

No. 458

**HUSBAND AND WIFE—MONTANA STATE
HOSPITAL—INSANE WIFE**

Held: A husband is not liable for the support and maintenance of his wife in the Montana State Hospital.

July 30, 1942.

Mr. C. K. Baker
Business Manager
Montana State Hospital
Warm Springs, Montana

Dear Mr. Baker:

You have submitted to me for my opinion the following problem:

The wife of a man who is financially able to pay for her maintenance and care was committed to the Montana State Hospital as an indigent patient. Is the husband required under the law to contribute to her support, maintenance and care while so confined?

In considering the problem it is necessary to note the provisions of Section 1444, Revised Codes of Montana, 1935, as amended by Chapter 117 of the Laws of 1939, which are as follows:

“Whenever a hearing for examination or committal is had before the judge, and the person is adjudged to be insane and ordered confined to the insane asylum, it shall be the duty of the judge before

whom the hearing is had to take evidence as to the financial worth of said insane person, which evidence shall be reduced to writing and filed in the office of the clerk of the district court of the proper county, together with all orders, subpoenas, affidavits, complaints, warrants and papers used on said hearing or made by said judge, and said clerk shall enter upon the journal of the minutes of probate proceedings a record of all proceedings had, in the same manner as proceedings in probate, and if it appear from said evidence that said insane person has any means, money or property, out of which the expenses of his maintenance in the insane asylum, or any part thereof could be paid, it shall be the duty of the judge before whom hearing is had, to issue a citation to the parties in possession of his property, and to the relatives of said insane person, if any there be in the county where said insane person resided, citing them to appear and show cause why a guardian should not be appointed for said insane person, and why said guardian should not be ordered to pay the costs of the maintenance of said insane person, or so much thereof as his means will permit, which citation shall be served and all proceedings thereunder conducted as provided by Sections 10355 to 10376 of these Codes, and if it appear to the court that said insane person has property that can be applied toward his maintenance, it shall be the duty of the court to make an order to that effect, stating how much of the said insane person's property shall be applied, the amount to be fixed with due regard to the proper preservation of the estate of said insane person." (Emphasis mine.)

The inquiry as to available funds for the support of the inmate is confined to the insane person and his property and not to that of a relative legally charged with the support of the person to be committed. It is apparent that, if the Legislature had contemplated charging anyone other than the person committed with the obligation of his support, judicial inquiry would have been ordered for the purpose of ascertaining who was to be primarily liable for the maintenance and support and their financial ability to discharge the duty.

I am not unmindful of the provisions of Section 5784, Revised Codes of Montana, 1935, which are as follows:

"The husband must support himself and wife out of his property or by his labor. If he is unable to do so, she must assist him as far as she is able."

It is the duty of the husband to support his wife and to supply her with the necessities of life. (State ex rel. La Point v. District Court, 69 Mont. 29, 220 Pac. 88.)

Many state have statutes which fix the liability of the husband for an insane wife's support in a public asylum. The case of Martin v. Beuter, 79 W. Va. 604, 91 S. E. 452, 4 A. L. R. 1106, summarizes the law on the subject in the following manner:

"As to the husband's liability for the support of his insane wife, the authorities are in considerable conflict. Differences in the circumstances under which claims for such support have been asserted and the provisions of the statutes pertaining to the subject may afford grounds for reconciliation of most of the decisions and for the view that the contradictions found therein are apparent rather than real. In some instances, actions were brought against husbands by hospitals for the insane, established and maintained by law and at public expense. Under such circumstances, there is no common law liability or right of recovery, and liability, therefore, depends upon the terms of the statute." (Citing cases.) (Emphasis mine.)

Section 1444, supra, imposed no liability on the husband to support an insane wife in the Montana State Hospital and it is reasonable inference

the Legislature did not contemplate the husband should be required to contribute to her support.

The Nebraska Supreme Court in *Baldwin v. Douglas County*, 37 Neb. 283, 55 N. W. 875, 20 L. R. A. 850, stated the equities of the problem in the following manner:

“We know of no principle of equity or justice that, under these circumstances, would imply a contract by the husband to answer for the treatment of his wife, furnished by the state in the interest of the general public. It would seem that the public thus benefited should defray all expenses incurred for its protection.”

From the foregoing authorities it is my opinion a husband is not liable for the support and maintenance of his wife in the Montana State Hospital.

Sincerely yours,

HOWARD M. GULLICKSON
Attorney General