Domestic Relations -- Wife's Cause of Action for Loss of Consortium Due to Negligent Injury to Husband

Follow this and additional works at: http://repository.law.miami.edu/umlr

Recommended Citation
Domestic Relations -- Wife's Cause of Action for Loss of Consortium Due to Negligent Injury to Husband, 5 U. Miami L. Rev. 319 (1951)
Available at: http://repository.law.miami.edu/umlr/vol5/iss2/13
themselves by misusing confidential information. Public confidence, it should be remembered, is essential to lending agencies.27 Since statutory prohibition28 against loan officers taking fees, gifts, or making unsound investments29 serves to protect banks against unconscionable acts by their officials, it seems that the courts should make them quasi-agents of the applicants dealing with the banks or in some other way establish a fiduciary relationship between them in every such case. The present decision could also serve as authority for requiring officials of banks other than co-operative banks, indeed of any lending agency that necessarily, because of statutory requirement or otherwise, acquires confidential information regarding the contemplated purchase, to deal honorably with those whose confidence they hold, and to use the information only for its intended purpose.

DOMESTIC RELATIONS—WIFE'S CAUSE OF ACTION FOR LOSS OF CONSORTIUM DUE TO NEGLECTFUL INJURY TO HUSBAND

Because of defendant employer's negligence, plaintiff's husband was injured, suffering severe and permanent injuries to his body, as a consequence of which plaintiff was deprived of his aid, assistance and enjoyment, specifically sexual relations. Plaintiff's husband received compensation for his injuries pursuant to the provisions of the Longshoremen's and Harbor Workers' Compensation Act,1 which provides2 exclusive liability for employers. Plaintiff brought action against defendant to recover for loss of consortium. Trial court entered a judgment for defendant, on motion that the court lacked jurisdiction and the complaint failed to state a cause of action. Held, on appeal, judgment reversed for plaintiff; a wife has a cause of action for loss of consortium due to a negligent injury to her husband. Hitaffer v. Argonne Co., 183 F.2d 811 (D.C. Cir. 1950), cert. denied, 71 S.Ct. 81 (1950).

Prior to the announcement of this decision, there was unanimity of authority denying the wife a cause of action in these premises.3 On the

28. ANN. LAWS OF MASS. c. 170 § 43.

other hand, courts have experienced no difficulty in permitting the husband to recover for loss of consortium due to an injury to the wife, whether intentional or unintentional. The wife, too, has been permitted to recover for loss of consortium due to an injury to the husband, and in cases involving direct attacks on the matrimonial relation, such as alienation of affections and criminal conversation. It is, then, only in the field of non-intentional, or negligent, injuries to the husband that the wife is universally denied relief for loss of consortium, a line of demarcation vigorously denounced in this court's well-reasoned opinion.

The universal rule has been condemned by nearly all legal writers. This is not surprising, when considered in the light of the rationalizations akin to legal acrobatics indulged in by the courts to sustain their adherence to this rule. A favorite premise upon which relief to the wife is denied is that, although consortium abstractly includes such elements as love, sexual relations, felicity and companionship, the essential compensable element in a negligent invasion is loss of material services. This premise, founded as it is on an arbitrary and fictitious separation of the various elements of consortium, serves only to circumvent the logic of allowing the wife such an action. Indeed, the conclusions reached by courts of different jurisdictions, after adopting this erroneous premise, have accomplished noticeably variant results. Other courts, proceeding on the rationale that elements

McDaniel v. Trent Mills, 197 N.C. 342, 148 S.E. 440 (1929); Helmstetter v. Duke Power Co., 224 N.C. 821, 32 S.E.2d 611 (1945), except that in its jurisdiction today the wife’s action may be maintained to recover actual expenses incurred by her own estate in caring for the husband, McDaniel v. Trent Mills, supra.


5. Commercial Carriers, Inc., v. Small, 277 Ky. 189, 126 S.W.2d 143 (1939); Skoglund v. Minneapolis Street Ry., 45 Minn. 330, 47 N.W. 1071 (1891); Matteson v. N.Y. Cent. R.R., 35 N.Y. 487 (1866).


9. See note 3 supra.


CASES NOTED

of the consortium, other than that of material services, are injured in negligent invasions, nevertheless on one or more of several grounds have denied recovery to the wife.\textsuperscript{16} None of these grounds have any real validity. Still other equally untenable grounds have been relied on by some courts\textsuperscript{16} in these actions. The utter inconsistency of the courts is manifested by the position taken that the wife may recover for an intentional or so-called malicious injury to the consortium,\textsuperscript{17} but may not recover for an identical injury caused by negligence. There is no good reason for allowing relief for an injury to a legally protected interest in the one case while denying it in the other, but courts have attempted to rationalize this departure from proper legal principles by an argument which is elementarily unsound.\textsuperscript{18}

It may be too optimistic to hope that stare decisis will give way in the face of this court's exhaustive, albeit devastating, treatment of the universal rule and the policy behind it. Yet it is much to be desired that the prevailing view be discarded, since there is neither logic nor fairness to support it. Certainly other jurisdictions conceivably could profit by an awareness of an historic decision delivered by a court unafraid of its duty to dispense justice. The language of this court\textsuperscript{19} may well be regarded as an important legal guidepost: "... we are not unaware of the unanimity of authority elsewhere denying the wife recovery under these circumstances ... after piercing the thin veils of reasoning employed to sustain the rule, we have been unable to disclose any substantial rationale on which we would be willing to predicate a denial of a wife's action for loss of consortium due to a negligent injury to her husband."

FEDERAL COURTS — EFFECT OF STATE DECISIONS IN NON-DIVERSITY CASES

Action was started in the federal court to recover the balance due a widow from National Service Life Insurance covering deceased. Recovery depended on a determination of whether claimant was the legal widow of the deceased. Claimant-wife and deceased were divorced from their former


\textsuperscript{17} See \textit{supra}, notes 6, 7, 8.


\textsuperscript{19} Hitaffer v. Argonne Co., 183 F.2d 811, 813 (D.C. Cir. 1950).