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Supreme Court No. 98259-7

**THE SUPREME COURT
OF THE STATE OF WASHINGTON**

From Court of Appeals No. 36209-4-III
(consolidated with 36210-8-III)

JENNIFER CURTIN,

Plaintiff / Respondent

v.

CITY OF EAST WENATCHEE,

Defendant / Petitioner

ANSWER TO PEITION FOR REVIEW

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A. Identity of Respondent

Respondent is Jennifer Curtin.

B. Citation to Court of Appeals (Div. III) Decision

The Court of Appeals Division III filed a published opinion on February 6, 2020, (No. 1 attached to Petition for Review Appendix) cited at *Curtin v. City of East Wenatchee*, __Wn.App.__, 457 P.3d 470, (Wash. App. Div. 3 2020); WL 582148 (Wn.App. 2020).

The Court of Appeals ruled consistent with earlier Supreme Court case precedents that the right in a tort action to recover pre-majority medical expenses lies with both the minor and the parents and can be recovered by the minor as necessaries if the minor's parents do not claim. *Id.* (Slip opinion at 6.) The Court of Appeals reversed the Trial Court's denial of Jennifer Curtin's motion for summary judgment on proximate cause and special damages and remanded for further proceedings consistent with their decision. *Id.* (Slip opinion at 10.)

C. Restatement of the Case

Jennifer Curtin (herein referred to as "Child") was a minor Child seriously injured in a car/pedestrian collision on December 9, 2009 and is now an adult. Glen "Skip" Curtin and Rebecca "Becky" Curtin (herein

referred to as "Parents"), both joined in their daughter's lawsuit asserting claims under RCW 4.24.010. Jennifer was a minor Child seriously injured in a car/pedestrian collision on December 9, 2009 at approximately 6:16 p.m. in the unmarked crosswalk where Grant Road meets the intersection of N. Georgia Street and S. Grover Street across from Eastmont High School and Eastmont Community Park in East Wenatchee, Washington. **Clerks Papers (CP) 206-211, 269-275, 282-295, 333-427.**

Defendant Leo Agens (herein Agens), was the driver of the vehicle that struck the Child. **CP 251-257**. Child sustained multiple serious injuries including, but not limited to, left temporal skull fracture and a traumatic brain injury. **CP 428-597**. Child has improved but continues to experience a permanent brain injury and is anticipated to receive future medical treatment over her lifetime. **CP 239-241, 525-531.**

On February 4, 2016, Respondent filed their lawsuit in Chelan County Superior Court against Mr. Agens and City of East Wenatchee (herein East Wenatchee). **CP 001-015**. In addition to alleging the negligence of Agens, the Respondent alleged that East Wenatchee had notice of the dangerous condition at Grant Road, were negligent in their design and construction, and failed to maintain the roadway or warn of the dangerous condition. **CP 269-295, 297-332**.

As part of Child's claim, the Parents joined in their adult Child's law suit asserting claims under RCW 4.24.010, "for the loss of love and companionship of the Child and for injury to or destruction of the Parent-Child relationship in such amount as, under all the circumstances of the case, may be just." **CP 003-015**. Parents both claim to have suffered anxiety, emotional and financial damages due to the incident, and that the Parent-Child relationship has suffered. **CP 004,013, 544,568**.

East Wenatchee filed Motions for Summary Judgment to dismiss the Respondent's claims on November 6, 2017. **CP 016-031**. Co-Defendant Agens joined in the motions. **CP 809-818**. East Wenatchee contended that the Parents' claims for loss of Parent/Child consortium and for recovery of medical expenses should be dismissed as barred by Washington's three-year statute of limitations, and that the Child cannot claim her pre-majority medical expenses after she reached the age of 18. **CP 613-625**. The Trial Court held oral arguments on March 19, June 4, and June 21, 2018. **CP 634-635, 766-767, 824-826; Report of Proceedings (RP) 1-134.** The Trial Court granted Respondents' Motion to dismiss the Parent's claims as barred by the statute of limitations. The Trial Court ruled that the Parents cannot join their RCW 4.24.010 claims with the adult Child's lawsuit, and further held that the Child could not claim pre-majority medical expenses, stating they belong to the Child's Parents. **CP 819-823, RP 80-130**. Petitioner

now requests review of the Court of Appeals reversal of the Trial Court's decision ruling that the Child could not claim pre-majority medical expenses, stating they belong to the Child's Parents.

D. Issues

1. Whether an emancipated minor can claim pre-majority medical expense as necessaries if parents are not allowed to recover pre-majority medical expenses in the same lawsuit.

2. Whether the Doctrine of a Minor Child's Medical Expenses as necessaries is still valid Washington Law.

3. Whether the Petition for Review fails to meet the criteria for RAP 13.4(b) where, the Court of Appeals Decision is not in conflict with any Supreme Court case or other Court of Appeals case.

E. Argument

1. An emancipated minor can claim pre-majority medical expense as necessaries if parents are not allowed to recover pre-majority medical expenses in the same lawsuit.

Petitioner, East Wenatchee argues that because only the parents can recover pre-majority medical expenses, the minor (as an emancipated adult

claimant) is barred from asserting the same claim because her parents claim is barred and that the Child has no right to collect them. See East Wenatchee Petition for Review at pages 6-9. Petitioner, further argues that the Child cannot assert her own claim for pre-majority medical expenses because the contract must "actually be made" by the minor child, and there can be no implied wavier of the right even though the Child has the right under Washington case law to claim pre-majority medical expenses as necessaries. See East Wenatchee Petition for Review at pages 12-14.

In this case, the Parents failed to make a claim by missing the Statute of Limitations (since the 3-year SOL ruled by the Trial Court was affirmed by the Court of Appeals Decision). See *Curtin v. City of East Wenatchee, ___Wn.App.___,* 457 P.3d 470, (Wash. App. Div. 3 2020) WL 582148 (Wn.App. 2020) (Slip opinion at pages 7-9). Under *Hammer*, this would be recognized as effectively emancipating the Child insofar as her right to recover pre and post majority. See *Hammer v. Caine*, 47 Wash. 672, at 673, 92 P. 441 (1907) (holding that parent's failure to claim parent's damages effectively emancipated his son, in so far as the right to recover damages thereby permitting son to recover all damages jury awarded both pre minority and post minority accruing from accident). The fact that the parent was making the claim on behalf of the minor in *Hammer* does not

alter the Court's ruling that it is the minor who is now asserting the claim, where the parent did not independently assert the same. Nothing in Washington law requires affirmative proof of an assignment from parent to child where the child incurs medical expenses as necessaires.

Washington's Supreme Court has already rejected Petitioners' argument that, an unemancipated minor must actually make a contract to be potentially bound to pay for medical expenses, and that only a parent can assert the claim and that no cause of action lies in favor of the minor for recovery of medical expenses as necessaries. See *Donald v. City of Ballard*, 34 Wn. 576, 76 P.80 (1904) citing *Daly v. Everett Pulp & Paper Co.,* 31 Wn. 252, 71 P.1014 (1903) (fact that the father prosecuted as next friend was tantamount to a relinquishment of such loss of services); and *Ball v. Pacific Coast R. Co.,* 182 Wn. 221, 46 P.2d 391 (1935) (father effected an equitable assignment to his son of any claim for medical expenses).

In fact, East Wenatchee conceded in their argument to the Court of Appeals that, *"There is no statute barring the recovery of Jennifer's pre-majority medical expenses"* as an adult. See Court of Appeals Brief of Respondent East Wenatchee at page 17 [Emphasis added]. This admission undercuts Petitioners' argument and ignores the fact that, if the parents are unable to assert their claim due to the Trial Court's ruling that the parents

claim is time barred, that ruling has the same effect as if the claim has never been made by the parents at all. Both the Parents and Child (now an adult) claimed the pre-majority medical expenses at the same time. If the parents' pre-majority medical expense claim is not allowed to proceed, then the child may assert it as necessaires in this case, and the Court of Appeals decision is correct.

In fact, Washington's Supreme Court has previously held such facts as in this case to be an implied waiver of the parent's right. See *Donald v. City of Ballard*, 34 Wn. 576, 76 P.80 (1904) citing *Daly v. Everett Pulp & Paper Co.,* 31 Wn. 252, 71 P.1014 (1903); *Ball v. Pacific Coast R. Co.,* 182 Wn. 221, 46 P.2d 391 (1935) and *McAllister v. Saginaw Timber Co.*, 171 Wn. 448, 18 P.2d 41 (1933). Citing RCW 26.28.030 (formerly Rem. Rev. Stat. §5829) the Washington Supreme Court held that a minor is liable for medical services on the ground that services were necessaries. The Court concluded that, since the minor's mother would be liable to the physician for the medical services, it did not follow that the son was not equally liable for them. See *McAllister v. Saginaw Timber Co.*, 171 Wash. at 451; see also, *Flessher v. Carstens Packing Co.*, 96 Wash. 505, at 509, 165 P. 397 (1917) (citing *Hammer v. Caine*, minor is authorized to recover medical treatment if not claimed by parent).

Obviously, the parents and child may not both recover for the same medical expenses, but one or the other can make recovery. See *Wooldridge v. Woolett*, 96 Wash.2d 659, 666, 638 P.2d 566 (1981); *Harbeson v. Parke-Davis, Inc*., 98 Wn. 2d 460, 656 P.2d 483 (1983) citing *Woodridge v. Woolett*, 96 Wn.2d, 659, 666, 638 P.2d 566 (1981). In this case Petitioners are arguing that no one, not even the minor now as an adult, can ever claim the pre-majority medical expenses, unless expressly contracted for by the minor and waived by the parents. Washington law requires no such express contract or waiver for there to be a contract based on necessaries.

2. Doctrine of a Minor Child's Medical Expenses as necessities is still valid Washington Law.

Petitioner East Wenatchee argues that "the contract for the necessaries must be made by the minor." See East Wenatchee Petition for Review page 14. This is an unsupported conclusion based on Petitioners' misunderstanding of the common law doctrine of medical expenses as necessaries, and Washington's informed consent laws which create the foundational right for medical providers to seek repayment of medical expenses as necessaries from either the parent or the child.

An injured minor may recover for his or her medical expenses when those expenses arise from the doctrine that medical expenses are

necessaries. See 42 Am.Jur.2d Infants § 145. To understand what "necessaries" are, Respondents direct this Court's attention to 42 Am.Jur.2d Infants § 145 Claim for medical expenses, which states as follows:

> Generally, a minor child does not have a cause of action for his or her medical expenses because the parents possess the exclusive right to recover for a minor's pre-majority medical expenses.[1] Since it is the parents' legal duty and obligation to provide their child's necessaries, the action to recover medical expenses of a child is vested exclusively in the child's parents.[2] **However, exceptions exist to this general rule that an injured minor may not recover for his or her medical expenses,[3] and he or she may recover those expenses when—**
>
> — the minor child has paid or agreed to pay them.[4]
> — the child is legally responsible for their payment, such as by reason of emancipation, or the death or incompetency of his or her parents.[5]

Note: Following footnotes 1-10 are from 42 Am.Jur.2d Infants § 145 follow below (citation to these authorities are omitted from Respondent's Table of Contents)

[1] Clardy v. ATS, Inc. Employee Welfare Benefit Plan, 921 F. Supp. 394 (N.D. Miss. 1996) (applying Mississippi law); National Bank of Commerce v. Quirk, 323 Ark. 769, 918 S.W.2d 138 (1996); Dewey v. Zack, 272 Ill. App. 3d 742, 209 Ill. Dec. 465, 651 N.E.2d 643 (2d Dist. 1995); Pepper v. Johns Hopkins Hosp., 111 Md. App. 49, 680 A.2d 532 (1996), aff'd, 346 Md. 679, 697 A.2d 1358 (1997); Eaves v. Boswell, 852 S.W.2d 353 (Mo. Ct. App. S.D. 1993); People v. Barnett, 17 Misc. 3d 505, 844 N.Y.S.2d 662 (County Ct. 2007); Byank v. Ski Liberty, 39 Pa. D. & C.4th 255, 1999 WL 483262 (C.P. 1999).

[2] Capp v. Carlito's Mexican Bar & Grill No. 1, Inc., 288 Ga. App. 779, 655 S.E.2d 232 (2007).

[3] Laughner v. Bryne, 18 Cal. App. 4th 904, 22 Cal. Rptr. 2d 671 (2d Dist. 1993).

[4] Hutto v. BIC Corp., 800 F. Supp. 1367 (E.D. Va. 1992) (applying Virginia law); Pepper v. Johns Hopkins Hosp., 111 Md. App. 49, 680 A.2d 532 (1996), aff'd, 346 Md. 679, 697 A.2d 1358 (1997). As obligation to pay for expenses as a "necessary," see §70.

[5] Hutto v. BIC Corp., 800 F. Supp. 1367 (E.D. Va. 1992) (applying Virginia law); Packard v. Perry, 221 W. Va. 526, 55 S.E.2d 548 (2007).

— the child is personally liable for payment of the expenses because his or her parents cannot afford to pay them.[6]
— **the infant's obligations arise from the doctrine that medical expenses are necessaries**.[7]
— the parents have waived or assigned their right of recovery in favor of a minor child.[8]
— **the parents are barred from asserting a claim for a minor's medical expenses due to the statute of limitations.**[9]
— **recovery of medical expenses by the infant is permitted by statute**.[10]

Id. (Emphasis Added)

In Washington State, an infant is incompetent to contract **except for necessaries of life**. *Chan Hai, In re*, 11 F.2d 667 (W.D. Wash. 1926), affirmed *Chan Hai v. Weedin* 15 F.2d 296 (U.S. 9th Cir.1926) [emphasis added]. Unless the minor is a single emancipated minor under the Mature Minor Doctrine, the minor cannot consent and receive treatment without parental consent in health care decisions. See *Smith v. Seibly*, 72 Wn.2d 16,

[6] Lopez v. Cole, 214 Ariz. 536, 155 P.3d 1060 (Ct. App. Div. 1 2007).

[7] Johns Hopkins Hosp. v. Pepper, 346 Md. 679, 697 A.2d 1358 (1997).

[8] Hutto v. BIC Corp., 800 F. Supp. 1367 (E.D. Va. 1992) (applying Virginia law); Estate of DeSela v. Prescott Unified School Dist. No. 1, 224 Ariz. 202, 228 P.3d 938, 255 Ed. Law Rep. 991 (Ct. App. Div. 1 2010), as amended, (May 27, 2010); Myer v. Dyer, 643 A.2d 1382 (Del. Super. Ct. 1993); Bauer ex rel. Bauer v. Memorial Hosp., 377 Ill. App. 3d 895, 316 Ill. Dec. 411, 879 N.E.2d 478 (5th Dist. 2007), appeal denied, 227 Ill. 2d 577, 321 Ill. Dec. 249, 888 N.E.2d 1182 (2008); Pepper v. Johns Hopkins Hosp., 111 Md. App. 49, 680 A.2d 532 (1996), aff'd, 346 Md. 679, 697 A.2d 1358 (1997); Eaves v. Boswell, 852 S.W.2d 353 (Mo. Ct. App. S.D. 1993).

[9] Myer v. Dyer, 643 A.2d 1382 (Del. Super. Ct. 1993); Johns Hopkins Hosp. v. Pepper, 346 Md. 679, 697 A.2d 1358 (1997).

[10] Hutto v. BIC Corp., 800 F. Supp. 1367 (E.D. Va. 1992) (applying Virginia law); Pepper v. Johns Hopkins Hosp., 111 Md. App. 49, 680 A.2d 532 (1996), aff'd, 346 Md. 679, 697 A.2d 1358 (1997).

431 P.2d 719 (1967). In addition, emergency medical services provided to minors are medical necessaries. See *McAllister v. Saginaw Timber Co.*, 171 Wash. at 451; see also, *Hammer v. Caine*, 47 Wash. 672, at 673, 92 P. 441 (1907). If the parent's consent is not readily available, the consent requirement for that treatment is satisfied and the minor can receive medical services. See RCW 7.70.050(4)[11] There is no requirement that the minor affirmatively enter into a formal contract for medical necessaries, rather, it is an implied contract based on the theory that the minor or the parent would have consented to life sustaining treatment if they were able to consent. See *Orwick v. Fox*, 65 Wn.App. 71, 86, 828 P.2d 12, *rev. denied*, 120 Wn.2d 1014 (1992). For non-emergency medical services, all parents have to give express or implied consent to any medical treatment as a prerequisite before receiving treatment by any medical provider licensed[12] whether it was verbal or written, or whether it was consented to by the parent, or the emancipated minor under the Mature Minor Doctrine. See *Miller v. Kennedy*, 11Wn.App. 272, 281-282, 522 P.2d 852 (1974) *aff'd per curium,* 85 Wn.2d 151 (1975). Non-written consent to medical treatment would also

[11] If a recognized health care emergency exists and the patient is not legally competent to give an informed consent and/or a person legally authorized to consent on behalf of the patient is not readily available, his or her consent to required treatment will be implied.
[12] Conditions of Participation for critical access hospitals, and surgery centers requires clinical records to include consent forms. See; ERISA; 42 C.F.R. § 416.47(b)(7) and 42 C.F.R. §482.24(c)(4)(v)

create an implied contract based on performance of medical services under the theory of unjust enrichment. See *Heaton v. Imus*, 93 Wn.2d 249, 252, 608 P.2d 631 (1980) and 6A Wash. Prac, WPI 301A.02 (7th Ed). Also, as a "family member" insured under her parents' health insurance policies, Jennifer is personally liable for repayment of the expenses to her insurers under the subrogation and reimbursement clauses from any amounts recovered from the tortfeasors. **CP 101, 773-776, 778.**

Further, the common law doctrine of a minor being liable to pay for necessaries has long been codified by Washington state statute and case law. See RCW 26.28.030 (formerly Rem. Rev. Stat. §5829). Under RCW 26.28.030**:**

> **A minor is bound,** not only by contracts **for necessaries**, but also by his or her other contracts, **unless he or she disaffirms them within a reasonable time after he or she attains his or her majority,** and restores to the other party all money and property received by him or her by virtue of the contract, and remaining within his or her control at any time after his or her attaining his or her majority.

(Emphasis added). It is clear that a minor is bound for contracts for necessaries. See RCW 26.28.030, *Lubin v. Cowell*, 25 Wn.2d 171, 170 P.2d 301 (1946) and *Plummer v. Northern Pac. Ry. Co.,* 98 Wash. 67, 167 P. 73 (1917) (infant is liable on implied contract to pay reasonable value of necessaries).

In *McAllister v. Saginaw Timber Co.*, 71 Wash. 448, 451, 18 P.2d 41 (1933), Washington's Supreme Court held long ago that medical expenses incurred by the minor, injured in an automobile collision, are "necessaries" for which minor is liable and can independently recover at trial if not recovered by the parent. Clearly *McAllister,* adopts this exception to the general rule that only a parent can claim the child's medical expenses.

3. The Petition for Review fails to meet the criteria for RAP 13.4(b) where, the Court of Appeals Decision is not in conflict with any Supreme Court case or other Court of Appeals case.

Under RAP 13.4(b) the Washington Supreme Court will accept review of a Court of Appeals decision terminating review only:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
> (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals. . . .

See RAP 13.4(b).

Review is only appropriate under RAP 13.4(b)(1) when the Court of Appeals' decision conflicts with binding Supreme Court precedent. RAP 13.4(b)(2) authorizes review only if the Court of Appeals decision conflicts with another decision of the Court of Appeals. See *State v. Taylor*,

140 Wn.2d 229, 235, 996 P.2d 571 (2000). Petitioner here only asserts RAP 13.4(b)(1) that the Court of Appeals decision conflicts with "decisions of the Supreme Court." See East Wenatchee's Petition for Review pages 14-16.

Petitioner states that the "*decision relied upon two decisions of the Supreme Court that did not squarely address the issue raised in this case."* Id. at page 16. [Emphasis added] Petitioner merely states, *"Here the Court of Appeals effectively overruled the Supreme Court by adopting out-of-state case law from West Virginia, Arizona, and Missouri"* and *"directly conflicts with the Supreme Court's decisions in cases where this Court held that a claim for an unemancipated minor's medical expenses is a claim owned by the minor's parent -not by the minor." Id* at page 15. [Emphasis added]. Petitioner does not cite to specific Washington Supreme Court cases they believe conflict with the decision in this case.[13]

However, it is Petitioner's citation to out of state case law that the Court of Appeals address, in rejecting Petitioner's argument:

> The dispute is over a portion of Ms. Curtin's claims. Specifically, the question is whether Ms. Curtin may recover damages for medical expenses incurred prior to her 18th

[13] The Court of Appeals Decision (Slip opinion page 6) rejected Petitioner's reading of *Handley v. Anacortes Ice Co.*, 5 Wn.2d 384, 105 P.2d 505 (1940) and *Harris v. Puget Sound Electric Railway*, 52 Wash. 299, 100 P. 841(1909). Why Petitioner is not able to cite to these cases specifically in their Petition for Review as the cases they believe are in conflict is a mystery.

> birthday. The Respondents argue, and the trial court agreed, that pre-majority medical expenses can be recovered only by a child's parents since the parents are financially responsible for the child's care and maintenance. *See* RCW 26.16.205. We review this legal question de novo. *Smith v. Bates Tech. Coll.*, 139 Wn.2d 793, 800, 991 P.2d 1135(2000). The Respondents' arguments against standing are based on the common law. The common law rule was a minor's parents held the exclusive rights to recover a child's medical expenses. *See State ex rel. Packard v. Perry*, 221 W. Va. 526, 532, 655 S.E.2d 548 (2007). The reasoning was that a child had no standing to recover pre-majority medical expenses unless the parents had assigned the child that right or the child had been emancipated. *Id*. at 534.

See *Curtin v. City of East Wenatchee*, ___Wn.App.___, 457 P.3d 470, (Div. 3 2020) WL 582148 (Wn.App. 2020). (Slip opinion at 4-5.)

The issue raised in the Petition for Review was whether the Court of Appeals ruled consistent with earlier Supreme Court case precedents; holding that the right in a tort action to recover pre-majority medical expenses lies with both the minor and the parents and can be recovered by the minor as necessaries if the minor's parents do not or cannot claim. The Court of Appeals ruled as follows based on Supreme Court precedent:

> In a series of prescient decisions, our high court declined to follow the common law approach. In *McAllister v. Saginaw Timber Co.*, 171 Wash. 448, 451, 18 P.2d 41(1933), the Supreme Court held the right to recover for pre-majority medical expenses lies with both a parent and child. The court reached this determination without qualification; the child in *McAllister* had not been emancipated and the court did not reason that the child's mother had refused support or assigned her right of recovery. *Id*. Instead, *McAllister* held that because medical expenses are legal "'necessaries,'" the parent and

> child hold equal rights and responsibilities. *Id*. The court also noted the shared right to recovery for pre-majority medical expenses must not work an injustice by permitting double recovery.

Id. (Slip opinion at 5-6.)

The Court of Appeals decision in this case does not conflict with any Supreme Court case. In rejecting Petitioner's argument, the Court of Appeals decision goes further to state specifically:

> Respondents [East Wenatchee] seek refuge in *Handley v. Anacortes Ice Co.*, 5 Wn.2d 384, 105 P.2d 505 (1940) and *Harris v. Puget Sound Electric Railway*, 52 Wash. 299, 100 P. 841(1909), but neither decision is inconsistent with the rule articulated in *McAllister*. *Handley* and *Harris* recognized that when a child is injured, the parent and the child may both have causes of action. *Handley*, 5 Wn.2d at 396; *Harris*, 52 Wash. at 300-01. Recovery of pre-majority medical expenses is generally a claim made by the parent who has paid the expenses; *Harris* and *Handley* referred to the right as such. But neither *Harris* nor *Handley* controverted *McAllister*'s clear rule (implicit in *Flessher*) that the right of recovery lies with the minor in addition to the minor's parents.

Id. (Slip opinion at 6.)

Clearly *McAllister,* adopts the medical necessaries exception to the general rule that only a parent can claim the child's medical expenses. The Court of Appeals correctly interpreted the Supreme Court's holding in *McAllister*, that the right of recovery lies with the minor in addition to the minor's parents and does not contradict the decisions in *Handley* and *Harris.*

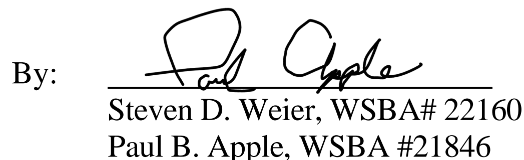
F. Conclusion.

In a series of precedent cases Washington's Supreme Court has already rejected Petitioners' argument that, an unemancipated minor must actually make a contract to be potentially bound to pay for medical expenses, and that only a parent can assert the claim and that no cause of action lies in favor of the minor for recovery of medical expenses as necessaries.

In *McAllister,* the Supreme Court adopted the exception to the general rule that only a parent can claim the child's medical expenses. The Supreme Court held that medical expenses incurred by the minor, injured in an automobile collision, are "necessaries" for which minor is liable and can independently recover at trial if not recovered by the parent.

The Court of Appeals correctly interpreted the Supreme Court's holding in *McAllister*, that the right of recovery lies with the minor in addition to the minor's parents and does not contradict the decisions in *Handley* and *Harris.* There is no direct conflict with any decision of the Supreme Court and the Petition for Review should be denied.

Respectfully submitted this 25th day of March 2020.

By: 

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