

Jonathan Rosenfeld's Nursing Homes Abuse Blog

New Illinois Court Decision Holds That No Punitive Damages Can Be Awarded In Survival Actions Involving Nursing Home Negligence

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Some of the substantial verdicts we have recently discussed at the [Nursing Homes Abuse Blog here](#) and [here](#) involve jury verdicts with [punitive damage](#) components. While some of these verdicts may seem excessive, most of the time the damages are awarded because the facilities conduct was so extreme that it *deserves to be punished*. In most jurisdictions, the punitive damages can only be pursued after a judge has approved the punitive damage portion of the lawsuit.

Unlike compensatory damages, that compensate an injured party, punitive damages are intended to punish the wrongdoing facility. While punitive damages may be awarded against one facility, many times the punitive award serves as a wake up call to other facilities to improve their care or risk similar awards.

However, the punitive damage aspect of many nursing home lawsuits will now have limited use in some cases involving Illinois nursing homes. Now, if a member of your family dies as a result of injuries caused by the nursing home's willful and wanton misconduct under the Illinois Nursing Home Care Act, you are no longer entitled to punitive damages in a survival action.

In [Vincent v. Alden-Park Strathmoor, Inc.](#), a case decided on April 7, 2010, the Second District Illinois Appellate Court held that an estate representative cannot seek common law punitive damages in a survival action for willful and wanton violations of the Illinois Nursing Home Care Act (NHCA - [210 ILCS 45/1](#)). The court decided that there was no statutory basis for punitive damages.

This case was brought by Thomas Vincent, the legal representative of Marjorie Vincent's estate. He sued [Alden-Park Strathmoor](#) for injuries that Ms. Vincent

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suffered while in Alden-Park Strathmoor's care. [Alden Park Strathmoor](#) is a [one-star](#) Medicare rated nursing home facility in Rockford, IL. This facility had 17 total health deficiencies between February 2009 and April 2010. This is 9 more than the average number of health deficiencies in both Illinois and the United States.

Mr. Thomas Vincent filed a three count complaint against the nursing home:

- Count I – defendant's negligence violated the Nursing Home Care Act
- Count II – defendant's actions violated the Wrongful Death Act
- Count III – defendant's willful and wanton conduct violated the Nursing Home Care Act with the plaintiff reserving the right to seek punitive damages for the alleged willful and wanton conduct

The main interest in this case comes with Count III of the complaint, where the plaintiff reserved the right to seek punitive damages for the defendant's alleged willful and wanton conduct, under section 2-604.1 of the Code of Civil Procedure ([735 ILCS 5/2-604/1](#)), which pertains to the pleading of punitive damages. The Survival Act ([755 ILCS 5/1](#)) allows an estate's representative to maintain any actions that accrued to the decedent prior to death.

The court noted that the Survival Act allows "actions to recover damages for an injury to the person" to survive a decedent's death. However, the court found that the Survival Act did neither provide for punitive damages nor were there strong equitable considerations favoring survival of punitive damages claims.

Therefore, even in cases where a nursing home's willful and wanton misconduct results in the death of a resident, the administrator of the decedent's estate may not seek punitive damages in a survival action. Instead, the administrator must rely upon the civil and criminal penalties provided by the Nursing Home Care Act for violations of that Act.

Sources:

[Illinois Court Opinions: Vincent v. Alden-Park Strathmoor, Inc.](#)

[Illinois State Bar Association: Vincent v. Alden-Park Strathmoor, Inc.](#)

[Illinois General Assembly: 735 ILCS 5/2-604.1 – Pleading of Punitive Damages](#)

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