

rights with his children. He filed a motion to discover correspondence from the plaintiff which is in the files of the New Hampshire Probation Department and which the department has refused to disclose. Even though there was no objection by either the plaintiff or the probation department, his motion was denied without a hearing by King, J., who transferred his exceptions.

■ Although a motion upon which the opposing party does not request a hearing may be acted on under Superior Court Rule 58, RSA 491: App. R. 58 (Cum. Supp. 1978), the motion cannot be denied without giving the movant a chance to be heard.

■ ■ This State takes a liberal view of discovery. Absent some privilege and subject to control to prevent harassment, full discovery is favored even against third parties and State agencies. See *Scontsas v. Citizens Insurance Co.*, 109 N.H. 386, 253 A.2d 831 (1969); *Marceau v. Orange Realty Inc.*, 97 N.H. 497, 92 A.2d 656 (1952); *Lefebvre v. Somersworth Shoe Co.*, 93 N.H. 354, 41 A.2d 924 (1945). There is no suggestion that any letters from plaintiff in the files of the probation department are privileged or that any harassment is involved. The letters may contain information relevant to the issues of visitation rights and the financial condition of the plaintiff. No reason has been advanced why the motion should not have been granted and we perceive none.

Defendant's exception is sustained and his motion is granted.

Exception sustained; motion for discovery granted; compliance within twenty days of the date hereof.

DOUGLAS, J., did not sit.

Strafford
No. 78-282

SHARON E. REID

v.

SPADONE MACHINE COMPANY

March 30, 1979

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Burns, Bryant, Hinchey, Cox & Shea, of Dover (*Jody A. Handy* orally), for the plaintiff.

Calderwood, Ouellette & Hallisey, of Dover (*William L. Tanguay* orally), for the defendant.

PER CURIAM. The issue in this action for loss of consortium is whether the wife's action is barred because her husband's action has been terminated by a judgment against the same defendant. We hold that the claim is not barred.

Plaintiff's husband was injured on November 15, 1974, while using a machine manufactured by the defendant in the course of his employment by Davidson Rubber Company. He brought suit against the defendant and a trial resulted in a verdict in his favor in the amount of \$150,000. After the entry of judgment in that case, plaintiff brought this action for loss of consortium. Defendant filed a "special plea and brief statement" claiming that the action was barred by res judicata and collateral estoppel. Plaintiff's objection to the plea was sustained and defendant's exception was transferred by *Cann, J.*

■ ■ A wife's cause of action for loss of consortium is created by statute as a separate and distinct claim and is not derivative from the claim of the husband. RSA 507:8-a. The plaintiff is a separate and distinct party from her husband and she was not a party to his action. Therefore, neither res judicata nor collateral estoppel against her result from that judgment. *Parklane Hosiery Co. v. Shore*, 99 S. Ct. 645 (1979).

■ ■ Defendant argues that the plaintiff should not be allowed to bring this action after waiting until the conclusion of her husband's

[REDACTED] [REDACTED]

suit. We agree that plaintiff should have brought her action so as to have it joined with that of her husband. Plaintiff's brief states that defendant would not agree to such a joinder. Joinder, however, does not depend upon consent of the parties. The fact that, for the purpose of judicial administration, plaintiff's action should have been joined with that of her husband does not however justify a dismissal of her action. It may be that consideration will be given by the superior court to a mandatory joinder rule in cases such as this; but none presently exists to bar plaintiff's action.

Exception overruled.

[REDACTED]

Hillsborough
No. 78-289

THE STATE OF NEW HAMPSHIRE

v.

FRANCIS G. HOLLAND

March 30, 1979

[REDACTED]

[REDACTED]

Thomas D. Rath, attorney general (*Anne E. Cagwin* orally), for the State.

Francis G. Holland, of Nashua, pro se.

MEMORANDUM OPINION

Defendant, who was convicted in the Milford District Court of speeding, for violating RSA 262-A:54, appealed to the Hillsborough County Superior Court where he pleaded nolo contendere. He was fined \$20 and a ten percent penalty charge in accordance with RSA 105-A:8 (Supp. 1977) was added. He excepted to the imposition of the penalty charge and his exception was transferred by *Cann, J.*

In *Opinion of the Justices*, 117 N.H. 382, 373 A.2d 640 (1977), the justices of this court were of the opinion that the proposed bill which became RSA ch. 105-A was constitutional. Although we did not have the benefit at that time of the adversary process, nothing in defend-