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Should Pennsylvania Recognize a Cause of Action for Loss of Parental Consortium?

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I. INTRODUCTION

Black's Law Dictionary has defined "consortium" to mean the "conjugal fellowship of Husband and Wife, and the right of each to the company, society, co-operation, affection, and aid of the other in every conjugal relation."[1] Black's further states that "damages for loss of consortium are commonly sought in wrongful death actions, or when [a] spouse has been seriously injured through [the] negligence of another; or by [a] spouse against [a] third person alleging that he or she has caused [a] breaking up of the marriage."[2] Black's also defines the action to include the loss or impairment of sexual relations and that the action "is a separate cause of action belonging to the spouse of the injured married partner and though derivative in the sense of being occasioned by injury to [the] spouse, is a direct injury to the spouse who has lost the consortium."[3]

As observed by professors Prosser and Keeton, the loss of consortium claim is derived from the marital relationship and the rights attendant upon that relationship.[4] Accordingly, a substantial majority of American Courts have refused to extend recovery for loss of consortium beyond the spousal relationship.[5] A small group of courts, however, have expanded the action beyond the spousal relationship, permitting recovery between parent and child, unmarried consorts, and married consorts when the injury occurred before marriage.[6] Pennsylvania, remaining consistent with the view of a majority of American Courts, has refused to extend a cause of action for loss of consortium beyond the spousal relationship.[7]

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1. BLACK'S LAW DICTIONARY, 280 (5th Ed. 1979).
2. *Id.*
3. *Id.*
4. W. PROSSER & W. KEETON, PROSSER AND KEETON ON TORTS, § 125 at 932 (5th Ed. 1984).
5. *Id.*
6. *Id. See infra*, notes 60 to 68 and accompanying text for jurisdictions permitting a cause of action for loss of parental consortium.
7. *See*, Steiner by Steiner v. Bell Telephone Co., 358 Pa. Super. 505, 517 A.2d 1348

This comment considers the narrow issue of whether Pennsylvania should join the minority view of American Courts and extend a cause of action to a child for the loss of *parental* consortium when the parent is negligently injured by a third party tortfeasor. The analysis begins with a brief and concise history of the development of the loss of consortium action and then shifts its focus to a review of relevant case law in Pennsylvania regarding the subject cause of action. The Comment considers the arguments for and against the adoption of a cause of action for the loss of parental consortium and concludes that Pennsylvania should not judicially expand recovery for loss of consortium beyond the spousal relationship.

II. Concise History

Early on, the common law recognized a cause of action in the master for the loss of a servant's services when the servant was injured by a third party tortfeasor.[8] By 1619, the Common Law Courts extended that right to a husband allowing him to recover for the loss of marital services from a tortfeasor who had injured his wife.[9] Until comparatively recently, however, there was no similar action in favor of a wife when her husband was injured.[10] It was not until 1950, in *Hitaffer v. Argonne*, Co.,[11] that an American Court allowed a wife to recover for loss of consortium.[12] Today, a majority of American Courts allow the loss of consortium claim to either spouse "as a matter of reform in the Common Law or as a matter of equal protection under constitutional or statutory provisions."[13] Still, as previously mentioned, courts have been reluctant

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(1986), *allocatur granted*, 516 Pa. 627, 532 A.2d 437 (1987), *affirmed without opinion*, 518 Pa. 57, 540 A.2d 266 (1988); Schroeder v. Ear, Nose and Throat Associates of Lehigh Valley, Inc., 383 Pa. Super. 440, 557 A.2d 21 (1989).

8. W. Prosser & W. Keeton, Prosser and Keeton on Torts, § 125 at 931 (5th ed. 1984).

9. *Id. See also*, Donald J. Farage, *Excerpts from a Symposium on Tort Law Developments in 1987*, 92 Dick. L. Rev. 133 (1987).

10. Prosser and Keeton at 931. Since then the Husband's claim for consortium developed by an expansion of the "services" owed to him by the wife, and since he owed the wife no services at all, it followed that she had no claim when he was injured. *Id.*

11. 183 F.2d 811 (D.C. Cir. 1950), *cert. denied*, 340 U.S. 852 (195), *overruled on other grounds*, Smither & Co., Inc. v. Coles, 242 F.2d 220 (D.C. Cir. 1957), *cert. denied*, 354 U.S. 914 (1957). The *Hittafer* court defined "consortium" to include not only marital services but also love, affection, companionship, and sexual relations. 183 F.2d at 819.

12. *Id.*

13. Prosser and Keeton at 932.

to extend recovery for loss of consortium beyond the spousal relationship.

III. PENNSYLVANIA

Pennsylvania has long recognized that where a third party has tortiously caused personal injuries to a wife, the husband is entitled to recover damages from the third party tortfeasor for the loss of consortium resulting from the wife's injuries.[14] Early Pennsylvania law did not grant the wife a similar cause of action.[15] As late as 1960, in *Neuberg v. Bobowicz*,[16] Pennsylvania continued to deny the wife recovery for loss of consortium when her husband was tortiously injured by a third-party.[17] It was not until 1974, in *Hopkins v. Blanco*,[18] that the Pennsylvania Supreme Court permitted a wife to recover for loss of consortium as a matter of right under the Equal Rights Amendment to the Pennsylvania Constitution.[19] As mentioned above in the Introduction, Pennsylvania Courts have refused to extend the loss of consortium action beyond the spousal relationship and accordingly have refused to recognize a cause of action for loss of parental consortium when a parent sustains personal injuries as a result of the conduct of a third-party tortfeasor.[20]

Two recent Pennsylvania Superior Court opinions, *Steiner by*

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14. *See*, Quinn v. City of Pittsburgh, 243 Pa. 521, 90 A.2d 353 (1914) (holding that "the right to recover for loss of consortium is confined to cases where a husband sues for injuries to his wife"); Brown v. Philadelphia Transp. Co., 437 Pa. 348, 263 A.2d 423 (1970); Link v. Highway Express Lines, Inc., 444 Pa. 447, 282 A.2d 727 (1971). See also, 21 STANDARD PENNSYLVANIA PRACTICE 2d § 116:48.

15. *See*, Farage, *Excerpts from a Symposium on Tort Development*, at 134.

16. 401 Pa. 146, 162 A.2d 662 (1960). Justice Musmanno's dissent in *Neuberg* later became the prevailing rule allowing the wife to recover for loss of consortium resulting from injury to her husband. (*See*, Hopkins v. Blanco, 457 Pa. 90, 320 A.2d 139 (1974), permitting a wife to recover for loss of consortium under the Equal Rights Amendment to the Pennsylvania Constitution.)

17. *Id.*

18. 457 Pa. 90, 320 A.2d 139 (1974). *Hopkins* held that under the Equal Rights Amendment to the Pennsylvania Constitution, since a Husband has a right to recover damages from a third person for loss of consortium in connection with personal injuries to his wife, the wife must be given an equal right, and to deny a wife the right to recover damages from a third person for loss of consortium in connection with personal injuries to her husband would violate the Pennsylvania Constitution. Thus, since the Husband is permitted to recover for the loss of his wife's consortium, under the Equal Rights Amendment to the Pennsylvania Constitution, the wife must similarly be allowed to recover for the loss of her husband's consortium. 21 STANDARD PENNSYLVANIA PRACTICE 2d § 116:48.

19. *Id.*

20. *See supra*, note 7 and accompanying text.

Steiner v. Bell Telephone Co.,[21] and *Schroeder v. Ear, Nose and Throat Assoc.*,[22] demonstrate this reluctance. In *Steiner*, the children of a parent injured by an unknown assailant while trying to dial for help sought to recover against Bell Telephone Company.[23] The Steiners alleged that Bell was liable to them for the injury to their family relationship "resulting from their parents' marital breakdown caused by the criminal attack on their mother which could have been avoided had Bell Telephone not negligently handled their mother's telephone call.[24] The trial court granted Bell's preliminary objections in the nature of a demurrer and dismissed the Steiners' complaint for failure to state a cause of action.[25] The Steiners appealed the trial court's order dismissing their complaint and the appeal was certified to be argued before the Pennsylvania Superior Court *en banc*.[26]

The issue before the Superior Court was whether Pennsylvania should recognize a cause of action by a child for loss of parental consortium, when the parent is injured by a third party tortfeasor's negligence. In affirming the trial court's order dismissing the Steiners' complaint, the Superior Court refused to recognize a cause of action for loss of parental consortium.[27]

Judge Rowley, writing for the majority[28] in *Steiner*, began his legal analysis by acknowledging that there was a division of authority among the sister states as to whether a child's action for loss of parental consortium was recognized.[29] The majority stated that only six states recognized a child's cause of action for loss of parental consortium resulting from a third party tortfeasor's injury to a parent, while the majority of states refused to recognize such a cause of action.[30] From this, the *Steiner* Court declared, "We do

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21. 358 Pa. Super. 505, 517 A.2d 1348 (1986), *allocatur granted*, 516 Pa. 627, 532 A.2d 437 (1987), *affirmed without opinion*, 518 Pa. 57, 540 A.2d 266 (1988).

22. 383 Pa. Super. 440, 557 A.2d 21 (1989).

23. 527 A.2d at 1348.

24. *Id.* at 1349.

25. *Id.*

26. *Id.*, Judges Cirillo, Brosky, Rowley, Wieland, Montemurro, Beck, Popovich and Johnson participated in the decision of the case. Judge Tamila did not participate in the decision.

27. 517 A.2d at 1349.

28. Judge Brosky filed a dissenting opinion.

29. 517 A.2d at 1354.

30. *Id.* The majority stated that the following jurisdictions recognized a cause of action for loss of parental consortium: Hay v. Medical Center of Vermont, 145 Vt. 533, 496 A.2d 939 (1985); Ueland v. Reynolds Metals Co., 103 Wash. 2d 131, 691 P.2d 190 (1984); Theama v. City of Kenosha, 117 Wis. 2d 508, 344 N.W.2d 513 (1984); Weitl v. Moes, 311 N.W.2d 259 (Iowa, 1981); Ferriter v. Daniel O'Connell's Sons, Inc., 381 Mass. 507, 413

not find a general consensus among state courts to allow the cause of action."[31]

The *Steiner* majority relied, in essence, on two bases in their determination not to judicially recognize the subject cause of action.[32] First, the majority stated that "[t]he difference in creation of spousal and filial relationships justifies the differential treatment between spouses and children."[33] The majority explained that spouses enter into their relationships freely and by choice whereas the child has no control over the commencement of the parent/child relationship.[34] The court further opined that although both relationships involve love, companionship, affection, guidance and care, the relationships are "substantively . . . different and are not comparable."[35]

The *Steiner* majority discussed the question raised in *Steiner* as a policy issue of how far to "extend liability beyond the ordinary principles of negligence which limit liability to those who are immediately injured and to those for whom liability is established by some legal source other than foreseeability."[36] The *Steiner* court also reasoned that the legislature is better equipped in weighing the benefits of allowing children to have a right to recover damages for loss of parental consortium and accordingly stated that the legislature "is the appropriate entity to determine if Pennsylvania will recognize a child's cause of action for loss of parental consortium and under what circumstances."[37]

N.E.2d 690 (1980); and Berger v. Weber, 82 Mich. App. 199, 267 N.W.2d 124 (1978), *aff'd*, 411 Mich. 1, 303 N.W.2d 242 (1981). At least three more jurisdictions have recognized the cause of action since *Steiner*. *See infra*, notes 60-68 and accompanying text.

31. 517 A.2d at 1354.

32. *See generally*, 517 A.2d at 1354-57.

33. *Id.* at 1355. The *Steiner* court stated that:

> Spouses enter into their relationships freely and by choice and do so to bind one another in a permanent unity. A child, however, has no control over the commencement of the parent/child relationship, and rather than trying to become one with his parents, he perpetually strives to develop from a totally dependent person to one which is entirely independent. Although both relationships involve love, companionship, affection, guidance and care, the nature of these elements, the ends which they ideally achieve, and the means by which they reach those ends is subtly but intrinsically different. Therefore, although identical labels can be attached to the elements of the spousal relationship and the parent/child relationship, substantively the relationships are different and are not comparable.

Id.

34. *Id.*

35. *Id.*

36. *Id.* at 1356. The court cited Northwest v. Presbyterian Inter Community Hospital, 293 Or. 543, 652 P.2d 318, 333 (1982), for support.

37. *Id.* at 1356. The *Steiner* court opined:

The majority also asserted that their reluctance to judicially expand tort liability was supported by Justice Flaherty's concurring opinion in *Mazzagatti v. Everingham*.[38] In *Mazzagatti*, the Pennsylvania Supreme Court declined to expand tort liability for negligent infliction of emotional distress of a close relative who arrived at the scene of an accident shortly after it took place.[39] Justice Flaherty stated:

> It is illusory to believe the public does not pay for tort recoveries, or that resources for such are limitless. As it is with everything, a balance must be struck—certain limits drawn. We are, in the end dealing with money, and that money must come from somewhere—from someone: the public pays for the very most part by increased insurance premiums, taxation, prices paid for consumer goods, medical services, and in loss of jobs when the manufacturing industry is too adversely affected. A sound and viable tort system—generally what we now have—is a valuable incident of our free society, but we must protect it from excess lest it becomes unworkable and alas we find it replaced with something far from desirable.[40]

In concluding, the *Steiner* Court stated that:

> because there is no constitutional mandate compelling us to recognize a cause of action for loss of parental consortium, because there is presently no legal basis for allowing the cause of action, because there is no general or growing consensus that such a cause of action should be established, and because to allow such a cause of action is a policy determination which can most thoroughly and representatively be considered and resolved by the legislature, we do not recognize a child's cause of action for loss of parental consortium due to tortious interference of a third party.[41]

> The legislature has more widespread resources to utilize the benefits of allowing children to have a right to recover damages for loss of parental consortium due to negligent injury and is the appropriate entity to determine if Pennsylvania will recognize a child's cause of action for loss of parental consortium and under what circumstances. The legislature has the ability to enact legislation for wrongful injury patterned on the wrongful death statute. Concern about increased litigation and multiple claims could thereby be addressed by allowing only one action to be brought and only one recovery to be made which must be shared by some legislatively determined apportionment among the legislatively determined class of beneficiaries. The legislature is also the more appropriate branch of government to establish the suggested new cause of action because then, if it is determined that some recovery should be allowed but that the benefits of unlimited recovery are outweighed by the cost to society, the legislature can establish a rule of law allowing partial recovery under circumstances and upon conditions which the people's representatives have established to be fairest and most beneficial to all.

Id.

38. *Id.* at 1357. Mazzagatti v. Everingham, 512 Pa. 266, 516 A.2d 672 (1986).
39. 517 A.2d at 1357.
40. *Id.* (*citing Mazzagatti*, 512 Pa. at 281, 516 A.2d at 680 (1986)).
41. 517 A.2d at 1357.

Judge Brosky dissented from the majority opinion in *Steiner*.[42] The dissent found the majority's bases for denying the Steiners' claim for loss of parental consortium unpersuasive.[43] Judge Brosky criticized the majority's conclusion that "[t]he difference in creation of spousal and filial relationships justifies the differential treatment between spouses and children."[44] The dissent opined that the majority failed to explain why this distinction should make a difference as to which relationship is to receive protection in our courts.[45] The dissent also rebutted the majority's opinion that whether to allow the cause of action is a policy determination which is best left to the legislature to resolve.[46] In so doing, the dissent referred to the case of *Ferriter v. O'Connell's Sons, Inc.*[47] wherein the Supreme Judicial Court of Massachusetts stated:

> As for the argument that we should withhold our hand until the legislature acts, we need only repeat: In a field long left to the Common Law, change may well come about by the same medium of development. Sensible reform can here be achieved without the articulation of detail or the creation of the administrative mechanisms that customarily comes about by legislative enactment . . . In the end, the legislature may say that we have mistaken the present public understanding of the nature of the [parent-child] relation, but that we cannot divine or anticipate.[48]

In concluding, Judge Brosky stated that the majority had not advanced any affirmative reasons for denying the subject cause of action, and would therefore reverse the trial court's order dismissing the Steiners' complaint and allow Michael Steiner a cause of action for the loss of his mother's consortium.[49]

More recently, in *Schroeder v. Ear, Nose and Throat Assoc.*,[50] the Pennsylvania Superior Court again refused to recognize a child's action for loss of parental consortium.[51] In *Schroeder*, a medical malpractice action was brought against physicians who failed to inform a patient of a Hodgkins disease diagnosis and/or that a C-T scan was recommended by a radiologist.[52] The patient,

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42. 517 A.2d at 1357-58.
43. *Id.* at 1357.
44. *Id.*
45. *Id.*
46. *Id.* at 1358.
47. *Id.*, Ferriter v. O'Connell's Sons, Inc., 381 Mass. 507, 413 N.E.2d 690 (1980).
48. *Id.* (*citing Ferriter*, 418 N.E.2d at 695).
49. 517 A.2d at 1358.
50. 383 Pa. Super. 440, 557 A.2d 21 (1989).
51. 557 A.2d at 23.
52. *Id.* at 21.

whose subsequent pregnancy was terminated in the course of treatment for the Hodgkin's disease, alleged that the physicians were negligent in their care and treatment and for failing to inform her of prior X-ray results.[53] The Complaint sought recovery for, *inter alia*, loss of consortium by the patient's husband, loss of parental consortium on behalf of the patient's minor child, and for the loss of services, society and companionship of the aborted fetus by the patient, her husband and the minor child.[54]

In response to the defendants' preliminary objections, Judge McGinley of the Court of Common Pleas of Lehigh County struck all counts of the Complaint regarding the minor's loss of consortium claim as well as all claims for damages for loss of the child in utero.[55]

On appeal, the Superior Court held, *inter alia*, that the minor child had no claim against the mother's physicians for loss of parental consortium.[56] The Court stated that "[a]ppellant's argument, that Lauren is entitled to recovery for injury to her mother, has been disposed of by this court in *Steiner by Steiner v. Bell Telephone Company*, . . . and our Order refusing to recognize loss of parental consortium as a cause of action has been affirmed without opinion."[57] The *Schroeder* Court concluded that consistent with the seminal case of *Quinn v. City of Pittsburgh*,[58] the right to enter claims for loss of consortium have been limited to spouses.[59]

IV. Other Jurisdictions

While no clear trend has emerged favoring the acceptance of a cause of action for loss of parental consortium, courts in at least nine (9) jurisdictions have recognized the cause of action. Arizona (1989),[60] Indiana (1988),[61] Alaska (1987),[62] Vermont ((1985),[63]

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53. *Id.* at 22.
54. *Id.*
55. *Id.* at 21.
56. *Id.* at 22.
57. *Id.*
58. 243 Pa. 521, 90 A.2d 353 (1914). In *Quinn*, a 10 year old girl was injured after falling from a bridge when she leaned against the bridge's wooden railing. 90 A.2d at 354. The trial judge included in his instructions to the jury that the jury could consider the companionship that the injured child would give to her mother. *Id.* The Pennsylvania Supreme Court held this was error and stated that "[t]he right to recover for loss of companionship is confined to cases where a husband sues for injuries to his wife." *Id.*
59. 557 A.2d at 23.
60. Villareal v. State Dept. of Transp., ___ Ariz. ___, 774 P.2d 213 (1989). *Villareal* held that children may recover for loss of consortium of a parent, overruling Jeyne v. Del E. Webb Constr. Co., 77 Ariz. 226, 269 P.2d 723 (1954). The *Villareal* court limited "parent" to

Washington (1984),[64] Wisconsin (1984),[65] Michigan (1981),[66] Iowa (1981),[67] and Massachusetts (1980).[68] The remaining states, however, have not adopted the cause of action. The Restatement (Second) of Torts also rejects the cause of action.[69]

Courts have relied on various reasons in accepting or rejecting a cause of action for loss of parental consortium. The following arguments are most commonly relied upon in rejecting a cause of action for loss of parental consortium: (1) No legal basis for such a cause of action; (2) Lack of precedent; (3) The adoption of such a cause of action is more properly a legislative function; (4) The likelihood of increased litigation through multiple claims; (5) Possibility of double recovery; (6) Interest in limiting the consequences of a wrong to a controllable degree; (7) Difficulty in assessing damages; (8) The inherent differences in the spousal and the parent/child relationships; (9) The fear that recognition of a child's cause of action will lead the way to similar actions for siblings, grandparents, and parent substitutes; and (10) The additional burden placed on society through increased insurance costs and the added expenses of litigation and settlement.

Some of the reasons commonly advanced for recognizing the cause of action are: (1) Society's increased recognition and aware-

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mean only biological and adoptive parents. Also, the court held that the child may recover only when the parent suffers a serious, permanent, disabling injury rendering the parent unable to provide love, care, companionship, and guidance to the child.

61. Dearborn Fabricating & Engineering Corp. v. Wickham, 532 N.E.2d 16 (Ind. Ct. App. 1988). However, on March 27, 1990, the Supreme Court of Indiana vacated the opinion of the Court of Appeals, reversed the trial court's denial of the defendant's motion to dismiss Count VII of the complaint regarding loss of parental consortium, and refused to recognize a cause of action for loss of parental consortium. Dearborn Fabricating and Engineering Corp. v. Wickham, ___ N.E.2d ___, 1990 WL 35624 (Ind.).

62. Hibpshman v. Prudhoe Bay Supply, Inc., 734 P.2d 991 (Alaska 1987).

63. Hay v. Medical Center Hospital, 145 Vt. 533, 496 A.2d 939 (1985).

64. Ueland v. Reynolds Metals Co., 103 Wash. 2d 131, 691 P.2d 190 (1984).

65. Theama v. City of Kenosha, 117 Wis. 2d 508, 344 N.W.2d 513 (1984).

66. Berger v. Weber, 411 Mich. 1, 303 N.W.2d 424 (1981).

67. Weitl v. Moes, 311 N.W.2d 259 (Iowa 1981). However, *Weitl* was overruled by Audobon-Exira Ready Mix, Inc. v. Illinois Cent. Gulf R.R., 335 N.W.2d 148 (Iowa 1983). The *Audobon* Court stated that:

> To the extent our plurality opinion in *Weitl* (1) granted a child an independent right to bring such an action and (2) to the extent that it interpreted section 613.15 to exclude intangible consortium damages, and (3) to the extent it limited the period of damages to the child's minority, it is overruled.

335 N.W.2d at 152.

68. Ferriter v. Daniel O'Connell's Sons, Inc., 381 Mass. 507, 413 N.E.2d 690 (1980).

69. RESTATEMENT (SECOND) OF TORTS § 707A (1977). That section provides that "[o]ne who by reason of his tortious conduct is liable to a parent for illness or other bodily harm is not liable to a minor child for resulting loss of parental support and care." *Id.*

ness of children as persons with rights; (2) The parent/child relationship is unique and deserves protection; (3) The loss of a parent's love, care and companionship can severely impact a child's development; (4) A child suffers a real and serious loss when a parent is injured; and (5) Recognizing such a cause of action will not increase litigation because compulsory joinder can easily solve this problem.

V. Conclusion

For the reasons cited above and because the reasons commonly cited for adopting the subject cause of action are less persuasive, Pennsylvania should not judicially extend a cause of action to a child for the loss of parental consortium when a parent is injured by the conduct of a third party tortfeasor. Such an extension of tort liability is generally disfavored in the law. Also, to allow such a cause of action, in essence, is to allow a cause of action for the negligent infliction of emotional distress where there is no contemporaneous observance of the injury.[70] Furthermore, the potential harm to the family which may be generated through the litigation process must be anticipated. As recently recognized by the Supreme Court of Indiana in *Dearborn Fabricating and Engineering Corp. v. Wickham*:[71]

> We are particularly concerned that each claim for such damages will invite defendants to minimize the claim by seeking to prove inadequacy and weakness of a child's familial relationships, resulting in pretrial investigation, depositions, trial testimony, and final argument attacking the quality of the parent-child relationship enjoyed by the child before the parent's injuries. Many loving children heretofore content would thus be likely to suffer significant emotional harm inflicted by the litigation process itself, in addition to that already resulting from the parent's injuries.[72]

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70. *See* Mazzagatti v. Everingham by Everingham, 516 A.2d 672, 512 Pa. 266 (1986). The *Mazzagatti* court held that a plaintiff who does not experience a contemporaneous observance of the injury to a close relative does not state a cause of action for the negligent infliction of emotional distress under the parameters set forth in Sinn v. Burd, 486 Pa. 146, 404 A.2d 672 (1979).

71. ___ N.E.2d ___, 1990 WL 35624 (Ind.)

72. 1990 WL 35624 (Ind.) at p. 6. The *Dearborn* Court further opined:

> While the parent-child relationship may presently be attacked in the litigation of a parent's claim for loss of services, society, and companionship resulting from tortious injuries to a child, we perceive such efforts as directed more at the adult parent claiming the loss, with negligible potential for personal attack upon a child's values and perceptions. Furthermore, an adult pursuing a claim for loss of society and companionship or spousal consortium takes on the risk of litigation assault upon the familial relationship knowingly and voluntarily. But this is not so for a child. The parent's attorney will likely include the child's claim with that of the parent as a matter

The likelihood of further expansion of consortium-like claims must also be contemplated. Lastly, the adoption of a new cause of action involves serious public policy concerns which are best left to the legislature to deal.

Gregg A. Guthrie

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of course. It is this consideration which persuades us that a child's loss of consortium claim may be distinguished and treated differently from that of a parent or a spouse. *Id.* at p. 6-7.