

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2010-CA-001053-MR

SOMERSET MANOR, LLC, D/B/A  
SOMERSET NURSING AND  
REHABILITATION FACILITY

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT  
HONORABLE JEFFREY T. BURDETTE, JUDGE  
ACTION NO. 09-CI-01499

BETTY REES

APPELLEE

OPINION  
AFFIRMING

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BEFORE: NICKELL AND THOMPSON, JUDGES; ISAAC,<sup>1</sup> SENIOR JUDGE.

ISAAC, SENIOR JUDGE: Somerset Manor, LLC, d/b/a Somerset Nursing and  
Rehabilitation Facility (SNRF) appeals from a Pulaski Circuit Court judgment

which held that Kentucky Revised Statutes (KRS) 404.040 does not impose a duty

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<sup>1</sup> Senior Judge Sheila R. Isaac sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

on Betty Rees to pay the nursing home expenses of her late husband, William Rees.

William Rees was a resident at SNRF in 2008. When he died on December 23, 2008, he had incurred an outstanding balance on his account of \$33,984.00. The account was credited by Medicaid in the amount of \$12,635.55, which left an outstanding balance of \$21,258.45. SNRF filed a claim against Rees's estate, which consisted of \$7,700.00. Betty Rees claimed the first \$15,000.00 of his estate under the spousal exemption provided in KRS 391.030. SNRF filed an action against Betty in Pulaski Circuit Court, arguing that KRS 404.040 imposes a legal duty on her to provide for the necessaries of her spouse, making her individually liable for the remaining debt. The circuit court entered summary judgment in favor of Betty and this appeal by SNRF followed.

In reviewing a grant of summary judgment, our inquiry focuses on “whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law.” *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky.App.1996); Kentucky Rules of Civil Procedure (CR) 56.03. When, as in this case, there are no disputes of fact, “the question is one of law and may be reviewed *de novo*.” *Lach v. Man O'War, LLC*, 256 S.W.3d 563, 567 (Ky. 2008).

KRS 404.040 provides as follows:

The husband shall not be liable for any debt or responsibility of the wife contracted or incurred before or after marriage, except to the amount or value of the

property he received from or by her by virtue of the marriage; but he shall be liable for necessities furnished to her after marriage.

In its judgment, the circuit court noted that some courts in other jurisdictions have held that the common law doctrine of necessities violates the equal protection clauses of the state or federal constitution and have either expanded the doctrine to apply to both spouses or have eliminated the doctrine altogether, holding that neither spouse is liable for the necessities furnished to the other. Because in Kentucky the doctrine has been codified, the circuit court concluded that this approach was not possible and that the rules of statutory construction had to be applied. It held that the statute plainly makes only husbands liable for the necessities of their wives.

On appeal, SNRF does not challenge the constitutionality of the statute, but the circuit court's interpretation of the statute, which it claims is unconstitutional and violates "common sense." SNRF argues that "[i]t is our responsibility to read the statutes of the General Assembly so as to save their constitutionality whenever such can be done consistent with reason and common sense." *Whiteco Metrocom Corp. v. Commonwealth, Transp. Cabinet, Dept. of Highways*, 14 S.W.3d 24, 27 (Ky.App. 1999) (citation omitted). It further argues that a court has no duty to adopt the plain meaning of a statute if doing so would lead to an absurd result.

We agree with the circuit court that construing the statute to impose a reciprocal duty on wives would constitute an impermissible infringement on the

role of the legislature. Even if the legislature decided that the policy considerations underlying the statute have now changed, we have no way of knowing if it would choose to revise the statute or repeal it altogether.

“The legislature bases its decisions on experience, empirical data, and the will of the people, and this Court is not in a position to second guess the legislators.”

*County of Harlan v. Appalachian Regional Healthcare, Inc.*, 85 S.W.3d 607, 614 (Ky. 2002) (internal citations omitted). “When the express language of a statute is clear and unambiguous, this Court is without authority to construe the statute otherwise.” *Consolidated Infrastructure Management Authority, Inc. v. Allen*, 269 S.W.3d 852, 856 (Ky. 2008). “We are not at liberty to add or subtract from the legislative enactment or discover meanings not reasonably ascertainable from the language used.” *Commonwealth v. Harrelson*, 14 S.W.3d 541, 546 (Ky. 2000).

The summary judgment is therefore affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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Frankfort, Kentucky

BRIEF FOR APPELLEE:

Jay McShurley  
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