

Wayne Health Care DeMay Living Ctr. v Blair

2011 NY Slip Op 31022(U)

April 20, 2011

Supreme Court, Wayne County

Docket Number: 68514/2009

Judge: Dennis M. Kehoe

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STATE OF NEW YORK
SUPREME COURT COUNTY OF WAYNE

WAYNE HEALTH CARE DEMAY LIVING
CENTER,

Plaintiff,

DECISION

-vs-

THE ESTATE OF ROBERT BLAIR and
SONJA BLAIR,

Index No. 68514

2009

Defendant.

Underberg & Kessler, LLP
Scott D. Shimick, Esq., of counsel
Attorneys for Plaintiff

Kenyon and Kenyon
Edward C. Kenyon, Esq., of counsel
Attorneys for Defendants

The above action was scheduled for a trial without jury before this Court on January 6, 2011. On the eve of trial, counsel for the parties informed the Court that they wished to submit the matter to the Court on a written stipulation of facts, together with a packet of attachments consisting of tax returns, pension and social security statements, bank statements and DeMay application's and agreements. Counsel appeared before the Court at the time the trial was to commence and placed their respective

arguments on the record. Counsel were then permitted to submit in writing any additional written legal arguments in support of their positions.

(The Court notes that a Motion for Summary Judgment was previously filed in this matter by the Plaintiff. That motion was denied by the Court, based on its determination that there were factual issues which had to await trial.)

As set forth in the Stipulation, Robert Blair and Sonja Blair were married on March 30, 1972. The parties resided together at 4856 Teller Road, Newark, New York, until Mr. Blair's admission to the DeMay Living Center on October 1, 2007. (Mr. Blair also resided at DeMay at various times between March 27, 2007 through September 30, 2007, prior to his final admission.) Mr. Blair passed away on August 7, 2008. The Plaintiff has now sued the Estate of Robert Blair and Sonja Blair for the sum of \$90,679.00, as reimbursement for expenses relating to the food, shelter, and medical services provided by DeMay to Mr. Blair during the period of his residence. (The Court notes that no estate has been filed on behalf of Mr. Blair, and therefore Sonja Blair is the only viable Defendant.)

The exhibits presented to the Court clearly indicate that Sonja Blair never signed any of the DeMay documents individually. The Application

for Admission and the Resident Admission Agreement were both executed by Mrs. Blair on behalf of her husband pursuant to a valid Power of Attorney. Mrs. Blair never signed a personal guaranty or any other document in her individual capacity.

Therefore, the only basis for recovery by DeMay against Sonja Blair individually is the common-law "doctrine of necessities", as set forth in the sole cause of action against Mrs. Blair in the Plaintiff's Complaint. This doctrine originally was intended to obligate a husband to pay for services rendered to his wife. However, given the major changes which have taken place regarding the status of married women under the law, there is little doubt that the doctrine although still valid, should be considered gender neutral.

However, the doctrine still requires that a creditor seeking to recover from a spouse such sums as are expended for the care of the other spouse has the burden of proving that the necessities were furnished on the credit of the community spouse. In other words, the application of the doctrine involves the issue as to what extent the Plaintiff may have relied on the Defendant's credit in extending services to the spouse. The Courts acknowledge that a presumption on this point does exist in the creditor's

favor. (See, Our Lady of Lourdes Mem'l Hosp. v Frey, 152 AD2d 73 (3rd Dept, 1989)). In addition, the doctrine also holds a community spouse legally responsible for such expenses, only insofar as they are commensurate with that spouse's means. (Our Lady of Lourdes, supra).

The written stipulation sets forth in great detail the income and assets of Mr. and Mrs. Blair. The Blairs' tax returns for the years 2004 through 2007 show a combined adjusted gross taxable income ranging from \$62,405.00 up to \$118,959.00. The income was derived from social security benefits, pension benefits and an annuity payment. Therefore, the total guaranteed monthly income at the time of Mr. Blair's admission to DeMay is stipulated to have been \$5,220.05. (This amount does not include interest and dividends.) The Blair's residence was assessed at \$117,900.00 in 2007, with an outstanding mortgage of \$9,029.99. (The home was insured for \$246,000.00.) There were also other miscellaneous accounts.

The written stipulation also states that Mr. Blair made application for Medicaid benefits, and that application was denied on November 28, 2007. (The "Notice Date" of the Decision is stamped February 9, 2009.) The Court has reviewed the Notice of Decision, together with six pages of

individual financial transactions, spanning a period in excess of a three (3) year period for which the Blairs were required to provide "verification". It does not appear that there was any follow-up to the denial, which was based on a finding of "failure to provide all requested verifications for Medicaid eligibility to be determined."

Had the Blairs received the Medicaid benefits they requested, the total amount payable to DeMay upon Mr. Blair's death would have been \$20,297.39. The Court strongly feels that payment of this amount would have constituted the fair and reasonable conclusion to this sad story.

However, for reasons not made clear to the Court, (although one might assume that the compilation of the required financial data could have discouraged further action by anyone in Mrs. Blair's situation), Mr. Blair was never awarded Medicaid benefits. As much as this Court would prefer to issue a judgment in the lower amount, as requested by the Defendant, there appears to be no legal authority for this Court to arrive at a figure based on something that "might have been". DeMay had a complete record of the Blairs' finances at the time of his admission to DeMay. Common law has created a presumption that a creditor has relied on the credit of the community spouse when providing services. Based on the

record as submitted, the Court cannot find that such presumption was rebutted. Finally, although the reduced monthly payments would appear to have been more in keeping with the Blairs' overall situation, again the Court cannot find on this record that the expenses incurred on Mr. Blair's behalf were not commensurate with Mrs. Blair's financial means at the time of the admission.

Therefore, the Court feels constrained by the law and by the record to grant the Plaintiff's motion for summary judgment, and the Plaintiff is awarded a money judgment against the Defendant Sonya Blair in the amount of \$90,679.00. No costs are awarded.

Counsel for the Plaintiff is directed to submit an Order in accordance with this Decision.

Dated: April 20, 2011
Lyons, New York


Honorable Dennis M. Kehoe
Acting Supreme Court Justice

WATSON
SUPREME AND JUSTICE COURT
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