268 S.W. 541

207 Ky. 12

BREUER
v.
DOWDEN.

Court of Appeals of Kentucky.

January 27, 1925

As Modified, March 3, 1925.

Appeal from Circuit Court, Jefferson County, Common Pleas Branch, Third Division.

Action by C. W. Dowden against R. O. Breuer. Judgment for plaintiff, and defendant moves for an appeal. Appeal granted, and judgment reversed.

Isaac Sherman, of Louisville, for appellant.

Joseph S. Laurent, of Louisville, for appellee.

SAMPSON, J.

This appeal presents the question of whether the parent is liable for necessaries furnished his adult daughter, living in his home as a member of the family, at a time she is sick and unable to earn her living. The evidence shows that Emily Breuer is the daughter of appellant, and that she was living in the home with her father and mother in Louisville as a member of the family when she engaged appellee, Dr. Dowden, to make a diagnosis of her physical ailments, and to give her treatment therefor. She was at the time about 23 or 24 years of age, but had never had employment or earned her living. She was under the care of the physician for about 8 months. Of this time she spent 6 weeks in a hospital away from her father's home. She was suffering from some nervous trouble, so she states, but she was not confined to her bed or room, except while at the hospital, and then for the purpose of treatment. At the time she gave her deposition in this case she had been married for some time, and was then 26 years of age, living with her husband in Atlanta. The evidence shows she and her father, appellant, were not on friendly terms, she never speaking to him except when it was absolutely necessary. Her mother was also estranged from the father, although they lived in the same house. There was little or no conversation between them.

The daughter and mother went to the doctor's office at the time his services were engaged. They gave a history of her case, but there was nothing said about who would pay the bill or the amount to be charged. In fact nothing appears to indicate that the mother engaged the physician. The doctor never called on the daughter at the parental residence, and the father never knew of the employment of appellee, doctor, until long after most of the services had been rendered. He did not authorize or direct his daughter or wife to engage the physician or consent for him to be so engaged, or promise or agree, either directly or indirectly to pay for the services. If the father is liable for the services of the physician, it must be on the implied promise which the law raises against the father, to provide the members of the household, of which he is the head, with necessities, and which in some cases has been extended to adult children.

Appellee insists that the law imposes a duty on the parent to support his adult dependent child, who has remained a member of the household because incapable of providing his own means of livelihood. In support of this proposition appellee cites the case of *Crain v. Mallone,* 130 Ky. 125, 113 S.W. 67, 22 L.R.A. (N. S.) 1165, 132 Am.St.Rep. 355, where we said:

> "The duty and obligation of a parent to care for his offspring does not necessarily terminate when the child arrives at age or becomes an adult; nor is it limited to infants and children of tender years. An adult child may from accident or disease be as helpless and incapable of making his support as an infant, and we see no difference in principle between the duty imposed upon the parent to support the infant and

> [268 S.W. 542] the obligation to care for the adult, who is equally, if not more, dependent upon the parent. In either case the natural as well as the legal obligation is the same, if the parent is financially able to furnish the necessary assistance."

See, also, *Overseers of the Poor of Alexandria v. Overseers of the Poor of Bethlehem* (1835) 16 N. J. Law, 119, 31 Am.Dec. 229; *Brown v. Ramsay,* 29 N. J. Law, 117; *Poor Overseers of Greeg Township v. Poor Overseers of New Berlin, 8 Pa. Super. Ct.* 640; *Rowell v. Town of Vershire,* 62 Vt. 405, 19 A. 990, 8 L.R.A. 708; *Bailey v. Penick,* 10 Ky. Law Rep. (abstract) 239; *Schultz v. Western Farm Tractor Co.* (1920), 111 Wash. 351, 190 P. 1007, 14 A.L.R. 514.

Appellee also insists that the wife who went with the daughter to call on the physician at the time he was engaged and treatment was undertaken, was the agent of the husband, and had power and authority to bind him for the services rendered her daughter on the theory as expressed in Mechem on Agency, § 162:

> "When a man maintains a domestic establishment and places his wife in charge of it, she takes by implication, as domestic manager, the power to make those contracts and purchases respecting the conduct and maintenance of the household affairs which are naturally and ordinarily incident to the wife's management of such an establishment. Supplies for the house, domestic service, medical attendant, articles for the use of the wife and children, and the like, suitable to the style in which the husband lives, and of the sort and amount which are ordinarily ordered by the wife under such circumstances, would fall within this rule."

We do not think the facts of this case bring it within the rule stated by Judge Mechem. In the absence of statute, says 29 Cyc. 1612, a parent is under no legal obligation to support an adult child; but the legal liability for the support of the child ceases when it reaches the age of majority, unless the child is in such a feeble and dependent condition physically or mentally as to be unable to support itself, and the parent's liability having once determined, will not be restored by a subsequent change in the condition of the child.

In treating the same subject, 20 R.C.L. p. 586, says:

> "The general rules of the law of parent and child being based on the child's incapacity, both natural and legal, and its consequent need of protection and care, apply only while the child is under the age of majority. * * * But where a child is of weak body or mind, unable to care for himself after coming of age, and remains unmarried, and living in the father's home, it has been held that the parental rights and duties remain practically unchanged. The father's duty to support the child continues as before."

In support of his contention that a parent is not legally liable for the debts of an adult daughter, appellant Breuer cites and relies upon *Central Ky. Asylum v. Knighton,* 113 Ky. 156, 67 S.W. 366, 23 Ky. Law Rep. 2380; Crain v. Mallone, supra; *Com. v. Willis' Ex., 7 Ky. Law Rep. (abstract)* 677; 29 Cyc. 1612, § 7; *Mercer v. Jackson,* 54 Ill. 397; *Haynes v. Waggoner,* 25 Ind. 174; *Mt. Pleasant Overseers of Poor v. Wilcox, 2 Pa. Dist. R.* 628, which tend to sustain his claim.

From the texts and cases cited by the parties we deduce the rule to be that a parent is not liable for the debts of his adult child in the absence of a statute to the contrary, unless the child is in such a feeble and dependent condition physically or

mentally as to be incapable of supporting himself; that if at the time the child becomes of age he is physically and mentally sound and able, if willing, to make and earn his own support, the parent is not liable for his debts or obligations thereafter contracted, even though he should later become sick or mentally unbalanced and therefore incapacitated to earn a livelihood. If, however, the child at the time of his arrival at the age of 21 is sick or otherwise incapacitated to earn a living for himself, and is, at the time, living in the home of the parent as a member of the household, the parent is liable for necessaries furnished him.

In the case of *Blachley v. Laba,* 63 Iowa 22, 18 N.W. 658, 50 Am.Rep. 724, the question was asked:

> "Is a father legally liable to a physician for the latter's services in professionally treating the adult but unmarried daughter of said father, during her last illness, where the physician was called by the daughter, she at the time living with her father as a member of his family, that being her home; the treatment being necessary and proper, and rendered with the knowledge of the father, and without any objection on the part of the latter to the physician?"

In answer to that question the court said:

"The fact that the adult child is a member of the family of the father does not render him liable for necessaries furnished upon request of the child. The father as the head of the family is not liable for necessaries furnished its members, other than the wife and minor children. Servants, lodgers, and boarders are members of the family, as well as all others who are subject to the authority of its head. See Webster's Dictionary. But for necessaries furnished none of them is the father liable. An adult son or daughter, whose home is with the father, is of this class of persons."

That was a stronger case for the doctor than the case now before us in that he performed his services at the home of the parent with the parent's knowledge and consent; notwithstanding these facts the court denied the physician a recovery. [268 S.W. 543.]

If it appeared from the evidence in this case that the adult daughter of appellant who lived in the home as a member of the family was physically or mentally incapacitated to earn her own livelihood at the time she arrived at her majority, and that this disability continued until the employment of appellee physician, we think his cause would be sustainable, but in the absence of such a showing we must hold that the father's liability for the debts of his adult daughter, even for necessities, terminated on her arrival at the age of 21 years, and having once terminated cannot be revived even though she became sick and incapacitated while continuing as a member of his household.

It must not be overlooked that the physician was engaged by the daughter without the knowledge or consent of the father, and that the first bill he rendered for services was made out and forwarded to her. When received by the daughter she immediately, without consulting the father, called at the physician's office and told him that she had nothing with which to pay him, and that she expected her father to pay the bill for her Thereupon the physician mailed the bill to the father and requested payment. These facts make it certain that the services were rendered to the daughter upon her credit, and that credit was not extended to the father.

We are also of opinion that the mother had no authority as agent of the father, under the facts of this case, to engage the physician to perform services for her adult daughter, if indeed she did attempt to make such engagement.

For the reasons indicated the appeal is granted, and judgment reversed for proceedings not inconsistent herewith.

Whole court sitting and concurring.

Judgment reversed.