Florida Law Review

Volume 50 | Issue 5 Article 4

Is the Doctrine of Necessaries Necessary in Florida: Should the Legislature Accept the Challenge of Connor v. Southwest Florida Regional Medical Center?

John S. Simons

NOTE

IS THE DOCTRINE OF NECESSARIES NECESSARY IN FLORIDA: SHOULD THE LEGISLATURE ACCEPT THE CHALLENGE OF *CONNOR V. SOUTHWEST FLORIDA REGIONAL MEDICAL CENTER*?*

*John S. Simons***

---

* *Editor's Note:* This Note received the Gertrude Brick Law Review Prize for the Outstanding Note written during the Spring 1998 Semester.

** This Note is dedicated to my wife Lynn. I cannot adequately express how much I appreciate her help and support. This Note is also dedicated to my children Joshua and Abigail. Additionally, I would like to thank my father, Gary C. Simons, Esq., for suggesting this topic.

I. INTRODUCTION

At common law, a husband was obligated to support his wife.[1] In part this support was due to the fact that a married woman was limited in her ability to own property and enter into contracts.[2] In an effort to protect women who were abandoned by their husbands, the courts developed the doctrine of necessaries.[3] Under this doctrine a husband was liable to those who provided necessary items and services to the wife, even though he had not contracted for them.[4] The husband's liability under the doctrine of necessaries was based on the legal theories of restitution and quasi-contract.[5] As time passed, theories of marriage changed, and women were accorded full rights to own property and execute contracts.[6] Despite these changes in the law, the doctrine of necessaries remained as a protection for wives who were dependent on their husbands.[7]

On December 21, 1995, the Supreme Court of Florida finally abrogated the common law doctrine of necessaries in Florida in *Connor v. Southwest Florida Regional Medical Center, Inc.*[8] The court found that the doctrine violated equal protection principles.[9] Rather than extend the doctrine to both genders, the court called on the legislature to decide if the doctrine of necessaries should remain the public policy of the state.[10] To date, the legislature has not responded to this call.[11]

---

1. *See* Mary Elizabeth Borja, Comment, *Functions of Womanhood: The Doctrine of Necessaries in Florida,* 47 U. MIAMI L. REV. 397, 400-01 (1992).

2. *See id.*

3. *See id.* at 398.

4. *See id.* at 401.

5. *See* Bartrom v. Adjustment Bureau, Inc., 618 N.E.2d 1, 4 (Ind. 1993).

6. *See* Borja, *supra* note 1, at 401-02.

7. *See id.* at 402.

8. 668 So. 2d 175, 177 (Fla. 1995).

9. *See id.* at 176-77. Equal protection is guaranteed by both the United States Constitution and the Florida Constitution. *See* U.S. CONST. amend. XIV, § 1; FLA. CONST. art. I, § 2.

10. *See Connor*, 668 So. 2d at 177. The court had previously called upon the legislature to consider whether the doctrine of necessaries should be extended to apply to both husbands and wives in *Shands Teaching Hospital & Clinics, Inc. v. Smith*, 497 So. 2d 644, 646 (Fla. 1986). In *Shands*, the court noted that there was a potential equal protection infirmity in the common law doctrine of necessaries, but refused to consider that issue because the hospital that raised it lacked standing. *See id.* at 646 n.1.

11. In the past two regular legislative sessions, the legislature considered enacting versions of the doctrine of necessaries. During the 1996 regular session, bills in both houses of the legislature were introduced that stated: "The husband and wife are liable jointly and severally for any debts contracted by either, while living together, for necessary household supplies of food, clothing, and fuel, for medical care, and for shelter for themselves and family, and for the education of their minor children." H.R. 1211, 1996 Leg., Reg. Sess., § 1 (Fla.); S. 906, 1996 Leg., Reg. Sess., § 1 (Fla.). During the 1997 regular session, the House of Representatives considered a bill which provided that: "Hospital bills are considered family expenses in which the husband and wife,

The purpose of this Note is to analyze the significance of the doctrine of necessaries and determine if the legislature should enact law to replace the abrogated doctrine. To this end, Part II of this Note examines the history and development of the doctrine of necessaries, and the judicial conception of marriage. Part III analyzes several of the choices that the legislature has in responding to the abrogation of the doctrine. Part IV concludes that the legislature should pass legislation that at least partially restores the doctrine of necessaries in Florida, with application to both genders. An appendix includes two proposals for legislation that are based on legislative and judicial response to this issue in other states.

II. HISTORY

A. *Coverture*

The doctrine of necessaries owes its existence to the common law doctrine of coverture.[12] Under the doctrine of coverture, a woman lost many of her legal rights when she married.[13] A married woman was denied the capacity to own property, to contract, or to sue or be sued.[14] Her husband was allowed to exercise these rights on her behalf.[15] This legal disability placed a woman in a precarious position.[16] If her husband chose to abandon her, or not to purchase the things that she needed, she was

---

while living together, are jointly and severally liable for each other and their minor children." H.R. 349, 1997 Leg., Reg. Sess., § 12 (Fla.) (version dated Mar. 24, 1997). As of the beginning of the 1998 regular session, the bill is still being considered, but has been amended to remove the provision holding spouses jointly and severally liable for hospital bills. *See* H.R. 349, 1998 Leg., Reg. Sess. (Fla.) (version dated Feb. 2, 1998).

12. *See* Bartrom v. Adjustment Bureau, Inc., 618 N.E.2d 1, 3 (Ind. 1993); Note, *The Unnecessary Doctrine of Necessaries*, 82 MICH. L. REV. 1767, 1770-72 & 1772 n.13 (1984).

13. *See* Borja, *supra* note 1, at 398.

14. *See Bartrom*, 618 N.E.2d at 3.

15. *See* Marcus L. Moxley, Survey of Developments in North Carolina Law, 1987, *VII. FAMILY LAW:* North Carolina Baptist Hospitals, Inc. v. Harris: *North Carolina Adopts a Gender-Neutral Approach to the Doctrine of Necessaries*, 66 N.C. L. REV. 1241, 1243-44 (1988).

16. *See Bartrom*, 618 N.E.2d at 3. The court considered the situation that coverture could impose upon a woman:

> Even this arrangement, however, had drawbacks apparent to common law courts, not the least of which was the peril at which it placed wives whose husbands were disinclined to honor their support obligations. Imagine, for example, the plight of a gravely ill woman denied by law the ability to hire a doctor and married to a man who refused to do so for her. In time, the common law developed the doctrine of necessaries as a mechanism by which the duty of support could be enforced.

Id.

helpless, or in legal terminology, necessitous.[17] The doctrine of coverture prevented the wife from suing her husband to compel him to fulfill his support obligation.[18]

Eventually, however, coverture did not reflect society's expectations of marriage, and states began to pass Married Women's Statutes.[19] These statutes enabled a married woman to own property, enter into contracts, and sue or be sued as though she were single.[20] These statutes, however, did not relieve a husband of his obligation to support his wife.[21] This was because of the fact that, in most households, the man was still the primary wage earner, and the wife continued to perform predominantly domestic chores.[22]

With coverture abolished by the Married Women's Statutes, a wife was afforded full legal rights.[23] These full rights are more appropriate in a society where most women work outside of the home, and are capable of earning significant incomes.[24] Due to increased equality in the marketplace, women bring more of their own property into marriage.[25] A husband no longer assumes all of his wife's legal rights.[26]

The courts have sought to find a way to characterize these changes in marriage. A wife can no longer be considered merely a husband's agent.

---

17. *See id.*

18. *See id.* The doctrine of necessaries did not allow a woman to sue her husband. Rather, it enabled her to use her husband's credit to purchase those items and services that were necessary. *See id.* Creditors were then able to sue the husband under a theory of restitution or quasi-contract. *See id.* at 4.

19. *See, e.g.,* FLA. STAT. § 708.08 (1997). The current Florida statute is derived from legislation initially passed in 1943. *See* 1943 Fla. Laws ch. 21932. Florida first abrogated the doctrine of coverture in the constitution of 1868. *See* FLA. CONST. art. IV, § 26 (1868); *see also* FLA. CONST. art. XI, § 1 (1885); FLA. CONST. art. X, § 5.

20. *See, e.g.,* FLA. STAT. § 708.08(1) (1997). This statute provides in part:

> Every married woman is empowered to take charge of and manage and control her separate property, to contract and to be contracted with, to sue and be sued, to sell, convey, transfer, mortgage, use, and pledge her real and personal property and to make, execute, and deliver instruments of every character without the joinder or consent of her husband in all respects as fully as if she were unmarried.

Id.

21. *See, e.g.,* FLA. STAT. § 708.10(1) (1997).

22. *See* Borja, *supra* note 1, at 402.

23. *See* FLA. STAT. § 708.08 (1997); *See also* FLA. CONST.art. X., § 5 ("There shall be no distinction between married women and married men in the holding, control, disposition, or encumbering of their property, both real and personal. . . .").

24. *See* Manatee Convalescent Ctr., Inc. v. McDonald, 392 So. 2d 1356, 1358 (Fla. 2d DCA 1980), *overruled by* Shands Teaching Hosp. & Clinics, Inc. v. Smith, 497 So. 2d 644 (Fla. 1986).

25. *See id.*

26. *See id.* (citing Merchant's Hostess Serv., Inc. v. Cain, 9 So. 2d 373, 375 (Fla. 1942)).

Married women are able to act on their own behalf.[27] Although each spouse is able to act independently, married couples do tend to act together, and frequently combine their resources, consolidating into a single economic unit.[28] One approach taken by courts in the area of family law is to analogize marriages to partnerships.[29] For instance, when spouses are making an equitable distribution in the dissolution context, courts will divide assets in much the same way as business partners would.[30]

B. *The Doctrine of Necessaries*

The common law doctrine of necessaries began its development in seventeenth century England.[31] As it developed under coverture, the doctrine of necessaries was essentially a means for a wife to compel her husband to support her.[32] A married woman could purchase items and services that were necessary to maintain her on her husband's credit.[33] The creditors were able to bring an action against the husband for payment, even though he had never agreed to be held liable.[34] Liability was generally founded on restitution and quasi-contract theories, but when appropriate would also be based on agency principles.[35]

The doctrine of necessaries had several limitations.[36] First, although the husband would only be held liable to pay for those items and services that were necessary, the definition of a necessary was somewhat broad.[37] Expectedly, food, clothing and shelter were considered necessaries.[38] Additionally, medical and dental services were necessaries.[39] Some courts

---

27. *See* Bartrom v. Adjustment Bureau, Inc., 618 N.E. 2d 1,3 (Ind. 1993).

28. *See* Jersey Shore Med. Ctr.-Fitkin Hosp. v. Estate of Baum, 417 A.2d 1003, 1008, 1010 (N.J. 1980).

29. *See id.*; Connor v. Southwest Fla. Reg'l Med. Ctr., 668 So. 2d 175, 179 (Fla. 1995) (Overton, J., dissenting).

30. *See Connor*, 668 So. 2d at 179 (Overton, J., dissenting).

31. *See* HOMER H. CLARK, THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES § 6.3, at 265 & n.1 (2d ed. 1988).

32. *See Bartrom*, 618 N.E.2d at 3.

33. *See id.*

34. *See id.* at 3-4.

35. *See* CLARK, *supra* note 31, § 6.3, at 265-66.

36. *See, e.g.*, Davis v. Baxter County Reg'l Hosp., 855 S.W.2d 303, 305 (Ark. 1993) (stating that when a creditor furnished necessaries solely on the credit of the wife, the husband was not liable); Beers v. Public Health Trust, 468 So. 2d 995, 1001-02 (Fla. 3d DCA 1985) (Nesbitt, J., dissenting) (stating that abandonment by spouse would prevent liability under the doctrine of necessaries); *Bartrom*, 618 N.E.2d at 6, 9 (stating that at common law, the doctrine of necessaries was limited to the husband's ability to pay and that marital misconduct ended both the duty to support, and liability under the doctrine of necessaries).

37. *See* Note, *The Unnecessary Doctrine of Necessaries*, *supra* note 12, at 1767 n.4.

38. *See id.*

39. *See id.*

were also willing to treat as a necessary those items needed to maintain the wife at her accustomed standard of living.[40]

The second limitation on the doctrine was that the wife had to make the purchases on her husband's credit.[41] If the creditor looked to the wife's own credit, then the husband would not be held liable for payment.[42] The creditor would be limited to his remedies against the wife.[43] The creditor carried the burden of showing that he had relied on the husband's credit.[44]

Additionally, the husband was not always held liable for the full amount of every expense, that could be classified as a necessary.[45] Instead, the husband would only be held liable to the extent of his ability to pay.[46] The husband would not be put into debt for his wife's extravagant purchases.[47] One court held that where a wife was properly admitted to a poorhouse, the husband could not be held liable for necessaries provided to her.[48]

Another limitation on the doctrine involved a couple's separation when the wife was at fault.[49] If a wife abandoned her husband, the husband would not be held liable for the purchase of necessaries after the abandonment.[50] Also, if the wife's scandalous behavior became notorious in the community, the husband could not be held to pay for her purchases.[51]

Even with the doctrine of coverture abolished, the doctrine of necessaries continues to be applied by many courts.[52] Courts are able to apply the doctrine in a manner that is consistent with the partnership view of marriage.[53] Under a partnership view of marriage, the spouses have an obligation to maintain the marriage partnership.[54] The doctrine of

---

40. *See id.*

41. *See* Medical Bus. Assocs., Inc. v. Steiner, 588 N.Y.S.2d 890, 897 (App. Div. 1992).

42. *See* Runkel v. Southeast Palm Beach Hosp. Dist., 453 So. 2d 939, 940 (Fla. 4th DCA 1984).

43. *See id.*

44. *See id.* at 939.

45. *See* Bartrom v. Adjustment Bureau, Inc., 618 N.E.2d 1, 6 (Ind. 1993).

46. *See id.*

47. *See id.*

48. *See* Board of Comm'rs v. Hildebrand, 1 Ind. 555, 556 (1849).

49. *See Bartrom*, 618 N.E.2d at 9.

50. *See id.*

51. *See id.*

52. *See, e.g., Bartrom*, 618 N.E.2d at 8; Jersey Shore Med. Ctr.-Fitkin Hosp. v. Estate of Baum, 417 A.2d 1003, 1010 (N.J. 1980); Landmark Med. Ctr. v. Gauthier, 635 A.2d 1145, 1152-53 (R.I. 1994).

53. *See Jersey Shore*, 417 A.2d at 1008.

54. *See* Joan M. Krauskopf & Rhonda C. Thomas, *Partnership Marriage: The Solution to an Ineffective and Inequitable Law of Support*, 35 OHIO ST. L.J. 558, 586-96 (1974) (concluding that a partnership model of marriage based on community property law would provide greater protection to spouses).

necessaries provides the means for the enforcement of this obligation.[55]

The doctrine of necessaries fits the expectations that many have of marriage,[56] as well as the public policy of most states concerning spousal support.[57] States' public policy, in general, is that spouses will not be left without support when the other spouse has the means to provide support.[58] Thus, a husband still has an obligation to support his wife.[59] Some laws have changed so that a wife has a reciprocal duty to support her husband.[60] The common law doctrine of necessaries did not reflect this change toward a mutual obligation of support.[61] Under the common law, there was no obligation for a wife to pay for the necessaries provided to her husband.[62]

Eventually, the common law doctrine of necessaries was challenged as a violation of equal protection principles.[63] Courts had two options for solving this problem. Some courts expanded the doctrine to apply to both spouses.[64] A few courts have refrained from what they see as a sweeping change, and instead, abrogated the doctrine—leaving it to the legislature to decide if the doctrine should be re-enacted with application to both husbands and wives.[65]

---

55. *See Jersey Shore*, 417 A.2d at 1008-09.

56. *See id.* at 1010.

57. *See, e.g.*, Connor v. Southwest Fla. Reg'l Med. Ctr., 668 So. 2d 175, 176 (Fla. 1995).

58. *See, e.g.*, Landmark Med. Ctr. V. Gauthier, 635 A. 2d 1145, 1152 (R.I. 1994).

59. *See* FLA. STAT. § 708.10(1) (1997).

60. *See, e.g., Connor*, 668 So. 2d at 176.

61. *See id.* at 175-76.

62. *See id.* This made sense historically, because under coverture, the husband had ownership and control over all of the property, and the wife had no ability to pay for the necessary expenses. *See Bartrom*, 618 N.E.2d at 3.

63. *See* Jersey Shore Med. Ctr.-Fitkin Hosp. v. Estate of Baum, 417 A. 2d 1003, 1006 (N.J. 1980). In 1980, the Supreme Court of New Jersey became the first state supreme court to address the issue and expanded the doctrine to apply equally to both spouses. *See id.* at 1010. On the last day of 1980, the Second District Court of Appeal of Florida also expanded the doctrine to apply to both spouses. *See* Manatee Convalescent Ctr., Inc. v. McDonald, 392 So. 2d 1356, 1359 (Fla. 2d DCA 1980). The *Manatee* decision was later overruled by the Supreme Court of Florida in two cases: Shands Teaching Hospital & Clinics, Inc. v. Smith, 497 So. 2d 644 (Fla. 1986), and Connor v. Southwest Florida Regional Medical Center, Inc., 668 So. 2d 175 (Fla. 1995).

64. In most states where courts have addressed the issue, the courts have expanded the doctrine to hold a wife liable for necessaries provided to her husband. *See, e.g., Bartrom*, 618 N.E.2d at 8; St. Francis Reg'l Med. Ctr., Inc. v. Bowles, 836 P.2d 1123, 1128 (Kan. 1992); Borgess Med. Ctr. v. Smith, 386 N.W.2d 684, 687 (Mich. Ct. App. 1986); Hulse v. Warren, 777 S.W.2d 319, 322 (Mo. Ct. App. 1989); Cheshire Med. Ctr. v. Holbrook, 663 A.2d 1344, 1347 (N.H. 1995); *Jersey Shore*, 417 A.2d at 1010; Medical Bus. Assocs., Inc. v. Steiner, 588 N.Y.S. 2d 890, 897 (App. Div. 1992); North Carolina Baptist Hosps., Inc. v. Harris, 354 S.E.2d 471, 474 (N.C. 1987); Landmark Med. Ctr. v. Gauthier, 635 A.2d 1145, 1152-53 (R.I. 1994); Richland Mem'l Hosp. v. Burton, 318 S.E.2d 12, 13 (S.C. 1984); Kilbourne v. Hanzelik, 648 S.W.2d 932, 934 (Tenn. 1983); Marshfield Clinic v. Discher, 314 N.W.2d 326, 327-28 (Wisc. 1982).

65. Relatively few states have abrogated the doctrine. *See* Emmanuel v. McGriff, 596 So. 2d 578, 579-80 (Ala. 1992); *Connor*, 668 So. 2d at 177; Condore v. Prince George's County, Md., 425

C. *Challenges to the Doctrine in Florida*

In Florida, the district courts of appeal did not agree on how to deal with the equal protection problem. The first court to address the issue was the Second District in *Manatee Convalescent Center, Inc. v. McDonald.*[66] In *Manatee*, a hospital appealed the dismissal of its complaint against a wife for payment of her husband's medical expenses.[67] In deciding to extend the doctrine of necessaries and hold the wife liable,[68] the court stated that "[c]hanging times demand reexamination of seemingly unchangeable legal dogma. Equality under law and even handed treatment of the sexes in the modern market place must also carry the burden of responsibility which goes with the benefits."[69]

Shortly thereafter, the Third District agreed with the *Manatee* decision in *Parkway General Hospital, Inc. v. Stern.*[70] The court stated that "a wife is liable for her husband's bills simply and solely because of the marital relationship between them. Thus, the only ways in which [the wife] . . . could have averted this responsibility was to have dissolved the marriage before her husband's hospitalization or somehow prevented the illness which required it."[71]

The First District was the next court to address the issue. In *Shands Teaching Hospital & Clinics, Inc. v. Smith,*[72] the First District affirmed the dismissal of a hospital's suit to recover medical expenses from a patient's wife.[73] The court declined to extend the doctrine, stating that the decision to do so was better left to the supreme court or the legislature.[74] Judge Barfield wrote a concurring opinion that accused the *Manatee* and *Parkway* courts of "elitist and dangerous" judicial activism.[75]

The Supreme Court of Florida granted review to resolve the conflict between *Shands*, which refused to extend the doctrine, and *Manatee* and *Parkway*, which extended the doctrine.[76] The court refused to acknowledge

---

A.2d 1011, 1019 (Md. 1981); Govan v. Medical Credit Servs., Inc., 621 So. 2d 928, 931 (Miss. 1993); Schilling v. Bedford County Mem'l Hosp., Inc., 303 S.E.2d 905, 908 (Va. 1983). The Virginia legislature has subsequently enacted legislation applying the doctrine of necessaries to both spouses. *See* VA. CODE ANN. § 55-37 (Michie 1997).

66. 392 So. 2d 1356 (Fla. 2d DCA 1980).
67. *See id.* at 1356.
68. *See id.* at 1359.
69. *Id.* at 1358.
70. 400 So. 2d 166 (Fla. 3d DCA 1981).
71. *Id.* at 167.
72. 480 So. 2d 1366 (1st DCA 1985), *aff'd*, 497 So. 2d 644 (Fla. 1986).
73. *See id.*
74. *See id.*
75. *Id.* at 1369-70 (Barfield, J., concurring).
76. *See* Shands Teaching Hosp. & Clinics, Inc. v. Smith, 497 So. 2d 644, 645 (Fla. 1986).

an implied-in-law contract[77] between the hospital and the wife for medical services provided to her husband, claiming that such an extension of the law was better left to the legislature.[78] The court also ruled that the hospital did not have standing to raise the equal protection argument in favor of expanding the doctrine of necessaries.[79] Thus, in *Shands*, the supreme court refused to expand the doctrine of necessaries, but also did not abrogate the doctrine, leaving the common law doctrine intact.[80] The court called upon the legislature to address the issue and decide whether the doctrine should be expanded.[81] The court expressly disapproved of the *Manatee* and *Parkway* decisions.[82]

After the *Shands* decision, the district courts were again inconsistent in their application of the doctrine of necessaries. Relying on the fact that the *Shands* decision had not addressed the equal protection issue, the Second District again extended the doctrine of necessaries in *Webb v. Hillsborough County Hospital Authority*.[83] In *Webb*, a husband appealed a judgment entered against him for medical expenses incurred by his wife.[84] The husband claimed that application of the doctrine of necessaries violated his right to the equal protection of the law.[85] The court stated that, unlike the hospital in *Shands*, the husband *did* have standing to raise the issue of equal protection.[86] The court held that the doctrine must expand to hold wives liable for the necessary expenses of their husbands to avoid violating equal protection.[87]

The other district courts were not willing to follow the lead of the Second District. In two cases, the Fourth District Court of Appeal refused to hold a wife liable for the necessaries of her husband, relying on the supreme court's refusal to extend the doctrine.[88] In two other cases, the Fifth District Court of Appeal held husbands liable for the necessary

---

77. The doctrine of necessaries is primarily based on theories of restitution and quasi-contract. *See* Bartrom v. Adjustment Bureau, Inc., 618 N.E.2d 1, 4 (Ind. 1993).

78. *See Shands*, 497 So. 2d at 645-46.

79. *See id.* at 646 n.1.

80. *See id.* at 645-46; *see also* Karol Williams, Comment, *The Doctrine of Necessaries: Contemporary Application as a Support Remedy*, 19 STETSON L. REV. 661, 662-63 (1990) (stating that the Supreme Court of Florida's decision in *Shands* left the common law doctrine of necessaries intact).

81. *See Shands*, 497 So. 2d at 646.

82. *See id.*

83. 521 So. 2d 199, 200-01 (Fla. 2d DCA 1988).

84. *See id.* at 200.

85. *See id.* at 200-01.

86. *See id.* at 203.

87. *See id.* at 201.

88. *See* Faulk v. Palm Beach Gardens Community Hosp., Inc., 589 So. 2d 1029, 1029 (Fla. 4th DCA 1991); Heinemann v. John F. Kennedy Mem'l Hosp., 585 So. 2d 1162, 1162 (Fla. 4th DCA 1991).

expenses incurred by their wives, while noting that the law did not apply the doctrine equally.[89]

The Second District Court of Appeal further addressed the issue of whether a wife could be held liable for the necessary expenses incurred by her husband in *Southwest Florida Regional Medical Center, Inc. v. Connor*.[90] The court relied upon its own decision in *Webb*, and ruled that the wife was liable for the expenses.[91] The court also certified conflict with the Fourth and Fifth Districts, and requested that the supreme court clarify the status of the doctrine of necessaries in Florida.[92]

The supreme court accepted review and abrogated the doctrine of necessaries in *Connor v. Southwest Florida Regional Medical Center*.[93] The court began by reviewing the recent history of the doctrine in Florida and the differing decisions of the district courts.[94] The supreme court then looked at how other states had addressed the doctrine.[95] The court observed that several states had abrogated the doctrine, while others had extended the doctrine,[96] and that state legislatures had responded to the issue in a variety of ways.[97] The court stated that the lack of consensus between the

89. *See* Waite v. Leesburg Reg'l Med. Ctr., Inc., 582 So. 2d 789, 789-90 (Fla. 5th DCA 1991); Halifax Hosp. Med. Ctr. v Ryals, 526 So. 2d 1022, 1022 (Fla. 5th DCA 1988).

90. 643 So. 2d 681 (2d DCA 1994), *rev'd*, 668 So. 2d 175 (Fla. 1995).

91. *See id.* at 684-85.

92. *See id.* at 685.

93. 668 So. 2d 175, 177 (Fla. 1995).

94. *See id.* at 176.

95. *See id.* at 176-77.

96. *See id.* The court cited three cases where state courts had abrogated the doctrine. These cases are: Emmanuel v. McGriff, 596 So. 2d 578 (Ala. 1992); Condore v. Prince George's County, 425 A.2d 1011 (Md. 1981); and Schilling v. Bedford County Memorial Hospital, Inc., 303 S.E.2d 905 (Va. 1983). The court failed to cite the Mississippi case, Govan v. Medical Credit Services, *Inc.*, 621 So. 2d 928 (Miss. 1993), the only other state supreme court to abrogate the doctrine of necessaries. Virginia has subsequently re-enacted the doctrine. *See* VA. CODE. ANN. § 55-37 (Michie 1997). The court also cited six cases where state courts expanded the doctrine. These cases are: Bartrom v. Adjustment Bureau, Inc., 618 N.E.2d 1 (Ind. 1993); St. Francis Regional Medical Center, Inc. v. Bowles, 836 P.2d 1123 (Kan. 1992); Jersey Shore Medical Center-Fitkin Hospital v. Estate of Baum, 417 A.2d 1003 (N.J. 1980); North Carolina Baptist Hospitals, Inc. v. Harris, 354 S.E.2d 471 (N.C. 1987); Landmark Medical Center v. Gauthier, 635 A.2d 1145 (R.I. 1994); and Richland Memorial Hospital v. Burton, 318 S.E.2d 12 (S.C. 1984). The court failed to mention three cases where the state supreme courts expanded the doctrine: Cheshire Medical Center v. Holbrook, 663 A.2d 1244 (N.H. 1995); Kilbourne v. Hanzelik, 648 S.W.2d 932 (Tenn. 1983); and Marshfield Clinic v. Discher, 314 N.W.2d 326 (Wisc. 1982). The court also did not mention the cases where intermediate state appellate courts have expanded the doctrine. *See, e.g.*, Borgess Med. Ctr. v. Smith, 386 N.W.2d 684 (Mich. Ct. App. 1986); Medical Servs. Assocs. v. Perry, 819 S.W.2d 82 (Mo. Ct. App. 1991); Medical Bus. Ass'n, Inc., v. Steiner, 588 N.Y.S.2d 890 (App. Div. 1992).

97. *See* Connor v. Southwest Fla. Reg'l Med. Ctr., 668 So. 2d 175, 177 (Fla. 1995). The court noted two states which have enacted the common law form of the doctrine, Kentucky and Oklahoma. *See id.* (citing KY. REV. STAT. ANN. § 404.040 (Michie 1994); OKLA. STAT. tit. 43, § 209 (1994)). Nevada also has enacted the common law doctrine of necessaries. *See* NEV. REV.

states showed that the issue was not one well suited for judicial determination,[98] and that "[t]he fact that courts and other legislatures have treated this problem in different ways illustrates the lack of consensus regarding the doctrine's place in modern society and reinforces the position we took in *Shands*."[99] The court again called upon the legislature to determine the future of the doctrine, announcing the abrogation of the common law doctrine of necessaries in Florida.[100]

STAT. § 123.090 (1997). The court also stated that Georgia had repealed its enaction of the common law doctrine of necessaries in 1979. *See id.* (citing 1979 Ga. Laws 466, 491). Finally, the court stated that North Dakota had enacted the doctrine in a modified form, which did not include medical services. *See id.* (citing N.D. CENT. CODE § 14-07-08 (1993)). However, the court cited to the wrong North Dakota statute. The court cited to a statute that provided for joint and several liability when one spouse bought necessary household supplies, which is a more limited rule than the doctrine of necessaries. *See* N.D. CENT. CODE § 14-07-08 (1997). North Dakota also has a statute providing for mutual liability for the necessaries provided to either spouse. *See* N.D. CENT. CODE § 14-07-10 (1997). This statute does not limit its definition of necessaries. *See id.* The court failed to cite to the state statutes that enacted the doctrine of necessaries, and applied liability to both spouses. *See, e.g.*, CAL. FAM. CODE § 914 (West 1994); CONN. GEN. STAT. § 46B-37(b) (1997) (limiting the application of the statute to medical, hospital, rental of a dwelling, and articles purchased to support the family or for the joint benefit of the spouses); HAW. REV. STAT. § 510-8(h) (1997); MASS. ANN. LAWS ch. 209 § 1 (Law. Co-op. 1997); NEB. REV. STAT. § 42-201 (1997) (providing that the wife is only liable after execution upon the husband); OHIO REV. CODE ANN. § 3103.03(c) (Anderson 1997); S.D. CODIFIED LAWS § 25-7-2 (Michie 1997); TEX. FAM. CODE ANN. § 4.02 (West 1997); VA. CODE ANN. § 55-37 (Michie 1997). The court also failed to take notice of the many states that had passed family expense statutes that provide for joint and several liability for family expenses. *See* COLO. REV. STAT. § 14-6-110 (1997); CONN. GEN. STAT. § 46B-37(b) (1997); 750 ILL. COMP. STAT. § 65/15(a)(1) (West 1997); IOWA CODE § 597.14 (1998); MONT. CODE ANN. § 40-2-106 (1997); OR. REV. STAT. § 108.040(1) (1996); UTAH CODE ANN. § 30-2-9 (1997); WASH. REV. CODE § 26.16.205 (1997); W. VA. CODE § 48-3-22 (1997); WYO. STAT. ANN. § 20-1-201 (Michie 1997). In most jurisdictions, family expenses include all necessaries as well as many other expenses. *See* CLARK, *supra* note 31, § 6.1, at 257-58. Finally, the court failed to note the states that have passed statutes requiring a person to support his or her spouse. *See, e.g.*, DEL. CODE ANN. tit. 13, § 502 (1997); IDAHO CODE § 32-901 (1997); NEV. REV. STAT. § 123.110 (1997) (requiring a wife to support a husband who is unable to support himself); N.M. STAT. ANN. § 40-2-1 (Michie 1997); OHIO REV. CODE. ANN. § 3103.03(A) (Anderson 1997). Support statutes have been construed as holding spouses liable for necessaries provided to the other spouse. *See* Jay M. Zitter, Annotation, *Wife's Liability for Necessaries Furnished Husband*, 11 A.L.R. 4th 1160 § 5[a] (1996) (citing Swogger v. Sunrise Hosp., Inc., 496 P.2d 751 (Nev. 1972)).

98. *See Connor*, 668 So. 2d at 177.

99. *Id.*

100. *See id.*

III. THE LEGISLATURE'S OPTIONS

A. *Maintain the Status Quo*

The legislature's first option is to maintain the status quo, and so far, this is the course that the legislature has chosen. Some commentators posit that this is the most appropriate solution.[101] The arguments in favor of enacting a doctrine of necessaries applicable to both spouses are more persuasive, because the doctrine of necessaries furthers several important public policies. First, the doctrine encourages spouses to support each other. The doctrine also furthers the policy of encouraging the payment of just debts. Finally, re-enacting the doctrine of necessaries will protect those creditors who are not able to protect themselves contractually.

Florida's public policy is that spouses should support each other.[102] This public policy is evidenced by a Florida statute that allows a spouse to seek support without seeking a dissolution of marriage.[103] The reciprocity of the support obligation is reflected by the fact that Florida provides for alimony and alimony *pendente lite* to be provided by either spouse.[104]

The public policy of mutual spousal support is also demonstrated in the significant protection provided surviving spouses in probate proceedings. For example, the surviving spouse receives a share of at least one-half of an intestate spouse's estate.[105] Where the deceased spouse had a will, the surviving spouse can claim a thirty percent elective share from the probate estate if the will provides less for the spouse.[106]

Another public policy that provides a strong argument in favor of reenacting the doctrine is that just debts should be paid. An example of this policy is the rights afforded creditors in probate proceedings. The personal representative is required to notify creditors of the administration of the

---

101. *See, e.g.*, Shawn M. Willson, Comment, *Abrogating the Doctrine of Necessaries in Florida: The Future of Spousal Liability for Necessary Expenses After* Connor v. Southwest Florida Regional Medical Center, Inc., 24 FLA. ST. U. L. REV. 1031, 1052-53 (1997). Willson argues that the doctrine does not respect the rights of spouses to arrange their own financial affairs, *see id.* at 1053, and provides more protection to creditors than to spouses, *see id.* at 1052.

102. *See* FLA. STAT. § 708.10(1) (1997).

103. *See* FLA. STAT. § 61.09 (1997).

104. *See* FLA. STAT. §§ 61.08(1), .071 (1997). In this context, one litigant has argued that *Connor* ended the duty of espousal support. *See* Fernandez v. Fernandez, 710 So.2d 223, 224-25 (Fla. 2d DCA 1998). In *Fernandez*, a husband attempted to enforce the provision in an antenuptial agreement which waived his wife's right to temporary alimony during dissolution proceedings. *See id.* at 224. The second District held that *Connor* did not address interspousal support and remanded for a determination of whether the wife qualified for temporary alimony. *See id.* at 224-25. The court certified the issue as one of great public importance to the supreme court. *See id.* at 225.

105. *See* FLA. STAT. § 732.102(1) (1997).

106. *See* FLA. STAT. § 732.207 (1997).

estate and the rights of creditors to file claims.[107] Additionally, the claims of creditors are paid before the spouse and other heirs receive an inheritance.[108]

Currently, it can be very difficult for creditors to enforce their debts against married couples. In the Rhode Island case, *Landmark Medical Center v. Gauthier*, the doctrine enabled a hospital to receive payment on an otherwise uncollectible debt.[109] In *Landmark Medical Center*, a hospital sued the husband's widow for payment of medical expenses associated with the husband's last illness.[110] The wife had not signed a contract guaranteeing her husband's medical bills.[111] The only marital asset was a three-unit apartment building that the spouses owned as joint tenants.[112] When the husband died, the building transferred by operation of law to the wife, with no probate proceeding.[113] Since there was no probate proceeding, the hospital did not have an opportunity to file a claim against the husband's estate.[114] The hospital could only seek payment from the wife under the doctrine of necessaries.[115] The court extended the doctrine and held the wife liable for the medical expenses.[116]

Part of the difficulty in collecting a debt from married couples is that a creditor cannot execute on jointly held property for the debt of one spouse.[117] Additionally, many marital assets are either exempt or homestead property.[118] There are also limitations on the doctrine of necessaries that prevent its successful use.[119] Because of these limitations, the doctrine of necessaries will offer some, but not complete, protection for

---

107. *See* FLA. STAT. § 733.212 (1997).

108. *See* FLA. STAT. § 733.707(1)-(2) (1997). Notably, funeral expenses, and medical and hospital expenses from the last illness, all of which are necessaries, are specifically included in the list of priorities. *See* FLA. STAT. § 733.707(1)(b), (d). The family allowance does have priority over the claims of some creditors, *see* FLA. STAT. §§ 732.403, 733.707(1) (1997), but this is generally not a significant amount.

109. 635 A.2d 1145 (R.I. 1994).

110. *See id.* at 1146.

111. *See id.* at 1154.

112. *See id.* at 1146.

113. *See id.*

114. *See id.*

115. *See id.* at 1148-49.

116. *See id.* at 1152.

117. *See* Meyer v. Faust, 83 So. 2d 847, 848 (Fla. 1955). The spouse who did not incur the debt must be joined in the lawsuit. *See id.* Each spouse must have a "full and fair hearing" on whether that spouse's property interest may be held liable for the debt. *Id.* Under Florida law, this is unlikely because the property interests of one spouse will not be held available for debts of the other spouse. *See* FLA. STAT. § 708.08(1); Blackshear Mfg. Co. v. McClenny, 78 So. 269, 269 (Fla. 1918).

118. *See* 24A FLA. JUR. *Executions* §§ 32-35 (1997).

119. *See supra* text accompanying notes 36-51.

most creditors.

The doctrine of necessaries provides a remedy for creditors who cannot protect themselves by forcing spouses to join in the contract.[120] In holding that the doctrine of necessaries should be expanded to find the wife liable, the court in *Landmark Medical Center* considered the contention that a creditor can protect its interests by having the spouse join in the contract, or by taking a security interest in the assets of a patient.[121] The court pointed out that hospitals are not able to protect themselves because they must treat patients, even where there is no contract.[122] The court also stated that "[r]equiring a hospital to secure payment for services before rendering treatment would lead to delay and hardship for both the hospital and the patients awaiting treatment."[123] From an economic viewpoint, the state should provide a remedy that allows hospitals to seek payment from a spouse. By allowing such a remedy, the state can help prevent the continuing rise in the cost of medical care.

The status quo is not an ideal situation. Spouses are obligated to support each other.[124] They are able to avoid doing so, however, by not paying debts that have been incurred by one spouse. The state should provide a remedy to allow creditors to utilize the courts and collect just debts. Even if the legislature decides not to fully re-enact the doctrine of necessaries, they should enact legislation that provides protection for medical care providers and hospitals—groups that are not able to protect themselves contractually.[125] This may help to stem the constantly increasing cost of medical care.

Should the legislature enact the doctrine of necessaries, however, it must decide *how* it will hold spouses liable. The legislature has two choices: it can apply joint and several liability; or it can find a way to apportion the liability between the two spouses. The next two sections address these options.

---

120. *See Landmark Medical Center* 635 A. 2d at 1154; *see also infra* note 122. *But see* Willson, *supra* note 101, at 1051 (arguing that creditors can protect themselves contractually).

121. *See* 635 A. 2d at 1154.

122. *See id.* Federal law requires any hospital that accepts Medicare funding to provide emergency treatment for any patient who enters the emergency department and requests treatment, even in those cases where there is not, in fact, an emergency medical condition. *See generally* GEORGE D. POZGAR, LEGAL ASPECTS OF HEALTH CARE ADMINISTRATION 339-45 (6th ed. 1996) (discussing hospitals' duty of care to Medicare patients).

123. *Landmark Med. Ctr.*, 635 A.2d at 1154.

124. *See supra* text accompanying notes 102-06.

125. *See supra* text accompanying notes 120-23.

B. *Enact the Doctrine with Joint and Several Liability*

Most legislatures that have enacted spousal liability for necessary expenses have applied joint and several liability for the expenses.[126] This option is the most protective of creditors. Creditors could choose between suing the spouse most able to pay, or joining both spouses in a lawsuit.[127] There are two problems with this form of liability, though. First, it does not respect the rights of spouses to determine how they will order their financial affairs.[128] Second, it will tend to inequitably distribute the cost of necessaries.[129]

One commentator who opposes enactment of the doctrine of necessaries in Florida has correctly pointed out that not all spouses choose to combine their earnings and assets.[130] Many couples enter into prenuptial agreements, or otherwise maintain separate property.[131] The law should recognize these decisions. One of the greatest weaknesses of joint and several liability is that the spouse who did not contract could face attachment of assets, even before the creditors attempted to collect from the spouse who received the necessaries.[132]

The other major difficulty with assigning joint and several liability under the doctrine is that this approach can create hardships for a dependent spouse.[133] The purpose of the doctrine of necessaries is to protect a dependent spouse.[134] A dependent spouse might face liability for significant necessary expenses regardless of that spouse's ability to pay.[135]

---

126. California, Connecticut, Hawaii, Massachusetts, North Dakota, Ohio, South Dakota, Texas, and Virginia have all enacted laws holding each spouse liable for the necessaries provided to the other spouse. *See* CAL. FAM. CODE § 914 (West 1994); HAW. REV. STAT. § 510-8(h) (1997); MASS. ANN. LAWS ch. 209 § 1 (Law. Co-op. 1997); N.D. CENT. CODE § 14-07-10 (1997); OHIO REV. CODE ANN. § 3103.03(c) (Anderson 1997); S.D. CODIFIED LAWS § 25-7-2 (Michie 1997); TEX. FAM. CODE § 4.02 (West 1997); VA. CODE ANN. § 55-37 (Michie 1997). Other states provide joint and several liability under family expenses statutes. These states include: Colorado, Connecticut, Illinois, Iowa, Montana, Oregon, Utah, Washington, and Wyoming. *See* COLO. REV. STAT. § 14-6-110 (1997); CONN. GEN. STAT. § 46B-37 (1997) (limiting the application of the statute to medical, hospital, rental of a dwelling, and articles purchased to support the family, or for the joint benefit of the spouses); 750 ILL. COMP. STAT. § 65/15(a)(1) (West 1997); IOWA CODE § 597.14 (1998); MONT. CODE ANN. § 40-2-106 (1997); OR. REV. STAT. § 108.040 (1996); UTAH CODE ANN. § 30-2-9 (1997); WASH. REV. CODE § 26.16.205 (1997); WYO. STAT. ANN. § 20-1-201 (Michie 1997).

127. *Cf.* Bartrom v. Adjustment Bureau, Inc. 618 N.E. 2d 1, 6 (Ind. 1993).

128. *See* Willson, *supra* note 101, at 1046-48.

129. *See Bartrom*, 618 N.E.2d at 6.

130. *See* Willson, *supra* note 101, at 1046-47.

131. *See id.* at 1047.

132. *See Bartrom*, 618 N.E. 2d at 6.

133. *See id.*

134. *See id.*

135. *See id.*

Joint and several liability might also impair the ability of a spouse to gain independent creditworthiness.[136] Hence, the goal of the doctrine could be thwarted.

Several courts have rejected the application of joint and several liability.[137] In *Jersey Shore Medical Center-Fitkin Hospital v. Estate of Baum*,[138] the Supreme Court of New Jersey decided not to apply joint and several liability to spouses under the doctrine of necessaries.[139] The court stated that applying joint and several liability would be "equality with a vengeance" because it would provide no protection to spouses and would give creditors the same rights as if both spouses were contractually liable.[140] The court stated that such an approach might create a hardship for families.[141] The court instead decided to apportion liability between the spouses, rather than holding each spouse equally liable.[142]

C. *Enact the Doctrine and Apportion Liability*

Holding spouses equally liable for necessary expenses tends to create inequitable results.[143] Therefore, it would be appropriate for the legislature to consider ways to apportion liability between the two spouses. There are two primary approaches to apportioning liability that have been implemented in different states.

Nebraska and Wisconsin currently apportion liability for necessaries primarily to the husband.[144] When the husband's assets are insufficient to cover any necessary expense, the wife is secondarily liable.[145] The Supreme Court of Wisconsin considered this approach in *Marshfield Clinic v. Discher*,[146] and held that it did not violate constitutional equal protection requirements.[147] The court reasoned that husbands and wives are not similarly situated.[148] The court stated that "wives have made substantial economic gains in the past decade, but substantial economic disparities still

136. *See id.* at 7.

137. *See, e.g., id.* at 8; St. Francis Reg'l Med. Ctr., Inc. v. Bowles, 836 P.2d 1123, 1128 (Kan. 1992); *Jersey Shore*, 417 A.2d 1003 at 1010.

138. 417 A.2d 1003 (N.J. 1980).

139. *See id.* at 1010.

140. *Id.* at 1009.

141. *See id.* at 1010.

142. *See id.*

143. *See supra* text accompanying notes 137-47.

144. *See* NEB. REV. STAT. § 42-201 (1997); Marshfield Clinic v. Discher, 314 N.W.2d 326, 327-28 (Wisc. 1982).

145. *See* NEB. REV. STAT. § 42-201 (1997); *Marshfield Clinic*, 314 N.W.2d at 327-28.

146. 314 N.W.2d 326 (Wisc. 1982).

147. *See id.* at 328.

148. *See id.* at 331.

persist between husbands and wives."[149] The Nebraska law has not faced a constitutional challenge in federal court. While these laws are currently valid, it is probable that this system will be found to violate equal protection principles in the near future.[150] Because constitutional problems with this approach are likely, Florida should consider other alternatives.

The most attractive alternative is the one adopted by the several states that hold the spouse who incurred the necessary expense primarily liable for payment.[151] The other spouse becomes secondarily liable when the spouse who incurred the expense does not have sufficient assets to satisfy the debt.[152] This approach is probably the best system of apportioning liability because it appears tnot to contravene the goal of the doctrine of necessaries, and because there are no equal protection problems with this approach—husbands and wives are treated equally.[153] The only difference in treatment is based on who incurred the necessary expense.[154] This approach also provides respect to the financial arrangements of married couples while still providing an obligation to pay just debts.

This approach was adopted in 1980 by the Supreme Court of New Jersey in *Jersey Shore*.[155] Several other courts have since adopted it.[156] The courts adopting this approach point out that placing primary liability on the spouse incurring the expense provides protection to a financially dependent spouse.[157] Where a financially independent spouse incurs the necessary expense, that spouse's assets will satisfy the debt.[158] The financially dependent spouse will only have liability when he or she incurs the expense.[159] Where spouses are interdependent, the spouse who does not

149. *Id.*

150. *See* Note, *The Unnecessary Doctrine of Necessaries*, *supra* note 12, at 1778.

151. Courts in Indiana, Kansas, Missouri, New Hampshire, New Jersey, New York, and South Carolina have held that the spouse who incurs the debt is primarily liable, and the other spouse is secondarily liable. *See* Bartrom v. Adjustment Bureau, Inc., 618 N.E. 2d 1, 8 (Ind. 1993); St. Francis Reg'l Med. Ctr., Inc. v. Bowles, 836 P. 2d 1123, 1128 (Kan. 1992); Medical Servs. Assocs. v. Perry, 819 S.W. 2d 82, 83 (Mo. Ct. App 1991); Cheshire Med. Ctr. v. Holbrook, 663 A. 2d 1244, 1347 (N.H. 1995); Jersey Shore Med. Ctr.- Fitkin Hosp. v. Estate of Baum, 417 A. 2d 1003, 1010 (N.J. 1980); Medical Bus. Assocs., Inc. v. Steiner, 588 N.Y.S. 2d 890, 897 (App. Div. 1992); Anderson Memorial Hosp., Inc. v. Hagen, 443 S.E.2d 399, 401 (S.C. Ct. App. 1994).

152. *See* sources cited *supra* note 151.

153. *See Jersey Shore*, 417 A.2d at 1009-10.

154. *See id.* at 1010.

155. *See id.* at 1009-10.

156. Courts that have adopted this approach include the Supreme Court of Indiana, the Supreme Court of Kansas, two district courts of appeals in Missouri, the Supreme Court of New Hampshire, the appellate divisions of two supreme courts in New York, and an appellate court in South Carolina. *See* sources cited *supra* note 150.

157. *See* Bartrom v. Adjustment Bureau, Inc., 618 N.E. 2d 1, 6-8 (Ind. 1993).

158. *See id.* at 8.

159. *See id.*

incur the expense will continue to have protection until the assets of the spouse who incurred the debt are exhausted.[160]

Assigning primary liability to the spouse who incurs the necessary expense respects agreements between spouses to maintain separate property.[161] Only after the separate property of the debt-incurring spouse is exhausted will jointly held property or the separate property of the other spouse be required to meet the legal obligation of support.[162] This approach provides protection for separate assets, dependent spouses, and creditors.[163] Because this approach balances all applicable interests, this is the most attractive approach for Florida.

D. *Necessary Limitations on the Doctrine of Necessaries*

The common law doctrine of necessaries provided several limitations to protect the husband who was required to pay expenses incurred by his wife.[164] If the legislature chooses to enact the doctrine of necessaries, it should maintain some of these limitations so that the doctrine protects more than just creditors. The legislature might also consider additional limitations, as noted below.

Under the common law, the definition of a necessary was very broad.[165] The legislature could maintain this broad definition, and allow the courts to determine what limitations on the doctrine should exist. The legislature might also determine that the common law definition is too broad, and could limit the doctrine of necessaries by carefully defining which necessary expenses are to be included.

If the legislature decides to define necessaries more narrowly, it will need to determine which interests are most in need of protection. As already discussed, hospitals are one class of creditors that are limited in their ability to protect themselves contractually.[166] At the very least, a narrow definition of necessaries ought to include hospital expenses. Such a definition would limit the actions that could be brought, but would still allow hospitals some fiscal security in rendering needed medical care.

---

160. *See id.*

161. *See* Jersey Shore Med. Ctr.- Fitkin Hosp. v. Estate of Baum, 417 A. 2d 1003, 1010 (N.J. 1980).

162. *See id.*

163. *See id.*

164. *See supra* text accompanying notes 36-51.

165. *See supra* text accompanying notes 37-40.

166. *See supra* text accompanying notes 120-23. Notably, all of the recent reported cases in Florida dealing with the doctrine of necessaries have sought payment of hospital expenses. *See* Borja, *supra* note 1, at 423 n.162 (stating that no case has been reported in Florida in the last 50 years other than cases seeking payment of hospital expenses). This points out the particular need of hospitals for protection under the doctrine.

There is, however, an advantage to broadly defining necessaries. Courts have long been able to limit the application of the doctrine of necessaries.[167] This should be allowed to continue. By allowing courts discretion to determine whether an expense is necessary, the legislature would leave the doctrine flexible enough to change over time.[168] This flexibility will keep the doctrine a viable source of protection for both spouses and creditors.

One common law protection under the doctrine of necessaries that the legislature should retain is limiting the liability of the spouse who did not receive the necessaries.[169] The *Bartrom* court limited this liability to the extent of the spouse's ability to pay on the date that the debt was incurred.[170] This limitation provides spouses additional protection from their creditors because future increases in wealth will not increase liability.[171]

Another limitation that the legislature must address is whether liability will continue once the spouses have separated. At common law, the husband remained liable for his wife's post-separation necessaries unless the wife was responsible for the separation or guilty of scandalous behavior.[172] Modern courts and legislatures have split over how to treat liability for necessaries when the spouses have separated. Many statutes—such as one that exists in Virginia[173] and the bills that were introduced during the 1996 and 1997 Florida Legislative Sessions—terminate the liability once the spouses have permanently separated.[174] Because spousal interests are not severed until equitable distribution occurs at the

---

167. *See supra* text accompanying notes 36-51.

168. *See* Willson, *supra* note 101, at 1047 (noting that theories of marriage have changed in the past and are likely to change in the future).

169. *See supra* text accompanying notes 45-48.

170. *See* Bartrom v. Adjustment Bureau, Inc., 618 N.E. 2d 1, 8 (Ind. 1993).

171. *See id.* at 6 (noting that holding both spouses fully liable for the necessary debt will leave both spouses "unable to provide for themselves or their family").

172. *See id.* at 9-10.

173. *See* VA. CODE ANN. § 55-37 (Michie 1997).

174. *See* H.R. 349, 1997 Leg., Reg. Sess., §12 (Fla.); H.R. 1211, 1996 Leg., Reg. Sess., § 1 (Fla.); S. 906, 1996 Leg., Reg. Sess., § 1 (Fla.). The Virginia statute provides in part: "The doctrine of necessaries as it existed at common law shall apply equally to both spouses, except where they are permanently living separate and apart, but shall in no event create any liability between such spouses as to each other." VA. CODE ANN. § 55-37 (Michie 1997). Florida House Bill 1211 and Senate Bill 906 provide in part: "The husband and wife are liable jointly and severally for any debts contracted by either, while living together, for necessary household supplies of food, clothing, and fuel, for medical care, and for shelter for themselves and family, and for the education of their minor children." Fla. H.R. 1211, § 1; Fla. S. 906, § 1. Committee Substitute for House Bill 349 provided in part: "Hospital bills are considered family expenses in which the husband and wife, while living together, are jointly and severally liable for each other and their minor children." Fla. H.R. 349, §12.

dissolution of the marriage the termination of liability is problematic where the spouses own assets jointly.[175] If the liability for necessaries ends with separation, a creditor will have no remedy, because the assets will not yet have been distributed.[176] This would be particularly unjust in a situation where the spouses later resolved their differences and reconciled. Termination of liability at separation also fails to protect the dependent spouse during the divorce proceedings.

Some courts have ruled that the liability should continue for debts incurred up to the date of dissolution.[177] Where a court has ordered temporary support, however, the court limits liability to the amount of the temporary support order at the date the debt was incurred.[178] Continuing liability until dissolution will provide protection to creditors while not presenting a significant risk to separated spouses. This is probably the preferable option—particularly because the law allows a separated spouse to file an action to determine support obligations, independent of a divorce proceeding.[179]

IV. CONCLUSION

The doctrine of necessaries has had a long history in Florida. It was first applied in the 1895 case of *Phillips v. Sanchez*,[180] when the Supreme Court of Florida required the estate of the husband to pay for the necessaries incurred by the wife.[181] That same court has now ended this history with its decision to abrogate the doctrine in *Connor*.[182] Unfortunately, the abrogation of the doctrine has left a significant gap in Florida's law.[183]

The doctrine of necessaries did provide protection to spouses in Florida.[184] In particular, the doctrine protected financially dependent spouses—historically the wives—from being neglected.[185] Where the financially independent spouse did not provide support, the dependent

175. *See Bartrom*, 618 N.E.2d at 8-9.

176. *See id.*

177. *See, e.g., id.* at 9.

178. *See id.*

179. *See* FLA. STAT. § 61.09 (1997).

180. 17 So. 363 (Fla. 1895).

181. *See id.* at 364-65. In *Phillips*, the necessary expense of the wife was hiring someone to provide medical care to her husband. *See id.* at 363-64. The husband's estate was held liable for payment of the medical care expenses. *See id.* at 365.

182. 668 So. 2d 175, 177 (Fla. 1995).

183. *See supra* text accompanying notes 102-25.

184. *See* Shands Teaching Hosp. & Clinics, Inc. v. Smith, 497 So. 2d 644, 645 (Fla. 1986). *But see* Willson, *supra* note 101, at 1052 (stating that the doctrine of necessaries frequently provides more protection to creditors than to spouses).

185. *See Shands*, 497 So. 2d at 645.

spouse was still able to receive necessaries.[186] The doctrine provided a suitable means of enforcing a spouse's duty to provide support, while preventing contentious interspousal litigation.[187]

The doctrine also protected creditors. Creditors could provide for the needs of a married person, and then seek payment from the spouse who was able to pay.[188] Without the doctrine, creditors have to seek financial guarantees, and will frequently not be willing to meet the needs of necessitous spouses. Some creditors—who cannot protect themselves because of governmental regulation—will be left with no remedy except increasing prices for all clients.[189]

The legislature should act to address this gap in the law of Florida. The legislature should first consider how broadly it wishes to act. It can choose to provide protection only for those creditors least able to protect themselves—such as hospitals. In the alternative, the legislature can make the doctrine broad and flexible and allow the courts to equitably determine when the doctrine should apply.

The legislature must also determine how to apply the doctrine to spouses even-handedly. Holding each spouse equally liable for the necessary expenses of either is "equality with a vengeance."[190] This approach does not recognize the rights of married individuals to arrange their own financial affairs.[191] The legislature should protect these rights by applying primary liability to the spouse who incurs the expense.[192] The spouse who does not incur the necessary expense should only be held liable when the spouse who incurred the liability does not have sufficient assets to satisfy the debt, for example, when the spouse incurring the debt is a home-maker with no separate assets.[193]

The legislature needs to provide other protections as well. The spouse who is required to pay for necessaries incurred by the other should only be required to pay based on his or her ability to pay when the debt was

---

186. *See id.*

187. Under coverture, the wife was not able to sue her husband directly in order to enforce his duty to provide support. *See supra* text accompanying notes 12-18.

188. *See Connor*, 668 So. 2d at 175.

189. *See supra* text accompanying notes 120-23.

190. Jersey Shore Med. Ctr.- Fitkin Hosp. v. Estate of Baum, 417 A. 2d 1003, 1009 (N.J. 1980); *see supra* text accompanying notes 137-42.

191. As noted above, the rights of spouses to maintain separate property and to determine how they will apportion debts between themselves should be balanced by their obligation to pay their just debts. *See supra* text accompanying notes 135-36.

192. *See supra* text accompanying notes 156-63.

193. This approach balances the needs of creditors to be paid with the ability of spouses to determine how to separate property. Spouses can determine for themselves how to pay their bills. When they are not willing to do this, the state should provide a remedy for creditors to seek payment. *See supra* text accompanying notes 156-63.

incurred.[194] The legislature should also protect the financially dependent spouse by maintaining liability for necessaries until a final divorce decree is entered.[195]

The following appendices provide two proposals for the legislature to consider. Each is based on the considerations within this Note. The proposals are drawn from the decisions made by courts and legislatures in other states.

Appendix A is a model for a general enactment of the doctrine of necessaries. This proposal has a very broad definition of what constitutes a necessary expense, and will allow courts discretion in determining the future course of the doctrine. The proposal also contains many of the restrictions that applied to the doctrine under the common law. The proposal continues liability during a separation until a support or dissolution order is entered. The proposed statute is numbered to be placed in Chapter 708 of the *Florida Statutes* with the laws dealing with Married Women's Property in Florida, which includes a provision requiring husbands to support their wives.[196]

Appendix B is more limited in scope. This proposal applies the doctrine only to medical and hospital expenses. The proposal is intended to provide protection for the medical industry, which, due to government regulations, is frequently unable to protect itself contractually.[197] Due to its narrow definition of necessaries, this proposal contains fewer limitations on the doctrine. This proposed statuted is numbered to be placed in Chapter 395 of the *Florida Statutes* with other laws relating to hospital and medical bills.

194. *See supra* text accompanying notes 169-71.
195. *See supra* text accompanying notes 170-87.
196. *See* FLA. STAT. § 708.10(1) (1997).
197. *See supra* note 122 and accompanying text.

APPENDICES

A. *General Proposal*

708.11 Liability for Necessaries Provided to Spouse—

(1) A person is liable to the creditors of the person's spouse for the reasonable cost of necessaries provided to the spouse.

(2) Necessaries shall include, but are not limited to: food, clothing, shelter, medical services, hospital expenses, and dental services.

(3) The liability of a person for necessaries provided to his or her spouse shall continue after the separation of the spouses, until a final order of dissolution of marriage is entered, unless pending a dissolution of marriage an order for temporary support has been entered obligating the married person to support the spouse who has received the necessaries, or if an adjudication has been entered relieving the married person from the obligation to support the spouse who has received the necessaries.

(4) (a) No assets of a married person may be attached for the debts incurred by that person's spouse for necessaries unless execution against the assets of the spouse who received the necessaries is insufficient to satisfy the debt.
(b) The liability of a person for the debts incurred by that person's spouse for necessaries is limited by the person's ability to pay the debt on the date the debt was incurred.
(c) A person will not be held liable for the debts incurred by that person's spouse for necessaries where it can be shown that the creditor relied solely on the credit of the spouse who received the necessary in agreeing to provide the necessary items or services. The creditor shall bear the burden of producing evidence that he or she did not rely solely on the credit of the spouse in allowing the debt to be incurred.
(d) A creditor may sue both spouses jointly in an action to recover the cost of necessaries provided to one spouse.

B. *Limited Proposal*

395.3011 Liability for medical services and hospital expenses provided to spouse and children—

(1) A person is liable for the reasonable uninsured cost of necessary services and hospitalization services provided to or on behalf of:

(a) the person;

(b) the person's spouse, provided such costs were incurred during the marriage;

(c) the person's children.

(2) A married person may be held liable for the medical and hospital expenses of his or her spouse only after the assets of the spouse who incurred the debt have been executed upon, and been found to be insufficient to provide for the expense. This provision shall not prevent the joinder of both spouses in a suit to recover medical or hospital expenses.