Ohio Supreme Court Holds That Supporting Spouse May Not Recover
Lost Income Resulting From Caring for Injured Spouse

Hutchings et al., v. Childress et al., 119 Ohio St. 3d 486, 2008-Ohio-4568

Among the legitimate items of damages recoverable by an injured party is the reasonable value or cost of nursing or other caregiver services which are required by the injured party. Although often provided by home-based nursing professionals, these services may be provided by non-professionals, such as family members. Thus, this type of recovery is available when a spouse cares for an injured spouse, a parent cares for an injured minor child, or even when a family member cares for an injured resident adult within the household.

Recently, the Ohio Supreme Court held that the appropriate measure of damages for an uninjured spouse’s care to an injured spouse is the economic value of the care provided, not the value of the lost wages incurred in providing that care. Put another way, a defendant is not liable for an uninjured spouse’s voluntary decision to leave his job and act as care provider for his injured spouse.

Prior to this decision, the law in this topic had only been addressed by a few courts in Ohio. Notably, the Second District held that such a measure of damages was appropriate in the recent case of Depouw v. Bichette. Given the Depouw decision, the Fifth District used Hutchings to certify a conflict to the Supreme Court: “Whether spouses can recover the income lost due to one spouse caring for another or whether they may only recover the cost to hire outside healthcare.”

In Hutchings, plaintiff Nancy Hutchings was involved in an automobile accident resulting in traumatic brain injury. As a result, Mrs. Hutchings was unable to think, speak, drive, and perform household activities. For the six weeks following the accident, her husband, John Hutchings, assumed care of Nancy. Prior to the accident, Mr. Hutchings was a financial planner. After the initial six weeks, Mr. Hutchings was often required to take off work to accompany Mrs. Hutchings to therapy and doctors appointments. He also took over all of Mrs. Hutchings’ household activities.

During the trial, the plaintiff presented expert economic evidence that Mr. Hutchings had suffered a loss of income due to the time he spent providing care to his wife. Extrapolating this lost time over his expected work life, Mr. Hutchings’ future damages were calculated to be between $1.7M and $2.2M. However, Plaintiff did not present evidence on the value of the nursing services provided or the cost to hire professional nursing care. Upon conclusion of the evidence, the trial court refused to instruct the jury as to Mr. Hutchings’ claim for lost income. The Fifth District affirmed the trial court’s denial stating, “[s]uch lost wages were not a loss that Nancy Hutchings necessarily suffered as the direct result of the defendant's negligence.” The Hutchings appealed to the Supreme Court.

The Supreme Court affirmed the Fifth District, rejecting multiple arguments presented by the Hutchings. First, the Hutchings argued that a spouse’s income should be contained within a loss of consortium claim (traditionally defined as society, services, sexual relations, conjugal affection, companionship, comfort, and solace). The Court stressed that a loss of consortium is for the services provided from the injured spouse to the uninjured spouse, i.e. Nancy to John. Therefore, an uninjured spouse’s income is not a service the injured spouse once provided and is not recoverable under a loss of consortium theory. Second, the Court considered the issues of causation and foreseeability. Generally, a defendant is responsible only for those damages which are the reasonably foreseeable consequences of his negligent actions. Since there was no way for the defendant to expect Mr. Hutchings would voluntarily become the caregiver for his wife, his lost income was not a foreseeable damage. Finally, the Court dismissed the view that lost wages were appropriate damages based upon the Ohio statutory duty of financial support owed by spouses. Even with this strong stance against a spouse’s ability to recover lost wages, the Supreme Court was very clear to point out that Ohio law does not allow a tortfeasor to benefit from gratuitous care provided by a spouse. The tortfeasor is still responsible for the value of the care his negligence caused the injured party to need.

The impact of this decision is significant. Hutchings sets forth an articulate legal ruling - an uninjured spouse may not recover his lost wages which he suffers as a result of caring for his injured spouse. The application of this rule will be appropriate in any case where an injured individual requires care, especially when that care is provided by a non-professional. The jury should be instructed that the proper measure of damages for care is the market value, whether provided by a family relative or professional care-giver. Expert testimony which measures the fair market value of that care is appropriate, while expert testimony which measures care in terms of the care-giver’s lost income is inappropriate.

If you would like a copy of this opinion or if you have any other questions regarding how the Hutchings ruling may affect a present or future case, please feel free to contact any of our Medical/Hospital Malpractice Group members.