

Civil Rights Update

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Seventh Circuit Rejects Claim for Loss of Society and Companionship for Adult Child

On July 11, 2005, the Seventh Circuit released its decision in the case of *Russ v. Watts*, 414 F.3d 783 (7th Cir. 2005), which held that a parent does not have a viable claim for loss of society and companionship for an emancipated adult child. The Seventh Circuit decision overruled its earlier decision in *Bell v. City of Milwaukee*, 746 F.2d 1205 (7th Cir. 1984), and brought the Seventh Circuit back in line with a majority of the other federal circuit courts.

On June 5, 1999, Robert Russ, a 22-year-old student at Northwestern University, was driving from campus to his mother's home in Calumet City, Illinois. At approximately 1:00 A.M., Chicago police attempted to stop Russ' car. A chase ensued with three separate squad cars pursuing Russ' vehicle. Russ' vehicle was eventually stopped when it collided with several other police vehicles. Once stopped, Russ' car was surrounded by the three officers, who had weapons drawn. Officer Watts then broke through the driver's side window and fired a single gun shot, killing Russ.

Months before Russ was killed, he and Erin Lewis conceived a son, Robert Anthony Russ, who was born on September 26, 1999, about four months after Russ' death. The probate division of the circuit court subsequently declared Robert Russ as the sole heir to Russ' estate, and appointed Lewis as the independent administrator of the estate. The court then entered an order substituting Lewis as the plaintiff in the wrongful death action filed by Russ' mother, Vera Love. In October 2003, a jury found Officer Watts liable for Russ' death and awarded \$9.6 million in damages to Russ' estate.

As a result of the substitution in the state court action, Russ' parents filed suit in federal court against the same defendants. Based upon the prior decision handed down in *Bell*, the district court determined the crucial issue to be whether Russ had become part of another family unit, thus precluding recovery by Russ' parents. In granting a summary judgment motion to the defendants, the district court concluded that the parents lacked standing to bring the action on the basis that Russ had formed a new family unit with Lewis at the time of the shooting. The parents then appealed to the Seventh Circuit Court of Appeals. The Seventh Circuit noted that most of the courts that considered the identical issue declined to find a violation of the familial liberty interests where the state action at issue was not aimed specifically at interfering with the relationship. Therefore the court re-examined its earlier decision in *Bell*.

The facts in *Bell* are as follows: On February 2, 1958, Daniel Bell, a 23-year-old African-American male, was pulled over by Milwaukee police officers Grady and Krause for driving a vehicle with a missing taillight. Bell fled on foot and was pursued by both Grady and Krause. Grady soon caught up to Bell and extended his hand to grab him. Grady's gun discharged, hitting Bell in the upper back, killing him. After determining that Bell was dead, Grady planted a knife in Bell's hand in an attempt to divert blame. It was not until 1978 that Krause revealed that the two officers had lied about the details of Bell's shooting. After Krause pled guilty to homicide, reckless conduct, and perjury, Bell's siblings filed suit against the officers and a jury awarded a verdict of \$75,000 for the loss of society and companionship to the Estate of Daniel Bell's father, Dolphus Bell.

The *Bell* case was appealed and the Seventh Circuit held that Bell's father could recover under § 1983 for a violation of his substantive due process right to associate with his son. The Seventh Circuit in *Bell* held that Daniel's status as an adult living on his own at the time he was killed did not preclude recovery. The court observed that "We are unpersuaded that a constitutional line based solely on age of the child should be drawn." Therefore, the Seventh Circuit in *Bell* concluded that Daniel Bell's age and separate residence were matters for the jury to consider when determining damages, but were not a bar to recovery.

The Seventh Circuit analyzed the decisions of its sister circuits when deciding *Russ* and determined that *Bell* was wrongfully decided. The court observed:

We now see that our conclusion that Dolphus Bell's parental liberty interest was violated by the killing of his son was not well grounded in the Constitution or Supreme Court case law. The Supreme Court has recognized violations of the due process liberty interest in the parent-child relationship **only** where the state took action specifically aimed at interfering with that relationship. As the Supreme Court has explained, [h]istorically, the guarantee of due process has been applied to *deliberate* decisions of government officials to deprive a person of life, liberty, or property. (Emphasis added), *Russ*, 414 F.3d at 788-789 citing *Daniels v. Williams*, 474 U.S. 327, 331 (1986).

The Seventh Circuit in *Russ* determined that neither the *Bell* nor the *Russ* case involved intentional action by a state official to interfere with a familial relationship. In the *Russ* case, there were no allegations that Watts shot Russ for the specific purpose of terminating Russ' relationship with his family. The Seventh Circuit was concerned that affording the plaintiffs a constitutional due process right to recover against the state in circumstances such as were present in *Russ* would create the risk of constitutionalizing all torts against individuals who happen to have families. Therefore, the Seventh Circuit elected to join a majority of its sister courts and held that Russ' parents had no constitutional right to recover for the loss of society and companionship of Russ.

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