

Tentative Rulings for May 31, 2023

Department 501

**Unless otherwise ordered, all oral argument in Department 501
will be presented in person or telephonically (not through Zoom).**

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

21CECG03517 *Gideon v. Whittington* (Dept. 501)

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

**22CECG03368 *RJP Latchkey, LLC v. Latchkey Pioneers, LLC* is continued to
Thursday, June 15, 2023, at 3:30 p.m. in Department 501**

**22CECG00447 *Yesenia Estrada v. Vicente Garcia* is continued to Thursday, June 1,
2023 at 3:30 p.m. in Department 501**

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Tentative Ruling

Re: ***Suastegui v. Slover, et al.***
Superior Court Case No. 22CECG01157

Hearing Date: May 31, 2023 (Dept. 501)

Motion: by Defendants Slover and CA Slover Trucking for Summary Judgment or, in the Alternative, Summary Adjudication

by Defendants Freshko Produce Services, LLC and Barnes for Order Granting Joinder to Defendants Slover and CA Slover Trucking's Motion for Summary Judgment

Tentative Ruling:

To grant defendants Freshko Produce Service, LLC and Barnes joinder to defendants Slover and CA Slover Trucking's motion for summary judgment.

To grant defendants Slover and CA Slover Trucking, joined by defendants Freshko Produce Services, LLC and Barnes, motion for summary judgment of the Complaint. The prevailing parties are directed to submit to the court, within 5 days of service of the minute order, a proposed Judgment consistent with the court's summary judgment order.

Explanation:

Defendants Slover and CA Slover Trucking, joined by defendants Freshko Produce Services, LLC and Barnes, move for summary judgment of the Complaint on the grounds that plaintiff Euriel Hernandez Suastegui lacks standing to bring claims for the wrongful death of decedent, Rosa Elia Farfan Parra, or claims on behalf of decedent surviving her death. (Code Civ. Proc. §§ 377.30 and 377.60.) Plaintiff's Complaint includes causes of action for motor vehicle negligence, general negligence and wrongful death, all seeking damages resulting from the loss of love, affection, society, service, comfort and support of decedent, Rosa Elia Farfan Parra.

A cause of action for wrongful death is a statutory claim intended to compensate specified persons for the loss of companionship and for other losses suffered as a result of a decedent's death. (*Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1263.) Those specified persons are set out in Code of Civil Procedure section 377.60, subdivision (a):

A cause of action for the death of a person caused by the wrongful act or neglect of another may be asserted by any of the following persons or by the decedent's personal representative on their behalf:

(a) The decedent's surviving spouse, domestic partner, children, and issue of deceased children, or, if there is no surviving issue of the decedent, the persons, including the surviving spouse or domestic partner, who would be

entitled to the property of the decedent by intestate succession. If the parents of the decedent would be entitled to bring an action under this subdivision, and the parents are deceased, then the legal guardians of the decedent, if any, may bring an action under this subdivision as if they were the decedent's parents.

(Code Civ. Proc., § 377.60, subd. (a).)

Here, the Complaint alleges plaintiff is the “wrongful death beneficiary” and successor in interest to all causes of action of decedent as the surviving husband of decedent. (Complaint, p. 6.) Plaintiff and decedent were in a romantic relationship and had four children together. (UMF 10.) However, it is undisputed that plaintiff and decedent were not legally married at the time of the motor vehicle accident on April 24, 2020. (UMF 7.) California does not recognize common law marriages unless validly created in another state which allows such marriages. (Fam. Code. §§ 300, subd. (a), 308; *Rosales v. Battle* (2003) 113 Cal.App.4th 1178, 1184.) It is undisputed that plaintiff and decedent resided together only in the State of California. (UMF 10.) As such, the undisputed evidence demonstrates plaintiff is not the surviving spouse of the decedent.

The statute also confers standing to one who would be entitled to the property of the decedent by intestate succession. (Code Civ. Proc. § 377.60, subd. (a).) Additionally, to be considered the decedent's successor in interest means one is the beneficiary of the decedent's estate. (*Id.* at §§ 377.10 and 377.11.) Here, it is undisputed that the decedent died intestate. (UMF 5.)

Where there is no surviving spouse, an entire intestate estate passes to the issue of decedent equally and if there is no surviving issue, to the decedent's parent or parents equally. (Prob. Code § 6402, subds. (a) and (b).) Where there is no surviving issue, parent, grandparent, the estate passes to any surviving issue of a predeceased spouse. (*Id.* at § 6402, subds. (d) and (e).) Where there is none, the estate passes to next of kin by ancestry. (*Id.* at § 6402, subd. (f).) Where there is no next of kin, the estate passes to the parents of a predeceased spouse or issue of those parents. (*Id.* at § 6402, subd. (g).) The progression of intestate succession does not include the unmarried partner of decedent.

Accordingly, defendants have met their burden to demonstrate plaintiff is neither the surviving spouse nor a beneficiary of the intestate decedent's estate such that he has standing to pursue an action for decedent's wrongful death or as decedent's successor in interest.

The decedent's personal representative may also bring an action for wrongful death of the decedent or one surviving the decedent. (Code Civ. Proc. §§ 377.30 and 377.60.) A personal representative is the executor or administrator appointed by order of the probate court. (Prob. Code §§ 58 and 8400.) It is undisputed that there is no personal representative of the decedent, Rosa Elia Farfan Parra. (UMF 6.)

Plaintiff has not submitted any evidence in opposition to the motion, and has thereby failed to raise any triable issues of material fact with regard to his standing to bring the claims set forth in the Complaint. Consequently, the court intends to grant summary judgment of the motor vehicle negligence, general negligence and wrongful

death causes of action as to defendants Slover, CA Slover Trucking, Freshko Produce Services, LLC and Barnes.

It is undisputed that the decedent and plaintiff had four children together. (UMF 10). Thus, it appears there may be persons with standing to pursue an action under Code of Civil Procedure section 377.60 and/or section 377.30. The granting of summary judgment based on plaintiff's lack of standing as the surviving spouse should not bar his potential appointment as the guardian ad litem for his and decedent's children to pursue claims should such an appointment be necessary.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: DTT **on** 5/26/2023.
(Judge's initials) (Date)