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# Requiring Reimbursement from the Involuntarily Committed - Chill v. Mississippi Hospital Reimbursement Commissioner

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# REQUIRING REIMBURSEMENT FROM THE INVOLUNTARILY COMMITTED – *Chill v. Mississippi Hospital Reimbursement Commission,* 429 So. 2d 574 (Miss. 1983).

## FACTS

Ernest B. Covington, thirty-eight years old, was involuntarily committed to the Mississippi State Hospital at Whitfield in March of 1951. In the commitment proceeding in chancery court, Covington was found to be mentally ill and in need of treatment, based on his threats of physical harm to others, and on the diagnosis of paranoid psychosis made by the two examining physicians. At the Mississippi State Hospital, Covington was diagnosed as paranoid schizophrenic.[1]

In July of 1953, Covington, no longer hospitalized,[2] made an attempt on the life of the chancellor who had originally ordered his commitment.[3] A new commitment proceeding was instituted, and after physicians diagnosed Covington as paranoid schizophrenic, the court "promptly entered the commitment order."[4] Covington was then returned to Whitfield, where he remained until his death in 1979. At the hospital, electroconvulsive therapy was administered to Covington frequently (once or twice a week, during some periods), despite his protests.[5] Described by the hospital staff as hostile and potentially homicidal, Covington was lobotomized[6] on January 18, 1957. He continued to receive electroconvulsive therapy. On December 18, 1979, Ernest B. Covington died.[7]

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1. Paranoid schizophrenia is a mental disorder characterized by severe distortions of reality, particularly delusions of persecution and delusions of grandeur. Paranoid psychosis, a phrase often used to describe a similar pathology, is a slightly more general term, with less emphasis on the distortion of the thought processes. L. BOURNE & B. EKSTRAND, PSYCHOLOGY: ITS PRINCIPLES AND MEANINGS 449-58 (1979). According to records from the Mississippi State Hospital, Covington believed that the railroad company was spying on him, that the telephone company had "tapped" his telephone lines, and that "the Catholics" were conspiring against him.

2. There is no clear indication whether Covington was released, escaped, or simply left the hospital of his own accord. Chill v. Mississippi Hospital Reimbursement Comm'n, 429 So. 2d 574, 577 (Miss. 1983).

3. Record at 89, *Chill.*

4. *Chill,* 429 So. 2d at 577.

5. Although there is no Mississippi case law on the subject, the New York Supreme Court has held that, under New York law, electroconvulsive therapy may not be administered without the patient's consent, *if* the patient has the requisite mental capacity to understand the effect of his consent or refusal. The language of the New York statute construed in New York Health and Hosp. Corp. v. Stein, 70 Misc. 2d 944, 335 N.Y.S. 2d 461 (Sup. Ct. 1972), required simply that there be "consent," without indentifying the party from whom that consent must be had. The court noted that if the patient lacked the requisite mental capacity, then the consent was to be from the nearest relative, the guardian, or – if there were no relative or guardian – the court. *But see* Rennie v. Klein, 462 F. Supp. 1131 (D.N.J. 1978); Mabry v. Hoye, 124 Miss. 144, 87 So. 4 (1921).

6. Psychosurgery, like electroconvulsive therapy, is currently the subject of much controversy in the areas of law and medicine. For a discussion of patient's rights with regard to such modes of treatment, *see* PRACTISING LAW INSTITUTE, MENTAL HEALTH LAW PROJECT; LEGAL RIGHTS OF MENTALLY DISABLED PERSONS (1979).

7. *Chill,* 429 So. 2d at 574.

During the years of Covington's confinement, his guardian periodically made small payments to the Mississippi State Hospital at Whitfield. In March of 1983, the Mississippi Hospital Reimbursement Commission (appellee) probated a claim against Covington's estate for the cost of his care and treatment from July 1, 1962,[8] until the time of his death. Bernard W. N. Chill, Sr. (appellant), administrator of the estate, contested the claim. The chancery court found for the Mississippi Hospital Reimbursement Commission in the amount of $16,230.80. Chill appealed to the Supreme Court of the State of Mississippi.[9]

## HISTORY AND BACKGROUND

When the first institutions for the mentally ill in the United States were established in the 1700's, commitment "procedures" usually consisted of a simple request that a person be confined to an asylum. If the person requesting confinement successfully persuaded a doctor or asylum employee that his request was valid, the commitment was carried out.[10] Since that time, advances made in the areas of personal liberties and due process have required modification and regulation of the commitment procedure.[11] Today civil commitment is governed by statute, and state statutes provide for varying degrees of due process, from specifying a right to jury trial[12] to allowing a hearing only by request, after hospitalization.[13]

In Mississippi, any interested person may initiate an involuntary civil commitment by filing an affidavit with the chancery clerk of the county in which the person alleged to be mentally ill resides

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8. July 1, 1962, is the effective date of the Mississippi Hospital Reimbursement Commission Act which provides that the patient, his estate, or other persons legally chargeable may be required to reimburse the state for care in a state hospital. MISS. CODE ANN. § 41-7-71 (1972 & Supp. 1983). The claim was for care and treatment from that date until the time of Covington's death. The award made by the chancery court, approximately 35% of the original claim, depleted most of the estate, which had already been decreased by a widow's allowance and legal fees.

9. *Chill*, 429 So. 2d at 574.

10. F. LINDMAN & D. MCINTYRE, THE MENTALLY DISABLED AND THE LAW 16 (1961).

11. *See generally* Illinois v. Allen, 397 U.S. 337 (1970); *In re* Barnard, 455 F.2d 1370 (D.C. Cir. 1971); Hesyford v. Parker, 396 F.2d 393 (10th Cir. 1968).

12. *See, e.g.*, Mental Health Code of Illinois § 5-4, ILL. ANN. STAT. ch. 91 1/2, § 8-6 (Smith-Hurd 1966). The Illinois statute requires a jury of six. If the purpose of the adjudication is to determine need for medical treatment, then one of the jurors must be a physician. If the purpose of the adjudication is to determine mental retardation, then one of the jurors must be either a physician or a psychologist. In either case, the professional is chosen by the court. In an emergency, the Illinois statute does provide for brief hospitalization without a hearing.

13. *See, e.g.*, N.Y. MENTAL HYGIENE LAW § 9.27-9.31 (McKinney 1978). The New York statute provides for a hearing at the request of the patient or anyone acting on his behalf, after involuntary hospitalization. The requirements for the original admission are an application for admission—which may be made by a relative, a hospital director, or other such specified person—and certificates from two physicians.

or is present. The requirements for the affidavit are that it include specific descriptions of the alleged incompetent's recent behavior, including names of witnesses; that it name the next of kin; and that it be accompanied by a filing fee, if the person filing can afford it. If the affidavit includes allegations of fact and names of witnesses and is thus sufficient to support the need of treatment, the sheriff is then authorized to bring the person into custody. The alleged incompetent is then examined by two physicians or by a physician and a psychologist.

If the examiners certify that the person is in need of treatment, a hearing before the chancellor or special master is set, and the alleged incompetent or his attorney is notified. During the hearing he has the right to counsel and the right against self-incrimination. The alleged incompetent has the right to be present at the hearing. If it is shown by clear and convincing proof that the person is mentally ill, and if the chancellor finds no less restrictive alternative, the person may be initially committed for three months. The commitment, however, may not be carried out until the director of the institution involved determines that facilities and services are available.[14] At the time of Convington's orginial commitment, Mississippi law provided for a hearing only after hospitalization, and then only if requested.[15]

Historically, involuntary civil commitments have been justified on two principles: police power[16] and parens patriae.[17] Perhaps the better accepted of these two is the police power justification.[18] In its regulatory capacity as protector of the public, the state exercises control over those individuals who, by reason of mental disturbance, pose a serious threat to the safety of others.

The parens patriae justification for civil commitment finds its origin in the concept that the state benevolently protects and provides for those citizens who are, in some way, unable to care for themselves.[19] Some commentators see a less compelling state interest in parens patriae than in police power,[20] and there is some doubt whether the deprivation of liberty inherent in a civil com-

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14. MISS. CODE ANN. §§ 41-21-65 to -73 (1972 & Supp. 1983).

15. MISS. CODE ANN. § 6909-08 (1942).

16. Lynch v. Overholser, 369 U.S. 705, 711 (1962); Payne v. Arkebauer, 190 Ark. 614, 80 S.W.2d 76 (1935); Bethany v. Stubbs, 393 So. 2d 1351 (Miss. 1981).

17. Addington v. Texas, 441 U.S. 418 (1979); *In re* Ballay, 482 F.2d 648 (D.C. Cir. 1973).

18. Note, *Procedural Safeguards for the Involuntary Commitment of the Mentally Ill in the District of Columbia*, 28 CATH. U.L. REV. 855 (1979).

19. Mormon Church v. U.S., 136 U.S. 1, 58 (1890); *In re* Ballay, 482 F.2d 648, 650 (D.C. Cir. 1973); Bethany v. Stubbs, 393 So. 2d 1351, 1353 (Miss. 1981).

20. *See* Curtis, *The Checkered Career of Parens Patriae: The State as Parent or Tyrant?*, 25 DE PAUL L. REV. 895 (1976); *In re* Gault, 387 U.S. 1, 16 (1966).

mitment is justified adequately by the state's "benign . . . purposes."[21]

Once a person is involuntarily committed, his maintenance and care may be costly.[22] Although at common law the state was responsible for this burden,[23] all fifty states today have statutes that provide for reimbursement to the state from the patient, his estate, or his relatives.[24]

The Mississippi statute construed in *Chill* provides that hospitalization shall be free of charge for those who cannot afford to pay, but that no person is entitled to free treatment if his estate or income is sufficient to pay for all or part of his care, or if there are persons legally responsible for his support who are able to pay for his care.[25] The act also requires the commission to adopt policies that "will not work an undue hardship" on persons required to pay, and that the amount charged should be in proportion to the ability to pay.[26]

Although the statute thus summarized was applied in *Chill,* the code section has been amended[27] by the legislature (effective March 14, 1983) to provide that the patient, his estate, his parents (if an unmarried minor), or his *spouse* – rather than "persons legally chargeable" – can be required to reimburse the state. This change does not affect such situations as the one presented in *Chill,* where the estate is required to reimburse, but it may prove significant in terms of certain constitutional issues.[28]

*Chill* is the first case construing Mississippi's reimbursement statute as applied to the involuntarily committed. In cases from other jurisdictions, justification for reimbursement statutes is often found in the reasonableness of requiring the patient to pay for treatment from which he benefits,[29] or in the moral obligation of the family to provide for the care of the mental patient,[30] or in the theory that the family derives benefit from the commitment and thus should bear the financial burden.[31] At least one case appears to base enforcement of the statute on deference to the

21. Martarella v. Kelley, 349 F. Supp. 575, 585 (S.D.N.Y. 1972).

22. *Chill*, 429 So. 2d at 343.

23. *In re* Bedford, 11 N.J. Misc. 589, 168 A. 134 (1933); Wiseman v. State, 94 S.W.2d 265 (Tex. Civ. App. 1936).

24. *E.g.*, ALA. CODE § 22-53-1 (1975); CAL. WELF. & INST. CODE § 7282 (West 1984); FLA. STAT. § 402.17 (1975); ME. REV. STAT. ANN. tit. 34, § 2512 (1978); N.Y. MENTAL HYG. LAW § 43.03 (McKinney 1978); OKLA. STAT. ANN. tit. 43A, § 111 (West 1979).

25. MISS. CODE ANN. § 41-7-71 (1972).

26. MISS. CODE ANN. § 41-7-79 (1972).

27. MISS. CODE ANN. § 41-7-71 (Supp. 1983).

28. *See infra* text accompanying notes 65-70.

29. *In re* Walters, 278 Pa. 421, 422, 123 A. 408, 409 (1924).

30. Beach v. Gov't. of Dist. of Columbia, 320 F.2d 790 (D.C. Cir. 1963), *cert. denied*, 375 U.S. 943 (1963).

31. Kough v. Hoehler, 413 Ill. 409, 109 N.E.2d 177 (1952).

legislature, relying almost entirely on the language of the statute itself.[32] A few cases construing reimbursement statutes have found that there was a duty, at common law, for the estate or relatives of the patient to provide for his maintenance and care, and have based the validity of statutes partially on this finding.[33] In the great majority of cases, reimbursement statutes have been held to be valid.[34] There are, however, cases in which reimbursement statutes have been held to be invalid, usually on constitutional grounds. In *Department of Mental Hygiene v. Hawley*,[35] the requiring of payment from the relatives of a person found not guilty by reason of insanity was held to be a violation of the relatives' fundamental rights. After reasoning that the state should bear the expense because the state receives the benefit of the confinement (protection of the public), the *Hawley* court makes an exception – that the patient himself or his estate may be charged, an apparent non sequitur from the theory of benefit to the state.

Another of the few cases striking down reimbursement statutes is *Department of Mental Hygiene v. Kirchner*.[36] In *Kirchner*, a statute requiring reimbursement from the relatives of a patient failed to withstand a challenge based on an equal protection theory. The reasoning in *Kirchner* was that there is no basis for requiring one adult to pay for the care of another adult in a mental hospital. Although several subsequent California cases[37] have upheld statutes imposing liability on relatives of persons civilly committed, those cases have been distinguished on the grounds that the relative from whom the state sought reimbursement was otherwise legally responsible for the support of the patient. Thus limited, the *Kirchner* rule is that requiring reimbursement from a person not otherwise legally responsible for support violates the principle of equal protection.

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32. *In re* Bedford, 11 N.J. Misc. 589, 168 A. 134 (1933), "The minimum rate of payment for the maintenance of any nonindigent patient shall be fixed by the board of managers . . . and shall be construed to be a reasonable charge for the care and treatment of any such patient . . . ." *Id.* at _____, 168 A. at 137 (quoting 1929 N.J. LAWS 441, as amended by ch. 332, § 2).

33. *E.g.*, Luder's Adm'r v. State, 152 S.W. 220 (Tex. Civ. App. 1912).

34. Gartner v. U.S., 166 F.2d 728 (9th Cir. 1948); Napa State Hospital v. Dasso, 153 Cal. 698, 96 P. 355 (1908); State v. Romme, 93 Conn. 571, 107 A. 519 (1919); Warren v. Pope, 64 So. 2d 564 (Fla. 1953); McKenna v. Roberts County, 72 S.D. 250, 32 N.W.2d 687 (1948); Green v. State, 272 S.W.2d 133 (Tex. Civ. App. 1954).

35. 59 Cal. 2d 247, 379, P.2d 22, 28 Cal. Rptr. 718 (1963).

36. 60 Cal. 2d 716, 388 P.2d 720, 36 Cal. Rptr. 488 (1964), *vacated on other grounds*, 380 U.S. 194 (1964), *on remand*, 62 Cal. 2d 586, 400 P.2d 321, 43 Cal. Rptr. 329 (1965).

37. Department of Mental Hygiene v. Kolts, 247 Cal. App. 2d 154, 55 Cal. Rptr. 437 (1966); *In re* Preston's Estate, 243 Cal. App. 2d 803, 52 Cal. Rptr. 790 (1966); Guardianship of Hicks, 228 Cal. App. 2d 629, 39 Cal. Rptr. 698 (1964).

## INSTANT CASE

*Chill v. Mississippi Hospital Reimbursement Commission*, an application of the Mississippi Hospital Reimbursement Act, is a case of first impression[38] in Mississippi. The court states the question as "whether, under what circumstances, and with what procedural safeguards, may the state demand of the estate of one involuntarily civilly committed to the Mississippi State Hospital (MSH) at Whitfield reimbursement for all or part of the cost of care and treatment there rendered?"[39] The appellant's argument was that, because Covington's procedural due process rights were violated at the commitment proceedings, the reimbursement claim must fail. Chill did not persuade the court to accompany him on his "quantum leap"[40] from lack of due process at the commitment hearing to failure of the reimbursement claim. Rather, the court remained solidly within the realm of fundamental, "hornbook" law when it held that "the only procedural due process rights of relevance were those of appellant Chill, as administrator of Covington's estate."[41]

The court employed a two-part analysis to reach its conclusion. First, in order to determine whether substantive rights had been violated by requiring reimbursement from the estate, the court addressed the issue of what substantive rights were at stake, and concluded that the rights in question were those of Chill as administrator of the estate. In determining whether those rights had been violated (the second part of the analysis), the court noted that Chill had been provided notice and a hearing, and that the Hospital Reimbursement Commission had proven the elements of its claim – that Covington was mentally ill, that the state provided care and treatment,. that the services were reasonably necessary, and that the sum required to be reimbursed was reasonable.[42]

The court stated that, had Chill been able to disprove any of those elements, he would have had a defense to the claim. It was not, however, a defense to assert the violation of Covington's rights. So long as the Hospital Reimbursement Commission

38. Watkins v. Watkins, 337 So. 2d 723 (Miss. 1976), involved a child support award which the father had been ordered to pay for his mentally retarded son, who was thirteen years old at the time of the divorce. After the son reached the age of majority, the mother attempted to have the child support continued, even though the son was able to earn a small salary. The court held that Missisippi's reimbursement statute had no bearing on the claim.

39. *Chill*, 429 So. 2d at 576.

40. *Id.* at 582.

41. *Id.* at 584.

42. *Id.* at 583.

proved that Covington was mentally ill (along with the other elements of the claim), the violation of Covington's rights was of no consequence to the reimbursement claim.[43]

## ANALYSIS AND CONCLUSION

As a case of first impression in Mississippi, *Chill* is significant in two ways: it identifies the circumstances under which a reimbursement claim may be allowed against the estate of one civilly committed, and it deals with certain constitutional challenges to the Mississippi reimbursement statute. The language used by the court in defining the "carefully limited circumstances"[44] under which such claims will be allowed – phrases such as "in need of mental treatment," "humane conditions," and "minimally adequate care and treatment"[45] – seems subject to a broad range of interpretations particularly when viewed in light of the meanings that appear to be assigned to those phrases in this case. A cursory reading of *Chill* might leave the reader with the impression that one can be found to be "in need of treatment" without being afforded procedural due process, but such is not the case. Because of the lack of due process in the commitment hearings, the Mississippi Hospital Reimbursement Commission was required to prove anew that Covington was indeed mentally ill, rather than relying on the results of the commitment hearings.[46] In fact, the court recognizes the requirement of clear and convincing proof for civil commitment[47] set forth by the United States Supreme Court in *Addington v. Texas*.[48] Neither does the *Chill* court hold that unwanted lobotomies and electroconvulsive therapy sessions constitute "humane conditions" and "minimally adequate treatment." The court simply recognizes that these measures were adequate and humane in light of psychiatric knowledge at the time Covington was treated. The three elements articulated by the court – need of treatment, humane conditions, and minimally adequate treatment – cannot be defined completely by one case and will continue to be developed and described as cases arise in which they must be interpreted.

Although *Chill* deals with constitutional challenges to the

43. *Id.* at 585.
44. *Id.* at 576.
45. *Id.* at 579.
46. *Id.* at 585.
47. *Id.* at 582. For purposes of the reimbursement claim, however, the preponderance standard suffices.
48. 441 U.S. 418 (1979).

Mississippi reimbursement statute, it leaves several constitutional questions unanswered – questions similar to those addressed in *Hawley* and *Kirchner*. By emphasizing the due process question, the appellant failed to direct the court's attention to more valid constitutional challenges, and so those challenges will not be addressed until they are brought before the court in future cases.[49] The focus of the appellant's argument in *Chill* was the violation of Covington's rights at the time of his original commitment. Had the appellant stressed the question whether reimbursement itself is valid, particularly in the case of an involuntary commitment, the goal of which was – at least partially – the protection of the public, the holding might have addressed more directly the issue of comparative benefit and corresponding financial responsibility. Mississippi's reimbursement statute has yet to be examined in light of the *Hawley* and *Kirchner* comparative-benefit theory.

The *Hawley* court would not allow relatives of a person found not guilty by reason of insanity to be held liable for his support, since the state benefitted from the commitment; but the court then stated that the patient himself (or his estate) could be charged. This curious exception highlights what is, perhaps, a cogent challenge to reimbursement statutes: "requiring reimbursement from patients is a violation of equal protection when the state does not require similar reimbursement from a prisoner for the costs of his confinement."[50] If the statute is to be struck down on the basis that the benefit is primarily to the state (as in a confinement of a penal nature), there is no basis for the distinction between the patient himself and his relatives. Such a distinction seems logical under a parens patriae rationale, but not under the police power rationale posited by the *Hawley* court. Thus, any justification offered for the existence of reimbursement statutes, and any scheme for determining to whom such statutes may justly be applied, are both grounded in the *purpose* of the commitment; and that purpose may be ascertained by answering one question: who benefits from the commitment? If, as the *Hawley* court seems to indicate, the state receives the main benefit, then it would appear that the state should bear the cost. A noteworthy distinction is the one made between the exercise of the police power against criminals (or defendants in criminal cases) and the exercise of the police power against the mentally ill (or those alleged to be so). Although criminals are considered more culpable than men-

49. United States v. Rumely, 345 U.S. 41 (1953).

50. Note, *Developments in the Law; Civil Commitment of the Mentally Ill*, 87 HARV. L. REV. 1190, 1367-68 (1974).

tally ill persons,[51] there are at least three important aspects in which the criminal has a distinct advantage over the dangerous mental patient. First, a criminal defendant is entitled to the fullest exercise of procedural due process, but a person subjected to a commitment hearing is not.[52] Second, a person normally must *commit* a crime in order to be confined, but a mentally ill person may be confined on the basis of what he *may do* in the future.[53] Third, a convicted criminal is sentenced for a specific period, but one civilly committed may be confined indefinitely.[54] This distinction between the criminal and the mentally ill person gains increased importance in the consideration of reimbursement statutes.[55]

Despite the questionable distinction *Hawley* makes between the patient and his family (in terms of benefit and corresponding financial responsibility), both *Hawley* and *Kirchner* suggest a standard for determining the validity of reimbursement statutes and their application: comparative benefit from the commitment; that is, he who benefits most, pays most. Although it is not within the scope of this article to suggest a detailed scheme for determining comparative benefits resulting from the hospitalization of the mentally ill, some determining factors may be enumerated: whether hospital conditions evidence treatment, custody, or punishment; whether the person committed is dangerous; and whether the commitment is the result of some criminal act.

Despite the difficulties in determining the benefits and corresponding responsibilities of the state and the patient, there appears to be a simpler basis for determining the duty of relatives, regardless of the purpose of or justification (whether police power or parens patriae) for the commitment. As articulated in *Kirchner*, a relative otherwise legally responsible for support of the patient derives economic benefit from the commitment simply because the state provides the basic support he would otherwise provide.[56] Thus a person otherwise legally chargeable may justly be required to compensate the state, particularly if he can afford to do so. On the same basis, a person who is a relative of the patient, but who *is not* in a relationship which entails a duty of support, derives little more benefit than friends of the patient, or the public at large;

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51. United States v. Freeman, 357 F.2d 606 (2d Cir. 1966); M'Naghten's Case, 10 Clark & F. 200, 8 Eng. Rep. (H.L. 1843).

52. *See supra* note 13.

53. Beaumont v. Morgan, 427 F.2d 667 (1st Cir. 1970), *cert. denied*, 400 U.S. 882 (1970).

54. Hoye v. State, 169 Miss. 111, 112, 152 So. 644, 645 (1934). *But see* McNeil v. Director, Patuxent Inst., 407 U.S. 245 (1972) (where confinement, after criminal conviction, for a longer period than the original sentence was held to be in violation of due process).

55. *See supra* text following note 50.

56. *Kirchner*, 60 Cal. 2d at 716, 388 P.2d at 720, 36 Cal. Rptr. at 488.

and to require reimbursement from such a person would be to apply a law inequitably – to impose class legislation.[57] This theory was articulated in *Kirchner* and *Hawley*, which apparently have found followings only in their home state of California. Other jurisdictions, both before and after these decisions, have upheld the validity of reimbursement statutes, usually relying on a moral obligation of the relatives, or a rational basis for distinguishing the parties held responsible, such as pre-existing legal duty to provide support.[58]

Because the appellant in *Chill* emphasized improprieties in the commitment procedure, constitutional challenges to the validity of reimbursement itself were not addressed. *Chill*, however, may offer some clues as to how those constitutional challenges will fare. An essential factor in determining the validity of reimbursement statutes is the purpose of the commitment – the benefits intended.[59] Language in Mississippi's commitment statute and language in the opinion suggest that a concern for public safety and a desire to provide for persons unable to care for themselves both motivate civil commitments in the state. The Mississippi commitment statute defines a person in need of mental treatment as one who is mentally ill so that he may "intentionally or unintentionally physically injure himself or other persons" or be "unable to care for himself."[60] Similarly, the court in *Chill* described persons who, "because of their illnesses, present a threat of harm to persons and property of others – as well as to themselves . . . ."[61] Noting that both the person committed and the general public benefit from the commitment, the court found that "it is not unreasonable to require the patient, *his family*, or his estate to pay at least a part of the bill."[62] Because the court clearly recognized that commitment benefits both the public and the patient, it is unlikely that it will be persuaded to require the state to bear the entire expense of care and treatment when those private parties deemed appropriate are able to pay. It is, however, possible that the court may be convinced to limit the amount that may be charged the patient, his estate, or his family; since the court did recognize some benefit to the public and stated that it was

57. *Kirchner*, 60 Cal. 2d at 717, 388 P.2d at 721, 36 Cal. Rptr. at 489. (Note that this case was vacated in Department of Mental Hygiene of California v. Kirchner, 380 U.S. 194 (1965)).

58. *See supra* note 40.

59. *See supra* text following note 50.

60. MISS. CODE ANN. § 41-21-61 (1972).

61. *Chill*, 429 So. 2d at 579.

62. *Id.* (emphasis added).

reasonable to expect payment for "at least a part of the bill"[63] from those private parties. Perhaps these limitations will be exercised in cases examined on the basis of individual circumstances in each particular situation.[64]

The challenge recognized in *Kirchner* may pose a more serious threat to Mississippi's reimbursement statute, as applied to family members.[65] Since *Chill* involved reimbursement from the patient's estate, the question raised in *Kirchner* was not addressed specifically, but may well prove the most likely basis for a future constitutional challenge to the Mississippi Hospital Reimbursement Commission Act. That act does not limit the persons chargeable to those already owing a legal duty of support. Rather, the statute, as amended in 1983, provides that, among others, a spouse may be held chargeable.[66] Since a wife apparently has no legal duty to support her husband,[67] the Mississippi statute requires support from one not otherwise responsible, possibly inviting a challenge on the grounds stated in *Kirchner*. The holding in *Chill* made clear that the patient's estate may be charged, but because the *Chill* court construed the former code section, requiring payment from persons legally responsible, rather than the new code section, requiring payment from the patient, his estate, parents of a minor child, or a spouse, little may be gleaned from the case by those desiring to predict the fate of a wife from whom the state seeks reimbursement for the care of her mentally ill husband. In *Chill*, the court often employs such phrases as those "legally liable"[68] and one "legally responsible";[69] but whether such phrases are more indicative of the statute being construed (the former code section), or more indicative of a tendency to limit reimbursement on the basis of reasoning similar to that found in *Kirchner*, remains to be seen. Mississippi's revised reimbursement statute[70] specifically enumerates those persons who may be liable for support. However, by including "spouse" in that enumeration, the

63. *Id.*

64. *See supra* text following note 50.

65. It is, however, essential to remember, when analyzing the ramifications of *Chill* and its position relative to trends in the law, that both *Hawley* and *Kirchner* have been limited to California, and that reimbursement statutes are generally upheld by the courts. *See supra* note 37.

66. MISS. CODE ANN. § 41-7-71 (Supp. 1983). The legislature did not amend § 41-7-79, which requires that the commission adopt policies that will not work a hardship on the legally responsible private parties. Thus, as the law now stands, a wife may be required to reimburse the state for the care of her mentally ill husband, but she is *not* afforded any protection from policies that might cause her financial hardship.

67. *See* Dodge v. Knowles, 114 U.S. 430, 435 (1885) ("The obligation to pay for the supplies of the family is ordinarily a debt of the husband . . . .").

68. *Chill*, 429 So. 2d at 578.

69. *Id.* at 580.

70. MISS. CODE ANN. § 41-7-71 (Supp. 1983).

legislature may have invited a constitutional challenge based on the *Kirchner* holding – that there is no basis for requiring reimbursement from a person with no pre-existing legal duty of support.

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