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# Supreme Court of Kentucky

2000-SC-0703-DG

**FINAL**  
DATE 11-7-02 E.A.R. Grouth, D.C.

JOHN P. DALEY; AND  
ALLSTATE INSURANCE COMPANY

APPELLANTS

V. ON REVIEW FROM COURT OF APPEALS  
1998-CA-1810  
BOONE CIRCUIT COURT NO. 95-CI-1

JAMES REED, ADMINISTRATOR OF  
THE ESTATE OF ROBIN REED, ET AL.

APPELLEE

AND 2000-SC-0744-DG

ALLSTATE INSURANCE COMPANY

APPELLANT

V. ON REVIEW FROM COURT OF APPEALS  
1998-CA-1810  
BOONE CIRCUIT COURT NO. 97-CI-487

JAMES REED, ADMINISTRATOR OF  
THE ESTATE OF ROBIN REED, ET AL.

APPELLEE

## OPINION OF THE COURT BY JUSTICE COOPER

### REVERSING AND REMANDING

In Moore v. State Farm Mutual Ins. Co., Ky., 710 S.W.2d 225 (1986), we held that a claim for loss of spousal consortium is payable under the "each person" limit, not

the "each accident" limit, of a policy of automobile liability insurance. The issue raised by this appeal is whether that holding applies as well to a claim for loss of parental consortium. We conclude that it does.

Robin Reed was killed when the vehicle she was operating was struck from the rear by a vehicle owned and operated by Appellant John P. Daley. Reed was alone in the vehicle at the time of the accident. Her husband, Appellee James Reed, as administrator of her estate, filed a wrongful death action against Daley in the Boone Circuit Court. KRS 411.130. Upon rendition of this Court's opinion in Giuliani v. Guiler, Ky., 951 S.W.2d 318 (1997), Reed filed an amended complaint, this time as next friend of the Reeds' four minor children, seeking damages for loss of parental consortium. Daley's vehicle was insured by a policy of liability insurance issued by Appellant Allstate Insurance Company. The applicable provisions of that policy are as follows:

**Limits of Liability**

The sum of the coverage limits shown on the declarations page for this coverage for:

1. "each person" is the maximum we will pay for damages arising out of bodily injury to one person in any one motor vehicle accident, including damages sustained by anyone else as a result of that bodily injury.
2. "each accident" is the maximum we will pay for damages arising out of bodily injury to two or more persons in any one motor vehicle accident. This limit is subject to the limit for "each person."

(Emphasis added, original emphasis deleted.)

The declarations page of the policy states the coverage limits as \$100,000 for each person and \$300,000 for each accident.<sup>1</sup> The policy defines "bodily injury" as

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<sup>1</sup> Actually, the declarations page states "300,000 each occurrence." No party to this action suggests that any significance should be given to the variance in the language of the declarations page ("occurrence") and that of the policy ("accident"), presumably because if "occurrence" does not mean "accident," the \$300,000 limit would not apply to any coverage described in the policy.

"bodily injury, sickness, disease, or death." James Reed, as administrator of the estate, settled the wrongful death action for \$100,000, exhausting the coverage limit for "each person." The children assert that their claims for loss of parental consortium are payable from the additional \$200,000 coverage available for "each accident." Relying on Moore, supra, the Boone Circuit Court held that the children's claims fell within the "each person" coverage of Allstate's policy. The Court of Appeals reversed. We now reverse the Court of Appeals and reinstate the Order of the Boone Circuit Court.

We note at the outset that virtually every jurisdiction that has addressed this issue has concluded that loss of consortium is not a separate "bodily injury" but is derivative of the injured party's bodily injury claim; and, thus, a claim for loss of parental consortium falls within the "each person" limit of the policy's coverage. Westfield Ins. Co. v. DeSimone, 247 Cal.Rptr. 291, 295 (Cal. Ct. App. 1988); Conner v. Stanford, 692 So.2d 1146, 1148 (La. Ct. App. 1997); Auto Club Ins. Ass'n v. Lanyon, 369 N.W.2d 269, 271 (Mich. Ct. App. 1985); State Farm Mut. Auto Ins. Co. v. Chambers, 860 S.W.2d 19, 22 (Mo. Ct. App. 1993); Smock v. Hall, 725 N.E.2d 673, 675 (Ohio Ct. App. 1999); Miller v. Public Employees Mut. Ins. Co., 795 P.2d 703, 705-06 (Wash. Ct. App. 1990); Federal Kemper Ins. Co. v. Karlet, 428 S.E.2d 60, 64 (W.Va. 1993); Richie v. American Family Mut. Ins. Co., 409 N.W.2d 146, 148 (Wis. Ct. App. 1987); cf. Lepic v. Iowa Mut. Ins. Co., 402 N.W.2d 758, 765 (Iowa 1987) (parent's claim for loss of child's consortium falls within the "each person" limit). The Court of Appeals' reliance on Giardino v. Fierke, 513 N.E.2d 1168 (Ill. App. Ct. 1987) and Bilodeau v. Lumbermens Mutual Cas. Co., 467 N.E.2d 137 (Mass. 1984) was misplaced. The insurance policy in Giardino defined "bodily injury" as "bodily injury, sickness, disease, death, or loss of services which result from it," 513 N.E.2d at 1172 (emphasis added), whereas Allstate's

policy defines "bodily injury" only as "bodily injury, sickness, disease, or death." And Bilodeau was abrogated within a year of its rendition when the Massachusetts Commissioner of Insurance changed the language of the state's mandatory insurance endorsement for the specific purpose of counteracting the decision in Bilodeau. Liberty Mut. Ins. Co. v. Comm'r of Ins., 481 N.E.2d 1373, 1375 (Mass. 1985); see McNeill v. Metropolitan Prop. & Liab. Ins. Co., 650 N.E.2d 793, 796 (Mass. 1995) (noting that new language superseded Bilodeau interpretation).

The Reed children rely primarily on the statement in Giuliani v. Guiler, supra, that a loss of consortium claim "is independent and separate from a wrongful death action and shall not be treated as a single claim." 951 S.W.2d at 322. Giuliani, however, did not intend by that language to change the law applicable to insurance coverage for loss of consortium claims or to make new law applicable only to claims for loss of parental consortium. In fact, Giuliani specifically cited for its "separate and independent" proposition to Department of Education v. Blevins, Ky., 707 S.W.2d 782, 785 (1986), which used identical language in addressing a claim by parents for the loss of a child's consortium. KRS 411.135. Giuliani and Blevins were both addressing an argument that a loss of consortium claim is essentially subsumed in a wrongful death action. What Giuliani and Blevins both held in that respect was that a claim for loss of consortium in which a survivor seeks damages for the loss of the decedent's companionship, services, etc., is a separate and independent cause of action from a wrongful death claim in which the decedent's estate seeks damages for the loss of the decedent's power to labor and earn money.

Of course, the existence of a cause of action for damages does not mean that those damages are ipso facto recoverable from a particular policy of insurance. See

Kentucky Central Ins. Co. v. Schneider, Ky., 15 S.W.3d 373, 375 (2000). Giuliani and Blevins were construing statutory and common law rights of action, not insurance policies. Of more significance to the issue raised in this case is the additional observation in Blevins that "both the personal injury and loss of consortium claim derive from the same injury." 707 S.W.2d at 785 (emphasis added).

The Reed children attempt to distinguish Moore v. State Farm, supra, because the insurance policy in Moore defined "damages" as including "damages for care and loss of services" whereas Allstate's policy contains no definition of the term "damages." This argument is a distinction without a difference. DeSimone, supra, 247 Cal.Rptr. at 293-94. If the word "damages" in Allstate's policy does not include "damages for care and loss of services," there is no coverage at all for damages for loss of consortium. Regardless, Moore did not rest its holding on the definition of "damages" but on the definition of "bodily injury." 710 S.W.2d at 226.

Under Daley's Allstate policy, damages "arising out of bodily injury to one person in any one motor vehicle accident, including damages sustained by anyone else as a result of that bodily injury," fall within the coverage limit for "each person." Damages for wrongful death and damages for loss of consortium "derive from the same injury." Blevins, supra, at 785. Thus, we conclude that the loss of consortium claims of the Reed children against Daley are derivative of the wrongful death claim of their mother's estate and fall within the "each person" limit of Daley's Allstate policy.

Accordingly, we reverse the Court of Appeals and remand this case to the Boone Circuit Court for a final resolution of the Reed children's claims against Daley.

All concur.

COUNSEL FOR APPELLANT JOHN P. DALEY (2000-SC-0703-DG):

Susanne M. Cetrulo  
Cetrulo & Mowery, P.S.C.  
203 Toebben Executive Center  
541 Buttermilk Pike  
Crescent Springs, KY 41017

COUNSEL FOR APPELLANT ALLSTATE INSURANCE COMPANY  
(2000-SC-0703-DG):

Thomas R. Yocum  
Benjamin Yocum & Heather  
1500 Central Trust Tower  
5 W. Fourth Street  
Cincinnati, OH 45202

COUNSEL FOR APPELLANT ALLSTATE INSURANCE COMPANY  
(2000-SC-0744-DG):

Susanne M. Cetrulo  
Cetrulo & Mowery, P.S.C.  
203 Toebben Executive Center  
541 Buttermilk Pike  
Crescent Springs, KY 41017

Thomas R. Yocum  
Benjamin Yocum & Heather  
1500 Central Trust Tower  
5 W. Fourth Street  
Cincinnati, OH 45202

COUNSEL FOR APPELLEE JAMES REED, ADMINISTRATOR OF THE ESTATE OF  
ROBIN REED, ET AL. (2000-SC-0703-DG):

Eric C. Deters  
Ashley Scott McDavid  
Eric C. Deters & Associates  
300 Buttermilk Pike, Suite 334  
Ft. Mitchell, KY 41017

Stuart Paul Brown  
Bogucki, Knoebel & Vice  
218 Stanley Reed Court  
P.O. Box 277  
Maysville, KY 41056

COUNSEL FOR APPELLEE JAMES REED, ADMINISTRATOR OF THE ESTATE OF  
ROBIN REED, ET AL. (2000-SC-0744-DG):

Eric C. Deters  
Eric C. Deters & Associates  
300 Buttermilk Pike, Suite 334  
Ft. Mitchell, KY 41017

COUNSEL FOR AMICUS CURIAE NATIONAL ASSOCIATION OF INDEPENDENT  
INSURERS (2000-SC-0703-DG AND 2000-SC-0744-DG):

A. Campbell Ewen  
Angela D. Lucchese  
Ewen Kinney & Rosing  
1090 Starks Building  
Louisville, KY 40202

COUNSEL FOR AMICI CURIAE THE ALLIANCE OF AMERICAN INSURERS AND  
THE INSURANCE INSTITUTE OF KENTUCKY (2000-SC-0703-DG AND  
2000-SC-0744-DG):

Douglas L. Hoots  
Landrum & Shouse, LLP  
106 West Vine Street, Suite 800  
Lexington, KY 40507

COUNSEL FOR AMICI CURIAE PROGRESSIVE MAX INSURANCE COMPANY AND  
GRANGE MUTUAL INSURANCE COMPANY (2000-SC-0703-DG AND  
2000-SC-0744-DG):

D. Craig Dance  
Greenebaum Doll & McDonald, PLLC  
Suite 1400, Vine Center Tower  
P.O. Box 1808  
Lexington, KY 40588

Donald L. Miller, II  
Frost Brown Todd, LLC  
400 West Market St. - 32nd Floor  
Louisville, KY 40202

Robert L. Steinmetz  
Laura M. Haara  
Brown, Todd & Heyburn, PLLC  
3200 Providian Center  
400 West Market Street  
Louisville, KY 40202