NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

DIVISION ONE
FILED: 10-21-2010
RUTH WILLINGHAM, ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

SUSAN BERK; GAVRIELLA BERK through Guardian Ad Litem Susan Berk; and RUTH BERK through Guardian Ad Litem Susan Berk, Plaintiffs/Appellants, v. RABBI WILLIAM C. BERK, an individual; JUDITH ENGELMAN, M.D., an individual; HOWARD MARKSON, an individual; REBECCA RUBIN, an individual; KATHY HOFFMAN, an individual, Defendants/Appellees.	1 CA-CV 09-0683 DEPARTMENT E **MEMORANDUM DECISION** (Not for Publication - Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court in Maricopa County

Cause No. CV2007-052724

The Honorable Robert A. Budoff, Judge

AFFIRMED

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H A L L, Judge

¶1 Susan Berk and her daughters, Ruth and Gavriella Berk, (collectively, plaintiffs) appeal from the trial court's ruling granting summary judgment in favor of William Berk, Judith Engelman, M.D., Howard Markson, Rebecca Rubin, and Kathy Hoffman (collectively, defendants). For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 The following facts are undisputed. In the fall of 2006, Susan and William and their two minor daughters, Ruth and Gavriella, were living in Israel. In October 2006, Susan took the Berks' oldest daughter, Ruth, to the hospital with complaints of a painful abdominal mass, hot flashes, and a low-grade fever. Over the next six weeks, Ruth was evaluated by numerous specialists at two hospitals and had extensive tests and procedures performed to determine the cause of her symptoms. The doctors were unable to locate an "organic" cause for Ruth's symptoms and concluded that they were "subjective" and psychologically based. During this time, Gavriella also became ill with complaints of severe nausea and a low-grade fever.

¶3 Professor Dan Engelhard, the chair of the pediatric department at the University Hospital Hadassah Ein Kerem, contacted one of Ruth's Arizona doctors and learned that Ruth had suffered similar symptoms two years earlier that also resulted in a lack of physical findings and a "suspicion of a mental pathology in the family." Thereafter, Dr. Engelhard arranged a conference with Susan, William, two other pediatricians, and a social worker. He informed the Berks that he was recommending a family psychological evaluation and referring the matter to the local social services authority.

Immediately thereafter, Susan removed Ruth from the hospital and returned to Arizona with her daughters.

¶4 When William returned to Arizona, he met with a friend and member of his religious congregation, Howard Silverman, M.D., to discuss his daughters' health and the Israeli doctors' recommendations for a psychological evaluation. Dr. Silverman informed William that he suspected Susan suffered from Munchausen by Proxy.[1] William then met with another friend and member of his congregation, Judith Engleman, M.D., who stated that she also suspected Susan may suffer from Munchausen by Proxy.

¶5 Shortly thereafter, Dr. Engleman contacted several of Susan's friends to arrange an "intervention" in which they would express their concerns with regard to Susan's mental health and encourage her to voluntarily submit to a psychological evaluation and counseling. On December 16, 2006, the Berks' marriage counselor, Rebecca Rubin, called Susan and suggested holding a meeting with William at Dr. Engelman's home to discuss

[1] Munchausen is defined as "a condition characterized by habitual presentation for hospital treatment of an apparent acute illness, the patient giving a plausible and dramatic history, all of which is false." Dorland's Illustrated Medical Dictionary 1635 (28th ed. 1994). Munchasuen by Proxy is defined as "a form of child abuse in which a parent fabricates medical disorders in a child and either obtains unnecessary medical treatments or harms the child through extreme hygienic practices or attempts to treat the imagined disorders at home." *Id*.

the Berks' marital problems and determine whether a reconciliation was possible.

¶6 That evening, Susan drove to Dr. Engelman's home. After Dr. Engelman closed the front door, Susan was "confronted" by Dr. Engelman, William, Kathy Hoffman, Cori Rosen, Rebecca Rubin, and Sharona Silverman. Dr. Engelman then informed Susan that her repeated claims that the Berks' children were physically ill "was really a desperate plea for [help for] herself." Dr. Engelman told Susan that she was harming her children and that they would continue to be psychologically damaged if she refused to deal with her own mental health issues. Dr. Engelman then stated that she had arranged for Susan to be transported to the hospital for three days of in-patient counseling and that Susan would then be transferred to a psychiatric facility in Tucson for thirty days of additional counseling.

¶7 When Dr. Engelman concluded speaking, Hoffman and Rosen, Susan's close friends, each told Susan that they also believed she was harming her children and encouraged her to receive psychiatric treatment. Rubin then addressed Susan and stated that she believed Susan was ill and harming her children because of unresolved childhood problems. Silverman, another member of the Berks' religious congregation, then spoke and

stated that she believed Susan was mentally ill and needed psychiatric treatment. Finally, William expressed his belief that the Berks' daughters had not been ill and that Susan "had made it up so that Ruth and Gavriella [] thought that they were sick, even though they were not."

¶8 When Engelman, Hoffman, Rosen, Rubin, Silverman, and William finished speaking, Susan stated that she would go to the hospital. Harry Rubinoff and Howard Markson then emerged from another room to escort Susan to a waiting vehicle and transport her to the hospital. Upon arriving at the hospital, Rubinoff and Markson told Susan to leave her purse and other belongings in the car and escorted her inside. Susan then signed numerous forms and was voluntarily admitted to the hospital.

¶9 Later that evening, Susan requested to be released from the hospital. Before she could be discharged, however, William filed an application for her involuntary evaluation, which was granted by the superior court. Susan was then transferred by police escort from the hospital to a psychiatric facility. On the morning of December 18, shortly after her psychiatric evaluation was conducted, Susan was released from the facility. Upon her release, William applied for an order of protection against Susan on behalf of the Berk children and

Susan was unable to communicate with or visit the children without supervision until January 2, 2007.

¶10 On October 15, 2007, plaintiffs filed a complaint against William, Dr. Engelman, Howard Markson, Rebecca Rubin, Cori Rosen, Kathy Hoffman, Sharona Silverman, and Harry Rubinoff. Plaintiffs alleged that (1) Dr. Engelman committed negligence/medical malpractice; (2) defendants conspired to commit false imprisonment; (3) defendants intentionally inflicted emotional distress upon them; (4) William committed libel; (5) defendants committed slander; (6) William committed false light invasion of privacy; (7) all defendants committed false light invasion of privacy; and (8) Susan and her daughters experienced a loss of consortium with each other as a result of defendants' actions.

¶11 After approximately twenty months of discovery and protracted motions practice, the trial court entered summary judgment in favor of defendants.[2] In pertinent part, the trial court found that: (1) defendants' conduct was not extreme and

[2] Before the trial court ruled on defendants' motions for summary judgment, defendants Rosen, Silverman, and Rubinoff reached a settlement with plaintiffs and were dismissed from the litigation. Dr. Engelman did not file a motion for summary judgment on the claim of medical malpractice and that claim, alone, survived the summary judgment rulings. The signed order from which plaintiffs appealed is a final judgment on the remaining counts pursuant to Arizona Rule of Civil Procedure (Rule) 54(b).

outrageous and therefore failed to meet the standard for intentional infliction of emotional harm; (2) plaintiffs failed to present any evidence that William "specifically said" that Susan suffered from Munchausen by Proxy to demonstrate slander; (3) plaintiffs failed to present evidence that William acted with malice or published statements to meet the standard for false light invasion of privacy; (4) plaintiffs failed to present evidence that Dr. Engleman made slanderous statements; (5) Hoffman's statements regarding Susan to her husband are protected as privileged; (6) Markson's statement that Susan is "crazy" does not constitute slander or false light invasion of privacy; (7) Rubin's statement regarding Susan's childhood issues are true and therefore not slanderous; (8) plaintiffs failed to present evidence that Rubin published any statement about Susan to meet the standard for false light invasion of privacy; (9) loss of consortium is a derivative claim and therefore does not survive as all other claims are dismissed.[3]

[3] As to Dr. Engelman, the trial court found that there was no evidence that plaintiffs had suffered any severe or disabling emotional injury that would support a loss of consortium claim.

¶12 Plaintiffs timely appealed[4] and we have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) section 12-2101(B) (2003).[5]

DISCUSSION

I. Refusal to Postpone Ruling on Summary Judgment Motions Until Plaintiffs Completed Additional Depositions

¶13 Plaintiffs contend that the trial court erred by denying their motion, filed pursuant to Rule 56(f), to postpone ruling on defendants' motions for summary judgment until plaintiffs deposed William, Markson, and Rubinoff. We review a trial court's denial of Rule 56(f) relief for an abuse of discretion. *Maricopa County v. Kinko's, Inc*., 203 Ariz. 496, 501, ¶ 19, 56 P.3d 70, 75 (App. 2002).

¶14 On December 5, 2008, plaintiffs' original trial attorney, Eric H. Krich, filed a motion to withdraw as counsel. On December 10, 2008, William responded to the motion and stated that he did not object to counsel's withdrawal from representation to the extent it did not interfere with his deposition already scheduled for January 6 and 7, 2009. William explained that he was traveling to the United States from Israel

[4] On appeal, plaintiffs do not challenge the trial court's entry of summary judgment on the claims of libel and conspiracy to commit false imprisonment.

[5] Although the notice of appeal includes the denial of the motion for new trial, plaintiffs raise no argument challenging the denial of their request for new trial.

for that deposition and did not intend to return "during the remainder of the discovery phase." On December 10, 2008, the trial court granted Krich's motion to withdraw as counsel "as it is with the approval of Plaintiff." The trial court further ordered that "all previously scheduled proceedings, including depositions, are affirmed as Plaintiff has agreed to the withdrawal of her counsel. Plaintiff will be expected to participate in all currently scheduled proceedings including depositions."

¶15 On December 12, 2008, Susan filed a pro per motion requesting that the trial court vacate its order allowing counsel to withdraw and postpone all depositions until they obtained new representation. On December 23, 2008, the trial court ordered that William's deposition "shall occur as scheduled . . . as he is traveling to the United States from Israel for the deposition and for other events and it is unknown at this time as to when in the future he will be able to appear other than at that time."

¶16 On December 30, 2008, Lawrence J. Marks filed a notice of his appearance in the matter on behalf of plaintiffs. The following day, Marks filed a motion requesting to postpone William's deposition because he was scheduled to be in trial on January 7, 2009. On January 5, 2009, the trial court denied

Marks' motion and ordered that William's deposition would proceed as scheduled on January 6, 2009. The trial court also stated that "upon appropriate Motion with good cause being shown," the court would consider a subsequent request by the plaintiffs to depose William "at a later time."[6]

¶17 On January 22, 2009, William filed a motion for partial summary judgment. At a status conference held February 18, 2009, the trial court ordered that all defendants' motions for summary judgment must be filed by March 13, 2009 and that plaintiffs' responses must be filed by May 11, 2009. On May 11, 2009, plaintiffs filed numerous responding motions to defendants' various motions for summary judgment. Plaintiffs also filed a motion requesting that the trial court postpone ruling on any of the motions for summary judgment until plaintiffs' counsel "has been able to depose [William, Markson, and Rubinoff] and submit any other material evidence." Plaintiffs also requested that the court grant them the opportunity to depose William. In his signed affidavit attached to the motion, Marks averred that he needed to depose William "to find out much more about the plans and arrangements made for the 'intervention,' as well as his involvement with the doctors in Israel, what evidence he has, if any, to determine that his

[6] Willaim was deposed as scheduled on January 6, 2009 and was questioned at length by counsel for the other defendants.

wife [had] any problems that might justify coercing a hospital stay, . . . and his motivations for attempting this intervention, petition for involuntary evaluation and order of protection keeping their children away from their mother."

¶18 On May 19, 2009, the trial court denied plaintiffs' motion as untimely. The trial court stated in relevant part:

> In open Court on February 18, 2009, with Plaintiff's counsel present, a briefing schedule was entered relative to Motions for Summary Judgment that had previously been filed by Defendants. The briefing schedule was quite liberal and was only adopted with the agreement of respective counsel. The briefing schedule required that Defendants' Responses to the Motions for Summary Judgment would be due May 11, 2009, with Replies due May 29, 2009, and with Oral Argument scheduled June 12, 2009. Plaintiff's counsel did not make any motion to extend any of the timeframes until the actual date that the Responses were due.
>
> The Court recognizes that Plaintiff's Motion does not actually seek the postponement of time to file its Response, but only that the Court delay ruling on the Motion for Summary Judgment. The Court, of course, will not rule on the Motion for Summary Judgment until the oral argument has taken place on June 12, 2009, which is 32 days from the date of Plaintiff's filing of the Motion to Postpone Rulings.
>
> The second part of Plaintiff's Motion is to be able to take the deposition of William Berk. The Court concedes that the taking of Defendant Berk's deposition is important but it is noted that no request for the taking of the deposition was made to the Court, again, until May 11, 2009, which was the

> deadline set forth by the Court for the filing of Responses to the Motion for Summary Judgment. Defendant Berk's deposition was previously taken and it appears that Plaintiff's counsel seeks now to reconvene this deposition. The Court would be inclined to allow same to occur but it is not a basis that this Court accepts at this juncture to delay the summary judgment proceeding that has already been scheduled.

¶19 Relying on *Simon v. Safeway, Inc*., 217 Ariz. 330, 173 P.3d 1031 (App. 2007), plaintiffs argue that the trial court abused its discretion in denying their Rule 56(f) motion because they set forth in their motion the information they were looking for and their plan for obtaining that information. In *Simon*, the plaintiff filed a lawsuit against a grocery store after he was allegedly injured by one of the store's security personnel. *Id*. at 332, ¶ 2, 173 P.3d at 1033. The grocery store filed a motion for summary judgment and the plaintiff filed a motion requesting that the trial court defer its ruling until he conducted additional discovery. *Id*. at 333, ¶ 3, 173 P.3d at 1034. The plaintiff stated that he needed additional "time to investigate the nature of Safeway's and [the security officer's] employment relationship" and stated that he believed conducting three additional depositions would provide him with the sought-after information. *Id*. at 333, ¶ 7, 173 P.3d at 1034. We held that the trial court abused its discretion in denying the plaintiff's motion because he explained the information he

sought and the manner in which he intended to obtain it, and other evidence in the record supported his "claim that a master-servant relationship existed so that Safeway could be liable under a theory of respondeat superior." *Id*. at 333, ¶ 8, 173 P.3d at 1034.

¶20 In reaching this conclusion, however, we expressly noted that "[t]here was no suggestion that [the plaintiff] had not been diligent in attempting to obtain this evidence." *Id*. at 333, ¶ 7, 173 P.3d at 1034. Indeed, we stated that "[t]he major objective of Rule 56(f) is to insure that a diligent party is given a reasonable opportunity to prepare his case." *Id*. at 333, ¶ 6, 173 P.3d at 1034 (internal quotations omitted).

¶21 In contrast to *Simon*, plaintiffs here were not diligent in pursuing the sought-after information. Instead, plaintiffs' counsel did not attend William's scheduled deposition that commenced on January 6, 2009 because he had a trial scheduled to begin on January 7, 2009. Plaintiffs were aware that William would otherwise be out of the country and unavailable for an in-person deposition at a later date. Moreover, although the trial court ordered William's deposition to proceed as scheduled, the court informed plaintiffs it would consider ordering him to submit to another deposition upon a showing of good cause. Plaintiffs, however, failed to make such

a request until the day their responses to defendants' motions for summary judgment were due.

¶22 In addition, although Susan claims that William manufactured his claim that Susan has a mental illness as a way of "getting rid of her," there is no evidence in the record, other than her deposition testimony, to suggest that William did not proceed with the intervention, involuntary commitment order, and order of protection with the belief that she suffers from a mental illness. *Cf. Simon*, 217 Ariz. at 333, ¶ 7, 173 P.3d at 1034 (holding the trial court abused its discretion by refusing to postpone ruling on the summary judgment motion until further depositions were conducted because the record supported the movant's claim).

¶23 More importantly, even if William had ulterior motivations for asserting that Susan suffers from a mental illness, as discussed below, numerous doctors concluded that Susan did have a mental illness and was harming her children, such that William's claim cannot be deemed knowingly false, reckless, or negligent. Therefore, even if Susan had evidence of William's alleged motivations, it would be insufficient to defeat defendants' motions for summary judgment. Under these circumstances, we cannot conclude that the trial court abused

its discretion by denying the plaintiffs' Rule 56(f) motion and request to depose William as untimely.

II. Summary Judgment in Favor of Defendants

¶24 A court shall grant summary judgment when "there is no genuine issue as to any material fact and [] the moving party is entitled to judgment as a matter of law." Ariz. R. Civ. P. 56(c). Summary judgment should be granted, "if the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense." *Orme Sch. v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990). If the evidence would allow a jury to resolve a material issue in favor of either party, summary judgment is improper. *United Bank of Ariz. v. Allyn*, 167 Ariz. 191, 195, 805 P.2d 1012, 1016 (App. 1990).

¶25 In reviewing a summary judgment, our task is to determine de novo whether any genuine issues of material fact exist and whether the trial court incorrectly applied the law. *L. Harvey Concrete, Inc. v. Agro Constr. & Supply Co.*, 189 Ariz. 178, 180, 939 P.2d 811, 813 (App. 1997). We review the facts in the light most favorable to the party against whom summary judgment was entered, *Riley, Hoggatt & Suagee, P.C. v. English*,

177 Ariz. 10, 12-13, 864 P.2d 1042, 1044-45 (1993), and will affirm the entry of summary judgment if it is correct for any reason. *Glaze v. Marcus*, 151 Ariz. 530, 538, 729 P.2d 342, 344 (App. 1986).

A. Slander Claim

¶26 Susan contends the trial court erred by granting summary judgment in favor of defendants on her claim of slander. Specifically, she argues that defendants' statements that they believed she had a mental illness and was causing her daughters to believe that they had fictitious illnesses were false and impugned her reputation.[7]

¶27 To prevail on her slander claim, Susan was required to prove that defendants made a false and defamatory communication about her and that they (1) knew the statement was false, or (2) acted in reckless disregard of its falsity, or (3) negligently failed to ascertain the falsity of the statement. *Rowland v. Union Hills Country Club*, 157 Ariz. 301, 306, 757 P.2d 105, 110 (App. 1988) ("One who publishes a false and defamatory communication concerning a *private* person . . . is subject to liability, if, but only if, he (a) knows that the statement is false and it defames the other, (b) acts in reckless disregard of these matters, or (c) acts negligently in failing to

[7] As to defendant Rubin, Susan contends that her statements about Susan's difficult childhood were slanderous.

ascertain them.") (quoting Restatement (Second) of Torts § 580(B) (1977)); *see also Peagler v. Phoenix Newspapers, Inc.*, 114 Ariz. 309, 315, 560 P.2d 1216, 1222 (1977) (adopting Restatement of Torts § 580(B) as the Arizona standard for slander).

¶28 The record reflects that Susan has repeatedly stated that she and her daughters suffer from illnesses that were never found to have a medical basis and has adamantly pursued medical tests and procedures related to these illnesses. In the summer of 1998, Susan began complaining of fatigue, slurred speech, and weakness in her legs. After performing numerous tests and procedures, the various doctors Susan consulted with were unable to discern a medical basis for her symptoms. Indeed, the health care providers she visited at UCLA suggested that her symptoms were psychological rather than physically based. Susan, however, concluded that she suffers from multiple sclerosis and she frequently discussed her symptoms and perceived illness with members of the Berks' religious congregation.

¶29 In December 2003 and January 2004, Ruth was repeatedly hospitalized for abdominal pain. After Ruth's initial tests revealed no abnormality, Susan began "advocating for more serious medical intervention." Susan requested that the doctors perform "exploratory surgery" and also remove Ruth's appendix,

which they did, revealing no medical abnormalities. At that point, William began to be concerned that "we were dealing with something psychological."

¶30 In January 2006, Gavriella was hospitalized with complaints of abdominal pain. As reflected in Gavriella's discharge summary, Susan was "quite insistent that Gavriella have an exploratory laparotomy." Gavriella's appendix was removed and determined normal with no pathology.

¶31 The record also reflects that the Israeli doctors who treated Ruth conducted extensive tests, found no physical evidence of illness, concluded that "there is something pathological and emotional in the family," and recommended psychological evaluations. Indeed, several doctors suspected Susan suffered from Munchasuen By Proxy and Dr. Engelhard opined that Susan was "suggesting to Ruth that she felt unwell and/or truly believed her to be unwell and Ruth, accordingly, was imagining herself to be unwell."

¶32 In response to defendants' evidence that numerous doctors believed Susan was the cause of her daughters' illnesses, Susan notes that one of the Berk daughters' Arizona pediatricians, Harold Magalnick, M.D., specifically stated that he did not believe Susan suffers from Munchasuen By Proxy. Susan's reliance on Dr. Magalnick's statement is misplaced,

however, because he did not make the statement until December 22, 2006 and defendants were therefore not aware of his countervailing viewpoint until after the conduct at issue had occurred.[8] In addition, we note that Dr. Magalnick also stated that he believed Ruth suffers from a syndrome that is emotionally/environmentally based and that counseling/therapy is appropriate.

¶33 Moreover, the record reflects that Susan shared her family's medical experiences with her friends and fellow congregants, including the doctors' opinions that their symptoms are psychological in nature. Based on this record, we conclude that defendants neither recklessly nor negligently stated a belief that Susan may suffer from a mental illness that is causing her daughters to experience symptoms of illness and disease. Therefore, we affirm the trial court's dismissal of the slander claim.

B. False Light Invasion of Privacy Claims

¶34 Susan contends that the trial court erred by granting summary judgment in favor of defendants on her claims of false light invasion of privacy. To establish a claim for false light invasion of privacy, a plaintiff is required to show that the defendant knowingly or recklessly gave publicity to a matter

[8] Dr. Magalnick wrote a letter addressing this issue on December 22, 2006, at Susan's request.

that places the plaintiff in a false light that a reasonable person would find highly offensive. *Godbehere v. Phoenix Newspapers, Inc.*, 162 Ariz. 335, 340, 783 P.2d 781, 786 (1989) (explaining the plaintiff "must prove that the defendant published with knowledge of the falsity or reckless disregard for the truth"); Restatement (Second) of Torts § 652E (1977).

¶35 As explained above, based on this record, we conclude that defendants neither recklessly nor negligently stated a belief that Susan may suffer from a mental illness that is causing her daughters to experience symptoms of illness and disease. We therefore affirm the trial court's dismissal of these claims.[9]

C. Intentional Infliction of Emotional Distress

¶36 Plaintiffs argue that the trial court erred by granting summary judgment in favor of defendants on plaintiffs' claim for intentional infliction of emotional distress. Arizona has adopted the Restatement (Second) of Torts § 46 (1965), which sets forth the elements of an intentional infliction of emotional distress claim:

> [*F*]*irst*, the conduct by the defendant must be "extreme" and "outrageous;" *second*, the defendant must either intend to cause

[9] Based on our resolution of this issue, we deny Plaintiffs' motion for leave to file a supplemental memorandum regarding the number of persons required to establish publicity.

> emotional distress or recklessly disregard the near certainty that such distress will result from his conduct; and *third*, severe emotional distress must indeed occur as a result of defendant's conduct.

Ford v. Revlon, Inc., 153 Ariz. 38, 43, 734 P.2d 580, 585 (1987). To prove a claim for intentional infliction of emotional distress, "[a] plaintiff must show that the defendant's acts were 'so outrageous in character and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community.'" *Mintz v. Bell Atl. Sys. Leasing Int'l, Inc.*, 183 Ariz. 550, 554, 905 P.2d 559, 563 (App. 1995). The conduct must "fall[] at the very extreme edge of the spectrum of possible conduct." *Watts v. Golden Age Nursing Home*, 127 Ariz. 255, 258, 619 P.2d 1032, 1035 (1980).

¶37 The record reflects that numerous doctors recommended that Susan and the Berk family obtain psychological evaluations. We agree with the trial court that, as a matter of law, defendants' "intervention" to implore Susan to obtain such an evaluation or any subsequent statements that they believed Susan suffered from a mental illness were not so outrageous and extreme as to support a claim for intentional infliction of emotional distress. Nor does the alleged "failure" of defendants to take steps to lessen any trauma suffered by the

Berk daughters at the separation from their mother following the intervention provide adequate support for their claims. Indeed, on appeal, plaintiffs have abandoned their claims regarding false imprisonment and libel, which allegedly formed the basis for the claimed harm. We therefore affirm the trial court's dismissal of this claim.

D. Loss of Consortium

¶38 Finally, plaintiffs assert that the trial court erred by granting summary judgment in favor of defendants on plaintiffs' claim of loss of consortium. A loss of consortium claim is a derivative claim. *Barnes v. Outlaw*, 192 Ariz. 283, 285-86, ¶ 8, 964 P.2d 484, 486-87 (1998). Thus, to establish a claim for loss of consortium, plaintiffs were required to prove each of the elements of at least one of the underlying causes of action.

¶39 As discussed above, plaintiffs failed to prove any of their underlying claims. Moreover, although plaintiffs' claim of medical malpractice against Dr. Engleman survived the summary judgment proceedings, none of the "separation" that allegedly contributed to their loss can be attributed to Dr. Engleman's conduct in helping obtain Susan's admission to the hospital. Susan voluntarily admitted herself to the hospital and was free to leave at any time until William obtained the involuntary

commitment order.[10] Therefore, even if Dr. Engleman is found liable on the medical malpractice claim, plaintiffs are not entitled to loss of consortium damages on that basis. Thus, we affirm the trial court's dismissal of this claim.

CONCLUSION

¶40 For the foregoing reasons, we affirm the trial court's rulings. Plaintiffs have not prevailed on any claim and we therefore deny their requests for their costs on appeal. We award defendants their taxable costs incurred on appeal upon their compliance with Arizona Rule of Civil Appellate Procedure 21(a).

/s/
PHILIP HALL, Presiding Judge

CONCURRING:

/s/
SHELDON H. WEISBERG, Judge

/s/
PETER B. SWANN, Judge

[10] Indeed, as stated above, plaintiffs have not challenged the trial court's dismissal of their false imprisonment claim on appeal.