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Case Comments

Dicta Editorial Board

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CASE COMMENTS

DOMESTIC RELATIONS: RECOVERY BY CHILD FOR LOSS OF MOTHER'S COMPANIONSHIP—An interesting decision to lawyers concerned with domestic relations law has just been rendered by the U. S. District Court for the District of Columbia. In *Hill v. Sibley Memorial Hospital*,¹ Justice Youngdahl granted a motion to dismiss count two of a complaint in which a minor sought to recover damages for loss of her mother's "comfort, aid, kindness and assistance" due to the alleged negligence of the defendant. The opinion does not state the facts of the case.

This decision does not change the law as lawyers have always understood it; it merely clarifies a point which is seldom litigated. It is the fourth reported case in which a child has sought to recover for loss of his parent's consortium." However, it differs from the other three cases in that they were in the nature of "alienation of affections" suits.

In *McMillan v. Taylor*² and *Elder v. MacAlpine-Downie*³ the children were suing defendants who had allegedly enticed their parent away from their homes. Both were decided by the U. S. Court of Appeals for the District of Columbia. The first case was dismissed on the ground that a cause of action did not exist for enticing a parent away from his or her spouse, thereby destroying the home and depriving the children of their parent's comfort, love and affection.

In the second case the court held an infant has no cause of action for alleged deprivation of family life to which he was naturally entitled against a woman who allegedly wrongfully enticed the infant's father from his home and induced him to desert the infant and mother. The suit for \$50,000 was dismissed for failure to state a cause of action upon which relief could be granted.

In the principal case, the court refuses to follow the decision of *Daily v. Parker*⁴ in which the U. S. Circuit Court of Appeals held that children may maintain an action for damages for being deprived of the support, guidance and protection of their father against a woman who has lured him away from his family.

Justice Youngdahl recognized a difference between an action for alienation of affections and one for negligence, but he dismissed the action because:

A lower court should be cautious in laying down a completely new rule in the light of prior holdings of our

¹ 108 F. Supp. 739 (1952).

² 160 F. 2d 221 (1946).

³ 180 F. 2d 385 (1950).

⁴ 152 F. 2d 174 (7th Cir.) 162 ALR 819 (1945).

Court of Appeals indicating hesitancy to extend the right of recovery of damages for such loss to a child. If there is to be a change in that doctrine, this court does not feel that it should be the one to initiate it.

In evaluating this decision it is necessary to determine what consortium is. Although some courts say that it consists primarily of services, the majority hold that the husband can recover even where there is no loss of services.

In *Lane v. Dunning*⁵ the court said:

The husband's right of action for damages for loss of consortium does not rest upon the ground of loss of service, but upon the loss of society or consortium arising by virtue of the marriage contract.

In *Guevin v. Manchester St. Ry.*⁶ the court defined consortium as "service, society, comfort and the sexual rights."

It seems to be well settled that the husband's action for negligent injury to the consortium was not dependent (at common law) upon his proving loss of service, that any substantial injury to marital rights is actionable.

Where the wife's right to consortium has been interfered with by a negligent injury to the husband, the general rule is that she has no remedy.⁷ if the injury is intentional or malicious she can recover against the tortfeasor. There is however a federal case, *Hitaffer v. Argonne Co.*,⁸ holding to the contrary in which the husband was injured during the course of his employment, and his wife sued his employer for loss of consortium after he had recovered under a Workmen's Compensation act. The Circuit Court of Appeals for the District of Columbia allowed recovery and pointed out why the law should protect the wife as well as the husband. In a forceful opinion Judge Clark writes:

We can conceive of no reasons for denying this right for the reason that in this enlightened day and age, they simply do not exist . . . The husband owes the same degree of love, affection, felicity, etc. to the wife as she to him . . . It would be a judicial fiat for us to say that a wife may not have an action for loss of consortium due to negligence.

There can be no doubt that the expressed view of this court is that the husband and wife have equal rights in the marriage relation which will receive equal protec-

⁵ 186 Ky. 797; 218 S. W. 269 (1920).

⁶ 78 N. H. 289; 99 Atl. 298; LRA 1917 c410 (1916).

⁷ *Giggey v. Gallagher Transportation Co.*, 101 Colo. 258; 72 P. 2d 1100 (1937).

⁸ 187 F. 2d 811; 23 ALR 2d 1366 (1950).

tion of the law. That these rights existed prior to the passage of the Married Women's act cannot be doubted. The act simply removed the wife's disability to invoke the law's protection.

Assuming that companionship is the primary element of consortium, why should not a wife or child be allowed recovery for loss of it? Certainly, the love and affection which a wife owes to her husband is no more valuable than that which a husband owes to his wife or a parent to his child. When the companionship of family life is invaded, should not the law protect both spouses in a like manner?

The objection to extending recovery is that an action by every member of the family could result. To overcome this objection, one action could be provided for, to be brought by the spouse for himself or herself and for the children. If the mother or father did not sue within a certain period, then the children should be allowed to bring the action.

The court's reluctance to extend recovery to children for loss of love and affection is understandable, but perhaps the time has come for a reappraisal of the validity of the law on consortium.

DOLORES KOPLOWITZ

ADMINISTRATIVE PROCEDURE

The President's Conference on Administrative Procedure announced that its Committee on Hearing Officers will study the status of federal hearing officers.

Mr. Earl Kintner, General Counsel of the Federal Trade Commission, is chairman of this committee. Mr. Kintner said his committee will analyze the controversy which surrounds the administration of hearing officers under the Administrative Procedure Act. His committee will approach all facets of the problem including the qualifications, recruitment, selection, administration, tenure, removal, compensation and promotion of hearing officers.

The committee will seek information both in writing and by hearings. All interested persons and organizations are invited to present their views. The Committee has prepared an outline on the subject which may be obtained by writing to:

Committee on Hearing Officers,
President's Conference on Administrative Procedure,
Room 576, Federal Trade Commission Building,
Washington 25, D. C.

PAGE SENATOR McCARTHY

Is this some more subtle Communist propaganda? A. L. Vogl of Denver calls to our attention the fact that the title to Vol. 16, American Jurisprudence reads: "Death to Diplomatic Officers."

APPROVED LAW LISTS

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- American Lawyers Quarterly, The American Lawyers Company, 1712 N.B.C. Building, Cleveland 14, Ohio.
- B. A. Law List, The B. A. Law List Company, 161 West Wisconsin Avenue, Milwaukee 3, Wisconsin.
- Clearing House Quarterly, Attorneys National Clearing House Co., 1645 Hennepin Avenue, Minneapolis 3, Minnesota.
- The Columbia List, The Columbia Directory Company, Inc., 320 Broadway, New York 7, New York.
- The Commercial Bar, The Commercial Bar, Inc., 521 Fifth Avenue, New York 17, New York.
- C-R-C Attorney Directory, The C-R-C Law List Company, Inc., 50 Church Street, New York 7, New York.
- Forwarders List of Attorneys, Forwarders List Company, 38 South Dearborn Street, Chicago 3, Illinois.
- The General Bar, The General Bar, Inc., 36 West 44th Street, New York 36, New York.
- International Lawyers Law List, International Lawyers Company, Inc., 33 West 42nd Street, New York 18, New York.
- The National List, The National List, Inc., 75 West Street, New York 6, New York.
- Rand McNally List of Bank Recommended Attorneys, Rand McNally & Company, P. O. Box 7600, Chicago 80, Illinois.
- Wright-Holmes Law List, Wright-Holmes Corporation, 225 West 34th Street, New York 1, New York.

GENERAL LAW LISTS

- American Bank Attorneys, American Bank Attorneys, 18 Brattle Street, Cambridge 38, Massachusetts.
- The American Bar, The James C. Fifield Company, 121 West Franklin, Minneapolis 4, Minnesota.
- The Bar Register, The Bar Register Company, Inc., One Prospect Street, Summit 1, New Jersey.
- Campbell's List, Campbell's List, Inc., 905 Orange Avenue, Winter Park, Florida.
- International Trial Lawyers, Central Guarantee Company, Inc., 141 West Jackson Boulevard, Chicago 4, Illinois.
- The Lawyers Directory, The Lawyers Directory, Inc., 17 South High Street, Columbus 15, Ohio.
- The Lawyers' List, Law List Publishing Company, 111 Fifth Avenue, New York 3, New York.
- Russell Law List, Russell Law List, 10 East 40th Street, New York 16, New York.

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Hine's Insurance Counsel, Hine's Legal Directory, Inc., 38 South Dearborn Street, Chicago 3, Illinois.

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The Underwriters List, Underwriters List Publishing Company, 308 East Eighth Street, Cincinnati 2, Ohio.

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Sullivan's Probate Directory, Sullivan's Probate Directory, Inc., 84 Cherry Street, Galesburg, Illinois.

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FOREIGN LAW LISTS

Canadian Credit Men's Commercial Law and Legal Directory, Canadian Credit Men's Trust Association, Ltd., 137 Wellington Street, West, Toronto, Ontario, Canada.

Canadian Law List, Cartwright & Sons, Ltd., 24 Adelaide Street, East, Toronto, Ontario, Canada.

Empire Law List, Butterworth & Co. (Publishers), Ltd., 88 Kingsway, London, W. C. 2, England.

The International Law List, L. Corper-Mordaunt & Company, Pitman House, Parker Street, London, W. C. 2, England.

Kime's International Law Directory, Kime's International Law Directory, Ltd., 4 New Zealand Avenue, London, E. C. 1, England.