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Valuable in Life, Valuable in Death, Why Not Valuable When Severely Injured? The Need to Recognize a Parent's Loss of a Child's Consortium in Minnesota

Scott Korzenowski

An American Linen truck struck and severely injured Trina Holmin's sixteen-month-old son Matthew on July 27, 1992. As a result, Matthew is now unable to walk. He is unable to talk, see, or communicate in any meaningful way. He cannot feed, clothe, or bathe himself. Although a settlement paid Matthew for his pain and suffering, and past, present and future medical expenses, what of the other harms? What of the intangible harm to the relationship between Matthew and his mother, Trina?

Minnesota courts recognize a parent's loss of companionship with a child as both painful and real. The courts also characterize the parent-child relationship as one that includes "natural rights of such fundamental importance ... that parents should not be deprived of them." Yet when the negligence of a third

   The truck driver, it was later learned, may not have been wearing his prescription eyeglasses at the time of the accident. Id.
2. Id.
3. The defendant corporation settled its claim with Matthew for five million dollars. As a result of the settlement, the bulk of Matthew's tangible needs will be provided for, with Trina, his mother, ideally suffering no subsequent economic harm. Id.
4. Father A v. Moran, 469 N.W.2d 503, 505-06 (Minn. Ct. App. 1991). The court said it recognized "the genuine loss and psychological suffering caused to the parent of [an injured child] ... and ... [found the parents'] argument to have strong sympathetic appeal." Id.
5. In re Parks' Petition, 127 N.W.2d 548, 553 (Minn. 1964) (holding that an adoption is not final until both parents have expressly and knowingly consented). These rights include "custody, society, comfort, and services of the
party injures a child so severely that the parents no longer enjoy these "fundamental" rights inherent in the parent-child relationship, Minnesota law does not allow the parent to recover damages for this loss, most often referred to as consortium.

This Note argues that Minnesota should recognize a parent's loss of consortium claim when a third party negligently injures a child so severely that the child loses his or her ability to communicate and function in a meaningful way. Part I outlines the history of the loss-of-consortium claim and the division among states in recognizing such damages for parents or children. This part also examines how the Minnesota Supreme Court used precedent and policy to deny a child's claim for loss of consortium arising out of a third party's negligence, and how the Minnesota Court of Appeals relied upon that decision to deny a similar claim by parents. Part II contends that the Minnesota Supreme Court ignored much of its precedent protecting the parent-child relationship when it expressly denied a child's claim for loss of consortium with an injured parent. This part also contends that the Minnesota Court of Appeals erred in relying on this supreme court decision to deny, without an independent analysis, a parent's claim for loss of consortium with a severely injured child. This Note concludes by exhorting the Minnesota courts to consider the unique situation of a parent's claim for child."

6. Father A, 469 N.W.2d at 506. "The Minnesota Supreme Court has explicitly denied a cause of action for loss of consortium in the parent-child context. . . . Such an expansion of parents' recovery is not consistent with Minnesota law." Id.

Although the parent can bring a claim for loss of services and wages and any applicable medical expenses incurred when a minor child is injured, the courts prefer the child herself to bring any action regarding future medical expenses. See Armentrout v. Virginian Ry. Co., 72 F. Supp. 997, 1002 (S.D.W.Va. 1947) (holding that "prospective expenses for care and nursing not already incurred by the parent constitute a proper element of the infant's recovery"), rev'd, 166 F.2d 400 (4th Cir. 1948); Rockwood v. Lansburgh, 293 P. 792, 794 (Cal. Dist. Ct. App. 1930); Clarke v. Eighth Ave. R.R. Co., 144 N.E. 516, 517 (N.Y. 1924) (reasoning that payment to infant rather than parent insures that money will more likely be used for the infant's benefit); Stone v. City of Pleasanton, 223 P. 303 (Kan. 1924).

This can debilitate the parents' legal options, even when negligence is certain. For example, an admittedly negligent tortfeasor can use a settlement offer to the injured child to persuade the parents, who seek loss of consortium, from pursuing their claim. By comparison, when a parent pursued a claim for loss of consortium with a severely brain-damaged child in Arizona, the court upheld a verdict of one million dollars. Reben v. Ely, 705 P.2d 1360 (Ariz. Ct. App. 1985).
loss of consortium.

I. THE LOSS-OF-CONSORTIUM CLAIM WITHIN THE PARENT-CHILD RELATIONSHIP

A. LOSS-OF-CONSORTIUM CLAIM IN TORT LAW

The primary purpose of tort law is to compensate the injured person at the expense of the wrongdoer. The function of the courts is to determine when such compensation is required. Typically, courts consider four factors before ruling on a tort claim's validity: injury—did the plaintiff suffer harm? factual causation—was the defendant responsible for the injury? legal (or proximate) causation—should the court, as a matter of public policy, hold the defendant responsible for the injury? excuse—was the defendant sufficiently justified in taking the apparently wrongful action?

The defendant incurs no liability, regardless of the resulting injury, when the law justifies or excuses the defendant's action. Similarly, the defendant incurs no liability, regardless of fault, when the law either does not recognize the plaintiff's claim as a legally compensable "injury," or does not classify the injury as one for which the defendant should be held legally responsible. The law will hold an at-fault defendant legally liable for only three types of injuries: physical harms, harms of appropriation, and harms to relational interests. Loss of consortium, broadly defined, encompasses the third of these

7. W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 2, at 7 (5th ed. 1984). Unlike criminal law, which focuses on the protection of the public at large "by punishing . . . [or] by deterring others from similar conduct," tort law focuses on compensating the injured party. "So far as the criminal law is concerned, the victim will leave the courtroom empty-handed . . . [but] . . . [i]f successful, the [civil tort] plaintiff receives a judgment for a sum of money, enforceable against the defendant." Id.
8. Id. § 4, at 20.
9. See id. § 7, at 31. This classification of tort theory was first posited by Dean Wigmore. John H. Wigmore, The Tripartite Division of Torts, 8 HARV. L. REV. 200 (1894).
10. KEETON ET AL., supra note 7, § 85, at 608. "[T]he fault principle only applies to conduct that is antisocial in the sense that its costs . . . outweigh its benefits." Id. In relation to behavior intended to cause a harm, the fault principle focuses on theories of justification. Id. In relation to behavior not intended to cause a harm, the fault principle focuses on negligence. Id.
11. Id. "In both [intended and unintended harm] instances, the conduct is determined not to be blameworthy when benefits outweigh costs." Id.
12. Id. § 7, at 31 (citing DEAN GREEN, JUDGE AND JURY 9-13 (1930)).
harms. When public policy dictates, however, courts will reject certain injuries within this sphere of compensable harm as being too remote or unforeseeable.

Practically speaking, Consortium encompasses the intangible or non-economic benefits inherent in the interaction between human beings. Unlike other intangible values that are compensated in tort, Consortium does not focus as directly on the plaintiff's internal feelings. Rather, it attaches value to the plaintiff's lost opportunity to derive benefit from other persons in the plaintiff's life. A loss-of-consortium claim, therefore, is

13. See Jacob Lippman, The Breakdown of Consortium, 30 COLUM. L. REV. 651, 666 (1930). Consortium is the relationship interest between husband and wife encompassing "the mutual right of the parties to the society, companionship and affection of each other." Id. (quoting Marri v. Stamford St. R.R., 78 A. 582 (1911)). Minnesota courts have defined consortium as encompassing elements such as "comfort, companionship, and commitment to the needs of each other." Thill v. Modern Erecting Co., 170 N.W.2d 865, 867-68 & n.2 (Minn. 1969) (citing Millington v. Southeastern Elevator Co., 239 N.E.2d 897, 899 (N.Y. 1968)).

14. This is the essence of proximate cause. Consequently, when only one type of loss-of-consortium claim is rejected (parent-child), while other types are maintained (husband-wife), the court is deciding that the plaintiff's injury, although within the realm of compensable legal harms, will not be compensated because of overriding public policy. See Salin v. Kloempken, 322 N.W.2d 736 (Minn. 1982) (rejecting a child's claim for loss of consortium); Father A v. Moran, 469 N.W.2d 503 (Minn. Ct. App. 1991) (rejecting a parent's claim for loss of consortium). In both Salin and Father A, the issue of the defendant's negligence was stipulated. In both cases, however, the plaintiff failed to recover despite the existence of compensable injury to the relationship. The courts decided that public policy precluded compensation for such an injury. Salin, 322 N.W.2d at 742 (explaining that "in the interest of limiting the legal consequences of the wrong to a controllable degree, a new cause of action on behalf of a child for the loss of parental consortium should not be recognized"); Father A, 469 N.W.2d at 506 (holding that although the defendant was at fault, the parents could not recover because "[t]he Minnesota Supreme Court has explicitly denied a cause of action for loss of consortium in the parent-child context"); see also Borer v. American Airlines, Inc., 563 P.2d 858, 862 (Calif. 1977) (denying a child's claim for loss of consortium in part because "the courts must locate the line of liability and nonliability at some point, a decision which is essentially political") (quoting Suter v. Leonard, 120 Cal. Rptr. 110, 111 (1975)). In essence, the court is deciding that the defendant, although responsible for the harm in fact, is not liable for the harm in law.


16. Examples include infliction of emotional distress and pain and suffering.

17. "Terms such as 'loss of society and companionship' or 'loss of love and companionship' best characterize the basis of this claim. Jean C. Love, Tortious Interference with the Parent-Child Relationship: Loss of an Injured
usually treated as a derivative claim.\textsuperscript{18} Thus a plaintiff's otherwise independent loss-of-consortium claim is based upon the defendant's breach of duty to a third party.\textsuperscript{19}

Although at its inception courts based loss of consortium upon elements unique to the marital relationship, they have expanded loss of consortium to include elements common to the

\textit{Person's Society and Companionship}, 51 IND. L.J. 590, 617 (1976). Although Love's discussion centers on the loss of consortium between parent and child, the more traditional loss of consortium between husband and wife has been defined similarly. In Minnesota, for example, loss of consortium is described as "reciprocal rights inherent" in the marital relationship. \textit{Thill}, 170 N.W.2d at 867-68 & n.2.


18. Huffer v. Kozitza, 375 N.W.2d 480, 482 (Minn. 1985). That is, the claim alleges injuries independent from the injuries asserted in the original claim. The fault in the derivative claim, meanwhile, is the same as that asserted in the original claim. Thus, the claim for loss-of-consortium damages, while dependent upon the determination of fault in the original cause of action, remains a separate damages claim. \textit{E.g.}, Kohler v. Fletcher, 442 N.W.2d 169, 173 (Minn. Ct. App. 1989) (holding that one spouse's loss-of-consortium claim fails if the other spouse's underlying tort claim fails). \textit{But see} Cole v. Fair Oakes Fire Protection Dist., 728 P.2d 743, 752 (1987) ("[T]he cause of action for loss of consortium is not merely derivative or collateral to the spouse's cause of action.").

19. The third party, of course, is the plaintiff in the direct claim. The direct claim is based upon the physical or mental harm inflicted upon a person with whom the loss-of-consortium plaintiff had a relationship interest. See Mogill, \textit{supra} note 17, at 1374-76 (arguing that although the defendant may not owe a duty to the loss-of-consortium plaintiff, it is an invalid reason for denying a consortium action). "[D]uty is a shorthand statement of a conclusion, rather than an aid to analysis in itself. . . . [T]he duty is not sacrosanct in itself, but is only an expression of the sum total of those considerations of policy which lead the law to say that the plaintiff is entitled to protection." KEETON ET AL., \textit{supra} note 7, § 53, at 356.
parent-child relationship. Despite the willingness to compensate relational interests common to both the marital and parental relationships, most courts continue to arbitrarily limit loss-of-consortium damages to the spousal relationship.

B. **HISTORICAL REJECTION OF LOSS-OF-CONSORTIUM CLAIMS IN PARENT-CHILD RELATIONSHIPS**

Historically, American courts refused to recognize parents’ claims for the lost benefit of their relationships with their children caused by the unintentional fault of another. Most courts limited a parent’s recovery to the child’s medical expenses and lost services or earning capacity. Many courts determined that the non-pecuniary or intangible harm to the parental relationship from a negligent tort was, for policy reasons, too remote or difficult to measure. The courts’ original policy behind limiting a parent’s claim for damages to only tangible harm stemmed from their classification of the

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20. HOMER H. CLARK, JR., THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES § 11.1, at 383 (2d ed. 1988). Although consortium’s genesis can be found in the right to compensation for the invasion of the marital relationship, “[i]t is useful to refer also to the parent-child relationship as constituting consortium.” *Id.* In the context of the parent-child relationship, however, “the word summarizes the multitude of rights and duties binding parents to their children and vice versa.” *Id.* Clark defines consortium as “a useful though ambiguous term.” *Id.* at 382. In the spousal relationship “it [is] used to denote . . . the right to . . . services, society, companionship, assistance and sexual relations . . . .” *Id.* Although the parent-child relationship does not include a sexual component, many courts have focused on the intangible elements inherent in the parental relationship and have recognized a loss of consortium claim. *Id.* at 385.

21. *See infra* notes 32-36, 53-54 and accompanying text (discussing the courts’ policy reasons for denying recovery).

22. *See, e.g.*, Shockley v. Prier, 225 N.W.2d 495, 497-500 (Wis. 1975) (stating the former common law position that parents could not recover for loss of consortium for negligent injury to their child); *see also* RESTATEMENT (SECOND) OF TORTS § 703, at 510 (1976) (discussing limits on parental recovery to loss of services and medical expenses).


24. By definition, loss of consortium is limited to those elements that make a relationship human. *See supra* notes 15-17 and accompanying text (describing the emotional component of loss of consortium).

parent-child relationship as purely economic. Courts measured the value of children according to their ability to provide labor and earn wages. Likewise, courts in the past have applied a similar rationale in denying a wife's claim for loss of consortium with an injured husband.

American courts went on to reject this distinction in 1950,
however, and presently forty-four states and the District of Columbia recognize a wife’s, as well as a husband’s, right to sue for the complete value of their spousal relationship. Likewise, states began to recognize a similar claim for parents and children when the relationship was either severed by death or severely damaged by intentional interference.

C. COURTS’ BELATED RECOGNITION OF PARENTS’ LOSS OF CONSORTIUM WITH A SEVERELY INJURED CHILD

Although the value of the parent-child relationship was becoming less reliant upon the child’s ability to provide labor or earn wages, courts until 1975 continued to reject both parents’ and children’s claims seeking damages for the non-economic loss caused by third parties who negligently harmed the parent-child relationship. Some courts adhered to the myth that a child was little more than an employee. Others focused on the differences in the spousal and parental relationships, most notably the sexual component of marriage. Most

ship for the negligent injury to her husband).

30. The six states that deny a wife’s claim for loss of consortium also deny a husband’s claim for loss of consortium. See UTAH CODE ANN. § 30-2-4 (1953); VA. CODE ANN. § 55-36 (Michie 1950); Roseberry v. Starkovich, 387 P.2d 321, 324-26 (N.M. 1963); Cozart v. Chapin, 241 S.E.2d 144, 145-46 (N.C. Ct. App. 1978); Ellis v. Hathaway, 493 P.2d 985, 986 (Utah 1972); see also Mogill, supra note 17, at 1333-34 nn.68-69 (listing states that do and do not recognize a wife’s claim for loss of spousal consortium).

Minnesota recognized a wife’s claim for loss of her husband’s consortium in 1969. Thill v. Modern Erecting Co., 170 N.W.2d 865 (Minn. 1969). The court in Thill explained, “The loss of ‘services’ is an outworn fiction, and the wife’s interest in the undisturbed relation with her consort is no less worthy of protection than that of the husband.” Id. at 868 (citations omitted).

31. See CLARK, supra note 20, § 11.2, at 385 (“[T]he essentially emotional suit is the essence of the suit is the intentional interference with the totality of the relationship between parent and child . . . .”); KEETON ET AL., supra note 7, §§ 124, 125, 127 (discussing interference with family relations, injuries to members of the family, and actions under wrongful death statutes).

32. “Since the services rendered to the parent by the child are in fact largely insignificant today, the characterization of the parent’s suit as one for loss of services has become a fiction.” CLARK, supra note 20, § 11.2, at 385.

33. See supra note 22 and accompanying text (discussing the historical reluctance of courts to grant recovery).

34. See, e.g., Smith v. Richardson, 171 So. 2d 96, 100 (Ala. 1965) (only permitting parents to recover for loss of their injured child’s labor and assistance).

35. Among those states relying most upon this differentiation is Minnesota. See Salin v. Kloempken, 322 N.W.2d 736, 739 (Minn. 1982) (“[T]he spousal
courts, however, relied upon the absence of precedent, or policy reasons such as limited foreseeability, remoteness and uncertainty of damages, potential double recovery and multiple suits, and increased insurance costs.\textsuperscript{36}

In 1975, an American court expressly rejected these arguments for the first time.\textsuperscript{37} In \textit{Shockley v. Prier},\textsuperscript{38} the Wisconsin Supreme Court reversed an order dismissing the parents’ claim for the loss of their minor son’s consortium.\textsuperscript{39} The parents alleged that the doctors who treated their prematurely born son negligently gave their infant excessive amounts of oxygen,\textsuperscript{40} causing blindness and permanent disfigurement.\textsuperscript{41} The court concluded that it required “little imagination to see the shattering effect that [the child’s] blindness will have on the relationship between him and his parents.”\textsuperscript{42} Consequently, the court held that the law should recognize the “right of parents to

action rests in large part on the deprivation of sexual relations and the accompanying loss of childbearing opportunity, which does not exist as an element of damages in the child’s action.” (citations omitted)); see also \textit{Clark}, \textsuperscript{supra} note 20, § 11.4, at 400 (noting that courts have held that “consortium is a relationship applying only to husband and wife”).

\textsuperscript{36} See Wilson v. Galt, 668 P.2d 1104, 1110-12 (N.M. Ct. App. 1983); see also Baxter v. Superior Court, 563 P.2d 871 (Cal. 1977) (holding that a parent cannot recover for loss of a child’s consortium); Borer v. American Airlines, Inc., 563 P.2d 858 (Cal. 1977) (holding that a child cannot recover for loss of a parent’s consortium). In \textit{Baxter}, the court said policy considerations holding against recognition of such a claim included the intangible character of the loss, the difficulty of measuring damages, the dangers of double recovery and extensive liability. \textit{Baxter}, 563 P.2d at 873.

\textsuperscript{37} \textit{Shockley v. Prier}, 225 N.W.2d 495, 499-500 (Wis. 1975). The court explained, “We submit that today’s relationship between parents and children is, or should be, more than that between master and servant.” \textit{Id.} at 500. “We conclude that the law should recognize the right of parents to recover for loss of aid, comfort, society and companionship of a child during minority when such loss is caused by the negligence of another.” \textit{Id.} at 499. The court further explained:

“[T]he ‘remedy’ of loss of minor’s earning capacity during minority is of diminishing significance. Since our court last laid down the rule in 1925, the family relationship has changed. Society and companionship between parents and their children are closer to our present day family ideal than the right of parents to the ‘earning capacity during minority,’ which once seemed so important when the common law was originally established.”

\textit{Id.}

\textsuperscript{38} 225 N.W.2d 495 (Wis. 1975).
\textsuperscript{39} \textit{Id.} at 501.
\textsuperscript{40} \textit{Id.} at 496.
\textsuperscript{41} \textit{Id.}
\textsuperscript{42} \textit{Id.} at 499.
recover for loss of aid, comfort, society and companionship of a child during minority when such loss is caused by the negligence of another.\footnote{43}

Since that time, eight other states have followed the Wisconsin Supreme Court's reasoning and recognized a parent's right to bring a loss-of-consortium claim.\footnote{44} Another four states have recognized or created such a right via statute or rule.\footnote{45} Those states recognizing a parent's claim did so because they considered the loss of society and companionship in the parent-child relationship to be the same, if not greater, than the losses

\footnote{43. Shockley v. Prier, 225 N.W.2d 495, 499 (Wis. 1975). Although it is beyond the scope of this Note, a parent's right to recover for loss of consortium with a severely injured child has not always been limited to the child's minority. \textit{E.g.}, Frank v. Superior Court, 722 P.2d 955, 960 (Ariz. 1986) (discussing reasons for the court's holding that compensable consortium should not end at age 18); see also Timothy D. Ament, \textit{Parents' Loss of Consortium Claims for Adult Children in Iowa: The Magical Age of Eighteen}, 41 DRAKE L. REV. 247, § III (1992) (discussing reasons why the Arizona Supreme Court rejected policy arguments against extension of consortium claims to adult children).

44. Those states are: Arizona, Colorado, Florida, Illinois, Louisiana, Michigan, Missouri, and Ohio. Mogill, \textit{supra} note 17, at 1337 n.83.

45. Those states' applicable laws are IDAHO CODE § 5-310 (1979), UTAH CODE ANN. §§ 78-11-6 to -7 (1953), WASH. REV. CODE ANN. § 4.24.010 (1983), and IOWA R. CIV. P. 8. Of the thirteen states that recognize a parent's claim for loss-of-consortium damages, six also have recognized a child's claim for loss of consortium (Arizona, Florida, Iowa, Louisiana, Washington and Wisconsin). Five of the thirteen, despite recognizing a parent's claim for loss of consortium, has expressly rejected a child's claim for loss of consortium (Colorado, Idaho, Illinois, Missouri, Ohio and Utah). Two states that have rejected a parent's claim for loss of consortium, have meanwhile recognized a child's claim for loss of consortium (Michigan and Wyoming). Michigan recognized a parent's cause of action in Bias v. Ausbury, 120 N.W.2d 233, 235-36 (Mich. 1963), but subsequently rejected it in Sizemore v. Smock, 422 N.W.2d 666 (Mich. 1988). The remaining states have either rejected the \textit{Shockley} reasoning altogether, or simply failed to recognize a familial claim for loss of consortium.

Typical among these states is California, which rejected the concept as it relates both to parents seeking loss of consortium for injuries to their children and children seeking loss of consortium for injuries to their parents. Baxter v. Superior Court, 563 P.2d 871 (Cal. 1977); Borer v. American Airlines, Inc., 563 P.2d 858 (Cal. 1977). Although the two claims are often bunched under the heading "parental loss of consortium," there are some significant differences between the two. Primary among these is the differing statute of limitations. Generally, the statute of limitations is tolled until a person reaches majority. Consequently, minor children could bring a loss-of-consortium action many years after the commission, and perhaps, after the completed adjudication of a single tort. Therefore, it is common for states that recognize a parental loss of consortium to require the derivative loss-of-consortium action to be joined to the victim's cause of action. \textit{Love, supra} note 17, at 590, 627, 632.
felt in the spousal relationship.\textsuperscript{46} In reaching this conclusion, these courts looked toward analogous tort law in holding that it would be anomalous to sustain recovery when the parent-child relationship is harmed by wrongful death or intentional interference, but not when the relationship is harmed by a negligently caused injury.\textsuperscript{47} Some states concluded that continuation of this distinction would violate the Equal Protection Clause of the United States Constitution.\textsuperscript{48} Other states relied upon the nature of the parent-child relationship and its evolution since agricultural times.\textsuperscript{49} Such holdings are supported by empirical

\textsuperscript{46} CLARK, \textit{supra} note 20, § 11.1, 383; see also Reighley v. International Playtex, Inc., 604 F. Supp 1078, 1081 (D. Colo. 1985) (discussing the court's duty to sanction and protect parent-child relationships as much as husband-wife relationships).

\textsuperscript{47} Reighley, 604 F. Supp at 1082 (citing numerous cases recognizing a child's claim for loss-of-consortium damages).

\textsuperscript{48} The Equal Protection Clause states that: "No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1. "Such equal-protection guarantees prohibit the creation of a classification that does not bear an adequate relationship to state objectives purportedly served by the classification." Love, \textit{supra} note 17, at 606 n.89. The standard of review in determining the adequacy of the classifications regarding loss of consortium would most likely be rational basis, the lowest level of scrutiny. In other words, whether the classification bears a rational relation to the law's purported purpose. \textit{Id.}

The classifications most often argued are parents whose children are killed compared to parents whose children are seriously injured, and persons whose spouses are severely injured compared to persons whose children are severely injured. In both cases, the first group can recover for loss of consortium but the second one cannot.

In Minnesota, both arguments have been rejected by the Minnesota Supreme Court. Salin v. Kloempken, 322 N.W.2d 736, 740, 742 (Minn. 1982). The court applied a form of the rational basis test, asking if the two classes were situated similarly. The court held that the parent-child relationship was not similarly situated to the spousal relationship, and thus did not support a new cause of action on behalf of children for the loss of parental consortium. \textit{Id.}

\textsuperscript{49} Shockley v. Prier, 225 N.W.2d 495, 488-99 (Wis. 1975). In recognizing a parent's claim for loss of consortium regardless of the child's age, an Arizona court said:

"[T]oday a plethora of laws aimed at children, e.g., child labor and compulsory education laws, virtually guarantees that children will not be an economic asset to their parents. Children are now valued for their society and companionship and '[t]he true significance of a parent's action under modern practice is that it compensates the parent's emotional losses when their child is injured.'" Frank v. Superior Court, 722 P.2d 955, 959 (Ariz. 1986) (quoting \textit{Note, The Child's Right to Sue for Loss of A Parent's Love, Care and Companionship}}
evidence showing that people in the United States are willing to spend thousands of dollars not only to acquire children, but to raise and educate them, often well into the children's adult years. 50 As these studies conclude, the value of the parent-child relationship in 1990s America is measurable, at least in part, by the money spent to create and nurture this relationship. 51

Most states rejecting the claim, meanwhile, have done so on proximate cause or legal grounds. 52 In other words, they have drawn an arbitrary line in the tort-law sand. Many of the courts that reject claims for damage to the parent-child relationship nevertheless admit that the wrongful act of the tortfeasor did in fact severely harm or even destroy the relationship. 53 These

Caused By Tortious Injury to the Parent, 56 B.U. L. REV. 722, 731-32 (1976)). 50. Patrick Reardon, Top Threat to Family: No Time for the Kids, CHI. TRIB., Oct. 10, 1991, § 1, at 1 (quoting Dr. Lee Salk, who was referring to a survey of 1200 persons conducted in June 1989 for Massachusetts Mutual Life Insurance Corp. in which 69% listed their family as the greatest source of pleasure in their lives); see also Susan J.G. Alexander, A Fairer Hand: Why Courts Must Recognize the Value of a Child's Companionship, 8 COOLEY L. REV. 273, 312-15 (1991) (citing figures from various sources of the cost of raising children, and arriving at the conclusion that raising children is expensive).

51. MARY ANN GLENDON, THE NEW FAMILY AND THE NEW PROPERTY 18 (1981). Glendon writes: "In a purely economic sense [children] are liabilities rather than assets. That people keep having them anyway despite the cost, is, . . . a 'revolutionary' change." Id.

Economists account for this revolutionary change on the grounds that children provide parents with "psychic income." Euston Quah & William Rieber, Value of Children in Compensation for Wrongful Death, 9 INT'L REV. L. & ECON. 165, 169-70 (1989) (refuting the historical view that a child's value is based upon the supplementation of the family income).

None of this is meant to assert that the parent-child relationship is a zero-sum gain, that is, worth only the money that is spent to create and maintain the relationship. Only that the amount of money spent on the relationship is an indication of the value many parents place on the relationship.

52. Salin, 322 N.W.2d at 737 (rejecting a child's claim for loss of consortium on the basis that "legal causation must terminate somewhere" after stating that "[t]here can be no doubt that the children's claims have both logical and sympathetic appeal"). In rejecting the claim for loss-of-consortium damages, courts could argue that the tortfeasor has no duty to the injured party's parents, and therefore no liability. This argument would be equally applicable to spousal consortium claims, however, and would not differentiate between the two. Thus, courts that allow spousal loss-of-consortium damages but choose to deny parental loss-of-consortium damages are forced to hang their hats on the causation element, which the Minnesota Supreme Court admitted "is a question of policy." Id.

53. See, e.g., Father A v. Moran, 469 N.W.2d 503, 505 (Minn. Ct. App. 1991) (explicitly recognizing "the genuine loss and psychological suffering caused to
courts have made a policy decision, however, to allow spousal loss-of-consortium claims while disallowing parental loss-of-consortium claims.54

D. MINNESOTA'S REJECTION OF THE LOSS-OF-CONSORTIUM CLAIM IN PARENT-CHILD RELATIONSHIPS: PRECEDENT AND POLICY

The Minnesota Supreme Court in 1908 originally recognized loss-of-consortium damages by allowing a husband to recover such damages following an injury to his wife.55 The damages included those elements "peculiar to the relationship... [such as] deprivation of her services, society, expense, and the like."56 It was not until 1969, however, that Minnesota allowed a wife's claim for loss of consortium with her husband.57 Minnesota has not yet expressly extended loss-of-consortium damages beyond the spousal relationship.

1. The Minnesota Supreme Court's Limitation of Loss-of-Consortium Claims to Spousal Relationships

The Minnesota Supreme Court in Salin v. Kloempken held that a child could not claim loss of consortium with an injured parent.58 Salin's holding specifically denied a claim of loss-of-consortium damages by the child of a quadriplegic parent. The court subsequently explained in dicta that, if presented with a parent's claim for loss of consortium for an injured child, it would deny such damages.59 In conclusion, the court stated that such

the parent").

54. In Borer v. American Airlines, Inc., the California Supreme Court held that "social policy must at some point intervene to delimit liability... 'Every injury has ramifying consequences, like the ripplings of the waters, without end. The problem for the law is to limit the legal consequences of wrongs to a controllable degree.'" Borer, 563 P.2d 858, 861-62 (Calif. 1977) (quoting Tobin v. Grossman, 249 N.E.2d 419, 424 (N.Y. 1969)).
56. Id. at 652.
57. Thill v. Modern Erecting Co., 170 N.W.2d 865 (Minn. 1969). In this case, the court said: "The loss of 'services' is an outworn fiction, and the wife's interest in the undisturbed relation with her consort is no less worthy of protection than that of the husband." Id. at 869 (citations omitted).
58. Salin v. Kloempken, 322 N.W.2d 736, 742 (Minn. 1982).
59. The Minnesota Supreme Court came to the conclusion in dicta that a parent's claim for loss of consortium falls outside the limits upon which social policy must intervene to delimit liability: "There are significant differences between the marital relationship and the parent-child relationship that support the limitation of a cause of action for loss of consortium to the marital
claims "should be limited to the spousal relationship." Although the court briefly discussed precedent and equal-protection arguments, it ultimately analyzed the policies surrounding the issue by undertaking "an exercise in delineating liability."  

60. Id. at 739. The policy considerations the supreme court espoused in denying a parental claim for loss of consortium focused on the lack of a sexual component in the parental relationship, and precedent limiting a parent's recovery to medical expenses and lost services. Id. at 738-39.

61. In rejecting the claim, the court cited two cases. The first, Plain v. Plain, 240 N.W.2d 330 (Minn. 1976), held that a child could not recover damages from his or her mother for the loss of maternal services when the mother negligently injured herself. Salin, 322 N.W.2d at 738. The second, Eschenbach v. Benjamin, 263 N.W. 154 (Minn. 1935), held that plaintiff children have no cause of action against a third person who negligently caused permanent and disabling injuries to their father. Salin, 322 N.W.2d at 738. The court quickly limited the persuasive effect of either case, however, by stating that it declined to recognize a child's cause of action for loss of consortium with a parent because of "prior cases." Id.

62. Among the arguments favoring recognition of loss-of-consortium damages, the court rejected those maintaining equal-protection violations. Salin, 322 N.W.2d at 742. The court reasoned that minor children are not situationally similar to spouses. Id. The court also concluded that children allowed to recover for loss of consortium under the wrongful death statute are not situationally similar to children whose parents remained alive. Id. The court found two specific differences. First, children who are eligible to recover under the wrongful death statute will recover only as a class, meaning that "there is but a single recovery on behalf of all beneficiaries." Id. Second, surviving children are totally deprived of their parent's presence while plaintiffs in an injury case are only partially deprived. Id.

Both arguments, however, are inapplicable to the case where a parent seeks loss of consortium with a severely injured child. One important difference is that every child has at most two parents, thus limiting recovery to a maximum of two people. Further, courts could hold that the parents can recover loss of consortium with a severely injured child only as a class. Two, it is naive to argue that the parent of a child, who is so severely injured that she cannot communicate in any meaningful way, is only "partially deprived" of that child's consortium.  

63. Salin v. Kloempken, 322 N.W.2d 736, 739 (Minn. 1982). Although many other courts have held that recognition of parental loss of consortium was a proper issue only for the legislature, the Minnesota Supreme Court stated it would not "rely on the rationale of those cases that have relegated this matter to the legislature." Id. at 741 (citing Pleasant v. Washington Sand & Gravel Co., 262 F.2d 471, 473 (D.C. Cir. 1958); General Electric Co. v. Bush, 498 P.2d 366, 371 (Nev. 1972); Duhan v. Milanowski, 348 N.Y.S.2d 696, 703 (Sup. Ct. 1973)). The court also refused to rely on the scarcity of precedent recognizing loss of parental consortium in other states. Salin, 322 N.W.2d at 741. "Lack of precedent cannot absolve a common law court from responsibility for adjudicating each claim that comes before it on its own merits." Id.
The court determined that many of the policy considerations it relied upon in Stadler v. Cross to limit the "circle of liability" in emotional and mental distress causes of action were equally reliable in denying a claim for loss-of-consortium damages. Those policies included: the threat of expansive litigation that comes with any derivative suit; the potential that juries might award damages for loss of consortium both in the parents' derivative claim and in the child's direct claim; the lack of a physical injury and the accompanying potential for fraudulent claims; the lack of foreseeability; the extended burden such damages will have on insurance companies; and the difficulty in determining the "intangible nature of the child's loss." Thus "in the interest of limiting the legal consequences of the wrong to a controllable degree," the court chose to restrict loss of consortium to the spousal relationship.


Although the Minnesota Supreme Court explained its decision in Salin as based on "precedent and ... public policy," it ignored many other decisions directly protecting the parent-child relationship. For example, when a tortfeasor, either negligently or intentionally, causes the death of a child, Minnesota's wrongful death statute allows parents to recover for the loss of a deceased child's comfort, aid, and society. Likewise, the Minnesota Supreme Court's holding in Miller v.

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64. 295 N.W.2d 552 (Minn. 1980) (adopting the zone-of-danger limitation to all claims seeking emotional and mental distress with resultant physical symptoms).
65. Salin, 322 N.W.2d at 739.
66. Id. at 738-39. A derivative suit in tort is one in which the plaintiff is not the party directly injured by the alleged tortfeasor. Instead, the plaintiff claims that the effect of the injury on the injured party has or will affect the plaintiff in a negative way.
67. Id.
68. Id. at 739.
69. Id.
70. Id. at 740-41.
71. Id. at 742.
72. Id.
73. MINN. STAT. ANN. § 573.02 (West Supp. 1994). Although the statute limits damages to "pecuniary loss resulting from the death," the supreme court has interpreted this to include compensation for comfort, assistance, and companionship. Fussner v. Andert, 113 N.W.2d 355, 358-59 (Minn. 1961).
Monsen\textsuperscript{74} allows either a parent or child to claim loss of consortium when \textit{intentional} interference by a third party damages their relationship.\textsuperscript{76} The supreme court has also expressly protected the relationship in the area of adoption.\textsuperscript{76}

In addition, the court has expressly recognized the value of emotional benefits of the parent-child relationship in tort.\textsuperscript{77} In \textit{Sherlock v. Stillwater Clinic},\textsuperscript{78} the supreme court recognized a parent's claim for wrongful conception.\textsuperscript{79} In determining just compensation for the plaintiff parents, the court did two things. First, it quantified the expenses associated with raising a child to the age of majority. Second, it mitigated those expenses by the value of the child's "aid, comfort, and society."\textsuperscript{80} The court subsequently explained that, because a child's "pecuniary benefits [to the family is] minimal," the amount of a child's "aid, comfort and society" was the "only" way a court could accurately compensate those benefits that a child brings to his or her parents.\textsuperscript{81}

3. Minnesota Court of Appeals' Rejection of a Parent's Claim for Loss of Consortium

Like the supreme court in \textit{Salin}, the Minnesota Court of Appeals in \textit{Father A v. Moran}\textsuperscript{82} ignored much of the precedent relating to the parent-child relationship. The court instead relied solely upon the dicta in \textit{Salin} and the holdings of two other cases to reject a parent's claim for loss of consortium.\textsuperscript{83}

\textsuperscript{74} 37 N.W.2d 543 (Minn. 1949).
\textsuperscript{75} Id. at 545.
\textsuperscript{76} \textit{In re Parks' Petition}, 127 N.W.2d 548, 553 (Minn. 1964). The court held that an adoption was ineffective unless both natural parents had expressly waived their parental rights. \textit{Id.} Although the legislature's primary purpose in passing adoption statutes was to protect the child, the court concluded that implicit in the statutes was the belief that a child is best protected when the law recognizes the natural rights of the parents. \textit{Id.} Those rights, the court said, include the "custody, society, comfort, and services of the child." \textit{Id.}
\textsuperscript{77} Sherlock v. Stillwater Clinic, 260 N.W.2d 169, 176 (Minn. 1977).
\textsuperscript{78} Id.
\textsuperscript{79} That is, the court held that parents who give birth after one of them has been surgically sterilized can sue the doctor for the cost of rearing the unwanted child. \textit{Id.}
\textsuperscript{80} Id.
\textsuperscript{81} Id. at 176 n.12.
\textsuperscript{82} 469 N.W.2d 503 (Minn. Ct. App. 1991).
\textsuperscript{83} Id. at 506. Besides \textit{Salin}, the court also relied upon Eichten \textit{v. Central Minn. Coop. Power Ass'n}, 28 N.W.2d 862, 871 (1947) and Dentinger \textit{v. Uleberg}, 213 N.W. 377, 377 (1927). \textit{Father A}, 469 N.W.2d at 506. \textit{See infra} note 89
In *Father A*, a minor who had been sexually abused by a neighbor, suffered a severe personality change.\(^{84}\) The court of appeals reversed the trial court's decision to grant the parents a portion of the child's punitive damages award because "[u]nder Minnesota law, parents' recovery based on injury to their child does not include damages for loss of consortium."\(^{96}\)

In addition to the statement in *Salin* limiting loss-of-consortium damages only to the spousal relationship,\(^{86}\) the court of appeals relied upon two other cases\(^{87}\) for the proposition that Minnesota law did not allow parents of an injured child to recover anything more than medical expenses and the value of the child's potential earnings.\(^{88}\) In neither case did the Minnesota Supreme Court address loss of consortium.\(^{89}\)

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(discussing the *Eichten* and *Dentinger* decisions).

84. *Father A*, 469 N.W.2d at 505.
85. *Id.* at 507. Although the court showed sympathy for the plaintiffs' claim, it said it was bound by the *Salin* decision: "The Minnesota Supreme Court has explicitly denied a cause of action for loss of consortium in the parent-child context." *Id.* at 506.
86. *Salin* v. *Kloempken*, 322 N.W.2d 736, 740 (Minn. 1982). *See supra* notes 58-63 and accompanying text (explaining the court's decision in *Salin*).
88. *Father A*, 469 N.W.2d at 506 (stating that "[u]nder traditional Minnesota common law, parents may recover damages based on injury to their child only for medical expenses, and for loss of the child's earnings, contributions, and services that the parents would have received until the child reached the majority age").
89. It is significant that in both *Eichten* and *Dentinger*, the court decided in favor of the plaintiff, and did nothing more than grant the damages requested. It is apparent from the procedural posture in both cases that the parties did not litigate the loss-of-consortium issue. Consequently, the issues regarding a limitation of a parent's damages were never briefed, argued, or considered. In both *Eichten* and *Dentinger*, it was the defendant who was appealing a decision to extend the parental cause of action beyond what it had been before. In *Eichten*, the court actually expanded a parent's ability to recover an injured child's medical expenses from the tortfeasor. *Eichten* v. Central Minn. Coop. Power Ass'n, 28 N.W.2d 862, 866, 871 (1947). One of the grounds upon which the defendant appealed was the excessiveness of damages. The trial court, in that case, awarded the father of a severely injured infant $2500 for medical expenses and loss of services. The court held that the damages were not extensive because many of the injuries were permanent, and that the father was entitled to loss of services even though evidence of such was "indirect, hypothetical, and to some extent speculative." *Id.* Similarly, in *Dentinger*, the court's only holding was that the parent, and not the child, could recover the injured child's medical expenses from the tortfeasor. *Dentinger* v. *Uleberg*, 213 N.W. 377, 377 (1927). In neither case did the court limit the parents' claims nor hold that medical expenses and loss of services were the only damages a parent could seek following an injury to a minor child.
II. PARENT'S CLAIM FOR LOSS OF CONSORTIUM AND MINNESOTA LAW UNDER FATHER A V. MORAN AND SALIN V. KLOEMPKEN: MISREADING OF PRECEDENT AND MISAPPLICATION OF STARE DECISIS

The Minnesota Supreme Court has never expressly denied a parent's claim for loss of consortium.\(^\text{90}\) Although the court of appeals in Father A v. Moran stated that it was following supreme court precedent in denying a parent's claim for loss-of-consortium damages with an injured child,\(^\text{91}\) none of the cases it relied upon expressly stood for such a proposition.\(^\text{92}\) The court of appeals, therefore, was mistaken in arriving at such a conclusion without independently analyzing the claim.

A. THE MINNESOTA SUPREME COURT AND A PARENT'S LOSS-OF-CONSORTIUM CLAIM

Although Minnesota courts have not recognized a claim for loss-of-consortium damages in the parent-child relationship,\(^\text{93}\) the Minnesota Supreme Court has not expressly denied a parent's claim for loss of consortium.\(^\text{94}\) In Salin, the supreme court held that the child of a physically injured parent could not recover loss-of-consortium damages.\(^\text{95}\) In dicta, the supreme court additionally announced, “[s]trong policy reasons, beyond those already mentioned, argue against extension of liability to loss of consortium of the parent-child relationship.”\(^\text{96}\) Subse-

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90. Supra notes 61-64 and accompanying text (explaining that the court in Salin expressly denied only a child's claim for loss of consortium).
91. 469 N.W.2d at 506.
92. A closer look at those three cases makes it clear that the issues unique to a parent's claim for loss of consortium have never been addressed by the state's highest court. See supra note 89 and accompanying text (explaining that in neither Eichten nor Dentinger did the court address the loss-of-consortium issue).
93. Father A v. Moran, 469 N.W.2d 503, 506 (Minn. Ct. App. 1991) (stating "after careful review of the relevant precedents, we conclude that such an expansion of parents' recovery is not consistent with Minnesota law"). This finding, however, is quite distinct from the proposition that Minnesota courts have expressly prohibited loss of consortium in the parent-child relationship.
94. See supra notes 58-63 and accompanying text (explaining that in Salin the court expressly denied only a child's claim for loss of consortium).
95. See supra notes 58-63 and accompanying text (explaining the court's decision in Salin).
96. Salin v. Kloempken, 322 N.W.2d 736, 740 (Minn. 1982).
sequently, the court of appeals in *Father A* erroneously extended the *Salin* holding to decide an issue never directly considered by the supreme court: whether to allow a parent's claim for loss of consortium following a negligent injury to a child.\(^9^7\) Neither the supreme court in *Salin* nor the court of appeals in *Father A*, however, addressed those arguments in the context of a parent's claim for loss of consortium with a negligently injured child.\(^9^8\)

Undoubtedly, some of the policy considerations the court relied upon in rejecting the claim are the same regardless of whether the plaintiff is a parent or a child.\(^9^9\) Other policy concerns the court relied upon in *Salin*, however, are unique to those claims that only a child may bring. These include precedent limiting a parent's recovery to medical expenses and lost services,\(^1^0^0\) the threat of expansive litigation,\(^1^0^1\) the potential for fraudulent claims,\(^1^0^2\) the lack of foreseeability,\(^1^0^3\) and the extended burden such damages will have on insurance companies.\(^1^0^4\)

When the parent, and not the child, seeks loss-of-consortium damages, however, the pool of potential claimants is finite, effectively reducing the threat of fraudulent claims, excessive liability, and the extended burden on insurance companies. Furthermore, the foreseeability of harm to the parent-child relationship is much higher when it is the parent, and not the child, who seeks loss-of-consortium damages. Because nearly every minor child lives with parents, it is highly likely that a parent will suffer greatly when there is a serious injury to the child. When the injured person is an adult, however, it is more difficult to foresee that a minor child will be harmed by the injury since many adults do not have children. Consequently, there is less certainty that a child will claim loss-of-consortium

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97. *Salin*, 322 N.W.2d at 738. For a description of the court's decision in *Salin*, see supra notes 58-63 and accompanying text.
98. *See supra* notes 58-63, 82-89 and accompanying text (describing the decisions in *Salin* and *Father A*).
99. These include the potential that juries might award damages for loss of consortium both in the derivative claim and in the direct claim, the lack of a physical injury to the plaintiff, and the difficulty in determining the "intangible nature of the [plaintiff's] loss." *Salin*, 322 N.W.2d at 738-41.
100. *Id.* at 738.
101. *Id.* at 738-39.
102. *Id.* at 739.
103. *Id.*
104. *Id.*
damages because of an injured parent.\textsuperscript{105}

Although the Minnesota Supreme Court decided in \textit{Salin} that children could not recover loss-of-consortium damages because of an injured parent,\textsuperscript{106} the court did not make an independent consideration of a parent's claim for loss-of-consortium damages with a severely injured child. Therefore, the court of appeals was incorrect in its finding that the supreme court specifically precluded such a claim.

\section*{B. MINNESOTA'S RECOGNITION OF THE VALUE OF PARENT-CHILD RELATIONSHIPS}

The Minnesota Supreme Court's failure to recognize claims for the negligent damage of the parent-child relationship\textsuperscript{107} conflicts with its own recognition of the value and importance of the parent-child relationship in at least three contexts: intentional interference, wrongful death, and wrongful conception. In each of these areas, the court recognized not only the importance of the relationship, but also the benefit, for both the parents and the children in protecting the relationship from interference.

\subsection*{1. Minnesota's Compensation of Parents for Intentional Interference with the Parent-Child Relationship}

Minnesota law compensates a parent for damage to his or her relationship with a child when a tortfeasor's action intentionally harms that relationship.\textsuperscript{108} In \textit{Miller v. Monsen}, the

\begin{itemize}
  \item \textsuperscript{105} This Note does not differentiate a parent's claim from a child's claim to diminish the validity of a child's loss-of-consortium claim with a severely injured parent. Rather, this Note offers the above-mentioned arguments to show that consideration of a child's claim for loss of consortium is different from consideration of a parent's claim. \textit{See supra} notes 44-45 (demonstrating that many states treat the two claims differently).
  \item \textsuperscript{106} \textit{Salin v. Kloempken}, 322 N.W.2d 736, 742 (Minn. 1982).
  \item \textsuperscript{107} \textit{Id.} at 738.
  \item \textsuperscript{108} \textit{Miller v. Monsen}, 37 N.W.2d 543, 545 (Minn. 1949) (holding that children, as well as parents, can recover for intentional interference with the family relationship). In \textit{Monsen}, the Minnesota Supreme Court affirmed a decision granting a minor child damages for the loss of consortium with her mother who the defendant enticed away from the family home. \textit{Id.} at 549. The question for decision in the case was whether "a minor child has a cause of action against one enticing its parent from their family home to recover damages sustained as a result of the enticement." \textit{Id.} at 544. The court found the defendant, who convinced the mother of the plaintiff to leave the family farm and live with him, liable for "destroy[ing] the relation then existing between plaintiff and her mother, thereby causing plaintiff loss of benefits flowing to her from such a relationship." \textit{Id.} The court based its decision on the
supreme court recognized a child's right to recover for "nurture and training—physical, intellectual, and moral," largely because the right was already a "well-settled one." In both a parent's and a child's claim for direct interference by a third party with the parent-child relationship, courts base their holdings upon the principle that when there is a legal wrong, "there should be a remedy to obtain redress." In *Monsen*, the legal wrong was alienation of affection, which the court defined as the unreasonable and direct interference by the tortfeasor with the child's "privilege of receiving benefits" from her mother.

By disallowing similar compensation when a tortfeasor damages the relationship through mere negligence, however, both *Salin* and *Father A* failed to address the distinction between loss-of-consortium damages based upon intentional interference and those resulting from negligence. In *Monsen*, however, the court attempted to distinguish these two by allowing a claim for loss of consortium only when the tortfeasor intended to damage the parent-child relationship.
Such a distinction, while valid, would invalidate all loss-of-consortium claims based on negligence, including those outside the parent-child relationship.115

The court in Monsen also used deterrence as a justification for its distinction between intentional interference and negligence.116 Such a consideration, while relevant in Monsen, strays from the main focus of tort law, which is not deterrence,117 but loss allocation.118 Once the court finds fault, it will afford a remedy for any real loss held to be within the universe of compensable harms, unless policy concerns dictate otherwise.119 The interference with the parent-child relationship, whether intentional or negligent, clearly causes a real loss within the universe of compensable harm.120 Consequently, the only valid justification upon which courts may deny this claim is not under deterrence, but public policy.121

115. Were the court's reason for denying a child's claim for loss-of-consortium damages based solely on the proposition that the tortfeasor did not directly damage the parent-child relationship, then the same argument would hold for a tortfeasor who did not directly damage the husband-wife relationship. Because Minnesota recognizes a spouse's loss of consortium with a negligently injured spouse, the justifications for denying a parent's loss-of-consortium damages must lay elsewhere.

116. Monsen, 37 N.W.2d at 547-49. In Monsen, the court gives three reasons for recognizing a loss-of-consortium claim where intentional interference caused the injury: the parents would not otherwise be able to recover, the act was committed directly against them, and deterrence. Id. at 549 (placing emphasis on the wrongful behavior of a tortfeasor). Of these three reasons for recognizing a claim, only the last two apply. In the case of a negligently inflicted severance, the parents also are not able to otherwise recover for the loss of the relationship.

117. KEETON ET AL., supra note 7, § 3, at 15-16. Negligence, by definition, cannot be deterred. The justification for allowing damages in negligence is loss allocation. "Therefore, the true purpose of compensatory damages is generally to adjust losses between the parties, not expressly to punish the defendant." Mogill, supra note 17, at 1388 n.392.

118. See supra note 7 and accompanying text (explaining that the focus of tort law is to compensate the injured party).

119. Foreseeability, remoteness and policy considerations all play into a court's determination of proximate cause. See supra note 14 and accompanying text (explaining proximate cause); see generally Salin v. Kloempken, 322 N.W.2d 736 (Minn. 1982) (treating proximate cause in the context of a loss-of-consortium claim).

120. See Monsen, 37 N.W.2d at 549 (holding that the relationship interest between parent and child is compensable); see also supra notes 12, 13 and accompanying text (laying out the parameters in which courts have found compensable harm).

121. See supra note 14 and accompanying text (noting that most decisions in which the courts have denied loss-of-consortium claims have been based on
When a third party negligently interferes in the family relationship, the damage is no less severe than when the third party intentionally interferes.\textsuperscript{122} Evidence shows that parents have similar reactions when either severe and permanent injury or alienation of affection results in the loss of companionship with a child.\textsuperscript{123} Such impact often mirrors the impact parents

public policy).

\textsuperscript{122} In fact, when the injury is in the form of permanent physical injury, the damage may be more severe. As Professor Clark wrote: "[It] turns out that there is greater reason, rather than less, to give legal redress for loss of consortium when it is caused by negligence than when it occurs through [an intentional tort]." HOMER H. CLARK, JR., LAW OF DOMESTIC RELATIONS § 10.5, at 277-78 (1968). Clark admits that there is a difference between negligent and intentional harms, but that the difference is not relevant in loss-of-consortium claims.

What is the relevant distinction between the case where the husband's affections are alienated by the "other woman" and the case where he is so seriously injured by the defendant's negligence that he becomes a human vegetable? Actually his wife is worse off in the second case than the first. In the first she may get a divorce and remarry more happily. In the second case, she can look forward to a lifetime as a combined nurse and breadwinner.

\textit{Id.} at 277.

\textsuperscript{123} See JAY BELSKY ET AL., THE CHILD IN THE FAMILY 103-104 (1984) (stating that family's initial reaction to a child born with cerebral palsy is shock, depression, guilt, denial, anger, sadness, and anxiety); VERDA HEISLER, A HANDICAPPED CHILD IN THE FAMILY: A GUIDE FOR PARENTS 38-39 (1972) (showing increased stress level for parents who care for handicapped children); CHARLOTTE THOMPSON, RAISING A HANDICAPPED CHILD 14-34 (1986) (finding that some parents are unable to deal with having a handicapped child and should consider placing the child in a foster home); Alexander, supra note 50, at 333-37 (describing the grief and stress parents feel when their children suffer severe permanent injury); Siegfried M. Fueschel, The Impact on the Family: Living with the Handicapped Child, 2 ISSUES IN L. & MED. 171, 187 (1986) (noting that parents who learn that a child has a significant handicap suffer from an extreme traumatic experience).

Much empirical evidence shows parents suffer both psychic pain and physical illness as a result of a severed relationship due to intentional interference. See SALLY ABRAMHS, CHILDREN IN THE CROSSFIRE: THE TRAGEDY OF PARENTAL KIDNAPPING 162-81 (1983) (describing the despair, anger and loneliness that the parents of abducted children experience); Alexander, supra note 50, at 329-32 (documenting physical ailments which parents endure when their children are abducted); see also JOHN E. GILL, STOLEN CHILDREN: HOW AND WHY PARENTS KIDNAP THEIR KIDS—AND WHAT TO DO ABOUT IT 166-75 (1981) (describing the different stages parents go through after being intentionally separated from their children); BOBBI LAWRENCE & OLIVIA TAYLOR-YOUNG, THE CHILD SNATCHERS 168-70 (1983) (showing that parents' trauma of child loss often includes physical trauma).

The emotional impact of a parent whose child has been kidnapped often leads to self-blame, feelings of powerlessness, sorrow, bitterness and fear,
feel upon a child's death. In many cases, a severe and permanent injury to a child would cause more harm to the family than a child's departure through abduction or otherwise. The loss, therefore, is no less worthy of a legal remedy. Accordingly, Minnesota courts should provide an adequate remedy, not to deter future wrongdoers, but to properly allocate the loss.

2. Compensating Parents for Wrongful Death of Child

Interestingly, Minnesota courts follow the loss-allocation paradigm when the parent-child relationship is severed by death, rather than serious injury. In a wrongful death case, Minnesota law allows a parent to recover for the "pecuniary loss resulting from the death," even when the tortfeasor is merely negligent. The Minnesota Supreme Court has interpreted such

alcoholism, anorexia, nervous breakdowns and suicide. A social worker quoted in the study said: "parents experience severe depression because the core of a parent is the belief that he or she can protect the child. When that youngster is taken away, it's as if the parent's life were being taken away. A lot of their strength goes too." ABRAHMS, supra, at 167.

124. See, e.g., Christine H. Littlefield & J. Philippe Rushton, When a Child Dies: The Sociobiology of Bereavement, 51 J. PERSONALITY & SOC. PSYCHOL. 797 (1986) (documenting the grief parents feel when their children die); see also LEO GOLDBERGER & SHLOMO BREZNITZ, HANDBOOK OF STRESS: THEORETICAL AND CLINICAL ASPECTS 342 (1982) (proposing that the death of a child was the most stressful of 102 common life events).

125. A severe injury, for example, can be irreversible, whereas a child's departure can be temporary. A severely injured child also can confront the parent daily, whereas a departed child obviously will not be present to constantly remind the parent of what was lost. Additionally, in the intentional interference cases, the person with whom the loss-of-consortium plaintiff had a relationship can return.

126. In Monsen, the court said that arguments stating that courts are incapable of defining such intangible losses are without merit. "As has been pointed out, courts and juries are required to do precisely those things in certain cases, and do so with complete success." Miller v. Monsen, 37 N.W.2d 543, 546 (Minn. 1949).

127. MINN. STAT. ANN. § 573.02 subd. 1 (West Supp. 1994). The statute reads as follows:

When death is caused by the wrongful act or omission of any person or corporation, the trustee appointed . . . may maintain an action therefore if the decedent might have maintained an action, had the decedent lived, for an injury caused by the wrongful act or omission. . . . The recovery in the action is the amount the jury deems fair and just in reference to the pecuniary loss resulting from the death, and shall be for the exclusive benefit of the surviving spouse and next of kin, proportionate to the pecuniary loss severally suffered by the death.

§ 573.02 subd. 1.
“pecuniary loss” to include loss of society, companionship and comfort—in other words, loss of consortium. Yet the court has refused to recognize a similar loss when the child, instead of losing its life, loses all mental and physical capability. In *Salin*, the court based this distinction in part on the fact that “surviving children are totally deprived of parental consortium while the plaintiffs here are only partially deprived.” Such a distinction is unworkable, however, when a child is so severely injured that he or she is incapable of any communication. In those cases, the surviving family members are “totally deprived” of consortium, making the distinction in potential damages available to the family members invisible, if not irrational.

130. Salin v. Kloempken, 322 N.W.2d 736, 742 (Minn. 1982). In this case, the injured party could still communicate. The father was rendered a paraplegic, but he had no brain damage and could still offer advice, support, love and other non-physical elements of society and companionship. *Id.* at 737. Similarly, in *Father A*, the injured daughter had no physical injuries. Evidence showed the daughter suffered emotional and psychological distress, but she still could communicate and function. The court noted that she had managed to continue her success both at work and in school. 469 N.W.2d at 506.
131. See supra notes 1-3 and accompanying text.
132. The Arizona Supreme Court stated that “no meaningful distinction can be drawn between death and severe injury where the effect on consortium is concerned.” Frank v. Superior Court, 722 P.2d 955, 957 (Ariz. 1986) (en banc).

Other commentators contend that the loss suffered by a parent whose child is severely injured might be even greater than the loss suffered by a parent whose child is killed:

It is easy to see that the loss of a child through his death takes from his parents the society and companionship that is the essence of the lost relationship. But consider the magnitude of the loss of society and companionship that occurs when a normal [child] is suddenly reduced to a blind, nearly deaf, partially paralyzed child with the mental age of three. The parental expectations for the continuation of the family relationship are the same in either case.

Perhaps the loss of companionship and society experienced by the parents of a child permanently and severely injured . . . is in some ways even greater than that suffered by parents of a deceased child. . . . [T]he parent . . . is confronted with his loss each time he is with his child and experiences again the child’s diminished capacity to give comfort, society, and companionship.

3. Minnesota’s Recognition of Child’s Value in Wrongful Conception Context

Despite the assessment in Father A that Minnesota law does not recognize as compensable a parent’s relationship interest in his or her child, the Minnesota Supreme Court has held that the benefit of a child’s “aid, comfort, and society” is a significant component of measuring damages in a wrongful conception case. Unlike parents who pursue loss of consortium to seek compensation for the full value of a lost parent-child relationship, parents pursuing wrongful conception are seeking full compensation for an unwanted parent-child relationship. In virtually all respects, the claims are mirror images of each other. Yet, as the holding in Sherlock confirms, Minnesota courts have treated the damage assessments quite differently.

When the parent-child relationship has been negligently damaged, Minnesota law disallows any recovery based upon lost “comfort, aid, and society.” When the relationship has been negligently created, however, the courts have reduced any recovery by the value of the child’s “comfort, aid, and society.” In essence, the courts have refused to compensate parents for a loss to the parent-child relationship, while giving credit for the same relationship values when the parent-child relationship has been negligently created. For this reason, the

133. Father A, 469 N.W.2d at 506.
134. Sherlock v. Stillwater Clinic, 260 N.W.2d 169, 176 (Minn. 1977). In Sherlock, the court held that a woman who became pregnant after a negligently performed sterilization operation could recover damages in tort. Id. The court determined that the doctor’s negligence created the situation whereby the woman became pregnant, and that “elementary justice requires that [the doctor] be held legally responsible for the consequences which have in fact occurred.” Id. at 174. Those damages included, among other things, the cost of rearing the child to the age of majority. Id. at 175. In an effort to avoid unjust enrichment by the plaintiff parent, however, the court reduced those costs by the “value of the child’s aid, comfort, and society which will benefit the parents for the duration of their lives.” Id. at 176.

In essence, the court said that a child, even an unwanted one, brings a non-economic value to the family relationship that must be compensated for in a negligence action. Id. at 176. Such an inference is logical, in that the court admits that “[o]ur only reason for valuing the benefits of the child’s aid, comfort, and society against the life expectancy of his parents is that in the usual case pecuniary benefits will be minimal during the child’s minority.” Id. at 176 n.12.

135. See supra notes 61-64, 83-90 and accompanying text (explaining that the court in Salin expressly denied only a child’s claim for loss of consortium).
136. Sherlock, 260 N.W.2d at 176.
court in *Salin* illogically rejected a parent’s claim for loss of consortium as a novel damage request.\(^{137}\)

The damage claims in both *Salin* and *Father A* were not of first impression. Well before Minnesota courts decided either case, Minnesota law allowed parents to seek damages for a negligent injury to their child.\(^{138}\) Courts defined such damages to be the measurable economic value of the child to the parents. Yet, as the plaintiffs in *Salin* and *Father A* claimed, the true value of the parent-child relationship is no longer economic.\(^{139}\)

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138. In *Eichten* v. Central Minn. Coop. Power Ass'n, 28 N.W.2d 862, 871 (Minn. 1947), and *Dentinger* v. Uleberg, 213 N.W. 377, 377 (Minn. 1927), parents were allowed to recover what the courts considered to be the pecuniary value of their children following serious injury. In *Eichten*, the court employed a flexible standard in measuring the lost services element of damages: “It is true that in view of the age of the child the evidence with reference thereto must be indirect, hypothetical, and to some extent speculative.” 28 N.W.2d at 871. Similarly in *Dentinger*, the court said that the father of a negligently injured son could recover “a fair measure of the value of any time lost by [the son] up to the time of this trial.” 213 N.W. at 377.

This measurement of services is not nearly as narrow as the courts in *Salin* and *Father A* contend. In *Bamka* v. Chicago, St. Paul, Minneapolis & Omaha Ry. Co., the Minnesota Supreme Court said a parent of a negligently injured child was entitled to “compensation for the care and trouble sustained by [the parent], growing out of certain injuries to his minor son.” 63 N.W. 1116, 1116 (Minn. 1895).

139. Obviously, if a child’s economic value was positive, then the plaintiffs in *Sherlock* would have been better off with the child and would have been incapable of any recovery. As the court correctly decided, however, the economic value of a child is negative.

At first glance, this might appear to be an argument against the recognition of a parent’s loss-of-consortium claim. In reality, however, it is an argument in favor of such a claim. To this day, the court admits that a child has value to the family. *Sherlock* v. Stillwater Clinic, 260 N.W.2d 169, 176 (Minn. 1977). The court nevertheless restricts the measure of the value to services and wages, when the relationship is impaired through the negligence of another. *Father A* v. Moran, 469 N.W.2d 503, 505 (Minn. Ct. App. 1991). Because the court no longer recognizes services and wages as an accurate representation of a child’s value, however, the court contradicts its ruling in *Sherlock*, when it holds that a parent can only recover for the loss of services and wages in a negligent injury case.

On the other hand, if the court were to completely disavow a parent’s right to recover the value of a negligently injured child, it would be going against the precedent set in *Eichten* and *Dentinger*. The solution consistent with precedent,
It is, as the court in *Sherlock* stated, emotional.\(^4\) Ironically, in a pure economic sense, a family will find itself in a better position following the death of or serious injury to a child, assuming that the child is able to directly recover for his or her medical expenses.\(^4\) The proper measure of a child's value to the parent, therefore, is the comfort, aid, and society taken from the family. In *Sherlock*, the supreme court recognized this value as both measurable and compensable. This same analysis should be utilized in measuring the compensation due a parent who loses the comfort, aid, and society of a child through serious injury.\(^4\)

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140. In today's world, children generally cost parents more money than they are capable of providing. The child's food, clothing, shelter, medical, dental and educational needs are but a few of the areas of parents' expenses. Others include books, high-fashion clothing and child care outside the home. See Alexander, *supra* note 50, at 312-14. According to studies, the average American family spends $38 per child for every $100 spent on an adult. Furthermore, this figure increases to $45 where there has been post-college schooling. *Id.* at 312 (citing EDWARD P. LAZEAR & ROBERT T. MICHAEL, *ALLOCATION OF INCOME WITHIN THE HOUSEHOLD* (1988)).

Consequently, the court's adherence to wage and service damages when parents seek redress for injured children is outdated. *CLARK, supra* note 20, § 11.4, at 399 ("Since the services rendered to the parent by the child are in fact largely insignificant today, the characterization of the parent's suit as one for the loss of services has become a fiction."). It also is contrary to its own valuation of the parent-child relationship in other contexts. *Sherlock*, 260 N.W.2d at 174. "The trier of fact will . . . be required to reduce these costs by the value of the child's aid, comfort, and society which will benefit the parents for the duration of their lives." *Id.* at 176; *see also* Miller v. Monsen, 37 N.W.2d 543, 548 (Minn. 1949) (stating that the privilege of receiving benefits is a right which the law protects against unreasonable interference).

If children were not an economic burden, the presence of one could not result in economic loss. Logic dictates that if a child benefitted a parent economically, then the act of receiving a child through the negligence of another would actually benefit the plaintiff economically. The court in *Sherlock* correctly held just the opposite. 260 N.W.2d at 176. Alexander reported that "[i]n contrast to the expenses of producing and raising a child, the monetary return that young children produce is, with rare exceptions, negligible or totally absent." Alexander, *supra* note 50, at 315.

141. Given this assumption, and the preference by the court that injured children bring their own claims for pain and suffering and medical expenses, the court in *Salin* effectively eliminated the parent's claim for a derivative action established in *Eichten* and *Dentinger*.

142. The court in *Sherlock* ultimately found that the cost of raising the child was greater than the value received from the comfort, aid, and society of the child. Such a finding, however, was based upon the fact that the parent in that
C. COMPARING PARENT-CHILD RELATIONSHIPS WITH SPOUSAL RELATIONSHIPS

Courts often fail to supply reasons for rejecting a parent's right to loss-of-consortium damages. Even courts that reject the claim admit that the parent-child relationship is vital and important. Courts rarely address, however, the true importance of this relationship. As the court in *Sherlock* asserted, purely economic considerations cannot adequately determine this value. Courts must therefore look to the value of the child's case did not want a child. When a parent chooses to have a child, the value of the child's comfort, aid, and society will usually be greater than the cost of rearing the child.


144. See, e.g., Salin v. Kloempken, 322 N.W.2d 736, 737 (Minn. 1982) (stating that "it is important to the child and to society that the benefits derived from the parent-child relationship be protected"); see also Father A v. Moran, 469 N.W.2d 503, 505-06 (Minn. Ct. App. 1991) (recognizing that the loss experienced by parent's of a sexually molested daughter are genuine); Borer v. American Airlines, Inc., 563 P.2d 858, 866 (Cal. 1977) (stating "we do not doubt the reality or the magnitude of the injury suffered by plaintiffs").

For a comprehensive study of the policy reasons behind loss of consortium in the parent-child context, see Alexander, *supra* note 50, at 296-352. The reasons listed by Alexander mirror those given by the Minnesota Supreme Court in *Salin*: opening the floodgates to litigation, creating a potential for double recovery, providing for intangible losses, increasing insurance costs, and overburdening the alleged tortfeasor. *Salin*, 322 N.W.2d at 739; Alexander, *supra* note 50, at 297-99.

145. Alexander, *supra* note 50, at 299. "Courts on both sides of this issue have thus supported their opinions by using the same kind of rhetoric, but neither side appears to have presented any empirical data that would give concrete support for their conclusions." *Id.*

Parents often consider the relationship with their children to be "the greatest source of pleasure" in their lives. See *supra* notes 50, 51. The efforts, both physical and economic, taken by parents to obtain a child of their own, emphasize the value of the parent-child relationship. Alexander, *supra* note 50, at 296-352. Alexander reports that "[i]f one looks at the specific dollar amounts spent on the production and the raising of children, it is clear that American parents today relinquish more of their economic resources to have a child than ever before." *Id.* at 304. If children did not have a value equal to or greater than the investment, it is unlikely so many people would go to such great pains to acquire them. GLENDON, *supra* note 51, at 18. "In a purely economic sense [children] are liabilities rather than assets. That people keep having them anyway despite the cost is . . . a 'revolutionary' change." *Id.* Some economists account for this revolutionary change on the ground that children provide parents with "psychic income." Quah & Rieber, *supra* note 51, at 169-70 (refuting the historical view that a child's value is based upon the supplementation of the family income).

companionship to accurately measure any damages to the relationship.\footnote{147}

Inconsistent to its holding in \textit{Sherlock}, the Minnesota Supreme Court determined that the benefits inherent in a parent's right to loss of consortium with an injured child are not analogous to the benefits inherent in a spouse's right to loss of consortium.\footnote{148} In short, the court held that the elements of sex and child-rearing in the spousal relationship made the relationship more valuable and, therefore, more worthy of compensation than the parent-child relationship.\footnote{149} In recognizing a wife's claim to loss of spousal consortium, the court defined consortium to include such "undefined elements as comfort, companionship, and commitment to the needs of each other."\footnote{150} It also referred to the predominance of the sexual relationship.\footnote{151} Previous Minnesota decisions, however, have not supported this reliance upon the sexual element as the foundation of loss of spousal consortium.\footnote{152}

In establishing loss-of-consortium damages, the Minnesota Supreme Court did not explicitly discuss the sexual aspect of the relationship.\footnote{153} Subsequent decisions also have referred to loss of consortium without explicitly mentioning sex.\footnote{154} While there is no doubt the sexual relationship is a component of the spousal loss-of-consortium claim, and that the court's reluctance to mention it while formulating the concept probably was a product of the times, the loss-of-consortium damages formulation no longer contemplates sex as the predominant component.\footnote{155}

\footnote{147} "Why do people have children? Scholars have arrived at different answers, but substantially agree that once a child is born, most parents hope to enjoy the companionship of their child in a normal, happy relationship, and that the bond they create with this child will remain strong throughout their lifetime." Alexander, \textit{supra} note 50, at 274; \textit{see generally} T. BERRY BRAZELTON \& BERTRAND C. CRAMER, THE EARLIEST RELATIONSHIP: PARENTS, INFANTS, AND THE DRAMA OF EARLY ATTACHMENT 9-16, 34-36 (1990) (discussing why men and women want to have children).

\footnote{148} \textit{See supra} notes 58-63 and accompanying text.

\footnote{149} Salin v. Kloempken, 322 N.W.2d 736, 739 (Minn. 1982); \textit{see also} Thill v. Modern Erecting Co., 170 N.W.2d 865, 867-68 (Minn. 1969).

\footnote{150} \textit{Thill}, 170 N.W.2d at 868.

\footnote{151} \textit{Id.}

\footnote{152} Mageau v. Great Northern Ry. Co., 115 N.W. 651, 652 (Minn. 1908).

\footnote{153} \textit{Id.}

\footnote{154} \textit{See} Brandt v. State, 428 N.W.2d 412, 417 (Minn. Ct. App. 1988); Mattfield v. Nester, 32 N.W.2d 291 (Minn. 1948).

Most of the remaining elements referred to by the Minnesota Supreme Court are not unique to the spousal relationship, but common to the parent-child relationship as well.\textsuperscript{156} Furthermore, certain relationship elements, such as nurturing, teaching and guiding, are unique to the parent-child relationship.\textsuperscript{157} At the most, the lack of certain elements in the parent-child relationship should do little more than reduce the actual damages amount of a parent's loss-of-consortium claim. It should not move the claim entirely outside the universe of compensable legal harms.

D. REASONABLE COSTS OF RECOGNIZING PARENT'S LOSS-OF-CONSORTIUM CLAIM

In rejecting the extension of loss-of-consortium claims beyond the spousal relationship, the Minnesota Supreme Court determined that the costs of expansion outweighed the benefits of compensating the deprived parents.\textsuperscript{158} However, the court hastily determined such costs without empirical evidence. Instead, it relied on factors cited by other state courts that had denied the claim,\textsuperscript{159} as well its own analysis of similar factors in the context of a claim for negligent infliction of emotional distress.\textsuperscript{160} The court primarily feared opening the litigation floodgates by allowing parents' loss-of-consortium claims for severely injured children. Such fears are unsubstantiated, however, for at least three reasons. First, an objective definition of the parent-child relationship will necessarily limit the class of potential plaintiffs. Second, a Wisconsin study shows that when

\begin{quote}
...concluded that the "rights and duties binding parents to their children" are very similar to the same rights binding husband to wife. \textit{Id.} at 1081.

\textsuperscript{156} Indeed, loss of consortium is 'a useful though ambiguous term having a rather old-fashioned ring today.' While companionship may include sexual relations, courts have continued to regard loss of consortium to embrace all of those values—tangible and intangible—inherent in the family relationship. . . . \textsuperscript{157} The term loss of consortium is equally appropriate in reference to the parent-child relationship.

\textit{Id.} at 739 (citing Amaya v. Home Ice, Fuel & Supply Co., 379 P.2d 513, 522 (Cal. 1963)).
\end{quote}
courts restrict parental loss-of-consortium claims to those situations where the child is severely injured, litigation will not run rampant. Third, the cost of compensating parents, while potentially significant in individual cases, is neither prohibitive in the aggregate nor a valid rationale for rejecting an otherwise valid cause of action.

1. Utilizing a Clearly Defined Parent-Child Relationship

Fraudulent claims, as well as the argument that remote foreseeability of injury will lead to unduly burdensome liability, do not apply to situations where the parent, and not the child, seeks loss of consortium. Courts can eliminate fraudulent claims in this context, for example, by clearly defining the population of parents who are eligible to be plaintiffs. Whether courts limit claimants to those who are either the biological or adoptive parents of an injured child is insignificant—courts can easily confine the class of parents to those who can objectively

161. See supra text accompanying notes 14, 44-49, 102. Only two states recognize a child's right for loss of consortium while also expressly denying a parent's. Conversely, of the eleven states that currently recognize a parent's claim to loss of consortium, five expressly deny a child's claim. This indicates that the policy reasons against a parent's claim are different and less persuasive than are those policy reasons against a child's claim.

This Note does not contend that a child should not be able to state a claim for loss of consortium, but only that such a claim has inherently different dangers and requires an inherently different analysis. The greatest difference, of course, is numbers. Whereas a parent can have many children, a child can have only two parents. Thus, the number of parents' claims for loss of consortium with an injured child is necessarily limited to two, whereas children's claims for loss of consortium with an injured parent are not limited to any specific number.

[It is no less foreseeable that a child has parents who will suffer genuine loss of society and companionship if their child suffers serious injury through another's negligence, than that bus passengers will suffer physical harm if their bus is impacted by a negligently operated automobile. The liability boundary for loss of society and companionship claims can reasonably be drawn to limit such claims to close spousal and parent-child relationships. Judicially developed joinder rules, rules barring subsequent parental assertion of a claim for lost society and companionship if the child's personal injury claim has been adjudicated or settled, and rules allowing defendants to implead any potential consortium plaintiff should foreclose the argument that recognition of the parental claim for loss of society and companionship would result in a burdensome number of separate suits.

Simpson, supra note 132, at 925-26. In Michigan, the court of appeals said that it was clear that "when a child is negligently injured a corresponding 'injury' to the parent is within the foreseeable risk of harm." Sizemore v. Smock, 400 N.W.2d 706, 708 (Mich. Ct. App. 1986), rev'd, 422 N.W.2d 666 (Mich. 1988).
prove a relationship with the injured child.\textsuperscript{162} Given the finite number of potential claimants, recognizing a parent's loss-of-consortium claim would not constitute a "burdensome" extension of liability.\textsuperscript{163}

The Minnesota Supreme Court in \textit{Salin}, however, failed to make this analysis. Instead, it concluded that, like claims for negligent infliction of emotional or mental distress, a loss-of-consortium claim required objective limitations to assure that a wrongdoer's "liability for the consequences of her or his actions [is not] unlimited."\textsuperscript{164} In \textit{Salin}, the court explained this reasoning as "somewhat analogous" to its decision to limit "the circle of liability" in emotional distress cases.\textsuperscript{165} The two situations, however, differ significantly.

In an emotional distress case, the pool of potential claimants is infinite, thereby making it necessary for courts to incorporate bright-line limiting devices such as the zone-of-danger requirement.\textsuperscript{166} In a parent's claim for loss of consortium, however,

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\textsuperscript{162} "[S]urely the parent-child relationship is sufficiently close to ensure the validity of the plaintiff's claim." \textit{Love}, \textit{supra} note 17, at 603. Additionally, a jury does not have to award loss of consortium where the relationship is subjectively lacking. While juries should presume that claims based upon the parent-child relationship are valid, they may reject claims where a plaintiff fails to subjectively show a valid relationship. Similarly, courts can ensure the limitations of a defendant's liability, extending liability to a maximum of two people. Many questions regarding potential claimants under the parental loss-of-consortium claim remain, however, such as whether illegitimate parents, legal guardians, or adoptive parents may stand as potential claimants. \textit{See} \textit{Love}, \textit{supra} note 17, at 602-03 (discussing possible secondary tort victims).

\textsuperscript{163} \textit{See} \textit{Simpson}, \textit{supra} note 132, at 925 ("The problem is not so serious when examined in the context of the parental suit for loss of society and companionship as, for example, in litigation arising from an automobile collision with a bus; for an injured child has only two parents, whereas a bus carries many passengers potentially subject to negligent injury.").

\textsuperscript{164} \textit{Salin} v. \textit{Kloempken}, 322 N.W. 2d 736, 739 (Minn. 1982) (quoting \textit{Stadler} v. \textit{Cross}, 295 N.W.2d 552, 554 (Minn. 1980)) (holding that bystanders outside the zone of danger cannot recover damages for injury caused by witnessing an injury to another).

\textsuperscript{165} \textit{Id.} The court in \textit{Salin} then looked to its decision in \textit{Stadler}, which limited claims for emotional and mental distress to those claimants within the zone of danger. \textit{Id.} (citing \textit{Stadler}).

\textsuperscript{166} In \textit{Stadler}, the court was concerned with limiting the potential pool of persons who could claim emotional distress as the result of an accident. 295 N.W.2d at 554-55. A person's liability for the consequences of her or his actions cannot be unlimited. The limits imposed must be as workable, reasonable, logical, and just as possible. If the limits cannot be consistently and meaningfully applied by courts and juries, then the imposition of liability would become arbitrary and capricious... Under the zone-of-
the pool of potential claimants is already limited by parental status. There is no need for any additional bright-line limiting device. The parental relationship itself provides an "objective" determination of legitimate plaintiffs.

2. Limiting Parental Loss-of-Consortium Claims to Severely Injured Children

The Minnesota Supreme Court refused to extend loss-of-consortium damages beyond the spousal relationship because it feared the proliferation of claims, potential fraud, and because the foreseeability of injury was so remote it would lead to unduly burdensome liability. In both circumstances, the court drew a line by determining that the cost of compensating the injury would be too high. As the court previously stated, "We cannot ignore the social burden of providing damages for loss of parental consortium."

In referring to its fear of what it terms "litigation without end," however, the court neither justified this fear of increased litigation, nor distinguished its prior holdings that invalidated the proliferation of claims as grounds for denying the danger rule the courts and juries can objectively determine... viable plaintiffs.

Id. at 554.  
167. See supra notes 161-63 and accompanying text.  
168. See supra notes 164-66 and accompanying text. Furthermore, the loss-of-consortium claim is much more limiting on its face. Unlike emotional distress, a loss-of-consortium claim depends on a preexisting relationship between the claimant and the injured party. An emotional distress claim, on the other hand, is based upon a person witnessing a catastrophe. Consequently, an emotional distress claim is infinitely open-ended, whereas the loss-of-consortium claim is not. Simpson notes that:

Inherent in a court's refusal to permit any new tort claim is the need to delimit the liability for foreseeable injury. This need fosters the fear that, if the parental claim for lost society and companionship is recognized, inevitably the claims of anyone having the slightest connection with the child must be recognized. . . . A parent's relational interest in his child, like a husband's relational interest in his wife, exemplifies the standard against which the genuineness of the relational interest should be measured. A line can be drawn by inquiring into the nature and genuineness of each relational injury, rather than by asking whether a prospective class of plaintiffs—aunts, uncles, cousins, friends—will be foreseeably injured.

Simpson, supra note 132, at 926.  
169. Salin v. Kloempken, 322 N.W.2d 736, 739 (Minn. 1982).  
170. Id. at 741.  
171. Id. at 739.
recognition of a new cause of action. In fact, one study found that "the dire consequences put forward as justifications for denying recovery do not appear to occur." Defense lawyers in Wisconsin, where a parent's right to loss of consortium has existed since 1975, responded to a survey by affirming almost unanimously that the availability of loss-of-consortium damages has not opened the floodgates to litigation. Courts can guarantee that such feared results will not occur by allowing parental loss-of-consortium damages only when the child's mental faculties are severely limited. Such a requirement would be consistent with the court's holding in Salin, where the plaintiffs were the children of a mentally sound father who had been rendered a quadriplegic. Because most consortium elements are mental or emotional, it makes sense to provide the cause of action only for parents of children who are mentally injured.

172. Miller v. Monsen, 37 N.W.2d 543 (Minn. 1949). In recognizing a parent's right to recover for loss of consortium where a third party intentionally interferes with the family relationship, the court said:

There is no merit to the contention that allowance of recovery in cases of this kind would produce a flood of litigation of the same sort. Assuming it to be true that to allow a right of recovery would increase litigation, that fact would be no valid reason for denying the right, for the plain reason that, if such enticement constitutes a legal wrong, there should be a remedy to obtain redress.

Id. at 546 (emphasis added).


175. Alexander, supra note 50, at 352. Additionally, defense lawyers reported that other feared results such as increased insurance costs, difficulty in determining damages, and fear of double recovery have not occurred. Id.


177. See infra note 178. Were proliferation of claims and potential for fraud realities, however, the court's reliance on them to deny a cause of action would still violate its own precedent. In Miller v. Monsen, 37 N.W.2d 543 (Minn. 1949), the supreme court held that neither the possibility of increased litigation nor the difficulty in assessing damages is a valid reason for denying an otherwise legitimate claim. Id. at 546. Interestingly, the court in Salin cited Monsen for the proposition that "courts . . . should strive continually to develop the common law in accordance with our own changing society," Salin v. Kloempken, 322 N.W.2d 736, 741 (Minn. 1982), but ignored the most essential directives of Monsen: "if [the third party's action] constitutes a legal wrong, there should be a remedy to obtain redress." Monsen, 37 N.W.2d at 546.
3. Independent Assessment of Parent's Loss-of-Consortium Claim

For the reasons stated, it is incorrect for courts to conclude either that the "social costs" of recognizing a parent's loss-of-consortium claim would be substantial, or that the burden of paying these costs would be inappropriately "borne by the public." In actuality, the decision to deny such a claim unfairly leaves the entire burden of the damaged relationship on the parent. Therefore, Minnesota courts should rely on their precedents protecting the parent-child relationship in other contexts, and compensate a parent who loses his or her relationship with a child through the negligence of another.

Certainly legislatures and courts must continue to limit the reaches of tort liability, addressing the increased insurance premiums and attorneys' fees that have become a reality in modern society. Yet given the way society values the parent-child relationship and the methods available to limit parental loss-of-consortium claims to a finite and deserving set of plaintiffs, it is anomalous for Minnesota courts to draw the loss-of-consortium line short of the parent-child relationship. Accordingly, Minnesota courts should recognize that Salin limits only a child's claim for loss of consortium, and should reconsider the court of appeals' out-of-hand rejection of a parent's claim for loss of consortium with a child who is severely limited by a mental injury. In addition, given its recognition of a child's value to a parent in other contexts, the Minnesota Supreme Court stated, "[a]ssuming it to be true that to allow a right of recovery would increase litigation, that fact would be no valid reason for denying the right, for the plain reason that, if such [wrongful act] constitutes a legal wrong, there should be a remedy to obtain redress." Monsen, 37 N.W.2d at 546.
Court should reconsider its holding that children cannot recover loss-of-consortium damages with a parent severely limited by mental injury, and disregard its own dicta that it will not recognize loss-of-consortium claims outside the spousal relationship.

CONCLUSION

Minnesota courts recognize loss of consortium when a tortfeasor intentionally or negligently damages the spousal relationship through injury or death. The courts also recognize loss of consortium when a tortfeasor intentionally damages the parent-child relationship through injury, or negligently or intentionally damages it through death. Therefore, neither precedent nor policy justifies the courts' unwillingness to recognize a similar claim when a tortfeasor negligently damages the parent-child relationship by causing severe injury to a child. Minnesota courts already recognize that the true value of this relationship is found in the aid, comfort, and society provided by the child to the parent. Thus, when a person suffers the real loss of such a socially important relationship through the negligence of another, tort law compels and requires a like remedy.