

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2019-096071

06/21/2021

HONORABLE TRACEY WESTERHAUSEN

CLERK OF THE COURT
C. Avena
Deputy

JOHN SANDERS, et al.

CHRISTOPHER D HILL

v.

SPRINGFIELD COMMUNITY ASSOCIATION

DEAN R COX

JUDGE WESTERHAUSEN

MINUTE ENTRY

Order denying Plaintiffs' Motion for New Trial.

Plaintiffs John Sanders, Lori Venberg and Robert Sanders filed a timely Motion for New Trial from this Court's judgment entered on April 15, 2021. Defendant Springfield Community Association responded, and Plaintiffs replied.

The Court stays to its conclusion that when Coela executed the Release of All Claims, she released all derivative claims, including her family's claims for loss of consortium. *Villareal v. State, Dept. of Transp.*, 160 Ariz. 474, 481 (1989) ("A defendant in a consortium case is liable to the child because the defendant injured the child's parent and thereby damaged the parent-child relationship. Both the child's claim and the parent's claim are based on the same conduct of the defendant. A child's claim for loss of consortium is derivative of the parent's claim for personal injuries. Defenses good against the parent will be good against the child, and any percentage of negligence attributable against the parent under Arizona's comparative negligence statute will reduce the amount of the child's recovery.")

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The Court's conclusion is not inconsistent with *Martin v. Staheli*, 248 Ariz. 87, 92 ¶ 17 ("Loss of consortium is a derivative claim, which means that the success of a loss-of-consortium claim is dependent on the success of another claim.") Under *Martin*, if Coela had filed a suit for personal injuries without including her family's loss of consortium claims, those claims could have been added, even if Coela died from unrelated causes during the pendency of the case. There was no personal injury lawsuit, though, at the time that Coela signed the release. When she did that, she extinguished her family's claims for loss of consortium.

The Court, however, was wrong about the application of Rule 80.a, because all of the communication back and forth regarding the negotiations and release occurred before the lawsuit was filed. The Court agrees with Plaintiffs that the Rule applies only to litigation then pending in the courts. That error does not change the outcome as to Plaintiffs' derivative claims for loss of consortium.

The Court denies the Motion for New Trial. The parties may submit a proposed final, appealable judgment to the Court as provided in the Rules.