

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON

BAPTIST MEMORIAL HOSPITAL,)
)
Plaintiff/Appellee)
)
v.)
)
SADIE DURDEN,)
)
Defendant/Appellant).

Shelby Circuit No. 50332 T.D.
FILED
Appeal No. 02A01-9411-CV-00260
October 10, 1995
Cecil Crowson, Jr.
Appellate Court Clerk

APPEAL FROM THE CIRCUIT COURT OF SHELBY COUNTY
AT MEMPHIS, TENNESSEE
THE HONORABLE JANICE M. HOLDER, JUDGE

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AFFIRMED

WILLIAM H. INMAN, SENIOR JUDGE

CONCUR:

ALAN E. HIGHERS, JUDGE

DAVID R. FARMER, JUDGE

OPINION

The plaintiff filed this action to recover the amount of an open account for services of a necessary nature rendered to the defendant's husband.

The defendant admits that such services were rendered for her husband, but she denies liability for payment, relying on the Statute of Frauds and the absence of any special contract.¹ The trial judge rendered summary judgment for the plaintiff, holding her liable for necessaries furnished to her husband during his lifetime. We affirm.

The common law duty of the husband to provide necessaries for his wife has always been recognized in Tennessee. *Simpson v. Drake*, 150 Tenn. 84, 262 S.W. 41 (1924). It was not until 1983 that the converse of this duty was pronounced in *Kilbourne v. Manzelik*, 648 S.W.2d 932 (Tenn. 1983), which held a wife liable for necessaries provided to her husband. The Statute of Frauds has no application in these circumstances.

The absence of any agreement by the defendant to pay the debt of her husband does not vitiate the common law duty evolved upon her by virtue of the marriage relationship. See, *Wallace v. Cox*, 136 Tenn. 69, 188 S.W. 611 (Tenn. 1916).

We cannot find that the evidence preponderates against the judgment, which is accordingly affirmed at the cost of the appellant. TENN. R. APP. P., Rule 13(d).

William H. Inman, Senior Judge

Concur:

¹She also raises the defense of economic inability to pay, which we are not privileged to consider on the initial issue of liability.

Alan E. Highers, Judge

David R. Farmer, Judge