

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2013-CA-001897-MR

BRANDON DIAZ, BY AND THROUGH  
his legal guardian ELOISE HALL

APPELLANT

v.

APPEAL FROM PIKE CIRCUIT COURT  
HONORABLE EDDY COLEMAN, JUDGE  
ACTION NO. 13-CI-00489

SUJATA GUTTI, M.D.

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, CHIEF JUDGE; CLAYTON AND KRAMER, JUDGES.

KRAMER, JUDGE: Brandon Diaz, by and through his legal guardian Eloise Hall, asserted a loss of consortium claim against Sujata Gutti, M.D., in Pike Circuit Court. In particular, Brandon alleged that his mother was severely injured and rendered totally incapable of caring for him due to Dr. Gutti's medical negligence.

Thereafter, Dr. Gutti filed a Kentucky Rule of Civil Procedure (CR) 12.02 motion to dismiss arguing that Kentucky does not recognize a child's or parent's loss of consortium claim outside the context of a wrongful death action. The circuit court granted Dr. Gutti's motion and dismissed, and this appeal followed.

We affirm. As to why, we begin by noting what we previously explained in *Goebel v. Arnett*, 259 S.W.3d 489, 492 (Ky. App. 2007):

In *Bayless v. Boyer*, 180 S.W.3d 439 (Ky. 2005), the Supreme Court of Kentucky declined to expand loss of consortium claims beyond the extreme case of a wrongful death action. The Supreme Court cited with approval this court's opinion in *Humana of Kentucky, Inc. v. McKee*, 834 S.W.2d 711 (Ky. App. 1992), in which we, too, declined to recognize a claim for parental loss of consortium *despite proof of serious and permanent injury* to a child.

(Emphasis added.)

To be sure, the case at bar involves a child's claim of loss of parental consortium, rather than a parent's claim of loss of a child's consortium. This is a distinction without a difference, however, because the two claims are reciprocal. *Giuliani v. Guiler*, 951 S.W.2d 318, 321 (Ky. 1997). Accordingly, Kentucky does not recognize either claim beyond the extreme case of a wrongful death action. *See, e.g., Lambert v. Franklin Real Estate Co.*, 37 S.W.3d 770, 779-780 (Ky. App. 2000)<sup>1</sup> (loss of consortium claim available to a child "only in those cases where there is likewise an action for the wrongful death of the parent.").

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<sup>1</sup> In his brief, Brandon has asked for *en banc* review of the holding of *Lambert*, discussed above. Reversing the holding of *Lambert*, however, would conflict with the Kentucky Supreme Court precedent cited above.

The Pike Circuit Court is therefore AFFIRMED.

ALL CONCUR.

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BRIEF AMICUS CURIAE, ON  
BEHALF OF KENTUCKY JUSTICE  
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