

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

April 18, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-3341-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

ELSIE BOLTZ,

Petitioner-Respondent,

v.

ESTATE OF ELMER BOLTZ,

Respondent-Appellant.

APPEAL from an order of the circuit court for Dodge County:
ANDREW P. BISSONNETTE, Judge. *Reversed and cause remanded with directions.*

Before Gartzke, P.J., Sundby and Vergeront, JJ.

PER CURIAM. The Estate of Elmer Boltz appeals from an order denying its order to show cause why Elsie Boltz, the ex-wife of the decedent,

should not be required to pay an unpaid charge for her hospital treatment during the marriage. We reverse.¹

The facts are not in dispute. Elmer and Elsie Boltz were married when Elsie received medical services at Milwaukee County Medical Complex in 1990 and 1991. Elsie commenced a divorce action shortly thereafter. Her preliminary financial disclosure statement indicated the amount she owed the county was unknown. The parties were divorced in 1993. Elmer died in January 1994. Milwaukee County filed a claim against his estate in April 1994 for approximately \$1800 in unpaid hospital bills for Elsie's treatment.

The Estate did not dispute the claim, and did not inform Elsie about the claim until it requested that she pay it in July 1995. The request was pursuant to a provision in their divorce judgment: "Any outstanding debt or liability not disclosed shall be the responsibility of the person who incurred it, and that party shall hold the other harmless for its payment." The parties do not dispute that Elsie's debt to the county was not disclosed. Elsie declined to pay the Estate.

The Estate issued an order to show cause why Elsie should not be required to pay the claim. The circuit court concluded it would be inequitable to enforce the divorce judgment against Elsie, pursuant to § 806.07, STATS., because the estate allowed the claim by not disputing it, and because the Estate did not provide timely notice to Elsie, preventing her from raising any defenses she "may" have had to the claim. The Estate appeals.

We conclude the circuit court erred because there is no evidence that Elsie had a meritorious defense to the claim. Elsie asserts two possible defenses on appeal. First, she points to an erroneous reference in the hospital claim to her date of death. She speculates that the claim may be for the wrong person. However, Elsie could have investigated the billing records more carefully before the show cause hearing and confirmed whether the claim was erroneous. Her mere speculation is not a satisfactory showing of a defense to the county's claim.

¹ This appeal is expedited under RULE 809.17, STATS.

Elsie also argues she has a defense based on *DHSS v. Estate of Budney*, 197 Wis.2d 949, 541 N.W.2d 245 (Ct. App. 1995). In *Budney*, the department attempted to recover from the decedent's estate medical assistance it paid correctly on behalf of his wife, who had died before him. In other words, the department sought to have the medical assistance paid for by the recipient's spouse's estate, rather than by the department. We held that such a recovery was not authorized under federal law.

Elsie argues her situation is analogous to *Budney*. We disagree. The "statement of patient account" submitted by the county shows the claim is for the balance due on hospital charges not fully covered by Medicare. The county does not appear to be attempting to have Elmer's estate reimburse it for Medicare benefits provided to Elsie. Rather, the county is seeking only to recover that portion of its charges not covered by other payments. Therefore, *Budney* does not provide Elsie with a defense to the county's claim.²

We agree the Estate's delay in notifying Elsie should not work to her disadvantage. However, without a showing of prejudice to Elsie, there is no reason the Estate should be barred from recovering pursuant to the divorce judgment. Because Elsie has not shown she had a meritorious defense to the county's claim, we conclude the circuit court erred. On remand, the court shall grant the relief sought by the Estate.

By the Court.—Order reversed and cause remanded with directions.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

² We also note that Elsie qualifies her argument by stating *Budney* is relevant "[i]f the origin of the claim was Medicaid benefits advanced by Milwaukee County." As with her other potential defense, it was Elsie's responsibility to investigate the records and determine, rather than speculate about, "the origin of the claim."