

RENDERED: APRIL 8, 2011; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2009-CA-002005-MR

JENNIFER LEIGH TURNER AS NEXT BEST  
FRIEND OF NATHAN MICHAEL DEAN TURNER APPELLANT

v. APPEAL FROM HARLAN CIRCUIT COURT  
HONORABLE RUSSELL D. ALRED, JUDGE  
ACTION NO. 08-CI-00160

SUSIE CLARK; SHIRLEY BROWNING;  
APPALACHIAN REGIONAL HEALTHCARE,  
INC., AND/OR HARLAN ARH HOSPITAL;  
AND APPALACHIAN REGIONAL HEALTHCARE  
DANIEL BOONE CLINIC APPELLEES

OPINION  
AFFIRMING

\* \* \* \* \*

BEFORE: CAPERTON AND THOMPSON, JUDGES; LAMBERT,<sup>1</sup> SENIOR  
JUDGE.

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<sup>1</sup> Senior Judge Joseph E. Lambert sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

THOMPSON, JUDGE: Jennifer Leigh Turner, as next best friend of Nathan Michael Dean Turner, appeals an order of the Harlan Circuit Court that dismissed Nathan's claim for loss of parental consortium. The sole issue presented is whether a minor child can recover for loss of consortium of a parent when not accompanied by an action for the parent's wrongful death. Based on existing precedent, we conclude that Kentucky law limits the loss of parental consortium to wrongful death claims and, therefore, affirm.

Nathan was born on August 31, 2007, at the Harlan Appalachian Regional Hospital. Following the delivery, his mother, Jennifer, suffered blood loss and two cardiac arrests. The present action was filed on Nathan's behalf alleging that Jennifer suffered permanent injury as a result of the appellees' negligence.

Following a motion to dismiss, the circuit court found that a claim for loss of parental consortium can only be maintained in a wrongful death action, and because Jennifer's injuries were not fatal, dismissed the complaint.

The Kentucky Supreme Court has not decided whether a loss of parental consortium claim is available beyond wrongful death claims; however, the precise issue was addressed in *Lambert v. Franklin Real Estate Co.*, 37 S.W.3d 770, 780 (Ky.App. 2000), which controls our decision.

In that case, the Court considered the Supreme Court's holding in *Giuliani v. Guiler*, 951 S.W.2d 318 (Ky. 1997), where the Supreme Court held that

a child's right to recover for loss of parental consortium is reciprocal of a parent's right to recover for loss of child consortium. *Id.* at 321. Although it was noted in *Lambert* that the *Giuliani* decision did not explicitly limit loss of parental consortium to wrongful death cases, this Court held that a child may file a claim for loss of parental consortium "only in those cases where there is likewise an action for wrongful death of the parent." *Id.* at 780.

The *Lambert* Court's reasoning was premised on the Supreme Court's statement in *Giuliani* that "the claim for loss of parental consortium is a reciprocal of the claim of the parents for loss of a child's consortium which was recognized in KRS 411.135," and the Supreme Court's recognition that "there is no legal distinction between a parent's loss of consortium claim for a child and a child's loss of consortium claim for a parent." *Id.* Thus, the *Lambert* Court concluded that "if there is no legal distinction between the two causes of action, then the cause of action for the loss of parental consortium should likewise be limited to cases involving the wrongful death of the parent." *Id.*

There may be judicial soundness to permitting recovery where the parent has suffered severe injury but not death. However, based on our Supreme Court's directive and our loss of consortium statutes, *Lambert* accurately states the law in this Commonwealth. Until our Supreme Court or General Assembly directs otherwise, a claim for loss of parental consortium can only be maintained if there is a claim for the parent's wrongful death.

Based on the foregoing, the order of the Harlan Circuit Court is affirmed.

ALL CONCUR.

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