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BELCHER v. GOINS: WEST VIRGINIA JOINS THE DISTINCT MINORITY OF JURISDICTIONS IN RECOGNIZING A CLAIM FOR LOSS OF PARENTAL CONSORTIUM

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I. INTRODUCTION

The majority of states, including West Virginia, recognize a husband’s or wife’s cause of action for loss of consortium in both in injury and wrongful death cases.1 This cause of action lies in the impairment of the non-injured spouse’s right to the society, affection, assistance, conjugal fellowship and sexual relations of the injured spouse.2 Due largely to the nature of the claim, consortium actions

have been historically limited to spouses. In 1980, however, a trend began to expand consortium claims to include a cause of action for the impairment of a child's relationship with the parent. Although recognized by only nine states, this cause of action is gaining momentum. West Virginia has recently joined the distinct minority of states which recognizes a child's cause of action for loss of consortium in a nonfatal injury case. This note analyzes the reasoning behind the decision of the Supreme Court of Appeals of West Virginia in Belcher v. Goins. It also discusses some of the major points of contention upon which the majority of courts base their rejection of the cause of action. It concludes by agreeing with the Court's decision, but points out some of the questions and problems that have plagued the recognition of a child's claim for loss of consortium which were not fully addressed by the court.

II. Facts

The mother of the plaintiff, Stephanie L. Belcher, was injured when the car she was driving was negligently struck head-on by a car driven by the defendant. At the time of the collision, the plaintiff was over eighteen years of age, but resided in her mother's home. Although the plaintiff was not in or near the car at the time of the accident, the plaintiff sought recovery from the defendant for "loss of love, companionship, and consortium of and from her mother," for mental anguish and for nursing and household services provided by the plaintiff to her mother after her mother was injured. The defendant moved to dismiss the claim for failure to state a claim upon which relief could be granted. The trial court denied the motion and ruled that a child has a claim for loss of consortium and mental anguish against a tort-feasor for injuries negligently inflicted on the parent. The age of the child, the circuit court held, was irrelevant, provided that the child lived with the injured parent. Further, the circuit court held that the child may also recover for the value of the nursing and domestic services provided by the child to a parent as a result of the injury. The defendant appealed the decision.

3. Id. at 935.
5. Id. at 833.
III. HOLDING BY THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Although the Supreme Court of Appeals of West Virginia rejected this particular plaintiff's claim due to her age, the court upheld the circuit court's recognition of a child's independent cause of action for loss of consortium due to the tortious injury of a parent by a third person. The court held that parental consortium refers to the intangible benefits arising from the relationship between a minor child and the child's natural or adoptive parents. Consortium includes: society, companionship, comfort, guidance, kindly offices and advice of such parent and protection, care and assistance provided by the parent. The court noted that consortium also includes, consistent with West Virginia's wrongful death statute, sorrow and mental anguish concerning the impairment of the relationship.6

The court limited the claim to minor children and physically or mentally handicapped persons of any age who are dependent upon their natural or adoptive parent physically, emotionally and financially. The injuries to the parent, however, must be serious in nature, thereby severely damaging the parent-child relationship.7

Damages for which the child may claim recovery do not include the loss of financial support of the parent; nor do they include, contrary to the lower court's holding, the value of nursing, domestic or household services provided by the child to the injured parent. Damages recoverable by the child encompass only the nonpecuniary elements constituting parental consortium. The court stated that the relevant factors to be considered in determining amount of damages include, but are not limited to, the child's age, the nature of the child's relationship with the parent, the child's emotional and physical characteristics, and whether other consortium-giving relationships are available to the child.8

Procedurally, the court required that a child's claim for loss of parental consortium be joined with the parent's claim against the

6. Id. at 834.
7. Id. at 841.
8. Id. at 841-43.
alleged tortfeasor if feasible. Further, any percentage of comparative contributory negligence attributable to the parent will reduce the amount of the child's recovery.9

The court overruled Wallace v. Wallace10 (refusing to recognize a cause of action for alienation of affection) to the extent it is inconsistent with the holdings in this case. Most importantly, the court made the principles of this opinion fully retroactive to cases in which the parent’s action for physical injuries has already been decided or adjudicated. In order to prevent stale claims, however, the court did require that the injuries must have been inflicted no more than two years prior and the claim must be brought within thirty days of the filing of the opinion.11

IV. HISTORICAL DEVELOPMENT OF CONSORTIUM CLAIMS

Early common law recognized an action by a master for the negligent injury of his servant.12 This action was allowed in order not only to protect the property of the master, but also to compensate him for the services that he was forced to forego.13 By 1619, this theory was extended, by analogy, to the family.14 At that time, a husband had an action to recover for the loss of marital services due to his wife’s injuries caused by the tortious actions of another as well as for the loss of the services of his children due to their tortious injury.15 Other family members, however, had no such rights. This was due to the doctrine of "pater familias" which dates back to Roman times. This doctrine vested all rights of the family in the father.16 This being the case, the courts refused to recognize any action in which he was not joined. The result was that the wife and the children were, at least in this area of the law, regarded as servants of the husband/father.17

9. Id. at 842.
11. Betcher, 400 S.E.2d at 841-43.
12. Keeton et. al., supra note 2, at 931.
13. Id.
14. Id.
15. Dionne, supra note 1, at 476.
17. Id.
Recovery in these actions by a husband, although labeled compensation for loss of services, was quickly recognized as compensation for the loss of sexual relations, society and affection. These “services” became labeled “consortium.” And although the wife would lose these same services if her husband were injured, she had no claim because under the law the husband owed the wife none of these services.

This obvious discrimination was followed by the early American common law, and it was not until the twentieth century that this injustice was remedied. In the 1950 landmark case of Hitaffer v. Argonne Co., the circuit court of the District of Columbia held that a wife may recover under a cause of action for the loss of her husband’s consortium. West Virginia, as well as the majority of states, now recognizes a wife’s cause of action for loss of consortium. Courts have not, however, shown much willingness to extend recovery for loss of consortium to unmarried consorts or even to consorts when the injury occurred before marriage. Courts have emphasized that the claim is derived from the marital relationship and the rights attendant upon it.

Although a father could recover for the loss of his child’s services in the seventeenth century, he had no right to recover for the loss of society and affection when his child was tortiously injured. This also was not changed until the twentieth century. In 1975, the Wisconsin Supreme Court allowed parents to pursue a claim for loss of filial consortium in Shockley v. Prier. In Shockley, the parents of

18. KEETON et al., supra note 2, at 931.
19. Id.
20. Id.
21. Dionne, supra note 1, at 479.
23. See King v. Bittinger, 231 S.E.2d 239 (W. Va. 1976); W. VA. CODE § 48-3-19a (1969) (A married woman may sue and recover for loss of consortium to the same extent and in all cases as a married man).
24. KEETON et al., supra note 2, at 932.
25. Id.
26. Dionne, supra note 1, at 481. See also RESTATEMENT OF TORTS § 701, cmt. h (1938).
27. 225 N.W.2d 495 (Wis. 1975).
an infant son sued two doctors and a hospital for loss of consortium due to injuries sustained by their son.\textsuperscript{28} West Virginia has not yet expanded the scope of liability in this area.

Despite progress in the law protecting the rights of a wife to spousal consortium and the parents to filial consortium, there has been slow recognition of a child's right to protection of parental consortium.\textsuperscript{29} States had been willing to protect a child from intentional interference with the parent-child relationship by providing an action for alienation of affection. However, most of these statutes have now been abolished.\textsuperscript{30} A child’s only protection from negligent interference with the parent-child relationship now comes under wrongful death statutes.\textsuperscript{31} Most states, including West Virginia, allow a surviving spouse, child, or other dependent to recover for loss of consortium when a parent is tortiously killed.\textsuperscript{32} Damages for which family members can recover under West Virginia’s wrongful death statute include “sorrow, mental anguish, and solace which may include society, companionship, comfort, guidance, kindly offices and advice of the decedent . . . compensation for reasonably expected loss of . . . services, protection, care and assistance provided by the decedent . . . .”\textsuperscript{33} A child’s right to parental consortium is widely protected in the case of a wrongful death of a parent, but not in the case of a non-fatal injury to a parent.

Despite this obvious inequity, courts that considered the issue of a child’s cause of action for loss of parental consortium prior to 1980 unanimously rejected such a cause of action.\textsuperscript{34} Of approximately thirty-four states in which the appellate courts have considered the issue, twenty-five states have refused to recognize a cause of action for a child’s loss of parental consortium.\textsuperscript{35} The Restatement of Torts,
which pre-dates all of the minority opinions, also rejects the cause of action. In 1980, however, the Massachusetts Supreme Court in *Ferriter v. Daniel O'Connell Sons, Inc.*, became the first court to protect the rights of children to their parents' love, affection and guidance. In reaching its decision, the court recognized, among other things, the similarity of a wife's loss of consortium and that of a child, and found no justification for protecting the former and not the latter. This line of reasoning is one of the most common found in the minority decisions.


37. 413 N.E.2d 690, 703 (Mass. 1980).
38. *Id.* at 693-94.
39. The following are opinions of state appellate courts recognizing a common-law claim for loss or impairment of parental consortium in a nonfatal injury case: Hibphushman v. Prudhoe Bay Supply, Inc., 734 P.2d 991 (Alaska 1987) (minor children; “tortiously inflicted” injuries upon parent, even when parent is not so severely injured as to be in a vegetative state); Villareal v. State Department of Health, 718 P.2d 221, 233-34 (Colo. 1986) (en banc), as modified on denial of reh'g; Hinde v. Butler, 408 A.2d 668, 670 (Conn. Super. Ct. 1979) (wrongful death action, but apparently also applicable to cases involving nonfatal physical injury to parent), criticized on another point, Leland v. Chawla, 467 A.2d 439 (Conn. Super. Ct. 1983); Zorzos v. Rosen, 467 So. 2d 305 (Fla. 1985) (statute passed in 1988, however, expressly authorizes recovery of damages by an “unmarried dependent” for loss or injury to parent; W. J. Bremer Co. v. Graham, 312 S.E.2d 787 (Ga. 1984); Halberg v. Young, 41 Haw. 634 (1957).
The twenty-five courts (hereinafter the majority courts) that have refused to recognize this cause of action have all based their decisions on like reasoning. The most common reasons given by these courts include: (1) the weight of precedent refuses to recognize such a claim; (2) courts should defer to the legislature in this area; (3) the lack of historical social and legal policy supporting a parental consortium action in contrast to that supporting wrongful death actions; (4) the dissimilarities between the husband/wife relationship and the parent/child relationship; (5) double recovery; (6) multiplicity of actions; (7) difficulty of assessing the amount of damages; (8) increased liability insurance costs; (9) adverse effect on family relations; and (10) exposure to potentially unlimited liability.

In Belcher v. Goins, the Supreme Court of Appeals of West Virginia addressed each of these arguments and, finding each of them unpersuasive, became only the tenth court to recognize a child's action for loss of consortium. Although persuasive at times, the court's reasoning leaves some questions unanswered.

V. Analysis

A. Weight of Precedent

The West Virginia Court began its analysis by stating that it was “more concerned with the persuasiveness of the precedent than with
the weight of the precedent." Setting the tone for the entire opinion, the court borrowed a statement from the Wisconsin court in *Theama v. City of Kenosha*, which also recognized this cause of action, by stating "[o]ur oath is to do justice, not perpetuate error." The Court was not to be moved by the clear trend that had been established in this area of tort law.

B. Deference to the Legislature

Regarding deference to the legislature, the Court pointed out that since the spousal claim to consortium was judicially created, and the spousal claim is analogous to parental consortium claims, courts have the inherent power to evolve common law in this area as society changes.

Although Maine's highest court in *Durepo v. Fishman* also recognized its right to expand the common law in this area, that court refused to recognize this cause of action. The Maine court found that this decision to expand liability to indemnify children in a parent's non-fatal injury was a question that should be left to the legislature. The court reasoned that "judicial decree [in this area] is no substitute for the exhaustive gathering of socio-economic facts and the public debate upon the import of those facts that would occur before the Maine Legislature enacted so sweeping an embellishment on . . . existing tort law . . . ." As an example of the "practical wisdom of leaving to the legislature the line-drawing job of defining the scope of tort liability in this area," the Maine court pointed to its wrongful death statute. The West Virginia court gave no reason why it was better for it to resolve this issue than the legislature.

41. Id.
42. 344 N.W.2d 513 (Wis. 1984).
43. *Belcher*, 400 S.E.2d at 837-38 (quoting Theama v. City of Kenosha, 344 N.W.2d 513, 518 (Wis. 1984)).
44. Id. at 838.
45. 533 A.2d 264 (Me. 1987).
46. Id. at 264-65.
47. Id. at 265.
48. Id. 265-66.
C. Similarity to Social Policy Behind Wrongful Death Statutes

Along the same lines as the preceding argument, many of the minority courts, as well as the West Virginia court, argue that legislatures, by explicitly protecting a child’s right to consortium in a wrongful death case, have implicitly protected a child’s right to consortium in an injury case. This “legal entitlement” theory is based on the sympathetic and logical argument that a child’s loss of love, care, companionship, and guidance is nearly the same whether the parent dies or is seriously injured. These courts seem to indicate that the legislature would be acting underinclusively and arbitrarily by drawing a distinction between children whose parents are killed and those whose parents are injured.

As one of the leading cases rejecting this cause of action points out, however, this reasoning ignores the historical and legal principles upon which wrongful death statutes are based. The California court in Borer v. American Airlines, Inc. explained that wrongful death statutes were enacted to give the heirs of a deceased victim a cause of action enabling them to pursue the tortfeasor. Under the common law, heirs had no such action. This being the case, a tortfeasor could escape liability “for his action” so long as the victim died. This problem, however, does not exist in an injury case. The injured party retains a cause of action and the tortfeasor cannot escape liability. The existence of a child’s cause of action is not needed to punish the tortfeasor in an injury case. It follows then, that the creation of a child’s cause of action in this setting is not supported by the social policies behind the creation of the wrongful death statute.

The California Court also pointed out that wrongful death statutes expanded the scope of recovery from pecuniary damages to

49. Id.
53. Id. at 865.
54. Id.
55. Id.
56. Id. at 866.
include damages for loss of affection and society. This was done because limiting damages solely to pecuniary losses would frequently bar the heirs from any recovery whatsoever if they failed to prove such losses. This was the result particularly if the deceased victim was a child, an elderly parent, or a non-working spouse who did not contribute measurable amounts of income to the family. The court felt, however, that this would not occur in an injury case because the child’s loss, both in terms of financial support and love and affection, is taken into consideration by the jury in the parent’s claim. Again, it would appear that the historical and legal policies behind wrongful death statutes do not support the theory that the passage of these statutes implicitly supports the creation of a parental consortium claim.

D. Similarities Between Consortium Claims

The West Virginia Court goes on to suggest that the similarities between parental and spousal consortium also give this new cause of action legal entitlement. The court found that the only real difference between the two relationships “is the lack of sexual relations and this single distinction is not significant enough to deny this important cause of action.” This argument by analogy, although persuasive, ignores many of the policy reasons behind the initial recognition of a spouse’s claim for loss of consortium. As the Minnesota Court pointed out when it considered this issue in *Salin v. Kloempken*, a spousal action is based not only on the loss of sexual services but also on the loss of child bearing opportunity.

Courts have also noted that the parent/child relationship, although important, is not a legally recognized entity. It is this legal entity of marriage, viewed as a “united” whole, provides the basis

57. Id.
58. Id. at 865.
59. Id.
60. Id.
62. Id.
63. 322 N.W.2d 736, 739 (Minn. 1982).
upon which the wife was given the right to base her recovery.\textsuperscript{65} This argument, although in keeping with precedent, is not supportable. The mere existence or non-existence of a legally recognized relationship is not of such importance that a child's right to recover for a meaningful loss should be denied.

\textbf{E. Double Recovery}

The Court also rejected the majority argument that recognizing a parental consortium would lead to double recovery.\textsuperscript{66} The courts rejecting the parental consortium claim observed that juries already award damages for loss of impairment of parental consortium in a non-fatal injury case as an undisclosed part of the parents' recovery of non-economic damages.\textsuperscript{67} The creation of a child's cause of action in this area would unjustly allow a child to recover twice.\textsuperscript{68} Ironically, the West Virginia court stated that this argument actually supports the recognition of a child's separate cause of action because this method of compensating a child is judicially inefficient.\textsuperscript{69} The Court stated that establishing two separate causes of action and limiting the injured parent's recovery to the loss of the parent's pecuniary ability to support the child and limiting the child's recovery to loss of parental society will not only end double recovery but also enhance judicial efficiency.\textsuperscript{70} This, the Court states, would be more efficient because "rather than having juries make blind calculations of the minor child's loss in determining an award to the parent, the minor child's loss would be argued openly in court and the jury would be instructed to consider the minor child's loss separately."\textsuperscript{71}

This argument, however, side steps the majority's actual view on double recovery. Those courts point out that if children are recovering for the loss of parental consortium under their injured parent's

\textsuperscript{65} Id.
\textsuperscript{66} Belcher, 400 S.E.2d 830, 838 (W. Va. 1990).
\textsuperscript{68} Id.
\textsuperscript{69} Belcher, 400 S.E.2d at 838.
\textsuperscript{70} Id.
\textsuperscript{71} Id.
claim, then the goal of protecting the child has been reached; establishing a child's independent cause of action will neither solve nor add anything meaningful. If anything more is needed, some majority opinions would advocate the more practical approach of using a jury instruction directing the jury to consider the loss to the child. This, the majority courts contend, will enhance judicial efficiency, if necessary, in a less cumbersome manner. The California court in Borer, however, rejects the jury instruction solution: "To ask the jury, even under carefully drafted instructions, to distinguish the loss to the mother from her inability to care for her children from the loss to the children from the mother's inability to care for them may be asking too much."

The minority courts' argument is much more persuasive than that of the majority in this area. This is particularly so since we do not know for certain if juries are indeed considering children in their award of damages. If a child's loss of a parent's companionship is worthy of recovery, as both the majority and minority opinions seem to agree, then a method of recovery should be implemented which assures that compensation is being given, rather than leaving it to chance.

F. Multiplicity of Actions

The West Virginia Court also rejected the arguments that this cause of action will lead to multiplicity of actions; defendants will be unfairly subjected to numerous and, in some cases, delayed claims. Virtually all courts recognizing this claim, including the West Virginia Court, remedy this defect by simply requiring that the child join the claim for loss of parental consortium with the parent's injury claim if feasible. This solution may seem relatively ideal on its face, but it has fundamental problems. First, the court did not fully discuss the possible roadblock created to such joinder of claims by the West

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74. Id.
Virginia Code. West Virginia, like many states, tolls the statute of limitations during minority. This would mean that a tortfeasor who injured the parent of a two-year-old child may have a claim brought against him by that child sixteen years later. Although the West Virginia Court states it will require joinder of parental consortium claims, it appears from various majority view opinions facing this same issue that hurdling this roadblock may require more than a mere judicial decision. Some courts suggest that it would instead require a legislative enactment creating a uniform statute of limitations period for both the parent’s action for personal injury and the child’s action for loss of parental consortium. The West Virginia Court gave the impression that by mandating this requirement in its decision it could override the need for any legislation. It is unclear if this is indeed the case.

G. Calculating Damages

The Court quickly dismissed the majority’s argument against recognition of the claim because of the difficulty in assessing the amount of damages. The Court aptly points out that the job of the fact-finder in calculating damages is difficult in any case and would be no more difficult in a parental consortium case.

Notably, the Court set out some of the factors that the jury may consider in assessing damages. These include: the child’s age, the nature of the child’s relationship with the parent, the child’s emotional and physical characteristics, and whether other consortium-giving relationships are available to the child. These factors are apparently intended to help a jury focus on the specific needs and injuries of each child in each case.

The difficulty in assessing damages was important, however, in Gaver v. Harrant, where Maryland’s Supreme Court of Appeals

77. See Salin v. Kloempken, 322 N.W.2d 736, 740 (Minn. 1982); Dearborn, Fabracing & Engig Corp. v. Workham, 551 N.E.2d 1135, 1137 (Ind. 1990).
78. See supra note 77.
79. Belcher, 400 S.E.2d at 839.
80. Id.
81. Id. at 842.
refused to recognize the parental consortium claims. It noted that considerations such as difficulty in assessing damages may not deter a court from compensating a primary victim, but become a more significant factor when the plaintiff is a secondary victim who has suffered no physical injury. This is, the court stated, because of the few instances in tort law where a secondary tort victim has been permitted to recover only for a negligently inflicted injury to a relational interest. This argument is sound, but, in West Virginia, unpersuasive since our Court has recognized a claim for the negligent infliction of emotional distress without the requirement of physical injury.

The opinion goes on to answer the related argument that monetary compensation will not enable the minor child to regain the loss of society, companionship, and the like. It agreed with the Wisconsin Court's response in *Theama v. City of Kenosha* to this argument:

> Although a monetary award may be a poor substitute for the loss of a parent’s society and companionship, it is the only workable way that our legal system has found to ease the injured party’s tragic loss. We recognize this as a shortcoming to our society, yet we believe that allowing such an award is clearly preferable to completely denying recovery.

The California Court in *Borer*, as well as other majority courts, was not so easily swayed by this sympathetic appeal into expanding the scope of consortium in tort actions. The *Borer* court stated:

> 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 . . . . Monetary compensation will not enable plaintiffs to regain the companionship and guidance of a mother; it will 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.

83. *Id.* at 217.
84. *Id.*
87. 344 N.W.2d 513, 520 (Wis. 1984).
89. *Id.*
Despite this cynical view, the West Virginia Court’s reasoning is quite sound in recognizing that recovery should not be denied a child merely because money damages are not a substitute for a parent’s companionship. The intangibility of the loss does not make that loss any less real.

H. Social Costs

The Court was also unswayed by the many arguments made by majority courts concerning the effect on society by this expansion of liability. Some of the perceived negative effects would be: increases in insurance costs, the accompanying danger of the inability to afford insurance due to the inflated rates, and the administrative costs of deciding consortium claims. The West Virginia Court’s opinion, like other minority courts’, stated that the law will not and should not vary with the cost of insurance. Rather, it is insurance costs that will vary with the potential liability of the law.

Most majority opinions would agree with the proposition that law should not be dictated by insurance costs, but point out that a balance must be struck and certain limits drawn. One commentator suggests that in an effort to receive larger and larger sums for secondary injuries at the tortfeasor’s expense, the injured party may be endangering his ability to recover at all. Therefore, the majority opinion believes that lines must be drawn limiting liability. This conclusion is very persuasive if we keep in mind the argument that children are considered by juries during the parent’s claim for non-economic injuries and are compensated at that time. If this is the case, it would be of little value to establish a separate cause of action for a child’s claim at the expense of higher insurance costs. A child who is already protected de facto would gain nothing, but society, on the other hand, would lose through higher insurance costs. It is

90. Belcher, 400 S.E.2d at 839.
92. Belcher, 400 S.E.2d at 839.
93. Id.
95. Id.
justifiable that the Court did not ignore this protective claim of children’s rights merely on the grounds that insurance costs would increase, even in light of the modern day cost of insurance and litigious climate.

I. Effect on Family Relationships

The ninth argument against recognition of this cause of action is the possibility of adverse effects on the family relationship. The argument is based on the belief that each of the minor children in a family would attempt to magnify the quality of his or her relationship with the parent in order to enhance his or her own damage award. Although the Belcher court recognizes the problem, it falters in its resolution by merely stating that the same situation is present in wrongful death actions. Actually, it is a contrary distinction that makes this majority argument unpersuasive. Since the class of claimants in a parental consortium claim is limited to children, it is less likely that children of such a young age would be motivated by greed. This cannot be said, however, in a wrongful death action where most of the claimants are adults and know the enhanced value, in terms of recovery, of magnifying the quality of their relationship with the deceased. Further, since the claims of the children are joined with those of the parent, it is likely that a single attorney will represent all claims and will attempt to communicate the gravity of the family’s loss to the jury rather than argue that one child is more deserving than another. If the situation did arise, however, where children claim a greater share due to the quality of their relationship with the parent, a jury would be capable of making those decisions.

J. Exposure to Unlimited Liability

The last argument against the recognition of a parental consortium claim is that it will expose the tortfeasor to potentially unlimited liability. The fear is that a claim would exist for anyone who could

96. Belcher, 400 S.E.2d at 839-40.
97. Id. at 840.
98. Id.
claim and prove a loss or impairment of consortium because of the close relationship with the physically injured person. The California Court in *Borer v. American Airlines, Inc.*, pointed out the need for line drawing to limit liability. The Court feared that recognition of a child's claim for consortium would start a "rippling in the water" that would lead to the recognition of claims by brothers, sisters, in-laws, grandparents and so on. This is an important consideration because, in some family situations, the relationship between other members of the family, such as a grandparent and a grandchild or two brothers, may be as important in terms of society and nurturing as the parent/child relationship. An argument denying a claim seeking protection of these special relationships would be difficult to make after recognizing the value of the parent/child relationship.

The West Virginia Supreme Court of Appeals attempted to allay this fear in a number of ways. First, it limited the class of plaintiffs under this action to minor children and to physically or mentally handicapped children of any age who are dependent upon the injured parent physically, emotionally, and financially. Further, the Court mandated that the injury to the parent must be serious in nature to the degree that it "severely" affects the "crucial role of the parent in these vitally important relationships." This definition, however, leaves something to be desired, particularly considering the novelty of these types of claims. Other courts have provided a more specific definition. Arizona, for example, limited its holding to allow recovery to claims only where "the parent suffers serious, permanent, disabling injuries rendering the parent unable to provide love, care, companionship, and guidance to the child." The parent's mental or physical impairment must be so overwhelming and severe that the parent/child relationship is destroyed or nearly destroyed. Other

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99. *Id.*
100. 563 P.2d 858, 862 (Cal. 1977) (en banc).
101. *Id.*
102. *Belcher*, 400 S.E.2d at 841.
103. *Id.* at 840, 841.
105. *Id.*
states such as Vermont (parent rendered permanently comatose)\textsuperscript{106} and Wisconsin (injuries to father caused very severe mental and physical injuries)\textsuperscript{107} also indicate that the parent/child relationship must be gravely affected for recovery under this claim. Although the West Virginia Court may not desire to limit recovery to such severe injuries, it might have given a clearer definition considering the novelty of this type of action in this country.

In a further attempt to limit liability, the Court states that at this time it does not recognize an adult child's claim for loss of parental consortium.\textsuperscript{108} However, this seems to go against every argument in support of recognizing a minor child's parental consortium claim, particularly in light of the fact that an adult child may make a claim for loss of consortium under the wrongful death statute.\textsuperscript{109} For example, Washington, one of the two jurisdictions allowing an adult claim, did so in order to remain consistent with its wrongful death statute, which like that of West Virginia, allows an adult child to recover for loss of consortium.\textsuperscript{110} Further, since the West Virginia Court found it unjust to place a higher value on the rights of a spouse to consortium than the rights of a child to the same, it seems contrary to its logic to hold the relationship of minor children with their parent to be of greater value than the relationship of adult children and their parent. It can be argued that in the case of a very young child, the relationship with a parent is of no greater value than that of an adult child who is the sole caretaker, and in many cases, the sole companion of an elderly parent. The West Virginia Court did, however, clearly leave the door open for a possible claim by an adult child.\textsuperscript{111}

VI. CONCLUSION

Although the West Virginia Court effectively refuted the main contentions given by the majority courts in refusing to recognize a

\textsuperscript{106} Hay v. Medical Center Hosp., 496 A.2d 939 (Vt. 1985).
\textsuperscript{107} Theama v. City of Kenosha, 344 N.W.2d 513 (Wis. 1984).
\textsuperscript{108} Belcher, 400 S.E.2d 830, 840 (W. Va. 1990).
\textsuperscript{109} W. VA. CODE § 55-7-6 (1989).
\textsuperscript{110} Ueland v. Pengo Hydra-Pull Corp., 691 P.2d 190 (Wash. 1984) (en banc).
\textsuperscript{111} Belcher, 400 S.E.2d at 840.
child's parental consortium claim, its reasoning left some questions unanswered. Most importantly, the Court did not address the rights of a child who is not born at the time of the action but whose relationship with the parent will be affected by a permanently disabling injury to the parent. It would appear that because the Court required a parental consortium claim to be joined with the parent's injury claim, these children are barred from recovery. This Court, as well as the other minority courts, must realize that the unborn child's relationship with a parent has been tragically affected in the same manner as the existing child's. An allowance of recovery for these later born children is only logical given the basic motivations for recognizing this cause of action protecting a child's right to have a normal nurturing relationship with a parent.

Despite these unanswered questions, the Court's decision is sound. This is particularly true when one considers the interest that is being protected. Whether it is in fact a reality that children in the past have recovered for loss of consortium under their parent's claim, there is little harm either judicially or socially in taking the step the West Virginia Court chose. It merely recognizes and assures that a child's rights will be considered by a jury as a distinct element of damages. Although it is unlikely that damage awards will increase significantly from a practitioner's standpoint, this decision protects and compensates a child in those cases where there has been a real loss.

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