

OHIO SUPREME COURT

Ohio State University Hospital v. Kinkaid

Ohio State University Hospital v. Kinkaid, 48 Ohio St. 3d 78 (Ohio 1990) · Decided January 31, 1990

OPINION

DOUGLAS, J.

Douglas, J. The issue before us is whether a wife is liable for the payment of hospital or medical expenses incurred by her husband before his death when, at the husband's death, his assets are insufficient to pay such expenses. R.C. 3103.03 provides, in relevant part, that "[t]he husband must support himself, his wife, and his minor children out of his property or by his labor.

If he is unable to do so, the wife must assist him so far as she is able. * * *" (Emphasis added.) Appellant contends that the General Assembly, by enacting R.C. 3103.03, has imposed a duty upon a wife to assist in the support of her husband when the husband is unable to provide for his own support.

In support of its position, appellant cites *Dean v. Angelas* (1970), 24 Ohio St. 2d 99, 53 O.O. 2d 282, 264 N.E. 2d 911, and several decisions from sister states. Appellee argues that where she has not personally contracted for the services, has not pledged her own credit, and has not refused to obtain the needed services for her husband, she is not liable for her husband's support.

Appellee cites *Tille v. Finley* (1933), 126 Ohio St. 578, 186 N.E. 448, and *Riverside Methodist Hosp. v. Payne* (1988), 48 Ohio App. 3d 123, 548 N.E. 2d 987. We agree, in part, with appellant. *Tille* is easily distinguished on the basis of the court's holding therein.

The court found that the creditor-plaintiff had furnished the medical services to the wife at her solicitation, had extended credit to the wife, and had looked to the wife alone for payment. In addition, *Tille* is a case involving a husband's responsibility (rather than a wife's responsibility) and, in *Tille*, the wife was still alive and could have been pursued for collection.

In part, we are more persuaded by the *Dean* case where the court said "* * * that a wife has a sufficient coequal duty under the statutes to support herself and her husband * * * *Dean*, supra, at 102, 53 O.O. 2d at 283, 264 N.E. 2d at 914. Each of these cases can either be distinguished or disapproved¹ when the statute is given a precise and literal reading. Of course, it is our duty to interpret the language of R.C.

3103.03 by giving it its clear and intended meaning. In *Slingluff v. Weaver* (1902), *8066 Ohio St. 621, 64 N.E. 574, paragraph one of the syllabus, the court held that "[t]he object of judicial investigation in the construction of a statute is to ascertain and give effect to the intent of the law-

making body which enacted it.* * *” The court also held, in paragraph two of the syllabus, that “* * the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation.

The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. * * *” (Emphasis added.) Further, we know that “[i]n matters of construction, it is the duty of this court to give effect to the words used, not to delete words used or to insert words not used. * * *” (Citation omitted.) *Cleveland Elec. Illum.*

Co. v. Cleveland (1988), 37 Ohio St. 3d 50, 524 N.E. 2d 441, paragraph three of the syllabus. Applying these rules, the language of the statute is clear. Where a husband is unable to provide for his own support, pursuant to R.C. 3103.03 a wife must aid in the support of her husband to the extent that she is able.

The determination as to a wife’s ability to aid in the support of her husband is a matter to be decided within the sound discretion of the trial court. We are aware of the strong public policy argument that the responsibility of support between a wife and husband should be one of mutual and equal obligation.

We recognize that it is a desirable goal to have autonomy and equality regardless of gender. We are also mindful of R.C. 3103.01 which provides that “[h]usband and wife contract towards each other obligations of mutual respect, fidelity, and support.” Notwithstanding these laudable objectives, R.C. 3103.03 is clear and must be enforced as written. If the General Assembly chooses to alter the existing statute, then that is, of course, within its prerogatives.

Finally, implicit in our decision, without saying more, is that medical expenses are necessities and, as such, are included as part of any definition of “support.” Accordingly, the judgment of the court of appeals is reversed. This cause is remanded to the trial court for further proceedings not inconsistent with this opinion. Judgment reversed and cause remanded.

Sweeney, Holmes and Wright, JJ., concur. Moyer, C.J., H. Brown and Resnick, JJ., dissent. See *Cleveland Metro. Gen. Hosp. v. Oleksik* (1987), 38 Ohio App. 3d 21, 525 N.E. 2d 831, and *In re Rauscher* (1987), 40 Ohio App. 3d 106, 531 N.E. 2d 745. Any language in either of these opinions inconsistent with that of the opinion herein is disapproved.