

621 So.2d 928
(Cite as: 621 So.2d 928)

C

Supreme Court of Mississippi.
Jeremy R. GOVAN
v.
MEDICAL CREDIT SERVICES, INC.

No. 90-CA-0533.
April 8, 1993.
Rehearing Denied Aug. 26, 1993.

Former husband appealed finding that he was liable for unpaid medical bills for services provided to former wife during marriage. The Circuit Court, Harrison County, [Jerry Owen Terry, Sr., J.](#), affirmed and husband appealed. The Supreme Court, [McRae, J.](#), held that husband was not responsible to health care provider for wife's debts in absence of express agreement.

Reversed and rendered.

[Banks, J.](#), concurred and filed opinion.

[Prather, P.J.](#), dissented and filed opinion in which [Sullivan](#) and [Pittman, JJ.](#), joined.

West Headnotes

[1] Husband and Wife 205 ¶19(15)

205 Husband and Wife

205I Mutual Rights, Duties, and Liabilities

205k19 Necessaries and Family Expenses

205k19(15) k. Medical Services. [Most](#)

Cited Cases

Husband was not liable to medical provider for unpaid medical bills of wife absent husband's express agreement with provider.

[2] Husband and Wife 205 ¶19(15)

205 Husband and Wife

205I Mutual Rights, Duties, and Liabilities

205k19 Necessaries and Family Expenses

205k19(15) k. Medical Services. [Most](#)

Cited Cases

Only where both spouses have expressly contracted with third-party creditor may one be liable for other's debts, unless there is some type of agency relationship.

***928** [David P. Oliver](#), Gulfport, for appellant.

[Bruce Cornell, Ann Bowden-Hollis, Robert C. Galloway & Galloway](#), Gulfport, for appellee.

En banc.

[McRAE](#), Justice, for the Court:

This appeal arises from a May 10, 1990, judgment of the Harrison County Circuit ***929** Court affirming an order of the County Court of the First Judicial District of Harrison County which granted the appellee's motion for judgment on the pleadings, which was treated as a motion for summary judgment. The trial court found the appellant liable for certain unpaid medical bills of his former wife, Kimberly Govan, which were incurred prior to their divorce. Finding that, absent any express agreement with a third party to do so, a spouse is not obligated to pay the debts of the other, we reverse the decision of the circuit court.

I.

Kimberly Govan was treated at Memorial Hospital at Gulfport on April 21, 1988. After her \$468.50 bill remained unpaid, it was turned over to Medical Credit Services, Inc. for collection. On May 9, 1989, Medical Credit Services sent a final notice to the Govans, advising them that legal action would be taken if the bill was not paid within seventy-two hours.

When the Govans failed to respond, Medical Credit Services filed a complaint against Jeremy Govan on May 16, 1989, in the County Court of the First Judicial District of Harrison County, seeking recovery of \$585.00, which included the amount

621 So.2d 928
 (Cite as: 621 So.2d 928)

due as well as attorneys' fees and court costs. Govan answered, asserting that he was not liable for the debt because he and Kimberly had subsequently divorced and he had not contracted with the hospital to provide services for her.^{FN1}

FN1. The record is silent as to when the couple ultimately separated and divorced, however, it does not matter for purposes of this appeal.

Medical Credit Services filed an amended complaint on October 18, 1989, naming both Jeremy and Kimberly Govan as parties. Jeremy Govan then filed a motion for summary judgment on October 30, 1989. He again asserted in his supporting affidavit that he had not contracted with the hospital to treat his then wife, and further, that responsibility for her debts would be a denial of equal protection under the fourteenth amendment of the United States Constitution and the Mississippi Constitution. The County Court Judge denied Govan's motion on November 6, 1989.

Medical Credit Services filed a motion for judgment on the pleadings on December 11, 1989. Kimberly Govan did not respond to the summons and amended complaint or the motion for summary judgment on the pleadings. An Entry of Default and Default Judgment were filed against her on December 18, 1989. Further, the County Court Judge, finding that Jeremy Govan had failed to file a legal defense to the action, found him liable for the past due bill and fees. Govan then appealed the judgment to the Harrison County Circuit Court, raising the same issues now before this Court. The Circuit Court affirmed the judgment of the County Court, finding that the County Court did not err in denying Jeremy Govan's motion for summary judgment and that Govan was liable for debts incurred by his wife during the marriage.

II.

[1] In this appeal, we are asked to consider whether a husband should be liable *per se* to a third party for debts incurred by his former wife during

their marriage. Absent one spouse's express agreement to be obligated to a third party for the debts of the other, we find no basis in our current jurisprudence for such liability. Accordingly, we reverse the ruling of the Circuit Court and render judgment for the appellant.

Govan asserts that liability to third party creditors for debts incurred by his former wife during their marriage is a violation of equal protection under the fourteenth amendment to the United States Constitution as well as under Miss. Const. art. 4, § 94, which states:

The legislature shall never create by law any distinction between the rights of men and women to acquire, own, enjoy, and dispose of property of all kinds, or their power to contract in reference thereto. Married women are hereby fully*930 emancipated from all disability on account of coverture. But this shall not prevent the legislature from regulating contracts between husband and wife; nor shall the legislature be prevented from regulating the sale of homesteads.

Moreover, Miss.Code Ann. § 93–3–1 (1972) legislatively abrogated the disability of coverture and vested married women with a panoply of rights. Both this Court and the legislature long have recognized “a clearly discernible nation-wide trend, of both state and federal legislation, to expand rather than restrict the economic and personal emancipation of women and their ever increasing participation in business and professional affairs.” *Cooke v. Adams*, 183 So.2d 925, 927 (Miss.1966). In expanding the rights of women, we also have placed on them greater responsibilities and obligations, accepting the contemporary reality that “[m]arried women today often are the breadwinners and have incomes and estates equal or superior to those of their husbands.” *Id.* at 927. Miss.Code Ann. § 93–5–23, for example, requires *both* parents to provide support for their minor children in proportion to their financial abilities. Our decisions, likewise, have ordered mothers to pay child support and wives to pay alimony. We have further broken

down barriers between men and women by abrogating interspousal tort immunity. In this case, we do not address the obligation for debts as between spouses, but with regard to a third party creditor who, solely on the basis of the marriage contract, seeks to collect from one spouse, with whom it has no express agreement, the debts of the other.

In *Cooke*, we held that where a wife had not signed an express contract for her hospital care, *her* estate, not her estranged husband, was primarily responsible for payment of her hospital bills.^{FN2} We stated that:

FN2. In so ruling we expressly overruled *McLemore v. Riley's Hospital, Inc.*, 197 Miss. 317, 20 So.2d 67 (1944) wherein a married woman's liability for her own debts attached only when she expressly agreed to the obligation. We found that the rule in *McLemore* “is unrealistic and does violence to the legislative policy expressed in [Miss.Code Ann.] section 451 [1956].” *Cooke*, 183 So.2d at 927.

[i]n the absence of any express agreement, where a married woman shall obtain necessities, whether in the form of goods or services, for her own personal use or benefit, under circumstances which, if she had not been married, would give rise by implication to a contract on her part to pay for such goods or services, she shall be liable, jointly with her husband, for the value of such goods or services, and recovery may be had from her separate estate.

Cooke, 183 So.2d at 927. Without resorting to the use of gender-neutral language, we clarified that, in so ruling, we did not seek to establish a constitutionally impermissible double standard for husbands and wives.

[2] Following our decision in *Cooke* as well as the directives of Miss. Const. art. 4, § 94 and Miss.Code Ann. § 93–3–1, we find that the circuit court erred in finding Govan liable for his former wife's hospital bill. Likewise, had Govan incurred

an obligation on his own behalf without his wife's express agreement, we would not find her liable. Only when both spouses have expressly contracted with a third party creditor may one be liable for the other's debts unless there is some type of an agency relationship.

III.

Govan suggests that the common law duty of a husband to provide for his wife amounts to gender-based discrimination in violation of the fourteenth amendment to the United States Constitution. While we reach our holding in this case without deciding that issue, we note that while the notion may be regarded as outmoded or unfair, nothing in the cases we surveyed from other jurisdictions even hints that it is unconstitutional. Instead, courts and legislatures in other jurisdictions still acknowledge the duty, but in some instances, have expanded the doctrine to include a reciprocal duty of a wife to her husband.

*931 Some jurisdictions have held that there is a duty of mutual or shared support between husband and wife, sometimes using the gender-neutral term, “spouse.” The Louisiana Courts have held that “[o]ne of the legal consequences of the contract of marriage is the duty of support that one spouse owes the other.” *Guidry v. Guidry*, 467 So.2d 96, 98 (La.App. 3rd Cir.1985); *Collins v. Collins*, 458 So.2d 1008, 1010 (La.App. 3rd Cir.1984); *See also Yale University School of Medicine v. Collier*, 206 Conn. 31, 536 A.2d 588, 591 (1988). In Ohio, a wife was found to be liable for the medical expenses of her deceased husband for which she had not contracted only when his own assets were insufficient to cover the amount owed. *Ohio State University Hospital v. Kinkaid*, 48 Ohio St.3d 78, 549 N.E.2d 517, 518 (1990). The Ohio Court cited R.C. 3103.03 for the proposition that “[t]he husband must support himself, his wife, and his minor children out of his property or by his labor. If he is unable to do so, the wife must assist him so far as she is able.” In so holding, the Ohio Court further noted that:

621 So.2d 928
 (Cite as: 621 So.2d 928)

We are aware of the strong public policy argument that *the responsibility of support between a wife and husband should be one of mutual and equal obligation*. We recognize that it is a desirable goal to have autonomy and equality regardless of gender. We are also mindful of R.C. 3103.01 which provides that “[h]usband and wife contract towards each other obligations of mutual respect, fidelity and support.” (Emphasis added.)

549 N.E.2d at 519. Indeed, we said as much in *Cooke*, when noting the obligation and duty a husband and wife have to one other.

IV.

Nothing in our jurisprudence obligates one spouse to be liable to a third party for the debts of the other without express consent. To hold otherwise would violate [art. 4, § 94 of the Mississippi Constitution](#) and open the door for either spouse to control or deplete the other's separate estate. Accordingly, we reverse the decision of the Circuit Court and render judgment here for appellant.

REVERSED AND RENDERED.

HAWKINS, C.J., DAN M. LEE, P.J., and BANKS, ROBERTS and SMITH, JJ., concur.

BANKS, J., concurs with separate written opinion. PRATHER, P.J., dissents with separate written opinion joined by SULLIVAN and PITTMAN, JJ. BANKS, Justice, concurring:

While I cannot agree that [Miss. Const. § 94](#) dictates that result, I agree with the majority disposition of this case. I would hold simply that the spousal duty of support is not enforceable by strangers to the marital contract and abandon judge-made law not appropriate in modern society absent legislative action. *Glaskox v. Miss. Export R.R. Co.*, 614 So.2d 906 (Miss. 1992); *Kirk v. Koch*, 607 So.2d 1220 (Miss.1992); *Pruett v. City of Rosedale*, 421 So.2d 1046 (Miss.1982).

PRATHER, Presiding Justice, dissenting:

Respectfully, I dissent from the majority opinion because it departs from well-entrenched law of

this state. In this case, the issue is whether a husband is legally responsible for necessary medical treatment furnished his wife by a third party during their marriage.

I.

Medical Credit Services, Inc., assignee of Memorial Hospital at Gulfport, sued Jeremy R. Govan, husband of Kimberly Govan, for medical services rendered his wife during their marriage. The county court entered an order granting Govan time within which to join his wife in the suit finding that both parties appear to be “jointly” liable for the debt. After service of process on the wife, the county court entered two orders: “Judgment on the Pleading” against Jeremy R. Govan and “Judgment *932 by Default” against Kimberly—each for the full debt, attorney's fee, interest, and costs. Jeremy Govan appealed to the circuit court and to this Court seeking reversal of the judgment entered against him.

Jeremy Govan (Govan) asserts a denial of equal protection of the law under the Fourteenth Amendment of the United States Constitution. He also bases his position on the [Mississippi Constitution Art. 4, Section 94](#) and [Miss.Code Ann. § 93–3–1 \(1972\)](#), removing the disability of coverture of married women in 1872. Relying on these authorities and *Cooke v. Adams*, 183 So.2d 925 (Miss.1966), the majority reverses the judgment against the husband. I respectfully submit that these authorities are not supportive of this conclusion.

II.

Historically, in Mississippi “[o]ne of the most fundamental duties growing out of the law of domestic relations is the duty of the husband to support the wife. That duty arises out of the marital relationship and continues during the existence of that relationship.” *Henderson v. Henderson*, 208 Miss. 98, 104, 43 So.2d 871, 872 (1950); *Thompson v. Thompson*, 527 So.2d 617, 621 (Miss.1988).

It is true that contemporary concepts of the rights of women have eroded our attitudes toward

621 So.2d 928
 (Cite as: 621 So.2d 928)

this basic and fundamental duty. This is evidenced and expressed in interpretation of our case law. However, I strongly disagree that in *Cooke*, cited by the majority, this Court abandoned totally the basic principles of *Henderson* and *Thompson*, and that today a husband is under no duty to provide medical services for his wife. The majority totally omits a quotation from *Cooke* that stated this principle:

It is not intended that anything in this decision shall diminish, or affect any duty or obligation of husband and wife to each other, *nor the obligation which rests upon the husband to support his wife and family, nor their right to look to him for such support.*

Id. at 927. (Emphasis added).

The law on this subject has been in transition. This contemporary trend is expressed in general terms by an annotation at 20 A.L.R. 4th 198–199, as follows:

A question has arisen in the modern cases within the scope of this annotation concerning whether the husband remains, as under common law, primarily or solely liable for necessities furnished the wife, with the wife being liable under various theories but only in a secondary capacity, or whether the wife herself may be equally or primarily liable. Thus, in a number of cases, the courts have ruled that the husband remains primarily liable, so that he must be sued first before an action could be brought against the wife, but if the judgment against the husband remained unsatisfied, the wife could be held secondarily liable under contractual theories of liability.... Some of these cases reasoned that despite the growing equality of women with men in terms of employment, their incomes lagged far behind their male counterparts, so that primary liability of the husbands was appropriate. In other cases, the courts have taken the general position that the husband was primarily or solely liable, and that the wife could be held liable if she expressly con-

tracted, without stating whether an action could be brought against the wife without prior action being taken against the husband or whether the wife was secondarily liable.... On the other hand, other cases rejected as inapplicable to modern social and economic conditions the common-law rule immunizing a wife from liability for her own necessities, noting that such rule was no longer applicable in modern society where many married women were employed and could pay for their own necessities. Consequently, a number of these courts, frequently reasoning that the spouse incurring expenses for necessary goods should be held primarily liable therefor and the other spouse only secondarily liable therefor, have held that a wife purchasing her necessities should be held primarily liable and her husband only secondarily liable.... Based on similar reasoning, other courts have taken*933 the position that both spouses should be jointly held liable for each other's necessities....

Mississippi's case law has not definitively adopted one of these alternative dispositions in this evolving area of the law. The *Cooke* holding is predicated upon two conditions: (1) a married woman having a separate estate, and (2) having obtained necessities under circumstances that would give rise to an implied contract. In *Cooke*, the deceased wife had an estate, but in the instant case, the record is silent. Likewise, in *Cooke*, the Court expressly continued the husband's obligation to support his wife; but the majority opinion ignores that part of the holding of *Cooke*, and adopts a contrary result.

The majority opinion bases its decision on Miss. Const. Art. 4, Sec. 94 and on Miss.Code Ann. § 93–3–1 (1972). The subject matter of that authority deals with removal of the disability of married women to own property, and to contract with reference to their property. But that legislation does not address the liability of a wife for necessities absent an express contractual agreement. *Cooke* modified this common law rule to imply a contract under

621 So.2d 928
(Cite as: 621 So.2d 928)

limited circumstances.

In addition, the majority relies on [Miss.Code Ann. § 93–5–23 \(1972\)](#) and states that both parents are to provide support for their minor children in proportion to their financial abilities. However, this ignores what this Court stated in [Tedford v. Dempsey](#), 437 So.2d 410, 422 (Miss.1983) when we recognized that in entering a child-support order, a chancellor must consider what is reasonable and that financial resources reasonably available to each parent is but one factor. Further this Court stated that “[i]t is more than a realistic recognition that in our society men still have a far greater earning capacity than do women.” This Court recognizes that the custodial parent also provides “in kind” services. Indeed, substantial non-monetary contributions by a non-working mother have been acknowledged to be valuable contributions. Each case is based on its particular circumstances, and to require a greater contribution from the father when the circumstances requires it evidences a compelling state interest and does not offend the equal protection requirement of the constitution and [§ 93–5–23](#). It is my position that the authorities relied on by the majority are not supportive of the result reached.

III.

If this Court is ready to adopt a new interpretation of its law on this subject in view of contemporary attitudes, it is my position that this Court should rule that a husband remains primarily liable for necessities of his wife and children. But if the judgment against the husband is unsatisfied, then the wife could be held secondarily liable under implied contractual theories of liability where she is employed and could pay for her necessities. [Estate of Stromsted](#), 99 Wis.2d 136, 299 N.W.2d 226 (1980). This rule would permit the trial court to determine the wife's employment status, her separate estate, if any, and her relative ability to pay. Whether the parties are separated and living apart is an important factor, also.

Other alternatives are also available. But respectfully, I suggest that the majority's views do not

represent mine, and I therefore dissent.

[SULLIVAN](#) and [PITTMAN](#), JJ., join this opinion.

Miss.,1993.

Govan v. Medical Credit Services, Inc.
621 So.2d 928

END OF DOCUMENT



Supreme Court of North Carolina.
NORTH CAROLINA BAPTIST HOSPITALS,
INC.

v.

Donnie G. HARRIS and Vern Dell Harris.

No. 284PA86.

April 7, 1987.

Hospital brought action against husband and wife to recover for services rendered to husband. The District Court, Civil Session, Yadkin County, Edgar B. Gregory, J., dismissed complaint against wife. Hospital appealed. The Court of Appeals, 80 N.C.App. 167, 341 S.E.2d 619, affirmed. Hospital appealed. The Supreme Court, Meyer, J., held that doctrine of necessities applied to either spouse, and thus, hospital was entitled to recover from wife for necessary medical expenses incurred by husband.

Reversed and remanded.

West Headnotes

Husband and Wife 205 19(15)

205 Husband and Wife

205I Mutual Rights, Duties, and Liabilities

205k19 Necessaries and Family Expenses

205k19(15) k. Medical Services. **Most**

Cited Cases

Doctrine of necessities, which had been applicable only to medical services provided to the wife, applied to medical services provided to either spouse; therefore, hospital was entitled to recover from wife for necessary medical expenses incurred by her husband, even though wife did not request husband's admission to hospital, did not anticipate that husband would be admitted to hospital, and did not agree to pay for the services; overruling *Presbyterian Hospitals v. McCartha*, 66 N.C.App. 177, 310 S.E.2d 409.

****471 *347** On discretionary review of a unanimous, unpublished opinion of the North Carolina Court of Appeals, 80 N.C.App. 167, 341 S.E.2d 619 (1986), affirming the judgment of Gregory, J., entered at the 20 May 1985 Civil Session of District Court, Yadkin County, dismissing plaintiff's complaint against defendant for failure to state a claim for relief.

This case originated as an action by North Carolina Baptist Hospitals, Inc., to recover payment for services rendered to Donnie ***348** G. Harris in January 1982. The hospital brought suit against both Mr. Harris and his wife, Vern Dell Harris, alleging an outstanding debt of \$3,303.61. The case was heard on plaintiff's motion for summary judgment at the 14 November 1983 session of the Yadkin County District Court, the Honorable Edgar B. Gregory presiding. Summary judgment was entered against defendant Donnie G. Harris in the full amount of the outstanding debt plus interest and costs. That judgment was not appealed. In the same order, Judge Gregory dismissed the plaintiff's complaint against defendant Vern Dell. Plaintiff appealed this latter portion of the judgment. In an unpublished opinion filed on 4 December 1984, the dismissal of the action against Vern Dell was reversed by the Court of Appeals and remanded for further findings of fact. *NC Baptist Hospitals v. Harris*, 71 N.C.App. 638, 323 S.E.2d 513 (1984). Following remand, plaintiff renewed its motion for summary judgment against Vern Dell, accompanied by additional affidavits. This motion was denied. The matter was tried at the 20 May 1985 Civil Session of the Yadkin County District Court, before Judge Gregory. Judge Gregory heard the evidence in the case on 20 May 1985 and took the matter under advisement. ****472** On 23 May 1985, Judge Gregory made findings of fact and dismissed plaintiff's complaint against Vern Dell.

Plaintiff made a timely appeal to the Court of Appeals. The parties stipulated to the facts as found by the trial court. By unpublished opinion filed on 1

April 1986, the Court of Appeals affirmed the dismissal of the complaint against Vern Dell. *N.C. Baptist Hos., Inc. v. Harris*, 80 N.C.App. 167, 341 S.E.2d 619 (1986). This Court granted discretionary review by an order entered on 28 August 1986. Heard in the Supreme Court 9 February 1987.

Turner, Enochs, Sparrow & Boone, P.A. by Thomas E. Cone and Wendell H. Ott, Greensboro, for plaintiff-appellant.

Finger, Parker & Avram by Raymond A. Parker, II and M. Neil Finger, Jonesville, for defendants-appellees.

Miller, Johnston, Taylor & Allison by James W. Allison and Paul A. Kohut, Charlotte, for Presbyterian Hosp., amicus curiae.

***349** MEYER, Justice.

On 20 January 1982 defendant Donnie Harris was admitted to plaintiff North Carolina Baptist Hospital for medical treatment. This treatment was in fact provided. It was stipulated by the parties that the treatment was necessary for the health and well-being of Mr. Harris.

At the time of Mr. Harris' admission to the hospital, the hospital's business office submitted to his wife, defendant Vern Dell Harris, a form to sign authorizing treatment. Vern Dell signed this form in her husband's name, "by Vern Dell Harris." She declined to sign as guarantor. The trial judge found as a fact that Vern Dell neither requested her husband's admission to the hospital, anticipated that he would be admitted, nor agreed to pay for the services.

The hospital charged \$3,303.61 for the services provided to defendant Donnie Harris. Neither Donnie nor Vern Dell has paid this bill to date.

We are called upon in this case to decide whether, in the absence of an express undertaking on her part, a wife may be held responsible for the necessary medical expenses incurred by her husband. We hold that she may be and that the

"doctrine of necessities," heretofore applicable only to medical services provided to the wife, applies to such services provided to either spouse.

At common law it was the duty of the husband to provide for the necessary expenses of his wife. *Bowen v. Daugherty*, 168 N.C. 242, 84 S.E. 265 (1915). This duty arose from the fact of the marriage, not from any express undertaking on his part. *Id.* The doctrine of necessities was a recognition of the traditional status of the husband in the marital relationship as the financial provider of the family's needs, *Perry v. Stancil*, 237 N.C. 442, 75 S.E.2d 512 (1953), and has been enforced even where the husband was incompetent, *Reynolds v. Reynolds*, 208 N.C. 254, 180 S.E. 70 (1935), or where the wife was financially capable of providing for her own needs. *See Bowling v. Bowling*, 252 N.C. 527, 114 S.E.2d 228 (1960). It is well settled that "doctrine of necessities" applies to necessary medical expenses. *Alamance County Hospitals, Inc. v. Neighbors*, 315 N.C. 362, 338 S.E.2d 87 (1986).

***350** A corresponding duty on the part of the wife has also been a feature of the common law. She was obliged to provide domestic services which pertain to the comfort, care, and well-being of her family and consortium to her husband. *Ritchie v. White*, 225 N.C. 450, 35 S.E.2d 414 (1945).

The traditional allocation of marital rights and duties was based at least in part on the legal disability of married women to manage their own financial affairs. *See* 2 R. Lee, *N.C. Family Law* § 107 (4th ed. 1980 & Supp.1985). At early common law, the property of a woman vested in her husband at the point of marriage. *O'Connor v. Harris*, 81 N.C. 279 (1878); *Arrington v. Yarbrough*, 54 N.C. 72 (1 Jones Eq.) (1853). As early as 1837, however, the legislature began taking steps to reduce the control of the husband over his wife's property. Thus, a wife could dispose of her property to her husband if the court ****473** could be assured, during a privy examination, that the transaction was entered into voluntarily. *Perry v. Stancil*, 237 N.C. 442, 75 S.E.2d 512 (1953). With the Constitution of 1868,

the legislature provided for the right of the wife to dispose of her property to third parties, although still requiring the consent of the husband. Transactions between the spouses were presumed to be the result of the husband's control over the wife as late as 1891. *See, e.g., Walker v. Long*, 109 N.C. 510, 14 S.E. 299 (1891).

Even after the enactment of the "Martin Act," 1911 Sess. Laws ch. 109 (now N.C.G.S. § 52-2), giving a married woman the right to dispose of her own property without the permission of her husband, and N.C.G.S. § 47-14.1 (formerly § 47-116), abolishing the privity examination, the judge-made doctrine of necessities continued to provide financial protection for married women. *See, e.g., Ritchie v. White*, 225 N.C. 450, 35 S.E.2d 414. Several commentators have noted a resulting disequilibrium in the law: wives share their husbands' freedom to contract and are additionally entitled to financial support, while no longer being required to provide the traditional domestic services. As Professor Lee noted:

The husband's common law duty to support his wife and minor children was partly balanced by the wife's duty to render services in the home. But the law can enforce the former, not the latter.

2 R. Lee, *N.C. Family Law* § 131, at 128 (4th ed. 1980).

***351** We have consistently held that a wife is responsible for her own necessities upon her express contract or on equitable principles when the husband was unable to pay, notwithstanding her husband's concurrent liability. *Bowen v. Daugherty*, 168 N.C. 242, 84 S.E. 265. It appears that this Court has not addressed the question of whether a wife may also be liable for the necessary medical expenses of her husband. A review of those cases in which other jurisdictions have reached this issue, and of our state's public policy as expressed through legislation, persuades us that the doctrine of necessities should be expanded to include this situation.

Most jurisdictions reaching this issue have held that the doctrine of necessities should be applied in a gender-neutral fashion. Some states have eliminated it from their common law altogether. *See, e.g., Condore v. Prince George's County*, 289 Md. 516, 425 A.2d 1011 (1981); *Schilling v. Bedford County Memorial Hospital, Inc.*, 225 Va. 539, 303 S.E.2d 905 (1983). Other jurisdictions have expanded the doctrine to apply equally to either gender. *See, e.g., Jersey Shore Medical Center-Fitkin Hospital v. Baum's Estate*, 84 N.J. 137, 417 A.2d 1003 (1980); *Richland Memorial Hospital v. Burton*, 282 S.C. 159, 318 S.E.2d 12 (1984). Still other jurisdictions have imposed liability on the wife where the husband is unable to pay for his own necessities. *See, e.g., Borgess Medical Center v. Smith*, 149 Mich.App. 796, 386 N.W.2d 684 (1986); *Marshfield Clinic v. Discher*, 105 Wisc.2d 506, 314 N.W.2d 326 (1982). One jurisdiction reaching this issue recently has held that the common law doctrine, as historically applied, is still the law. *See Shands Teaching Hosp. and Clinics, Inc. v. Smith*, 497 So.2d 644 (Fla.1986). We agree with plaintiff that the trend is toward a gender-neutral application of the doctrine. *See* Annot. "Wife's Liability for Necessaries Furnished Husband," 11 A.L.R.4th 1160 (1982 and Supp.1986). Our concern here must be with the policy of North Carolina as evinced by the actions of our legislature. It is to this consideration we now turn.

This Court has not addressed the question of whether, or under what circumstances, a wife may be held liable for the necessary medical expenses provided to her husband. The defendant wife relies on *Presbyterian Hospitals v. McCartha*, 66 N.C.App. 177, 310 S.E.2d 409, *disc. rev. improvidently allowed*, 312 N.C. 485, 322 S.E.2d 761 (1984). There the Court of Appeals, under ***352** facts similar to the ones at bar, determined that a wife was not liable for the medical expenses of her husband. The court reasoned that since the hospital was looking to the husband for payment and not relying on the wife's credit, there ****474** was no basis in law or equity for her to be held liable.

A review of several historical developments in the law of our state indicates a trend toward “gender neutrality.” Many of the statutory provisions that formerly applied only to males now apply to both genders. Thus, N.C. G.S. § 14-322, which had provided for criminal sanctions against males for non-support, now applies to either gender. There is no longer a statutory presumption that the husband is the supporting spouse for alimony purposes. N.C.G.S. § 50-16.1(4) (1984). No longer is the duty to support children the sole primary responsibility of the father. N.C.G.S. § 50-13.4(b) (1984).

Perhaps the most convincing evidence that our legislature intends to bring gender neutrality into the law of domestic relations is the Equitable Distribution Act. N.C.G.S. §§ 50-20, -21 (1984 & Supp.1985). This act is uniform in its treatment of parties to a marriage as equal partners in a joint enterprise and appears to us to be a clear break from the archaic notions reflected in earlier statutes.

We followed the legislative trend toward gender neutrality in our recent case of *Mims v. Mims*, 305 N.C. 41, 286 S.E.2d 779 (1982). There, we considered the judge-made rule that where a wife buys property and puts it in her husband's name, a resulting trust in the property arises in her favor; yet where the husband buys property and puts it in his wife's name, the law presumes it to have been a gift to her. We noted that this rule arose in our courts sitting in equity to protect the interests of the wife, whom the law presumed to be controlled by her husband in financial matters. In deciding that this gender-biased rule was no longer in keeping with the modern concept of the marriage and with recent legislative trends already alluded to, we said:

These notions no longer accurately represent the society in which we live, and our laws have changed to reflect this fact. No longer must the husband be, nor is he in all instances the sole owner of the family wealth. No longer is the wife viewed as “little more than a chattel in the eyes of the *353

law.” *Nicholson v. Hospital*, 300 N.C. 295, 298, 266 S.E.2d 818, 820 (1980). No longer in all cases is the husband the supporting and the wife the dependent spouse. No longer is the wife thought generally to be under the domination of her husband.

Mims v. Mims, 305 N.C. at 49, 286 S.E.2d at 785 (citation omitted) (footnotes omitted).

We find that the reasoning in *Mims* is sound and applies equally well to the judge-made gender-biased rule requiring a husband to pay for the necessities of his wife, but relieving her of a reciprocal duty. We therefore hold that a wife is liable for the necessary medical expenses provided for her husband. To the extent that the Court of Appeals opinion in *McCartha*, 66 N.C.App. 177, 310 S.E.2d 409, conflicts with our ruling, that case is overruled.

Defendant contends that a gender-neutral application of the doctrine would be better accomplished by abolishing the doctrine of necessities altogether. We see no reason to take this course. The doctrine has historically served several beneficial functions. Among these are the encouragement of health-care providers and facilities to provide needed medical attention to married persons and the recognition that the marriage involves shared wealth, expenses, rights, and duties. We conclude that the benefits to the institution of marriage will be enhanced by expanding rather than abolishing the doctrine of necessities. Our decision 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.

Because this obligation, like the husband's obligation to pay for the medical expenses of his wife, arises from the marriage relationship, attempts by the wife, as here, to disavow this duty have no effect.

Having held that the doctrine of necessities applies equally to both spouses, we turn to the ques-

tion of whether the dismissal of plaintiff's action against Vern Dell Harris was proper. In order to make out a *prima facie* case against a spouse for the **475 recovery of expenses incurred in providing necessary medical services to the other spouse, the following must be shown:

(1) medical services were provided to the spouse;

*354 (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 person to whom the medical services were provided at the time such services were provided; and

(4) the payment for the necessities has not been made.

Turning to the facts in the present case, it appears that all of the elements of a *prima facie* case have been proven or stipulated to by the parties and that no affirmative defenses have been shown. The trial judge found as facts, and the parties so stipulated, that services were provided to defendant Donnie Harris; that these services were necessary to his health and well-being; that Donnie Harris was married to Vern Dell Harris at the time that the services were provided; that the outstanding balance for the services was \$3,303.61; and that the payment for those services has not been made. We conclude, therefore, that plaintiff is entitled to recover of Vern Dell Harris \$3,303.61, the cost of the medical services provided for her husband by plaintiff.

We, therefore, reverse the decision of the Court of Appeals, vacate the judgment of the trial court, and remand the case to the Court of Appeals for further remand to the District Court, Yadkin County, for entry of judgment for \$3,303.61, plus interest, in favor of plaintiff against Vern Dell Harris.

REVERSED AND REMANDED.

N.C.,1987.

North Carolina Baptist Hospitals, Inc. v. Harris
319 N.C. 347, 354 S.E.2d 471, 55 USLW 2655

END OF DOCUMENT

C

Supreme Court of New Hampshire.
CHESHIRE MEDICAL CENTER

v.

Rachel R. and Robert W. HOLBROOK.

No. 94-735.

Aug. 25, 1995.

Medical center which had provided services to wife filed petition to attach real property owned by husband under common-law doctrine of necessities. Husband questioned whether doctrine of necessities remained law of New Hampshire, and the Superior Court, Cheshire County, [Mangones, J.](#), approved motion to transfer without ruling on questions raised. The Supreme Court, [Johnson, J.](#), held that: (1) common-law doctrine of necessities violated equal protection clause of New Hampshire Constitution; (2) doctrine would not be abolished, but judicially reformulated to apply to all married individuals equally, regardless of their sex; and (3) husband was secondarily liable for necessary medical services provided to his wife, under judicially reformulated doctrine of necessities, but only to the extent that resources of wife were insufficient to satisfy debt.

Remanded.

West Headnotes

[1] Constitutional Law 92 3081

92 Constitutional Law

92XXVI Equal Protection

92XXVI(A) In General

92XXVI(A)6 Levels of Scrutiny

92k3069 Particular Classes

92k3081 k. Sex or Gender. **Most**

Cited Cases

(Formerly 92k224(1))

To withstand scrutiny under equal protection clause of New Hampshire Constitution, common

law rule that distributes benefits or burdens on basis of gender must be necessary to serve some compelling state interest. [Const. Pt. 1, Art. 2.](#)

[2] Constitutional Law 92 3409

92 Constitutional Law

92XXVI Equal Protection

92XXVI(B) Particular Classes

92XXVI(B)11 Sex or Gender

92k3408 Families and Children

92k3409 k. In General. **Most Cited**

Cases

(Formerly 92k224(2))

Husband and Wife 205 19(1)

205 Husband and Wife

205I Mutual Rights, Duties, and Liabilities

205k19 Necessaries and Family Expenses

205k19(1) k. In General. **Most Cited**

Cases

Common law doctrine of necessities, under which husband was liable for necessities supplied to wife but no corresponding obligation was imposed on wife for necessities furnished to husband, was not necessary to serve any compelling state interest, but was rather predicated on anachronistic assumptions about marital relations and female dependence, and violated equal protection clause of New Hampshire Constitution. [Const. Pt. 1, Art. 2.](#)

[3] Constitutional Law 92 3409

92 Constitutional Law

92XXVI Equal Protection

92XXVI(B) Particular Classes

92XXVI(B)11 Sex or Gender

92k3408 Families and Children

92k3409 k. In General. **Most Cited**

Cases

(Formerly 92k224(2))

Constitutional Law 92 3413

92 Constitutional Law

92XXVI Equal Protection

92XXVI(B) Particular Classes

92XXVI(B)11 Sex or Gender

92k3413 k. Tort or Financial Liabilities.

Most Cited Cases

(Formerly 92k224(2))

Husband and Wife 205 ↪19(1)

205 Husband and Wife

205I Mutual Rights, Duties, and Liabilities

205k19 Necessaries and Family Expenses

205k19(1) k. In General. Most Cited

Cases

Upon finding that common law doctrine of necessities violated equal protection, court did not have to abolish doctrine but could reformulate it to apply equally to both husbands and wives, inasmuch as such a gender-neutral formulation of doctrine was consistent with policy underlying New Hampshire's gender-neutral support laws. *Const. Pt. 1, Art. 2; RSA 458:19, 546-A:2.*

[4] Husband and Wife 205 ↪19(1)

205 Husband and Wife

205I Mutual Rights, Duties, and Liabilities

205k19 Necessaries and Family Expenses

205k19(1) k. In General. Most Cited

Cases

Under judicially reformulated doctrine of necessities, spouse who receives necessary goods or services, be it husband or wife, is primarily liable for payment, but other spouse is secondarily liable to the extent that resources of first spouse are insufficient to satisfy debt.

[5] Husband and Wife 205 ↪19(1)

205 Husband and Wife

205I Mutual Rights, Duties, and Liabilities

205k19 Necessaries and Family Expenses

205k19(1) k. In General. Most Cited

Cases

Under judicially reformulated doctrine of ne-

cessaries, husband was not liable for necessary medical expenses incurred by his wife unless resources of wife were insufficient to satisfy debt; medical provider had to look first to wife for payment before pursuing collection from husband.

****1345 *187 Franklin H. Hopkins**, Keene, by brief and orally, for plaintiff.

Rachel R. Holbrook and Robert W. Holbrook, pro se, filed no brief.

JOHNSON, Justice.

This interlocutory transfer without ruling from the Superior Court (*Mangones*, J.) poses several questions relating to the common law doctrine of necessities, under which a husband is bound to pay for necessary medical services furnished to his wife. We hold that a husband or wife is not liable for necessary medical expenses incurred by his or her spouse unless the resources of the spouse who received the services are insufficient to satisfy the debt.

The facts are not in dispute. In March 1993, the defendants, Rachel R. Holbrook and Robert W. Holbrook, were married and ***188** shared a residence. During this time, Mrs. Holbrook received medical services from the plaintiff, Cheshire Medical Center. Cheshire Medical Center charged her \$7,080.40 for her treatment. Mrs. Holbrook, who was subsequently incarcerated, could not pay the amount due. She offered to pay the medical center ten dollars each month until her release from prison in 1996, at which time she would “make more substantial payments, ****1346** provided [she is] in good health and working.”

Dissatisfied with this proposed payment schedule, Cheshire Medical Center filed a petition to attach real property owned by Mrs. Holbrook's husband. During a superior court hearing on the matter, her husband questioned whether the “doctrine of necessities” remains the law of New Hampshire. The superior court approved a motion by both

parties to transfer the issue without ruling to this court.

The transferred questions of law are: (1) whether the necessities doctrine as articulated in our common law violates the equal protection clauses of the New Hampshire and United States Constitutions, N.H. CONST. pt. I, art. 2; U.S. CONST. amend. XIV, § 1; and if so, (2) whether the doctrine should be abolished; and if not, (3) whether the liability imposed under the doctrine is sole, joint and several, or primary and secondary. We find that as traditionally formulated, the necessities doctrine is unconstitutional, and should be revised to impose reciprocal responsibilities upon husbands and wives. We also hold that the spouse who receives the necessary goods or services is primarily liable for payment; however, the other spouse is secondarily liable.

I. The Common Law Doctrine of Necessaries

At common law, upon marriage a woman forfeited her legal existence and became the property of her husband:

A man has as good a right to his wife, as to the property acquired under a marriage contract; and to divest him of that right without his default, and against his will, would be as flagrant a violation of the principles of justice as the confiscation of his estate.

Drew's Appeal, 57 N.H. 181, 183 (1876) (quotation omitted); see *Fremont v. Sandown*, 56 N.H. 300, 303 (1876). “[P]ersonal chattels in possession which belonged to the wife at the time of the marriage, or which fell to her afterwards, became instantly the absolute property of the husband, ... her choses in action became his ... by his asserting title to them and reducing them to possession.” *Hoyt v. White*, 46 N.H. 45, 46-47 (1865). Moreover, “[t]he *189 services and earnings of the wife belong[ed] to the husband, as much as his own; in law, they [were] his own.” *Id.* at 47. As she had no legal identity, “the married woman's contracts were absolutely void,-not merely voidable,

like those of infants and lunatics.” *Dunlap v. Dunlap*, 84 N.H. 352, 353, 150 A. 905, 906 (1930) (quotation omitted).

Because the wife could not contract for food, clothing, or medical needs, *see id.*, her husband was obligated to provide her with such “necessaries,” *cf. Harris v. Webster*, 58 N.H. 481, 482 (1878) (at common law, married woman could not contract because marriage extinguished her “legal personality”; married woman was “under the protection and influence” of her husband). If the husband failed to do so, the doctrine of necessities made him legally liable for essential goods or services provided to his wife by third parties. *Ott v. Hentall*, 70 N.H. 231, 232, 47 A. 80, 80 (1900); *Morrison v. Holt*, 42 N.H. 478, 479-80 (1861); *Tebbets v. Hapgood*, 34 N.H. 420, 421 (1857). The husband's liability did not exceed his reasonable ability to pay. *See Ott*, 70 N.H. at 232, 47 A. at 80; *Fremont*, 56 N.H. at 303.

In the mid-nineteenth century, the enactment of the married woman's act partly dissipated the marital disabilities of women, *cf. RSA* chapter 460 (1992). The common law preventing married women from retaining their earnings and owning property was abolished. *See Cooper v. Alger*, 51 N.H. 172, 174-75 (1871); *Houston v. Clark*, 50 N.H. 479, 481-82 (1871). In 1951, the legislature finally accorded married women the unrestricted right to contract that they possess today. *See Laws* 1951, 78:1. In 1955, the legislature enacted *RSA 546-A:2*, which imposes a gender-neutral obligation of spousal support. *Laws* 1955, 206:1. Despite these developments, the common law rule of necessities has endured.

II. Equal Protection

[1][2] Our constitution guarantees that “[e]quality of rights under the law shall not be denied or abridged by this state on account**1347 of ... sex.” N.H. CONST. pt. I, art. 2. In order to withstand scrutiny under this provision, a common law rule that distributes benefits or burdens on the basis of gender must be necessary to serve a compelling State interest. *See LeClair v. LeClair*, 137

N.H. 213, 222, 624 A.2d 1350, 1355 (1993).

We find no compelling justification for the gender bias embodied in the traditional necessities doctrine.

[T]he old notion that generally it is the man's primary responsibility to provide a home and its essentials can no longer justify a [law] that discriminates on the basis of gender. No longer is the female destined solely for the home *190 and the rearing of the family, and only the male for the marketplace and the world of ideas.

Orr v. Orr, 440 U.S. 268, 279-80, 99 S.Ct. 1102, 1111-12, 59 L.Ed.2d 306 (1979) (quotation and brackets omitted). The traditional formulation of the necessities doctrine, predicated on anachronistic assumptions about marital relations and female dependence, does not withstand scrutiny under the compelling interest standard.

Because we find that the common law doctrine violates our State Constitution, we need not engage in a separate federal examination. See *State v. Ball*, 124 N.H. 226, 232, 471 A.2d 347, 351 (1983).

III. Modification of the Common Law Doctrine

[3] Having determined that the gender bias in the necessities rule violates our constitution's equal protection guarantees, we must determine whether the doctrine should be abolished or revised. Compare *Schilling v. Bedford Cty. Memorial Hosp.*, 225 Va. 539, 303 S.E.2d 905, 908 (1983) (leaving to legislature decision whether to modify necessities doctrine) with *Memorial Hospital v. Hahaj*, 430 N.E.2d 412, 415-16 (Ind.Ct.App.1982) (extending necessities doctrine).

[4][5] We conclude that imposing a reciprocal obligation on both parties to the marital contract is consistent with the policy underlying New Hampshire's gender-neutral support laws. See RSA 546-A:2; RSA 458:19 (1992). Accordingly, we hereby expand the common law doctrine to apply to all married individuals equally, regardless of

gender. We also hold that a medical provider must first seek payment from the spouse who received its services before pursuing collection from the other spouse. Cf. *In re Houghton Estate*, 114 N.H. 33, 36-37, 314 A.2d 674, 676 (1974) (under former RSA 8:41-a, patient primarily liable for his medical expenses and his share of decedent's estate only secondarily so).

Remanded.

All concurred.

N.H.,1995.
Cheshire Medical Center v. Holbrook
140 N.H. 187, 663 A.2d 1344

END OF DOCUMENT

374 So.2d 895
(Cite as: 374 So.2d 895)



Court of Civil Appeals of Alabama.
William Herbert ORR
v.
Lillian M. ORR.

Civ. 1006.
May 30, 1979.
Rehearing Denied June 27, 1979.

Proceeding was brought by former wife for rule nisi due to former husband's failure to pay alimony. The Circuit Court, Lee County, G. H. Wright, Jr., J., denied husband's constitutional challenge to alimony statutes, and former husband appealed. The Court of Civil Appeals, 351 So.2d 904, affirmed. The Supreme Court of Alabama granted petition for writ of certiorari but subsequently quashed writ as improvidently granted, 351 So.2d 906, and former husband appealed. The United States Supreme Court, 99 S.Ct. 1102, 59 L.Ed.2d 306, held that Alabama alimony statutes violated equal protection, and remanded case. On former wife's motion to affirm, the Court of Civil Appeals, Holmes, J., held that rights under alimony statutes, which had been found constitutionally impermissible because they improperly excluded statutory benefits from class of individuals on basis of sex, would be neutrally extended to males as well as females.

Judgment of trial court affirmed.

Writ denied, Ala., 374 So.2d 898.

West Headnotes

[1] Federal Courts 170B ⚔️513

170B Federal Courts

170BVII Supreme Court

170BVII(E) Review of Decisions of State Courts

170Bk513 k. Determination and disposition of cause. [Most Cited Cases](#)

(Formerly 134k286(1))

Considering entire proceeding in which former wife sought rule nisi due to former husband's failure to pay alimony and importance of issues raised, and especially considering United States Supreme Court's determination in case that Alabama alimony statutes violated equal protection, former wife's motion to affirm trial court's judgment in favor of wife was properly before the Court of Civil Appeals and issues raised therein were appropriate for its consideration on remand from the United States Supreme Court.

[2] Constitutional Law 92 ⚔️961

92 Constitutional Law

92VI Enforcement of Constitutional Provisions

92VI(C) Determination of Constitutional Questions

92VI(C)1 In General

92k960 Judicial Authority and Duty in General

92k961 k. In general. [Most Cited](#)

Cases

(Formerly 92k45)

Where statute is constitutionally infirm on basis of underinclusiveness, court may satisfy Constitution's commands by either extending benefits to those excluded from scope of its coverage or by invalidation of statute in its entirety.

[3] Constitutional Law 92 ⚔️961

92 Constitutional Law

92VI Enforcement of Constitutional Provisions

92VI(C) Determination of Constitutional Questions

92VI(C)1 In General

92k960 Judicial Authority and Duty in General

92k961 k. In general. [Most Cited](#)

Cases

(Formerly 92k45)

Choice between invalidation of statute or ex-

374 So.2d 895
(Cite as: 374 So.2d 895)

pansion of scope of its applicability to cure constitutional infirmity requires of necessity an ascertainment of predominant legislative purpose underlying statute's enactment; that is to say, given nature and substance of statute, its relevant economic, social and historical implications, question is whether it can be concluded that benefits should be terminated to class of persons whom legislature intended to benefit.

[4] Constitutional Law 92 1007

92 Constitutional Law

92VI Enforcement of Constitutional Provisions

92VI(C) Determination of Constitutional Questions

92VI(C)3 Presumptions and Construction as to Constitutionality

92k1006 Particular Issues and Applications

92k1007 k. In general. Most Cited

Cases

(Formerly 92k45)

Divorce 134 559

134 Divorce

134V Spousal Support, Allowances, and Disposition of Property

134V(C) Spousal Support

134k559 k. Nature and purpose of spousal support; property award distinguished. **Most Cited Cases**

(Formerly 134k231)

Since legislative objective of providing monetary assistance to financially needy wife continues as pragmatic matter in appropriate circumstances in its viability today, and since legislature is quite cognizant of fact that female in appropriate cases who has virtually contributed her adult life to maintenance of marital relationship is arguably not destined for "the market place," rights under Alabama's current alimony statutes, which had been found by the United States Supreme Court to violate equal protection, would be neutrally extended to needy husbands as well as wives so as to render

statutes constitutional. [Code of Ala.1975, §§ 30-2-51 to 30-2-53.](#)

[5] Divorce 134 559

134 Divorce

134V Spousal Support, Allowances, and Disposition of Property

134V(C) Spousal Support

134k559 k. Nature and purpose of spousal support; property award distinguished. **Most Cited Cases**

(Formerly 134k231)

Where alimony rights had been neutrally extended to needy husbands as well as wives in response to United States Supreme Court's determination that Alabama alimony statutes violated equal protection, former wife was entitled to continued alimony payments from her former husband under such statutes. [Code of Ala.1975, §§ 30-2-51 to 30-2-53.](#)

*896 HOLMES, Judge.

This is a divorce case.

After the parties' divorce in 1974, the wife petitioned the Circuit Court of Lee County for a rule Nisi due to the husband's failure to pay alimony. The husband unsuccessfully defended on the ground that Alabama's alimony statutes, [ss 30-2-51, 52, and 53, Code of Ala. 1975](#), were unconstitutional. Upon the husband's appeal to this court, we sustained the constitutionality of the statutes. [Orr v. Orr, Ala.Civ.App., 351 So.2d 904 \(1977\).](#)

The husband appealed to our supreme court which initially granted certiorari, but which subsequently, without opinion, quashed the writ as improvidently granted. [Orr v. Orr, Ala., 351 So.2d 906 \(1977\).](#)

The husband appealed to the Supreme Court of the United States. That court, on March 5, 1979, held that [ss 30-2-51, 52, and 53](#) were unconstitutional on the ground that they were violative of the equal protection provisions of the United States Constitution. [Orr v. Orr, 440 U.S. 268, 99 S.Ct.](#)

1102, 59 L.Ed.2d 306 (1979). The case was remanded to this court for proceedings consistent with the Supreme Court's opinion.

Upon remand, the wife filed in this court a motion to affirm the judgment rendered in the court below.

The dispositive issue now before us is whether the wife's motion to affirm the original judgment of the trial court should be granted. For the reasons set forth below, we hold that it should and affirm.

We note at the outset that the Supreme Court of the United States in its opinion goes to some length to suggest matters of state law which might well preserve the wife's right to alimony in this instance. Specifically, the opinion suggests that this court can respond to reversal and bind Mr. Orr to continue his alimony payments on two such grounds: (1) by a neutral extension of alimony rights to needy husbands as well as wives, *Orr, supra*, at 272, 99 S.Ct. 1102; and/or (2) by determining that, as a contractual matter, Mr. Orr is bound to continue alimony payments by virtue of his stipulated agreement to do so. *Id.* at 284, 99 S.Ct. 1102.

[1] Considering the entire proceeding and the importance of the issues raised by this matter, we determine that the motion is properly before this court and that the issues raised therein are appropriate for our consideration. See *State ex rel. Knox v. Dillard*, 196 Ala. 539, 72 So. 56 (1916). See also *Bryant v. Moss*, 295 Ala. 339, 329 So.2d 538 (1976); *Sterling Oil of Oklahoma, Inc. v. Pack*, 291 Ala. 727, 287 So.2d 847 (1973).

Our alimony statutes were found to be constitutionally impermissible for the reason that they are underinclusive; that is, they improperly exclude statutory benefits from a class of individuals on the basis of sex. The wife initially contends that this court can respond to reversal by neutrally extending alimony rights to males as well as females. In support of this contention, she cites *Orr, supra*, in addition to other appropriate authority. We agree.

[2] Where a statute is constitutionally infirm on the basis of underinclusiveness, a court may satisfy the Constitution's commands by either extending benefits to those excluded from the scope of its coverage or by invalidation of the statute in its entirety. *Orr, supra*; *Welsh v. U. S.*, 398 U.S. 333, 90 S.Ct. 1792, 26 L.Ed.2d 308 (1970). In *Welsh, supra*, the Supreme Court stated:

Where a statute is defective because of under-inclusion there exist two remedial alternatives: a court may either declare it a nullity and order that its benefits not extend to the class that the legislature intended to benefit, or it may extend the coverage of the statute to include those who are aggrieved by exclusion. . . . (Citations omitted.) 398 U.S. at 361, 90 S.Ct. at 1807-1808, Harlan, J., concurring.

Courts have on a number of occasions remedied the deficiencies in underinclusive statutes by extending benefits to those impermissibly excluded. See, e. g., *Califano v. Goldfarb*, 430 U.S. 199, 97 S.Ct. 1021, 51 L.Ed.2d 270 (1977); *897 *Weinberger v. Wiesenfeld*, 420 U.S. 636, 95 S.Ct. 1225, 43 L.Ed.2d 514 (1975); *Levy v. Louisiana*, 391 U.S. 68, 88 S.Ct. 1509, 20 L.Ed.2d 436 (1968); *White v. Crook*, 251 F.Supp. 401 (M.D.Ala.1966); *Beal v. Beal, Me.*, 388 A.2d 72 (1978). See also *Eich v. Town of Gulf Shores*, 293 Ala. 95, 300 So.2d 354 (1974).

[3] The choice between invalidation of a statute or expansion of the scope of its applicability requires, of necessity, an ascertainment of the predominant legislative purpose underlying the statute's enactment. *Beal, supra*. That is to say, given the nature and substance of the statute, its relevant economic, social, and historical implications, can it be concluded that benefits should be terminated to the class of persons whom the legislature intended to benefit. In this instance, we think not.

[4] Alabama's current alimony statutes have their genesis in ss 1970, 71, and 72, Code of Ala. 1852. As we suggested in our original opinion, this

374 So.2d 895
 (Cite as: 374 So.2d 895)

statutory scheme has served a crucial legislative policy; to provide alimony upon the demise of a marriage in order to preserve the economic Status quo of the parties as its existed during the marriage. [Orr v. Orr, Ala.Civ.App., 351 So.2d 904 \(1977\)](#).

It is clear to this court that the statutes, notwithstanding the deficiency which the Supreme Court found to exist, were at the time of their promulgation substantially related to the appropriate legislative objective of providing monetary assistance to the financially needy wife and that this objective continues, as a pragmatic matter in appropriate circumstances, in its viability today. Furthermore, it occurs to us that the legislature is quite cognizant of the fact that the female in appropriate cases who has virtually contributed her adult life to the maintenance of the marital relationship is arguably not destined for “the market place . . .” Put another way, a female who has virtually never been employed outside the home, but has been a mother, wife, and/or homemaker for a number of years is not in a favored position to obtain gainful employment.

As a matter of predominant legislative purpose then, we are not prepared to eliminate the current statutory benefits available to needy females inasmuch as we are of the opinion that the legislature would not do so. We are in agreement with the Supreme Court of Maine, in *Beal*, supra, which, in its resolution of the issue of whether to extend or eliminate the benefits of its original alimony statute concluded:

(A)s between abolishing alimony and making it available to husbands in appropriate cases, (the legislature) would choose the latter. We conclude that the dominant legislative purpose of the alimony statute, as it stood when this action was brought, is correctly served by treating is as extending eligibility to men as well as women. . . . [388 A.2d at 76](#).

[5] Because we here respond to reversal by neutrally extending alimony rights to needy hus-

bands as well as wives, we hold that the wife's motion to affirm the judgment rendered below is due to be granted.

We would be remiss in not commenting that we take the above action reluctantly. It has been the policy of this court not to encroach on the legislature's function. We adhere to that policy. However, in view of the magnitude of the problem created by the action of the United States Supreme Court, we are compelled to apply the principle of law which we do in this instance. Unless we take appropriate measures, Alabama will be without an alimony statute. The legislature has not had ample opportunity to respond to this void; it therefore becomes our duty to fill that void by the application of appropriate legal principles.

In view of the above it is unnecessary to reach other issues raised by the motion to affirm.

The judgment of the trial court is due to be affirmed.

AFFIRMED.

WRIGHT, P. J., and BRADLEY, J., concur.

Ala.Civ.App., 1979.
 Orr v. Orr
 374 So.2d 895

END OF DOCUMENT

497 So.2d 644, 11 Fla. L. Weekly 577
(Cite as: 497 So.2d 644)



Supreme Court of Florida.
SHANDS TEACHING HOSPITAL AND CLIN-
ICS, INC., Petitioner,
v.
Rebecca SMITH, Respondent.

No. 68237.
Nov. 13, 1986.

Hospital sought to hold wife responsible for unpaid balance owing on deceased husband's medical bill on theory that wife was responsible for providing necessities to husband just as husband was to wife under common law. The Circuit Court, Alachua County, Woodrow Beauchamp, J., entered order dismissing suit, and hospital appealed. The District Court of Appeal, 480 So.2d 1366, affirmed, and hospital sought review. The Supreme Court, Shaw, J., held that common-law doctrine of necessities has not been altered and, hence, does not permit a wife to be held liable to a third party for providing food, shelter, and medical services to her husband.

Affirmance by District Court of Appeal approved.

West Headnotes

[1] Husband and Wife 205 ⚖️19(11)

205 Husband and Wife

205I Mutual Rights, Duties, and Liabilities

205k19 Necessaries and Family Expenses

205k19(11) k. Liability of Wife. **Most**

Cited Cases

Husband and Wife 205 ⚖️19(15)

205 Husband and Wife

205I Mutual Rights, Duties, and Liabilities

205k19 Necessaries and Family Expenses

205k19(15) k. Medical Services. **Most**

Cited Cases

Common-law doctrine of necessities has not been altered and, hence, does not permit a wife to be held liable to a third party for providing food, shelter, and medical services to her husband; disapproving *Parkway General Hospital, Inc. v. Stern*, 400 So.2d 166 (Fla.App.3 Dist.); *Manatee Convalescent Center, Inc. v. McDonald*, 392 So.2d 1356 (Fla.App.2d Dist.). West's F.S.A. § 61.001 et seq.

[2] Husband and Wife 205 ⚖️19(15)

205 Husband and Wife

205I Mutual Rights, Duties, and Liabilities

205k19 Necessaries and Family Expenses

205k19(15) k. Medical Services. **Most**

Cited Cases

Hospital could not hold wife responsible for unpaid balance owing on deceased husband's medical bill on theory that wife was responsible for providing necessities to husband just as husband was to wife under common law. West's F.S.A. § 61.001 et seq.

*645 David E. Mathias and David A. Roberts, III, Gainesville, for petitioner.

Hal Castillo of Lewis, Paul, Isaac & Castillo, P.A., Jacksonville, for respondent.

William A. Bell, Tallahassee, and Constance J. Kaplan and Barry R. Lerner of Bacen & Kaplan, P.A., Fort Lauderdale, for Florida Hosp. Ass'n, amicus curiae.

SHAW, Justice.

We review *Shands Teaching Hospital & Clinics v. Smith*, 480 So.2d 1366 (Fla. 1st DCA 1985), to resolve certified direct conflict with *Parkway General Hospital, Inc. v. Stern*, 400 So.2d 166 (Fla. 3d DCA 1981), and *Manatee Convalescent Center, Inc. v. McDonald*, 392 So.2d 1356 (Fla. 2d DCA 1980). Art. V, § 3(b)(4), Fla. Const.

Petitioner Shands Hospital provided medical services to the now deceased husband of respondent. The husband entered into an agreement binding him as the guarantor for all charges not paid by an insurer, but respondent never agreed in writing to pay for the services provided her husband. Following the death of the husband, petitioner brought suit on the unpaid balance against respondent relying on the theory that a wife is responsible for providing necessities to a husband just as a husband is to a wife under the common law. *Parkway General Hospital; Manatee Convalescent Center*. The trial court declined to follow these authorities and dismissed the suit, finding that the common law imposed no liability on a wife for the necessities of her husband. The first district court of appeal affirmed, reasoning that the common law of necessities countenanced by *Phillips v. Sanchez*, 35 Fla. 187, 17 So. 363 (1895), had not been altered by this Court or by the constitution or statute and it would be improper for a district court to overrule a controlling precedent of this Court. *Hoffman v. Jones*, 280 So.2d 431, 434 (Fla.1973). The district court below also expressed the view that this issue was one which was most appropriate for legislative, not judicial, resolution.

Under the common law doctrine of necessities, a husband who was derelict in furnishing food, shelter, and medical services to his wife was liable to a third party who provided those necessities to the wife. However, because a wife was deemed legally incapable of incurring an obligation independent of her husband and because the husband was legally, and exclusively, responsible for providing the necessities for the entire family unit, there was no reciprocal liability on the part of the wife to a third party for providing the necessities of the husband. *Phillips*. Similarly, until the enactment of chapter 71-241, Laws of Florida, only the husband was responsible for the payment of alimony or child support in the event of divorce or dissolution of marriage. Ch. 61, Fla.Stat. (1969).

Both parties agree, as do we, that it is an ana-

chronism to hold the husband responsible for the necessities of the wife without also holding the wife responsible for the necessities of the husband. At this point, however, the parties positions diverge. Petitioner argues that the marital partnership benefits when one spouse or partner receives medical services and that these benefits, which both spouses or partners receive, give rise to an implied-in-law contract. Accordingly, petitioner argues, the second spouse should be liable for these services as a matter of equity in order to prevent unjust enrichment. Respondent*646 denies that she received any benefit or unjust enrichment from the medical services received by her deceased husband. Moreover, respondent urges, petitioner should have either sought her guaranty of the medical bills prior to rendering them or looked to the assets of the deceased husband.

The difficulty with these arguments is that both have merit and we are being asked to establish a fixed rule of law that the wife is or is not liable when the issue is one of equity which can only be determined based on the particular equities of a given factual situation. We can easily visualize instances where it would be inequitable to hold either a wife *or a husband* ^{FN1} liable for medical services rendered to a spouse, just as we can visualize instances where it would be inequitable not to hold either spouse liable for medical services received by the other spouse. Two conclusions are apparent from this decisional quandary. The first is that the issue is one with broad social implications, the resolution of which requires input from husbands, wives, and the public in general. The second conclusion is that, of the three branches of government, the judiciary is the least capable of receiving public input and resolving broad public policy questions based on a societal consensus.

FN1. The issue of whether it is a denial of equal protection to hold a husband liable for a wife's necessities when a wife is not liable for a husband's necessities is not before us. Petitioner makes an equal protec-

tion argument that this is so, but we do not accept that petitioner has standing to make such an argument. *Contra, Jersey Shore Medical Center-Fitkin Hospital v. Estate of Baum*, 84 N.J. 137, 417 A.2d 1003 (1980).

The two conclusions above lead us to the controlling question of whether this Court is the proper institution to resolve this issue. Petitioner urges that we are, and cites in support various decisions we have rendered in the past modifying the common law.^{FN2} Predictably, respondent cites previous decisions where we have held that it is the province of the legislature, not the courts, to modify the common law.^{FN3}

FN2. Preeminently, *Insurance Co. of North America v. Pasakarnis*, 451 So.2d 447 (Fla.1984), which permitted the use of the seat belt defense to mitigate damages; *Hoffman v. Jones* which abolished contributory negligence and established comparative negligence; and *Gates v. Foley*, 247 So.2d 40 (Fla.1971), which created an independent cause of action in the wife for loss of consortium of husband.

FN3. Preeminently, *Zorzos v. Rosen*, 467 So.2d 305 (Fla.1985), where we deferred to the legislature by declining to create a cause of action for loss of parental consortium where death does not occur and *State v. Egan*, 287 So.2d 1 (Fla.1973), where we held that changes in the common law should come from the legislature, not the courts.

Of the cases cited, *Gates* and *Zorzos* most aptly illustrate the distinctions which determine whether this Court will modify the common law by either creating or refusing to create a cause of action. In *Gates*, we recognized that there was a common law right of the husband to sue for a loss of a wife's consortium. Accordingly, in view of equal protection provisions of the constitution and certain statutes abolishing legal distinctions between the sexes

and husbands and wives, we held that a wife had a cause of action for loss of a husband's consortium. The present case is distinguishable from *Gates* in that here there is no valid equal protection argument that petitioner hospital is being denied a right available to other plaintiffs. In *Zorzos*, we recognized that there was a statutory right to sue for loss of parental consortium when the parent dies. We declined, however, to create a common law right to sue for parental consortium where death does not occur because we considered it "wiser to leave it to the legislative branch with its greater ability to study and circumscribe the cause." *Zorzos* at 307. The same considerations apply here.

[1][2] We approve the decision below and disapprove *Parkway General Hospital and Manatee Convalescent Center*.

It is so ordered.

*647 McDONALD, C.J., and ADKINS, BOYD, OVERTON, EHRLICH and BARKETT, JJ., concur.

Fla.,1986.
 Shands Teaching Hosp. and Clinics, Inc. v. Smith
 497 So.2d 644, 11 Fla. L. Weekly 577

END OF DOCUMENT

C

Supreme Court of New Hampshire.
SOUTHERN NEW HAMPSHIRE MEDICAL
CENTER

v.

Anthony HAYES.

No. 2008-844.

Argued: Oct. 8, 2009.

Opinion Issued: Feb. 11, 2010.

Background: Hospital filed suit against husband and wife, seeking to recover fees incurred for wife's medical treatment. The Superior Court, Hillsborough County, [Nicolosi, J.](#), granted hospital's motion in limine to exclude evidence that wife "eloped" for purposes of doctrine of necessities. The Superior Court, [Brennan, J.](#), granted hospital's motion for summary judgment against wife. Following bench trial, the Superior Court, [Smukler, J.](#), entered judgment for hospital against husband. Husband appealed.

Holdings: Following wife's death, the Supreme Court, [Duggan, J.](#) held that:

- (1) emergency medical services provided to wife at hospital were reasonable, and thus wife was liable to hospital for fees incurred for such services;
- (2) elopement is not a defense to the application of the doctrine of necessities, abrogating [Cogswell v. Tibbetts](#), 3 N.H. 41; and
- (3) non-debtor spouse is liable for his or her spouse's necessities if debtor spouse is unable to pay for his or her necessities.

Affirmed in part, reversed in part, and remanded.

[Hicks, J.](#), concurred specially and filed opinion.

West Headnotes

[1] Health 198H 943

198H Health

198HVII Compensation

198Hk943 k. Quasi contract, quantum meruit, and emergency assistance. **Most Cited Cases**

Health 198H 944

198H Health

198HVII Compensation

198Hk944 k. Adequacy of services; consideration. **Most Cited Cases**

Emergency medical services provided by hospital to wife for complications stemming from alcoholism were reasonable, and thus wife was liable to hospital for fees incurred for such services.

[2] Appeal and Error 30 934(1)

30 Appeal and Error

30XVI Review

30XVI(G) Presumptions

30k934 Judgment

30k934(1) k. In general. **Most Cited**

Cases

When reviewing a trial court's grant of summary judgment, the Supreme Court considers the affidavits and other evidence, and inferences properly drawn from them, in the light most favorable to the non-moving party.

[3] Appeal and Error 30 863

30 Appeal and Error

30XVI Review

30XVI(A) Scope, Standards, and Extent, in

General

30k862 Extent of Review Dependent on Nature of Decision Appealed from

30k863 k. In general. **Most Cited**

Cases

If the Supreme Court's review of a trial court's grant of summary judgment does not reveal any genuine issues of material fact, i.e., facts that would affect the outcome of the litigation, and if the mov-

ing party is entitled to judgment as a matter of law, the Supreme Court will affirm.

[4] Appeal and Error 30  **893(1)**

30 Appeal and Error

30XVI Review

30XVI(F) Trial De Novo

30k892 Trial De Novo

30k893 Cases Triable in Appellate

Court

30k893(1) k. In general. [Most Cited](#)

Cases

The Supreme Court reviews the trial court's application of the law to the facts de novo.

[5] Husband and Wife 205  **1**


205 Husband and Wife

205I Mutual Rights, Duties, and Liabilities

205k1 k. The relation in general. [Most Cited](#)

Cases

The modern marital relationship is viewed by law as a partnership of equality, an evolution from the 19th century relationship of dominance by a husband and submission by a wife who had little standing as an individual person or legal entity.

[6] Divorce 134  **559**

134 Divorce

134V Spousal Support, Allowances, and Disposition of Property

134V(C) Spousal Support

134k559 k. Nature and purpose of spousal support; property award distinguished. [Most Cited](#)

Cases

(Formerly 134k231)

Husband and Wife 205  **17**

205 Husband and Wife

205I Mutual Rights, Duties, and Liabilities

205k17 k. Contracts with third persons in general. [Most Cited](#)

Married women today have an unrestricted right to contract, and the spousal support statute im-

poses a gender-neutral obligation of spousal support. [RSA 546-A:2](#).

[7] Husband and Wife 205  **19(1)**

205 Husband and Wife

205I Mutual Rights, Duties, and Liabilities

205k19 Necessaries and Family Expenses

205k19(1) k. In general. [Most Cited](#)

In order to establish a prima facie case against one spouse for the value of services or goods provided to the other spouse under the doctrine of necessities, the provider must show that: (1) the services or goods were provided to the receiving spouse; (2) they 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 services or goods were provided; and (4) payment for the necessities has not been made.

[8] Husband and Wife 205  **19(1)**

205 Husband and Wife

205I Mutual Rights, Duties, and Liabilities

205k19 Necessaries and Family Expenses

205k19(1) k. In general. [Most Cited](#)

Under the third prong of a prima facie case of the doctrine of necessities, requiring that the person against whom the action is brought was married to the receiving spouse at the time the services or goods were provided, a creditor must show more than the legal fact of marriage to demonstrate that the parties are “married” for the purposes of liability.

[9] Husband and Wife 205  **19(1)**

205 Husband and Wife

205I Mutual Rights, Duties, and Liabilities

205k19 Necessaries and Family Expenses

205k19(1) k. In general. [Most Cited](#)

Proof of an undissolved marriage does not in itself provide the basis for liability to a creditor supplying a spouse with necessities, as in some circumstances a marriage will cease to exist for pur-

poses of liability under the necessities doctrine.

[10] Husband and Wife 205 ⚡19(1)

205 Husband and Wife

205I Mutual Rights, Duties, and Liabilities

205k19 Necessaries and Family Expenses

205k19(1) k. In general. [Most Cited Cases](#)

Whether liability exists under the doctrine of necessities in a given case is a fact- and case-specific inquiry.

[11] Husband and Wife 205 ⚡19(1)

205 Husband and Wife

205I Mutual Rights, Duties, and Liabilities

205k19 Necessaries and Family Expenses

205k19(1) k. In general. [Most Cited Cases](#)

Husband and Wife 205 ⚡19(3)

205 Husband and Wife

205I Mutual Rights, Duties, and Liabilities

205k19 Necessaries and Family Expenses

205k19(3) k. Separation in general. [Most Cited Cases](#)

A non-debtor spouse's liability under the necessities doctrine depends on a mutual expectation that the spouses will share assets, expenses, and debts; accordingly, factors to consider in determining whether the marriage is no longer viable for the purposes of the necessities doctrine might include whether the parties were separated, when they separated, whether they are living apart, and whether they share their living expenses and debt.

[12] Husband and Wife 205 ⚡19(1)

205 Husband and Wife

205I Mutual Rights, Duties, and Liabilities

205k19 Necessaries and Family Expenses

205k19(1) k. In general. [Most Cited Cases](#)

Elopement is not a defense to the application of the necessities doctrine; rather, the third party seeking to impose liability on the non-debtor spouse retains the burden to demonstrate that the parties were “married” for the purposes of liability

under the necessities doctrine, abrogating *Cogswell v. Tibbetts*, 3 N.H. 41.

[13] Husband and Wife 205 ⚡19(1)

205 Husband and Wife

205I Mutual Rights, Duties, and Liabilities

205k19 Necessaries and Family Expenses

205k19(1) k. In general. [Most Cited Cases](#)

A non-debtor spouse is liable for his or her spouse's necessities if the debtor spouse is unable to pay for his or her necessities.

****598** Welts, White & Fontaine, P.C., of Nashua ([Michael J. Fontaine](#) and Lisa A. Biron on the brief, and Mr. Fontaine orally), for the plaintiff.

Smith-Weiss, Shepard & Durmer, P.C., of Nashua ([Robert M. Shepard](#) and Melissa S. Penson on the brief, and Ms. Penson orally), for the defendant.

DUGGAN, J.

***713** The defendant, Anthony Hayes, appeals: (1) an order of the Superior Court (*Brennan*, J.) granting summary judgment in favor of the plaintiff, Southern New Hampshire Medical Center (SNHMC), with respect to Karen Hayes' unpaid medical expenses; (2) an order of the Superior Court (*Nicolosi*, J.) granting SNHMC's motion *in limine* to exclude evidence that Karen Hayes “eloped” under the doctrine of necessities; and (3) a ruling on the merits (*Smukler*, J.) finding Anthony Hayes liable under the doctrine of necessities for Karen Hayes' medical bills. We affirm in part, reverse in part, and remand.

The record supports the following facts. Anthony and Karen Hayes married in 1977. In July, August, October and November 2006, Karen, who did not have health insurance, received emergency medical treatment at SNHMC for complications stemming from alcoholism, leaving a balance due of \$85,238.88. The record contains conflicting evidence about the status of Karen and Anthony's marriage during this time. While Karen's medical records indicate that she was living with Anthony,

Anthony disputes this, asserting that he and Karen “did not live as husband and wife for the past seven to eight years ... when [the medical bills] were ... incurred.” For example, Anthony testified that sometimes Karen was admitted to SNHMC after being “taken out of hotels, motels, and other people's houses.”

SNHMC filed suit against the Hayeses, and successfully sought a real estate attachment on two unencumbered parcels owned jointly by the Hayeses. When SNHMC placed an attachment on the properties, Karen and Anthony were still married. The Hayeses were divorced in January 2007 pursuant to a stipulated agreement. Under the terms of the divorce, each party was responsible for his or her own medical expenses not covered by insurance. Specifically, “Karen [was] responsible for paying the debt to [SNHMC] as well as any other medical debts or bills.” Karen received one automobile valued at \$1,200, her bank account with a balance of \$0.00, and all of her debts. Anthony received the marital properties subject to SNHMC's attachment.

Prior to trial, SNHMC moved *in limine* to prohibit Anthony “from introducing at trial any information, documentation or witnesses concerning *714 or in any way referencing an alleged common law doctrine of elopement.” SNHMC argued that elopement is an affirmative defense, and that Anthony failed to give adequate notice, pursuant to Superior Court Rule 28, that **599 he intended to rely upon this doctrine. Anthony objected, contending that he gave adequate notice.

The trial court granted SNHMC's motion. It ruled that elopement is an affirmative defense, but that Anthony failed to properly raise it. The court found that it would be unfair to require SNHMC to counter this defense, given that “the legal fact of marriage was not in dispute.”

The trial court granted summary judgment in favor of SNHMC against Karen, finding “no issue of material fact” that she was liable for the balance

owed to SNHMC. The trial court, however, denied SNHMC's motion for summary judgment against Anthony, finding that genuine issues of material fact remained with respect to his liability for Karen's medical expenses. Following a bench trial on the merits, the trial court found that Anthony was liable, under the doctrine of necessities, for Karen's medical debts to SNHMC. During the pendency of these proceedings, Karen passed away.

On appeal, Anthony argues that: (1) elopement is not an affirmative defense; (2) even if it is, he provided sufficient notice; (3) pursuant to *Cheshire Medical Center v. Holbrook*, 140 N.H. 187, 190, 663 A.2d 1344 (1995), SNHMC was required to find that Karen had inadequate funds before seeking reimbursement from Anthony; (4) Karen had sufficient resources to satisfy her debt because Karen jointly owned the two pieces of property attached by SNHMC; and (5) the trial court erred when it granted summary judgment against Karen. SNHMC counters that: (1) elopement is an affirmative defense; (2) Anthony's interrogatory responses and pleadings did not provide adequate notice; (3) even if the trial court erred by treating elopement as an affirmative defense, that error was harmless because Anthony could not factually support an elopement defense; (4) SNHMC was required only to first seek payment from Karen before pursuing Anthony, which it did; (5) Karen lacked sufficient resources to satisfy her debt to SNHMC; (6) the trial court correctly granted summary judgment against Karen and found Anthony liable under the necessities doctrine; and (7) Anthony lacks standing to contest the trial court's summary judgment ruling against Karen.

I. Summary Judgment: Karen Hayes

We first address, as a preliminary matter, SNHMC's argument that Anthony lacks standing to appeal the summary judgment against Karen. Specifically, SNHMC contends that only Karen's estate would have standing to appeal and “as of this time, no estate has been opened,” and that “Mr. *715 Hayes has suffered no legal injury that an appeal to

this Court will protect and he may not seek relief for the benefit of another.” Although Anthony did not address these contentions in his brief, at oral argument he argued that he has standing to challenge the judgment against Karen because, under the necessities doctrine, he is potentially liable for her debt. We assume for the purposes of this appeal that Anthony has standing to attack the judgment against Karen.

[1] Anthony argues that the trial court erroneously granted summary judgment against Karen. He contends that whether he and Karen were married for the purposes of liability under the necessities doctrine, and whether SNHMC's charges and the medical services provided to Karen were reasonably necessary, were material, disputed issues of fact. He argues that the trial court erroneously granted summary judgment against Karen because the evidence was insufficient for such a ruling. Anthony also maintains that the affidavit supporting SNHMC's motion for summary judgment was incompetent because**600 the affiant was not a medical practitioner and lacked personal knowledge of the services provided and whether they were medically necessary. SNHMC counters that the applicability of the necessities doctrine is irrelevant to the validity of the judgment against Karen, Karen's objection did not comply with RSA 491:8-a (1997), and Anthony failed to present any facts supporting his contention that SNHMC's charges and services were unreasonable. SNHMC also argues that Anthony failed to preserve his arguments that its charges were not reasonable because of its billing practices and that its affidavit was incompetent because he first raised those arguments in a motion to reconsider.

[2][3][4] “When reviewing a trial court's grant of summary judgment, we consider the affidavits and other evidence, and inferences properly drawn from them, in the light most favorable to the non-moving party.” *Everitt v. Gen. Elec. Co.*, 159 N.H. 232, 234, 979 A.2d 760 (2009). “If this review does not reveal any genuine issues of material fact, *i.e.*,

facts that would affect the outcome of the litigation, and if the moving party is entitled to judgment as a matter of law, we will affirm.” *Smith v. HCA Health Services of N.H.*, 159 N.H. 158, 160, 977 A.2d 534 (2009). “We review the trial court's application of the law to the facts *de novo*.” *Everitt*, 159 N.H. at 234, 979 A.2d 760.

In its motion for summary judgment against Karen, SNHMC contended that it provided medical care to her and that, as a result, she owed SNHMC for the services provided. In support of its motion, SNHMC attached an affidavit from its Credit and Collection Manager who stated that she was “familiar with the books and records of [SNHMC]” and had “personal knowledge of the matters stated herein.”

*716 In her objection, Karen denied “that medical and health care services and/or supplies were properly administered to [her] or that they were reasonable or necessary.” She also asserted:

In determining whether or not the charges rendered by [SNHMC] in this case are reasonable, the court needs to consider other issues, such as the fact that [SNHMC] is allegedly a non-profit organization and needs to consider billing rates or cash payments as opposed to insurance payments or [Medicaid] payments.”

Karen neither referred to anything in the record nor filed an affidavit contradicting SNHMC's motion.

We agree that whether the Hayeses were married for the purposes of liability under the necessities doctrine was irrelevant to the trial court's grant of summary judgment against Karen. Moreover, Karen failed to allege that there were any disputed issues of material fact, or that SNHMC was not entitled to judgment as a matter of law. The party opposing a motion for summary judgment cannot “rest upon mere allegations or denials of [the] pleadings, but [her] response, by affidavits or by reference to depositions, answers to interrogatories,

or admissions, must set forth specific facts showing that there is a genuine issue for trial.” RSA 491:8-a, IV. Karen failed to refer to any facts in the record, or to present the trial court with an affidavit, supporting her allegations that the hospital's charges were not reasonable.

In her motion to reconsider, Karen raised a new challenge to the affidavit supporting SNHMC's motion for summary judgment:

[SNHMC] submitted an Affidavit in support of its Motion For Summary Judgment, along with a copy of an invoice for services that were rendered to the Defendant. **601 The Affidavit was signed by an employee that works in the business department of the hospital, and not by a doctor or a medical practitioner.

The motion thus challenged the competency of the affidavit. The motion, however, failed to identify any facts supporting Karen's claim, and failed to demonstrate that SNHMC was not entitled to judgment as a matter of law.

II. The Doctrine of Necessaries

The ancient common law doctrine of necessities imposed liability on husbands for “essential goods and services provided to [their wives] by third parties” if they failed to provide their wives “with such necessities.” *717 *Holbrook*, 140 N.H. at 189, 663 A.2d 1344 (quotation omitted). Necessaries included “necessary food, drink, washing, physic, instruction, and a suitable place of residence, with such necessary furniture as is suitable to her condition.” *Ray v. Adden*, 50 N.H. 82, 83 (1870); see *Morrison v. Holt*, 42 N.H. 478, 480 (1861) (legal expenses not necessities unless husband's conduct rendered expenses necessary to secure wife's personal protection or safety).

This doctrine originated as a result of draconian legal restrictions on the rights of married women to “contract, sue, or be sued individually” or exercise control over their property or financial affairs. *North Ottawa Community Hosp. v. Kieft*, 457 Mich.

394, 578 N.W.2d 267, 269 (1998); *Medical Business Associates v. Steiner*, 183 A.D.2d 86, 588 N.Y.S.2d 890, 892 (1992). A married woman's contracts “ ‘were absolutely void,—not merely voidable, like those of infants and lunatics.’ ” *Holbrook*, 140 N.H. at 189, 663 A.2d 1344 (quoting *Dunlap v. Dunlap*, 84 N.H. 352, 353, 150 A. 905 (1930)). “[U]pon marriage a woman forfeited her legal existence and became the property of her husband,” as, in the eyes of the law, a husband and wife were considered one legal entity. *Id.*; *Steiner*, 588 N.Y.S.2d at 892. In return for his responsibility for his wife's support and liability for her torts, a husband was entitled to her “society.” *Drew's Appeal*, 57 N.H. 181, 183 (1876).

“A man has as good a right to his wife, as to the property acquired under a marriage contract; and to divest him of that right without his default, and against his will, would be as flagrant a violation of the principles of justice as the confiscation of his estate.”

Holbrook, 140 N.H. at 188, 663 A.2d 1344 (quoting *Drew's Appeal*, 57 N.H. at 183). The husband was “the sole owner of the family wealth,” and the wife was “viewed as little more than a chattel in the eyes of the law.” *N.C. Baptist Hospitals, Inc. v. Harris*, 319 N.C. 347, 354 S.E.2d 471, 474 (1987) (quotation omitted).

Accordingly, the law of necessities “attempted to obviate some of the victimization which coverture would otherwise have permitted” by “providing a common-law mechanism by which the duty of support could be enforced.” *Kieft*, 578 N.W.2d at 270 (quotation omitted). It reflected the sad reality that, “[b]ecause the wife could not contract for food, clothing, or medical needs, her husband was obligated to provide her with such necessities.” *Holbrook*, 140 N.H. at 189, 663 A.2d 1344 (citation and quotation omitted). To obtain compensation from a husband for goods or services provided to his wife, a creditor had to set forth a *prima facie* case that husband and wife were married, that the husband failed to provide his wife

with necessaries, and that the articles or services in question were necessaries “according to the husband's situation in life.” *Rumney v. Keyes*, 7 N.H. 571, 580 (1835); see *Ott v. Hentall*, 70 N.H. 231, 232, 47 A. 80 (1900). If the couple separated, the *718 husband could nonetheless be liable under **602 the necessaries doctrine if he caused the separation by abandoning his wife, evicting her without reason, or committing some other kind of misconduct that drove the wife out of the marital home. *Ott*, 70 N.H. at 232, 47 A. 80; *Allen, Cummings & Co. v. Aldrich*, 29 N.H. 63, 73 (1854); *Rumney*, 7 N.H. at 578. However, even if the husband and wife separated by consent, a husband could still be liable for his wife's necessaries. *Pidgin v. Cram*, 8 N.H. 350, 351 (1836).

Husbands could avoid liability under the necessaries doctrine under certain circumstances. See, e.g., *Tebbetts v. Hapgood*, 34 N.H. 420, 421 (1857); *Allen*, 29 N.H. at 73; *Rumney*, 7 N.H. at 578. For example, a husband whose wife “eloped” would not be liable for her necessaries. *Cogswell v. Tibbetts*, 3 N.H. 41, 42 (1824); see *Rumney*, 7 N.H. at 580. A wife who voluntarily left her husband to live with an adulterer, or was removed forcibly from the marital home but chose to reside with the adulterer, “eloped” for the purposes of the doctrine. *Cogswell*, 3 N.H. at 42. Key to the determination of “elopement” was whether the wife had left her husband, committed adultery and also remained beyond his control. *Id.*; see *Rumney*, 7 N.H. at 580.

[5][6] “In modern America, ‘no longer is the female destined solely for the home and the rearing of the family, and only the male for the marketplace and the world of ideas.’ ” *Steiner*, 588 N.Y.S.2d at 893 (quoting *Stanton v. Stanton*, 421 U.S. 7, 14-15, 95 S.Ct. 1373, 43 L.Ed.2d 688 (1975)). “The modern marital relationship is viewed by law as a partnership of equality, an evolution from the nineteenth century relationship of dominance by a husband and submission by a wife who had little standing as an individual person or legal entity.” *Forsyth Memorial Hosp., Inc. v. Chisholm*, 342 N.C. 616,

467 S.E.2d 88, 90 (1996). Undoubtedly, married women today have an “unrestricted right to contract,” and RSA 546-A:2 (2007) “imposes a gender-neutral obligation of spousal support.” *Holbrook*, 140 N.H. at 189, 663 A.2d 1344. The doctrine of necessaries has been characterized as “an anachronism that no longer fits contemporary society,” *Steiner*, 588 N.Y.S.2d at 893 (quotation omitted), and some courts have abolished it. See, e.g., *Emanuel v. McGriff*, 596 So.2d 578, 580 (Ala.1992); *Condore v. Prince George's Cty.*, 289 Md. 516, 425 A.2d 1011, 1019 (1981). In New Hampshire, however, the doctrine endures: we extended it to apply to all married individuals, regardless of gender, see *Holbrook*, 140 N.H. at 190, 663 A.2d 1344, and many courts have similarly extended the doctrine to apply to both husbands and wives. See, e.g., Simons, Note, *Is the Doctrine of Necessaries Necessary in Florida: Should the Legislature Accept the Challenge of Connor v. Southwest Florida Regional Medical Center?*, 50 FLA. L.REV. 933, 939 (1998); *Kieft*, 578 N.W.2d at 270.

[7] *719 When considering the application of the doctrine in the modern day, some courts have outlined a *prima facie* case under the law of necessaries as follows:

In order to establish a *prima facie* case against one spouse for the value of [services or goods] provided to the other spouse, the ... provider must show that (1) [services or goods] were provided to the receiving spouse, (2) [they] 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 [services or goods] were provided, and (4) payment for the necessaries has not been made.

Wesley Long Nursing Center, Inc. v. Harper, No. COA06-1706, 2007 WL 4233643, at *2 (N.C.Ct.App. Dec.4, 2007) (unpublished opinion); see **603 *Queen's Medical Center v. Kagawa*, 88 Hawai'i 489, 967 P.2d 686, 693 (1998); *Trident Regional Medical Center v. Evans*, 317 S.C. 346, 454

S.E.2d 343, 345 (1995). This approach comports with our own common law on the necessities doctrine. *See, e.g., Ott*, 70 N.H. at 232, 47 A. 80; *Rumney*, 7 N.H. at 580. We note that, for the purposes of the necessities doctrine, hospitals and other medical providers are uniquely situated and, therefore, uniquely likely to seek the application of this doctrine, as, unlike other creditors, medical providers may not turn away patients who require treatment. *See Marshfield Clinic v. Discher*, 105 Wis.2d 506, 314 N.W.2d 326, 329 (1982) (noting that hospitals are often forced to respond to patients who require immediate, emergency care).

A. Elopement

We next consider whether elopement is an affirmative or general defense to the law of necessities. As stated above, the trial court ruled that elopement is an affirmative defense, and barred Anthony from presenting evidence that Karen “eloped,” finding that Anthony had failed to give adequate notice of his intention to rely upon that defense. We conclude that “elopement” is no longer a defense to the doctrine of necessities. *Cf. Chisholm*, 467 S.E.2d at 91.

As noted above, the necessities doctrine developed during a time when married women were severely restricted in their ability to contract, sue, or be sued, or to exercise control over their property, services, or earnings. *See Kieft*, 578 N.W.2d at 269; *Chisholm*, 467 S.E.2d at 90; *Steiner*, 588 N.Y.S.2d at 892. To defend on the grounds of elopement, the non-debtor spouse had to prove that the debtor spouse left the non-debtor spouse, escaped his or her control and committed adultery. *See Cogswell*, 3 N.H. at 42. Such a defense does not comport with the modern status of marriage. *720 We have “rejected such antiquated and obsolete notions concerning women by modernizing the common law necessities doctrine to impose liability on a gender-neutral basis and, thereby, making either spouse responsible for the necessary services provided to the other.” *Chisholm*, 467 S.E.2d at 90-91; *see Holbrook*, 140 N.H. at 190, 663 A.2d

1344.

[8][9][10] Given that the “historical purposes underlying the [elopement] exception to the necessities doctrine are incompatible with current mores and laws governing modern marital relationships in [New Hampshire],” we find that the elopement exception “has no place in the common law.” *Chisholm*, 467 S.E.2d at 91. *But see Bartrom v. Adjustment Bureau, Inc.*, 618 N.E.2d 1, 9-10 (Ind.1993) (reasoning that common law defenses to application of doctrine of necessities remain applicable). Rather, we conclude that, under the third prong of the *prima facie* case that we have outlined above, the creditor-in this case, the hospital-must show more than the legal fact of marriage to demonstrate that the parties are “married” for the purposes of liability under the necessities doctrine. *See Roach v. Mamakos*, 196 Misc.2d 456, 764 N.Y.S.2d 539, 541 (2003); *National Account Systems, Inc. v. Mercado*, 196 N.J.Super. 133, 481 A.2d 835, 837 (1984). “[P]roof of an undissolved marriage does not in itself provide the basis for liability to a creditor supplying a spouse with necessities,” as “in some circumstances a marriage will cease to [exist] for purposes of liability under” the necessities doctrine. *Mercado*, 481 A.2d at 837. This is a fact-specific, and case-specific, inquiry. *See Nichol v. Clema*, 188 Neb. 74, 195 N.W.2d 233, 235 (1972) (noting that each decision with respect to liability under necessities doctrine “must necessarily be largely governed by the facts existing in **604 the particular case in which it is rendered”).

[11] The non-debtor spouse's liability under the necessities doctrine depends on a mutual expectation that the spouses will share assets, expenses, and debts. Accordingly, factors to consider in determining whether the marriage is no longer viable for the purposes of the necessities doctrine might include whether the parties were separated, when they separated, whether they are living apart, and whether they share their living expenses and debt. *See Mercado*, 481 A.2d at 837 (factors to consider

in determining liability under necessities doctrine include whether the parties are separated and have been financially supporting each other). If a marriage has broken down to the extent that spouses are no longer sharing assets or debts, it makes little sense to hold a non-debtor spouse liable for the medical expenses of the other. See *id.* at 837. But see *Kagawa*, 967 P.2d at 699-700 (non-debtor spouse liable for necessities until divorce finalized); *Bartrom*, 618 N.E.2d at 9 (holding that “duty of spousal support continues at least until the marriage relationship is dissolved”).

[12] *721 For the reasons described above, “elopement” is no longer a defense to the application of the necessities doctrine; rather, the third party seeking to impose liability on the non-debtor spouse—in this case, SNHMC—retains the burden to demonstrate that the parties were “married” for the purposes of liability under the necessities doctrine. Because we hold today that “elopement” is not an affirmative defense, we reverse and remand to the trial court for a new trial on the merits.

B. Liability of Non-Debtor Spouse

We next consider Anthony's argument that SNHMC must determine that his wife could not satisfy her debt before seeking reimbursement from him. Anthony relies primarily upon *Holbrook*, 140 N.H. at 190, 663 A.2d 1344. SNHMC argues that it must only seek payment from Karen before pursuing Anthony, relying upon language in *Holbrook* which states that “a medical provider must first seek payment from the spouse who received its services before pursuing collection from the other spouse.” *Holbrook*, 140 N.H. at 190, 663 A.2d 1344.

[13] Under the doctrine of necessities, “a husband or wife is not liable for necessary medical expenses incurred by his or her spouse unless the resources of the spouse who received the services are *insufficient* to satisfy the debt.” *Holbrook*, 140 N.H. at 187, 663 A.2d 1344 (emphasis added). Accordingly, “the spouse who receives the necessary goods or services is primarily liable for payment,”

and “the other spouse is secondarily liable.” *Id.* at 188, 663 A.2d 1344. We have held that the doctrine of necessities renders the non-debtor spouse “liable to the hospital to the extent [his or her spouse's] estate[] [is] *unable to pay* for the necessary medical services provided.” *St. Joseph Hosp. of Nashua v. Rizzo*, 141 N.H. 9, 12, 676 A.2d 98 (1996) (emphasis added).

The defendant argued before the trial court that SNHMC was required to demonstrate that Karen could not pay for her medical services before pursuing his assets. The trial court stated that it did “not necessarily agree with ... Mr. Hayes['] legal position,” citing the language in *Holbrook* which states that the medical provider must “first seek payment from the spouse who received its services before pursuing collection from the other spouse.” The trial court reasoned that the *Holbrook* “language is directed at collection efforts” and “does not necessarily restrict a finding of liability.” However, the trial court, **605 “[f]or the purposes of its analysis ... accept[ed] [without] deciding the defendant's legal position” and determined that, even under a standard requiring SNHMC to prove that Karen lacks the resources to pay her debts before pursuing Anthony, SNHMC demonstrated that Karen's estate could not satisfy the debt to SNHMC.

We clarify our holding in *Holbrook* by confirming that the trial court applied the correct standard when it determined that Karen could not *722 satisfy her debt to SNHMC. On remand, the trial court should apply the standard set out above, that the non-debtor spouse is liable for his or her spouse's necessities if the debtor spouse is unable to pay for his or her necessities.

Affirmed in part; reversed in part; and remanded.

BRODERICK, C.J., and DALIANIS and CONBOY, JJ., concurred; HICKS, J., concurred specially.

HICKS, J., concurring specially.

I concur in the judgment of the majority because the issue of abolishing the common law necessities doctrine was not raised by either party. I write separately, however, because anachronisms in the doctrine, which are evident in the court's discussion of its origins, raise questions about its continued applicability in the modern world.

The necessities doctrine “originated in English common law over three centuries ago when married women had no property or contractual rights and their husbands controlled their financial affairs.... The primary purpose of the doctrine was to assure that dependent wives received support from neglectful husbands.” *Medical Center Hosp. of Vt. v. Lorrain*, 165 Vt. 12, 675 A.2d 1326, 1328 (1996).

In *Cheshire Medical Center v. Holbrook*, 140 N.H. 187, 663 A.2d 1344 (1995), we were called upon to reexamine the necessities doctrine in light of subsequent changes in the legal status of women. More specifically, *Holbrook* presented the question whether the doctrine, as it then existed in our common law, violated the Equal Protection Clauses of the State and Federal Constitutions. *Holbrook*, 140 N.H. at 188, 663 A.2d 1344. After chronicling the legal advances that “dissipated the marital disabilities of women,” *id.* at 189, 663 A.2d 1344, we concluded that “[t]he traditional formulation of the necessities doctrine, predicated on anachronistic assumptions about marital relations and female dependence, does not withstand scrutiny under the compelling interest standard,” *id.* at 190, 663 A.2d 1344. We then “expand [ed] the common law doctrine to apply to all married individuals equally, regardless of gender.” *Id.*

Although we purported to “determine whether the [necessaries] doctrine should be abolished or revised,” *id.* at 190, 663 A.2d 1344, we undertook none of the traditional analysis for determining whether to abolish existing precedent. Thus, while the holding in *Holbrook* may appear broad, it bears recalling that the specific question before us was whether the gender distinctions in the common law necessities doctrine violated constitutional guaran-

tees of equal protection. Thus, *Holbrook's* revision of the doctrine may be viewed as simply the abolition of gender distinctions that violated equal protection, *723 rather than a considered expansion of the doctrine. An examination of the doctrine under the traditional factors for determining whether to abrogate precedent, however, reveals that it has long outlived its relevance and should be abandoned.

We do not lightly overrule longstanding precedent. See **606 *Alonzi v. Northeast Generation Servs. Co.*, 156 N.H. 656, 659, 940 A.2d 1153 (2008). “The doctrine of stare decisis demands respect in a society governed by the rule of law, for when governing legal standards are open to revision in every case, deciding cases becomes a mere exercise of judicial will with arbitrary and unpredictable results.” *Id.* at 659-60, 940 A.2d 1153 (quotation omitted). Nevertheless, we will abandon precedent when “the ruling has come to be seen so clearly as error that its enforcement was for that very reason doomed.” *Id.* at 660, 940 A.2d 1153 (quotation omitted). In determining whether to overrule prior case law, we consider several factors, including:

- (1) whether the rule has proven to be intolerable simply in defying practical workability;
- (2) whether the rule is subject to a kind of reliance that would lend a special hardship to the consequences of overruling;
- (3) whether related principles of law have so far developed as to have left the old rule no more than a remnant of abandoned doctrine; and
- (4) whether facts have so changed, or come to be seen so differently, as to have robbed the old rule of significant application or justification.

Id. (quotation omitted). Most, if not all, of these factors apply to the common law doctrine of necessities.

The necessities doctrine arose out of the legal disabilities imposed upon married women under the common law; those restrictions on property ownership and contractual capacity are the *raison d'être*

for the doctrine. As we stated in *Holbrook*, “Because the wife could not contract for food, clothing, or medical needs, her husband was obligated to provide her with such ‘necessaries.’ ” *Holbrook*, 140 N.H. at 189, 663 A.2d 1344 (citation omitted). Without the underlying legal disability of the wife, the common law justification for binding her husband to her contracts for necessities disappears. See *Lorrain*, 675 A.2d at 1329 (noting that since women now have the same property and contractual rights as men, “the circumstances that led to the emergence of the necessities doctrine no longer exist”). Viewed in this light, the doctrine of necessities is “no more than a remnant of abandoned doctrine” that has been “robbed ... [of its] justification.” *Alonzi*, 156 N.H. at 660, 940 A.2d 1153 (quotation omitted).

The doctrine also defies practical workability. See *id.* As the Supreme Court of Vermont noted in *Lorrain*, “because the husband’s liability under the doctrine had substantial limitations, the doctrine never accomplished its *724 purported purpose-to be an effective support mechanism for neglected wives.” *Lorrain*, 675 A.2d at 1329; see Note, *The Unnecessary Doctrine of Necessaries*, 82 Mich. L.Rev. 1767, 1799 (1984) (concluding that the necessities doctrine “is generally an ineffective means of providing spousal support” and finding “no persuasive evidence that the doctrine is useful in the context of the narrow support problem it was intended to alleviate”).

Finally, there appears to be little reliance upon the doctrine “that would lend a special hardship to the consequences of overruling” it. *Alonzi*, 156 N.H. at 660, 940 A.2d 1153 (quotation omitted). In fact, “studies indicate that in deciding whether to extend credit, creditors give little weight to a married woman’s support rights.” *Lorrain*, 675 A.2d at 1329.

Consideration of the foregoing factors leads to the conclusion that the common law doctrine of necessities is no longer viable. Furthermore, while our gender-neutral revision of the doctrine in *Hol-*

brook may have alleviated then extant equal protection concerns, it is doubtful that it solved any of the underlying problems with the doctrine or rendered the **607 doctrine more effective in fulfilling its original purpose. There is, in fact, some indication that “the modern[, gender-neutral] doctrine seems to result in *less* available credit for needy spouses.” Note, *The Unnecessary Doctrine of Necessaries*, *supra* at 1780. As the *Lorrain* court noted, “In truth, extension of the doctrine serves creditors’ rights, not spousal support rights,” *Lorrain*, 675 A.2d at 1329, in stark contradiction to its genesis. For the foregoing reasons, should a case presenting the issue come before us, the necessities doctrine should be abolished.

N.H.,2010.
Southern New Hampshire Medical Center v. Hayes
159 N.H. 711, 992 A.2d 596

END OF DOCUMENT