth District Court of Appeal are now bound to follow *Youngblood*. The Fifth District's jurisdiction encompasses the following counties: Hernando, Citrus, Sumter, Lake, Marion, Putnam, St. Johns, Flagler, Volusia, Seminole, Orange, Osceola and Brevard. Any cases where the cause of action accrued prior to May 15, 2001, and its jurisdiction lies in the First, Second or Third District Court of Appeal are free to follow either *Knowles* or *Youngblood*, or in the alternative, disagree with both of them. Moreover, in those pending cases where the cause of action accrued prior to May 15, 2001, and where the trial courts have previously ruled on the *Knowles* issue, Plaintiffs' lawyers may file Motions for Re-Hearing and/or Reconsideration of the issue, especially in those counties who fall under the Fifth District's jurisdiction.

Interestingly, the *Youngblood* Court certified conflict with *Knowles*. The *Knowles* Opinion was released by the Fourth District Court of Appeal back in May of 2000. Despite the fact that *Knowles* was briefed before the Supreme Court and argued before the Supreme Court back on August 31, 2001, the Supreme Court has yet to release an Opinion. In fact, the Supreme Court of Florida has not yet even accepted jurisdiction in *Knowles*. It is still entirely possible that the Florida Supreme Court could refuse to accept jurisdiction and allow the

Unanimous En Banc Opinion to stand as law. Others now believe that the *Youngblood* opinion will force the Supreme Court to make a decision in *Knowles*. We do not believe that to be the case.

We believe *Youngblood* will have absolutely no effect on *Knowles*. *Knowles* was briefed and argued before Justices Lewis, Anstead, Harding, Shaw, Wells and Quince. Justice Pariente recused herself because one of the Plaintiff/Appellees lawyers had previously clerked for her. Justice Harding has since retired and a new Justice has been appointed. The new Justice cannot be involved in the *Knowles* decision because he was not present at Oral Argument. As such, we believe that *Knowles* has already been decided, but not yet released. *Youngblood* may spark the Court to release its opinion in *Knowles*, but it should not change any of the Justices' minds.

Additionally, one would think that if the Supreme Court of Florida disagreed with the Fourth District's Unanimous En Banc Opinion in *Knowles*, and wanted to reverse, they would have already done so. Why wait and jeopardize numerous claims of elderly nursing home residents when a reversal would rescue their claims and advance their cases? Further, the makeup of the Florida Supreme Court is somewhat liberal and a reversal of *Knowles* would no doubt benefit Plaintiff lawyers throughout the state.

In addition to the above, the decision may affect rulings on punitive damages in Chapter 400 claims that accrued prior to May 15, 2001. The trial

judge in *Youngblood* stated that the evidence for punitive damages has "got to be beyond gross." In Chapter 400 cases, punitive damages may be awarded for conduct that is willful, wanton, gross or flagrant, reckless, or consciously indifferent to the rights of the resident. Prior to October 1, 1999, there were no limitations on punitive damages. Subsequent to October 1, 1999, punitive damages were limited to three times the amount of compensatory damages unless the Plaintiff demonstrated by clear and convincing evidence that the punitive award was not excessive in light of the facts and circumstances.

Obviously, the *Youngblood* Court took issue with the trial Judge stating that the evidence has to be beyond gross which is more than the statute requires. However, most disturbing about *Youngblood* is the fact that the Court cited to *Payton Healthcare vs. Estate of Campbell*, which allowed a punitive damage award on expert testimony that the care and treatment was "outrageous." The *Youngblood* Court seems to indicate that a Judge should not grant Summary Judgment or direct a verdict in favor of the Defendant on punitive damages when Plaintiff's expert testifies that the care was "outrageous." Obviously, the word outrageous does not appear in the statute and it is an extremely easy burden to meet on behalf of Plaintiffs. Further, Judges may think they must grant Plaintiff's Motion to Amend the Complaint to add a Claim for Punitive Damages solely when the expert's affidavit or deposition indicates that the care was "outrageous."

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