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Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-002248-MR

OHIO COUNTY HOSPITAL CORPORATION APPELLANT

v.

APPEAL FROM OHIO CIRCUIT COURT
HONORABLE RONNIE C. DORTCH, JUDGE
ACTION NO. 03-CI-00178

TINA MARTIN, ADMINISTRATRIX OF THE ESTATE OF BILLIE CAROL SHREVE, DECEASED; AND DONALD RAY SHREVE, INDIVIDUALLY APPELLEES

OPINION
AFFIRMING IN PART, REVERSING IN PART, AND VACATING IN PART AND REMANDING

** ** ** ** **

BEFORE: TAYLOR AND THOMPSON, JUDGES; BUCKINGHAM,[1] SENIOR JUDGE.

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[1] Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5) of the Kentucky Constitution and Kentucky Revised Statute (KRS) 21.580.

BUCKINGHAM, SENIOR JUDGE: Ohio County Hospital Corporation (the hospital) appeals from a judgment of the Ohio Circuit Court in favor of Tina Martin, administratrix of the estate of Billie Carol Shreve, deceased, and Donald Ray Shreve, the surviving spouse of Billie Carol Shreve. Shreve died after being treated at the hospital following an automobile accident, and this case arose as a result of a claim of medical negligence brought by the administratrix of her estate and by her surviving husband against the hospital and her treating physician. We affirm in part, reverse in part, and vacate in part and remand for a new trial.

On June 22, 2002, at approximately 10:55 a.m., Billie Carol Shreve was injured in an automobile accident. She was transported to the hospital, and she arrived there at 11:20 a.m. She was evaluated by Nurse Holly Strader, a registered nurse, and was seen by Dr. Kevin Gregory, the emergency room physician. She did not complain specifically of pain, but she stated that she was uncomfortable. Shreve was monitored by the nursing staff and Dr. Gregory.

Shreve's condition deteriorated, and she became unconscious at 12:54 p.m. Dr. Gregory concluded that she had gone into shock and was likely hemorrhaging. He was unsure of the site of her hemorrhaging and ordered a CT scan. In the meantime, Shreve received blood transfusions. When the results of the CT scan were received, Dr. Gregory determined that Shreve had internal bleeding from abdominal trauma and that she would require surgery. After learning that no surgeons were available, Dr. Gregory arranged for Shreve to be transferred to Owensboro Medical Health Systems, Inc., in Owensboro for surgery. By the time Shreve was delivered to the hospital in Owensboro, she had bled to death.

Tina Martin, administratrix of Shreve's estate, and Donald Ray Shreve, Shreve's husband, filed a civil complaint in the Ohio Circuit Court alleging negligence against the hospital and Dr. Gregory. The claim against Dr. Gregory was settled before the trial of the claim against the hospital.

The case was tried in the Ohio Circuit Court in August 2006. The jury returned a verdict determining that both Dr. Gregory and the hospital were negligent and that each was liable for 50% of the damages. The jury stated in its verdict that Shreve's estate had suffered damages of $48,000 for destruction of Shreve's power to earn money, $50,000 for her pain and suffering, and $725 for funeral expenses, for a total of $98,725. The jury also stated that Donald Ray Shreve, Shreve's husband, had suffered damages of $250,000 for loss of consortium. Because the jury assessed 50% of the liability against the hospital and 50% against Dr. Gregory, the court entered a judgment of $49,362.50 in favor of Shreve's estate and a judgment of $125,000 in favor of Mr. Shreve.[2] This appeal by the hospital followed.

The hospital's first argument is that the trial court erred by not granting it a directed verdict on the appellees' claim for damages for violation of the federal Emergency Medical Treatment and Active Labor Act (EMTALA).[3] The hospital asserts that in order to prevail on their claim, the appellees were required to prove that the hospital denied appropriate treatment because of Shreve's insurance status or lack of ability to pay. The hospital notes that the EMTALA was enacted by Congress to prevent

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[2] The jury determined that the driver of the other vehicle, who was not named as a party in the case, had no liability.

[3] The standard of review by an appellate court on the issue of a directed verdict is set forth in *Bierman v. Klapheke*, 967 S.W.2d 16,18-19 (Ky. 1998), and will not be reiterated herein.

hospitals "from dumping patients, who lack insurance to pay for their claims, by either refusing treatment or transferring them to other hospitals." *See Thornton v. Southwest Detroit Hosp.*, 895 F.2d 1131, 1132 (6th Cir. 1990). Thus, the hospital maintains that the appellees did not have a valid EMTALA claim because there was no proof that Shreve was "dumped" to another hospital due to her insurance status or her inability to pay.

The EMTALA is found at 42 U.S.C. § 1395dd. It contains a medical screening requirement, 42 U.S.C §1395dd(a), and a stabilization requirement, 42 U.S.C. § 1395dd(b). It also provides for a private cause of action for violations of the Act by hospitals. 42 U.S.C. § 1395dd(d)(2)(A). There are no Kentucky state cases addressing EMTALA claims.

The medical screening requirement in 42 U.S.C. § 1395dd(a) provides as follows:

> In the case of a hospital that has a hospital emergency department, if any individual (whether or not eligible for benefits under this subchapter) comes to the emergency department and a request is made on the individual's behalf for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition (within the meaning of subsection (e)(1) of this section) exists.

The medical stabilization requirement in 42 U.S.C. § 1395dd(b) provides that if a hospital determines that an individual has an emergency medical condition, it must either provide a medical examination and treatment as within its capabilities in order to stabilize the individual or transfer the individual to another medical facility.

42 U.S.C. § 1395dd(c) addresses the circumstances under which a hospital may transfer an individual who has an emergency medical condition that has not been stabilized. The statute provides that the hospital may not transfer the individual unless one of three requirements is met. First, the individual may request in writing that he or she be transferred to another medical facility. 42 U.S.C. § 1395dd(c)(1)(A)(i). Second, a physician may sign a certification "that based upon the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the individual[.]" 42 U.S.C. § 1395dd(c)(1)(A)(ii). Third, if there is no physician physically present in the emergency room at the time of transfer, a qualified medical person, as defined elsewhere in the statute, may sign the certification described above after a physician has made the required determination and subsequently countersigns the certification. 42 U.S.C. § 1395dd(c)(1)A)(iii).

In this case, the appellees alleged that the hospital failed to provide an appropriate medical screening and/or failed to stabilize Shreve's condition before discharging her and transferring her to another facility. Thus, they alleged violations of both subsections (a) and (b) of 42 U.S.C. § 1395dd. The trial court instructed the jury to determine whether the hospital failed to comply with their statutory duties and whether such failure or failures were substantial factors in causing Shreve's death. Further, the court instructed the jury that it was not to determine under the EMTALA instruction whether the hospital exercised ordinary care.[4] The jury found that the hospital failed to

[4] The ordinary care/negligence instruction was given to the jury in a preceding instruction.

provide an appropriate medical screening or failed to stabilize Shreve's condition before transferring her.[5]

As we have noted, the hospital argues that the "(a)ppellees did not enter any evidence into the record of disparate treatment, or treatment based on insurance status" and that the trial court thus erred in not granting it a directed verdict because, they argue, "[a]ppellees failed to make a *prima facie* case under EMTALA." We first turn to the appellees' claim under 42 U.S.C. § 1395dd(a).

In *Morgan v. North MS Medical Center, Inc.*, 403 F.Supp.2d 1115 (S.D.Ala. 2005), the court held as follows:

> [T]he screening duty is not triggered whenever a hospital neglects to perform a screening test that the plaintiff believes should have been done, or even one that any reasonably diligent hospital would have performed. Rather, EMTALA's screening obligation is focused exclusively on ensuring that a hospital applies the same screening procedures for indigent patients who present at its emergency room that it does for similarly situated patients who have insurance or are otherwise well-heeled.

Id. at 1125. *See also Holcomb v. Monahan*, 30 F.3d 116, 117 (11th Cir. 1994)("this language only requires a hospital to provide indigent patients with a medical screening similar to one which they would provide any other patient"); *Gatewood v. Washington Healthcare Corp.*, 933 F.2d 1037, 1041 (D.C.Cir. 1991)("The federal Emergency Act is not intended to duplicate preexisting legal protections, but rather to create a new cause of action, generally unavailable under state tort law, for what amounts to failure to treat").

Additionally, the hospital states that EMTALA is not intended to be a federal malpractice statute. *See Harry v. Marchant,* 291 F.3d 767, 770 (11th Cir.

[5] The instruction and verdict form did not allow the jury to specify whether it found the failure to comply with only one statutory duty or both duties.

2002)(EMTALA "was not intended to be a federal malpractice statute"); *Morgan*, 403 F.Supp.2d at 1124 ("Courts have universally recognized that EMTALA was not conceived as a federal malpractice statute").

In response to the hospital's argument, the appellees argue that the hospital has misstated the law and that they were not required to introduce proof of bad motive or other nonmedical reasons in order to prove disparate treatment. They cite *Power v. Arlington Hospital Association,* 42 F.3d 851 (4th Cir. 1994), and *Roberts v. Galen of Virginia, Inc.,* 525 U.S. 249, 119 S.Ct. 685, 142 L.Ed.2d 648 (1999), to support their argument.

Having examined the case law from other jurisdictions and from the U.S. Supreme Court, we conclude that improper motive is required to establish a claim under 42 U.S.C. § 1395dd(a) but not under 42 U.S.C. § 1395dd(b). As we have noted, the medical screening requirement in 42 U.S.C. § 1395dd(a) states that a hospital that has an emergency department must provide an "appropriate medical screening" for any individual who presents himself or herself and requests examination or treatment for a medical condition. In resolving the issue presented by the parties, the meaning of the phrase "appropriate medical screening" must be determined.

In *Cleland v. Bronson Health Care Group, Inc.*, 917 F.2d 266 (6th Cir. 1990), the 6th Circuit stated, "we interpret the vague phrase 'appropriate medical screening' to mean a screening that the hospital would have offered to any paying patient[.]" *Id*. at 268. The court further stated as follows:

> We believe that the terms of the statute, specifically referring to a medical screening exam by a hospital "within its capabilities" precludes resort to a malpractice or other

> objective standard of care as the meaning of the term "appropriate." Instead, "appropriate" must more correctly be interpreted to refer to the motives with which the hospital acts. If it acts in the same manner as it would have for the usual paying patient, then the screening provided is "appropriate" within the meaning of the statute.
>
> This result does not constitute a backdoor means of limiting coverage to the indigent or uninsured. A hospital that provides a substandard (by its standards) or nonexistent medical screening for any reason (including, without limitation, race, sex, politics, occupation, education, personal prejudice, drunkenness, spite, etc.) may be liable under this section. . . .
>
> On the other hand, if. . . a hospital provides care . . . that is no different than would have been offered to any patient, and, from all that appears, is "within its capability" (that is, constitutes a good faith application of the hospital's resources), then the words "appropriate medical screening" in the statute should not be interpreted to go beyond what was provided here.

Id. at 272.

The appellees cite the *Roberts* case to support their argument that improper motives need not be proved to establish a violation of the EMTALA. In *Roberts*, the U.S. Supreme Court, in a case out of Kentucky, addressed whether a plaintiff must prove improper motive to establish an EMTALA claim for violation of the stabilization requirement (not the medical screening requirement). The Court held that the statute, 42 U.S.C. § 1395dd(b), "contains no express or implied 'improper motive' requirement." 525 U.S. at 253, 119 S.Ct. at 687. The Court noted that unlike 42 U.S.C. § 1395dd(a), 42 U.S.C. § 1395dd(b) "contains no requirement of appropriateness." 525 U.S. at 252, 119 S.Ct. at 686.

Therefore, so far as the stabilization requirement of 42 U.S.C. § 1395dd(b) is concerned, the appellees are correct that improper motive does not have to be proved. However, the issue of whether improper motive is required to be proved to establish a claim under 42 U.S.C. § 1395dd(a) was not before the *Roberts* Court. Recognizing that the 6th Circuit in *Cleland* had upheld the requirement of proving improper motive to establish a claim under that portion of the statute, the Court stated that it expressed no opinion concerning whether the words "appropriate medical screening" as used in that statute meant that proof of an improper motive was required.[6] *Id*.

We conclude that the 6th Circuit's interpretation of the statute is correct and that improper motive must be proved to establish a claim under the medical screening requirement of 42 U.S.C. § 1395dd(a). *See also Newsome v. Mann*, 105 F.Supp.2d 610, 611-12 (E.D.Ky. 2000). Therefore, since there was no evidence of such motive in this case, the court should have directed a verdict in the hospital's favor on that portion of the appellees' claim.

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The Court in *Roberts* also recognized that the 6th Circuit's interpretation of 42 U.S.C. § 1395dd(a) conflicted with the interpretation of other circuits that did not read the statute as imposing an improper motive requirement. *Id*. One of the circuits was the 4th Circuit in *Power v. Arlington Hospital Assn.*, 42 F.3d 851, 857 (4th Cir. 1994), the other case cited by the appellees. In addition to the *Power* case, cases from other jurisdictions cited by the Supreme Court in *Roberts* as being in conflict with *Cleland* are *Summers v. Baptist Medical Center Arkadelphia*, 91 F.3d 1132, 1137-38 (8th Cir. 1996); *Correa v. Hospital San Francisco*, 69 F.3d 1184, 1193-94 (1st Cir. 1995); *Repp v. Anadarko Mun. Hospital*, 43 F.3d 519, 522 (10th Cir. 1994); and *Gatewood v. Washington Healthcare Corp.*, 933 F.2d 1037, 1041 (D.C.Cir. 1991).

Turning to the portion of the appellees' claim relating to 42 U.S.C. § 1395dd(b) and the stabilization requirement, we conclude that, although no improper motive is required to be proved, the trial court also erred in not granting a directed verdict in the hospital's favor on this issue. In *Holcomb v. Monahan*, 30 F.3d 116 (11th Cir. 1994), the court stated as follows:

> To succeed on a section 1395dd(b) claim, a plaintiff must present evidence that the plaintiff had an emergency medical condition, the hospital knew of the condition, the patient was not stabilized before being transferred, and the hospital neither obtained the patient's consent to transfer nor completed a certificate indicating the transfer would be beneficial to the patient and was appropriate.

Id. at 117. *See also Baber v. Hospital Corp. of America*, 977 F.2d 872, 883 (4th Cir. 1992).

The appellees argued that the hospital violated 42 U.S.C. § 1395dd(b) because it failed to stabilize Shreve before transferring her. In fact, the court instructed the jury that the hospital had a legal duty to stabilize Shreve before discharging her and transferring her to another facility. The appellees' argument and the court's instruction were not an accurate statement of the law. Rather, patients with an emergency medical condition "must either be treated *or* transferred in accordance with EMTALA." (emphasis added). *See Burditt v. U.S. Dept. of Health and Human Services*, 934 F.2d 1362, 1368 (5th Cir. 1991). In other words, "[u]nder certain circumstances, EMTALA allows hospitals to transfer patients instead of treating them." *Id*. at 1370. Whether the hospital violated EMTALA depends on whether the transfer complied with the requirements of 42 U.S.C. § 1395dd(c). *See id*.

Here, Dr. Gregory completed the certificate required by 42 U.S.C. § 1395dd(c)(1)(A)(ii). There is no question that the hospital complied with the statute. Therefore, the court erred in not granting a directed verdict on this portion of the appellees' EMTALA claim as well.

Next, the hospital contends that the trial court erred in not granting a directed verdict in its favor on the loss of consortium claim of Donald Ray Shreve, Shreve's husband. We agree.

KRS 411.145(2) states that "[e]ither a wife or husband may recover damages against a third person for loss of consortium, resulting from a negligent or wrongful act of such third person." KRS 411.145(1) states that "[a]s used in this section 'consortium' means the right to the services, assistance, aid, society, companionship and conjugal relationship between husband and wife, or wife and husband."

In *Clark v. Hauck Mfg. Co.*, 910 S.W.2d 247 (Ky. 1995), a case cited by the hospital, a husband died 49 days after being injured and having never left the hospital. The Kentucky Supreme Court upheld the dismissal of a loss of consortium claim as follows:

> The estate sought damages for loss of consortium extending beyond the date of death. Kentucky law does not recognize such a claim. *Brooks v. Burkeen*, Ky., 549 S.W.2d 91, 92 (1977). A claim for loss of consortium is viable only for the period of time between the date of injury and the date of death. It does not extend beyond.
>
> The loss of consortium claim is personal to the surviving spouse. The purpose is to compensate for that period of time while the injured spouse was still alive but incapable of fully participating with the other spouse in conjugal relations attendant to the marital status.

Id. at 252. However, the court in *Clark* dismissed the loss of consortium claim because it was not timely brought, and the court did not address whether the claim would otherwise have been valid even though the spouse lived only 49 days. *Id*.

In *Brooks v. Burkeen*, 549 S.W.2d 91 (Ky. 1977), *overruled on other grounds by Guiliani v. Guiler*, 951 S.W.2d 318 (Ky. 1997), the Kentucky Supreme Court held that there is no cause of action for loss of consortium where the spouse dies instantaneously following the tortious injury. *Id*. at 92.

In *Everley v. Wright*, 872 S.W.2d 95 (Ky.App. 1993), another case cited by the hospital, this court recognized that a loss of consortium claim in a medical negligence case was dismissed at trial because the husband died only two hours after surgery. *Id*. at 96. But, that issue had not been appealed, and the court did not specifically address the validity of the claim.

In this case, Donald Ray Shreve introduced evidence that his wife was his sole caretaker and that he depended on her for his basic needs. There was also evidence that Mr. Shreve could neither read nor write and that he has physical and emotional problems that have prevented him from ever working. More importantly to this case, the evidence was that Shreve lived only a few hours after the alleged negligent act.

Mr. Shreve argues that the law in Kentucky limiting loss of consortium damages to the date of death is unjust, wrong, and should be changed. He further argues, however, that even under existing law, the judgment determining damages of $250,000 for loss of consortium and awarding him $125,000 should be upheld. He maintains that the facts and circumstances as they relate to him distinguish this case from those cited by the hospital.

The issue is how long a spouse must survive following a tortious injury before a valid loss of consortium claim will arise. In *Rogers v. Fancy Farm Telephone Co.*, 170 S.W. 178 (Ky. 1914), the court cited *Louisville & Nashville Railroad Co. v. McElwain*, 34 S.W. 236 Ky. 1896), for the following proposition:

> at common law a husband could recover damages for the loss of his wife's society from the date of the injury until her death resulting from a negligent act, although she died as a result thereof, provided any appreciable time elapsed after the negligent act became operative until her death, during which time the husband could have enjoyed his wife's society.

Id. at 179. The court in that case held that no appreciable time had elapsed and affirmed the trial court's dismissal of the loss of consortium claim. *Id*.

The facts here are that Shreve lived for only a short period of time between the alleged negligent act and her death. The fact that Mr. Shreve may now be in a difficult situation due to his wife's death is not relevant to the loss of consortium claim because that claim relates only to damages incurred between the negligent act and death.[7] We conclude that no appreciable time had elapsed between the alleged negligent act and Shreve's death and that Mr. Shreve could not have suffered damages for loss of consortium during that time.[8] Therefore, the court erred in not granting a directed verdict in favor of the hospital and dismissing the loss of consortium claim.

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[7] Further, we are bound by the precedent of the *Clark* case and other cases which hold that a loss of consortium claim does not extend beyond death. *See* Rules of Supreme Court (SCR) 1.030(8)(a).

[8] There are cases from other jurisdictions that hold that a loss of consortium claim arises if the injured spouse lives for any length of time following the tortious injury. *See*, for example, *Walden v. Coleman*, 105 Ga.App. 242, 124 S.E.2d 313 (1962). Those cases are in conflict with the Rogers case which holds that a loss of consortium claim will arise only where the spouse lives for an “appreciable time” following the negligent act. *See id*.

Having held that the trial court erred by not granting directed verdicts and dismissing the appellees' EMTALA and loss of consortium claims, we now turn to the estate's medical negligence claim against the hospital. The hospital alleges that three errors by the trial court occurred that warrant the granting of a new trial.

First, the hospital argues that the court abused its discretion in allowing the estate to introduce evidence of the hospital's website and newspaper advertising. This evidence promoted the hospital's emergency room team. The appellees concede that Shreve did not rely on either the hospital's website or its newspaper advertising when she was transported to the hospital. However, the appellees argue that the evidence was introduced "to show that the Appellant recognized the requirements necessary to have an effective emergency room team, but continually failed to have necessary components of that team available at the time of its treatment of the Decedent."

Assuming the materials on the hospital's website and in its newspaper advertisements were irrelevant to whether or not the hospital was negligent in its care and treatment of Shreve, we conclude that any error in admissibility was harmless. *See* Kentucky Rules of Civil Procedure (CR) 61.01.

Next, the hospital argues that statements by appellees' counsel in closing argument to the jury were erroneously allowed and were unduly prejudicial. Appellees' counsel argued to the jury in his closing statement that the hospital was negligent because the treating nurse, Holly Strader, failed to "go up the chain of command" and inform a supervisor that she thought the care provided by Dr. Gregory was negligent. The hospital contends that the argument was improper and should not have been allowed because there was no expert testimony that Strader was negligent in this regard.

Generally, in medical negligent cases, negligence and causation must be established by expert testimony. *Andrew v. Begley*, 203 S.W.3d 165, 170 (Ky.App. 2006). In *Johnson v. Vaughn*, 370 S.W.2d 591 (Ky. 1963), Kentucky's highest court stated as follows:

> The burden of proof in a malpractice case is, of course, on the party charging negligence or wrong. That must be established by medical or expert testimony unless the negligence and injurious results are so apparent that laymen with a general knowledge would have no difficulty in recognizing it.

Id. at 596.

The appellees concede that there was no expert testimony that Nurse Strader was negligent. Rather, they argue that the existence of a chain of command policy does not require expert testimony. Regardless of whether the argument was properly allowed or not, we conclude that any error in this regard was harmless. *See* CR 61.01.

Finally, the hospital argues that the trial court erred in instructing the jury as follows in Instruction No. 1:

> It was the duty of Defendant, Ohio County Hospital Corporation, and its employees, in establishing and following policies, procedures, and guidelines regulating the administration of care to patients, including decedent, Billie Carol Shreve, to exercise the degree of care and skill ordinarily expected of reasonable and prudent hospitals under similar circumstances.

The hospital argues that the appellees presented no evidence "as to the standard of care for drafting and implementing policies or that any alleged deviation was a substantial factor in the death of Ms. Shreve. Further, [a]ppellees never entered any expert testimony as to how and when specific policies were violated or if these alleged violations caused Ms. Shreve's death."

In response, the appellees state that both Dr. Mulliken and Dr. Kaplan testified in that regard. We agree and find no error.

Having determined that the medical negligence claim should be affirmed but that the EMTALA claims were improperly submitted to the jury and should have been dismissed by directed verdict, we turn to the question of how this affects the verdict as it relates to damages. The appellees sought common elements of damages as to each of their claims. As such, the verdict did not segregate the damages for each claim. Therefore, it is impossible to determine what portion of the damages was attributable to each claim. Thus, we must vacate the damages award and remand for a new trial on that issue.[9] *See Stringer v. Wal-Mart Stores, Inc.*, 151 S.W.3d 781, 801 (Ky. 2004).

The judgment of the Ohio Circuit Court is affirmed in part, reversed in part, and vacated in part and remanded for a new trial on the estate's medical negligence claim.

THOMPSON, JUDGE, CONCURS AND FILES SEPARATE OPINION.

THOMPSON, JUDGE, CONCURRING: I agree with the majority that we are bound to follow the law of Kentucky as enunciated in *Clark v. Hauck Manufacturing Co.*, 910 S.W.2d 247, 252 (Ky. 1995). Pursuant to this mandate, loss of consortium cannot be compensated after the date of the death.

In the case before us, the spouse has suffered a tremendous loss by the death of his caregiver. Because he was unable to prove even nominal damages between the time of the accident and the time of death, his claim must fail. However, as Justice Leibson noted in *Hilen v. Hays*, 673 S.W.2d 713, 717 (Ky. 1984), citing *Goetzman v.*

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[9] As stated earlier in this opinion, the loss of consortium claim should have been dismissed. Therefore, it should not be allowed on a retrial of the damages issue.

Wichern, 327 N.W.2d 742 (Iowa 1983): "We must reform common law doctrines that are unsound and unsuited to present conditions."

It is my belief that the Supreme Court of Kentucky should revisit its interpretation of the common law and adopt a claim of loss of post-death spousal consortium. Kentucky is totally in the minority of the State's interpretation of the common law on this issue. It has been reported that Kentucky is only one of four states which do not recognize post-death loss of consortium. I would urge our Supreme Court to revisit this question.

TAYLOR, JUDGE, CONCURS IN PART, CONCURS IN RESULT ONLY IN PART, AND FILES SEPARATE OPINION.

TAYLOR, JUDGE, CONCURRING IN PART AND CONCURRING IN RESULT ONLY IN PART: I concur with the majority opinion except as concerns the loss of consortium issue whereupon I concur in result only and join in Judge Thompson's concurring opinion on this issue.

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