Michigan Law Review

Volume 41 | Issue 1

1942

QUASI-CONTRACTS - RECOVERY BY DONOR OF CHARITABLE RELIEF FROM PAUPERS AND THEIR ESTATES

James L. McCrystal
University of Michigan Law School

QUASI-CONTRACTS — RECOVERY BY DONOR OF CHARITABLE RELIEF FROM PAUPERS AND THEIR ESTATES — The question whether or not a pauper[1] or his estate assumes an obligation to reimburse the donor of charitable relief has been subject to many varied and inconsistent answers. Most of the cases in this field are not distinguishable on their facts, and hence the inability to reconcile them must be laid to the differences in the reasoning of the courts in their attempts to handle these cases more from a sociological approach than from a legal point of view. In discussing this problem it is desirable to place these cases in three principal classes: (1) where relief is given to one who in fact is unable to support himself; (2) where relief is given to a person who in fact is able to support himself but who is guilty of no fraud or misrepresentation in applying for and receiving the assistance;[2] (3) where relief is given under statutory authorization and conditions.

1.

When the recipient of relief was in fact unable to support himself the American courts have generally held that neither he nor his estate

[1] One can be a pauper when he is possessed of money or property because the presence of these two elements does not always make a person able to support himself. See 31 WORDS AND PHRASES 432 (1940); annotation in 98 A. L. R. 870 (1935).

[2] The situation where the recipient is guilty of fraud needs no detailed discussion. Rescission and restitution have been freely granted in such cases. See Eggers v. Anderson, 63 N. J. Eq. 264, 49 A. 578 (1901); In re Anderson's Estate, 157 Ore. 365, 71 P. (2d) 1013 (1937); Jones v. Stearns, 97 Vt. 37, 122 A. 116 (1923); Old Men's Home v. Lee's Estate, 191 Miss. 669, 4 So. (2d) 235 (1941).

is under a duty to repay the donor.[3] The early cases seems to base their decisions on the language of the court in *Selectmen of Bennington v. McGennes*,[4] decided in 1790, wherein the court said, "The provision made, by law, for the relief of the poor is . . . a charitable provision. . . . Poverty and distress give a man, by law, a claim on the humanity of society for relief." The language of this case is very strong in view of the fact that the pauper left the state and later returned with funds to support himself. In a later case where relief was given to an insane person who, unknown to the donor, had money in the bank, the court refused recovery from the estate on the ground that the relief was charitable.[5] Hence it would seem that where public welfare authorities administer relief the early courts called it charity, and it made no difference whether the pauper subsequently acquired property or had a small amount when he received the aid. Later cases in this field were decided on the ground that the public officials had no authority to charge for the relief they bestowed on the paupers. In *Board of Commissioners of Switzerland County v. Hildebrand*,[6] where the husband of the pauper was sued for board and lodging for his wife, the court held that the commissioners could not open a boarding house nor convert the county poor house into a boarding house for those who might wish accommodations for pay. The real basis for these decisions seems to be that the courts will not allow recovery unless the legislature expressly provides for it by statute.[7] It was even so held in a case where the guardian of an insane person made an express contract with the authorities to pay for board and lodging.[8]

Where relief is administered by private institutions or individuals, the courts are reluctant to allow recovery unless a contract, either ex-

[3] Stow v. Sawyer, 3 Allen (85 Mass.) 515 (1862); Shepherd v. Young, 8 Gray (74 Mass.) 152 (1857); Board of Commissioners of Switzerland County v. Hildebrand, 1 Ind. 555 (1849); Selectmen of Bennington v. McGennes, 1 D. Chip (Vt.) Rep. 44 (1790); WOODWARD, QUASI-CONTRACTS, § 46 (1913).

[4] 1 D. Chip. (Vt.) Rep. 44 at 45 (1790).

[5] Stow v. Sawyer, 3 Allen (85 Mass.) 515 at 517 (1862). The court admitted the result worked a hardship on the donor, but justified it by saying "In almost all cases where relief is furnished by a town to persons who have property not at their immediate command, we cannot help believing that they would be disposed to indemnify the town."

[6] 1 Ind. 555 (1849).

[7] Montgomery County v. Gupton, 139 Mo. 303, 39 S. W. 447, 40 S. W. 1094 (1897); Board of Commissioners of Marshall County v. Burkey, 1 Ind. App. 565 (1891) (food and clothing furnished to an insane person); Spokane County v. Arvin, 169 Wash. 349, 13 P. (2d) 1089 (1932).

[8] Board of Commissioners of Montgomery County v. Ristine, 124 Ind. 242, 24 N. E. 990 (1890); Board of Commissioners of Noble County v. Schmoke, 51 Ind. 416 (1875).

press or implied, can be shown. In *Shepherd v. Young*[9] the plaintiff kept and boarded a girl for nearly three years. The girl was killed, and the plaintiff sought to recover the value of the services rendered from the girl's estate, which had just received a settlement from the railroad company for the girl's death. The court refused the claim on the grounds that the services were bestowed as a gratuity and that there was nothing upon which an implied contract could be based.

Regardless of the language or reasoning used by the courts in these cases it seems that the real basis is that in the absence of mistake or fraud the relief is given as a gift, and a subsequent change of intent on the part of the donor will not give rise to an obligation to make restitution. However, whether the courts use the approach that the "worthy poor have a right to relief" or that such relief is a gift and hence not revocable, the ultimate result seems justified.[10]

2.

The courts are in absolute conflict when the recipient of the relief has enough money to support himself and is not guilty of fraud in concealing his ability to pay. In a leading New York case, *City of Albany v. McNamara*,[11] testatrix became an inmate in the charity ward, and the city paid the hospital, believing that she was poor. In an action by the city against her estate the court refused recovery on two grounds: first, that since there was no request for aid by the testatrix and no representation as to her financial condition, there was nothing upon which to base a contract; and second, that it was the duty of the poor authorities to make investigations of the applicant, and if the relief were granted, the results of the investigation would not be reviewed by the courts. A different approach to the problem was used in a Kentucky case[12] where the plaintiff, an orphan society, had supported and educated four children who supposedly were penniless but who were afterwards discovered to have had a small sum of money. The court in refusing recovery relied on the gift concept and held that a subsequent change of intent by the donor would not permit a recovery unless the donation was the result of fraud. The court also stressed the fact that the plaintiff was a corporation organized for charity, capable of

[9] 8 Gray (74 Mass.) 152 (1857).

[10] The English courts are inclined to allow the donor to recover. See In re Clabbon, [1904] 2 Ch.. 465; Birkenhead Union v. Brookes, 95 L. T. 359, 70 J. P. 406 (1906); Guardians of Poor of St. Mary, Islington v. Biggenden, [1910] 1 K. B. 105. *Contra*: Guardians of Ponty Pridd Union v. Drew, [1927] 1 K. B. 214. See also 25 HALSBURY, LAWS OF ENGLAND, 2d ed., 401-402 (1937); 37 ENG. & EMPIRE DIGEST 229 (1928).

[11] 117 N. Y. 168, 22 N. E. 931 (1889).

[12] St. Joseph's Orphan Society v. Wolpert, 80 Ky. 86 (1882).

making a contract for support, and the fact that it did not so contract indicated an intent to render the support as a gift.

Standing opposed to these two landmark cases are courts which have taken two different approaches to the problem and allowed recovery. In *Tazewell County v. Cooney*[13] the pauper was admitted to the county home and while there began to receive a Civil War pension and continued to receive it until he died. In allowing the county to recover from his estate the amount expended by it after he began receiving the pension, the court said that the charitable provisions of the poor laws did not apply to one able to support himself and that this relief was not given as a gift binding on the county because no officer of the county was legally capable of forming such an intention. In *Agnew's Will*[14] a hospital patient was operated upon by a surgeon who mistakenly thought he was a charity case, and the patient mistakenly thought the services were being performed gratuitously. The court decreed restitution, invoking the doctrine of mistake and following the well-known rule that when a benefit is conferred under a mistake as to basic assumptions, the retention of the benefit is ordinarily inequitable. It has been held that this rule applies regardless of the negligence of the party in failing to ascertain the truth.[15]

It appears that the point of departure for these cases rests upon a somewhat attentuated distinction drawn by the courts and writers between benefits bestowed under mistake of fact and benefits bestowed as a gift but induced by a mistake as to the actual financial condition of the recipient. Professor Woodward, speaking of the case of *St. Joseph's Orphan Society v. Wolpert*,[16] justifies it on the ground that it exemplifies the doctrine that a benefit conferred as a gift will not give rise to a quasi-contractual obligation to make restitution by a change in the donor's intent. He seems to state a recognized rule of law but ignores completely the possibility that the relief would not have been given "but for" mistake as to the actual financial condition of the donee.[17] Contrasted with this is a statement by the same writer that "No matter how close at hand the means of knowledge may be, no matter how stupid or careless the failure to ascertain the truth may be, if one confers a benefit under an honest mistake, i.e., in unconscious ignorance of the truth, the retention of the benefit is ordinarily inequitable."[18]

[13] 215 Ill. App. 617 (1919).

[14] 132 Misc. 466, 230 N. Y. S. 519 (1928), noted in 29 COL. L. REV. 95 (1929); 14 CORN. L. Q. 239 (1929); 42 HARV. L. REV. 283 (1929).

[15] WOODWARD, QUASI-CONTRACTS 15 (1913). But see Manchester v. Burns, 45 N. H. 483 (1864), where the court held that negligence in discovering a material fact would bar recovery.

[16] 80 Ky 86 (1882).

[17] WOODWARD, QUASI-CONTRACTS, § 46 (1913).

[18] Id., § 15.

Reconciling these two views on any legal basis is difficult because underlying the cases is the fact that the true condition of the recipient is unknown and if it were known the assistance probably would not be given.[19] It is submitted that the courts in cases involving welfare institutions require them to assume the burden of discovering the assets of the indigent person and that no duty of restitution will be decreed even though the pauper failed to disclose the ownership of property.[20]

Despite the fact that the great weight of authority is in accord with the doctrine of the *McNamara*[21] and *Wolpert*[22] cases, it would seem that this theory of the courts should be cast aside for want of any justification from either a legal or a pragmatic point of view. Obviously this doctrine has very little basis in reason when the doctrine of restitution for mistakes as to basic assumptions is applied to it. Just why the courts hestitate to apply the mistake doctrine to this type of case is not satisfactorily explained in the cases. In other fields of law this reluctance is absent. For example, if a testator provides in his will that he wants to leave his entire estate "to *X*, instead of *Y*, because *X* is a pauper," and it is later discovered that *X* is not a pauper and that the testator was mistaken, the courts will often set aside this provision of the will.[23] The equities of this case are no stronger in favor of the testator than those of welfare institutions who bestow benefits on a person mistakenly believed to be a pauper. Perhaps the only reason for distinguishing the two cases is that the testator clearly shows he is mistaken and just what he would have done had there been no mistake. But in the case of welfare institutions it is perhaps even easier to determine what would have been done had there been no mistake, because they are able by direct evidence to make known their policy of caring for the poor.

If the reasoning of the courts is based on policy considerations, it is equally difficult to sustain a denial of restitution. Perhaps the judicial thought is based on the belief that "the worthy poor are entitled to relief," without considering that in these cases the donee is not in fact

[19] In cases involving county organizations, it might be held illegal to give relief to a person not entitled to it. See RESTITUTION RESTATEMENT, § 26 (1) comment C (1937).

[20] 2 DURFEE and DAWSON, CASES ON REMEDIES 570 (1939).

[21] City of Albany v. McNamara, 117 N. Y. 168, 22 N. E. 931 (1889).

[22] St. Joseph's Orphan Society v. Wolpert, 80 Ky. 86 (1882).

[23] Gifford v. Dyer, 2 R. I. 99 (1852). See also ATKINSON, WILLS, § 107 (1937). If the testator provides in his will that he is leaving his entire estate "to X because he is a pauper," and X is in fact pecunious, the courts will not set aside the provision. It should be noted that this result is based on the fear of allowing parole evidence as to what the testator would have wanted had he known the truth and does not imply that the legatee has a strong equitable position. Obviously this element is lacking in the pauper cases because of the opportunity of getting direct evidence from the still existing welfare institution.

a pauper. Another possible explanation for denying recovery may be that in the great majority of the cases the donee is not well fixed financially, so that the advantages of the gain to him will far outweigh the loss to the institution.[24] However, it is questionable if this view of the courts is entirely fair to the people who maintain the welfare institutions. Such institutions are usually supported by public taxes or individual donations, and it would seem unlikely that the contributors would approve of dispensing money to persons able to support themselves. At least it seems that the persons who keep these institutions functioning have a superior equitable position to that of the legatees or heirs of the pauper, who will in the long run profit by the gratuitous support given to their ancestor.

It is to be hoped that in the future the courts will change their views on this problem and apply the doctrines of mistake when the occasion arises. As a suggested approach it is submitted that there are two possible ways to justify recovery by the donor: first, by applying the strict doctrine of mistake in basic assumption; or, second, on the theory that the person receiving relief acted so unreasonably in mistakenly believing that he was entitled to relief as to be charged with the knowledge of the donor's mistake, thus making applicable the doctrine of palpable mistake.[25]

3.

Both state and federal governments have in recent years made statutory provisions for old age and poor relief.[26] The general tendency of such legislation is to permit the authorities to recover from the estate of the donee. However, in construing these statutes the courts, adhering to the premise that "the worthy poor are entitled to relief," demand that the statutes expressly provide for reimbursement before this can be had. In *Montgomery County v. Gupton*,[27] where a statute provided for recovery by the county from anyone who by law is bound to support a recipient of public care, the court held that this did not authorize recovery from the donee himself and that it would be judicial legislation to infer from this that the legislature intended to make the recipient himself liable. In Massachusetts a statute was enacted which

[24] If this be a valid rationalization the Agnew case can be reconciled with the former cases because in that case the donee was worth over $40,000, and this might have bothered the court. However, it should be pointed out that the case is somewhat distinguishable from the others on the ground that the claimants were doctors and not the hospital.

[25] But see Patterson, "Equitable Relief for Unilateral Mistake," 28 COL. L. REV. 859 at 897 (1928).

[26] For a summary of these statutes see 48 C. J. 519 (1929). See also annotations 98 A. L. R. 870 (1935), 125 A. L. R. 712 (1940).

[27] 139 Mo. 303, 39 S. W. 447, 40 S. W. 1094 (1897).

read that "A person, his executor or administrator, shall be liable in contract to any town . . . for expenses incurred by it for his support."[28] In *City of Worcester v. Quinn*[29] the court gave the statute a very strict interpretation, holding that "expenses," taken literally, did not include the relief given. It would appear that the court went far out of its way in so construing the statute.[30]

Perhaps the most extreme case where the court protected the "worthy poor" in spite of statutory enactments arose in New York. One section of the New York Poor Law[31] provided that before a person was to be admitted to a county almshouse, he was to be investigated by the overseer of the poor to determine whether or not he was eligible for relief. Another section[32] of the law provided expressly that if it were ascertained that a recipient of relief had real or personal property, or if he should die leaving property, an action could be maintained by the overseer against the person or his estate to recover the amount of money expended on his behalf. In *Thomas' Estate*[33] the recipient of the relief was guilty of no fraud or misrepresentation, but she had property worth about $1800 when she received relief. In a suit arising out of a claim filed against her estate by the overseer, the court refused recovery on the ground that there must be actual fraud or concealment of assets before the statutory cause of action would arise. In view of the decision in the *McNamara*[34] case it is doubtful whether the legislature passed this act merely to declare the common law, which had always allowed recovery where there was fraud. This decision is more surprising than the *McNamara* case because here the court could have decreed restitution by employing the mistake doctrine or by statutory interpretation, and yet refused to invoke either one. This case is perhaps the most extreme example of judicial protection of the worthy poor, and its result must have been met with unfavorable comment by the public, for in 1930 these sections of the Poor Law were repealed and provisions were enacted which foreclose any interference by the courts in proceedings to reimburse the welfare authorities. The new statute charges the donee with a promise to repay regardless of whether he was guilty of fraud or the authorities were negligent in distributing the relief.[35]

[28] Mass. Gen. Laws (1932), c. 117, § 5.

[29] 304 Mass. 276, 23 N. E. (2d) 463 (1939).

[30] The court here was impliedly holding that the rule of Stow v. Sawyer, 3 Allen (85 Mass.) 515 (1862), still applied. See notes 3 and 5, supra.

[31] N. Y. Poor Law, § 20, N. Y. Laws (1896), c. 225, § 20.

[32] N. Y. Poor Law, § 57, added by N. Y. Laws (1901), c. 664, § 1.

[33] 132 Misc. 842, 231 N. Y. S. 93 (1928).

[34] City of Albany v. McNamara, 117 N. Y. 168, 22 N. E. 931 (1889).

[35] 52-A N. Y. Consol. Laws (McKinney, 1941), § 104.

In view of these decisions it becomes apparent that if legislatures seek to invest the welfare authorities with a right of reimbursement from the estate of one who was actually a pauper when the charity was given, they must pass an unequivocal statute susceptible of no judicial interpretation in favor of the pauper. Likewise, if the legislature would provide a means for recovering from the estate of one who is not a pauper, but who has received charity through the mistaken belief of the authorities that he was poor, it would do well to provide for recovery from actual paupers as well, in view of the courts' failure to distinguish an actual pauper from a person who receives relief under a mistake.[36] The anomalous situation that arose in New York is a forceful example of what results when the legislature confines itself to changing the common law in the former respect only.

Perhaps the only other method open to legislatures seeking to curb the distribution of welfare to persons who are merely mistaken and not guilty of fraud in receiving the relief is to pass a statute such as that enacted in Mississippi,[37] to the effect that anyone found guilty of concealing his assets intentionally when he receives relief is subject to a criminal penalty. It is true that this type of statute would not directly remedy the situation, but it would have such a deterrent effect on all recipients of relief as to cause them to divulge their assets lest they be found guilty of fraud even when they were not in fact fraudulent.

James L. McCrystal

[36] The following states have statutes which deal with this problem in general and permit reimbursement in some form: Ala. Code (1940), tit. 44, § 9 (authorities can recover from pauper unless court finds that family of pauper are dependent on him); Cal. Welfare and Inst. Code (Deering, 1937), §§ 2600-2605; Colo. Stat. Ann. (1935), c. 124, § 3; Conn. Gen. Stat. (1930), § 1697; Del. Rev. Code (1935), § 1634; Me. Rev. Stat. (1930), c. 33, § 39; Mich. Stat. Ann. (1937), §§ 16.185, 16.186; Miss. Code (Supp. 1938), § 2217; N. J. Rev. Stat. (1937), § 44: 4-91; N. C. Code Ann. (Michie, 1935), § 1339 (authorities have power to sell any property of pauper who obtains relief); Ohio Gen. Code (Page, 1937), § 2548 (county has power to sell property of pauper); Ore. Comp. Laws (1940), § 126-204; Pa. Stat. (Purdon, 1936), tit. 62, § 1914 (authorities have power to lease property of pauper); S. D. Code (1939), § 50.0107; Vt. Pub. Laws (1933), § 3928.

The Connecticut, Delaware, Illinois, Mississippi, and West Virginia statutes have criminal sanctions for fraudulently obtaining relief. Conn. Gen. Stat. (1930), § 1700; Del. Rev. Code (1935), § 1635; Ill. Stat. Ann. (Smith-Hurd, 1935), c. 107, § 15a; Miss. Code (Supp. 1938), § 2217; W. Va. Code Ann. (1937), § 626(156).

[37] Miss. Code (Supp. 1938), § 2219.