



AlaFile E-Notice

02-CV-2016-000224.00

Judge: JOHN R LOCKETT

To: HAILS EDWARD BARRETT
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NOTICE OF COURT ACTION

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

VALENTINA HENRY ETC VS FAIRHOPE YACHT CLUB
02-CV-2016-000224.00

A court action was entered in the above case on 5/16/2018 2:52:21 PM

ORDER

[Filer:]

Disposition: GRANTED IN PART
Judge: JRL
Notice Date: 5/16/2018 2:52:21 PM

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IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

HENRY VALENTINA AS PERSONAL,)	
REP & ADMN OF ESTATE,)	
Plaintiff,)	
)	
V.)	Case No.: CV-2016-000224.00
)	
FAIRHOPE YACHT CLUB,)	
Defendant.)	

ORDER

This matter is before the Court on Fairhope Yacht Club's (FYC) Motion for partial summary judgment (Doc. 362) on certain damage claims made by Plaintiff. FYC challenges 3 items of damages claimed by the Plaintiff: 1) loss of financial support; 2) loss of society; and 3) pain and suffering experienced by deceased prior to death. After a review of the briefs and arguments of the parties, the Court finds that FYC's Motion is due to be GRANTED in part and DENIED in part.

Loss of Financial Support

The evidence is undisputed that Plaintiff's decedent, Robert Thomas (herein "Thomas"), had no dependents at the time of his death. Further, no evidence was offered that Thomas' four adult children anticipated that any future pecuniary benefits were to be rendered to them by their deceased father. Absent the same, no award for loss of financial support is justified. Bergen v. F/V St. Patrick, 816 F. 2d 1345, 1350 (9th Cir. 1987). Accordingly, FYC's motion for partial summary judgment on Plaintiff's claim for loss of financial support is due to be and is hereby GRANTED.

Loss of Society

Plaintiff also claims damage for loss of society by each of Thomas' four non-dependent children, relying upon Sea-Land Servs., Inc. v. Gaudet, 414 US 573 (1973). However, it appears that the holding in Gaudet which awarded loss of society damages has been limited to the facts of that case, i.e., to representatives of a deceased Longshoreman's family. Miles v. Apex Marine Corp., 498 US 19, 31. (1990). After Miles, loss of society damages are not available to non-dependent survivors of non-seaman in wrongful death actions under general maritime law. Tucker v. Fearn 333 F.3d 1216, 1221-22 (11th Cir. 2003). Based upon the facts before this Court, Plaintiff is not entitled to loss of society damages in this case. Therefore, FYC's Motion for partial summary judgment on Plaintiff's claim for loss of society is hereby GRANTED.

Pain and Suffering

Lastly, FYC argues that the record contains insufficient evidence that Plaintiff's deceased experienced pain and suffering prior to death. This Court disagrees. The testimony of other crew members indicates that Thomas was conscious while in the water prior to his death. This evidence creates a jury question on the issue of conscious pain and suffering. See Self v. Great Lakes Dredging & Dock Co., 832 F.2d 1540, 1549 (11th Cir. 1987) ("if the decedent was conscious while in the water, ... then it must be without dispute that he did suffer some pain ... from the anguish of struggling against drowning.")(citation omitted). Accordingly, FYC's Motion for partial summary judgment on the issue of damages for pain and suffering is thus DENIED.

DONE this 16th day of May, 2018.

/s/ JOHN R LOCKETT
CIRCUIT JUDGE
