



# Cincinnati Law Library News

A Monthly Newsletter from the Cincinnati Law Library Association

November 2009

## Martin v. Ohio County Hospital Corporation and Post-Death Spousal Loss of Consortium Claims in Kentucky

Jeremiah A. Byrne & Catherine Ford, reprinted with permission.

The Supreme Court of Kentucky rendered a unanimous decision in *Tina Martin, Administratrix of the Estate of Billie Carol Shreve, Deceased; and Donald Ray Shreve, Individually v. Ohio County Hospital Corporation* (No. 2008-SC-000211), holding, for the first time, that KRS 411.145 allows a spouse to claim loss of consortium after the death of his or her spouse.

### History of Spousal Consortium in Kentucky

Prior to 1970, Kentucky common law recognized only a husband's right to recover for loss of consortium with his wife in the time period leading up to her death. However, Kentucky's highest court extended this right to wives in *Kotsiris v. Ling*, 451 S.W.2d 411, 412 (Ky. 1970), stating that "considerations militating in favor of recognition of the wife's cause of action outweigh the considerations on which the doctrine of stare decisis rests," and holding that "a wife has a cause of action for loss of consortium of her husband resulting from an injury to the husband due to the negligent act of another." A few months later, the Kentucky Legislature enacted KRS 411.145, which provides:

(1) As used in this section "consortium" means the right to the services, assistance, aid, society, companionship and conjugal relationship between husband and wife, or wife and husband.

(2) Either a wife or husband may recover damages against a third person for loss of consortium, resulting from a negligent or wrongful act of such third person.

The language of the statute does not indicate whether a claim for spousal consortium is limited to the loss up until the spouse's death or extends beyond it. Thus, the statute did not clarify whether the legislature intended to codify the common law cause of action of loss of spousal consortium, which ended at death, or if the legislature intended the cause of action to extend beyond death, as do parent-child consortium claims.

Despite multiple attempts to amend KRS 411.145 to allow spouses to bring loss of consortium claims in wrongful death actions, those attempts were never successful. In January 2008, a new version of a prior spousal consortium bill was introduced in the 2008 Regular Session of the General Assembly. The bill sought to amend KRS 411.145 to include actions by the surviving spouse, provided that the consortium claim was brought as part of the wrongful death action and not as a separate lawsuit. House Bill 297 did not move beyond committee, however.

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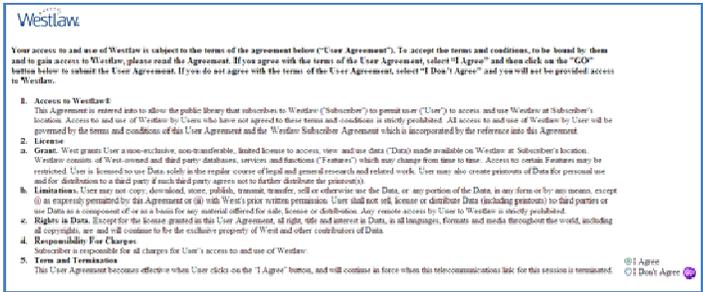
Open Monday-Friday 8 - 4

[www.cincinnatiilaw.org](http://www.cincinnatiilaw.org)

## Tech Tip: Westlaw Subscription Changes

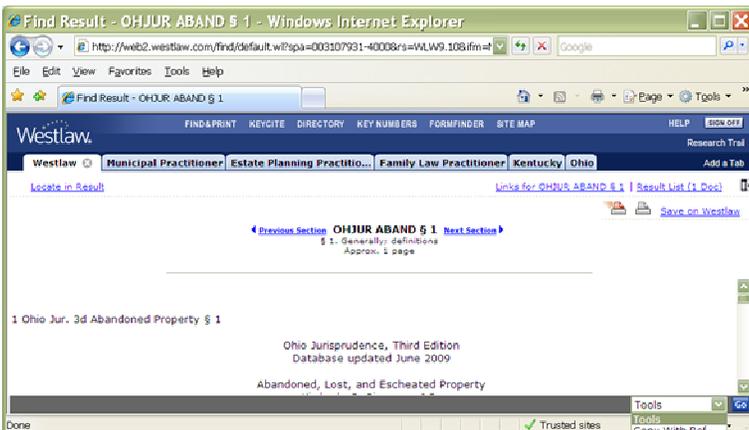
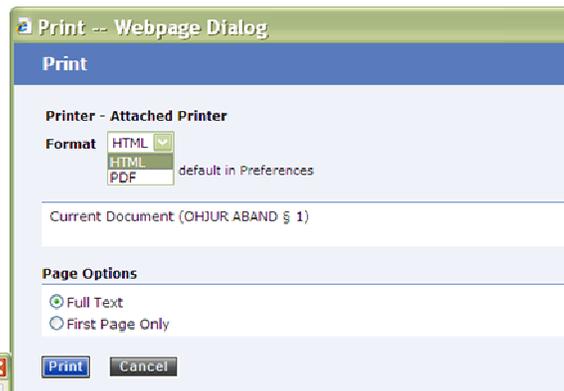
By Julie Koehne

When using the Westlaw databases available here at the Law Library, we previously needed to enter a password and client code for access. Now all we need to do is accept the User Agreement to proceed.



In exchange for much improved privacy, we no longer have an email option. However, you can print the material, copy and paste it, or save it as a PDF.

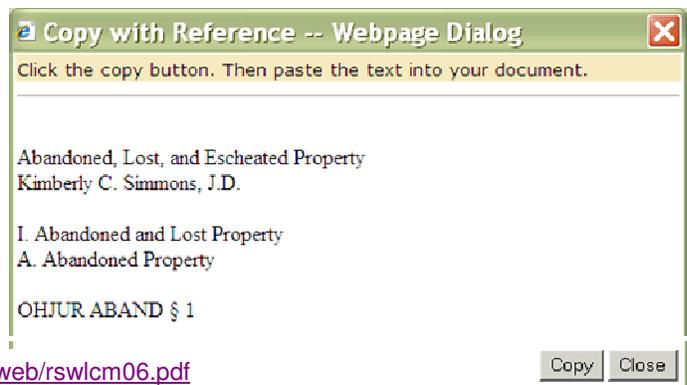
To print a paper copy, select the HTML format, then click "Print". Select PDF to save the file to a flash drive or to the desktop so you may attach as a file using your own email provider.



To cut and paste material into another document using the Copy with Reference feature, highlight the text you want, select "Copy With Ref" from the Tools drop-down list in the bottom right hand corner for the screen, then click Go.

You may get several warnings asking you about your clipboard usage, choose "Allow access".

When the "Copy with Reference" box displays with the text you highlighted, click the Copy button, then paste it into the document.



<http://west.thomson.com/documentation/westlaw/wlawdoc/web/rswlcm06.pdf>

*(Spousal loss continued from page 1)*

## **The Supreme Court's Decision in Martin v. Ohio County Hospital Corporation**

In the October 1, 2009, opinion written by Justice Noble, the Supreme Court of Kentucky noted that "the issue of whether a spouse may claim loss of consortium after the death of her spouse turns on what the silence of the legislature on that issue in KRS 411.145 means." At common law, spousal consortium claims ended at death. However, with the enactment of KRS 411.145, the legislature made loss of consortium a statutory action belonging specifically to the spouse and not to the estate of the decedent, but remained silent as to whether such a claim is limited to the loss up until the spouse's death or extends beyond it.

The Supreme Court concluded that loss of consortium damages under KRS 411.145 do not cease at death by (1) considering the language of the statute, (2) recognizing that the majority of states allow, via statute or case law, spousal consortium damages to continue after death; and (3) rejecting the Appellee's contention that because by legal definition, marriage is a relationship existing "in law for life," any recovery related to the marriage relationship cannot continue after death.

Turning first to the language of KRS 411.145, the Court noted that the statute allows a husband or wife to recover damages for "services, assistance, aid, society, companionship, and conjugal relationship," which are elements that "describe the personal relationship, mental and physical, between spouses." The Court reasoned that the "pain and deprivation" coming from a loss of those elements does not disappear the day a spouse dies and that those losses are not worthless after death.

In addition, the Court noted that KRS 411.145 is intended to be compensatory, providing that a third person must compensate the spouse for a loss resulting from a "negligent and wrongful act," and "compensation cannot be had if the damages claimed are required to terminate at death." Allowing a loss of consortium claim only if the victim survives (1) created a "class of plaintiffs whose cause of action depended on the vagaries of fate, rather than the orderly operation of law," and (2) created a perverse incentive for tortfeasors "to kill victims instead of leaving them disabled, as only by instantly kill-

ing the victim can the tortfeasor be guaranteed to owe no loss of consortium."

The Supreme Court then noted that Kentucky was in the minority regarding spousal consortium. Twenty-six other states have some form of loss of spousal consortium set forth in a statute, and all of those states specifically recognize that those damages continue after death. Fifteen states recognize through case law that loss of consortium damages continue past death, and only seven stop such damages at death.

The Court reasoned that because the legislature decided to enact a statute creating a cause of action for loss of spousal consortium rather than leaving the question to the common law, it must have wished to depart from the common law approach. The legislature deliberately chose not to include the limiting language of "until death," and instead used the broad compensatory language "may recover damages." If the legislature had merely intended to adopt the common law approach, it need not have acted at all. The Court thus declined to provide a missing term by limiting recovery only up to the time of death.

Finally, the Court rejected the Appellee's contention that because the statutory definition of marriage in KRS 402.055 is a relationship existing "in law for life," recovery for loss of spousal consortium cannot continue after death as the legal marriage relationship ends at death. The Court noted that "a loss of consortium claim is grounded on compensation for a third party's wrong-doing which intervenes in the marital relationship so as to deny spousal consortium." The claim makes a third party liable for wrongfully depriving a spouse of the marital relationship that could have continued but for that party's wrongdoing. This loss is "definable and measurable," and a surviving spouse has the right to be compensated for a relationship wrongfully taken away. The Court thus reversed the Court of Appeals, concluding that the legislature did not intend to devalue the spousal relationship by "putting an arbitrary limit on the duration of what can be profound loss." The Court held that bereaved spouses have the right to have such a loss evaluated by a jury, and KRS 411.145 allows post-death loss of consortium claims.

*(Continued on page 4)*

*(Spousal Loss, Continued from page 3)*

### **How this opinion affects Kentucky Businesses and Insurance Companies:**

This important opinion greatly increases a business litigant's liability exposure. Kentucky juries will now consider a spouse's loss of love and affection resulting from the death of their spouse.

Clearly this loss is real and will be relevant in every wrongful death case involving a married individual. Similar loss of consortium claims brought in Kentucky by the children of deceased parents often have resulted in jury awards in the seven figures. This new law allowing spousal consortium has turned a million dollar claim into a multi-million dollar claim overnight.

We see two areas of debate coming out of this new law. First, to what extent does this opinion apply retroactively to existing cases and claims? We feel there is a strong argument the new rule does not apply to these existing cases and claims. Second, this opinion heightens the legal relevance of the spousal relationship prior to the incident. Therefore, businesses defending wrongful death cases will now be allowed to take discovery related on this topic.

*Senior Associate Jeremiah A. Byrne is a trial lawyer in Frost Brown Todd LLC's Litigation Department.*

*Associate Catherine Ford currently practices in the Frost Brown Todd LLC's Litigation Department.*

*Legal Updates are published by Frost Brown Todd as a business resource to our clients and friends and is intended to provide reports on current developments and legal news affecting business and industry.*



## **Damages**

By Glenna Herald

Personal injury attorneys tend to neglect damages persuasion, the most important aspect of their work, argues trial consultant David Ball. He calls on attorneys to join the "damages revolution," by refusing to treat damages like "pornography," or something about which we are ashamed.

To reinforce your arsenal of damages information, the CLLA offers our library users the following resources:

### **Books**

David Ball on Damages: A Plaintiff's Attorney's Guide for Personal Injury and Wrongful Death Cases/ David Ball

Now What Makes Juries Listen/ Sonya Hamlin

Powerful Deliberations: Putting it all Together for the Jury/ G. Christopher Ritter

Tort Law Desk Reference: A Fifty-State Compendium/ Morton F. Daller

Punitive Damages/ Linda L. Schlueter

Damages in Tort Actions/ Robert L. Conasan

Jury Instructions on Damages in Tort Actions/ Ronald W. Eads

Kentucky Law of Damages/ Ronald W. Eads

National Jury Verdict Review and Analysis

What It's Worth

### **Electronic Databases**

Aspen's Personal Injury Law Library

Westlaw's Ohio Personal Injury Practice

Westlaw's National Jury Verdicts

BNA's Product Safety and Liability Report

CCH Products Liability Reporter

Baldwin's Tort Law

### **Blogs**

Mass Tort Litigation Blog/ [http://lawprofessors.typepad.com/mass\\_tort\\_litigation/](http://lawprofessors.typepad.com/mass_tort_litigation/)

Torts Prof Blog/ <http://lawprofessors.typepad.com/tortsprof/>

## Did You Know You Could...? Tips Gleaned from a Recent Conference

By Mary Jenkins, Law Librarian & Director

### **Law Firms Going Green**

Carter Strang, Esq., with the Cleveland firm of Tucker Ellis & West LLP, detailed the Cleveland Metropolitan Bar Association's Green Initiative. For more information about their program, see [http://www.clemetrobar.org/Committees/Green\\_Initiative/Green\\_Initiative\\_Committee/](http://www.clemetrobar.org/Committees/Green_Initiative/Green_Initiative_Committee/). With more clients asking about firms' commitments to the environment, it might be useful to try out their Carbon Footprint Calculator for Legal Services Organizations. From switching to compact fluorescent light bulbs to recycling to selecting paper with more recycled content to encouraging use of carpools and public transportation, the green-certified firms in Cleveland prove that it is feasible at a firm-wide level to commit to more environmentally responsible practices that can save money as well.

### **Wikis in the Workplace**

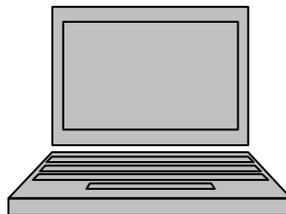
I offered a presentation at the recent Ohio Regional Association of Law Libraries on the use of wikis in organizations to enhance collaboration and knowledge management. Wikis serve as collaborative work spaces and locations for centralized data and information dissemination. If your firm is overly dependent on one person who is the keeper of information and documents or if you'd like to see more coordinated and centralized information, a wiki is one option. There are also many much more sophisticated enterprise content management systems. If you would like to know more about creating and maintaining wikis for your office or other options for managing content across your organization, feel free to contact me.

### **Screen Capture Applications**

Do you ever need to demonstrate or explain how to do something on a computer? It could be how to complete forms or how to use a website, for example, or you might want to do voice-overs for PowerPoint presentations for people to watch later. To save time and money by doing your demo or instruction just once, consider several easy-to-use, affordable applications. Ones to look into: Camtasia (<http://www.techsmith.com/camtasia.asp>), Jing (<http://www.jingproject.com/>), uTIPU (<http://www.utipu.com/app/>), and Camstudio (<http://camstudio.org/>). The first is full-featured and is fee-based; the rest are free and simple to use. Think of these like YouTube videos with voice-over. Consider these applications for your firm's training or demonstration needs.

### **E-Discovery Management and E-Evidence**

A law firm technology expert with Visual Evidence demonstrated his company's products but also discussed evidentiary data collection and review and case presentation generally. Among his tips: Be careful about the format in which you accept documents. If possible, require documents in searchable electronic format to save significant time and money. Advise your clients to have record retention policies. Don't forget to search a suspect's Xbox hard drive for hidden documents. If you would like a copy of a chart developed by Visual Evidence that details e-discovery best practices, please let me know.

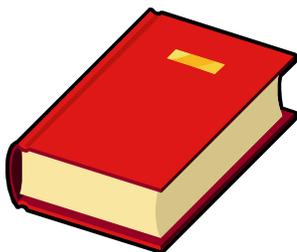


## A Letter from Board Leadership

A lot has changed since 1847 when the first books were brought together for a law library in what was then a rugged frontier town on the north bank of the Ohio River. Along with its aspiring soap merchants, pig traders and flat-boat crews, lawyers were starting to be an important influence in the Cincinnati community. Books and the rule of law go together, of course, and we have been proud of the traditions of the Cincinnati Law Library Association for many years. The recent fiscal problems of the smallest law libraries in the smaller counties led the 2008 Legislature to enact a major change in Ohio law libraries. On January 1, 2010, the Hamilton County Law Library Resources Board will assume the role of steward of these resources, and will be a part of the county government structure. You will see the same smiling faces, helpful people and good reference materials. Subscribers will not see any increase in rates for these exceptional services. The Association will continue as a private nonprofit entity when it passes the torch to the board. Our front door sign will change to Hamilton County, reflecting the official title and reflecting the broad reach of law and lawyers in our community. As leaders of the Association and the incoming Board, respectively, we pledge to give you the same high quality service and ease of use that has long characterized this very special institution.

Cathy Cook, President, Cincinnati Law Library Association

Jim O'Reilly, Chair, Hamilton County Law Library Resources Board



## January 2010: Smooth Sailing and Steady at the Helm

By Mary Jenkins, Law Librarian & Director

The Cincinnati Law Library Association Board of Trustees and I have used the phrase "smooth transition" repeatedly as we've discussed our hopes for and the reality of the shift from governance by the CLLA to the County Law Library Resources Board. With two months to go until the switch, I assure you that the range and quality of our services and resources are intact. Here are the changes that you can expect: As Cathy and Jim noted in their letter, the law library's name will change to "Hamilton County Law Library", reflecting the library's official affiliation with Hamilton County, its public board and mission, and the geographic region that it serves. Along with that, you will see the new name and logo on print publications, letterhead, and on the website.

In December, we will send out renewal invoices for 2010. The rates and services are unchanged but you will see the word "subscriber" instead of "member" and your check will be payable to the Hamilton County Law Library. You will remain a member of the Cincinnati Law Library Association in 2010 but the library will be providing the materials and services and, therefore, payments will come to the library.

We do have an impending staffing change, although it is unrelated to this legislation: Madonna Stoneking, our Membership Assistant, plans to retire this December. I won't pretend that 2010 will be the same without Madonna. She has provided more than 35 years of fine service to our members and we will miss her mightily. Be sure to say farewell before December 4 as Madonna will take some vacation time in December. We are making plans for the work that Madonna does but please be assured that we will do our best to demonstrate her level of competence and congeniality.

*(Continued on page 7)*

I will use county systems for matters like bill paying and insurance. Those will be significant administrative changes but they should not impact your interaction with the library. I expect that county contracts and services will help us to reduce costs and thereby provide additional resources over time. County personnel have been very collegial and supportive as we have worked through the many details of this governance change.

When you come into the law library or call us or visit the website post December 31, you will find that the library you rely on is ready to serve you. We'll just have to get used to the new name on the ship's bow!

### Earn Free CLE Credit with Lexis

On **Tuesday, November 10** your Lexis representative will offer the following classes for CLE credit in the CLLA's board room.

**9:30 for Lexis Essentials (1.0 CLE Credit)** Explore basic search functionality of Lexis.COM including:

- Get a Document feature
- Table of Contents searching & navigation
- Term & Connector search construction
- FOCUS search for narrowing results
- Search by Headnote / Topic
- Document Delivery
- Shepard's Overview

**11:00 for Advanced Lexis (1.0 CLE Credit)** Increase your efficiency and get better search results with advanced search techniques and strategies. In this class you will learn:

- Advanced Boolean search logic
- Alerts
- Shepard's Alerts
- Segment searching

Please call **946.5300** or email **gherald@cms.hamilton-co.org** to register. We look forward to seeing you then.

## Member Benefits

All members have access to the following valuable resources and services:

**Circulation privileges** to borrow from over 40,000 print volumes for **up to 6 weeks** at a time

Access to extensive electronic databases from the Law Library, including **LexisNexis**, **Shepards'**, **CCH Omnitax**, **CCH Human Resources Group**, and **CCH Business Group** resources, **Hein Online** Law Journals and Federal Register, and over 70 **Aspen / LOISLaw** treatises in 16 substantive areas

**Wireless network** throughout the Law Library

Polycom **videoconferencing**

**5 meeting rooms** with speaker phones

Professional **reference service** by our law librarians, available via e-mail, telephone, and in person;

Free **document delivery** by fax or e-mail of print and electronic materials Inexpensive **CLE seminars** throughout the year, on legal research and substantive topics.

In addition, solos and members whose firm has a membership have **24 hour remote access** to Fastcase.com case law and Aspen/LOISLaw treatises

## Holidays in November

The law library will be closed on the following days this November.

Veterans Day	Wednesday	November 11, 2009
Thanksgiving Day	Thursday	November 26, 2009
Day after Thanksgiving	Friday	November 27, 2009



## November 2009 Law Library Newsletter

### INSIDE THIS MONTH

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- Tech Tip: Westlaw
- Changes in 2010

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