

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
STEPHANIE A. GALLAGHER
UNITED STATES DISTRICT JUDGE

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February 26, 2021

LETTER MEMORANDUM

Re: Derrell Cooper v. Kelsey J. Benedict
Civil Case No. SAG-20-3475

Dear Parties:

I have reviewed Defendant's unopposed motion, ECF 9, in which Defendant seeks to dismiss Count II (Assault), Count VI (Loss of Consortium), and the demands for attorneys' fees from Plaintiff's Complaint. Defendant correctly notes that Count II is time-barred, because the Complaint was filed more than one year from the alleged assault. *See* Md. Code, Cts. & Jud. Proc., § 5-105 (providing a one-year statute of limitations for civil assault claims). Further, Defendant correctly notes that the Complaint's allegations do not state a plausible claim for loss of consortium, because Plaintiff does not allege the required spousal or marital relationship. *See Oaks v. Connors*, 339 Md. 24, 34, 660 A.2d 423, 428 (1995). Thus, Counts II and VI are properly dismissed.

However, this Court will decline to assess at this early stage what damages might be available to Plaintiff if he should prevail on one or more of his claims. While Defendant correctly summarizes the law relevant to the availability of attorneys' fees in conjunction with the claims Plaintiff asserts, questions regarding potential damages are not well-suited to disposition on a Rule 12(b)(6) motion to dismiss for failure to state a claim. Because several of Plaintiff's substantive counts were not challenged as to their viability, those counts will proceed to discovery. Plaintiff will be free, of course, to oppose the request for attorneys' fees at a later stage in the litigation.

For the reasons set forth herein, Defendant's unopposed Motion to Dismiss, ECF 9, will be GRANTED in part as to Counts II and VI and DENIED in part as to the motion to dismiss the demand for attorneys' fees. A separate order follows.

Sincerely yours,

/s/

Stephanie A. Gallagher
United States District Judge