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

SHANDS TEACHING HOSPITAL AND CLINICS, INC.

Plaintiff, Petitioner

vs.

REBECCA SMITH

Defendant, Respondent

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

PETITIONER'S REPLY BRIEF

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I. JUDICIAL AUTHORITY EXISTS TO HOLD A WIFE RESPONSIBLE FOR HER HUSBAND'S NECESSARY MEDICAL CARE UNDER THE DOCTRINE OF AN IMPLIED-IN-LAW CONTRACT

Respondent believes that Petitioner is requesting an abrogation of the common law and argues that the separation of powers doctrine precludes this Honorable Court from enforcing the implied contract under the common law rule. Respondent broadly overstates and misinterprets the issue before this Court.

First, Respondent alleges that Petitioner is asking this court to "abrogate" a common law rule. This allegation is incorrect. The term "abrogate" is defined as follows:

> To annul, repeal, or destroy; to annul or repeal an order or rule issued by a subordinate authority; to repeal a former law by legislative act, or by usage.

Black's Law Dictionary 21 (Rev. 4th Ed. 1968).

No abrogation of any common law rule is involved in this case. Petitioner merely requests this Court to recognize and enforce the wife's obligations under the principle of an implied-in-law contract. Respondent has not cited, nor has Petitioner found, any Florida case holding a wife not responsible for necessaries furnished to her husband, other than the First District Court of Appeal holding in the instant case. Thus, the ruling requested by Petitioner would not result in an abrogation or repeal of any common law rule.

Next, Respondent alleges that "in the absence of constitutional or statutory authority reflecting a change in established law" this Court has no authority to enforce the implied-in-law contract. Respondent urges this Court to ignore the changes in the Florida Constitution and Florida Statutes that have occurred over the last several decades. Petitioner's Brief on the Merits provides numerous examples of substantial relevant changes in the established law. Furthermore, contrary to Respondent's contention, the changes need not be "explicit", but may be implicit; otherwise, courts could never have made any adjustments to the common law to keep it consistent with the evolution of modern society. Banfield v. Addington, 140 So. 893 (Fla. 1932). Respondent relies on State v. Egan, 287 So.2d 1 (Fla. 1973) to argue that only legislative change is appropriate. However, in this opinion, Justice Boyd pointed out that the common law does not stand still, and emphasized:

> . . . Courts may properly extend old principles to new conditions, determine new or novel questions by analogy, and even develop and announce new principles made necessary by changes wrought by time and circumstance.
>
> * * *
>
> The courts of this jurisdiction do, and properly so, take into account the changes in our social and economic customs and present day conceptions of right and justice.

Id. at 7.

Respondent further relies on Ripley v. Ewell, 61 So.2d 420 (Fla. 1952) and Zorzos v. Rosen, 467 So.2d 305 (Fla. 1985). Ripley has been expressly overturned by Gates v. Foley, 247 So.2d 40 (Fla. 1941), and both the majority and dissent in Zorzos acknowledged that the court had authority, without specific legislative direction, to recognize a new cause of action by a minor child for loss of consortium of an injured parent.

Petitioner recognizes that courts cannot promulgate the law in the first place. However, the doctrine of necessaries is firmly established, and Petitioner merely requests that this Court interpret and enforce the doctrine in light of changed circumstances and social concepts.

Next, Respondent alleges that Petitioner, as a creditor, has no cause of action in the common law. This allegation ignores the fact that the Petitioner's claim is based on an implied-in-law contract. Furthermore, Respondent's theory is inconsistent with 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 475 (1980). In Fieldhouse, this Court, in upholding the constitutionality of §708.10 Fla.Stat. (1977), affirmed that a creditor could enforce the husband's liability for his wife's hospital bills solely by virtue of the marriage.

Respondent urges this Court to recognize that there has been no change in societal concepts regarding the roles and obligations of married women. In support, Respondent cites the

failure of the Florida Legislature to enact the "Equal Rights Amendment to the Florida Constitution". First, this argument ignores the adoption of §708.08 (1), Fla.Stat., as well as the important sex-neutral modifications made to the Florida Constitution in 1968 and to Chapter 61, Fla.Stat., in 1971. This position also ignores the string of Florida cases that have recognized spousal equality in the marital relationship. (See; Gates v. Foley, 247 So.2d 40 (Fla. 1971), Beard v. Beard, 262 So.2d 269 (Fla. 1st DCA 1972), Hallman v. Hospital & Welfare Board of Hillsborough County, 262 So.2d 669 (Fla. 1972), Yordon v. Savage, 279 So.2d 844 (Fla. 1973), Cummings v. Cummings, 330 So.2d 134 (Fla. 1976), and Markham v. Markham, 265 So.2d 59 (Fla. 2d DCA 1980)). Second, the Equal Rights Amendment was a proposed amendment to the United States Constitution and not the Florida Constitution. One can only speculate as to all the reasons for the failure of the ratification of the Equal Rights Amendment to the U.S. Constitution, but Petitioner seriously doubts that the operative reason was out of fear that the marital relationship would evolve toward equality.

No abrogation or repeal of the common law is requested by Petitioner. The historical reason for the one-sided application of the common law rule of necessaries was because a married woman was unable to contract. This disability has been removed by statutory change. (§708.08 (1), Fla.Stat. (1985)). Petitioner

merely requests that the implied-in-law contract imposed by the common law doctrine of necessaries be enforced against the wife. This action is consistent with, and endorsed by, prior changes in constitutional and statutory law. Since there is no conflicting prior decisional law, this case presents a case of first impression to this Court. This Court is urged to follow Manatee Convalescent Center, Inc. v. McDonald, 392 So.2d 1356 (Fla. 2d DCA 1980) and Parkway General Hospital v. Stern, 400 So.2d 166 (Fla. 2d DCA 1980), reversing the lower court, and finding the wife responsible for her husband's medical care.

II. SINCE THE WIFE IS LIABLE FOR HER HUSBAND'S MEDICAL CARE UNDER AN IMPLIED-IN-LAW CONTRACT, THE STATUTE OF FRAUDS IS INAPPLICABLE

As the Respondent aptly points out, an implied-in-law obligation is an exception to the Statute of Frauds. Thus, the Respondent's argument that the Statute of Frauds applies is wholly dependent upon the outcome of the first issue. Respondent's contention would be accurate if, and only if, the wife had no legal obligation for the medical necessaries furnished to her husband. However, Petitioner respectfully submits that a married woman has a the legal obligation to provide for the medical necessaries furnished to her husband under an implied-in-law contractual obligation.

CONCLUSION

Based upon the foregoing, Petitioner respectfully requests that the decision of the District Court of Appeal, First District, be reversed 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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CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Hal Castillo, Esquire, 2468 Atlantic Boulevard, Jacksonville, Florida 32207 by mail this 7th day of April, 1986.

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