

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.

WILDER, P.J. (*dissenting*).

We respectfully dissent. We would adopt part III of this Court's decision in *Wesche v Mecosta Co Rd Comm*, 267 Mich App 274, 278-280; 705 NW2d 136 (2005), and hold that MCL 691.1405 does not provide an exception to governmental immunity for loss of consortium claims.

We review de novo issues of statutory interpretation. *Stanton v Battle Creek*, 466 Mich 611, 614; 647 NW2d 508 (2002). The primary rule of statutory interpretation is to give effect to the intent of the Legislature. *Id.* at 615. "To achieve this task, we must first examine the statute's language. If the language is clear and unambiguous, we assume the Legislature intended its plain meaning, and the statute is enforced as written." *Id.* (citation omitted). In determining whether a governmental entity is liable in tort, we follow the principle that "the immunity

conferred upon governmental agencies is *broad*, and the statutory exceptions thereto are to be *narrowly* construed." *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 158; 615 NW2d 702 (2000) (emphasis in original).

Pursuant to MCL 691.1405, "[g]overnmental agencies shall be liable for bodily injury and property damage resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle" In this case, plaintiffs alleged in part that plaintiff Rebecca Kik was a pregnant passenger in an ambulance being driven by defendant Sbraccia and that his negligent or grossly negligent operation of the ambulance, resulting in a rollover accident, caused plaintiff Rebecca Kik to be "thrown about the back of the ambulance, sustaining injuries which subsequently resulted in the premature birth and death of her daughter" Plaintiffs also sought recovery for a number of derivative claims, including loss of consortium and loss of society and companionship.

As noted in *Wesche*, since at least 1960, loss of consortium has been construed as a separate cause of action in Michigan. *Wesche, supra* at 279, citing *Wessels v Garden Way, Inc*, 263 Mich App 642, 648; 689 NW2d 526 (2004). However, "[a] claim of loss of consortium is derivative and recovery is contingent upon the injured spouse's recovery of damages for the injury." *Id.*, quoting *Berryman v K mart Corp*, 193 Mich App 88, 94; 483 NW2d 642 (1992). Thus, loss of consortium claims do not encompass bodily injury or property damage, but encompass other damages deriving from the spouse's injury. None of the claims asserted by plaintiff Robert Kik against the township defendants arises from his bodily injury or property damage; rather, they are derivative claims arising from plaintiff Rebecca Kik's injuries. Therefore, because the governmental immunity exception provided in MCL 691.1405, under a narrow construction, does not apply to plaintiff Robert Kik's loss of consortium claims, we

would conclude that the trial court erred by denying the township defendants' motion for partial summary disposition.

Zahra and Schuette, JJ., concurred with Wilder, P.J.

/s/ Kurtis T. Wilder

/s/ Brian K. Zahra

/s/ Bill Schuette