

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e) (3) of the North Carolina Rules of Appellate Procedure.

No. COA06-1706

NORTH CAROLINA COURT OF APPEALS

FILED: 4 December 2007

THE WESLEY LONG NURSING
CENTER, INC. D/B/A The MOSES
CONE EXTENDED CARE CENTER,
Plaintiff,

v.

Guilford County
No. 06 CVD 3889

ESTELL HARPER,

Defendant.

Court of Appeals

Appeal by defendant Estell Harper from order entered 24
October 2006 by Judge Susan E. Bray in District Court, Guilford
County. Heard in the Court of Appeals 30 August 2007.

Slip Opinion

*Michael T. Marshall, P.A., by Michael T. Marshall, for
plaintiff-appellee.*

Barbara Gore Washington for defendant-appellant.

STROUD, Judge.

Plaintiff sued defendant Estell Harper to recover the costs of providing necessary medical services to defendant's wife. On or about 15 August 2006 plaintiff filed a motion for summary judgment which was granted on 24 October 2006 in favor of plaintiff. The dispositive question before this Court is whether the trial court erred in granting summary judgment for plaintiff based upon the necessities doctrine. For the following reasons, we affirm.

I. Background

Plaintiff provided necessary nursing services, medical services, and medical supplies to Carrie W. Harper ("decedent") from approximately 24 January 2005 until 30 November 2005. Defendant was decedent's spouse at the time plaintiff provided decedent with medical care.

On or about 20 February 2006, plaintiff filed a complaint to recover \$34,730.87, the alleged amount of decedent's medical expenses, with interest, from defendant. Defendant filed an unverified answer, admitting that plaintiff had provided necessary medical services and supplies to decedent and that decedent was his spouse. Defendant's answer denied the amount of the debt and his responsibility for it and requested verification of the account balance. On or about 15 August 2006 plaintiff filed a motion for summary judgment pursuant to Rule 56 of the North Carolina Rules of Civil Procedure, accompanied by a verified affidavit of statement of account. Defendant filed an opposing affidavit which alleged only that he did not owe the plaintiff any money, that he had not been a patient at the plaintiff's facility, and that the estate of the decedent is responsible for the payment of the debt. On 24 October 2006, Judge Susan E. Bray granted plaintiff's motion for summary judgment. Defendant appeals.

II. Standard of Review

On appeal, our standard of review for an order granting summary judgment is *de novo*. Summary judgment is only appropriate when there is no genuine issue of material fact and [any party] is entitled to judgment as a matter of law. In considering summary judgment motions, we review the record in the light most favorable to the nonmovant. The

entry of summary judgment presupposes that there are no issues of material fact.

Winding Ridge Homeowners Ass'n v. Joffe, ___ N.C. App. ___, ___, 646 S.E.2d 801, 804 (2007) (internal citations and quotations omitted); see also N.C. Gen. Stat. § 1A-1, Rule 56.

III. Analysis

Defendant argues the trial court erred in granting summary judgment to plaintiff because defendant is not responsible for decedent's medical bills because her estate is the responsible party. We disagree.

A. Necessaries Doctrine

The necessities doctrine "is a recognition of a personal duty of each spouse to support the other, a duty arising from the marital relationship itself and carrying with it the corollary right to support from the other spouse." *N.C. Baptist Hosp. v. Harris*, 319 N.C. 347, 353, 354 S.E.2d 471, 474 (1987). "It is well settled that [the] 'doctrine of necessities' applies to necessary medical expenses." *N.C. Baptist Hosp.* at 349, 354 S.E.2d at 472.

In order to establish a *prima facie* case against one spouse for the value of necessary medical services provided to the other spouse, the health-care provider must show that (1) medical services were provided to the receiving spouse, (2) the medical services were necessary for the health and well-being of the receiving spouse, (3) the person against whom the action is brought was married to the receiving spouse at the time the medical services were provided, and (4) payment for the necessities has not been made.

Forsyth Mem'l Hosp. v. Chisholm, 342 N.C. 616, 619, 467 S.E.2d 88, 89-90 (1996) (internal citations omitted).

In *Forsyth Mem'l Hosp.*, a wife, separated from her husband at the time his medical services were rendered, was required to pay his medical bills pursuant to the necessities doctrine. *Forsyth Mem'l Hosp.*, 342 N.C. 616, 467 S.E.2d 88. The North Carolina Supreme Court held that once all of the requirements for a *prima facie* case for the necessities doctrine had been established a spouse would be liable unless an exception applied. See *id.* at 619, 467 S.E.2d at 90.

In the present case, as in *Forsyth Mem'l Hosp.*, "it is undisputed that the pleadings and affidavits of record establish the applicability of the necessities doctrine." *Id.* Defendant's answer admits: (1) medical services were provided to his wife, (2) the medical services provided to his wife were "necessary," and (3) Carrie W. Harper was his spouse "at the time services were rendered." See *id.* at 619, 467 S.E.2d at 89-90. Plaintiff's accounting affidavit also establishes element (4) by presenting evidence that "payment for the necessities has not been made." See *id.* at 619, 467 S.E.2d at 90. In his opposing affidavit defendant fails to raise any legal defense or exception to the necessities doctrine, but only claims he is not personally responsible for the debt. Undoubtedly plaintiff has established a *prima facie* case against defendant pursuant to the necessities doctrine. See *id.* at 619, 467 S.E.2d at 89-90.

Defendant has also argued no "exception" to the necessities doctrine, but instead has claimed that he is not responsible for his deceased wife's medical bills as her estate is the responsible

party. See *id.* at 619, 467 S.E.2d at 90. However, this argument is contrary to the clearly established law of North Carolina on the necessities doctrine. See *id.* 342 N.C. 616, 467 S.E.2d 88; *N.C. Baptist Hosp.*, 319 N.C. 347, 354 S.E.2d 471. The necessities doctrine is "a *personal* duty of each spouse to support the other, a duty arising from the marital relationship." See *N.C. Baptist Hosp.* at 353, 354 S.E.2d at 474.

B. N.C. Gen. Stat. § 28A-19

Defendant argues that pursuant to N.C. Gen. Stat. § 28A-19, governing decedents' estates, his wife's estate is responsible for the debt. See N.C. Gen. Stat § 28A-19 (2005). Defendant correctly points out that pursuant to N.C. Gen. Stat. § 28A-18-1 "[u]pon the death of any person, all demands whatsoever, and rights to prosecute or defend any action or special proceeding, existing in favor of or against such person . . . shall survive to and against the personal representative or collector of his estate." N.C. Gen. Stat § 28A-18-1 (2005). However, although the hospital may pursue the wife's estate for payment of the debt, it is not required to do so before filing a claim against defendant pursuant to the necessities doctrine. See *id.*; see also *N.C. Baptist Hosp.* at 353, 354 S.E.2d at 474. The necessities doctrine makes the spouse personally liable for the debt, not secondarily liable for the debt. *N. C. Baptist Hosp.* at 353, 354 S.E.2d at 474.

Plaintiff has established a *prima facie* case for the necessities doctrine and plaintiff is entitled to file a claim against defendant personally without first seeking recovery from

decedent's estate. See *id.*; *Forsyth Mem'l Hosp.* at 619, 467 S.E.2d at 89-90; N.C. Gen. Stat. § 28A-19. Based upon the pleadings and affidavits, "there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law." *Winding Ridge Homeowners Ass'n* at ___, 646 S.E.2d at 804; see also N.C. Gen. Stat. § 1A-1, Rule 56. This assignment of error is overruled.

The defendant also assigns error to the trial court's failure to make findings of fact. However, "it is not a part of the function of the court on a motion for summary judgment to make findings of fact and conclusions of law. . . . [T]he enumeration of findings of fact . . . is technically unnecessary and generally inadvisable in summary judgment cases." *Mercier v. Daniels*, 139 N.C. App. 588, 590, 533 S.E.2d 877, 879 (2000) (internal citations and internal quotations omitted). We conclude that the trial court properly refrained from making findings of fact upon plaintiff's motion for summary judgment. See *id.* This assignment of error is overruled.

V. Conclusion

For the reasons stated above, we affirm the trial court's order granting summary judgment in favor of plaintiff because plaintiff is personally liable for decedent's medical bills pursuant to the necessities doctrine.

AFFIRMED.

Judges ELMORE and STEELMAN concur.

Report per Rule 30(e).