

IN THE SUPREME COURT OF FLORIDA

MICHAEL ZORZOS, ROYAL INSURANCE
COMPANY OF CANADA, a foreign
corporation, CHAMPION SERVICES, INC.
d/b/a BUDGET RENT-A-CAR OF
CLEARWATER, FLORIDA and NATIONAL
UNION FIRE INSURANCE COMPANY OF
PITTSBURG, a New York corporation,

Petitioners,

vs.

STEPHEN JOEL ROSEN, a minor,
by and through his father and
next friend, MICHAEL ROSEN and
BARBARA BETH ROSEN, a minor,
by and through her father and
friend, MICHAEL ROSEN,

Respondents,

CASE NO.: 65,239

FILED

SID J. WHITE

JUN 13 1984

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

PETITION FOR DISCRETIONARY REVIEW OF A DECISION
OF THE DISTRICT COURT OF APPEAL, FIFTH DISTRICT

BRIEF ON THE MERITS OF AMICUS CURIAE
THE FLORIDA DEFENSE LAWYERS' ASSOCIATION

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PREFACE

This is a petition for discretionary review of a decision of the Fifth District Court of Appeal. The Fifth District Court of Appeal certified its decision as directly conflicting with decisions of the Second and Third District Courts of Appeal. This court has jurisdiction pursuant to Article V, Section 3(b)(4), Florida Constitution (1968).

This brief is submitted on behalf of the Florida Defense Lawyers Association as amicus curiae, in support of the position of petitioners.

The petitioners were the appellees before the Fifth District Court of Appeal and the defendants before the trial court. The respondents were the appellants before the Fifth District Court of Appeal and the plaintiffs before the trial court. In this brief the parties will be referred to as plaintiffs, defendants and the Florida Defense Lawyers' Association.

The symbol (R. _____) will be used to refer to the record on appeal.

STATEMENT OF THE CASE AND FACTS

The Florida Defense Lawyers' Association adopts the statements of the case and facts set forth in petitioners' brief on the merits.

QUESTION PRESENTED

WHETHER A CHILD HAS A CAUSE OF ACTION FOR LOSS OF CONSORTIUM AGAINST A THIRD PERSON WHO NEGLIGENTLY INJURES THE CHILD'S PARENT.

SUMMARY OF ARGUMENT

This court should quash the decision of the Fifth District Court of Appeal. A child has no claim for loss of consortium. This court should not create one. To permit such recovery will create a double-recovery as the child of an injured parent already receives compensation for the loss of parental consortium through damages awarded to the injured parent. Damages for the new cause of action would be speculative. Creating this new cause of action would cause potentially unlimited liability. If this cause of action is to exist, the legislature should study the problem and create it. This court need not create this cause of action because adequate remedies exist through causes of action this court presently recognizes.

QUESTION PRESENTED

WHETHER A CHILD HAS A CAUSE OF ACTION
FOR LOSS OF CONSORTIUM AGAINST A THIRD
PERSON WHO NEGLIGENTLY INJURES THE
CHILD'S PARENT.

ARGUMENT

This court should deny the existence of a child's cause of action for loss of consortium against a person who negligently injures the child's parent. The majority of jurisdictions which have considered this issue have held that a child has no independent cause of action against a tortfeasor who negligently injures his parent. This court should reject the cause of action and quash the decision of the Fifth District Court of Appeal.

Numerous reasons militate against the extension of such a cause of action to a child: (1) absence of any enforceable claim on the child's part for the parent's services; (2) absence of precedent; (3) uncertainty and remoteness of damages; (4) double recovery; (5) multiplicity of litigation; (6) possible upset of settlements with parents; (7) fabrication of claims; (8) increased insurance costs.

A. OTHER JURISDICTIONS HAVE OVERWHELMINGLY REJECTED THIS DERIVATIVE CAUSE OF ACTION.

By incorrectly rejecting prior Florida precedent, the Fifth District Court of Appeal has moved from solid

ground in tort law into a quagmire of uncertainty and dilemma. Its decision conflicts directly with those of the Second and Third District Courts of Appeal, Fayden v. Guerrero, 420 So.2d 656 (Fla. 3d DCA 1982); Ramirez v. Commercial Union Insurance Company, 369 So.2d 360 (Fla. 3d DCA 1979); Clark v. Suncoast Hospital, Inc., 338 So.2d 1117 (Fla. 2d DCA 1976); and runs contrary to the overwhelming weight of authority in the United States. This court should carefully scrutinize the long-range effects of approval of the opinion of the Fifth District Court of Appeal.

At common law a child had no cause of action for loss of his parent's consortium. Clark v. Suncoast Hospital, Inc., 338 So.2d 1117, 1118 (Fla. 2d DCA 1976). Of the twenty-five other American jurisdictions which have considered this issue, twenty-two have rejected the child's independent cause of action.

Following is a list of jurisdictions which have rejected the theory:

1. Alaska:

Early v. United States,
474 F.2d 756 (9th Cir. 1973).

2. Arizona:

Jeune v. Dell E. Webb Construction Co.,
77 Ariz. 226, 269 P.2d 723 (1954).

3. California:

Borer v. American Airlines, Inc.
19 Cal 3d 441, 138 Cal Rptr. 302, 563 P.2d 858
(1977).

Suter v. Leonard,
45 Cal App 3d 744, 120 Cal Rptr. 110
(2d Dist. 1975).

Garza v. Kantor,
54 Cal App 3d 1025, 127 Cal Rptr. 164
(2d Dist. 1976).

4. Connecticut:

Clock v. Romeo,
561 F.Supp. 1209 (D.C. Conn. 1983).

Hinde v. Butler,
35 Conn. Supp. 292, 408 A.2d 668
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5. District of Columbia:

Pleasant v. Washington Sand & Gravel Co.,
104 App DC 374, 262 F.2d 471 (1958)
(applying District of Columbia law).

Hill v. Sibley Memorial Hospital,
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6. Georgia:

Brumer Co., Inc. v. Graham,
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Turner v. Atlantic Coastline Ry. Co.,
159 F. Supp. 590 (N.D. Ga. 1958)

7. Hawaii:

Halberg v. Young,
41 Hawaii 634 (1957).

Meredith v. Scruggs,
244 F.2d 604 (9th Cir. 1957).

8. Illinois:

Block v. Piolet Bros. Scrap & Metal, Inc.,
457 N.E.2d 509 (Ill.App. 1st DCA 1983).

Mueller v. Hellrung Construction Co.,
437 N.E.2d 789 (Ill.App. 5th DCA 1982).

Koskela v. Martin,
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414 N.E.2d 1148 (1980).

9. Iowa:

Audubon - Exira Ready, Mix, Inc. v. Illinois
Central Gulf Railroad Co.,
335 N.W.2d 148 (Iowa 1983).

10. Kansas:

Schmeck v. City of Shawnee,
647 P.2d 1263 (Kan. 1982)

Hoffman v. Dautel,
189 Kan 165, 368 P.2d 57 (1962).

11. Louisiana:

Kelly v. United States Fidelity & Guaranty Co.,
353 So.2d 349, (La. App. 1977)
app dismd, 357 So.2d 1144 (La).

12. Minnesota:

Salen v. Klomempken,
322 N.W.2d 736 (Minn. 1982).

Plain v. Plain,
240 N.W.2d 330 (Minn. 1982).

13. Missouri:

Bradford v. Union Electric,
598 S.W.2d 149 (Mo. App. 1979).

Klein v. Abrahamson,
513 S.W.2d 714 (Mo. App. 1974).

14. Nebraska:

Hoelsing v. Sears, Roebuck & Co.
484 F. Supp 478 (D.C. Neb. 1980).

15. Nevada:

General Electric Co. v. Bush,
88 Nev. 360, 498 P.2d 366 (1972).

16. New Jersey:

Russell v. Salem Transportation Co.,
61 N.J. 502, 295 A.2d 862 (1972)

17. New York:

De Angelis v. Lutheran Medical Center,
58 N.Y.2d 1053, 462 N.Y. Supp.2d 626,
449 N.E.2d 406 (N.Y. Ct. App. 1983).

Huhan v. Milanowski
75 Misc. 2d 1078, 348 N.Y.S.2d 696 (1973).

18. North Dakota:

Morgel v. Winger,
290 N.W.2d 266 (N.D. 1980).

19. Ohio:

Gibson v. Johnston,
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20. Oregon:

Norwest v. Presbyterian Intercommunity Hospital,
631 P.2d 1377, aff'd, 652 P.2d 318
(Or. 1982).

21. South Carolina:

Turner v. Atlantic Coastline Railway Co.,
159 F.Supp 590 (N.D. Ga. 1958)
(applying South Carolina law).

22. Washington:

Erhardt v. Havens, Inc.,
53 Wash. 2d 103, 330 P.2d 1010 (1958).

Roth v. Bell,
24 Wash. App. 92, 600 P.2d 602 (1979).

The majority of jurisdictions which have faced this problem have found significant difficulty would accompany the establishment of this action. See, Annot. 11 ALR 4th 549 (1982). One court listed the problems as including:

absence of an enforceable claim by the
child to the parent's services;
indirectness and derivative nature of

the injury; uncertainty and remoteness of the damages; possibility of overlap with the parent's recovery; multiplication of tort claimants; multiplication of tort litigation; abrogation of the period of limitation; splitting the cause of action; and potential increase of insurance costs.

Suter v. Leonard, 45 Cal. App.3d 744, 746, 120 Cal. Rptr. 110, 112 (Cal.2d Dist. Ct. App. 1975).

Only three states, Massachusetts, Michigan and Wisconsin, allow a child to maintain an independent action for this kind of loss. See Ferriter v. Daniel O'Connell's Sons, Inc., 413 N.E.2d 690 (Mass. 1980); Berger v. Weber, 303 N.W.2d 424 (Mich. 1981); Theama By Bichler v. City of Kenosha, 344 N.W.2d 513 (Wis. 1984). Iowa had briefly allowed a child an independent cause of action, Weitl v. Moes, 311 N.W.2d 259 (Iowa 1981), but overruled its decision based on a state statute which had already provided the child with a right to recovery. Audubon - Exira Ready Mix, Inc. v. Illinois Central Gulf Railroad Co., 335 N.W.2d 148 (Iowa 1983).

Florida courts have previously considered the issue and rejected the cause of action. Fayden v. Guerrero, 420 So.2d 656 (Fla. 3d DCA 1982); Ramirez v. Commercial Union Insurance Co., 369 So.2d 360 (Fla. 3d DCA 1979); Clark v. Suncoast Hospital, Inc., 338 So.2d 1117 (Fla. 2d DCA 1976). Their decisions should be approved by this court.

B. THE INJURED PARENT IS THE PROPER PARTY TO RECOVER DAMAGES.

In Audubon the Iowa court correctly recognized that the injured parent is the proper party to recover for the child. 335 N.W.2d at 152. There is no necessity for a child to have the right of independent recovery as any award granted to the injured parent will include provisions designated for the care of the child. See Halberg v. Young, 41 Hawaii 634 (1957). The Halberg court examined this precise factor, declaring that:

where a parent has been injured by the negligent act of another the parent will recover from the other full damage which he has sustained, including such inability, if any, to properly care for his children, and thus the parent's ability to carry out his duty to support and maintain the child has not, in a legal sense, been destroyed or impaired by the injury to him.

Halberg, at 640. [emphasis added].

As a family member, it is presumed that a child presumptively participates in the injured parent's recovery. Russell v. Salem Transportation Co., 61 N.J. 502, 295 A.2d 862 (N.J. 1972). Such a recovery more properly lies with persons whose majority makes them more capable of managing the fund created for the benefit of the minor.

C. DAMAGES OF THE CHILD ARE SPECULATIVE.

A child's damages stemming from parental injury are purely speculative. Duhan v. Milanowski, 75 Misc. 2d

1078, 348 N.Y.S.2d 696 (N.Y. Sup. Ct. 1973); Koskela v. Martin, 414 N.E.2d at 1148. Recognizing this dilemma, the Koskela court stated that "monetary compensation is not an adequate substitute for ... companionship and guidance ..., so we have no standard by which to judge the adequacy of any award." 414 N.E.2d at 1151. The court in Duhan, exaggerated this point, asking "[O]f what are damages to consist? To a child who has lost the services of a parent the possibilities range from malnutrition to a warped psyche." 348 N.Y.S.2d at 702.

Recovery of these damages will create numerous problems. Derivative claims arising out of a single injury will sharply increase. When separate actions are instituted on behalf of each claimant, the risk of overlap in damages awarded to each becomes closer to a certainty. 414 N.E.2d at 1151. This overlap will, in effect, force a single defendant to pay the same damages two, three or four times.

The adjustment in damages may not seem complicated where there is merely a single companion claim to that of the injured party. But "the right here debated would entail adding as many companion claims as the injured party ha[s] minor children, each such claim entitled to separate appraisal and award." Russell v. Salem Transportation Co., 295 A.2d at 864. With each child and the spouse seeking independent damages, the problem of multiple recovery becomes evident and the trial becomes more complex. This 'multiplicity effect' brings with it a "substantial

accretion of liability against the tortfeasor arising out of a single transaction." 295 A.2d at 864. In Borer v. American Airlines, Inc., 19 Cal.3d 441, 138 Cal. Rptr. 302, 563 P.2d 858 (1977), a mother of nine children was negligently injured. The Borer court denied recovery to the children, stating that such liability would be "extended and disproportionate...[and] should not [be] recognize[d]...nonstatutor[ily]...." 19 Cal.3d at 453, 138 Cal. Rptr. at 310.

Furthermore, the probing analysis and mental trauma of the courtroom could disrupt the familial relationship more than the incident of which the child complained. The potential courtroom spectacle echoes the opening scene of King Lear, where his daughters vie to show who loves her father best.

D. A CHILD'S CLAIM CANNOT BE COMPARED WITH A SPOUSE'S CLAIM OR A WRONGFUL DEATH CLAIM.

The Fifth District Court of Appeal analogized a child's claim for loss of consortium to related causes of action. The court cited the landmark case of Gates v. Foley, 247 So.2d 40 (Fla. 1971) for the proposition that a married person may maintain an independent cause of action for loss of consortium of an injured spouse. The Fifth District Court of Appeal reasoned that since both the spouse/spouse and the parent/child relationships involve

care, comfort, society, and companionship, claims for spousal consortium and parental consortium should be treated the same.

The court premised its conclusion on Berger v. Weber, 303 N.W.2d 424 (Mich. 1981), a Michigan Supreme Court case which broadly interpreted "consortium":

Sexual relations are but one element of the spouse's consortium action. The other elements -- love, companionship, affection, society, comfort, services and solace -- are similar in both relationships [spousal and parental] and in each are deserving of protection.

303 N.W.2d at 426.

However, in adopting the Michigan definition of consortium, the Fifth District Court of Appeal ignored a conflicting decision previously established by this Court:

We are only concerned with loss of consortium, by which is meant, the companionship and fellowship of husband and wife and the right of each to the company, cooperation and aid of the other in every conjugal relation. Consortium means much more than mere sexual relation and consists, also, of that affection, solace, comfort, companionship, conjugal life, fellowship, society and assistance so necessary to a successful marriage.

Gates v. Foley, 247 So.2d 40, at 43 (Fla. 1971).

Comparison of the Michigan and Florida definitions shows that the Michigan Supreme Court defined consortium much more broadly and adopted the concept of love, companionship and affection in general. Under that definition any reasonably intimate relationship could merit

compensation for loss of consortium. In contrast, this Court's definition of consortium, as detailed in Gates, is narrower and specifically tailored to the marital relationship. Gates goes beyond the definition of love, companionship and affection, and speaks of the fellowship, cooperation, aid, assistance and conjugal life provided by the marital bond. 247 So.2d 40, 43. Gates views the marital relationship as a give and take partnership venture of mutual comfort and support. In contrast, the parental role has traditionally been viewed as one of one-sided support. Although the parent/child relationship undeniably involves love and affection, it lacks the element of mutual assistance contemplated by Gates. Herein lies the major flaw in the Fifth District Court of Appeal's analogy of the parent/child relationship to the spousal relationship.

The Fifth District Court of Appeal also cites Florida's wrongful death statute, § 768.21, Fla. Stat. (1983), which provides recovery to both a surviving spouse and a minor child for loss of consortium where the negligence of a third party causes the death of a spouse or parent. 9 FLW, at 841. The court reasoned that it is inconsistent to allow recovery where the parent is fatally injured, but not where the parent is injured and does not die. The court used an extreme example by rhetorically asking whether the child suffers any less loss of parental consortium where the parent is comatose than where the parent is dead. Id. The Fifth District Court of Appeal

took its opinion beyond the facts of this case merely for the sake of emotional impact.

In this case the plaintiffs' father received no permanent injury. This case involves at best a temporary loss of the father's affection. The temporary nature of this loss renders inappropriate an analogy to the wrongful death statute, which contemplates compensation for the permanent deprivation of a spouse or parent. See § 768.21, Fla. Stat. (1983). To allow recovery for temporary loss of consortium would open the floodgates and allow suits any time a child is deprived of his parent's comfort. For example, in the case of false imprisonment, a child could sue for the temporary deprivation of his parent's consortium. This instance goes far beyond the bounds contemplated by this Court in Gates. Consider also the extensive and thoughtful dissent in Berger which rebuts the argument that there should be no distinction between negligence and wrongful death cases. Berger, 303 N.W. 2d at 441-42 (Levin, J., dissenting).

Furthermore, how are temporary losses to be gauged? What happens where the parent was previously unavailable or rarely affectionate? What if a parent's injuries left him paralyzed and immobile, but he was as comforting and loving, or more so, than before the injury? These questions pose prohibitive problems and illuminate the speculative nature of a child's claim for temporary loss of consortium. Indeed, the assessment of alleged temporary

losses is considerably more speculative than the determination of permanent losses pursuant to the wrongful death statute.

The Fifth District Court of Appeal analogized the child's right to a parent's right to sue for loss of his child's companionship and services where the child is tortiously injured by a third party. 9 FLW, at 841. In support of this proposition, the court cited Wilkie v. Roberts, 109 So. 225 (Fla. 1926), which held that the father's right to the "custody, companionship, services and earnings of his minor child are valuable rights, constituting a species of property in the father. . ." Id. at 227. Wilkie undoubtedly stems from the historical view that children are a sort of "living investment" who provide home services in appreciation and exchange for their food and shelter. Since this investment is logically and historically viewed as nonreciprocal, there is no inherent justification for giving a child corollary rights. In fact, Florida courts have ruled that where a child is injured, a parent may recover only the value of the child's services. A parent may not recover for temporary lost love and affection resulting from negligent injury. See City Stores Co. v. Langer, 308 So.2d 621, 622 (Fla. 3d DCA 1975).

Wilkie's parental "property" approach is theoretically inconsistent with Gates' give and take "partnership" approach. Since the relationships between parent/child and spouse/spouse are distinct, there is an

underlying logic for the disparate treatment of their claims for loss of companionship.

E. ANY CHANGE SHOULD BE MADE BY THE LEGISLATURE.

If Florida must have an independent cause of action for a child's loss of consortium, the legislature should create the right of recovery. Clark v. Suncoast Hospital, Inc., 338 So.2d 1117 (Fla. 2d DCA 1976). Numerous other courts have recognized the potential problems associated with creation of the cause of action. In Huhan v. Milanowski, 75 Misc.2d 1078, 348 N.Y.S.2d 696 (1973), the court determined the legislature was better equipped to fashion the cause of action, noting:

the complete inadequacy of our judicial system to solve such a complex issue. Untested complaints and appeals are dull and clumsy tools to fashion a new legal form.... Decades can pass before the new principle of law is formed. The matter requires study in depth and resolution by a comprehensive statutory enactment.

Huhan, 348 N.Y.S.2d at 702.

The Florida legislature has already granted a child a right to recovery for the loss of consortium in the event of a parent's wrongful death. In creating the right to recovery under the wrongful death act, the legislature has recognized the loss is total and compensable when a parent dies. If a child is to be permitted recovery under the facts of this case, the legislature, which is better equipped than this court to study the problem, should fashion the remedy.

F. CHILDREN PRESENTLY HAVE A REMEDY THROUGH A CAUSE OF ACTION FOR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS WHICH PERMITS THE RECOVERY OF THE SAME DAMAGES THEY WOULD RECEIVE UNDER THE PROPOSED CAUSE OF ACTION.

In Florida, a child whose parent has been injured may independently recover for emotional distress caused by a defendant so long as the distress stems from an act which resulted in a physical impact to the child as well. Crane v. Loftin, 70 So.2d 574 (Fla. 1954). This Court has other cases before it contemplating whether to extend this cause of action to encompass emotional distress stemming from an incident which resulted in physical harm to the plaintiff or which placed the plaintiff within the zone of physical danger created by the defendant's acts. Champion v. Gray, 420 So.2d 348 (Fla. 5th DCA 1982); Cadillac Motor Car Division v. Brown, 428 So.2d 915 (Fla. 3d DCA 1983). Without commenting on the merits of these other suits, no matter which view this Court ultimately adopts it will place some limitation on the right of a plaintiff to recover for emotional harm. Viewed historically, this limitation is logical and necessary.

[T]o permit the jury a sufficient handhold to withstand spurious claims not susceptible of proof, the common law devised the rule that absent an impact caused by the defendant, the plaintiff could not recover otherwise parasitic damages for emotional distress. ... [T]he rule simply acknowledges that in order to recover for this type of intangible harm the plaintiff must prove that it accompanied harm of a demonstrative nature.

Richmond, The Impact Rule and the Florida Common Law, 2 Trial Advocate Q. 122 (1983).

The Florida Defense Lawyers Association maintains that the present effort to create a new cause of action for loss of parental consortium is little more than an "end run" attempt to avoid the limitations this Court has placed in the past and will place in the future on recovery for a cause of action bearing the identical remedies. In short, the elements of damages for which a plaintiff may seek recovery in emotional distress are the same elements for which a plaintiff may seek recovery in loss of consortium. Where this Court has placed limits on recovering the damages under the rubric of negligent infliction of emotional distress, it should not now permit plaintiffs to circumvent those limitations simply by retitling their cause of action.

Elements of a cause of action for emotional distress listed in Proof of Facts include: "confusion, disorientation, anxiety, nervousness, depression, loss of appetite, difficulty in sleeping, inability to work, loss of powers of concentration, [and] interference with normal enjoyment of life." 3 Am.Jur. Proof of Facts 722 (1959). In other words, plaintiffs seeking to recover for emotional distress must prove what amounts to psychic disturbance, and will recover a monetary amount expressing these intangible elements as well as compensation for needed psychiatric treatment to alleviate these problems. Compare Ford Motor Credit Co. v. Sheehan, 373 So.2d 956 (Fla. 1st DCA 1979) (intentional infliction of emotional distress).

In comparison, the damages awarded to a child by those courts acknowledging the tenuous extension of loss of consortium to children seem for the most part identical, assuming the ability to assess such speculative matters with any degree of accuracy. The Michigan Supreme Court, acknowledging that the loss "is an intangible loss," likens the elements of damage to "pain and suffering, loss of society and companionship in wrongful death actions, and ... loss of spousal consortium." Berger v. Weber, 303 N.W.2d at 427. Massachusetts likened the elements of damage specifically to "severe mental distress" and "shock," with the physical harm attendant upon those emotional traumas. Ferriter v. Daniel O'Connell's Sons, Inc., 413 N.E.2d at 696, 697. Awards to children in wrongful death cases mirror these elements, as the mental harm to the child plays a key role. Consider by example Lithgow v. Hamilton, 69 So.2d 776 (Fla. 1954).

As a result of the accident his personality has changed. He is highly nervous and easily disturbed, has frequent and persistent headaches, and doesn't get along well with other children. ... He should have a complete neurological examination every six months for a period of several years until his condition improves.

69 So.2d at 779. In other words, those damages awarded in cases similar to the instant case mirror the damages awarded in cases seeking awards for negligent infliction for emotional distress.

True, cases for loss of parental consortium frequently seek as an element of damages the loss of "attention, care, comfort, companionship, protection, education, and moral training of the father." Triay v. Seals, 109 So. 427, 430 (Fla. 1926). See also Liberty Mutual Ins. Co. v. Furman, 341 So.2d 1056 (Fla. 3d DCA 1977). As noted earlier, the parent's inability to care for the needs of the child due to the fault of the defendant will be an element of damages for the parent to pursue during the trial of the parent's claim. This monetary award will compensate precisely those elements noted in Triay. Thus, the only damage to the child for which the defendant has not given adequate compensation through the parent's suit is the element of mental or emotional distress. The child, however, has a perfectly adequate remedy, acknowledged in Florida law since 1889 with the case of Florida R. & Nav. Co. v. Webster, 25 Fla. 394, 5 So. 714, which sounds in negligent infliction of emotional distress. Even the cases recently brought before this Court acknowledge the existence of this cause of action; they merely seek to have its parameters expanded. See, e.g., Champion v. Gray; Cadillac Motor Car Division v. Brown.

Children seeking to recover for emotional harm from injury to their parents have a perfectly adequate cause of action in intentional infliction of emotional distress. This Court need not create a new cause of action to give these children a remedy presently available to them.

Further, creation of this new cause of action would have the improper effect of circumventing the safeguards this Court has erected around recovery for emotional distress.

Similarly, children seeking to recover for their parents' inability to care for their requirements have no need for the creation of a new cause of action. The parent's reduced ability to care for a child receives adequate compensation through the parent's case-in-chief against the tortfeasor. Thus, these damages as well are exacted from the tortfeasor and the Court need not fashion a cause of action which would, in effect, force the tortfeasor to pay the identical damages twice.

CONCLUSION

The decision of the Fifth District Court of Appeal should be quashed. The decisions of the Second and Third District Courts of Appeal in Clark v. Suncoast Hospital, Inc., 338 So.2d 1117 (Fla. 2d DCA 1976), Ramirez v. Commercial Union Insurance Company, 369 So.2d 360 (Fla. 3d DCA 1979) and Fayden v. Guerrero, 420 So.2d 656 (Fla. 3d DCA 1982) should be approved as the controlling law of the State of Florida.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by United States mail this 11th day of June, 1984 to: Chris W. Altenbernd, Esquire, George A. Vaka, Esquire, Fowler, White, Gillen, Boggs, Villareal & Baker, P.A., Post Office Box 1438, Tampa, Florida 33601; Walton B. Hallows, Jr., Esquire, Darrell F. Carpenter, Esquire, Wells, Gattis, Hallows & Holbrook, P.A., Post Office Box 3109, Orlando, Florida 32802; James A. Murman, Esquire, Barr, Murman & Tonelli, P.A., 505 North Morgan, Tampa, Florida 33602; and to, Professor Michael L. Richmond, Nova University Center of the Study of Law, 3100 S.W. ninth Avenue, Ft. Lauderdale, Florida 33315.

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