

STATE OF MICHIGAN
COURT OF APPEALS

REBECCA KIK and ROBERT KIK, individually,
and as Personal Corepresentatives of the
Estate of SHARON ANN LEELANI KIK,
deceased,

Plaintiffs-Appellees,

v

JOHN-CHRISTOPHER SBRACCIA, KINROSS
CHARTER TOWNSHIP EMS, and KINROSS
CHARTER TOWNSHIP,

Defendants-Appellants.

FOR PUBLICATION
October 10, 2006
9:05 a.m.

No. 256419
Chippewa Circuit Court
LC No. 04-7213-NI

Official Reported Version

Before: Wilder, P.J., and Cavanagh, Smolenski, Zahra, Fort Hood, Schuette, and Borrello, JJ.
BORRELLO, J.

This conflict panel was convened to resolve an inconsistency between the vacated portion of this Court's prior opinion in *Kik v Sbraccia*, 268 Mich App 690; 708 NW2d 766 (2005) (*Kik I*), vacated in part 268 Mich App 801 (2005), and this Court's earlier decision in *Wesche v Mecosta Co Rd Comm*, 267 Mich App 274; 705 NW2d 136 (2005). In accordance with MCR 7.215 (J)(1), the panel in *Kik I* was required to follow the precedent of *Wesche*, which held that loss of consortium claims are not included in the motor vehicle exception to governmental immunity found in MCL 691.1405 and that such claims were therefore barred by governmental immunity. Were it not for *Wesche* and MCR 7.215(J)(1), the panel in *Kik I* would have affirmed the decision of the lower court that damages for derivative claims were available in an action brought pursuant to the motor vehicle exception, MCL 691.1405.

The conflict at issue involves whether damages for derivative claims such as loss of consortium are available in actions brought pursuant to the motor vehicle exception. MCL 691.1405. In *Wesche*, a panel of this Court held that because loss of consortium claims do not encompass bodily injury or property damage, they are not included in the motor vehicle exception to governmental immunity. *Wesche, supra* at 278-279. Therefore, this Court affirmed the trial court's ruling that the plaintiff wife's loss of consortium claim was barred by governmental immunity. *Id.* at 279-280. In *Kik I*, this Court held that the panel's decision in *Wesche* was inapplicable to wrongful death cases, *Kik I, supra* at 706-707, 712 n 42; therefore, *Wesche* did not apply to plaintiffs' claim for loss of society and companionship for the death of their daughter. However, the panel in *Kik I* concluded that the claim for loss of consortium brought by plaintiff husband against defendants Kinross Charter Township and Kinross Charter Township EMS (but not Sbraccia, the driver of the ambulance, individually), relating to the injuries suffered by plaintiff wife in the accident, did fall squarely within the scope of *Wesche*. *Id.* at 707. In *Kik I*, the panel opined "that *Wesche* was incorrectly decided" and stated that "were we not obligated by MCR 7.215(J) to follow *Wesche*, we would reach a different conclusion" *Id.* at 711. However, because it was constrained to do so by MCR 7.215(J), this Court followed *Wesche* and reversed the trial court's denial of summary disposition regarding plaintiff husband's claim for loss of consortium arising out of his wife's injuries and remanded the matter to the trial court for entry of summary disposition in favor of the township and the township's EMS on that claim. *Id.* at 711-712.

Following due consideration of the analyses of the competing viewpoints regarding this conflict issue in *Wesche* and *Kik I*, we resolve the conflict in accordance with the panel's opinion in *Kik I*. We are persuaded by the panel's reasoning in part III of the *Kik I* opinion and adopt its

reasoning and analysis as our own. We therefore expressly adopt and reinstate part III of the panel's opinion in *Kik I* and overrule part III of the *Wesche* opinion.

We direct the trial court to vacate its order granting summary disposition in favor of the township and the township's EMS with respect to plaintiff husband's claim for loss of consortium arising from plaintiff wife's injuries.

Vacated and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

Cavanagh, Smolenski, and Fort Hood, JJ., concurred with Borrello, J.

/s/ Stephen L. Borrello
/s/ Mark J. Cavanagh
/s/ Michael R. Smolenski
/s/ Karen M. Fort Hood