

Bonbrest v. Kotz (1946)

Court: United States District Court for the District of Columbia

Citation: Bonbrest v. Kotz, 65 F.Supp. 138 (D.C.D.C. 1946)

Status as current law: Doubtful

Value as precedent: Medium

Case significance:

This influential opinion was copied throughout the United States allowing civil actions and wrongful death claims on behalf of children who suffered injuries while a viable fetus. The case essentially overruled the opinion by Justice Oliver Wendell Holmes, Jr. in *Dietrich v. Inhabitants of Northampton* (1884). However, the ability to sue was usually limited in two ways: the fetus had to be viable, and a child had to be born alive to have a claim. These two restrictions have recently been removed in many jurisdictions.

Case Summary:

- Facts—Defendant physicians J. Kotz and Morton S. Kaufman were alleged to have caused prenatal injury to Bette Gay Bonbrest, an unborn child, through professional malpractice during delivery of the child. The child survived the birth but suffered debilitating injuries.
- Law—It was commonly understood that an unborn child did not have standing to sue for injuries suffered in the womb. However, this Court claimed a prerogative to extend common law protections to the viable fetus in this case based on similar treatment of the viable fetus in other fields of law, such as criminal and abortion laws.
- Ruling—The child Bette Gay Bonbrest had standing as an individual to sue for injuries suffered while she was a viable fetus in the womb.

Quotes:

“Here, however, we have a viable child—one capable of living outside the womb—and which has demonstrated its capacity to survive by surviving—are we to say now it has no locus standi in court or elsewhere? As to a viable child being ‘part’ of its mother—this argument seems to me to be a contradiction in terms. True, it is in the womb, but it is capable now of extra-uterine life—and while dependent for its continued development on sustenance derived from its peculiar relationship to its mother, it is not a ‘part’ of the mother in the sense of a constituent element—as that term is generally understood. Modern medicine is replete with cases of living children being taken from dead mothers.” 65 F.Supp. 140

“But on the assumed facts here we have not, as in the *Dietrich* case, ‘an injury transmitted from the actor to a person through his own organic substance, or through his mother, before he became a person’ standing ‘on the same footing as an injury transmitted to an existing person through other intervening substances outside him,...’ but a direct injury to a viable child—the distinction is an important one—by the defendants in their professional capacities. This seems to me to be the solid factual ground on which the two cases stand distinguished.” 65 F.Supp. 140

“The absence of precedent should afford no refuge to those who by their wrongful act, if such be proved, have invaded the right of an individual—employed as the defendants were in this case to attend, in their professional capacities, both the mother and child. And what right is more inherent, and more sacrosanct, than that of the individual in his possession and enjoyment of his life, his limbs and his body?” 65 F.Supp. 142

“It is to be noted that there is a medical distinction between the term ‘embryo’ and a ‘viable foetus’.

The embryo is the foetus in its earliest stages of development, especially before the end of the third month, but the term 'viable' means that the foetus has reached such a stage of development that it can live outside of the uterus." American Illustrated Medical Dictionary, 19th Ed., Dorland, pp. 483, 1605. 65 F.Supp. 140, Footnote 8

"The law is presumed to keep pace with the sciences and medical science certainly has made progress since 1884." 65 F.Supp. 143

This case cites to these authorities:

Dietrich v. Inhabitants of Northampton, 138 Mass. 14 (1884)

A fetus is part of its mother and thus a child does not have standing to sue for injuries suffered in the womb.

Montreal Tramways v. Leveille, 4 Dom.L.R. 337 (1933)

Under Canadian law it is a crime to cause the death of a viable fetus, therefore a civil lawsuit should be allowed for injury caused to a viable fetus.

This case was cited in:

Summerfield v. Superior Court, 144 Ariz. 467, 698 P.2d 712 (1985)

The word "person" in Arizona's wrongful death statute includes a viable fetus.