

Ashmore v. Hartford Hospital (SC 20052)

Brief Summary: Wrongful death and loss of consortium lawsuit after the plaintiff's husband was put on life support, and later died, due to negligence by the hospital staff following a routine heart surgery. Defendant argued that the loss of consortium award was excessive because it was \$3 million more than the wrongful death award. Court held that a loss of consortium award should presumptively not be substantially greater than the wrongful death award and there was no evidence in the case justifying such a disparity in the present case.

The plaintiff's husband visited the defendant hospital for a routine elective heart surgery. During the procedure, the surgeon connected standard epicardial pacing electrodes to the decedent's heart to assist with heart rate and rhythm management in the event that he should experience any complications. In the case of an abnormal rhythm, such wires can be connected to a system that provides electrical stimulation to return the heartbeat to its normal rhythm. During his second night in the hospital, the decedent experienced atrial fibrillation—a common postoperative condition. Over the next hour his heart rate dropped, he displayed signs of distress and alarms sounded, however, the hospital failed to connect the wires or contact the surgeon. Eventually, the staff restarted his heart via electric shock, but the lack of a heartbeat for seventeen minutes caused severe oxygen deprivation requiring him to be placed on life support. Several days later, with no reasonable possibility of recovery, the plaintiff was forced to decide to terminate her husband's life support.

The plaintiff sued the hospital for wrongful death in her capacity as executor of the decedent's estate, and loss of spousal consortium in her individual capacity. The jury found in favor of the plaintiff awarding the decedent's estate \$75,000 in economic damages; \$1.2 million in noneconomic damages; and \$4.5 million in damages to the plaintiff for loss of consortium.

The defendant then filed a motion seeking a remittitur of the loss of consortium award (lower the amount). The trial court denied the remittitur, leading to the defendant's appeal which was transferred to the Supreme Court of Connecticut. The issues before the court were: (1) whether the appropriate standard of review for a trial court's decision on a remittitur is a deferential abuse of discretion or de novo standard? (2) whether a spousal loss of consortium award in a wrongful death action presumptively should not be substantially greater than the wrongful death award? And (3) whether the evidence justifies a substantially greater loss of consortium award? The court held, first, that a deferential abuse of discretion standard is the correct standard of review. Second, that a loss of consortium award should presumptively not be substantially greater than the wrongful death award. Third, that the jury could not have reasonably found, based on the evidence, that the circumstances justified a substantially greater loss of consortium award. Thus, the court remanded the case for reconsideration of the defendant's motion for remittitur.

General Statutes § 52-216a provides the general statutory authority for remittitur. It states that if the court at the conclusion of the trial concludes that the verdict is excessive as a matter of law, it shall order a remittitur and, upon failure of the party so ordered to remit the amount ordered by the court, it shall set aside the verdict and order a new trial. The defendant argued that the statute's language "excessive as a matter of law" indicates that the standard of review ought to be a de novo standard—meaning the court acts as if it were considering the question for the first time, without deference to the trial court. The defendant argued this was the appropriate standard because appellate courts typically review legal determinations de novo rather than for an abuse of discretion. An abuse of discretion standard means that the court will overturn the verdict only if the trial court made a clear error in its decision, thus, it may be more difficult to have a decision overturned with an abuse of discretion standard compared to a de novo standard.

The court rejected the defendant's argument and stated that the statute containing the words "matter of law" does not necessitate a de novo standard. Furthermore, the court emphasized that for over thirty-five years since the enactment of the statute the court used the abuse of discretion standard, thus, concluding that if the legislature intended for the standard to be de novo they would have included it in one of the amendments.

General Statutes § 52-555a states that the surviving spouse of an injured person who dies as a result of tortiously inflicted injuries can recover damages from the tortfeasor for any loss of consortium she has suffered or will probably suffer as a direct and proximate result of her spouse's wrongful death. These damages include household services and the intangible or sentimental aspects of a marriage, such as the loss of emotional support, sexual relations, and physical affection.

The defendant argued that the disparity between the wrongful death and loss of consortium award implies that the plaintiff's loss of her spouse was \$3.3 million, or 275 percent more devastating than the decedent losing his life. Thus, the verdict is irrational and must have been a result of improper sympathy, partiality, or prejudice. Furthermore, the defendant argued that wrongful death award should be greater because the decedent spouse suffers the same deprivations as the deprived spouse (marital affection, companionship etc.) plus their life. Thus, the award should compensate for both. The court agreed and established a presumption that a direct injury to one spouse is no less harmful than the concomitant loss of consortium suffered by the deprived spouse. However, the presumption can be overcome by evidence that the marriage was an unequal one, in which the deprived spouse relied more heavily on the support of or derived far more satisfaction than the impaired spouse, or that the impaired spouse somehow had less to lose. To support this conclusion the court cited both Connecticut and outside cases. For

example, in *Champange v. Raybestos-Manhattan, Inc.* the court held that a loss of consortium award that was more than twice as large as the wrongful death award was excessive. Thus, the court concluded that when the loss of consortium award is substantially greater than the wrongful death award a suspicion arises that the award was the product of sympathy or prejudice, thus, to uphold the award the court must be able to point out evidence that justifies the disparity.

Next, the court looked at whether there was sufficient evidence to justify the disparity in the case. The court stated that there was no evidence the jury could have considered to determine the time, cost, and burden on the plaintiff for household chores—such as the cost of hiring help. Furthermore, there was no evidence presented indicating that the plaintiff's loss was atypical. There was also no evidence that the plaintiff and decedent maintained a sexual relationship or continued to engage in any form of physical affection. Additionally, the court stated that the plaintiff's testimony suggested that her husband was a workaholic, thus, calling into question the quality and quantity of the time they spent together. Thus, the court concluded that nothing in the record indicated that the plaintiff was so uniquely dependent on the decedent, or derived so much joy from his presence, that her loss of his consortium was nearly four times as devastating as his complete loss of life and all of its pleasures.

Lastly, the plaintiff argued that the award was justified by the trauma she experienced being forced to decide whether to terminate her husband's life support. However, the court agreed with the defendant that this type of harm is not within the ambit of loss of consortium. Instead, it is the type of harm associated with liability to a bystander for extreme emotional distress. Furthermore, stating that it was unlikely she would prevail on such a claim had she brought it. Thus, the court argued that allowing the plaintiff to recover for the trauma of terminating his life support as loss of consortium when she would be unlikely to under bystander

liability undermines the function of bystander liability. Therefore, concluding the jury could not reasonably have found that the plaintiff's lost consortium was substantially more damaging than the decedent's loss of life and all its enjoyments.

The concurrence added that the abuse of discretion standard of review used to consider whether a verdict is excessive as a matter of law will remain a legal oxymoron unless and until the legislature clarifies its intent in General Statutes § 52-216a.

The key takeaway from this case is that the court will presume a verdict was made in error when the loss of consortium award is significantly greater than the wrongful death award. Consequently, plaintiff's attempting to recover damages for loss of consortium should provide evidence that indicates the loss monetarily—such as expenses for household work. Strategically, plaintiffs should attempt to maximize the wrongful death award as much as possible to maximize the potential loss of consortium award.