

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001060

05/28/2020

HONORABLE DANIEL J. KILEY

CLERK OF THE COURT
J. Celian/C. Mai
Deputy

LANCE LAMONTE JOHNSON

v.

EAGLE EXPRESS LINES INC, et al.

JILL ANN HERMAN

JEVEDIA MUHAMMAD
7308 S 74TH LN
LAVEEN AZ 85339
JOHNNY J SORENSON
JUDGE KILEY

MINUTE ENTRY

In this consolidated case, Plaintiff Eric Muhammad asserted a claim for personal injuries he sustained on March 20, 2014, when the vehicle in which he was a passenger was involved in a serious collision. *See* Complaint in CV2016-001970 at ¶¶ 9-12, 16, 20.¹ Plaintiff Jevedia Muhammad, who was not present at the time of the accident, asserted a claim for loss of consortium. *Id.* at ¶¶ 16, 20.

The Plaintiffs received a settlement from the Defendants of \$350,000. Of that sum, \$29,875.40 has already been paid, by agreement of the parties, to various medical providers who provided treatment to Mr. Muhammad. *See* Minute Entry of January 30, 2020, at p. 2. Pursuant to Court order, another \$81,250.00 was paid to Oasis Financial in repayment of a loan that Mr.

¹ CV2016-001970 was consolidated with this case, which was filed against the same Defendants by Lance Lamonte Johnson, the driver of the vehicle in which Mr. Muhammad was riding at the time of the accident.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001060

05/28/2020

Muhammad had taken out on November 27, 2019. *See* Motion for Leave to Partially Disburse Settlement Funds to Pay Settlement Advance Loan at pp. 2-3; Order Granting Leave to Partially Disburse Settlement Funds at pp. 1-2. Unpaid attorney fees and costs total \$116,675.72; at the May 26, 2020 hearing in this matter, neither party disputed that these fees and costs should be paid out of the settlement. After payment of these fees and costs, a total of \$122,198.88 remains. The Plaintiffs, who have commenced marital dissolution proceedings, disagree on how these funds should be divided between the Plaintiffs. Ms. Muhammad asserts that the funds should be divided equally between them. Mr. Muhammad takes the position that Ms. Muhammad is entitled to no more than \$5,000 for her loss of consortium claim, or roughly 4% of the available funds, and that the remaining 96% or so of the funds should be distributed to him.

The evidence presented at the evidentiary hearing on May 26, 2020, establishes that Mr. Muhammad sustained severe injuries as a result of the March 20, 2014, accident. As a result of the trauma of the accident, he was initially unable to even move his arms and legs. He spent almost three weeks as a patient at St. Joseph's Hospital and Medical Center, and was in the Intensive Care Unit for much of that time. As he began to regain mobility in his extremities and make other progress, Mr. Muhammad was moved to a neurological rehab unit, where he remained until his discharge on April 29, 2014. After his discharge, he participated in outpatient physical therapy for approximately three more weeks until his insurance benefits ran out. Meanwhile, he was required to wear a halo brace for almost two months after the accident; the surgical screws from the halo brace have left indentations on his forehead that are visible to this day. Although Mr. Muhammad returned to work in June 2014, he testified without contradiction that he did so out of financial necessity, and not because he had made a full recovery.

While Mr. Muhammad has made considerable progress since the accident, he has not fully recovered, and it is unlikely he ever will. He is unable to walk without a cane, and still experiences pain and numbness in his arms and legs. There is no reason to believe that this pain and numbness will ever resolve; on the contrary, Dr. Cifuentes testified at the May 26th hearing that Mr. Muhammad will suffer from a permanent loss of mobility and function. Additionally, Mr. Muhammad testified that he had not fully recovered the cognitive abilities that he had before the accident, and that his diminished mental faculties have negatively affected his ability to maintain employment in the IT field as he once did.

Ms. Muhammad, too, suffered a terrible loss as a result of the March 2014 accident. She provided significant care for her husband, both during his hospitalization and after he was discharged on April 29, 2014. She assisted him with all activities of daily living, including eating, bathing, and toileting. Additionally, she testified, and Mr. Muhammad agreed, that she assisted him with performing exercises that had been prescribed for him to assist in his recovery. She testified that her relationship with Mr. Muhammad suffered after the accident and that Mr. Muhammad could be "angry" and "irritable," making it "stressful" for her to "be in our home."

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001060

05/28/2020

The parties are now separated. They have not resided together since at least August 2019, when Mr. Muhammad initiated marital dissolution proceedings.

In support of her position that she is entitled to half of the net settlement proceeds of \$122,198.88, Ms. Muhammad points out that Arizona is a community property state. While this is true, it has no bearing on the division of the settlement proceeds between the two Plaintiffs in this personal injury case. The only issue to be resolved at present is the relative values of each Plaintiff's claim. The sole claim Ms. Muhammad asserts in this case is a claim for loss of consortium, for which she is entitled to damages for her loss of "love," "affection," "companionship," "society," and other aspects of the marital relationship. *Barnes v. Outlaw*, 192 Ariz. 283, 286, 964 P.2d 484, 487 (1998) (citations and internal quotations omitted). By contrast, the damages to which Mr. Muhammad is entitled include damages for pain and suffering, lost earnings, lost earning capacity, and past and future medical expenses. *See Bruce Church, Inc. v. Pontecorvo*, 124 Ariz. 305, 308, 603 P.2d 932, 935 (App. 1979). The fact that the parties are married does not establish that the value of their respective claims is equal.²

In further support of her position, Ms. Muhammad notes, correctly, that Mr. Muhammad borrowed money over the course of these proceedings, and that these loans have now been repaid using settlement funds obtained from the Defendants. Ms. Muhammad asserts that the use of the settlement funds to repay these debts should not reduce the amount of the settlement funds awarded to her because, she alleges, Mr. Muhammad borrowed the money without her knowledge and for his own purposes. She further alleges that, since the parties' separation last summer, Mr. Muhammad has voluntarily provided financial support to a third party and that this provision of support amounts to the waste or dissipation of marital assets (although she did not use those terms).

The evidence presented at the May 26th hearing establishes that Mr. Muhammad took out loans in June 2017, December 2018, and February 2019. Hearing Exhibits 42-44. He testified that he used the net loan proceeds (after payment of interest and loan processing fees) to pay the parties' rent and other joint expenses. He acknowledged, in response to questioning by Ms. Muhammad, that he did not tell her at the time about the loans he took out in December 2018 and February 2019, but asserted that his failure to discuss these loans with Ms. Muhammad was

² The Court expresses no opinion, however, on whether the Muhammad marital community may properly assert a claim to the portion of the settlement proceeds that is ultimately awarded to Mr. Muhammad. *See Bugh v. Bugh*, 125 Ariz. 190, 192, 608 P.2d 329, 331 (App. 1980) ("[T]he portion of a personal injury recovery which represents lost wages incurred during marriage also is considered community property."). That is a matter that the parties may address in their Family Court case.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001060

05/28/2020

consistent with the parties' practice of allowing Mr. Muhammad to handle the family's finances without Ms. Muhammad's involvement. The Court sees no reason to doubt Mr. Muhammad's testimony on these points.

The evidence presented at the hearing also establishes that Mr. Muhammad borrowed \$65,000 from Oasis Financial in November 2019, months after the parties separated. Mr. Muhammad testified that he used the bulk of these funds, or roughly \$40,000, to repay the indebtedness remaining from the three prior loans. Mr. Muhammad acknowledged that he kept the remainder, or roughly \$15,000, and that he did not provide any of these funds to Ms. Muhammad or their daughter. Indeed, he acknowledged that he has provided no financial support to Ms. Muhammad or their daughter since they separated last summer, asserting that he has been financially unable to do so.

While the evidence thus supports Ms. Muhammad's assertion that at least part of the Oasis Financial loan proceeds was kept by Mr. Muhammad and not shared with his wife or child, the Court finds that whether all or any part of the Oasis Financial loan proceeds should be treated as Mr. Muhammad's sole and separate debt is an issue to be resolved in the parties' Family Court proceedings.³ That issue is not, in other words, relevant to the relevant value of each Plaintiff's claim in this personal injury case.

At the hearing, Ms. Muhammad presented testimony on other issues as well, including testimony that Mr. Muhammad was not wearing a seat belt at the time of the accident (which, she suggested, contributed to the severity of his injuries) and that some of Mr. Muhammad's pain and loss of function may be attributable to medical conditions that pre-existed the accident (such as, for example, the medical issues that necessitated Mr. Muhammad's hip replacement surgery in 2009). While these facts may (and, undoubtedly, did) affect the amount of the overall settlement that these two Plaintiffs received from the Defendants, the Court fails to see how these facts relate to the proper division of the settlement proceeds as between the two Plaintiffs.

³ Although this Court previously granted Mr. Muhammad's unopposed motion for an order permitting this debt to Oasis Financial to be repaid, the Court did so only to avoid the additional \$19,500 payoff charge that Oasis Financial would have imposed if the debt were not repaid by the May 28, 2020 deadline that Oasis Financial had set. *See* Motion for Leave to Partially Disburse Settlement Funds to Pay Settlement Advance Loan at p. 2. The Court's ruling authorizing the disbursement of settlement funds to pay off the indebtedness to Oasis Financial should not be construed as a finding that both parties are, or should be, equally responsible for the indebtedness to Oasis Financial. The Court has made no determination as to whether the November 2019 loan from Oasis Financial should be treated as a community or separate debt.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001060

05/28/2020

While Ms. Muhammad's losses are certainly significant, it cannot be said that they are equal to Mr. Muhammad's. Not only has Mr. Muhammad suffered significant physical pain and decreased physical mobility since the accident, but he will continue to experience pain, numbness, and some loss of physical function for the foreseeable future (and, in all likelihood, forever). Ms. Muhammad's losses, though significant, are not of the same character. Moreover, Mr. Muhammad's loss of income and the diminution of his earning capacity is an element of damage that only he can claim in this personal injury case. The Court finds that Ms. Muhammad has failed to justify her position that she is entitled to one-half of the net settlement proceeds.

In support of his position that Ms. Muhammad is entitled to no more than \$5,000, Mr. Muhammad argued at the May 26th hearing that the damages that are recoverable for a loss of consortium claim are limited to damages for the loss of love, care, and companionship, and that Ms. Muhammad had presented little to no evidence to support a finding of such a loss.

The Court certainly agreed with Mr. Muhammad that "[t]he purpose of" a loss of consortium claim "is to compensate for the loss" of "love, affection, protection, support, services, companionship, care, society, and in the marital relationship, sexual relations." *Barnes*, 192 Ariz. at 286, 964 P.2d at 487 (citations and internal quotations omitted). For two reasons, however, the Court disagrees with Mr. Muhammad's assertion that little to no evidence was presented at the May 26th hearing to support a finding that Ms. Muhammad has suffered a compensable loss of consortium.

First, Ms. Muhammad testified without contradiction that Mr. Muhammad would become "angry" and "irritable" with her after the accident, which created "stress" in the family home. Such testimony certainly establishes the type of decline in the quality of the marital relationship that constitutes a compensable loss of consortium. *See Peterson v. Sun State Intern. Trucks, LLC*, 56 So.3d 840, 843-44, 845 (Fla.App. 2011) (setting aside jury verdict awarding no damages to husband for loss of consortium, where uncontroverted evidence showed that, after wife was injured in car accident, the spouses' relationship "deteriorated" in part because wife "had become more short-tempered with her husband and had begun to pull away from him emotionally"); *Robbins v. State ex rel. Dep't of Labor*, 728 So.2d 991, 999 (La.App. 1999) (holding that trial court erred in awarding no damages for loss of consortium to children whose relationship with their injured mother suffered in part due to their mother's post-accident "mood swings" and "crankiness").

Second, the Court disagrees with Mr. Muhammad's assertion that his wife's provision of significant caregiving services to him during and after his hospitalization is irrelevant to her loss of consortium claim. As case law recognizes (and common sense would indicate), a married couple's relationship inevitably suffers when one spouse is required to become more of a caregiver than a partner to the other spouse. *See, e.g., Mealy v. B-Mobile, Inc.*, 195 Cal.App.4th

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001060

05/28/2020

1218, 1225, 124 Cal.Rptr.3d 804, 809 (2011) (holding that trial court erred in dismissing husband's loss of consortium claim and finding that "the evidence compels the conclusion that [husband] suffered a compensable loss of consortium" because he had become "virtually a full-time caregiver for his wife," resulting in an "inevitable loss of conjugal society, comfort, affection, moral support and other noneconomic elements of the marital relationship"). The significant caregiving services that Ms. Muhammad provided to her husband after his accident can properly be viewed as one measure of the extent to which her husband's accident deprived Ms. Muhammad of a normal, healthy marital relationship. *See Quadrone v. Pasco Petroleum Co., Inc.*, 156 Ariz. 415, 417, 752 P.2d 504, 506 (App. 1987) ("[T]he basis for recovery for loss of consortium is interference with the continuance of a healthy and happy marital life and injury to the conjugal relation.") (citation and internal quotations omitted). *See also Cedeno v. Broan-Nutone, LLC*, 2019 WL 4751913 at *11 (E.D.N.Y., Sept. 30, 2019) (awarding loss of consortium damages to wife after a bench trial, the Court noted, *inter alia*, that wife "took on significant caregiving responsibilities for her husband in the months following his accident"); *Davis v. Caterpillar*, 787 So.2d 894, 900 (Fla.App. 2001) (ordering new trial on wife's loss of consortium claim because damages awarded "did not sufficiently address the losses suffered," the Court noted, *inter alia*, that after husband's accident, wife "changed his dressings day after day, cleaned his wounds, massaged his leg, bathed him, helped him dress and took him to his numerous doctor's appointments").

After considering the foregoing, the Court finds that Mr. Muhammad is entitled to 90% of the net settlement proceeds after payment of the outstanding legal fees and costs, and that Ms. Muhammad is entitled to 10%. Accordingly,

IT IS ORDERED awarding Plaintiff Eric Muhammad 90% of the net settlement proceeds, and Plaintiff Jevedia Muhammad 10% of the net settlement proceeds, after payment of the outstanding legal fees and costs.

It appears that all outstanding issues in this case have been resolved. Out of an abundance of caution, however, the Court will defer entering final judgment pursuant to Ariz.R.Civ.P. 54(c) at this time, to give the parties an opportunity to raise additional issues, if any, that require resolution before entry of final judgment. Accordingly,

IT IS ORDERED placing this matter on the Dismissal Calendar for dismissal of all claims with prejudice and with no further notice on or after **June 12, 2020**, unless, prior to that date, any party files a motion requesting relief on any issue(s) that remain unresolved.