

Jul 2023 | [Articles Blog: The Westchester Litigator](#)

Westchester Supreme Court Addresses Question of First Impression Under New York's Child Victim's Act: Does the CVA's Revival Statute Apply to Wrongful Death Claims?

In February 2019, New York State enacted the Child Victim's Act (the "CVA"), which, *inter alia*, opened a one-year window reviving civil actions based on certain criminal sexual offenses against minors for which the statute of limitations had already run. The "window" period was thereafter extended for an additional year. The purpose of the CVA was to revive civil claims by survivors of childhood sexual abuse that were time-barred under the existing statute of limitations and to provide a more generous statute of limitations to such survivors in the future. Recently, the Westchester County Supreme Court (Steinman, J.) addressed the novel issue of whether the CVA "window" also revives wrongful death claims. In other words, does the CVA revive claims by a survivor's decedents or only those brought by survivors?

The Case: *The Estate of R.S.G. v. Catholic Foreign Mission Society of America, Inc., et al.*

R.S.G. allegedly was sexually abused as a minor by a priest at the Church of Saint John and Saint Mary between 1962 and 1969. He did not pursue claims for that abuse and passed away in 2019. Following the passage of the CVA, R.S.G.'s heirs brought claims for, *inter alia*, wrongful death against the church and several other Catholic organizations. The church moved to dismiss, *inter alia*, the wrongful death claim, arguing that the CVA did not revive it and so was time-barred.

Noting that the question of the CVA's impact on wrongful death claims was a matter of first impression, Judge Steinman undertook an extensive analysis of the CVA and its legislative history.

The judge began by noting that both the CVA and New York's Estate, Powers and Trusts law (EPTL) §5-4.3, the statute governing wrongful death, "must be strictly construed." This scrutiny is warranted because EPTL §5-4.3 is the sole basis for a wrongful death claim, and the CVA, a revival statute, is an extreme exercise of legislative power.

In looking at the language of the CVA, the court focused on the expansion of the statute of limitations in CPLR 214-g: "[E]very civil claim or cause of action brought ... by a person for physical, psychological, or other injury or condition suffered as a result of [the wrongful] conduct." According to Judge Steinman, that language "reflects that the statute benefits claims 'by a person for physical, psychological, or other injury or condition suffered as a result of [the wrongful] conduct.' This language reflects an intent ... to benefit those plaintiffs who suffered sexual abuse, not a victim's distributees seeking to recover for their own purely

pecuniary losses.” The court found the legislative history further supported that conclusion as a memorandum authored by the CVA’s sponsors and sent to former Governor Cuomo focused on “victims” and “survivors” and made no mention of benefiting the heirs of survivors.

Finally, the court distinguished the CVA from several other legislation that expressly revived wrongful death claims, concluding that the legislature is fully equipped to revive wrongful death claims when it intends to do so. In the absence of such language in the CVA or any evidence that the legislature intended to provide such a remedy, the court held the CVA inapplicable to wrongful death claims and dismissed the plaintiff’s claim as untimely.

Takeaway

With its recent passage, the New York State courts are still grappling with the interpretation and scope of the CVA. With Judge Steinman’s opinion in *The Estate of R.S.G.*, the Westchester Supreme Court is the first court to weigh in on applying the CVA revival window to wrongful death claims, holding the CVA does not apply, and such claims cannot be revived. It will be interesting to see whether and how other trial courts and potentially the appellate courts tackle the issue in the future.