COURT OF APPEALS
DECISION
DATED AND FILED

December 20, 2001

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-2421 **Cir. Ct. No. 01-SC-828**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

MERCY HEALTH SYSTEM CORPORATION,

PLAINTIFF-APPELLANT,

V.

RUSSELL WAYNE GAUSS,

DEFENDANT-RESPONDENT,

LISA ANN RABE,

DEFENDANT.

APPEAL from an order of the circuit court for Rock County: JAMES WELKER, Judge. *Reversed and cause remanded with directions*.

¶1 VERGERONT, P.J.[1] Mercy Health System Corporation (Mercy) appeals the trial court's order dismissing its small claims action against Russell Gauss for the unpaid balance on an account in the amount of $2,624.45 plus interest. Mercy filed the action against both Gauss and Lisa Ann Rabe, who was previously married to Gauss. Mercy filed a motion for summary judgment against both Gauss and Rabe before the court commissioner and the commissioner granted the motion as to both Gauss and Rabe. Gauss, but not Rabe, demanded a trial before the court. Gauss appeared unrepresented on the scheduled date before the court, but Rabe did not appear. The court affirmed the summary judgment as to Rabe and then, because Gauss denied he was obligated for the bill, the court conducted a trial. After hearing Gauss's testimony and the testimony of the manager of patient accounting for Mercy, the court dismissed the action as to Gauss.

¶2 Mercy contends that the trial court erred in not granting summary judgment against Gauss and also erred in dismissing its action after trial because it proved its claim against Gauss. We do not address the first issue because we conclude that the evidence presented at trial established that Gauss was liable under the doctrine of necessaries. We therefore reverse.

BACKGROUND

¶3 At trial, Mercy's account's manager testified that he was familiar with the regularly kept business records regarding accounts owed to Mercy, he

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (1999-2000). All references to the Wisconsin Statues are to the 1999-2000 version unless otherwise noted.

was familiar with the account for Rabe for services provided in 1996, he identified the itemized statements of charges for services rendered to her on certain dates in January and February 1996, and stated that $2,624.45 was still owed. On the statements the patient's name is Lisa Rabe; the guarantor's name is Russell Gauss with an address in Edgerton, Wisconsin, under the name of Russell Gauss; and the "date of bill" on each statement is in January or February 1996. According to the regular practice at Mercy, the manager testified, a guarantor is listed on an account either because that person carries the primary insurance or because that person's signature is on the admission sheet. He did not have Gauss's signature with him. It is Mercy's practice to always send bills to the guarantor. Bills are sent within fourteen days of the services and are sent thereafter until the bill is paid or written off and sent to outside collection. His records did not show the mail to Gauss's address on the statements were returned.

¶4 The court received the itemized statements into evidence.

¶5 Gauss testified that he was married to Rabe in 1982 and they were divorced August 28, 1997. He acknowledged he was married to her in January and February 1996. He did not have any idea if Rabe received the services that were itemized in the statements and did not even know she was at the hospital. The address on the statements below his name was his address at the time, but he never received a statement. He denied agreeing to guarantee the bill. He pointed out that her maiden name was on the bill and he asked why the bill would have her maiden name on it if they were married at the time. As far as he knew, the bill could have been paid by the insurance company, the name of which was on the statements.

¶6 After hearing the testimony, the trial court had a brief discussion with Mercy's counsel and then dismissed the case. In that discussion the court stated that it "gather[ed] these people were separated and he didn't know anything about it [the bill]." Mercy's counsel agreed with the court there was no evidence that Gauss had affirmatively guaranteed the bill. However, he argued, that was irrelevant except to show that Gauss was sent the bill because he was named as guarantor. Counsel explained that Mercy was suing Gauss as Rabe's spouse, not as a guarantor. The trial court dismissed the case without explaining its reason, and the written order does not make any findings of fact or conclusions of law.

DISCUSSION

¶7 Mercy argues on appeal that the trial court erred in dismissing its claim against Gauss based on lack of evidence that he guaranteed the bill. Mercy's theory of liability, it asserts, as it did in its summary judgment brief in the trial court, is that Gauss is liable under the doctrine of necessaries because he was married to Rabe when the services were provided. Therefore, Mercy contends, it is irrelevant whether Gauss agreed to guarantee the bill. Mercy argues that the evidence establishes that Gauss is liable under the doctrine of necessaries. Gauss, who is now represented by an attorney, states in response that Gauss's status as a guarantor is an "essential part of Mercy's theory of liability against Gauss," but does not elaborate further.

¶8 We agree with Mercy that it raised the theory of liability based on the doctrine of necessaries in the trial court. The doctrine of necessaries is a common law doctrine, modified by WIS. STAT. § 765.001(2),[2] which imposes on

[2] WISCONSIN STAT. § 765.001(2) provides:

(continued)

each spouse the personal liability for the other's necessaries. ***St. Mary's Hosp. Med. Ctr. v. Brody***, 186 Wis. 2d 100, 108-09, 519 N.W.2d 706 (Ct. App. 1994). The doctrine of necessaries is particularly appropriate in cases dealing with medical care. ***Id.*** at 108.

¶9 The trial court did not explain why, although Gauss was married to Rabe when she incurred the bill, he was not liable unless he had agreed to guarantee the bill; and Gauss on appeal does not explain why that is a correct view of the law. Our own research has uncovered no support for that proposition. We therefore agree with Mercy that Gauss may be liable under the doctrine of necessaries even if he did not agree to guarantee Rabe's bill, and we consider Gauss's other arguments against liability.

> (2) INTENT. It is the intent of chs. 765 to 768 to promote the stability and best interests of marriage and the family. It is the intent of the legislature to recognize the valuable contributions of both spouses during the marriage and at termination of the marriage by dissolution or death. Marriage is the institution that is the foundation of the family and of society. Its stability is basic to morality and civilization, and of vital interest to society and the state. The consequences of the marriage contract are more significant to society than those of other contracts, and the public interest must be taken into account always. The seriousness of marriage makes adequate premarital counseling and education for family living highly desirable and courses thereon are urged upon all persons contemplating marriage. The impairment or dissolution of the marriage relation generally results in injury to the public wholly apart from the effect upon the parties immediately concerned. Under the laws of this state, marriage is a legal relationship between 2 equal persons, a husband and wife, who owe to each other mutual responsibility and support. Each spouse has an equal obligation in accordance with his or her ability to contribute money or services or both which are necessary for the adequate support and maintenance of his or her minor children and of the other spouse. No spouse may be presumed primarily liable for support expenses under this subsection.

¶10 Gauss contends that the court found that he did not know about the bill or about the services. We accept that factual finding as supported by the record. However, Gauss does not explain why that precludes holding him liable under the doctrine of necessaries, and we are aware of no authority for that proposition.

¶11 Gauss also contends that the trial court found he and Rabe were separated at the time she received the medical services.[3] He contends this "is significant because it cast[s] doubt on whether the services provided Rabe were in the interest of the marriage. This is particularly so because Rabe's recovery for personal injuries and medical expense is not considered marital property but rather is individual property, § 766.31(7)(f), Wis. Stats." Gauss does not develop this argument further than these two sentences. We do not understand it. Gauss has provided no authority for the proposition that, because spouses are separated, the doctrine of necessaries does not apply. Nor is there any detail in the record on the circumstances of the separation that might explain to us why the doctrine should not apply. There is also nothing in the record before the trial court on Rabe's personal injury claim, although we see a notation from the commissioner's notes that "she [Rabe] believed personal injury lawsuit had paid bill."

¶12 Assuming for purposes of argument that the services were provided Rabe for injuries resulting from an accident for which she recovered compensation, we fail to see how that relates to Gauss's liability to Mercy for the

[3] Mercy replies that the court did not make this finding because the language "I gather" does not signify a finding; Mercy also argues that if the court intended this to be a finding, it is not supported by the record. We assume without deciding that it is a finding supported by the record.

bill for those services. WISCONSIN STAT. § 766.31(7)(f) provides that a recovery for personal injury "except for the amount of that recovery attributable to expenses paid or otherwise satisfied from marital property and except for the amount attributable to loss of income during the marriage" is classified as individual property, not martial property, under Wisconsin's Marital Property Law. This does not address the liability of the non-injured spouse to the healthcare provider for medical expenses resulting from the accident. Rather, spouses' obligations are addressed in WIS. STAT. § 766.55, and we have held that a spouse's obligation for the other spouse's necessary medical treatment, according to one's ability, falls into the support category, § 766.55(2)(a), as an "obligation to satisfy a duty of support owed to the other spouse." ***St. Mary's Hosp.***, 186 Wis. 2d at 109-10.[4]

¶13 In short, Gauss has not presented us with any developed argument that persuades us he is not liable to Mercy for the medical services it provided Rabe during their marriage. We therefore conclude that he is liable under the doctrine of necessaries. We reverse and remand with directions to the trial court to enter judgment against Gauss.[5]

By the Court.—Order reversed and cause remanded with directions.

This opinion will not be published. WIS. STAT. RULE 809.23(b)4.

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[4] The significance of that holding in ***St. Mary's Hospital***, 186 Wis. 2d 100, 519 N.W.2d 706 (Ct. App. 1994), is that the healthcare provider may then satisfy a judgment against the spouse who did not receive medical care from all marital property and all other property of the obligated spouse. ***Id.*** at 109-110.

[5] Gauss apparently argued to the court commissioner that the divorce judgment made Rabe liable for the bill. If that is the case, Gauss has recourse against Rabe for not complying with the court order in the divorce action. However, that is not a defense to Mercy's claim against him, as he appears to recognize now, since he is not pursuing this argument.