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In the midst of seemingly juggled policy concerns, Illinois courts have treated suits for loss of society and companionship in different and sometimes inconsistent ways. Most recently, in Dralle v.


Ruder, the Illinois Supreme Court refused to recognize a cause of action for a parent's loss of society and companionship resulting from a nonfatal injury to a child. Because a parent's cause of action was unnecessary and lacked legislative support, the court properly limited tort liability. In doing so, however, the court tainted its decision with inconsistent reasoning. Additionally, the scope of the opinion was narrow and thus did not thoroughly resolve this controversial issue.

The events leading to the Dralle litigation began October 17, 1977, when Karen Dralle gave birth to Jeffrey Dralle. During the delivery, Jeffrey suffered anoxia and was in fetal distress. Consequently, the child was born with a number of serious disorders. The plaintiffs claimed Jeffrey's injuries were the result of Karen Dralle's...
ingestion of Merrell-Dow's prescription drug Bendectin\(^\text{10}\) during her pregnancy.\(^{11}\)

The complaint,\(^{12}\) in addition to Jeffrey's claim for his own injuries, sought parental recovery for loss of society and companionship resulting from the child's injuries.\(^{13}\) The defendant, Merrell-Dow, moved for dismissal of the parental claims for recovery contending that Illinois did not recognize a cause of action for the parents' claims.\(^{14}\)

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12. \textit{Dralle v. Ruder}, 124 Ill. 2d 61, 529 N.E.2d 209, 210 (1988). The four part complaint named two physicians, a medical center and Merrell-Dow the manufacturer of Bendectin as defendants. \textit{Id.} The complaint was premised on both product liability and negligence theories. \textit{Id.} Counts one and two were negligence actions brought by Jeffrey Dralle and his parents respectively. \textit{Id.} Counts three and four were product liability actions also by Jeffrey and his parents respectively. \textit{Id.}

13. \textit{Id.}

14. \textit{Dralle}, 124 Ill. 2d at 64, 529 N.E.2d at 210. Merrell-Dow also contended that damages for loss of society and companionship are not recoverable in a product liability action. \textit{Id.} at 74, 529 N.E.2d at 215. The supreme court did not address this contention because the result in the loss of society and companionship issue mooted the product liability issue. \textit{Id.} The court, however, cited without explanation Hammond v. North Am. Asbestos Corp., 97 Ill. 2d 195, 454 N.E.2d 210 (1983). \textit{Id.} The \textit{Hammond} case affirmed a spousal claim for loss of consortium in a products liability action. \textit{Hammond}, 97 Ill. 2d 195, 459 N.E.2d 210 (1983). The reason for the court's reference to the \textit{Hammond} case is not clear because the question, whether damages for loss of society and companionship are recoverable in a products liability action, was not at issue in \textit{Hammond}. See \textit{Hammond}, 97 Ill. 2d at 199, 454 N.E.2d at 213 (main issue concerned whether the statute of limitations barred the action).

Recovery in strict liability requires physical harm to plaintiff's person or property. Woodhill v. Parke Davis and Co., 58 Ill. App. 3d 349, 355, 374 N.E.2d 655, 668 (1978), aff'd, 79 Ill. 2d 26, 38, 402 N.E.2d 194, 200 (1980). See also \textit{Restatement (Second) of Torts} § 402A (1) (1965) (seller of a product is subject to liability for physical harm caused by the product). In his concurring opinion, Justice Clark asserted that the claim should have been dismissed on strict liability grounds. \textit{Dralle}, 124 Ill. 2d at 74-75, 529 N.E.2d at 215 (Clark, J., concurring). Justice Clark reasoned...
The trial court granted the motion and dismissed the parents' claims. The parents then appealed from the dismissal order and the appellate court reversed the trial court decision. The appellate court reasoned that because a parent may recover for loss of a child's society and companionship in a wrongful death action, it would be anomalous to deny recovery in a nonfatal injury action.

The Illinois Supreme Court allowed the defendant's petition for leave to appeal to resolve the conflict among the lower courts involving the applicability of case precedent in this area. The court addressed the issue of whether Illinois recognizes a cause of action for the loss of a child's society and companionship resulting from a nonfatal injury. The court concluded that nonfatal injuries receive sufficient compensation and held that policy considerations necessitated limiting the extension of tort liability for loss of society and companionship. Accordingly, the court reversed the appellate court's judgment.

In deciding whether to recognize a cause of action for loss of society and companionship, the Dralle court first referred to the ap-
pellate court’s reliance on Bullard v. Barnes. In Bullard, the Illinois Supreme Court recognized a parent’s right to recover for the loss of a deceased child. The Bullard court concluded that earlier cases allowed similar recovery and that allowing parental recovery was consistent with the expanded recovery trend in wrongful death cases.

The Dralle court, however, concluded that the Bullard decision did not support a claim for nonfatal injuries. In support of this conclusion, the court distinguished wrongful death actions from nonfatal injury actions on the basis that only surviving family members can sue in a wrongful death action. Illinois enacted the Wrongful Death Act in 1853 to allow the recovery of the value of the child’s contribution to the family income. Today, however, the only injury that families usually incur is loss of society. Thus, the court concluded that recognition of a cause of action for loss of society in wrongful death actions was necessary to compensate for the death. Conversely, the court observed that a nonfatally injured victim retains his own cause of action. Because injured parties can sue on their own behalf, the court found parental causes of action unnecessary.

In addition to the fact that nonfatally injured victims can bring their own suit, the court asserted policy considerations in support of its decision. The court’s first policy concern was the need to limit

25. Id. at 65, 529 N.E.2d at 211.
27. Id. at 515, 468 N.E.2d at 1233. The Bullard court noted that when enacted, the Wrongful Death Act reflected the social values of the time. Id. The court then stated that today the presumption of pecuniary injury is no longer the loss of a child’s earnings; rather it is the loss of a child’s society. Id. at 517, 468 N.E.2d at 1234. For a discussion of the history of the Wrongful Death Act, see infra note 67.
28. Dralle, 124 Ill. 2d at 69, 529 N.E.2d at 212.
29. Id. at 69, 529 N.E.2d at 212. For further discussion of the distinction between a wrongful death cause of action and a nonfatal injury cause of action, see infra note 65 and accompanying text.
30. See Bullard v. Barnes, 102 Ill. 2d 505, 515, 468 N.E.2d 1228, 1233 (1984) (parents could only recover for loss of child’s income).
32. Dralle, 124 Ill. 2d at 69, 529 N.E.2d at 212. See Bullard, 102 Ill. 2d at 516, 468 N.E.2d at 1233 (stating that in modern family life children do not provide significant financial benefits to their parents); McClung, The Value of A Child, 25 BAYLOR L. REV. 118 (1973) (advocating recovery for loss of society and companionship because children no longer provide financial support to families).
33. Dralle, 124 Ill. 2d at 69, 529 N.E.2d at 212. For further discussion of the nonfatal injury distinction, see infra note 65 and accompanying text.
35. Dralle, 124 Ill. 2d at 69-71, 529 N.E.2d at 213-14. See Love, supra note 1, at 595-605 (discussing various policy considerations involved).
tort liability to a controllable degree.\textsuperscript{36} The court reasoned that allowing a parental cause of action would lead to grandparents, siblings, and friends bringing claims.\textsuperscript{37} Consequently, the court concluded that a loss of society and companionship theory of recovery could lead to unlimited liability.\textsuperscript{38}

The court next examined the problems associated with assessing damages for loss of society and companionship.\textsuperscript{39} In particular, the court feared that tortfeasors might end up overcompensating the injured parties.\textsuperscript{40} The court reasoned that the parents’ claims and the child’s claim, though legally distinct, were factually similar and difficult to distinguish.\textsuperscript{41} The court concluded that the likelihood of double recovery weighed against recognizing the parents’ claims.\textsuperscript{42}

In connection with the damage assessment problems, the court considered the necessity of evaluating the diminution in value of a child’s society and companionship an undesirable task.\textsuperscript{43} The court reasoned that the open courtroom is not a suitable place for parents

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\item[36.] Dralle, 124 Ill. 2d at 69-70, 529 N.E.2d at 213.
\item[37.] Id. at 70, 529 N.E.2d at 213. See Koskela v. Martin, 91 Ill. App. 3d 568, 572, 414 N.E.2d 1148, 1151 (1980) (discussing the possible consequences involved with recognizing the action); See also Cockrum v. Baumgartner, 95 Ill. 2d 193, 202, 447 N.E.2d 384, 390 (1983), which stated that “[e]very injury has ramifying consequences, like the rippling[s] of the water, without end. The problem for the law is to limit the legal consequences of wrongs to a controllable degree.” Id. at 202, 447 N.E.2d at 390 (quoting Tobin v. Grossman, 301 N.Y.S. 2d 554, 561, 249 N.E.2d 419, 424 (1969)).
\item[38.] Dralle, 124 Ill. 2d at 70, 529 N.E.2d at 213. The need to prevent limitless liability in the area of family relations has been asserted by Illinois and other courts when denying claims. See Baxter v. Superior, 19 Cal. 3d 461, 464-65, 563 P.2d 871, 873, 138 Cal. Rptr. 315, 317 (1977) (defendants’ liability increases with each claim instituted by family members); Borer v. American Airlines Inc., 19 Cal. 3d 441, 449, 563 P.2d 858, 863-64, 138 Cal. Rptr. 302, 307-08 (1977) (asserting that claims by each family member multiplies liability of defendant); Cockrum, 95 Ill. 2d at 203, 447 N.E.2d at 390 (rejecting contention that tortfeasor liable for all costs to plaintiff); Koskela v. Martin, 91 Ill. App. 3d 568, 572, 414 N.E.2d 1148, 1150 (1980) (stating that not every loss is compensable and courts must locate line where liability terminates). But see Frank v. Superior Court, 150 Ariz. 228, 233, 722 P.2d 955, 960 (1986) (court is responsible for dealing with suits on merits irrespective of number of suits imagined when engaging in gloomy speculation).
\item[39.] Dralle, 124 Ill. 2d at 70, 529 N.E.2d at 213.
\item[40.] Id. The court stated that the assessment of damages posed undeniably difficult problems for the trier of fact. Id. at 70-71, 529 N.E.2d at 213.
\item[41.] Id. at 70, 529 N.E.2d at 213. See Baxter, 19 Cal. 3d at 464-65, 563 P.2d at 873, 138 Cal. Rptr. at 317 (asserting danger of double recovery if multiple claims not distinguished); Borer, 19 Cal. 3d at 449, 563 P.2d at 863, 138 Cal. Rptr. at 307 (advocating that having jury distinguish parents’ claim from child’s claim may be asking too much). But see Brown v. Metzger, 104 Ill. 2d 30, 35, 470 N.E.2d 302, 304 (1984) (double recovery problem solved by joinder); Dini v. Naiditch, 20 Ill. 2d 406, 426-27, 170 N.E.2d 881, 891 (1960) (double recovery a cliche for denying recovery).
\item[42.] Dralle, 124 Ill. 2d at 70, 529 N.E.2d at 213.
\item[43.] Id. at 70-71, 529 N.E.2d at 213. The court illustrated the paradox of the situation by stating that in such circumstances parents must minimize their child’s value while the defendant shows the greater family bonds arising from the injuries. Id.
to disparage their own child's value. The court contrasted this situation with wrongful death actions which presume injury. Consequently, the court concluded that interests in maintaining family relations dissuade allowing the parents' claims.

After declaring that policy considerations weigh against recognizing the parents' causes of action, the Dralle court acknowledged that a spouse may bring an action for loss of consortium when the other spouse is nonfatally injured. The court, however, attempted to reconcile the different treatment of these two conceptually similar fact situations. In doing so, the court set forth a list of attributes found in a spousal relationship: material services, elements of companionship, felicity, sexual intercourse and the fact that marriage is a basic human right. The court then concluded that many of those attributes are not found in a parent-child relationship. On this basis, the court rejected spousal consortium actions as a basis for recognizing a cause of action in a case involving a nonfatally injured child.

44. For a discussion of the applicability of the court's degradation argument, see infra note 101 and accompanying text.
45. Dralle, 124 Ill. 2d at 71, 529 N.E.2d at 213. See also Bullard v. Barnes, 102 Ill. 2d 505, 507, 468 N.E.2d 1228, 1234 (1984) (parents entitled to presumption of pecuniary injury under wrongful death statute).
46. Dralle, 124 Ill. 2d at 71, 529 N.E.2d at 213.
47. Id. at 71-72, 529 N.E.2d at 214. For a comparison of different interpretations of the term consortium, see infra note 50.
49. Id. at 72, 529 N.E.2d at 214.
50. Id. The court did not specify which attributes were missing from the parent-child relationship that were present in the spousal relationship. Id. at 78, 529 N.E.2d at 216-17 (Clark, J., concurring). Justice Clark asserted that sexual intercourse was the one key missing attribute in the parent-child relationship. Id. at 78, 529 N.E.2d at 217 (Clark, J., concurring). Courts generally maintain that there is a distinction between spousal consortium and loss of society and companionship. See Borer v. American Airlines, 19 Cal. 3d 441, 448, 563 P.2d 858, 863, 138 Cal. Rptr. 302, 307 (1977) (spousal consortium different because claim rests on impairment of sexual life of couples); see also Brown v. Metzger, 104 Ill. 2d 30, 34, 470 N.E.2d 302, 304 (1984) (stating that consortium encompasses loss of support and society including companionship and sexual intercourse); Elliot v. Willis, 92 Ill. 2d 530, 535, 442 N.E.2d 163, 165 (1982) (consortium unique to spousal relationship and includes society, guidance, companionship, felicity and sexual relations); Mitchell v. White Motor Co., 58 Ill. 2d 159, 162, 317 N.E.2d 505, 507 (1974) (asserting that spousal relationship is contractually injured); Koskela v. Martin, 91 Ill. App. 3d 568, 572, 414 N.E.2d 1148, 1151 (1980) (consortium dealt with destruction of sexual life and does not exist in a child's action); Prosser and Keeton, supra note 14, at 931 (historically consortium meant spouses services, sexual relationships, companionship and society); Love, supra note 1, at 613-615 (asserting that the only significant difference is sexual relations). But see Hair v. County of Monterey, 45 Cal. App. 3d 538, 545, 119 Cal. Rptr. 639, 644 (1975) (consortium no longer limited to a spouse; includes loss of any family member); Dralle, 124 Ill. 2d at 78, 529 N.E.2d at 217 (Clark, J., concurring) (no important difference between spousal loss and parental loss); Berger v. Weber, 82 Mich. App. 199, 209, 267 N.W.2d 124, 130 (1981) (other elements also deserving of protection).
51. Dralle, 124 Ill. 2d at 72, 529 N.E.2d at 214. In its analysis, the court stated
Upon reaching its conclusion, the Dralle court limited the scope of its opinion to cases involving indirect or negligent interference with the parent-child relationship. The court recognized that Illinois appellate courts differed in their decisions whether to permit recovery for parental loss of society in direct or intentional nonfatal interference suits. The court stated, however, that the type of harm in the direct interference cases involved a different basis for recovery. Therefore, the court did not consider the nature or extent of recovery for a direct interference in the Dralle decision.

In Dralle, the Illinois Supreme Court justifiably affirmed the dismissal of the parents' causes of action for loss of society and companionship. The decision was correct for three reasons. First, in a nonfatal injury case the injured child has a cause of action so a parental action is unnecessary. Second, the need to limit tort liability to a controllable degree outweighs reasons for recognizing the new cause of action. Finally, there is no legislative support for a parental cause of action.

The court's opinion, however, falls short in three respects. First, the court's attempt to distinguish spousal actions from parental actions that spousal consortium draws its primary animation from the marriage relationship, a basic human right which is fundamental to our existence and survival. Id. Justice Clark, in response to this statement, contended that it was "late in the day" to deny that a parent has a fundamental right to companionship and care of her children. Id. at 78, 529 N.E.2d at 217 (Clark J., concurring). See also Santosky v. Kramer, 455 U.S. 745, 753 (1982) (parents have fundamental liberty interest in care and custody of child).

52. An indirect interference occurs when companionship and affection are interfered with through physical injury to a family member. PROSSER AND KEETON supra note 14, at 916.

53. Dralle, 124 Ill. 2d at 72, 529 N.E.2d at 214.

54. A direct interference is an act by the defendant with the intent to disrupt a relationship. Id. Examples of this direct interference include abduction, criminal conversation, seduction or alienation of affections. PROSSER AND KEETON supra note 14, at 924-30.


56. Dralle, 124 Ill. 2d at 73, 529 N.E.2d at 214. For a comparison of the difference between direct and indirect interference, see supra notes 52 and 54.


58. See infra note 66 and accompanying text.

59. See infra notes 74-77 and accompanying text.

60. See infra notes 80-82 and accompanying text.
tions is not rational or consistent with the overall reasoning of the court’s opinion. The court limited the scope of the opinion and did not clarify whether it would recognize other similar suits. Last, the policy argument based on damage assessment problems, which the court asserted for the non-recognition of the cause of action, applies equally to wrongful death and spousal actions where the court has previously rejected the argument. Consequently, these shortcomings weaken the persuasiveness of the court’s reasoning.

The court’s approach to distinguishing claims under the Wrongful Death Act from nonfatal injury claims focused on requiring defendants to provide safeguards against reasonable risks of injury. Both fatal and nonfatal injuries result in genuine loss of society and companionship. An injured person, however, may bring suit for all his injuries, including any loss of society and companionship he suffers.

In contrast, before the Illinois Supreme Court recognized loss of society claims under the Wrongful Death Act, family members could only sue for economic damages resulting from death to another. Under the Wrongful Death Act, this resulted in the intolerable para-

61. See infra notes 83-93 and accompanying text.
62. See infra notes 94-96 and accompanying text.
63. Dralle, 124 Ill. 2d at 80, 529 N.E.2d at 218 (Clark, J., concurring) (stating that majority resurrected argument it previously rejected). For a list of those cases where the court has rejected damage assessment problems as a basis for denying recovery, see supra note 41.
64. Id. at 69, 529 N.E.2d at 212. The Dralle court reasoned that safeguarding against the parents’ injury was not reasonable in light of the fact that defendant must also safeguard against the child’s injuries. Id.
65. A plausible reason for a court to distinguish between fatal and nonfatal injuries is that in death claims genuineness is certain. See Love, supra note 1, at 612 (asserting that some courts implicitly conclude the reason for distinguishing is that death claims are certain to be genuine).

The Illinois Wrongful Death Act states:

Every such action shall be brought by and in the names of the personal representatives of such deceased person and, except as otherwise hereinafter provided, the amount recovered in every such action shall be for the exclusive benefit of the surviving spouse and next of kin of such deceased person and in every such action the jury may give such damages as they shall deem a fair and just compensation with reference to the pecuniary injuries resulting from such death, to the surviving spouse and next of kin of such deceased person.

dox that it was better to kill someone than injure him. Therefore, ensuring tortfeasors are liable for their actions required that courts allow next of kin to recover for the loss of society and companionship resulting from death.

A defendant must compensate nonfatal injuries that are the direct result of his actions. In this way the defendant is responsible for providing safeguards against injury to others. Therefore, the distinction between wrongful death actions and nonfatal injury actions is rational and consistent with certain notions of social justice and policy.

The next consideration that supports the court's decision is the need to limit the legal consequences of wrongs to a controllable degree. Recovery for loss of society and companionship resulting from nonfatal injuries can create additional suits by family members. A child's injuries affect his parents, grandparents, brothers, sisters, aunts, uncles and cousins. Because wrongful conduct can affect so many people, limiting the legal consequences of wrongs to a controllable degree is necessary. As a result, courts must find a compromise that protects not only plaintiffs, but defendants as well.

The rational place to draw the line in loss of society claims, where the injured parties have a cause of action themselves, is at the direct injury. Because the direct injury receives compensation,

70. A physically injured person can recover for loss of society that is a result of the injury. Prosser and Keeton supra note 14, at 368.
73. Dralle, 124 Ill. 2d at 70, 529 N.E.2d at 213.
76. Koskela v. Martin, 91 Ill. App. 3d 568, 572, 414 N.E.2d 1148, 1151 (1980). While declining to allow a child to recover for the loss of society and companionship of her father, the Koskela court stated that "[i]t may be difficult for courts to draw the line to end litigation if all members of the household such as cousins, grandchil-
practical considerations of limiting liability outweigh the need to insure that the defendant is held liable for all the consequences of his actions. Consequently, family recovery for loss of society and companionship resulting from nonfatal injuries to another is neither a necessary or logical extension of tort liability.

Another reason for refusing to extend liability is that there is no legislative support for a parental cause of action. The Illinois legislature recently acted to limit tort liability. Denying parental claims for loss of society when children suffer nonfatal injuries is consistent with the policies of this recent legislation. Additionally, the legislature generally is in a better position to weigh the merits of expanding recovery against other considerations. The legislature, as it did with the Wrongful Death Act, can establish who may recover and place limits circumscribing the available remedy. Because legislative action is the appropriate means for expansion of liability in this area, the legislative attempts to limit tort recovery support the refusal to recognize a parental cause of action for loss of society.

Although the court's decision was justified, the court's reasoning was strained in its analysis of spousal consortium actions. The Dralle court distinguished spousal recovery for loss of society and companionship from the parent-child situation on the basis that the parent-child relationship lacks many of the attributes of the spousal relationship. As Chief Justice Clark pointed out in his concurring opinion, the only element of companionship attributable to a

dren and foster children could have potential claims for loss of consortium." Id.

77. See Id. at 572, 414 N.E.2d at 1151 (holding defendant responsible for every other person places unreasonable burden on all human activity).


79. These reform bills targeted two areas. Articles one through seven were aimed at cutting down the number of lawsuits in Illinois. EIGHTY-FOURTH GENERAL ASSEMBLY OF ILLINOIS, SENATE DEBATES, at 80 (June 30, 1986). Articles eight through twenty six were aimed at regulating the insurance industry. Id.


81. Block, 119 Ill. App. 3d at 987, 457 N.E.2d at 512. The Block court stated that the legislature can better evaluate the merits of recovery against problems of duplicate recovery, increased litigation, remoteness of damages and adverse affects on the family. Id.

82. See infra note 106 for state statutes which create a cause of action for loss of society.

83. The court, however, did not specify which attributes were lacking in the parent-child relationship. Dralle v. Ruder, 124 Ill. 2d 61, 72, 529 N.E.2d 208, 214 (1988).
spousal relationship that is lacking in a parent-child situation is sexual intercourse. Justice Clark stated that although the factual distinction exists, it does not compel the conclusion that spousal actions should be treated differently. Sexual relations are but one element of the spousal consortium action. Adding sex to the other elements of the relationship does not necessarily make the relationship more deserving of protection.

The distinction is even more illogical when considering the fact that one may partially lose companionship of a spouse and still be able to enjoy sexual intercourse with that spouse. The court has not stated that a spouse can only sue if the ability to have sexual intercourse is lost. Further, Illinois does not distinguish spousal recovery from parent-child recovery under the Wrongful Death Act.

Not only is the court's treatment of a spousal action illogical, it is also inconsistent with the court's policy considerations in .

When the injured spouse retains a cause of action, there is still substantially the same possibility of multiple recovery. Damages are not recognizably less difficult to calculate either. Consequently, if

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84. Id. at 78, 529 N.E.2d at 217 (Clark J., concurring).
85. Id. at 76, 529 N.E.2d at 216 (Clark J., concurring). Justice Clark stated "a difference which makes no difference is no difference." Id.
87. See Dralle, 124 Ill. 2d at 79, 529 N.E.2d at 217 (Clark J., concurring) (injury to child no less than injury to spouse).
88. If a spouse sues for loss of consortium and part of her damages relate to sexual intercourse, then sex is a factor. See Dini, 20 Ill. 2d at 427, 170 N.E.2d at 891 (wife's action not merely for loss of support but other elements as well which include sex). However, if the spouse does not claim impaired sexual relations, and rather claims the other elements of consortium, then theoretically sex would not be a factor in the suit. See Brown v. Metzger, 104 Ill. 2d 30, 34, 470 N.E.2d 302, 304 (1984) (loss of support and loss of society two elements of consortium). But see Montgomery v. Stephan, 359 Mich. 33, 44, 101 N.W.2d 227, 232 (1960) (consortium cannot be broken down into component parts).
89. The Illinois Supreme Court has previously stated that an estranged spouse can be joined in a husband's action for damages. See Brown, 104 Ill. 2d at 35, 470 N.E.2d at 304. Although the Metzger court implied that a spouse may still recover even if sex is not a factor, the Dralle court, in stating that the elements of consortium are all welded into a conceptualistic unity, implied that the elements cannot be considered separately. Dralle, 124 Ill. 2d at 72, 529 N.E.2d at 214.
90. The Wrongful Death Act states that the surviving spouse and next of kin may sue for wrongful deaths. For the relevant text of the statute, see supra note 67.
91. For a discussion of the policy concerns espoused by the Dralle court, see supra text accompanying notes 35-46.
92. But cf. Dralle, 124 Ill. 2d at 80, 529 N.E.2d at 218 (Clark J., concurring). Justice Clark stated that even if the problem of multiple recovery existed, careful jury instructions would prevent multiple recovery. Id.
Illinois denies a parent-child cause of action, the state should deny a spousal cause of action.

In addition to the inconsistent treatment of spousal actions, the majority opinion has ambiguous implications. The court limited its holding to the facts of the case and implicitly did not address the closely connected issue of whether the Dralle holding extends to situations where the child, already living, is subsequently nonfatally injured. In those situations there is a pre-existing relationship which helps determine the value of the loss. Therefore, the court may decide that the loss is easier to calculate. Because the calculation is easier, the court may find such a relationship similar to a spousal relationship. If so, there may be enough attributes present for the court to find the injury compensable.

Finally, the court's policy arguments based on damage assessment problems are unpersuasive. Duplicate recovery, because of the difficulty in distinguishing the parents' claims from the child's claim, is a relevant concern. However, because this same court has overcome these problems, the arguments are not appropriate and

94. See Dralle, 124 Ill. 2d at 72, 529 N.E.2d at 214 ("companionship and society for which recovery is sought here is not identical with the spousal claim recognized in Dini").


96. Prior to Dralle, the Illinois Supreme Court rejected a wrongful life claim because it did not think a meaningful comparison of the infant's injured state and what the infant's condition would have been without the injury could be made. Goldberg, 113 Ill. 2d at 489, 499 N.E.2d at 409. This theory that damages are too speculative was forcibly argued by the defendants in Dralle. See Appellant's Opening Brief at 27-28, Dralle v. Ruder, 124 Ill. 2d 61, 529 N.E.2d 209 (No. 64424) (1988).

97. An Arizona court recognized a cause of action for an adult child. Frank v. Superior Court, 150 Ariz. 228, 232 P.2d 955 (1986). Arizona, however, had previously recognized recovery for injury to minor children. See Reben v. Ely, 146 Ariz. 309, 310, 705 P.2d 1360, 1361 (Ariz. Ct. App. 1985) (parents may sue for loss of consortium of injured child). In Frank, the court concluded that there was no reason to limit recovery to parents of minor children when parents of adult children may suffer equal or greater harm. Frank, 150 Ariz. at 234, 722 P.2d at 961 (emphasis added). Since the Frank court relied on the Reben case, it does not appear that the Frank court considered the minor and adult situations distinguishably different. The Frank case, however, may imply that as the child gets older a more valuable relationship develops between the parent and child.

98. See Comment, The Parental Claim For Loss of Society and Companionship Resulting From The Negligent Injury of a Child: A Proposal for Arizona, 1980 Ariz. St. L.J. 909, 924-26 (advocating that multiple recovery is a relevant concern but can be reasonably limited).

reduce the persuasiveness of the opinion.100

In connection with the damage assessment problem, the court’s concern about parents degrading their children is misplaced.101 The parents of a child that suffers an ordinary prenatal injury contend that the child means very much to them.102 The parents then assert that, like any injured person, they deserve compensation for the damage done to the parent-child relationship.103 Therefore, the child’s value is not degraded.104

The Dralle decision represents the court’s determination to limit expansion of tort liability in the controversial area of family relations. The ruling undoubtedly will have a significant impact on future loss of society and companionship litigation.105 Barring legis-


101. The argument against parents disparaging their children in court is characteristically found in wrongful birth and wrongful life cases. See Cockrum v. Baumgartner, 95 Ill. 2d 193, 202, 447 N.E.2d 385, 390 (1983) (wrongful birth case asserting that courtroom is not suitable place for parents to disparage their child’s value). Wrongful birth and wrongful life cases are different from the ordinary prenatal injury such as that found in Dralle. In Dralle, the assertion is that if the defendant was not negligent, the child would have been born healthy. Dralle v. Ruder, 124 Ill. 2d 61, 63, 529 N.E.2d 209, 210 (1988). In contrast, wrongful birth and wrongful life actions claim that if not for the defendant, the child would not have been born at all. See Siemienic v. Lutheran Gen. Hosp., 117 Ill. 2d 230, 512 N.E.2d 691 (1987) (wrongful life suit premised on idea that not being born is better than having an impaired existence); Goldberg v. Ruskin, 113 Ill. 2d 482, 499 N.E.2d 406 (1986) (suit premised on claim that child better off if not born at all). For a general discussion of claims involving wrongful birth and wrongful life, see Trotzig, The Defective Child and the Actions for Wrongful Life And Wrongful Birth, 14 FAM. L.Q. 15-17 (1980); Note, Damages for Wrongful Birth and Wrongful Pregnancy in Illinois, 15 LOY. U. CHI. L.J. 799 (1984).

102. Prenatal injuries can be classified into two categories: 1) tortious infliction of a physical injury upon an unborn child; and 2) tortious acts or omissions which result in birth of an unwanted child. Prosser and Keeton, supra note 14, at 367. The first category is an ordinary prenatal injury and the latter category is commonly known as a wrongful birth. Id.

103. See supra note 101.


105. See Barkei v. Delnor Hosp., 176 Ill. App. 3d 681, 531 N.E.2d 413 (1988) (parents denied recovery for loss of society and companionship). But cf. Hutson v. Bell, 702 F. Supp. 212 (N.D. Ill. 1988). In Hutson, the plaintiff’s son was allegedly shot in the head after being taken into custody. The parent’s sued under the federal civil rights statute, 42 U.S.C.A. § 1983, for deprivation of a constitutionally protected liberty interest in her son’s continued society. The federal district court declined to follow Illinois law and recognized the parental cause of action for loss of society and companionship resulting from non-fatal injuries to a child. Hutson, 702 F. Supp. at 214. The district court reasoned that the Supreme Court considered a parent’s right to society and companionship a fundamental right. Id. at 215. The fourteenth amendment protects the parent’s interest regardless of whether the child is fatally or nonfatally injured. Id. at 214. Therefore, the court found the Dralle decision inconsis-
ative action, it is now clear that in Illinois parents may only recover for loss of society and companionship in wrongful death actions and probably direct interference actions. Unfortunately, the Dralle opinion not only has ambiguous implications with regard to children already living, it also is inconsistent with Illinois' treatment of spousal actions. Although reconciliation of this inconsistent treatment will require legislative action, resolution of direct interference and pre-existing children issues may be the next page written in this controversial area.

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106. At least five states provide for a parent's cause of action by statute. See IdaHO CODE § 5-310 (1979) (interpreted in Hayward v. Yost, 72 Idaho 415, 242 P.2d 971 (1952); IOWA R.C.P. 8 (stating that parents may sue for actual loss of services resulting from injury or death to a minor child); LA. CIV. CODE ANN. art. 2315 (West Supp. 1989) (recovery for loss of society allowed in wrongful death and nonfatal injury actions); N.D. CENT. CODE § 32-03.2-04 (1988) (recovery allowed when injuries fatal or nonfatal); WASH. REV. CODE § 4.24.010 (1983) (amended to include recovery for loss of companionship). The Illinois legislature attempted to amend the Wrongful Death Act to allow damages for lost society; but the bill did not pass. LEGISLATIVE SYNOPSIS AND DIGEST OF THE EIGHTY-SECOND GENERAL ASSEMBLY, STATE OF ILLINOIS, H.B. 445 at 697 (1983).