



SEELEY, SAVIDGE , EBERT & GOURASH Co., LPA

26600 Detroit Road
Cleveland, Ohio 44145
P: 216-566-8200
F: 216-566-0213

CLIENT ALERT

September, 2008

Ohio Supreme Court Limits Damages Available To Spouse Providing Gratuitous Care to Plaintiff

In the matter of first impression the Ohio Supreme Court in *Hutchings v. Childress*, 119 Ohio St. 3d 486 (September 17, 2008), resolved a conflict among judicial districts in Ohio and adopted the majority rule that a spouse who provides gratuitous care for an injured spouse is not entitled to recover lost wages incurred as a result of providing that care but is instead limited to the economic value of such care. In that case, the plaintiff suffered a traumatic brain injury in an automobile accident caused by the defendant that affected her ability to think, speak, drive, and perform household activities. Her husband, also a plaintiff in the suit, functioned as a caregiver for her injuries by providing her with continuous nursing care for six weeks following the accident and attendance at numerous medical appointments and physical therapy sessions for months following the accident. At trial, the husband introduced evidence concerning the wages he lost as a financial planner while he provided the nursing and follow-up care, but did not introduce evidence concerning the reasonable value of his care. The Court relied upon the collateral source rule to prohibit the defendant tortfeasor from benefiting from the gratuitous care, but limited the recovery to the market value of the care, not the amount of lost income incurred as a result of providing that care. In reaching that result, the Court rejected the notion that the value of care could be measured by the nature of the job held by the person providing the care. It posited that "[A] tortfeasor who caused an automobile accident would expect to be responsible for paying a mechanic's hourly rate for the repair of a plaintiff's automobile, not the hourly rate of a surgeon who likes to tinker with automotive repair. Likewise, a tortfeasor would expect to pay the market rate for the care provided to the injured party, not the wages of a stockbroker who provided that care."

In an unusual twist, while announcing a rule that provides for the recovery of the market value of nursing services provided by a party entitled to recover for loss of consortium, the Court deprived the plaintiff husband in this case from recovering because he did not put in any evidence concerning the market value of his services.

The SSE&G "Client Alert" is intended to provide current information for our clients and friends regarding important legal developments. The foregoing discussion is general information rather than specific legal advice. Because it is necessary to apply legal principles to specific facts, always consult your legal adviser before using this discussion as a basis for a specific action.

Justice Lundberg-Stratton, concurring in part and dissenting in part, stated that she would have remanded the case to the trial court and permit the plaintiff husband to introduce evidence regarding the value of the services he rendered. She recognized that to prohibit him from doing so in a matter of first impression would render an unjust result and avoid the anomalous result that the plaintiff could not benefit from the ruling announced by the Court.

For questions or additional information, contact Daniel F. Gourash, (216) 566-8200 or by e-mail at DFGourash@sseg-law.com

The SSE&G "Client Alert" is intended to provide current information for our clients and friends regarding important legal developments. The foregoing discussion is general information rather than specific legal advice. Because it is necessary to apply legal principles to specific facts, always consult your legal adviser before using this discussion as a basis for a specific action.