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Trial attorneys weigh in on punitive damage case

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Regardless of how the Illinois Supreme Court rules in a case dealing with punitive damages, the outcome will affect the approach to liability of nursing homes.

Not only did the attorneys who argued the case before the justices last week stress their concerns, but attorneys with the Illinois Trial Lawyers Association and the Illinois Defense Trial Counsel added their voices to the issue through a pair of amicus briefs.

The issue over whether punitive damages are available under the state's Nursing Home Care Act comes from the case of *Thomas Vincent v. Alden-Park Strathmoor, Inc.*

As the legal representative of his mother's estate, Thomas Vincent filed a three-count complaint in Winnebago County against Alden Park Strathmoor Inc., for damages arising out of his mother's care at the nursing home prior to her death.

The first two counts sought compensatory damages under the state's Nursing Home Care and Wrongful Death acts. The third count was a survival action under the Nursing Home Care Act (NHCA) that also included a request to reserve the right to seek punitive damages for the defendant's allegedly willful and wanton conduct.

The nursing home argued against the plaintiff's reservation of the right to punitive damages, asserting that the claim didn't survive the decedent's death.

The trial court granted the defendant's motion to strike Vincent's reservation, but certified a question for interlocutory review.

The question was "whether common-law punitive damages are available in an action brought by the personal representative of the estate of a deceased nursing home resident based on the Survival Act for willful and wanton violations of the Nursing Home Care Act which caused injuries that ultimately claimed her life."

The 2nd District Appellate Court found that common-law punitive damages are not available in a survival claim brought under the state's nursing home act.

On behalf of the Illinois Trial Lawyers Association, [Steven M. Levin](#) and [Michael F. Bonamarte IV](#) with Levin & Perconti in Chicago filed an amicus brief in support of Vincent.

"It's a crucial safety rule and it's an important principle that our most vulnerable citizens need," said Levin, who has handled nursing home cases for almost 25 years.

Bonamarte said the case that now awaits a ruling from the state Supreme Court could have a positive effect on the care and treatment nursing home patients receive.

Traditionally, he said, punitive damages are not allowed in death cases under the state's nursing home act, but there needs to be a law designed to protect these people.

To eliminate punitive damages for residents who die in nursing homes is like saying these facilities are better off killing someone than injuring them, Bonamarte and Levin said.

The Illinois Association of Defense Trial Counsel, however, has an opposing view.

[Daniel W. Farroll](#) of HeplerBroom LLC said a large part of his practice is devoted to nursing home cases. This case is important for lawyers, he said, because it could change a century-old law.

"There is going to be a dramatic shift in the law," Farroll said. "It will also affect far more cases than just nursing homes."

The law has been sufficient for 100 years, Farroll said, adding that if it is time for punitive damages to be awarded under the Nursing Home Care Act then state lawmakers should undergo a debate and change the law.

"That is what the three branches of government are all about," he said.

Arguing on behalf of Vincent during last week's arguments in the case, [Frank A. Perrecone](#) of Ferolie and Perrecone Ltd., told justices that under Section 3-603 of the NHCA, a resident may maintain an action under the act for any other type of relief.

"That section does provide the remedy for common-law punitive damages," Perrecone said.

Justice [Rita B. Garman](#) asked, "What about the fact that some actions don't survive for parties to bring claims? Is there a case that addresses this issue?"

Pointing to *National Bank of Bloomington v. Norfolk & W. Ry. Co.*, Perrecone said, "What this court decided was that if a statute provides for punitive damages, the Survival Act will permit the representative of the estate to maintain that action."

"Any statute?" Garman asked.

Perrecone said Section 3-603, "in our opinion, provides for the remedy of punitive damages being incorporated in the act."

However, [Lisa A. Jensen](#), of Jensen Law Office, LLC, told the justices that in *National Bank*, this court only recognized one limited exception.

"Where a statute specifically provides for recovery of punitive damages as part of a comprehensive regulatory scheme, then punitive damages will be deemed to survive the death of a plaintiff. The Nursing Home Care Act is not such a case," Jensen said.

This case is *Vincent v. Alden-Park Strathmoor, Inc.*, No. 110406.

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