[Cite as *Fudacz v. Univ. of Toledo Med. Ctr.*, 2013-Ohio-5956.]

Court of Claims of Ohio
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SARAH FUDACZ, et al.

Plaintiffs

v.

UNIVERSITY OF TOLEDO MEDICAL CENTER

Defendant

Case No. 2013-00441

Judge Dale A. Crawford

ENTRY OF PARTIAL DISMISSAL

Background

{¶ 1} On July 29, 2013, Plaintiffs filed a complaint against Defendant, University of Toledo Medical Center (UTMC), for medical negligence, parental loss of consortium, sibling loss of consortium, and negligent infliction of emotional distress. On August 27, 2013, Defendant filed an Answer to Plaintiffs' Complaint as well as a Motion to Dismiss Counts II and III of the Complaint pursuant to Civ.R. 12(B)(6), and on September 13, 2013, Plaintiffs filed a Memorandum Contra Defendant's Motion.

{¶ 2} This case arises from a kidney transplant that was scheduled to take place at UTMC on August 10, 2012. Plaintiff Sarah Fudacz (Sarah) was scheduled to receive a kidney from her younger brother, Plaintiff Paul Fudacz, Jr. (Paul Jr.), who was a perfect match. The removal of the kidney from Paul Jr. was successful and the kidney was placed in a slush machine for temporary storage before it was to be moved to Sarah's operating room. A nurse, Judith Moore, returned to Paul Jr.'s operating room after her lunch break and unknowingly flushed the kidney down a disposal for medical waste, causing the kidney to become unusable. At the same time, Sarah was fully prepared for surgery, under anesthesia, and ready for the transplant. However,

because the kidney had been disposed of, the surgery could not continue as scheduled, and Sarah was revived from anesthesia and taken to recovery.

{¶ 3} During this period, Paul Sr. and Ellen Fudacz (Paul and Ellen), Sarah and Paul Jr.'s parents, were in the waiting room. They were informed that Paul Jr.'s kidney had been successfully removed. Paul Jr. was taken to recovery, but Paul and Ellen were not informed of this. An hour later, they were informed that Sarah, and not Paul Jr., had been moved to recovery. Confused as to why Sarah was moved to recovery before her surgery was scheduled to be over and why they were not informed that Paul Jr. had been moved to recovery, Paul and Ellen attempted to get more detailed information on the status of both of their children. The nurses were not able to provide more information other than what was available on the monitors in the waiting area. Eventually, Paul and Ellen were informed that Paul Jr.'s kidney had been accidentally flushed down a medical waste hopper. The parents then went to visit Sarah, who had thought that her brother died in surgery and that was the reason why she did not have the operation performed on her. Afterward, the parents had to inform Paul Jr. that the kidney could not be transplanted to Sarah because the kidney had been flushed down a disposal. Although the procedure could not continue on that day, Sarah eventually received a replacement kidney on November 13, 2012.

{¶ 4} Count One of Plaintiffs' Complaint alleges medical negligence with respect to Sarah and Paul Jr.'s medical care and treatment. Counts Two and Four allege parental loss of consortium and negligent infliction of emotional distress for Plaintiffs Paul Sr. and Ellen Fudacz. Count Three alleges sibling loss of consortium for Plaintiffs Christopher, Marie, John, and Joseph Fudacz.

{¶ 5} In its Motion to Dismiss, Defendant argues that Counts Two and Three should be dismissed pursuant to Civ.R. 12(B)(6). In particular, Defendant asserts that loss of consortium claims have not been recognized in Ohio courts for parents of adult children nor has the claim been recognized for siblings. In construing a motion to dismiss pursuant to Rule 12(B)(6), the court must presume that all factual allegations of

the complaint are true and make all reasonable inferences in favor of the non-moving party. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 532 N.E.2d 753 (1988). Then, before the court may dismiss the complaint, it must appear beyond doubt that plaintiff can prove no set of facts entitling it to recover. *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975).

History of Consortium Claims

{¶ 6} The evolution of the loss of consortium claim is a complicated one and requires a detailed analysis in order to appropriately make a determination in this case. The history of loss of consortium claims can be traced back to Roman civil law under the doctrine of *paterfamilias*, which gave fathers ownership of their wives and children and the right to recover for injuries to them. This doctrine was adopted in the early 1800s under English common law as a remedy for deprivation of the benefits of a family relationship due to injuries caused by a tortfeasor. The early cases of consortium arose from the spousal relationship under the tenet of *per quod servitium et consortium amisit*, which means "in consequence of which he lost her society and services."1

{¶ 7} By the 1800s, the loss of consortium claim was adopted by American jurisprudence. With the change in social perspectives, the law of consortium also changed and the claim for a husband's loss of consortium expanded from loss of just services to include the loss of love, care, and companionship.2 The property and services aspect of the claim had then become only part of the claim as a whole. The concept changed even more drastically when the court of appeals for the District of Columbia allowed a wife to maintain a separate action for injuries to her husband stating that "the husband and the wife have equal rights in the marriage relation, which will receive equal protection of the law." *Hitaffer v. Argonne Co.*, 183 F.2d 811 (D.C. Cir. 1950). Accordingly, both husband and wife can now sue for negligent or intentional injury to the other in all jurisdictions.

{¶ 8} As a natural progression of consortium claims, filial loss of consortium became the next frontier for the courts. Similarly to spousal consortium claims, filial consortium claims began as claims for loss of services of the child but progressed to a more emotional nature of loss. The justification for allowing children to recover for a loss of a parent is that there is no substantial difference between the love and affection children have with their parents compared to what a husband and wife has with each other, other than sexually. The first case to allow a derivative claim of parents for loss of filial consortium was *Shockley v. Prier*, 225 N.W.2d 495 (Wis. 1975). In this case, parents of a premature infant brought a claim against the hospital for negligently caring for the infant, causing the infant to suffer permanent blindness and disfigurement. The Wisconsin Supreme Court held that a cause of action for loss of filial consortium was indeed valid, and that the validity of the claim stemmed from a natural extension of tort law. This progression did not occur nationally though, and the states, including Ohio, continue to be split on how far to extend the right to bring consortium claims.

History of Consortium Claims in Ohio

{¶ 9} Ohio courts have generally defined the term "consortium" as the loss of "services society, companionship, comfort, love, and solace." *Gallimore v. Children's Hospital Medical Center*, 67 Ohio St.3d 244, 246; 617 N.E.2d 1052 (1993). The term "consortium" is defined by Merriam-Webster as "the legal right of one spouse to the company, affection, and assistance of and to sexual relations with the other."3 While the dictionary defines the term in this way, the Ohio Revised Code does not define the term at all. However, the term is found in numerous statutes in the code. The main reference to the term can be found in R.C. 2315.18, which defines noneconomic loss as "nonpecuniary harm that results from an injury or loss to person or property that is a subject of a tort action, including, but not limited to, pain and suffering, loss of society, *consortium*, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education, disfigurement, mental anguish, and any

other intangible loss." *Id*. at (A)(4) [Emphasis added.]. The term can also be found in Ohio Revised Code sections 2323.55–.56, 2724.05–.06, 2929.01, 2245.40, and 3955.01. In Ohio's wrongful death statute, the term "consortium" is not specifically used, but the statute allows a similar claim to be brought "in the name of the personal representative of the decedent for the exclusive benefit of the surviving spouse, the children, and the parents of the decedent, all of whom are rebuttably presumed to have suffered damages by reason of the wrongful death, and for the exclusive benefit of the other next of kin of the decedent." R.C. 2125.02(A)(1). As with many states, courts in Ohio have looked to the wrongful death statutes when wrestling with consortium claims, debating the inconsistency of allowing recovery for death of, but not for a serious injury to, a family member. Consequently, there is not much statutory guidance given to the courts with regard to the determination of who can bring consortium claims. But as the court in *Gallimore* stated, "[w]hen the common law has been out of step with the times, and the legislature, for whatever reason, has not acted, [the court has] undertaken to change the law, and rightfully so." *Gallimore*, at 253.

{¶ 10} The history of loss of consortium claims in Ohio is nearly as murky as the nation as a whole. From the *Clark v. Bayer*, 32 Ohio St. 299 (1877) case, which allowed a grandparent to bring a claim for loss of services for injured grandchildren, to *Keaton v. Ribbeck*, 58 Ohio St. 2d 443, 391 N.E.2d 307 (1979), which held that Ohio did not recognize a loss of filial consortium action, Ohio courts have been conflicted on expanding the scope of loss of consortium claims. In 1970, Ohio followed the D.C. court's example in *Hitaffer, supra*, by recognizing a claim for loss of spousal consortium. *Couston v. Remlinger Oldsmobile-Cadillac*, 22 Ohio St. 2d 65, 258 N.E.2d 230 (1970). The court in *Couston* held that a husband and a wife have equal rights in a marriage to recover for loss of consortium.

{¶ 11} Ohio courts continued its history with consortium claims with a case which held that there was no legal obligation for a parent to show affection to a child, and accordingly, a child could not bring a claim for loss of affection, society and

companionship of a parent. *Kane v. Quigley*, 1 Ohio St. 2d 1, 203 N.E.2d 338 (1964). In the Eight District Court of Appeals, the court held that a claim made by parents of a minor child for filial consortium could be pursued. *Norvell v. Cuyahoga County Hospital*, 11 Ohio App.3d 70, 463 N.E.2d 111 (8th Dist.1983). Two years later, the same court ruled that a minor child could not bring a cause of action for loss of a mother's consortium. *Sanders v. Mt. Sinai Hospital*, 21 Ohio App.3d 249, 487 N.E.2d 588 (8th Dist.1985). However, in a federal case out of the Southern District of Ohio, the court allowed a minor child to pursue a claim for loss of parental consortium. *Leach v. Newport Yellow Cab, Inc.*, 628 F.Supp. 293 (S.D. 1985).

{¶ 12} The confusion continued in Ohio courts with the decisions in *High v. Howard*, 64 Ohio St.3d 82, 592 N.E.2d 818 (1992), and *Farley v. Progressive Casualty Insurance Co.,* 64 Ohio St.3d 82, 592 N.E.2d 818 (1992). In these two 1992 cases, the facts were essentially identical, but the courts concluded differently. Both cases were loss of parental consortium claims brought by a child's mother for an injury to the child's father. In both cases, the parents were divorced and the child lived with the mother. The *Farley* court, held that the trial court properly awarded damages for loss of parental consortium. The court in *High v. Howard*, however, held that the cause of action for loss of parental consortium did not exist in Ohio.4 In its opinion, the Supreme Court of Ohio set out a list of reasons supporting why a cause of action for parental consortium should be rejected. First, the court asserted that the legislature was the proper entity to determine whether a loss of parental consortium claim could be properly pursued. According to Chief Justice Moyer, "[t]here is no better example of an issue that should be determined by the legislative process where arguments in support of and opposed to the proposed remedy may be fully aired and debated." *Id*. at 820. In addition to this argument, the court refused to allow the parental consortium claim because of the possibility of multiple and fraudulent suits, the fact that there was no precedent, the possibility of overlapping with a parent's recovery, and the increase of insurance costs.

{¶ 13} These arguments were countered in a well-argued dissent in *High* by Justice Resnick, which was joined by Justices Douglas and Sweeney. Justice Resnick, observed the progressive nature and trend of consortium claims, citing thirteen cases which allowed claims for loss of parental consortium.5 She also argued that in light of the wrongful death statute, it would be inconsistent for the court to allow recovery for a child in the event a parent dies, but not when the parent is injured. She went further by asserting that it could even be worse for a child to deal with an injured parent day to day. It was also inconsistent in her view to allow for spousal and filial loss of consortium but not for parental consortium. The loss of a parent's love and care is arguably more injurious to a child than a loss of an adult's child or spouse to the adult.

{¶ 14} These arguments laid out by the court continued to be the issues of debate for consortium claims, but it was not until *Gallimore, supra*, that the Supreme Court revisited the arguments from *High*. The court in *Gallimore* held that a parent can recover damages in a derivative action for loss of filial consortium, supporting its conclusion by referring back to *Clark v. Bayer*, holding which allowed a grandfather to recover damages for the services of minor grandchildren. The court reasoned that the infant children in the *Clark* case were incapable of rendering valuable services other than that of "society, companionship, comfort, love and solace, *i.e.*, elements of 'consortium.'" *Gallimore*, at 1054–55. The court went further, overturning *High* and holding that a child can recover damages in a derivative action for loss of parental consortium. The *Gallimore* court relied on Justice Resnick's dissent in *High*, and described the parent-child relationship as "unique" and "deserving of special recognition in the law." The court explained that "[t]he common law is ever-evolving and we [the court] have the duty, absent action by the General Assembly on a specific question, to be certain that the law keeps up with the ever-changing needs of modern society." *Gallimore*, at 1057.

{¶ 15} The Supreme Court of Ohio expanded the *Gallimore* holding further in a case which raised the issue of whether an adult child could claim a loss of parental

consortium. *Rolf v. Tri-State Motor Transit Company*, 91 Ohio St.3d 380, 745 N.E.2d 424 (2001). The court found that "an artificial age barrier" does not exist to change a parent-child relationship when a child reaches the age of majority. "The fact that an adult child's relationship with a parent differs from that of a minor child does not provide [the court] with justification for refusing to recognize an adult child's loss-of-parental-consortium claim." *Id*. at 382.

{¶ 16} Although *Rolf* is the last guidance on consortium claims from the Supreme Court, the line of consortium cases continued in the Second District Court of Appeals, which recognized a parent's claim for loss of consortium of an adult child. *Brady v. Miller*, 2nd Dist. Montgomery No. 19723, 2003 Ohio App. LEXIS 4087 (August 29, 2003). The court reasoned that "parents were equally capable of suffering a loss of society, companionship, comfort, love, and solace" as a result of an injury to a child whether the child was a minor or an adult. *Id*. at ¶ 19. The Northern District of Ohio also held that parents could recover for a loss of consortium claim of an adult child. *Martin v. City of Broadview Heights*, N.D.Ohio No. 1:08 CV 2165, 2011 U.S. Dist. LEXIS 92466 (August 18, 2011). However, in a Fifth District case, also post-*Rolf*, the court rejected a parental loss of consortium claim of an adult child because the *Rolf* court did not extend its holding to include that type of claim. *Maroney v. State Farm Mutual Auto Ins. Co.*, 5th Dist. Richland No. 01CA99, 2002 Ohio App. LEXIS 2020 (June 25, 2002).

Parental Loss of Consortium

{¶ 17} In Count Two of their Complaint, Plaintiffs assert a claim for parental loss of consortium for both Paul Jr. and Sarah. As indicated earlier, loss of consortium damages include loss of services, society, companionship, comfort, love and solace. Looking at the history of consortium cases in Ohio, there is precedence that a child has the right to bring a claim for loss of consortium for an injury to a parent, whether a minor or an adult, is permitted. *See Rolf, supra*. It is also clear that a parent can bring a loss of consortium claim for a minor child. *See Gallimore, supra*. However, the lower courts

are conflicted with regard to combining the two principles and allowing a parent to recover for loss of consortium of an adult child.

{¶ 18} Defendant, citing *Gallimore*, claims that although a loss of consortium claim can be brought by a parent for a minor child, a claim brought by a parent for an adult child has never been recognized by Ohio law or the courts. Indeed, *Gallimore* stands for the proposition that parents may bring a loss of consortium claim for a minor child. However, *Gallimore* also does not expressly limit a claim brought for an adult child. Defendant also relies on *Moroney, supra*, which held that a parent does not have a right to recover for a loss of consortium for injuries to an adult child.

{¶ 19} Plaintiffs cite to a number of other cases to support their claim, but only one of those decisions binds this Court. *Rolf, supra,* recognizes a claim for loss of consortium of an adult child for a parent, concluding that "it is irrational to deny recovery for loss of parental consortium simply because the child has reached the age of majority." *Id*. at 383. The court in *Rolf* went on to say that "[t]he parent-child relationship does not end when the child becomes eighteen. It endures throughout life and can be characterized by love, care and affection for the duration." *Id*. Plaintiffs argue that although this does not describe the situation of this case exactly, its reasoning still applies. In support of this proposition, Plaintiffs also cite to *Brady* and *Martin, supra*. In both *Brady* and *Martin*, the court applied the reasoning in *Rolf* and found that the reasoning in *Rolf* was more persuasive than pre-*Rolf* decisions denying loss of consortium claims for adult children. As a result, the court held that the plaintiffs could bring their loss of consortium claim for an adult child.6

{¶ 20} Although both of these cases are not binding on this Court, there is some precedential value in them. At the least, the two cases indicate that a claim for loss of consortium brought by a parent for an adult child has been recognized in Ohio courts. These cases also indicate the direction that the ever-changing society is pointing loss of consortium claims. As the court recognized in *Rolf*, a parent-child relationship is not any less significant when a child turns eighteen. The parental instinct of caring for a

child remains for even an adult child. Especially in a society where fifty-six percent of young adults, ages 18–24, and sixteen percent of adults, ages 25–31, still live with their parents (approximately twenty-one and a half million people),7 there is no rationale for setting a strict limitation on pursuing a loss of consortium claim when a child reaches the age of majority. Rather, the determination should be a factual one. Surely there are situations when a child reaches the age of majority and no longer maintains a relationship with his/her parents. In those cases, although the parent may pursue a loss of consortium claim, it does not mean that the claim is factually provable. Indeed, the parents' burden would be a difficult one, requiring examples and evidence of continued reliance and support on the parents by the child, and a type of relationship that would cause an actual loss of services, society, companionship, comfort, love and solace, rather than a superficial loss.8

{¶ 21} In this case, Paul and Ellen have alleged sufficient facts to pursue a loss of consortium claim for their adult children, Sarah and Paul Jr. Whether they can factually show that their relationship with Sarah and Paul Jr. is sufficient enough to succeed in their claim is a question left to be determined. Accordingly, Defendant's Motion to Dismiss Count Two of Plaintiffs' Complaint is DENIED.

Sibling Loss of Consortium

{¶ 22} Next, Defendant argues that Count Three of Plaintiffs' Complaint should also be dismissed pursuant to Civ.R.12(B)(6). In Count Three, Plaintiffs claim sibling loss of consortium for Christopher, Marie, John and Joseph Fudacz. Plaintiffs cite to *In re Estate of Harrison*, 9th Dist. No. 25812, 2012 Ohio App. Lexis 1906 (May 16, 2012), which categorized siblings as "other next of kin" in a wrongful death action. Plaintiffs attempt to make a connection between the recognition of siblings as next of kin in probate matters and the recognition of siblings as proper parties to bring a loss of consortium claim, arguing that the same inconsistency exists between recovering for a wrongful death and not an injury as acknowledged in *Gallimore*.

{¶ 23} Defendants argue that the court in *Gallimore* explicitly precludes siblings from bringing loss of consortium claims. Specifically, the court in *Gallimore* made "no suggestion that the right does or should extend to a Gilbert and Sullivan cavalcade of 'his sisters and his cousins, whom he reckons up by dozens, and his aunts!'" *Gallimore*, at 252.

{¶ 24} The current law regarding sibling loss of consortium claims relies on the assumption that all families meet the definition of a nuclear family. However, this is an increasingly false assumption. Families can have many, and often times very different, configurations. They can consist of only grandparents with grandchildren, siblings living with and taking care of each other, a disabled parent with children, a parent with a disabled child,9 unmarried parents, same-sex couples, domestic partners with children, and so on. Consider a situation where an adult sibling is appointed a minor sibling's legal guardian. Is that relationship any less dependent or intimate than one of a parent and child? Further consider when that minor sibling reaches the age of majority. Does the relationship between the siblings then instantly change into one of equality and independence? The logical answer is no, but under the current doctrine, the siblings would have no remedy for any injury caused by a third-party against one of them. Although the relationship between the siblings mirrors more closely that of a parent-child relationship rather than a traditional sibling relationship, they are precluded from any recovery for loss of consortium only because they fall within the same generation on the family tree. The mere fact that they are siblings should not justify disallowing a claim for loss of consortium.

{¶ 25} The New Mexico Supreme Court has acknowledged this inconsistency and has held that siblings may recover for loss of consortium claims. In its opinion, the court explained that "[w]here the facts demonstrate that two siblings shared a mutually dependent relationship, recovery for loss of consortium may be available." *Wachocki v. Bernalillo County Sheriff's Department*, 150 N.M. 650 (2011) at ¶ 12. Although the court did not conclude that the sibling relationship in *Wachocki* was close enough to recover

on the claim, it explicitly kept the door open for siblings to bring a claim for loss of consortium.

{¶ 26} This court is cognizant of *Gallimore*'s decision to limit the loss of consortium claim to the issue in front of them, but the *Gallimore* court also realized that the law must keep up with the times. This court acknowledges the possibility that Plaintiffs could adequately show that there was a mutual dependent relationship between the siblings and Sarah and Paul Jr. and agrees that siblings should be permitted to recover for loss of consortium claims. However, unlike Count Two of the Complaint, a claim for sibling loss of consortium has not been addressed by any Ohio court. Though the rationale of *Gallimore* and *Rolf* could potentially be used to extend loss of consortium claims for siblings, courts in Ohio have not done so, and this court declines to expand the doctrine to siblings. Rather, it is up to the Supreme Court to expand the claim to sibling relationships and require the fact finder to weigh the evidence and determine whether a mutual dependent relationship existed between them.10 Alternatively, the legislature has the power to amend the law for consortium cases. Until either of these things occur, this court is bound by the outdated precedent of disallowing sibling loss of consortium claims.11 Therefore, Defendant's Motion to Dismiss Count Three of Plaintiffs' Complaint is GRANTED.

{¶ 27} Accordingly, Defendant's Motion to Dismiss Count Two of Plaintiffs' Complaint is DENIED, and Defendant's Motion to Dismiss Count Three of Plaintiffs' Complaint is GRANTED. Count Three of Plaintiffs' Complaint is hereby DISMISSED. Furthermore, because Plaintiffs Christopher, Marie, John and Joseph Fudacz no longer have a claim in this matter, they are DISMISSED as parties in this case.

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DALE A. CRAWFORD
Judge

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[1] Demetrio, *Loss of consortium: a continuing evolution*, Trial (Sep. 1, 2000).

[1] *Id*.

[1] http://www.merriam-webster.com/dictionary/consortium

[1] The court referred to the *Kane* case, as well as *Masitto v. Robie*, 486 N.E.2d 1258 (Ohio Ct. App. 1985); *Sanders v. Mt. Sinai Hospital*, 487 N.E.2d 588 (Ohio Ct. App. 1985); *Viock v. Stowe-Woodward Co*., No. E-84-27, 1986 WL 3254 (Ohio Ct. App. Mar. 14, 1986); and *Kukarola v. Gualtieri*, No. 12637, 1989 WL 3904 (Ohio Ct. App. Jan. 18, 1989), to support its reasoning that no cause of action for parental consortium exists in Ohio.

[1] Justice Resnick cited to the following cases: *Hibpshman v. Prudhoe Bay Supply, Inc.*, 734 P.2d 991 (Alaska 1987); *Villareal v. Arizona Dept. of Transp.*, 160 Ariz. 474774 P.2d 213 (1989); *Weitl v. Moes*, 311 N.W.2d 259 (Iowa 1981); *Ferriter v. Daniel O'Connell's Sons, Inc.*, 381 Mass. 507, 413 N.E.2d 690 (1980); *Berger v. Weber*, 411 Mich. 1, 303 N.W.2d 424 (1981); *Pence v. Fox*, 248 Mont. 521, 813 P.2d 429 (1991); *Williams v. Hook*, 804 P.2d 1131 (Okla.1990); *Reagan v. Vaughn*, 804 S.W.2d 463 (Tex.1990); *Hay v. Medical Ctr. Hosp. of Vermont*, 145 Vt. 533, 496 A.2d 939 (1985); *Ueland v. Pengo Hydra-Pull Corp.*, 103 Wash.2d 131, 691 P.2d 190 (1984); *Belcher v. Goins*, 184 W.Va. 395, 400 S.E.2d 830 (1990); *Theama v. Kenosha*, 117 Wis.2d 508, 344 N.W.2d 513 (1984); and *Nulle v. Gillette-Campbell Cty. Joint Powers Fire Bd.*, 797 P.2d 1171 (Wyo.1990).

[1] These rulings are not a single exception to the rule. The earliest case allowing recovery for loss of consortium claims for adult children was an Arizona case in 1985, *Frank v. Superior Court of Arizona*, 722 P.2d 955 (Ariz.1985). In 1989, the Supreme Court of Hawaii also allowed for parents to bring a loss of consortium claim for their adult child. *Masaki v. General Motors Corp.*, 780 P.2d 566 (Haw.1989). Massachusetts gives a statutory right to parents to bring a cause of action for loss of consortium for an adult child who is dependent on the parents for support. Mass. Ann. Laws 231 85X. Washington also provides a similar right in Wash. Rev. Code 4.24.010. A court in Montana also found that parents could bring a loss of consortium claim to adult children. *Marlys Bear Medicine v. U.S.*, 192 F.Supp. 2d 1053 (D. Mont.2002). *See also Sawyer v. Claar*, 766 P.2d 792 (Ida.1988) (recognizing that a serious injury of an adult child is no less crippling or compensable than if the child had been a minor); and *Nelson v. Four Season Nursing Ctr.*, 934 P.2d 1104 (Okla.1996) (concluding that "[t]here is simply no good reason to afford the personal right of companionship and the parent-child relationship less protection in cases involving adult children who seek to recover for injury to the parent-child relationship." *Id*. at 1105.)

[1] Richard Fry, *A Rising Share of Young Adults Live in Their Parents' Home*, PewResearch Social & Demographic Trends, August 1, 2013, http://www.pewsocialtrends.org/2013/08/01/a-rising-share-of-young-adults-live-in-their-parents-home/.

[1] The Supreme Court of New Mexico has set forth factors to be considered when determining whether a relationship is intimate enough to recover for a loss of consortium claim. The factors include (1) the

duration of the relationship; (2) the degree of mutual dependence; (3) the extent of common contributions to a life together; (4) the extent and quality of shared experience; (5) whether the plaintiff and the injured person were members of the same household; (6) the emotional reliance on each other; (7) the particulars of their day to day relationship; and (8) the manner in which they related to each other in attending to life's mundane requirements.

[7] In the case of a disabled child, especially a severely disabled child, a strong dependency on a parent(s) is necessary regardless of the age of the child.

[8] It must be noted that although this court must refuse a claim for sibling loss of consortium at this time, it has no doubt that, unless limited by the legislature, claims for loss of consortium may be extended to include grandparents (*see Fernandez v. Walgreen's Hastings Co*, 968 P.2d 774 (N.M.1998), in which the New Mexico Supreme Court allowed a consortium claim brought by a grandparent for a grandchild), and siblings, and will be extended in the near future to include unmarried partners, both heterosexual and same sex couples, whether or not the state recognizes the "marriage". With regard to unmarried partners, the rate of cohabitation has increased greatly in recent years. Casey E. Copen, et al., *First Premarital Cohabitation in the United States: 2006–2010 National Survey of Family Growth*, National Health Statistics Reports, Number 64, April 4, 2013. New Mexico pioneered the movement by deciding in *Lozoya v. Sanchez*, 66 P.3d 948 (N.M.2003) that an unmarried couple could recover for loss of consortium. In *Lozoya*, the court left room open for all unmarried partners to bring a consortium claim. Same sex couples can bring a claim if they are engaged, married, or meet the general test for common law marriage. *Id*. at 958. If they do not meet those three criteria, they need only to show three relationship requirements: an exclusive, committed relationship that only one plaintiff can claim. *Id*.

[9] A hesitance to progress into unchartered territory is a natural reaction. "When faced with a totally new situation, we tend always to attach ourselves to the objects, to the flavor of the most recent past. We look at the present through a rearview mirror. We march backwards into the future." M. McLuhan & Q. Fiore, The Medium is the Massage 74–75 (1967). The court in *Gallimore* understood this reliance but pushed forward, stating that "[t]he common law is not static. It is dynamic, and it must continue to evolve to keep up with the times." *Gallimore*, *supra*, at 254. "Either the common law must be modernized to conform with present-day norms, or it will engender a lack of respect as being out of touch with the realities of our time." *Id*. at 255.