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# Quasi-Contract -- Expense of Medical Care of Indigent Parent

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say that the attorney could forget the inconsistency notion in alternative joinder of plaintiffs.

It would seem that by the *Conger* decision, North Carolina, in the alternative joinder situation, is becoming more liberal, perhaps even approaching the liberality of the Federal Rules.[28] It is hoped that the court will continue "to reach the conclusions most likely to expedite the prompt administration of justice."[29]

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**Quasi-Contract—Expense of Medical Care of Indigent Parent**

During the last illness of a parent, it is not unusual for his children to assume his medical bills. In *Deskovick v. Porzio*[1] the Superior Court of New Jersey, Appellate Division, recently considered an action to recover such expenses brought by two adult sons against the estate of their father, on an alleged contract for repayment.

The decedent's illness made his sons reluctant to discuss money matters with him and testimony indicates that they were erroneously led to believe that their father was unable to pay his medical bills.[2] They assumed and paid the bills, allegedly intending to have an accounting at some unspecified future date. Since the estate left by the decedent was more than sufficient to cover his medical expenses[3] they sought recovery, basing their action on a theory of contract implied in fact.[4] There could have been no such contract,

[28] 2 BARRON AND HOLTZOFF, FEDERAL PRACTICE AND PROCEDURE § 533, at 193 (1961). Rule 20(a) of the Federal Rules of Civil Procedure was enacted in contemplation of procedural economy and provided for, among other aspects, the alternative joinder of defendants. The authors cite Payne v. British Time Recorder Co., [1921] 2 K.B. 1, as the forerunner of Rule 20(a). *Payne* is interesting, therefore, from a historical point of view. In *Payne,* plaintiff supplier ordered cards from manufacturer for a customer from a sample furnished by manufacturer. On arrival, customer refused acceptance, alleging variance from the sample. The British court allowed joinder of customer and manufacturer in the alternative, realizing that the case, as in *Conger,* presented one common question: Did the cards furnished meet the specifications of the sample? This is a case of "mutual exclusiveness," because recovery against one would definitely preclude recovery against the other.

[29] 260 N.C. 112, 118, 131 S.E.2d 889, 893 (1963).

[1] 78 N.J. Super. 82, 187 A.2d 610 (App. Div. 1963).

[2] *Id.* at 85-86, 187 A.2d at 611-12.

[3] *Id.* at 89, 187 A.2d at 613.

[4] "Contracts are express when their terms are stated by the parties and are often said to be implied when their terms are not so stated. The dis-

however, because the decedent had not known that the plaintiffs were paying his bills.[5] In spite of this, the New Jersey Court reversed the trial court's order of involuntary dismissal with prejudice, but remanded the case to be tried on a theory of quasi-contract.

In proposing a quasi-contractual theory of recovery[6] the court felt that the plaintiffs were not guilty of officious intermeddling which would have barred their recovery as volunteers.[7] This is so since the plaintiffs were the appropriate persons to discharge their father's financial obligations. The court found, in essence, unjust enrichment to the estate of the decedent. That the plaintiffs, at the time they paid the bills, may have had a gratuitous intent was ruled of no effect because this gratuitous intent was a product of their mistaken appraisal of the situation.[8]

No case squarely in point with *Deskovick* has been found.[9] In similar cases, however, there appears to be some uncertainty regarding the proper theory of recovery. This is particularly noticeable in suits to recover for personal services rendered to the decedent,

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tinction is not based on legal effect but on the way in which mutual assent is manifested." 1 WILLISTON, CONTRACTS § 3, at 8-9 (3rd ed. 1957); 1 CORBIN, CONTRACTS § 18 (2d ed. 1963); RESTATEMENT, CONTRACTS § 5 (1932).

[5] 78 N.J. Super. 82, 86-87, 187 A.2d 610, 611.

[6] "A quasi-contractual obligation is one that is created by the law for reasons of justice, without any expression of assent and sometimes even against a clear expression of dissent." 1 CORBIN, CONTRACTS § 19, at 46 (2d ed. 1963); 1 WILLISTON, CONTRACTS § 3A (3rd ed. 1957). Historically, quasi-contract relief was awarded under the common counts in the common-law action of *indebitatus assumpsit,* on equitable criteria. Archawski v. Hanioti, 350 U.S. 532 (1956); Herrmann v. Gleason, 126 F.2d 936 (6th Cir. 1942); Dean v. Mattox, 250 N.C. 246, 108 S.E.2d 541 (1959); Allgood v. Wilmington Sav. & Trust Co., 242 N.C. 506, 88 S.E.2d 825 (1955) (for the remedy, not the facts); DAWSON, UNJUST ENRICHMENT 10-26 (1951).

[7] Schmid v. First Camden Nat'l Bank and Trust Co., 130 N.J. Eq. 254, 22 A.2d 246 (Ch. 1941); Whitehead v. Wilson Knitting Mills, 194 N.C. 281, 139 S.E. 456 (1927); Blacknall v. Hancock, 182 N.C. 369, 109 S.E. 72 (1921).

[8] The Court relied heavily on RESTATEMENT, RESTITUTION § 26 (1936). "A person is entitled to restitution from another to whom gratuitously and induced thereto by mistake of fact he has given money . . . ." *Id.* at 116. Restitution is allowed when the plaintiff has a "mistaken belief in the existence of facts which would create a moral obligation upon the donor to make the gift . . . ." *Id.* at 118.

[9] In the case of *In re* Dolgy's Estate, 338 Mich. 567, 61 N.W.2d 649 (1953), the plaintiff had paid hospital expenses incurred by his deceased father-in-law. Upon the death of the plaintiff's mother-in-law he sued *her* estate for reimbursement of her husband's medical bills. The court disallowed the claim, but indicated that it might have been valid if brought against the estate of the father-in-law.

where the courts speak of implied contracts without saying more.[10]

In such suits to recover for personal services a common case is one in which a close relative is taken into the plaintiff's home. This relative is usually aged and infirm, and requires a great deal of personal attention and nursing. At his death the plaintiff seeks reimbursement from his estate.[11] In determining whether or not to grant recovery, the courts seek to raise a factual presumption of a contract to pay.[12] When recovery is denied it is usually because of a lack of a basis for this presumption.[13] Occasionally courts will grant recovery in this situation based either on a theory of quasi-contract,[14] or one of supplying necessaries to an incompetent.[15]

[10] Typical of this hazy delineation is Snyder v. Nixon, 188 Iowa 779, 176 N.W. 808 (1920). In that case the plaintiff cared for her aged father for five years and told him that she intended to charge for her services, to which he agreed. Disappointed at her inheritance, she sued his executor. The court said, "The general rule is that, where one renders services of value to another, with his knowledge and consent, the presumption is that the one rendering services expects to be compensated, and that the one to whom the services are rendered intends to pay for the same; and so the *law* implies a promise to pay." *Id.* at 781, 176 N.W. at 809. (Emphasis added.) In Ellis v. Cox, 176 N.C. 616, 97 S.E. 468 (1918), it was said, "The jury or a referee may find as a fact an intent on the one part to charge and on the other to pay for the services, and . . . the law implies a contract to pay . . . ." *Id.* at 619, 97 S.E. at 469.

[11] "It not infrequently happens that those who are 'old and only in the way' are bundled off upon some more amiable member of the family, who uncomplainingly responds without the slightest assistance from the complacently selfish: and in the contest which ensues, really an effort to compel contribution based upon the same moral obligation, the selfish appear consumed with a 'righteous indignation' at the hardness of the claimant, which has as little sincerity as Judas exhibited in his protest against the waste of the precious ointment: 'This he said, not that he cared for the poor, but because he . . . had the bag, and bare what was put therein.' John xii, 6." Jones v. Jones, 129 S.C. 8, 12-13, 123 S.E. 763, 764 (1924). It is not surprising that the South Carolina Supreme Court ruled that there was a presumption that the plaintiff's services were rendered for a charge.

[12] Synder v. Nixon, 188 Iowa 779, 176 N.W. 808 (1920) (no relation); Nesbitt v. Donoho, 198 N.C. 147, 150 S.E. 875 (1929) (father); Henderson v. McLain, 146 N.C. 329, 59 S.E. 873 (1907) (mother-in-law); Whitaker v. Whitaker, 138 N.C. 205, 50 S.E. 630 (1905) (grandfather); Jones v. Jones, 129 S.C. 8, 123 S.E. 763 (1924) (father-in-law).

[13] Disbrow v. Durand, 54 N.J.L. 343, 24 Atl. 545 (Ct. Err. & App. 1892) (brother); Frain v. Brady, 48 R.I. 24, 134 Atl. 645 (1926) (no relation).

[14] Winkler v. Killian, 141 N.C. 575, 54 S.E. 540 (1906) (*semble*) (mother); Conkling's Estate v. Champlin, 193 Okla. 79, 141 P.2d 569 (1943) (no relation).

[15] In *In re* Marine Trust Co., 156 Misc. 297, 281 N.Y. Supp. 553 (Sup. Ct. 1935), recovery was facilitated by N.Y. PERSONAL PROPERTY LAW § 83 which provides essentially that one furnishing necessaries to an incompetent can recover their value from his estate. It was held in Key v. Harris, 116 Tenn. 161, 92 S.W. 235 (1905), that recovery might be had on the theory of

Other similar cases occur when the plaintiff, believing the decedent to be destitute, renders professional services. The courts have been more forthright in their application or refusal of quasi-contract in this area.[16]

The authorities seem to be in conflict in cases where the plaintiff provides services in the belief that she is legally married to the decedent. She has rendered her household services because of this belief, but finds on the husband's death that the marriage was never legal. Where the parties relied on their marriage in good faith the courts have generally refused to allow recovery.[17] On the other hand, one jurisdiction has recognized the mistake as a basis for quasi-contractual recovery and granted the appropriate relief in this situation.[18]

Further analysis shows that in most of the personal service and marriage cases the plaintiff stood or failed on the basis of his state of mind at the time he conferred benefits on the decedent. If the plaintiff intended a gratuity he was thereby barred from recovery, but if it could be presumed that he intended to charge he could do so later. Two cases in North Carolina seem to run contrary to this general rule.

In *Prince v. McRae*[19] the plaintiff, a physician, had rendered services to the decedent. The plaintiff had not made a charge but later apparently decided to collect from the decedent's estate. The North Carolina Supreme Court affirmed his recovery, and upheld the trial court's refusal to instruct the jury that an initial gratuitous

furnishing necessaries to an incompetent, where the plaintiff had nursed her idiot sister over a period of years. This theory was suggested by the court in spite of the fact that Tennessee had no counterpart of N.Y. PERSONAL PROPERTY LAW § 83.

[16] Recovery was allowed in quasi-contract where the estate of the one benefited was valued at upwards of $400,000. The court intimated that there might have been non-disclosure by the decedent. *In re* Agnew's Will, 132 Misc. 466, 230 N.Y. Supp. 519 (Surr. Ct. 1928). When the estate of the one benefited amount to only about $1,800, however, the court denied any recovery. *In re* Thomas' Estate, 132 Misc. 842, 231 N.Y. Supp. 93 (Surr. Ct. 1928).

[17] Nicely v. Howard, 195 Ky. 327, 242 S.W. 602 (1922) (dictum); Ogden v. McHugh, 167 Mass. 267, 45 N.E. 731 (1897) (dictum); Cooper v. Cooper, 147 Mass. 370, 17 N.E. 892 (1888); Cropsey v. Sweeney, 27 Barb. 310 (N.Y. 1857).

[18] Roberts v. Roberts, 64 Wyo. 433, 196 P.2d 361 (1948). In Sanders v. Ragan, 172 N.C. 612, 90 S.E. 777 (1916), the decedent had fraudulently induced the plaintiff to render her household services, and recovery was allowed on that basis.

[19] 84 N.C. 674 (1881).

intent on his part would defeat the plaintiff. Indeed, the court seems to have overlooked altogether the question of the plaintiff's original state of mind.

In *Thomas v. Thomasville Shooting Club*[20] the North Carolina Supreme Court upheld an instruction that:

> If Thomas did not at the time intend to charge for getting up the leases, and this was known to the defendant, then he could not charge and recover for same, but if it was not known to the defendant that Thomas did not intend to charge, then Thomas could afterwards sue for and recover for his services in getting up the leases.[21]

This appears to be a unique rule, enabling the plaintiff to change his mind in order to recover for a benefit he originally intended as a gift.

Where one bestows benefits gratuitously with full appreciation of the facts it should not be the policy of the law to allow him to be reimbursed,[22] as was done in *Thomas*. But when one has a gratuitous intent because of a misapprehension of attendant circumstances, the principal case should govern and that intent alone should not bar his recovery.

The result of the *Deskovick* case appeals to the layman's rough sense of justice. Should such a case arise in North Carolina,[23] it should be recognized as grounded on quasi-contract, and the donor's original benevolent motives should not defeat him in court, so long as he was misled in the formulation of those motives.

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**Workmen's Compensation—Scope of Immunity from Actions at Law—The Question of Borrowed Servants**

A landowner, constructing a storage plant for use in its business, employed a crew to lay water and sewer pipe on the construction site.

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[20] 121 N.C. 238, 28 S.E. 293 (1897).

[21] *Id.* at 240, 28 S.E. at 294.

[22] See Meier v. Planer, 107 N.J. Eq. 398, 152 Atl. 246 (Ch. 1930); Everitt v. Walker, 109 N.C. 129, 13 S.E. 860 (1891); Trustees of the University v. McNair's Executors, 37 N.C. 605 (1843).

[23] See Basinger v. Pharr, 225 N.C. 531, 35 S.E.2d 626 (1945). In that case the plaintiff had brought an action to recover money advanced by him on behalf of his father for medical expenses, etc., incurred by the latter during his last illness. In the same action the plaintiff sought recovery of an advance made directly to the decedent. The lower court non-suited the plaintiff as to both items, and he appealed only as to the second, leaving open the precise question presented by *Deskovick*.