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Jury Verdicts on the Rise

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by Jill Menukin Steinberg , Angie Davis , Emily Landry

In 1999, the value of every wrongful death case in the State of Tennessee increased dramatically when the Supreme Court held that a surviving spouse and adult children could recover for loss of consortium damages in a wrongful death case. See *Jordan v. Baptist Three Rivers Hospital*, 984 S.W. 2d 593 (Tenn. 1999). Plaintiffs who are children or the spouse of the deceased may now recover for damages such as loss of companionship, comfort, society, attention, cooperation, affection, care and love, and in the case of the spouse, sexual relations. Prior to this ruling, the Tennessee courts only allowed plaintiffs to recover certain damages on behalf of the deceased. Specifically, plaintiffs could recover the mental and physical suffering, loss of time, and necessary expenses resulting to the deceased from the personal injuries.

The expansion of recovery to plaintiffs for loss of consortium essentially allowed survivors of the deceased to be compensated for their losses suffered as a result of the death of their spouse or parent. For example, in the case of a child recovering loss of consortium damages for the loss of his or her parent, the child may recover for the loss of nurturing, education, and moral training which he or she likely would have received from the deceased parent. The *Jordan* Court recognized, “an individual family member has value to others as part of a functioning social and economic unit. This value necessarily includes the value of mutual society and protection, i.e., human companionship.” The Court further concluded that human companionship has a definite and ascertainable value that should be included in any damages award as a component of pecuniary loss.

After this landmark decision, there have been several cases that have modified and shaped the loss of consortium landscape in Tennessee. In 2000, the Court allowed plaintiffs in all cases tried or retried after the *Jordan* decision, and all cases on appeal at the time of the *Jordan* decision in which the issue was raised at the appropriate time, to include a claim for loss of consortium damages. See *Hill v. City of Germantown*, 31 S.W.3d 234 (Tenn. 2000).

In 2001, an appellate court allowed a parent to recover loss of consortium damages in a wrongful death action for the death of his or her child. See *Thurman v. Sellers*, 62 S.W.3d 145 (Tenn. Ct. App. 2001). The Court set out factors to be considered in computing the value of the life of the deceased, including: (1) life expectancy, (2) age, (3) condition of health and strength, and (4) capacity for labor and for earning money through skill and any art, trade, profession and occupation or business. However, the Court noted that living expenses that the decedent would have incurred had he or she lived should be deducted from any award. The Court suggested that expert testimony would be helpful in the valuation of the child’s pecuniary loss because estimates of a child’s future earnings and contributions are speculative. The judge or jury should consider the benefits the child bestowed on the family such as comfort, society, attention, cooperation, affection, care and love. Because this varies from family to family, the measurement of a particular parent’s loss of a particular child’s consortium must be decided on a case-by-case basis.

Finally, in 2001, another Tennessee appellate court declined to create a new cause of action to allow children whose parents suffered personal injury, but not death, due to the tortuous acts of a third party to recover consortium damages. See *Taylor v. Beard*, 2001 WL 1381355 (Tenn. Ct. App. 2001), *aff’d* 28 TAM 10-1. The Court found that the recovery for loss of consortium in a wrongful death action was merely an expansion of damages under a state statute, not the common law. Because an action for personal injury is one created by common law, no such expansion of damages was allowed.

Thus far, little case law exists regarding the propriety of loss of consortium damages that have been actually awarded by a judge or jury. In one case, survivors of driver who died after a vehicle struck state-operated grass mowing equipment brought an action against the state seeking damages arising

out of the accident. See *Knowles v. State*, 49 S.W.3d 330 (Tenn. Ct. App. 2001). The appellate court upheld an award of \$300,000 for the life of the decedent and loss of consortium claimed by the decedent's sons. The plaintiffs presented evidence of their father's work history, ability to engage in manual labor and to otherwise earn a living after retirement, the excellent relationship between the sons and their father, regular visits, and time spent together at family gatherings and other outdoor activities. The Court found the decedent's life expectancy was 6.53 years. He had usual living expenses such as utility bills, food, prescriptions, and other miscellaneous expenses. The State argued that the judgment was excessive citing pre-Jordan cases involving the deaths of elderly persons. The Court declined to reduce the \$300,000 award by the trial court recognizing that after Jordan the term "pecuniary value" also included consortium-type damages.

In conclusion, the effects of Jordan and its progeny are far-reaching, though the full extent of the impact of these cases remains to be determined. This line of cases gives the judge or jury significant discretion to award large judgments that are unlikely to be disturbed on appeal if appropriate evidence is presented regarding the deceased's contribution to the household and family members. Furthermore, the indeterminate nature of consortium damages reduces the predictability of jury verdicts, which in turn will affect liability evaluations and target settlement figures.

Jordan and its progeny give the judge or jury significant discretion to award large judgments that are unlikely to be disturbed on appeal if appropriate evidence is presented. The indeterminate nature of consortium reduces predictability of outcomes.