JOINDER OF CAUSES OF ACTION; HUSBAND AND WIFE; CHILD AND PARENT

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In common law, in Ohio, as well as in many other states, a husband has a cause of action against one who wrongfully or negligently causes personal injury to his wife.[1] This cause of action has not been abrogated by any of the so-called "married women's statutes", which enable a married woman to sue in her own name as though unmarried, etc.[2]

Under modern statutory practice in Ohio, a wife may sue and recover damages for injury to her person, and may claim as damages any wages which *she has lost*, any disability which she suffers and for pain and suffering. However, she is not entitled to recover for the loss of her services to her husband or to the expense to which he has been put by reason of her injury.[3] While, obviously, the great bulk of evidence necessary to establish a cause of action of the husband is likewise necessary to establish the cause of action of the wife, and the converse is likewise true, it has not been permissible under the statutes which permit the joinder of parties and causes of action (section 2309.05 and 2309.06, Revised Code) to join husband and wife and their separate causes of action in the bringing of one suit.

A parallel situation has existed with respect to the claim of a minor for personal injuries and the cause of action of his parent for loss of services and expenses.[4]

Numerous states have, by statute, permitted the joinder of a husband's action for loss of services of his wife and medical expenses incurred by him with the action brought by the wife to recover her own injuries. Such joinder is permissive in New Jersey, Massachusetts, California, Pennsylvania and a number of other states.

The Judicial Council of Ohio has made a study of the statutory situation in Ohio and found that there is frequent duplication of litigation resulting from the inability of such plaintiffs to join their causes of action, although they arose out of the same wrongful act, involved the same defendant and required substantially the same evidence to establish. The Council also considered that although, with consent of both parties, such

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1 Baltimore & Ohio R.R. v. Glenn, 66 Ohio St. 395, 64 N.E. 438 (1902).

2 *Ibid.* 28 OHIO JUR. 2d *Husband and Wife,* § 134.

3 Baltimore & Ohio R.R. v. Glenn, *supra* note 1; Hrvatin v. Cleveland Ry., 69 Ohio App. 499, 44 N.E.2d 283 (1942).

4 30 OHIO JUR. 580 *Parent and Child,* § 31.

actions might be consolidated for trial, this seldom occurs in practice, because of the suspicion and lack of cooperation which often exists as between counsel for the plaintiff and counsel for the defendant.

As a result of this study, the Judicial Council prepared a proposal which was embodied in Senate Bill 313, introduced in the 103rd General Assembly by the authors. This proposal simply provided that causes of action of a married woman or a minor for personal injuries might be joined with the claims of the husband of the married woman or parent or guardian of the minor,[5] and that the requirement, that causes of action united must affect all parties to the action, should not prevent a joinder of the cause of action of a married woman or a minor with the cause of action of the husband of the married woman or parent or guardian of the minor, growing out of the same wrongful act.[6]

As originally introduced, Senate Bill 313 amended section 2305.10, Revised Code, to include within the two-year statute of limitations, actions for expenses or loss of services occasioned by a personal injury to a married woman or a minor, but this portion of the bill was deleted in the Judiciary Committee of the Senate and Senate Bill 313 as thus amended was passed by both Houses and signed by the Governor.

Consideration was given to the question as to whether the joinder of such causes of action should not be made compulsory, rather than permissive only. However, the matter was resolved in favor of permissive joinder because of the difficulty which would be occasioned in the event a husband and wife were estranged and the husband were recalcitrant, or were absent from the jurisdiction. Furthermore, sufficient protection against unnecessary multiplicity of actions under the amended statute is found in section 2309.64, Revised Code, which provides that when two or more actions are pending in the same court, the defendant may, on motion and notice to the adverse party, require him to show why they should not be consolidated, and the court has the power to order consolidation if it finds that they ought to be joined. It is unlikely that a husband and wife would file their actions in different counties simply for the purpose of harassing the defendant, and the plaintiff is protected by the opportunity to show cause why the actions should not be joined. It would appear unlikely that a court would order joinder of the actions if the interests of the husband and wife did not in fact coincide.

To summarize, where in the past, most personal injuries to a married woman or a minor child have required the filing of two civil actions to bring before the proper court all of the legal rights which arise by reason of such injury, one such action will now suffice. Advantages to the plaintiff include greatly reduced expense of the furnishing of expert testimony, the filing of one deposit for court costs, rather than two, and perhaps the tactical advantage of being able to show substantial medical expenses

[5] Ohio Rev. Code § 2309.05 as amended, effective November 9, 1959.

[6] Ohio Rev. Code § 2309.06 as amended, effective November 9, 1959.

in the same action as is claimed damages for a personal injury itself. The defendant is afforded the advantage of responding in a single trial, with the attendant reduction of per diem legal fees, the cost of expert testimony and other expenses occasioned by a possible double trial of substantially the same issues. Of course, the reduction in the amount of litigation necessary to establish these causes of action has an alleviating effect on the crowded court dockets.