

legal lines

from
MOORE, SUSLER, MCNUTT & WRIGLEY
Lawyers

One Court – Two Cases...and O.J. Plays On

by
Karen Root and Bill McNutt

Well, after twelve grueling months of testimony and television drama, the O.J. Simpson trial is finally over. Or is it?

Civil actions based on theories of the wrongful death of Ronald Goldman and Nicole Brown Simpson have been filed by the respective families. Both lawsuits name O.J. as a defendant, as well as unnamed other persons known as “Does 1 through 10.” But these lawsuits are *civil* actions and differ greatly from the criminal trial that has been highly scrutinized by the media.

When the public learned these lawsuits had been filed, questions arose such as, “How can O.J. be tried again—isn’t that double jeopardy?”, “The jury already decided O.J. was innocent—what’s the point of suing him for wrongful death?”, and “Won’t O.J. be able to take the 5th again?” These are valid questions and reflect a general misunderstanding about our legal system. But there are legitimate explanations for these inquiries and other questions about the O.J. case.

First, though, let’s clear up a common misconception: O.J. Simpson was not found to be innocent of wrongdoing in connection with the deaths of his ex-wife and Goldman. The jury simply found that the evidence did not prove, beyond a reasonable doubt, that he was guilty of murder. That distinction is important, particularly in light of the pending lawsuit. A new civil jury could indeed find that O.J. contributed in some way to the deaths and, as a result, should be held monetarily liable to the surviving families.

Second, O.J. will not (and in fact, cannot) be subjected to any sort of

criminal punishment such as imprisonment or a fine even if the plaintiffs win in the pending suits. That would be double jeopardy and the U.S. Constitution does not allow such exposure for the same crime. That does not mean, however, that O.J. might not be required to pay damages to the plaintiffs if a jury finds, by a preponderance of the evidence (a much less exacting standard than the one required in a criminal case), that his actions led or contributed to the decedents’ deaths.

Third, O.J. will be made to testify this time. Before in the criminal trial he could not be forced to incriminate himself because of the protections of the Fifth Amendment to the U.S. Constitution, which prohibits the government from requiring persons accused of crime to testify against themselves. Now, however, O.J. cannot be further prosecuted so he can be made to testify because the Fifth Amendment no longer applies. For that reason he has now been required to answer questions in a deposition (testimony given before trial for discovery purposes) so that the lawyers for the families will know what he has to say. Interestingly, Officer Mark Furhman, who found the glove, but apparently lied when asked about his use of pejoratives against African-Americans, now may invoke the Fifth Amendment because he is in jeopardy of being tried for perjury.

Civil v. Criminal Proceedings

All state courts have both criminal and civil trials. A criminal case is tried for the violation of the penal statutes of that particular state. Defendants are guaranteed rights

under the state laws and constitutions, and by the U.S. Constitution.

Civil trials, on the other hand, are based both on the statutes and common law (precedents which have been developed by the courts of the state) and the civil court follows a more flexible set of procedures.

Another difference is the timing and depth of pretrial discovery that can be conducted. Criminal defendants are not immediately entitled to see the evidence gathered by law enforcement agencies and, in fact, if charges are not brought by the public prosecutor, it is unlikely the accused will ever know what incriminating information the authorities had.

In civil cases, on the other hand, full and open discovery allows the opposition access to almost any information it wants. In fact, the court routinely will impose sanctions (or even dismiss the suit) against uncooperative parties.

Keep in mind the major distinction between a criminal trial and a civil trial is at the end of the case. A person found guilty in a criminal trial may lose life, liberty or be fined. In civil trials, however, a person found liable will only be required to pay monetary damages or possibly be subjected to some form of an injunction against future conduct. In our American culture, the imposition of a money judgment, even if it were a very large one, is not considered criminal punishment.

It thus appears that O.J. will continue to be in the forefront of the news. The court docket for civil trials moves much more slowly than in criminal cases. It could be many months before the O.J. case is back in court before a different jury to decide whether he must pay money for the deaths of the victims.

It's Renewal Time for Senior Citizens Tax Freeze Homestead Exemption

Are you, or is someone you know, entitled to receive or renew a Senior Citizens Tax Freeze Homestead Exemption?

This law allows a qualified senior citizens to elect to freeze the equalized assessed value of his or her residence at the greater of that value for 1993 or for the first taxable year the applicant is eligible. Eligibility requirements are:

- *Having attained 65 years of age
- *A total household income of no more than \$35,000
- *The real property is used as the principal residence
- *The real property is owned or leased by the eligible applicant
- *The applicant is liable for the payment of real property taxes.

The forms for filing are now available at the Office of the Supervisor of Assessments on the fourth floor in the new Macon County Office Building, 141 S. Main Street (the old Ambassador Hotel), at local banks and at the Macon County Senior Center downtown, or we will send you a copy upon request. Filing deadline is July 1st.

THE BIG PICTURE...

Our annual firm conference with you in mind!

On a beautiful Friday afternoon and Saturday in mid-October the lawyers, paralegals and office manager assembled for the firm's 14th Annual Meeting, this year planned by Karen Williams, Marilyn Cushing and Karen Root.

The theme was the Big Picture and such terms as "sharpening the focus", "exposing the negative" and "zooming in on goals" were employed in "developing" the picture of Moore, Susler, McNutt & Wrigley as we hurtle toward the 21st century.

You were definitely in the picture as we sought answers for questions such as:

1. What are the unmet needs of clients now?
2. What services will help clients in the future and how can we be ready to provide them?
3. What roles can we and our support staff play in serving our clients better?

Growing out of the October meeting, we have begun monthly meetings of our entire staff and in December we all

devoted an additional half day to "The Big Picture". A fun part of that session was attempting to unscramble eight words related to what Marilyn Cushing, the scrambler, sees as good service and making up a successful law firm.

We thought you might enjoy attempting to unscramble them, too.

- leecnxelec
- ricgan
- wekgendlo
- soryutce
- icyfecenf
- depir
- trosppmesn
- pretesc

Mailed-in or dropped-off correct unscramblings of all eight words will bring you the one of the following which you select:

- A. The legal check-up;
- B. Some helpful hints about use of health care powers of attorney and property powers of attorney;
- C. Some questions and answers concerning living trusts;
- D. One-half hour consultation with one of our lawyers of your choice.

Deadline

Deadline

Deadline

Deadline

If you are eligible for deferral of your 1996 real property taxes...qualifications:

- ✓ 65 years or older
- ✓ household income of \$25,000 or less
- ✓ you've lived in the residence for at least three years
- ✓ no delinquent taxes
- ✓ prior deferrals don't total 80% of your equity in your residence.

The deferral amounts to a loan at 6% interest, repayable only after your lifetime or when you sell the property. Applications are available at the Macon County Office Building.

Meet Kit Dunn



Since late 1991 Kathryn "Kit" Dunn has been a valued legal secretary at Moore, Susler, McNutt & Wrigley.

Born in LaGrange, Illinois, Kit graduated from Eisenhower High School and attended Southern Illinois University at Carbondale. In August, 1993 she completed a paralegal course through the American Institute for Paralegal Studies, Inc., enhancing her ability to help us provide the best services to our clients.

Kit and her husband Paul have two children: Nicole, age 11 and Kyle, age 6. Nicole has followed in Kit's "hoof" steps in a love of horses. Kit formerly competed on hunter/jumpers.

Moore, Susler, McNutt & Wrigley
3071 North Water Street
Decatur, IL 62526

(217) 872-1600

Vol. I, Issue 5 - February 1996

This publication is distributed with the understanding that neither any author nor the law firm is rendering legal or other professional advice or opinions on specific facts or matters, and accordingly neither assumes any liability whatsoever in connection with its use.