

OHIO SUPREME COURT CASE: NURSING FACILITY COULD NOT COLLECT DECEASED HUSBAND'S DEBT FROM WIFE UNDER OHIO'S NECESSARIES LAW

Under Ohio's spousal necessities law, an individual has a duty to support his or her spouse, which includes the obligation to pay for medical care received by the spouse. A recent Ohio Supreme Court **case** determined that a creditor must present its claim for unpaid necessities to the decedent's estate before the creditor can pursue a claim against the surviving spouse under Ohio's necessities law.

The modern version of the necessities laws and doctrine imposes limited secondary liability upon one spouse when the other spouse is unable to pay for his or her necessary expenses using his or her separate funds. The liability is secondary in the sense that it exists only if the debtor spouse is unable to satisfy his or her own personal needs or obligations.

DETAILED ANALYSIS

In this case, a resident lived at the nursing facility and accrued a private account balance of \$1,678. After the resident died, a probate estate was not opened by the resident's family or the nursing facility. After the probate creditor claim period expired, the nursing facility sued the surviving spouse under Ohio's necessities law, seeking payment for the deceased resident's unpaid bill. The surviving spouse moved for summary judgment and argued that the nursing facility did not first pursue the assets of the deceased resident and determine that those assets were insufficient before it pursued collection against the surviving spouse.

The issue made it to the Ohio Supreme Court, which determined that the nursing facility could not collect on expenses for a resident after the resident's death from the surviving spouse under the doctrine of necessities. The court determined that the nursing facility was required to seek payment from the deceased resident's estate before pursuing collection of the nursing facility's unpaid bill against the surviving spouse. Since the nursing facility did not take this step, the Supreme Court denied the nursing facility's claim.

PRACTICAL TAKEAWAYS

- Nursing facilities must consider procuring the appointment of an executor or personal representative if a decedent's family does not open a probate estate with the courts.
- Nursing facilities must seek payment from the deceased resident's estate before pursuing collection of the nursing facility's unpaid bill against the surviving spouse under the necessities laws.

Should you have any questions, please contact:

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