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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

DELIILAH ESTARELLA, a Minor,  
etc., et al.,

Plaintiffs and Appellants,

v.

WEST COAST AMBULANCE  
CORPORATION et al.,

Defendants and Respondents.

B266387

(Los Angeles County  
Super. Ct. Nos. BC527749  
& MC024963)

APPEAL from a judgment of the Superior Court of Los Angeles County. Randolph A. Rogers, Judge. Affirmed.

Carpenter, Zuckerman & Rowley, John C. Carpenter and Paul S. Zuckerman for Plaintiffs and Appellants.

Collins Collins Muir & Stewart, Michael L. Wroniak, Michael C. Lubin and James C. Jardin for Defendants and Respondents.

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Delilah Estarella<sup>1</sup> seeks to overturn long-standing precedent established by the California Supreme Court in *Borer v. American Airlines, Inc.* (1977) 19 Cal.3d 441, 444 (*Borer*), which declined to recognize a child's cause of action for loss of parental consortium. Relying on *Borer*, the trial court sustained demurrers to Delilah's loss of parental consortium claim without leave to amend. We are likewise bound to follow the decision of our Supreme Court under the doctrine of stare decisis. Accordingly, we affirm the judgment.

### FACTS AND DISCUSSION

On October 21, 2013, Thomas Estarella's car collided with an off-duty ambulance driven by Maria Guadalupe R. Marquez of West Coast Ambulance Corporation. Thomas suffered traumatic brain injury along with other injuries. Thomas' infant daughter, Delilah, brought suit for loss of parental consortium against a number of defendants, including Marquez and West Coast Ambulance.<sup>2</sup> The defendants demurred to Delilah's claim on the ground a loss of consortium claim may not be maintained by a minor for injury to a parent under *Borer, supra*, 19 Cal.3d 441. The trial court sustained the demurrers without leave to amend and dismissed Delilah's complaint. Delilah appealed.

Delilah's appeal concerns one question: Should California reconsider *Borer, supra*, 19 Cal.3d 441? In *Borer*, a mother was injured by a falling light fixture in an airline terminal. Her nine children brought suit against the airline for loss of her services,

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<sup>1</sup> For ease of reference, we refer to members of the Estarella family by their first names with no disrespect intended.

<sup>2</sup> Thomas also brought suit against the defendants, but his claims are not at issue in this appeal.

companionship, affection, and guidance. The airline’s demurrer to the complaint was sustained without leave to amend. (*Id.* at p. 445.) The judgment was affirmed. The California Supreme Court reasoned, “taking into account all considerations which bear on this question, including the inadequacy of monetary compensation to alleviate that tragedy, the difficulty of measuring damages, and the danger of imposing extended and disproportionate liability, we should not recognize a nonstatutory cause of action for the loss of parental consortium.” (*Id.* at p. 453.)

Delilah “recognizes that stare decisis precludes this court from departing from the California Supreme Court’s holding [in] *Borer*. As such, the appellant fully recognizes that this court is required to affirm.” Nevertheless, Delilah presents extensive argument for overturning *Borer*, including that at least 22 states disagree with its holding and allow parent-child loss of consortium claims. Where out-of-state authority is at odds with California law, however, it lacks even persuasive value. (*Fairbanks v. Superior Court* (2009) 46 Cal.4th 56, 64.) As acknowledged by Delilah, we are bound to follow the decisions of our Supreme Court. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) It is not our function to attempt to overrule decisions of the Supreme Court. (*Ibid.*)

#### **DISPOSITION**

The judgment is affirmed. Respondents are awarded costs on appeal.

BIGELOW, P.J.

We concur:

RUBIN, J.

FLIER, J.