Filial Support Laws

A Festering Hot Topic in Pennsylvania

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“At common-law, an adult child never was under any duty or obligation to contribute to the support of his parents.”

Theories of Financial Liability for Nursing Home Care

- “Promise” Based
  - Common Law: Contracts
  - Common Law: Implied at Law: Quasi-contract, Quantum Meruit or Unjust Enrichment
  - Common Law: Promissory Estoppel

- “Fault” Based
  - Common Law: Fraud
  - Statutory Theories of Fraudulent Transfers

- “Family-Status” Based
  - Statutory Filial Support law Claims
“Promise-Based” Theories

- **Common Law Contract**
- **Pennsylvania Elements:**
  - Existence of Contract, incl. essential terms
    - Showing parties reached mutual agreement to be bound, exchanged consideration, and have set forth terms with “sufficient clarity”
    - **Note:** Pa Statute of Frauds may apply, requiring writing “signed by party to be charged”
  - Breach of a Duty imposed by contract; and
  - Resulting Damages

*Presbyterian Medical Center v. Budd, 832 A.2d 1066 (Pa. Super. Ct. 2003)*
More “Promise-Based” Theories

- Implied-at-Law Contracts (also known as “quasi-k” or “unjust enrichment” of “quantum meruit”)
- Pennsylvania Elements:
  - Benefits conferred on defendant (issue: child vs. patient-parent) by plaintiff; and
  - Appreciation of benefits by defendant, and
  - Acceptance and retention of benefits under circumstances where inequitable for defendant to retain without paying

- No “actual promise” required
- Pennsylvania Courts: No finding of unjust enrichment possible where written or express k between parties exists

Promissory Estoppel
Pennsylvania Elements:
- Promise: which promisor should reasonably expect to induce action or forbearance on part of promisee, or
- Misleading words, conduct or silence by “promisor” and
- Reasonable reliance: inducing action or forbearance under circumstances where there is no duty of inquiry; and
- Injustice can be avoided only by enforcing the promise

Lehigh Valley Hospital v. Montgomery County, 768 A.2d 1197 (Pa. Cmmw. 2001)
“Fault-Based” Theories

- **Common Law Fraud**
- **Pennsylvania Elements:**
  - Misrepresentation, and
  - Fraudulently uttered with **intention** that target will be induced to act on it, and
  - Target’s justifiable reliance on the misrepresentation, and
  - Damage proximately caused by misrepresentation
- **Standard of Proof:** “Evidence that is clear, precise and convincing”

More “Fault Based” Theories

- **Fraudulent Transfer Act**: 12 Pa.C.S.A. §§ 5101-5110
  - Compare to Uniform Act (UFTA)
  - Section 5104 (simplified):
    - Transfer made by a debtor is fraudulent as to a creditor if transfer made:
      - (a)(1) With “actual intent to hinder, delay or defraud any creditor of debtor,” or
      - (a)(2) “Without receiving reasonably equal value in exchange” + “reason to believe” debtor would incur debts beyond ability to pay
  - 10 statutory “factors” for determining intent for (a)(1) claims, incl. “insolvency” of debtor created by transfer

23 Pa.C.S.A. § 4603:
“...All of the following individuals have the responsibility to care for and maintain or financially assist an indigent person, regardless of whether the indigent person is a public charge:
- Spouse of indigent person
- Child of indigent person
- Parent of indigent person”
Section 4603(a)(2) says obligation does *not* apply:

- If an individual does not have “sufficient financial ability to support the indigent person”
- “A child shall not be liable for the support of a parent who abandoned the child and persisted in the abandonment for period of ten years during the child’s minority.”
Filial: Who has Standing to Sue?

Under 23 Pa.C.S.A. § 4603 (c):
- A Court has “jurisdiction” upon petition of:
  - (1) an indigent person; or
  - (2) any other person or public body or public agency having any interest in the care, maintenance or assistance of such indigent person.
Filial: Unexplored Defenses?

- Should liability be limited by statutory formula?
- Should any award of support be “prospective” only?
- Should statutory filial support be available to pay obligations owed “by” the indigent person but incurred before court’s order of support?*
- Are statutory claims against children predicated on some contract-like relationship between facility and children? *Assumpsit?*
Filial: Other Concerns?

- Personal Jurisdiction over target defendant?
- Choice of Law: Does Pennsylvania statute even apply?
- Statute of Limitations: comparison to K or tort actions
- Application in “non” nursing home contexts
**Filial: Three Pennsylvania Cases**

  - Adult son liable to pay $125/month for mother’s past health care expenses, despite evidence his own expenses exceeded income.

  - Daughter subject to filial claim by Nursing Home, where evidence showed mother’s indigence was caused by daughter’s transfer of $200k+ to self.

  - Affirms Nursing Home’s judgment against son for $92k+ for mother’s nursing home care, based on “plain language” of statute.
2015: U.S. Citizen/Resident of Pennsylvania receives letter from German authorities:
- Notifies “Daughter” of obligation to pay towards nursing home care in Germany for indigent “Father.” (History: Divorced parents; Father did not support family for at least 10 years of child’s minority).
- Germany seeks Daughter’s tax returns & financial records to determine “how much” she will pay

**German Law:** “Lineal relatives are under obligation to maintain each other.” “Only a person who is incapable of maintaining self is entitled to maintenance.” “Lineal relatives are obligated to supply information on income and assets...”

**Hague Convention(s) on Recognition/Enforcement of International Support and Maintenance Decisions**

**U.S. Constitutional Limits** on cross-border enforcement?
Attorney General Allege
Unfair Debt Collection Practices

  - Challenges law firm’s debt collection practices for health care company clients (dentist, anesthesiologist, cardiologist), including claims made against adult children and a “sister” of original debtors
  - Alleges “collection letter to family members falsely stated they were fully responsible for underlying debt” based on 23 Pa.C.S.A. § 4603
Planning Strategies with Families

- Proper Medicaid planning
- Read (amend) Contracts carefully
- Consider who and how to sign Contracts
- Do NOT allow courts to enter default judgments on claims (*BUT* think carefully about “jurisdiction” in “cross border disputes”)
- Coordinate as necessary with NH to “cure” problems with Medicaid coverage
Pennsylvania: Pending Legislation

- Pennsylvania Bar Association adopted resolution supporting **repeal** in 2006

- Past attempts blocked by DPW (now DHS) and/or Nursing Home lobbies. Or propose amendments that would limit liability for adult children, as long as no contact and no “overt action” with parent.

- **Current Pennsylvania Bill for repeal/amendment:**
  - **Proposes Repeal:** House Bill 242 (Printer’s No. 242), Session 2015-16, by Representative DeLuca, Thomas, Longietti, Costa, Dunbar, Schlossberg, Kotik, McNeill, Gainey, Miller, Cohen & Gibbins
“Filial Support Claims” are NOT limited to nursing home disputes

- **Eori v. Eori** (August 2015) Pa. Superior Court affirms award:
  - Obligating one brother to pay $400/month in “filial support” for care of mother by other brother
  - Another sibling (sister) agreed to $400/month “consent decree”

- **Van Horn v. Nearhoof** (Lycoming Co., Nov. 2014) Parents claim against two adult daughters:
  - Parents alleged they made “estate planning” transfers of property to “avoid” taxes or nursing home claims
  - Alleged Daughters made reciprocal promises ($700 per month)
  - Alleged Daughters’ breach of oral support/payment agreements & filial support obligation
  - After Nonjury Trial: Court held transfers were “support deeds” and ordered rescission in favor of parents, against non-supporting Daughter
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