

IN THE COURT OF APPEALS 02/27/96

OF THE

STATE OF MISSISSIPPI

NO. 91-CA-00992 COA

**JOHN PAUL PRESTAGE, NATURAL FATHER AND NEXT OF FRIEND OF AMY
PRESTAGE, A MINOR**

APPELLANT

v.

NEW HOLLAND, INC. (FORMERLY SPERRY-NEW HOLLAND)

APPELLEE

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. JAMES E. GRAVES

COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

WILLIAM B. RAIFORD, III

ATTORNEY FOR APPELLEE:

MICHAEL W. ULMER

NATURE OF THE CASE: LOSS OF CONSORTIUM CLAIM FOR NEGLIGENCE WHICH
DISABLED PARENT

TRIAL COURT DISPOSITION: DISMISSED ON GROUNDS THAT FAILED TO STATE A
CLAIM FROM WHICH RELIEF COULD BE GRANTED

BEFORE BRIDGES, P.J., PAYNE, AND SOUTHWICK, JJ.

PER CURIAM:

John Prestage was injured at work by a combine manufactured by New Holland and sold by Greenwood Ford Tractor Sales, Inc. As a result of the accident, one of Prestage's legs was amputated below the knee. Prestage and his wife successfully sued New Holland and Greenwood Ford. He then filed a separate law suit against New Holland on behalf of one of his daughters, Amy Prestage, for loss of parental consortium. New Holland filed a motion to dismiss under Rule 12 of the Mississippi Rules of Civil Procedure for failure to state a claim. The trial court granted New Holland's motion on the grounds that Mississippi had never recognized such a cause of action. On appeal, Prestage argues that allowing this claim would be consistent with the expansion of consortium claims in Mississippi and consistent with authorities outside the state.

On September 28, 1995, the Mississippi Supreme Court issued its opinion in *Thompson v. Love*, 661 So. 2d 1131, 1131 (Miss. 1995), in which it deferred to the legislature the creation of a cause of action for a child's loss of parental consortium. Specifically the court said, "While we do not hold that the cause of action is without merit, we do hold that the creation of such a cause of action could best be handled by the legislature's ability to enact the legislation if it so chooses." *Id.*

For the foregoing reasons, we affirm the trial court's dismissal of the claim for parental loss of parental consortium in this case.

THE JUDGMENT OF THE CIRCUIT COURT OF HINDS COUNTY IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.