



Till Death Do Us Part: Civil Damages After Remarriage

BY JACKIE KURTH

It is not uncommon to represent a person in a civil wrongful death case who also seeks to remarry years after losing a spouse. Such clients have gone through an unspeakable tragedy—losing the love of their lives to an accident, such as a tragic collision or medical procedure.

It is not uncommon to represent a person in a civil wrongful death case who also seeks to remarry years after losing a spouse. Such clients have gone through an unspeakable tragedy—losing the love of their lives to an accident, such as a tragic collision or medical procedure. Civil litigators may get to know these clients by representing them as plaintiffs, or when taking their depositions in defense of the case. As human beings, we want to see them find love again. As attorneys, however, we instead often see the prospect of remarriage as a legal hurdle.

In a wrongful death case, a defense attorney may view remarriage as a way to draw a line in the sand of damages. A plaintiff's attorney should thus consider how to educate the client on the effects that remarriage can have if their civil case goes to trial. This article serves to outline how remarriage can alter damages claims in a civil suit.

Jackie Kurth is an Associate Attorney at Salvi, Schostok & Pritchard P.C. at the Waukegan, Illinois location. She focuses her legal practice on catastrophic personal injury, medical malpractice, and nursing home negligence.



It is well-settled that recovery for loss of consortium ends upon the remarriage of the surviving spouse.¹ This is true even if the marriage with the deceased spouse was of a different quality from that with the present spouse.² A loss of consortium claim includes a claim for loss of material services.³ Thus, if a plaintiff does not make a loss of consortium claim, then evidence of a remarriage is not admissible at trial as it is not relevant to the issue of the amount of damages.⁴

This general rule, however, does not apply to claims for loss of financial support.⁵ In *Pfeifer v. Canyon Constr.*

¹ See *Carter v. Chicago & Illinois Midland Ry. Co.*, 130 Ill. App. 3d 431 (4th Dist. 1985).

² *Id.* at 436 (holding that evidence of second marriage being of a different nature and quality was irrelevant to question of when loss of consortium damages end).

³ See *Dotson v. Sears, Roebuck & Co.*, 157 Ill. App. 3d 1036 (1st Dist. 1987).

⁴ *Id.* at 1043.

⁵ *Pfeifer v. Canyon Constr. Co.*, 253 Ill. App. 3d 1017 (2d Dist. 1993).

Co., the defendant attempted to argue that, a claim for loss of financial support should stop at remarriage just like a claim for loss of material services. The appellate court rejected this argument. In doing so, it first held:

Thus, the rule reiterated in *Watson*, i.e., that remarriage does not affect the damages recoverable in a wrongful death action, has applied to damages for loss of financial support. Defendant cannot escape the application of the rule by attempting to recast financial support as either a type of material service or as an element of loss of consortium, separate from but similar to, the 'material services' which were at issue in *Dotson*....⁶

The appellate court continued its analysis by stating:

The concept of consortium, as it emerges from the cases, consists primarily and essentially of intangible elements which are unique, and very personal, to any given marriage. The loss of consortium reflects the loss of personal benefits and satisfactions the surviving spouse enjoyed as a result of a **highly individualized** relationship with a particular person. That relationship and those benefits cannot be duplicated. As for material services, we note first that the courts speak of a wife's 'services in the home,' services 'as [the spouse's] wife,' and 'personal services.' The courts' discussions do not include, even by implication, the concept of financial support. Too, while some material services are clearly more tangible in nature than such things as affection and companionship, they are also highly personal to, and generally flow from, the particular relationship between specific spouses. As such, they are properly part of consortium.⁷

The *Pfeifer* court then distinguished consortium from financial support, further declaring:

In contrast, **financial support lost due to the wrongful death of a spouse is totally tangible.** Financial support is wholly unlike the elusive and highly personal characteristics of consortium. **It does not flow from, is not unique to,**

and does not depend upon the relationship between particular spouses. In fact, we believe it quite possible for financial support to flourish in a marital relationship even though many elements of consortium may be at low ebb, or even be missing altogether."⁸

As support for this holding, the appellate court in *Pfeifer* cited to the Illinois Supreme Court's opinion in *Elliott v. Williams*, which held that "it is true that damages for loss of consortium are not capable of being given the detailed in-depth analysis that an expert can call upon to testify about in calculating a decedent's professional worth where **future earnings of an individual employed in a particular field can be measured with precision and particularity.**"⁹ Ultimately in *Pfeifer*, the

appellate court reversed on the basis that loss of financial support should not cease on the date of remarriage, and a new trial was ordered.¹⁰

Believe it or not, these are some of the most recent Illinois cases on this topic. It appears that the boundaries of these rulings have not been tested—or, at the least, have not been defined by subsequent decisions. In addition, it appears that the question of whether grief and sorrow damages end upon the date of remarriage has not been formally answered following the 2007 amendment of the Wrongful Death Act.¹¹

There has been limited delineation of this precedent. For example, the *Martin* case held that when a plaintiff merely lives with another—but does not remarry—then a loss of consortium claim stands, and evidence of living with another is irrelevant.¹²

With this precedent, the case law suggests that the only two factors that are relevant to deciding this issue are: (1) a remarriage happened; and (2) when the remarriage happened. Relying on the holding of *Martin*, there is room to argue that the timing of a couple's dating, living together, engagement, etc., are **not** relevant factors, since merely entering a personal relationship does not

8 *Id.* (emphasis added).

9 *Id.* at 1030 (quoting *Elliott v. Williams*, 92 Ill. 2d 530, 539-40 (1982)) (emphasis added).

10 *Pfeifer*, 253 Ill. App. 3d at 1031.

11 740 ILCS 180/1, *et seq.*

12 *Martin v. Illinois C. G. R.R.*, 237 Ill. App. 3d 910, 922 (1st Dist. 1991) (rejecting the argument that the principle that loss of consortium ends upon remarriage should be extended "to a surviving spouse who enters into a personal relationship with another person but who is not married to that person").

6 *Id.* at 1027-28.

7 *Id.* at 1029-30 (emphasis added).

cause a cessation of loss of consortium damages.

Moreover, there is a reasonable legal basis for arguing that the date of remarriage controls only loss of consortium and loss of material services damages. This interpretation is supported by the holding in *Pfeifer* explicitly allowing for loss of financial support to continue after remarriage, as well as the wording of Illinois Pattern Jury Instruction 31.04, entitled "Measure of Damages – Wrongful Death – Adult Decedent – Widow and/or Lineal Next of Kin Surviving."¹³ This instruction reads, in relevant part, as follows:

In determining pecuniary loss, you may consider what the evidence shows concerning the following:

- [1. What (money,) (benefits,) (goods,) (and) (services) the decedent customarily contributed in the past;]
- [2. What (money,) (benefits,) (goods,) (and) (services) the decedent was likely to have contributed in the future;]
- [3. Decedent's personal expenses (and other deductions);]

13 See IPI 31.04 (West 2022).

[4. What instruction, moral training, and superintendence of education the decedent might reasonably have been expected to give decedent's child had decedent lived;]

[5. Decedent's age;]

[6. Decedent's health;]

[7. Decedent's habits of (industry,) (sobriety,) (and) (thrift);]

[8. Decedent's occupational abilities;]

[9. The grief, sorrow, and mental suffering of [next of kin];]

[10. The relationship between [lineal next of kin, e.g. son] and [decedent].]

[11. The marital relationship that existed between [widow/widower] and [decedent].]

[Widow/widower] is not entitled to damages for loss of [decedent's] society and sexual relations after [date of remarriage].¹⁴

In other words, this instruction specifically tells jurors that the *only* damages to be cut off after the date of remarriage are damages for loss of society and sexual relations. The other 10 paragraphs in IPI 31.04 concerning monetary support and grief and sorrow are not limited in this way. The "Notes on Use" also instruct that we are to "[u]se only those factors 1-11 which are applicable to the facts of this case. If the surviving spouse has remarried, the bracketed paragraph should be utilized to insert the date of the remarriage."¹⁵

This outcome makes sense, since the decision in *Pfeifer* makes clear that loss of consortium is an element of damages distinct from loss of financial support. It arguably follows that this conclusion would also apply to grief and sorrow, which is also considered its own distinct element of damages. To sum up, a logical deduction from the foregoing discussion is that loss of society damages end upon remarriage, but future wage loss or grief and sorrow do not.



Helping people obtain the benefits that are rightfully theirs.

Do you have a client who cannot work and is struggling to obtain Social Security Disability benefits?

Has your client already been turned down?

SSD cases can be time-consuming and confusing, with complex requirements and deadlines.

With nearly 25 years of experience, The Good Law Group has won cases at all levels of the claims process, including cases originally declined by the Social Security Administration.

Get help today!

847-577-4476 | 800-419-7606

thegoodlawgroup.com • info@TheGoodLawGroup.com
209 W. Madison Street, Suite 1, Waukegan, IL 60085

14 *Id.* (emphasis added)

15 *Id.*, citing *Carter v. Chi. & Ill. Midland Ry. Co.*, 130 Ill.App.3d 431 (4th Dist. 1985).