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April 7

2013



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Damages Pt. 13: Sentimental Value in Personal Property

It has been almost a year since we completed our twelve-part series on various aspects of damages recoverable through a lawsuit. The series was extremely successful with the installment on contract damages remaining our most highly read post each month to date. It was always my intention to create twelve installments in the series and then to move on to different aspects of law. Nevertheless, there is a certain remote area of the law of damages that I think merits reopening our damages series and dictates this thirteenth installment. This week the Hoosier Litigation Blog shall take a look at the contentious area of damages that is the recovery for the sentimental value of personal property.

As the ability to recover for sentimental damages varies dramatically from state to state, our discussion will focus on how this form of damages functions under Indiana law. Though we shall focus on Indiana law, since there is a fantastic decision from D.C. District Judge Rosemary M. Collyer discussing this concept, we shall also incorporate Judge Collyer's discussion in her 2008 opinion in the case *Edmonds v. United States*.

In *Edmonds*, Judge Collyer was asked to determine whether under the law of the District of Columbia a person could seek to recover sentimental value for the loss of a piece of personal property – photographs. After recognizing that D.C. case

law had never addressed this issue before, Judge Collyer looked to cases in other states and the authoritative Restatement of the Law. Judge Collyer recognized that both the majority of states as well as the Restatement do not support permitting recovery for sentimental value for lost property. Ultimately, Judge Collyer chose to follow the majority approach. However, before coming to that conclusion, she did note that a handful of states recognize sentimental value as a damage that can be recovered.

In discussing the minority of states that allow recovery for sentimental value, Judge Collyer looked to the Washington Supreme Court case *Mieske v. Bartell Drug Co.* that stated:

What is sentimental value? The broad dictionary definition is that sentimental refers to being governed by feeling, sensibility or emotional idealism Webster's Third New International Dictionary (1963). Obviously that is not the exclusion contemplated by the statement that sentimental value is not to be compensated. If it were, no one would recover for the wrongful death of a spouse or a child. Rather, the type of sentiment which is not compensable is that which relates to indulging in feeling to an unwarranted extent or being affectedly or mawkishly emotional.

Judge Collyer also looked to an Indiana and Texas decision in which the respective courts found it appropriate to allow recovery for sentimental damages.

As we can tell from the *Edmonds* case, courts that have addressed the issue rarely allow for recovery of sentimental value in the loss of personal property. However, in limited circumstances, some courts have allowed for the recovery of sentimental damages. Indiana is a state that has case law in which the court found it proper to allow for recovery of sentimental damages. The marquee Indiana case addressing sentimental damages is *Campins v. Capels*.

In *Campins*, the case arose from the theft and destruction of four rings. Three of the rings were national racing championship rings awarded by United States Auto Club (USAC). The other, a free-form wedding band with twelve diamonds. The primary issue related to the rings was what damages were recoverable by the victims for the total loss of the rings. The standard rule for the loss of personal property is that “damages are measured by its fair market value at the time of the loss, fair market value being the price a willing seller will accept from a willing buyer.” The court found that the standard method was not appropriate to items of personal property that do not have a fair market value as they are not readily available on the market. The USAC rings in particular, the court noted, “were

coveted awards and symbols of certain achievements accomplished by very few, such awards not having many willing sellers and therefore no real market. These rings should be valued differently than other jewelry.”

The court, after discussing numerous decisions by other states regarding items with lesser fair market value than utility value to its true owner, determined that in cases such as *Campins* “the best method to ensure fairness to both parties is to receive a wide range of elements for consideration in the actual value.” Further, one such appropriate consideration is sentimental value, but only in limited circumstances. The court made sure to specify what it meant by sentimental value.

When we refer to sentimental value, we do not mean mawkishly emotional or unreasonable attachments to personal property. Rather, we are referring to the feelings generated by items of almost purely sentimental value, such as heirlooms, family papers and photographs, handicrafts, and trophies. What we are referring to basically are those items *generally* capable of generating sentimental feelings, not just emotions peculiar to the owner. In other words, any owner of these USAC rings would have similar feelings. The most apt analogy to our situation is that of the trophies. In two cases, courts have awarded damages based on the consideration of the “blood, sweat and tears” expended to win these objects. We see no difference in giving special consideration to items such as these and to the three USAC rings, awarded for three years of “blood, sweat and tears” and thus having special sentimental meaning[.]

Ultimately, the court concluded that the plaintiffs were entitled to seek sentimental value for the loss of the rings.

Thirteen years after the 1984 decision in *Campins*, the Indiana Court of Appeals once more addressed the availability of sentimental value damages in the case *Mitchell v. Mitchell*. In the case, the daughter of a deceased man sued her stepmother for depriving her of access to photographs, videos, and the personal effects of her late father. At issue in the case was whether sentimental value could be considered in determining the recoverable damages. In accordance with the *Campins* decision, the court found that sentimental value could be considered. The court also expanded the law on sentimental value damages by noting that the person asserting the claim is “in the best position to judge the amount of her damages.” This means that the court recognized that the jury’s consideration of assessing sentimental value damages may be entirely based upon the testimony of the person who had the sentimental relationship to the property.

The *Mitchell* decision, though useful for its discussion of the evidence in establishing sentimental value, did not do much else to reshape the sentimental value damages landscape. The items with sentimental value in *Mitchell* were specifically listed by the *Campins* court as being subject to sentimental value damages. Unlike *Mitchell*, the 2005 case *Lachenman v. Stice* sought to dramatically expand the available class of personal property for which sentimental value could be recovered.

In *Lachenman*, the plaintiff sought to recover the sentimental value for the loss of her Jack Russell terrier after it was attacked and killed by her neighbor's German Shepherd. The court concluded that "[a] family dog may well have sentimental value, but it is not an item of almost purely sentimental value such as an heirloom." Thus, the court found that it could not expand the sentimental value damages to include a family dog.

I will note, to the animal lovers out there – myself included in that category – there are many efforts to expand the law in other states to allow for the recovery of the loss of a pet beyond the mere cost of the animal. In fact, just last year a case in Colorado permitted recovery for the loss of a pet. However, that case is the only one of its kind of which I am aware. Further, there are a lot of procedural aspects to the decision that keep it from being a case to get very excited over.

So to review what we've discussed today. Most states that have addressed the issue have found that sentimental value is not recoverable for the loss of personal property. Indiana has recognized a limited set of circumstances that allows for the recovery of sentimental value. One key to determining whether sentimental value may be considered for recovery is whether the item is devoid of any value other than sentimental value. Further, where sentimental value is recoverable, the best evidence toward that value may be the testimony of the person who suffered the loss.

Join us again next time for further discussion of developments in the law.

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- Pt. 2 – Duty to Mitigate Damages
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- Pt. 5 – Assessing Damages When Injured Person is Partially at Fault
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- Pt. 9 – Damages for the Loss of Chance of Survival from Medical Malpractice
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- Pt. 11 – Wrongful Death
- Pt. 12 – Contract Damages

Sources

- *Edmonds v. United States*, 563 F. Supp. 2d 196 (D.D.C. 2008).
- Restatement (Second) Torts § 911, *cmt. e* (1979).
- *Mieske v. Bartell Drug Co.*, 92 Wash.2d 40, 593 P.2d 1308, 1311 (Wash. 1979).
- *Campins v. Capels*, 461 N.E.2d 712 (Ind. Ct. App. 1984).
- *Mitchell v. Mitchell*, 685 N.E.2d 1083 (Ind. Ct. App. 1997), *aff'd in part and rev'd on other grounds*, 695 N.E.2d 920 (Ind. 1998).
- *Lachenman v. Stice*, 838 N.E.2d 451 (Ind. Ct. App. 2005).

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