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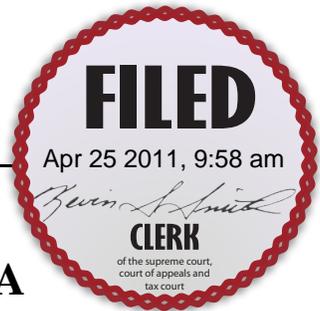
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**IN THE
COURT OF APPEALS OF INDIANA**

MARGARET ROUPP,)
)
Appellant- Respondent,)
)
and)
)
INDIANA FAMILY AND SOCIAL)
SERVICES ADMINISTRATION,)
)
Appellant (Intervenor))
)
vs.)
)
ROBERT ROUPP,)
)
Appellee- Petitioner,)

No. 41A01-1007-MI-335

APPEAL FROM THE JOHNSON SUPERIOR COURT
The Honorable Kevin M. Barton, Judge
Cause No. 41D01-0906-MI-42

April 25, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issue

In anticipation of his wife Margaret's application for Medicaid, Robert Roupp sought a trial court order allocating spousal support. The trial court issued an order transferring marital assets and Margaret's social security income to Robert and increasing Robert's community spouse resource allowance, the amount of assets exempt from being spent down prior to Medicaid eligibility. The trial court based its order on the common law doctrine of necessities and held that the order was subject to recognition upon Margaret's application for Medicaid. The Indiana Family and Social Services Administration ("FSSA"), the State's Medicaid agency, was permitted to intervene in the action and now appeals from the denial of its motion to correct error.¹ FSSA raises a single issue on appeal, which we restate as whether the trial court's order is contrary to law because the doctrine of necessities is inapplicable to this case. Concluding that given the undisputed facts of this case, Robert did not meet the standard for a distribution under the doctrine of necessities, we reverse and remand.

¹ While Margaret was a party in the trial court and remains a party on appeal pursuant to Indiana Appellate Rule 17(A), Margaret does not participate in this appeal. Accordingly, we have re-captioned the case to reflect FSSA as the party bringing this appeal.

Facts and Procedural History²

Robert and Margaret have been married since 1947 and there is no separation or divorce action pending. Margaret requires full institutional care in a nursing home, while Robert is able to live in an assisted living facility. Margaret's nursing home care may potentially be covered by Medicaid, subject to income and resource qualification. As of July 1, 2009, the couple's assets had a countable value of \$222,005.84, which represented assets owned jointly or held in the couple's joint irrevocable trust.

On June 29, 2009, Robert filed a "Petition for Spousal Support Pursuant to 42 U.S.C. § 1395r – 5 (d) (5), ICES Manual 3455.15.10.10 and the Doctrine of Necessaries." Appendix of Appellant at 6. Robert's petition stated Margaret "is expected to be approved for Medicaid benefits effective July 1, 2009," *id.* at 7, and requested relief effective as of that date. However, Margaret had not yet applied for Medicaid and Robert had not done so on her behalf. The trial court characterized Robert's petition as seeking "a spousal support order for transfer of marital assets and for an award of income prior to application for Medicaid assistance."³ *Id.* at 190.

Robert served a copy of his petition upon FSSA's Office of Medicaid Policy and Planning and upon its General Counsel. FSSA then filed its motion to intervene, which the trial court granted. On September 24, 2009, the trial court held an evidentiary hearing on Robert's petition at which Robert and FSSA appeared by counsel and FSSA filed a motion to dismiss.

² We heard oral argument on March 29, 2011, at the Indiana Court of Appeals Courtroom in Indianapolis. We thank counsel for their capable advocacy.

³ At oral argument in the present appeal, counsel for FSSA stated that after the trial court denied FSSA's motion to correct error, Margaret applied for and was approved for Medicaid. In light of FSSA's representation, we believe, although the parties have not raised it as an issue, that FSSA has a sufficient interest in this litigation and its appellate claims present a properly justiciable controversy.

On December 11, 2009, the trial court issued its order denying FSSA's motion to dismiss and granting Robert's petition for spousal support. The trial court determined Robert's necessary living expenses were \$3,541.50 per month and that his monthly income was \$2,924.79, resulting in a shortfall of \$616.71 per month. The record showed Margaret's income was \$554.30 per month in social security benefits and that her nursing home care cost between \$4,500 and \$4,800 per month. Id. at 91; Transcript at 65. The trial court determined that \$405.90 per month of Margaret's social security benefits would be transferred to Robert for payment of his necessary expenses and that the remaining shortfall of \$210.81 per month would be met by an upward adjustment to Robert's community spouse resource allowance ("CSRA"). Specifically, the trial court increased Robert's CSRA from \$109,560.00 to \$202,377.60, the amount calculated to be necessary to provide \$210.81 of monthly income utilizing a 1.25% annual interest rate. The trial court directed that marital assets up to \$202,377.60 be transferred to Robert as his CSRA and be used for his support. The trial court's legal conclusions included the following:

The Court concludes that a state court may enter an order under the common law doctrine of necessities that . . . increases the resources available for the support of the community spouse by increasing the CSRA which Order is then subject to recognition upon application for Medicaid under . . . 42 USC Sec. 1396r-5.

Id. at 199. The trial court's order provided that the above relief was effective as of July 1, 2009.

FSSA filed a motion to correct error, which the trial court denied following a hearing. FSSA now appeals.

Discussion and Decision

I. Standard of Review

FSSA appeals from the trial court's denial of its motion to correct error, a decision that we generally review for an abuse of discretion. D.W. v. L.W., 917 N.E.2d 725, 727 (Ind. Ct. App. 2009). Here, however, the relevant facts are undisputed and the issue on appeal is purely a question of law. As such, our review is de novo. See Howard v. Am. Family Mut. Ins. Co., 928 N.E.2d 281, 283 (Ind. Ct. App. 2010) (reviewing interlocutory order de novo where the relevant facts were undisputed and the issue was purely one of law); Ind. BMV v. Charles, 919 N.E.2d 114, 116 (Ind. Ct. App. 2009) (stating that because the issue was one of law, decision on motion to correct error would be reviewed de novo).

II. Medicaid Background

The relevant background to Robert's petition is the "spousal impoverishment" provisions of the Medicare Catastrophic Coverage Act of 1988 ("MCCA"), 42 U.S.C. section 1396r-5, which together constitute "a complex set of instructions made part of the federal Medicaid statute." Wisconsin Dep't of Health & Family Servs. v. Blumer, 534 U.S. 473, 477 (2002).

The spousal impoverishment provisions permit a spouse living at home (called the "community spouse") to reserve certain income and assets to meet the minimum monthly maintenance needs he or she will have when the other spouse (the "institutionalized spouse") is institutionalized, usually in a nursing home, and becomes eligible for Medicaid.

The [MCCA] shelters from diminution a standard amount of assets (called the "community spouse resource allowance," "CSRA," or "resource allowance"). The MCCA allows an increase in the standard allowance if either spouse shows, at a state-administered hearing, that the community spouse will not be able to maintain the statutorily defined minimum level of

income on which to live after the institutionalized spouse gains Medicaid eligibility.

Id. at 477-78. In developing standards for determining Medicaid eligibility, States must “tak[e] into account only such income and resources as are, as determined in accordance with standards prescribed by the Secretary [of Health and Human Services], available to the applicant.” Id. at 479 (emphasis in original) (quoting 42 U.S.C. § 1396a(a)(17)(B)). The MCCA contains a complex set of allocation rules governing both income and resources.

Regarding income, the MCCA directs that, in any month when a spouse is in an institution, “no income of the community spouse shall be deemed available to the institutionalized spouse”; thus the community spouse’s separate income is preserved for that spouse and does not affect the determination of whether the institutionalized spouse qualifies for Medicaid. Id. at 480-81 (quoting 42 U.S.C. § 1396r-5(b)(1)). For the period after the institutionalized spouse becomes Medicaid eligible, the statute establishes for the community spouse a “minimum monthly maintenance needs allowance,” or MMMNA, calculated by multiplying the federal poverty level for a couple by a percentage set, within limits, by the State. Id. at 481 (citing § 1396r-5(d)). If the income of the community spouse is less than the MMMNA, that shortfall is “deducted” from the income of the institutionalized spouse and reallocated to the community spouse, reducing the amount of income that would otherwise be considered available for the institutionalized spouse’s care. Id. The amount reallocated is called the “community spouse monthly income allowance,” or CSMIA. Id. at 482 (citing § 1396r-5(d)(1)(B)).

“As a result, Medicaid will pay a greater portion of the institutionalized spouse’s medical expenses than it would absent the CSMIA provision.” Id.

As for resources, for purposes of establishing the institutionalized spouse’s Medicaid eligibility, a portion of the couple’s assets – the community spouse resource allowance (“CSRA”) – is reserved for the benefit of the community spouse.⁴ Id. (citing § 1396r-5(c)(2)). The CSRA is calculated as half of the couple’s jointly or separately owned resources as of the time the institutionalized spouse’s institutionalization commenced, subject to upper and lower limits. Id. (citing §§ 1396r-5(c)(1)(A), (c)(2)(B), (f)(2)(A) & (g)). The CSRA is considered unavailable to the institutionalized spouse in the eligibility determination, but all resources above the CSRA (excluding a small personal allowance for the institutionalized spouse, as determined by federal regulations) must be spent before eligibility can be achieved. Id. at 482-83 (citing § 1396r-5(c)(2)).⁵

The MCCA provides a “fair hearing” mechanism through which a couple, after an application for Medicaid benefits has been made, may obtain a higher CSRA by establishing that the standard CSRA, in relation to the amount of income it generates, is inadequate to raise the community spouse’s income to the MMMNA. Id. at 483 (citing § 1396r-5(e)). Obtaining a higher CSRA enables the institutionalized spouse to reserve additional resources for post-eligibility transfer to the community spouse and, by reducing the resources deemed available for payment of medical expenses, means the institutionalized spouse will become eligible for Medicaid sooner. Id. at 483-84. The

⁴ The MCCA excludes from the definition of “resources” the couple’s home, one automobile, personal belongings, and certain other property. Blumer, 534 U.S. at 482 n.3.

⁵ Once the institutionalized spouse is determined to be Medicaid eligible, “no resources [gained by] the community spouse shall be deemed available to the institutionalized spouse.” Blumer, 534 U.S. at 482 n.4 (quoting § 1396r-5(c)(4)).

fair hearing process also permits increasing the community spouse's MMMNA if either spouse establishes that the community spouse needs additional income "due to exceptional circumstances resulting in significant financial duress." 42 U.S.C. § 1396r-5(e)(2)(B).

III. Common Law Doctrine of Necessaries

The trial court based its order for spousal support on the common law doctrine of necessities, stating that the doctrine provides Robert a freestanding cause of action to seek an award of spousal support. App. of Appellant at 190-93. Therefore the trial court did not address whether the MCCA provides a cause of action to distribute marital assets in anticipation of a Medicaid application. We agree with the trial court that the doctrine of necessities could provide a freestanding cause of action for spousal support, and we likewise need not address whether a cause of action could arise under the MCCA. We part company with the trial court, however, because given the facts of this case Robert did not meet the standard for a distribution under the doctrine of necessities.

In Bartrom v. Adjustment Bureau, Inc., 618 N.E.2d 1 (Ind. 1993), our supreme court held that the doctrine of necessities operates as follows:

Each spouse is primarily liable for his or her independent debts. Typically, a creditor may look to a non-contracting spouse for satisfaction of the debts of the other only if the non-contracting spouse has otherwise agreed to contractual liability or can be said to have authorized the debt by implication under the laws of agency. When, however, there is a shortfall between a dependent spouse's necessary expenses and separate funds, the law will impose limited secondary liability upon the financially superior spouse by means of the doctrine of necessities. We characterize the liability as "limited" because its outer boundaries are marked by the financially superior spouse's ability to pay at the time the debt was incurred. It is "secondary" in the sense that it exists only to the extent that the debtor spouse is unable to satisfy his or her own personal needs or

obligations. We think these rules will assist enforcement of the marital duty of support in both a workable and an equitable manner.

Id. at 8 (footnotes omitted). As the bedrock rationale for the doctrine of necessities, the supreme court explained that “[t]he notion that the available resources of one spouse ought be used to help support the other should the other become necessitous flows from the nature of the marital relationship itself,” and that the duty of spousal support is “clearly embedded” in Indiana’s statutory law of domestic relations. Id. at 5.

Since our supreme court decided Bartrom, this court has applied the doctrine of necessities as a basis for ordering a distribution of assets from a financially superior spouse to a dependent spouse when the dependent spouse’s separate funds were insufficient to meet her expenses and the financially superior spouse’s funds were otherwise unavailable to the dependent spouse. See Matter of Guardianship of Hall, 694 N.E.2d 1168 (Ind. Ct. App. 1998). In Hall, the wife petitioned for a distribution of assets and income when her institutionalized husband’s guardianship estate had \$176,705.45 in assets and \$1,789.00 of monthly income. Id. at 1169. The wife’s assets belonging solely to her and held outside the guardianship estate were valued at \$7,055.52, and the wife’s monthly income of \$638.50 was insufficient to meet her expenses. Id. The wife had no access to the guardianship funds because the guardianship was being controlled by the husband’s children. See id. Based on the doctrine of necessities, this court affirmed the trial court’s award of \$10,000 in assets and \$289 of monthly income from the husband’s guardianship estate to the wife, reasoning that the wife was “dependent upon her financially superior spouse” and her “separate funds [were] insufficient to meet her expenses.” Id. at 1169-70. Implicit in this court’s decision was a recognition that the

husband's guardianship estate did have sufficient income and assets to pay the wife's necessary expenses.

In the present case, the trial court's application of the doctrine of necessities is not consistent with a careful reading of Bartrom or Hall. To begin with, Margaret is not financially superior to Robert. Robert claimed income of \$2,924.79 per month, and the trial court found his necessary expenses totaled \$3,541.50 per month. Margaret's income was \$554.30 per month whereas her nursing home care cost between \$4,500 and \$4,800 per month. The Roupps' assets, owned jointly or held in their joint irrevocable trust, were valued at \$222,005.84 as of July 2009. Robert's daughter testified that Margaret's nursing home care and medical expenses were being paid "[f]rom [Robert]'s account." Tr. at 65. Thus, Robert had access to far more than enough assets and income to meet his necessary expenses as well as Margaret's. These facts make the present case unlike Hall, where the spouse who received the distribution had far fewer assets and income than the other spouse and, because the other spouse's assets were subject to a guardianship, no access to assets or income from which to pay her necessary expenses. See 694 N.E.2d at 1169.

The trial court, in holding Robert was entitled to a distribution under the doctrine of necessities, had to rely upon speculation as to the Roupps' future situation with regard to Medicaid. Robert's income already exceeded his monthly maintenance needs as determined under the Medicaid standards: his monthly income in 2009 was \$2,924.79, and the parties stipulated that for 2009 the cap on the MMMNA was \$2,739. The trial court did not find any exceptional circumstances that had caused or were causing Robert significant financial duress and, as a result, had no reason to conclude based on Medicaid

principles that Robert presently needed an award of income or increase in his CSRA. Instead the trial court premised its order on the assumption that Margaret would in the future apply and be found eligible for Medicaid such that Medicaid would pay the greater share of her long term care expenses. The trial court also looked prospectively to the amount of assets and income that would then remain for Robert under Medicaid's standard income and resource allocation rules which, as discussed in Part II supra, would require the Roupps to spend down approximately half their resources prior to Margaret's eligibility. The trial court determined that under the standard Medicaid rules, if Margaret were to apply and be found eligible, Robert would in the future lack sufficient funds to pay his necessary expenses as those currently exist.

Such forward looking speculation is inconsistent with the definition of the doctrine of necessities, which imposes a "secondary liability" on the financially superior spouse limited "by the financially superior spouse's ability to pay at the time the debt was incurred." Bartrom, 618 N.E.2d at 8. Here, there is no evidence or finding that Margaret has an ability to pay for Robert's necessary expenses that Robert lacks. Whereas the doctrine of necessities articulated in Bartrom looks retrospectively, imposing present liability for a debt or necessary expense already incurred, the trial court's order is fatally premised on improper speculation regarding Margaret's future qualification for Medicaid and the Roupps' future financial needs.

Because the trial court awarded Robert a distribution under the doctrine of necessities and specified an increase in his CSRA, it had to reach the further issue of whether anything in Medicaid statutes or regulations precluded its order for income and asset shifting from being binding on Medicaid. The trial court framed that issue as

whether the Roupps were required to utilize the administrative fair hearing process under the MCCA as the exclusive avenue for adjusting Robert's CSMIA and CSRA or whether those amounts could also be increased by a court order prior to the Roupps' filing of a Medicaid application. Robert has argued to the trial court and on appeal that an administrative fair hearing and a court order are parallel remedies for increasing the CSRA and that the federal and state statutes do not imply a sequence or require exhaustion of the administrative process. We need not address this question, however, given our dispositive conclusion that the legal basis for the trial court's order on spousal support, the doctrine of necessities, is inapplicable to this case and therefore we must reverse.

Conclusion

Given the undisputed facts of this case, Robert did not meet the standard for a distribution under the doctrine of necessities and the trial court lacked a legal basis to transfer marital assets and Margaret's income to Robert in anticipation of Margaret's application for Medicaid. We reverse the trial court's denial of FSSA's motion to correct error and remand with instructions for the trial court to vacate its order on spousal support.

Reversed and remanded.

RILEY, J., and BROWN, J., concur.