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A-04-000642

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IN THE NEBRASKA COURT OF APPEALS

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ROBERT SALTS,

Appellant,

v.

LANCASTER COUNTY, NEBRASKA, and BERNIE HEIER, LARRY HUDKINS, DEB SCHORR, RAY STEVENS, and BOB WORKMAN, as the LANCASTER COUNTY BOARD OF COMMISSIONERS for LANCASTER COUNTY NEBRASKA,

Appellees.

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APPEAL FROM THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

The Honorable Bernard J. McGinn, District Judge

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Submitted By:

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... iii

STATEMENT OF THE CASE ..... iv

PROPOSITIONS OF LAW ..... v

1. AT COMMON LAW THE COUNTY WOULD NOT BE LIABLE FOR THE RELIEF OF THE POOR FOR THERE IS NO COMMON LAW LIABILITY UPON ANY GOVERNMENTAL UNIT TO SUPPORT POOR AND INDIGENT PERSONS. THE LIABILITY, IF ANY, MUST ARISE BY VIRTUE OF STATUTES MAKING IT THE DUTY OF THE COUNTY TO DO SO ..... v

2. IN THE ABSENCE OF ANYTHING TO THE CONTRARY, STATUTORY LANGUAGE IS TO BE GIVEN ITS PLAIN AND ORDINARY MEANING; AN APPELLATE COURT WILL NOT RESORT TO INTERPRETATION TO ASCERTAIN THE MEANING OF STATUTORY WORDS WHICH ARE PLAIN, DIRECT, AND UNAMBIGUOUS ..... v

3. WHENEVER ANY NONRESIDENT SHALL FALL SICK IN ANY COUNTY IN THIS STATE, NOT HAVING MONEY OR PROPERTY TO PAY HIS OR HER BOARD, OR WHENEVER ANY POOR PERSON NOT HAVING A LEGAL SETTLEMENT IN THE COUNTY IS FOUND IN DISTRESS, WITHOUT FRIENDS OR MONEY, SO THAT HE OR SHE IS LIKELY TO SUFFER, IT SHALL BE THE DUTY OF THE COUNTY BOARD TO FURNISH SUCH TEMPORARY ASSISTANCE TO SUCH PERSON AS IT SHALL DEEM NECESSARY ..... v

4. EVERY PERSON WHO HAS RESIDED ONE YEAR CONTINUOUSLY IN ANY COUNTY, SHALL BE DEEMED TO HAVE LEGAL SETTLEMENT IN SUCH COUNTY ..... v

5. RESIDENCY: AN APPLICANT MUST MEET THE REQUIREMENTS OF 2:101. APPLICANTS NOT RESIDING IN LANCASTER COUNTY MUST ALSO MEET THE FOLLOWING CRITERIA:

1. THE APPLICANT DID NOT ENTER LANCASTER COUNTY FOR THE SOLE PURPOSE OF OBTAINING MEDICAL CARE; AND

2. THE ILLNESS OR INJURY FOR WHICH MEDICAL ASSISTANCE IS REQUESTED AROSE IN LANCASTER COUNTY, NEBRASKA; AND

3. THE MEDICAL CARE IS PROVIDED FOR A LIFE THREATENING OR LIFE TRAUMA CONDITION ..... v

STATEMENT OF FACTS ..... 1

ARGUMENT ..... 3

I. NEBRASKA STATE STATUTE PROVIDES LANCASTER COUNTY WITH DISCRETION IN PROVIDING MEDICAL ASSISTANCE TO NONRESIDENT INDIGENT PERSONS ..... 3

II. LANCASTER COUNTY DID NOT EXCEED ITS AUTHORITY IN ESTABLISHING RESIDENCY REQUIREMENTS IN THE GENERAL ASSISTANCE GUIDELINES ..... 5

III. LANCASTER COUNTY’S APPLICATION OF THE GENERAL ASSISTANCE GUIDELINES ENACTED PURSUANT TO *NEB. REV. STAT.* § 68-114 DOES NOT IMPINGE ON A CONSTITUTIONAL RIGHT ..... 7

CONCLUSION ..... 9

**TABLE OF AUTHORITIES**

**CASES**

*Capitol City Telephone v. Nebraska Department of Revenue*,  
264 Neb. 515, 650 N.W.2d 467 (2002) ..... v, 3

*Krumwiede v. Krumwiede*,  
264 Neb. 378, 647 N.W.2d 625 (2002) ..... 3

*Mary Lanning Memorial Hospital v. Clay County*,  
170 Neb. 61, 101 N.W.2d 510 (1960) ..... v, 3, 4

*Memorial Hospital et al., v. Maricopa County et al.*,  
415 U.S. 250 (1974) ..... 7, 8

**STATUTES**

*Neb. Rev. Stat. § 25-1911* ..... iv

*Neb. Rev. Stat. § 68-104* ..... 3

*Neb. Rev. Stat. § 68-114* ..... v, 4, 5, 7

*Neb. Rev. Stat. § 68-115* ..... v, 6

*Neb. Rev. Stat. § 68-131* ..... 4

*Neb. Rev. Stat. § 68-143* ..... 7, 8

*Neb. Rev. Stat. § 68-144* ..... 4, 5, 7, 8

**RULES**

Lancaster County General Assistance Guidelines Rule 2:101 ..... 1, 5

Lancaster County General Assistance Guidelines Rule 3:101 ..... v, 1, 5, 6, 7

## STATEMENT OF THE CASE

### Jurisdiction

Appellees Lancaster County and the Lancaster County Board of Commissioners accept Appellant's statement of jurisdiction.

### Nature of the Case

Appellees Lancaster County and the Lancaster County Board of Commissioners accept Appellant's statement of the nature of the case.

### Issues Tried to the Court Below

Appellees Lancaster County and the Lancaster County Board of Commissioners accept Appellant's statement of the issues tried to the court below.

### How the Issues Were Decided

Appellees Lancaster County and the Lancaster County Board of Commissioners accept the Appellant's statement of how the issues were decided.

### Scope of Review

A judgment rendered or final order made by the district court may be reversed, vacated, or modified for errors appearing on the records. *Neb. Rev. Stat. § 25-1911 (Reissue 1995)*.

## PROPOSITIONS OF LAW

1. AT COMMON LAW THE COUNTY WOULD NOT BE LIABLE FOR THE RELIEF OF THE POOR FOR THERE IS NO COMMON LAW LIABILITY UPON ANY GOVERNMENTAL UNIT TO SUPPORT POOR AND INDIGENT PERSONS. THE LIABILITY, IF ANY, MUST ARISE BY VIRTUE OF STATUTES MAKING IT THE DUTY OF THE COUNTY TO DO SO.

*Mary Lanning Memorial Hospital v. Clay County*, 170 Neb. 61, 101 N.W.2d 510 (1960).

2. IN THE ABSENCE OF ANYTHING TO THE CONTRARY, STATUTORY LANGUAGE IS TO BE GIVEN ITS PLAIN AND ORDINARY MEANING; AN APPELLATE COURT WILL NOT RESORT TO INTERPRETATION TO ASCERTAIN THE MEANING OF STATUTORY WORDS WHICH ARE PLAIN, DIRECT, AND UNAMBIGUOUS.

*Capitol City Telephone v. Nebraska Department of Revenue*, 264 Neb. 515, 650 N.W.2d 467 (2002).

3. WHENEVER ANY NONRESIDENT SHALL FALL SICK IN ANY COUNTY IN THIS STATE, NOT HAVING MONEY OR PROPERTY TO PAY HIS OR HER BOARD, OR WHENEVER ANY POOR PERSON NOT HAVING A LEGAL SETTLEMENT IN THE COUNTY IS FOUND IN DISTRESS, WITHOUT FRIENDS OR MONEY, SO THAT HE OR SHE IS LIKELY TO SUFFER, IT SHALL BE THE DUTY OF THE COUNTY BOARD TO FURNISH SUCH TEMPORARY ASSISTANCE TO SUCH PERSON AS IT SHALL DEEM NECESSARY.

*Neb. Rev. Stat. § 68-114*

4. EVERY PERSON . . . WHO HAS RESIDED ONE YEAR CONTINUOUSLY IN ANY COUNTY, SHALL BE DEEMED TO HAVE LEGAL SETTLEMENT IN SUCH COUNTY.

*Neb. Rev. Stat. § 68-115*

5. RESIDENCY: AN APPLICANT MUST MEET THE REQUIREMENTS OF 2:101. APPLICANTS NOT RESIDING IN LANCASTER COUNTY MUST ALSO MEET THE FOLLOWING CRITERIA:

1. THE APPLICANT DID NOT ENTER LANCASTER COUNTY FOR THE SOLE PURPOSE OF OBTAINING MEDICAL CARE; AND
2. THE ILLNESS OR INJURY FOR WHICH MEDICAL ASSISTANCE IS REQUESTED AROSE IN LANCASTER COUNTY, NEBRASKA; AND
3. THE MEDICAL CARE IS PROVIDED FOR A LIFE THREATENING OR LIFE

TRAUMA CONDITION.

Lancaster County General Assistance Guidelines Rule 3:101

## STATEMENT OF FACTS

On March 17, 2003, Robert Salts moved to Lancaster County to enter Cornhusker Place for substance abuse treatment. (T16; 5:6-7). Prior to entering Cornhusker Place, Mr. Salts lived in Beatrice, Nebraska for one month; Kearney, Nebraska for three months; and Lexington, Nebraska for one and one half years. (T16; 5:1-5). On May 29, 2003, Robert Salts applied through the Nebraska Department of Health and Human Services (HHS) for Lancaster County General Assistance requesting medical services for an ear infection, an ongoing skin condition, and dental work. (T16). On June 9, 2003, Mr. Salts's application was denied by HHS on the basis that Mr. Salts was not a Lancaster County resident. (T17). The notice of denial also made reference to Rules 2:101 and 3:101 of the Lancaster County General Assistance Guidelines. (E1, Exhibit A, Page 12). On July 8, 2003, Mr. Salts filed an appeal with HHS challenging the denial of his General Assistance application, and the appeal hearing was held on August 6, 2003. (T17).

At the appeal hearing, Kim Fiero testified on behalf of HHS and determined that Dawson County was Mr. Salts' legal settlement for purposes of General Assistance. (5:4-5). Ms. Fiero further determined that Mr. Salts was ineligible to receive General Assistance from Lancaster County because he entered the County for the sole purpose of receiving medical treatment, the need for treatment arose outside of Lancaster County, and the assistance requested was not for a life threatening/life trauma condition. (5:8-14). In making this determination, Ms. Fiero referred to Rule 3:101 of the Lancaster County General Assistance Guidelines. *Id.*

On September 22, 2003, Kerry Eagan, hearing officer for the Lancaster County Board of Commissioners, upheld HHS's denial of Mr. Salts' application for Lancaster County General Assistance. (T17). Following the denial, Mr. Salts filed an appeal with the Lancaster County



District Court on October 22, 2003. (T17). The District Court affirmed the decision of the Lancaster County Board of Commissioners on April 16, 2004. (T21). Mr. Salts timely filed an appeal of the District Court's decision with this Court.

## ARGUMENT

The issue at hand in this case is the obligation of counties to provide general assistance to nonresident indigent persons; and more specifically, whether the Lancaster County General Assistance Guidelines are contrary to the Nebraska statutes. The Nebraska Supreme Court has previously stated, “[a]t common law the county would not be liable for the relief of the poor for there is no common law liability upon any governmental unit to support poor and indigent persons. The liability, if any, must arise by virtue of statutes making it the duty of the county to do so.” *Mary Lanning Memorial Hospital v. Clay County*, 170 Neb. 61, 64, 101 N.W.2d 510, 513 (1960). The Nebraska state statutes governing the obligation of counties to provide General Assistance are found in *Neb. Rev. Stat. §§ 68-104 et seq.* (Reissue 1996).

In considering the application of a statute, a court must determine and give effect to the purpose and intent of the Legislature by looking at the entire language of the statute considered in its plain, ordinary, and popular sense. *Capitol City Telephone v. Nebraska Department of Revenue*, 264 Neb. 515, 650 N.W.2d 467 (2002). “In the absence of anything to the contrary, statutory language is to be given its plain and ordinary meaning; an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous.” 264 Neb. at 528, 650 N.W.2d at 478 (2002); *see also Krumwiede v. Krumwiede*, 264 Neb. 378, 647 N.W.2d 625 (2002).

### **I. NEBRASKA STATE STATUTE PROVIDES LANCASTER COUNTY WITH DISCRETION IN PROVIDING MEDICAL ASSISTANCE TO NONRESIDENT INDIGENT PERSONS**

Pursuant to the Nebraska statutes, specifically §§ 68-131 et seq., each county shall

establish standards of eligibility for general assistance which the county board deems necessary to ensure the maintenance of minimum health and decency. In establishing these standards of eligibility, a county is given broad discretion on how it chooses to address the medical needs of nonresidents. § 68-114 provides in pertinent part:

Whenever any nonresident shall fall sick in any county in this state, not having money or property to pay his or her board, or whenever any poor person not having a legal settlement in the county is found in distress, without friends or money, so that he or she is likely to suffer, it shall be the duty of the county board to furnish such temporary assistance to such person **as it shall deem necessary...**

(Emphasis added). By including the language “as it shall deem necessary,” it is clear that the legislature intended to provide counties with the discretion to furnish temporary medical assistance to nonresidents. Lancaster County does not have an unconditional duty to provide medical assistance of any nature to all nonresidents; rather, the County is given broad discretion on how it chooses to address the medical needs of nonresidents. In addition, § 68-144 provides:

If any person shall become chargeable in any county in which he or she has not established a legal settlement at the time of applying for aid, he or she shall be duly taken care of by the proper authority of the county where he or she may be found. It shall be the duty of the clerk of the county board to send a notice by mail to the clerk of the county board of the county in which such poor person has a legal settlement that such poor person has become chargeable as a poor person, and requesting the authorities of such county to promptly remove such poor person and to pay the expense accrued in taking care of him or her.

Although this section seems to provide a broad duty to counties to provide general assistance to nonresidents, it must be read in conjunction with § 68-114. *See Mary Lanning Memorial Hospital v. Clay County*, 170 Neb. 61, 68, 101 N.W.2d 510, 515 (1960) (stating that all statutes relating to the same subject should be construed and considered together for the purpose of giving effect to legislative intent). Thus, any assistance provided by the county to a

nonresident would be temporary in nature, and limited to the assistance deemed necessary by the county board. Section 68-144 also provides the procedure by which counties are reimbursed for expenses accrued in providing care to nonresidents. The county clerk of the county in which the indigent person is found must notify the county of legal settlement and request prompt removal of the person. Strict application of this section would require Lancaster County to notify Dawson County to promptly remove Mr. Salts and pay Lancaster County for the expenses accrued in taking care of him. Lancaster County has not proposed such a strict application of § 68-144.

Appellant suggests that if counties are given “unfettered discretion” in deciding what assistance to provide to nonresidents, counties could simply decide it was not necessary to provide any benefits or assistance to those without legal settlement in the county. (Appellant’s Brief, Page 14). However, such a proposition is far reaching and not applicable to the case at hand. Lancaster County has not neglected or refused to provide assistance to nonresidents. The County Board has established standards of eligibility for general assistance which the County Board deems necessary. Such authority and discretion is clearly founded in *Neb. Rev. Stat.* § 68-114.

## **II. LANCASTER COUNTY DID NOT EXCEED ITS AUTHORITY IN ESTABLISHING RESIDENCY REQUIREMENTS IN THE GENERAL ASSISTANCE GUIDELINES**

In accordance with *Neb. Rev. Stat.* § 68-114, Lancaster County has enacted guidelines to comply with the statutes requiring a county to provide assistance to indigent persons. Lancaster County did not exceed its statutory authority in establishing the residency requirements in Rules 2:101 and 3:101 of the Lancaster County General Assistance Guidelines (Guidelines). Rule

2:101 addresses the residency requirement and states:

Residency: An applicant must reside within the geographical boundaries of Lancaster County in order to make application through the Lincoln Office. Individuals residing outside Lancaster County should be referred to the appropriate county office for assistance. If an individual is not permanently residing in Nebraska and/or Lancaster County, temporary assistance may be granted provided all other eligibility criteria are met.

Those other eligibility criteria are found in Rule 3:101 of the Guidelines which states:

Residency: An applicant must meet the requirements of 2:101. Applicants not residing in Lancaster County must also meet the following criteria:

1. The applicant did not enter Lancaster County for the sole purpose of obtaining medical care; and
2. The illness or injury for which medical assistance is requested arose in Lancaster County, Nebraska; and
3. The medical care is provided for a life threatening or life trauma condition.

There is no dispute that Mr. Salts is not a resident of Lancaster County, but rather has legal settlement in Dawson County, Nebraska. *Neb. Rev. Stat.* § 68-115 provides that “[e]very person...who has resided one year continuously in any county, shall be deemed to have legal settlement in such county.”

Within Rule 3:101, the first and second conditions are related and prevent the situation where a claimant is injured or becomes ill in another county and then enters Lancaster County for the sole purpose of obtaining medical care from Lancaster County General Assistance for that specific illness or injury. The third condition provides a specific guideline for the type of medical care for nonresidents which the County Board deems necessary. By establishing this condition, the County Board has chosen to limit medical care for nonresidents to situations involving life threatening or life trauma conditions. There is no evidence in the record indicating that Mr. Salts’ medical needs were life threatening or of an emergency nature. Nonemergencies,

such as in the case of Mr. Salts, can be referred to the county in which the claimant has established legal settlement pursuant to *Neb. Rev. Stat.* § 68-143, which states that “any person becoming chargeable as a poor person in this state shall be chargeable as such in the county in which he or she has established legal settlement . . .”

The aforementioned guidelines contained in Rule 3:101 reflect the discretion vested in the County Board pursuant to § 68-114; and therefore, are not contrary to state law. Lancaster County does not have an unconditional duty to provide temporary medical assistance of any nature to all nonresidents.

Moreover, contrary to Appellant’s assertion, Mr. Eagan did not suggest that Mr. Salts return to his county of legal settlement (Dawson County) for care. Rather, as previously discussed, Mr. Eagan noted that “a strict application of the duty to provide temporary medical assistance to nonresidents as set forth under §§ 68-114 and 68-144 would result in a request to Dawson County to promptly remove [Mr. Salts] from Lancaster County and reimburse the County for any temporary medical expenses incurred.” (E2,23:13-17). Because it appears Mr. Salts’ medical conditions are long term, Mr. Eagan went on to explain that the most reasonable solution is for Mr. Salts to apply for General Assistance in Dawson County and specifically request that he be allowed to remain at Cornhusker Place while receiving inpatient substance abuse treatment. *Id.*

### **III. LANCASTER COUNTY’S APPLICATION OF THE GENERAL ASSISTANCE GUIDELINES ENACTED PURSUANT TO *NEB. REV. STAT.* § 68-114 DOES NOT IMPINGE ON A CONSTITUTIONALLY GUARANTEED RIGHT**

Appellant relies on the United States Supreme Court case, *Memorial Hospital et al., v.*

*Maricopa County et al.*, 415 U.S. 250 (1974) and argues that Mr. Salts' equal protection rights are infringed upon. *Memorial Hospital* involved an indigent who moved from New Mexico to Arizona (Maricopa County), and sought medical care for a severe respiratory attack after having resided in Phoenix for less than two months. *Id.* at 252-253. Arizona statutes require an indigent to have been a resident of the County for one year in order to be eligible for free non-emergency medical care. *Id.* The U.S. Supreme Court held that such requirement impinges on the constitutionally guaranteed right of interstate travel and is subject to strict scrutiny. *Id.* at 254-255.

The present case before this Court is distinguishable because unlike the indigent in *Memorial Hospital*, Mr. Salts is not being penalized for his intrastate travel and is not being denied general assistance statewide. Rather, Mr. Salts is being referred to the county with financial responsibility to seek general assistance for his ongoing, long term care needs. The State is not refusing to treat Mr. Salts' medical needs as was the issue in *Memorial Hospital*. Arguably, a constitutional analysis is not required in the case at hand. A constitutionally guaranteed right to intrastate travel has not been formally recognized by the United States Supreme Court, nor the Nebraska Supreme Court. Furthermore, there is no constitutional right to receive non-emergency medical care at a county's expense.

The Nebraska Legislature has provided counties with the discretion to establish guidelines and provide assistance for the medical needs of residents and non-residents. The Legislature has also provided that the county of legal settlement shall be responsible for the medical expenses of its indigent residents. *See Neb. Rev. Stat.* §§ 68-143 and 68-144. Lancaster County's application of its General Assistance Guidelines do not impinge on Mr. Salts'

constitutional rights. Furthermore, contrary to Appellant's concern that Mr. Salts' will not be able to receive assistance for his non-emergency medical needs, the record reflects that Lancaster County did not seek removal of Mr. Salts to Dawson County, as there is clearly a compelling need for Mr. Salts to remain in Lancaster County and complete his inpatient substance abuse treatment at Cornhusker Place. (E2,23:8-12).

### CONCLUSION

For the foregoing reasons, the Appellees respectfully request that the District Court's decision be affirmed and payment of any court costs be assessed against the Appellant.

DATED this 6 day of October, 2004.

THE COUNTY OF LANCASTER, and  
LANCASTER COUNTY BOARD OF  
COMMISSIONERS, et. al.,  
Appellees.

GARY E. LACEY  
Lancaster County Attorney

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**PROOF OF SERVICE**

The undersigned hereby certifies that two copies of the Appellees' brief was sent by U.S. Mail, prepaid postage, to Appellant's attorney of record, Rebecca L. Gould, Nebraska Appleeed Center, 941 "O" Street, Suite 105, Lincoln, Nebraska 68508.

DATED this 6 day of October, 2004.

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Subscribed and sworn before me, a notary public, on this 6 day of October, 2004.

[Signature]  
Notary Public

