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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DEREK J. BLOODWORTH,	)	Civil No.11cv1440-DMS (NLS)
	)	
Plaintiff,	)	<b>ORDER DENYING PLAINTIFF'S</b>
v.	)	<b>MOTION REQUESTING</b>
	)	<b>APPOINTMENT OF COUNSEL FOR</b>
E. ROMERO, M.D., et al.,	)	<b>MINOR CHILDREN</b>
	)	
Defendants.	)	[Doc. No. 64.]
	)	

Before the Court is Plaintiff’s motion requesting appointment of counsel for his three minor children in this action. Having considered Plaintiff’s arguments, the Court **HEREBY DENIES** the motion.

**BACKGROUND**

Plaintiff, Derek Bloodworth, proceeding *pro se*, filed this 42 U.S.C. § 1983 civil rights action on June 30, 2011 based on a “near fatal” stroke and subsequent treatment he suffered while in custody at the Imperial County Jail and at the R.J. Donovan Correctional Facility as a pretrial detainee. Plaintiff alleges medical malpractice by medical staff at the jail and at the prison, as well as deliberate indifference to medical need in violation of the Eighth Amendment, and violation of the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395 by the two hospitals that refused to transfer Plaintiff to Sharp Memorial Hospital for further necessary care.

On January 30, 2012, Plaintiff filed a motion to appoint counsel for his three minor children.

1 **DISCUSSION**

2 Plaintiff asserts his children have been deprived of their “constitutional right to familial  
3 association, society, and companionship, in violation of the Fourteenth Amendment.” [Doc. No. 64  
4 at 4.] Plaintiff further describes the children’s loss as “[deprivation of] the care, companionship, and  
5 emotional support of their father and have experienced and continue to experience great mental and  
6 emotional pain and suffering.” Essentially, Plaintiff seeks appointment of counsel for his children to  
7 assist them in a loss of consortium claim.

8 Although the Court recognizes that a parent cannot bring a lawsuit on behalf of a minor in  
9 federal court without retaining a lawyer, such appointment is inappropriate in this case for the reasons  
10 stated below. *See Johns v. County of San Diego*, 114 F.3d 874, 877 (9th Cir. 1997) (parent cannot  
11 bring lawsuit on behalf of minor without lawyer) citing *Osei-Afryie v. Medical College*, 937 F.2d 876,  
12 882-83 (3d Cir. 1991); *Cheung v. Youth Orchestra Found. of Buffalo, Inc.*, 906 F.2d 59, 61-62 (2d.  
13 Cir. 1990); *Meeker v. Kercher*, 782 F.2d 153, 154 (10th Cir. 1986) (per curium).

14 In the first instance, not only are Plaintiff’s children not named as parties in the Complaint but  
15 Plaintiff has asserted no derivative claims in his Complaint. Plaintiff’s First Amended Complaint  
16 included causes of action for negligence, intentional infliction of emotional distress, medical  
17 malpractice, and cruel and unusual punishment. In fact, this motion is the first time Plaintiff has raised  
18 the issue of his children’s interests.

19 Additionally, appointment of counsel for the minor children would be futile as they do not  
20 have a viable loss of consortium claim. “An individual’s capacity to sue is determined by the law of  
21 the individual’s domicile.” *Johns*, 114 F.3d at 877. Under California law, children cannot maintain  
22 a cause of action for loss of parental consortium. *Borer v. American Airlines, Inc.*, 19 Cal.3d 441, 444  
23 (1977). In *Borer*, the nine children of Patricia Borer sought damages for loss of their mother’s  
24 services, society, companionship, affection, tutelage, direction, guidance, instruction, and aid in  
25 personality development when she was struck by a lighting fixture cover at the American Airlines  
26 terminal at Kennedy Airport. *Id.* at 445. The court concluded that the payment of damages for loss  
27 of consortium of a parent “neither truly compensates for such loss nor justifies the social cost in  
28 attempting to do so.” *Id.*

1 In reaching this conclusion, the court discussed several policy reasons which opposed  
2 extending liability to cover the parent-child context:


3 “Loss of consortium is an intangible, nonpecuniary loss; monetary compensation will not  
4 enable plaintiffs to regain the companionship and guidance of a mother; it will simply establish  
5 a fund so that upon reaching adulthood, when plaintiffs will be less in need of maternal  
6 guidance, they will be unusually wealthy men and women. To say that plaintiffs have been  
7 ‘compensated’ for their loss is superficial; in reality they have suffered a loss for which they  
8 can never be compensated; they have obtained, instead, a future benefit essentially unrelated  
9 to that loss.” *Id.* at 447.

10 Moreover, the court in *Borer* was concerned that the public would be burdened with higher  
11 insurance premiums, and that the cost of administration would be expensive, because every injury to  
12 a parent would trigger an action for loss of consortium. Further, the court reasoned that the difficulty  
13 in defining and quantifying damages would lead to a risk of double recovery: “to ask the jury, even  
14 under carefully drafted instructions, to distinguish the loss to the mother from her inability to care for  
15 her children from the loss to the children from the mother’s inability to care for them may be asking  
16 too much.” *Id.* at p. 448. Considering these factors, the court concluded there were strong reasons  
17 for refusing to recognize the parental consortium cause of action. *Id.*

18 Thus, under existing California law, Plaintiff’s minor children have no claim for loss of  
19 consortium. Accordingly, the Court **DENIES** Plaintiff’s motion requesting appointment of counsel  
20 for his minor children.

21 **IT IS SO ORDERED.**

22 DATED: February 9, 2012

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Hon. Nita L. Stormes  
U.S. Magistrate Judge  
United States District Court