

1825 INJURY TO WIFE: MEDICAL AND HOSPITAL EXPENSES

Instruction withdrawn.

COMMENT

This instruction was originally published in 1960. It was withdrawn in 1995.

The doctrine of necessities has been modified by Wis. Stat. § 765.001(2), part of Wisconsin's Marital Property law. Under this landmark change to the law of property ownership and family support obligations, Wisconsin law now imposes personal liability on each spouse for the other's necessities. Section 765.001(2) provides:

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.

The court of appeals has interpreted this new provision as providing that a spouse is equally responsible for medical expenses incurred by the other spouse while the two are married. St. Mary's Hosp. Med. Center v. Brody, 186 Wis.2d 100, 519 N.W.2d 706 (Ct. App. 1994).

As a result of this change in the doctrine of necessities, the Committee withdrew this instruction which was based on the husband having primary responsibility for his wife's medical bills. Recovery of medical and hospital expenses by a plaintiff is covered in Wis JI-Civil 1750A, 1754, and 1765.

Under the prior common-law doctrine, the husband had the duty to support himself, his wife, and others in the family. The wife, however, had no duty to support and was not liable to a creditor for necessities furnished to her or her husband. In applying this former doctrine, Wisconsin courts have held that a married woman was not liable for medical services furnished her (unless covered by an express contract) and, therefore, was not entitled to recover the value of the medical service from a tortfeasor. Instead, recovery of such expenses for medical services to the wife was for the husband. Luther Hosp. v. Garborg, 71 Wis.2d 460, 462, 238 N.W.2d 529 (1976); Seitz v. Seitz, 35 Wis.2d 282, 295, 151 N.W.2d 86 (1967); Fischer v. Fischer, 31 Wis.2d 293, 309, 142 N.W.2d 857 (1966); Fee v. Heritage Mut. Ins. Co., 17 Wis.2d 364, 117 N.W.2d 268 (1962); Puhl v. Milwaukee Automobile Ins. Co., 8 Wis.2d 343, 349, 99 N.W.2d 163 (1959); Jewell v. Schmidt, 1 Wis.2d 241, 83 N.W.2d 487, 491092 (1957). Only if the injured wife obligated herself by contract to pay for medical care could the wife recover for the cost of such care. Seitz v. Seitz, 35 Wis.2d 282, 151 N.W.2d 86 (1967); Sulkowski v. Schaefer, 31 Wis.2d 600, 143 N.W.2d 512 (1966). In Jewell, supra at 250, the court expressed the prevailing necessities doctrine in the following manner:

The early rule was that it was the husband's absolute duty to pay for medical services to his wife, and that this duty could not be altered even where the wife agreed to pay the bills, recognized them as her personal debt, and in fact made payments on them from time to time from her separate estate. Stack v. Padden (1901), 111 Wis. 42, 86 N.W. 568. This absolute

bar has been softened by subsequent decisions, based on the statutes extending the legal rights of married women. The present rule is that a married woman may contract for medical services in her own right but, in the absence of the establishment of such an express contract between the wife and the person rendering the service, the husband, and not the wife, is the person liable for such expenses and the one entitled to recover for them.

In Estate of Stromstead, 99 Wis.2d 136, 299 N.W.2d 226 (1980), the hospital which had rendered medical services to the wife sued the wife's estate for the value of such services. The estate argued that, based on the prevailing common law doctrine of necessities, a married woman is not liable under implied contract principles for such medical services. On review, the supreme court said that a wife shares with her husband a limited legal duty of support of the family and that the wife may be held liable to an implied-in-law contractual obligation for the provision of medical services and other necessities to her or family. Specifically, the court said a married woman "cannot be viewed as being immune from such a suit" as suggested in Jewell v. Schmidt, supra. The earlier line of cases cited above were overruled. However, the court in reshaping the necessities doctrine refused to impose joint and several liability on the husband and wife. Instead, the court held that a creditor seeking to recover under the rule of necessities for goods or services furnished to the wife or family members must first proceed against the husband as the primary responsible party. Stromstead, supra at 144. To the extent the husband is unable to satisfy his obligation in this regard, the creditor may seek satisfaction from the wife.

The reshaping of the necessities doctrine in Stromstead was later reaffirmed by the court in Marshfield Clinic v. Discher, 105 Wis.2d 506, 314 N.W.2d 326 (1982).

In Marshfield Clinic, the court considered whether, under its Stromstead rule, a wife can be held liable for the necessary medical expenses incurred by her husband in the absence of her agreement to accept responsibility for the expenses. The court reaffirmed the doctrine it had developed in Stromstead which made the wife secondarily liable for the payment of necessities furnished to family member. The court held that its rule was constitutional even though the classification incorporated in the rule was gender based because the rule served several important governmental objectives. Marshfield Clinic, supra at 509-17. The court also stated that the Stromstead rule only applies in the absence of an express agreement by the parties. Thus, if the medical provider had expressly agreed to look only to the husband for payment of his or his family's medical expenses, then the wife could not be liable.