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Evaluation of Household Services by Forensic Economists and Life Care Planners: Core Concepts and Avoidance of Double Counting

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I. Introduction

In cases involving catastrophic injuries, both economic experts and life care planners are called upon to deal with the loss of the injury victim's capacity to provide household services. Life care planners deal with this loss by including services of attendant care, handymen and lawn care as part of a life care plan. Economic experts often treat loss of household services as separate element of loss by the injury victim in a way that is more similar to loss of earning capacity than as part of a life plan. If a life care plan contains elements that replace lost household services, a completely separate evaluation of household services will result in double counting. Often, economists do not include household services when such elements exist in a life care plan to avoid double counting. However, there are critical differences in concept that are involved in treating household services as a separate element of damages by economists and the role household services play in life care plans. The purpose of this paper is to set out the nature of differences in concept and to discuss some of the problems involved if both an economic expert and a life care planning expert separately deal with household services.

Household services seem simple enough until one asks exactly what the concept entails. It clearly includes such basic services as cooking, cleaning, self-provided household repairs, basic lawn care, any self-provided painting jobs, shopping for needed household goods, writing checks and maintaining records for household needs (including paying for utilities and taxes), supervising any commercially provided services around the home, gardening, interior decorating, chauffeuring other household members to other locations, child care generally, helping children with school work, caring for family pets, helping disabled family members with attendant care and many other activities. However, there is no simple boundary for what constitutes "household services." If an individual bathes himself or herself is he or she providing a household service? This is a needed service. It takes time to bathe. If a person is sufficiently disabled, it is a service that a person cannot provide for himself or herself without assistance. If a person can feed himself or herself, is that a household service? It is a self-service that some disabled persons cannot provide without assistance. If one takes a walk for exercise, is that a household service? If one goes to the gym and works out, is that a household service? These latter self-needed services are not typically thought of as "household services" by economists, but they are clearly needed services that are provided for in life care plans. On the other hand, life care planning experts do not typically think of gardening (as separate from basic lawn care), shopping and interior decoration as needed services for a life care plan.

Some economists include personal "advice and counsel" that one family member provides to other family members as household services. Some even include companionship, or "accompaniment services," as a form of household services. Is a father providing household services to his wife and children when he is watching sports events on television? By some definitions used by a small number of economists, he is providing household services while watching sports events on television. A few economists (although very few) also treat time a husband or father spends sleeping at home a form of household services, using wages paid to security guards to value sleeping time in that he would be there to help in case of a home invasion or a health need for one of the members of the family. In fact, there is a term for such services in the commercial marketplace. That term is "passive security." A passive security worker has no expected duties while working, but is expected to be on premise and to notify someone of any security breaches that might occur. Sleeping and watching television are allowed as long as the person is physically present on the premises.

With exceptions of the sort in the previous paragraph, there are core differences between how many economists and all life care planning experts view household services. In a life care plan, the goal is to provide an injured plaintiff with sufficient life care to allow the injured plaintiff to function, after an injury, as closely to "normal" as may be possible. If an individual needs help with bathing, that help will be provided for in a life care plan. If an individual needs help fixing meals, eating meals, and cleaning up after meals, that help will be provided for in a life care plan. If an injured plaintiff needs handyman services because of an injury, handyman services will be included in a life care plan. Many economists, on the other hand, view household services as an alternative expression of an individual's earning capacity. With that view, time that is spent providing household services is time that could have been used to increase money earnings, whether in a moonlight job or perhaps more education or skill development that would lead to higher earnings in the future.

Household services could be the subject of several treatises, but the goals of this paper are much smaller than that. The paper will look at basic differences between how most economists view household services and typical elements of household services that appear in life care plans. It will consider the differences and how economists deal with those differences. There are important differences between household services that an individual provides for himself or herself, and household services that are provided for family members. Those differences will be discussed. The paper will also review the limited existing literature that pertains to differences between household services in economic projections and in life care plans. Finally, it will provide selected examples of how the two fundamental views of household services have been reflected in legal decisions.

Because it will simplify discussion to assume initially that an individual was living alone and not providing household services for anyone else, the next two sections will make that assumption. Following those sections, the paper will consider circumstances in which the injured person was providing household services still needed by other family members and in which other family members provide services in response to the injured person's inability to provide those services.

II. Household Services as "Ordinary Life Care"

Working to earn an income in the commercial labor market requires some personal time investment in bathing, grooming, eating, spending time getting needed medical services, and exercise. Typically, an economist does not think of time spent on those self-services as "household services," but those are services that are needed for an individual to function in life and to provide labor services in the commercial marketplace. In a life care plan, such self-services are covered in the form of attendant care, which may include specialized services if medical injections must be given that can only be given by either a family member or a registered nurse. Since economists do not ordinarily include such "ordinary life care," in projections of household services, no issue arises regarding double counting of such services. When double counting issues arise, it is normally with regard to other types of "ordinary life care" services, which can include handyman services, lawn care services, cleaning and cooking services that uninjured individuals would ordinarily be able to provide for themselves, but which individuals with severe injuries cannot provide for themselves. Handyman services, lawn care services, and cleaning and cooking services are services that economists would ordinarily include as household services.

From a life care planning perspective, there is no essential difference between providing for needed self-services such as bathing, grooming, eating, spending time getting needed medical services and exercise, on the one hand, and handyman services, lawn care, and cooking and cleaning services on the other. Both types of services are needed for the injured person to function in everyday life and thus both types of services should be and are provided for in life care plans, if made necessary because of an injury. If both self services and basic household services are needed so that the injure person can function normally, both should be included in a life care plan.

One specific service that often appears in life care plans is of special interest. That service is "case management." A person who is not injured would normally be assumed to be able to handle his or her own finances. Life care plans, however, significantly increase the amount of financial resources that need to be managed, thus creating a potential need for case management simply from that perspective. If the injury includes loss of cognitive functioning, the need for case management is increased. This is a topic worthy of a paper on its own merits and will not be covered here for that reason.

Another point that will become relevant shortly is that life care plans are always forward looking. A loss of household services begins at the point of injury, but inclusion of providing for future household services in a life care plan only begins when a life care plan is implemented and will only last as long as an injured person is expected to remain alive.

III. Household Services as Part of Earning Capacity

Most, but not all, economists treat household services as an expression of lost earning capacity. If one thinks in terms of time available to a person, a week contains 168 hours. Full-time work in the commercial labor market takes up, for an average individual, between

45 and 50 hours per week (Expectancy Data 2012). Sleeping takes up between 56 and 60 hours per week. Self services (other than sleeping) take up between 12 and 14 hours per week. Using the midpoint of those ranges, accounts for 118.5 hours out of the 168 hours available, leaving 49.5 hours available for "household production," "caring and helping," and "leisure." The remaining 49.5 hours per week for the average person can be viewed as discretionary time an individual has available for other purposes than work and self maintenance. If it is assumed that those hours could conceivably have been used to increase money income in the commercial labor market, time spent providing household services can be thought of as an expression of an individual's earning capacity. In other words, the individual could have used time spent providing household services to provide more money income, but instead chose to use that time to provide household production, which provides personal satisfaction, but not money payments for activities provided.

Since case law in all states defines earnings loss in terms of "earning capacity," treating loss of household services as a loss of earning capacity is consistent with this way of looking at the meaning of lost household services. This approach raises important questions that are not typically addressed. For example: Could a worker actually find alternative employment in the commercial labor market for amounts of time projected to be spent on "household production" and while other time uses the economic expert treats as a part of household services? Are there fundamental differences between scheduled time uses of the sort that employment normally involves and discretionary time use needed for providing household services? And so forth. Nevertheless, treating household services as deriving from an individual's earning capacity in the commercial labor market that is used for non-market production of household services has great appeal to many economists.

Treating household services an expression of earning capacity is greatly different from treating household services as "ordinary life care." An individual's loss of earning capacity starts from the moment of injury, not the moment of inception of a life care plan. Thus, a projection of lost household services based on the loss of earning capacity concept implies including lost household service from the moment of injury to the present, while "ordinary life care" only considers the need for household services going forward from the date at which the life care plan is assumed to be implemented. There are no past lost household services in a life care plan, but past lost household services make logical sense if a part of past earning capacity was used to produce those household services. However, the widespread use of "replacement cost" methods by economists is a method that makes more logical sense if household services are to be treated as "ordinary life care." An opportunity cost methodology involves valuing lost household services based directly on the sacrificed opportunity to make additional income by using those hours to obtain greater income in the commercial labor market. Replacement cost measures how much it would cost to obtain the lost household services in the commercial labor market, which is more consistent with the "ordinary life care" concept.

There is also in important "scope" difference between the two concepts. To the extent that an individual uses part of his or her earning capacity to engage in gardening or interior decoration or the preparation of meals that are more elaborate than needed, a measure of lost household services will be significantly greater than a measure of "ordinary life care" that is needed. A beautiful garden can provide value that is similar to other values that income may be spent to purchase in commercial markets. That is true even though time spent gardening has potential recreational value in excess of the value of the garden itself. High quality interior decoration can increase the sale value of housing. This direct commercial value may be produced in excess of the cost of providing "ordinary life care," which is focused on the minimum cost of life care made necessary because of an injury.

Another difference between the two concepts relates to post-injury longevity. The present value of lost earning capacity is calculated on the bases of an individual's pre-injury life expectancy. The present value of a life care plan is calculated on the basis of an individual's post-injury life expectancy. Thus, if lost household services are viewed as an expression of earning capacity, the value would be calculated based on the individual's pre-injury life expectancy. If household services are viewed as "ordinary life care," lost services (for the injured person) would only be needed for the individual's post-injury life expectancy.

The real problem is that both concepts are correct as far as they go, but have important problems when assumed to be the only correct concept. Household services in a life care plan are ordinary household services, but ordinary household services do not capture all of the value that individuals may produce by using part of their time to provide quality improvements above and beyond those "needed" because of an injury. On the other hand, it is not true that all time spent providing household services could have been used to produce income-equivalent amounts often projected for those services by economic experts. This is further confounded by the fact that a number of household services, including gardening, shopping, lawn-care, and interior decoration also have important recreational values to the persons providing them. Recreational value cannot be replaced by having someone else provide those services. Recreational value is only obtained by providing the services oneself, which has typically been rendered impossible for persons in need of life care plans. Thus, there is no simple "right answer" to how household services should be valued. The issues involved are highly complex in a way generally not recognized in much of the literature that exists regarding household services.

IV. Replacement Cost versus Opportunity Cost in Valuing Household Services

Economists have long recognized that there are two general ways to measure lost household services: Replacement cost and opportunity cost. The overwhelming majority of papers that have been written about the valuation of household services have been based on replacement cost valuations. The concept underlying replacement cost is one of determining present value for the flow of household services that have been lost as a result of an injury. The concept underlying opportunity cost is determining a present value for the portion of an individual's earning capacity that would have been allocated before the injury to the production of household services. As suggested earlier, the opportunity cost method corresponds most closely to the core concept that loss of household services represents the loss of earning capacity that would have been devoted to the production of household services before an injury. Replacement cost corresponds most closely to the "ordinary life care concept" used in the production of most life care plans. The possible methods to use for household service valuation were described in some detail in Ireland and Ward (1991). There can be important variations in which time use surveys to use and which replacement wage rates to use, but the essential approach is to provide values based on one or more commercial wage rates for labor activities that are similar to household services to time use amounts indicated in a time use survey.

Over the years, the source most widely quoted for replacement cost evaluations of lost household services is Expectancy Data's *Dollar Value of a Day* (DVD) series, currently at the *2012 Dollar Valuation.* Prior to 2003, many different time use surveys were used and many different articles were published. See Ireland, Hicks, Johnson and Metzen (1991) for a bibliography of papers before 1991. See Ireland and Depperschmidt (1998) for reprints of many of the papers published between 1991 and 1998. After 2003, relatively little has been published other than the annual editions of DVD. 2003 is important because that is the year that the Bureau of Labor Statistics began publishing results for the American Time Use Survey (ATUS), which almost immediately became the time use survey of choice for using the replacement cost approach. Kurt Krueger of Expectancy Data has done an excellent job of developing and deriving time use data in a fashion designed to be useful for forensic economists using the replacement cost. Kurt's methods for providing market wages for time uses has generally been accepted as reasonable. As such, there has been no demand for other studies. There have been two exceptions. One exception was a study by Clauretie (2010) that received no attention from forensic economists other than a paper by Ireland (2011) that pointed out how much more useful the DVD annual editions have been to practicing forensic economists. A second exception was a study by Cushing and Rosenbaum (2012) using what the authors called a "Direct Output Approach" (as opposed to a "Labor Value Approach" used by most economists) that involved "valuing (household) services at retail prices" (p.37). That study has also not received significant attention, but provided a useful bibliography of recent publications on household services.

Since 2000, no papers have been published about the opportunity cost approach. Even before 2000, the number of studies relying upon the opportunity cost approach was relatively small and largely focused on valuation of homemaker services. Homemakers pose special issues for the reasonable assessment of the value of household services. Homemakers are usually defined as women who maintain households and raise children, but are either not employed or not fully employed in the commercial labor market. One of the special issues is that it is obvious that education plays an important role in determining the average quality of a homemaker. A mother with a master's degree will have skills that a mother with a ninth grade education does not. For some household services, education has little significance for the value of services provided. A clean floor is a clean floor whether cleaned by a person with a 9th grade education or a masters degree. Helping children with homework, maintaining family records and making family investment decisions is another matter. Replacement cost valuations inherently assume a constant level of education for each service, thus suggesting the education has no impact on the value of household services provided. An opportunity cost method values foregone earnings of a homemaker using the homemaker's education as a key variable in determining the foregone opportunity cost of being a homemaker rather than being employed in the commercial labor market. See Romans and Floss (1989) and Ireland (1991).

In the case of homemakers, opportunity cost is more obvious than in the case of individuals who are fully employed in the labor market. The opportunity cost of 12.82 hours per seek spent on average by "Married males, that work full-time, youngest child under age 13" (DVD 12, Table 1) is the labor market value of 12.82 hours per week in the commercial labor market on a schedule determined by the married male, not his part-time employer, assuming that the married male has a regular full time job at which the married male spends 41.06 hours per week working at that job. It is not obvious that the average married male who works full-time in the labor market could find an additional part-time job working 12.82 hours per week at times of the married male's discretion. For opportunity cost to be a useful approach there must be a sacrificed labor market wage from which to derive a value. If no such opportunity existed, the true opportunity cost value of the 12.82 hours per week is $0. This is not very satisfying when it is obvious that household services have important value.

The true value of lost household services is not measurable. It is the dollar value the family would have been willing to pay before the injury for the household services that were provided by the injury victim. Commercial provision of household services is significantly different from family provision and can only imperfectly replace family provision. Commercial provision requires scheduling and types of monitoring not required for family provision. Commercial provision raises security issues that are not involved with family provision. The intensity of time use is greater with commercial provision than with family provision. Stopping to drink a beer during lawn care is fine with family provision, but not with commercial provision, and so forth. The differences between commercial provision and family provision (by the injury victim) are great enough that any method will lead to only approximate results. For reason discussed above, it is obvious why opportunity cost methods are typically framed around measurement of services provided by homemakers and replacement cost methods tend to be used for all other circumstances. However, by any method, valuation of household services using the concept that household services are an expression of earning capacity must only be an approximate measure.

By contrast, the measurement necessary for handyman services, lawn care, cooking and cleaning services provided in a life care plan are very specific, typically with providers and rates identified in the life care plan reports. Technically, estimates of household services in life care plan reports are a type of replacement cost approach. The goal of household services provided for in a life care plan, however, is not full replacement of all household services that may have been lost because of an injury, but only those household services that are necessary to maintain ordinary life functions. One should note, however, that other types of losses could be claimed separately from the life care plan. The value of home improvements made before an injury that the individual is unable to make after an injury can be separately estimated as a damage caused by an injury.

V. What if Families of Injured Persons Lose Household Services

If an individual is injured badly enough to be confined to institutional care, a life care plan for that individual that includes cost of substitutes for household services needed by the injured person will be taken care of in the institution. However, if the injured person was providing household services for members of his or her family, those lost household services would not be usually be taken into account in the life care plan. Some life care planners project costs for providing child care if an injury victim cannot do so, but this author has never seen a life care plan that provided household services unless the injury victim was still one of the persons living in a household. An economic expert, on the other hand, might confront a case in which the injury victim's need for household services is taken care of institutionally, but other family member plaintiffs have still lost the household services of an injury victim. If those family members have been listed as plaintiffs, an economist can address those losses of "ordinary life care" separately.

For reasons discussed in Ireland and Ward (1991), household services may not have the same value to all family members. Ireland and Ward provided an example of a mother and wife whose work on her flower garden was a major source of pleasure to her, but not to her husband or children. Her husband was drafted to provide gardening service he did not enjoy and from which he did not benefit. The children were not permitted to play near the flower garden to avoid damaging the garden, so that the flower garden was something that the rest of the family was glad to get rid of, even though they greatly missed the wife/mother who was now institutionalized. This highlights a distinction between the concept of household services as an expression of earning capacity and as ordinary life care. The mother's gardening activity was not ordinary life care that the mother and wife provided for her husband and children, but essentially her hobby. Maintaining the flower garden with the woman hospitalized might have provided some small pleasure to the mother in the institution, but at the cost of making life somewhat less pleasant for the husband and children. If the woman's gardening is thought of as an expression of her pre-injury "earning capacity," an economic expert can project its lost value as part of time spent on household service production. If thought of in terms of "ordinary life care," what needs to be replaced are the necessary services such as cleaning, cooking and so forth that are still needed by family members other than the injured woman. From a life care planning perspective, the needs of remaining family members for household services provided by the injured woman would probably not be considered in a life care plan. There is probably no reason that a life care plan could not contain such elements, but this author has never seen a life care plan that contained such elements.

An economic expert could value a life care plan for the injured woman and also provide a projection for the loss of household services by remaining family members as a separate calculation. The projection by the economic expert could be based on either the "earning capacity" or the "ordinary life care" conceptions of household services, but some consideration of the differences between household services lost by the mother and household services lost by other family members should be included in the analysis if the "earning capacity" approach is used.

VI. What if Families of Injured Persons Provide Needed Household Services

While it is a secondary matter, some court cases have involved questions of whether the provision of replacement household services by other family members is compensable. In this case, the household services were provided, but not by the family member who would have provided those services if the injured person had not been injured. In *Schultz v. Harrison Radiator Division* (1997), the highest court in New York held that past household services that had been provided by family and friends were not compensable because there was no money outlay to pay for those services, but that future household services needed by the injured person were compensable along with other needed life care. That case, however, involved a person who lived alone and was not previously providing care for other family members. In cases in which the injured person continued to live with his or her family, it has sometimes been the case that both life care needed by the injured person and replacement household services needed by other family members were provided by other family members. In such cases, the law of various states is unclear about whether the family members who have provided needed life care or who have provided replacement household services can be compensated for their past provisions of such services. At least in some instances, courts have held, however, that family members can be compensated for filling those roles in the future in lieu of attendant care provided for in life care plans and for providing replacement household services.

VII. Existing Literature

The "Bibliography and References" provided at the end of this paper is not intended to be exhaustive. The references in the papers themselves provide a much more extensive list of studies involving estimations of the values of household services. The intent is rather that the bibliography that is provided would enable a reader to find a broad swath of the literature. Most of the existing literature regarding the valuation of household services consists of papers discussing some form of replacement cost methodology in which the author or authors have selected a time use survey and apply market wage rates to the valuation of time amounts either spent on household services in general or on specific household services. From the standpoint of this paper, many of those publications would be, in that sense, repetitive. All studies cited in this paper appear in the Bibliography and References, but not all papers listed in the Bibliography and References have been cited or discussed.

VII. Discussion of Selected Legal Decisions Regarding Household Services

The set of descriptions of legal decisions that have discussed the valuation of household services in the appendix of this paper show indications that the courts have sometimes found the concept that production of household services are an expression of earning capacity reasonable and sometimes found the concept that household services are "ordinary life care" needed by individuals reasonable. The decisions that are described were not selected through a systematic search of all legal decisions, but through day to day searches for opinions that would be of special interest to forensic economists that this author has been performing, using LEXIS as a search engine, for a number of years. The decisions provided should be understood as a sample of decisions collected for purposes other than the development of this paper, but which hopefully give a flavor of decisions that have been reached.

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Appendix: Selected Legal Decisions Regarding Household Services

Luttrell v. Wood, 902 S.W.2d 817 (KY 1995). This Kentucky Supreme Court decision held that while household services of a decedent in a Kentucky Wrongful Death case were valuable to survivors, "ordinary and necessary services that come with day-to-day family like . . . are clearly not an element of damages for wrongful death." In Kentucky, the measure of damages in a wrongful death action is the damage to the estate of the decedent's "power to labor and earn money." The Luttrell Court held that the ability to provide household services for survivors is not part of a decedent's "power to labor and earn money."

Risko v. Thompson Muller Automotive Group, 2010 N.J. Super Unpub. LEXIS 1446 (N.J. App. 2010). This was an appeal of the trial court judge's decision in a wrongful death action to grant a new trial to the defendant that was granted by the Appellate Decision of the Superior Court of New Jersey. In describing damages, the court said:

> *Defendant also did not produce any expert proof refuting plaintiff's damages claim. In this regard, plaintiff produced an economic expert, Dr. Robert P. Wolf, who concluded that plaintiff had suffered economic damages of $ 1,034,307 as a result of Camille's death, including $ 143,988 for loss of household services, $ 328,012 for loss of advice, counsel, support, and companionship, and $ 562,307 for lost sleep-time, on-call services. At the close of evidence and following the court's instruction, the jury returned a verdict finding defendant solely negligent and awarding plaintiff $ 1,210,319 in compensatory damages and $ 539,681 for pain and suffering, for a total amount of $ 1.75 million.*

Schreiner v. Fruit, 519 P.2d 462 (AK 1974). From its own standpoint, the principle ruling in this case was that wives have the same right to sue for loss of consortium due to negligently inflicted injuries to their husbands that husbands had in Alaska with respect to wives. The court said about the right to sue for loss of consortium that:

> *A claim for relief for loss of consortium provides a means for an injury not otherwise compensable. It should be recognized as "compensating the injured party's spouse for interference with the continuance of a healthy and happy marital life." The interest to be protected is personal to the wife, for she suffers a loss of her own when the care, comfort, companionship, and solace of her spouse is denied her. The basis for recovery is no longer the loss of services, but rather the injury to the conjugal relation.*

Put into the context of forensic economics, "care, comfort, companionship, and solace" one spouse derives from another is not a "service" like household services that can be replaced in the commercial market, but something uniquely irreplaceable that is intangible because of its uniqueness.

Schultz v. Harrison Radiator Division General Motors Corp., 90 N.Y.2d 311 (1997). Damages for household services are to be awarded only for actual past expenditures and future services. An award had been made for past lost household services by the trial court. That award had been affirmed by an intermediate court of appeals, but was reversed by New York's highest court in a decision that otherwise affirmed the trial court verdict and the appeals court decision, but remanded the decision to the trial court to implement its decision with respect past lost household services.

> *Defendant contends that since plaintiff did not incur any actual expenditures on household services between the accident and the date of verdict, having relied on the gratuitous assistance of relatives and friends, the jury improperly awarded plaintiff $ 43,096 in that respect. We agree.*
>
> *A damages award reflecting the value of such services did not serve a compensatory function and was improperly made (see, Coyne v Campbell, 11 NY2d 372). The jury should also have been instructed that future damages for loss of household services should be awarded only for those services which are reasonably certain to be incurred and necessitated by plaintiff's injuries. Contrary to plaintiff's contention, such an instruction does not require him to be dependent on the charity of others. Such a charge to the jury merely ensures that any compensatory damages awarded to plaintiff are truly compensatory.*

Michigan Central Railroad Company v. Vreeland, 227 U.S. 59 (1913). This U.S. Supreme Court decision is a very early decision under the Federal Employers Liability Act (FELA), holding that a broad interpretation of household services is in order in FELA actions when calculating damages. The *Vreeland* Court held that:

> *A pecuniary loss or damage must be one which can be measured by some standard. It is a term employed judicially, "not only to express the character of the loss of the beneficial plaintiff which is the foundation of the recovery, but also to discriminate between a material loss which is susceptible of pecuniary valuation, and that inestimable loss of the society and companionship of the deceased relative upon which, in the nature of things, it is not possible to set a pecuniary valuation." Patterson, Railway Accident Law, § 401. . . .*
>
> *Neither "care" nor "advice," as used by the court below, can be regarded as synonymous with "support" and "maintenance," for the court said it was a deprivation to be measured over and above sup-*

port and maintenance. It is not beyond the bounds of supposition that by the death of the intestate his widow may have been deprived of some actual customary service from him, capable of measurement by some pecuniary standard, and that in some degree that service might include as elements "care and advice." But there was neither allegation nor evidence of such loss of service, care, or advice; and yet, by the instruction given, the juries were left to conjecture and speculation.

Johnson v. Dobrosky, 187 N.J. 594; 902 A.2d 238 (N.J. 2006). This decision describes in some detail the application of *Green v. Bittner*, 85 N.J.1; 424 A.2d 210 (1980) in reversing a decision of the New Jersey Court of Appeals allowing testimony about the fact that the decedent had been convicted of welfare fraud. This testimony had been admitted as relevant to the quality of the advice and counsel the decedent would have provided. The New Jersey Supreme Court held that there was no direct connection between the quality of advice and counsel the decedent would have provided to her spouse and children and that a new trial was warranted. The Court held that the market value for the services business adviser, therapist trained counselor would measure the loss of advice and counsel. The Court repeated statements in *Green v. Bittner* to the effect that loss of "companionship" was defined as "the loss of a type of household services provided by in-home nurses or those employed to care for the infirm," but appeared to be saying that such services were not relevant in the current case, though relevant in cases involving the death of a child.

Neyer v. United States, 845 F.2d 641 (6th Cir. 1988). This was an FTCA decision governed by Ohio law that involved an injury to a wife. The first issue of interest was whether it is the injured wife or the husband who has the right to recover for loss of household services. This issue was remanded to the district court for further consideration. The second issue was that the Court had concern that an award for household services might be duplicative of an award for "loss of consortium of his wife's services" to the husband. This issue was also remanded to the district court for further consideration. The Court went on to say:

[R]ecovery for loss of household services is only proper when the husband has paid a third party to perform those services or is reasonably certain to be required to do so in the future. See Crowe, 13 Ohio App.2d 208, 235 N.E.2d 247; Curry, 135 Ohio St. 435, 21 N.E.2d 341. Therefore, despite the fact that the Neyers presented the court with evidence regarding the economic value of homemaking services, they failed to show to what extent they had paid for those services between the accident and trial and would pay for them in the future, and who paid or would pay for such services.

The district court found only that the Neyers employed a full-time, home-based nurse for approximately four months after Mrs. Neyer returned from the hospital and that after that time neighbors and friends cooked for the Neyers and helped out around the house. This matter was also remanded to the district court for further consideration.

Lilli v. United States, 2007 U.S. Dist. LEXIS 6543 (D. N.J. 2007). This was a decision under the Federal Tort Claims Act (FTCA) for damages resulting from an automobile accident. It was noted that: "There were no expenses incurred for hiring anyone to perform household services that Mrs. Lilli was unable to do after the accident, as Mr. Lilli did everything." Under "Findings of Fact," the court said: "4. Vincent Lilli incurred no compensable expenses for replacement of services for the period during which JoAnn Lilli was unable to perform all normal household activities."

E. M. Babinec v. Yabuki, 799 P.2d 1325 (Alas. 1990). Relating to lost household services, the court said: "We find no double recovery in compensating the Yabukis for the monetary costs of replacing Mrs. Yabuki with paid 'domestics' while also compensating Mrs. Yabuki for the lost pleasure she had experienced doing such tasks herself."

Nadeau v. Austin Mutual Insurance Company, 350 N.W.2d 368 (Minn.1984). One of the issues in this case was: "Whether plaintiffs can recover replacement service lost benefits for household services performed by an injured person's spouse, where no expenses were actually incurred by or on behalf of the injured person." The injured party was the wife, Ferol Nadeau. The court rejected a special exception for household managers because there was "no indication in the record on appeal that Mrs. Nadeau provided care and maintenance of the home on a full time basis."

Wentling v. Medical Anesthesia Services, 237 Kan. 503 (Kan. 1985). This is the key case in Kansas concerning relational services as household services. Lloyd Durham was the economist for the plaintiff that the value of the loss of conventional household services was $586,071. He also testified about what elements of loss were not included in his figure for lost household services. These additional pecuniary losses that he could not value in specific dollar terms incuded: "[M]oral training, social training, educational assistance (particularly with a handicapped child), a mother's role as nurturer and counselor, companionship, services to her husband, and more." The court held that the jury could award damages in these areas even if the plaintiff did not provide a precise

Howard v. Crystal Cruises, 41 F.3d 527 (9th Cir. 1994). This decision requires that spousal income be included in a determination of personal consumption by a decedent in a wrongful death action under the Death on the High Seas Act. The district court had applied a 30 percent personal consumption rate from the

Cheit Table to reduce family income and the decedent's household services by that percentage. The plaintiff widow argued that the 30 percent rate should not be applied to her income under the collateral source rule and that the 30 percent should not have been applied at all to the calculation of lost household services even though it was the plaintiff economist who introduced the Cheit 30 percent rate. The 9th Circuit upheld the district court's calculation of damages as not exhibiting clear error.

McNeely v. Henry, 100 N.M. 794; 676 P.2d 1359 (N.M.App. 1984). The court held that where "a single person suffers the loss of capacity to perform household services for one's self, that person is also entitled to recover the reasonable value of lost household services and that individual is a proper party to seek such recovery." The court indicated that the loss of household services is a part of lost earning capacity. This decision has been interpreted to apply to wrongful death litigation as well.

Mono v. Peter Pan Bus Lines, 13 F.Supp. 2d 471 (S.D.N.Y. 1998). This federal district court decision narrowly interprets *Schultz v. Harrison Radiator Div. Gen. Motors Corp.*, 90 N.Y.2d 311, 660 N.Y.S.2d 685 (1997) to apply only to circumstances in which an individual has suffered no loss of household services as a result of an injury or death. It therefore held that it was proper for a plaintiff husband to be awarded the replacement value of household services his wife would have provided, but for her death. In *Schultz*, the injured plaintiff had suffered no loss of household services because replacement services had been provided by friends and relatives. Schultz also included language requiring that expenditures for household services must have been made necessary by the injury or death, which was not discussed in this decision. The Mono court explained:

> *Moreover, unlike the plaintiff in Schultz, Henry Mono has suffered some harm from the loss of his wife's household services: He must now perform the chores that she previously provided for him. The pecuniary value of Joyce Mono's household services properly quantifies the burden Henry Mono incurs in performing these chores. For these reasons, the holding of Schultz is inapplicable to this wrongful death action. Accordingly, the jury did not err in awarding damages to Henry Mono for the loss of his wife's household services, though he now performs the chores himself.*

The court reduced values awarded by the jury for lost household services for an adult child who lived on the west coast and for the widower Henry Mono that were based on projections by economist Conrad Berenson.

LaRose v. Washington University, 2004 Mo. App. LEXIS 1705 (Mo.App. 2004). This was "lost chance of survival" action relating to a homemaker. The economic expert for the plaintiff, Dr. Leroy Grossman apparently projected the present value of $10,000 per year of either lost earnings or lost household services for the homemaker. "Although Grossman said that he was not testifying that the loss of Gail's household services equaled $10,000, he testified that the value of those services could be more or less than that amount." The court said:

> *Physical impairment of a plaintiff's ability to perform household duties has been recognized in Missouri as a compensable claim for damages. Collier v. Simms, 366 S.W.2d 499, 500 (Mo. App. 1963). The court in Collier essentially equated this loss of ability to a plaintiff's loss of ability to work or labor.*

The court also held that household services are not a part of consortium, but a separate element of damages.

Gotsch v. Market Street Railway, 89 Cal. App. 477; 265 P. 268 (Cal. App. 1928). The court held that a full time homemaker could recover for damages.

> *While the evidence does not show that plaintiff was engaged in any direct gainful employment for which she received a specific wage, it does show that she was capable of and did perform her family and household duties. Such services have value. The impairment of the power of a woman to work is an injury to her personal rights wholly apart from any pecuniary benefit the exercise of this power might bring, and if he injury has lessened this power she ought to recover damages therefor regardless of whether she worked or not. The vicissitudes of life might call upon her at any moment to avail her capacity to work, and jurors may be presumed to be reasonably familiar with such services.*

This decision also upholds the right to use mortality tables in a personal injury action. This decision was upheld in *Marshall v. Smith*, 131 Cal.App.258; 21 P.2d 117 (Cal. App. 1933) and, through *Marhall*, in *McCormack v. City and County of San Francisco*, 193 Cal. App. 2d 96; 14 Cal. Rptr. 79 (Cal. App.1961). Each of these decisions emphasizes that loss of the ability to provide household services is compensable and concurrently represents a loss of earning capacity.

Bouchard v. American Home Products, 2002 U.S. Dist LEXIS 27517 (N.D.Ohio 2002). This decision applies Daubert standards in denying and accepting motions in limine to exclude and limit the testimony of a number of experts on both sides of the litigation. All other motions were denied, but the request to exclude the testimony of economist Dr. Mark Berger on behalf of the defendant was granted. The court said:

> *Berger's qualifications, methodology and analysis are inadequate. First, he points to no evidence other than his own assumption that Bouchard would have been severely disabled in the absence*

of her Redux-related impairments. While he does list symptoms discussed by medical professionals in this case, Berger is not a medical professional himself and is not qualified to make a determination of disability. Even more important than Berger's ability to decide that Bouchard would be disabled without the use of Redux is his almost complete disregard for the facts of this case.

The court cited *Elcock v.Kmart Corp.*, 233 F.3d 734, 754 (3rd Cir. 2000), as follows: "An economist's testimony concerning a reliable method for assessing future economic loss can be deemed relevant only insofar as a jury can usefully apply that methodology to the specific facts of a particular case." Dr. Kenneth J. Manges, a vocational expert for the defense fared much better. Manges expressed opinions as to the motivation to find work of the plaintiff and the loss of household services based on the opinion of the plaintiff that her ability to perform household services had been reduced by 20 percent. The court said:

Bouchard has put forth no reason why a vocational expert may not rely on statement made by the evaluation subject. She has not convinced the court that Dr. Manges is unqualified to evaluate her ability to perform household services. While there may be some question about Dr. Manges' ability to reduce his evaluation of Bouchard's abilities to a definite percentage, there is no indication that such is not the general practice in his field, or that he should have relied on some other methodology in doing so.

Davis v. Rocor International, 226 F.Supp.2d 839 (S.D.Miss. 2002). A *Daubert* standard was applied to the proffered expert testimony of Dr. Stan Smith in several areas. The hedonic damages testimony of Stan Smith was rejected on the grounds of not assisting the trier of fact to understand or determine an issue in this case. The loss of society testimony of Stan Smith was rejected on the basis of lack of evidence showing loss of society based on percentages in this personal injury action and on the basis that Smith, as an economist, has not been shown to be qualified as an expert with respect to relationship values. The loss of household services testimony of Stan Smith, projected on the basis of 40 percent, was rejected because there was no showing that Smith, as an economist, is independently qualified to make that determination and that Plaintiffs had not shown that Smith's opinion would assist the trier of fact in understanding the evidence presented at trial.

Green v. Bittner, 85 NJ 1 (1980). This decision provides for the recovery as pecuniary damages in a New Jersey wrongful death action the future advice and counsel and the possible future companionship of an adult child to her parents. Donna Green, the decedent, was a high school senior at the time of her death and was a model daughter according to the decision. The trial court had awarded no pecuniary damages to her parents based on the existing New Jersey standard that recovery should be limited to lost future household services and lost future financial support for her parents. Judge Wilenz held for a unanimous court that the jury should have considered the value of the advice and counsel that Donna Green would have provided as an adult to her parents and the companionship services she might have provided to them in old age.

The court defined lost companionship as follows:

Companionship, lost by death, to be compensable must be that which would have provided services substantially equivalent to those provided by 'companions' often hired today by the aged and infirm, or substantially equivalent to services provided by nurses or practical nurses. And its value must be confined to what the marketplace would pay a stranger with similar qualifications for performing such services. No pecuniary value may be attributed to the emotional pleasure that a parent gets when it is his or her child doing the caretaking rather than a stranger, although such pleasure will often be the primary value of the child's service, indeed, in reality, its most beneficial aspect.

The court defined loss of guidance, advice and counsel as follows:

The loss of guidance, advice and counsel is similarly confined to its pecuniary element. It is not the loss simply of exchange of views, no matter how perceptive, when a child and parent are together; it is certainly not the pleasure that accompanies such an exchange. Rather it is the loss of that kind of guidance, advice and counsel which all of us need from time to time in particular situations, for specific purposes, perhaps as an aid in making a business decision, or a decision affecting our lives generally, or even advice and guidance needed to relieve us from unremitting depression. It must be the kind of advice, guidance or counsel that could be purchased from a business advisor, a therapist, or a trained counselor, for instance. That some of us obtain the same benefit without charge from spouses, friends or children does not strip it of its pecuniary value." The Court acknowledged the speculation involved in such calculations, but argued that other kinds of damages are awarded on a similarly speculative basis, saying: "Given the normal parent-child relationship, a jury could very well find it is sufficiently probable, had the child lived, that at some point he or she would have rendered that kind of companionship services mentioned herein and, although perhaps even more conjectural, the kind of advice, guidance and counsel we have described. It will be up to the jury to decide what services would have been rendered, and what their value is, subject to no *more and no less control, direction, and guidance from the court than occurs in other wrongful death cases." The decision also provides useful review of how parental loss in the death of a child is handled in states other than New Jersey.*

Lujan v. Gonzales, 84 N.M. 229, 501 P.2d 673 (N.M. App.1972). This decision sets out the standards for recovery in a wrongful death action in New Mexico. On appeal, the defendants challenged the award for loss of household services on the ground that New Mexico's wrongful death act is based on losses to the estate, not losses to survivors. The Court held that evidence of loss to the statutory beneficiaries proved that the loss of household services was a loss to the estate and held that an award for lost household services was therefore proper.

Corlett v. Smith, 107 N.M. 707; 763 P.2d 1172 (N.M. 1988). This was a decision in a New Mexico wrongful death action, which is based on loss to the estate of the decedent and not to survivors. Regarding household services, the court said:

> *When husband performed household services, other income-producing activity could not be undertaken. Further, specific costs would be incurred if someone else were retained to perform them. We believe the value of those services is an evidentiary item admissible in this case in establishing the present worth of husband's life. Cf. Lujan v. Gonzales, 84 N.M. 229, 501 P.2d 673 (Ct. App.1972) (the fact finder may consider evidence of household services to the statutory beneficiaries in awarding damages for the pecuniary value of a life).*

This is in spite of the fact that it was the wife's suicide that caused the death of the husband, which left no dependants for whom the lost household services would have been a benefit.

Garza v. Berlanga, 598 S.W.2d 377 (Tex. App. 1980). This decision approved trial court testimony about the value of moral guidance services provided by a decedent in a wrongful death action. The Court described the testimony as follows:

> *Dr. Benz, an expert in the field of economics, testified as to the value of the services which Linda Berlanga would have performed for the three children, had she lived up until the time they were 22 years of age. He then gave values for services in the areas of moral guidance and housework. The values given were based on the life expectancy of the deceased and the dependency of the minor plaintiffs until they reached 22 years of age. As a comparable for loss of household services, he considered the services of a housemaid paid the minimum wage rate, projected the wages until the youngest child would reach the age of 22, added an anticipated inflation factor, figured in a discount rate, and arrived at a conclusion that the sum of $134,112 would be the total pecuniary loss for those types of services. In arriving at the economic value for the loss of moral guidance, he equated the loss as being equal to the annual salary of a school teacher and, figuring in the same factorss, arrived at the total sum in this area of $159,208.00. In obtaining a figure as to how to divide these amounts among the three children, he gave his opinion as to certain percentage figures based on their ages with the youngest child receiving the most and the oldest the least.*

Moritz v. Allied American Mutual Fire Insurance Company, 27 Wis. 2d 13; 133 N.W.2d 235 (Wis. 1965). The trial court rejected a claim for household services which was upheld by the Wisconsin Supreme Court, saying: "While appellant clearly was entitled to some compensation for the household services she required as a result of the accident, the record demonstrates that the damages were not proved with any reasonable certainty. When damages are susceptible of precise proof or of estimation by someone having knowledge, the proof must be adduced in order to sustain the burden of showing the expenses. This appellant failed to do, and since the trial court is not permitted to determine the value of personal services, there was no error in disallowing the jury award."

Author Notes

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