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ILLINOIS LAW MANUAL

CHAPTER II

NEGLIGENCE

C. LOSS OF CONSORTIUM

1. Basic Law

It has always been the law in Illinois that a husband could recover for loss of consortium arising out of injury to his wife. Despite “social progress,” it was not until 1960 that the Illinois Supreme Court recognized a wife’s loss of consortium arising out of injury to her husband.

Dini v. Naiditch, 20 Ill. 2d 406, 430 (1960).

A common error is an assumption that the recovery for loss of consortium is limited to loss of sexual relations. To the contrary, consortium also includes material services, companionship, and felicity. Malfeo v. Larson, 208 Ill. App. 3d 418, 425 (1990). All of these elements are encompassed in the term “loss of consortium.”

A loss of consortium claim is derivative. The claim flows from an injury to a spouse who has an independent recoverable cause of action against a defendant in his or her own right. Allender v. Guardian Life Insurance Company of America, 592 F. Supp. 541, 544 (N.D. Ill. 1984), *aff’d.*; 789 F. 2d 920 (7th Cir. 1986); Economy Preferred Insurance Co., 302 Ill. App. 3d 360, 363 (4th Dist. 1998). Nevertheless, loss of consortium is an independent action of its own and is, therefore, not derivative in the sense that a spouse must not bring the action as a representative of the injured spouse. Sharpenter v. Lynch, 233 Ill. App. 3d 319, 325 (1992). The party

seeking loss of consortium may sue in his or her own name.

The independent nature of a claim for loss of consortium is best illustrated by the fact that such a claim is not released by an agreement to settle the injured spouse’s own claim. Brown v. Metzger, 104 Ill. 2d 30, 35 (Ill. 1984). However, a double recovery for the same elements of damage is not permitted.

The elements of a claim for loss of consortium are:

- (1) liability of the defendant to the injured spouse;
- (2) marriage of the claimant to the injured spouse; and
- (3) damages (proof of which is required and not presumed).

Seaman v. Wallace, 204 Ill. App. 3d 619, 639 (4th Dist. 1990).

The statute of limitations governing this cause of action is set forth in section 13-203 of the Code of Civil Procedure (735 ILCS 5/13-203). With minor exceptions, the time limit for bringing a claim for loss of consortium is the same as for filing a claim for damages to the injured spouse.

Due to the derivative nature of a claim for loss of consortium, the injured spouse's comparative negligence is applied. Therefore, any recovery for loss of consortium is subject to reduction by the injured spouse's comparative negligence. Blagg v. Illinois F.W.D. Truck & Equipment Co., 143 Ill. 2d 188, 201 (Ill. 1991); Lundquist v. Nickels, 238 Ill. App. 3d 410, 433 (4th Dist. 1992).

2. Analysis

Assume an unemployed wife is injured as a pedestrian when struck by an automobile operated by the defendant. Her physical injuries render her permanently disabled, and her closed-head injury leaves her mentally incompetent for a period of three years following the accident. Three and one-half years following the accident, and with no lawsuit having been filed on her behalf, she makes a full settlement with the defendant-driver and gives her own general release. Her settlement includes reimbursement for her pain and suffering as well as

out-of-pocket expenses to pay for maid service to clean her home and a cook to prepare the family's meals.

Although the statute of limitations for personal injury is two years, her husband has five years in which to file a loss of consortium action against the defendant. The statute of limitations for the injured wife's cause of action was tolled for the period of her mental incompetence, three years. Therefore, the statute of limitations did not start to run until the injured wife regained her mental competency.

The husband, although sexually impotent, may still make a claim for the loss of companionship and society of his injured wife as a result of her mental incompetency and physical injuries. Obviously, however, he will not be able to claim the loss of sexual relations. Further, he will not be able to claim the loss of his wife's household services of cooking and cleaning as those damages were reimbursed in the wife's own settlement.