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Recent Developments

Gaver v. Harrant: CHILD CANNOT RECOVER DAMAGES FOR LOSS OF PARENTAL CONSORTIUM WHEN THIRD PARTY'S NEGLIGENCE CAUSES PARENT'S INJURY.

In *Gaver v. Harrant*, 316 Md. 17, 557 A.2d 210 (1989), the Court of Appeals of Maryland refused to adopt a cause of action allowing a minor child to recover damages for the loss of parental society and affection due to injury to the parent by a third party's negligence. In so ruling, the court of appeals affirmed the decision of the Circuit Court for Frederick County.

In 1985, Stephen Gaver helped his neighbor, Roman Harrant, construct a 2400-pound free-standing post and beam trellis. The structure fell upon Gaver, causing permanent injuries. Gaver and his wife, on their own behalf and on behalf of their two minor children, brought suit against their neighbor alleging the neighbor's negligence and asking for loss of consortium damages for the children. The Circuit Court for Frederick County dismissed the claim because Maryland did not recognize a cause of action rewarding minor children for the loss of society and affection of a parent. The importance of this issue compelled the court of appeals to grant certiorari before the court of special appeals considered the case.

Under the existing rule in Maryland, a child cannot recover damages for the loss of parental society and affection when the parent suffers an injury due to the negligence of another. The court can only change this rule if the rule is "unsound in the circumstances of modern life, a vestige of the past, no longer suitable to our people." *Id.* at 28, 557 A.2d at 216 (quoting *Harrison v. Montgomery County Bd. of Educ.*, 295 Md. 442, 459, 456 A.2d 894 (1983)).

The court quickly noted that tort law does not favor claims in which "the injury to the plaintiff occurs as a consequence of injury to another person, and this consequential injury is to the plain-

tiff's psychic interests rather than to his physical person or tangible property." *Gaver*, 316 Md. at 22, 557 A.2d at 213 (quoting *Norwest v. Presbyterian Intercommunity Hosp.*, 293 Or. 543, 652 P.2d 318, 321 (1982)). The *Gaver* court was wary that the child suffered only intangible injuries. It believed that damages were too uncertain and too remote to be assessed. The court opined that money serves as a poor remedy for a child's mental scars. This cause of action:

[W]ill simply establish a fund so that upon reaching adulthood, when plaintiffs will be less in need of maternal guidance, they will be unusually wealthy men and women. To say that plaintiffs have been "compensated" for their loss is superficial; in reality they have suffered a loss for which they can never be compensated; they have obtained, instead, a future benefit essentially unrelated to that loss.

Gaver, 316 Md. at 25, 557 A.2d at 214 (quoting *Borer v. American Airlines*, 138 Cal. Rptr. 302, 563 P.2d 858, 862 (1977)). Other courts point out that an undesirable recovery is of greater social benefit than no recovery at all.

The court feared that adoption of such a cause of action would unnecessarily subject the tortfeasor to even greater liability, particularly because this liability grows out of a single incident. *Gaver*, 316 Md. at 31, 557 A.2d at 217. Additionally, society would bear the burden of increased insurance premiums and increased costs of administration.

The court was also wary of expanding loss of consortium claims. The first time Maryland recognized a loss of consortium cause of action was over two decades ago in *Deems v. Western Md. Ry.*, 247 Md. 95, 231 A.2d 514 (1967). This decision, according to the court of appeals in *Gaver*:

[D]id not create a new loss of consortium cause of action for the wife; instead, [it] created a joint husband-wife cause of action for loss of con-

sortium. This . . . is more than simply requiring joinder of claims, because the loss of consortium claim belongs to neither spouse alone, but to the "entity."

Gaver, 316 Md. at 31-32, 557 A.2d at 218. Thus, the nature of the relationship between a husband and a wife sets it apart from the relationship between a parent and a child, as far as this cause of action is concerned. Accordingly, the analogy to a spousal consortium claim was rejected.

The argument advanced in support of the cause of action looked to Maryland's Wrongful Death Act, which allows a minor child to recover loss of consortium damages for the death of a parent. Thus, "the real anomaly is to allow a child's recovery for the loss of a parent's death but to deny such recovery when the loss attends the parent's injury." *Gaver*, 316 Md. at 27, 557 A.2d at 215 (quoting *Berger v. Weber*, 411 Mich. 1, 303 N.W.2d 424, 426 (1981)). The *Gaver* court disagreed. It pointed out that the statute was a legislative creation, and that the legislature was welcome to create a new cause of action if it so desired. But the court did not presently desire to take this approach.

The court concluded:

We, of course, are not unmindful of the importance of the parent-child relationship, nor of the magnitude of loss suffered by a child when a parent is seriously injured. We conclude, however, that adoption of the proposed cause of action is not compelled by changing circumstances nor by a pressing societal need.

Gaver, 316 Md. at 33, 557 A.2d at 218. As a result, the Court of Appeals of Maryland exhibits a growing distaste for loss of consortium claims. Aligning itself with the majority of jurisdictions, the court refused to extend the cause of action to a child whose parent suffered an injury at the hands of another's negligence.

—Gregory R. Smouse