

047

SUPREME COURT
STATE OF FLORIDA

CASE NO: 68000-237

SHANDS TEACHING HOSPITAL AND
CLINICS, INC.,

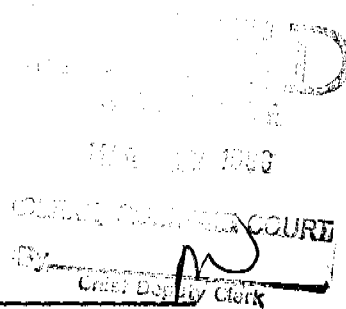
Petitioner,

vs.

REBECCA SMITH

Respondent.

FILED
MAY 17 1983
CLERK OF THE SUPREME COURT
Chief Deputy Clerk



Appeal from the First District
Court of Appeal

RESPONDENT'S BRIEF ON THE MERITS

HAL CASTILLO, ESQUIRE
LEWIS, PAUL, ISAAC & CASTILLO, P.A.
2468 Atlantic Boulevard
Jacksonville, FL 32207
904/398-7100
Attorneys for Respondent

TABLE OF CONTENTS

	<u>PAGE</u>
Table of Contents.....	i
Table of Citations.....	ii
Statement of the Case and the Facts.....	1
Summary of Argument.....	2
Argument.....	3
I. A WIFE IS NOT RESPONSIBLE FOR THE NECES- SARIES, INCLUDING MEDICAL EXPENSES, OF HER HUSBAND ABSENT SPECIFIC LEGISLATIVE ENACT- MENT TO THAT EFFECT.....	3
II. SINCE NO CONTRACT CAN BE IMPLIED BY LAW IN THIS CASE, THE STATUTE OF FRAUDS, SECTION 725.01, FLORIDA STATUTES (1983) REQUIRES AN AGREEMENT TO PAY THE DEBT OF ANOTHER BE IN WRITING AND SIGNED BY THE PARTY TO BE CHARGED IN ORDER TO BE ENFORCEABLE.....	6
Conclusion.....	8
Certificate of Service.....	9

TABLE OF CITATIONS

	<u>PAGE</u>
<u>CASES</u>	
<u>Correll v. Elkins</u> 195 So.2d 27 (Fla. 1st DCA 1967).....	3
<u>Gates v. Foley</u> 247 So.2d 40 (Fla. 1971).....	4
<u>Manatee Convalescent Center, Inc. v. McDonald</u> 329 So.2d 1359 (Fla. 2nd DCA 1980).....	5
<u>Parkway General Hospital, Inc. v. Stern</u> 400 So.2d 166 (Fla. 3rd DCA 1981).....	5
<u>Pepper v. Pepper</u> 66 So.2d 280 (Fla. 1953).....	5
<u>Ripley v. Ewell</u> 61 So.2d 420 (Fla. 1952).....	4
<u>State v. Egan</u> 287 So.2d 1 (Fla. 1973).....	4
<u>State v. Herndon</u> 158 Fla. 115, 27 So.2d 833 (Fla. 1946).....	5
<u>Zorzos v. Rosen</u> 467 So.2d 305 (Fla. 1985).....	4
<u>CONSTITUTIONAL PROVISIONS</u>	
Fla. Const., article I, section 2.....	4
Fla. Const., article X, section 5.....	4, 5
Fla. Const., article II, section 3.....	4
<u>STATUTES</u>	
Chapters 61 and 708, Fla.Stat. (1985).....	4
Section 61.09, Fla.Stat (1983).....	5
Section 61.10, Fla.Stat (1983).....	5
Section 708.08(1), Fla.Stat. (1985).....	4
Section 725.01, Fla.Stat. (1973).....	3, 4
Section 725.01, Fla.Stat. (1983).....	6

STATEMENT OF THE CASE AND OF THE FACTS

The Respondent, REBECCA SMITH, adopts the Statement of the Case and the Statement of the Facts as set forth in Petitioner's Brief on the Merits.

SUMMARY OF THE ARGUMENT

The common law doctrine of necessities has never been explicitly altered by Constitution, our Courts or by statutes to require the Respondent to be legally responsible for the debt of another, her husband. While this Honorable Court has the power to abrogate a common law rule which is found to be inconsistent with constitutional or statutory law, under the separation of powers doctrine that power does not include the power to judicially create new liabilities and causes of action which did not exist under the common law. The Petitioner has no cause of action against Respondent absent a specific written agreement signed by Respondent to be responsible for the debts of her husband.

I. A WIFE IS NOT RESPONSIBLE FOR THE NECESSARIES, INCLUDING MEDICAL EXPENSES, OF HER HUSBAND ABSENT SPECIFIC LEGISLATIVE ENACTMENT TO THAT EFFECT.

Under common law, a husband was responsible for the necessities of his wife, including any medical expenses. Correll v. Elkins, 195 So.2d 27 (Fla. 1st DCA 1967). The common law has never been explicitly altered by constitution, courts or statutes to require that a wife be responsible for the medical expenses of her husband. Petitioner urges this Court to abrogate the common law rule alleging that the common law rule has been abrogated by substantial changes in law and societal concepts of rights and justice. It is respectfully submitted by the Respondent that in the absence of constitutional or statutory authority reflecting a change in the established law, it would be a violation of the separation of powers doctrine for this Honorable Court to judicially create new liabilities and a new cause of action which did not exist under the common law.

In the first place, Petitioner, as a creditor, has no cause of action under the common law rule. There are only three (3) possible bases for liability of one person for the debts of another. One would be the voluntary agreement of the party to be held liable. The second would be statutory enactment to that effect. Third would be a common law rule implying such an obligation. In Florida, the Legislature has enacted no statute requiring a wife be responsible for the medical expenses of her husband. Respondent did not agree to pay, in writing, for the medical services provided to her husband. See, Section 725.01,

Fla.Stat. (1973). At common law, the wife was not liable for her husband's necessities. See, Fla. Const., article I, Section 2 and article X, Section 5; Chapters 61 and 708, Florida Statutes (1985); and Gates v. Foley, 247 So.2d 40 (Fla. 1971).

Section 2.01, Florida Statutes (1985), provides:

"The common and statute law of England which are of a general and not a local nature...down to the Fourth day of July, 1776, are declared to be of force in this state; provided, the said statutes and common law be not inconsistent with the Constitution and laws of the United States and the acts of the legislature of this State."

The Supreme Court of Florida in State v. Egan, 287 So.2d 1 (Fla. 1973), emphasized that "it is the province of the legislature and not of the court to modify the rules of common law." In that opinion, the Supreme Court further urged that a statutory enactment is essential to repeal, abrogate or change the rules of common law. See also, Ripley v. Ewell, 61 So.2d 420, 423 (Fla. 1952); Zorzos v. Rosen, 467 So.2d 305, 307 (Fla. 1985).

Of course, Respondent recognizes that the courts have a right to interpret law in light of changing circumstances and changing social concepts. However, courts cannot promulgate the law in the first place as that would be an invasion of the legislative function and would constitute a violation of the separation of powers doctrine of the Florida Constitution. Fla. Const., article II,

Section 3; State v. Herndon, 158 Fla. 115, 27 So.2d 833 (Fla. 1946); Pepper v. Pepper, 66 So.2d 280 (Fla. 1953).

Petitioner submits that the common law should be amended, abrogated, or repealed by a decisional law to reflect a purported change in social concepts. Petitioner claims that the "partnership concept" of marriage, Fla. Const., article X, Section 5; Section 708.08(1), Florida Statutes (1985) and Sections 61.09 and 61.10, Florida Statutes (1983), imply a purported change in societal concepts. However, this purported change in societal concepts is wholly unwarranted and unfounded. Our State Legislature has had the opportunity on several occasions to enact the Equal Rights Amendment to the Florida Constitution. Had that Equal Rights Amendment been enacted, an amendment would arguably have given the Petitioner the basis that there was a change in societal concepts as recognized and enacted by our Legislature. However, our Legislature, after much consideration and debate, refused to enact this Amendment. Therefore, it would be a violation of the separation of powers doctrine for the Courts to declare law which the Legislature has specifically refused to enact.

Petitioner relies on Manatee Convalescent Center, Inc. v. McDonald, 392 So.2d 1359 (Fla. 2nd DCA 1980), and Parkway General Hospital, Inc. v. Stern, 400 So.2d 166 (Fla. 3rd DCA 1981). It is respectfully submitted that the courts in these cases elected to violate the separation of powers doctrine. They ruled by decisional law that the wife was responsible for her husband's

medical expenses thereby amending, abrogating and revoking the common law even in light of the absence of change in societal concepts. Respondent respectfully submits that these cases are in error. Even if this Court were persuaded to enact, by judicial decision, such a law, it should be given prospective application only.

II. SINCE NO CONTRACT CAN BE IMPLIED BY LAW IN THIS CASE, THE STATUTE OF FRAUDS, SECTION 725.01, FLORIDA STATUTES (1983) REQUIRES AN AGREEMENT TO PAY THE DEBT OF ANOTHER BE IN WRITING AND SIGNED BY THE PARTY TO BE CHARGED IN ORDER TO BE ENFORCEABLE.

Section 725.01, Fla.Stat. (1983), provides:

"no action shall be brought...to charge the defendant upon any special promise to answer for the debt ...of another person...unless such agreement shall be in writing and signed by the party to be charged therewith."

Petitioner admits that Respondent never agreed in writing to pay for the medical expenses incurred by her husband. However, Petitioner contends that the common law should be abrogated, amended or repealed by this Court to establish an implied contract because of the unjust enrichment of the Respondent. Petitioner's conclusion would be accurate if, and only if, the wife had a legal obligation to pay for her husband's medical expenses. However, Respondent contends she does not have a legal obligation to pay for her husband's expenses as stated above since there was no

legal obligation under the common law. Thus, this transaction is subject to the Statute of Frauds and must be in writing to be enforceable.

In the present case, the party receiving the "benefit" was not the Respondent, but rather her deceased husband. No injury has occurred to the Petitioner herein, but if Petitioner had desired that the wife be responsible for the medical bills of her husband, all they merely had to do was require Respondent to execute a guaranty, or, in the alternative, look solely to the assets of the Respondent's husband for satisfaction of their bill. Thus, Petitioner does not seek the redress of an injury, but instead, the creation of a windfall to an otherwise uninjured creditor and force a potentially insurmountable obligation on an unsuspecting person.

CONCLUSION

Under the facts sub judice and the law cited by the Respondent herein, the Order of the Trial Court in granting the Defendant's Motion to Dismiss was correct. The First District Court of Appeal's ruling that a Wife is not responsible for the medical bills of her husband should be affirmed. To rule by decisional law that a wife is responsible for the necessities of her husband would manifestly amend, abrogate or repeal the common law and would do so without any recognized change in societal concepts, thus violating the separation of powers doctrine. Secondly, the statute of frauds is applicable as there is no implied contract in law between the Petitioner and Respondent. For all of the foregoing reasons, the decision in the First District Court of Appeals, State of Florida, should be affirmed. In the alternative, any amendment, abrogation or revocation of the common law by this Court should only be given prospective application.

Respectfully submitted,

LEWIS, PAUL, ISAAC & CASTILLO, P.A.

Hal Castillo

HAL CASTILLO, ESQUIRE
2468 Atlantic Boulevard
Jacksonville, FL 32207
904/398-7100
Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Respondent's Brief on the Merits has been served on DAVID A. ROBERTS, III, ESQUIRE, Co-Counsel for Petitioner, Box J-334, JHMHC, Gainesville, FL 32610; to DAVID E. MATHIAS, ESQUIRE, Co-Counsel for Petitioner, Box J-303, JHMHC, Gainesville, FL 32610; to WILLIAM A. BELL, The Florida Hospital Association, P. O. Box 469, Tallahassee, FL 32301; and to CONSTANCE J. KAPLAN and BARRY R. LERNER, Attorneys for Amicus Curiae, Florida Hospital Association, 1415 East Sunrise Boulevard, Suite 800, Ft. Lauderdale, FL 33304, by U. S. Mail, this 14th day of March, 1986.

Hal Castillo

ATTORNEY