RECOGNIZING THE CHILD'S CONSORTIUM ACTION BY DENYING THE SPOUSE'S

MELISSA S. YORK*

INTRODUCTION

A substantial number of state supreme courts refuse to recognize an action for a child's loss of parental consortium.[1] However, at least one court in a state that denies such recovery has acknowledged that "[w]hen the vitally important parent-child relationship is impaired and the child loses the love, guidance and close companionship of a parent, the child is deprived of something that is indeed valuable and precious. No one could seriously contend otherwise."[2] Recovery for loss of parental consortium has been denied on several grounds: the desire to await legislative action;[3] fear of multiplicity of claims and double recovery;[4] the absence of a legal right to a parent's love, guidance and companionship;[5] the remote nature of the injury and the inadequacy of monetary compensation;[6] and, the lack of the sexual element that is present in the spousal relationship.[7]

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* J.D. Candidate, 1995, Indiana University School of Law—Indianapolis; B.A., with distinction, 1988, Purdue University.

1. Twenty state supreme courts have refused to recognize a child's action for loss of parental consortium. Lewis v. Rowland, 701 S.W.2d 122 (Ark. 1985); Borer v. American Airlines, Inc., 563 P.2d 858 (Cal. 1977); Lee v. Colorado Dep't of Health, 718 P.2d 221 (Colo. 1986) (en banc); Zorzos v. Rosen, 467 So. 2d 305 (Fla. 1985); Halberg v. Young, 41 Haw. 634 (Haw. 1957); Dearborn Fabricating & Eng'g Corp. v. Wickham, 551 N.E.2d 1135 (Ind. 1990); Hoffman v. Dautel, 368 P.2d 57 (Kan. 1962); Kelly v. United States Fidelity & Guar. Co., 357 So. 2d 1144 (La. 1978); Durepo v. Fishman, 533 A.2d 264 (Me. 1987); Gaver v. Harrant, 557 A.2d 210 (Md. 1989); Salin v. Kloempken, 322 N.W.2d 736 (Minn. 1982); Vosburg v. Cenex-Land O'Lakes Agronomy Co., 513 N.W.2d 870 (Neb. 1994); General Elec. Co. v. Bush, 498 P.2d 366 (Nev. 1972); Russell v. Salem Transp. Co., 295 A.2d 862 (N.J. 1972); DeAngelis v. Lutheran Medical Ctr., 449 N.E.2d 406 (N.Y. 1983); Vaughn v. Clarkson, 376 S.E.2d 236 (N.C. 1989); Morgel v. Winger, 290 N.W.2d 266 (N.D. 1980); High v. Howard, 592 N.E.2d 818 (Ohio 1992); Norwest v. Presbyterian Intercommunity Hosp., 652 P.2d 318 (Or. 1982); Steiner v. Bell Tel. Co., 540 A.2d 266 (Pa. 1988).

2. *Hoffman*, 368 P.2d at 59.

3. *Lewis*, 701 S.W.2d at 124; *Lee*, 718 P.2d at 234; *Zorzos*, 467 So. 2d at 307; *Hoffman*, 368 P.2d at 60; *Durepo*, 533 A.2d at 265; *Morgel*, 290 N.W.2d at 267; *High*, 592 N.E.2d at 820.

4. *Borer*, 563 P.2d at 860; *Lee*, 718 P.2d at 233.

5. *Lewis*, 701 S.W.2d at 124-25; *Russell*, 295 A.2d at 864; *High*, 592 N.E.2d at 820.

6. *Borer*, 563 P.2d at 862; *Lee*, 718 P.2d at 233; Norwest v. Presbyterian Intercommunity Hosp., 652 P.2d 318 (Or. 1982).

7. *Borer*, 563 P.2d at 863; Dearborn Fabricating & Eng'g Corp. v. Wickham, 551 N.E.2d 1135, 1136 (Ind. 1990); Salin v. Kloempken, 322 N.W.2d 736, 739 (Minn. 1982); Vaughn v. Clarkson, 376 S.E.2d 236, 236-37 ("If a loss of consortium is seen not only as a loss of service but as a loss of legal sexual intercourse and general companionship, society and affection as well, by definition any damage to consortium is limited to the legal marital partner of the injured.").

At the same time, an overwhelming majority of states recognize a spousal consortium claim.[8] Although the spousal action as recognized at common law was strictly for the benefit of the husband, the right has more recently been extended to the wife as well.[9] Courts have distinguished this claim from the child's on several grounds: the "right" to spousal consortium as a result of the marriage contract,[10] the sexual aspect and the possibility of the loss of childbearing,[11] the "foreseeability" that an injured party's spouse

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8. The spousal consortium claim has been recognized by nine state legislatures and 28 state supreme courts. COLO. REV. STAT. ANN. § 14-2-209 (1987); ME. REV. STAT. ANN. tit. 19, § 167-A (West 1964); MISS. CODE ANN. § 93-3-1 (1972); N.H. REV. STAT. ANN. § 507 (8-a) (1983); OKLA. STAT. ANN. tit. 43, § 214 (West 1990); OR. REV. STAT. § 108.010 (1989); S.C. CODE ANN. § 15-7520 (Law Co-op. 1976); TENN. CODE ANN. § 25-1-106 (1980); VT. STAT. ANN. tit. 12, § 5431 (Supp. 1991); Swartz v. United States Steel Corp., 304 So. 2d 881 (Ala. 1974); Schreiner v. Fruit, 519 P.2d 462 (Alaska 1974); City of Glendale v. Bradshaw, 503 P.2d 803 (Ariz. 1972); Hopson v. St. Mary's Hosp., 408 A.2d 260 (Conn. 1979) (recognizing a cause of action for both spouses); Gates v. Foley, 247 So. 2d 40 (Fla. 1971); Rindlisbaker v. Wilson, 519 P.2d 421 (Idaho 1974); Dini v. Naiditch, 170 N.E.2d 881 (Ill. 1960); Troue v. Marker, 252 N.E.2d 800 (Ind. 1969); Childers v. McGee, 306 N.W.2d 778 (Iowa 1981); Kotsiris v. Ling, 451 S.W.2d 411 (Ky. 1970); Deems v. Western Md. Ry., 231 A.2d 514 (Md. 1967); Olson v. Bell Tel. Lab., Inc., 445 N.E.2d 609 (Mass. 1983); Montgomery v. Stephan, 101 N.W.2d 227 (Mich. 1960); Thill v. Modern Erecting Co., 170 N.W.2d 865 (Minn. 1969); Novak v. Kansas City Transit, Inc., 365 S.W.2d 539 (Mo. 1963) (en banc); General Elec. Co. v. Bush, 498 P.2d 366 (Nev. 1972); Ekalo v. Constructive Serv. Corp., 215 A.2d 1 (N.J. 1965); Millington v. Southeastern Elevator Co., 239 N.E.2d 897 (N.Y. 1968); Nicholson v. Hugh Chatham Memorial Hosp., Inc., 266 S.E.2d 818 (N.C. 1980) (allowing consortium action to both spouses); Hastings v. James River Aerie No. 2337—Fraternal Order of Eagles, 246 N.W.2d 747 (N.D. 1976); Clouston v. Remlinger Oldsmobile Cadillac, Inc., 258 N.E.2d 230 (Ohio 1970); Hopkins v. Blanco, 320 A.2d 139 (Pa. 1974); Mariani v. Nanni, 185 A.2d 199 (R.I. 1962); Hoekstra v. Helgeland, 98 N.W.2d 669 (S.D. 1959); Whittlesey v. Miller, 572 S.W.2d 665 (Tex. 1978) (recognizing an action for both spouses); Lundgren v. Whitney's, Inc., 614 P.2d 1272 (Wash. 1980); King v. Bittinger, 231 S.E.2d 239 (W. Va. 1976); Peeples v. Sargent, 253 N.W.2d 459 (Wis. 1977). Only four state supreme courts expressly deny recovery for spousal consortium. Schmeck v. City of Shawnee, 647 P.2d 1263 (Kan. 1982); Roseberry v. Starkovich, 387 P.2d 321 (N.M. 1963); Ellis v. Hathaway, 493 P.2d 985 (Utah 1972); Bates v. Donnafield, 481 P.2d 347 (Wyo. 1971).

9. Nine state legislatures and 25 state supreme courts have extended the husband's common law action to the wife. COLO. REV. STAT. ANN. § 14-2-209; ME. REV. STAT. ANN. tit. 19, § 167-A; MISS. CODE ANN. § 93-3-1; N.H. REV. STAT. ANN. § 507 (8-a); OKLA. STAT. ANN. TIT. 43, § 214; OR. REV. STAT. § 108.010; S.C. CODE ANN. § 15-7520; TENN. CODE ANN. § 5-1-106; VT. STAT. ANN. tit. 12, § 5431; *Swartz,* 304 So. 2d 881; *Schreiner*, 519 P.2d 462; *City of Glendale*, 503 P.2d 462; *Gates*, 247 So. 2d 40; *Rindlisbaker*, 519 P.2d 421; *Dini*, 170 N.E.2d 881; *Troue*, 252 N.E.2d 800; *Childers*, 306 N.W.2d 778; *Kotsiris*, 451 S.W.2d 411; *Deems*, 231 A.2d 514; *Olson*, 445 N.E.2d 609; *Montgomery*, 101 N.W.2d 227; *Thill*, 170 N.W.2d 865; *Novak*, 365 S.W.2d 539; *General Elec. Co.*, 498 P.2d 366; *Ekalo*, 215 A.2d 1; *Millington*, 239 N.E.2d 897; *Hastings*, 246 N.W.2d 747; *Clouston*, 258 N.E.2d 230; *Hopkins*, 320 A.2d 139; *Mariani*, 185 A.2d 119; *Hoekstra*, 98 N.W.2d 669; *Lundgren*, 614 P.2d 1272; *King*, 231 S.E.2d 239; *Peeples*, 253 N.W.2d 459.

10. *Schreiner*, 519 P.2d at 464 (citing Hitaffer v. Argonne Co., 183 F.2d 811 (D.C. Cir. 1950), *cert. denied,* 340 U.S. 852 (1950)); *Lee*, 718 P.2d at 232; *Gates*, 247 So. 2d at 43; *accord* Tribble v. Gregory, 288 So. 2d 13, 16 (Miss. 1974); *Novak,* 365 S.W.2d at 543.

11. *Hopson*, 408 A.2d at 264; *Millington,* 239 N.E.2d at 900; *Clouston*, 258 N.E.2d at 235; *see also* cases cited *supra* note 9.

may also suffer damages as a result of such injury,[12] and the desire to limit tortfeasor liability.[13]

This Note will review the development of the common law consortium action as a reflection of changing societal values and realities. It will then examine the distinctions and reasoning courts have utilized in denying the child's action for loss of parental consortium while recognizing the corresponding spousal claim. Finally, it will suggest that current societal values (especially with regard to divorce rates, marital trends, family structures, and the growing emphasis on children's rights) and sound public policy considerations dictate that the child's action for loss of consortium be recognized while the spousal consortium claim be abolished.

I. DEVELOPMENT OF THE CONSORTIUM ACTION

The common law consortium action developed from early Roman law, which allowed a man to maintain an action for injuries to his wife, children and slaves.[14] Such actions had their roots in a master-servant analogy, and damages consisted of the value of lost services.[15] A married woman injured by a third party had no legal identity and therefore no standing to bring suit in her own right. Instead, her husband sued jointly on behalf of himself and his wife for her injury.[16] The husband also had actions for injuries to the marital relationship resulting from the torts of criminal conversation and abduction. These early actions compensated the husband for the loss of the wife's services to which he was entitled in the eyes of the law.[17] The legal disabilities of the wife at early common law reflected the inferior social status of women at that time [18] as well as the legal fiction that

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12. *Hopson*, 408 A.2d at 264 ("Should the victim be married, it follows that the spouse may suffer personal and compensable, though not physical, injuries as a direct result of the defendant's negligence and that such injuries should not go uncompensated."); Salin v. Kloempken, 322 N.W.2d 736, 739 (Minn. 1982) (denying child's cause of action for parental consortium on the basis of, *inter alia*, foreseeability).

13. Lewis v. Rowland, 701 S.W.2d 122, 124 (Ark. 1985); Borer v. American Airlines, Inc., 563 P.2d 858, 862 (Cal. 1977) ("[T]he courts must locate the line between liability and nonliability at some point . . . ."); *Lee*, 718 P.2d at 234; Dearborn Fabricating & Eng'g Corp. v. Wickham, 551 N.E.2d 1135, 1137 (Ind. 1990) (quoting *Borer*, 563 P.2d at 863); Durepo v. Fishman, 533 A.2d 264, 265 (Me. 1987); Gaver v. Harrant, 557 A.2d 210, 217 (Md. 1989) ("[W]e are also concerned with the substantial expansion of tortfeasor liability and the accompanying societal costs . . . ."); *Salin*, 322 N.W.2d at 739 (quoting Stadler v. Cross, 295 N.W.2d at 552, 554 (Minn. 1980)); Russell v. Salem Transp. Co., 295 A.2d 862, 864 (N.J. 1972); Norwest v. Presbyterian Intercommunity Hosp., 652 P.2d 318, 333 (Or. 1982).

14. WILLIAM L. PROSSER, THE LAW OF TORTS § 129, at 929 (4th ed. 1971); *see also* Robert J. Cooney and Kevin J. Conway, Note, *The Child's Right to Parental Consortium,* 14 J. MARSHALL L. REV. 341, 342-43 (1981).

15. B. HOLDSWORTH, A HISTORY OF ENGLISH LAW 427, 430 (2d ed. 1937).

16. Guy v. Livesey, 81 Eng. Rep. 428 (1619).

17. Igneri v. Cie. de Transports Oceaniques, 323 F.2d. 257, 263 n.15 (2d Cir. 1963), *cert. denied,* 376 U.S. 949 (1964); Brett, *Consortium and Servitium—A History and Some Proposals*, 29 AUSTL. L.J. 321, 325-28 (1955); Note, *Judicial Treatment of Negligent Invasion of Consortium*, 61 COLUM. L. REV. 1341, 1343-44 (1961).

18. Montgomery v. Stephan, 101 N.W.2d 229, 230 (Mich. 1960) ("This, then, is the soil in which the

when a man and woman married, they became one entity "owned" by the husband.[19] Eventually the consortium action began to shift away from the emphasis on lost services and compensated the husband for the loss of the wife's society and injury to the marital relationship as elements of damage.[20]

In the mid-nineteenth century, Married Women's Acts established separate legal identities for wives.[21] Soon thereafter, courts were compelled to recognize a consortium action for the wife such as that which had long been recognized for the husband.[22] While a few states abolished the action altogether rather than extend it to the wife,[23] this alternative was widely rejected.[24] Further, some courts that initially abolished the action reconsidered their positions and now allow independent or joint actions for loss of spousal consortium.[25]

Today, the spousal consortium action recognizes "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."[26] As such, it reflects the current nature of the marital relationship "as a single social and economic unit"[27] and the reality that "the common law as to consortium has evolved to meet changing times and conditions."[28] Where it is recognized,

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doctrine took root; the abject subservience of the wife to the husband, her legal nonexistence, her degraded position as a combination vessel, chattel and household drudge . . . .").

19. Jesse C. Rickman, Comment, *The Negligent Impairment of Consortium—A Time for Recognition as a Cause of Action in Texas*, 7 ST. MARY'S L.J. 864, 866 (1976); *see also* Jacob Lippman, *The Breakdown of Consortium*, 30 COLUM. L. REV. 651 (1930).

20. PROSSER, *supra* note 14, § 124, at 873; *see also* HARPER AND JAMES, TORTS § 8.9 (1956).

21. Bill Leaphart and Richard E. McCann, *Consortium: An Action for the Wife*, 34 MONT. L. REV. 75, 79-80 (1973).

22. *See* Hittafer v. Argonne Co., 183 F.2d 811 (D.C. Cir. 1950), *cert. denied*, 340 U.S. 852 (1950); *see also* cases cited *supra* note 9.

23. Marri v. Stamford St. R.R., 78 A. 582 (Conn. 1911); Helmstetler v. Duke Power Co., 32 S.E.2d 611 (N.C. 1945); Ellis v. Hathaway, 493 P.2d 985, 986 (Utah 1972); Kronenbitter v. Washburn Wire Co., 151 N.E.2d 898 (N.Y. 1958); Neuberg v. Bobowicz, 162 A.2d 662 (Pa. 1960).

24. Schreiner v. Fruit, 519 P.2d 462, 465 (Alaska 1974); City of Glendale v. Bradshaw, 503 P.2d 803, 805 (Ariz. 1972); Deems v. Western Md. Ry., 231 A.2d 514, 521 (Md. 1967) ("To overrule the common-law doctrine and to deny the claim of the husband as well as that of the wife in order to attain equality of treatment between them . . . it seems to us, is to throw out the baby with the bath water."); Montgomery v. Stephan, 101 N.W.2d 227, 232 (Mich. 1960); Novak v. Kansas City Transit, Inc., 365 S.W.2d 539, 546 (Mo. 1963); Ekalo v. Constructive Serv. Corp., 215 A.2d 1, 7 (N.J. 1965); Clouston v. Remlinger Oldsmobile Cadillac, Inc., 258 N.E.2d 230, 235 (Ohio 1970); Hopkins v. Blanco, 320 A.2d 139, 141 (Pa. 1974); Hoekstra v. Helgeland, 98 N.W.2d 669, 681 (S.D. 1959).

25. Hopson v. St. Mary's Hosp., 408 A.2d 260, 265 (Conn. 1979); Nicholson v. Hugh Chatham Memorial Hosp., Inc., 266 S.E.2d 818, 823 (N.C. 1980); Whittlesey v. Miller, 572 S.W.2d 665, 668 (Tex. 1978).

26. Gates v. Foley, 247 So. 2d 40, 43 (Fla. 1971) (citing Lithgow v. Hamilton, 69 So. 2d 776 (Fla. 1954)).

27. Lee v. Colorado Dep't of Health, Inc., 718 P.2d 221, 232 (Colo. 1986).

28. Hastings v. James River Aerie No. 2337—Fraternal Order of Eagles, 246 N.W.2d 747, 751 (N.D.

the child's action for loss of parental consortium likewise compensates for love, companionship, affection, society, services and solace.[29]

II. Changing Societal Values and Family Structure

A. Divorce

An explosion of the incidence of divorce occurred in the United States in the 1960s and 1970s.[30] The divorce rate more than doubled between 1963 and 1975.[31] By 1985 almost one-quarter of all persons who had ever married had also divorced.[32] Today at least half of all marriages end in divorce.[33] Based upon recent data of the Census Bureau, the projected divorce rate for all marriages is forty percent. Although this figure represents a slight decline from the previously projected rate of fifty percent,[34] the divorce rate appears to have stabilized at a high level.[35]

As a result of the increased divorce rates in the United States, only a small minority of American households in recent years are traditional families, consisting of a married couple living with their two children. In 1970, such families comprised only thirteen percent of households, and although the number of such families has since increased by 1.7 million, their proportion to the total population has decreased to ten percent.[36] In fact, a recent Census Bureau report indicated that one out of every two (or 32.3 million) American children lived in a non-traditional nuclear family in 1991. Such "non-traditional" homes consisted of single-parents, step-parents, other relatives or non-relatives.[37] These changes prompted commentators to note that "[t]he traditional family

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1976) (justifying the extension of the husband's common law consortium action to the wife).

29. Berger v. Weber, 303 N.W.2d 424 (Mich. 1981); *accord* Hibpshman v. Prudhoe Bay Supply, Inc., 734 P.2d 991, 994 (Alaska 1987); Villareal v. State Dep't of Transp., 774 P.2d 213, 217 (Ariz. 1989); Ferriter v. Daniel O'Connell's Sons, Inc., 413 N.E.2d 690, 696 (Mass 1980); Keele v. St. Vincent Hosp. & Health Care Ctr., 852 P.2d 574, 578 (Mont. 1993) (Trieweiler, J., concurring) (extending the child's cause of action beyond injuries rendering parent a quadriplegic); Pence v. Fox, 813 P.2d 429, 433 (Mont. 1991); Williams v. Hook, 804 P.2d 1131, 1138 (Okla. 1991); Reagan v. Vaughn, 804 S.W.2d 463, 467 (Tex. 1991); Hay v. Medical Ctr. Hosp., 496 A.2d 939, 942 (Vt. 1985); Ueland v. Reynolds Metals Co., 691 P.2d 190, 192 (Wash. 1984); Belcher v. Goins, 400 S.E.2d 830 (W. Va. 1990) (quoting *Berger*, 303 N.W.2d at 426); Theama v. City of Kenosha, 244 N.W.2d 513, 518 (Wis. 1984); Nulle v. Gillette-Campbell County Joint Powers Fire Bd., 797 P.2d 1171, 1174 (Wyo. 1990) (quoting Hoffman v. Dautel, 368 P.2d 52, 59 (Kan. 1962)).

30. Bureau of the Census, U.S. Dep't of Commerce, Singleness in America (Current Population Reports (series p-23, no. 162, 1990)) [hereinafter Singleness].

31. Mary Ann Glendon, *Family Law Reform in the 1980's,* 44 La. L. Rev. 1553 (1984).

32. Singleness, *supra* note 30.

33. David A. Hamburg, *The New Family: Investing in Human Capital*, Current, July-Aug. 1993, at 4.

34. Barbara Vobejda, *Baby-Boom Women Setting Divorce Record: Census Data Underscore Dramatic Social Change in Last Two Decades*, Wash. Post, Dec. 9, 1992, at A, al [hereinafter *Baby-Boom Women*].

35. Barbara Vobejda, *Census Bureau Says Rapid Changes in Family Size, Style Are Slowing*, Wash. Post, June 24, 1993, at A, a21.

36. *Id.*

37. *Half of Nation's Children Live in Non-Traditional Families, Census Bureau Reports* (Census

with a breadwinner-husband and a homemaker wife who live with their biological children is certainly an anomaly in America today."[38] In a commencement speech to Notre Dame University graduates in May of 1992, former President Bush called the American family "an institution under siege," noting America's distinction as the world's leader in divorce rates.[39]

B. Single-Parent Families

Changes in American lifestyles have also resulted in increased numbers of single-parent families. The Census Bureau recently reported increasing proportions of never-married mothers. Approximately twenty-four percent of single women aged eighteen to forty-four had conceived a child out of wedlock, compared with fifteen percent ten years earlier.[40] Further, the number of single parents in the United States increased from 3.8 million in 1970 to 10.5 million in 1992, and has stabilized at increased rates since 1980.[41]

As a result of the increased numbers of unmarried mothers and high divorce rates, the proportion of children under the age of eighteen living with a single parent increased from twelve percent in 1970 to twenty-seven percent in 1993.[42] Additionally, sixteen percent of children in two-parent homes are living with one stepparent.[43] Most single parent households in the United States are headed by women, and tend to be lower income.[44] As a result, increasingly large proportions of children are living below the poverty level: from fourteen percent in the 1970s to twenty-one percent in 1991.[45]

C. Postponement and Lower Incidence of Marriage

Since 1960, the number of young adults choosing to postpone marriage has increased markedly. In 1960, only twenty-eight percent of women and fifty-three percent of men aged twenty to twenty-four had never married, compared to sixty-three and seventy-nine percent, respectively, in 1990.[46] Similarly, in 1990, those aged twenty-five to twenty-nine

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Bureau Press Release No. 121, August 30, 1994).

38. Mary Patricia Treuthhart, *Adopting a More Realistic Definition of "Family,"* 26 GONZ. L. REV. 91 (1990/1991).

39. Dan Balz, *Bush Ties Social Ills to Ailing Families: Notre Dame Graduation Speech Stresses Need to Bolster Home Life,* WASH. POST, May 18, 1992, at A, a10. "President Bush told a commencement audience here today that the nation's social problems cannot be erased until the family is first strengthened and restored." *Id.*

40. *Single Mothers on the Rise Regardless of Background, Census Bureau Reports* (Census Bureau Press Release No. 127, July 14, 1993).

41. *Pace of Change in Household Composition Slowed in the 1980's and Early 90's, Census Bureau Reports* (Census Bureau Press Release No. 109, June 24, 1993).

42. LIFE AS AND WITH A SINGLE PARENT, March Current Population Survey (August 17, 1994).

43. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, FAMILY LIFE TODAY . . . AND HOW IT HAS CHANGED (Current Population Reports (series p-23, no. 181, 1992)) [hereinafter FAMILY LIFE].

44. Sheryl L. Scheible, *Women as Single Parents: Confronting Institutional Barriers in the Courts, the Workplace, and the Housing Market,* 23 FAM. L.Q. 131 (1989) (reviewing ELIZABETH MULROY, WOMEN AS SINGLE PARENTS (1988)) [hereinafter *Women as Single Parents*].

45. FAMILY LIFE, *supra* note 43.

46. FAMILY LIFE, *supra* note 43.

were much less likely to have married: forty-five percent of men and thirty-one percent of women.[47] According to a Census Bureau demographer, the fraction of the population that will never marry has doubled from five percent in the 1950s to ten percent in 1991. As a result, a smaller portion of adult life is being spent within marriage.[48]

Further, children in single-parent households are now almost equally likely to be living with a never-married parent as with a divorced one: In 1993, thirty-seven percent of such children were living with a divorced parent, compared with thirty-five percent living with a never-married parent.[49] Only a decade ago, the number of children living with a divorced parent was twice the number of children living with a never-married parent.[50] These recent lifestyle changes prompted a sociologist at Johns Hopkins University to comment that "[t]here's been a turn away from marriage in the last decade or two. That partly has been compensated by people living together. But the institution of marriage doesn't seem as strong as it used to be."[51]

D. Increasing Awareness of Children's Rights

In recent years, the notion of a child as a "chattel" belonging to his parents has eroded.[52] As a result, society and courts are increasingly recognizing children as individuals with rights.[53] This change is reflected in many states' Wrongful Death Statutes, which allow a child to recover for the death of a parent[54] and in child custody determinations that require consideration of the best interests of the child.[55] The new emphasis on children's rights is perhaps most apparent in a recent Indiana case involving

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47. FAMILY LIFE, *supra* note 43.

48. *Baby-Boom Women, supra* note 34.

49. *Gap Narrows Between Children Living with A Divorced or Single Parent, Census Bureau Finds* (Census Bureau Press Release No. 108, July 20, 1994).

50. *Id.*

51. Barbara Vobejda, *Americans Spending Less Time Married; Rates Are Lowest in Two Decades While Cohabitation is Common*, WASH. POST, Aug. 26, 1992, at A, a1.

52. Williams v. Hook, 804 P.2d at 1131, 1134-35 (Okla. 1991) (noting Steiner v. Bell Tel. Co., 517 A.2d 1348, 1351 (Pa. Super. Ct. 1986)); Belcher v. Goins, 400 S.E.2d 830, 836 (W. Va. 1990) ("[M]inor children have many of the same rights as adults, rather than being mere chattels.").

53. Berger v. Weber, 303 N.W.2d 424, 427 (Mich. 1981) (recognizing the child's action for loss of parental consortium). "The importance of the child to our society merits more than lip service. Convinced that we have too long treated the child as a second-class citizen or some sort of non-person we feel constrained to remove the disability we have imposed." *Id.*

54. *E.g.*, Hibpshman v. Prudhoe Bay Supply, Inc., 734 P.2d 991, 994 (Alaska 1987); Villareal v. State Dep't of Transp., 774 P.2d 213, 218 (Ariz. 1989); Borer v. American Airlines, Inc., 563 P.2d 858, 865 (Cal. 1977); Zorzos v. Rosen, 467 So. 2d 305, 307 (Fla. 1985); Durepo v. United States Fidelity & Guar. Co., 533 A.2d 264, 265-66 (Me. 1987); Ferriter v. Daniel O'Connell's Sons, Inc., 413 N.E.2d 690, 695 (Mass. 1980); High v. Howard, 592 N.E.2d 818, 820 (Ohio 1992); *Williams*, 804 P.2d at 1136; Reagan v. Vaughan, 804 S.W.2d 463, 465 (Tex. 1991); Ueland v. Reynolds, 691 P.2d 190, 192 (Wash. 1984); Nulle v. Gillette-Campbell County Joint Powers Fire Bd., 797 P.2d 1171, 1175 (Wyo. 1990).

55. Pence v. Fox, 813 P.2d 429, 433 (Mont. 1991) (indicating that the policy of allowing a child's parental consortium action is consistent with the "best interests of the child test" in child custody determinations).

two unmarried teachers who conceived a child, and contractually agreed that the father would be held harmless for monetary and emotional support of their child.[56] Three years later, the child's mother filed suit as the child's next friend to establish paternity and to obtain child support and medical expenses. The trial court found the written agreement, entered into between the parties prior to the child's conception, void as against public policy and ordered the father to pay child support. The appellate court affirmed, holding the written agreement "unenforceable because a parent has no right to contract away a child's support benefits."[57] In reaching its decision, the court also noted that "[i]t is apparent that our legislature has created a strong current public policy (and not merely maintained an ancient one) with the object of protecting the rights of the state."[58] Indeed, the United States Supreme Court acknowledged children as persons under the Constitution in 1969.[59]

III. Recognizing the Action For Loss of Parental Consortium

Although a number of courts have expanded the common law consortium action to include the child's claim for loss of parental consortium,[60] the majority continue to deny such recovery.[61] They are often compelled to distinguish between the child's claim and the corresponding, highly recognized spousal action.[62] Courts have offered many reasons for their adverse positions, denying recovery to children on the following grounds: lack of legislative approval;[63] fear of multiple claims and double recovery;[64] the absence of a legal right to a parent's love, guidance and companionship;[65] injury that is too remote and for which monetary compensation is inadequate;[66] and the absence of the sexual element of the spousal interest.[67]

Many courts have indicated that the decision to permit the child's recovery for loss of parental consortium should be left to state legislatures "in this area in which judicial decree is no substitute for the exhaustive gathering of socio-economic facts and the public debate upon the import of those facts that would occur before the . . . [l]egislature enacted so sweeping an embellishment on the existing tort law of this state."[68] However, some

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56. Straub v. B.M.T., 626 N.E.2d 848 (Ind. Ct. App. 1993), *affirmed* 645 N.E.2d 597 (Ind. 1994).

57. *Id.* at 852.

58. *Id.* at 851-52.

59. Tinker v. Des Moines Sch. Dist., 393 U.S. 503, 511 (1969); *see also* Goss v. Lopez, 419 U.S. 565 (1975) (recognizing child's due process right to notice and hearing in school disciplinary process); Gomez v. Perez, 409 U.S. 535 (1973) (recognizing equal protection right of illegitimate children to maintain civil action against parent for failure to support).

60. *See* cases cited *supra* note 29.

61. *See* cases cited *supra* note 1.

62. *See* cases cited *supra* note 1.

63. *See* cases cited *supra* note 3.

64. *See* cases cited *supra* note 4.

65. *See* cases cited *supra* note 5.

66. *See* cases cited *supra* note 6.

67. *See* cases cited *supra* note 7.

68. Durepo v. Fishman, 533 A.2d 264, 265 (Me. 1987); *accord* Lewis v. Rowland, 701 S.W.2d 122,

courts awaiting legislative approval of the child's action developed a common law action on behalf of the wife[69] and rejected invitations to deny the spousal consortium claim in total.[70] If legislative approval were the well-reasoned alternative to common law development, the spousal claim would be widely abolished as unsupported by legislative action. Indeed, many courts allowing a common law action for loss of parental consortium considered and rejected the argument that the issue is one for legislative determination,[71] noting that "loss of consortium has been repeatedly recognized as a cause of action created and developed by the courts. We have long recognized our responsibility to adapt the common law to the needs of society as justice requires where the legislature has not spoken."[72]

With the exception of a very small minority of states where the spouse's right to damages for injury to the marital relationship has been initiated by legislative action,[73] spousal consortium actions are entirely creations of the common law.[74] Therefore, when

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124 (Ark. 1985); Lee v. Colorado Dep't of Health, 718 P.2d 221, 234 (Colo. 1986); Zorzos v. Rosen, 467 So. 2d 305, 307 (Fla. 1985); Hoffman v. Dautel, 368 P.2d 57, 60 (Kan. 1962); Gaver v. Harrant, 557 A.2d 210, 216 (Md. 1989); Morgel v. Winger, 290 N.W.2d 266, 267 (N.D. 1980); High v. Howard, 592 N.E.2d 818, 820 (Ohio 1992).

69. Deems v. Western Md. Ry., 231 A.2d 514 (Md. 1967); Clouston v. Remlinger Oldsmobile Cadillac, Inc., 258 N.E.2d 230 (Ohio 1970).

70. Schreiner v. Fruit, 519 P.2d 462, 465 (Alaska 1974); City of Glendale v. Bradshaw, 503 P.2d 803, 805 (Ariz. 1972); *Deems*, 231 A.2d at 521; Montgomery v. Stephan, 101 N.W.2d 227, 232 (Mich. 1960); Novak v. Kansas City Transit, Inc., 365 S.W.2d 539, 546 (Mo. 1963); Ekalo v. Constructive Serv. Corp., 215 A.2d 1, 7 (N.J. 1965); *Clouston*, 258 N.E.2d at 235; Hopkins v. Blanco, 320 A.2d 139, 141 (Pa. 1974); Hoekstra v. Helgeland, 98 N.W.2d 669, 681 (S.D. 1959).

71. *See* cases cited *supra* note 29; *see also* Salin v. Kloempken, 322 N.W.2d 736, 741 (Minn. 1982) (rejecting child's action on other grounds). "We are aware that courts should not shirk their duty to overturn unsound precedent and should strive continually to develop the common law in accordance with our own changing society .... Accordingly, we do not rely on the rationale of those cases that have relegated this matter to the legislature." *Id.*

72. Hibpshman v. Prudhoe Bay Supply, Inc., 734 P.2d 991, 995 (Alaska 1987).

73. COLO. REV. STAT. § 14-2-209 (1987); ME. REV. STAT. ANN. tit. 19, § 167-A (West 1964); MISS. CODE ANN. § 93-3-1 (1972); N.H. REV. STAT. ANN. § 507 (8-a) (1983); OKLA. STAT. ANN. tit. 43, § 214 (West 1990); OR. REV. STAT. § 108.010 (1989); S.C. CODE ANN. § 15-7520 (Law. Co-op. 1976); TENN. CODE ANN. § 25-1-106 (1980); VT. STAT. ANN. tit. 12 § 5431 (Supp. 1991).

74. Swartz v. United States Steel Corp., 304 So. 2d 881 (Ala. 1974); *Schreiner*, 519 P.2d 462; *City of Glendale*, 503 P.2d 803; Hopson v. St. Mary's Hosp., 408 A.2d 260 (Conn. 1979); Gates v. Foley, 247 So. 2d 40 (Fla. 1971); Rindlisbaker v. Wilson, 519 P.2d 421 (Idaho 1974); Dini v. Naiditch, 170 N.E.2d 881 (Ill. 1960); Troue v. Marker, 252 N.E.2d 800 (Ind. 1969); Childers v. McGee, 306 N.W.2d 778 (Iowa 1981); Kotsiris v. Ling, 451 S.W.2d 411 (Ky. 1970); *Deems*, 231 A.2d 514; Olson v. Bell Tel. Lab., Inc., 445 N.E.2d 609 (Md. 1967); *Montgomery*, 101 N.W.2d 227; Thill v. Modern Erecting Co., 170 N.W.2d 865 (Minn 1969); *Novak*, 365 S.W.2d 539; General Elec. Co. v. Bush, 498 P.2d 366 (Nev. 1972); *Ekalo*, 215 A.2d 1; Millington v. Southeastern Elevator Co., 239 N.E.2d 897 (N.Y. 1968); Nicholson v. Hugh Chatham Memorial Hosp., Inc., 266 S.E.2d 818 (N.C. 1980); Hastings v. James River Aerie No. 2337—Fraternal Order of Eagles, 246 N.W.2d 747 (N.D. 1976); *Clouston*, 258 N.E.2d 230; *Hopkins*, 320 A.2d 139; Mariani v. Nanni, 185 A.2d 119 (R.I. 1962); *Hoekstra*, 98 N.W.2d 669; Whittlesey v. Miller, 572 S.W.2d 665 (Tex. 1978); Lundgren v. Whitney's,

advanced by courts to justify denying the child's consortium action, the argument that legislatures are better suited to debate and decide such policy issues lacks force. Conversely, in recognizing the wife's consortium action, the Supreme Court of Illinois aptly pointed out that it found "no wisdom in abdicating to the legislature [its] essential function of re-evaluating common-law concepts in the light of present day realities."[75] Lack of legislative approval should not bar recognition of a child's action for loss of parental consortium.

Recognition of the child's consortium action has also been denied on the basis of fears of multiplicity of claims and double recovery.[76] Courts have consistently pointed out that "recognition of a right to recover for such losses in the present context, moreover, may substantially increase the number of claims asserted in ordinary accident cases, the expense of settling or resolving such claims, and the ultimate liability of the defendants."[77] Additionally, courts have asserted that a threat of double recovery exists in allowing the child's claim because juries may compensate the child's economic and emotional loss in an award to the parent.[78]

However, recognition of the child's action may actually result in fewer claims than the spousal action because not all married persons have children, and those who do are parents of minor children for a much shorter time than they are spouses.[79] Further, because the common law consortium action, initially available only to the husband, has been almost unanimously extended to the wife,[80] it is entirely logical to further extend the consortium action to children.[81] Finally, should the spousal claim be abolished, as advocated *infra*, courts may be much less reluctant to deny the child's action based on fears of double recovery because the action will no longer be viewed as an extension of the existing spousal action.

Inc., 614 P.2d 1272 (Wash. 1980); King v. Bittinger, 231 S.E.2d 239 (W. Va. 1976); Peeples v. Sargent, 253 N.W.2d 459 (Wis. 1977).

75. *Dini*, 170 N.E.2d at 892.

76. Borer v. American Airlines, 563 P.2d 858, 860 (Cal. 2977); Lee v. Colorado Dep't of Health, 718 P.2d 221, 233 (Colo 1986).

77. *Borer*, 563 P.2d at 860 (denying parental consortium action to nine children of injured parent).

78. *E.g.*, Hoffman v. Dautel, 368 P.2d 57, 58-59 (Kan. 1962) ("[J]uries as a matter of fact consider the plight of young children in fixing damages where the parent is seriously injured . . . ."); Salin v. Kloempken, 322 N.W.2d 736, 740 (Minn. 1982) ("[J]uries may already compensate the child for lost economic support through an award to the parent and, in addition, they may already indirectly factor in a child's emotional loss through an award to the parent.").

79. *Borer*, 563 P.2d at 869 (Mosk, J., dissenting) (arguing that recognition of the child's cause of action will actually result in less liability and lower insurance costs than the corresponding spousal action).

80. *See* sources cited *supra* note 9.

81. Courts recognizing the wife's consortium action have refused to judicially abolish the cause of action. *See* cases cited *supra* note 70.

The possibility of double recovery has been widely addressed, and firmly rejected,[82] as a barrier to allowing recovery to the wife in a spousal action.[83] Courts concerned with this issue have remedied the possibility of double recovery by requiring joinder of the spousal claims,[84] utilizing detailed jury instructions defining damages, or both.[85] Still other courts have considered and refused to require joinder, indicating that such a requirement is unnecessary because the claims of the husband and wife are "separate and distinct."[86] Finally, in acknowledging the wife's action, courts have commented that assessing consortium damages is no more difficult for a jury than computing damages for pain and suffering and emotional distress.[87]

The child's action for loss of parental consortium presents less danger of double recovery than the spousal claim because the parent-child relationship is independent of any spousal interest. Absent instruction to the contrary, a jury would be more likely to consider the spousal consortium interest in assessing the victim's damages due to the traditional "unified" concept of the marital relationship. Recognition of the more remote consortium interest of the child likewise does not present a danger of double recovery

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82. *See* cases cited *supra* note 78; *see also* Gates v. Foley, 247 So. 2d 40, 45 (Fla. 1971); Troue v. Marker, 252 N.E.2d 800, 806 (Ind. 1969); Novak v. Kansas City Transit, Inc., 365 S.W.2d 539, 544 (Mo. 1963) (en banc); Hoekstra v. Helgeland, 98 N.W.2d 669, 682 (S.D. 1959) (defining the separate spousal claims resulting from negligent injury to one spouse).

83. *See, e.g.*, Schreiner v. Fruit, 519 P.2d 462, 466 (Alaska 1974) (Recognizing the wife's action for spousal consortium, the court noted that "[t]he strongest objection which can be made to the granting of relief in this case is the possibility of double recovery."); City of Glendale v. Bradshaw, 503 P. 2d 803, 805 (Ariz. 1972); Hopson v. St. Mary's Hosp., 408 A.2d 260, 264 (Conn. 1979); Deems v. Western Md. Ry., 231 A.2d 514, 522 (Md. 1967) (allowing only one joint recovery for spousal consortium to guard against the possibility of double damages); Tribble v. Gregory, 288 So. 2d 13, 17 (Miss. 1974) (limiting wife's recovery to loss of society, conjugal rights and physical spousal assistance); Nicholson v. Hugh Chatham Memorial Hosp., Inc., 266 S.E.2d 818, 822-23 (N.C. 1980) (requiring joinder of consortium action with injured spouse's claim against tortfeasor).

84. *Gates*, 247 So. 2d at 45 (allowing defendant to spousal consortium action to request joinder of spouses' claims); Ekalo v. Constructive Serv. Corp., 215 A.2d 1, 8 (N.J. 1965) ("In all future actions, the wife's consortium claim may be prosecuted only if joined with the husband's action."); *Nicholson*, 266 S.E.2d at 823 (requiring joinder of consortium action with physically injured spouse's claim against tortfeasor).

85. *E.g.*, *Gates*, 247 So. 2d at 45 ("[T]he trial court should carefully caution the jury that any loss to the wife of her husband's material support is fully compensated by any award to him . . . and that the wife is entitled to recover only for loss of consortium as defined in this opinion."); Montgomery v. Stephan, 101 N.W.2d 227, 231 (Mich. 1960); Clouston v. Remlinger Oldsmobile Cadillac, Inc., 258 N.E.2d 230, 234 (Ohio 1970) ("No authority has been cited indicating that courts have had difficulty with juries failing to follow instructions . . . ."); *Ekalo*, 215 A.2d at 6 ("[A] jury could be fully and fairly instructed as to the nature and limits of the independent demands for recovery."); *cf.* Hibpshman v. Prudhoe Bay Supply, Inc., 734 P.2d 991, 996 (Alaska 1987).

86. Kotsiris v. Ling, 451 S.W.2d 411, 413 (Ky. 1970); *accord City of Glendale*, 503 P.2d at 805; *Novak*, 365 S.W.2d at 544.

87. *Hopson*, 408 A.2d at 264; Millington v. Southeastern Elevator Co., 239 N.E.2d 897, 902 (N.Y. 1968); *Hoekstra*, 98 N.W.2d at 682; *accord* Hay v. Medical Ctr. Hosp. 496 A.2d 939, 943-44 (Vt. 1985) ("Damages . . . are no more difficult to ascertain than in other classes of injury, involving intangible loss, where we have allowed recovery.").

where joinder may be required and proper jury instructions can adequately identify the child's "separate and distinct" damages.

Courts have also denied the child's action on the basis that a child, although entitled to a parent's support,[88] has no legal right to the love and affection of her parents.[89] These courts reason that to justify a consortium cause of action, they "would first have to recognize that a child has a legal claim against its [parent] for love, guidance and companionship before [they] could recognize the same claim against a third party."[90] However, this reasoning does not prevail in regard to the spousal consortium claim. Spouses have no legal claim against their marital partners for love, affection, sexual services and companionship in states where actions for adultery, criminal conversation, and alienation of affections have been abolished as outmoded by the changing views on marriage and divorce.[91] Nonetheless, the spousal consortium action continues to be recognized.[92]

Furthermore, the consortium action compensates one for the injury to the relationship with another.[93] As such, the action does not seek to create or enforce a positive relationship where none exists, as suggested by the "legal right" argument; rather, its purpose is to compensate for a valuable relationship that has been seriously injured or destroyed by the act of a third party.[94] Therefore, denying recovery on the basis that the child has no legal entitlement to a parent's love and affection is inconsistent with the courts' treatment of the spousal consortium claim.

The child's consortium action has further been denied on the assertion that injury to the parent-child relationship is too remote and incapable of adequate monetary compensation.[95] However, even courts denying the action have acknowledged that

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88. Lewis v. Rowland, 701 S.W.2d 122, 124 (Ark. 1985) ("Parents have a legal duty to support their minor children but not the legal duty to love them.").

89. *Id.*; Russell v. Salem Transp. Co., 295 A.2d 862, 864 (N.J. 1972); High v. Howard, 592 N.E.2d 818, 820 (Ohio 1992).

90. *Lewis*, 701 S.W.2d at 124.

91. Norwest v. Presbyterian Intercommunity Hosp., 652 P.2d at 318, 329 (Or. 1982); *cf.* Berger v. Weber, 303 N.W.2d 424, 426 (Mich. 1981); Ekalo v. Constructive Serv. Corp., 215 A.2d 1, 3 (N.J. 1965) (noting that alienation of affections and similar spousal actions have been abolished by legislative action).

92. *See* cases cited *supra* note 91.

93. *E.g.*, Dearborn Fabricating & Eng'g Corp. v. Wickham, 551 N.E.2d 1135, 1137 (Ind. 1990); Hoffman v. Dautel, 368 P.2d 57, 59 (Kan. 1962); Millington v. Southeastern Elevator Co., 239 N.E.2d 897, 900 (N.Y. 1968) ("[T]he 'consortium' interest to be protected here does not rest on any medieval theory but on the real injury done to the marital relationship."); Whittlesey v. Miller, 572 S.W.2d 665, 667 (Tex. 1978) ("[C]onsortium contemplates a single tortious act which injures both spouses by virtue of their relationship to each other."); Theama v. City of Kenosha, 344 N.W.2d 513, 521 (Wis. 1984).

94. Villareal v. State Dep't of Transp., 774 P.2d 213, 219 (Ariz. 1989) (limiting action to severe parental injuries that destroy or nearly destroy the parent-child relationship); *accord* Keele v. St. Vincent Hosp. & Health Care Ctr., 852 P.2d 574, 577 (Mont. 1993); Williams v. Hook, 804 P.2d 1131, 1138 (Okla. 1991) (requiring permanent loss of parental consortium as prerequisite to action); Reagan v. Vaughan, 804 S.W.2d 463, 467 (Tex. 1991) (requiring "serious, permanent, and disabling injuries" to the parent as a prerequisite to recovery).

95. Borer v. American Airlines, 563 P.2d 858, 862 (Cal. 1977); Lee v. Colorado Dep't of Health, 718

serious harm to the child results from an injury to the parent-child relationship[96] and that they "see little difference in terms of remoteness between the situation of a spouse seeking to recover for loss of consortium, and that of a minor child similarly seeking recovery for the loss of consortium."[97]

The issue of "remoteness" concerns the relationship between the tortfeasor and the primary tort victim (physically injured party)[98] and as such, is inapplicable to the independent consortium action, which compensates for damage to one's relationship with the victim. Although the "remote" nature of the injury has also been advanced as a basis for denying the wife's consortium action,[99] courts have overwhelmingly concluded that "[t]he loss in both [spousal] situations appears to us to be alike, and one is no more indirect than the other."[100] As a result, some courts recognizing the spousal action have acknowledged that because the injury to the parent-child relationship is no more remote than the injury to the marital relationship, an action for loss of parental consortium must be extended to children.[101]

In refusing the child's consortium action, it has also been asserted that:

> [M]onetary compensation will not enable plaintiffs [children] to regain the companionship and guidance of a mother; it will simply establish a fund so that upon reaching adulthood, when plaintiffs will be less in need of maternal

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P.2d 221, 233 (Colo. 1986); *Norwest*, 652 P.2d at 322.

96. *E.g. Borer*, 563 P.2d at 866 ("We are keenly aware of the need of children for the love, affection, society and guidance of their parents; any injury which diminishes the ability of a parent to meet these needs is plainly a family tragedy . . . ."); *Lee*, 718 P.2d at 233; *Hoffman*, 368 P.2d at 59; Salin v. Kloempken, 322 N.W.2d 736, 737 (Minn. 1982); *Norwest*, 652 P.2d at 323 ("We accept the view that a parent's disablement is likely to mean a painful and possibly permanent psychic injury to the child . . . .").

97. Hay v. Medical Ctr. Hosp., 496 A.2d 939, 943 (Vt. 1985); *accord* Berger v. Weber, 303 N.W.2d 424, 427 (Mich. 1981) ("[W]e see no reason why the child's injury is any more remote than the injury in the spouse's cause of action.").

98. *Hay*, 496 A.2d at 943; *accord Berger*, 303 N.W.2d at 426-27; Theama v. City of Kenosha, 344 N.W.2d 513, 522 (Wis. 1984).

99. Marri v. Stamford St. R.R., 78 A. 583 (Conn. 1911); Troue v. Marker, 252 N.E.2d 800, 805 (Ind. 1969); Ekalo v. Constructive Serv. Corp., 215 A. 2d 1, 5 (N.J. 1965) ("The position that her injuries are indirect or too remote to warrant legal protection runs counter to basic principles of negligence and causation . . . ."); Roseberry v. Starkovich, 387 P.2d 321, 324 (N.M. 1963); Nicholson v. Hugh Chatham Memorial Hosp., Inc., 266 S.E.2d 818, 821 (N.C. 1980); Hoekstra v. Helgeland, 98 N.W.2d 669, 679 (S.D. 1959); Whittlesey v. Miller, 572 S.W.2d 665, 667 (Tex. 1978).

100. *Troue*, 252 N.E.2d at 805; *see also* Schreiner v. Fruit, 519 P.2d 462, 465-66 (Alaska 1974); Hopson v. St. Mary's Hosp., 408 A.2d 260, 264 (Conn. 1979); Gates v. Foley, 247 So. 2d 40, 44 (Fla. 1971) ("[N]o reasonable distinction may be made between the wife's claim for . . . consortium and a similar claim by her husband."); Deems v. Western Md. Ry., 231 A.2d 514, 522 (Md. 1967); *Ekalo*, 215 A.2d at 5; *Nicholson*, 266 S.E.2d at 822; Hopkins v. Blanco, 320 A.2d 139, 140 (Pa. 1974); *Hoekstra*, 98 N.W.2d at 680; *Whittlesey*, 572 S.W.2d at 668; Lundgren v. Whitney's, Inc., 614 P.2d 1272, 1275 (Wash. 1980).

101. Villareal v. State Dep't of Transp., 774 P.2d 213, 218 (Ariz. 1989); *Hay*, 496 A.2d at 943; Belcher v. Goins, 400 S.E.2d 830, 838 (W. Va. 1990) ("Another basis for recognizing . . . parental consortium is the similarity of such consortium to spousal consortium, which is already judicially recognized.").

> guidance, they will be unusually wealthy men and women. To say that plaintiffs have been "compensated" for their loss is superficial; in reality they have suffered a loss for which they can never be compensated; they have obtained, instead, a future benefit essentially unrelated to that loss.[102]

Likewise, a spousal consortium action does not compensate the marriage partner for the lost or damaged relationship with the injured party; rather, it provides an immediate monetary benefit wholly unrelated to the spouse's injury. Therefore, although this argument could logically be advanced to deny recovery for all tortious injuries, it is a basic principal of tort law that monetary compensation, though usually inadequate, is the only recovery available through the legal system.[103] Further, although monetary compensation may not restore or replace the injured parental relationship, courts have acknowledged that it may alleviate the child's loss in other ways: psychiatric treatment and adequate child care services—which may be made available by a monetary judgment—could offset the injury to the parental relationship by providing some measure of guidance and affection.[104]

Finally, courts have denied recovery for parental consortium on the theory that the spousal action primarily compensates for the injury to the sexual relationship, and this element is absent from the parent-child relationship.[105] Nevertheless, courts recognizing the spousal action have pointed out that the sexual relationship is merely one of many elements constituting the consortium action,[106] and that love, affection, companionship, comfort and society—elements common to both the spousal and parent-child relationship—are equally worthy of legal protection.[107] It has further been noted that an injury to a child's parent results in greater harm to the child than a similar injury to the relationship between two adults[108] because "the child's relational interest with the parent

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102. Borer v. American Airlines, Inc., 563 P.2d 858, 862 (Cal. 1977).

103. Theama v. City of Kenosha, 344 N.W.2d 513, 520 (Wis. 1984) ("Although a monetary award may be a poor substitute for the loss of a parent's society and companionship, it is the only workable way that our legal system has found to ease the injured party's tragic loss. We recognize this as a shortcoming of our society . . . .").

104. *E.g.*, Williams v. Hook, 804 P.2d 1131, 1136 (Okla. 1991) ("[M]onetary compensation . . . may aid in ensuring the child's continued normal and complete mental development into adulthood, and lessen the impact of the loss."); *Hay*, 496 A.2d at 944; Ueland v. Reynolds Metals Co., 691 P.2d 190, 194 (Wash. 1984); *Theama*, 344 N.W.2d at 516; *see also* David P. Dwork, Note, *The Child's Right to Sue for Loss of a Parent's Love, Care and Companionship Caused by Tortious Injury to the Parent*, 56 B.U. L. REV. 722, 742 (1976).

105. *See* cases cited *supra* note 7.

106. Berger v. Weber, 303 N.W.2d 424, 426 (Mich. 1981); Pence v. Fox, 813 P.2d 429, 432 (Mont. 1991); *Hay*, 496 A.2d at 942; *cf.* Sizemore v. Smock, 422 N.W.2d 666, 669 (Mich. 1988).

107. *Berger*, 303 N.W.2d at 426; *Hay*, 496 A.2d at 942.

108. *Theama*, 344 N.W.2d at 516; *accord* Villareal v. State Dep't of Transp., 774 P.2d 213, 217 (Ariz. 1989); Weitl v. Moes, 311 N.W.2d 259, 269 (Iowa 1982), *rev'd on other grounds,* Audubon-Exira Ready Mix, Inc. v. Illinois Cent. Gulf R.R., 335 N.W.2d 148 (Iowa 1983)); Reagan v. Vaughn, 804 S.W.2d 463, 466 (Tex. 1990); *Ueland*, 691 P.2d at 192; *see also* Dwork, *supra* note 104, at 742.

is characterized by dependence. In contrast, the parent's relational interest with the child is not. In a real sense, the child is 'becoming' and the parent 'has become.'"[109]

A young child needs the nurture and guidance of a parent for proper development.[110] When children are deprived of a positive parental influence due to death or injury, studies have shown that they exhibit higher rates of illness and psychiatric disorders and a higher incidence of juvenile delinquency.[111] Increased percentages of children live in single-parent homes.[112] In these cases, the effect on the child of injury to the parent—the child's sole or primary source of guidance and companionship—is much more pronounced than in the case where a child lives with both parents. The economic ramifications of injury to the head of a single-parent household also severely affect the child: Statistics show that single-parent households tend to be lower income.[113] A monetary judgment from a consortium action may be the only way the child can obtain funds for domestic assistance and necessary counseling.

Conversely, an adult whose spouse has been injured is more capable of adjusting to the loss by initiating new relationships to compensate for the injury to the spousal bond.[114] Courts that have considered recognizing the wife's consortium action in addition to the husband's have noted that juries may consider the injury to the marital relationship in assessing damages of the injured party.[115] However, as noted *supra*, injury to the parent-child relationship, lacking the traditional concept of "unity" that belongs to the marital relationship, is less likely to be considered as an element of damage accruing to the injured parent. The absence of unity from the parent-child relationship that does exist in the marital relationship is a factor to be considered in assessing damages, but should not stand as a bar to the cause of action itself.

Finally, with the stabilization of increased divorce rates at nearly fifty percent,[116] society has less incentive to protect the marital relationship, which stands a significant

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109. Nulle v. Gillette-Campbell County Joint Powers Fire Bd., 797 P. 2d 1171, 1175 (Wyo. 1990).

110. *E.g.*, Hoffman v. Dautel, 368 P.2d 57, 59 (Kan. 1962); Williams v. Hook, 804 P.2d 1131, 1136 (Okla. 1991); Ueland v. Reynolds Metals Co., 691 P.2d 190, 194 (Wash. 1984); *Nulle*, 797 P.2d at 1174 ("The strategic significance of the family is to be found in its mediating function in the larger society."); Dwork, *supra* note 104, at 734.

111. Ronald Wenkart, Comment, *The Child's Cause of Action for Loss of Consortium*, 5 SAN FERN. V. L. REV. 449, 461 (1977).

112. *See* FAMILY LIFE, *supra* note 43.

113. *See Women as Single Parents*, *supra* note 44.

114. *See* Dwork, *supra* note 104, at 742; *accord* Keele v. St. Vincent Hosp. & Health Care Ctr., 852 P.2d 574, 578 (Mont. 1978) (Trieweiler, J., specially concurring) ("And yet, there should be no dispute that disruption of the parent-child relationship will in most cases have much greater consequences than damage to the relationship between two adults."); Hay v. Medical Ctr. Hosp., 496 A.2d 939, 942 (Vt. 1985); Theama v. City of Kenosha, 344 N.W.2d 513, 516 (Wis. 1984).

115. Deems v. Western Md. Ry., 231 A.2d 514, 522 (Md. 1967) ("[T]hese marital interests are in reality so interdependent, because injury to these interests is so essentially incapable of separate evaluation . . . ."); *cf.* Gates v. Foley, 247 So. 2d 40, 45 (Fla. 1971); Tribble v. Gregory, 288 So. 2d 13, 17 (Miss. 1974); Clouston v. Remlinger Oldsmobile Cadillac, Inc., 258 N.E.2d 230, 234 (Ohio 1970); Hoekstra v. Helgeland, 98 N.W.2d 669, 682 (S.D. 1959).

116. Hamburg, *supra* note 33; *Baby-Boom Women*, *supra* note 34.

chance of dissolution regardless of the occurrence of the injury, than in protecting the parent-child bond, which can never be substantially replaced.[117] Although the sexual element is absent from the parent-child relationship, it is but one of many consortium components and not indicative of the gravamen of harm that results to the relationship. Therefore, lack of the sexual element of the spousal claim is a tenuous distinction upon which to deny a child's right to damages for the loss of parental consortium.

IV. Denying the Spousal Consortium Action

In an attempt to justify recognition of the spousal consortium action while denying the child's similar cause, courts have been compelled to distinguish the seemingly similar claims and have done so on several grounds: a right to spousal consortium resulting from the marriage contract;[118] the important sexual element of the relationship and the possible deprivation of childbearing;[119] the foreseeability that an injured adult's spouse may also suffer damages as a result of the injury;[120] and the desire to limit tortfeasor liability.[121]

One common distinction holds that the spouse is entitled to consortium as a "right" resulting from the marriage contract,[122] and the child has no such legal entitlement. Courts recognizing the child's action have failed to advance any specific argument with regard to this theory, except to generally point out that a child has as great an interest in the love, guidance and companionship of a parent as the spouse has in the similar elements of the marital relationship.[123]

However, upon closer examination and in light of current social trends, the child's recovery for parental consortium is more appropriately allowed and the spousal action abolished on these grounds. An adult, upon marriage, voluntarily agrees to take the spouse "in sickness and in health." Certainly it is foreseeable to an adult mature enough to marry that an accident or act of violence may injure one's spouse at any time. Other causes of action recognizing the "right" to the consortium elements of the marital relationship, such as adultery, criminal conversation, and alienation of affections, have been abolished as "these actions for invasion of the family relationship were considered

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117. *Hay*, 496 A.2d at 944, ("[N]o amount of money can ever take the place of a lost parent."); *accord* Borer v. American Airlines, Inc., 563 P.2d 858, 862 (Cal. 1977); Williams v. Hook, 804 P.2d 1131, 1136 (Okla. 1991); Ueland v. Reynold Metals Co., 691 P.2d 190, 194 (Wash. 1984); *Theama*, 344 N.W.2d at 520 ("Therefore, we believe that denying the child's right to recover premised upon the belief that loss of a parent's society and companionship is irreplaceable would most certainly amount to a perpetuation of error."); Dwork, *supra* note 104, at 734 ("Money cannot replace a parent's love, care and companionship any more than it can replace a severed member . . . . ").

118. *See* cases cited *supra* note 10.

119. *See supra* notes 9 and 11.

120. *See* cases cited *supra* note 12.

121. *See* cases cited *supra* note 13.

122. *See* cases cited *supra* note 10.

123. Ferriter v. Daniel O'Connell's Sons, Inc., 413 N.E.2d 690, 692 (Mass. 1980) ("We are skeptical of any suggestion that the child's interest in this setting is less intense than the wife's."); Berger v. Weber, 303 N.W.2d 424, 427 (Mich. 1981); Nulle v. Gillette-Campbell County Joint Powers Fire Bd., 797 P.2d 1171, 1175 (Wyo. 1990).

outmoded by changing views of marriage, divorce, and sexual relations . . . ."[124] Finally, continued high divorce rates and greater numbers of adults postponing and foregoing marriage[125] seem to indicate that the high expectation or existence of the positive, almost ethereal, qualities in marital relationships that were anticipated by spousal consortium actions no longer exists. Courts have idealistically described such qualities:

> [the wifely] duties and responsibilities in respect of the family unit complement those of the husband, extending only to another sphere. In the good times she lights the hearth with her own inimitable glow. But when tragedy strikes it is a part of her unique glory that, forsaking the shelter, the comfort, the warmth of the home, she puts her arm and shoulder to the plow.[126]

However, the changing views of and statistics relating to marriage and divorce indicate that these idealistic qualities are, in fact, outmoded and unrealistic.

Conversely, the minor child, dependent upon the parent for proper development and guidance, has not likewise consented to take the parent "in sickness and in health." In fact, the child whose parent is injured by a third party is deprived of the necessary parental relationship completely against her will and to society's detriment.[127] The child would receive the immediate benefit of monetary compensation for an injury to the parent-child relationship, but society receives the ultimate benefit "since ideally the child will become a normal adult who is capable of functioning as such in his or her own social setting."[128] As discussed *supra*, a monetary judgment from a consortium action may be the only means by which a child can obtain necessary counseling and child care services after injury to her parent.[129] These services contribute to the child's ability to become a productive and well-adjusted adult member of society.

In justifying recognition of the spousal consortium action while denying the child's, courts have also distinguished the claims on the basis of the sexual element of the spousal relationship,[130] often with particular emphasis on the possibility of the loss of

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124. Norwest v. Presbyterian Intercommunity Hosp., 652 P.2d 318, 329 (Or. 1982); *cf.* Whittlesey v. Miller, 572 S.W.2d 665, 666 (Tex. 1978) (noting that the tort of criminal conversation has been abolished by legislative action).

125. *See supra* subparts II.A. and II.C.

126. Montgomery v. Stephan, 101 N.W.2d 227, 234 (Mich. 1960) (recognizing the wife's action for loss of spousal consortium).

127. *See* Villareal v. State Dep't of Transp., 774 P.2d 213, 217 (Ariz. 1989) ("Because every individual's character and disposition impact on society, it is of highest importance to the child and society that we protect the right to receive the benefits derived from the parental relationship."); *Berger*, 303 N.W.2d at 426 ("[S]ociety will also benefit if the child is able to function without emotional handicap."); Hay v. Medical Ctr. Hosp., 496 A.2d 939, 946 (Vt. 1985) (quoting Theama v. City of Kenosha, 344 N.W.2d 513, 521 (Wis. 1984)); Ueland v. Reynolds Metals Co., 691 P.2d 190, 195 (Wash. 1984) (citing *Berger*, 303 N.W.2d at 424); *Nulle*, 797 P.2d at 1175.

128. *Theama*, 344 N.W.2d at 521; *Berger*, 303 N.W.2d at 426; *accord Hay*, 496 A.2d at 946; *Ueland*, 691 P.2d at 195.

129. *See supra* text accompanying notes 111-14.

130. *See* cases cited *supra* notes 9 and 11.

childbearing.[131] However, consortium includes elements of love, affection, society and companionship, and the loss of any one of these elements is sufficient for recovery.[132] Therefore, an action for loss of spousal consortium is not denied, nor an award reduced, where the couple, by age, choice or for other reasons, no longer engages in sexual activity; nor is it denied to spouses who have not been deprived of their plans for or capability of childbearing. In fact, it has been recognized that the spousal action "cannot fairly be limited . . . to sexually active couples: surely a husband or wife of advanced years suffers a no less compensable loss of conjugal society when his or her lifetime companion is grievously injured by the negligence of another."[133] Because the sexual element has been so noted as an insignificant factor within the spousal consortium action itself, it is a trivial distinction upon which to deny the child's action.

Recognition of the spousal action, with emphasis on the possibility of the loss of sexual activity and childbearing, actually presents a danger of double recovery to the spouse. Because the independent consortium action compensates the uninjured spouse for damage to the marital relationship, the partner has suffered an injury only so long as she remains married to the injured spouse. That is, even if the sexual relationship has been damaged by the act of a third party, or the couple's childbearing plans extinguished, the spouse who maintains the independent action for loss of spousal consortium has suffered no physical injury herself, but is awarded damages in an amount that will compensate her for the lifetime deprivation of her spouse's relationship. Thereafter, if the marriage ends in divorce, as nearly half of all marriages do,[134] the recovering spouse may remarry, bear children, and actually lose little with respect to the damages assessed in the spousal consortium action. It has been noted that:

> Sometimes a [spousal] consortium plaintiff is not damaged, even though the spouse was severely injured. Large numbers of people spend good money each year to put away the companionship of their marital partner. Unless the consortium plaintiff testifies the jury must speculate as to . . . whether she was in fact more unburdened than damaged by the incident.[135]

Furthermore, the second marriage and subsequent children are benefits the party would not have been able to obtain but for the dissolution of the previous relationship. As a result, the uninjured but compensated spouse has gained a "windfall," having already been

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131. *E.g.*, Dearborn Fabricating & Eng'g Corp. v. Wickham, 551 N.E.2d 1135, 1137 (Ind. 1990) ("[T]he spousal action rests in large part on the deprivation of sexual relations and the accompanying loss of childbearing opportunity.") (quoting Salin v. Kloempken, 322 N.W.2d 736, 739 (Minn. 1982)); Nicholson v. Hugh Chatham Memorial Hosp., Inc., 266 S.E.2d 818, 821 (N.C. 1980) ("[T]he 'uninjured' spouse's loss of conjugal fellowship deprives that spouse of sexual gratification and the possibility of children.").

132. Peeples v. Sargent, 253 N.W.2d 459, 471 (Wis. 1977) ("Consortium involves a broad range of elements . . . any one of which is sufficient to constitute a cause of action.") (quoting Schwartz v. Milwaukee, 195 N.W.2d 480, 484 (Wis. 1972)).

133. Borer v. American Airlines, Inc., 563 P.2d 858, 868 (Cal. 1977) (Mosk, J. dissenting).

134. *See* Hamburg, *supra* note 33; *Baby-Boom Women*, *supra* note 34.

135. Middlebrook v. Imler, Tenny & Kugler, M.D.'s, Inc., 713 P.2d 572, 588-89 (Okla. 1985) (Summers, J., dissenting in part and concurring in part) (footnotes omitted).

compensated for the lifelong loss of a marital relationship and inability to bear and raise children.

Courts have further distinguished the spousal consortium claim from that of the child on the basis that the injury to the marital relationship is foreseeable, and therefore compensable.[136] However, courts choosing to recognize the child's action have indicated that the foreseeability of harm to a victim's child is as foreseeable as harm to a victim's spouse.[137] That a child whose parent has been seriously injured will suffer severe emotional damage herself is likewise forseeable.[138] In fact, due to the dependent nature of the parent-child relationship, it is more foreseeable that a child would be severely affected by a parent's injury than an adult, and independent, spouse.

Finally, courts recognizing the spousal action have often denied the child's consortium claim in an effort to limit tortfeasor liability.[139] Courts have feared that extending the spousal action to children may lead to claims from grandparents, close friends or other relatives.[140] This argument has been rejected as ignoring the importance of the parent-child relationship.[141] One writer has asserted that:

> The distinction between the interests of children and those of other relatives is rational and easily applied. Most children are dependent on their parents for emotional sustenance. This is rarely the case with more remote relatives. Thus, by limiting the plaintiffs in the consortium action to the victim's children, the courts would ensure that the losses compensated would be both real and severe.[142]

Therefore, denial of the child's consortium action on these grounds is misguided and inappropriate.

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136. *See* cases cited *supra* note 12.

137. *E.g.*, Villareal v. State Dep't of Transp., 774 P.2d 213, 218 (Ariz. 1989) ("We believe that the foreseeability of harm to a victim's child is as equally foreseeable as harm to a victim's spouse."); *accord* Hay v. Medical Ctr. Hosp., 496 A.2d 939, 943 (Vt. 1985).

138. *Villareal*, 774 P.2d at 218; Belcher v. Goins, 400 S.E.2d 830, 840 (W. Va. 1990) ("Because of the crucial role of the parent . . . damages are almost certain to be inflicted when a tortfeasor interferes with these relationships by seriously injuring the parent physically."); Nulle v. Gillette-Campbell County Joint Powers Fire Bd., 797 P.2d 1171, 1174 (Wyo. 1990).

139. Lewis v. Rowland, 701 S.W.2d 122, 124 (Ark. 1985); Borer v. American Airlines, Inc., 563 P.2d 858, 862 (Cal. 1977); Lee v. Colorado Dep't of Health, Inc., 718 P.2d 221, 234 (Ohio 1986); Dearborn Fabricating & Eng'g Corp. v. Wickham, 551 N.E.2d 1135, 1137 (Ind. 1990) (quoting *Borer*, 562 P.2d at 863); Durepo v. Fishman, 533 A.2d 264, 265 (Me. 1987); Gaver v. Harrant, 557 A.2d 210, 217 (Md. 1989); Salin v. Kloempken, 322 N.W.2d 736, 739 (Minn. 1982) (quoting Stadler v. Cross, 295 N.W.2d 552, 554 (Minn. 1980)); Russell v. Salem Transp. Inc., 295 A.2d 862, 864 (N.J. 1972); Norwest v. Presbyterian Intercommunity Hosp., 652 P.2d 318, 333 (Or. 1982).

140. *Villareal*, 774 P.2d at 219; *Borer*, 563 P.2d at 862; Belcher v. Goins, 400 S.E.2d 830, 840 (W.Va. 1990); Theama v. City of Kenosha, 344 N.W.2d 513, 521 (Wis. 1984).

141. *Theama*, 344 N.W.2d at 521 ("[W]e believe that this argument ignores the importance of the nuclear family in present-day society."); *Belcher*, 400 S.E.2d at 840.

142. *See* Dwork, *supra* note 104, at 738 (encouraging recognition of the child's action notwithstanding the "exorbitant liability" argument).

Courts have also expressed concerns that expanding the action to compensate children will lead to increased insurance premiums.[143] However, "the provision and cost of such insurance varies with potential liability under the law, not the law with the cost of insurance."[144] Additionally, courts recognizing the child's action have concluded that the benefit to the child whose relationship with his parent has been damaged outweighs any additional costs to society.[145]

CONCLUSION

The common law consortium action developed as a reflection of changing views and societal attitudes. Initially an action available only to the husband, the wife's claim is now widely recognized. Several states have allowed the child's claim as well. However, the majority of state supreme courts still deny a consortium action to a child whose relationship with a parent has been damaged as the result of an injury to the parent.

Recent changes in family structure, marriage trends and expectations and current social and judicial emphasis on children's rights dictate that the child's action for loss of parental consortium be recognized, and the corresponding spousal action be abolished.

Today's society reflects high divorce rates, greater postponement of and abstention from marriage and rising numbers of single-parent families.[146] These factors indicate increasing disillusionment with marriage and lower expectations of the marital relationship. At the same time, growing recognition of and concern for children's rights are reflected in Wrongful Death Statutes—which allow children to recover for injuries resulting in death to their parents, judicial consideration of the child's best interests in child custody matters, court decisions that deny one parent the right to contract away a child's right to support from the other parent, and Supreme Court recognition of the child as an individual under the Constitution.[147]

Further, an examination of the arguments presented by courts to justify recognition of the spousal consortium action and to deny the child's corresponding claim for loss of parental consortium reveals that the judicial reasoning in this area is artificial, insignificant and strained.[148] With the exception of the sexual element of the marital relationship, every basis upon which the child's action has been denied has likewise been asserted to defeat the spousal claim, and has been firmly rejected.[149]

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143. Berger v. Weber, 303 N.W.2d 424, 426 (Mich. 1981); *Norwest*, 652 P.2d at 322; Hay v. Medical Ctr. Hosp., 496 A.2d 939, 946 (Vt. 1985); Ueland v. Reynolds Metals Co., 691 P.2d 190, 195 (Wash. 1984); *Belcher*, 400 S.E.2d at 839; Nulle v. Gillette-Campbell County Joint Powers Fire Bd., 797 P.2d 1171, 1176 (Wyo. 1990).

144. *Norwest*, 652 P.2d at 323; *accord Belcher*, 400 S.E.2d at 839; *Nulle*, 797 P.2d at 1176 ("Insurance is a loss-spreading device by design. Increases in premiums are unwarranted only when it is decided that the innocent victim will bear the loss rather than the guilty tortfeasor, his insurer, and the public.").

145. *E.g.*, *Berger*, 303 N.W.2d at 462; *Hay*, 496 A.2d at 946; *Theama*, 344 N.W.2d at 521.

146. *See supra* Part II.

147. *See supra* subpart II.D.

148. *See supra* Part IV.

149. *See supra* Part IV.

Recognition of the child's action for loss of parental consortium, and denial of the spousal action, would serve several positive and necessary purposes by: 1) reflecting current attitudes toward marriage and lower expectations of the marital relationship; 2) protecting the greater interests of society in ensuring the proper development of a child whose relationship with a parent has been damaged or destroyed by a third party; 3) guarding against the great possibility of excessive recovery to the spouse who is awarded consortium damages and later divorces the injured spouse and remarries; and 4) eliminating courts' reluctance to recognize the child's action on the grounds that doing so would extend liability beyond its current scope. Most importantly, to permit the child to recover for injury to the parent-child relationship would acknowledge its standing as "the earliest and most hallowed of the ties that bind humanity."[150]

150. Voss v. Ralston, 550 P.2d 481, 485 (Wyo. 1976).