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North Carolina Baptist Hospitals, Inc. v. Harris: **North Carolina Adopts a Gender-Neutral Approach** **to the Doctrine of Necessaries**

In a medical emergency, the last thing on anyone's mind is who will pay the bill. Although it is standard practice for a hospital to request information about insurance prior to admission, there is no guarantee that the information provided is correct or that the patient will be able to pay any balance left unpaid by the insurance. In seeking collection of the debt, the hospital is often thwarted by the patient's marriage relationship. The debtor spouse may have few personal assets, or the assets may be owned jointly with the non-debtor spouse as tenants by the entirety.¹ Because the wife historically has been the spouse who did not work outside the home and owned few personal assets independent of the husband, the common-law solution to this problem was the doctrine of necessities.²

The common-law doctrine of necessities imposed on the husband the duty to provide for the necessary expenses of the wife, including her necessary medical expenses.³ Under this doctrine, creditors who provided the wife with necessary goods and services could reach the personal assets of the husband in satisfaction of the wife's debt.⁴ In *North Carolina Baptist Hospitals, Inc. v. Harris*⁵ the North Carolina Supreme Court recently recognized that such a rule no longer accurately reflects current attitudes. In the modern marriage, the wife is not necessarily dependent on the husband.⁶ After reviewing the various approaches taken by other jurisdictions to modify the common-law doctrine of necessities, the *Harris* court extended the doctrine to hold both spouses jointly and severally liable for the necessary medical expenses of either spouse.⁷

1. See *infra* notes 100-06 and accompanying text.

2. The doctrine of necessities is based on the assumption that the husband and wife are living together. When the husband and wife are living apart, a presumption exists at common law that the husband is not liable for necessities furnished to the wife. *Cole v. Adams*, 56 N.C. App. 714, 716, 289 S.E.2d 918, 920 (1982). The wife may rebut this presumption upon a showing that the husband expressly pledged his credit or that the husband neglected to support the wife after separation. *Id.*

3. See, e.g., *Alamance County Hosp., Inc. v. Neighbors*, 315 N.C. 362, 367, 338 S.E.2d 87, 89 (1986) (husband's duty to support his family); *Bowen v. Daugherty*, 168 N.C. 242, 244, 84 S.E. 265, 266 (1915).

4. "Necessities or necessities 'are those things which are essential to [a wife's] health and comfort according to the rank and fortune of her husband.'" *Cole v. Adams*, 56 N.C. App. 714, 715, 289 S.E.2d 918, 919-20 (1982) (quoting 2 R. LEE, NORTH CAROLINA FAMILY LAW § 132 (4th ed. 1979)).

5. 319 N.C. 347, 354 S.E.2d 471 (1987).

6. According to the court,

These notions [of a wife's dependency] no longer accurately represent the society in which we live, and our laws have changed to reflect this fact. No longer must the husband be, nor is he in all instances the sole owner of the family wealth. No longer is the wife viewed as "little more than a chattel in the eyes of the law." *Nicholson v. Hospital*, 300 N.C. 295, 298, 266 S.E.2d 818, 820 (1980). No longer in all cases is the husband the supporting and the wife the dependent spouse. No longer is the wife thought generally to be under the domination of her husband.

Id. at 352-53, 354 S.E.2d at 474 (quoting *Mims v. Mims*, 305 N.C. 41, 49, 286 S.E.2d 779, 785 (1982)).

7. *Harris*, 319 N.C. at 353, 354 S.E.2d at 474. The *Harris* court did not address the question

This Note analyzes the supreme court's holding in *Harris* in light of the four approaches taken by other jurisdictions to modify the common-law doctrine of necessities. The court in *Harris* determined that the marriage relationship would be better served by extending the doctrine of necessities to both spouses in a joint and several fashion, rather than choosing another approach such as abolishing the doctrine altogether. Although this approach comports with traditional family law principles, it inadequately protects the interests of the nondebtor spouse.

On January 20, 1982, Donnie Harris was admitted to North Carolina Baptist Hospital for necessary medical treatment.⁸ At the time of the patient's admission, the hospital's business office requested his wife, Vern Dell Harris, to sign a form authorizing treatment. Rather than signing the form in her own name, Ms. Harris signed the form in her husband's name, "by Vern Dell Harris."⁹ Ms. Harris refused to sign as guarantor.¹⁰

The hospital provided the medical treatment, charging Mr. Harris \$3,303.61.¹¹ When payment was not made, the hospital brought suit against both Donnie and Vern Dell Harris for the debt.¹² Summary judgment was entered against Donnie Harris for the full amount of the debt.¹³ At the same hearing, Judge Gregory dismissed plaintiff's complaint against Vern Dell Harris.¹⁴ Plaintiff appealed this portion of the judgment, which was subsequently reversed by the North Carolina Court of Appeals and remanded for further findings of fact.¹⁵ Upon further findings of fact, Judge Gregory again dismissed the complaint against Vern Dell Harris.¹⁶ The North Carolina Court of Appeals affirmed that decision in an unpublished opinion.¹⁷

On discretionary review, the North Carolina Supreme Court unanimously reversed the court of appeals and held that Vern Dell Harris was liable for the entire debt.¹⁸ In extending the common-law doctrine of necessities to apply equally to both spouses, the supreme court in *Harris* noted that the trend in

whether its holding would extend beyond medical services to include all necessary goods and services.

8. It was stipulated by the parties that the treatment to Mr. Harris was necessary for his health and well-being. *Id.* at 349, 354 S.E.2d at 472.

9. *Id.*

10. *Id.* "A guaranty of payment is an absolute promise by the guarantor to pay a debt at maturity if it is not paid by the principal debtor." *Investment Properties of Asheville, Inc. v. Norburn*, 281 N.C. 191, 195, 188 S.E.2d 342, 345 (1972).

11. *Harris*, 319 N.C. at 349, 354 S.E.2d at 472.

12. *Id.* at 348, 354 S.E.2d at 471.

13. This judgment was not appealed. *Id.*

14. *Id.*

15. *North Carolina Baptist Hosps., Inc. v. Harris*, 71 N.C. App. 638, 323 S.E.2d 513 (1984).

16. *Harris*, 319 N.C. at 348, 354 S.E.2d at 472. Prior to *Harris*, the doctrine of necessities was only applicable to medical services provided to the wife. *Id.* at 349, 354 S.E.2d at 472.

17. *North Carolina Baptist Hosps., Inc. v. Harris*, 80 N.C. App. 167, 341 S.E.2d 619 (1986), *rev'd*, 319 N.C. 347, 354 S.E.2d 471 (1987).

18. *Harris*, 319 N.C. at 354, 354 S.E.2d at 475. Defendant argued that if the court expanded the common-law doctrine of necessities to include the liability of the wife for necessities furnished to the husband, then such a holding should be applied only prospectively because it creates a new cause of action against the wife that did not formerly exist. New Brief for Defendant-Appellee at 15, *Harris*, 319 N.C. 347, 354 S.E.2d 471 (1987) (No. 284PA86); see *Borgess Medical Center v. Smith*,

other jurisdictions was towards a gender-neutral application of the doctrine.¹⁹ The court also noted a trend toward gender neutrality in recent acts of the North Carolina General Assembly.²⁰

The supreme court rejected defendant's argument that the doctrine of necessities should be abolished.²¹ The court noted that in the past the doctrine had served the beneficial purpose of encouraging health-care providers to provide necessary medical attention to married persons.²² The *Harris* court also recognized that "marriage involves shared wealth, expenses, rights, and duties," and each spouse has a personal duty to support the other, "a duty arising from the marital relationship itself."²³

The *Harris* decision expressly overruled *Presbyterian Hospital v. McCartha*,²⁴ a case in which the North Carolina Court of Appeals held under similar facts that the doctrine of necessities was not applicable to hold a wife liable for the medical expenses of her husband.²⁵ In order to understand the *Harris* decision, it is first necessary to review both the history of the doctrine of necessities in North Carolina and the four approaches that have been taken by other jurisdictions to "modernize" the doctrine.

At common law the husband and wife were regarded as one legal entity.²⁶ Upon marriage the personal property of a woman vested absolutely in the husband.²⁷ Furthermore, the husband became seised of an estate in the land of his wife during marriage, which gave him the right to possession and control of the estate during marriage.²⁸ He could use the rents and profits from the wife's estate as he pleased, and could convey his interest in the wife's property without her consent.²⁹ The husband could also subject the wife's personal property, as well as his interest in her real property, to levy under execution to satisfy his

149 Mich. App. 796, 386 N.W.2d 684, 687 (1986); *Jersey Shore Medical Center-Fitkin Hosp. v. Estate of Baum*, 84 N.J. 137, 152, 417 A.2d 1003, 1010-11 (1980).

19. *Harris*, 319 N.C. at 351, 354 S.E.2d at 473.

20. See *infra* notes 45-48 and accompanying text.

21. Defendant argued that

[f]or a state to have credit laws which treat a married man, or a married woman differently from a man or woman who is not married violates the married person's constitutional right of equal protection under the law. When credit is extended to any adult in today's marketplace, the creditor is looking only to the person who expressly agrees to make payment. Why should a married debtor be treated differently under the law from a single creditor?

New Brief for Defendant-Appellee at 14, *Harris*, 319 N.C. 347, 354 S.E.2d 471 (1987) (No. 284PA86).

22. *Harris*, 319 N.C. at 353, 354 S.E.2d at 474.

23. *Id.*

24. 66 N.C. App. 177, 310 S.E.2d 409, *disc. rev. denied as improvidently allowed* 312 N.C. 485, 322 S.E.2d 761 (1984) (per curiam). For a discussion of *McCartha*, see *infra* notes 75-78 and accompanying text.

25. *Id.* at 179, 310 S.E.2d at 411.

26. See, e.g., *Combs v. Combs*, 273 N.C. 462, 465, 160 S.E.2d 308, 311 (1968); *Woolard v. Smith*, 244 N.C. 489, 492, 94 S.E.2d 466, 468 (1956).

27. See, e.g., *O'Connor v. Harris*, 81 N.C. 279 (1878); *Arrington v. Yarborough*, 54 N.C. (1 Jones Eq.) 73 (1853); 2 R. LEE, NORTH CAROLINA FAMILY LAW § 107 (4th ed. 1979 & Supp. 1985).

28. *Perry v. Stancil*, 237 N.C. 442, 445, 75 S.E.2d 512, 515 (1953).

29. "Upon the birth of issue capable of inheriting the wife's land, [the husband's] estate was

own debts.³⁰ There arose at marriage the corresponding legal disability of a woman to manage her own property.³¹

Because the married woman was considered legally incapable of owning property and incurring debts independent of her husband, the marriage relationship gave rise to the duty of the husband to support the wife. At common law, the husband was liable for the wife's "necessaries," which included "the cost of clothing, food, ordinary household supplies, medical attendance, expenses of sickness, . . . as well as articles of comfort suitable to the condition and style in which the parties were accustomed to live."³² In exchange, the wife was legally obligated to provide domestic services for the comfort, care, and well being of the family, and to provide consortium to the husband.³³ Such common-law rules had prevailed in North Carolina through the early nineteenth century.³⁴ However, limitations that have burdened the property rights of married women have since been gradually liberalized and removed. By 1837 enabling statutes had modified the common law governing the property rights of married women in three respects. First, the wife's land could be conveyed only by a deed jointly executed and acknowledged by *both* the husband and wife.³⁵ Second, the wife possessed independent rights in property she acquired after divorce.³⁶ Third, the husband could no longer lease the lands of the wife for a term of years or for life without the joinder of the wife.³⁷ In 1848 the general assembly provided that the wife's land was no longer subject to sale under execution for the debts of the husband.³⁸

Perhaps the greatest change in the common-law property rights of married women in North Carolina, however, occurred at the constitutional convention of 1868 when the following provision was adopted:

The real and personal property of any female in this State acquired before marriage, and all property, real and personal, to which she may, after marriage, become in any manner entitled, shall be and remain the sole and separate estate and property of such female, and shall not be liable for any debts, obligations or engagements of her husband, and may be devised and bequeathed, and, with the written assent of her husband, conveyed by her as if she were unmarried.³⁹

Having recognized the separate estate of the wife, it was only a matter of time until the general assembly removed the remaining disabilities of married women to contract and to convey property in their own names. In 1911, the general

enlarged so that he immediately became the owner for the period of his natural life and he could convey his life estate therein without the joinder of his wife." *Id.*

30. *Id.* at 445, 75 S.E.2d at 515.

31. *Id.*

32. *Bowen v. Daugherty*, 168 N.C. 242, 244, 84 S.E. 265, 266 (1915).

33. *Ritchie v. White*, 225 N.C. 450, 453, 35 S.E.2d 414, 416 (1945).

34. *Perry*, 237 N.C. at 445, 75 S.E.2d at 515.

35. 1 N.C. REV. STAT., ch. 37, § 9 (1837) (emphasis added).

36. *Id.* ch. 39, § 11 (1837).

37. *Id.* ch. 43, § 9 (1837).

38. Act of Jan. 29, 1849, ch. 41, § 2, 1848 N.C. Pub. Laws 89, 90.

39. N.C. CONST. of 1868, art. X, § 6.

assembly enacted the Martin Act, which gave a married woman the right to contract and dispose of her property without her husband's consent.⁴⁰

The removal of the legal disabilities of married women, however, did not affect the common-law duty of the husband to provide for the necessities of the wife. In *Bowen v. Daugherty*⁴¹ the North Carolina Supreme Court ruled on claims against the estate of a deceased wife "consisting of funeral and burial expenses, tombstone, doctor's bills and nursing during [the wife's] last illness."⁴² The court determined that the husband, not the wife's estate, was liable for these claims.⁴³ Even though the Martin Act had removed the disabilities of married women, that development did not affect the husband's duty to support his wife. In describing the interaction between the Martin Act and the doctrine of necessities, Justice Clark stated in concurrence:

The husband does not become liable as surety for his wife's contracts, nor responsible for debts contracted by her, except for her support, as above stated. And she is not made responsible for articles bought for such support except where by contract, express or by her conduct, she leads the seller reasonably to understand that she is assuming individual responsibility. In the latter case the husband would still remain liable, and the seller can recover against either or both.⁴⁴

Although the doctrine of necessities remained unchanged in North Carolina until *Harris*, other pertinent changes occurred in the law affecting the relationship between the husband and wife. Many of the laws that historically have treated husband and wife differently have been revised by the legislature or courts in a gender-neutral fashion.⁴⁵ For example the Equitable Distribution Act⁴⁶ "is uniform in its treatment of parties to a marriage as equal partners in a joint enterprise."⁴⁷ The *Harris* court stated that this statute appears to be "a

40. Act of Mar. 6, 1911, ch. 109, § 1, 1911 N.C. Pub. Laws 272, 272-73.

41. 168 N.C. 242, 84 S.E. 265 (1915).

42. *Id.* at 243, 84 S.E. at 265.

43. The *Bowen* court reasoned that these debts, though incurred by the wife, were the husband's responsibility:

[W]e see no reason, before or since the statute, why a debt of the husband should be imputed to the wife. True, the general rule is that when goods are supplied or services rendered by one person for another, the law implies a promise to pay what they are reasonably worth; but the principle, in our opinion, should not control when the goods were acquired or services rendered under circumstances which created a recognized liability in [the husband].

Id. at 244-45, 84 S.E. at 266.

44. *Id.* at 246, 84 S.E. at 267 (Clark, J., concurring).

45. See, e.g., N.C. GEN. STAT. § 14-322 (1986) (providing for criminal sanctions against both the husband and wife for nonsupport); *id.* § 50-13.4(b) (1987) (duty to support children no longer exclusively the primary responsibility of the father); *id.* § 50-16.1(4) (1987) (abolishing the statutory presumption that the husband is the supporting spouse for alimony purposes); see also *Mims v. Mims*, 305 N.C. 41, 48, 286 S.E.2d 779, 785 (1982) (presumptive gift rule applies to both husband and wife). But see N.C. GEN. STAT. § 14-202 (1986) (making it illegal for any person to "peep secretly into any room occupied by a female person"); *id.* § 148-6 (1987) ("no female convict shall be worked on public roads or streets in any manner").

46. N.C. GEN. STAT. §§ 50-20 to -21 (1987).

47. *Harris*, 319 N.C. at 352, 354 S.E.2d at 474. See generally Sharp, *The Partnership Ideal: The Development of Equitable Distribution in North Carolina*, 65 N.C.L. REV. 195, 198-201 (1987) (discussing the "partnership" concept of marriage).

clear break from the archaic notions reflected in earlier statutes."⁴⁸ In support of its decision to extend the doctrine of necessities to apply equally to both spouses, the *Harris* court noted this trend towards gender neutrality. As further support for its decision, the *Harris* court observed that most other states addressing the doctrine of necessities in recent years have modified the doctrine under one of four approaches.⁴⁹

The first and most common approach has been to expand the doctrine of necessities by applying it equally to both the husband and the wife. Under this approach, the husband and wife are in effect jointly and severally liable for the necessary medical expenses of either spouse.⁵⁰ Although some state courts have adopted this approach,⁵¹ it has often been adopted by state legislatures in the form of family expense statutes⁵² or statutes specifically addressing the doctrine of necessities.⁵³

In *Richland Memorial Hospital v. Burton*⁵⁴ the South Carolina Supreme Court considered a claim against the appellant husband for the medical expenses of his deceased wife. The trial court found the husband liable under the common law doctrine of necessities.⁵⁵ The husband appealed, alleging that the doctrine violated the equal protection clauses of the South Carolina and United States Constitutions.⁵⁶ The *Burton* court agreed with the husband, noting the recent legislative and common-law trends in South Carolina towards gender neutrality.⁵⁷ The court concluded, however, that the doctrine of necessities remained a viable common-law doctrine.⁵⁸ The court therefore extended the doctrine of necessities to allow third parties providing necessities to a husband or wife to bring an action against the nondebtor spouse.⁵⁹

Although the joint and several approach is gender neutral, it is also procreditor. This approach gives a creditor complete discretion in the collection

48. *Harris*, 319 N.C. at 352, 354 S.E.2d at 474.

49. See generally Comment, *The New Doctrine of Necessaries in Virginia*, 19 U. RICH. L. REV. 317, 326-31 (1985) (discussing four approaches to modifying the common-law doctrine of necessities).

50. See *Jersey Shore Medical Center-Fitkin Hosp. v. Estate of Baum*, 84 N.J. 137, 149, 417 A.2d 1003, 1009 (1980).

51. See, e.g., *Cooke v. Adams*, 183 So.2d 925 (Miss. 1966); *Richland Memorial Hosp. v. Burton*, 282 S.C. 159, 318 S.E.2d 12 (1984).

52. See, e.g., COLO. REV. STAT. § 14-6-110 (1973); ILL. ANN. STAT. ch. 40, para. 1015 (Smith-Hurd 1980 & Supp. 1987); IOWA CODE ANN. § 597.14 (West 1981); WASH. REV. CODE ANN. § 26.16.205 (1986).

53. See, e.g., HAW. REV. STAT. § 572-24 (1985); MONT. CODE ANN. § 40-2-106 (1987); VA. CODE ANN. § 55-37 (1986).

54. 282 S.C. 159, 318 S.E.2d 12 (1984).

55. *Id.* at 160, 318 S.E.2d at 13.

56. *Id.* See S.C. CONST. art. I, § 3; U.S. CONST. amend. XIV, § 1.

57. See, e.g., S.C. CODE ANN. § 20-7-40 (Law. Co-op. 1976 & Cum. Supp. 1987) (support of his or her spouse and children); *id.* § 20-3-120 (alimony and suit money); *id.* § 20-3-130 (alimony). See also *Boan v. Watson*, 281 S.C. 516, 519, 316 S.E.2d 401, 403 (1984) (holding common-law dower unconstitutional as violative of equal protection).

58. *Burton*, 282 S.C. at 160, 318 S.E.2d at 13.

59. *Id.* The court left open the possibility it was not adopting a pure joint and several approach when it stated: "The issue whether, in some instances, the creditor must first seek to recover from the estate of the spouse who received the services is not before us." *Id.* at 161, 318 S.E.2d at 13-14.

of the debt by allowing the creditor to seek payment from either spouse. Because this approach does not take into account which spouse actually incurred the debt, it has been criticized by those states adopting another approach.⁶⁰

Based on the assumption that many wives are still not financially equal to husbands in today's society, courts employing a second approach place primary liability on the husband for the necessary medical expenses of either spouse, and secondary liability on the wife.⁶¹ In *Estate of Stromsted v. St. Michael Hospital of Franciscan Sisters*,⁶² the Wisconsin Supreme Court extended the common-law doctrine of necessities to both spouses but refused to hold the wife primarily liable.⁶³ The court refused to subject the wife to joint and several liability because statistics revealed that a married woman remains behind her husband "as an income-producing element of the family."⁶⁴ The court therefore held that the husband must continue to be viewed as having primary liability for the necessities of his household and, to the extent the husband is unable to satisfy his obligation, the creditor may seek collection from the wife.⁶⁵

A third approach places primary liability on the spouse who incurred the debt and secondary liability on the nondebtor spouse.⁶⁶ In *Memorial Hospital v. Hahaj*⁶⁷ the hospital brought an action against a married woman for medical services she incurred in her own behalf. After recognizing the changing role of the married woman and the marital relationship, the Indiana Court of Appeals held the wife primarily liable and her husband secondarily liable for these medi-

60. See, e.g., *Memorial Hosp. v. Hahaj*, 430 N.E.2d 412, 416 (Ind. App. 1982); *Jersey Shore Medical Center-Fitkin Hosp. v. Estate of Baum*, 84 N.J. 137, 149, 417 A.2d 1003, 1009 (1980); *Marshfield Clinic v. Discher*, 105 Wis. 2d 506, 514, 314 N.W.2d 326, 330 (1982).

61. See, e.g., *Marshfield Clinic v. Discher*, 105 Wis. 2d 506, 314 N.W.2d 326 (1982); *Estate of Stromsted v. St. Michael Hosp. of Franciscan Sisters*, 99 Wis. 2d 136, 299 N.W.2d 226 (1980). For a discussion of the constitutionality of this approach, see Note, *Inequality in Marital Liabilities: The Need For Equal Protection When Modifying the Necessaries Doctrine*, 17 U. MICH. J.L. REF. 43, 48-56 (1983).

62. 99 Wis. 2d 136, 299 N.W.2d 226 (1980).

63. *Id.* at 146, 299 N.W.2d at 231.

64. *Id.* at 144-145, 299 N.W.2d at 230. The court cited statistics from a 1977 study, which stated that the average working wife contributed only about one-fourth of the family's income. *Id.* at 145 n.7, 299 N.W.2d at 230 n.7 (citing *Labor Force Participation of Married Women*, MONTHLY LAB. REV., June 1977, at 33); see also *Marshfield Clinic v. Discher*, 105 Wis. 2d at 512 & n.7, 314 N.W.2d at 329 & n.7 (1982) (citing *Occupational Segregation and Earnings Differences by Sex*, MONTHLY LAB. REV., Jan. 1981, at 49) ("Through 1978, women who worked full time earned about 60 percent as much as men").

65. Although the *Stromsted* rule is not gender neutral, its constitutionality was later upheld in a decision of the Wisconsin Supreme Court:

To satisfy a constitutional challenge, a gender based rule must serve important governmental objectives and the means employed must be substantially related to the achievement of those objectives.

In considering the necessities rule, as articulated in *Sharpe* and *Stromsted*, it is apparent that it serves several important governmental objectives. The rule benefits families by making it more likely that they will obtain necessary and appropriate goods and services. It enables wives to obtain credit more easily, rather than having to depend on their husbands to make necessary purchases. It also protects wives from economic hardship by placing primary liability on husbands.

Marshfield Clinic v. Discher, 105 Wis. 2d 506, 509-10, 314 N.W.2d 326, 328 (1982).

66. See, e.g., *Memorial Hosp. v. Hahaj*, 430 N.E.2d 412 (Ind. App. 1982); *Jersey Shore Medical Center-Fitkin Hosp. v. Estate of Baum*, 84 N.J. 137, 417 A.2d 1003 (1980).

67. 430 N.E.2d 412 (Ind. App. 1982).

cal expenses.⁶⁸ The court reasoned that the modern marriage is like a financial partnership in which either spouse is liable for his or her own medical expenses, with the other spouse and the marital property secondarily liable.⁶⁹

Like the second approach, this approach seeks to expand the doctrine of necessities but limits a creditor's right to pursue his claim against both spouses jointly and severally. Unlike the second approach, however, this approach is gender neutral, and takes into account which spouse incurred the debt.⁷⁰ The second approach seeks to protect the wife; the third approach seeks to protect the nondebtor spouse.

As a final approach, some state courts have abolished the doctrine of necessities altogether as violative of the equal protection clause of the fourteenth amendment to the United States Constitution.⁷¹ In such cases only the spouse who incurred the debt has been held liable for necessary medical expenses, absent some contractual obligation by the nondebtor spouse.⁷² Rather than expanding the doctrine of necessities, these courts have concluded that this is a policy matter better left to the legislatures of their respective states.⁷³

The court in *Harris* recognized the various approaches taken by other jurisdictions to extend the doctrine of necessities, as well as the trend in the North Carolina General Assembly towards gender neutrality, and concluded that the doctrine should be extended in a gender-neutral fashion in North Carolina.⁷⁴ By its holding in *Harris*, the North Carolina Supreme Court expressly overruled *Presbyterian Hospital v. McCartha*,⁷⁵ a case in which the North Carolina Court of Appeals refused to hold a wife liable for the necessary medical expenses of her

68. *Id.* at 416.

69. *Id.* at 415.

70. The New Jersey Supreme Court addressed the need for limitations on a creditor's right to pursue the debt of marital partners:

Normally a person is not liable for the debt of another in the absence of an agreement. The imposition of liability based on marital status alone is an exception to that rule. Nonetheless, it is a justifiable exception. The reasonable expectations of marital partners are that their income and assets are held for the benefit of the marital partnership and, incidentally, for creditors who provide necessities for either spouse. However, it would be unfair to accord the same rights to a creditor who provides necessities on the basis of an agreement with one spouse as to a creditor who has an agreement with both spouses. In the absence of such an agreement, a creditor should have recourse to the property of both spouses only where the financial resources of the spouse who incurred the necessary expense are insufficient. Marshalling the marital resources in that manner grants some protection to a spouse who has not expressly consented to that debt.

Jersey Shore Medical Center, 84 N.J. at 151, 417 A.2d at 1010.

71. See, e.g., *Condore v. Prince George's County*, 289 Md. 516, 425 A.2d 1011 (1981); *Schilling v. Bedford County Memorial Hosp., Inc.*, 225 Va. 539, 303 S.E.2d 905 (1983).

72. See generally Note, *The Unnecessary Doctrine of Necessaries*, 82 MICH. L. REV. 1767 (1984) (arguing the doctrine of necessities has outgrown its usefulness and should be abolished).

73. See, e.g., *Condore*, 289 Md. at 532, 425 A.2d at 1019; *Schilling*, 225 Va. at, 303 S.E.2d at 908. The Supreme Court of Florida recently upheld the common-law doctrine of necessities, and noted that neither the court nor the state legislature had overruled it. *Shands Teaching Hosp. & Clinics, Inc. v. Smith*, 497 So. 2d 644, 646 (Fla. 1986). The court refused to overrule the doctrine, stating that the legislative branch was more suited to "receiving public input and resolving broad policy questions." *Id.*

74. *Harris*, 319 N.C. at 353, 354 S.E.2d at 474; see *supra* notes 18-20 and accompanying text.

75. 66 N.C. App. 177, 310 S.E.2d 409, *disc. rev. denied as improvidently allowed per curiam*, 312 N.C. 485, 322 S.E.2d 761 (1984).

husband.⁷⁶ Although the facts in *McCartha* were nearly identical to those in *Harris*, the court's analysis in *McCartha* was completely different. The *McCartha* court stated that the doctrine of necessities was not applicable when the hospital relied solely on the separate credit or estate of the husband.⁷⁷ Because the wife in *McCartha* neither contracted for nor requested the treatment given to the husband, "[t]his situation [did] not give rise to the necessities doctrine; and it would not even if the gender of the parties was reversed and the hospital had contracted only with the wife."⁷⁸ Having held that the doctrine of necessities was not applicable to the case at hand, the *McCartha* court never even addressed the issue whether the doctrine should be applied on a gender-neutral basis.

In contrast to *McCartha*, the *Harris* court concluded that reliance on the separate credit or estate of the nondebtor spouse was not an essential element of the doctrine of necessities.⁷⁹ Vern Dell Harris was held liable for her husband's medical expenses even though she did not request or contract for those services.⁸⁰ Not only did *Harris* overrule *McCartha* by applying the doctrine of necessities to a spouse who does not request or contract for necessary medical expenses, it contradicted the dicta in *McCartha* to the effect that the doctrine only applies to the husband.

The supreme court's extension of the doctrine of necessities to both spouses is a logical step in the evolution of the rights and duties of both husband and wife. At common law only the husband had a duty of support.⁸¹ However, the wife had duties of her own, including the duty to provide the traditional domestic services.⁸² Even though the wife's duty to provide domestic services became unenforceable, the husband remained liable for the support of the wife.⁸³ The *Harris* court noted a resulting disequilibrium in the law: "[W]ives share their husbands' freedom to contract and are additionally entitled to financial support, while no longer being required to provide the traditional domestic services."⁸⁴ Extending the doctrine of necessities rectified this disequilibrium by placing the same duty of support on each spouse in a gender-neutral fashion.

The *Harris* court could have corrected this disequilibrium in the rights and

76. *Id.* at 179, 310 S.E.2d at 411.

77. *Id.*

78. *Id.*

79. The court in *Harris* set forth the following four essential elements that must be shown to establish a prima facie case against a spouse for necessary medical services provided to the other spouse:

(1) medical services were provided to the spouse; (2) the medical services were necessary for the health and well-being of the receiving spouse; (3) the person against whom the action is brought was married to the person to whom the medical services were provided at the time such services were provided; and (4) the payment for the necessities has not been made.

Harris, 319 N.C. at 353-54, 354 S.E.2d at 475.

80. The trial court found that Vern Dell Harris "neither requested her husband's admission to the hospital, anticipated that he would be admitted, nor agreed to pay for the services." *Id.* at 349, 354 S.E.2d at 472.

81. See *supra* text accompanying note 32.

82. See *supra* text accompanying note 33.

83. See, e.g., *Ritchie v. White*, 225 N.C. 450, 452-53, 35 S.E.2d 414, 415-16 (1945).

84. *Harris*, 319 N.C. at 350, 354 S.E.2d at 473.

duties of the spouses just as effectively by abolishing the doctrine of necessities. The court noted, however, two reasons why a gender-neutral application of the doctrine would be better accomplished by extending, rather than abolishing, the doctrine. First, the doctrine of necessities encourages health-care providers to give necessary medical attention to married persons.⁸⁵ Second, the court recognized that marriage "involves shared wealth, expenses, rights, and duties."⁸⁶ Each spouse has a duty to support the other, "a duty arising from the marital relationship itself and carrying with it the corollary right to support from the other spouse."⁸⁷ The *Harris* court's conclusion that the marital relationship itself creates a sharing of wealth and a duty of support is consistent with traditional notions of marriage. At common law, the husband and wife were regarded as one legal entity.⁸⁸ Although the individual rights and independence of the wife were later established by the removal of the married woman's disabilities,⁸⁹ North Carolina law has continued to recognize the spouses as a single entity under the tenancy by the entirety doctrine⁹⁰ and the Equitable Distribution Act.⁹¹ Therefore, it is not surprising that the *Harris* court continued to view the marriage as a viable entity unto itself, capable of creating its own rights and duties.⁹²

In extending the doctrine of necessities, the *Harris* court never discussed which specific approach it was taking to achieve that result. The court simply entered judgment against the wife for the entire amount of the husband's necessary medical expenses.⁹³ Because the husband had already been held liable for the debt,⁹⁴ the court haphazardly adopted the joint and several approach without offering a rationale for its choice of that particular approach.

Although the joint and several approach to extending the doctrine of necessities has been widely adopted, some courts have characterized it as "equality with a vengeance."⁹⁵ This approach takes into account neither which spouse incurred the debt nor the financial resources of each spouse. The creditor can proceed directly against the nondebtor spouse, regardless of that spouse's finan-

85. *Id.* at 353, 354 S.E.2d at 474.

86. *Id.*

87. *Id.*

88. See *supra* note 26 and accompanying text.

89. See *supra* notes 35-40 and accompanying text.

90. See *infra* note 100.

91. See *supra* notes 46-47 and accompanying text.

92. The supreme court stated that because the duty of support arises from the marriage relationship itself, attempts by a spouse to disavow this duty have no effect. *Harris*, 319 N.C. at 353, 354 S.E.2d at 474. However, the traditional view in North Carolina that spousal duties and rights cannot be altered by the parties may be changing. The North Carolina General Assembly recently adopted the Uniform Premarital Agreement Act. Act of June 25, 1987, ch. 473, § 1, 1987 N.C. Adv. Legis. Serv. 3 (codified at N.C. GEN. STAT. §§ 52B-1 to -11 (1987)). The Act provides that parties may by a written and signed premarital agreement contract with respect to "the modification or elimination of spousal support." N.C. GEN. STAT. § 52B-4(a)(4) (1987). Presumably, such an agreement would prevent creditors who provide necessities to one spouse from seeking collection from the nondebtor spouse under the doctrine of necessities.

93. *Harris*, 319 N.C. at 354, 354 S.E.2d at 475.

94. See *supra* text accompanying note 13.

95. *Jersey Shore Medical Center-Fitkin Hosp. v. Estate of Baum*, 84 N.J. 137, 149, 417 A.2d 1003, 1009 (1980).

cial situation. Although the original purpose of the doctrine of necessities was to provide support for married women, this rationale has lost favor.⁹⁶ Because the joint and several approach does not consider whether one spouse needs support from the other, the doctrine of necessities has been reduced to nothing more than a creditor's remedy.⁹⁷

Furthermore, the court's imposition of joint and several liability threatens the protections of the married woman's property that have evolved in North Carolina law. For example, one provision in the North Carolina Constitution protects a married woman's property:

The real and personal property of any female in this State acquired before marriage, and all property, real and personal, to which she may, after marriage, become in any manner entitled, shall be and remain the sole and separate estate and property of such female, and shall not be liable for any debts, obligations, or engagements of her husband⁹⁸

An argument can be made that extending the doctrine of necessities to hold the wife liable creates a direct liability in the wife in her own right, and therefore does not violate the North Carolina Constitution.⁹⁹ Even if such an assertion is true, the court's extension of the doctrine of necessities has undermined the intent of this provision of the constitution to give a married woman independent control over her own property.

Another important issue is the impact *Harris* will have on the tenancy by the entirety.¹⁰⁰ The tenancy by the entirety has traditionally protected the joint

96. *Estate of Stromsted v. St. Michael Hosp. of Franciscan Sisters*, 99 Wis. 2d 136, 149-50 & n.2, 299 N.W.2d 226, 233 & n.2 (1980) (Abrahamson, J., dissenting).

97. *Id.* (Abrahamson, J., dissenting). Judge Abrahamson further stated in his dissent:

The creditor's benefit may be attained at a substantial cost to the homemaker. Under the majority's formulation, a full-time homemaker who has supported the family by contributing her services, who has little or no income or property, and to whom the husband owes the duty to support, becomes, in effect, a guarantor of payment for necessities supplied to her husband, herself and the children.

Id. at 149, 299 N.W.2d at 233 (Abrahamson, J., dissenting).

98. N.C. CONST. art. X, § 4.

99. Brief for Plaintiff-Appellant at 10-11, *Harris*, 80 N.C. App. 167, 341 S.E.2d 619 (1986) (No. 8523DC1142), *rev'd*, 319 N.C. 347, 354 S.E.2d 471 (1987).

100. The joint tenancy is a form of concurrent ownership characterized by the unities of time, title, interest, and possession. *Combs v. Combs*, 273 N.C. 462, 465, 160 S.E.2d 308, 311 (1968). Each tenant has an equal undivided interest in the whole of the property, including the right of survivorship upon the death of the other tenant. *Davis v. Bass*, 188 N.C. 200, 204-05, 124 S.E. 566, 568 (1924).

The tenancy by the entirety is a form of concurrent ownership created when a fifth unity, unity of person, is added to the other four. *Combs*, 273 N.C. at 465, 160 S.E.2d at 311.

This tenancy by the entirety takes its origin from the common law when husband and wife were regarded as one person, and a conveyance to them by name was a conveyance in law but to one person. The estate rests upon the doctrine of the unity of person, and upon the death of one the whole belongs to the other, not solely by right of survivorship, but also by virtue of the grant which vested the entire estate in each grantee . . . and the estate thus created has never been destroyed or changed by statute in North Carolina.

Id.

In North Carolina, a tenancy by the entirety is created whenever land is conveyed or devised to a husband and wife as such. *Id.* Unlike the joint tenancy, neither tenant is entitled to partition. *Jones v. W.A. Smith & Co.*, 149 N.C. 317, 319, 62 S.E. 1092, 1093 (1908). Each tenant has a right of survivorship that cannot be defeated by one spouse acting alone. *L & M Gas Co. v. Leggett*, 273

property in a marriage from the debts and obligations of a single spouse.¹⁰¹ Because the supreme court's holding in *Harris* placed joint and several liability on both spouses for the necessary expenses of either spouse, it may have opened the door for a creditor health-care provider to use the doctrine of necessities to reach tenancy by the entirety property.¹⁰² Not only might the personal assets of both spouses be subject to a judgment, the family home might be vulnerable as well.¹⁰³

Fearing such a result, the Virginia General Assembly recently extended the common-law doctrine of necessities by a statute expressly stating that "[n]o lien arising out of a judgment under this section shall attach to the judgment debtors' principal residence held by them as tenants by the entireties."¹⁰⁴ Other states have tempered the gender-neutral application of the doctrine of necessities by holding the debtor spouse primarily liable and the nondebtor spouse secondarily liable.¹⁰⁵ Not only does this approach force the creditor to proceed initially against the debtor spouse, it also protects any property held by the spouses as tenants by the entirety.¹⁰⁶

Given that *Harris* adopted the joint and several approach to extending the doctrine of necessities, a response by the North Carolina General Assembly similar to that taken by the Virginia General Assembly appears particularly appropriate.¹⁰⁷ The Virginia statute strikes a fair balance between the competing

N.C. 547, 552, 161 S.E.2d 23, 27 (1968). The tenancy by the entirety therefore endures until one spouse dies, an absolute divorce is decreed, or both spouses join in a voluntary conveyance. *Branstetter v. Branstetter*, 36 N.C. App. 532, 534-35, 245 S.E.2d 87, 89-90 (1978).

101. Unlike the joint tenancy, property held by the husband and wife as tenants by the entirety is not subject to execution to satisfy a judgment entered against either the husband or the wife individually. See, e.g., *Sawada v. Endo*, 57 Haw. 608, 615, 561 P.2d 1291, 1295 (1977); *L & M Gas Co. v. Leggett*, 273 N.C. 547, 550, 161 S.E.2d 23, 26 (1968); *Winchester-Simmons Co. v. Cutler*, 199 N.C. 709, 712, 155 S.E. 611, 612-13 (1930); *Vasilion v. Vasilion*, 192 Va. 735, 740, 66 S.E.2d 599, 602 (1951).

102. Traditionally a creditor could reach entireties property on a joint obligation of the husband and wife. See, e.g., *L & M Gas Co. v. Leggett*, 273 N.C. 547, 550, 161 S.E.2d 23, 26 (1968); *Southern Distrib. Co. v. Caraway*, 189 N.C. 420, 422, 127 S.E. 427, 428-29 (1925). After *Harris*, traditional rules on entireties property may no longer be an obstacle to creditors who provide necessary goods and services. In light of this judicially imposed obligation on the nondebtor spouse, it is unclear whether the North Carolina Supreme Court will extend *Harris* this far. See generally *Reppy, North Carolina's Tenancy By The Entirety Reform Legislation of 1982*, 5 CAMPBELL L. REV. 1, 8-16 (1982) (discussing the right of a creditor of one spouse to reach the tenancy by the entirety).

103. A debtor's "aggregate interest" in real or personal property used by the debtor or a dependent of the debtor as a residence is exempt from the claims of creditors up to a limit of \$7,500. N.C. GEN. STAT. § 1C-1601(a)(1) (1987). To the extent a debtor has an interest in his home in excess of \$7,500, § 1C-1601 appears to authorize a forced sale with the debtor receiving the first \$7,500 of proceeds. See *Peeples, New Rules For An Old Game: North Carolina's New Exemption Act*, 17 WAKE FOREST L. REV. 865, 874-79 (1981).

104. VA. CODE ANN. § 55-37 (Repl. Vol. 1986). This result seems particularly appropriate because it protects only a tenancy by the entirety which is also the debtor's principal residence. Therefore, spouses cannot defeat the rights of the creditor simply by transferring a large portion of their property into tenancies by the entirety.

105. See *supra* notes 66-70 and accompanying text.

106. See, e.g., *Lake v. Callis*, 202 Md. 581, 588, 97 A.2d 316, 319 (1953) (entireties property not subject to judgment against husband and wife if wife was surety on, rather than maker of, note); *Southern Distrib. Co. v. Caraway*, 189 N.C. 420, 422, 127 S.E. 427, 428-29 (1925) (when wife only secondarily liable on debt, property held by entireties not subject to attachment because judgment was not rendered on joint obligation).

107. See *supra* note 104 and accompanying text.

interests of the creditor and the nondebtor spouse. By protecting only the debtors' principal residence, it does not turn the tenancy by the entirety into a general device to defeat creditors by excepting all entireties property from the joint and several effect of the doctrine of necessities.

No one denies that the common-law doctrine of necessities is out of step with a modern society in which both spouses have an equal right to manage their own individual property. However, the approach adopted in *Harris* undermines that independence by giving creditors a broad remedy which, if unchecked, might subject all of a married individual's property to seizure for the debts of a spouse. Such a remedy might even be used to force a sale of the family home to pay for one spouse's medical bills. In the future either the general assembly or the supreme court should clarify the impact of *Harris* on the nondebtor spouse, and in doing so, should afford some protection to that spouse's property interests.

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