Sibling Consortium: Recognizing the Right to Recovery in Connecticut

LAURA ANN RAYMOND[†]

I. INTRODUCTION

Over the course of time, consortium claims have expanded to allow damages for different familial relationships. Jurisdictions take distinctive approaches to assessing these sometimes-complex causes of action, with most states rejecting a sibling's right to bring a loss of consortium claim for the loss of their deceased sibling. This note analyzes the origins of sibling consortium, the arguments for and against recognition of sibling consortium, and ultimately concludes that Connecticut should allow recovery for mourning brothers and sisters. Section II describes the historical origins of consortium claims and the expansion brought forth by evolving social norms. Section III describes the early emergence of loss of consortium claims for siblings in various state court opinions and wrongful death statutes. Section IV explains the current state of sibling consortium in Connecticut firstly by examining the state's previous parental, child, and spousal consortium holdings. Section V emphasizes the strong reasons in favor of siblings, and later analyses the current arguments against expanding consortium claims in Section VI. Amongst the various reasons for recognition, this note emphasizes the treatment of siblings in foster care and adoption cases, the social research demonstrating the importance of sibling bonds, and the constitutional tort arguments already explored by multiple legal scholars. Section VII ultimately concludes that Connecticut should allow siblings the opportunity to bring consortium actions.

II. BACKGROUND

A. Brief Definition

Modern day consortium is difficult to define because courts and legislatures have actively shaped the meaning in response to changing social patterns and moral attitudes.[1] Early common law focused on husbands seeking to recover for the loss of their wife's inability to perform contractual obligations of a marriage. These rights emphasize a loss of service,

[†] University of Connecticut School of Law, J.D. Candidate 2018 (Human Rights Certificate); Rhode Island Collage, B.A. 2014.

[1] Nancy C. Osborne, *Loss of Consortium: Paradise Lost, Paradise Regained*, 15 CUMB. L. REV. 179 (1984).

including the loss of company, companionship, and conjugal affection.[2] A contemporary definition, however, is difficult to find, as modern courts rely upon various elements and terminology; "the term is applied to different relationships and the courts continue to define consortium in the context of the particular relationship for which protection is sought."[3] Current trends in consortium include elements which consist of a protected familial relationship, intangible elements within that relationship, and compensation for loss of those intangible elements.[4]

B. Origins of Consortium

The notion that familial or servant relations warrant protection was first emphasized in early Roman Law.[5] By Roman practice, *paterfamilias*, or fathers, could have brought a tort action for injury to wives, children, or slaves.[6] The claim was brought under the theory that the *paterfamilias* and their inferiors had identical interests, whereas an injury to a slave would result in an injury to the *paterfamilias*.[7]

The common law firstly adopted the Roman's approach to consortium as tortious interference between servants and masters, limiting remedies to pecuniary damages for lost services.[8] Premised upon the master-servant dynamic, the courts later allowed recovery for family relationships by husbands and fathers.[9] For instance, the available remedies by fathers were limited to loss of services, similarly to the master.[10] Husbands could bring broader claims for both pecuniary and nonpecuniary damages, but wives and children lacked standing to sue.[11] The legal system's unequal treatment of wives stemmed from the notion that upon marriage, husbands and wives entered a single unit with the women's identity merging into her husbands.[12] The analogy between husbands and masters was recognized as the primary motive to deny women's claims, as men held all the property of married couples, and women were viewed as

---

[2] *Id.* at 179–180.

[3] *Id.* at 180, 182.

[4] *Id.* at 182.

[5] Michael A. Mogill, *And Justice for Some: Assessing the Need to Recognize the Child's Action for Loss of Parental Consortium*, 24 ARIZ. ST. L.J. 1321, 1327 (1992).

[6] *Id.*

[7] *Id.*

[8] Jean C. Love, *Tortious Interference with the Parent-Child Relationship: Loss of an Injured Person's Society and Companionship*, 51 IND. L.J. 591, 599–600 (1976).

[9] *Id.* at 600.

[10] *Id.*

[11] *Id.*

[12] Mogill, *supra* note 5, at 1328–1329.

servants.[13]

The law's treatment of wives continued into the twentieth century, whereas wives could only seek recovery where husbands were joined in the action.[14] By, the mid-century an evolution of women's rights bled into the law, and jurisdictions slowly allowed recovery by wives for an infliction of physical injury upon their husband.[15] Progress for women was solidified through the Married Women's Property Act, which freed wives from any incapacities under the common law.[16] The passage of the Act supported the notion that women had separate property from their husbands, and thus were free from their husband's insolvency.[17] The modern concept logically allowed courts to take the position that, "the two were no longer one and there was no longer any such estate as [the] tenancy by the entirety."[18] Therefore, the identity of wives was split from that of their husbands, and the ability to bring forth claims for loss of society or companionship could no longer be barred.

Jurisdictions shaped their understanding of remedy equality, after the ruling in *Hitaffer v. Argonne Co.*, where the United States Court of Appeals for the District of Columbia held that tort actions by wives for the indirect interference with the marriage relation is allowed.[19]

The Married Women's Act and the *Hitaffer* holding did not gain an immediate recognition of spousal consortium for wives, rather it was a slow trickle. After the D.C. Circuit's recognition of recovery for married women, some jurisdictions continued to drag their feet.[20] Most jurisdictions allowed consortium actions by wives only if the loss was sustained by an intentional or malicious act.[21] *Hitaffer* slowly persuaded state courts to reevaluate their current case law. For example, in 1957 the Supreme Court of Arkansas allowed recovery for negligence actions by relying upon *Hitaffer*, other D.C. cases, and

---

[13] *Id.*

[14] Restatement (Second) Torts § 693, cmt. c (1976).

[15] L.E. Butler, *Torts: Husband's Right to Recover for Loss of Wife's Consortium*, 48 CAL. L. REV. 882, 883 (1960).

[16] Vesper, *The History of Consortium – From the 1950's to the Present*, 2 Litigating Tort Cases § 25:11 (2017).

[17] Bernie D. Jones, *Revisiting the Married Women's Property Acts: Recapturing Protection in the Face of Equality*, 22 AM. U.J. GENDER SOC. POL'Y & L. 91, 92 (2013).

[18] *Id.* at 100.

[19] Hitaffer v. Argonne Co., 183 F.2d 811 (D.C. Cir. 1950); Restatement (Second) of Torts § 693, cmt. d (1977).

[20] D. Richard Joslyn, *Wife's Right of Action for Loss of Consortium*, 36 A.L.R.3d 900 (1971).

[21] Keith E. Spero, *Wife's Action for Loss of Consortium*, 17 CLEV.-MARSHALL L. REV. 462, 462 (1968).

case law from Mississippi, California, Iowa, and Georgia.[22]

Apparent in this discriminatory practice was the Fourteenth Amendment application; the idea that, a "wife is entitled to 'equal protection' under the law and that therefore, like her husband, is entitled to maintain an action for loss of consortium based upon negligence."[23] The United States Supreme Court never reviewed a challenge to state laws or judicial rulings that prohibited wives from bringing a consortium claim for negligence. Rather, state courts gradually changed their own jurisprudence.[24]

C. Emergence of Parental Consortium

Shortly after the emergence of equality in spousal consortium, claims by children for the unlawful death of their parent began popping up across the country. One of the earliest cases comes from a Michigan appeals court, which reviewed whether the state's wrongful death statute extended to *married* children.[25] The court's holding appears radical due to the broad ruling and time period, as wives had only recently begun to bring successful consortium claims. *Westfall's* precedent-setting holding widely applied to all children, whether they were adults and married, or only minors.[26] The court reasoned, "[a] family unit, including all of its members, whether living under the same roof or not, is still a family unit."[27] The court continued to explain that the unlawful taking of a member of the family unit, which results in pecuniary injury to the survivors, opens the door to an action under the state's death act.[28] Decades later, the appeals court's holding continues to be affirmed by subsequent rulings in favor of parental consortium.[29]

Massachusetts followed Michigan's lead and held children may have a viable claim for consortium if they can demonstrate they are minors and are dependent upon their parent.[30] The children had to show economic dependence, filial needs for closeness, guidance, and

---

[22] *Id.* at 463–464.

[23] *Id.* at 468.

[24] Joslyn, *supra* note 20, at §3(a).

[25] Westfall v. Venton, 137 N.W.2d 757 (Mich. Ct. App. 1965).

[26] *Id.* at 762.

[27] *Id.* at 761.

[28] *Id.*

[29] *See* Thorn v. Mercy Mem'l Hosp. Corp., 761 N.W.2d 414 (Mich. Ct. App. 2008), Scott's Estate v. Burger King Corp., 291 N.W.2d 174 (Mich. Ct. App. 1980), Berger v. Weber, 267 N.W.2d 124 (Mich. Ct. App. 1978), *aff'd as modified*, 303 N.W.2d 424 (Mich. 1981).

[30] Ferriter v. Daniel O'Connell's Sons, Inc., 413 N.E.2d 690, 696 (Mass. 1980).

nature.[31] In regards to future consortium relationships, the court stated, "[a]s claims for injuries to other relationships come before us, we shall judge them according to their nature and their force."[32] The appeals court of Massachusetts later extended consortium claims to adult disabled children who are dependent upon their parent physically, emotionally, and financially.[33] In 1998, the First Circuit interpreted Massachusetts's wrongful death statute and concluded that adult children are not required to be financially dependent upon their parent to bring a consortium claim.[34]

Southern states like Louisiana recognized parental consortium claims as early as the 1990's. Louisiana's Third Circuit held a child may be compensated similarly to a spouse, if sufficient evidence is presented.[35] Children may be awarded for, "loss of love and affection, society and companionship, material services, support, aid and assistance, comfort, and felicity."[36] Louisiana acknowledged that consortium claims are typically brought by minor children, but remained open to adult children bringing this claim, as state statute allows.[37] The opinion progressively noted their state's wrongful death statute allowed far-reaching claims like damages to the aggrieved spouses or children of *surviving* loved ones since 1982.[38]

III. EMERGENCE OF SIBLING CONSORTIUM CASE LAW

By the turn of the twentieth century, state courts began experimenting with sibling consortium more and more. One of the earliest cases from Louisiana's Supreme Court examined sibling consortium in great depth, and ultimately upheld damages for the loss and suffering from the wrongful death of a brother.[39] The court recognized damages recoverable from "moral as well as material injury, from injury to feelings as well as to purse."[40] The court acknowledged English common law typically declined to award noneconomic damages, but explained many states have moved beyond traditional pecuniary damages in wrongful death cases. In states such as

---

[31] *Id.*

[32] *Id.*

[33] Morgan v. Lalumiere, 493 N.E.2d 206, 211 (Mass. App. Ct. 1986).

[34] Mitchell v. United States, 141 F.3d 8, 20 (1st Cir. 1998) (citing Santos v. Lumbermens Mut. Cas. Co., 556 N.E.2d 983, 988 n. 10 (1990)).

[35] Sebastien v. McKay, 649 So. 2d 711, 714 (La. Ct. App. 1994) (citing Higley v. Kramer, 581 So. 2d 273, 282 (La. App. 1st Cir.)).

[36] *Id.*

[37] *Id.*

[38] *Id.* (citing LSA-C.C. Art. 2315).

[39] Underwood v. Gulf Ref. Co. of Louisiana, 55 So. 641, 652 (La. 1911).

[40] *Id.*

Kentucky, California, and Texas, statutes gave juries discretion to award damages they found fair and just.[41] This type of persuasive jurisdiction provided the opinion's sound basis for sibling consortium.

Another early case from the Mississippi Supreme Court allowed surviving siblings to recover for prospective pecuniary benefits and loss of companionship on behalf of their deceased brother.[42] The court explained the siblings had a right to recover for loss of companionship, if clear evidence demonstrated their brother intended to continue his close relationship with his siblings.[43]

The court based its standard on an earlier Mississippi case involving spousal and parental consortium, which abandoned the purely economic damages allowed, under an 1846 statute called "Lord Campbell's Act."[44] Like the Louisiana Supreme Court, the Mississippi Supreme Court, cited emerging case law and statutes giving juries the ability to award damages for emotional injuries.[45] Most notably, the court relied upon the reasoning of a Florida court that examined a widow's claim for spousal consortium. The court stated, "the jury may properly take into consideration her loss of the comfort, protection, and society of the husband."[46] Mississippi adopted Florida's approach to spousal and parental consortium and later applied the same reasoning to sibling consortium in *Boone*.[47]

A few years later, Washington State interpreted their wrongful death statute to include recovery for a dependent sibling.[48] In 1928, Washington allowed actions to benefit parents, sisters, or minor brothers who were substantially financially dependent upon the deceased.[49] In this case, a sister was unable to provide for herself or maintain an independent lifestyle, and relied upon her brother's assistance.[50] The Washington Supreme Court held sufficient reliance does not require complete and absolute reliance, only a demonstration of substantial need.[51] The court upheld the sister's award and gave deference to the trial court's calculation of damages.[52] Although the court allowed the recovery, the sister based her argument upon economic reliance and not loss of society or affection. Regardless, the ruling revealed a shift towards recovery for siblings where none previously existed. The strict law regarding sibling recoveries slowly become more lenient.

---

[41] *Id.*
[42] Gulf & S.I.R. Co. v. Boone, 82 So. 335 (Miss. 1919).
[43] *Id.* at 338.
[44] St. Louis & S.F.R. Co. v. Moore, 58 So. 471, 474 (Miss. 1912).
[45] *Id.*
[46] *Id.* at 475 (citing Florida R. R. Co. v. Foxworth, 25 So. 338, 348 (Fla. 1899).
[47] Gulf & S.I.R. Co. v. Boone, 82 So. 335 (Miss. 1919).
[48] Estes v. Schulte, 264 P. 990, 990 (Wash. 1928).
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] *Id.* at 991.

By the middle of the century, New York followed Louisiana and Mississippi's lead and examined compensation for siblings in wrongful death actions. In *Leavy v. Yates*, an eight-year-old boy was struck by an automobile and sustained injuries to the liver, which eventually killed him.[53] The deceased was survived by a twin brother who brought an action for loss of companionship, affection, and guidance.[54] Without much explanation, the court allowed the claims by the surviving twin, and labelled them as, "an item of pecuniary damage."[55] Unlike other cases, the opinion unilaterally established a claim of action for sibling consortium without citing to any persuasive case law or controlling wrongful death statute.

A. The Interpretation of Wrongful Death Statutes

In the decades to come, more states examined sibling recovery within the meaning of their state's wrongful death statute. In the early 1980's, Michigan considered an action for loss of society and companionship brought by the deceased's siblings under their wrongful death statute.[56] Under the law, those entitled to damages, "shall be of that class, who by law, would be entitled to inherit the personal property of the deceased had he died intestate."[57] The term "class" was widely disputed amongst the parties, but the court reasoned every Justice of the Michigan Supreme Court interpreting the statute has encompassed a broad meaning, and the legislature never clarified their intentions despite having ample opportunity to do so.[58] Therefore, the court confirmed its interpretation that "class" can most definitely extend to siblings of the deceased.[59]

In *Sheahan v. Illinois Regional*, Illinois' statute was largely debated due to the vague language which allowed wrongful death actions to "next of kin of such deceased person."[60] *Sheahan* finally clarified that brothers and sisters may suffer injuries compensable, under the statute for consortium.[61] Previous rulings which refused to extend consortium to next of kin siblings were held factually distinct.[62] Previous cases involved insufficient evidence, barring recovery due to proof, not as a matter of law.[63] Further, the court rejected arguments that losses of companionship cannot be sustained because they are intangible and highly speculative.[64] Without warning, the

---

[53] Leavy v. Yates, 142 N.Y.S.2d 874 (N.Y. Sup. Ct. 1955).
[54] *Id.*
[55] *Id.* at 875.
[56] Crystal v. Hubbard, 324 N.W.2d 869 (Mich. 1982).
[57] Mich. Comp. Laws § 600.2922(2) (1971).
[58] *Crystal*, 324 N.W.2d at 880.
[59] *Id.*
[60] Sheahan v. Ne. Ill. Reg'l Commuter R.R. Corp., 496 N.E.2d 1179, 1180 (Ill. App. Ct. 1986).
[61] *Id.*
[62] *Id.* at 1182.
[63] *Id.*
[64] *Id.*

court found several reasons to move away from the traditional interpretation that previously barred many families from bringing consortium claims. The court's opinion elegantly preserved its previous holdings and simultaneously declared the emerging right of action.

The same year, the Fifth Circuit reviewed an action for loss of society by the siblings of an unborn brother that perished in an airplane crash.[65] The court examined the Louisiana statute which allowed actions for "the surviving brothers and sisters of the deceased, or any of them, if he left no spouse, child, or parent surviving."[66] The court reasoned the plain language of the statute provided sufficient language for the recovery of an unborn sibling.[67] Furthermore, an earlier Louisiana case granted parents compensation for the loss of love and affection for their unborn child, and provided enough justification for further expansion to sibling claims.[68]

Not long after, an Ohio appeals court examined the state's wrongful death statute when adult siblings brought a claim for mental anguish.[69] The case involved the statute's modification in 1982, which allowed recovery for "mental anguish incurred by the surviving spouse, minor children, parents, or next of kin."[70] The controversy amongst litigants revolved around the added "next of kin" to the state's statute. The court reasoned the legislature felt siblings cannot be excluded from recovery but the siblings retained the burden of proving any damages.[71] The conclusion by the court appears as a compromise. Although siblings are included within the "next of kin" meaning, they maintain a heavier burden of proof than parents or spouses.

In addition to mental anguish, the opinion provided strong language for siblings to recover for loss of society. The court stated, "A brother, sister, or adult child can suffer grief over the loss of a sibling just as can a mother, parent, or minor child. To exclude one group simply because another exists would partially thwart the intent of the statute's amendments."[72] The court's ruling was two-fold, it acknowledged the legislature's newly amended statute provided a means of recovery beyond economic damages and clarified the rights of siblings as a matter of law.

Historically, claims for consortium have flourished in various jurisdictions with some southern state's allowing recovery for numerous familial relationships. These types of actions truly began their expansion after wives gained newfound property rights through federal legislation.[73]

---

[65] *In re* Air Crash Disaster at New Orleans, La., 795 F.2d 1230 (5th Cir. 1986).
[66] *Id.* (citing La. Civ. Code art. 2315(D)(1)(c), current section at 2315.2(A)(3))
[67] *In re Air Crash* Disaster at New Orleans, La., 795 F.2d at 1237.
[68] *Id.*
[69] Shoemaker v. Crawford, 603 N.E.2d 1114 (Ohio Ct. App. 1991).
[70] *See* OHIO REV. CODE. ANN. § 2125.02(B)(5) (West 2017).
[71] *Shoemaker*, 603 N.E.2d at 1120-21.
[72] *Id.* at 1120.
[73] Mogill, *supra* note 5, at 1329.

Consortium then evolved not long after to include claims by children seeking damages for the loss of their mother or father.[74] With parental consortium claims allowed in some jurisdictions, the emergence of sibling claims has sprouted across the nation.[75] While some states have welcomed the newer right of action, Connecticut's familial consortium history gives little hope to up incoming sibling consortium claims.

IV. FAMILIAL DAMAGES IN CONNECTICUT

Historically, spouses have experienced inequality when attempting to bring tort actions for loss of consortium, and Connecticut was no exception. As previously mentioned, men held the superior right to bring such a claim for the loss of services by his sub-servant wife. In 1877, Connecticut passed the Married Woman's Act, a significant milestone for the equality of property rights. The Act stated in part, "[t]he wife shall have power to make contracts with third persons, and to convey to them her real and personal estate, in the same manner as if she were unmarried."[76] The implication of property equality was demonstrated years later when the Connecticut Supreme Court held a husband could not recover for the injuries of his wife.[77] The court narrowly interpreted the Act as meaning each spouse may only recover for their own injuries, essentially eliminating claims for spousal consortium.[78]

Marri barred recovery for over half a century but was eventually overruled when the Connecticut Supreme Court reconsidered its original holding. In 1979, the court reviewed a malpractice suit brought by both spouses where the husband claimed he was deprived of his wife's love, affection, and consortium.[79] The court scrutinized prior precedent in the wake of emerging claims in neighboring jurisdictions:

> Having thus reexamined the decision in *Marri*, we find its reasoning no longer persuasive and its result unsound. We are confirmed in this view by the movement of the law in other jurisdictions where, since 1950, a growing majority of courts have come to recognize a right of action for loss of consortium in either spouse.[80]

The battle over damages for spousal consortium was finally put to rest, but newer claims for child and parental consortium was long from settled.

---

[74] *See* discussion *supra* Section II.c. Emergence of Parental Consortium.
[75] *See* discussion *supra* Section III. Emergence of Sibling Consortium Case Law.
[76] Married Woman's Act, ch. 114, sec. 1, 149 Stat. 211 (1877).
[77] Marri v. Stamford St. R. Co., 78 A. 582 (Conn. 1911).
[78] *Id.* at 587.
[79] Hopson v. St. Mary's Hosp., 408 A.2d 260, 261 (Conn. 1979).
[80] *Id.* at 265.

About a decade later, the Connecticut's Appellate Court would deny parents the right to consortium for the loss of their son.[81] The court reasoned the right arose from the civil contract of marriage that could not extend to the loss of children.[82] Since the court's ruling in *Mahoney*, no other appeals court has reversed the central holding. The Second Circuit reaffirmed *Mahoney* as good law seven years later.[83] Despite Connecticut's reluctance to award consortium for the loss of children, several trial courts have ignored *Mahoney*'s precedent.[84] Judges have reasoned that the parent-child relationship is constitutionally protected, and therefore should be afforded the same rights as spouses.[85]

The fight for consortium on behalf of parents has been accompanied by claims for parental consortium on behalf of children. In 1992, a superior court granted the right to parental consortium for two minor children whose father was injured from an automobile accident.[86] The children argued that Connecticut should finally recognize the cause of action and the court agreed.[87] The opinion examined Connecticut's history of familial consortium and acknowledged that the Connecticut Supreme Court did not hesitate to overrule *Marri* based on the evolution of the law, and likewise should recognize parental consortium on the same grounds.[88] The opinion goes on to state:

> The history of the loss of consortium claim articulated above demonstrates that it has, albeit in uneven advances, tracked changing economic conditions and the attendant changes in societal attitudes about the nature of the relationships implicated. The law involving the parent child

---

[81] Mahoney v. Lensink, 550 A.2d 1088 (Conn. App. Ct. 1988), *aff'd in part*, *rev'd in part*, 569 A.2d 518 (Conn. 1990).

[82] *Id.* at 1094.

[83] *See* Belliveau v. Stevenson, 123 F.3d 107, 110 (2d Cir. 1997) ("The Mahoney opinion suggests two principles. First, there is no claim for loss of filial consortium under Connecticut law in any circumstance because loss of consortium claims have historically been available only to spouses. Second, and immediately relevant to this case, even if loss of filial consortium might be found to give rise to a cause of action in certain cases (where, for example, a parent or child was injured, rather than killed), the doctrine cannot cover a claim for postmortem loss of consortium because there is no statutory authority for such an action.").

[84] *See* McCarthy v. Yantorno, No. CV 990078474S, 1999 WL 682056, at *3 (Conn. Super. Ct. Aug. 18, 1999) (citing Pacelli v. Dorr, No. CV 96-0382547S, 1998 WL 470580 (Conn. Super. Ct. July 31,1998); Condon v. Guardini, 16 Conn. L. Rptr. 466 (Super. Ct. 1996); Davis v. Davis, No. CV 9577180, 1996 WL 156011 (Conn. Super. Ct. Mar. 15, 1996); Scalise v. Bristol Hospital, No. CV93-0525217 S, 1995 Conn. Super. LEXIS 1983 (July 5, 1993); LeBlanc v. Vitam Youth Treatment Center, No. CV 950148611S, 1997 Conn. Super. LEXIS 1448 (May 9,1997); Devalle v. Goggins, 18 Conn. L. Rptr. 32 (Super. Ct. 1996); Condron v. Pollak, 10 Conn. L. Rptr. 411 (Super. Ct. 1993)).

[85] *McCarthy*, 1999 WL 682056, at *3.

[86] Kizina v. Minier, No. 099375, 1992 WL 16942 (Conn. Super. Ct. Jan. 24, 1992).

[87] *Id.* at *1.

[88] *Id.* at *4.

> relationship, and the state's interest therein, has changed greatly since the child was viewed as merely another servant in the household of the paterfamilias.[89]

The court's holding in *Kizina* was consistent with another superior court, which upheld parental consortium for a minor child whose mother was similarly injured in an automobile accident.[90] The previous extension of spousal consortium in *Hopson*, the compelling public policy to strengthen families and protect children from injury and negligence, and the evolution of children's rights under the federal constitution justified the court's conclusion.[91]

The clash between superior courts and the ignored precedent of *Mahoney* eventually landed at the Connecticut Supreme Court. *Mendillo v. Board of Education* seemed to definitively hold the right of parental consortium did not exist.[92] The cause of action was labeled as a third-party negligence action because the minor children sought damages for tortious conduct inflicted upon their parent, and therefore required a special policy inquiry.[93] However, the court acknowledged their reluctance to extend liability to a third-party in most cases, as policy considerations frequently failed to justify extending said liability.[94] The court stated, "it is fair to say that imposing third party liability of the kind sought in the present case remains the exception rather than the rule."[95] An argument against public policy further tilted the court's opinion, as the justices felt an injured parent may have many relationships with friends or neighbors, that would similarly suffer third-party losses.[96] The court clearly viewed claims for parental consortium as opening the door to unlimited liability for defendants, and declined to grant such right.

Almost twenty years later, the Connecticut Supreme Court overruled *Mendillo* and recognized the cause of action for loss of parental consortium by minor children.[97] The court criticized *Mendillo's* reasoning in many respects to justify the new cause of action. Firstly, the court disagreed with *Mendillo*'s conclusion that the distinction between minor and adult children is arbitrary.[98] Adult and minor children have different legal entitlements regarding their parents, with adults having more autonomy and

---

[89] *Id.*
[90] Henderson v. Micciche, No. 0105625, 1992 WL 96829 (Conn. Super. Ct. May 1, 1992).
[91] *Id.* at *1.
[92] Mendillo v. Bd. of Educ. of East Haddam, 717 A.2d 1177 (Conn. 1998).
[93] *Id.* at 1189.
[94] *Id.*
[95] *Id.*
[96] *Id.* at 1190.
[97] Campos v. Coleman, 123 A.3d 854 (Conn. 2015).
[98] *Id.* at 860.

responsibility.[99]

Secondly, the court rejected the notion that recognizing parental consortium would not yield significant social benefits that outweigh any undue societal costs.[100] Persuasive reasoning from Wisconsin provided, "[a]lthough a monetary award may be a poor substitute for the loss of a parent's society and companionship, it is the only workable way that our legal system has found to ease the injured party's tragic loss."[101] The minority in *Mendillo* was cited as explaining the development of children's character, disposition, and abilities has wider societal implications.[102] The string of reasoning suggests that compensation will hopefully provide children with resources to mature into responsible adults without the guidance of their deceased parent.

Thirdly, and perhaps most importantly, the court narrowed the cause of action to claims resulting from the parent's injury during the parent's life.[103] The limitation may be a compromise to grant the right of action, but severely limits the ability of children to successfully prevail. The court justified their reasoning by prior precedent, which disallowed spouses to recover damages for postmortem loss of consortium.[104] Although the court cites this previous holding, it's worth noting the legislature reacted to the conservative judicial opinion. Shortly after the decision in *Ladd*, the legislature enacted Conn. Gen. Stat. § 52–555a which authorizes recovery for spouses, overruling *Ladd*'s holding.[105] Despite the outrage by the legislature, the *Campos* opinion cites the bad law as justification to narrowly limit another right to recovery.

A. Sibling Consortium & Connecticut Courts

Over a period of two decades, Connecticut trial courts have grappled with the confusing case law surrounding consortium claims and have declined to recognize such a right for siblings.[106] The claims began in 1995, when Connecticut saw a handful of superior courts mentioning claims for filial consortium. In *Hawthorne v. Lowe*, the court considered a motion for summary judgment against a brother's claim for consortium.[107] At the time,

---

[99] *Id.*

[100] *Id.* at 861.

[101] *Id.* at 962 (citing Theama by Bichler v. City of Kenosha, 344 N.W.2d 513, 520 (Wis. 1984)).

[102] *Campos*, 123 A.3d at 862 (citing Mendillo v. Bd. of Educ. of East Haddam, 717 A.2d 1177 (Conn. 1998) (internal citation omitted)).

[103] *Id.* at 869.

[104] *Id*. (citing Ladd v. Douglas, 523 A.2d 1301 (Conn. 1987)).

[105] *Id.*

[106] *See e.g.* Hawthorne v. Lowe, No. CV 301393S, 1995 WL 155518 (Conn. Super. Ct. Mar. 23, 1995); Urbanski v. Carabetta Enterprises, 1995 WL 527396 (Conn. Super. Ct. Aug. 14, 1995); Schlierf v. Abercrombie & Kent, Inc., 2011 WL 2418571 (Conn. Super. Ct. May 19, 2011); Scalise v. Bristol Hosp., No. CV93-0525217A 1995 WL 410751, (Super. Ct. July 5, 1995).

[107] *Hawthorne*, 1995 WL 155518.

the court declined to grant the motion, as the claim for consortium was alleged in conjunction with a wrongful death action brought by the brother.[108] After subsequent litigation, the claim was eventually disallowed because, "[f]ilial consortium neither is a federal civil right nor a recognized cause of action in Connecticut."[109]

In *Scalise v. Bristol Hospital*, the court denied a defendant's motion to strike a claim for consortium by family members.[110] The defendants argued no legislation existed which permitted recovery by family members for wrongful death causes of action, and therefore the action should have been barred.[111] The court did not find the argument persuasive "[w]hat power should the legislature have to prevent common law courts from recognizing new causes of action where injuries to the citizens requires redress where the legislature has not directly spoken on the matter? None that our constitution is prepared to recognize."[112] The absence of an enacted statute was not a sufficient legal argument to prevent the court from entertaining sibling consortium.

Further reasoning stated that when plaintiffs bring a new cause of action, the trial court should allow those plaintiffs to develop a factual basis for the claim.[113] The opinion goes on to write, "[j]ust because we have a pleading device called a motion to strike it shouldn't be regarded as a straight jacket preventing a proper testing of new legal theories."[114]

Despite the court's argument in *Scalise*, most trial courts have followed *Hawthorne's* conclusion that no higher court has recognized the action. A decade after *Scalise*, a federal district court in Connecticut disallowed a sister's claim for loss of sibling consortium, finding that Connecticut case law so far failed to recognize sibling consortium.[115] The court used prior precedent that examined spousal consortium, which held consortium cases were limited to spouses married at the time of the injury.[116] The court

---

[108] *Id.* at *2 (stating the claim, "by itself, does not amount to a claim for loss of filial consortium, as it is being alleged as part of a wrongful death cause of action brought pursuant to General Statutes § 52-555. Furthermore, if the defendants contend that this allegation is improper, there are other procedures that they could have used to challenge its inclusion in the complaint.").

[109] Hawthorne v. Lowe, No. CV 930301393S, 1996 WL 152041, *1 (Conn. Super. Ct. Mar. 6, 1996).

[110] The opinion does not clarify which family members brought claims for consortium, but classifies the claim as filial consortium, commonly referred to as sibling consortium. *Scalise*, No. 1995 WL 410751 (1995).

[111] *Id.* at *5.

[112] Scalise v. Bristol Hosp., No. CV93-0525217A, 1995 WL 410751 at *5 (Super. Ct. July 5, 1995).

[113] *Id.*

[114] *Id.*

[115] Kaya v. City of New London, 458 F. Supp. 2d 1, 7 (D. Conn. 2006) (stating, "Nevertheless, the court is bound by *Gurliacci's* holding that loss of consortium claims are limited to marriage, *and therefore does not find that Connecticut recognizes a cause of action for sibling loss of consortium*.") (emphasis added).

[116] *Id.* (citing Gurliacci v. Mayer, 590 A.2d 914 (1991)).

acknowledged the plaintiff's "advance normative arguments"[117] for sibling consortium, but found the Connecticut Supreme Court's ruling for spousal consortium implicitly prevented other types of filial consortium.[118]

Years later, another superior court followed *Hawthorne's* approach and dismissed a filial consortium claim[119] because the claim was too undeveloped in case law and the superior courts remained split.[120] The Connecticut Supreme Court recognized its authority to grant new causes of action,[121] but the trial court found, "no case law that grants such authority to the Superior Court."[122] This language is strikingly different than *Scalise's*, which stated new causes of action should not be hindered by dismissals, and plaintiffs should be allowed to develop a basis for their claim.[123]

V. ARGUMENTS FOR SIBLING CONSORTIUM IN CONNECTICUT

A. Sibling Relationships in Other Court Proceedings

While courts are reluctant to acknowledge the importance of sibling relationships in tort actions, they have taken the opposite view in regards to divorce or foster care disputes. Courts are known to positively emphasize this type of relationship, one court's rationale noted:

> Young brothers and sisters need each other's strengths and association in their everyday and often common experiences, and to separate them, unnecessarily, is likely to be traumatic and harmful. The importance of rearing brothers and sisters together, and thereby nourishing their familial bonds, is also strengthened by the likelihood that the parents will pass away before their children.[124]

Another court similarly stated when these children become adults later in life, they will have one another to depend on, not their parents.[125]

---

[117] *Id.*

[118] The court argued that because the Supreme Court did not explicitly discuss sibling consortium, the claim was barred. *Id.*

[119] Keough v. Dayton Const. Co., Inc., No. X05CV095012675S, 2011 WL 1168432, *9 (Conn. Super. Ct. Feb. 3, 2011).

[120] *Id.* at *8 (stating, "In response, the plaintiffs argue that Connecticut courts have not conclusively ruled on the viability of filial consortium, and there remains a split of authority on the matter, citing to some trial court opinions that have allowed such claims.).

[121] *See* ATC Partnership v. Coats North America Consolidated, 935 A.2d 115 (Conn. 2007); Binette v. Sabo, 710 A.2d 688 (1998).

[122] *Keough*, 2011 WL 1168432, at *9.

[123] Scalise v. Bristol Hosp., No. CV93-0525217A, 1995 WL 410751 at *5 (Super. Ct. July 5, 1995).

[124] Barbara Jones, *Do Siblings Possess Constitutional Rights?*, 78 CORNELL L. REV. 1187, 1190 (1993) (citing Obey v. Degling, 337 N.E.2d 601, 602 (N.Y. 1975)).

[125] *Id.* (citing In re Patricia A. W., 89 Misc.2d 368, 379 (N.Y. Fam. Ct. 1977)).

Due to the imperative nature of sibling connections, courts are disinclined to separate them in divorce proceedings. The interest of children is above all else, with one New York court observing, "[t]he overwhelming motivation of the court in providing for the best interests of the children is that they have a meaningful relationship with their siblings."[126] Likewise, courts have highlighted the significance of sibling contact in adoption cases, with one court ordering maintenance contacts between siblings against the wishes by adoptive parents.[127] Clearly, the continued relationship between siblings is important enough to legally protect and should be equally transferred to tort actions.

While courts have strengthened the legal rights of siblings in other circumstances, their rationale for doing so calls on the emotional and biological bonds between siblings. For example, one court stated:

> Surely, nothing can equal or replace either the emotional and biological bonds which exist between siblings, or the memories of trials and tribulations endured together, brotherly or sisterly quarrels and reconciliations, and the sharing of secrets, fears and dreams. To be able to establish and nurture such a relationship is, without question, a natural, inalienable right which is bestowed upon one merely by virtue of birth into the same family.[128]

A deeper look into the social research behind sibling relationships supports this court's argument that some familial bonds are significant to childhood development.

B. The Importance of Sibling Bonds & Empirical Analyses

From a scientific perspective, sibling relationships play an important role to individual and family functioning.[129] Research in developmental psychology has shown early attachment as, "the foundation of self-concept, basic trust in relationships, and adaptivity throughout adult life."[130] Contemporary psychoanalytic theory further demonstrates an early search for secure emotional relationships as a vital achievement of development with greater achievement of this goal associated with individual

---

[126] *Id.* at 1191 (citing *In re Patricia*, 89 Misc.2d 368 at 379).

[127] *Id.*, at 1192 (citing New York ex rel. Sibley v. Sheppard, 429 N.E.2d 1049 (N.Y. 1981); see also In re Adoption of Anthony, 113 Misc.2d 26 (N.Y. Fam. Ct. 1982)).

[128] *Id.*, at 1190 (citing L. v. G., 497 A.2d 215, 218 (N.J. Super. Ct. Ch. Div. 1985) (emphasis added)).

[129] William Wesley Patton & Sarah Latz, *Severing Hansel from Gretel: An Analysis of Siblings' Association Rights*, 48 U. MIAMI L. REV. 745, 765 (1994).

[130] *Id.* at 762.

characteristics like self-esteem and capacity for intimacy.[131] Among the early attachments, sibling relationships may be described as the most important.[132]

The idea that siblings form early attachments to one another is undoubtedly proven through empirical research. For example, two fundamental studies of attachment reported infants in many families became attached to older siblings, "they showed distress at the siblings' absence, greeted them with pleasure, and showed preference for them as playmates."[133] Another study found by fourteen months 50% of infants were reported to miss their older sibling, and 36% went to their older sibling for comfort when distressed.[134]

Research by social scientists has shown the benefits of close sibling relationships in childhood. Studies when observed in children's homes and in laboratories suggest middle school children can teach new cognitive concepts and language skills, as well as the ability to adjust their teaching methods to their younger siblings.[135] The teaching role older siblings take on expands their ability to understand other's perspectives, and often older siblings earn higher reading and language achievement scores, earn greater self-competence, and learn how to balance their self-concerns with the needs of others.[136] Likewise, younger siblings nurtured by older siblings gain sensitivity to other's feelings.[137] The research suggest:

> Sibling relationships that are characterized by a balance of nurturance and conflict can provide a unique opportunity for children to develop the ability to understand other people's emotions and viewpoints, to learn to manage anger and resolve conflict, and to provide nurturance themselves. Indeed, younger siblings who experience a balance of nurturance and conflict in their sibling relationships have been found to be more socially skilled and have more positive peer relationships compared with children who lack this experience.[138]

The benefits of siblingship does not stop after childhood, more research demonstrates siblings continue to routinely participate in significant patterns

---

[131] *Id.* (citing J.L. Trop, Recent Developments in Self-Psychology, 7 Current Opinions in Psychiatry 225–28 (1994)).

[132] *Id.* at 765.

[133] Judy Dunn, *Sibling Relationships in Early Childhood*, 54 CHILD DEV. 795 (1983).

[134] *Id.*

[135] Gene H. Brody, *Siblings' Direct and Indirect Contributions to Child Development*, 13 CURRENT DIRECTIONS IN PSYCHOLOGICAL SCIENCE 124 (2004).

[136] *Id.*

[137] *Id.*

[138] *Id.*

of exchange during young adulthood.[139] College aged women reported their level of emotional support as equal to parental support, and rated their sibling relationship as "closest."[140] The research found young women seeking a family member in confidence often depend on their sibling or mother.[141] These young women indicated they could depend on their closest sibling for help, guidance, and felt protected by their siblings against difficulties and dangers.[142]

Adult siblings share different types of life experiences that further cement their relationship. For instance, siblingship in adulthood frequently consists of cooperation over the care of elderly parents and the dismantling of the parental home.[143] Siblings bond over their parent's weakened health and eventual death because, "[i]t is at this point in their adult life cycles that siblings must turn to one another in a spirit of unity in order to adequately carry out critical responsibilities to their parents."[144]

Other research suggests that adult siblings have closer relationships, especially amongst working-class families.[145] The study states, "[t]he rules of relevance of these relationships were not limited to occasional visits and knowledge of each other's general welfare but were defined more widely."[146] The siblings bonded over social activities with an emphasis on enjoyment of each other's company, rather than only interacting to maintain contact with one another.[147] The individuals recognized their siblings as the most important people in their social network, and often described one another as "best friends."[148] The research went onto declare, "no non-kin relationship was as important to these respondents as their 'special' sibling relationships."[149]

Despite old age, elderly siblings also expressed their connection as significant.[150] While elderly siblings reported reduced contact, they expressed sentiments of closer and more compatible relationships with siblings, compared to younger studies.[151] Interestingly enough, more research suggests that while older individuals often disengage with non-kin relationships in their golden years, they rarely disengage from family

---

[139] Ann Goetting, *The Developmental Tasks of Siblings Over the Life Cycle*, 48 J. MARRIAGE & FAM. 703 (1986).

[140] *Id.* at 708.

[141] *Id.*

[142] *Id.*

[143] *Id.* at 709.

[144] *Id.*

[145] Allan Graham, *Sibling Solidarity*, 39 J. MARRIAGE & FAM. 177, 181 (1977).

[146] *Id.*

[147] *Id.*

[148] *Id.*

[149] *Id.*

[150] Goetting, *supra* note 139, at 709.

[151] *Id.* (internal citation omitted).

involvement.[152] As the years go on, the elderly often shift their interest towards their familial relationships, which become more important to them.[153] Siblingship in older years is comparable to siblingship in young and middle adulthood, as interaction is reflective of situational demands. [154] Research describes the following with elderly siblings:

> The essence of the relationship lies in a reserved form of companionship and socio-emotional support that is expressed mostly through the sharing of ritual occasions, brief visits, and commercial and home recreation. Assistance, when offered is supplied in the form of aid when ill; financial support; and help with critical decisions, business dealings, homemaking, home repairs, transportation, and shopping.[155]

The need for siblingship appears in many forms, with perhaps the most important relating to shared reminiscence and perceptual validation.[156] One researcher noted that because siblings share common biographies, they can use reminiscences to validate and clarify previous events and relationships.[157]

The bond amongst siblings becomes even more pronounced with twins, which studies often refer to as "special relationships" due to the unique characteristics that place twins into their own category.[158] Twins typically bond over life events,[159] developmental stages, and similar health histories.[160] Due to their intense bond, twins are predisposed to suffer together, which contributes to extreme grief when one twin prematurely dies, even more so when the death is unexpected.[161]

Dr. Nancy Segal, a leading psychological scientist, has researched and found a distinct pattern of increased mourning amongst twins.[162] The study states, "[w]hen a twin is lost, whether identical or fraternal, the loss of that twin induces greater grief intensity than the loss of any other relative,

---

[152] *Id.* (internal citation omitted).

[153] *Id.* at 709–710.

[154] *Id.*

[155] *Id.* (internal citations omitted).

[156] Goetting, *supra* note 139, at 709-10.

[157] *Id.*

[158] Brynne D. Mcbride, *And Then There Was One: Defining A "Special Relationship" in Iowa's Wrongful-Death Statute for the Relief of Twins*, 88 IOWA L. REV. 471, 493 (2003) (citing NANCY L. SEGAL, ENTWINED LIVES: TWINS AND WHAT THEY TELL US ABOUT HUMAN BEHAVIOR 97–115 (Deb Brody ed., Plume Books 1999).

[159] Life events typically occur on the same timeline with twins.

[160] Mcbride, *supra* note 158, at 494.

[161] *Id.*

[162] *Id.* at 495.

including a mother, father, or non-twin sibling."[163] The loss is unique because the surviving twin serves as a consistent reminder to themselves and their family of their lost sibling.[164] Aside from visual reminders, twins may experience guilt, insecurity, unwillingness to continue growing up without the twin, romanticizing of death and risk-taking behavior, taking on characteristics of the deceased twin, personality changes, and substance abuse.[165]

Throughout the various stages of life, the bond of siblinghood seemingly transforms by different events. Despite the many challenges siblings may endure, their relationship provides countless benefits along the way. The social research demonstrates the significance of these bonds, especially between twins, and shows how siblings rely on one another to successfully go through the changes of their lifetime. Therefore, when a sibling's relationship is unexpectedly severed they are undoubtedly injured and deprived of siblingship. The argument that sibling relationships are not worthy of the same compensation of parents or spouses is simply without merit.

C. Constitutional Rights of the Child & Siblings

The Supreme Court of the United States declined to examine whether siblings have a constitutional right to their sibling relationship,[166] and many lower federal and state courts have declined to provide a constitutional basis for siblingship. Regardless, legal scholars have offered multiple compelling arguments that such a right is protected.[167]

1. Due Process Clause

One argument set forth emphasizes the importance of family relationships founded upon the Due Process Clause of the Fourteenth Amendment. In *Smith v. Organization of Foster Families*, the Supreme Court declined to extend Due Process protection to the parent-foster-child relationship.[168] Despite the blow to foster-parents, dicta defined the type of relationship protected under the Due Process Clause. The courts analysis requires that "First, the relationship must be a biological one. Second, it must involve 'emotional attachments that derive from the intimacy of daily association. And third, unlike a foster parent and foster child relationships

---

[163] *Id.* (internal citations omitted).

[164] Mcbride, *supra* note 158, at 495.

[165] *Id.*

[166] Adoption of Hugo, 700 N.E.2d 516 (Mass. 1998), cert. denied, 526 U.S. 1034 (1999); Randi Mandelbaum, *Delicate Balances: Assessing the Needs and Rights of Siblings in Foster Care to Maintain Their Relationships Post-Adoption*, 41 N.M.L. Rev. 1, 25 (2011).

[167] Mandelbaum, *supra* note 166, at 25.

[168] Smith v. Org. of Foster Families For Equal. & Reform, 431 U.S. 816, 816 (1977).

it must have 'its origins entirely apart from the power of the State.'"[169] Hypothetically, a biological sibling relationship that involved emotional attachment and stemmed from the family unit itself would qualify as constitutionally protected.

Likewise, *Moore v. City of East Cleveland* held the family unit is protected through the Due Process Clause and classified family life as a protected liberty.[170] The court continued its discussion by stating, "[o]ur decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition. It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural."[171] Furthermore, the *Moore* decision examined the definition of family and held grandparents sharing a household along with parents and grandchildren are equally deserving of constitutional protection.[172] The definition was extended beyond the traditional parent-child relationship by acknowledging the significance of close familial connections.[173] Following this logic, siblings living under the same household that share a close familial bond should be deserving of constitutional recognition.

The central holdings of *Smith* and *Moore* continued by the Second Circuit's decision, in *Rivera v. Marcus*.[174] *Rivera,* the foster parent and adult sibling to two younger siblings rightfully claimed Due Process protection after the siblings were removed and further communication was barred without explanation.[175] The court found liberty interests significant to preserving the integrity and stability of the family.[176]

2. Right to Associate

Aside from the Due Process recognition, legal scholars have set forth the notion of siblingship as constitutionally protected under the First Amendment's right to associate:[177]

> Professor William Patton and Dr. Sara Latz argue that "the historical and contemporary evidence supports a clear finding that sibling's association has been a relationship

[169] Mandelbaum, *supra* note 166, at 26 (internal citations omitted) (quoting *Smith*, 431 U.S. 843–46).

[170] *Id.* (citing Moore v. City of East Cleveland, 431 U.S. 494, 499 (1977) (citing Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632, 639–40 (1974)).

[171] *Id.* at 27 (citing *Moore*, 431 U.S. 494 at 503).

[172] *Id.* at 27 (citing *Moore*, 431 U.S. 494 at 504).

[173] *Id.* at 27.

[174] Rivera v. Marcus, 696 F.2d 1016, 1024–25 (2d Cir. 1982).

[175] *Id.* at 1017–18.

[176] *Id.* The court emphasized protection was particularly justified because the siblings had maintained their family environment since birth.

[177] Mandelbaum, *supra* note 166, at 28 (citing Patton, *supra* note 129, at 754).

> historically endemic to the American definition of family. Siblings, just like parents and children, should clearly be held to possess an inherent, fundamental liberty interest in continued contact and association." Another commentator suggests that a sibling's right to contact with an adopted brother or sister is encompassed within the fundamental right to intimate association.[178]

Scholars base their conclusion from the holding in *Roberts v. United States Jaycees*, which protects freedom of association in order to, "protect the choice to enter into and maintain certain intimate human relationships that must be secured against intrusion by the State because of the role of such relationships in safeguarding the individual freedom that is central to our constitutional scheme."[179] The First Amendment embraced highly personal relationships, especially against unjustified state interference.[180] Siblingship contains the close relationship, as proven through various empirical studies, and easily fits the reasoning described in *Roberts*.[181] Additionally, the sibling bond is strikingly similar to other dicta describing family relationships, "by their nature, they involve deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one's life."[182]

After the *Roberts* decision, in *Trujillo v. Board of County Commissioners*, the Tenth Circuit examined whether siblings have a constitutional right to maintain their relationship pursuant to the First Amendment.[183] The court held the deprivation of a sibling relationship, stemming from an alleged wrongful death claim, is a violation of the constitutional right to familial association.[184] Although wrongful death claims typically involve the parental relationship, the court reasoned other intimate relationships should be provided a remedy.[185]

VI. THE ARGUMENT AGAINST SIBLING CONSORTIUM IN CONNECTICUT

A. Lack of Guidance by Case Law & Statute

Amongst the reasons for not recognizing sibling consortium, the largest

---

[178] *Id.*

[179] *Id.* (citing Roberts v. United States Jaycees, 468 U.S. 609, 617–18 (1984)).

[180] *Id.*

[181] *See supra* Part b. The Importance of Sibling Bonds & Empirical Analyses.

[182] Mandelbaum, *supra* note 166, at 28 (citing *Roberts*, 468 U.S. at 619–20).

[183] Jones, *supra* note 124, at 1206 (citing Trujillo v. Bd. of Cty. Com'rs of the Cty. of Santa Fe , 768 F.2d 1186 (10th Cir. 1985).

[184] *Id.*

[185] *Id.*

and most widely cited justification by trial courts is no appellate jurisdiction has definitely ruled siblings may recover consortium damages, and no statutory provision grants such right. This argument is persistent within the opinions already mentioned,[186] and is further demonstrated through *Urbanski v. Carabetta Enterprises*.[187] The argument that no precedent exists for sibling consortium dates back to the earliest cases, with *Urbanski* setting the tone for years to come. The opinion cited a claim by a sister for filial loss of consortium arising from the death of a sibling; other claims by the decedent's parents were made for parental consortium.[188] The court's reasoning provided little substance and referenced a newly decided superior court decision when stating, "there is no statutory provision for recovery for loss of parental or filial consortium."[189] The court continued, "[t]he majority of Superior Court decisions have refused to recognize claims for filial consortium absent legislative or appellate authority."[190] The reasoning provided little insight into why sibling consortium should be denied, and seemed to punt the new cause of action by citing the lack of mandatory authority.

Similar to sibling consortium, parental consortium faced the same challenges before finally being allowed. In "Children's Rights: The Parental Consortium Dilemma and Connecticut Law," Timothy David DiResta explained the difficulty associated with bringing parental consortium claims over two decades ago.[191] DiResta's article explains the arguments used against parental consortium, which are incredibly similar to the arguments currently used today against sibling consortium. DiResta researched the reasoning behind parental consortium dismissals and found many trial courts relied on the lack of legislative or judicial authority. One court stated, "no appellate level court has yet addressed the validity of a claim for loss of parental consortium…."[192] Another court denied minor children such right because the Connecticut General Statute failed to unambiguously create the cause of action.[193]

B. Appellate Dicta

The trial courts have used language from other opinions where plaintiffs

---

[186] *See* Hawthorne v. Lowe, No. CV 301393S, 1995 WL 781417, at *1 (Conn. Super. Ct. Dec. 14, 1995); Kaya v. City of New London, 458 F. Supp. 2d 1, 7 (D. Conn. 2006); Keough v. Dayton Constr. Co., No. X05CV095012675S, 2011 WL 1168432 at *9 (Conn. Super. Ct. Feb. 3, 2011).

[187] Urbanski v. Carabetta Enters., No. CV 94-0463861S, 1995 WL 527396 (Conn. Super. Ct. Aug. 14, 1995).

[188] *Id.* at *1.

[189] *Id.* at *2.

[190] *Id*.

[191] Timothy David DiResta, Children's Rights: The Parental Consortium Dilemma and Connecticut Law, 14 QLR 437, 450 (1994).

[192] *Id.* (internal quotations omitted) (citing O'Hazo v. Sousa, 7 Conn. L. Rptr. 62 (Super. Ct. 1992)).

[193] *Id.* at 451 (citing Foran v. Carangelo, 153 Conn. 356 (1966)).

sought compensation for consortium from the wrongful death of their parent or child to deny claims for sibling consortium. As previously discussed, *Kaya v. City of New London* declined to recognize the action and cited precedent involving spousal consortium from the Connecticut Supreme Court's ruling in *Gurliacci*'s.[194] There, the Supreme Court held, "claims for loss of consortium are limited to claims by one spouse for loss of services, support, and relations of the other, and that such claims are viable only if the couple was married at the time of the injury."[195] The discussion over whether spouses should have a right of action, therefore sealed the fate for siblings to bring similar claims. However, the controversy in *Gurliacci* was whether unmarried couples could bring consortium claims, not whether other types of filial relationships had such right.[196] The opinion explores the relationships of married persons, and does not mention sibling relationships.[197]

Likewise, *Schlierf v. Abercrombie & Kent* used dicta from an appellate court opinion to justify the dismissal of sibling consortium.[198] *Schlierf* took language from the overruled precedent established in *Mendillo v. Board of Education*, which previously denied parental consortium to children.[199] *Mendillo* explored the differences between the parent-child relationship and the spousal relationship and stated:

> These differences arise out of the fact that the relationship between spouses is different in kind as well as source from the parent-child relationship. Marriage is a unique human relationship ... the closest entity recognized by society ... a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred ... Most important, the spousal relationship is based on notions of commitment between adults. [T]he formal marriage relation forms the necessary touchstone to determine the strength of commitment between the two individuals which gives rise to the existence of consortium between them in the first instance.[200]

The *Schlierf* court recognized the plaintiff's argument that while *Mendillo* focuses on the institution of marriage, it does not expressly reject

---

[194] Kaya v. City of New London, 458 F. Supp. 2d 1, 6 (D. Conn. 2006) (citing Gurliacci v. Mayer, 218 Conn. 531, 561–64 (1991)).

[195] *Id.*

[196] *Gurliacci*, 218 Conn. at 531.

[197] *Id.*

[198] Schlierf v. Abercrombie & Kent, Inc., No. X02CV055003467, 2011 WL 2418571 at *8 (Conn. Super. Ct. May 19, 2011).

[199] *Id.* (citing Mendillo v. Bd. Of Educ. Of East Haddam, 717 A.2d 1177 (Conn. 1998).

[200] Mendillo, 717 A.2d at 1195.

consortium for siblings.[201] However, the court ultimately declined to recognize the claim for public policy reasons, discussed later on.[202]

Likewise, the court's opinion in *Keough v. Dayton Construction Company* used language borrowed from *Hopson v. St. Mary's Hospital*.[203] *Keough* explains the types of damages discussed in *Hopson,* [t]hese intangible elements are generally described in terms of affection, society, companionship and sexual relations ... These intangibles have also been defined as the constellation of companionship, dependence, reliance, affection, sharing and aid which are legally recognizable, protected rights arising out of the civil contract of marriage."[204] The damages are deliberated to support the notion that an injury to married parties is categorically different than an injury to sibling relationships. Since the type of injury is different, the court logically concluded damages could not be awarded. However, the opinion made no effort to discuss the possible injuries associated with sibling consortium or how they differ from spousal relationships.

DiResta's analysis of parental consortium revealed trial courts have used the same type of appellate dicta to sway dismissals towards defendants. For instance, *O'Hazo v. Sousa* declined parental consortium based off appellate dicta, asserting, "the appellate courts, in discussing loss of consortium claims, have repeatedly emphasized the marriage relationship . . . [[[and] this court follows the . . . higher court pronouncements on the importance of a marriage relationship for consortium claims . . . ."[205]

Similarly, a trial court in *Clark v. Romeo* relied upon the Connecticut Supreme Court's reasoning in *Hopson*,[206] which emphasized the importance of marriage as an institution and the protections that should be afforded to it.[207] In *Lesco v. Royal Glass of Connecticut*, another superior court cited appellate dicta[208] that suggested consortium arises from the contract of marriage, and cannot be extended to a child-parent relationship.

Perhaps most troublesome for consortium seekers is Connecticut's latest ruling which contains cautionary language.[209] Although the *Campos*

---

[201] Schlierf, 2011 WL 2418571, at *8.

[202] *Id.*

[203] See Hopson v. St. Mary's Hospital, 208 A.3d 260 (Conn. 1979); (Overruling prior precedent and ruled spouses have the right to bring consortium as a matter of law).

[204] Keough v. Dayton Constr. Co., No. X05CV095012675S, 2011 WL 1168432 at *8 (Conn. Super. Ct. Feb. 3, 2011) (internal citations omitted).

[205] DiResta, *supra* note 189, at 450.

[206] *Hopson* is frequently cited as justification to challenge consortium claims, but does not explicitly rule out other types of claims in negligence suits.

[207] DiResta, *supra* note 189, at 450.

[208] *See* Mahoney v. Lensink, 550 A.2d 1088, 1094 (Conn. App. Ct. 1988); (Denying consortium to a parent for the wrongful death of their child. "The right to consortium is said to arise out of the civil contract of marriage and as such, does not extend to the parent-child relationship.").

[209] Campos v. Coleman, 319 Conn. 36 (2015).

decision expanded consortium rights for children, the opinion made careful mention about familial relationships and the significance between children and their parents.[210] The opinion reads, "the familial relationships referred to in Mendillo are more attenuated and derivative than the parent-child relationship because the relationship between siblings, between a grandparent and a grandchild, and between an uncle or an aunt and a niece or a nephew arises through the parent-child relationship."[211] *Campos* granted the cause of action but used rationale to prevent other types of familial relationships from gaining the same right. The court seemed concerned with endless liability in wrongful death cases that far exceed the reaches of foreseeability.[212] The opinion recognized the uniqueness of the parent child relationship and then used that distinction to place an arbitrary limitation on other family members.[213]

The *Campos* dissent criticized the majority's distinction between the parent-child relationship and other familial connections.[214] For instance, the dissent questioned whether other biological relationships, like siblings, may bring a claim for parental consortium because the siblings functioned more like a parent-child relationship.[215] The dissent ultimately concluded the majority's opinion is unclear and, "[d]eciding where to draw the line is essentially a political decision that turns on a number of socio-economic factors, and it should therefore be left to the legislature."[216]

The dissent failed to recognize that the Connecticut legislature has proven they are no mechanism for change. Connecticut has considered editing the wrongful death statute a number of times, most recently in 2016 and in reaction to the *Campos* holding. Senate Bill 247, sponsored by the Joint Committee on Judiciary, would have allowed minor children to bring a cause of action for loss of consortium with respect to the death of a parent.[217] The reasoning for the bill was to clarify and codify the *Campos*

---

[210] *Id.* at 44.

[211] *Id.*

[212] *Id* at 48.

[213] Id. at 46–47 ("The child-parent relationship is unique in its emotional closeness, in its value to society and in its generation of enforceable legal rights and obligations. By limiting loss of familial consortium claims to cases involving the impairment of that relationship, we are merely recognizing the natural distinction between that relationship and other familial relationships.") (internal citations omitted).

[214] *Id* at 76.

[215] Campos, 319 Conn. at 76 n.8 ("Other possibilities include aunts and uncles and nieces and nephews, stepparents and stepchildren, foster parents and foster children, and siblings, to name only a few more. In each of these relationships, it is conceivable that the adult, although not the child's natural or legal parent, stands in loco parentis.").

[216] *Id.* at 76 (internal citations omitted).

[217] Bill History, Session Year 2016, Substitute for Raised S.B. No. 247, CONN. GEN. ASSEMBLY, https://www.cga.ct.gov/2016/cbs/S/pdf/SB-0247.pdf (last visited on Apr. 7, 2018).

decision.[218] Unfortunately, the bill died in chamber.[219]

The Connecticut legislature, situated in the insurance capitol, is geographically convenient for insurance representatives to attend and testify on proposed legislative bills. Multiple members of the insurance industry submitted testimony against S.B. 247, leading to its demise. Property Causality Insurers Association of America testified against the bill, claiming parental consortium claims can be significantly higher than other consortium claims because multiple children can increase claim payouts exponentially.[220] Similarly, the Insurance Association of Connecticut testified that the potential recovery is too large and would have economic consequences, including increased insurance premiums.[221] Insurance companies have obvious financial incentives to limit potential liability, therefore their involvement in legislative bills that affect their bottom-line should be expected.

However, the insurance industry's claim that S.B. 247 would have resulted in increased costs to policy holders was addressed by the Plaintiffs in *Campos*. In the Plaintiffs' Brief and supporting Appendix, they demonstrated there is no correlation between liability insurance rates and whether that state allows parental consortium claims; the three states with the lowest car insurance rates actually recognize parental consortium.[222]

Additionally, the Plaintiffs further addressed the argument by the *Campos* dissent that the court should defer to the legislature. Claims for parental consortium have historically been founded upon the common law, and the legislature has not limited the court's holdings in this field.[223] The court chose to reconsider and reform their holding on spousal consortium by overruling *Marri*.[224] Rather than defer to the legislature, the court in *Hopson* decided the holding in *Marri* was no longer persuasive given the growing majority of other states which recognized spousal consortium.[225]

C. Plaintiff's Burden of Proof & Evidence Difficulties

Aside from overcoming the harsh language imposed by the Connecticut

---

[218] *Id.* "Presently a minor child can bring a claim or cause of action resulting from an injury to a parent but not for wrongful death of a parent. The proposed bill will allow a minor child to bring a loss of parental consortium when a parent is killed. The bill also clarifies & codifies a recent Supreme Court case; *Campos*, 319 Conn. at 43."

[219] *Id.*; Judiciary Favorable Report for SB-247, CONN. GEN, ASSEMBLY, ftp://ftp.cga.ct.gov/2016/jfr/s/2016SB-00247-R00JUD-JFR.htm (last visited on Apr. 7, 2018). Four democrats and twelve republicans voted against the bill.

[220] 2016 Legis. Bill Hist. CT S.B. 247.

[221] *Id.*

[222] Brief of Plaintiffs-Appellants at 11—12, Campos v. Coleman, 319 Conn. 36 (2015) (No. 19195).

[223] Rely Brief of Plaintiffs-Appellant at 1—2, Campos v. Coleman, 319 Conn. 36 (2015) (No. 19195).

[224] *Id.* at 1.

[225] *Id.* at 2.

appellate courts, the *unique* and *speculative* nature of consortium damages may further hinder siblings' ability to recover. Placing a value on the loss of a loved one is incredibly difficult for juries, which may consider a number of factors in their calculation.[226] A well prepared plaintiff should demonstrate the nature, closeness, dependence of the relationship, possibly their living arrangements, the nature and frequency of visits, and effective witnesses.[227] Sibling consortium cases pose a different type of challenge for plaintiffs because the relationship is likely incredibly different than a parental or spousal relationship. In a spousal consortium case, the plaintiff would be expected to show loss of services, loss of companionship and society, and impairment of sexual relations.[228] However, sibling relationships would not include sexual relations and would place more emphasis on the closeness or dependence between the two parties. This may limit the amount of damages siblings may expect to recover, because their injury may be perceived as less significant.

To make matters worse, some courts have noted the speculative nature of consortium damages in general. A notable California opinion discussed the difficulties associated with loss of consortium claims:

> However, damages for the intangible, noneconomic aspects of mental and emotional injury are of a different nature. They are inherently nonpecuniary, unliquidated and not readily subject to precise calculation. The amount of such damages is necessarily left to the subjective discretion of the trier of fact. Retroactive interest on such damages adds uncertain conjecture to speculation…[229]

Another Pennsylvania case acknowledged the law does not require plaintiffs to prove exact mathematical equations, but requires the claim to be supported by a reasonable basis for calculation, stating mere guess or speculation is not enough.[230] Similarly, the Vermont Supreme Court concluded that an award of damages for pecuniary injuries do not require exact computation, but cannot be sustained without proper evidence.[231] The

---

[226] As an example, with parental loss jurors may consider, "the relationship between the parent and child, the living arrangements of the parties, any absence of the deceased from the beneficiary for extended periods, the harmony of the family relationship, and common interests and activities." 10 FRUMER & FRIEDMAN, PERSONAL INJURY ACTIONS, DEFENSES, AND DAMAGES § 45.08 (Matthew Bender, Rev. Ed. 2018)

[227] 70 THEODORE Z. WYNMAN, CAUSES OF ACTION 194 (2d ed. 2015).

[228] *Id.* § 20.

[229] Fox v. Pac. Sw. Airlines, 133 Cal. App. 3d 565, 573 (1982) (internal citation omitted).

[230] Kaczkowski v. Bolubasz, 491 Pa. 561, 567 (1980) (internal citation omitted).

[231] "[I]t is competent to show the situation of the persons who claim to have been so injured, and the occasion for and value to them of the services of the deceased." Mobbs v. Cent. V. Ry., 150 Vt. 311, 316 (1988) (internal quotes and citation omitted).

court went onto deny sibling consortium because a showing of the family unit was insufficient evidence to support damages.[232]

The general consensus amongst the courts is the plaintiff maintains the burden to sufficiently demonstrate their somewhat imprecise damages to the jury.[233] However, without an exact set of criteria, plaintiffs have another difficult hurdle to successfully maintain their claim.

Despite the challenges of maintaining this burden, the court in *Hopson* addressed the same argument when recognizing spousal consortium. The court stated, "[t]he difficulty of assessing damages for loss of consortium is not a proper reason for denying the existence of such a cause of action inasmuch as the 'logic of (that reasoning) would also hold a jury incompetent to award damages for pain and suffering.'"[234] There are also mechanisms to minimize improper verdicts, as explained by the *Hopson* opinion. Some of these ideas involve joining claims for consortium and physical injuries into one action tried before a single trier of fact and limiting recovery in a particular case to those elements established by plaintiffs during trial by means of jury instructions.[235]

VII. CONCLUSION

Although some states allow brothers and sisters to recover for the wrongful death of their sibling, Connecticut's judiciary has not definitively answered this question. The recent *Campos* decision leads spectators to believe other types of familial relationships will face difficulties in gaining recognition. The Connecticut Supreme Court appears hesitant to expand consortium claims for grieving family members. The Justices cannot unanimously agree upon the correct factors to examine or how to much liability is too much for potential tortfeasors. Despite the opinion's dicta regarding different familial dynamics, family courts proclaim siblinghood as incredibly important in foster care and adoption cases, believing sibling relationships should be considered above all else. Social science bolsters the family court's assertion that sibling bonds should be protected. Detailed research has shown bonds between siblings to be significant, and at times more significant, than spousal or parental relationships. The research found siblings support one another through the ever-changing stages of life. These relationships are critical to childhood development, adulthood, and remain important throughout retirement years. The siblinghood connection only intensifies between twins. Constitutional language supports the argument

---

[232] *Id.*

[233] Rathey v. Priority EMS, Inc., 894 So. 2d 438 (La. Ct. App. 4th Cir. 2005), *writ denied*, 901 So. 2d 1108 (La. 2005), *writ denied*, 901 So. 2d 1107 (La. 2005).

[234] *Hopson v. St. Mary's Hospital*, 176 Conn. 485, 493 (Conn. 1979) (citing Millington v. Se. Elevator Co., 22 N.Y.2d 498, 507 (N.Y. 1968)).

[235] *Id.* at 494.

by strongly favoring siblinghood through Substantive Due Process and First Amendment protections. Consortium claims continue to be debated with shifting family dynamics and various jurisdictions recognizing some claims and not others. While Connecticut's current law remains unusually conservative, the state should consider the evolution of consortium rights and allow siblings to bring this cause of action.