

CONSORTIUM DAMAGES IN KENTUCKY: PAST, PRESENT, AND FUTURE

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Introduction

Kentucky law strictly limits the recovery of consortium damages to three contexts: loss of consortium upon injury or wrongful death of a spouse, children's loss of consortium resulting from wrongful death of a parent, and parental loss of consortium resulting from wrongful death of a minor child. This article discusses the history and evolution of consortium claims, explores the various ways in which current plaintiffs seek to broaden these claims, and raises questions regarding the future of consortium claims under Kentucky law. Now more than ever, defense attorneys must consider the historical progression of consortium law and under-

lying rationales to accurately evaluate and effectively defend against aberrant changes in the law.

10 History and Evolution of Loss of Consortium Claims in Kentucky

Modern consortium claims flow from a mixed-bag of statutory and common law rights and have been shaped by centuries of evolving con-

stitutional rights and societal values. The earliest consortium claims can be traced to early common law actions designed to protect the economic interests that husbands maintained in their wives. *Giuliani v. Guiler*, 951 S.W.2d 318, 320 (Ky. 1997). Early Kentucky cases indicate that “[t]he common law regarded the wife as the servant of the husband more than as his companion....” *Louisville & N. Ry. Co. v. Kinman*, 206 S.W. 880, 881 (Ky. 1918). By the late 1800s and early 1900s, husbands could recover damages for the loss of their wives’ society and companionship. *Lane v. Dunning*, 218 S.W. 269, 270 (Ky. 1920) (citation omitted). Although the doctrine was expanded to recognize a more intimate husband-wife relationship, these actions were still founded upon property rights granted to husbands by the marriage contract. *Id.*

Common law spousal consortium claims were available only to husbands until 1970, when the Court of Appeals (then Kentucky’s highest court) concluded that wives were entitled to a reciprocal cause of action. *Kotsiris v. Ling*, 451 S.W.2d 411, 412 (Ky. 1970). Later that year, the Kentucky General Assembly codified

the court’s decision in Kentucky Revised Statute (KRS) § 411.145, which created Kentucky’s first statutory spousal consortium claim. Under KRS § 411.145, spouses may seek compensation for the loss of “the services, assistance, aid, society, companionship and conjugal relationship between husband and wife, or wife and husband.” Before 2009, Kentucky law held that loss of spousal consortium damages extended only from the time of the spouse’s injury until his or her death. *Clark v. Hauck Mfg. Co.*, 910 S.W.2d 247, 252 (Ky. 1995) (citing *Brooks v. Burkeen*, 549 S.W.2d 91 (Ky. 1977)), *overruled in part*, *Martin v. Ohio County Hosp. Corp.*, 295 S.W.3d 104 (Ky. 2009). However, in 2009, the Kentucky Supreme Court abandoned that premise, finding that a spouse’s loss of consortium damages extend beyond death. *Martin v. Ohio County Hosp. Corp.*, 295 S.W.3d 104, 108 (Ky. 2009).

Unlike spousal consortium rights, parental consortium claims originated by statute. In 1968, two years before the codification of spousal consortium rights, the Kentucky General Assembly enacted KRS § 411.135, creating a new right by which parents may seek

consortium damages resulting from the wrongful death of their minor child. KRS § 411.135 expressly defines loss of consortium within the context of the parent-child relationship as “the loss of affection and companionship that would have been derived from such child during its minority.” Under Kentucky law, the age of minority ends at age eighteen. KRS § 2.015.

Since the statute’s enactment, Kentucky courts have consistently held that parental loss of consortium claims do not exist outside of the wrongful death context established by KRS § 411.135. *Humana of Ky., Inc. v. McKee*, 834 S.W.2d 711, 725 (Ky. App. 1992); *Goebel v. Arnett*, 259 S.W.3d 489, 492 (Ky. App. 2008). Neither statutory nor common law provides loss of consortium claims to the parents of children who are only injured. *Bayless v. Boyer*, 180 S.W.3d 439, 449 (Ky. 2005).

In 1997, the Kentucky Supreme Court recognized the right of a minor child to recover for loss of parental consortium based on the reciprocal rights bestowed upon parents by KRS § 411.135. *Giuliani*, 951 S.W.2d at 318. As with parental consortium claims, the Kentucky Court of Appeals has held that minor children of injured but living parents cannot assert claims for losses of parental consortium. *Lambert v. Franklin Real Estate Co.*, 37 S.W.3d 770, 780 (Ky. App. 2000). Similarly, the Court of Appeals has held that adult children (those over age eighteen) are not entitled to consortium damages resulting from the death of a parent. *Clements v. Moore*, 55 S.W.3d 838, 840-41 (Ky. App. 2000).

While an estate has up to one year after a personal representative is appointed to bring a claim for wrongful death under KRS § 413.180, the Court of Appeals has held that any person asserting a loss of consortium claim has only one year from the date of death to do so, regardless of when the personal representative is appointed. *Potter v. Boland*, 2011-CA-1336, 2012 Ky. App. LEXIS 1057 (Ky. App. Dec. 7, 2012).

To date, Kentucky has not expanded the right to recover for loss of consortium to other circumstances outside the spousal or parent-child relationships. In *Ammon v. Welty*, 113 S.W.3d 185 (Ky. App. 2002), the Court of Appeals declined to expand the scope of consortium claims to encompass the loss experienced by a family whose dog was shot and killed. The court concluded that “[t]he loss of love and affection resulting from the destruction of property is not compensable.” *Id.* at 187-88. The familial relationship is the cornerstone of all consortium rights under current Kentucky law. *Id.* The stark contrast between the familial bond protected by modern consortium rights and the economic interests protected by early common law demonstrates the evolution of changing family dynamics and societal values.

KRS § 411.135 and KRS § 411.145 tailor consortium claims to reflect the distinct nature of

spousal and parent-child relationships. Spousal consortium claims are broad and reflect marriage as a partnership. KRS § 411.145 recognizes spousal rights to “services, assistance, aid, society, companionship and conjugal relationship” Claims arising within the parent-minor child relationship are limited to the losses of affection and companionship resulting from wrongful death. KRS § 411.135. Interestingly, nothing under the law allows minor children or parents to seek consortium damages related to lost services, assistance, and aid. KRS § 405.010, however, recognizes that parents may seek compensatory damages for the loss of services

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and earnings of a minor child. The Kentucky General Assembly enacted both KRS § 411.135 and KRS § 405.010 in 1968, and provided clear distinction between the substance and function of these two statutes.

KRS § 405.010 is a domestic relations statute that recognizes a long-standing common law claim rooted in the master/servant doctrine. Under early common law, “[t]he duty of the father to educate and maintain the son entitled the former to the son’s services, and ...created the relation of master and servant; any interference

with the master’s right to control the servant by another renders the latter liable for at least any injury that was likely to result from such illegal conduct.” *Hendrickson v. Louisville & N. Ry. Co.*, 126 S.W. 117, 118 (Ky. 1910). Early common law cases allowed fathers to recover for their children’s lost wages and for the monetary value of services the children would have provided to the family absent injury. *Soper v. Igo, Walker & Co.*, 89 S.W. 538, 539 (Ky. 1905). At common law, only men could assert claims for the loss of a minor child’s services. *Adams v. Louisville & N.R. Co.*, 154 S.W. 392, 393 (1913). However, KRS § 405.010 provides both parents with this right to recovery.

In *Yeager v. Clise*, 2010 Ky. App. LEXIS 374 (Ky. App. Apr. 30, 2010), 2010 WL 1728934, the Kentucky Court of Appeals demonstrated the distinction between parental consortium and loss of services claims. Although the injured child’s father could seek damages for the loss of services, he was not entitled to consortium damages for injuries to his minor child. 2010 Ky. App. LEXIS 374, at *4. The *Yeager* Court also acknowledged that loss of services claims were historically based upon the parents’ duty to provide support for their children. *Id.* at *3 (citing *Jewell v. Jewell*, 255 S.W.3d 522, 524 (Ky. App. 2008)). It is noteworthy that the parental duty to support children is not contingent upon any reciprocal duty bestowed upon the child. Accordingly, KRS § 405.010 only provides parents with the right to seek loss of services damages and does not provide children with a reciprocal right. To protect against double recovery, either the parents or the child may seek lost economic damages. *Smith v. Geoghegan & Mathis*, 333 S.W.2d 254, 256 (Ky. 1960). Today, few parents seek loss of services damages arising from their child’s injuries independently but do so only on the child’s behalf.

Plaintiffs’ Attempts to Broaden Loss of Consortium

Plaintiffs’ attorneys are currently seeking to expand loss of consortium claims under Kentucky law. In some cases, plaintiffs have tried to recover damages where the parent or child is injured rather than deceased. In other cases, persons who typically do not have standing to assert a loss of consortium claim are attempting to do so. This section will describe various scenarios in which plaintiffs’ attorneys have attempted to broaden the scope of loss of consortium claims in Kentucky.

A. Non-Death Cases

As noted above, loss of consortium damages may only be recovered by a parent or child in wrongful death cases. However, plaintiffs are repeatedly pressing Kentucky courts to expand loss of consortium dam-

ages to apply to situations involving severe or disabling injuries to a parent or child who is still living.

1. Severely injured children

In a medical malpractice case currently pending in Jefferson Circuit Court, the parents of a child who sustained a severe and permanent brain injury at birth have asserted claims for loss of consortium. The defendants moved for partial summary judgment on those claims, citing KRS § 411.135, *McKee*, 834 S.W.2d 711, and *Bayless*, 180 S.W.3d 439, all of which clearly limit a parent's loss of consortium claim to wrongful death cases. At least one federal court applying Kentucky law has also concluded that loss of consortium is limited to wrongful death cases. *Ferguson v. Aventis Pasteur, Inc.*, 444 F. Supp. 2d 755, 761 (E.D. Ky. 2006).

In response to the defendants' motions, the plaintiffs asserted that older Kentucky cases allowed parents to recover loss of consortium damages. *See, e.g., Meredith v. Buster*, 273 S.W. 454 (Ky. 1925) (abduction case noting that father is entitled to child's "services, companionship and association"); *Washburn v. Abrams*, 90 S.W. 997 (Ky. 1906) (abduction case recognizing father's right to recover for loss of children's "services and society"); *Soper v. Igo, Walker & Co.*, 89 S.W. 538 (Ky. 1905) (abduction case stating that father may recover for loss of services and "injury to his feelings and the loss of companionship of his child"). The plaintiffs claimed these cases were not cited to the Kentucky Supreme Court when it decided *Bayless* in 2005; therefore, they argued that the defendants' reliance on *Bayless* is misplaced. Notably, however, all of the cases cited by the plaintiffs involved child abductions, in which the child was physically separated from a parent, and not the victim of negligently-inflicted injuries.

The plaintiffs also cited KRS § 405.010, which allows parents to recover damages for the loss of a minor child's "services and earnings" during the age of minority. As noted above, claims for loss of services typically seek the loss of the child's economic earnings. Presumably, these types of damages were recognized a century ago, when children worked on the family farms and outside help was hired when the child was unable to work. In modern times, however, children do not typically provide any sort of services to their families that would result in economic earnings, so it is unclear what damages could be recoverable under this statute.

The Jefferson Circuit Court granted the defendants' motions, noting that over the past century, Kentucky courts repeatedly have denied loss of consortium claims in non-death cases. Further, the court also held that the plaintiffs' loss of

services claim is subsumed by their claim for impairment of the child's earning capacity. Accordingly, the court dismissed both the loss of consortium and loss of services claims.

2. Severely injured parents

Currently pending before the Kentucky Court of Appeals is a case in which a thirteen-year-old child, whose mother sustained a severe brain injury, seeks to recover damages for the loss of his mother's consortium. *Diaz v. Gutti*, 2013-CA-001897. In that case, a 31-year-old mother de-

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veloped a thiamine deficiency and permanent brain injury following bariatric surgery. As a result, she is unable to care for her son. Her legal guardians brought a medical negligence case against the treating neurologist, and the child's guardian asserted a claim on his behalf for the loss of his mother's consortium. The Pike Circuit Court granted the physician's Rule 12.03 motion for judgment on the pleadings on the child's loss of consortium claim.

On appeal, the plaintiff has argued that the Kentucky Court of Appeals wrongfully decided *Lambert v. Franklin Real Estate Co.*, 37 S.W.3d

770 (Ky. App. 2000), and should overturn it *en banc* because the Kentucky Supreme Court did not explicitly limit its holding in *Giuliani v. Guiler*, 951 S.W.2d 318 (Ky. 1997), to wrongful death cases. Citing the public policy expressed in KRS § 600.010, which is to protect children and strengthen families, the plaintiff argues that loss of consortium damages should be available to a child whose parent has been permanently injured in order to protect the child's right to parental love and affection. The plaintiff also claims that twelve other jurisdictions allow a child to assert loss of consortium claims when a parent has been severely and permanently injured.

The Kentucky Justice Association (KJA) has submitted an amicus brief in *Diaz*, in which it urges the Court of Appeals to overrule *Lambert*. In its brief, the KJA claims the restrictions imposed by the court in *Lambert* have "no basis in law or fact." The KJA also argues that there is no distinction between the loss experienced by a child if a parent is permanently incapacitated and if the parent is deceased. Citing KRS § 405.020, which requires parents to nurture their children, the KJA asserts that the child has been denied this right because his mother is unable to nurture him as a result of her injuries. Finally, the KJA claims that because spouses are permitted to recover loss of consortium damages both before and after death under *Martin v. Ohio County Hosp. Corp.*, 295 S.W.3d 104 (Ky. 2009), children should have the same right.

In response, the defendant physician argues that the Court of Appeals correctly decided *Lambert* because the Kentucky Supreme Court in *Giuliani* held that a child's loss of consortium claim is reciprocal to that which is granted to a parent under KRS § 411.135. Because that statute limits parents' loss of consortium claims to wrongful death cases, the holding in *Giuliani* is necessarily limited to death cases. Additionally, the physician noted that more than thirty states do not recognize loss of consortium claims in non-death cases. On September 10, 2014, the Court of Appeals issued a notice indicating that it would not hear oral argument in *Diaz*.

Based on the Court of Appeals' decision in *Lambert*, federal courts applying Kentucky law have held that a child may not recover damages for loss of parental consortium when the parent is not deceased. *Brown v. Mason & Dixon Lines, Inc.*, 2008 U.S. Dist. LEXIS 42062, 2008 WL 2224881 (W.D. Ky. May 27, 2008); *Brown v. John Deere Co.*, 2006 U.S. Dist. LEXIS 76289, 2006 WL 2989211 (E.D. Ky. Oct. 19, 2006).

3. Why damages should not be allowed in non-death cases

By limiting loss of consortium claims to parents and children in wrongful death cases, Kentucky has created a workable standard that allows its courts to easily determine whether a

plaintiff can recover such damages. Plaintiffs’ lawyers who advocate for loss of consortium claims in non-death cases often fail to address the difficulties that would arise if such claims are permitted. For example, what parameters would apply to determine when such damages could be recovered? Would consortium claims be permitted only in cases involving a severe brain injury, or would a broken bone or other minor injury be sufficient? Failure to impose a bright-line rule regarding the type and extent of injury necessary for a loss consortium claim in a non-death case would undoubtedly result in conflicting rulings and confusion among the courts and litigants.

Additionally, parent-child relationships do not end when the parent or child is injured. Although a baby may sustain a brain injury at birth, that child’s parents still have the opportunity to engage in a loving, nurturing relationship with the child and, in some cases, the child may return the parents’ affections. Moreover, if the parents are permitted to assert a claim for loss of consortium, how could a jury determine what the parent-child relationship would have been like if the child had not been injured and award damages for the difference? Because the parent-child relationship has not been permanently extinguished, as in death cases, it would be difficult to measure loss of consortium damages in a non-death case.

B. Other Persons Asserting Consortium Claims

Recently, plaintiffs’ lawyers also have tried to extend consortium damages to persons outside of the traditional family unit. In discovery, defense counsel must explore whether a plaintiff asserting a loss of consortium claim has legal standing to do so under Kentucky law.

1. Grandparents

The Kentucky Court of Appeals has decided one case involving a grandparent’s claim for loss of consortium. *Willis v. Jefferson County Metro. Sewer Dist.*, 2009-CA-001874, 2010 Ky. App. LEXIS 1012 (Ky. App. Oct. 22, 2010). In *Willis*, a truck owned by the Metropolitan Sewer District (“MSD”) struck and killed a nine-year-old girl. When the girl was a baby, the grandmother obtained custody and was appointed as her legal guardian, but did not adopt her. The girl’s estate brought a wrongful death claim against MSD, and the grandmother asserted a claim for loss of consortium. MSD moved for and was granted partial summary judgment on the grandmother’s claim.

The Court of Appeals found that KRS § 411.135 limits recovery to “the surviving parent, or parents,” and therefore expressly precludes recovery by any other person, such as “grandparents, guardians, or other custodial family members.” *Id.* at *8. The court recognized that while it may be harsh to deny recovery to others who have essentially acted as parents during the

child’s lifetime, it was compelled to follow the statute’s plain language. The grandmother moved for discretionary review, which was denied, and the Kentucky Supreme Court ordered the Court of Appeals’ opinion not to be published. *See* 2011 Ky. LEXIS 257 (Ky. 2011). Accordingly, grandparents do not have standing to assert loss of consortium claims even if they

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had legal custody of the grandchild at the time of death.

2. Legal custodians or de facto custodians

Grandparents are not the only ones seeking to bring loss of consortium claims for the wrongful death of a child. In a wrongful death case currently pending in Jefferson Circuit Court, the child’s legal custodians (a biological aunt and her husband) asserted individual claims for loss of consortium and sued as co-administrators of the child’s estate. In their complaint, the plaintiffs allege that the child was their “son,” but the child’s medical records identified the plaintiffs as his biological aunt and her husband. The defendants moved for partial dismissal and summary judgment based on the non-parent plaintiffs’ inability to recover under KRS § 411.135.

In response, the plaintiffs asserted that they should be permitted to bring claims for loss of consortium because they raised the child since birth and were granted permanent custody of him when he was two years old. They also cited cases from other jurisdictions, such as *Fernandez v. Walgreen Hastings Co.*, 968 P.2d 774 (N.M. 1998), that allow non-parents to recover damages for loss of a child’s consortium. Additionally, the plaintiffs claim they were the child’s *de facto* custodians, citing *Anderson v. United States*, 731 F. Supp. 391 (D. N.D. 1990) and KRS § 403.270, a Kentucky statute which is used to determine the child’s best interest in a custody dispute.

In their reply memoranda, the defendants noted that “permanent custody” is not truly permanent because it can be modified under various circumstances. *See* KRS § 403.340. If the plaintiffs had adopted the child under KRS § 199.520, then they would be treated as the child’s natural parents “for purposes of inheritance and succession and for all other legal considerations,” including the right to recover for loss of the child’s consortium. KRS § 199.520. The defendants acknowledge that while the child’s custodians certainly loved and provided for him, Kentucky law simply does not allow anyone other than a natural parent, as legally defined, to assert a loss of consortium claim.

The Jefferson Circuit Court granted the defendants’ motions and dismissed the claims for loss of consortium. While the court expressed its sympathy to plaintiffs for their loss, it held that it could not ignore the plain language of KRS § 411.135 and dismissed the claims.

3. Stepparents and stepchildren

While Kentucky’s appellate courts have not decided whether a stepparent may assert a claim for loss of a stepchild’s consortium, the Kentucky Court of Appeals has addressed a similar issue. In *Davis v. Johnson*, 295 S.W.3d 841 (Ky. App. 2009), the court held that an adult stepchild who had not been adopted by her stepfather before he died could not share in the proceeds resulting from the settlement of a wrongful death claim brought by the stepfather’s estate. The court analyzed KRS § 411.130(2), which governs who may bring an action for wrongful death, as well as other Kentucky statutes that treat stepchildren the same as biological or adopted children, and concluded that the Legislature intentionally omitted stepchildren from the wrongful death statute. Accordingly, the court held that the stepchild could not recover a share of the estate’s damages.

Davis did not address loss of consortium claims. However, under the same reasoning, it is likely that stepparents and stepchildren would not be permitted to recover damages for

loss of consortium. Like KRS § 411.130(2), which only refers to “children of the deceased,” KRS § 411.135 allows only “parent, or parents” to recover damages, not stepparents. Presumably, Kentucky courts would apply the rationale of *Davis* and conclude that stepparents and stepchildren cannot recover damages for loss of consortium.

4. Siblings

In another wrongful death case, the plaintiffs asserted a loss of consortium claim on behalf of a child whose sibling was killed in an automobile accident. Both children were under the age of eighteen when the accident occurred. The plaintiffs alleged that the surviving child was deprived of the love and affection of his deceased brother. While it appears that no Kentucky court has addressed a “sibling-to-sibling” loss of consortium claim, other states have rejected such claims unless specifically allowed by the state’s wrongful death statute. *See, e.g., Solomon v. Harman*, 489 P.2d 236 (Ariz. 1971); *Clark v. Jones*, 658 P.2d 1147 (Okla. 1983); *Ford Motor Co. v. Miles*, 967 S.W.2d 377 (Tex. 1998); *Long v. Dugan*, 788 P.2d 1 (Wash. Ct. App. 1990); *Bell v. City of Milwaukee*, 746 F.2d 1205 (7th Cir. 1984). Therefore, if addressed by a Kentucky court, KRS § 411.135 likely would prohibit this type of “sibling-to-sibling” claim. Kentucky law has never recognized the bond between siblings as being similar to that between parent and child, and siblings owe no duty to love and nurture one another.

5. Claims involving children over age eighteen

Plaintiffs also have attempted to bring loss of consortium claims that extend beyond the time the child reaches age eighteen. The Kentucky Court of Appeals has twice held that an adult child (over the age of eighteen) may not bring a claim for loss of parental consortium. *Smith v. Vilvarajah*, 57 S.W.3d 839 (Ky. App. 2000); *Clements v. Moore*, 55 S.W.3d 838 (Ky. App. 2000). Similarly, federal courts applying Kentucky law have held that parents may not bring claims for loss of their child’s consortium when the child was over the age of eighteen at the time of death. *Godawa v. Byrd*, 2014 U.S. Dist. LEXIS 105142, 2014 WL 3809781 (E.D. Ky. Aug. 1, 2014); *Campbell v. Adult Daycare of Lexington, Inc.*, 2012 U.S. Dist. LEXIS 46810, 2012 WL 1119746 (E.D. Ky. April 3, 2012); *Radford v. DVA Renal Healthcare, Inc.*, 2010 U.S. Dist. LEXIS 121114, 2010 WL 4779927 (W.D. Ky. Nov. 16, 2010); *Combs v. Comair, Inc. (In re: Air Crash at Lexington, KY)*, 556 F. Supp. 2d 665, 673 (E.D. Ky. 2008).

Future Claims Involving Same-Sex Couples

In early 2014, Judge John Heyburn of the Western District of Kentucky ruled in *Bourke v. Beshear*, 996 F. Supp. 2d 542 (W.D. Ky. 2014), that Kentucky’s refusal to recognize same-sex marriages validly made in other states was unconstitutional. In July 2014, Judge Heyburn issued a similar ruling in *Love v. Beshear*, 989 F. Supp. 2d 536 (W.D. Ky. 2014), concluding that Kentucky’s ban on same-sex marriage violated the Equal Protection Clause. Recently, however, the United States Court of Appeals for the Sixth Circuit reversed Judge Heyburn’s rulings, as well as similar rulings in Ohio, Michigan, and Tennessee. *DeBoer v. Snyder*, 772 F.3d 388 (6th Cir. 2014). The issue likely will be reviewed by the United States Supreme Court in 2015.

The expansion of constitutional rights, changing social values, and advancements in technology and medicine have redefined modern relationships.

If same-sex marriage is recognized in Kentucky, tort litigation involving claims for loss of consortium will be affected. If that occurs, Kentucky courts likely will allow married, same-sex partners to recover damages for loss of spousal consortium under KRS § 411.145. But these decisions also raise questions regarding same-sex parents’ claims for the loss of a child’s consortium. In both traditional and same-sex relationships, a couple may formally adopt a child under KRS § 199.520, which establishes their rights as parents under KRS § 411.135. But if the child dies before the adoption is complete, any non-biological parent likely would not have standing to assert a loss of consortium claim, much like the non-parents discussed above, because KRS § 411.135 limits claims to the surviving “parent, or parents.”

Same-sex couples who undergo fertility treatment present another interesting question because the embryo(s) or child(ren) may be the biological offspring of one parent, but not the other. For example, if one partner is the biological parent (such as the sperm donor in a male couple or the egg donor in a female couple), but the child dies before the non-biological parent can legally adopt him or her, only the biological parent would have standing to assert a claim for loss of consortium under KRS § 411.135. Similarly, if a lesbian couple has one partner donate her eggs, which are fertilized with sperm from an anonymous donor, and the other partner carries the pregnancy (like a gestational surrogate), would both partners be considered the child’s parents, or would only one woman have standing to assert a loss of consortium claim? As same-sex marriage case law evolves, it is certain to impact Kentucky law regarding loss of consortium claims in the parent-child context.

Conclusion

The expansion of constitutional rights, changing social values, and advancements in technology and medicine have redefined modern relationships. Kentucky law has consistently adapted consortium damages to reflect changing societal values while providing bright-line limitations regarding the contexts under which these claims arise. These distinctions are necessary in order to provide clear guidance for application of the law, even if they appear harsh in some circumstances. Defense attorneys must consider the progression of the law underlying modern consortium claims to protect against plaintiffs’ attempts to rapidly expand consortium claims beyond the intent of the Legislature.



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