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Domestic Relations - No Action to Husband for Wife's Personal Injuries

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DOMESTIC RELATIONS — NO ACTION TO HUSBAND FOR WIFE'S PERSONAL INJURIES

The wife of the plaintiff had been seriously and permanently injured when struck by an automobile. The wife then sued and recovered judgment for $8,500.00. Included in this sum was $1,300.00 for medical expenses made necessary by the accident. The wife's mental condition was such that a committee had to be appointed for her and this entire fund was placed in the hands of the committee. The husband, plaintiff in the present action, had personally contracted the debt for the medical services to his wife and had paid approximately $1,000.00 of this debt. He then sought reimbursement from the fund recovered by the wife and now in the hands of the committee. The trial court disallowed this claim and on appeal, *held,* affirmed. The statute[1] abolishing the action of the husband for a wife's personal injuries was said to be controlling. *Floyd v. Miller*, 190 Va. 303, 57 S. E. 2d 114 (1950). *Hudgins, C. J., and Gregory, Staples JJ., dissenting.*

The husband's duty to support his wife, and the wife's duty to render services to the husband are two of the most ancient concepts of the common law.[2] Together with this support of the wife, it is the duty of the husband to provide the wife necessaries according to his station in life. Reasonable medical expenses have been universally recognized to fall within the classification of necessaries and the husband has no choice but to pay such expenses.[3]

Prior to the enactment of what is commonly called the Married Woman's Act, the wife had no right of action against a third party for injuries sustained by her, nor for loss of time, services or expenses incurred due to the negligence of a third party. That right of action belonged to the husband.[4] In the revision of the Code of 1919[5] the right of the husband to sue for loss of domestic services of the wife and was taken from him and given to the wife. In 1932[6] the section was further amended so as to broaden its scope and it now reads: "In an action by a married woman to recover for a personal injury inflicted on her, she may recover the entire damage sustained including the personal injury, expenses arising out of the injury (whether chargeable to her or her husband) notwithstanding the husband may be entitled to the benefit of her services about domestic affairs and consortium; and no action for such injury, expenses or loss of services or consortium, shall be maintained by the husband."[7]

The majority of the court interpreted this "no action" clause to mean that the husband could bring no action whatsoever against

the wife as well as no action against the tort-feasor. The plaintiff contended, to no avail, that such interpretation which would prevent his reimbursement is a denial of due process. If the plaintiff had a cause of action which arose prior to the amendment of 1932, this would constitute a vested property right and it is well settled that such property rights cannot be taken away by legislative enactment without it being a denial of due process.[8] Since the husband had this property right prior to the enactment of the amendment, it must be said to affect only his form of action and not his right. Where a statute is ambigious and open to more than one interpretation, one of which will render it void and another which will render it valid, then the latter construction which sustains its validity must be adopted.[9] It is submitted that the interpretation which allows the wife to recover for the benefit of the husband is the only valid interpretation.

The recovery by the wife adds to her own separate estate and the court leaned heavily on the portion of the Virginia Code[10] providing ". . . nor shall the property of the wife be subject to the debts or liabilities of the husband." The court added that to allow the husband any action "would amount to judicial legislation and not interpretation." Here the husband had no choice but to pay the medical expenses. The wife recovered an equal amount from the tort-feasor, thus amounting to a double payment of these expenses. As pointed out by the dissent the practical effect is to allow the wife to recover from the husband for the negligence of a third party. Since the husband has no choice in the matter, to deny him reimbursement is to place him in a position less advantageous than of a stranger.[11] It is submitted that the court's interpretation, which is in violation of natural justice, is contrary to the cannon of construction that statutes in derogation of the common law are to be strictly construed.

The statute in question says in effect that the property of the wife shall not be liable for the debts of the husband and it is conceded that such medical expenses do constitute a debt of the husband. However can it be said that all of the proceeds of this recovery by the wife constitute property of the wife? To deny reimbursement to the husband is to allow a double recovery to the wife — a situation not consonant with good reason. The purpose of recovery of medical expenses is to make whole the injured party. Here the wife is being made more than whole at the expense of the husband. If this were not a situation of husband and wife, it is a typical situation for the enforcement of a resulting trust. In view of his common law liability, the husband cannot be said to be a volunteer. However the court says that sustaining such an

argument would require judicial legislation instead of judicial interpretation. It is submitted that strict interpretation in the light of natural justice and past legislative history does not amount to judicial legislation.

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FOOTNOTES

1. VA. CODE §55-36 (1950).
2. 29 Va. L. Rev. 857 (1943).
3. MADDEN, PERSONS AND DOMESTIC RELATIONS, §58 (1931).
4. Richmond Ry. & Elec. Co. v. Bowles, 92 Va. 738, 24 S. E. 388 (1896).
5. VA. CODE §5134 (1919), §55-36 (1950).
6. ACTS OF GENERAL ASSEMBLY, 1932, c. 25, p. 21.
7. VA. CODE §55-36 (1950).
8. 16 CORPUS JURIS SECUNDUM 599, p. 1196.
9. Miller v. Commonwealth, 172 Va. 639, 648, 2 S. E. 2d 343, 347 (1939).
10. VA. CODE §55-36 (1950).
11. See Hall v. Stewart, 135 Va. 384, 387, 116 S. E. 469, 473 (1923).