

Hernandez v. First Student, Inc. (2DCA, LA County, Appeal No. B281161, July 9, 2019)
Evidence of a mother's drug use and how it relates to her relationship with her deceased son
was relevant in determining damages awarded in a wrongful death case

FACTS/ PROCEDURE

After dropping off her last student on her school bus route in Glendale, CA, a bus driver named Barbara Calderon hit and killed a 13-year-old named Jonathan Hernandez when he rode his bike into the street. When police arrived at the scene, Calderon admitted that she had seen Jonathan riding his bike on the sidewalk, but that she did not see him drive his bike into the street.

Jonathan's mother, Karen Hernandez, and his father filed a wrongful death action on his behalf against Calderon and the owner of the bus, First Student Inc. The jury found that both Jonathan and Calderon were negligent, attributing 80% fault to Jonathan. At the damages phase of the trial, the jury was told that Karen used crystal methamphetamine for a majority of Jonathan's life. She admitted to becoming aggressive toward Jonathan and was at one point arrested for assaulting a man in Jonathan's presence while she was under the influence of drugs. The jury proceeded to award Jonathan's parents with \$250,000 in damages. Jonathan's parents filed a lengthy and detailed motion for a new trial on the grounds of juror misconduct, erroneous evidentiary and instructional rulings, and attorney misconduct. The trial court issued a 25-page ruling denying the parents' motion. This appeal followed. Jonathan's parents contended on appeal that the court abused its discretion in permitting evidence of Karen's drug use during the damages phase of trial and argued the information created a bias among the jury.

HOLDING/DISCUSSION

Affirmed. Factors such as the closeness of a family unit, the depth of their love and affections, and the nature of the personal relationship between decedent and the survivors are proper considerations for a jury assessing non-economic damages.

While a surviving parent's drug use has the potential to be prejudicial and may not be a factor in every case, it was relevant here. The evidence regarding Karen's drug abuse revealed that at times Karen aggressive and assaulted a man in front of Jonathan while under the influence. Even though favorable evidence such as the fact that Karen's parental rights were never terminated is admissible, unfavorable evidence is equally admissible in determining the amount of damages. Karen relied on *Hernandez v. County of Los Angeles*, where the court found that the evidence of marijuana use amounted to undue prejudice. However, this argument fails because there is probative value for Karen demonstrating the quality of her relationship with her son Jonathan.