

Definition of “Spouse” for Personal Injury Lawsuits? Let The Jury Decide!

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As a Missouri personal injury attorney, I know all too well how a physical injury to a person can affect an entire family. In most states, when the death of one person occurs due to the negligence of another, the living “spouse” has a claim for wrongful death. Likewise, where a serious injury results, most states

provide the “spouse” with a right of consortium claim. Most personal injury attorneys equate this right of consortium claim with the loss of income, support, comfort, companionship, and sexual relations. While there is plenty of case law from state to state speaking as to what specific damages can be recovered for wrongful death and loss of consortium claims, the question of who can recover as a “spouse” has simply not been litigated to a large degree.

In today’s society, a long-term, committed relationship is no longer always composed of a married man and woman. More and more, heterosexual couples are choosing to create a life together without the formality of a marriage certificate. In most states, same-sex couples don’t have a choice because, regardless of the level of commitment, same-sex marriages are typically not permitted. Only five states currently allow same-sex couples to marry – Massachusetts, Connecticut, Vermont, New Hampshire, and Iowa. New York, Rhode Island, and Maryland recognize, but do not perform, same-sex marriages. Five states – Illinois, Nevada, New Jersey, Oregon, and Washington allow civil unions but not same-sex marriages. It doesn’t seem fair to create a bright-line rule that only married couples are entitled to recover for the wrongful death or serious injury to a significant other. Instead, the more reasonable approach is to make this determination on a case-by-case basis.

A Connecticut woman, Charlotte Stacey, knows all too well how cruel such a bright-line rule can be. After being diagnosed with ovarian cancer, Charlotte’s longtime domestic partner, Margaret Mueller, fought through 24 cycles of chemotherapy. When her condition didn’t improve, she sought a second opinion. Her new oncologist discovered that Margaret didn’t have ovarian cancer at all – she had cancer of the appendix.

Tragically, it was too late. The cancer had progressed past the point of treatment and Margaret died in 2009. Margaret’s estate filed a medical malpractice case against her original oncologist. Charlotte filed a loss of consortium claim as part of the malpractice claim. In 2006, a Connecticut state judge dismissed Charlotte’s loss of consortium claim because the two women were not technically married.

While Connecticut’s Supreme Court ruled that same-sex couples have a right to marry, that ruling came in 2008, seven years following Margaret’s misdiagnosis. The couple would have married had they been allowed to. The women were together, as a committed couple, for 25 years. Because Margaret could no longer climb the steps in their condo, the couple moved to Norwalk which required Charlotte to commute two hours each way to her job in New York. As Margaret’s health continued to deteriorate, Charlotte spent most of her time caring for her beloved. She watched, in agony, the life drain from the one person she knew like no other. Still, the trial court held that Charlotte had no spousal claim. In 2010, a Connecticut jury awarded Margaret’s estate \$2.45 million. It is expected that Charlotte will appeal the trial court’s 2006 ruling. It seems that a logical alternative to Charlotte’s continued nightmare would have been to allow the jury to determine whether, after already hearing the facts set forth in the malpractice claim itself, the circumstances warranted recovery on the part of Charlotte.

We trust our jurors with determining the value of a life, whether someone met the standard of care, and what actions are reasonable. Jurors make these factual decisions based upon their beliefs and society. Isn’t the depth of a relationship just another question of fact that must be decided on a case-by-case basis? The definition of marriage is changing because society is changing. Should we not trust our local jurors with defining “spouse” by evaluating the totality of the circumstances surrounding a couple’s relationship? ■