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## ***Alamance County Hospital v. Neighbors*: North Carolina Rejects Child Support Provisions as a Limit on the Doctrine of Necessaries**

Under the English common law, no civilly enforceable law obligated parents to support their children.<sup>1</sup> As the common law developed in the United States, however, a father became primarily liable for the support of his minor children under the doctrine of necessaries.<sup>2</sup> This doctrine imposes liability on a father to a third party who has provided a child with necessaries that the father has refused or failed to provide.<sup>3</sup> At least one jurisdiction also requires that the parent have knowledge that the third party is providing necessary goods or services to be liable under the doctrine.<sup>4</sup>

Today, state statutes require a noncustodial parent to fulfill any obligation to provide necessaries through child support payments.<sup>5</sup> Many jurisdictions, however, still impose common-law liability to a third party even though the parents are divorced and the parent being sued does not have custody of the child.<sup>6</sup> These jurisdictions have taken the view that parents have a common-law duty to support their children that is independent of any statutory requirements for child support provisions in a divorce decree.<sup>7</sup> In contrast, the remaining jurisdictions have taken the view that the child support which the noncustodial

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1. J. MADDEN, *PERSONS AND DOMESTIC RELATIONS* 383 (1931). Although a father could be criminally liable for neglecting the maintenance of his child, there was no civil liability. *Id.* “[T]he law [did] not, as in the case of husband and wife, create any liability on the part of a parent for necessaries furnished his child, in the absence of [a] contract in fact, express or implied, on his part.” *Id.* at 384.

2. H. CLARK, *LAW OF DOMESTIC RELATIONS* § 6.3, at 189-90 (1968). If the father fails to provide necessaries, the mother or child may purchase them on the husband’s credit. The father is then liable to the supplier. *Id.* at 190. “At common law the husband was primarily liable for the support of his minor children. . . . Upon his failure or neglect to furnish necessaries for the support of his children according to his station in life, one who has done so may recover from the father accordingly.” 2 W. NELSON, *DIVORCE AND ANNULMENT* § 15.59, at 360-61 (2d ed. 1961).

3. *See, e.g.,* *Watkins v. Medical & Dental Finance Bureau*, 101 Ariz. 580, 422 P.2d 696 (1967) (en banc), in which the court stated:

The “implied promise for necessaries” doctrine was not formulated for the purpose of aiding enterprising third parties, but rather is a policy law meant to impel neglectful parents to assume responsibility for their child’s welfare. Parents who are not guilty of neglect, in turn, are not to be denied the valuable right to choose with whom they shall deal.

*Id.* at 582, 422 P.2d at 698.

4. *Thompson v. Perr*, 238 S.W.2d 22 (Mo. Ct. App. 1951) (holding that a dentist could not recover from a father paying child support because the father had no knowledge that the dentist had rendered services to the child). *But see* *Lawrence v. Cox*, 464 S.W.2d 674 (Tex. Ct. App. 1971) (holding that a dentist could recover from a father paying child support even though the father had no knowledge that the services were rendered).

5. *See generally* Wallop, *The Last Campaign—Child Support and Poverty*, 1983 DET. C.L. REV. 1467 (discussing the relationship between the poverty problem in the United States and the problem of collecting child support payments); Note, *Child Support: His, Her, or Their Responsibility?*, 25 DE PAUL L. REV. 707 (1976) (discussing the factors to be considered when the court determines the amount of child support); *Survey of Developments in North Carolina Law, 1981, Family Law*, 60 N.C.L. REV. 1379, 1394-96 (1982) (discussing cases addressing issues of court-ordered child support).

6. J. MADDEN, *supra* note 1, at 388.

7. J. MADDEN, *supra* note 1, at 388-89.

parent is obligated to pay under the divorce decree constitutes the absolute limit of his or her liability.<sup>8</sup> Because these jurisdictions limit liability to the terms of the divorce decree, subject to the power of the court to modify the decree, they do not allow a cause of action for necessities by a third party against a noncustodial parent.<sup>9</sup>

In *Alamance County Hospital v. Neighbors*,<sup>10</sup> a case of first impression in North Carolina, the North Carolina Supreme Court adopted the view that the common-law remedy under the doctrine of necessities exists in addition to whatever provisions for child support the divorce decree may contain.<sup>11</sup> This Note examines the court's application of related North Carolina cases and considers cases from other jurisdictions. The Note concludes that although the definition of a legal necessary will require refinement in the future, the supreme court adopted the better view.

The third party suing for compensation in *Alamance County Hospital* was a hospital that had rendered nonemergency medical services to defendants' minor daughter.<sup>12</sup> Defendants had divorced prior to their daughter's hospitalization.<sup>13</sup> During the divorce proceedings, the court granted custody of the child to the mother and ordered the father to pay \$26.50 per week for the support and maintenance of the child.<sup>14</sup> All support payments were current when the hospital brought suit against both parents jointly and severally.<sup>15</sup>

When the mother admitted the child to the hospital, she signed the hospital admission forms. Later, she signed two promissory notes for the payment of the hospital bill.<sup>16</sup> The record contained no evidence that the father signed anything or even knew of his daughter's illness and admission to the hospital.<sup>17</sup> The hospital's theory of recovery against the father was not, however, based on contract.<sup>18</sup> It more closely resembled a claim for restitution from the father under the common-law doctrine of necessities.<sup>19</sup> The father filed a motion to dismiss

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8. Annotation, *Support Provisions of Judicial Decree or Order as Limit of Father's Liability for Expenses of Child*, 7 A.L.R.2d 491, 492-97 (1949). On request by the custodial parent, the divorce decree may be subsequently modified by a court to increase the amount for child support if changed circumstances warrant such a modification. *Id.* at 492, 494.

9. *Id.* at 492. In these jurisdictions, "a judicial support provision is the absolute limit of the father's liability except as it may be subsequently modified. Sometimes the decree or order is considered as replacing the father's common-law liability with a statutory one, and sometimes as defining or limiting it." *Id.*

10. 315 N.C. 362, 338 S.E.2d 87 (1986).

11. *Id.* at 368-70, 338 S.E.2d at 91-92.

12. *Id.* at 364, 338 S.E.2d at 88.

13. *Id.* at 363, 338 S.E.2d at 88.

14. *Id.*

15. *Id.* The amount for support was later increased to \$35 per week in 1976; support was lowered to \$30 per week in a 1978 criminal support order. *Id.*

16. *Id.* at 364, 338 S.E.2d at 88.

17. *Id.* The opinion suggests that the medical care provided for defendants' daughter was not emergency care. *Id.* at 368 n.2, 338 S.E.2d at 90 n.2.

18. *Id.* at 368, 338 S.E.2d at 90-91.

19. *Id.* at 368, 338 S.E.2d at 90. The hospital's complaint alleged that the services it provided were necessary and reasonable, and that both the mother and father had refused to pay for them. *Id.* at 368, 338 S.E.2d at 91. The hospital failed to cite any authority, however, that supported its own right to collect from the father in the absence of a contract. *Id.* at 368 n.2, 338 S.E.2d at 90 n.2.

for failure to state a claim on which relief could be granted, and a motion to drop his name as a party to the action on the grounds that, because he was paying child support, the hospital had no direct action against him.<sup>20</sup> The trial court entered an order granting the father's motion to dismiss and the hospital appealed.<sup>21</sup>

The North Carolina Court of Appeals affirmed the trial court's order on the ground that there was no contract between the father and the hospital.<sup>22</sup> The court of appeals cited no authority for its holding, and did not address the doctrine of necessities. It simply held that, absent a contract, a noncustodial parent is not liable to a third party provider of nonemergency care for a minor child.<sup>23</sup> The hospital appealed to the North Carolina Supreme Court, which reversed the decision and held that the right of a third party provider of goods or services to recover against the noncustodial parent continues, despite the divorce, "unimpaired by contracts or judicial decrees or orders affecting the relations between the parents."<sup>24</sup>

In reviewing the court of appeals' decision, the supreme court noted that the father's defense that a noncustodial parent's liability is limited to the amount of child support in the divorce decree raised an issue of first impression in North Carolina.<sup>25</sup> The court also noted that North Carolina cases recognized a third party provider's right to recover from a noncustodial parent,<sup>26</sup> but that these cases did not involve the situation in which the noncustodial parent is making child support payments as ordered in a divorce decree.<sup>27</sup> The court examined North Carolina statutory law concerning child support and concluded that the 1981 amendment to North Carolina General Statutes section 50-13.4(b),<sup>28</sup> which made both parents primarily liable for the support of their children, did not lessen a father's duty to support his minor children.<sup>29</sup> Therefore, this statute did not prevent the court from finding liability to the third party provider. The

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20. *Id.* at 364, 338 S.E.2d at 88.

21. *Id.* at 364, 338 S.E.2d at 89.

22. *Alamance County Hosp. v. Neighbors*, 68 N.C. App. 771, 773, 315 S.E.2d 779, 780 (1984), *rev'd*, 315 N.C. 362, 338 S.E.2d 87 (1986). "While parents are ordinarily liable for the support, maintenance, and care of their minor children, a non-custodial parent is not liable to a third-party provider of nonemergency care for a minor child absent some contractual relationship . . ." *Id.*

23. *Id.*

24. *Alamance County Hosp.*, 315 N.C. at 369, 338 S.E.2d at 92.

25. *Id.* at 368, 338 S.E.2d at 91.

26. *Id.* at 367, 338 S.E.2d at 90. The cases cited were *Bitting v. Goss*, 203 N.C. 424, 166 S.E. 302 (1932); *Howell v. Solomon*, 167 N.C. 588, 83 S.E. 609 (1914); and *P.J. Hunycutt & Co. v. Thompson*, 159 N.C. 29, 74 S.E. 628 (1912).

27. *Alamance County Hosp.*, 315 N.C. at 367, 338 S.E.2d at 90.

28. Act of June 18, 1981, ch. 613, § 1, 1981 N.C. Sess. Laws 872 (codified at N.C. GEN. STAT. § 50-13.4(b) (1984)).

29. *Alamance County Hosp.*, 315 N.C. at 366, 338 S.E.2d at 90. Before 1981, this statute made the father's responsibility for support of his children primary and the mother's secondary. *In re Register*, 303 N.C. 149, 154, 277 S.E.2d 356, 359 (1981), *superseded by statute as stated in* *Plott v. Plott*, 313 N.C. 63, 67-68, 326 S.E.2d 863, 866-67 (1985). The statute was amended in 1981 to make both parents primarily liable. Act of June 18, 1981, ch. 613, § 1, 1981 N.C. Sess. Laws 892 (codified as amended at N.C. GEN. STAT. § 50-13.4(b) (1984)). The 1981 amendment, however, did not diminish the father's responsibility, but instead made both parents primarily liable for the support of their children. See *Plott v. Plott*, 313 N.C. 63, 67-68, 326 S.E.2d 863, 866-67 (1985).

court also concluded that North Carolina still follows the common-law doctrine of necessities.<sup>30</sup>

The court then looked to cases from other jurisdictions to help it decide whether to allow a cause of action by the hospital or to limit the noncustodial parent's liability to the amount of child support in the divorce decree.<sup>31</sup> The court identified several states that limit liability to the child support obligation in a divorce decree, but failed to examine any cases from those states.<sup>32</sup> The court did cite cases from jurisdictions that have allowed liability to a third party provider,<sup>33</sup> but discussed only one of these cases, *Barrett v. Barrett*,<sup>34</sup> a 1934 Arizona case. Relying on *Barrett*, the court stated that a child's right to support from both parents is unimpaired by support provisions in a divorce decree.<sup>35</sup> The court expanded this principle to include the right of third party providers of necessities to claim compensation from both parents, not just the custodial parent.<sup>36</sup> The supreme court then reversed the court of appeals' decision and held that, because a noncustodial parent's liability for the support of his or her minor children is not necessarily limited to the amount of child support in a divorce decree, the hospital had stated a cause of action against the father.<sup>37</sup>

Prior to the 1981 amendment to section 50-13.4(b), only the father was primarily liable for the support of his minor children.<sup>38</sup> North Carolina child support law now provides that both the mother and the father are primarily liable.<sup>39</sup> The amended statute, however, does not diminish the father's obligation.<sup>40</sup> He cannot contract away or transfer to another his responsibility to support his children.<sup>41</sup> His obligation to provide support survives divorce even if the mother is awarded custody of the children.<sup>42</sup>

30. *Alamance County Hosp.*, 315 N.C. at 367, 338 S.E.2d at 90.

31. *Id.* at 368-69, 338 S.E.2d at 91.

32. *Id.* at 368, 338 S.E.2d at 91. States limiting a noncustodial parent's liability to judicially decreed child support include Arkansas, California, Maine, Massachusetts, Nebraska, New York, Ohio, and Oregon. *Id.*

33. *Id.* at 369, 338 S.E.2d at 91; see *Graham v. Graham*, 38 Colo. 453, 457, 88 P. 852, 853 (1906) (father is still liable for necessary expenses for the support of his minor children even though he does not have custody; the rights of the children are not affected by the divorce decree because they are not parties to the divorce action); *Thompson v. Perr*, 238 S.W.2d 22, 25 (Mo. Ct. App. 1951) (court would have allowed recovery if the third-party provider, a dentist, could have shown that the noncustodial parent had knowledge of his services); *Rose Funeral Home v. Julian*, 176 Tenn. 534, 537-38, 144 S.W.2d 755, 756 (1940) (court allowed recovery to the third party on the grounds that a divorce decree providing for child support payments relates merely to rights between the father and mother and does not affect the rights of the child).

34. 44 Ariz. 509, 39 P.2d 621 (1934).

35. *Alamance County Hosp.*, 315 N.C. at 369, 338 S.E.2d at 91.

36. *Id.* at 369, 338 S.E.2d at 92.

37. *Id.* at 369-70, 338 S.E.2d at 91-92.

38. *In re Register*, 303 N.C. 149, 154, 277 S.E.2d 356, 359 (1981), *superseded by statute as stated in* *Plott v. Plott*, 313 N.C. 63, 67-68, 326 S.E.2d 863, 866-67 (1985).

39. See *supra* note 29; *Plott v. Plott*, 313 N.C. 63, 67-68, 326 S.E.2d 863, 866-67 (1985).

40. *Plott*, 313 N.C. at 67-68, 326 S.E.2d at 866-67.

41. *Ritchie v. White*, 225 N.C. 450, 452-53, 35 S.E.2d 414, 415 (1945) (wife not allowed to enforce contract made with deceased husband because the contract gave away property rightfully belonging to his children).

42. *Becker v. Becker*, 273 N.C. 65, 70, 159 S.E.2d 569, 573 (1968); *Story v. Story*, 221 N.C. 114, 116, 19 S.E.2d 136, 137 (1942).

No North Carolina case since 1981 has dealt with a parent's liability to a third party provider of necessities. The few North Carolina cases that have involved this common-law liability were decided by the North Carolina Supreme Court in the early 1900s, when only the father was primarily liable for the support of his children. The court held in those cases that a third party provider of necessities does have a cause of action against the noncustodial parent.<sup>43</sup> Recovery was allowed only under certain circumstances, however. If the noncustodial parent had neither refused nor neglected to provide support, but had at all times been ready, willing, and able to fulfill his support obligation, then no recovery was allowed.<sup>44</sup>

Three early North Carolina cases addressed the liability of a noncustodial parent to a third party provider. In *P.J. Hunycutt & Co. v. Thompson*<sup>45</sup> a third party who had furnished funeral services for a deceased minor child sued the child's father for compensation.<sup>46</sup> The father had refused to support his son while the son was in his custody and as a consequence had wrongfully driven him away from home.<sup>47</sup> The North Carolina Supreme Court held that, because the father had failed to provide for his son, the father was liable for the son's funeral expenses.<sup>48</sup> If, however, the son had left home without fault on the father's part, the third party provider could not have recovered.<sup>49</sup>

In *Howell v. Solomon*<sup>50</sup> a minor child's grandmother brought suit against the child's father to recover compensation for the support and maintenance of his two children.<sup>51</sup> The grandmother had taken custody of the children when their mother died and had prevented the father from having any access to them or providing support for them.<sup>52</sup> The court recognized that such a cause of action by a third party provider is valid in North Carolina.<sup>53</sup> The court refused to allow recovery, however, because the father was at all times ready and willing to provide support.<sup>54</sup>

The facts in another early North Carolina case, *Bittin v. Goss*,<sup>55</sup> did not involve a traditional third party provider suit against the noncustodial parent. The case, however, does provide another example of North Carolina's accept-

43. *Bitting v. Goss*, 203 N.C. 424, 166 S.E. 302 (1932); *Howell v. Solomon*, 167 N.C. 588, 83 S.E. 609 (1914); *P.J. Hunycutt & Co. v. Thompson*, 159 N.C. 29, 74 S.E. 628 (1912). One commentator has suggested that North Carolina still follows this view. 3 R. LEE, NORTH CAROLINA FAMILY LAW § 230, at 148 (4th ed. 1981).

44. See *Howell v. Solomon*, 167 N.C. 588, 593, 83 S.E. 609, 612 (1914); *P.J. Hunycutt & Co. v. Thompson*, 159 N.C. 29, 30-31, 74 S.E. 628, 629 (1912); 3 R. LEE, *supra* note 43, § 230, at 148.

45. 159 N.C. 29, 74 S.E. 628 (1912).

46. *Id.* at 30, 74 S.E. at 628.

47. *Id.* at 30-31, 74 S.E. at 629.

48. *Id.* at 33, 74 S.E. at 630.

49. *Id.* at 30-31, 74 S.E. at 629.

50. 167 N.C. 588, 83 S.E. 609 (1914).

51. *Id.* at 589, 83 S.E. at 610.

52. *Id.* at 590, 83 S.E. at 610. The court did not fully relate the facts of the grandmother's interference. It simply stated that "her infirmity of disposition" and "her intolerance, [sic] quarrelsome disposition" drove the father away. *Id.* at 593, 83 S.E. at 612.

53. *Id.* at 592, 83 S.E. at 612.

54. *Id.* at 593, 83 S.E. at 612.

55. 203 N.C. 424, 166 S.E. 302 (1932).

ance of the principle that a third party provider can sue for compensation. The issue was whether an infant living with his father could be liable to a doctor who had rendered emergency medical care to the infant.<sup>56</sup> The infant had recovered damages from another party for the injuries requiring the medical care.<sup>57</sup> The court held the infant was liable to the doctor, but also stated, "It goes without saying that the father was liable to plaintiff the physician for the services rendered his infant son."<sup>58</sup>

Although recognizing that a cause of action may exist against a noncustodial parent, none of these early North Carolina cases dealt with a situation in which a divorce decree provided that the noncustodial parent make child support payments to the custodial parent. Other jurisdictions have addressed this issue, and though some allow liability, others do not. *Barrett*, on which the supreme court relied, propounds the view that the noncustodial parent should be liable to a third party provider of necessities regardless of whether the court has ordered child support payments to the custodial parent in the divorce decree. The court in *Barrett* awarded custody of the children to the mother and ordered the father to pay one thousand dollars and certain items of personal property in lieu of any further provisions for child support.<sup>59</sup> When the mother became ill and unable to provide for her children, one of the brothers furnished fifty dollars per month for the support of the other children. The father knew that his son was providing support for his children.<sup>60</sup> The son sued the father for the amount of money the son had given his mother to support the other children.<sup>61</sup> The court stated that a divorce decree providing for child support is binding between the mother and father, "but neither the statute nor the decree thereunder is the full measure of the duty of the parent to his minor children. If it were, the children's right to support could not be enforced for lack of a remedy, provided the parent failed to act."<sup>62</sup> The court also stated that although liability could not be based on a contract theory, it could be found under the doctrine of necessities.<sup>63</sup>

Some jurisdictions completely bar recovery by a third party provider against a noncustodial parent when that parent is paying child support pursuant

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56. *Id.* at 427, 166 S.E. at 303.

57. *Id.* The father had also recovered expenses incurred as a result of the child's accident, including medical and hospital expenses. *Id.*

58. *Id.*

59. *Barrett*, 44 Ariz. at 511, 39 P.2d at 621. The court also absolved the father of any duty to support his children. *Id.*

60. *Id.*

61. *Id.*

62. *Id.* at 516, 39 P.2d at 623. *Rose Funeral Home v. Julian*, 176 Tenn. 534, 144 S.W.2d 755 (1940), is another case holding a noncustodial father liable on the theory that the child's rights against his parents survive divorce:

Where the divorce decree awarding the custody of the child to the mother provides that the father shall contribute to its maintenance, it is logically held that such a decree relates merely to the relative rights and duties of the parents toward each other. Since the child is not a party to such suit, the child's rights as against the father are not affected.

*Id.* at 537-38, 144 S.W.2d at 756.

63. *Barrett*, 44 Ariz. at 519, 39 P.2d at 624.

to a divorce decree.<sup>64</sup> Some jurisdictions justify refusal to allow such a cause of action on these grounds:

When the custody of a minor child is granted to the mother on divorce from the father, and the father is ordered to contribute to the mother for the support of the child, his common-law obligation to support the child ceases and the obligation under the decree is substituted therefor.<sup>65</sup>

Under this view, the terms of the divorce decree limit the noncustodial parent's legal liability for the support of his or her children.<sup>66</sup> Another reason courts have given for denying the cause of action is that the parent being sued has been deprived of custody of the child.<sup>67</sup> "The exoneration from the common law obligation to support the child when custody is decreed to the mother is based upon the fact that the decree of custody to the mother deprives the father of his title to the services and earnings of the child."<sup>68</sup> At least one court denied a cause of action for another reason—the uncertainty that would result if one parent could incur debt and the creditors could recover directly from the other parent.<sup>69</sup> Instead of requesting a court to modify the divorce decree, the custodial parent would "assume the power to modify the decree merely by purchasing necessities on credit."<sup>70</sup>

The court in *Alamance County Hospital* indicated it was applying the common-law doctrine of necessities adopted in *P.J. Hunycutt & Co.* and *Howell*.<sup>71</sup> These cases stated that a third party provider has a right to sue a noncustodial parent for compensation. The court adopted from *Barrett* the conclusion that the child's right to support from both parents survives divorce and is not limited by statute or a divorce decree under a statute.<sup>72</sup> It is only fair to the child that he or she be able to rely on both parents for food, clothing, medical care, education, and other necessities regardless of the fact that the parents are bound to divorce provisions between themselves. The large number of divorced mothers living in poverty<sup>73</sup> demonstrates that the mother, who usually is the custodial

64. See, e.g., *Mahaney v. Crocker*, 149 Me. 76, 98 A.2d 728 (1953); *Ryder v. Perkins*, 219 Mass. 525, 107 N.E. 387 (1914); *Coastal Adjustment Bureau v. Wehner*, 246 Or. 115, 423 P.2d 967 (1967).

65. *Mahaney v. Crocker*, 149 Me. 76, 78, 98 A.2d 728, 729 (1953). "Until modified by the court, . . . the amount which the father is ordered to pay in such [a] decree measures his duty to support the child." *Id.*

66. *Ryder v. Perkins*, 219 Mass. 525, 527, 107 N.E. 387, 388 (1914).

67. *Mahaney*, 149 Me. at 78, 98 A.2d at 729.

68. *Id.* at 78, 98 A.2d at 729.

69. *Coastal Adjustment Bureau v. Wehner*, 246 Or. 115, 117, 423 P.2d 967, 968 (1967).

70. *Id.*

71. *Alamance County Hosp.*, 315 N.C. at 367, 338 S.E.2d at 90.

72. *Id.* at 369, 338 S.E.2d at 91-92.

73. M. TAKAS, CHILD SUPPORT xi (1985). Professor Takas has noted:

Today millions of families are headed by single mothers, and most experience the frustration of limited family income and lack of reliable child support. In fact, among female-headed families with children in the home, nearly two-thirds receive no child support at all, and about one-third actually live below the poverty level.

*Id.* (footnotes omitted).



parent,<sup>74</sup> often will be unable to provide all necessities from the father's child support payments.<sup>75</sup> In addition, children frequently need unexpected medical or dental care. Such expenses rarely can be anticipated when the court is determining the amount of support the noncustodial parent should pay. It also seems appropriate to prevent the father, who was a party to bringing the child into the world, from avoiding financial responsibility for these exigencies merely because he is current in his support payments.<sup>76</sup>

It is important to understand that the decision in *Alamance County Hospital* still requires that, for the third party provider to recover from the noncustodial parent paying child support, it must establish that, first, "the services or goods provided were legal necessities" and, second, "the parent against whom relief is sought has failed or refused to provide" the legal necessities.<sup>77</sup> Thus, the child support payments already made will be taken into account in determining "whether the parent has in fact met the obligation" to provide necessities for the child.<sup>78</sup> The noncustodial parent can defend on the basis that the goods and services provided were not necessary. The noncustodial parent also can try to show that the child support payments were in fact sufficient to provide for the necessities of the minor child. Furthermore, the court did not address "the question of responsibility of [the] parents as between themselves" for the cost of necessities.<sup>79</sup> Therefore, the custodial parent, who usually will incur the expense, will often be liable for a share of the cost of that necessary. Liability between the parents would depend on their relative economic circumstances, the amount contributed by both parents, and what the custodial parent did with the child support payments from the noncustodial parent. Thus, there are built-in disincentives to the custodial parent to incur frivolous expenses. Should the goods or services provided prove not to be necessities, the custodial parent will be fully liable to the third party provider for the expense. Even if the goods or services are necessities, the custodial parent may be liable to the noncustodial parent for part or all of the expense.

There are practical arguments that support the view that liability should be

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74. L. WEITZMAN, *THE DIVORCE REVOLUTION* 222 (1985). "On the average, mothers have been awarded custody in close to 85 percent of the divorce cases in which children were involved. Fathers were typically awarded custody in about 10 percent of the cases while the remaining awards were to relatives, and/or for shared custody." *Id.*

75. Also, noncustodial fathers often fail to make support payments. *Id.* at 262. Professor Weitzman has noted:

Despite court orders, noncustodial fathers fail to pay \$4 billion in child support each year. More than half (53 percent) of the millions of women who are due child support do not receive the court-ordered support. Child support awards that go unpaid and unenforced make a mockery of the judicial system and the value of court orders. They also leave millions of children without the basic necessities of life.

*Id.* (footnotes omitted).

76. Although divorced mothers may live in poverty, divorced fathers without custody may live in relative comfort even though they are making child support payments. M. TAKAS, *supra* note 73, at xi. "One study shows that although the standard of living of women and children drops by an average 73 percent after a divorce, men's standards of living actually increase by an average 42 percent." *Id.*

77. *Alamance County Hosp.*, 315 N.C. at 370, 338 S.E.2d at 92.

78. *Id.*

79. *Id.*

limited to the amount of child support in the divorce decree. Allowing one parent to incur the other parent's debt could result in never-ending litigation and constant squabbles over which expenses were actually necessary.<sup>80</sup> Considering the broad range of goods and services that could be classified as "necessaries,"<sup>81</sup> the noncustodial parent could be subject to unlimited liability. The custodial parent also needs clear guidelines on which expenses are legal necessities. Otherwise, a relatively poor custodial parent incurring an expense on behalf of the minor child might be surprised to be fully liable for the cost of something deemed not to be a necessary. The holding in *Alamance County Hospital* is not limited to medical services and, therefore, fails to provide guidelines that could be used to limit the number of such suits. North Carolina courts should provide these guidelines so that the support obligation in excess of judicially decreed child support payments will be delineated clearly.

Another argument against allowing recovery from a parent making child support payments is that the court's holding primarily protects third party creditors and is unnecessary to protect the rights of the minor children.<sup>82</sup> The holding protects creditors by guaranteeing that, if the custodial parent does not pay, the noncustodial parent will be responsible for paying the debt. Arguably, the court's holding is not necessary to protect the child's right to support because a custodial parent can always request that the court modify the amount of support provided in the divorce decree. Increase in child support through modification allows for unanticipated expenses not included in the original support order. Third parties may be unwilling to provide necessities, however, without the guarantee that both parents will be liable for the expenses. Furthermore, the needs of the child may become desperate before the custodial parent can procure a modification.

A noncustodial parent, even though current in making child support payments, should be liable to a third party provider of necessities. The common-law doctrine, as explained above, provides adequate safeguards against excessive liability. Although the definition of necessities requires further refinement, the court has properly protected an interest more important than that of the noncustodial parent—the interest of the child.

B. RENEE SANDERLIN

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80. *Karminski v. Karminski*, 260 A.D. 491, 493-94, 23 N.Y.S.2d 141, 142 (1940).

81. One commentator has noted:

Necessaries are usually defined as those articles or services reasonably appropriate for the support of wife and child, bearing in mind both their needs and the husband's means. . . . This includes not only food, clothing, and shelter, but such things as medical and dental care, legal services where needed, furniture and household goods, the wife's funeral services, and if the husband is rich, perhaps even a mink coat. . . . Whether a given article is a necessary is generally a question of fact for the jury.

H. CLARK, *supra* note 2, § 6.3, at 190 (footnotes omitted).

82. See, e.g., *Watkins v. Medical & Dental Fin. Bureau*, 101 Ariz. 580, 582, 422 P.2d 696, 698 (1967) (en banc) ("The 'implied promise for necessities' doctrine was not formulated for the purpose of aiding enterprising third parties, but rather is a policy law meant to impel neglectful parents to assume responsibility for their children's welfare.").