

## Wrongful death lawsuits weigh value of life for young victims

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Superior Court Justice Michael Klass listens to attorney Kevin Leonard arguing on behalf of Crystal Sorey, at right, who is the biological mother of Harmony Montgomery, a 5-year-old New Hampshire girl who was murdered in 2019 by her father, Adam Montgomery, during a hearing at Hillsborough County Superior Court in Manchester on Friday.

DAVID LANE/UNION LEADER



Keoni Curt Hubbard

Newborn Mattilyn Kitner had only been out of the hospital for 12 days when she was found dead on a couch in the home of her caregiver in 2022. She would be 4 years old now.

Harmony Montgomery should have been in kindergarten, but was never enrolled, when she was violently killed by her father, Adam Montgomery, in December 2019. She would be turning 12 on June 7.

Both girls had their entire lives ahead of them.

The grandparents of Mattilyn settled a wrongful death lawsuit against Division for Children, Youth and Families for the maximum amount allowed under state law: \$475,000.

Harmony's mother, Crystal Sorey, has filed two wrongful death lawsuits and settled one for \$2.25 million against DCYF. Another asks for a \$15.5 million judgment against Montgomery.

Given Mattilynn and Harmony's cases, some might wonder: How do experts and lawyers determine the monetary value of human life?

Unlike Adam Montgomery, who was sentenced to 56 years in prison for charges in connection to Harmony's death, no criminal charges were ever filed in Mattilynn's death, according to Kitner's attorney, Mike Lewis, a former homicide prosecutor.

Before the Kitner settlement was reached, DCYF relied on an expert report that determined Mattilyn's economic loss to be \$287,000 based on being female and born to poor, uneducated parents.

"The state hired an economist, who did everything he could to minimize the value of this little girl's life," Lewis said.

Lewis argued that the state, through the Department of Transportation, has claimed the value of human life is worth as much as \$15 million. He pointed to digital signs on the highway that read, "One death is too many."

Settlements involving state agencies are subject to a statutory cap of \$475,000 per incident, which Lewis considers an “extreme injustice.” The dollar figure for the cap has not been updated since 2007.

“The state has the huge advantage of an outdated — in my opinion unconstitutional — statutory cap on damages,” Lewis said.

#### Economics at play

Sorey continues to pursue a \$15.5 million judgment against Harmony’s father, even though he’s locked up for life and will likely never be able to pay. Such a judgment would essentially block Montgomery from obtaining any significant amount of money either through inheritance or if she seeks judgments from lawsuits down the road.

“The defendant robbed Harmony, her family, and the community of the person (Harmony) was going to become. He killed all potential she held and eradicated the potential good she could do for her family and the community,” Sorey’s lawyer, Kevin Leonard, said in a court filing.

Hillsborough County Judge Michael Klass took the \$15.5 million request under advisement during a hearing on Friday afternoon.

When it comes to a wrongful death lawsuit, a lot of hypotheticals come into play such as valuation sources, life expectancy and previous jury verdicts. Sorey’s lawsuit includes a 22-page appraisal of economic loss “measured as scientifically and accurately as the data permit,” according to the report by Gary M. Crakes, an economics consultant.

Crakes appraised the earnings for a female high school graduate, a woman with some college and a woman with a bachelor's degree. Leonard said it's based on evidence it would be “reasonable for the court to determine” Harmony would have received a bachelor’s degree and earned approximately \$2,984,000 from her working years.

Besides economic loss damages, the lawsuit also seeks non-economic loss damages and enhanced compensatory damages.

One of the challenges of a wrongful death lawsuit is putting value to the invaluable, said J. Tucker Merrigan, a Boston attorney representing the estate of an 11-year-old boy, Keoni Hubbard, who was killed after being struck by a propeller boat at Camp Bell, a Boy Scout property in Gilmanston.

"He had taken from him the ability to live another 70-plus years due to horrible negligence," Merrigan said. "So, the ask to a jury is how to value the life that he does not get to live."

Claims of the family members from Lexington, Mass., will also be considered, but the state has a cap for under consortium damages.

The case will go to trial in October, and Merrigan said he thinks a jury will award more than \$100 million in damages.

"Unfortunately, it is a tragic case that involved horrible disregard for life of campers in New Hampshire," he said.

#### Differing opinions

The grandmother of Mattilyn, Jennifer Kitner, filed a lawsuit in November 2023 alleging that DCYF caused Mattilynn's death while in DCYF's custody by knowingly placing the infant in a harmful environment that led to her death "under grotesque and unavoidable circumstances."

Mattilyn's mother, Kylieeanna Johnson, had a substance abuse disorder, which prompted DCYF to place Mattilyn elsewhere. The infant was placed in a home of another woman, Rhonda Packer, who was not licensed as a foster parent and had a history of drug abuse.

DCYF was aware that Johnson was either staying at Packer's home or visiting regularly.

Mattilyn was found dead wedged between two couch cushions. A witness said Johnson and Packer's brother-in-law had intercourse on the couch and smothered the baby. An autopsy showed that she died of asphyxia due to suffocation as a result of being placed in a dangerous sleep environment.

Like anything involving money, the debate over the value of life can be contentious.

Lewis sought to have the deposition, testimony and expert report by Dr. Lawrence Spizman excluded (if the case went to trial) saying DCYF had proposed "an approach to valuing Mattilyn's life that is offensive to the law and beyond it."

Spizman's report opined that Mattilyn's life was "preordained to lesser things," according to the request.

Lewis argued that Spizman's analysis discriminated against Mattilyn on the basis of sex. He cited a federal case where the judge found that factoring in gender-, race- and ethnicity-based statistics in earning capacity violated equal protection.

Merrimack County Superior Court Judge John Kissinger allowed Spizman's testimony but said he would allow vigorous cross-examination.

Lewis suggested a valuation of statistical life method, which the state's Department of Transportation uses to ensure safe highways and streets. The "comprehensive unit cost" for a fatal injury is \$15,130,940, according to DOT documents.

The DOT uses the number to advocate for investments in public safety, according to court documents.

The U.S. Department of Health and Human Services valuation of statistical life is \$13.1 million, according to court documents.

An expert hired by the defense reported Mattilyn likely would have earned between \$759,340 to \$1,128,331 in her life based on either a high school diploma or associate degree.

The New Hampshire Attorney General's Office objected to Lewis's request to throw out Spizman's report, saying Spizman performed a standard analysis of loss of earning capacity.

"Our legal system addresses tort injuries chiefly through monetary compensation, and one of the measures of that compensation is the value of 'the capacity to earn money during the deceased party's probable working life,'" the state said in its filing.

The state has "denied and disputed, and continues to deny and dispute, any allegations of wrongdoing, damages or liability in the action," according to a copy of the settlement obtained by the Union Leader.

No admission of wrongdoing

The settlement reached between Sorey and DCYF includes no admission of wrongdoing from the state.

For the case seeking a judgment against Adam Montgomery, Leonard used many of the same documents as Lewis, including U.S. Department of Health and Human Services Value of Statistical Life Guidelines, the U.S. Department of Transportation Valuation of a Statistical Life and the N.H. Department of Transportation Crash Cost Update.

"Courts routinely consider such governmental valuations as relevant benchmarks in assessing damages and this Court should as well. Each of these sources constitutes a public, authoritative governmental publication whose accuracy cannot reasonably be questioned," Leonard wrote.

Leonard asked Judge Klass to accept the calculation of economic loss by Crakes and to consider comparable jury verdicts.

“Harmony’s Estate is entitled to be compensated for the loss of her life, that is, for the shortening of her life. This amount recognizes Harmony’s inability, by virtue of her shortened life, to carry on and enjoy life in a way she would have had she lived longer,” Leonard wrote.

In the Kitner case, Lewis said the state failed to prosecute the death of the infant and let everyone off the hook.

“There has to be a way to give meaning in some fashion to what happened here,” Lewis said.

Lewis agrees with the state in that money is a primary way to seek justice when filing suit.

“It’s money or nothing,” Lewis said. “So, when you have the death of a child and someone is responsible, it’s money or nothing.”

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