

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Orchard Villa

Court of Appeals No. L-12-1213

Appellee

Trial Court No. CI0201102364

v.

Irene Suchomma

DECISION AND JUDGMENT

Appellant

Decided: July 19, 2013

* * * * *

Matthew G. Burg, for appellee.

L. Douglass McCrury, for appellants.

* * * * *

SINGER, P.J.

{¶ 1} Appellant, Irene E. Suchomma, appeals a judgment of the Lucas County Court of Common Pleas, which, following a trial to the bench, found her liable for her deceased husband's medical expenses. Because we conclude that the trial court's findings were supported by the evidence, we affirm.

{¶ 2} Both appellant and her late husband, Joseph Suchomma, worked at and retired from the Toledo Jeep assembly plant. Consequently, both had limited, fixed incomes. The Suchommas pooled their incomes in order to pay necessary bills such as the mortgage and utilities.

{¶ 3} In 2007, appellant's husband required knee replacement. This procedure went poorly. Joseph lost his leg to the hip as a result of repeated infections from the knee replacement.

{¶ 4} On June 19, 2009, Joseph signed a contract to recuperate from the amputation at appellee, Orchard Villa, a private long-term care facility. His stay lasted from that day through January 2, 2010. The contract between Joseph Suchomma and appellee contained a private pay provision. This clause provided that appellee could recover from Joseph for any amount due under the contract that was not covered by a third party. Appellant was not a cosigner.

{¶ 5} Joseph utilized Medicare Part A and Medical Mutual insurance to cover the cost of his care in full until Medicare Part A was exhausted. At that time, the cost of his care was partially covered by Medicare Part B and insurance. Joseph was responsible for the remainder under the private pay provision.

{¶ 6} Shortly after his release from appellee's care, appellant's husband was diagnosed with leukemia. Joseph died on April 20, 2010. Appellee then sought to collect the remaining unpaid balance, \$20,692.80, from appellant. When she refused to pay, appellee sued, asserting that appellant was liable for her late husband's debt.

{¶ 7} Following a bench trial, the trial court entered judgment in favor of appellee for the entire disputed amount. From this judgment, appellant appeals.

{¶ 8} Appellant sets forth the following five assignments of error:

I. The trial court's ruling that appellant's husband's inability "to pay for the remaining debt owed" under his contract with appellee by the time he died satisfied the inability to support himself element required to trigger possible liability under Rev. Code § 3103.03 is contrary to law.

II. The trial court's ruling that appellant's supposed "ability to aid in the payment" of appellee's bill satisfied the failure to assist in her husband's support element required to trigger possible liability under Rev. Code § 3103.03 is contrary to law.

III. The trial court's finding that appellant "has the ability to aid in the payment" of appellee's bill, whether looked at as of the time appellee provided services to appellant's husband or after his death, is contrary to the manifest weight of the evidence.

IV. The trial court's finding that appellee rendered services to appellant's husband "in good faith" is contrary to the manifest weight of the evidence.

V. The trial court's finding that the contract price of the necessities appellee supplied appellant's husband equaled the "reasonable value" of those necessities is unsupported by the weight of the evidence.

{¶ 9} The legal obligation for a husband or wife to support the other is expressly provided for in law. In relevant part, R.C. 3103.03 provides:

(A) Each married person must support the person's self and spouse out of the person's property or by the person's labor. If a married person is unable to do so, the spouse of the married person must assist in the support so far as the spouse is able * * *

(C) If a married person neglects to support the person's spouse in accordance with this section, any other person, in good faith, may supply the spouse with necessaries for the support of the spouse and recover the reasonable value of the necessaries supplied from the married person who neglected to support the spouse unless the spouse abandons that person without cause.

{¶ 10} At issue is whether appellant's husband was unable to support himself such that appellee, while able to, must assist in his support. Appellant asserts, in essence, that the trial court's judgment on all elements of this issue is against the manifest weight of the evidence.

{¶ 11} The standard of review for manifest weight is the same in a civil case as in a criminal case. *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 17. Weight of the evidence concerns the greater amount of credible evidence offered in trial to support one side or the other of an issue. The party having the burden of proof will be entitled to a verdict if the trier of fact, on weighing the evidence, finds

that the greater amount of credible evidence sustains the issue to be determined. *Id.* at ¶ 12, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997).

Moreover, the trier of fact may believe or disbelieve any or all of the testimony of a witness. *Swan v. Skeen*, 40 Ohio App.2d 307, 308-09, 319 N.E.2d 221 (10th Dist.1974).

On review, there is a presumption in favor of the decision of the trier of fact. *Eastley* at ¶ 21. The appeals court acts a “thirteenth juror” to determine whether the trier of fact lost its way and created such a manifest miscarriage of justice that the verdict must be overturned and a new trial ordered. *Thompkins* at 387.

{¶ 12} Appellant, in her first assignment of error, asserts that the trial court erred in finding that Joseph Suchomma’s inability to pay his bill to appellee constituted an inability to support himself sufficient to give rise to a R.C. 3103.03 spousal obligation.

{¶ 13} Medical expenses have been held to be included within the definition of necessities under R.C. 3103.03. *Ohio State Univ. Hosp. v. Kinkaid*, 48 Ohio St.3d 78, 80, 549 N.E.2d 517 (1990). Thus, inability to pay for medical expenses would qualify as inability to support oneself under the statute. *Fulton Cty. Health Ctr. v. Jones*, 6th Dist. No. F-07-013, 2007-Ohio-6523, ¶ 18.

{¶ 14} The record contains multiple statements showing a systematically increasing past-due balance mailed to appellant’s husband from November 1, 2009 to February 1, 2010, with the same past-due balance on the December 1, 2010 statement.

While Joseph made two private pay payments on his account, they were in the amounts of \$500 and \$10. When examined against the total balance of \$20,692.80, these do not evidence a showing of ability to pay on the debt.

{¶ 15} Appellant argues that her husband could have conceivably used every penny he would have received in the future to pay down the debt, and this shows an ability to pay. The court, however, is not in a position to determine where limited funds may be allocated by an individual based solely on speculation. Barring evidence to corroborate it, appellant's testimony is insufficient to outweigh the evidence countervailing it.

{¶ 16} Appellant's first assignment of error is not well-taken.

{¶ 17} Appellant, in her second and third assignments of error, contends that appellant does not have the ability to pay her late husband's debts and that any finding of such ability is against the manifest weight of the evidence.

{¶ 18} The determination of a spouse's ability to provide the type of financial aid required by R.C. 3103.03 "is a matter to be decided within the sound discretion of the trial court." *Kinkaid*, 48 Ohio St.3d at 80, 549 N.E. 2d 517. Therefore, this court must find that the trial court abused its discretion in finding that appellant was capable of providing such aid. An abuse of discretion connotes more than an error of law or judgment; it implies that the court acted arbitrarily, unreasonably, or unconscionably. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 19} While appellant’s resources are admittedly limited, she is now the sole owner of the marital home and her own income plus survivor benefits. This demonstrates ability for appellant to pay the debt to appellee, even where appellant avers that the home is worth less than the debt. *See Metrohealth Ctr. for Skilled Nursing Care v. Parnell*, 8th Dist. No. 98211, 2012-Ohio-4725 (Wife’s self-serving affidavit alone that her home was worth less than amount of unpaid bill for nursing services could not invalidate “ability to assist” element of R.C. 3103.03). This is sufficient for the trial court to find, in its discretion, that appellant was sufficiently able to aid in her husband’s support. *Compare Brown v. Williamson*, 183 Ohio App.3d 814, 2009-Ohio-4579, 919 N.E.2d 233 (2d Dist.) (surviving wife not liable under statute due to record containing no evidence of wife’s financial status), *Ohio State Univ. Med. Ctr. v. Calovini*, Ct.of Cl. No. 2001-05561-PR, 2002-Ohio-5756 (surviving wife not liable under R.C. 3103.03 due to never having been employed during marriage and having no independent financial means).

{¶ 20} Having properly determined both that appellant’s husband lacked the ability to support himself and that appellant had the ability to aid him, appellant’s second and third assignments of error are not well-taken.

{¶ 21} Appellant, in her fourth assignment of error, asserts that the services rendered by appellee to her husband were not provided in good faith as required by the statute.

{¶ 22} The facts in the instant case are analogous to those present in *Home Helpers/Direct Link v. St. Pierre*, 196 Ohio App.3d 480, 2011-Ohio-4909, 964 N.E.2d 41 (12th Dist.), where a skilled-care service continued to provide care for a patient, despite the non-payment of invoices.

{¶ 23} Appellant has not raised an issue relating to the level or type of medical care provided by appellee. The record contains documentation of appellant's husband's extensive treatment schedule and various rounds of therapy. Even in light of the increasing past-due balance, appellee continued to provide this same level of care.

{¶ 24} Akin to the holding in *Home Helpers*, there is sufficient evidence in the record to support the trial court's finding that appellee's services were supplied with the good faith required by R.C. 3103.03.

{¶ 25} Appellant's fourth assignment of error is found not well-taken.

{¶ 26} In her fifth assignment of error, appellant contends that the remaining balance owed on the contract is not equivalent to the reasonable value of the services rendered.

{¶ 27} "Proof of the amount paid or the amount of the bill rendered and of the nature of the services performed constitutes prima facie evidence of the necessity and reasonableness of the charges." *Wagner v. McDaniels*, 9 Ohio St.3d 184, 459 N.E.2d 561 (1984). Appellee produced at trial both diagnostic and accounting information relating to appellant's husband's stay, all of which was authenticated by the office manager.

{¶ 28} Appellant has provided nothing beyond an assertion that the contract rate is not equal to reasonable value. Joseph acquiesced to the terms under the contract, and appellant requested that his stay be extended ten additional days without complaint of the contract rate.

{¶ 29} The trial court found this documentation and testimony evidence sufficient to demonstrate the reasonableness of the charges. There is nothing in the record to suggest otherwise.

{¶ 30} Appellant's fifth assignment of error is not found well-taken.

{¶ 31} The judgment of the Lucas County Court of Common Pleas is affirmed. It is ordered that appellant pay the court costs of this appeal, pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J.

JUDGE

Stephen A. Yarbrough, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.