



City To Face Wrongful Death Suit

Janeway Case Ruling Has Statewide Impacts

By Chris Meagher

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In a decision with broad public policy implications throughout the state, the California Supreme Court ruled on July 16 against an appeal by the City of Santa Barbara, opining that written waivers do not cover gross negligence, regardless of the wording of the releases that people sign when participating in activities. The ruling also means the city must defend itself against charges of gross negligence in the 2002 death of Katie Janeway, a 14-year-old developmentally disabled girl who drowned in Los Banos del Mar Pool during a city-run summer camp. Following Katie's drowning, the Janeways filed a wrongful death lawsuit.

“Gross negligence ‘long has been defined’ in California and other jurisdictions as either a ‘want of even scant care’ or ‘an extreme departure from the ordinary standard of conduct,’” wrote Chief Justice Ronald George in the majority opinion. The city had initially sought to have the Janeways’ suit dismissed, insisting it was shielded by the liability waiver signed by Katie’s mother, Maureen. When the city lost on that point, it appealed, but an appellate court ruled that the waiver did not cover gross negligence. Santa Barbara officials had been looking for a firmer definition of what constitutes gross negligence, said city attorney Stephen Wiley. “It’s a very subjective definition,” Wiley said. “What does that mean? How is that different than ordinary negligence?”



Katie Janeway

Paul Tetreault, an attorney for NASCAR, wrote a legal brief in support of the city’s position, positing that the vague definition of gross negligence could hamper judges’ ability to dismiss cases, thus leading to more lawsuits. Lawyers on behalf of several other organizations—including the League of California Cities, Sierra Club, California Park & Recreation Society, and 24 Hour Fitness USA, Inc.—also filed briefs supporting the city’s position. The groups realized the implications of the ruling will be far-ranging and, according to Tetreault, decided input from the broader market was needed. “California law for decades and decades has been different ... This changes the law by a significant amount,” Tetreault said. Big organizations such as NASCAR and other major league sports will be able to survive the change, he explained, but an expected rise in insurance costs could force some smaller agencies to discontinue services or activities they provide.

The case came before the state’s highest court after the city appealed the decision of the Superior Court and the Court of Appeal. The Supreme Court denied the appeal, despite Maureen Janeway’s having signed a release which said she assumed “full responsibility for and risk of bodily injury, death or

property damage.” Katie suffered from cerebral palsy, epilepsy, and other disabilities and had attended Adventure Camp, a program for children with developmental problems, from 1999 to 2002.

On the day she died, Katie went swimming about an hour after having a seizure. “Katie had seizures often,” Wiley said. “Her parents didn’t want to restrict activities just because she had seizures.” Veronica Malong, Katie’s one-on-one counselor at the camp, said in a deposition she had looked away from the pool for about fifteen seconds. When she looked back, she couldn’t locate the girl. Five minutes later, after Malong had jumped into the pool to search and the pool had been evacuated, Katie was found at the bottom. She died the next day.

Yet to be decided by a jury is whether gross negligence occurred. The Janeway family, represented by attorney Roland Wrinkle, alleges it was gross negligence that Katie received spotty supervision from Malong and the city. Wiley disagreed, noting that the pool was operated in total compliance with all safety regulations. The only fault Wiley could see was that Malong was distracted and looked away, a circumstance “pretty clearly not gross negligence,” Wiley said.

The family is suing for damages to be determined at trial, which won’t begin for several months. The original claim was for \$200 million. Maureen Janeway referred questions to Wrinkle, who said the family hopes the case can be Katie’s legacy. Organizations “cannot feel free to grossly neglect, to have someone seriously injured or killed and walk away from it,” he said.