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IN THE SUPREME COURT OF FLORIDA  
CASE NO. 68,237

SHANDS TEACHING HOSPITAL AND CLINICS, INC.

Plaintiff, Petitioner

vs.

REBECCA SMITH

Defendant, Respondent

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ON REVIEW OF THE DECISION  
OF THE DISTRICT COURT OF APPEAL  
OF FLORIDA, FIRST DISTRICT

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PETITIONER'S BRIEF ON THE MERITS

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TABLE OF CONTENTS

	Page
Table of Citations . . . . .	ii
Explanation of References . . . . .	iv
Statement of the Case and the Facts . . . . .	1
Summary of Argument . . . . .	3
Argument . . . . .	5
I. THE DECISION THAT A WIFE IS NEVER RESPONSIBLE FOR HER HUSBAND'S MEDICAL NECESSARIES, ABSENT AN EXPRESS CONTRACT, IS CERTIFIED TO BE IN DIRECT CONFLICT WITH OTHER DECISIONS. . . . .	5
II. THE COURT ERRED IN NOT RECOGNIZING CHANGES IN THE LAW AND CIRCUMSTANCES WHICH REQUIRE A WIFE TO BE RESPONSIBLE FOR HER HUSBAND'S MEDICAL NECESSARIES, JUST AS HE HAS ALWAYS BEEN RESPONSIBLE FOR HERS. . . . .	6
A. Judicial Authority To Reinterpret Or Modify A Common Law Doctrine Exists Where There Have Been Substantial Changes In Law And Social Concepts Of Right and Justice. . . . .	7
B. In Today's Society, The Marital Partnership Imposes Upon The Wife The Responsibility For The Medical Necessaries Furnished To Her Husband. . .	14
Conclusion . . . . .	22
Certificate of Service . . . . .	23

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE(S)</u>
<u>Banfield v. Addington</u> 140 So. 893 (Fla. 1932) . . . . .	7, 11, 12
<u>Beard v. Beard</u> 262 So.2d 269 (Fla. 1st DCA 1972) . . . . .	17
<u>Birge v. Simpson</u> 280 So.2d 482 (Fla. 1st DCA 1973) . . . . .	17
<u>Cummings v. Cummings</u> 330 So.2d 134 (Fla. 1976) . . . . .	16
<u>Fieldhouse v. Public Health Trust of Dade County</u> 374 So.2d 476 (Fla. 1979), cert. denied 444 U.S. 1062, 100 S.Ct. 1003, 62 L.Ed 2d 475 (1980). . . . .	15
<u>Gates v. Foley</u> 247 So.2d 40 (Fla. 1971). . . . .	13, 16, 18, 19
<u>Hallman v. Hospital &amp; Welfare Board Of Hillsborough County</u> , 262 So.2d 669 (Fla. 1972) . . . . .	15, 17
<u>Hoffman v. Jones</u> 280 So.2d 431 (Fla. 1973) . . . . .	8, 13
<u>Insurance Co. of North America v. Pasakarnis</u> 451 So.2d 447 (Fla. 1984) . . . . .	8, 13, 14
<u>Jersey Shore Medical Center-Fitkin Hospital v. Estate of Baum</u> , 417 A.2d 1003 (N.J. 1980) . . .	18
<u>Manatee Convalescent Center, Inc. v McDonald</u> 392 So.2d 1356 (Fla. 2d DCA 1980) . . . . .	3, 4, 5, 6, 11, 18, 20, 21, 22
<u>Markham v. Markham</u> 265 So.2d 59 (Fla. 2d DCA 1980) . . . . .	16
<u>Nursing Care Services, Inc. v Dobos</u> 380 So.2d 516 (Fla. 4th DCA 1980) . . . . .	8, 19
<u>Omwake v. Omwake</u> 70 So.2d 565 (Fla. 1954). . . . .	9

<u>Parkway General Hospital v. Stern</u> 400 So.2d 166 (Fla. 3rd DCA 1981) . . . . .	3, 4, 5 6, 18, 21, 22
<u>Phillips v. Sanchez</u> 17 So. 363 (Fla. 1895). . . . .	8, 14
<u>State v. Herndon</u> 27 So.2d 833 (Fla. 1946). . . . .	12
<u>Tipper v. Great Lakes Chemical Co.</u> 281 So.2d 10 (Fla. 1973). . . . .	8
<u>Variety Children's Hospital, Inc. v. Vigliotti</u> 385 So.2d 1052 (Fla. 3d DCA 1980) . . . . .	8, 17, 18, 19, 20
<u>Yordon v. Savage</u> 279 So.2d 844 (Fla. 1973) . . . . .	16

CONSTITUTIONAL PROVISIONS

Section 1, Florida Constitution (1885) . . . . .	9
Section 4, Florida Constitution (1885) . . . . .	9
Article I, Section 2, Florida Constitution (1968). . . . .	9
Article I, Section 9, Florida Constitution (1968). . . . .	10
Article I, Section 21, Florida Constitution (1968) . . . . .	10
Article V, Section 3(b)(4), Florida Constitution (1985) . . . . .	6
Article X, Section 5, Florida Constitution (1968). . . . .	10, 15, 16

STATUTES AND RULES

Chapter 61, Florida Statutes (1985). . . . .	10
Section 61.08, Florida Statutes (1985) . . . . .	11
Section 61.09, Florida Statutes (1985) . . . . .	11
Chapter 395, Florida Statutes (1985) . . . . .	18
Section 395.0143, Florida Statutes (1985). . . . .	18
Section 708.08(1), Florida Statutes (1985) . . . . .	10
Florida Rule of Appellate Procedure 9.030 (a)(2)(A)(vi) . . . . .	6

EXPLANATION OF REFERENCES

A true and correct copy of the decision of the District Court of Appeal, First District, may be found in the Appendix to this Petitioner's Brief on the Merits. References to the decision and to other material in the Appendix will be made by the notation "A at \_\_\_\_."

STATEMENT OF THE CASE AND OF THE FACTS

Plaintiff, Shands Teaching Hospital and Clinics, Inc., (Petitioner herein), filed its Complaint against Defendant, Rebecca Smith, (Respondent herein), for non-payment of hospital services and treatment furnished to her husband, Timothy H. Smith, Jr. A at 1. Mr. Smith was admitted to Petitioner's hospital and received necessary medical goods and services during the period from July 7, 1981 through June 24, 1983. Mr. Smith signed a written agreement for payment of his treatment. The Respondent never agreed in writing to make payment for the medical necessities furnished to her husband.

The Complaint alleged that the Respondent was the spouse of the patient, that she was married to him during the period in which he received medical treatment from the Petitioner and that she is indebted to the Petitioner for the value of the treatment furnished to her husband. A at 1. The theory supporting Petitioner's Complaint was an implied-in-law contractual obligation on the part of the Respondent to provide for her husband's medical necessities.

On May 31, 1984, the Respondent filed a Motion to Dismiss the Complaint alleging that the Respondent never agreed in writing to pay for her husband's debt; that the accounts were not hers, but those of her husband; and that the Petitioner was not entitled to relief on either an open

account or an account stated. A at 27. The Trial Court ruled that since the common law imposed no liability on the wife for necessaries furnished to the husband, the only way the wife could be held responsible for the medical bills of the husband was by contract. The Trial Court further held that since the wife did not contract to pay for the debt of another in writing, she could not be held responsible for the debt under the Statute of Frauds. Therefore, the Trial Court granted the Respondent's Motion to Dismiss with Prejudice. A at 29.

Thereafter, the Petitioner filed its Notice of Appeal with the District Court of Appeal, First District. A at 31. After consideration of the briefs filed by both parties, the First District Court affirmed the decision of the Trial Court on December 30, 1985, and certified its opinion to be in conflict with prior decisions of the District Court of Appeal, Second District and District Court of Appeal, Third District. A at 32. Petitioner invokes the conflict jurisdiction of this Court to review the opinion of the District Court of Appeal, First District.

## SUMMARY OF ARGUMENT

The District Court of Appeal, First District, erred in not following its sister courts in Manatee Convalescent Center, Inc. v. McDonald, 392 So.2d 1356 (Fla. 2d DCA 1980), and Parkway General Hospital, Inc. v. Stern, 400 So.2d 166 (Fla. 3d DCA 1981), when it failed to hold a wife responsible for the medical necessities furnished to her husband. In its opinion, the First District Court stated that it could not follow the Second and Third Districts because a District Court cannot overrule controlling precedent of the Florida Supreme Court without statutory or constitutional authority reflecting a change in law.

Petitioner submits that there is no controlling precedent of the Florida Supreme Court which states a wife is not responsible for medical necessities furnished to her husband; this being a case of first impression to the Florida Supreme Court. Further, Petitioner submits that there have been substantial constitutional, statutory and societal changes which authorize this Court to follow the holdings of Manatee, supra, and Parkway, supra.

The common law doctrine of necessities is a unique application of an implied-in-law contract that was intended to assure the husband's financial responsibility for necessary debts incurred by the wife. The application of the doctrine to medical expenses incurred by either spouse



recognizes the mutual benefits received by the marriage and family when medical care is provided, and reflects the mutuality and equality of the marital partnership in today's society. To allow a wife, or even a husband, to ignore the financial responsibilities for medical care implicit in the marital relationship is to ignore the purpose and concept of marriage.

Petitioner respectfully requests this Court to reverse the First District Court, and follow the courts in Manatee, supra, and Parkway, supra, and hold that a wife is responsible, under an implied-in-law contract, for the medical care of her husband.

ARGUMENT

- I. THE DECISION THAT A WIFE IS NEVER RESPONSIBLE FOR HER HUSBAND'S MEDICAL NECESSARIES, ABSENT AN EXPRESS CONTRACT, IS CERTIFIED TO BE IN DIRECT CONFLICT WITH OTHER DECISIONS

The opinion of the First District that, absent an express contract, a wife is never responsible for her husband's medical bills is certified to be in direct conflict with Manatee Convalescent Center, Inc. v. McDonald, 392 So.2d 1356 (Fla. 2d DCA 1980), and Parkway General Hospital, Inc. v. Stern, 400 So.2d 166 (Fla. 3d DCA 1981).

In Manatee, supra, a convalescent center brought action against a wife to collect the cost of her husband's hospitalization. There was no written contract between the wife and the medical facility. The Second District Court expressly held that a wife, even in the absence of an express contract, is liable for the necessities furnished to her husband, and that those necessities included hospitalization and medical expenses.

In Parkway, supra, a hospital sought to recover the costs of a patient's hospitalization from, among others, his wife. Again, there was no written contract between the wife and the hospital. The Third District Court of Appeal ruled that:

...[the] wife is responsible for her husband's necessities, including medical bills, just as the husband is and always has been liable for hers.

Id. at 167.

The per curiam opinion in the instant case "certifies conflict" with both Manatee, and Parkway, and holds that:

...the only way that a wife can be held responsible for the medical bills of her husband is by contract.

A at 33. Thus, the decision in the instant case is certified to be in direct conflict with the decisions of Manatee, supra, and Parkway, supra.

This Court has jurisdiction to review the First District's opinion pursuant to Article V, Section 3(b)(4) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2) (A)(vi).

II. THE COURT ERRED IN NOT RECOGNIZING CHANGES IN THE LAW AND CIRCUMSTANCES WHICH REQUIRE A WIFE TO BE RESPONSIBLE FOR HER HUSBAND'S MEDICAL NECESSARIES, JUST AS HE HAS ALWAYS BEEN RESPONSIBLE FOR HER'S

This case is before the Court as a result of the failure of the First District Court to follow the logical and equitable decisions of its sister courts in Manatee Convalescent Center, Inc. v. McDonald, 392 So.2d 1356 (Fla. 2d DCA 1980), and Parkway General Hospital, Inc. v. Stern, 400 So.2d 166 (Fla. 3d DCA 1981). In the Manatee and Parkway opinions, the Second and Third District Courts, respectively, held that a wife is responsible for the medical necessities of her husband just as he is, and always has been, for hers. In each case the Court not only found a justiciable issue based upon changes in constitutional,

statutory and decisional law, but determined that the equality of the sexes within the marital relationship mandated equitable treatment of the spouses.

This comprehensive issue is best understood through an analysis of two sub-issues: (A) Petitioner will establish that contrary to the First District opinion, courts have the authority to modify the common law rule in the instant case; and (B) Petitioner will demonstrate that making the wife responsible for her husband's necessaries via an implied-in-law contract is not only equitable and proper under the law, but beneficial to the family and important to the concept of marriage.

A. JUDICIAL AUTHORITY TO REINTERPRET OR  
MODIFY A COMMON LAW DOCTRINE EXISTS WHERE  
THERE HAVE BEEN SUBSTANTIAL CHANGES IN LAW  
AND SOCIAL CONCEPTS OF RIGHT AND JUSTICE.

Petitioner submits that courts not only have the authority, but the duty, to reinterpret common law outmoded by legislative and constitutional enactments. The First District Court failed to recognize its authority, where there has been constitutional and statutory change, to modify a common law doctrine. Banfield v. Addington, 140 So. 893 (Fla. 1932). Petitioner also submits that even if there had not been constitutional and statutory changes, this Court has the authority to modify the common law rule

of the case at bar because social concepts of right and justice demand change. Hoffman v. Jones, 280 So.2d 431 (Fla. 1973), and Insurance Company of North America v. Pasakarnis, 451 So.2d 447 (Fla. 1984).

This is a case couched in the common law doctrine of necessities. This doctrine provides that a husband is responsible for necessary goods or services provided to one or both spouses based upon the benefits conferred upon the marital relationship. Phillips v. Sanchez, 17 So. 363 (Fla. 1895), and Variety Children's Hospital, Inc. v. Vigliotti, 385 So.2d 1052 (Fla. 3d DCA 1980). Such necessary goods and services include food, shelter, clothing and medical services. Id.

Petitioner's theory of recovery is that a wife is equally responsible for medical necessities furnished to her husband based on the similar benefit conferred upon the marital relationship. In both instances, the benefits conferred give rise to an implied-in-law contract. Such contract is not based upon consent, but rather upon a duty that arises from the factual situation; a duty which will result in equity and prevent unjust enrichment. This common law theory is well established in Florida. Tipper v. Great Lakes Chemical Co., 281 So.2d 10 (Fla. 1973), Nursing Care Services, Inc. v. Dobos, 380 So.2d 516 (Fla. 4th DCA 1980), and Variety Children's Hospital, Inc. v. Vigliotti, supra.

The reason for the sexually discriminatory application of the doctrine of necessities under early common law was that a married woman was deemed legally incapable of incurring any obligations independent of her husband. As discussed in Omwake v. Omwake, 70 So.2d 565 (Fla. 1954), under the early common law, upon marriage a husband and wife became in legal contemplation one person; the separate legal existence of the wife merged into that of the husband, particularly insofar as matters of business and property were concerned. Id. at 568.

The Court is urged to recognize that the common law rules regarding the disabilities of married women, and their legal inability to contract, have been removed by constitutional revisions, legislative enactments, and decisional law that reflect substantial changes in the law and social concepts of right and justice.

Prior to the 1968 Revision, the Florida Constitution always contained a provision that: "...[A]ll men are equal before the law..." (Florida Constitution, Declaration of Rights, Section 1 (1885)) (emphasis added); and that every person could have a remedy by due course of the law: "...for any injury done him..." (Florida Constitution, Declaration of Rights, Section 4, 1885), (emphasis added). Now, however, the Florida Constitution (1968) contains the following significant clauses:

All natural persons are equal before the law...  
Art. I, §2, Fla. Const. (1968) (emphasis added).

No person shall be deprived of life, liberty, or property without due process of law. Art. I, §9 Fla. Const. (1968) (emphasis added).

The Courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay. Art. I, §21, Fla. Const. (1968) (emphasis added).

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. Art. X, §5, Fla. Const. (1968)

In addition to the constitutional changes, statutory changes have occurred that specifically relate to the contractual obligations of married women. For example, §708.08(1), Florida Statutes (1985), first enacted in 1943, provides:

Every married woman is empowered to take charge of and manage and control her separate property, to contract and be contracted with, to sue and be sued, to sell, convey, transfer, mortgage, use and pledge her real and personal property and to make, execute and deliver instruments of every character without the joinder or consent of her husband in all respects as fully as if she were unmarried. Every married woman has and may exercise all rights and powers with respect to her separate property, income, and earnings and may enter into, obligate herself to perform, and enforce contracts or undertakings to the same extent and in like manner as if she were unmarried and without the joinder or consent of her husband. All conveyances, contracts, transfers, or mortgages of real property or any interest in it executed by a married woman without the joinder of her husband before or after the effective date of the 1968 Constitution of Florida are as valid and effective as though the husband had joined (emphasis added).

Even more significant are the 1971 amendments to Chapter 61, Florida Statutes, regarding alimony and support.

The amendments changed all references therein from "husband" and "wife" to "spouse" or "party". Specifically, the statutes regarding alimony (§61.08 Fla.Stat.) and maintenance (§61.09 Fla.Stat.) were amended by changing the "husband's" responsibility to that of the "spouse". As cited in Manatee, supra, this is clear recognition by the legislature that a male partner may be unable to fund his medical necessities, and that the rights of the husband for such support and contributions became coequal with those of the wife. Id. at 1357.

These constitutional and legislative declarations not only reflect the changing perceptions of the role of the wife, but have served as the impetus to force equitable changes in the common law respecting the marital relationship. Furthermore, if the law has changed, judicial reinterpretation of the common law is especially appropriate when the common law has become archaic.

The Florida Supreme Court in Banfield v. Addington, 140 So. 893 (Fla. 1932), reasoned that a statute forced the court to reevaluate a common law rule. Banfield involved the issue of whether a married woman could be held responsible under the theory of respondeat superior for the torts of one of her employees. Under the classic common law rule in effect at that time:

The only torts for which the wife could be sued at common law, and judgement rendered against her, and jointly with her husband, were torts unmixed with any element of contract, or in other words, her pure torts.



Id. at 898. However, the Court acknowledged that a statute had been passed by the legislature which authorized married women to seek employment and earn their own wages. This Court, in 1932, went on to add:

But the foregoing view of the legal relationship of husband and wife is no longer warranted, when by modern conditions and through modern statutory provisions the wife has been emancipated with respect to her personal wages and earnings.

Id. The key point that this Court made was:

That the common law may be modified indirectly as well as directly, by a statute which is "inconsistent" with a common law and a particular instant, is a rule well settled in our jurisdiction.

Id. at 899.

Other Florida judicial decisions have followed the rule announced in Banfield that if a statutory or constitutional change directly or indirectly impacts a common law rule, the court must treat the rule in light of these changed circumstances. As stated by Justice Terrell in State v. Herndon, 27 So.2d 833 (Fla. 1946):

It is quite true that under our scheme of things courts are not clothed with the power to enact laws in the first instance but they do have the power and it is their duty to keep legislative and constitutional enactments ambulatory, likewise it is their duty within the scope of their power to square the law with good morals and to harmonize constitutional and statutory precepts with reason and good conscience, otherwise they may become ridiculous when applied to changing concepts. Interpreting the law in the light of changing concepts is very different from promulgating the law in the first place.

Id. at 835.

The classic example of judicial modification of the common law, and the creation of new and distinct causes of action, is found in Gates v. Foley, 247 So.2d 40 (Fla. 1971). In Gates, the Florida Supreme Court, recognizing the previous constitutional and legislative actions regarding the rights of women, created an independent cause of action in the wife for loss of consortium based upon the marital relationship. In so acting, Justice Adkins stated:

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.

Id. at 43.

Even if there had not been the above cited constitutional and statutory changes in the law impacting the rights and responsibilities of the wife, this Court would have the authority to modify the common law rule in the case at bar because societal perceptions and social circumstances demand change. This Court has exercised this authority in the past, in the relative absence of statutory change, to interpret and correct a law made obsolete by changing attitudes and circumstances. Hoffman v. Jones, 280 So.2d 431 (Fla. 1973), and Insurance Co. of North America v. Pasakarnis, 451 So.2d 447 (Fla. 1984). In Hoffman, the Court exercised its authority to replace the rule of contributory negligence with that of comparative negligence. In so doing, the Court emphasized its duty to reexamine

common law rules "in light of current 'social and economic customs' and modern 'conceptions of right and justice'." Id. at 436.

In Insurance Co. of North America, supra, this Court again modified a common law rule that had not kept pace with today's society. In recognizing the admissibility of seat belt evidence, the Florida Supreme Court stressed that it is this Court's duty to insure the law remains realistic and fair as society changes.

Finding an equitable implied-in-law contract in the instant case, and thereby remedying the one-sided application of the doctrine of necessities as applied to medical care, is not difficult. This Court must not hesitate to recognize its authority to act when constitutional and statutory direction exists, and social and economic evolution evidences change.

B. IN TODAY'S SOCIETY, THE MARITAL PARTNERSHIP IMPOSES UPON THE WIFE RESPONSIBILITY FOR THE MEDICAL NECESSARIES FURNISHED TO HER HUSBAND.

The resolution of this issue requires a close examination by this Court of the marital duties of the wife imposed by statutes and the common law in the proper context of today's society. As stated earlier, it is clear a husband has always been responsible for the wife's necessities. Phillips v. Sanchez, 17 So. 363 (Fla. 1895).

This responsibility has been confirmed as recently as 1979. Fieldhouse v. 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). In Fieldhouse, the Florida Supreme Court affirmed the trial court which held the husband liable for his wife's hospital bills solely by virtue of the marriage.

The concepts of fairness and equality, particularly in the marital partnership, have been repeatedly expressed by the Florida Courts as they determine, and insure, the equal status of women. As the concept of equality has expanded, the mutual duties inherent in a marital partnership must also expand. Petitioner submits that the concept of equality in a relationship is meaningless unless it encompasses the responsibilities, as well as the rights of that relationship.

The Florida Supreme Court best stated Petitioner's argument in Hallman v. The Hospital and Welfare Board of Hillsborough County, 262 So.2d 669 (Fla. 1972). In holding that a wife's separate, personal, property may be encumbered to pay for the hospital expenses of her husband where she had signed to be responsible, the Court stated:

Florida Constitution (1968), Article X, Section 5, F.S.A., clearly provides that there shall be no distinction between married men and married women in encumbering their property, both real and personal. The people of our State, in adopting this provision, recognized that married women had assumed a position of prominence in the daily

marketplace, so the legal shackles which hindered the progress of married women in the business world should be removed. In removing the shackles it was also necessary to lower the protective wall immunizing married women from various causes of action, for freedom of activity carries with it many responsibilities. It is inconsistent to say that the distinction between married women and men in encumbering their property is removed and, at the same time, hold that a married woman may be held liable for the payment of her husband's debt only if she executes an instrument in writing according to the law respecting conveyances by married women. (emphasis added)

Id. at 670. And in Cummings v. Cummings, 330 So.2d 134 (Fla. 1976), where the Florida Supreme Court held that liability for debts that arose during the marriage should be mutually shared by the parties upon dissolution, the Court stated:

By adopting such an equal position regarding the parties' indebtedness, the court will insure that women have both equal rights and equal responsibilities and obligations as required by Article X, Section 5, Florida Constitution. (emphasis added)

Id. at 137.

Numerous cases in this State demonstrate the evolving and expanding concept of placing the wife on equal footing with the husband, and make the theory of equality a reality. Such areas where the courts, by judicial decision, have recognized the equality of the spouses include the right to privacy, Markham v. Markham, 265 So.2d 59 (Fla. 1st DCA 1972), the right to sue for loss of consortium of a spouse, Gates v Foley, 247 So.2d 40 (Fla. 1972), the right to sue for direct and indirect economic loss by either parent because of injuries sustained to a child, Yordon v. Savage,

279 So.2d 844 (Fla. 1973), responsibilities pertaining to the holding, control, disposition or encumbering of real or personal property, Hallman v. Hospital & Welfare Board of Hillsborough Co., 262 So.2d 669 (Fla. 1972), responsibilities pertaining to the award of alimony, Beard v. Beard, 262 So.2d 269 (Fla. 1st DCA 1972), and the support of children, Birge v. Simpson, 280 So.2d 482 (Fla. 1st DCA 1973), and Variety Children's Hospital, Inc. v. Vigliotti, 385 So. 2d 1052 (Fla. 3rd DCA 1980). The constitutional and statutory changes in Florida, and changing societal concepts of marital equality, were the cornerstones to each of these decisions.

Having recognized that wives enjoy both equal rights and responsibilities in the marital partnership, next we must consider the purpose and benefit of the doctrine of necessities in today's society. The provision of a "necessary", such as medical care, clearly is intended to benefit the spouse that receives the care. But the other spouse benefits too. One does not have to look far to see families severely impacted by the illness of a spouse. Loss of income, companionship, affection, and the inability to participate in child care and other household responsibilities are clear examples of the negative impact of an illness within a family. To ignore the benefits received by the spouse or family when a physician or hospital participates in the cure of a spouse is to ignore

the reality of the marital relationship. As stated in Jersey Shores Medical Center-Fitkin Hospital v. Estate of Baum, 417 A.2d 1003 (N.J. 1980), which established the duty in New Jersey for a wife to be responsible for her husband's medical bills based upon the common law doctrine of necessities, the court stated:

A necessary expense incurred by one spouse benefits both. In a viable marriage, husbands and wives ordinarily do not distinguish their financial obligations on the basis of which one incurred the debt.

Id. at 1009.

If a wife is not benefited by the healing of her sick or injured spouse, the holding in Gates v. Foley, supra, would never have occurred. The Court in Gates, in finding a separate cause of action for the wife for the loss of consortium of her husband, clearly recognized the loss to the wife for injuries or illnesses suffered by the husband.

While the doctrine of necessities, when applied equally between the spouses, provides mutual benefits to the spouses, it does not become operational unless it is also for the benefit of the provider of the necessities. Variety Childrens' Hospital, Inc v. Vigliotti, supra; Parkway General Hospital, Inc. v. Stern, supra, and Manatee Convalescent Center, Inc. v. McDonald, supra. This is particularly relevant since Petitioner is a hospital licensed under Chapter 395, Florida Statutes. §395.0143, Fla. Stat. (1985) mandates Petitioner to provide emergency medical care to

everyone who presents themselves for such care. Therefore, when the patient requiring emergency medical care is a married man, Petitioner is mandated by law to provide that care, with the result being a benefit conferred upon the wife. To say the marriage may receive this benefit, without mutual financial responsibility, is simply inequitable and will result in unjust enrichment on the part of the wife. In fact, if a hospital refused to treat a husband in need of care because the wife announced her desire not to be financially responsible, both the husband and the wife would have independent causes of action against the hospital for the harm caused. Nursing Care Services, Inc. v. Dobos, 380 So.2d 516 (Fla. 4th DCA 1980), and Gates v. Foley, supra.

Petitioner's theory in this case is well presented in the analagous case of Variety Children's Hospital v. Vigliotti, 385 So.2d 1052 (Fla. 3rd DCA 1980). In Variety, hospital care was rendered to a child. The father agreed in writing to pay for the services, while the mother entered into no such agreement. The Court found that not only was the husband responsible based upon the signed agreement, but the hospital also had an independent cause of action against the wife based upon an implied-in-law contract. The court based its holding on the common law doctrine of necessities and found that the benefits derived by the mother because of that care provided to her child made her legally responsible for the care; otherwise, she would have been unjustly



enriched. In explaining the theory, the court stated:

Quasi-contracts are obligations imposed by law on grounds of justice and equity. They are imposed for the purpose of preventing unjust enrichment. Unlike express contracts or contracts implied in fact, quasi-contracts do not rest upon the assent of the contracting parties. Quasi-contracts are based primarily upon a benefit flowing to the person sought to be charged. The person unjustly enriched is required to compensate the person furnishing the benefit.

Id. at 1053. Applying the facts of the case to the law, the Court went on to say:

Thus, the preliminary question in determining whether the law should imply a contract in this case turns upon whether the mother has been unjustly enriched, and that determination turns upon whether the mother has an obligation or legal duty that has been satisfied by the efforts of another.

Id. Finally, the Court found the mother received a legal benefit, and thus liability, when it stated:

In the case under consideration, the mother received a "legal" benefit when the hospital rendered its services to her child. Her duty to provide or procure necessary medical services for her daughter was fulfilled. She would be unjustly enriched if allowed to enjoy that benefit without compensating the hospital.

Id. at 1054. Petitioner submits it is logical to substitute a husband for the child in the Variety decision.

In fact, until the First District's opinion in this case, the wife's implied-in-law obligation to provide for her husband's medical necessities had been the law of this State since 1980. Manatee, supra. One year later, the

Third District Court of Appeal explicitly followed Manatee when it ruled in Parkway, supra, and stated:

It is enough to say that the result is compelled by the state of modern society and of Florida constitutional, statutory, and decisional law - all of which recognize the equality of spouses of either sex in their relationships to each other and to the law itself.

Id. at 167.

Petitioner is unaware of any public outcry or social upheaval created by these decisions. Petitioner submits that the citizens of this State have generally recognized and accepted Manatee and Parkway as the appropriate and equitable rule.


This Court is urged to follow the Second and Third District Courts and recognize the benefits conferred upon the family and marital partnership when medical services are provided to a husband. In light of the benefit received, the theory of implied-in-law contracts is clearly applicable to this case to make each spouse mutually and equitably responsible for the care provided to the family members regardless of sex. Appropriate action by this Court will remove the one-sided application of the common law doctrine of necessities which, in the words of Justice Barfield in the concurring opinion below: "...is an anachronism in our modern society." A at 35.

CONCLUSION

Petitioner respectfully requests that this Court reverse the District Court of Appeal, First District, and follow the equitable rule set forth in Manatee, supra, and Parkway, supra, that a wife is responsible for her husband's medical necessities. Contrary to the First District, this Court should recognize prior and substantial constitutional, statutory and societal changes that require a reinterpretation of the common law rule of this case.

The benefits received by each spouse justify and support the reciprocal application of the implied-in-law contract theory in actions for medical necessities. To allow one spouse to simply ignore the medical needs of the other spouse would be to tear at the fabric of the marital family. Reversal will prevent inequitable treatment of spouses on the basis of sex, and cause the common law doctrine to be consistent with the law and with present day perceptions of equity.

Respectfully Submitted,

  
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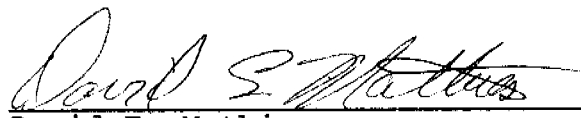
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CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Hal Costello, Esquire, 2468 Atlantic Boulevard, Jacksonville, Florida 32207 by mail this 24th day of February, 1986.



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