

VERMONT SUPERIOR COURT, CIVIL DIVISION, WASHINGTON UNIT

Preston v. Copley Health Systems, Inc., et al.

Preston · No. 25-CV-01118 · Decided February 5, 2026

SUMMARY

The Vermont Superior Court denied Copley Health Systems’ motion to dismiss claims for loss of parental consortium and loss of filial consortium. The court held that Hay v. Medical Center Hospital of Vermont did not limit parental consortium claims to cases involving a permanently comatose parent, and it declined to dismiss the child-consortium claim because Vermont law does not expressly prohibit its recognition. The court also concluded that novel claims should generally proceed beyond the pleading stage where factual development may assist resolution.

CASE DETAILS

COURT	Vermont Superior Court, Civil Division, Washington Unit
WRITING FOR THE COURT	Daniel Richardson
JURISDICTION	Vermont Superior Court, Civil Division, Washington Unit
DECIDED	February 5, 2026
DOCKET	25-CV-01118
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved under Vermont Rule of Civil Procedure 12(b)(6) to dismiss Counts V and VI of the complaint, asserting claims for loss of parental consortium and loss of filial consortium. The Vermont Superior Court denied the motion.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts the nonmoving party's factual allegations as true, draws all reasonable inferences in that party's favor, and asks whether it appears beyond doubt that no facts or circumstances would entitle the plaintiff to relief. Dismissal is disfavored, particularly where the asserted theory is novel.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Mikayla Preston, O.W. v. Copley Health Systems, Inc.

TOPICS

- motions to dismiss
- loss of consortium
- civil procedure
- medical malpractice
- health law

PRACTICE AREAS

civil procedure

torts

health law

remedies

QUESTIONS PRESENTED

1. Whether O.W.'s claim for loss of parental consortium was barred because the alleged injury did not render Preston permanently comatose or functionally equivalent to death.
2. Whether Vermont law categorically precluded Preston's claim for loss of her child's consortium.
3. Whether either consortium claim failed as a matter of law under Vermont's Rule 12(b)(6) pleading standard.

HOLDINGS

1. Vermont's recognition of a child's loss-of-parental-consortium claim in *Hay v. Medical Center Hospital of Vermont* is not limited to cases involving a permanently comatose parent. Because the facts relevant to dismissal were disputed and went beyond the pleadings, O.W.'s claim could not be dismissed at this stage.
2. The court declined to dismiss Preston's claim for loss of her child's consortium because Vermont has no statute or binding case law prohibiting recognition of the claim, and the claim was at least a potentially viable novel development of the common law.

KEY QUOTATIONS

"A motion to dismiss . . . is not favored and rarely granted." (at 1)

"There is no basis to dismiss O.W.'s loss of parental consortium claim at this point in the litigation as the facts underlying such a dismissal are in dispute and go beyond the function of a motion to dismiss." (at 3)

"For these reasons, the court declines to dismiss Ms. Preston's consortium claim." (at 4)

FACTUAL BACKGROUND

Mikayla Preston was admitted to Copley Hospital for an elective induction of labor. Hospital personnel allegedly administered the wrong drug intravenously because of an error by the hospital pharmacy. Preston and her son, O.W., allegedly suffered non-fatal injuries, and they asserted claims for loss of consortium: O.W. for loss of parental consortium and Preston for loss of filial consortium.

PROCEDURAL HISTORY

Mikayla Preston and her son, O.W., brought claims arising from the alleged intravenous administration of the wrong drug during Preston's elective labor induction at Copley Hospital. Copley moved to dismiss the two consortium claims under Rule 12(b)(6). The court denied the motion, concluding that the parental-consortium claim was not limited to cases involving a permanently comatose parent and that the parent-child consortium claim was not barred as a matter of law.

DISPOSITION

other

CASES CITED

- Hay v. Medical Center Hosp. of Vermont, 145 Vt. 533 (1985)
- Alger v. Department of Labor & Industries, 2006 VT 115, ¶ 12, 181 Vt. 309
- Colby v. Umbrella, Inc., 2008 VT 20, ¶ 13, 184 Vt. 1
- Bock v. Gold, 2008 VT 81, ¶ 4, 184 Vt. 575
- Derosia v. Book Press, Inc., 148 Vt. 217, 220 (1987)
- Harris v. Sherman, 167 Vt. 613, 615 (1998)
- Whitney v. Fisher, 138 Vt. 468, 471–72 (1980)
- Letourneau v. Claffey, No. 289-12-19 Cacv, 2023 WL 9320693 (Vt. Super. Ct. Dec. 8, 2023)

OPINION

Preston v. Copley Health

PER CURIAM.

VERMONT SUPERIOR COURT CIVIL DIVISION

Washington Unit Case No. 25-CV-01118 65 State Street Montpelier VT 05602 802-828-2091
www.vermontjudiciary.org Mikayla Preston, et al v. Copley Health Systems, Inc., et al

ENTRY REGARDING MOTION

Title: Motion to Dismiss Counts V and VI of Complaint (Motion: 3) Filer: Curtis L. S. Carpenter
Filed Date: November 05, 2025 The motion is DENIED. Decision on Copley’s Motion to Dismiss Plaintiff Ms. Mikayla Preston, on behalf of herself and her son, identified as O.W., asserts that she was admitted to Copley Hospital for an elective induction of labor, during which hospital personnel intravenously administered the wrong drug due to an error by the hospital pharmacy. Non-fatal injuries are alleged to have resulted to both her and O.W. Among the several claims asserted in this case are O.W.’s loss of parental consortium and Ms. Preston’s loss of filial (child) consortium. Copley has filed a Rule 12(b)(6) motion to dismiss both consortium claims. It argues that the parental consortium claim falls outside the scope of Hay v. Medical Center Hosp. of Vermont, 145 Vt. 533 (1985), which recognized such a claim in the context of a parent in a permanently comatose state, and the child consortium claim is simply not recognized in Vermont. Procedural Standard A motion to dismiss for failure to state a claim faces a high bar. The Vermont Supreme Court has described the familiar standard for Rule 12(b)(6) motions to dismiss for failure to state a claim as follows: “A motion to dismiss . . . is not favored and rarely granted.” This is especially true “when the asserted theory of liability is novel or extreme,” as such cases “should be explored in the light of facts as developed by the evidence, and, 1 generally, not dismissed before trial because of the mere novelty of the allegations.” In reviewing a motion to dismiss, we consider whether, taking all of the nonmoving party’s factual allegations as true, “it appears beyond doubt’

that there exist no facts or circumstances that would entitle the plaintiff to relief.” We treat all reasonable inferences from the complaint as true, and we assume that the movant’s contravening assertions are false. *Alger v. Dep’t of Labor & Indus.*, 2006 VT 115, ¶ 12, 181 Vt. 309 (citations omitted); see also 5B A. Benjamin Spencer, et al., *Fed. Prac. & Proc. Civ.* § 1357 (4th ed.) (“Ultimately, the burden is on the moving party to prove that no legally cognizable claim for relief exists.”). The Vermont Supreme Court has made clear that “[t]he complaint is a bare bones statement that merely provides the defendant with notice of the claims against it.” *Colby v. Umbrella, Inc.*, 2008 VT 20, ¶ 13, 184 Vt. 1. “[T]he threshold a plaintiff must cross in order to meet our notice- pleading standard is ‘exceedingly low.’” *Bock v. Gold*, 2008 VT 81, ¶ 4, 184 Vt. 575. The purpose of the complaint “is to initiate the cause of action, not prove the merits of the plaintiff’s case.” *Colby*, 2008 Vt. 20, ¶ 13. The mere absence of an allegation or an element is not a proper basis for dismissal. *Id.*; see also 5A *Wright & Miller, Federal Practice and Procedure: Civil 2d* § 1356, at 296 (“The Rule 12(b)(6) motion . . . is not designed to correct inartistic pleadings.”). Analysis Consortium refers to the “benefits that one person . . . is entitled to receive from another, including companionship, cooperation, affection, aid, and (between spouses) sexual relations.” *Black’s Law Dictionary* 304 (7th ed. 1999). A claim for loss of consortium is derivative in the sense that it depends “upon the success of the underlying tort claim, and arises on account of the injured [person’s] physical injury.” *Derosia v. Book Press, Inc.*, 148 Vt. 217, 220 (1987). The law limits who in relation to the injured person may bring such a claim. Either legally married spouse may bring such a claim. See 12 V.S.A. § 5431; *Harris v. Sherman*, 167 Vt. 613, 615 (1998); *Whitney v. Fisher*, 138 Vt. 468, 471–72 (1980). In *Hay v. Medical Center Hosp. of Vermont*, 145 Vt. 533 (1985), the Vermont Supreme Court extended the claim to the circumstance of a child claiming the loss of a parent’s consortium. The Court has never extended the similar claim to the circumstance of a parent claiming the loss of a child’s consortium, but it has never expressly denied it in any decisions analyzing the claim of consortium. 2

1. Child’s loss of parental consortium

In *Hay*, the tort-victim’s injury resulted in a permanently comatose state. Copley argues that *Hay* is limited to such a circumstance, or at least one in which the parent is in some kind of state functionally equivalent to death. Ms. Preston appears to understand *Hay* similarly. She argues that dismissal would be premature, however, because the evidence may reveal that she does suffer the sort of lack of capacity that *Hay* requires, and otherwise the court should more broadly construe the claim to not require a lack of capacity equivalent to death. The *Hay* Court engaged in a detailed analysis of the propriety of evolving the common law to permit a child to claim a lack of parental consortium. Nothing in the substance of that analysis implies that it was adopting a limitation on such claims requiring the functional death of the parent, which limit would have no history or basis under an ordinary spousal consortium claim and would ensure that the claim could only be asserted in the rarest of circumstances. Rather, the analysis appears to impose no such limitation whatsoever. No doubt, the Court concludes by stating: “For the reasons cited herein, we

recognize that a minor child has the right to sue for damages for the loss of parental consortium when the parent has been rendered permanently comatose.” Hay, 145 Vt. at 545. But in light of the analysis that precedes it, the reference to the parent’s permanently comatose condition here must be understood to simply refer to a fact of the case rather than as a limitation on the claim adopted. In fact, Justice Larrow, in dissent, recognized exactly that: “The majority opinion discusses loss of parental consortium at length. Although its specific holding relates to the permanent ‘brain death’ of the mother, its general discussion makes it clear that this is not a sine qua non for liability, and that the Court is adopting a cause of action for a minor’s loss of parental consortium, without limitation.” Id. at 546 (Larrow, J., dissenting). The court agrees. There is no basis to dismiss O.W.’s loss of parental consortium claim at this point in the litigation as the facts underlying such a dismissal are in dispute and go beyond the function of a motion to dismiss.

2. Parent’s loss of child’s consortium

3 The Vermont Supreme Court has never similarly expanded the common law to extend to a parent’s loss of a child’s consortium. Copley argues that, since Hay, forty years have gone by without the Court having done so, and that should be sufficient for the court to conclude that the common law should not so evolve now. However, the Court draws no such inference from mere silence in the decisions of the Supreme Court because there is no indication that the issue has been put to it in those forty years. Otherwise, there is no statute or binding case law prohibiting any such further evolution of the common law. The undersigned examined this question in detail in *Letourneau v. Claffey*, No. 289-12- 19 Cacv, 2023 WL 9320693 (Vt. Super. Ct. Dec. 8, 2023) in the context of a motion for judgment on the pleading. There, the court reviewed the history of things and relevant authorities and concluded that extending the claim to a parent’s loss of a child consortium makes good sense and was consistent with both evolving practice and common law recognition concerning the loss of a child to a parent. See id. at *3 (“While Hay focuses on the child’s perspective and the loss of a parent, nothing in its reasoning suggests that the analysis is not equally as strong in the opposite direction. Time has proven the truth of this position.”). For that reason, the motion for judgment on the pleadings was denied. The court adopts the analysis of *Letourneau* for purposes of this case and the present motion to dismiss. See also Restatement (Third) of Torts: Concluding Provisions § 48B TD No. 1 (broadly adopting parental loss of child consortium claim). At worst, Ms. Preston’s claim is novel under Vermont law, and the dismissal standard counsels in favor of keeping novel claims in the case so that they may be more reliably addressed once the evidence has developed. For these reasons, the court declines to dismiss Ms. Preston’s consortium claim. Whether either plaintiff in fact has experienced any loss of consortium is not presented by Copley’s motion. The court notes that Plaintiffs presented numerous other arguments in support of the denial of Copley’s motion. Because the motion is denied for the reasons asserted above, the court declines to address those other arguments. 4

ORDER

For the foregoing reasons, Copley’s motion to dismiss is Denied. Electronically signed on

1/28/2026 12:07 PM pursuant to V.R.E.F. 9(d) Xp _____

Daniel Richardson Superior Court Judge 5

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/vermont-superior-court-civil-division-washington-unit-vermont-superior-court-civil-division-washingt/2026/preston-v-copley-health-systems-inc-et-al-yl5nyjy0>