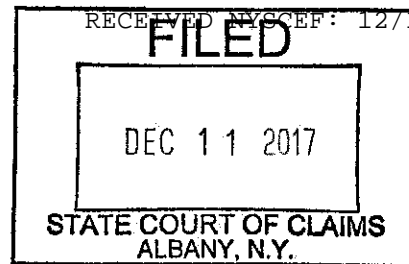


Strickland v State of New York
2017 NY Slip Op 32871(U)
November 9, 2017
Court of Claims
Docket Number: 120654
Judge: Frank P. Milano
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STATE OF NEW YORK COURT OF CLAIMS

**SELENA STRICKLAND, as
Administratrix of the Estate of Leonard
Strickland,**

Claimant,

DECISION

-v-

THE STATE OF NEW YORK,

Claim No. 120654

Defendant.

BEFORE:

**HON. FRANK P. MILANO
Judge of the Court of Claims**

APPEARANCES:

**For Claimant:
STEIN SCHWARTZ CHESIR & ROSH, LLP
By: Law Offices of John R. Seebold, PLLC
By: John R. Seebold, Esq.**

**For Defendant:
HON. ERIC T. SCHNEIDERMAN
New York State Attorney General
By: Michael Rizzo, Esq.
Assistant Attorney General**

This Court, by Decision filed October 26, 2016, found defendant liable for use of excessive force upon Leonard Strickland at Clinton Correctional Facility during a specific and defined period of time on October 3, 2010. Although Mr. Strickland died that day, the Court further found that claimant (Selena Strickland, as Administratrix of the Estate of Leonard Strickland) failed to prove that any defendant conduct proximately caused the death of Leonard Strickland.

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Accordingly, a trial was conducted July 20, 2017 to determine what damages, if any, were proven for Leonard Strickland's conscious pain and suffering caused by defendant's use of excessive force on October 3, 2010. One witness testified at the trial on damages, claimant's expert, Dr. Alan Schechter, who had also testified as an expert at the previously conducted trial on liability. The parties, at the outset of the trial on damages, stipulated that all of the evidence adduced at the trial on liability, both testimonial and documentary, was incorporated by reference into the trial on damages.

In determining that defendant used excessive force upon Leonard Strickland on October 3, 2010, the Court, in its Decision filed October 26, 2016 found, "defendant's choice to drag claimant through a corridor, onto an elevator and down another corridor, face down, by his hands cuffed behind his back and above his head, placing his full (and substantial) body weight upon his hyper-extended shoulders, was inappropriate and negligent." Defendant's use of such force occurred within a time period of two minutes, thirty-five seconds, and was memorialized on a videotape recording (trial on liability Exhibit #1/trial on damages Exhibit #2) during a time-stamped running time of the videotape from the 5:00 minute/second mark to the 7:35 minute/second mark.

Leonard Strickland was intermittently dragged during this two minute, thirty-five second period of time as his lower body dragged across the floor down a corridor, across the grate of an elevator threshold and then down another corridor. The videotape, at a later point, clearly shows Mr. Strickland with two bloodied knees, injuries also documented by trial on damages Exhibits #1, #3 and #4.

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The Court, fully crediting the testimony and opinion of Dr. Schechter, finds that during the two minute, thirty-five second period of time in question, Leonard Strickland demonstrated two objective manifestations of consciousness, first at the 6:44 mark of the videotape when, while on the floor of the elevator, he moves both of his feet and both of his legs, flexing his legs at the knee, and next at the 7:10/7:11 mark of the videotape when he emits an audible expression of pain.

Dr. Schechter further opined, without contradiction, that Leonard Strickland lost consciousness at some point between the noted time of 7:11 and 7:44 on the videotape. Based upon the Court's findings of fact during the trial on liability, and further based upon the credited testimony of Dr. Schechter at both trials, the Court now finds that Leonard Strickland endured conscious pain and suffering, caused by defendant's use of excessive force, for a period of two minutes, thirty-five seconds, represented by the time period between the 5:00 minute/second mark and the 7:35 minute/second mark of the videotape.

The Court next finds, again based upon its trial on liability findings and upon Dr. Schechter's credited testimony, that the source of Leonard Strickland's pain was his shoulders and his legs/knees, attributable to the manner by which he was transported by defendant during the time period in question. This finding is further supported by trial on damages Exhibits #1, #3 and #4, which note bilateral bruising to both of Leonard Strickland's shoulders and bilateral abrasions to both of Leonard Strickland's knees (Exhibit #3), and which further note abrasions to both of Leonard Strickland's knees (Exhibits #1 and #4).

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Claimant, in post-trial briefing, cites a number of cases awarding damages which range from \$300,000 to \$2,000,000. All of the cases cited by claimant, however, involve injuries to litigants that substantially deviate from the instant case in both quantitative and qualitative ways.

While the conscious pain and suffering endured by Leonard Strickland was real and meaningful, it was for a more limited duration and from the result of injuries far less catastrophic than those highlighted by claimant. Next, no evidence was presented to suggest, let alone prove, that Mr. Strickland had any apprehension of impending death due to defendant's use of excessive force. Finally, no trial evidence presented proved the level or degree of conscious pain and suffering endured by Leonard Strickland, be it modest or excruciating.

In consideration of all of the foregoing, claimant is awarded damages in the amount of \$75,000 attributable to Leonard Strickland's conscious pain and suffering, endured by reason of defendant's use of excessive force on October 3, 2010, with interest to be computed from the date liability was determined, September 28, 2016, together with the amount of the filing fee, if any, pursuant to Court of Claims Act §11-a(2).

All motions not previously decided are hereby denied.

Let judgment be entered accordingly.

Albany, New York
November 9, 2017



FRANK P. MILANO
Judge of the Court of Claims