

CIRCUIT COURT FOR THE JUDICIAL CIRCUITS OF FLORIDA

Memorial Hospital-Flagler, Inc. v. Harp

45 Fla. Supp. 2d 135 (Fla. Cir. Ct. 1990) · Decided December 21, 1990

SUMMARY

The court granted Gerrie Harp’s motion to dismiss a hospital’s claim seeking payment for her husband’s necessary medical expenses. Although the court concluded that applying the common-law doctrine of necessities only to husbands would violate equal protection, it followed the Florida Supreme Court’s contrary holding in Shands Teaching Hospital and Clinics, Inc. v. Smith.

CASE DETAILS

COURT	Circuit Court for the Judicial Circuits of Florida
WRITING FOR THE COURT	Kim C. Hammond
JURISDICTION	Florida
DECIDED	December 21, 1990
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendant Gerrie Harp moved to dismiss the hospital's claim seeking to hold her liable for her husband's necessary hospital expenses. The circuit court granted the motion to dismiss.
STANDARD OF REVIEW	De novo review of the sufficiency of the complaint on a motion to dismiss.
PRECEDENTIAL VALUE	Published Florida circuit court trial-level opinion; persuasive but not binding outside the issuing court, subject to controlling appellate precedent.

TOPICS

- motions to dismiss
- health law
- equal protection
- constitutional law
- civil procedure

PRACTICE AREAS

- health law
- constitutional law
- civil procedure

QUESTIONS PRESENTED

1. Whether Gerrie Harp could be held liable for her husband's necessary hospital expenses under Florida's common-law doctrine of necessities when she had not agreed to pay them.

2. Whether the circuit court could modify or equalize Florida's common-law doctrine of necessities on equal-protection grounds despite controlling Florida Supreme Court precedent.

HOLDINGS

1. Under the controlling Florida Supreme Court precedent in *Shands Teaching Hospital and Clinics, Inc. v. Smith*, Gerrie Harp was not liable for her husband's necessary hospital expenses absent an agreement to pay them; the motion to dismiss was therefore granted.

KEY QUOTATIONS

“Requiring a husband to be responsible under the common law for necessities provided to his wife but not requiring a wife to be responsible for necessities provided to her husband clearly would be an unconstitutional violation of the Equal Protection Clause of the 14th Amendment of the United States Constitution.” (137)

*“Although this Court does not agree with the ruling in *Shands*, it is, nevertheless, bound by the Florida Supreme Court precedent and, therefore, must follow the holding of the case.”* (137)

FACTUAL BACKGROUND

Memorial Hospital-Flagler provided necessary hospitalization and treatment to Leonard Harp. Leonard allegedly guaranteed payment but was unable to pay the hospital's \$14,945.25 claim. The hospital sought to impose liability on Leonard's wife, Gerrie, although she had not guaranteed payment.

PROCEDURAL HISTORY

Memorial Hospital-Flagler, Inc. sued Leonard Harp and Gerrie Harp for \$14,945.25 in hospital and treatment expenses incurred by Leonard. The hospital alleged that Leonard had guaranteed payment but was unable to pay, and sought recovery from Gerrie despite her not having guaranteed payment. Gerrie moved to dismiss, relying on the Florida Supreme Court's decision in *Shands Teaching Hospital and Clinics, Inc. v. Smith*. The court granted the motion because it was bound by *Shands*.

DISPOSITION

dismissed

CASES CITED

- *Shands Teaching Hospital and Clinics, Inc. v. Smith*, 497 So. 2d 644 (Fla. 1986)
- *Halifax Hospital Medical Center v. Ryals*, 526 So. 2d 1022 (Fla. 5th DCA 1988)
- *Manatee Convalescent Center, Inc. v. McDonald*, 392 So. 2d 1356 (Fla. 2d DCA 1980)
- *Parkway General Hospital, Inc. v. Stern*, 400 So. 2d 166 (Fla. 3d DCA 1981)
- *Jersey Shore Medical Center-Fitkin Hospital v. Estate of Baum*, 84 N.J. 137, 417 A.2d 1003 (1980)
- *Webb v. Hillsborough County Hospital Authority*, 521 So. 2d 199, 205-207 (Fla. 2d DCA 1988)
- *Schilling v. Bedford County Memorial Hospital, Inc.*, 225 Va. 539, 303 S.E. 2d 905 (1983)

- Orr v. Orr, 440 U.S. 268, 99 S. Ct. 1102, 59 L. Ed. 2d 306 (1979)

OPINION

HAMMOND, J.

OPINION OF THE COURT KIM C. HAMMOND, Circuit Judge. ORDER GRANTING DEFENDANTS MOTION TO DISMISS THIS MATTER came on to be heard upon Defendant Gerrie Harp's Motion To Dismiss, and the Court, having reviewed the pleadings, heard arguments of counsel, and being otherwise duly informed about the premises, hereby FINDS AS FOLLOWS: Memorial Hospital-Flagler, Inc. brought an action against Leonard Harp and his wife Gerrie Harp seeking damages in the amount of \$14,945.25 for expenses incurred during the necessary hospitalization and treatment of Leonard Harp.

The Hospital asserts that Leonard Harp, who guaranteed payment, is unable to pay for the services provided, and it, therefore, seeks judgment against his wife, Gerrie. *136 Defendant Gerrie Harp moves to dismiss, asserting that she did not guarantee payment and thus is not liable for her husband's necessary hospital bills. She cites as authority for her position Shands Teaching Hospital and Clinics, Inc. v Smith,² 497 So.2d 644 (Fla.

1986). See also Halifax Hospital Medical Center v Ryals, 526 So.2d 1022 (Fla. 5th DCA 1988). In Shands, a case factually identical to the instant case, the Florida Supreme Court unanimously adhered to the common law doctrine of necessities despite its obvious equal protection violation.

Under the doctrine of necessities a husband is liable for his wife's necessary living and medical expenses as though he had contracted for them himself, but his wife is under no such obligation to him. The Court in Shands expressly disapproved 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), both of which ruled that wives are now liable for the medical expenses of their husbands even when they have not agreed to be held responsible, reasoning that a wife should be treated the same as the husband in reference to the necessities of the spouse.

The Plaintiff Hospital in the instant case argues that equal protection requires that husbands and wives be treated equally and that wives not be treated differently with respect to the responsibility of one spouse for necessities provided to the other spouse.

However, the Florida Supreme Court held that the plaintiff hospital in Shands did not have standing to raise the equal protection issue as between husbands and wives. It also held that changing the common law regarding an issue of this type would best be left to the legislature and not the Court. This trial court is not totally convinced that the hospital in Shands and the hospital in the present case do not have standing to raise the equal protection issue.

See *Jersey Shore Medical Center-Fitkin Hospital v Estate of Baum*, 84 N.J. 137, 417 A.2d 1003 (1980). Neither is this Court convinced that the unconstitutional doctrine of necessities must be left to the legislature to change (which it has yet to do and may never do). There should be a court-made choice of law here in order not to ignore the equal protection violation.

See *Webb v Hillsborough County Hospital Authority*, 521 SO.2d 199, 205-207 (Fla. 2d DCA 1988). Requiring a husband to be responsible under the common law for necessities provided to his wife but not requiring a wife to be responsible for necessities provided to her husband clearly would be an unconstitutional violation of the Equal Protection Clause of the 14th Amendment of the United States Constitution.

Webb, supra; *Schilling v Bedford County Memorial Hospital, Inc.*, 225 Va. 539, 303 S.E. 2d 905 (1983); See also *Orr v Orr*, 440 U.S. 268, 99 S.Ct. 1102, 59 L.Ed.2d 306 (1979). Fairness requires, logically, that both spouses be treated so that if one spouse should be liable for necessities, then, in like circumstances, the other spouse should be equally liable.

The common law doctrine holding a husband financially responsible for necessities must equally apply to a wife for necessities provided for her husband when he is unable to pay for them. *Webb*, supra. Although this Court does not agree with the ruling in *Shands*, it is, nevertheless, bound by the Florida Supreme Court precedent and, therefore, must follow the holding of the case.

Perhaps someday soon the Florida Supreme Court will consider revisiting the doctrine of necessities as framed in *Shands*. As the Florida Supreme Court has shown in the past, the judiciary has the power to reform the common law when it violates the Constitution; and when constitutional rights are at issue, the courts have an obligation to address them. See Waters, *Reforming Florida's Doctrine of Necessaries*, *The Florida Bar Journal*, November 1989, at 11.

It is hereby ORDERED AND ADJUDGED: THAT the Defendant's Motion To Dismiss is GRANTED. DONE AND ORDERED in Chambers at Bunnell, Flagler County, Florida, this 21st day of December, 1990.