

1 COLEMAN ET AL. v. SANDOZ PHARMACEUTICALS CORPORATION ET AL.

2 [Cite as *Coleman v. Sandoz Pharmaceuticals Corp.* (1996), ___ Ohio St.3d ____.]

3 *Torts -- Minor child has cause of action for loss of parental consortium against a*

4 *third- party tortfeasor who negligently or intentionally injures the child's*

5 *parent -- Gallimore v. Children's Hosp. Med. Ctr. is applicable*

6 *retroactively.*

7 (No. 95-912 -- Submitted November 7, 1995 -- Decided February 14, 1996.)

8 ON ORDER from the United States District Court for the Northern District of

9 Ohio, Western Division Certifying Three Questions of State Law, No.

10 3:91CV7573.

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12 *Murray & Murray Co., L.P.A., Thomas J. Murray and Nancy L. Ogden, for*

13 respondents Janette Coleman et al.

14 *Balk, Hess & Miller and Richard H. Carr; for intervening respondent*

15 Brandi Coleman, a minor child.

16 *Rohrbacher, Nicholson & Light Co., L.P.A., David J. Rohrbacher, C.*

17 *Randolph Light, Beverly J. St. Clair, Barbara A. Braun Hafner and Diane J.*

18 *Knoblauch, for petitioner Sandoz Pharmaceuticals Corporation.*

1 Vorys, Sater, Seymour & Pease and Edgar A. Strause; Wilmer, Cutter &
2 Pickering, David P. Donovan, Roger W. Yoerges and Kimberly M. Hult, in support
3 of petition, for *amicus curiae* American Cyanamid Company.

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5 The following questions have been certified to us by the United States
6 District Court for the Northern District of Ohio, Western Division, pursuant to
7 S.Ct.Prac.R. XVIII:

8 “The first questions [*sic*] of law presented in the instant case, therefore, is
9 whether *Gallimore* [*v. Children’s Hosp. Med. Ctr.* (1993), 67 Ohio St.3d 244, 617
10 N.E.2d 1052] is retroactive so that Brandi Coleman may maintain a cause of action
11 for loss of parental consortium even though the incident at issue took place before
12 *Gallimore* was decided. Second, if *Gallimore* is retroactive, the question becomes
13 whether Brandi Coleman’s loss of parental consortium claim is outside of the
14 statute of limitations because it was not joined with Janette Coleman’s case, or
15 whether such requirement does not apply in this case because it was not feasible.
16 Third, in a case such as this where the intervening minor child has sued additional
17 parties as defendants, an additional question presented is whether a derivative loss
18 of parental consortium claim that is filed by an intervening child can be brought

1 against additional defendants where the parent’s case in chief has only one
2 defendant.”

3 We answer the first and third certified questions in the affirmative.

4 As to the second certified question, in *Gallimore, supra*, we approved of the
5 reasoning of Justice Resnick in her dissent in *High v. Howard* (1992), 64 Ohio
6 St.3d 82, 592 N.E.2d 818, where she wrote as follows:

7 “The only realistic concern expressed by the majority is the problematic area
8 regarding multiple suits. Yet, the Sixth District Court of Appeals, in *Farley*
9 [*v. Progressive Cas. Ins. Co.* (Feb. 21, 1992), Lucas App. No. L-90-323,
10 unreported, 1992 WL 32111], *supra*, considered the question and reached a very
11 coherent, sensible solution—one that I recommend this court adopt. That court
12 framed and answered the issue as follows:

13 “***R.C. 2305.16 tolls the statute of limitations for minors until they reach
14 the age of majority. Thus, a minor would potentially have many years after the
15 parent’s injury to bring a cause of action for loss of parental consortium. This
16 would impede settlement of the injured parent’s claim and the spouse of the
17 injured parent’s loss of consortium claim, since a tortfeasor, or his insurance
18 company, would be most likely to resist settling a portion of the damages arising

1 from one injury without settling all of them. Further, if a case were not settled, the
2 injured parent and spouse could file their lawsuit within two years from the date of
3 injury and a separate lawsuit could potentially be filed by each child many years
4 later.

5 ““This problem has been dealt with in other jurisdictions by requiring
6 joinder of all minors’ consortium claims with the injured parent’s claim whenever
7 feasible.***We believe that this is a sensible solution to the problem and hold that
8 *a child’s loss of parental consortium claim must be joined with the injured*
9 *parent’s claim whenever feasible.*” (Emphasis added.) *Id.* at 94-95, 592 N.E.2d
10 at 826-827.

11 We find nothing in the record before us to show that joinder of Brandi
12 Coleman’s cause of action for loss of parental consortium to her mother’s cause of
13 action is not just and feasible. Moreover, since the statute of limitations for
14 Brandi’s *independent* cause of action for loss of parental consortium is majority
15 plus four years (see R.C. 2305.09), there is no statute-of-limitations problem.

16 DOUGLAS, RESNICK, F.E. SWEENEY and PFEIFER, JJ., concur.

17 MOYER, C.J., WRIGHT and COOK, JJ., dissent.

1 Cook, J., dissenting. I respectfully dissent. As to the first certified question,
2 I would answer the question in the negative.

3 In Gallimore v. Children’s Hosp. Med. Ctr. (1993), 67 Ohio St.3d 244, 255,
4 617 N.E.2d 1052, 1060, this court plainly stated, “[w]e further order that our
5 holdings today be applied only prospectively and, of course, to the case at bar.”
6 Justice Resnick’s dissent in High v. Howard (1992), 64 Ohio St.3d 82, 96, 592
7 N.E.2d 818, 827, upon which the majority in Gallimore relied, stated, “[t]his
8 holding should be applied prospectively, and only to the instant case and to any
9 actions *arising* on or after the date of this decision.” (Emphasis added.)

10 In the usual case, retroactivity is not an issue. The courts simply apply their
11 best understanding of current law in resolving each case that comes before them.
12 James B. Beam Distilling Co. v Georgia (1991), 501 U.S. 529, 535, 111 S.Ct.
13 2439, 2443, 115 L.Ed.2d 481, 488. While generally a lower court reviewing a
14 pending matter applies the most recent state court decision, even if the decision
15 was announced after the operative events occurred, this court has the authority to
16 make its rulings prospective only. OAMCO v Lindley (1987), 29 Ohio St.3d 1, 29
17 OBR 122, 503 N.E.2d 1388, syllabus, citing Great Northern Ry. Co. v. Sunburst
18 Oil & Refining Co. (1932), 287 U.S. 358, 364, 53 S.Ct. 145, 148, 77 L.Ed. 360,

1 366. See, also, Harper v. Virginia Dept. of Taxation (1993), 509 U.S. ____, 113
2 S.Ct. 2510, 2518-2519, 125 L.Ed.2d 74, 88. In OAMCO, this court declared that
3 its decision, with the exception of the subject litigants, should only receive
4 prospective application to transactions occurring after the date of the issuance of
5 the decision.

6 I favor application of Gallimore only to actions arising after the decision
7 based on a balancing of the equities. First, Gallimore was unmistakably a break
8 from precedent. As the cause of action for loss of parental consortium did not
9 exist in Ohio prior to Gallimore, parties foreclosed by a prospective application
10 cannot be said to have had an expectation revoked. On the other side, however,
11 the potential tortfeasors who may reasonably have expected that all claims against
12 them had been resolved or waived, may now face claims eighteen years old (given
13 the tolling statute). Moreover, given the language of Gallimore and High cited
14 above, parties will have resolved claims during the interim between the
15 announcement of Gallimore and this decision which will now be subject to further
16 litigation. The balance of fairness, therefore, I believe, lies in applying Gallimore
17 to cases arising after that decision.

1 Answering the first issue in the negative would render moot the second and
2 third certified questions.

3 MOYER, C.J., and WRIGHT, J., concur in the foregoing dissenting opinion.

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