



Medical Liability Practice Group

August 5, 2009

SUPREME COURT RULES HOUSEHOLD SERVICES CONSTITUTE ECONOMIC LOSS

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Recently, the Michigan Supreme Court held that the state's wrongful death statute permitted recovery for the value of a decedent's household services, and that such a claim was for economic damages and not subject to the cap on non-economic damages.

In *Thorn v. Mercy Memorial Hospital*, 281 Mich App 644 (2008), the plaintiff was the personal representative of Laurie Green, who died following a caesarian section performed at the defendant hospital. The plaintiff subsequently brought suit for medical malpractice and sought damages under the Wrongful Death Act, MCL 600.2922, including damages for the replacement value of household services the decedent had provided to her minor children. The plaintiff's economics expert placed the value of the replacement cost at \$1.45 million.

The trial court granted the defendants' motion for summary disposition, holding that recovery for the loss of household services was not included among the permissible damages listed in the wrongful death statute. The trial court allowed such loss of services to be considered by the jury as non-economic damages within the context of loss of society and companionship. The plaintiff appealed.

When reviewing the case, the Michigan Court of Appeals focused on the language of the wrongful death statute and held that damages for loss of household services were encompassed by the statute. MCL 600.2922(6) reads:

In every action under this section, the court or jury may award damages as the court or jury shall consider fair and equitable, under all the circumstances, including reasonable medical, hospital, funeral, and burial expenses for which the estate is liable; reasonable compensation for the pain and suffering, while conscious, undergone by the deceased during the period intervening between the time of the injury and death; and damages for the loss of financial support and the loss of the society and companionship of the deceased.

The court rejected the defendants' argument that the language of MCL 600.2922(6) limits damages to those categories listed in the statute after the word "including." Rather, the court found that the specific categories of damages listed in the statute following the term "including" were merely examples of the types of damages available, not an exhaustive list.

The court also rejected the defendants' alternative argument that damages for "loss of services" are equivalent to damages for loss of consortium and, therefore, are non-economic in nature and subject to the damages cap of MCL 600.1483. The court differentiated "loss of society and companionship" from "loss of consortium," noting that Michigan courts have historically treated loss of consortium as an independent cause of action, not an element of damages.

The court noted that MCL 600.1483 does not provide a definitive answer to the question of whether "loss of services" damages are economic or non-economic. The court looked to other Michigan statutes for guidance, particularly the product liability statute, MCL 600.101 *et seq.*, and held that Michigan recognizes damages for loss of services as being economic in nature and distinct from those for loss of society and companionship.

The defendants sought leave to appeal to the Supreme Court (*Thorn v. Mercy Memorial Hospital*, -- N.W.--, 2009 WL 1940849), which was denied, allowing the lower court's decision to stand.

Given this ruling, plaintiff attorneys will undoubtedly utilize their economics experts to blackboard significant damages for loss of household services in every case in which such a claim can be made. Because these damages are now considered economic, they are not subject to the cap, and it will become even more important to effectively cross examine plaintiffs' damages experts to challenge and discredit their opinions.