

IN THE SUPREME COURT OF OHIO

John H. Hutchings, et al.,	:	
	:	Case Nos. 06-1703
Appellants,	:	06-2183
	:	
v.	:	On Appeal from the
	:	Delaware County Court
David R. Childress, et al.,	:	of Appeals, Fifth
	:	Appellate District
Appellees.	:	

APPELLANTS JOHN AND NANCY HUTCHINGS'
MOTION FOR RECONSIDERATION

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I. INTRODUCTION

In ruling on this appeal, this Court recognized that this area of law was unsettled in Ohio, as this Court had never ruled on the question of whether an injured spouse could recover the wages lost by her husband in missing work to care for her. This Court has now ruled that she may not. This Court's decision makes clear that the injured spouse may recover only the reasonable market value of the nursing services provided by the other spouse. Based on this Court's opinion, however, unlike all future litigants, Appellants John and Nancy Hutchings are able to recover neither John's lost wages nor the reasonable value of the nursing care he provided.

Appellants do not ask this Court to reconsider its decision on the underlying issue of law. They seek only the opportunity to present to the Trial Court evidence regarding the market value of the nursing services John Hutchings provided to Nancy Hutchings -- an amount that this Court explicitly stated was recoverable.

II. ARGUMENT

Appellants cannot be faulted for their failure to present evidence at trial of the market value of the nursing services. After all, as this Court recognized, the law in this area was unsettled at the time. The only thing clear to Appellants at the time of trial was that they could not recover *both* the reasonable value of John's nursing services *and* John's lost wages. Indeed, this Court noted that, at the time of trial, the question of whether the caretaking spouse's lost wages were recoverable was a question "that has been addressed by few Ohio courts and never by this one." *Hutchings v. Childress*, Slip Opinion No. 2008-Ohio-4568, ¶15.

Justice Stratton's partial dissent also discusses the lack of guidance in this area at the time of trial. "At the time that Nancy filed suit, this court had never addressed the type of damages that the injured spouse could recover for care provided by the uninjured spouse. And

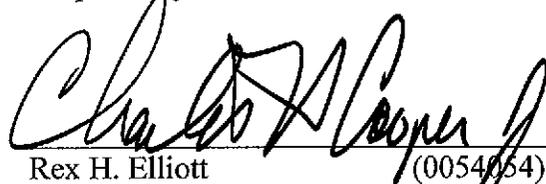
only a few appellate courts had addressed the issue." *Id.* at ¶47. Justice Stratton went on to state: "Having now decided that the proper measure of damages for a spouse's services is the market value of those services, we should permit the parties to present evidence on that standard." *Id.*

Appellants John and Nancy Hutchings simply could not have known, at the trial of this matter, that recovery for the market value of John's care was recoverable, but recovery for John's lost income was not. Now that this Court has provided the needed guidance on this question, justice requires that the case be remanded to the trial court to permit Appellants to present evidence of the market value of John's nursing care. As a result, Appellants respectfully request that this Court reconsider its disposition and remand the matter to the trial court.

III. CONCLUSION

For the foregoing reasons, this Court should permit Appellants to present evidence to the trial court of the market value of the care that John Hutchings has provided to his injured wife.

Respectfully submitted,



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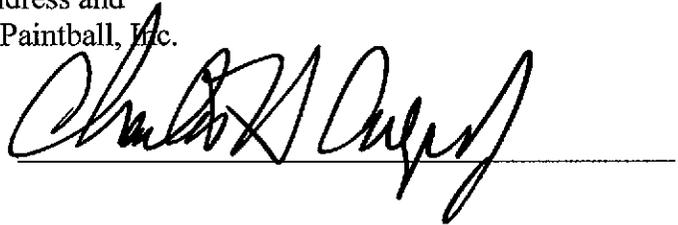
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion for Reconsideration of Appellants John and Nancy Hutchings was served upon the following counsel of record, by ordinary U.S. mail, postage prepaid, this 29th day of September, 2008:

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A handwritten signature in black ink, appearing to read "David R. Childress", is written over a horizontal line. The signature is cursive and somewhat stylized.