SUPREME COURT
STATE OF FLORIDA

CASE NO. 68000-237

SHANDS TEACHING HOSPITAL and CLINICS, INC.,

Petitioner,

vs.

REBECCA SMITH,

Respondent,

Appeal from the First District Court of Appeal

Appeal No. BC-307

BRIEF OF AMICUS CURIAE THE FLORIDA HOSPITAL ASSOCIATION

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PRELIMINARY STATEMENT

The Florida Hospital Association (FHA) adopts the statement of the case and the statement of the facts as set forth in Petitioner's Brief.

All emphasis is supplied unless noted otherwise.

INTEREST OF THE FLORIDA HOSPITAL ASSOCIATION

Amicus Curiae Florida Hospital Association respectfully submits this brief in support of the Shands Teaching Hospital and Clinics, Inc., in this matter.

Florida Hospital Association is a voluntary organization of hospitals within the State of Florida. More than two hundred hospitals are members in the FHA. These hospitals vary in size from thirty-two beds to one thousand beds. The Associations's members are representative of the various types of ownership currently existing in the hospital industry in the State of Florida. The Association's mission is to enhance its members' ability to "provide comprehensive, efficient, high-quality health care to the people in Florida consistent with financial and civic responsibilities." As a result, the Florida Hospital Association historically has undertaken to assist its members in their efforts to achieve the delivery of cost-effective, high-quality health care services to the population of Florida. A hospital's financial integrity is of critical importance in its ability to deliver cost-effective, high-quality health care services both to its patients and the population base which it serves.

Florida Hospital Association is keenly aware of the societal changes within the family unit over the last decade. Working wives and two-paycheck families are now the norm, not the exception.

To uphold the lower Court decision which held that a husband is liable for his wife's hospital bills, but a wife does not have the corresponding liability for her husband's hospital bills, would violate equal protection, the common law of necessities, and public policy. A wife would be under no financial or legal obligation to ensure that her husband's medical bills were paid. In fact, should this decision be upheld, it would be to the financial detriment of the wife to provide either health insurance coverage or other mechanisms in order for the husband's hospital bills to be paid. Consequently, the Florida Hospital Association strongly supports the holdings in Manatee Convalescent Center, Inc. vs. McDonald, 392 So.2d 1356 (Fla. 2d DCA 1980); and Parkway General Hospital, Inc. vs. Stern, 400 So.2d 166 (Fla. 3d DCA 1981). It is the contention of the Florida Hospital Association, that the hospital bills of a husband or wife should be viewed as "family expenses," in which either party to the partnership of marriage may be looked to for payment.

Accordingly, should the lower court's decision be upheld, each hospital in the State would be required to scrutinize every married male's individual financial resources at the time of admittance. The hospital would be unable to look at

the wife's financial abilities as a source of payment for her husband's hospitalization. This in turn, would pose a severe threat to the financial stability of hospitals in the State of Florida. Hospitals would undoubtedly turn away many non-emergency married men from their doors; not because of the hospital's inability to provide quality health care to these individuals, but because of the hospital's inability to count on the "family unit" as a source of payment for health care services rendered.

SUMMARY OF THE ARGUMENT

The "Necessaries Doctrine" which holds that a husband is responsible to those who furnish necessaries, including medical services, to his wife is part of the common law. It developed at a time when married women had few, if any rights apart from their husbands. Therefore, at that time it was also appropriate that the doctrine provided that the wife was not liable for necessaries furnished to her husband.

Great societal changes have occurred since the time the common law was created. Constitutional revisions, legislative enactments and judicial decisions now recognize that marriage should be viewed as a partnership. As such, both husband and wife receive benefits and have corresponding burdens, both express and implied as a result of their marital status.

If the partnership theory of marriage is to remain a viable concept, the doctrine of necessaries must be enlarged to provide that a spouse is liable for necessary medical services provided to the other spouse. Even though such a modification would require this Court to judicially expand a common law doctrine, the Court has the precedent, authority, and justification to do so.

POINT I

PURSUANT TO THE PARTNERSHIP THEORY OF MARRIAGE, QUASI-CONTRACTS, AND EQUAL PROTECTION, A WIFE SHOULD BE LEGALLY RESPONSIBLE FOR HER HUSBAND'S NECESSITIES.

At the outset, it should be stated that Shands Teaching Hospital and Clinics has standing to bring this action. Kumar Corp. vs. Nopal Lines, Ltd., 462 So.2d 1178 (Fla. 3d DCA 1985) cited the United States Supreme Court Case of Sierra Club vs. Morton, 405 U.S. 727, 731, 92 S.Ct. 1361, 1364, 31 L.Ed. 2d 636, 641 (1972), for the proposition that standing is no more than having, or representing one who has, "a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy." In the case at bar, Shands alleges that the respondent has an implied-in-law duty to pay her husband's hosptial bill. As Shands has a sufficient stake in this controversy, it has the requisite standing to obtain this judicial resolution of the controversy.

Additionally, the New Jersey Supreme Court held on nearly identical facts, that a hospital had a sufficient stake in the controversy to raise an equal protection challenge to the common law doctrine of necessaries. Jersey Shore Medical Center-Fitkin Hospital vs. Estate of Baum, 417 A.2d 1003 (1980).

The "Necessaries Doctrine" developed as part of the common law and was based upon a legal fiction that a woman had no individuality and was dependent upon her husband for her legal existence. Through marriage, the two parties had become one: the husband. As a result, the husband was legally responsible

to support his wife. If he was derelict in his duty to support her, he would be held liable for an article or service that was furnished to the wife if it was one of the class of items or services with which he was obligated to provide to her. These obligated items were deemed "necessaries." In Florida, necessaries include food, shelter, and medical services. Phillips vs. Sanchez, 17 So. 363 (1895).

The Necessaries Doctrine not only presumed that the husband was in a better economic situation than his wife, it also defined the contract of marriage as one in which the husband contributed monetary support and the wife contributed domestic services. See, 41 Am. Jur. 2d, Husband and Wife, §§348-370 (1979).

This doctrine benefited families by making it more likely that they would obtain the necessary and the appropriate goods and services. It enabled wives to obtain goods and services for the family's benefit without having to depend on their husbands to have made each purchase or pledge of credit. This doctrine encouraged the extension of credit to those who in an individual capacity may have not had the ability to make these basic purchases and was adopted as a result of concern for the support and sustenance of the family and the individual members thereof.

Even though the "Necessaries Doctrine" exists today, the roles of husband and wife and society's view of the status of woman have changed considerably. As Justice Terrell observed in 1942:

> It is utterly foolish to contend that in marriage, the personality of the wife is submerged in that of the husband. Personalities differ as the ones who wear them but they do not merge in husband and wife unless one or the other happens to be of the floor dummy variety ... In the marital state, husband and wife are partners and equals; in business both know their way about and being so there is no earthly reason why the wife should be hobbled by such an impediment ...

Merchant's Hostess Service of Florida, Inc. vs. Cain, 9 So.2d 373, 375 (1942).

This Court stated: "The unity concept of marriage has in large part given way to the partnership concept, whereby a married woman stands as an equal to her husband in the eyes of the law." Gates vs. Foley, 247 So.2d 40, 44 (Fla. 1971). In that case, this Court recognized that marriage was a joint venture between husbands and wives, and whether they contributed income or domestic services, they were one financial unit. Therefore, a necessary expense incurred by one spouse, would benefit both. In a viable marriage, most husbands and wives do not ordinarily distinguish their financial obligations on the basis of which party incurred the debt. As a result, the old common law rule, whereby the husband was solely responsible for his family's necessities is out of touch with the changing role of women.

In Gates vs. Foley, supra, this Court was called upon to determine whether a new cause of action, loss of consortium by a wife, should be judicially created. In Gates, as in the case at bar, the Court was faced with a common law doctrine

which applied only to the husband and not to the wife. Justice Adkins, writing for a unanimous Court, after reviewing changes in the legal and societal status of women, wrote:

> ... By giving the wife a separate equal existence, the law created a new interest in the wife which should not be left unprotected by the Courts. Medieval concepts which have no justification in our present society should be rejected. We, therefore, hold that deprivation to the wife of a husband's companionship, affection and sexual relationship ...constitutes a real injury to the marital relationship and on which should be compensable at law if due to the negligence of another.
>
> A husband, of course, has a cause of action for loss of consortium of his wife when she suffers personal injury through the negligence of another. [citation omitted]. No reasonable suggestion can be offered any longer to explain the disparity in the spouses' relative rights to secure damages for loss of consortium. No reasonable distinctions may be made between the wife's claim for negligent impairment of consortium and a similar claim by her husband.

247 So.2d 40, at 44.

Under the common law, a married woman may contract for medical services in her own right. However, in the absence of an express contract between the wife and the hospital, the husband and not the wife is the person liable for such expenses. Therefore, he was the only one entitled to recover for them. This rule retains the legal immunity of married women with respect to contracts for necessaries which are now implied by the operation of law. This theory of legal

incapacity is anachronistic and does not have a place in modern society where women have become familiar components of the business and professional world.

In Variety Children's Hospital, Inc. vs. Vigliotti, 385 So.2d 1052 (Fla. 3d DCA 1980), the court held that since both parents of the minor child have a duty to provide medical services to that child, the mother received a "legal" benefit when the hospital rendered services to her child. Thus, the court reasoned she would be unjustly enriched if she was allowed to enjoy the benefit without compensating the hospital.

Vigliotti expressly approved of the partnership theory of marriage as enunciated in Gates vs. Foley, supra. In the case at bar, the wife received a benefit when the hospital furnished services to her husband. She, too, would be unjustly enriched in the absence of an implied-in-law contract.

In 1968 the Florida Constitution was revised. No longer did the Constitution contain provisions such as all men are created equal before the law; [Florida Constitution, Declaration of Rights, Sec. 1 (1885)]; and that every person could have a remedy for injuries done him by due course of the law; [Florida Constitution, Declaration of Rights, Sec. 4 (1885)].

The Revised Florida Constitution (1968) contains the following relevant clauses which provide equality between the sexes:

> "All natural persons are equal before the law" Article 1, Sec. 2.

> "No person shall be deprived of life, liberty, or property without due process of law." Article 1, Sec. 9.
>
> "There shall be no distinction between married women and married men, in the holding, control, disposition or encumbering of their property, both real and personal." Article X, Sec. 5.

In addition, the Florida Legislature enacted the "Married Women's Property Act" Chapter 708, Fla.Stat. (1983) and the legislature rewrote Chapter 61, Florida Statutes in order to provide equality between the sexes in the area of dissolution of marriage. [1]Reflecting on these changes, this Court stated in Ball vs. Ball, 335 So.2d 5 (Fla. 1976):

> All presumptions which the different status of the sexes require the Courts to create prior to the [1968] Constitutional change, and all presumptions developed by the Courts since that date are now unnecessary.

335 So.2d 5 at 8.

As the partnership theory of marriage and corresponding family support obligations have developed through constitutional, legislative, and judicial changes, the Second District Court of Appeals reasoned that since the duties of family support have increasingly been placed equally upon both parties to a marriage , the doctrine of necessaries should also be enlarged

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1 It is also interesting to note that Florida husbands are now eligible to seek assistance at domestic violence centers, 14B Fla. Stat. Ann. 415. 602 (Supp. 1985); as well as receive "displaced homemaker" job training 14B Fla.Stat. Ann. 410.30 (Supp. 1985).

to hold a wife liable for the necessaries of her husband. Manatee Convalescent Center, Inc. vs. McDonald, 392 So.2d 1356 (2d DCA 1980).

Disparate treatment of men and women who are similarly situated violates equal protection of the laws. Kendrick vs. Everheart, 390 So.2d 53 (Fla. 1980). Since the equal protection law applies to Florida common law as well as statutory law, a state is obligated to provide equal protection of its laws not only in the acts of its legislature, but also in the decision of its courts. New York Times Co. vs. Sullivan, 376 U.S. 254, 265, 84 S. Ct. 710, 718, 11L.Ed.2d 686, 697 (1964).

Under this rationale, the New Jersey Supreme Court in Jersey Shore Medical Center-Fitkin Hospital vs. Estate of Baum, supra, held that discrimination against husbands which resulted from the application of the common law doctrine of necessaries violated both the equal protection clause of the Fourteenth Amendment and the New Jersey constitution. That court cited the case of Orr vs. Orr, 440 U.S. 268, 99 S. Ct. 1102, 59 L.Ed.2d 306 (1979), for the proposition that no longer was a wife "destined solely for the home and the rearing of the family, and only the male for the market place and the world of ideas."

It was stated:

> Although our focus is not on a statute, but a common law rule, the same reasoning that lead to the invalidation of alimony statute in Orr now requires modification of the common law rule to achieve a fairer distribution of the costs of necessaries incurred by either spouse in the course of their marriage.

417 A.2d 1003, at 1008.

POINT II

WHERE THE CONDITIONS AND NEEDS OF SOCIETY HAVE CHANGED, THE SUPREME COURT OF FLORIDA MAY ADAPT THE COMMON LAW TO REFLECT THESE NEW CONDITIONS.

In view of the discussion contained in Point I regarding the changes in both federal and state constitutions as well as statutory enactments and judicial rulings, the partnership theory of marriage has been created in Florida in order to adapt the common law to the changing needs and conditions of society. This Court must now decide whether to uphold the lower court decision or to approve the holdings of Manatee Convalescent Center, Inc. vs. McDonald, supra and Parkway vs. General Hospital, Inc. vs. Stern, 400 So.2d 166 (Fla. 3d DCA 1981).

It was suggested in the lower court that this issue is most appropriate for legislative concern. While this Court has the prerogative of deferring this issue to the Legislature, this Court also has the ability to adapt the doctrine to modern society. The role of the Florida Supreme Court in overturning unfound common law precedent was stated as follows:

> The law is not static. It must keep pace with changes in our society, for the doctrine of stare decisis is not an iron mold which can never be changed.
>
> ...Legislative action could, of course, be taken, but we abdicate our own function, in

> a field peculiarly nonstatutory, when we refuse to reconsider an old and unsatisfactory court-made rule.

Gates vs. Foley, supra, at 43.

Mr. Justice Cardozo discussed the court's role in confronting common law doctrine as follows:

> That court best serves the law which recognizes that the rules of law which grew up in a remote generation may, in the fullness of experience be found to serve another generation badly, and which discards the old rule when it finds that another rule of law represents what should be according to the established and settled judgment of society and no considerable property rights have become vested in reliance upon the old rule. It is thus great writers upon the common law have discovered the source and method of its growth, and in its growth found its health and life. It is not and it should not be stationary. Change of this judicial character should not be left to the legislature.

B. Cardozo, The Nature of the Judicial Process, 151-152 (1921).

The Florida Supreme Court is not the first highest court in a state to determine whether the common law doctrine of necessaries should provide equal benefits and burdens to both the husband and the wife. A brief discussion on how various courts in other jurisdictions have grappled with this issue, provide guidance on this issue.

In St. Luke's Medical Center vs. Rosengartner, 231 N.W. 2d 601 (Ia. 1975), the Supreme Court of Iowa recognized

the important policy considerations before making the necessaries of either the husband, the wife, or other members of the family chargeable jointly and individually to "both the husband and the wife or either of them." The Iowa court, after reviewing common law and the case law of the family necessaries doctrine stated that medical and hospital expenses properly constituted family expenses so that:

> [a] spouse cannot so easily cast off his or her responsibility to third persons for obligations incurred by the other spouse for items which are of the character of family expenses."

St. Luke's Medical Center, supra, at 602.

In 1980, the New Jersey Supreme Court, in the case of Jersey Shore Medical Center-Fitkin Hospital vs. Baum, supra, determined that the common law doctrine concerning necessaries which protected the wife from liability for her husband's necessary expenses without according similar protection to the husband constituted a denial of equal protection of the law. The court after discussing the purpose of the common rule and its history, detailed various state statutes which modified the rights and duties of husband and wife in dealing both with each other and with creditors.

Like Florida, New Jersey courts had previously judicially approved the concept that "a marriage is a shared enterprise, a joint undertaking, that in many ways is akin to a partnership". Rothman vs. Rothman, 320 A.2d 496 (N.J. 1974).

Therefore, the New Jersey court determined that both spouses were liable for the necessary expenses incurred by either spouse. Jersey Shore, supra, at 1010.

The case of Condore vs. Prince Georges's County, 425 A. 2d 1011 (Md. 1981), has been cited for the holding that the Maryland Court of Appeals determined that neither the husband nor the wife is liable for necessaries of the other absent an express or implied contract. However, such a finding would be overbroad and simplistic. In Condore, the husband entered the hospital and signed a form agreeing to be responsible for all charges incurred. He later died in the hospital, and the wife was subsequently sued for her husband's bill. The court after reviewing Maryland's enactment of the Equal Rights Amendment and its constitutional provisions, stated that the necessaries doctrine violated the Equal Rights Amendment and was no longer a part of the common law. In making this determination, the Court was faced with a conflicting constitutional provision enacted in 1867 which provided, "the property of the wife shall be protected from the debts of her husband." Md. Constitution, Art. III Section 43. The court reasoned that if it was to expand the necessaries doctrine, it would have to strike down Art. III, Section 43 of its constitution. Since, neither party in their argument alleged such a provision was unconstitutional

in light of the Equal Rights Amendment, the court felt constrained to defer this matter to the Maryland legislature.

In Schilling vs. Beford County Memorial Hospital, Inc., 303 S.E. 2d 905 (Va.1983), the Virginia Supreme Court held that a husband was not liable for his wife's medical necessities. Like Condore, supra, the rationale for this decision was based on the conflicting law the court was required to interpret; a statutory provision enacted in 1919 and the common law. The specific code provision which was in effect at the time stated:

> A husband shall not be responsible for any contract, liability or tort of his wife, whether the contract or liability was incurred or the tort was committed before or after marriage.

Va Code §55-37 (1981).

Rather than judicially modifying the common law, the Virginia court stated that since both the statute and the necessaries doctrine contained gender-based classifications, the ultimate determination should be made by the legislature. The legislature did not hesitate to act, for in its next session, the General Assembly rewrote the statute to specifically provide mutual liability for family necessaries. Va. Code §55-37 (1985 p.p.).

Several years ago Florida had a statute which provided that all the property of a wife was her separate property and would not be available for the debts of her husband.

Fla.Stat. §708.02 (1969). However, Emhart Corporation vs. Brantley, 257 So.2d 273 (Fla. 3d DCA 1972) determined that this statute was inconsistent with and in fact repealed by Article X, Section 5 of the 1968 Florida Constitution. Thus, this Court is not faced with the conflicting statutory and constitutional provisions that were encountered by the Maryland and Virginia courts and which motivated their decisions to defer this issue to their respective legislatures.

The Wisconsin Supreme Court, judicially modified the necessaries doctrine through its holdings in three separate cases on this issue: Sharpe Furniture, Inc. vs. Buckstaff, 299 N.W. 2d 219 (Wis. 1981); Matter of Estate of Stromsted, 299 N.W. 2d 226 (Wis. 1980); and Marshfield Clinic vs. Discher, 314 N.W. 2d 326 (Wis. 1982).

In Sharpe, the Wisconsin Supreme Court determined that the husband was liable for the furniture purchases of his wife since the necessaries doctrine, as it applied to the wife's purchases on credit, remained intact. In Stromsted, the court held that even though the wife was liable along with her husband for the family's necessaries, the husband was primarily liable and the wife would be liable only to the extent that her husband was unable to satisfy the obligation. In Marshfield Clinic, the Wisconsin court further judicially expanded the common law doctrine by holding that a hospital

may look to both the husband and the wife for payment of medical expenses unless it could be affirmatively shown that the hospital expressly agreed to hold only one spouse financially responsible for the services.

In Hay vs. Medical Center Hospital of Vermont, 496 A.2d 939 (Vt. 1985), not a necessaries case, the Vermont Supreme Court was called upon to determine whether it should judicially create a new cause of action, where none had existed at common law. That court stated that it previously had met with the changing times and new societal demands by expanding outmoded common law concepts. It went on to cite specific examples and stated as follows:

> The foregoing serves to illustrate that this Court had frequently met new and difficult problems head on, using common law principles. Many of these cases have produced a change which would have a profound effect on social and business relationships, such as industry-wide insurance patterns, husband-wife relationships, and lessor-lessee obligations, to mention only the most obvious. When confronted with these difficult and complex issues, this Court did not shirk its duties and retreat into the safe haven of deference to the legilature. It is the responsibility of the courts to balance competing interests and to allocate losses arising out of human activities.

496 A. 2d 939 at 945.

A Pennsylvania court was called upon to determine whether a wife would be liable for her husband's funeral expenses if the estate was insolvent. Swidzinski vs. Schultz, 493 A.2d 93 (Pa.Super. 1985). This court discussed the historical reasons for the necessaries doctrine and various statutory and judical changes which provide equal protection between the spouses. It then went on to hold that when a husand's estate is insufficient to pay funeral expenses, those expenses, to the extent of the insufficiency, are charged to the surviving spouse as her share of the burdens arising out of a marital relationship. The Pennsylvania court reasoned that such a holding "acknowledges modern economic realities, like those presented in the instant case, in which the surviving wife's assets may exceed those of her husband's estate." 493 A.2d at 97.

From the discussion above, it can be generalized that other jurisdictions have judicially expanded the common law doctrine of necessaries. Since individual spousal liability has been created when the common law did conflict with either statutory or constitutional provisions specifically providing that one spouse was not liable for the necessaries of the other, and since Florida no longer has conflicting statutory and constitutional provisions, it would appear that the Supreme Court of Florida has the authority to judicially change the

the doctrine in light of its approval of the partnership theory of marriage. Gates vs. Foley, supra.

In light of the fact the Court clearly has the authority to take this step, now would be the perfect opportunity to use the common law as a sword rather than shield the common law from societal changes and perpetuate the anachronism that a wife has no independent existence apart from her husband. Rather than support the outmoded concept that the husband is solely responsible for the family's necessaries, this Court can modify the common law by approving the holdings of the Third District Court of Appeals and the Fourth District Court of Appeals which have determined that the wife is impliedly liable for her spouse's and children's necessary bills. Beers vs. Public Health Trust of Dade County, 468 So.2d 995 (Fla. 3d DCA 1985); Parkway General Hospital, Inc. vs. Stern, 400 So.2d 166 (Fla 3d DCA 1981); Manatee Convalescent Center, Inc. vs. McDonald, 392 So.2d 1356 (Fla. 2d DCA 1980); Variety Children's Hospital vs. Vigliotti, 385 So.2d 1052 (Fla. 3d DCA 1980); Nursing Care Services vs. Dobos, 380 So.2d 516 (Fla. 4th DCA 1980); Fieldhouse vs. Public Health Trust of Dade County, 374 So.2d 476 (Fla. 1979), cert. denied 444 U.S. 1062, 100 S.Ct. 1003, 62 L.Ed. 2d 745 (1980).

CONCLUSION

Based upon the foregoing, it is respectfully requested that the decision of the District Court of Appeal be quashed and the cause remanded to that court with instructions to further remand same to the trial court for further proceedings.

Respectfully submitted,

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MAILING CERTIFICATION

I HEREBY CERTIFY that a copy of the foregoing Amicus Curiae Brief was mailed to DAVID A. ROBERTS, III, ESQUIRE, Attorney for Petitioner, P.O. Box J. 334, Gainesville, FL 32610 and HAL CASTILLO ESQUIRE, LEWIS, PAUL, ISAAC & CASTILLO, P.A., Attorney for Respondent, 2468 Atlantic Blvd., Jacksonville, FL 32207, on this 24 day of February, 1986.

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