

LOSS OF CONSORTIUM AND SUPPORT

Recent Developments and a Refresher

By Nick Mauro

I. Three Categories of Loss of Consortium

- A. Spousal
- B. Parent - Child
- C. Child -Parent

For each relationship there is the person who suffered the bodily harm as a result of the defendant's tort. This is the "injured" person.

The other person in the relationship is the person who suffered the loss of consortium or services. This is the "deprived" person.

II. Feasible Joinder Rule

- A. Requires the loss of consortium claims to be brought with the primary injury or death claim unless the deprived person can show it was not feasible for the consortium claim to be brought with the primary claim. *Christy v. Miulli*, 692 N.W.2d 694 (Iowa 2005).

III. Parental Claims and Damages

A. Iowa Code Section 613.15A

1. "A parent or the parents of a child may recover for the expenses and actual loss of services, companionship, and society resulting from injury to or the death of a minor child and **may recover for the expense and actual loss of services, companionship, and society resulting from the death of an adult child.**"
2. This is a 2007 addition to the Iowa Code allowing parents to bring a loss of consortium claim for injuries or death of their children.
 - a. The Code now provides parents a cause of action for the **death** of their **adult** children. It does not allow parents a cause of action for injuries to their adult children, no matter how severe.
 - b. Parental loss of consortium claims were previously governed by Iowa Rule of Civil Procedure 1.206 (previously Rule 8).

B. Statute of Limitations

1. Because parents have a legal duty to support their children, they have a two year statute of limitations with which to bring a loss of consortium claim for injuries to a child. *Gookin v. Norris*, 261 N.W.2d 692 (Iowa 1978).
2. Parents cannot assign their loss of consortium claim, including their claim for past and future medical expenses, to their children in an effort to overcome a statute of limitations problem. *Id.*
3. Likewise, in the event of a wrongful death of a minor, the statute of limitations for the minor's estate to bring a claim is 2 years, whereas if a minor is injured the statute of limitations for his/her claim is one year after the minor turns 18.

C. Types of Recovery Available to Parents

1. Loss of services of their child
 - a. In the event of an injury to a minor child, loss of services consists of the reasonable value of the lost services less the amount it would have cost to provide for the child's support and maintenance during the period of minority. *Wardlow v. Keokuk*, 190 N.W.2d 439 (Iowa 1971).
 - (1) The loss of services includes not only the amount the child would have earned, but also the economic or financial value of the child's labor at home.
 - (2) Loss of services of a child is to be considered in conjunction with loss of companionship and loss of society.
 - b. The new law seems to suggest that in the event of death to the child, the loss of services would consist of the reasonable value of the lost services during the shorter of the parent's or the child's life expectancy, rather than just during the child's minority.
 - (1) This could potentially include a much larger time frame for loss of services damages, which in turn could potentially result in a higher jury award for this type of damage.
 - (2) Issues
 - (a) Consider a person in his/her 50s who provides everyday support to his elderly parents (e.g. car rides, house maintenance, bill pay, grocery shopping, etc.). The elderly parents could potentially assert a sizable loss of services and companionship claim in the event their 50 year old child is negligently killed.

- (b) Consider a situation in which a parent's minor child is negligently killed. How much will the court allow the jury to speculate as to potential future loss of services and companionship?
 - i) The deprived parents may claim they planned on their child taking care of them when they reached senior citizen age.
 - ii) This is probably way too speculative, but one could envision an aggressive plaintiff's lawyer making such a claim.
 - c. As the new statute is currently written, parents' loss of services claim for death of a child will only be deducted by the amount it would have cost to provide for the child's support during the period of minority, even if the child continued living with the parents or continued to receive support and maintenance from the parents after turning 18.
 - (1) For example, if the parents are paying for their 19 year old child to attend a private college and allowing the child to live at home during this time, their loss of services claim will not be deducted by the costs incurred in supporting this child because the child has reached a majority age.
 - (2) If parents are now able to assert a loss of services claim for the death of an adult child, one would think the value of that claim should be reduced by the cost incurred in providing support to that adult child, if any.
- 2. Loss of companionship and society
 - a. This is the parents' right to the intangible benefits of companionship, cooperation, and affection of the child.
 - (1) It does not include the parents' mental anguish as a result of the child's injury or death.
 - (2) Loss of companionship and society includes several factors such as the child's age, health, intelligence, interests, personality, and activities in the household and community. Iowa Civil Jury Instruction 200.29.
 - b. Again, as currently written the new law suggests the time frame for loss of companionship and society in the event of death to the child will be the shorter of the parents' or the child's life expectancy.
 - (1) This could also lead to potentially higher jury verdicts for this type of claim, especially in situations in which the child is an only child.
- 3. Past and future medical expenses
- 4. Burial expenses

D. Application of Comparative Fault

1. Iowa Code Section 668.3(1)(b) now provides that the loss of consortium claim is barred if the comparative fault of the person whose injury or death provides the basis for consortium damages is greater than 50%.
2. Likewise, any damages allowed for the loss of consortium claim are diminished in proportion to the amount of fault attributable to the person whose injury or death provided the basis for the consortium damages.

IV. Spousal Claims

- A. Spousal consortium is the fellowship of a husband and wife and the right of each other to the benefit of company, cooperation, affection, and aid of the other.
- B. One spouse cannot waive the other spouse's (or their children's) loss of consortium or support claims.
 1. For example, husband engages in dirt track auto racing as a hobby. He is required before every race to sign a liability waiver waiving any and all claims he or his family may have in the event he is injured or killed in the race.
 2. The husband's waiver is not valid as to his wife or children.
 - a. If the husband is injured or killed during the race, his wife and children still have a valid loss of support and consortium claim, notwithstanding the husband's waiver.
 - b. In order for promoters or operators of potentially dangerous activities to protect themselves, they would be well advised to secure liability waivers from both the participant and his/her spouse, although this may rarely be practical.
 - (1) E.g. bungee jumping, sky diving, auto racing etc. where an injury could be potentially the result of the promoter/operator's negligence.

V. Child Claims

- A. Both minor and adult children can recover for their loss of consortium for injury sustained to a parent.
 1. Parental consortium is the right of the child to intangible benefits of companionship, comfort, guidance, affection and aid.
- B. A minor child is entitled to loss of financial support caused by a parent's injury or death.

1. In the event of a death, the loss of support is the reasonable value of the amount of financial support which the decedent would have contributed, but for his/her death.
2. The damages are limited to the period when the child would reach the age of majority, unless a jury finds that a child would have a need for support after the child reaches the age of 18 or marries.
3. Loss of support is generally not an element of damages when a parent is injured since the parent's lost wages will incorporate any loss of support to the child.

C. Limitations on recovery

1. A child is not entitled to damages for loss of parental consortium unless the parent's death or injury has caused a significant disruption or diminution of the parent-child relationship.
2. Damages for loss of parental consortium are limited in time to the shorter of the child's or the parent's normal life expectancy.
3. Comparative fault principles apply. If the injured parent is greater than 50% at fault for his/her injuries, the child is precluded from recovering. Likewise, recovery is diminished in proportion to the injured parent's fault if 50% or less.
4. A child cannot sue his own parent for loss of consortium or support if the parent negligently caused his/her own death.
 - a. For example, if parent falls asleep at the wheel and drivers his/her car into a tree the child cannot sue the parent for loss of consortium or support.

D. Statute of Limitations

1. A minor child's statute of limitations for bringing a loss of consortium claim is one year after the minor reaches majority. *Christy v. Miulli*, 692 N.W.2d 694 (Iowa 2005).
 - a. For example, if a parent is injured in a car crash in 2005, and the parent has a child who is 10 years old at the time, the parent's statute of limitations for bringing a personal injury action is 2007. This child's statute of limitations for bringing a loss of consortium action is 2013 (one year after the child reaches majority).
 - b. The feasible joinder rule still applies, so if the parent files a lawsuit, the child's claim should be asserted as well.
 - c. But, if the parent simply blows the statute of limitations or for whatever reason chooses not to file a lawsuit, the child may still file his/her claim anytime

within one year after the child reaches majority.

(1) This does not violate the feasible joinder rule. *Id.*