

***B.B. v. County of Los Angeles* (2018) 25 Cal. App. 5th 115**

Proposition 51 requires a judgment for non-economic damages be allocated in proportion to the fault of each tortfeasor, regardless of whether each tort was negligent or intentional.

FACTS AND PROCEDURAL POSTURE

Darren Burley suffered brain death from lack of oxygen due to a cardiac arrest following a prolonged and violent struggle with several deputies of the Los Angeles County Sheriff's Department, who were called to arrest Burley after he assaulted a woman while under the apparent influence of cocaine, marijuana, and PCP. In a wrongful death action brought by Burley's estranged wife and five children (Plaintiffs) against the deputies and the County of Los Angeles (County) (collectively, Defendants), a jury found Deputy David Aviles liable for intentional battery by use of excessive force and Deputy Paul Beserra liable for negligence resulting in Burley's death. The jury attributed 40 percent of the fault to Burley for his own death, and found Deputies Aviles and Beserra each 20 percent at fault, while allocating the remaining 20 percent of fault to the other deputies. The jury awarded Plaintiffs \$8 million in noneconomic damages, and the trial court entered judgment against Aviles for the full amount of the award based on the jury's finding that he intentionally harmed Burley.

On appeal, Defendants argued the court erred in holding Deputy Aviles liable for the full noneconomic damages award despite the jury's comparative fault allocation. The court of appeal agreed that Civil Code section 1431.2 mandates allocation of the noneconomic damages award in proportion to each defendant's comparative fault, notwithstanding the jury's finding of intentional misconduct.

The court relied primarily on the Supreme Court decision *DaFonte v. Up-Right, Inc.* (1992) 2 Cal.4th 593, 602 in reaching its conclusion. *DaFonte* held the plain language of section 1431.2 unambiguously applied in "every case" to shield "every 'defendant'" from joint liability for noneconomic damages not attributable to his or her own comparative fault. Because 1431.2 unambiguously refers to "each defendant," the statute's meaning is clear and it is not proper to engage in statutory construction.

Accordingly, the court of appeal directed the trial court to vacate the judgment and enter a separate judgment against Deputy Beserra and the County and a separate judgment against Deputy Aviles and the County, holding them liable for the noneconomic damages award in an amount proportionate to the jury's comparative fault determinations.