IN THE SUPREME COURT OF THE
STATE OF SOUTH DAKOTA
APPEAL #30152

****

AVERA ST. MARY'S HOSPITAL,
APPELLANT,
vs
SULLY COUNTY, SOUTH DAKOTA,
APPELLEE.

****

APPEAL FROM CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT
SULLY COUNTY, SOUTH DAKOTA, THE HONORABLE
CHRISTINA L. KLINGER, CIRCUIT COURT JUDGE, PRESIDING

****

APPELLANT'S BRIEF

****

Robert R. Nelson
Attorney for Plaintiff/Appellant
212 East 11th Street, Suite 200
Sioux Falls, SD 57104
Robert.Nelson@Avera.org
(605) 322-4621

James E. Moore and Justin G. Smith
Attorneys for Amicus Curiae, South Dakota
Association of Healthcare Organizations
300 South Phillips Avenue, Suite 300
Sioux Falls, SD 57117-5027
James.moore@woodsfuller.com and
Justin.smith@woodsfuller.com
605-336-3890

Mr. Ryan S. Vogel
Attorney for Defendant/Appellee
P.O.Box 1030
Aberdeen, SD 57402-1030
rvogel@rwwsh.com
(605) 225-6310

****

NOTICE OF APPEAL FILED October 26, 2022

****

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT 1

JURISDICTIONAL STATEMENT 1

STATEMENT OF LEGAL ISSUES 2

STATEMENT OF THE CASE 3

STATEMENT OF FACTS 4

STANDARD OF REVIEW 6

ARGUMENT 7

I. THE TRIAL COURT ERRED AS A MATTER OF LAW IN AFFIRMING THE COUNTY'S DENIAL DECISION APPLYING ROANE AS CONTROLLING PRECEDENT GIVEN THE SUBSTANTIAL NUMBER OF MATERIAL FACTS DIFFERENT IN ROANE VERSUS THE INSTANT CASE. 7

II. THE TRIAL COURT ERRED AS A MATTER OF LAW IN IN AFFIRMING THE COUNTY'S DENIAL DECISION BASED UPON ITS INTERPRETATION OF SDCL 28-13-37 AS REQUIRING NOTICE TO THE COUNTY OF J.R.'S ILLNESS WHILE J.R. REMAINED IN SULLY COUNTY. 19

CONCLUSION 25

REQUEST FOR ORAL ARGUMENT 26

TABLE OF AUTHORITIES

Statutes

124 Statute 119 (May, 2010) 3, 4, 6, 10
42 USC § 1395 dd 2, 3, 9, 12
IRC § 501(r)) 10
SD Rev. Code 1919, § 10035 ..... 2, 3
SD Rev. Code 1919, § 10052 ..... 2, 3
SDCL 28-13-33 ..... 20, 22
SDCL 28-13-34.1 20
SDCL 28-14-2 2
SDCL 7-8-29 3

Cases

Appeal of AT&T Inform. Sys., 405 NW2d 24 (SD 1987) 19
Argus Leader v. Hagen, 2007 SD 96, ¶ 12, 739 NW2d 475 ..... 2, 19, 20
Avera Heart Hospital of South Dakota v. Grant County, South Dakota (J.D.), 25CIV21-000054 ..... 8, 3
Avera Heart Hospital of South Dakota v. Minnehaha County, South Dakota (E.F.), 49CIV10-001310 ..... 8, 3
Avera Heart Hospital of South Dakota, et. al. v. Potter County, South Dakota (B.R.A.) 53CIV12-000057 ..... 8, 3
Avera St. Luke's Hospital et. al. v. Grant County, South Dakota (J.D.) 25CIV18-000045 ..... 8, 3
Avera St. Luke's Hospital v. Walworth County, South Dakota (C.R.) 64CIV17-000008 8
Avera St. Luke's Hospital v. Walworth County, South Dakota (R.H.) 6 4CIV01-000089 ..... 8, 3
Avera St. Mary's Hospital v. Hughes County, South Dakota, (M.B.) 32CIV14-000126 8
Bd. Of Com'rs v. Denebrink15 Wyo.342, 89 Pac. 7 (1907) 2, 14
Bd. Of Supervisors v. Gilbert & Bonner, 70 Miss. 791 (1893) 2, 17
Cero Gordo County v. Boone County, 152 IA 692 (1911) 12, 18, 23
County of Christion v. Rockwell, 25 Ill. App. 20 (1887) 2, 16
County of Clinton v. Pace, 59 Ill. App. 576 (1895) 16
County of Madison v. Haskell, 63 Ill. App. 657 (1895) 2, 16
Delano v. Petteys, 520 NW2d 606, 608 (SD 1994) 19, 20
Hamlin County v. Clark County, 1 SD 131, 45 NW 329 (1890) 11, 12, 13, 18
Hartpence v. Youth Forestry Camp, 325 NW2d 292, 295 (SD 1982) 20
In re Estate of Ginsbach, 2008 SD 91 ¶ 10, 757 NW2nd 65 7
In re Famous Brands, Inc. 347 NW2d 882, 884-85 (SD 1984) 19
Keller v. Potter County, South Dakota (C.R.). 53CIV00-000041 3
Keller v. Potter County, South Dakota 53CIV00-000041 8

Kittredge v. Inhabitants of Newbury, 14 Mass. 448, 13 Tyng 448 (1817) 14
Miller v Inhabitants of Somerset, 14 Mass. 396, 13 Tyng 396 (1817) 14
Moon v. Board of Commissioners, 97 Ind. 176 (1884) 11, 13, 14, 18
Morgan County v. Seaton, 122 Ind. 521 (1890) 13, 14
Moss v. Guttormson, 1996 SD 76, ¶10, 551 NW2d 14, 17 19
Newcomer v. Jefferson Township, 181 Ind. 1 (1914) 18
Patrick v. Town of Baldwin, 109 Wis. 342 (1901) 14
Queen of Peace Hospital et. al. v Hanson County, South Dakota,
30CIV93-000022 ..... 8, 21, 3
Robbins v. Town of Homer, 95 Minn. 201 (1905) 18
Satellite Cable Servs. v. Northern Electric, 1998 SD 67, ¶ 5, 581 NW2d 478, 480 7
Schafer v. Duel County Bd. Of Com'rs, 2006 SD 106, ¶ 5, 725 NW2d 241, 243 7
St. Luke's Hosp. Ass'n. v. Grand Forks County, 8 ND 241, 77 NW 598 (1898) 13
State v. De La Rosa, 2003 SD 18, ¶ 5, 657 NW2d @ 685 6
State v. Hirning, 1999 S.D. 53, ¶ 8, 592 NW2d 600 6
State v. Wilson, 2004 S.D. 33, ¶ 8, 678 NW2d 176 7
Steinberg v. State Dept. of Military and Veterans Affairs, 2000 SD 36 ¶ 6,
607 NW2d 596, 599 7
Zoss v. Schaefers, 1999 SD 105, ¶ 6. 598 NW2d 550 7

PRELIMINARY STATEMENT

References to the two Court Motion hearing transcripts will be "HT1" (January 6, 2021) and "HT2" (August 18, 2022) followed by the appropriate page number. References to the Court's August 29, 2022 bench decision will be "BD" followed by the appropriate page number. References to any affidavit will be by use of surname and paragraph number followed by the Appendix ("App.") page number. References to any record in the Docket will be Clerk's Record "CR" followed by the page number.

JURISDICTIONAL STATEMENT

Avera St. Mary's (Avera) filed an Amended Notice of Appeal with an Appeal Bond under the provisions of SDCL 7-8-29, from a decision of the Sully County Board of Commissioners (County) issued December 30, 2021 denying Avera's claim. (CR 297). Avera requested relief from the circuit court pursuant to SDCL 28-13-40. Id. The matter came on for hearing before the court, the Hon. Christina L. Klinger presiding, on August 18, 2022. An oral ruling or bench decision was issued on August 29, 2022. (CR 808). Thereafter, the court denied Avera's proposed findings of fact, conclusions of law and order, and entered County's findings of fact and conclusions of law and Order on September 27, 2022. (CR 844). The Order affirmed County's denial of Avera's claim based solely on the reason that notice or complaint of J.R.'s life-threatening illness was not provided by Avera to County while J.R. remained in the County. (HT2; CR 808, CR 851). Notice of Entry was served and filed on September 28, 2022. (CR 803). The court's Order is a final order or determination affecting Avera's substantial rights, and is appealable pursuant to SDCL 15-26A-3(4).

STATEMENT OF LEGAL ISSUES

1. Whether the court erred as a matter of law affirming County's denial decision, in applying Roane as controlling precedent given the substantial number of material facts different in Roane versus the instant case.

Circuit Court: The court held that Roane was controlling authority in affirming the County's denial decision, and it was the primary basis for its decision.

Most relevant cases:

Roane v. Hutchinson County, 40 S.D. 297, 167 N.W. 168 (1918) (Majority Opinion)
Bd. Of Com'rs v. Denebrink15 Wyo.342, 89 Pac. 7 (1907)
County of Christion v. Rockwell, 25 Ill. App. 20 (1887)
County of Madison v. Haskell, 63 Ill. App. 657 (1895)
Bd. Of Supervisors v. Gilbert & Bonner, 70 Miss. 791 (1893)

Most relevant statutes:

SD Rev. Code 1919, § 10035
SD Rev. Code 1919, § 10052
SDCL 28-13-37
SDCL 28-14-2 *et. seq*
42 USC § 1395 dd - EMTALA

2. Whether the court erred as a matter of law affirming the County's denial decision, base upon its interpretation of SDCL 28-13-37 as requiring notice to the County of J.R.'s illness while J.R. remained in Sully County.

Circuit Court: The court held that the statute required the County be provided with notice of J.R.'s illness while J.R. was still within County, despite the language of SDCL 28-13-37 not expressly stating that requirement or timeframe to provide such notice.

Most relevant cases:

Roane v. Hutchinson County, 40 S.D. 297, 167 N.W. 168 (1918)
Argus Leader v. Hagen, 2007 SD 96, ¶ 12, 739 NW2d 475
US West Communications, Inc. v. Public Utilities Comm'n., 505 NW2d 115, 122-23 (SD 1993))
Nelson v. School Bd. Of Hill City, S.D., 459 NW2d 451 (S.D. 1990))

Most relevant statutes:

SDCL 28-13-37 and SDCL 28-13-38
SD Rev. Code 1919, § 10035
SD Rev. Code 1919, § 10052
42 USC § 1395 dd - EMTALA
124 Statute 119 (May, 2010) - Affordable Care Act (ACA)
IRC § 501(r)

STATEMENT OF THE CASE

Round 1:

Avera served and filed an administrative appeal under SDCL 7-8-29 seeking relief for assistance for emergency hospital services provided to J.R., a nonresident of Sully County, who nonetheless had returned to Sully County for six months of work each year for the past 10–11 years as a greenskeeper for Sutton Bay Golf Resort. (Malsam ¶¶ 2-7, Ex. A, B and C, CR 15, 20, 65). County denied Avera's claim on March 3, 2015 on the sole basis that J.R. was not a resident of Sully County. (Malsam ¶ 3, CR 15, 20). Avera sought relief through a Motion for Order Directing Assistance pursuant to SDCL 28-13-1 *et. seq.*, and specifically SDCL 28-13-40. (CR 12). After hearing, (HT1) the Court by Order dated February 9, 2021, remanded Avera's claim back to the Sully County Board of County Commissioners to provide a factual and evidentiary basis for their decision on whether facts and circumstances were met for SDCL 28-13-37 and 28-13-38 to apply. (CR 202, 200, 247). The Court maintained jurisdiction of Avera's claim.

Round 2:

The Commissioners held a hearing/meeting on December 30, 2021, and after taking testimony, reviewing affidavits and records submitted, and hearing oral argument, again denied Avera's claim for the following reasons: 1) J.R. was not a resident of Sully

County at the time of hospitalization; and 2) J.R. was indigent by design for failing to purchase individual insurance through the Affordable Care Act (ACA). After hearing the Court concluded that J.R.'s residency in Sully County at the time of hospitalization was neither relevant nor applicable under the language of SDCL 28-13-37, and because Avera was not asserting J.R. was a resident at hospitalization. (HT2; BD @ 7; CR 254, 808). The Court further concluded that Ms. Peterson's opinion and Commissioners' conclusion that J.R. could apply for the ACA at any time was unsupported by the record, and thus J.R. was not indigent by design. (HT2; BD @ 10-11). The Court went on, however, to affirm County's denial decision pursuant to the language of SDCL 28-13-37, applying Roane as case precedent to the facts of the instant case (HT2; BD @ 12-14). The Court reasoned that even though there was no hospital within the borders of Sully County that could have treated J.R.'s emergency medical condition, Roane required that Sully County receive notice of J.R.'s illness while he remained in the County before Sully County was liable to Avera. (HT2; BD @ 12-15).

STATEMENT OF FACTS

J.R. was a married, Hispanic male, 57 years old at date of service, not a veteran of any armed services, or member of a Native American tribe. (Malsam ¶¶ 3, 6, Ex. B; CR15, 20). J.R. was not a resident of Sully County, and was brought from Sully County to the Emergency Department of St. Mary's Hospital at 1:57 P.M., Thursday, August 14, 2014, (a work day), with complaints of epigastric abdominal pain, nausea, and vomiting. (Malsam ¶ 4, Ex. C; CR15, 20; Executive Summary, CR 389; BD @ 8, CR 808). J.R. was diagnosed with acute appendicitis with perforation, necrosis, peritonitis, and SIRS (Systemic Inflammatory Response Syndrome). (Malsam ¶ 8, Ex. C; CR15, 20; BD @ 8,

CR 808). The patient was immediately taken to the operating room undergoing a laparoscopic appendectomy, at which time an infectious disease consultation was obtained. (Malsam; ¶ 4, Ex. C, CR 15, 20). At the time of hospitalization, J.R. was employed at Sutton Bay Golf Resort under a work Visa, as a seasonal employee, hired as a groundskeeper and maintenance worker. (Malsam; ¶ ¶ 5, 7, 10, 11, CR 15, 20; BD @ 7, CR 808). Individual health insurance was not offered to J.R. at Sutton Bay. J.R.'s income in 2014 was $19,624.90. (BD @ 7-8, CR 808; Malsam ¶¶ 12, 13, Ex. C, CR 15, 20). The first "notice" or "complaint" made to County was Avera's August 22, 2014 Notice of Hospitalization while J.R. was still hospitalized. (Malsam ¶ 3, Ex. B, CR 15, 20; *cf.* BD @ 12 where court concluded J.R.'s application was first notice to County.)

No deposition was able to be taken as J.R. left County shortly after his hospitalization. (BD @ 8, CR 808). No payments have been made on this account, which has a principal balance of $75,632.35. (Malsam, ¶¶ 17, 20, CR 15; BD @ 8, CR 808). At the time of hospitalization, J.R. was living in Agar, Sully County, legally working here, and given a social security number to file income tax. (Malsam ¶¶ 5, 7, 9, 10, CR 15; BD @ 7-8, CR 808; Barnard, ¶ 5, CR 65). J.R. spoke little to no English, and had worked at Sutton Bay for the last 10 consecutive years, working six (6) months each year, returning to Mexico and his family (for the winter months) when the season was over at the golf course. (Id. and Malsam ¶ 14). The Federal Poverty Income Guidelines for a household of five (5) in 2014 was $27,910.00. J.R. was $8,285.10 below the income guidelines[1]. (Malsam ¶ 19, Ex. E, CR 15, 20). J.R. was not able to purchase individual

[1] Even for a household of three (3) in 2014 the Federal Poverty Income Guideline was $19,790.00. (Malsam Ex. E, CR 15, 20)

health insurance, as the income he made from his employment at Sutton Bay was sent directly home to Mexico to support his four (4) dependents living there. (Malsam ¶¶ 4, 6, 13, Ex. C, CR 15, 20). Concerning J.R.'s failure to purchase individual health insurance through the ACA, the following greatly impact his ability to do so: 1) J.R. spoke little to no English, requiring interpreters to complete the County's Application for Assistance; (Malsam ¶ 14, Ex. C, CR 15, 20); 2) J.R. would not have had access to any computer, much less understand it, to even apply under the ACA for which the Marketplace was only open less than eight (8) months prior; (Id; Malsam ¶ 4, Ex. C, CR 15, 20); 3) open enrollment for J.R. under the ACA had closed prior to J.R.'s arrival in Sully County in April, 2014, and J.R. did not meet any of the ACA exceptions to apply outside the open enrollment period (BD @ 8-11; CR 808); and 4) on County's Application for Assistance, J.R. indicated he did not believe he could purchase health insurance when in this country on a work Visa (Malsam ¶¶ 6, 14, Ex. C, CR 15, 20; BD @ 10-11, CR 808). The court determined J.R. was not indigent by design based on failure to apply under the ACA because it was not available to him to enroll. (BD @ 10-11, CR 808). The court also determined J.R. had no friends or money to help with Avera's hospital bill, both qualifying elements under SDCL 28-13-37 (BD @ 11-12, CR 808).

STANDARD OF REVIEW

This Court has held that it will only reverse the trial court's findings of fact if they are clearly erroneous. State v. De La Rosa, 2003 SD 18, ¶ 5, 657 NW2d @ 685 (citations omitted). This Court has also held "'[i]t is well settled that "[o]nce the facts have been determined, however, the application of a legal standard to those facts is a question of law reviewed *de novo.*" State v. Hirning, 1999 S.D. 53, ¶ 8, 592 NW2d 600, @ 603

(citation omitted). State v. Wilson, 2004 S.D. 33, ¶ 8, 678 NW2d 176. There are no material facts in dispute in the instant case, only a question of law in how SDCL 28-13-37 applies to the facts.

Where questions of law exist, or application of the law to a set of facts, (decisions on statutory interpretation) this Court applies a *de novo* standard. In re Estate of Ginsbach, 2008 SD 91 ¶ 10, 757 NW2nd 65, 68 [¶16]. Issues involving statutory construction or interpretation are questions of law for this Court to determine *de novo* with no deference to the circuit court's decision (Schafer v. Duel County Bd. Of Com'rs, 2006 SD 106, ¶ 5, 725 NW2d 241, 243; Steinberg v. State Dept. of Military and Veterans Affairs, 2000 SD 36 ¶ 6, 607 NW2d 596, 599; Zoss v. Schaefers, 1999 SD 105, ¶ 6. 598 NW2d 550; Satellite Cable Servs. v. Northern Electric, 1998 SD 67, ¶ 5, 581 NW2d 478, 480).

ARGUMENT

I. THE TRIAL COURT ERRED AS A MATTER OF LAW IN AFFIRMING THE COUNTY'S DENIAL DECISION APPLYING ROANE AS CONTROLLING PRECEDENT GIVEN THE SUBSTANTIAL NUMBER OF MATERIAL FACTS DIFFERENT IN ROANE VERSUS THE INSTANT CASE.

A. ROANE IS INAPPOSITE AS CONTROLLING AUTHORITY BASED UPON ITS FACTS ALONE.

Avera respectfully submits that the Roane decision (Roane v. Hutchinson County, 40 SD 297, 167 N.W.168 (1918) (Appendix D) is not controlling based upon the number

of material facts different in Roane from the instant case. Roane has little, if any precedential application, to the case at bar for several reasons.

First, unlike the 28 boxcar riding paupers in Roane, J.R. in the instant case was far from a transient individual simply traveling through Sully County to some other location, at the time of his perforated appendicitis requiring emergency hospitalization, surgery and ICU treatment. J.R. had in fact been returning to County each year for 10 years; J.R. was not "incidentally passing through [Sully] County." (*cf.* Roane @ 298; *see* Queen of Peace Hospital et. al. v Hanson County, South Dakota, 30CIV93-000022; all non-resident patients injured in a one vehicle accident on I-90, were just driving through Hanson County, but the claims were paid in spite of Roane); Avera Heart Hospital of South Dakota, et. al. v. Potter County, South Dakota (B.R.A.) 53CIV12-000057; Avera St. Luke's Hospital v. Walworth County, South Dakota (R.H.) 64CIV01-000089; Keller v. Potter County, South Dakota 53CIV00-000041; Avera St. Luke's Hospital v. Walworth County, South Dakota (C.R.) 64CIV17-000008; Avera Heart Hospital of South Dakota v. Minnehaha County, South Dakota (E.F.), 49CIV10-001310; Avera Heart Hospital of South Dakota v. Grant County, South Dakota (J.D.), 25CIV21-000054; Avera St. Luke's Hospital et. al. v. Grant County, South Dakota (J.D.) 25CIV18-000045; Avera St. Mary's Hospital v. Hughes County, South Dakota, (M.B.) 32CIV14-000126; (*see* App. E and other South Dakota Circuit decisions).

Additionally, Roane cited Section 2761 of the 1915 Political Code of South Dakota (converted to 1919 S.D. Rev. Code § 10035) (*see* App. C), which is at least 1 or 2 iterations prior to the language of current SDCL 28-13-37, but at least at the time of Roane, placed a general, over-arching legal duty as prescribed by law over the poor (no

exceptions). Roane also cited § 2781 of the 1915 Political Code (converted to 1919 S.D. Rev. Code § 10052) dealing with county duties and obligations for "sick or dying" (*see* App. C). The statute seems more inclined to pay for burying someone versus medically treating them. The language has been amended and modified since. At the time of the Roane decision, basic transportation in South Dakota was by train, carriage, horseback or walking. There were few if any freestanding brick-and-mortar hospitals, and in fact, Hutchinson County apparently had an operating hospital within its borders in Tripp in 1918 (App. D). By contrast, Sully County's last operating hospital within its borders was abandoned in 1894 (following a fire at Fort Sully II in 1884). The Roane court concluded no county liability because the overseers of the poor had not taken charge of the injured persons while in Hutchinson County. Roane @ 302-03.

Given no operational hospital within Sully County's borders at the time of J.R.'s hospitalization, it is difficult to imagine how County can argue faithful discharge of its express statutory duties and obligations, whether to residents under SDCL 28-13-1 *et. seq.*, or non-residents under SDCL 28-13-37. By express decision, waiver, or implied default, the County's Commissioners have delegated (or defaulted) their legal duties concerning poor relief obligations to both residents and non-residents to area hospitals outside the County, including but not limited to Avera. This is especially true when those very hospitals are integral in providing the necessary emergency hospitalization and treatment required to save the patient's life; hospitalization, and treatment, which is not available within County's borders.

Roane focused materially on the fact that the medical treatment services were voluntarily undertaken by the plaintiff physician as a good Samaritan. (Id. @ 40 SD 304-

05). Avera is not a physician, but a hospital. Further, it cannot be said Avera in the instant case voluntarily provided the hospitalization to J.R., due to legal duties and obligations imposed by Federal law upon Avera for anyone presenting to its Emergency Department in critical condition, regardless of their ability to pay. Avera was not a "good Samaritan" like the physician in Roane who "volunteered" his services to the 28 injured train riding paupers. (*See* the Examination and Treatment for Emergency Medical Conditions and Women in Labor Act - EMTALA (42 USC § 1395 dd); numerous provisions of the Patient Protection and Affordable Care Act (ACA) 124 Statute 119 (May, 2010); and IRC § 501(r)).

Roane also held "[t]here can be no duty resting upon the county to care for non-inhabitant poor unless prescribed by statute." Avera's position is that is exactly what SDCL 28-13-37 provides. County initially never addressed the express language of SDCL 28-13-37 as applying to the instant case, other than to cling to the position that J.R. was not a resident. When the court told County J.R. need not be a resident for SDCL 28-13-37 to apply (HT1, CR 202), County changed its argument to no liability because under County's view of the statute, County was entitled to prior notice while J.R. was still within Sully County, despite no operational hospital since 1894 within the County, and despite the emergency circumstances of J.R.'s condition. Finally, the Roane majority opinion goes against the greater weight of authority (two supporting versus five contrary) of cases cited in the concurring opinion.

B. ROANE REPRESENTS OUTDATED, BAD PRECEDENT BASED UPON THE CASES CITED IN THE DECISION ITSELF, AND SHOULD BE OVERTURNED OR MODIFIED.

1. Roane Majority Opinion.[2]

The Roane majority cited as precedential authority or "in agreement with its decision" only five cases involving a county government as a party; the remaining cases cited involved municipalities or townships, which are clearly a different political subdivision or level of government, dissimilar to County governments, and thus distinguishable. Further, one of the five cases, Moon v. Board of Commissioners, 97 Ind. 176 (1884), involved a request by a surveyor for reimbursement of his costs for specific services provided for a drainage ditch project - hardly even a remotely analogous situation to emergency hospital services provided to a non-resident in a life-threatening situation.

Of the remaining cases with at least a county as one party cited by the Roane majority, only one case was from South Dakota; Hamlin County v. Clark County, 1 SD 131, 45 NW 329 (1890). This case involved Hamlin County suing Clark County for reimbursement for medical care Hamlin had provided to a resident of Clark County who became injured in Hamlin County after falling off a roof upon which he was working. (Id. @ 133). Clearly different parties and facts than in the instant case (or in Roane). Moreover, the Hamlin holding and rationale has been superseded by the enactment of

[2] Cases cited by both the Roane majority and concurring opinions are in App. D

SDCL 28-13-38 (*see* last sentence) and SDCL 28-14-2 *et. seq.*, codifying county to county reimbursement.

Similar to Hamlin, Cero Gordo County v. Boone County, 152 IA 692 (1911) was a county suing a county, and reads like a Greek tragedy. The Cero Gordo court itself references the parable from the Bible concerning the injured traveler left by the road for dead, to whom only the Good Samaritan provided assistance. (Id. @ 693-94). While specific Iowa statutes were not quoted (or cited) the Court appears to base its decision on the following rationale:

> But reimbursement for aid extended to a transient pauper is not directed, and, if plaintiff is entitled thereto, this must be owing to an implied promise on the part of Boone county to repay Cerro Gordo county.

Boone @ 697. The Court further reasoned that in order to recover for services, there must be a contract, or services must have been at the request of authorized officers. Boone @ 698.

Like Hamlin, this was a case of one County suing another County for reimbursement,(not a medical provider suing a county), however, Boone County, where the pauper's emergency health issue first arose, dodged its liability through the purchase of a $0.48 train ticket sending the pauper down the rails to another County, which shipped him to another County (Cerro Gordo) where ultimately BOTH the pauper's feet had to be amputated due to frostbite. Boone @ 694. This unseemly "process" of transferring extremely difficult (or life threatening) cases down the road when historically undertaken by hospitals was referred to as "patient dumping," and ultimately proscribed by Federal law. (EMTALA). This Court should be mindful that a decision in Sully County's favor may well encourage counties to behave like Boone County - except with a

bus vs. train ticket – at risk of great harm or even death to the individual concerned, and/or potentially increased public, societal program costs wherever that person ultimately "lands." This is especially true in 23 South Dakota counties where no hospital exists within the respective county's borders. (Rave Affidavit ¶5, SDAHO Motion to Appear Amicus, filed herein).

The third case with a county as a party, St. Luke's Hosp. Ass'n. v. Grand Forks County, 8 ND 241, 77 NW 598 (1898) was a similar holding or result to Boone, however, the St. Luke's Court based its decision on Hamlin (discussed supra) distinguished on its facts as one County suing another County, and that the issue in Hamlin was resolved by enactment of SDCL 28-13-38 and 28-14-2 to 2.1. The St. Luke's court further cited Moon (discussed supra) also distinguished on its facts to the pauper receiving medical care and treatment from St. Luke's. What is noteworthy, however, is the St. Luke's Court's failure to quote, much less mention, a single North Dakota statute, yet the Roane Court relied on it as precedent with no side by side comparison of statutes. The St. Luke's court also never discussed whether the medical care and treatment was emergency in nature, although it noted that requested authorization was refused on behalf of the county. Id. @ 241. Given no such mention, and the county's refusal, one can reasonably conclude emergency hospital treatment was not involved. The St. Luke's court disposed of the hospital's claim on a pleading deficiency and is distinguishable from the instant case.

Morgan County v. Seaton, 122 Ind. 521 (1890) involved a County appealing from a judgment in favor of Dr. Seaton for emergency professional medical care and treatment provided to a poor, resident of the County. Id. @ 522. The Morgan Court reversed the judgment concluding that the complaint did not state facts sufficient to constitute a cause

of action reasoning county had employed a physician to attend to the poor as required by statute (although he had refused to act), and further, that the Township trustee declined to employ Dr. Seaton. Id. @ 526; 522. Morgan, at least on its face, provides limited support for the Roane Court given the employment of a county physician by Morgan County, and the statutory scheme of (more numerous) Township Trustees as overseers of the poor in Indiana, neither of which fact or structure existed in Hutchinson County (or in Sully County), although there is at least anecdotal evidence of a hospital operating in Hutchinson County in 1916 (App. D).

The remaining cases claimed by the Roane Court to "also sustain our holding in this case," all involved physician claims against a town or municipality and are factually distinguishable on the basis of the party or governmental entity concerned alone. (Miller v Inhabitants of Somerset, 14 Mass. 396, 13 Tyng 396 (1817); Kittredge v. Inhabitants of Newbury, 14 Mass. 448, 13 Tyng 448 (1817); and Patrick v. Town of Baldwin, 109 Wis. 342 (1901)).

2. Roane Concurring Opinion:

It is noteworthy that the concurrence by two justices in Roane listed five cases involving physicians versus counties, one more than the number of cases involving at least a county as one party cited in the majority opinion, (if the surveyor claims in Moon are accepted as not relevant). Each of those five cases resulted in the physician being compensated, either by affirming or by reversing a lower court decision.

Bd. Of Com'rs v. Denebrink15 Wyo.342, 89 Pac. 7 (1907) held that emergency surgery provided by the plaintiff/physician to amputate the arm of a nonresident pauper run over by a train was entitled to compensation. (Id. @ 353). County asserted there was

no notice to the board before services were provided, but the Court noted that the board was not in session at the time of the accident. Denebrink @ 349. The same fact can be concluded about Thursday, August 14, 2014 in the instant case for Sully County. Judgment of the lower court for the physician was affirmed. Id.

Denebrink involved a demurer by the county to the physician's petition or claim which was overruled; when the county refused to plead further, judgment was granted to the physician, and county appealed asserting no notice or request for assistance. Id. @ 343. On appeal, the Denebrink Court concluded the case fell within the exception that such a request was necessary for contract liability, reasoning:

> It was both the moral and legal obligation of the board to furnish a physician for the injured man, and upon its failure to do so Dr. Denebrink and his assistant perform the services which the exigencies of the case required to save a human life with the expectation of being reimbursed therefor. In such cases there is always a legal presumption of a promise to pay without any proof that such promise has been made or the services requested by the party sought to be charged.

(citations omitted). Id. @ 349.The Denebrink Court further reasoned:

> It was sufficient to lead to the facts showing the immediate necessity for the services rendered in the impossibility of a president request or promise to pay. To hold that such request was necessary to maintain the action would, under the circumstances as shown in the petition, be inhuman and shocking to all sense of decency and render the statute less effective than it was evidently intended. Such request was in the nature of an impossible condition precedent and sufficiently appears by allegations in the petition.

Id. @ 351. Denebrink should have been given more weight by the Roane majority, and is on point with the instant case. The Sully County Commissioners were not in session when J.R. was taken to Avera's Emergency Department, just short of death's door. The exigencies of J.R.'s case required immediate emergency hospital services to save his life, medical care which County was otherwise statutorily required to provide-notice by Avera

to County while J.R. was still within County's borders would not have been possible save grave potential jeopardy to J.R.'s life.

County of Christion v. Rockwell, 25 Ill. App. 20 (1887) held that a private physician providing emergency services to a minor pauper (amputation of the boy's leg after being accidentally shot) was entitled to reimbursement from the County. Id. @ 21.

> There was no time to apply for aid to any county official nor was there any attempt to do so, but the operation was performed without delay and with such skill that a rapid recovery ensured.

Id. @ *21*. The lower court's judgment was affirmed with costs. Id. @ 22.

County of Clinton v. Pace, 59 Ill. App. 576 (1895) involved the county asserting no recovery for any physician services rendered without permission from the overseer of the poor. Id. @ 578. The Clinton court concluded:

> This is not the law. The county has been held to a liability for necessary services rendered by a physician where prompt and immediate action is required, without notice to, or permission from, the overseer of the poor.

(Citations omitted). Id. The court further reasoned:

> We see no reason why the overseer, who is required to cause such assistance to be rendered as he may deem necessary and proper, may not examine into the case while the treatment, originating in an emergency, is progressing, and accept past services while contracting for a continuation thereof in the future. The chief object of the statute is to have the judgment of the overseer on the case, based on his personal knowledge, to prevent imposition on the county, and this object is accomplished if a personal examination is made before the necessity for County aid has terminated.

Id. @ 580. The lower court's judgment in favor of the physician was affirmed. Id.

County of Madison v. Haskell, 63 Ill. App. 657 (1895) involved emergency medical treatment at the scene, and extended hospitalization thereafter, by a physician (otherwise employed by the railroad) for several nonresidents of the County, some who were initially injured in the railroad collision, with many others injured subsequently out

of the same incident as a result of the explosion of oil tanks beside the rails. Id. @ 657-58. Madison County asserted it had a physician employed to provide any necessary medical care and treatment free of charge (although he was in an adjoining township), and that plaintiff/physician Haskell had failed to show he was "requested and authorized" to provide such emergency medical treatment and services. Id. @ 659-60. After reasoning that the legislature had made it absolutely obligatory upon the County to make all necessary and proper provision for nonresidents of the County "in the condition of the sufferers in this case," the Court concluded that "[Madison County] can not avoid the liability so imposed, by its own failure to appoint necessary agents or prescribe regulations as to the manner of doing it. (citations omitted). Id. @ 660-61. The Court concluded that the county board of Madison County had not prescribed any, and as such, the underlying judgment in favor of the physician was affirmed. Id. @ 661-62.

Bd. Of Supervisors v. Gilbert & Bonner, 70 Miss. 791 (1893) involved the emergency amputation of an African-American patient's leg by a physician before the patient was declared a pauper in need of care and removed to the county poorhouse. Id. @ 791-92. The patient had already lost his other leg, and survived the operation only about five days. Id. @ 792. The Gilbert Court concluded that no steps had been taken by any county officer or other person to have the elderly patient declared a pauper and removed to the poor-house, but that the patient's medical condition required immediate surgery and removal of his limb. Id. @ 793. In affirming the lower court's decision in favor the physician, the Gilbert court stated:

> [h]umanity demanded that what was done should be done, and then and there. It was a case of genuine emergency, in which the county should be held answerable for the fee. The fee is indisputably reasonable.

Id.

The remaining two cases cited by the Roane concurrence involved towns or municipalities and not counties. However, both lower court decisions in favor of the Township were reversed and remanded for further proceedings. Robbins v. Town of Homer, 95 Minn. 201 (1905); and Newcomer v. Jefferson Township, 181 Ind. 1 (1914).

When reviewing the simple weight of legal authority or precedent considered by the Roane Court, and specifically only those decisions involving a county versus townships or municipalities, the Roane concurrence cites five (5) cases involving payment of medical care by counties, each one determined favorable to the physician concerned. The majority opinion cites only two (2) cases involving medical providers against counties. (Hamlin and Boone, involved counties suing counties, and Moon involved requested payment for surveyor fees). There remains only two decisions involving medical claims against counties upon which the Roane majority opinion is based versus five in the concurrence. How or why the Roane court dismissed this far greater weight of precedent is difficult to tell, but it defies explanation and reason, and is not defensible from a jurisprudence standpoint.

When this Court also considers the substantial number of facts materially different in Roane versus the instant case, together with massive, undisputed changes in law, transportation modes of conveyance, mobility of society, and even the number of hospitals in existence within the state, it becomes clear that Roane has outlived its useful precedential value, and should be overruled, or at a minimum, modified to exclude its application to emergency hospital services claims, at least in 23 South Dakota counties which have no operating hospital within their borders.

II. THE TRIAL COURT ERRED AS A MATTER OF LAW IN IN AFFIRMING THE COUNTY'S BENIAL DECISION BASED UPON ITS INTERPRETATION OF SDCL 28-13-37 AS REQUIRING NOTICE TO THE COUNTY OF J.R.'S ILLNESS WHILE J.R. REMAINED IN SULLY COUNTY.

When it comes to statutory construction, "[t]he intent of the legislature is 'derived from the plain, ordinary and popular meaning of statutory language.'" (Petition of Northwestern Pub. Serv. Co., 1997 SD 35, ¶14, 560 NW2d 925). (citations omitted). "Interpreting statutes according to their plain language is a primary rule of statutory construction." (citations omitted). Argus Leader v. Hagen, 2007 SD 96, ¶ 12, 739 NW2d 475. This Court has held "[i]n arriving at the intention of the Legislature, it is presumed that the words of the statute have been used to convey their ordinary, popular meaning." (Appeal of AT&T Inform. Sys., 405 NW2d 24 (SD 1987)).

The primary purpose of statutory construction is to determine the intent of the law. (*See* Moss v. Guttormson, 1996 SD 76, ¶10, 551 NW2d 14, 17). "[S]tatutes must be construed according to their intent, the intent must be determined from the statute as a whole, as well as enactments relating to the same subject." (*See* Id. quoting US West Communications, Inc. v. Public Utilities Comm'n., 505 NW2d 115, 122-23 (SD 1993)). "This Court assumes that statutes mean what they say and that legislators have said what they meant. When the language of the statute is clear, certain and unambiguous, there is no occasion for construction, and the Court's only function is to declare the meaning of the statute as clearly expressed in the statute." (Delano v. Petteys, 520 NW2d 606, 608 (SD 1994) quoting In re Famous Brands, Inc. 347 NW2d 882, 884-85 (SD 1984)).

Since statutes must be construed according to their intent, the intent must be determined from the statute as a whole, as well as enactments relating to the same subject. Id. When the question is which of two enactments the legislature intended to apply to a particular situation, terms of a statute relating to a particular subject will prevail over general terms of another statute. (Nelson v. School Bd. Of Hill City, S.D., 459 NW2d 451 (S.D. 1990)). Moreover, this Court has held "[w]e read statutes to give effect to all provisions." (Hartpence v. Youth Forestry Camp, 325 NW2d 292, 295 (SD 1982)). "In construing a statute, we presume 'that the legislature did not intend an absurd or unreasonable result' from the application of the statute." Argus Leader at ¶ 15 (citing State v. Wilson, 2004 SD 33, ¶ 9, 678 N.W.2d 176, 180 (quoting State v. I-90 Truck Haven Service, Inc., 2003 S.D. 51, ¶ 3, 662 N.W.2d 288, 290) (further citations omitted). When construing statutes together it is presumed that the legislature did not intend an absurd or unreasonable result. (US West at 122-23).

Finally, this Court has further held, "[w]hen determining legislative intent, we must assume that the legislature in enacting a provision has in mind previously enacted statutes relating to the same subject matter." (In re Estate of Smith, 401 NW2d 736, 740 (SD 1987)). Concerning amendments to statutes, this Court is to presume the legislature's amendment was passed to change existing law and "that the legislature intended to alter the meaning of the statute to comport with the new terms." (Delano at 609). Avera submits enactment of SDCL 28-13-38 (last sentence) and 28-14-2 *et. seq.* post Roane are instructive intent of the legislatures behind 28-13-37.

The statute at issue in this case is SDCL 28-13-37, which provides:

28-13-37. County duty to relieve nonresidents in distress.

It shall be the duty of the county commissioners, on complaint made to them that any person not an inhabitant of their county is lying sick therein or in distress, without friends or money, so that he is likely to suffer, to examine into the case of such person and grant such temporary relief as the nature of the case may require.

On initial review, it is readily apparent that the statute contains no express specific timeframe, or date within which the notice or "complaint" must be provided to the County Commissioners. Compare and contrast the 15 day window required for mailing notice by a hospital under SDCL 28-13-34.1 for a resident of the county when emergency hospital services are provided. If the hospital complies with this timeframe, the county of residence "is liable to the hospital for the reimbursement of the hospitalization." SDCL 28-13-33 (emphasis added). Before the poor relief statutes were substantially amended in 1997, the required timeframe for notice of nonemergency hospital services was seven days (*See* SDCL 28-13-34.1, amended July 1, 1997, App C).

Avera submits that the language of SDCL 28-13-37 is general enough to cover the gamut of potential health issues which may be encountered by a non-resident of a county (i.e. from a sprained or broken limb, to severe trauma from an accident, or even a heart attack, the latter two of which are readily agreed to be emergency in nature and life threatening). Indeed, Avera has respectively been awarded compensation under that statute from different counties involving those exact physical or medical maladies (Queen of Peace Hospital, et. al. v Hanson County, South Dakota, et. al. 30CIV93-000022; Avera Heart Hospital of South Dakota, et. al. v. Potter County, South Dakota, (B.R.A.) *53CIV12-000057*, App. E). The circuit court certainly found as a fact that J.R's medical condition (acute appendicitis) was certainly a condition covered by the language of this statute (BD @ 8-9, CR 808). The record is also undisputed that J.R.'s condition was life-

threatening and emergency hospital services were required (Id., Malsam ¶¶ 3, 8, Ex. B, CR 15, 20). Given J.R.'s admission through the emergency department, immediate surgery, lengthy intensive care unit stay and hospitalization (August 14-25, 2014), that conclusion is well established (Id.).

What County nonetheless disputes, and steadfastly contends, is that this statute requires notice to the Commissioners while J.R. was still within Sully County. This indeed was a conclusion reached by the circuit court when it affirmed the County's denial based on the language of SDCL 28-13-37, using Roane (distinguished *supra*) as controlling precedent. Avera asserts this was reversible error for numerous reasons.

First, unlike Hutchinson County in Roane, Sully County has no viable operating hospital within his borders and has not had one since Fort Sully II burned in 1884 and was abandoned in 1894. (App. C). The only way for the County's interpretation of the statute to be given effect is if Avera had caused J.R. to be driven back to Sully County to implore the Commissioners for assistance for him providing them notice; this after J.R. had already been lying sick and suffering within Sully County for days and been driven to the threshold of the Emergency Department of Avera with the diagnosis of (ruptured appendicitis with sepsis), a life-threatening illness (BD @ 8-9, CR 808; Malsam ¶ 8, Ex. C, DR 15, 20). Such a "process requirement" is certainly contrary to the five relevant cases cited by the Roane concurrence, and the greater weight of authority when compared to only two relevant cases in the Roane majority.

Avera's respectfully submits the legislature did not intend such an unreasonable result from either the language of the statute, or the application of the statute to the facts of this case. Yet, this is exactly the result asserted by the County and adopted by the

court. Such an interpretation not only unreasonably jeopardizes the life and health of nonresidents of County, but also debases their emergency medical condition and required emergency medical care and treatment to that of nonemergency services which after amendment in 1997 "shall be approved by the County before the services are provided." (emphasis added). SDCL 28-13-33. County's argument may have had some credibility had Sully County contained an operational hospital to which J.R. could have been taken, but once J.R. was at the Emergency Department threshold of Avera and his life-threatening condition diagnosed, compliance with the County's proffered statutory interpretation was chronologically impossible, and an absurd or unreasonable result which the Legislature certainly did not intend. If the circuit court's decision affirming County's interpretation of this statute is not reversed, Sully County will forever have insulated itself from any statutory duty and obligation for nonresidents.[3] This absurd result could also be replicated in 23 additional counties in South Dakota, each of which presently have no operating hospital facility within their borders. (Rave Affidavit ¶5, SDAHO Motion to Appear Amicus filed herein).

County also asserts that Avera's claim for relief goes beyond the "temporary relief" contemplated by SDCL 28-13- 37. County argued that once J.R. had been taken to the emergency department of Avera in Pierre, South Dakota, by his "friend," County's legal duty and responsibility under this statute to J.R. had been discharged, much like Boone County argued after buying a $0.48 railroad ticket and sending the pauper with

[3] The circuit court in its bench decision clearly sided with Avera's claim under the facts of this case, but indicated despite what the court believed the legislature intended under SDCL 28-13-37, it was not the court's place to interpret the statute and it would look to the Supreme Court for direction and guidance. (BD @ 14, CR 808).

two frost bitten feet down the road to another County (Boone supra). This certainly cannot be the intent of the Legislature by and through the language of SDCL 28-13-37, because when read in conjunction with 28-13-38, County was required to provide "the same relief as is customary in cases where persons have established residency in the state and county." Arguably County accepts that had J.R. been a resident of Sully County, the County would have been responsible for Avera's claim based upon how long they clung to the rationale of no liability based upon J.R.'s non-residency (HT1 29, 30; HT2 @ 49-52; CR 202, 254).

County had 11 years to get to know J.R., having returned there for approximately six months of work under a Visa for each of those years. J.R. lived and worked in Sully County, paid rent, had a bank account, purchased gasoline and paid sales tax on all his purchases in Sully County. County also had the opportunity to get to know J.R. and review his case based upon their County specific application completed by J.R. with the assistance of an interpreter, and submitted to the County (Malsam ¶ 4, Ex. C, CR 15, 20). Avera's opportunity to get to know J.R. began when he presented at the threshold of its emergency department at 1:57 PM, August 14, 2014, with life-threatening illness(es) and at death's door. Under County's strained interpretation of the statutory language and the absurd or unreasonable result of applying that interpretation to the facts of this case, however, the die was cast; the burden fell upon Avera, and the County's statutory duty and obligation to J.R., if any, had been discharged. This is the statutory interpretation upon which the circuit court affirmed the County's denial decision applying Roane as controlling precedent; despite all the material factual differences which render Roane inapposite as authority, and the greater weight of authority cited in the Roane

concurrence, (as compared to the Roane majority) favorable to the medical provider concerned in one hundred percent (100%) of the cases. By affirming the County's denial of Avera's claim, the circuit court effectively insulates Sully County (and 23 other South Dakota counties with no operating hospital within their borders) forever from any statutory duty to non-residents in emergency distress under SDCL 28-13-37; this despite Avera's Notice to County on August 22, 2014, while J.R. was still hospitalized. (Malsam ¶ 3, Ex. B, CR 15, 20).

CONCLUSION

Based upon all of the statutory and case precedent cited above concerning statutory interpretation and application, the contrary, absurd, and unreasonable result obtained by interpreting and applying SDCL 28-13-37 as asserted by the County, and affirmed by the circuit court, Avera respectfully requests pursuant to SDCL 15-26A-12, that this Court reverse the lower court's decision and hold that a hospital providing emergency hospital services to a nonresident of a County in which the emergency medical condition arose, and in which a hospital is not located, is not required to provide such County notice while the nonresident is still within that County in order to be reimbursed for such emergency hospital services under SDCL 28-13-37.

Respectfully submitted this 1st day of February, 2023.

Attorney for Appellant
212 East 11th Street, Suite 200
Sioux Falls, SD 57104
605) 322-4621
Robert.Nelson@avera.org

REQUEST FOR ORAL ARGUMENT

Appellant, Avera St. Mary's Hospital, respectfully requests oral argument in this appeal.

Robert R. Nelson

IN THE SUPREME COURT OF THE
STATE OF SOUTH DAKOTA
APPEAL #30152

****

AVERA ST. MARY'S HOSPITAL,
APPELLANT,
vs
SULLY COUNTY, SOUTH DAKOTA,
APPELLEE.

****

APPEAL FROM CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT
SULLY COUNTY, SOUTH DAKOTA, THE HONORABLE
CHRISTINA L. KLINGER, CIRCUIT COURT JUDGE, PRESIDING

****

APPENDIX

****

INDEX TO
APPELLANT'S APPENDIX

Item			Page
A			
	9/27/2022	Findings of Fact and Conclusions of Law	1
		Exhibit A to Order Affirming Decision	3
	9/27/2022	Order Affirming Decision of the Sully County Board of County Commissioners	8
	9/12/2022	Denied – Avera's proposed Findings of Fact and Conclusions of Law	10
	9/27/2022	Denied – Judgment	18
	9/27/2022	Denied – Order Reversing Sully County Commission Denial	19
B			
	1/6/2021	Hearing Transcript 1	21
	8/18/2022	Hearing Transcript 2	40
	8/29/2022	Bench Decision Transcript	72
C			
	SD Rev. Code 1919, § 10035		77-5
	SD Rev. Code 1919, § 10052		77-3
	1997 Senate Bill 121 (amending 28-13-34.1)		78
	Treaty of Fort Sully		89
D			
	Roane v. Hutchinson County, 40 S.D. 297, 167 N.W. 168 (1918		94
	Hamlin County v. Clark County, 1 SD 131, 45 NW 329 (1890)		101
	Moon v. Board of Commissioners, 97 Ind. 176 (1884)		106
	Cero Gordo County v. Boone County, 152 IA 692 (1911)		111
	St. Luke's Hosp. Ass'n. v. Grand Forks County, 8 ND 241, 77 NW 598 (1898)		120
	Morgan County v. Seaton, 122 Ind. 521 (1890)		122
	Miller v Inhabitants of Somerset, 14 Mass. 396, 13 Tyng 396 (1817)		128
	Kitteredge v. Inhabitants of Newbury, 14 Mass. 448, 13 Tyng 448 (1817)		131
	Patrick v. Town of Baldwin, 109 Wis. 342 (1901)		134
	Bd. Of Com'rs v. Denebrink15 Wyo.342, 89 Pac. 7 (1907)		147
	County of Christion v. Rockwell, 25 Ill. App. 20 (1887)		160
	County of Clinton v. Pace, 59 Ill. App. 576 (1895		163
	County of Madison v. Haskell, 63 Ill. App. 657 (1895)		168

Bd. Of Supervisors v. Gilbert & Bonner, 70 Miss. 791 (1893) 174
Robbins v. Town of Homer, 95 Minn. 201 (1905) 177
Newcomer v. Jefferson Township, 181 Ind. 1 (1914) 183

E

Queen of Peace Hospital et. al. v Hanson County, South Dakota, 30CIV93-000022 190
Avera Heart Hospital of South Dakota, et. al. v. Potter County, South Dakota (B.R.A.) 53CIV12-000057 192
Avera St. Luke's Hospital v. Walworth County, South Dakota (R.H.) 64CIV01-000089 194
Keller v. Potter County, South Dakota (C.R.). 53CIV00-000041 196
Avera St. Luke's Hospital v. Walworth County, South Dakota (C.R.) 64CIV17-000008 201
Avera Heart Hospital of South Dakota v. Grant County, South Dakota (J.D.), 25CIV21-000054 204
Avera St. Luke's Hospital et. al. v. Grant County, South Dakota (J.D.) 25CIV18-000045 207
Avera Heart Hospital of South Dakota v. Minnehaha County, South Dakota (E.F.), 49CIV10-001310 210
Avera St. Mary's Hospital v. Hughes County, South Dakota, (M.B.) 32CIV14-000126 212

STATE OF SOUTH DAKOTA) : SS.		IN CIRCUIT COURT
COUNTY OF SULLY)		SIXTH JUDICIAL CIRCUIT
AVERA ST. MARY'S HOSPITAL, Plaintiff, -vs- SULLY COUNTY, SOUTH DAKOTA, (J.R.), Defendant.	* * * * * * * * * *	59CIV18-11 FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiff, Avera St. Mary's Hospital, filed a Second Amended Notice of Appeal from Sully County Board of County Commissioners dated May 26, 2022 and Plaintiff's Amended Motion for Order Directing Assistance dated May 31, 2022 challenging the Sully Board of County Commissioners denial of J.R.'s County Application for Assistance. The matter came on for hearing before the Honorable Christina Klinger, presiding, on August 18, 2022. Plaintiff appeared through its attorney, Robert Nelson, and Defendant appeared through its attorney, Ryan S. Vogel.

Having conducted a review of this matter, having considered the evidence in the record, having considered arguments of counsel, and having rendered its oral decision on August 29, 2022, the Court now makes and enters the following:

FINDINGS OF FACT

1. Attached and incorporated by this reference as the Court's Findings of Fact is the transcript of the Court's oral ruling from August 29, 2022.

CONCLUSIONS OF LAW

2. Attached and incorporated by this reference as the Court's Conclusions of Law is the transcript of the Court's oral ruling from August 29, 2022.

59CIV18-11

BY THE COURT: 9/27/2022 11:03:43 AM

Attest:
Wittler, Sherise
Clerk/Deputy

Circuit Court Judge

STATE OF SOUTH DAKOTA) SS		IN CIRCUIT COURT
COUNTY OF SULLY)		SIXTH JUDICIAL CIRCUIT
AVERA ST. MARY'S HOSPITAL, Plaintiff, vs. SULLY COUNTY, SOUTH DAKOTA (J.R.), Defendant.		59CIV18-11 TRANSCRIPT OF BENCH DECISION

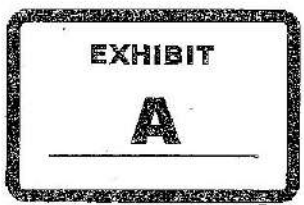
BEFORE: THE HONORABLE CHRISTIE KLINGER
Judge of the Sixth Judicial Circuit, in Pierre, South Dakota, on the 29th day of August, 2022.

APPEARANCES:

MR. ROBERT NELSON
Po Box 1843
Sioux Falls, SD 57101
Counsel for the Plaintiff.

MR. RYAN VOGEL
PO Box 1030
Aberdeen, SD 57402
Counsel for the Defendant.

Jess Paulsen, RPR
Official Court Reporter
PO Box 1238
Pierre, SD 57501
605-773-8227
jessica.paulsen@ujs.state.sd.us



PROCEEDINGS

THE COURT: All right. We're going to get started. We're going to be in session in 59CIV18-11, Avera St. Mary's Hospital v. Sully County, South Dakota.

Go ahead, counsel, note your appearance for the record, starting with Avera St. Mary's.

MR. NELSON: Thank you, Your Honor. Robert R. Nelson, an attorney in Sioux Falls, South Dakota.

MR. VOGEL: Thanks, Judge. Ryan Vogel on behalf of Sully County.

THE COURT: All right. This is the time and place that was scheduled for the Court to give an opinion with regard to an appeal from Sully County Commissioners' decision regarding payment or non-payment for medical fees for J.R.

The Court has had an opportunity to review the filings and consider the argument that was made.

Mr. Nelson, are you in agreement to having this decision provided by the Court via the telephone conference?

MR. NELSON: I'm not sure I understand the question, Your Honor. Are you not going to -- well, I guess, number one, is it recorded?

But number two then, is it anticipated that you won't issue a written memorandum decision?

THE COURT: I'm not issuing a written memorandum, no.

MR. NELSON: Okay.

THE COURT: I'm giving you my oral decision and I will appoint one of you to provide the Findings and Conclusions.

Jess is --

MR. NELSON: I understand.

THE COURT: Jess is recording this.

You have the right to have this heard in Sully County. If you want to come back to Sully County, I can wait and have my decision at that time.

But that's not going to change the fact that it's going to be an oral decision, which one of the parties will be doing the Findings and Conclusions.

MR. NELSON: No, I didn't understand that was the nature of the question, Your Honor.

It's fine being issued today at this time by telephone, yes.

THE COURT: All right. Thank you.

Mr. Vogel.

MR. VOGEL: It's fine with me as well, Your Honor.

THE COURT: All right. As the Court stated, it's reviewed the entire file, considered the argument of counsel at the hearing and issues now the Findings and Conclusions and decision.

The underlying issue is medical treatment from August 13, 2014, through August 15, 2014, of J.R. The

Sully County Commission considered some documents. The file itself is somewhat confusing; however, at a minimum, the Sully County Commission considered the documents that were filed by affidavit of Susan Lamb.

In addition, it's clear to this Court that the Sully County Commission considered Mr. Nelson's executive summary, as that was referred to in the transcript on page 16, line 14.

Sarah Peterson provided statements at the hearing and her work was also considered in reviewing the file in its totality. The Court has also considered these.

The Court agrees that there's nothing that allows the county to look at dual residency with regard to J.R. The county's decision based on the minutes was to deny Avera's claim for J.R. in that he was not a resident of Sully County, and, therefore, they needed to consider whether he was lying sick in the county when the complaint was made.

The Sully County Commission decided, and decision was that he was not lying sick -- J.R. was not lying sick in the county when it was made, and as a result, the claim was denied.

In addition, the Sully County Commission went on to consider whether J.R. was indigent by design as a result of failing to apply for the ACA and had determined that that

was, in fact, the case, and, therefore, provided two basis for the denial of St. Mary's claim.

In providing this, the Sully County Commission did not take sworn testimony, nor did it make any Findings as to credibility. A majority of the documents were submitted by affidavit and/or other documents.

The Court's first question as brought up by counsel was the standard of review that applies. Sully County Commission is an administrative agency, and the question with regard to standard of review, therefore, becomes whether it's an administrative action versus a quasi-judicial action. An administrative action would bring in the arbitrary abuse of discretion quasi-judicial as a de novo review.

Avera's argument that 7-8-30 would provide de novo review is found to be not supported. 28-13-1.4 specifically states notwithstanding 7-8-30 and goes on to direct the discretion of appeal in medical cases.

But based on case law, the Court goes back to whether this was a quasi-judicial or a non-quasi-judicial administrative action by the Sully County Commissioners.

In looking at that, the Court has looked to the decision that -- and the underlying issue to be a non-quasi-judicial.

We look to whether it's a future change, change in

existing conditions by making a new rule to be adopted thereafter, whether it's something that resembles what courts customarily do, and whether there's an exercise of discretion over a matter of policy.

Quasi-judicial is an investigation, declares, and enforces liabilities as they stand on the present or past facts, and under laws already in existence.

It could have been determined in an original action in the circuit court or resembles what courts customarily do. They served as a role of an adjudicatory body or adjudicates the rights between specific individuals.

In reviewing the Sully County commission's decision, it's clear that this Court -- or it's clear to this Court that this was a quasi-judicial decision from the Sully County Commissioners. They investigated facts. They are -- they presented and made a decision based on present or future facts under the laws that are currently in existence under chapter 28-13. They adjudicated the rights of Avera, but, also, J.R.

They certainly -- their function certainly appeared to be -- resemble that of what a court ordinarily would do and simply by not taking sworn testimony under oath, that can't be avoided.

The question as to whether this particular action could actually have been brought directly to circuit court

based on SDCL 28-13-40, but at a minimum, it certainly resembles something that the circuit court generally does, and as a result, the Court has decided this is a quasi-judicial action therefore bringing a de novo review.

The Court has reviewed the entirety of the file that's appropriately -- that was appropriately before the Sully County Commission at the time of the decision and makes the following Findings and Conclusions.

J.R. was a citizen of Mexico. He was working validly in the U.S. on a work visa. He was employed at Sutton Bay Golf for approximately ten years prior to 2014.

During those ten years, he lived in the U.S. six months of the year in Sully County with a group of individuals of 10 to 12 individuals that were in the same or similar situation and they lived in a school in Agar, South Dakota.

He's not a resident of Sully County at the time of his medical bills. He was employed by Sutton Bay from April 15th of 2014 through October 15th of 2014 at $12 an hour. He worked full-time as the weather would allow, but was a seasonal worker.

He -- there was no insurance offered to him at Sutton Bay.

He was given a Social Security number and filed taxes, and he was provided a work permit. He had no insurance in

Mexico. He was -- the only evidence in the file was that he was not aware and no insurance was offered to him when he came to the U.S.

His 2014 income was $19,624.90. At a minimum, he has a three person household. He had $3,000 in savings, and a 1994 Ford Ranger worth approximately $2,000.

He was hospitalized on August 13th of 2014 through the 25th of 2014 for acute appendicitis with perforation and had immediate surgery to address the issue upon being brought to the hospital.

He had -- J.R. has no assets or payments. He left the U.S. shortly after being hospitalized.

The address at the hospital listed Agar as his home. He has no steady employment in Mexico. No ownership of land in Mexico, but the land he lives on is an inheritance with low income with plumbing.

There was an emergent need for his treatment that was established by the affidavits of Dr. Carda and Becker. The record establishes that J.R. was brought from Sully County, where he was living, to the ER at Avera St. Mary's.

Who or how he was transported from Sully County is not contained within the records. There is a lot of inference regarding Ms. Lupe, who may or may not have brought him. In the records, she is listed as an interpreter. There's no actual evidence on who brought J.R. to the ER room on

the day in question.

He, however, was brought in with abdominal pain, nausea, vomiting, and the medical professionals determined it was an acute appendicitis with perforation and systemic inflammatory response syndrome. He had immediate treatment with a surgery that same day.

The Onida ambulance did not transport J.R. to the hospital. J.R.'s wife maintained residency in Mexico, was a housewife and did not work.

Sarah Peterson was a Sully County consultant and she's the Coddington County director for poor relief fund. She recommended J.R. failed to purchase health insurance per 28-17 -- or 28-13-27.

The basis for her opinion was provided on a statement at the hearing as his failure to apply for ACA. The basis of her opinion, as was filed in the record, is -- it can't be read. It's not clear. Her second page, it's absolutely unable to be read, so the record is not clear.

Based on the filing that's with regard to Ms. Peterson's opinion, it's not clear what that was other than what was at the -- said at the hearing. That was that the ACA applied and J.R. could apply any time. The record does reflect some documents regarding the ACA and abilities to apply for that.

Based on what was provided to this Court,

10

Ms. Peterson's opinion that J.R. could apply for the ACA at any time is unsupported by the documents that she submitted. The documents that were submitted with regard to the ACA support that the marketplace for the ACA, the premiums varied depending upon the plan available. They -- the premiums varied depending upon the adjustment for family size and age.

The calculator actually submitted was for 2021 and not 2014. There's a difference in years and what was provided for in 2014 is unknown by this Court.

Where the person applying lives would affect the cost. The calculation did not include any -- does not include any inheritance. Therefore, the issue regarding J.R.'s land is a non-issue because it would have been inheritance regardless.

J.R. would have been a valid non-immigrant -- or he would have been a valid immigrant eligible for the ACA lawful -- if he was lawfully present in the U.S., which he was.

He may have had a five year waiting period for the Medicaid application, which then would affect an ACA application.

The documents provided that the Court went back to with regard to the ACA several times was that an ACA application was noted in the documents and it specifically

11

stated that Medicaid could be applied for at any time; however, ACA application could only enroll during open enrollment and those were three months long and began in the fall. That's page 15 of how to get insurance.

J.R. would not have been in the U.S. during that time period, and as a result, the ACA -- whether the ACA was available to him based on the evidence in front of the Court is questionable.

The Court, however, relies on J.R.'s statement to the hospital, which is the only evidence of what was actually provided to J.R. upon entering into the U.S. was that he did not recall any insurance ever being provided as an option.

That's the only evidence in front of the Court, and as a result, the Court cannot find that there was any ACA insurance actually provided to him upon entry.

The county denied Avera's application on two statutes. SDCL 28-13-1.3, whether there was indigency by design; in 28-13-1.1, whether J.R. was lying sick -- I'm sorry -- 28-13-37, whether he was lying sick when complaint was made, and whether he had friends or money.

The facts do not support that J.R. had money to pay these bills.

As far as friends goes, it's unclear whether he had any friends. It's unclear how he got there, and so the

12

Court cannot support that he had any friends available to him.

Lying sick at the time of the complaint, that's not how the Court reads the statute; however, it does -- SDCL 28-13-37 does not solely control the outcome of this case.

The Court has relied upon Roane, which is 40 S.D. 297 and has reviewed that in detail. The complaint was made to Sully County for the first time at the application. At the time of that complaint, the hospitalization had already occurred.

The major question in this case comes down to whether J.R. had to be lying sick in Sully County at the time that the complaint was made or at the time of the illness or whether what temporary relief was required to be provided.

This Court has authority to apply the law as it currently stands. This Court does not have authority to make new case law or to apply the law as it thinks the Supreme Court would do or in light of the significant changes from 1918 to 2022.

The Court has reviewed Roane, and although it initially appears that the Supreme Court focused on the transient individuals being temporarily in the county, the ultimate decision from the Supreme Court in Roane was that the County was not provided an opportunity or provided with notice of the illness while the individual remained in the

13

county.

The individuals were removed without any type of notice being provided to the Board of Overseers which is similar to the Sully County Commission.

There's -- specifically, the Supreme Court said there's no showing that the notice was given at the time when said injured persons were in, in that case, Hutchinson County.

The Court went on to say that without the knowledge or consent of the overseers, that there was no statutory relief. And went on to further actually say that temporary relief was, in fact, furnished by some good samaritan who, in seeking the temporary relief, removed the injured person from the county. J.R. was removed from Sully County without notice to the Sully County Commissioners.

Ultimately, the Supreme Court in Roane touched on that it was transient individuals who were temporarily in Hutchinson County; however, that wasn't the basis for their decision.

The current law as it stands is that the individuals were removed from the county at the time that the temporary relief was sought, and as a result, that county could not be held responsible for the medical bills pursuant to statute 28-13-37 which is nearly identical to what it was in 1918.

Based on J.R. not being in Sully County, the fact that he was removed for medical attention, that would not render Sully County liable on the grounds of statutory duty. As in the absence of some action on the part of the county commissioners, authorizing or consenting to that removal and care, there's no statutory authority pursuant to SDCL 28-13-37 in Roane.

As this Court has said, it's my job and authority -- the only authority I have is to enforce the law as it currently stands. It's not my job to change the law as I believe the Supreme Court may apply it. And it's not my job to change the law where the legislature -- when it's legislative action that needs to be taken instead.

As a result, I am going to affirm the Sully County Commissioners' decision to deny this claim, understanding that I -- it's not this Court's intent -- it's not -- this Court doesn't believe that this is what the intent was of this statute, but that's the current law as it sits and it's not my job to change that, so you'll have to do that through either the Supreme Court or the legislature.

Any questions, Mr. Nelson?

MR. NELSON: No. I just don't know whether the Court recalled or wants to address the fact that there is no hospital within Sully County since 1840-whatever for the commissioners to have discharged their statutory duties to

a non-resident as Hutchinson County did back in 1918.

THE COURT: Thank you for pointing that out.

The Court does find that there is no hospital in Sully County that could have treated this type of action -- or this type of medical condition.

Unfortunately, based on Roane, that doesn't change the Court's decision, but that is a Finding of Fact that was supported by the evidence.

I fully understand, Mr. Nelson, your argument regarding voluntary and the hospital. I -- this Court doesn't necessarily disagree with your argument.

This Court's sole duty is to enforce the law as it currently exists, and that law says that as it currently exists in this Court's multiple readings of Roane over the weekend is that for the removal of J.R. without notice, or giving the commissioners the ability to address the situation under 28-13-37, does not provide statutory authority for payment. And as a result, I am going to continue the affirmance.

If this is appealed, I fully -- I look forward to seeing that decision and whether the law is updated based on the current status or the current moveability of more people of moving from county to county and the lack of hospital within Sully County, but this Court does not believe it has the authority to enter any other decision at this point.

Mr. Vogel, any questions?

MR. VOGEL: No, Your Honor.

THE COURT: All right. Mr. Vogel, you need to do the Findings and Conclusions, please.

MR. VOGEL: When will they be due by, Your Honor?

THE COURT: Well, statutorily, they'll be due within 10 days, So I don't know if you're asking for more time or...

MR. VOGEL: No, I am not.

THE COURT: All right. Yeah, we'll stick with the 10 days and you guys can keep this case moving.

MR. VOGEL: All right. Thanks, Judge.

THE COURT: All right. Thank you.

We'll be in recess.

MR. NELSON: Thank you, Your Honor.

(End of proceedings.)

CERTIFICATE OF REPORTER

I, Jessica Paulsen, RPR, Official Court Reporter in and for the State of South Dakota, do hereby certify that the Transcript of Bench Decision contained on the foregoing pages was reduced to stenographic writing by me and thereafter transcribed; that said proceedings commenced on the 29th day of August, 2022, in Pierre, South Dakota, and that the foregoing is a full, true, and complete transcript of my shorthand notes of the proceedings had at the time and place set forth above.

Dated this 2nd day of September, 2022.

/s/Jess Paulsen
Jess Paulsen, RPR
Official Court Reporter

STATE OF SOUTH DAKOTA) : SS. COUNTY OF SULLY)		IN CIRCUIT COURT SIXTH JUDICIAL CIRCUIT
AVERA ST. MARY'S HOSPITAL, Plaintiff, -vs- SULLY COUNTY, SOUTH DAKOTA, (J.R.), Defendant.	* * * * * * * * *	59CIV18-11 ORDER AFFIRMING DECISION OF THE SULLY COUNTY BOARD OF COUNTY COMMISSIONERS

Avera St. Mary's Hospital ("Avera"), filed an Amended Notice of Appeal on May 26, 2022 appealing the decision of the Sully County Board of Count Commissioner's ("Commission") denial of the County Application for Assistance dated August 24, 2014 regarding J.R ("Application"). The matter came on for hearing before the Court, the Honorable Christina Klinger presiding, on August 18, 2022. Avera appeared through its attorney, Robert Nelson. Sully County appeared through its attorney, Ryan S. Vogel. An oral ruling was issued on August 29, 2022.

Having considered the arguments of counsel and having conducted a review of this matter under the de novo standard of review, and having entered its oral ruling on August 29, 2022 and Findings of Fact and Conclusions of Law dated September 27th, 2022, both of which are incorporated herein by this reference, now, therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that the Commission's denial of the Application for the reasons set forth in the oral ruling from August 29, 2022 and the Findings of Fact and Conclusions of Law is AFFIRMED.

Attest:
Wittler, Sherise
Clerk/Deputy

BY THE COURT: 9/27/2022 10:35:39 AM

Circuit Court Judge

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF SULLY)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

AVERA ST. MARY'S HOSPITAL, Plaintiff, v. SULLY COUNTY, SOUTH DAKOTA (J.R.), Defendant.	59CIV18-000011 FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came on for hearing on August 18, 2022, of Avera St. Mary's (Avera's) Amended Notice of Appeal from a decision of the Sully County Board of County Commissioners issued following a December 30, 2021 hearing/meeting, which decision denied Avera's Application for Assistance and Hospital Request for Payment on behalf of J.R., a nonresident of Sully County, pursuant to SDCL 28-13-37 and 28-13-38. Avera was represented by Robert R Nelson, attorney at law, Sioux Falls South Dakota, and Sully County was represented by Ryan Vogel, attorney at law, Aberdeen, South Dakota.

The Court heard extended oral argument of respective counsel, and took the matter under advisement. After having reviewed all documents and pleadings filed in the Court record, good cause otherwise appearing therefore, the Court hereby enters its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

1. The Sully County Commissioners at their December 30, 2021 meeting received affidavits from both sides, briefs, documents and exhibits, and heard live witness testimony and oral argument of counsel for both sides.

2. This meeting of the Sully County Commissioners followed a remand of Avera's appeal from this Court by order dated February 9, 2021, directing the Commissioners to develop informal record of the reasons supporting any decision reached by them.

3. The Sully County Commissioners issued their decision denying Avera's claim dated December 30, 2021.

4. J.R. was a Mexican citizen, and not claimed by Avera to be a resident of Sully County.

5. J.R. was employed by Sutton Bay, a large golf resort business located in Sully County, for approximately six months each year as a groundskeeper for the last 11 years prior to 2014.

6. J.R. would arrive annually under a work visa in mid to late April, and worked until sometime in October until Sutton Bay closed.

7. J.R. filed taxes in United States in 2014 which showed his adjusted gross income at $20,555.00 for 2013. J.R.'s income for 2014 was much less at $14,219.10 per pay stub dated September 4, 2014 from Sutton Bay.

8. J.R.'s household consisted of three individuals, J.R., and his wife and daughter, the latter two remaining in Mexico while J.R. worked at Sutton Bay.

9. J.R. had very limited assets including a checking account with approximately $2,000.00, and an old Ford Ranger pickup worth approximately $3,000.00, both of which were disclosed on the County's specific application for poor relief assistance.

10. J.R. provided an old school house in Agar, Sully County, South Dakota, as the address where he lived while working for Sutton Bay each year. It is believed this house was owned by Sutton Bay.

11. On the morning of August 14, 2014, J.R. became gravely ill with severe abdominal pain. He went next-door to his residence and requested an acquaintance drive him to seek medical care and treatment.

12. J.R. was first taken to a medical clinic in Onida, Sully County, South Dakota, and that provider directed that J.R. be immediately taken to St. Mary's Hospital because the medical provider could not help J.R.

13. J.R. was admitted through the emergency department of Avera suffering from acute appendicitis with perforation and necrosis, and underwent immediate surgery followed by ICU and acute inpatient admission until his discharge on August 25, 2014.

14. J.R.'s illness clearly arose while he was at his living quarters in Agar, Sully County.

15. J.R. was not insured and incurred charges for this unexpected hospitalization of $75,632.35, which to date remain wholly unpaid.

16. Sully County's potential liability under SDCL Ch. 28-13, is at the lesser of actual cost ($40,563.33) or Medicaid payment methodology ($13,732.91) pursuant to SDCL 28-13-29.

17. Despite statutory authority to establish and maintain a County Hospital under SDCL Ch. 34-8, Sully County has had no operating hospital within its borders since Fort Sully II was abandoned in 1894.

18. The County's consultant, Sarah Peterson, from Watertown, South Dakota, submitted information and documents asserting the Affordable Care Act ("ACA") applied and that J.R. could have obtained health insurance through the ACA which he failed to do.

19. Peterson's documentation did not include an actual ACA application for J.R. for 2014, the calculation and dollar amount she submitted was for 2021, and she utilized a household size of one for J.R. despite J.R. reflecting a household of three on the County's specific application;

Peterson also asserted J.R. could apply at any time under the ACA, which was not supported by her documentation. Finally, page 2 of Peterson's documentation is illegible and unreadable in the Clerk's file.

20. The documentation submitted from Peterson herself (Exhibit C, p. 15), the ACA was only open for enrollment three months in the Fall each year, and J.R. was not in Sully County at that time. The ACA was not available as a resource for J.R.

21. Peterson's documentation further reflected a checklist or formula to determine when assistance should be provided (Peterson Affidavit November 13, 2020; Exhibit B, p. 6). Based upon Peterson's own information, J.R.'s case was one which required further investigation at a minimum.

22. J.R. had no sufficient funds to pay his bills and no friends to help him with his hospitalization.

23. Sully County's initial denial of Avera's claim dated March 3, 2015 was based upon J.R. not being a resident of Sully County at the time of hospitalization.

24. Sully County's second denial of Avera's claim dated December 30, 2021 was based upon not receiving notice of J.R.'s illness while J.R. was still within Sully County, citing Roane v. Hutchinson County, 40 SD 297, 167 NW 168 (1918), a case involving a Yankton physician's request for payment of medical care and treatment to non-residents of Hutchinson County.

25. Sully County never asserted that Avera's Notice of Hospitalization failed to comply with the requirements of SDCL 28-13-34.1.

26. Avera asserted that Roane was distinguishable on numerous facts, and that Sully County had delegated at best, and abandoned at worst, its statutory duties and obligations to residents and nonresidents under SDCL Ch. 34-8, and Ch. 28-13.

27. With no hospital within Sully County, and Avera being the closest hospital to where J.R. was directed, it would be a factual impossibility for Avera to provide notice to Sully County of J.R.'s illness while J.R. was still within Sully County (short of sending J.R. back to the Sully County before admitting him at great risk to J.R.'s life).

28. Sully County's second denial also alleged that J.R. was indigent by design for failing to purchase individual insurance through the ACA.

29. Avera asserted J.R.'s household of three and his income for 2013 was under the federal poverty income guidelines, with J.R.'s 2014 income being less than 2013 due to his illness and lost time from work. Avera also provided documentation directly from the ACA's 2014 website at www.healthcare.gov, and referred to Peterson's supporting Exhibits, documenting that the ACA's open enrollment closed March 31, 2014, and thus was not available for J.R. to access.

30. If any of the above Findings of Fact are deemed to be Conclusions of Law, they shall be treated as if set forth below under the Court's Conclusions of Law.

Having entered its Findings of Fact, the Court now hereby enters its Conclusions of Law as follows:

CONCLUSIONS OF LAW

1. If any of the following Conclusions of Law are deemed to be Findings of Fact, they shall be treated as if set forth above under the Court's Findings of Fact.

2. The decision by the Sully County Board of County Commissioners denying Avera's Application and claim for assistance on behalf of J.R. was a judicial decision by the County Commissioners. The Commissioners adjudicated rights of J.R. and Avera, after receiving evidence including affidavits, testimony, documents, and briefs.

3. Under SDCL 28-13-40, Avera could have proceeded to Circuit Court by direct legal action, and this statute allows the Court to direct the Commissioners to provide assistance.

4. The standard of review adopted by the Court in this matter is a de novo standard.

5. J.R.'s residency status within Sully County is not relevant to this case. Avera has never asserted J.R. was a resident of Sully County.

6. Sully County Commissioners owe a statutory duty to both residents and nonresidents of Sully County under the respective provisions of SDCL Ch. 28-13.

7. The emergency hospitalization of J.R. at Avera pursuant to SDCL 28-13-27(2) was established in the record.

8. J.R.'s medical indigence was established in the record.

9. The Affordable Care Act in mid-to-late April 2014 when J.R. arrived in Sully County, was not available to J.R. as a resource alleged by County's consultant, and thus, J.R. was not indigent by design for failing to apply for health insurance under the ACA.

10. SDCL 28-13-27 states no express timeframe within which notice must be provided to the County concerning a nonresident.

11. SDCL 28-13-38 provides that the Commissioners shall grant such temporary relief to nonresidents as they would provide in any case where the person has established residency in the state and county.

12. Given no operational hospital, much less medical clinic established or supported by the Sully County Commissioners within Sully county, whether by implied delegation or abdication, it would be factually and fundamentally impossible for a hospital outside of Sully County to provide notice to the Sully County Commissioners of emergency hospital services required by a nonresident while that nonresident was still within Sully County.

13. Given the delegation or abdication of their statutory duties and obligations under SDCL Ch. 28-13 by not having either established a County owned hospital within Sully County, or supporting and maintaining one, Sully County Commissioners are not entitled to notice under SDCL 28-13-37 while the nonresident requiring emergency hospital services is still within Sully County.

14. The Notice of Hospitalization provided by Avera to Sully County pursuant to SDCL 28-13-34.1 met all statutory requirements and was sufficient notice to the Sully County Commissioners under SDCL 28-13-37 for J.R.

15. The Roane case asserted by Sully County as controlling authority is distinguishable on its facts from the instant case, and not controlling authority. The provider involved was a physician, and Avera is a hospital. The physician in Roane "voluntarily" provided the medical treatment and services, while Avera in the instant case was required to provide J.R. all needed emergency hospital care and treatment by Federal law (42 USC Sec. 1395 dd), the ACA, and IRC Sec. 501(r). All 28 of the injured nonresidents in Roane were clearly transient with no connection to Hutchison County, while J.R. in the instant case had been returning to Sully County under a work visa for approximately six months per year for the past 11 years. The Roane Court concluded "...that the County can only be charged by and through the acts of its overseers amounting to express or implied authorization of the temporary relief ..." , but the Sully County Commissioners, by failing to establish or support a hospital (even though otherwise legally authorized to do so), have impliedly authorized hospitals outside of their borders to provide the necessary hospital care and medical treatment Sully County is required by statute to provide to not only their residents, but nonresidents lying sick within their borders.

16. The Sully County Commissioners decision denying Avera's application and claim on behalf of J.R. is not supported by either the facts of this case nor applicable statutory or case law, and Sully County is liable for and directed to pay to Avera, County's statutory obligation at Medicaid payment methodology rates of $13,732.91 under SDCL 28-13-29, pursuant to 28-13-37 and 28-13-38.

Let judgment and order be entered accordingly.

BY THE COURT:

_____

Circuit Court Judge

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF SULLY)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

AVERA ST. MARY'S HOSPITAL, Plaintiff, v. SULLY COUNTY, SOUTH DAKOTA (J.R.), Defendant.	59CIV18-000011 JUDGMENT

The Court, having previously entered its Order Reversing Sully County Commissioner's Denial, good cause otherwise appearing therefore, it is hereby;

ORDERED ADJUDGED AND DECREED, that Avera St. Mary's shall have and recover judgment in the amount of $13,732.91 from Sully County in payment of its Application and claim for assistance on behalf of J.R., a medically indigent, non-resident of Sully County, who required emergency hospital services at Avera St. Mary's from August 14-25, 2014; and it is further

ORDERED ADJUDGED AND DECREED, that Avera St. Mary's is entitled to interest at the statutory rate on its claim amount from and after the date of denial until paid in full.

BY THE COURT:

_____

Circuit Court Judge

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF SULLY)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

AVERA ST. MARY'S HOSPITAL, Plaintiff, v. SULLY COUNTY, SOUTH DAKOTA (J.R.), Defendant.	59CIV18-000011 ORDER REVERSING SULLY COUNTY COMMISION DENIAL

This matter came on for hearing on August 18, 2022, of Avera St. Mary's (Avera's) Amended Notice of Appeal from a decision of the Sully County Board of County Commissioners issued following a December 30, 2021 hearing/meeting, which decision denied Avera's Application for Assistance and Hospital Request for Payment on behalf of J.R., a nonresident of Sully County, pursuant to SDCL 28-13-37 and 28-13-38. Avera was represented by Robert R Nelson, attorney at law, Sioux Falls South Dakota, and Sully County was represented by Ryan Vogel, attorney at law, Aberdeen, South Dakota.

The Court, having previously entered its Findings of Fact and Conclusions of Law, good cause otherwise appearing therefore, it is hereby;

ORDERED ADJUDGED AND DECREED, that the Sully County Board of County Commissioners decision dated March 3, 2015 , denying the Application and claim of Avera St. Mary's on behalf of J.R., a medically indigent, nonresident of Sully County, is hereby reversed; and it is further

ORDERED ADJUDGED AND DECREED, that Sully County shall pay to Avera St. Mary's on behalf of J.R., its statutory obligation pursuant to SDCL 28-13-29, at the Medicaid

payment methodology rate of $13,732.91, together with interest thereon at the statutory rate from the date of denial.

MM/DD/YYYY HH:MM:SS AM

BY THE COURT:

Reviewed

Circuit Court Judge Klinger, Christina

Denied: 09/27/2022
/s/ Klinger, Christina

STATE OF SOUTH DAKOTA) SS	IN CIRCUIT COURT
COUNTY OF SULLY)	SIXTH JUDICIAL CIRCUIT

AVERA ST. MARY'S HOSPITAL, Plaintiff, vs. SULLY COUNTY, SOUTH DAKOTA (K.M.) Defendant.	TRANSCRIPT OF MOTION HEARING 59CIV18-12
AVERA ST. MARY'S HOSPITAL, Plaintiff, vs. SULLY COUNTY, SOUTH DAKOTA (J.R.), Defendant.	59CIV18-11

BEFORE: THE HONORABLE CHRISTINA KLINGER
Judge of the Sixth Judicial Circuit, in Pierre, South Dakota, on the 6th day of January, 2021.

APPEARANCES:

MR. ROBERT NELSON
Po Box 1843
Sioux Falls, SD 57101
Counsel for the Plaintiffs.

MS. EMILY SOVELL
PO BOX 585
Onida, SD 57564
Counsel for the Defendants.

Jessica Paulsen, RPR
Official Court Reporter
PO Box 1238
Pierre, SD 57501
605-773-8227
jessica.paulsen@ujs.state.sd.us

Jessica Paulsen, RPR

PROCEEDINGS

THE COURT: So 59CIV18-12, Avera St. Mary's v. Sully County with regard to treatment of K.M.

Based on the briefing, both parties agree that this is an evidentiary hearing. Mr. Nelson?

MR. NELSON: Well, the only stipulation I want to make to that, Your Honor, is that I won't object to additional live testimony as long as the Court doesn't prejudice any of the evidence submitted by Avera in affidavit form.

Simply because two reasons. One, I don't believe that a trial de novo is required where live witness testimony has to be present.

And, number two, Natalie Malsam, who was the person submitting the major affidavit in support of Avera claims, essentially just lifted the facts from the patient's deposition and any records that the hospital had in its possession.

She is a person who is covering double jobs in St. Luke's in Aberdeen as well as down in Mitchell at Queen of Peace Hospital and it would be virtually impossible for her to be away and attend and provide live testimony again, which is essentially is going to be exactly what she said in the affidavit.

So if that stipulation is acceptable to the county, I'm fine.

THE COURT: Ms. Sovell.

MS. SOVELL: Your Honor, what I would request, and I had suggested this previously, but I didn't get an answer from Mr. Nelson, is that we bifurcate this and first determine the issues of law, which I think would then tell us whether we need evidence to supplement the record.

If we look at right within the code 28-13-1.4, and these are all cited in both briefs, he proposes it can be reviewed under either form. I don't disagree that there are two different mechanisms for review.

But I think that when you look closer at 28-13-1.4, it says notwithstanding 7-8-30, which is the more general review and has the language on de novo, notwithstanding in any appeal regarding medical indigence, the Circuit Court may affirm or remand for further proceedings or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the county has done one of six things.

Either because they have violated constitutional statutory provision; number two, because they have exceeded their statutory authority; 3, because they made an unlawful procedure; four, they've affected by other error of law; five, they're clearly erroneous in light of the entire evidence; or six, there's clearly unwarranted exercise of discretion.

When I did the briefing, we did not have the benefit of that most recent decision by Justice Gilbertson. And that case, in my opinion, really focused the Court in on SDCL28-13 and staying within the parameters that have been set forth strictly within the county poor relief code.

If you look closely again at 28-13-1.4, it says notwithstanding 7-8-30. What's the plain meaning of notwithstanding. Well, it means, by Webster's, it's either without being affected by or in spite of.

So whether or not that general review statute exists or not, I think the Court stays within the review as set forth right within 28-13-1.4.

If we are within that review, then we look strictly at what the county did at the lower level and we look at that record. I think that's what should happen. I think that's the appropriate review by this Court.

If, however, the Court disagrees with that, I think we should have a specific ruling as to why and what type of a review that we're doing and then I'm prepared to go forward with evidentiary.

But I think we should probably make a clear record as to what type of a review before we delve in.

THE COURT: The county's record on this is a letter saying they have denied this without -- and it doesn't give a reason why; is that right? So that's the record I'm

looking at.

If that is, in fact, the record, it's going back down.

MS. SOVELL: No, I would disagree with that, Your Honor. And it's fine if you do remand that. I think it's appropriate if there are errors.

But the record that existed at the time is set forth within the affidavits of Malsam. So to that extent, I don't disagree that Malsam's can be looked at. That was his affidavit and Malsam's included what existed by the county at the time of the review.

There was -- you know, there was a June 27, 2014, letter of denial.

There was, in this particular case, we're looking at K.M., there was a notice of hospitalization dated August 16, 2014. That's also in Exhibit B of Nelson's documents.

There is a January 17, 2014, hospital request for payment.

And there is -- there is additional records, Your Honor.

But the dilemma that we have is because of the way that these are coming into the courts, it's not as expected under Chapter 7 where the appeal is filed and the record is taken over. That statutory form has been out the window.

So what I would like to do maybe with respect to just

6

this argument is to have the county auditor just bring into evidence that which was in existence at the time the county made its decision.

THE COURT: The problem with that, Ms. Sovell, is you're arguing that I look at the record below, but, yet, you want to bring in evidence here today to clarify what that record was.

If we have a record below, give me the record. If we don't have a clear record below, then we're going to go back on remand and you're going to make an appropriate record.

MS. SOVELL: Okay. And, Your Honor, if that's what the Court would like, I don't object to that whatsoever. The record that we have on file that existed at the time the county made its decision that would be relevant as I sit here and make this argument before you is this:

There's a June 27th letter of denial.

There's a notice of hospitalization dated August 16, 2014, that's in the record.

There is the hospital request for payment also attached in the record, and that is dated January 17, 2014.

The most relevant portion of the record, in my opinion, is that notice of hospitalization that is deficient.

We have enough with those three things without

7

anything else to say the county did not commit error in their decision. We have a deficient application. We have a letter of denial.

The State Supreme Court, nor has the legislature ever, ever told the counties that they have to submit in any format their denial.

If they took the application from Avera hospital and stamped it with denial and sent it back, it doesn't make a very good record, but the legislature has not told the county you must follow specific statutory guidelines on the denial.

Where conversely with Avera and the hospitals, they have very particularly said within this timeframe, you have to hit these marks, you have to submit your estimated payments. You have to do these things.

It's deficient even with those three documents that are in the settled record that nobody can refute were in existence.

THE COURT: You're reading -- I agree with your reading of what the legislature has directed. My concern with that is how does this Court make a legitimate review if I don't know why the commission denied it?

How can I either uphold or remand it? How can I look at a clearly erroneous standard if I don't know why it was denied?

8

MS. SOVELL: Your Honor, and I'll be real frank, this case started in 2013. We don't have the same county commissioners. We don't have the same auditors. We don't have the same county poor relief contract providers. Nothing is the same.

This has lingered on and that goes into some other arguments on delay of it when we have let this linger since 2013.

There's not a single person that remembers how the hell this was -- heck this was decided. I'm sorry.

THE COURT: Thank you.

MS. SOVELL: It has lingered on for so long.

And what I'm saying is, under what the statute has given us, we have enough to simply say the county is not responsible.

We have an irregularity or a non-statutory format for application, and we have the denial letter. That's all that's necessary.

THE COURT: Had the letter said this is why we're denying it, we would have that record.

And you're not the only county that's struggling with this. You're not the only hospital. This code has been simply ignored for quite sometime and there are several counties that are struggling with this right now. So this is not a Sully County issue because this is the way it's

9

been done.

But when you ask me to look at them and to decide whether the county was clearly erroneous without giving me a reason why it was denied, the record seems to be lacking.

MS. SOVELL: Okay. With that, Your Honor, I don't disagree. And I would -- if the Court rules that this should be remanded back for consideration on those issues and for further findings to present to this Court as to why, I will absolutely have the county comply and they will do as the Court orders.

THE COURT: Well, let's hear from Mr. Nelson on the issue.

I mean, I heard from you in other counties on the issue, but...

MR. NELSON: Thank you, Your Honor.

May it please the Court and counsel. First, I was counsel in that recent Judge Gilbertson decision, which I'll refrain from my editorial review at this point, but suffice it to say, it did not specifically address county poor relief claims and say that you have to do this, you have to do that, you have to stay within the code under county poor relief.

It was a declaratory action under SDCL Chapter 27A-10. Basically total different underpinnings, total different issues, total different claims saying that these type of people, the ones that are either subject to emergency hold

and/or continuing hold are not your typical people that are under county poor relief, and, thus, those statutes don't apply.

So that aside, number two, we expressly agree with the Court's rationale that essentially the county's record in this matter is only the June 27, 2014, letter. There's nothing else.

We've sought clarification of reasons. We never got them. We took at least a couple times to get the patient's deposition taken and it took months, at least, after that to get documentation that was not provided by the patient at the time of the deposition, which, unfortunately, didn't happen.

But it's interesting to note that the county didn't come up with any semblance of a viable defense until November 10 of 2020 when they finally responded to Avera's motion to -- for an order to direct payment.

And that motion ultimately resulted because all efforts to resolve this claim any other way over the two-plus years that Avera has attempted have been either unresponded to or rejected out of hand.

If this matter is remanded based on the record, Avera would ask that the Court maintain jurisdiction because Avera would submit we're going to be right back in front of the Court on any of the same issues that are still

outstanding in this appeal.

There have been other cases where the notice was not perfect, whether it was a different statement as far as the medical illness or issue involved or a different dollar amount, and other circuit courts have upheld that as sufficient or substantial compliance with the notice requirement that the county was on notice sufficiently to have met the statutory requirements.

So we would be happy to provide those to the Court if and when -- if it's remanded and the county decides to latch onto that sole prong of defense and then go forward with that.

But with that said, again, we submit this person is clearly somebody that should have been determined eligible for assistance by the county. It was clearly an emergency. She almost lost her life. She's clearly a resident of the county. She was a single mom. No insurance.

And pretty much meets every criteria or requirement that would or should qualify her for assistance under the statutes. Thank you.

THE COURT: Ms. Sovell, you were -- you read off three or four things that consist of the record. Where did you get that record from?

MS. SOVELL: Your Honor, the record is actually right within the affidavits that were submitted both by

Mr. Malsam and they're also attached to the affidavit of Sarah Petersen, who is now currently the consultant on county poor relief for Sully County.

And Sarah is present in the courtroom. She did obtain the records for review directly from the county auditor's office. They are attached specifically to the county's -- let me just double check to make sure I'm accurate in that.

The notice of hospitalization specifically referenced that we submit has the blank error is specifically attached to hers, but it is also attached to his.

His documents in and of themselves have adequate and sufficient record to show what existed at the time Sully County made its decision, period.

THE COURT: It shows it existed, but how do I know that the county considered it? How do I know what happened at that meeting when there's no record of that meeting?

Like I said, this is not a Sully County issue. I've been asked on hundreds of cases now to decide what the -- if the county was clearly erroneous, but nobody gives me a record. I can't look on Odyssey and see -- there's no index.

I don't know what -- just because the document existed, I don't know if the commissioners were given it to look at.

MS. SOVELL: Yeah. And I understand that that is a

deficiency within the statutory code.

I can tell you that they were dated prior to the decision being made. I can tell you it's common course. That's what counties do.

But I also understand the dilemma that exists for the Courts.

THE COURT: Mr. Nelson, anything else?

MR. NELSON: No, Your Honor.

THE COURT: All right. So I'll be frank, it was my understanding based on the briefing that the parties had agreed that evidence was going to be heard. This was going to be an evidentiary hearing. That's no longer the Court's understanding.

And so I'm not going to proceed in that manner because, frankly, I don't know that it's authorized for me to have an evidentiary hearing without the agreement of the parties.

Both -- well, we're talking about 18-12 right now. It's impossible for this Court to determine what record was actually placed in front of the county commissioners at the time of this decision, and as a result, 28-13-1.4, I'm remanding it to the county commissioners for determination on all of the necessary issues, including residency, if that is an issue in this particular one, but, also, for just general qualification based on the statutory

requirements.
MS. SOVELL: Thank you, Your Honor.
THE COURT: I assume you both have the same argument in 18-11 -- or 18 --
MR. NELSON: Well, no.
THE COURT: Okay.
MR. NELSON: And I guess I want to be clear before I leave this case, Your Honor.

Avera doesn't have an objection to additional evidence being taken as long as the county stipulates that there is no argument or exclusion or deferential treatment to live testimony versus the evidence Avera has submitted by affidavit.

As long as the county would stipulate to that, we are happy to go forward and let the county put in whatever evidence they deem necessary.
MS. SOVELL: Your Honor, I struggle with that because I think what happens now on remand is we go back and we address a full record, including all of the indigency by design, income, all the information that is there.

That will require, just as it would in court, cross-examination, information from both sides. I don't think that would be appropriate, and I would not agree to that.

Again, I think that simply remand back down -- you

know, again, this is a legislature issue, not a court issue.

Typically, especially because the confidential nature of a lot of the information on the individual, these are all held in executive session. They pertain to litigation.

So to -- and maybe this is a question where the Court is to fashion a hearing that is a closed session executive hearing. I don't know that that's being done in other counties, but maybe that's the appropriate way to bring a full record to the Court.
THE COURT: I think there's a mixture of ways other counties are addressing this and that's why you're not getting clear direction.
MS. SOVELL: And I agree with you.

But I -- we will do our best to develop a full record still within the parameters of the privacy of the individual at issue and we will bring it back to you.
THE COURT: At least in this Court's opinion, I need to know what the record was.

If I don't know what the commissioners were given, I can't tell whether their decision was clearly erroneous or not. Just because a document existed doesn't mean anybody handed it to them for consideration.

So I would be making a lot of assumptions which I don't think either of you would agree for me to make in

order to make a decision.
MS. SOVELL: I understand fully.
THE COURT: Mr. Nelson, they're not willing -- county is within their rights. They're not willing to stipulate to that so it's going to be remanded.
MR. NELSON: I understand that, Your Honor.
THE COURT: All right.

18-11. This is more of an issue of residency; is that right?
MS. SOVELL: Your Honor, I think that there's two legal issues. One, the standard of review, which we already touched on.

And then, two, he relies primarily on what I refer to as the distress statute which is 28-13-37.

So I think that probably we could do some of the legal arguments with respect to that here today, but I will -- it's Mr. Nelson's motion and I will defer.
THE COURT: Mr. Nelson, same issue, I assume, is that I don't know what this record is again, at no fault of the county or the hospital. I'm not putting blame on either party here.

I think nobody really ever figured how to do these until they were asked to make some decisions this year, and last year I think with Brookings County had those issues.

But we have the same issue. I mean, you guys can make

legal argument on the residency issue, but until I know what the commissioners decided, again, I'm stuck with I don't know what the record was. I don't know who gave them what. I don't know if they were given the notice of hospitalization because there's no record to verify that.
MS. SOVELL: I will say there is one difference on -- oh, I'm sorry.
MR. NELSON: Go ahead.
MS. SOVELL: In this particular case, there was, I believe, in the letter a direct reference to residency in the denial.

So this is slightly different. There's a few varying factors in this case that were not applicable in K.M..
THE COURT: Mr. Nelson.
MR. NELSON: Your Honor, yes, the county actually did state a reason for denying in this case, which even to this date, they seem to want to latch on and carry forth and say essentially if the person is not a resident, we have zero liability.

That argument or position wholly ignores subsection 37 of the county poor relief chapter and it flies in the face of modern economic operations in rural South Dakota and all over the place as evidenced by the different decisions and cases that I have submitted in rebuttal and in response to the county and to the Court.

If the county wants to continue and make that argument on residency, this would be an appropriate time to maybe quash that and say that that's not the only issue that matters so that we could more appropriately focus on the other things.

But, clearly, this individual was someone who had come back to the county, had for at least 10 different years, maybe up to 11 or 12, had worked there at Sutton Bay Golf, and, you know, this is probably one of the most egregious situations I've seen.

Most of the time you're talking about dairies, egg, or chicken plants, or something else. Still big corporation, but not something that is clearly for the pursuit of high-end leisure activities and golf.

And for the price of the memberships that they charge up there, you would think that between, you know, the hospital and the county and Sutton Bay that they would have some type of conscious or obligation to provide health insurance for these individuals so that Avera and counties don't get stuck with them, which ends up being, again, cost or expenses which are shared or spread among all the population that remains here.

Avera submits that there is enough in the record based on the only reason the county denied it to support a decision today.

Avera submits that regardless of the fact that he was not a resident of this county, he certainly is someone who clearly fell within the language and provisions of subsection 37.

And for those reasons, we would request that the Court consider and grant Avera's motion.

THE COURT: So Avera is agreeable to the Court giving a legal conclusion as to whether sub 37 -- or 28-13-37 is in addition to residency requirements. Is that --

MR. NELSON: It's different. It's not in addition to. It's just different.

THE COURT: The coverage would be -- the coverage does not -- is not excluded, I guess.

The county made the argument that, and correct me if I'm wrong, Ms. Sovell. The county made the argument that, basically --

Help me understand that argument, maybe, Ms. Sovell. Because 28-13-37 provides relief -- or relief for certain people if they're not residents.

MS. SOVELL: Your Honor, yes -- well, yes and no. 28-13-37 is what I think what we all commonly refer to as the distress statute and it is applicable that individuals -- if you look throughout 28, hospital is referred to as hospital. Individual is referred to as individual.

This allows individuals, if there's a complaint made,

to basically take them out of immediate distress. If there is a person who is in the street suffering immensely, we have an obligation to not let that person lay there if they don't have family, friends, or somebody to get them by ambulance to a hospital. That's what that's particular to.

He argued that that Roane case is no longer good law. That absolutely is spot on. This is spot on and has been cited for the specific purpose of saying hospitals don't have -- counties don't have an obligation to pay hospitals.

Hospitals have a very specific statutory duty to prove when and if the county has an obligation to pay and that has been cited repeatedly.

That Roane said the county where an individual whose non-residence is located does not have to pay for the medical care, indigent or not. They're a non-resident.

We don't just toss the entire residency requirement of the entire section 28 out the window just because we have somebody who is a non-resident laying alongside the road.

The Roane case is on. It has been cited again and again. I think it is just basically a lack of proper reliance on that code section to say Sully County could pay.

If the Court does deem 28-13-37 to create some responsibility for the counties to take that person to another county's hospital and then continue to pay for

them, we have set a horrible public policy.

Every person, regardless of how much money they have, if they're a non-resident and it's not easy for Avera to go latch on to their assets in Mexico with their corn farm. Okay. Now Sully County or Hughes County or whomever, they're going to have to pay that just because they were taken by ambulance elsewhere, resident or not.

No, that's not what our code says. That's not what should be happening here.

THE COURT: Roane was decided in 1918?

MS. SOVELL: Yes.

THE COURT: The statute wasn't updated and adopted by our legislature until 1939.

MS. SOVELL: Yes.

THE COURT: So --

MS. SOVELL: It was cited again in the '30s. It was cited in case law.

It was cited again in the '80s through several of the cases where they were pointing specifically to the hospitals statutory obligations.

It was cited again in 2001 saying statutory obligations.

Nothing has negated that basic precept within that case and it's been cited in recent case law.

THE COURT: Well, 28-13-37 was adopted in 1939 and gave us

possible reasons why we -- why the county would be responsible for non-resident care.

You're relying on a case from 1918, which may have been cited later, but there was no case that has specifically considered 28-13-37.

MS. SOVELL: I don't disagree with you.

But the facts and the law that were set forth there are similar now and they have continued to cite it for the same purposes of holding the hospitals to task. Regardless of Roane -- to task in following their statutory guidelines that they must meet.

Regardless of Roane, the statute in and of itself, if you look at what it says, it shall be the duty of the county commissioners on complaint made to them that any person not an inhabitant of their county is lying sick there or in distress without friends or money, so that he is likely to suffer to examine into the case of such person and grant temporary -- temporary is very key language -- relief as the nature of the case may require.

I'm not saying that if somebody didn't see this individual laying in the street and came to the commissioners and said they need to be taken by ambulance to a hospital, I agree. I don't disagree with that.

When we look just as the statute, it doesn't say the county has to continue to pay for all their care once you

transfer them to another county's hospital.

THE COURT: So who pays them?

MS. SOVELL: Then at that point, then whether it's Hughes County or Minnehaha County or whomever, they can look back to the county of residence.

In this case, there is no county of residence. They would have to go and get recompensed from his home county of Mexico.

The information that he put in that was in the record at the time and dated prior to the denial in this case has a plethora of information on this individual's whereabouts, his assets, his residency.

And it doesn't say that we just cast aside the rest of the statutes. It says then, yes, we go back in. Okay. We took him down there.

If the Court specifically rules, okay, yes, you have to pay for their care just because they have an accident -- if the Court says Sully County has to pay for any individual who has the accident here and whether that care is in Hughes County or in Minnehaha County, fine, I would ask for specific ruling on that as to why and then it guides us right back in.

It doesn't say within the county poor relief statutes that a person who gets care under the distress statutes automatically applies, then we go right back in and we go

under residency.

Residency in this particular case is not Sully County. Sully County does not pay this bill.

THE COURT: Who pays it?

MS. SOVELL: They would have an obligation to go and try to seek it from his home county, his home place, his home assets.

This is what's so difficult. If this -- change the facts. It's not the man from Mexico that's working at Sutton Bay who has a corn farm. So it's a prince from the Middle East with gold and treasures.

Do we say, okay, just because he had the accident here and there's no insurance and it's too tough for Avera to go and track down his assets in the Middle East that he should qualify? That's not what the statutes say.

THE COURT: But don't the statutes give the county the right to then go after the individual and any rights they have?

Isn't that -- the whole purpose of the poor relief is so that our hospitals and clinics are not footing the bill for this and creating -- because that's the public policy so that hospitals are not incurring ridiculously large bills and having to foot the bill on their own.

Instead, they want that to come back to the county and the taxpayers and they've given the commissioners -- or the

county the ability to go back and try to seek that from the individual or their county of residence.

MS. SOVELL: So, Your Honor, I'm not -- I hold that statute and understand its intent is to get them immediate care.

As I look through the rest of 28-13-1.3, nowhere, nowhere does the legislature say that the county then has to pay.

It goes right back into the criteria for the medically indigent person for the county of residence, for all of those things.

It does not say just because they are found laying in wait and we had to take that emergency step to get them to care that the county has to pay.

THE COURT: Well, the 28-13-38, the county furnishing relief shall be entitled to reimbursement from the county in which the person has established residency.

MS. SOVELL: Right. That --

THE COURT: It says the county who paid can go back against the county of residency. That doesn't say the hospital who paid can go back.

So doesn't that in and of itself show that the county -- it's intended to put the burden on the county, the taxpayers to pay, not the individual hospital.

MS. SOVELL: Only after they've met their statutory burden if they qualify for payment.

THE COURT: And you're saying he doesn't meet that why?
MS. SOVELL: Because he is not a resident. Right specifically within 28-13-3, any person in order to be entitled to assistance shall have established residency in the state -- in the state, first, so that's specific -- and in the county where the application is made.

The residency shall be established by his personal presence in a fixed and permanent abode and his intention to remain there.

In determining the residency of the applicant, the county commissioners may consider the establishment of a local bank account, and it goes on to talk about the driver's licensing and that type of thing.

Your Honor, even if we say somehow we've taken this distress statute and brought it in to say, okay, we're going to make this work, then we still have to go back into the code and walk through.

The very first statute in 28-13-1 says, and that's the preface for the entire code section, which takes us right back into that most recent case from Gilbertson, he says focus on that statute as they're written.

28-13-1 says every county shall relieve and support all poor and indigent persons who have established residency therein. That is critical and key throughout.

I don't know where these other county's decisions come

from. I don't know how they were argued.

I think that if we have the individual who doesn't say I'm going home. I think if you have the, sadly, the illegal immigrant who doesn't qualify for other medical care and they are staying in South Dakota and they are staying in Sully County and they have no other place that they're ever planning on going, I hate to say it out loud, but I think we're stuck.

In this case, we don't have residency. We don't have an obligation, period.

THE COURT: So are you simply ignoring 37 and 38?
MS. SOVELL: No.
THE COURT: Which 38 is temporary relief to non-resident.
MS. SOVELL: Yes. It says we have to get them temporary relief. We have to get them to a hospital.

Then if you go on to 38 -- I'm sorry. I have to get there, Your Honor. Yes, that is the one that says we have to get them temporary relief.

Then if you go down to 28-13-38, if a person is entitled to temporary relief as a poor person shall be in any county in which he has not established residency. We're right back to residency again. And then it goes on to talk about the commissioners then could go back to the other county.

Here, if he's going against where the hospital is,

Hughes County is the right person -- the right county to go to if we're looking at the aid beyond the temporary. He was taken from Sully County.

I don't even know if we have a record that says that the conditions started in Sully County or Hughes County or Minnehaha County.

But I just don't know how we put the onus on Sully County for any individual beyond the temporary relief to get them to where they can be cared for.

THE COURT: Looking at the first sentence in 38, whenever a person's entitled to temporary relief as a poor person shall be in any county in which he has not established residency.

Doesn't that infer that he's entitled to relief even though he has not established residency?
MS. SOVELL: Temporary relief, Your Honor. And maybe that's the issue is defining that in our -- having our legislature define it.

Temporary, as I have viewed it through the statutes, whether it be in that Roane case or going forward, temporary is getting them to some place where they can be cared for.

I don't think if there's a whole bus full of people who aren't Sully County residents, and they're all coming through as migrant travelers, do we put that entire onus on

Sully County?

Hospitals receive millions of dollars towards indigent care and other things to help with the status of taking care of the indigents who cannot afford or have insurance. Sully County does not.

Sully County taxpayers, this is setting, again, a very scary precedence for all counties and their taxpayers. Public policy says no.

There are other mechanisms by which the hospitals receive compensation for the indigents and the poor that come within their front doors.

THE COURT: Section 28-13-1 specifically allows the county to raise money by taxation to support -- for the support and employment of the poor.
MS. SOVELL: I don't disagree that that's what it says.

But, again, we're dealing with the temporary. When does the temporary aid stop?
THE COURT: When the county is entitled to reimbursements from the poor person's established residency according to 23-18-38.
MS. SOVELL: Yes. I agree that when there is a person who is properly fit with the parameters for their residency when they're not indigent by design.

I think what we do then if the Court says I'm ruling to you that the distress statute justifies the county

should pay. Okay. I accept that. Let's get the ruling on the record that says that, and we then take it back and we go right back into the statute.

The other portions of it, the -- again, I submit to you that the residency requirement is there. But then you also have to go back in and prove the indigence. Was he indigent by design. Was he not it indigent by design.

Again, that goes back to the wealthy prince. Just because he's here, if he has assets, do we just pay?

Here, we have an individual who clearly says right within the application that's the first thing that comes in. I don't live here. I have a corn farm. I come up here a few months a year and I work at Sutton Bay Golf Resort and I go back to my farm in Mexico.

I just don't see these statutes in setting forth obligation for any counties to pay under the circumstances.

Again, that's why there's other federal assistance to these hospitals to do that.

THE COURT: All right. Mr. Nelson.

MR. NELSON: First of all, I'm going to make an express request on the record for the authority or citation that supports the county's contentions that there's millions of dollars that flow to the hospitals for care of poor indigent people because that's simply not true.

THE COURT: I'm not a federal judge and I'm not going to

make that decision.

MR. NELSON: It's write-offs and it's uncompensated care and it's nothing but deductions and shortfalls to the bottom line.

First of all, to argue -- the county argued that a hospital can't make a complaint under 37. It doesn't say who the complaint has to be made by. So that argument falls.

Number two, it says not an inhabitant of their county. Well, clearly, if you're not an inhabitant of the county, you don't turn around and then go back to the front end of the county poor relief statutes and start looking at, well, are they a resident, are they indigent by design, and all these other issues. They're not a resident.

If you're going to give any meaning whatsoever to 37, you can't accept the county's argument which essentially guts every word in the statute and wants to try to shoehorn it back into this guy is not a resident so therefore we have absolutely no responsibility.

Number three, the Roane decision as the Court correctly noted was decided in 1918. I looked up for one of those prior cases I submitted to the Court exactly how many private hospitals there were even in the state at that time, and I think it was clearly less than five, maybe less than three. I know the first Avera facility was about

1911.

So the history of the state as they develop and as counties existed is every county was required to have their own hospital and part of the tradeoff for all of the county poor relief statutes coming into play or coming into enactment is counties have got to get out of the business of having to have a hospital and meet that requirement and obligation.

So Roane, which was decided in 1918 under the old political code, not even the current statutory scheme, not even the one that exists just prior to this statutory scheme is not applicable law. It is in opposite.

Moreover, it dealt with a bunch of individuals that were riding on top of boxcars on the train. God knows what they were doing or where they were going other than maybe just getting a free ride.

But it is totally different than an individual who is here legally on a work Visa, has come back to Sully County at least 10 years, maybe up to 12. I can't recall exactly from the record, but here legally, working here legally.

The county is enjoying the sales tax revenue, everything else and whatever he buys for groceries or gasoline or --

MS. SOVELL: I'm going to object now to this form of argument. We don't have any of that in the record.

THE COURT: It's a legal argument.

MR. NELSON: This is legal.

THE COURT: Go ahead.

MR. NELSON: So to say they have no benefit or no responsibility or obligation, I think, ignores all that.

Not only that, the familiarity with this gentleman, the first time Avera gets to meet him is when he presents at the ED with a burst appendix and a sepsis on death's door.

And we basically provide the temporary relief to get him healed through the ICU and back to a medical, physical, stable condition so that he's able to be discharged and walk out. But for that care and treatment being provided, he would have died.

Now, I submit that as the Court has noted clearly 37 is a different statute. It is under a civil society, if nothing else, that the State recognizes a certain obligation to transients or other individuals that are not residents of a county.

If the Court refers to the Hanson County case, which I believe I provided a copy of, that one was ultimately resolved and determined involving 16 or 18 transient workers who we never got to the point of whether they had legal work Visas even because they were en route from the northwest where they were working in the forest down to the

southeast, who knows, South Carolina, somewhere, but they had a van accident two miles inside the Hanson County border, and as a result of that and this statute, the determination, ultimate resolution of that case was there's responsibility and liability for the temporary relief because of the emergency nature required.

For the county to say you can look at that statute, but then you have to go back into the front end of 28-13 and work all the way through those statutes is nonsensical. It's an oxymoron. There's no way you can apply the standards of residency and all those other issues apply to the residency of the county.

He was here on a legal work Visa. He is here not as a resident and because he was here for so long and worked so many different years -- arguably, there's some familiarity that the county should have had with the situation.

I can't believe this is the first time the county was ever apprised that Sutton Bay is bringing in labor from outside the country to staff its greens and grounds and take care of everything.

THE COURT: Well, under this code, the county would only care if there was an emergency medical need.

MR. NELSON: Exactly. But some of the other counties where these other cases have happened have decided to look at requiring a bond or putting other restrictions on a private

enterprise that wants to do things like that so that they don't get burned or don't get liability laid at their doorstep in the future.

If this is the first time this has happened to Sully County then that's an option for them to consider.

But, clearly, the residency is not in issue. It doesn't have to be an issue. He is not a resident. We have never asserted that he was.

And the record from the affidavits and whatever else is -- there's two other brothers down in Mexico. They each live in their own little adobe hut on what might be 20 acres referred to as this huge corn farm owned by him alone.

Any assets he did have, the county clearly looked at, this old Ford Ranger pickup, and some money in a bank account and those were all less than what is exempt or otherwise allowed residence under the county poor relief two-page worksheet calculation.

So for all those reasons, we submit that every element of 28-13-37 has been met. The county has never cited any authority that shows or demonstrates or holds that notice of hospitalization as submitted by Avera St. Mary's, in this case to the county, was not sufficient complaint made to the commissioners.

And then even beyond that, contrary to what

Hutchison County may have had in the Roane case, there's no hospital in Sully County where they could have directed or taken them.

So what is their alternative? Let him die in the street or let somebody else take care of it and turn the other cheek and hopefully never have somebody knock on their door.

Avera respectfully requests this Court at least determine that the residency is irrelevant as to the county's liability in this case and we would further submit that enough exists in the record to show that the requirements of 28-13-37 have been met, not only in this case, but analogous to other cases submitted by Avera in this circuit to grant its relief.

MS. SOVELL: Your Honor, if I may very briefly in response to that.

THE COURT: Mr. Nelson, assuming that the non-residency issue is met by the hospital, 28-13-38 specifically says the condition -- the commissioners thereof may, if the same is deemed advisable, grant such relief.

It's not a shall. It's not a requirement. It's if somebody deems it advisable, they can make the temporary relief.

How do we get to shall? How did we get to requiring them to do that instead of if being within their discretion

when the term may is used?

MR. NELSON: Well, when reading in conjunction with 37, which expressly talks about a duty of the county commissioners, I think that it takes it a little bit higher than a low level discretion, you know, may think about it if it's reasonable.

You go to the second argument, if this person was a resident of this county, all economic wage, whatever factors being identical, and that medical condition involved, this is a claim that the county would have to pay.

You know, they want to argue, oh, golly, he should have jumped on the computer and, you know, looked under the ACA and gotten insurance. He doesn't speak a word of English.

THE COURT: Well, I'm not going to get into the facts because, again, we're looking at a situation here where I don't know what was presented.

Based on the current record that I have, I don't know what was presented to the commissioners and there is no way for me to determine whether their decision was clearly erroneous on the facts because I don't know. I don't have what the record was.

Because something existed, doesn't mean it was presented to them. We didn't create a record that I can

look at. So I'm not going to get into the facts of whether they met those or not.

My sole issue of looking at today is whether the non-residency status, which I believe the hospital agrees, is that correct, Mr. Nelson?

MR. NELSON: Yes, Your Honor.

THE COURT: You're not claiming he's a Sully County resident?

MR. NELSON: No.

THE COURT: So the sole issue is a legal argument of whether the non-resident can be covered under the county poor relief.

Isn't that what we're looking at today, right now?

MS. SOVELL: Your Honor, I would submit that that's the sole issue that we're addressing right now.

I'm not saying that's the sole issue that should be determined overall, but, yes.

THE COURT: Right. Okay.

So I'm just not going to get into those facts, Mr. Nelson. I'm not saying they're erroneous or not. I don't have a record to look at.

Response.

MS. SOVELL: Your Honor, very briefly.

First and foremost, the Court said the same focus that I was on is this is a discretionary by the county.

The word may makes that continued under 28-13-38 discretionary.

And then when I go back to 37, even the bare bone elements of 28-13-37, first of all, if the inhabitant is lying sick therein. I don't know that we have in the settled record right here whether he was lying sick in Hughes County before he was taken to Hughes County. How he linked back to Sully County is his employment at Sutton Bay.

So I don't think that is clear that he was lying sick in Sully County. So I think that has failed on behalf of the hospital.

And the element of without friends or money. He has a plethora of information in the application that came in and is in the affidavits to say he had shared a household with several. He was claiming a forty-four-year-old niece as a dependent. I mean, that hasn't been proven either. He had friends and there's evidence of money.

So that he is likely to suffer to examine into the case of such person and grant temporary relief. And I go back to temporary. Again, there's nothing that carries the county's obligation forward.

So I just kind of wanted to walk through the elements if the Court deems this to apply to this individual that we haven't even met the bare bone facts of 28-13-37.

THE COURT: Mr. Nelson, anything further?

MR. NELSON: Your Honor, based on the facts of this case, which I'm not sure if you want to get into or not. The county is certainly getting into them.

It is an individual that qualifies and meets the requirements of 37. Is here for 10 to 12 years straight working on a work Visa, and he's someone that ended up with a burst appendix and sepsis and was brought in. It's in the record, but he was brought in from Sully County.

So, again, if that's something that needs to be fleshed out at a hearing at the county commission level, that's fine. But that's the facts.

THE COURT: All right. Both parties have agreed that this is not an evidentiary hearing and the Court's been very clear that the record is not sufficient for the Court to determine really any of the facts.

And so -- and this was somewhat of a problem in both of your briefs too. You both argued that I shouldn't consider the evidence, but then you both argued the evidence to me.

So we can't have it both ways. We're either in the evidence or we're not, and you both argued that we're not. The county is within their rights and not stipulating to that. So I'm not making any factual determinations today.

What started off as an argument -- or what I would

maybe frame maybe more appropriately is a declaratory ruling on whether 28-13-37 and 38 applied slowly morphed into an evidentiary fact that were presented by the county and the hospital.

So I'm -- the Court's not willing to -- based on both parties going into the factual basis, the Court's not willing to give you a specific ruling on whether 28-13-37 and 38 specifically apply to this case because the county has argued that factually in the evidence are going to determine that and I don't know whether that was before the commission.

The Court is willing to give a general ruling and regarding 28-13-37, it's clear that it shall be the duty of the county commissioners on a complaint made to them that any person who is not an inhabitant of their county lying sick and in distress without any friends or money is entitled to temporary relief as the nature of the case may require.

The legislature went on to speak of temporary relief in 28-13-38 and stated whenever any person entitled to temporary relief as a poor person shall be in a county in which he has not established residency.

Based on this, it's clear to this Court that the legislature was intended to provide poor relief to non-residents of the county under certain circumstances

based on 28-13-37, 28-13-38.

38 goes on to say that the commissioners -- or the county would then grant such relief by providing the same relief as is customary in cases where persons have established residency.

That statute specifically compares non-residents to residents and says non-residents in certain circumstances are to be treated identical to the residents.

Further, it goes on to provide the county with a way to obtain reimbursement from the individual's established residency.

Based on these two statutes alone and in comparison to 28-13 generally, it's this Court's opinion based on the argument and the statute cited that the legislature clearly intended to provide relief to non-residents under those two statutes and only when certain circumstances are met.

That doesn't mean that the circumstances were met in this case because there's no indication of what facts actually are provided under this case.

So that -- the factual and evidentiary is remanded to the commissioners for consideration on whether these statutes are met.

MS. SOVELL: Thank you.

THE COURT: Mr. Nelson, will you provide an -- I guess do you guys want an order on the general ruling?

MR. NELSON: I'll take a stab at it and round it to everybody.

THE COURT: Ms. Sovell, do you want a written order?

MS. SOVELL: Yes, Your Honor. I think that would be helpful so that I can guide the commissioners through what needs to be done.

THE COURT: Try to agree on it based on this ruling. The county is not waiving anything by agreeing to that order, but try to agree on it.

If you can't, submit it to me by e-mail. If you can agree on it, submit it by Odyssey.

MS. SOVELL: Thank you.

THE COURT: All right. Thank you.

Do you guys need other hearings or do you want to get this scheduled at the county level first?

MS. SOVELL: Your Honor, I think I would -- because our commissioners only meet month-to-month, I think I would need to address, first, the ruling with them and secondly scheduling if they have an off day or any other type of review.

The other issue I have is our county poor relief advisor is going to be gone until March -- she will be unavailable until May.

Quite frankly with us meeting only once a month, I don't know that we'll have everything done by then, but I

would just keep that in mind as we look at scheduling going forward.

THE COURT: All right. Do an order for remand in both, please, Ms. Sovell.

All right. Anything else, Mr. Nelson?

MR. NELSON: No, Your Honor.

THE COURT: Ms. Sovell?

MS. SOVELL: Nothing further. Thank you.

THE COURT: All right. Thank you.

(End of proceedings.)

CERTIFICATE OF REPORTER

I, Jessica Paulsen, RPR, Official Court Reporter in and for the State of South Dakota, do hereby certify that the Transcript of Motion Hearing contained on the foregoing pages was reduced to stenographic writing by me and thereafter transcribed; that said proceedings commenced on the 6th day of January, 2021, in Onida, South Dakota, and that the foregoing is a full, true, and complete transcript of my shorthand notes of the proceedings had at the time and place set forth above.

Dated this 22nd day of January, 2021.

/s/Jessica Paulsen
Jessica Paulsen, RPR
Official Court Reporter

'

'30s [1] - 21:16
'80s [1] - 21:18

1

10 [4] - 10:16, 18:7, 32:19, 40:6
11 [1] - 18:8
12 [3] - 18:8, 32:19, 40:6
16 [3] - 5:15, 6:18, 33:22
17 [2] - 5:17, 6:21
18 [2] - 14:4, 33:22
18-11 [2] - 14:4, 16:8
18-12 [1] - 13:18
1911 [1] - 32:1
1918 [4] - 21:10, 22:3, 31:21, 32:9
1939 [2] - 21:13, 21:25

2

20 [1] - 35:12
2001 [1] - 21:21
2013 [2] - 8:2, 8:8
2014 [6] - 5:11, 5:15, 5:17, 6:19, 6:21, 10:6
2020 [1] - 10:16
23-18-38 [1] - 29:20
27 [2] - 5:11, 10:6
27A-10 [1] - 9:22
27th [1] - 6:17
28 [2] - 19:23, 20:17
28-13 [2] - 34:8, 42:13
28-13-1 [3] - 26:18, 26:22, 29:12
28-13-1.3 [1] - 25:5
28-13-1.4 [5] - 3:7, 3:11, 4:6, 4:12, 13:21
28-13-3 [1] - 26:3
28-13-37 [15] - 16:14, 19:8, 19:18, 19:20, 20:23, 21:25, 22:5, 35:20, 36:12, 39:4, 39:25, 41:2, 41:7, 41:13, 42:1
28-13-38 [6] - 25:14, 27:19, 36:18, 39:1, 41:20, 42:1

3

3 [1] - 3:21
37 [10] - 17:20, 19:4, 19:8, 27:11, 31:6, 31:15, 33:15, 37:2, 39:3, 40:6
38 [7] - 27:11, 27:13, 27:16, 28:10, 41:2, 41:8, 42:2

7

7 [1] - 5:23
7-8-30 [2] - 3:12, 4:7

A

ability [1] - 25:1
able [1] - 33:12
abode [1] - 26:8
absolutely [3] - 9:9, 20:7, 31:19
ACA [1] - 37:14
accept [2] - 30:1, 31:16
accident [4] - 23:17, 23:19, 24:12, 34:2
according [1] - 29:19
account [2] - 26:12, 35:16
accurate [1] - 12:7
acres [1] - 35:12
action [1] - 9:22
activities [1] - 18:14
addition [2] - 19:9, 19:10
additional [2] - 5:19, 14:9
address [3] - 9:18, 14:19, 43:18
addressing [2] - 15:12, 38:15
adequate [1] - 12:11
adobe [1] - 35:11
adopted [2] - 21:12, 21:25
advisable [2] - 36:20, 36:22
advisor [1] - 43:22
affected [2] - 3:22, 4:9
affidavit [3] - 5:9, 12:1, 14:13
affidavits [4] - 5:7, 11:25, 35:9, 39:15
affirm [1] - 3:15
afford [1] - 29:4
agree [10] - 7:19, 10:4, 14:23, 15:14, 15:25, 22:23, 29:21, 43:7, 43:9, 43:11
agreeable [1] - 19:7
agreed [2] - 13:11, 40:13
agreeing [1] - 43:8
agreement [1] - 13:16
agrees [1] - 38:4
ahead [2] - 17:8, 33:3
aid [2] - 28:2, 29:17
allowed [1] - 35:17
allows [2] - 19:25, 29:12
almost [1] - 11:16
alone [2] - 35:13, 42:12
alongside [1] - 20:18
alternative [1] - 36:4
ambulance [3] - 20:5, 21:7, 22:22
amount [1] - 11:5
analogous [1] - 36:13
answer [1] - 3:3
appeal [3] - 3:14, 5:23, 11:1
appellant [1] - 3:17
appendix [2] - 33:8, 40:8
applicable [3] - 17:13, 19:22, 32:12
applicant [1] - 26:10
application [6] - 7:2, 7:7, 8:17, 26:6, 30:11, 39:14
applied [1] - 41:2
applies [1] - 23:25
apply [5] - 10:3, 34:10, 34:11, 39:24, 41:8
apprised [1] - 34:18
appropriate [6] - 4:16, 5:5, 6:10, 14:23, 15:9, 18:2
appropriately [2] - 18:4, 41:1
arguably [1] - 34:15
argue [2] - 31:5, 37:12
argued [7] - 20:6, 27:1, 31:5, 40:18, 40:19, 40:22, 41:9
arguing [1] - 6:5
argument [18] - 6:1, 6:16, 14:3, 14:11, 17:1, 17:20, 18:1, 19:14, 19:15, 19:17, 31:7, 31:16, 32:25, 33:1, 37:7, 38:10, 40:25, 42:14
arguments [2] - 8:7, 16:16
aside [2] - 10:4, 23:13
asserted [1] - 35:8
assets [8] - 21:4, 23:12, 24:7, 24:14, 30:9, 35:14
assistance [4] - 11:15, 11:19, 26:4, 30:17
assume [2] - 14:3, 16:18
assuming [1] - 36:17
assumptions [1] - 15:24
attached [5] - 6:21, 12:1, 12:6, 12:9, 12:10
attempted [1] - 10:20
auditor [1] - 6:1
auditor's [1] - 12:5
auditors [1] - 8:3
August [2] - 5:15, 6:18
authority [3] - 3:21, 30:21, 35:21
authorized [1] - 13:15
automatically [1] - 23:25
Avera [18] - 7:7, 7:12, 10:20, 10:22, 10:24, 14:9, 14:12, 18:19, 18:23, 19:1, 19:7, 21:3, 24:13, 31:25, 33:7, 35:22, 36:8, 36:13
Avera's [2] - 10:16, 19:6

B

bank [2] - 26:12, 35:15
bare [2] - 39:3, 39:25
based [12] - 10:22, 13:10, 13:25, 18:23, 37:19, 40:2, 41:5, 41:23, 42:1, 42:12, 42:13, 43:7
basic [1] - 21:23
basis [1] - 41:6
Bay [1] - 30:13
bay [5] - 18:8, 18:17, 24:10, 34:18, 39:9
behalf [1] - 39:11
below [3] - 6:5, 6:8, 6:9
benefit [2] - 4:1, 33:4
best [1] - 15:15
between [1] - 18:16
beyond [3] - 28:2, 28:8, 35:25
bifurcate [1] - 3:4
big [1] - 18:12
bill [3] - 24:3, 24:20, 24:23
bills [1] - 24:23
bit [1] - 37:4
blame [1] - 16:20
blank [1] - 12:9
bond [1] - 34:25
bone [2] - 39:3, 39:25
border [1] - 34:3
bottom [1] - 31:4
boxcars [1] - 32:14
briefing [2] - 4:1, 13:10
briefly [2] - 36:15, 38:23
briefs [2] - 3:8, 40:18
bring [4] - 6:1, 6:6, 15:9, 15:17
bringing [1] - 34:18
brookings [1] - 16:24
brothers [1] - 35:10
brought [3] - 26:15, 40:8, 40:9
bunch [1] - 32:13
burden [2] - 25:22, 25:24
burned [1] - 35:2
burst [2] - 33:8, 40:8
bus [1] - 28:23
business [1] - 32:6
but.. [1] - 9:13
buys [1] - 32:22

C

calculation [1] - 35:18
cannot [1] - 29:4
care [17] - 20:15, 22:2, 22:25, 23:17, 23:19, 23:24, 25:4, 25:13, 27:5, 29:3, 29:4, 30:23, 31:2, 33:13, 34:20, 34:22, 36:5
cared [2] - 28:9, 28:22
Carolina [1] - 34:1
carries [1] - 39:21
carry [1] - 17:17
case [34] - 4:3, 5:13, 8:1, 14:8, 17:9, 17:13, 17:16, 20:6, 20:19, 21:17, 21:24, 22:3, 22:4, 22:17, 22:19, 23:6, 23:10, 24:2, 26:20, 27:9, 28:20, 33:20, 34:4, 35:23, 36:1, 36:10, 36:13, 39:20, 40:2, 41:6, 41:17, 42:18, 42:19
cases [8] - 11:2, 12:18, 17:24, 21:19, 31:22, 34:24, 36:13, 42:4
cast [1] - 23:13
certain [5] - 19:18, 33:17, 41:25, 42:7, 42:16
certainly [2] - 19:2,

40:4
change [1] - 24:8
Chapter [1] - 9:22
chapter [2] - 5:23, 17:21
charge [1] - 18:15
check [1] - 12:7
cheek [1] - 36:6
chicken [1] - 18:12
Circuit [1] - 3:14
circuit [2] - 11:5, 36:14
circumstances [5] - 30:16, 41:25, 42:7, 42:16, 42:17
citation [1] - 30:21
cite [1] - 22:8
cited [12] - 3:8, 20:8, 20:12, 20:19, 21:16, 21:18, 21:21, 21:24, 22:4, 35:20, 42:14
civil [1] - 33:16
claim [2] - 10:19, 37:10
claiming [2] - 38:7, 39:16
claims [2] - 9:19, 9:24
clarification [1] - 10:8
clarify [1] - 6:6
clear [8] - 4:21, 6:9, 14:7, 15:13, 39:10, 40:15, 41:13, 41:23
clearly [20] - 3:23, 3:24, 7:24, 9:3, 11:14, 11:15, 11:16, 12:19, 15:21, 18:6, 18:13, 19:3, 30:10, 31:10, 31:24, 33:15, 35:6, 35:14, 37:21, 42:14
clinics [1] - 24:20
closed [1] - 15:7
closely [1] - 4:6
closer [1] - 3:11
code [11] - 3:7, 4:5, 8:22, 9:20, 13:1, 20:21, 21:8, 26:17, 26:19, 32:10, 34:21
coming [4] - 5:22, 28:24, 32:5
commission [3] - 7:22, 40:11, 41:11
commissioners [20] - 8:3, 12:23, 13:20, 13:22, 15:20, 17:2, 22:14, 22:22, 24:25, 26:11, 27:23, 35:24, 36:19, 37:4, 37:20, 41:14, 42:2, 42:21, 43:5, 43:17
commit [1] - 7:1
common [1] - 13:3
commonly [1] - 19:21
compares [1] - 42:6
comparison [1] - 42:12
compensation [1] - 29:10
complaint [6] - 19:25, 22:14, 31:6, 31:7, 35:23, 41:14
compliance [1] - 11:6
comply [1] - 9:9
computer [1] - 37:13
concern [1] - 7:20
conclusion [1] - 19:8
condition [3] - 33:12, 36:19, 37:9
conditions [1] - 28:5
confidential [1] - 15:3
conjunction [1] - 37:2
conscious [1] - 18:18
consider [4] - 19:6, 26:11, 35:5, 40:19
consideration [3] - 9:7, 15:23, 42:21
considered [2] - 12:15, 22:5
consist [1] - 11:22
constitutional [1] - 3:19
consultant [1] - 12:2
contentions [1] - 30:22
continue [3] - 18:1, 20:25, 22:25
continued [2] - 22:8, 39:1
continuing [1] - 10:1
contract [1] - 8:4
contrary [1] - 35:25
conversely [1] - 7:12
copy [1] - 33:21
corn [4] - 21:4, 24:10, 30:12, 35:12
corporation [1] - 18:12
correct [2] - 19:14, 38:5
correctly [1] - 31:21
cost [1] - 18:20
counsel [2] - 9:15, 9:16
counties [14] - 7:5, 8:24, 9:12, 13:4, 15:9, 15:12, 18:19, 20:9, 20:24, 29:7, 30:16, 32:3, 32:6, 34:23
country [1] - 34:19
county [115] - 3:17, 4:5, 4:14, 5:10, 6:1, 6:2, 6:15, 7:1, 7:10, 8:2, 8:4, 8:14, 8:21, 9:3, 9:9, 9:18, 9:21, 10:2, 10:14, 11:7, 11:10, 11:15, 11:17, 12:3, 12:5, 12:15, 12:19, 13:20, 13:22, 14:10, 14:14, 14:15, 16:3, 16:20, 17:15, 17:21, 17:25, 18:1, 18:7, 18:17, 18:24, 19:2, 19:14, 19:15, 20:11, 20:13, 22:1, 22:14, 22:15, 22:25, 23:5, 23:6, 23:7, 23:23, 24:6, 24:16, 24:24, 25:1, 25:2, 25:6, 25:9, 25:13, 25:14, 25:15, 25:18, 25:19, 25:22, 26:6, 26:11, 26:22, 27:21, 27:24, 28:1, 28:12, 29:12, 29:18, 29:25, 31:5, 31:9, 31:10, 31:12, 32:3, 32:4, 32:21, 33:19, 33:20, 34:7, 34:12, 34:16, 34:17, 34:21, 35:14, 35:17, 35:20, 35:23, 37:3, 37:8, 37:10, 38:11, 38:25, 40:4, 40:11, 40:23, 41:3, 41:8, 41:14, 41:15, 41:21, 41:25, 42:3, 42:9, 43:8, 43:15, 43:21
County [37] - 8:25, 12:3, 12:13, 12:17, 16:24, 20:21, 21:5, 23:4, 23:18, 23:20, 24:2, 24:3, 27:6, 28:1, 28:3, 28:5, 28:6, 28:8, 28:24, 29:1, 29:5, 29:6, 32:18, 34:2, 35:5, 36:1, 36:2, 38:7, 39:7, 39:8, 39:11, 40:9
county's [10] - 4:23, 10:5, 12:6, 20:25, 23:1, 26:25, 30:22, 31:16, 36:10, 39:22
couple [1] - 10:9
course [1] - 13:3
court [2] - 14:21, 15:1
COURT [55] - 3:1, 4:23, 6:4, 7:19, 8:11, 8:19, 9:11, 11:21, 12:14, 13:7, 13:9, 14:3, 14:6, 15:11, 15:18, 16:3, 16:7, 16:18, 17:14, 19:7, 19:12, 21:10, 21:12, 21:15, 21:25, 23:2, 24:4, 24:16, 25:14, 25:18, 26:1, 27:11, 27:13, 28:10, 29:12, 29:18, 30:19, 30:25, 33:1, 33:3, 34:21, 36:17, 37:16, 38:7, 38:10, 38:18, 40:1, 40:13, 42:24, 43:3, 43:7, 43:13, 44:3, 44:7, 44:9
Court [35] - 3:14, 4:3, 4:11, 4:16, 4:17, 6:13, 7:4, 7:21, 9:6, 9:8, 9:10, 9:15, 10:23, 10:25, 11:9, 13:19, 15:6, 15:10, 17:25, 19:5, 19:7, 20:23, 23:16, 23:18, 29:24, 31:20, 31:22, 33:15, 33:20, 36:8, 38:24, 39:24, 40:15, 41:12, 41:23
Court's [7] - 10:5, 13:12, 15:18, 40:14, 41:5, 41:6, 42:13
courtroom [1] - 12:4
courts [2] - 5:22, 11:5
Courts [1] - 13:6
coverage [2] - 19:12
covered [1] - 38:11
create [2] - 20:23, 37:25
creating [1] - 24:21
criteria [2] - 11:18, 25:8
critical [1] - 26:24
cross [1] - 14:22
cross-examination [1] - 14:22
current [2] - 32:10, 37:19
customary [1] - 42:4

D

dairies [1] - 18:11
Dakota [2] - 17:22, 27:5
date [1] - 17:16
dated [5] - 5:14, 6:18, 6:21, 13:2, 23:10
de [1] - 3:13
dealing [1] - 29:16
dealt [1] - 32:13
death's [1] - 33:8
decide [2] - 9:2, 12:18
decided [6] - 8:10, 17:2, 21:10, 31:21, 32:9, 34:24
decides [1] - 11:10
decision [15] - 3:16, 4:2, 6:3, 6:15, 7:2, 9:16, 12:13, 13:3, 13:21, 15:21, 16:1, 18:25, 31:1, 31:20, 37:21
decisions [3] - 16:23, 17:23, 26:25
declaratory [2] - 9:22, 41:1
deductions [1] - 31:3
deem [2] - 14:16, 20:23
deemed [1] - 36:20
deems [2] - 36:22, 39:24
defense [2] - 10:15, 11:11
defer [1] - 16:17
deferential [1] - 14:11
deficiency [1] - 13:1
deficient [3] - 6:24, 7:2, 7:16
define [1] - 26:18
defining [1] - 28:17
delay [1] - 8:7
delve [1] - 4:22
demonstrates [1] - 35:21
denial [9] - 5:12, 6:17, 7:3, 7:6, 7:8, 7:11, 8:17, 17:11, 23:10
denied [5] - 4:24, 7:22, 7:25, 9:4, 18:24
denying [2] - 8:19, 17:16
dependent [1] - 39:17
deposition [2] - 10:10, 10:12
design [5] - 14:20, 29:23, 30:7, 31:13
determination [2] - 13:22, 34:4
determinations [1] - 40:24
determine [6] - 3:4, 13:19, 36:9, 37:21, 40:16, 41:10
determined [3] - 11:14, 33:22, 38:17
determining [1] - 26:10
develop [2] - 15:15,

32:2
die [1] - 36:4
died [1] - 33:14
difference [1] - 17:6
different [14] - 3:10, 9:23, 9:24, 11:3, 11:4, 17:12, 17:23, 18:7, 19:10, 19:11, 32:17, 33:16, 34:15
difficult [1] - 24:8
dilemma [2] - 5:21, 13:5
direct [2] - 10:17, 17:10
directed [2] - 7:20, 36:2
direction [1] - 15:13
directly [1] - 12:5
disagree [7] - 3:9, 5:3, 5:8, 9:6, 22:6, 22:23, 29:15
disagrees [1] - 4:17
discharged [1] - 33:12
discretion [3] - 3:25, 36:25, 37:5
discretionary [2] - 38:25, 39:2
distress [6] - 16:14, 19:22, 20:1, 22:16, 23:24, 26:15, 29:25, 41:16
document [2] - 12:22, 15:22
documentation [1] - 10:11
documents [3] - 5:16, 7:16, 12:11
dollar [1] - 11:4
dollars [2] - 29:2, 30:23
done [5] - 3:17, 9:1, 15:8, 43:6, 43:25
door [2] - 33:9, 36:7
doors [1] - 29:11
doorstep [1] - 35:3
double [1] - 12:7
down [7] - 5:2, 14:25, 23:15, 24:14, 27:19, 33:25, 35:10
driver's [1] - 26:13
duty [4] - 20:10, 22:13, 37:3, 41:13

E

e-mail [1] - 43:10
east [2] - 24:11, 24:14
easy [1] - 21:3
economic [2] - 17:22, 37:8
ED [1] - 33:8
editorial [1] - 9:17
efforts [1] - 10:19
egg [1] - 18:11
egregious [1] - 18:9
either [10] - 3:9, 3:19, 4:8, 7:23, 9:25, 10:20, 15:25, 16:20, 39:17, 40:21
element [2] - 35:19, 39:13
elements [2] - 39:4, 39:23
eligible [1] - 11:14
elsewhere [1] - 21:7
emergency [5] - 9:25, 11:15, 25:12, 34:6, 34:22
employment [2] - 29:14, 39:8
en [1] - 33:24
enactment [1] - 32:6
End [1] - 44:10
end [3] - 18:14, 31:11, 34:8
ended [1] - 40:7
ends [1] - 18:20
English [1] - 37:15
enjoying [1] - 32:21
enterprise [1] - 35:1
entire [5] - 3:23, 20:16, 20:17, 26:19, 28:25
entitled [8] - 25:15, 26:4, 27:20, 28:11, 28:14, 29:18, 41:17, 41:20
erroneous [7] - 3:23, 7:24, 9:3, 12:19, 15:21, 37:22, 38:20
error [3] - 3:22, 7:1, 12:9
errors [1] - 5:5
especially [1] - 15:3
essentially [3] - 10:5, 17:18, 31:16
established [11] - 25:16, 26:4, 26:7, 26:23, 27:21, 28:12, 28:15, 29:19, 41:22, 42:5, 42:10
establishment [1] - 26:11
estimated [1] - 7:14
evidence [13] - 3:6, 3:24, 6:2, 6:6, 13:11, 14:9, 14:12, 14:16, 39:18, 40:19, 40:20, 40:22, 41:9
evidenced [1] - 17:23
evidentiary [6] - 4:20, 13:12, 13:16, 40:14, 41:3, 42:20
exactly [3] - 31:22, 32:19, 34:23
examination [1] - 14:22
examine [2] - 22:17, 39:19
exceeded [1] - 3:20
excluded [1] - 19:13
exclusion [1] - 14:11
executive [2] - 15:5, 15:7
exempt [1] - 35:16
exercise [1] - 3:24
Exhibit [1] - 5:15
existed [9] - 5:6, 5:9, 6:14, 12:12, 12:14, 12:23, 15:22, 32:3, 37:24
existence [2] - 6:2, 7:18
exists [4] - 4:10, 13:5, 32:11, 36:11
expected [1] - 5:22
expenses [1] - 18:21
express [1] - 30:20
expressly [2] - 10:4, 37:3
extent [1] - 5:7

F

face [1] - 17:21
facility [1] - 31:25
fact [3] - 5:2, 19:1, 41:3
factors [2] - 17:13, 37:9
facts [11] - 22:7, 24:9, 37:16, 37:22, 38:1, 38:19, 39:25, 40:2, 40:12, 40:16, 42:18
factual [3] - 40:24, 41:6, 42:20
factually [1] - 41:9
failed [1] - 39:11
falls [1] - 31:8
familiarity [2] - 33:6, 34:15
family [1] - 20:4
far [1] - 11:3
farm [5] - 21:4, 24:10, 30:12, 30:14, 35:12
fashion [1] - 15:7
fault [1] - 16:19
federal [2] - 30:17, 30:25
fell [1] - 19:3
few [2] - 17:12, 30:13
figured [1] - 16:22
file [1] - 6:14
filed [1] - 5:23
finally [1] - 10:16
findings [1] - 9:8
fine [3] - 5:4, 23:20, 40:12
first [16] - 3:4, 9:15, 26:5, 26:18, 28:10, 30:11, 30:20, 31:5, 31:25, 33:7, 34:17, 35:4, 38:24, 39:4, 43:15, 43:18
fit [1] - 29:22
five [2] - 3:23, 31:24
fixed [1] - 26:8
fleshed [1] - 40:11
flies [1] - 17:21
flow [1] - 30:23
focus [3] - 18:4, 26:21, 38:24
focused [1] - 4:3
follow [1] - 7:10
following [1] - 22:10
foot [1] - 24:23
footing [1] - 24:20
Ford [1] - 35:15
foremost [1] - 38:24
forest [1] - 33:25
form [3] - 3:9, 5:24, 32:24
format [2] - 7:6, 8:16
forth [6] - 4:5, 4:12, 5:6, 17:17, 22:7, 30:15
forty [1] - 39:16
forty-four-year-old [1] - 39:16
forward [6] - 4:19, 11:11, 14:15, 28:20, 39:22, 44:2
four [3] - 3:22, 11:22, 39:16
frame [1] - 41:1
frank [2] - 8:1, 13:9
frankly [2] - 13:15, 43:24
free [1] - 32:16
friends [5] - 20:4, 22:16, 39:13, 39:18, 41:16
front [5] - 10:24, 13:20, 29:11, 31:11, 34:8
full [4] - 14:19, 15:10, 15:15, 28:23
fully [1] - 16:2
furnishing [1] - 25:14
future [1] - 35:3

G

gasoline [1] - 32:23
general [5] - 3:12, 4:10, 13:25, 41:12, 42:25
generally [1] - 42:13
gentleman [1] - 33:6
Gilbertson [3] - 4:2, 9:16, 26:20
given [5] - 8:14, 12:23, 15:20, 17:4, 24:25
god [1] - 32:14
gold [1] - 24:11
golf [2] - 18:8, 18:14
Golf [1] - 30:13
golly [1] - 37:12
grant [6] - 19:6, 22:18, 36:14, 36:20, 39:20, 42:3
greens [1] - 34:19
groceries [1] - 32:22
grounds [1] - 34:19
guess [3] - 14:7, 19:13, 42:24
guide [1] - 43:5
guidelines [2] - 7:10, 22:10
guides [1] - 23:22
guts [1] - 31:17
guy [1] - 31:18
guys [3] - 16:25, 42:25, 43:14

H

hand [1] - 10:21
handed [1] - 15:23
hanson [2] - 33:20, 34:2
happy [2] - 11:9, 14:15
hate [1] - 27:7
healed [1] - 33:11
health [1] - 18:18
hear [1] - 9:11
heard [2] - 9:12, 13:11
hearing [6] - 13:12, 13:16, 15:7, 15:8, 40:11, 40:14
hearings [1] - 43:14
heck [1] - 8:10
held [1] - 15:5
hell [1] - 8:10
help [2] - 19:17, 29:3
helpful [1] - 43:5
high [1] - 18:14
high-end [1] - 18:14
higher [1] - 37:4

history [1] - 32:2
hit [1] - 7:14
hold [3] - 9:25, 10:1, 25:3
holding [1] - 22:9
holds [1] - 35:21
home [5] - 23:7, 24:6, 27:3
Honor [28] - 3:2, 5:3, 5:20, 6:12, 8:1, 9:5, 9:14, 11:24, 13:8, 14:2, 14:8, 14:17, 16:6, 16:10, 17:15, 19:20, 25:3, 26:14, 27:17, 28:16, 36:15, 38:6, 38:14, 38:23, 40:2, 43:4, 43:16, 44:6
hopefully [1] - 36:6
horrible [1] - 21:1
hospital [24] - 5:17, 6:20, 7:7, 8:22, 16:20, 18:17, 19:23, 19:24, 20:5, 20:25, 22:23, 23:1, 25:19, 25:23, 27:15, 27:25, 31:6, 32:4, 32:7, 36:2, 36:18, 38:4, 39:12, 41:4
hospitalization [6] - 5:14, 6:18, 6:23, 12:8, 17:5, 35:22
hospitals [13] - 7:12, 20:8, 20:9, 20:10, 21:20, 22:9, 24:20, 24:22, 29:2, 29:9, 30:18, 30:23, 31:23
household [1] - 39:15
huge [1] - 35:12
Hughes [7] - 21:5, 23:4, 23:20, 28:1, 28:5, 39:7
hundreds [1] - 12:18
hut [1] - 35:11
Hutchison [1] - 36:1

I

ICU [1] - 33:11
identical [2] - 37:9, 42:8
ignored [1] - 8:23
ignores [2] - 17:20, 33:5
ignoring [1] - 27:11
illegal [1] - 27:4
illness [1] - 11:4
immediate [2] - 20:1, 25:4
immensely [1] - 20:2
immigrant [1] - 27:4
impossible [1] - 13:19
included [1] - 5:9
including [2] - 13:23, 14:19
income [1] - 14:20
incurring [1] - 24:22
index [1] - 12:21
indication [1] - 42:18
indigence [2] - 3:14, 30:6
indigency [1] - 14:19
indigent [9] - 20:15, 25:9, 26:23, 29:2, 29:23, 30:7, 30:24, 31:13
indigents [2] - 29:4, 29:10
individual [16] - 15:4, 15:17, 18:6, 19:24, 20:13, 22:21, 23:19, 24:17, 25:2, 25:23, 27:2, 28:8, 30:10, 32:17, 39:24, 40:5
Individual [1] - 19:24
individual's [2] - 23:11, 42:10
individuals [5] - 18:19, 19:22, 19:25, 32:13, 33:18
infer [1] - 28:14
information [6] - 14:20, 14:22, 15:4, 23:9, 23:11, 39:14
inhabitant [5] - 22:15, 31:9, 31:10, 39:4, 41:15
inside [1] - 34:2
instead [2] - 24:24, 36:25
insurance [5] - 11:17, 18:19, 24:13, 29:4, 37:14
intended [3] - 25:22, 41:24, 42:15
intent [1] - 25:4
intention [1] - 26:8
interesting [1] - 10:14
involved [2] - 11:4, 37:10
involving [1] - 33:22
irregularity [1] - 8:16
irrelevant [1] - 36:9
issue [23] - 8:25, 9:11, 9:13, 11:4, 12:17, 13:24, 15:1, 15:2, 15:17, 16:8, 16:18, 16:25, 17:1, 18:3, 28:17, 35:6, 35:7, 36:18, 38:3, 38:10, 38:15, 38:16, 43:21
issues [9] - 3:5, 9:7, 9:24, 10:25, 13:23, 16:11, 16:24, 31:14, 34:11
itself [2] - 22:12, 25:21

J

January [2] - 5:17, 6:21
Judge [1] - 9:16
judge [1] - 30:25
jumped [1] - 37:13
June [3] - 5:11, 6:17, 10:6
jurisdiction [1] - 10:23
justice [1] - 4:2
justifies [1] - 29:25

K

K.M [1] - 5:14
K.M. [1] - 17:13
keep [1] - 44:1
key [2] - 22:18, 26:24
kind [1] - 39:23
knock [1] - 36:6
knows [2] - 32:14, 34:1

L

labor [1] - 34:18
lack [1] - 20:20
lacking [1] - 9:4
laid [1] - 35:2
language [3] - 3:13, 19:3, 22:18
large [1] - 24:22
last [1] - 16:24
latch [3] - 11:11, 17:17, 21:4
law [7] - 3:5, 3:22, 20:6, 21:17, 21:24, 22:7, 32:12
lay [1] - 20:3
laying [3] - 20:18, 22:21, 25:11
least [6] - 10:9, 10:10, 15:18, 18:7, 32:19, 36:8
leave [1] - 14:7
legal [9] - 16:10, 16:15, 17:1, 19:8, 33:1, 33:2, 33:24, 34:13, 38:10
legally [3] - 32:18, 32:20
legislature [10] - 7:4, 7:9, 7:20, 15:1, 21:13, 25:6, 28:18, 41:19, 41:24, 42:14
legitimate [1] - 7:21
leisure [1] - 18:14
less [3] - 31:24, 35:16
letter [8] - 4:23, 5:12, 6:17, 7:3, 8:17, 8:19, 10:6, 17:10
level [4] - 4:14, 37:5, 40:11, 43:15
liability [4] - 17:19, 34:5, 35:2, 36:10
licensing [1] - 26:13
life [1] - 11:16
light [1] - 3:23
likely [2] - 22:17, 39:19
line [1] - 31:4
linger [1] - 8:7
lingered [2] - 8:6, 8:12
linked [1] - 39:8
litigation [1] - 15:5
live [3] - 14:11, 30:12, 35:11
local [1] - 26:12
located [1] - 20:14
look [20] - 3:7, 3:11, 4:6, 4:13, 4:14, 6:5, 7:23, 9:2, 12:20, 12:24, 19:23, 22:13, 22:24, 23:5, 25:5, 34:7, 34:24, 38:1, 38:21, 44:1
looked [4] - 5:8, 31:21, 35:14, 37:13
looking [8] - 5:1, 5:13, 28:2, 28:10, 31:12, 37:17, 38:3, 38:13
lost [1] - 11:16
loud [1] - 27:7
low [1] - 37:5
lower [1] - 4:14
lying [5] - 22:15, 39:5, 39:6, 39:10, 41:15

M

mail [1] - 43:10
maintain [1] - 10:23
Malsam [2] - 5:7, 12:1
Malsam's [2] - 5:8, 5:9
man [1] - 24:9
manner [1] - 13:14
March [1] - 43:22
marks [1] - 7:14
Mary's [1] - 35:22
matter [2] - 10:8, 10:22
matters [1] - 18:4
mean [6] - 9:12, 15:22, 16:25, 37:24, 39:17, 42:17
meaning [2] - 4:7, 31:15
means [1] - 4:8
mechanisms [2] - 3:10, 29:9
medical [7] - 3:14, 11:4, 20:15, 27:4, 33:11, 34:22, 37:9
medically [1] - 25:8
meet [5] - 22:11, 26:1, 32:7, 33:7, 43:17
meeting [3] - 12:16, 43:24
meets [2] - 11:18, 40:5
memberships [1] - 18:15
met [10] - 11:8, 25:24, 35:20, 36:12, 36:18, 38:2, 39:25, 42:16, 42:17, 42:22
Mexico [5] - 21:4, 23:8, 24:9, 30:14, 35:10
middle [2] - 24:11, 24:14
might [1] - 35:11
migrant [1] - 28:25
miles [1] - 34:2
millions [2] - 29:2, 30:22
mind [1] - 44:1
Minnehaha [3] - 23:4, 23:20, 28:6
mixture [1] - 15:11
modern [1] - 17:22
modify [1] - 3:16
mom [1] - 11:17
money [7] - 21:2, 22:16, 29:13, 35:15, 39:13, 39:18, 41:16
month [3] - 43:17, 43:24
month-to-month [1] - 43:17
months [2] - 10:10, 30:13
moreover [1] - 32:13
morphed [1] - 41:2
most [5] - 4:2, 6:22, 18:9, 18:11, 26:20
motion [4] - 10:17, 10:18, 16:17, 19:6
MR [19] - 9:14, 13:8, 14:5, 14:7, 16:6, 17:8, 17:15, 19:10, 30:20, 31:2, 33:2, 33:4, 34:23, 37:2,

38:6, 38:9, 40:2, 43:1, 44:6
MS [40] - 3:2, 5:3, 6:12, 8:1, 8:12, 9:5, 11:24, 12:25, 14:2, 14:17, 15:14, 16:2, 16:10, 17:6, 17:9, 19:20, 21:11, 21:14, 21:16, 22:6, 23:3, 24:5, 25:3, 25:17, 25:24, 26:2, 27:12, 27:14, 28:16, 29:15, 29:21, 32:24, 36:15, 38:14, 38:23, 42:23, 43:4, 43:12, 43:16, 44:8
must [2] - 7:10, 22:11

N

nature [4] - 15:3, 22:19, 34:6, 41:17
necessary [3] - 8:18, 13:23, 14:16
need [6] - 3:6, 15:18, 22:22, 34:22, 43:14, 43:18
needs [2] - 40:10, 43:6
negated [1] - 21:23
Nelson [13] - 3:4, 9:11, 13:7, 16:3, 16:18, 17:14, 30:19, 36:17, 38:5, 38:20, 40:1, 42:24, 44:5
NELSON [19] - 9:14, 13:8, 14:5, 14:7, 16:6, 17:8, 17:15, 19:10, 30:20, 31:2, 33:2, 33:4, 34:23, 37:2, 38:6, 38:9, 40:2, 43:1, 44:6
Nelson's [2] - 5:15, 16:17
never [5] - 10:8, 33:23, 35:8, 35:20, 36:6
niece [1] - 39:16
nobody [3] - 7:17, 12:19, 16:22
non [14] - 8:16, 20:14, 20:15, 20:18, 21:3, 22:2, 27:13, 36:17, 38:4, 38:11, 41:25, 42:6, 42:7, 42:15
non-residence [1] - 20:14
non-residency [2] - 36:17, 38:4
non-resident [6] - 20:15, 20:18, 21:3, 22:2, 27:13, 38:11
non-residents [4] - 41:25, 42:6, 42:7, 42:15
non-statutory [1] - 8:16
nonsensical [1] - 34:9
northwest [1] - 33:25
note [1] - 10:14
noted [2] - 31:21, 33:15
nothing [7] - 8:5, 10:7, 21:23, 31:3, 33:17, 39:21, 44:8
notice [9] - 5:14, 6:18, 6:23, 11:2, 11:6, 11:7, 12:8, 17:4, 35:21
notwithstanding [4] - 3:12, 3:13, 4:7, 4:8
November [1] - 10:16
novo [1] - 3:13
nowhere [2] - 25:5, 25:6
number [4] - 3:20, 10:4, 31:9, 31:20

O

object [2] - 6:13, 32:24
objection [1] - 14:9
obligation [11] - 18:18, 20:3, 20:9, 20:11, 24:5, 27:10, 30:16, 32:8, 33:5, 33:18, 39:22
obligations [2] - 21:20, 21:22
obtain [2] - 12:4, 42:10
Odyssey [2] - 12:20, 43:11
office [1] - 12:6
offs [1] - 31:2
old [3] - 32:9, 35:15, 39:16
once [2] - 22:25, 43:24
one [9] - 3:18, 13:24, 16:11, 17:6, 18:9, 27:17, 31:21, 32:11, 33:21
ones [1] - 9:25
onus [2] - 28:7, 28:25
operations [1] - 17:22
opinion [4] - 4:3, 6:23, 15:18, 42:13
opposite [1] - 32:12
option [1] - 35:5
order [7] - 10:17, 16:1, 26:3, 42:25, 43:3, 43:8, 44:3
orders [1] - 9:10
otherwise [1] - 35:17
outside [1] - 34:19
outstanding [1] - 11:1
overall [1] - 38:17
own [3] - 24:23, 32:4, 35:11
owned [1] - 35:12
oxymoron [1] - 34:10

P

page [1] - 35:18
paid [2] - 25:18, 25:20
parameters [3] - 4:4, 15:16, 29:22
part [1] - 32:4
particular [5] - 5:13, 13:24, 17:9, 20:5, 24:2
particularly [1] - 7:13
parties [4] - 13:10, 13:17, 40:13, 41:6
party [1] - 16:21
patient [1] - 10:11
patient's [1] - 10:9
pay [17] - 20:9, 20:11, 20:14, 20:22, 20:25, 21:6, 22:25, 23:17, 23:18, 24:3, 25:7, 25:13, 25:23, 30:1, 30:9, 30:16, 37:11
payment [4] - 5:18, 6:20, 10:17, 25:25
payments [1] - 7:15
pays [2] - 23:2, 24:4
people [5] - 9:25, 10:1, 19:19, 28:23, 30:24
perfect [1] - 11:3
period [2] - 12:13, 27:10
permanent [1] - 26:8
person [23] - 8:9, 11:13, 17:18, 20:2, 20:3, 20:24, 21:2, 22:15, 22:17, 23:24, 25:9, 25:16, 26:3, 27:19, 27:20, 28:1, 28:11, 29:21, 37:7, 39:20, 41:15, 41:20, 41:21
person's [2] - 28:11, 29:19
personal [1] - 26:7
persons [2] - 26:23, 42:4
pertain [1] - 15:5
Petersen [1] - 12:2
physical [1] - 33:11
pickup [1] - 35:15
place [4] - 17:23, 24:6, 27:6, 28:21
placed [1] - 13:20
plain [1] - 4:7
planning [1] - 27:7
plants [1] - 18:12
play [1] - 32:5
plethora [2] - 23:11, 39:14
plus [1] - 10:20
point [3] - 9:17, 23:3, 33:23
pointing [1] - 21:19
policy [3] - 21:1, 24:21, 29:8
political [1] - 32:10
poor [23] - 4:5, 8:4, 9:19, 9:21, 10:2, 12:3, 17:21, 23:23, 24:19, 26:23, 27:20, 28:11, 29:10, 29:14, 29:19, 30:23, 31:12, 32:5, 35:17, 38:12, 41:21, 41:24, 43:21
population [1] - 18:22
portion [1] - 6:22
portions [1] - 30:4
position [1] - 17:20
possible [1] - 22:1
precedence [1] - 29:7
precept [1] - 21:23
preface [1] - 26:19
prejudiced [1] - 3:17
prepared [1] - 4:19
presence [1] - 26:8
present [2] - 9:8, 12:4
presented [4] - 37:18, 37:20, 37:25, 41:3
presents [1] - 33:7
pretty [1] - 11:18
previously [1] - 3:3
price [1] - 18:15
primarily [1] - 16:13
prince [2] - 24:10, 30:8
privacy [1] - 15:16
private [2] - 31:23, 34:25
problem [2] - 6:4, 40:17
procedure [1] - 3:22
proceed [1] - 13:14
proceedings [2] - 3:15, 44:10
prong [1] - 11:11
proper [1] - 20:20
properly [1] - 29:22
proposes [1] - 3:8
prove [2] - 20:10, 30:6
proven [1] - 39:17
provide [7] - 11:9, 18:18, 33:10, 41:24, 42:9, 42:15, 42:24
provided [4] - 10:11, 33:13, 33:21, 42:19
providers [1] - 8:4
provides [1] - 19:18
providing [1] - 42:3
provision [1] - 3:20
provisions [1] - 19:3
Public [1] - 29:8
public [2] - 21:1, 24:21
purpose [2] - 20:8, 24:19
purposes [1] - 22:9
pursuit [1] - 18:13
put [5] - 14:15, 23:9, 25:22, 28:7, 28:25
putting [2] - 16:20, 34:25

Q

qualification [1] - 13:25
qualifies [1] - 40:5
qualify [4] - 11:19, 24:15, 25:25, 27:4
quash [1] - 18:3
quite [2] - 8:23, 43:24

R

raise [1] - 29:13
ranger [1] - 35:15
rationale [1] - 10:5
read [1] - 11:21
reading [3] - 7:19, 37:2
real [1] - 8:1
really [3] - 4:3, 16:22, 40:16
reason [4] - 4:25, 9:4, 17:16, 18:24
reasonable [1] - 37:6
reasons [4] - 10:8, 19:5, 22:1, 35:19
rebuttal [1] - 17:24
receive [2] - 29:2, 29:10
recent [4] - 4:2, 9:16, 21:24, 26:20
recognizes [1] - 33:17
recompensed [1] - 23:7

record [54] - 3:6, 4:15, 4:21, 4:23, 4:25, 5:2, 5:6, 5:23, 6:5, 6:6, 6:8, 6:9, 6:11, 6:14, 6:19, 6:21, 6:22, 7:9, 7:17, 8:20, 9:4, 10:5, 10:22, 11:22, 11:23, 11:24, 12:12, 12:16, 12:20, 13:19, 14:19, 15:10, 15:15, 15:19, 16:19, 17:3, 17:5, 18:23, 23:9, 28:4, 30:2, 30:21, 32:20, 32:25, 35:9, 36:11, 37:19, 37:23, 37:25, 38:21, 39:6, 40:9, 40:15
records [2] - 5:19, 12:5
refer [2] - 16:13, 19:21
reference [1] - 17:10
referenced [1] - 12:8
referred [3] - 19:23, 19:24, 35:12
refers [1] - 33:20
refrain [1] - 9:17
refute [1] - 7:17
regarding [2] - 3:14, 41:13
regardless [4] - 19:1, 21:2, 22:9, 22:12
reimbursement [2] - 25:15, 42:10
reimbursements [1] - 29:18
rejected [1] - 10:21
relevant [2] - 6:15, 6:22
reliance [1] - 20:21
relief [39] - 4:5, 8:4, 9:19, 9:21, 10:2, 12:3, 17:21, 19:18, 22:19, 23:23, 24:19, 25:15, 27:13, 27:15, 27:18, 27:20, 28:8, 28:11, 28:14, 28:16, 31:12, 32:5, 33:10, 34:5, 35:17, 36:14, 36:20, 36:23, 38:12, 39:20, 41:17, 41:19, 41:21, 41:24, 42:3, 42:4, 42:15, 43:21
relies [1] - 16:13
relieve [1] - 26:22
relying [1] - 22:3
remain [1] - 26:9
remains [1] - 18:22
remand [7] - 3:15, 5:4, 6:10, 7:23, 14:18, 14:25, 44:3
remanded [5] - 9:7, 10:22, 11:10, 16:5, 42:20
remanding [1] - 13:22
remembers [1] - 8:9
repeatedly [1] - 20:12
request [5] - 3:2, 5:17, 6:20, 19:5, 30:21
requests [1] - 36:8
require [3] - 14:21, 22:19, 41:18
required [2] - 32:3, 34:6
requirement [6] - 11:7, 11:18, 20:16, 30:5, 32:7, 36:21
requirements [5] - 11:8, 14:1, 19:9, 36:12, 40:6
requiring [2] - 34:25, 36:24
residence [6] - 20:14, 23:5, 23:6, 25:2, 25:9, 35:17
residency [33] - 13:23, 16:8, 17:1, 17:10, 18:2, 19:9, 20:16, 23:12, 24:1, 24:2, 25:16, 25:19, 26:4, 26:7, 26:10, 26:24, 27:9, 27:21, 27:22, 28:13, 28:15, 29:19, 29:22, 30:5, 34:11, 34:12, 35:6, 36:9, 36:17, 38:4, 41:22, 42:5, 42:11
resident [18] - 11:16, 17:18, 19:2, 20:15, 20:18, 21:3, 21:7, 22:2, 26:2, 27:13, 31:13, 31:14, 31:18, 34:14, 35:7, 37:8, 38:8, 38:11
residents [9] - 19:19, 28:24, 33:19, 41:25, 42:6, 42:7, 42:8, 42:15
resolution [1] - 34:4
resolve [1] - 10:19
resolved [1] - 33:22
Resort [1] - 30:14
respect [2] - 5:25, 16:16
respectfully [1] - 36:8
responded [1] - 10:16
response [3] - 17:24, 36:15, 38:22
responsibility [4] - 20:24, 31:19, 33:5, 34:5
responsible [2] - 8:15, 22:2
rest [2] - 23:13, 25:5
restrictions [1] - 34:25
result [2] - 13:21, 34:3
resulted [1] - 10:18
revenue [1] - 32:21
reverse [1] - 3:15
review [14] - 3:10, 3:13, 4:10, 4:11, 4:13, 4:16, 4:19, 4:22, 5:10, 7:21, 9:17, 12:5, 16:11, 43:20
reviewed [1] - 3:9
ride [1] - 32:16
ridiculously [1] - 24:22
riding [1] - 32:14
rights [4] - 3:16, 16:4, 24:17, 40:23
road [1] - 20:18
Roane [10] - 20:6, 20:13, 20:19, 21:10, 22:10, 22:12, 28:20, 31:20, 32:9, 36:1
round [1] - 43:1
route [1] - 33:24
rules [2] - 9:6, 23:16
ruling [10] - 4:18, 23:21, 29:24, 30:1, 41:2, 41:7, 41:12, 42:25, 43:7, 43:18
rural [1] - 17:22

S

sadly [1] - 27:3
sales [1] - 32:21
Sarah [2] - 12:2, 12:4
scary [1] - 29:7
scheduled [1] - 43:15
scheduling [2] - 43:19, 44:1
scheme [2] - 32:10, 32:12
SDCL [1] - 9:22
SDCL28-13 [1] - 4:4
second [1] - 37:7
secondly [1] - 43:18
section [4] - 20:17, 20:21, 26:19, 29:12
see [3] - 12:20, 22:20, 30:15
seek [2] - 24:6, 25:1
seem [1] - 17:17
semblance [1] - 10:15
sent [1] - 7:8
sentence [1] - 28:10
sepsis [2] - 33:8, 40:8
session [2] - 15:5, 15:7
set [5] - 4:5, 4:11, 5:6, 21:1, 22:7
setting [2] - 29:6, 30:15
settled [2] - 7:17, 39:6
several [3] - 8:23, 21:18, 39:16
shall [11] - 22:13, 25:15, 26:4, 26:7, 26:22, 27:20, 28:12, 36:21, 36:24, 41:13, 41:21
shared [2] - 18:21, 39:15
shoehorn [1] - 31:17
shortfalls [1] - 31:3
show [3] - 12:12, 25:21, 36:11
shows [2] - 12:14, 35:21
sick [5] - 22:15, 39:5, 39:6, 39:10, 41:16
sides [1] - 14:22
similar [1] - 22:8
simply [5] - 8:14, 8:23, 14:25, 27:11, 30:24
single [2] - 8:9, 11:17
sit [1] - 6:15
situation [2] - 34:16, 37:17
situations [1] - 18:10
six [2] - 3:18, 3:24
slightly [1] - 17:12
slowly [1] - 41:2
society [1] - 33:16
sole [5] - 11:11, 38:3, 38:10, 38:15, 38:16
someone [3] - 18:6, 19:2, 40:7
sometime [1] - 8:23
somewhat [1] - 40:17
somewhere [1] - 34:1
sorry [3] - 8:10, 17:7, 27:16
sought [1] - 10:8
South [3] - 17:22, 27:5, 34:1
southeast [1] - 34:1
Sovell [8] - 3:1, 6:4, 11:21, 19:15, 19:17, 43:3, 44:4, 44:7
SOVELL [40] - 3:2, 5:3, 6:12, 8:1, 8:12, 9:5, 11:24, 12:25, 14:2, 14:17, 15:14, 16:2, 16:10, 17:6, 17:9, 19:20, 21:11, 21:14, 21:16, 22:6, 23:3, 24:5, 25:3, 25:17, 25:24, 26:2, 27:12, 27:14, 28:16, 29:15, 29:21, 32:24, 36:15, 38:14, 38:23, 42:23, 43:4, 43:12, 43:16, 44:8
specific [7] - 4:18, 7:10, 20:8, 20:10, 23:21, 26:5, 41:7
specifically [12] - 9:18, 12:6, 12:8, 12:9, 21:19, 22:5, 23:16, 26:3, 29:12, 36:18, 41:8, 42:6
spite [1] - 4:9
spot [2] - 20:7
spread [1] - 18:21
St [1] - 35:22
stab [1] - 43:1
stable [1] - 33:12
staff [1] - 34:19
stamped [1] - 7:8
standard [2] - 7:24, 16:11
standards [1] - 34:11
start [1] - 31:12
started [3] - 8:2, 28:5, 40:25
state [5] - 17:15, 26:5, 31:23, 32:2
State [2] - 7:4, 33:17
statement [1] - 11:3
status [2] - 29:3, 38:4
statute [19] - 4:10, 8:13, 16:14, 19:22, 21:12, 22:12, 22:24, 25:3, 26:15, 26:18, 26:21, 29:25, 30:3, 31:17, 33:16, 34:3, 34:7, 42:6, 42:14
statutes [15] - 10:2, 11:20, 23:14, 23:23, 23:24, 24:15, 24:16, 28:19, 30:15, 31:12, 32:5, 34:9, 42:12, 42:16, 42:22
statutory [15] - 3:20, 3:21, 5:24, 7:10, 8:16, 11:8, 13:1, 13:25, 20:10, 21:20, 21:21, 22:10, 25:24, 32:10, 32:11
stay [1] - 9:20
staying [3] - 4:4, 27:5, 27:6
stays [1] - 4:11
step [1] - 25:12
still [4] - 10:25, 15:16,

18:12, 26:16
stipulate [2] - 14:14, 16:4
stipulates [1] - 14:10
stipulating [1] - 40:23
stop [1] - 29:17
straight [1] - 40:6
street [3] - 20:2, 22:21, 36:5
strictly [2] - 4:5, 4:13
struggle [1] - 14:17
struggling [2] - 8:21, 8:24
stuck [3] - 17:2, 18:20, 27:8
sub [1] - 19:8
subject [1] - 9:25
submit [12] - 7:5, 7:14, 10:24, 11:13, 12:9, 30:4, 33:15, 35:19, 36:10, 38:14, 43:10, 43:11
submits [2] - 18:23, 19:1
submitted [6] - 11:25, 14:12, 17:24, 31:22, 35:22, 36:13
subsection [2] - 17:20, 19:4
substantial [2] - 3:16, 11:6
suffer [2] - 22:17, 39:19
suffering [1] - 20:2
suffice [1] - 9:18
sufficient [4] - 11:6, 12:12, 35:23, 40:15
sufficiently [1] - 11:7
suggested [1] - 3:3
Sully [24] - 8:25, 12:3, 12:13, 12:17, 20:21, 21:5, 23:18, 24:2, 24:3, 27:6, 28:3, 28:5, 28:8, 28:24, 29:1, 29:5, 29:6, 32:18, 35:5, 36:2, 38:7, 39:8, 39:11, 40:9
supplement [1] - 3:6
support [4] - 18:24, 26:22, 29:13
supports [1] - 30:22
Supreme [1] - 7:4
Sutton [6] - 18:8, 18:17, 24:10, 30:13, 34:18, 39:9

T

talks [1] - 37:3
task [2] - 22:9, 22:10
tax [1] - 32:21
taxation [1] - 29:13
taxpayers [4] - 24:25, 25:23, 29:6, 29:7
temporary [22] - 22:18, 27:13, 27:14, 27:18, 27:20, 28:2, 28:8, 28:11, 28:16, 28:19, 28:21, 29:16, 29:17, 33:10, 34:5, 36:22, 39:20, 39:21, 41:17, 41:19, 41:21
term [1] - 37:1
testimony [1] - 14:12
themselves [1] - 12:11
therefore [1] - 31:18
therein [2] - 26:24, 39:5
thereof [1] - 36:19
they've [3] - 3:22, 24:25, 25:24
three [5] - 6:25, 7:16, 11:21, 31:20, 31:25
throughout [2] - 19:23, 26:24
timeframe [1] - 7:13
today [6] - 6:6, 16:16, 18:25, 38:3, 38:13, 40:24
took [4] - 7:7, 10:9, 10:10, 23:15
top [1] - 32:14
toss [1] - 20:16
total [3] - 9:23, 9:24
totally [1] - 32:17
touched [1] - 16:12
tough [1] - 24:13
towards [1] - 29:2
track [1] - 24:14
tradeoff [1] - 32:4
train [1] - 32:14
transfer [1] - 23:1
transient [1] - 33:22
transients [1] - 33:18
travelers [1] - 26:25
treasures [1] - 24:11
treated [1] - 42:8
treatment [2] - 14:11, 33:13
true [1] - 30:24
try [5] - 24:5, 25:1, 31:17, 43:7, 43:9
turn [2] - 31:11, 36:5
two [12] - 3:10, 3:20, 10:4, 10:20, 16:10, 16:13, 31:9, 34:2, 35:10, 35:18, 42:12, 42:15
two-page [1] - 35:18
two-plus [1] - 10:20
type [6] - 4:18, 4:22, 9:24, 18:18, 26:13, 43:19
typical [1] - 10:1
typically [1] - 15:3

U

ultimate [1] - 34:4
ultimately [2] - 10:18, 33:21
unavailable [1] - 43:23
uncompensated [1] - 31:2
under [21] - 3:9, 5:23, 8:13, 9:20, 9:22, 10:2, 11:19, 23:24, 24:1, 30:16, 31:6, 32:9, 33:16, 34:21, 35:17, 37:13, 38:11, 39:1, 41:25, 42:15, 42:19
underpinnings [1] - 9:23
unfortunately [1] - 10:12
unlawful [1] - 3:21
unresponded [1] - 10:21
unwarranted [1] - 3:24
up [8] - 10:15, 18:8, 18:16, 18:20, 30:12, 31:21, 32:19, 40:7
updated [1] - 21:12
upheld [1] - 11:5
uphold [1] - 7:23

V

van [1] - 34:2
varying [1] - 17:12
verify [1] - 17:5
versus [1] - 14:12
viable [1] - 10:15
viewed [1] - 28:19
violated [1] - 3:19
Visa [3] - 32:18, 34:13, 40:7
visas [1] - 33:24

W

wage [1] - 37:8
wait [1] - 25:12
waiving [1] - 43:8
walk [3] - 26:17, 33:13, 39:23
wants [3] - 18:1, 31:17, 35:1
ways [2] - 15:11, 40:21
wealthy [1] - 30:8
webster's [1] - 4:8
whatsoever [2] - 6:13, 31:15
whereabouts [1] - 23:11
whole [2] - 24:19, 28:23
wholly [1] - 17:20
willing [5] - 16:3, 16:4, 41:5, 41:7, 41:12
window [2] - 5:24, 20:17
word [3] - 31:17, 37:14, 39:1
workers [1] - 33:23
worksheet [1] - 35:18
write [1] - 31:2
write-offs [1] - 31:2
written [2] - 26:21, 43:3

Y

year [4] - 16:23, 16:24, 30:13, 39:16
years [5] - 10:20, 18:7, 32:19, 34:15, 40:6

Z

zero [1] - 17:18

STATE OF SOUTH DAKOTA	) SS	IN CIRCUIT COURT
COUNTY OF SULLY	)	SIXTH JUDICIAL CIRCUIT

AVERA ST. MARY'S HOSPITAL, Plaintiff, vs. Sully County, SOUTH DAKOTA (J.R.), Defendant.	)	59CIV18-11 TRANSCRIPT OF ORAL ARGUMENT

BEFORE: THE HONORABLE CHRISTIE KLINGER
Judge of the Sixth Judicial Circuit, in Onida, South Dakota, on the 18th day of August, 2022.

APPEARANCES:

MR. ROBERT NELSON
Po Box 1843
Sioux Falls, SD 57101
Counsel for the Plaintiff.

MR. RYAN VOGEL
PO Box 1030
Aberdeen, SD 57402
Counsel for the Defendant.

Jess Paulsen, RPR
Official Court Reporter
PO Box 1238
Pierre, SD 57501
605-773-8227
jessica.paulsen@ujs.state.sd.us

PROCEEDINGS

THE COURT: All right. We're going to be in session in 59CIV 18-11, Avera St. Mary's Hospital v. Sully County.

Go ahead and note your appearance for the record, please.

MR. NELSON: Thank you, Your Honor. Robert Nelson on behalf of Avera St. Mary's Hospital.

MR. VOGEL: Thanks, Your Honor. Ryan Vogel on behalf of Sully County.

THE COURT: All right. We have two motions. Well, one motion and a Notice of Appeal to address today.

Is that the agreement of the parties?

MR. NELSON: Yes, Your Honor. I mean, they both were timely served and notice for hearing.

MR. VOGEL: Your Honor, I, with my submissions, Sully County's position is this is an appeal hearing on the Sully County commission's determination on an application for poor relief.

So we're opposing the motion to supplement the record so however the Court wants to handle it, obviously, it's up to the Court.

But I think my argument will tie into with why we're opposing the motion to supplement the record.

THE COURT: All right. My question is only those are the two motions pending; right? Two issues pending?

MR. VOGEL: Yes, I haven't filed anything.

THE COURT: Okay.

MR. VOGEL: Other than responses, Your Honor.

THE COURT: Mr. Nelson, that's everything you have pending?

MR. NELSON: Yes, Your Honor.

THE COURT: All right. Let's do the motion to supplement the record first.

Mr. Nelson, anything else?

MR. NELSON: Well, Your Honor, Avera will essentially rest on the supporting affidavits and the motion. Clearly, the -- somewhat of a surprise, if you will, but the questions were raised at the December 30 of '21 hearing by the commissioners how do we know that J.R. was in Sully County when he started getting sick. I mean, he could have been in Pierre visiting friends. He could have been anywhere.

And then when they introduced the letter from the Onida Ambulance to say, look, with his other hospitalization, they picked him up. They took him right to the hospital. Well, yeah they did, because he had a gaping gash in his hand and ran him down to the hospital to the emergency room for stitches and taking care of it.

The bottom line is that one never became a claim because it was a work comp injury and work comp took care of it.

But the point being, the commission wanted to say that because Sully County implied, I may be reading into this, but because Sully County and Onida Ambulance went and picked him up, they were aware at the time he was ill that he was requiring treatment and, you know, so they impliedly would have been responsible for it.

I guess I submit that if the ambulance had, in fact, picked up J.R. in this case, because clearly, it's not work comp. It didn't -- the appendix, abscess, and bursting didn't happen while he was on the job, and really I'm not aware of any work comp case where that's ever been tied into a casual claim for work comp.

The worst that would have happened is that Sully County would have also had an unpaid ambulance bill.

So the statutes that we cited in the motion clearly talk about only having to make the motion prior to the hearing. They don't talk about any other limitation. They don't talk about any restrictions.

The county has not cited any case or authority that would preclude granting that motion and supplementing the record.

And Avera can only assume that the reason they don't want the record further supplemented with this information in there is that it further boxes the county into a corner and takes away some of their other questions or issues that

were raised at the hearing.

So for those reasons, and to have a fuller, truer, and more complete record, Avera respectfully requests that that motion be granted and that the record be supplemented with the two additional pleadings.

THE COURT: Mr. Nelson, maybe you can answer this, and it somewhat is getting beyond your motion, but since your motion does ask to supplement the record, these somewhat kind of bleed into each other.

The record on the appeal wasn't exactly, what I would call, a clean record. It was confusing to the Court, even after remanding it and giving pretty clear direction on what I needed to proceed.

There's a letter from the auditor, somewhere within the record, that says the attachments that the commission reviewed have already been provided and so I'm not providing them again.

I, in reviewing the record, am not clear what the commission reviewed at this time, other than the parties have submitted documents and referred to them as documents that were reviewed by the commission.

So these documents that were submitted, and they're attached mostly to Avera's motions or responses and pleadings, are those what the commission reviewed?

MR. NELSON: Well, it would be part of it. And the Court

6

raises an excellent question, because, again, with regard to the, I'll use air quotes, but the affidavit of Sarah Peterson, my paralegal just raised this question after our reply brief, and I apologize for not seeing it myself and not raising it, but there could be some real question of whether that document even meets the minimum requirements for an affidavit.

There's no jurat. There's no language that says the affiant -- or the affiant, after duly being sworn under oath, deposes and states as follows. There's no sovereign seal ahead of the notary at the bottom.

Basically, it looks kind of like a homemade affidavit that someone tried to call and say this is an affidavit. So that's one issue.

Second, there was testimony, I'll use that word, again, in air quotes, by Ms. Peterson at the hearing. As far as I know, she was never sworn in, at least not in my presence.

Mr. Vogel and I obviously are officers of the Court. We're not able to testify or produce facts, but we're there making argument.

But clear from the transcript, if the Court saw that, that the commission relied upon 95 to 98 percent plus Ms. Peterson's submissions in writing and all the attached exhibits and recommendation of Mr. Vogel.

7

So those are other additional issues that Avera questions as far as procedural irregularities and whether that documentation is appropriately in the record.

THE COURT: Did you request a regular procedure or an opportunity to cross-examine any of the, I'm going to say witnesses, Ms. Peterson?

MR. NELSON: Well --

THE COURT: There was another one, I believe, also, from the --

MR. NELSON: Unless Ms. Lamb testified. I don't recall that.

THE COURT: That's possible.

MR. NELSON: But I guess my understanding was it was a hearing. That, you know, in -- if there was any additional oral testimony, which counsel never discussed between ourselves. Clearly I anticipated that I would be able to cross-examine.

In fact, if you note in the transcript, when Ms. Peterson started to respond -- she appeared by telephone -- started to respond to commission questions, I asked to raise a question or two and I was pretty much shut down.

It was only if the county commissioners were going to allow me to ask Ms. Peterson or relay the questions to them and have them ask Ms. Peterson that we would be able to get

8

the information I was trying to clarify.

So did I ask for a formal hearing? No. I understood it to be a hearing before the county commissioners which is an administrative agency, under Chapter 1-26.

And, I guess, whether or not I cross-examined the witness, certainly anything accepted by the commissioners should meet minimum evidentiary standards, which I submit this pleading purported to be an affidavit by Ms. Peterson does not.

THE COURT: Did you object to it at the time of the hearing -- or the time it was introduced?

Again, I'm going to go back -- and Mr. Vogel, this is coming to you too -- I don't still know looking at what was submitted, I don't know what the commission looked at --

MR. VOGEL: Your --

THE COURT: -- because the letter from the auditor says here's the transcript. You have everything else.

I don't know what everything else is and that was part of the issue previously.

MR. VOGEL: If I may, Your Honor?

THE COURT: Go ahead.

MR. VOGEL: On March 1, 2022, Ms. Lamb submitted an affidavit that included Exhibits A, B, C, and D. That was filed through Odyssey.

Exhibit A was the transcript made of the commission

9

meeting by Ms. Wittler. It's the complete transcript.

Exhibit B -- this was all attached to that -- reattached to that affidavit, Your Honor.

Exhibit B were the documents submitted on behalf of Avera St. Mary's by Mr. Nelson.

Exhibit C were documents submitted on behalf of Sully County by myself.

Exhibit D is the official minutes of Sully County.

And that is the entire record, you know, the transcript and all -- everything that was submitted prior to the hearing and potentially -- excuse me -- in the meeting and at the meeting, that was what was considered by the Sully County commissioners.

So that's the complete transcript or record that the statute calls for.

And I apologize, Your Honor. My office may not have looked at your preferences and e-mailed or mailed you a copy. It may have just been filed in Odyssey.

THE COURT: That's my preference.

MR. VOGEL: Just filing?

THE COURT: Yes.

MR. VOGEL: Okay.

THE COURT: I want -- I just want to be certain, because the -- again, the record wasn't extremely clear. This is not a typical record that I would receive from an

administrative appeal of any kind, but these are not typical cases.

So I want to be clear that this -- these records submitted by Avera were considered by the commission.

MR. VOGEL: Which records are you referring to?

THE COURT: There were the, I think, it's the exhibit -- I only printed them one time because they were -- you've got several submissions where Exhibits A through C, at least, were submitted. They're the exact same thing multiple times.

So what I'm looking at is the records that were submitted on January 31st of 2022, starting with the Onida Fire Department letter.

There includes with it an affidavit of Dr. Brant Becker, which, frankly, was in the record previously, September 25th of 2020.

And then shortly after that is an executive summary, confidential, and that actually was dated March 1st.

And then with the affidavit of Dr. Becker.

MR. VOGEL: Your Honor, my understanding is, yes, because that would have been exhibit -- attached as Exhibit B to that affidavit of Ms. Lamb. It's dated February 28, 2022, and filed on March 1, 2022.

I had set -- I had corresponded with Mr. Nelson prior to the meeting. It had been in November and got

rescheduled for reasons and asked to provide the auditor any materials that he wanted the commission to consider at the meeting on December 30th to the auditor by a specific date, and I believe those were included and they were attached to that affidavit of Ms. Lamb and was filed with the Court.

THE COURT: All right. Thank you.

Mr. Nelson, anything else in light of that?

MR. NELSON: No, Your Honor.

THE COURT: Mr. Vogel, with regard to the motion to supplement the record.

MR. VOGEL: And I apologize, Your Honor. Is your preference -- is it all right if I remain seated?

THE COURT: Whatever you're comfortable doing.

MR. VOGEL: Thank you, Your Honor.

I think you hit kind of the nail on the head as far as these -- the appeal and this motion to supplement the record. Kind of, in my opinion, they tie hand in hand.

The county's position is that the original remand to Sully County was to create a better record so the Court -- a more complete record so the Court understood what the -- what was reviewed to rationalize the decision of the commission in accepting or granting or denying the application, and that was done and it was denied and then there was an appeal.

So to start with that, I mean, this goes to the motion to supplement the record. I -- we're objecting to it.

Number one, the statute cited by Mr. Nelson for -- that allows the Court to have the agency add additions to the record also states that there has to be good reason to supplement.

If you continue on reading that statute, Mr. Nelson didn't cite that, but it does. And that's what I addressed in my brief. There is no good reason to supplement and remand this back for additional hearing.

They've had plenty of time. The hospitalization ended in August of 2014. The first application was denied by letter in 2015. And I wasn't a part of it from 2015 until the hearing in January of 2021, but there were six years there where information could have been gathered by Avera.

There was the hearing before this Court in 2021 and then the remand, and there was -- then my office came on board.

And there was communication between myself and Mr. Nelson and setting of the commission hearing to re-hear this petition or present it to the commission again, and that took place on December 30th, 2021.

So Avera had a year since remand to gather any information they needed to present to the commission to make part of the appeal record, and that's what we're

talking about here is an appeal record.

This is -- and the way I see it, just like an appeal to this Court to the Supreme Court, what's the record is the record, so that goes back to my motion -- the motion to supplement. We're opposed to it.

Number one because, as I outlined in my brief, our position is the standard of review for this Court on the commission's denial of the application is an abuse of discretion and that's a high standard.

And the Supreme Court has said, you know, it's not the trial court's job to be a one person administrative agency under a de novo review, even though the statutes say that.

So if this Court is to supplement the record and make the determination on the appeal, essentially, we're reviewing a de novo, or the Court is saying even with that information, they wouldn't have abused the discretion. So that's why we're opposing that, Your Honor. It really ties to the standard of the review.

And we're asking that this not be remanded again. This case has been going on since hospitalization, eight years; since remand, a year and a half. Mr. Nelson has had ample time to gather any information he wanted to present to the commission.

It has nothing to do with not wanting to hear the information. There needs to be some finality here. And

14

that's what the commission, on behalf Sully County, we're opposed to it. There's no good reason.

We believe the standard is abuse of discretion and not de novo, and I'll get into that more in my argument regarding the appeal of why I believe it's abuse of discretion.

So for those reasons, we are opposing the motion to supplement the record.

THE COURT: Well, Avera says the good reason is because they couldn't find this individual.

MR. VOGEL: Ms. Falcon?

THE COURT: Yes.

MR. VOGEL: Well, like Mr. Nelson said, I'm an officer of the Court. Ms. Falcon lived in Agar. There's an article on her in the Agar -- excuse me -- the Sully County -- or the Onida Watchman from 2016 about her helping residents in the community.

I searched Google and found her -- an address in Agar and in Aberdeen, and a South Dakota phone number, which is a cell phone number for Ms. Falcon. I don't know if Mr. Nelson reached out to those numbers because he never put that in his affidavit.

Her information, frankly, is that she transported J.R. to the hospital, which bolsters Avera's argument, which I outlined in my brief, that she is a friend of J.R. so he

15

wasn't without friends.

But that's the reason why there's no good reason. They've had ample time. They've had eight years to find Ms. Falcon, whose -- there's no information in there about where Ms. Falcon was. Was she in a different country ? Was she trying to hide out? Just said we couldn't find her. What efforts? I don't know.

THE COURT: The affidavit you've taken from Ms. Falcon would support she was in Sully County when she picked him up; right?

MR. VOGEL: Her affidavit?

THE COURT: Yes.

MR. VOGEL: Yes.

THE COURT: But realistically, that's not much different than what's already contained within the exhibits from Avera's records; right?

MR. VOGEL: That J.R. was in Sully County before he went to the hospital?

THE COURT: Yes, sir.

MR. VOGEL: Yeah, it's not much different.

THE COURT: I mean, the record says he lives in Sully County, Agar. I guess maybe they didn't say county.

His medical records that I was asking you about, and I understand I'm getting a little off base here, but they talk about he came from Agar. He's lived there for

16

twelve years for about six months of the year; right?

And the difference between the affidavit of Falcon is she says I drove him; right?

MR. VOGEL: Correct, Your Honor.

We're not disputing that he lived in Agar for a certain period of time during some seasonal work.

THE COURT: All right. Mr. Nelson.

MR. NELSON: Well, Your Honor, two things the affidavit does do is it eliminates the questions or issues raised by the commissioners at the hearing as to whether there was anything in the record that established him being sick or ill in Sully County.

Again, they said, and I don't know that this made it into the minutes, but they said he could have been visiting friends over in Pierre. He could have been, you know, who knows where. How do we know he was in Sully County? So the affidavit addresses that.

Secondly, it addresses J.R.'s friend trying to get him conservative medical care and treatment at the clinic here in Onida, which, again, takes away from the county's argument that we have absolutely no control or involvement in this issue until we get a notice ten days later.

Well, the doctor up here in a clinic, which is the only medical care this county has available in it since 1884, before Sully two burned. The county has basically,

17

looking at it favorably, delegating; looking at it negatively, advocated their duty and responsibility to provide emergency hospital services to not only non-residents, but residents of the county because there is no hospital here.

So what are they going to do? They're going to go to the closest hospital, whether that's up in Potter County, which is probably not where they're going to go with an emergency appendectomy.

The doctor expressly told her, as she stated in the affidavit, get him to the hospital in Pierre or St. Luke's.

So it addresses more than just was he -- did he come from, you know, Sully County. Was he in Sully County.

THE COURT: What about the issue brought up by Mr. Vogel that he Googled her and found her quickly?

MR. NELSON: Two responses. His affidavit and when he Googled her doesn't say how far back that Google was up and available. I guess we don't dispute that it was here recently and he came cross it.

My paralegal is an expert at social media. She looked for the last couple of years. The hospital had told us the only place we came up with her name is from the face sheet of the admission and said that she had answered some questions initially, but was not that involved.

We said we need to try to find her and/or the other

interpreter and we were told they moved back to Mexico. They moved back to Mexico.

So at that point, we essentially gave up until I tried one more time when the commissioners raised that question and I looked at the face sheet to see who he came with or how he came in, and it was pretty clear that she was involved in bringing him in.

And we took a shot at checking records, and low and behold, she had access to Avera St. Luke's for a recent medical care treatment issue and we had a good cell number for her, so that's how we finally -- she didn't find it on Google or social media at the time we found it.

And I actually -- my cell phone in the car with my very first text message to her, which was, like, May 4th or 5th that I decided to say that the Court wants to see it or Mr. Vogel.

But, you know, efforts were made to try and find her. It's not like Avera is sitting back and saying this isn't important or we don't care about this.

THE COURT: All right. The statute that -- one of the statutes that you relied upon was 1-26-33 for supplementing the record.

My review of that statute provides that a party can provide a shortened record and if that shortened record is provided, then the record can be supplemented to include

what was already provided to the administrative agency.

That's not how you are relaying it.

MR. NELSON: Well, I know that they -- the statute talks -- and I can't recall the language and didn't bring that code book, but I know it talks about short record versus, you know, a longer length record and whatever.

But I guess the bottom line is I looked to the language in that statute which says a party can move to supplement the record.

The only timeframe it talks about is that motion must be made before the hearing -- the date and time set for the hearing on the appeal, which it clearly was, and for those reasons, we ask that it be granted.

THE COURT: So 1-26-33 states within 30 days after service of the Notice of Appeal, or within further time allowed by the Court, the agency shall transmit the reviewing record to the electronic copy of the entire record to the proceeding under review. By stipulation of the parties to the review proceedings, the Court -- the record may be shortened.

The party unreasonably refusing to stipulate or limit -- to limit the record may be taxed by the Court for additional costs.

The Court may require or permit subsequent corrections or additions to the record. And then it goes on to discuss

the assembly of the record.

The Court's reading of that is if there is a shortened record provided, the Court can allow corrections or additions to the record. This wasn't a shortened record.

Do you have any authority where a full record is allowed to be supplemented upon appeal?

MR. NELSON: Well, I don't know how the law defines what a full record is, frankly. I mean, it's -- a record is communicated to the Court at some point.

Clearly, the 30 day timeframes and other timeframes talked about in that statute were not kept by this whole appeal process.

I thought -- I guess, again, I don't have that motion right handy in front of me, but I thought there was another statute I referenced for authority.

THE COURT: 7-8-29.

MR. NELSON: Okay.

THE COURT: All right. Anything else, Mr. Nelson?

MR. NELSON: No, Your Honor.

THE COURT: Mr. Vogel?

MR. VOGEL: No, Your Honor.

MR. NELSON: Sorry. One more point.

THE COURT: Go ahead.

MR. NELSON: The other affidavit -- one of the other affidavits we are asking to supplement is one from me,

where, again, the ACA is a confusing brass of all kinds of information coming from the hearing with the commissioners. Ms. Peterson testified, and even put in her written submissions that the ACA looks like it might be applicable to J.R.

Spending hours of research and reading all the different pages and everything else on healthcare.gov and other resources and articles on it, we came up with a provision which essentially said in 2014, open enrollment closed March 31, 2014.

Essentially, the ACA was closed enrollment by J.R. -- when he would have arrived any time in mid-April or otherwise.

So we think that is an important fact that we had very little knowledge or information about prior to the hearing in order to respond to and come up with a response.

And it's interesting from Avera's standpoint that the only response from Ms. Peterson or the county on that has been, well, if he'd applied for Medicaid and been denied, then he could have applied for the ACA outside the open enrollment period.

We have never been provided anything in writing from healthcare.gov or any article that supports that.

Avera submits it's essentially a conclusory opinion or statement by Ms. Peterson that has not been substantiated.

So for those reasons, that affidavit is also important to supplement the record because it essentially guts their county's alternative, if you will, rationale for denying assistance for J.R.

THE COURT: Mr. Vogel, did you want to respond?

MR. VOGEL: One thing I didn't bring up is that I understand this was remanded to the county to make a complete record.

It is the county's position that this was not what I would call a hearing with sworn testimony. This was a commission meeting when an application was considered by an administrative agency, just like the cases I cited where townships are talking about petitions to vacate roads and petitions about drainage. Those aren't hearings. There's not sworn testimony.

People can come in and voice their concerns and object to it and file objections and the proponent can speak to the commission.

And that's why, you know, I talk about administrative decisions versus quasi-judicial. If it's quasi-judicial, you may have sworn testimony. So the county's position is this was a meeting without sworn testimony.

On this appeal, the county has no burden, so Avera is saying we need to substantiate or provide proof to them of something.

Ms. Peterson spoke to the commission. She is a consultant of theirs on poor relief and provided information from her that she had from her experience in poor relief consulting work, and that's what was relied upon.

It's in the transcript. It's in the documents that were provided, along with Ms. Lamb's affidavit.

So that's, again, why we're saying the record shouldn't be supplemented. This wasn't a full blown hearing. There wasn't sworn testimony.

It strikes me as odd that Avera wants to rely on an idea of Lupe Falcon, who is relying on statements from a third-party which is hearsay in a sworn affidavit.

So, I mean, we're getting into that now, but that wasn't presented to the commission.

So we're opposed to supplementing the record.

MR. NELSON: Your Honor.

THE COURT: Go ahead.

MR. NELSON: One of the two cases cited by Mr. Vogel was decided prior to the amendment to 7-8-30, so we submit that it's not controlling or applicable.

Both of the cases involved conditional use permits for whether it was drainage, highway, roads, or whatever, things that county commissioners typically do.

7-8-30 before its amendment, and I forget the year,

I'm sorry, I mentioned it in the brief, the reply brief, but before its amendment, talked about de novo review.

And it -- if you look to 28-13 -- Chapter 28-13, there's two different statutes, 1.4, and 40 that talk about the different reviews and standards of review.

Now, even the one in 1.4 doesn't come to the highest level that the county wants abuse of discretion. 1.4 talks about reverse or modify if substantial rights of the applicant had been prejudiced because the county's finding that the conclusions or decisions are, and it lists several different categories.

But I would also note for the Court and Mr. Vogel that 1.4 does, by its premise or opening language, does not even come into play in this case because we're not arguing medical indigence. That's not a reason for them -- they've ever listed for denying it.

Their two reasons are, number one, that they didn't get notice when he was lying sick therein in Sully County.

And, secondly, the ACA was available as insurance form that he could have afforded.

Well, the first one, obviously, is an impossibility, to me, because when Avera finds out what's going on, he's at the threshold of the emergency department, and short of being able to reverse all time and space and go backwards, there's no way Avera can comply with that conclusion or

that interpretation of that statute.

Secondly, on the ACA, for it to have been available to him, it has to be available. Avera has submitted documentation from healthcare.gov, the government's own website, on the ACA that said it closed March 31, 2014. No more open enrollment.

Ms. Peterson says, well, if he applied for Medicaid, again no citation, no authority again, just her experience, if you will.

But even in Exhibit D -- excuse me -- Exhibit C, the Peterson's written submission on page 15, there's a statement here.

Now let's talk about how to get health insurance. Remember, you can enroll in Medicaid or CHIP any time. You can only enroll in the marketplace plan during open enrollment periods which are generally three months long and begin in the fall. That's in Ms. Peterson's own submission in Exhibit C.

THE COURT: Which was part of the initial record.

MR. NELSON: Yes. But either not even considered or overlooked by the commissioners.

THE COURT: But that's not something you have to supplement the record with. That's already there.

MR. NELSON: Well, the supplementing the record part addresses the fact that open enrollment was closed

March 31, 2014, so it wasn't available, also, for that reason for him.

THE COURT: I'm going to back up to a statement you made about medically indigent. I'm confused with that statement because isn't this entire case about whether this individual is medically indigent based on the definition defined by 28-13-1.3?

And then --

MR. NELSON: Well, Your Honor --

THE COURT: -- sub 4 says not indigent by design, which is the denial. One of the denials by the commission; right?

MR. NELSON: That is the problem. We're relying on to say he's indigent by design because he doesn't get insurance through the ACA, and because of that, he's not medically indigent.

Well, we're not disputing -- we've not gotten to the level of disputing whether or not he's medically indigent. He's below the federal poverty and income guidelines.

We're disputing, number one, still the residency issue or, you know, does the county have to have notice while a person still is within the county that they're lying sick or in need therein.

And then the other issue being, well, the ACA was there. He should have gotten insurance through that, so those are the two primary grounds.

If we eliminate the ACA as an alternative, then he is no longer indigent by design and then we can look at -- or the Court can consider that's the only criteria of the definition you challenged, so at that point, we can probably go to the standards under 1.4, if the Court is concerned or wary of doing a de novo review.

But nothing under Chapter 28-13, or any cases cited, talk about abuse of discretion standard. In fact, I would submit to the Court that these specific narrow amendment of 7-8-30, which carved out unless the appeal is from a, you know, special use or whatever the language is, special use or a variance type permit that de novo review under 7-8-30 still stands as modified by 28-13-1.4.

THE COURT: So you're requesting a de novo review?

MR. NELSON: De novo or under 1.4. It's the Court's discretion, obviously. But we submit that no way, no how does any authority cited by the county or any of the facts justify an abuse of discretion standard of review, which is a high standard.

THE COURT: All right. Mr. Vogel, last chance.

We've got to get an answer to this motion to supplement.

MR. VOGEL: Okay. I think I've made my point pretty clear about that. It's -- I don't have anything further on the supplementing the record motion, Your Honor.

THE COURT: All right. Avera's motion to supplement cites SDCL 1-26-33 as the -- as a basis for supplementation on appeal.

The Court reads 1-26-33 to allow additions or corrections to the record; however, that has to be read in combination with the prior sentences, which allow a shortened record. This was not a shortened record and the records on appeal are as they stand.

It's possible for this Court to review the commission's decision if I allow additional evidence. It's simply not an appeal of a decision. It's not a new decision at that point.

7-8-29 is direction for the time allowed and transcripts of the proceedings, and that does not authorize additional records.

In addition, the Court's considered the amount of time between the hospitalization that's involved here and when the affidavit was submitted.

The commission had two hearings -- at least two hearings on this matter previously.

The matter had been appealed once and remanded already, and as a result, the motion to supplement is denied.

It's -- at this point, it would be unreasonable to allow additional evidence or considerations when that

evidence was not provided to the commissioners.

With that denial, we can move on to the actual appeal, including the standard of review, which understood is contested by both parties.

Mr. Nelson, it's your appeal. Do you want to go first?

MR. NELSON: Sure. Your Honor, essentially, the Court is going to have to determine what the standard of review is. Avera submits it's de novo under 7-8-30, and that that standard may be modified by the standards under 28-13-1.4.

If we eliminate the fact that J.R. was not indigent by design, which is the only criteria the county is alleging of the definition of a medically indigent person, that was not met.

So however the Court decides that, Avera objects to it and resists and contends that the abuse of discretion standard does not apply.

And that is the primary reason why 7-8-30 was amended with that short language that talks about except for special use or whatever type of applications or decisions.

THE COURT: 7-8-30 specifically applies to county commissioner's decisions; is that right?

MR. NELSON: Yes.

THE COURT: And then going on to say that it's a de novo review unless it's relating to a conditional use permit.

30

MR. NELSON: And that's the new language that was amended in it.
THE COURT: We're not dealing with a conditional use permit.
MR. NELSON: So it's back to de novo is the argument from Avera.
THE COURT: In 28-13-1.4 would apply a clearly erroneous standard. Sub 5; right?
MR. NELSON: Well, it's one of them, yeah. Clearly have warranted exercise of discretion, made unlawful procedure, other error of law clearly erroneous in light of the entire evidence of the record.
THE COURT: All right. Sorry to interrupt. Go ahead.
MR. NELSON: So as a result of the December 30 hearing, I'm going to refer specifically to the transcript at pages 32 and 33, that's where Counsel Vogel made his recommendation to the commissioners that the claim be denied first because the 28-13-37 states the obligation of the county is to identify the person who is lying sick therein when a complaint is made.

I would direct the Court to the language of 28-13-37 and state I don't see any timeframe in there saying the complaint must be made to them at the time the patient is in -- lying in the county sick.

And then, further, submit to the Court that it, again,

31

it would be metaphysically and chronologically impossible for Avera to ever do this, to ever provide notice while the person was still within the county when they find out that the person is presenting at their ED threshold.

So in summary then to adopt the county's position of that, interpretation of that statute, they essentially have insulated themselves for life from any medical care and treatment for any non-resident of the county because if the person has a friend, is the friend going to sit there and think, okay, I just took him to the clinic, the doctor directed me to get him down to the hospital in Pierre, I better go swing by and talk to the auditor, you know, and be concerned about how this is going to be handled.

Are they going to follow the prudent person rule and get the person under the medical direction of the emergency department so they can get care and treatment.

Clearly, if Ms. Falcon hadn't taken J.R. to the hospital in Pierre, he probably would have died. The doctor here didn't even want to deal with it at the clinic and directed her to immediately get him to Pierre.

If the county had -- again, the hospital would have been supported. But if they even had some agreement to say, well, we contracted with, you know, Avera St. Mary's or Potter County, or Avera St. Luke's in Aberdeen at a discounted rate and that's why we wanted to have notice

32

ahead of time so we can control where they go, that might be an argument of issue.

There's nothing in the record on that. In fact, I submit they don't have any such agreement. There's nothing in the record about any agreement with the county even with a physician to provide medical care and treatment for residents or non-residents of Sully County.

Avera submits that, clearly, in a medical emergency situation which is what this is, the care and treatment is the primary objective or primary goal, and the county should recognize that and accept that people are going to get taken to the emergency department if they're directed clearly by a doctor to do so.

But even, you know, if that hadn't occurred, that if it looks like they need emergency care now, that's where they're going to go.

On the insurance issue, number one, clearly there is no employer-offered health insurance through Sutton Bay, so there is nothing there that J.R. declined.

Should he have purchased individual health insurance on a commercial basis? Well, that's one question they can look at. The county never really raised it or talked about it.

But if the county is going to take that position, then 28-13-32.11 mandates that the county do a financial

33

calculation or eligibility form dealing with commercial premiums available and document that he could, in fact, have walked into an insurance agent's office and picked out insurance, and that was not done.

So that argument has essentially been waived that he should have bought individual insurance commercially.

Then that takes up to the ACA argument and analysis. Again, if the record is not supplemented pursuant to the court order, then Avera would ask that the Court take judicial notice of the ACA website healthcare.gov, and that -- readily apparent on that website is discussion about when the enrollment period was in 2014, and the fact that it closed on March 31, 2014. That's at least one prong or argument that the ACA was not available to him.

You go then to the written or oral submissions by the consultant Peterson to the board saying that if he only applied for Medicaid and been denied, then he could have applied outside the open enrollment period for the ACA.

We have found nothing on that that remotely hints or supports that statement. The county has not provided anything that, as far as written authority, that supports that statement, and we don't think it is accurate.

Clearly with the threshold for Medicaid and even below federal poverty guidelines at 19 thousand and some odd dollars, J.R. would not have qualified for Medicaid because

it's over 8 hundred some dollars per month in income, and he would have had over $2,000 in assets.

So, again, why didn't the county rebut or provide any authority that documents -- if he had applied for ACA and been denied, he could have applied for Medicaid, been denied.. He could have applied for ACA outside the open enrollment period. I can't answer that. The county has to. We think it's because it's not an option and doesn't exist.

You look at the brief of the county, the primary brief, and they are fixated on the Roane decision from 1918.

Number one, that case was -- well, it's 104 years ago that it was handed down, but let's talk about the differences in it if the Court even thinks it might apply tangentially.

That case involved a physician providing voluntarily surgical care and treatment to 28 hobos, vagabonds, whatever, transients that were riding on top of railroad cars through Hutchinson County. That was the only tie to Hutchinson County is the accident happened there.

If the Court wants a recent occurrence of a circuit court case, you can look at the Hanson County case where I forget, but it was either 15 or 16 Mexican nationals were in a van, a single van, driving on I-90 and the driver fell

asleep and the van went in the ditch, went up under the overpass, sheered the top off, you know, two or three of them were dead instantly there, and then the remainder were taken to three different hospitals: McKennan, Sanford, and Queen of Peace.

The county ended up paying on that claim simply because the accident happened within Hanson County.

Other differences between Roane, emergency hospital care, and treatment today by a hospital is not voluntary. EMTALA has been enacted and cited in our briefs. It doesn't give the hospital to say, well, we don't have any proof of payment. We're not going to provide care and treatment. That's clearly a difference.

Again, the Court in Roane talked about this being the voluntary provision by a physician of medical care and treatment.

Ties to the county. Again, J.R. had come back to Sully County for approximately six months of the year, or 12 years to work. He's living here paying rent. He's purchasing groceries. He's purchasing gasoline. You know, he's contributing to the economy into the, you know, the welfare of Sully County.

Every one of those individuals in the Hutchinson County case weren't doing anything in Hutchinson County.

Another material difference is Hutchinson County, at the time of that accident, railroad accident, had a hospital in its borders. Sully County can't say that.

You know, so, again, substantial differences between the two cases. We submit that it's not controlling. It doesn't apply. Avera has submitted, I can't remember, four to six different court decisions. Some from the same circuit where this identical issue has been involved and where the Court actually went through hearing and ruled in Avera's favor.

If you look at the standards again, and clearly erroneous in light of the entire evidence in the record, how many years did the county deny this claim based on him not being a resident, and that was their flat out denial.

They weren't going to change, weren't going to do it, negotiations, discussions, whatever for years.

When they finally got Mr. Vogel involved, then they decided to, you know, look at a couple potential different routes.

But even with, you know, submissions provided to the commissioners by Ms. Peterson, primarily because they listened to her and they listened to Mr. Vogel, you've got the Exhibit C to Peterson's written affidavit, which says on page 15 that remember that you can enroll in Medicaid or CHIP any time.

You can only enroll in the marketplace plan during open enrollment periods, which are generally three months long and again in the fall.

Again, this is from healthcare.gov. It's a submission from Peterson herself. The county apparently overlooked that or didn't consider it at all.

Other errors, the initially calculated premiums under the ACA for J.R. using '21 numbers and data when it should have been '14, so that was kind of an audible call that was changed in the middle of it.

Calculated J.R.'s income and household bills as one person when clearly on the county's own application, he's documenting and filling out that he's got a daughter and a wife at home, so it's three.

The -- somehow, in Peterson's written submissions, come up with a statement that J.R. was at 154 percent of poverty income guidelines. The only possible way of trying to back into that math and make it work is if she's looking at his income based on one person, one household, one in the household.

Because the poverty guidelines for a household of three are $19,790 in 2014, clearly, it's -- can't be disputed that it was at least a household of three.

And he also filled out on the application, the county's application, that he had a niece and her child in

the household as well, so he was supporting them.

But even under just the household of three, he's under federal poverty guidelines.

Peterson submitted and argued that the statute doesn't allow for J.R. to have or maintain two households. Well, it certainly has to look at the expenses of doing that because otherwise any county poor relief case where the primary breadwinner, the husband is off on the road, whether he's an over the road trucker or construction worker off somewhere else, you just don't build a wall and say we're not considering any of those expenses he's got to incur to go do his job and make his income, he's only allowed one household. It's ridiculous.

Even in Peterson's written submissions, there's a formula in there that we cited in the brief, and it's an attachment to the brief, that talks about checkmarks yes, no, and maybe. And it basically says if there's any checks for no or maybe, that that requires further investigation.

Well, the final document submitted to the commissioners had at least one or two maybes and a no, which would dictate further investigation and discussion, but, yet the commission went ahead and made their decision and reached the result they wanted to reach.

Finally, whether or not this was a formal contested hearing, you know, Avera submits that there's got to be

some credibility insurance or affirmation in Peterson's written submissions.

The fact that it doesn't even meet the minimum qualifications of an affidavit when everything else submitted by Avera that was factually based or submitted facts to make sure it was by affidavit, I think is a fact in consideration the Court needs to look at seriously and not overlook.

So whether or not the subsection standard is 4, affected by other area of law because they argue we didn't get notice while J.R. was still in Sully County, which is impossible to do; or whether it's 5, where it's clearly erroneous in light of the entire evidence of record; or 6, a clearly unwarranted exercise of discretion.

We -- Avera submits that any one of those three subsections under 1.4 apply.

We submit that subsection 4 of the definition of medically indigent is not met because the county never looked at commercial insurance, never calculated the form required under 32.11, never made that argument that he could have gone down the street somewhere and walked into an agency and purchased insurance.

And, secondly, the ACA, which they did rely on wholeheartedly, was passed open enrollment period, essentially for him, every single year, and was not

available for him even if he had applied for Medicaid and been denied.

So for those reasons, Avera respectfully requests that the motion to direct assistance on behalf of J.R. be granted.

Thank you.

THE COURT: All right. Thank you.

All right. You're going to have to wait, Mr. Vogel. We're going to take a 10 minute recess so Jess can rest her hands. Okay. Thank you.

(A brief recess was taken.)

THE COURT: Are we ready to proceed?

MR. VOGEL: Yes, Your Honor.

THE COURT: All right. We'll be back on the record.

Mr. Vogel.

MR. VOGEL: Thank you, Your Honor.

COURT REPORTER: Please speak loudly. The air is on right behind me.

MR. VOGEL: First I'll address the standard of review. I think I briefed it pretty thoroughly.

One thing I will mention, Mr. Nelson brought up that the statute he references cited to a de novo standard on county commissions appeals from county commissioners.

In -- and he also indicates that the case I cited was before an amendment to the statute saying unless it's for

conditional use permit.

These cases are still controlling. In fact, there was a recent one I cited to as well, McLaen v. White Township, which pertained to drainage -- a drainage decision by the board of supervisors of a township. And the statutory standard of review listed in our statutes as de novo, but the Court determined that, no, it's not de novo.

The rationale was we have a separation of powers doctrine that's Constitutional, and legislatures cannot legislate around Constitutional doctrines like the separation of powers doctrine.

So the analysis needs to be done in any appeal from a township, county commission, unless it's a conditional use permit, and then there's a different standard, but it needs to be determined whether the meeting or the determination made was the administrative one, or quasi-judicial, and that's the determination that this Court, in my opinion, needs to determine first, and I submit it was administrative.

If the Courts in these township cases are determining that someone petitioned to vacate a right-of-way where you have put the objection is coming in and submitting objections and comments to the contrary as well as a drainage issue or individuals coming in and objecting as well, we're not having the sworn testimony hearing, those

are administrative and we review those under the abuse of discretion, and that's because it's not something the Court generally does.

It's not adjudicating the rights of different individuals in a controversy between them. Even though Mr. Nelson would think there's a controversy between the parties here, that's not what this was.

This was an application for poor relief submitted to the county for its consideration. And I know a lot of counties have welfare records, Brown County does, and they review these and work with the county commission. That's allowed by statute.

So this was an administrative decision by the county commissioners. This was not quasi-judicial, so, therefore, we're looking at abuse of discretion, which is a very high standard.

And one other case that Troy Township cites to is Dunker v. Brown County Board of Education, and the citation to that case is 121 N.W.2d 10 1963. In that case, it had to do with a board of education creating -- developed a new school district within Brown County. It was appealed by some individuals and the statute on that, actually, on the appeal said that statute pertaining to it required a trial to the circuit court de novo.

The Supreme Court said hold on a second. We got to

look at separation of powers between the judicial branch and these government bodies when they're making administration determinations, and this is an administrative determination and we're going to review it and ask ourselves whether the board acted unreasonably, arbitrarily, or manifested the abuse of discretion, and that's kind of morphed into the term abuse of discretion when we look at the McLaen v. White Township case.

So Avera is saying he's talking about townships and this and that. The same analysis is done here.

This is not -- the analysis done in White Township and Troy Township did not pertain to a conditional use permit. They were reviewing de novo statutes saying we're -- the legislature cannot say de novo review is done if this is an administrative action. That's what was done by the county commissioners here. They were considering an application for poor relief.

So I'll move on to the commissioner's denials.

THE COURT: Mr. Vogel, how do you compare that with 28-13-1.4. That states notwithstanding 7-8-30, and then goes into specifically appeals regarding medical indigence?

MR. VOGEL: What I would submit, Your Honor, is you can't -- per the Supreme Court statute -- excuse me -- Supreme Court opinions, you can't lower the burden. You can't lower it to de novo or anything below abuse of

discretion because of separation of powers.

If there is a review that a statute mandates that is greater than de novo, because then -- the reason I say that is because now the circuit court doing a de novo review is inserting itself into the decision being processed, essentially, remaking the decision, reviewing the evidence as the county commission didn't even see it.

So if we go below abuse of discretion, or go below de novo, that's a problem. If we can go above it with clearly erroneous or so forth, it's a higher burden.

You're not inserting yourself in a remake of decision. You're reviewing the evidence of the facts you relied upon and their decision saying was this clearly erroneous or was this abuse of discretion.

That's how I rectify it.

THE COURT: So your argument then -- or your position then that 28-13-1.4 is unconstitutional?

MR. VOGEL: As it pertains to medical indigency, if any of those burdens -- I'll be honest with you, Your Honor, I didn't specifically look at if it would be considered a lesser burden -- excuse me -- a lesser standard of review than abuse of discretion, but if they are, then, yes.

THE COURT: Well, it's clearly erroneous is one of them.

MR. VOGEL: Right. And that, again, I believe that's higher than an abuse of discretion, a higher review. I

could be incorrect. I didn't look at them.

But if any of those are a lesser degree or standard of review of abuse of discretion, which has been outlined by the South Dakota Supreme Court, then, yes, those wouldn't be the appropriate standard of review and you would need to use what's been outlined by the South Dakota Supreme Court.

THE COURT: Do you have any position on what clearly unwarranted exercise of discretion is?

MR. VOGEL: I don't. My opinion would be that would be similar to abusing your discretion, using different language.

You know, I did a little research, but I don't exactly know any of that. I don't know if that's ever really been interpreted exactly what each of those subsections, what level that meets.

THE COURT: All right. Thank you.

MR. VOGEL: So moving on to the denial by the commissioners. The first reason, and I submit the only reason we need to look at further reason for denial is 28-13-37, that's the non-resident statute within the poor relief statutes, and I cited to it in my brief.

I also cited the commissioner's decision. I understand initially the one page letter said he's not a resident, he's denied. They moved on from that after the remand. That's not the reason for the denial.

First and foremost, the reason was he was not lying sick and distressed in the county when Sully County was notified. He also was transported by a friend.

We have two different things here. When we look at 28-13-37, the statute says it's the duty of the county on a complaint made to them that any person not an inhabitant of the county is lying sick therein. Is is present tense. This is a good samaritan statute.

If the county is made aware that someone is lying distressed in their county, they can't sit back and say, he's not a resident, we're just going to leave him there.

Well, they need to provide temporary relief, and that was step one was when anyone in the county became aware, he was already in Hughes County at Avera St. Mary's.

And how did he get there? Well, apparently, he was transported by a friend. Well, read on with that statute, it says without friend or money. Well, he had a friend.

So he wasn't lying sick in Sully County without friends, number one. He had a friend transport him and provided him with the temporary relief he needed which was transportation to the hospital. So they have that.

Also, when the complaint was made to Sully County, he was lying in a different county. Like I said, this is a temporary relief statute. So this was all presented to -- and that's why that letter from the Onida Ambulance was

submitted to show that he wasn't transported by Onida Ambulance.

If Onida Ambulance would have transported, would the county have been responsible for that ambulance bill? I don't know. We're not here to decide that today.

But what I'm saying is under the statute and under the facts presented to the county commissioners, he was a non-resident. No one disputes that, so he wasn't an inhabitant and he was not lying sick in the county when the complaint was made to Sully County.

Whether he started off sick in the county or not, you know, frankly, I don't know if there's been a lot of evidence to establish that that's part of the record. There was a new affidavit that was submitted that hasn't been accepted.

Even if he was lying sick in Sully County and transported by someone else, Sully County is not responsible for paying for his entire medical care.

THE COURT: Who is?

MR. VOGEL: The county of his residency. That's the conundrum here, and it's not Sully County's conundrum, it's Avera's. He's not a resident of any county of the United States of America. So Avera should be seeking from his county of residency, but...

THE COURT: What's the purpose of the non-residency

statutes then?

MR. VOGEL: Temporary relief. That moves on to the Roane case. When you look at the Roane case, it talks about some good samaritan --

Before I cite to it, Your Honor, the Roane case is controlling. I understand it's old. It is a case that's cited after the statute and the only changes to the statute since Roane that we currently have are that if added language to state that if they're without friends or money in the county. So it still talks about lying in distress in the county.

So with regard to Roane, when you look at Roane, I quoted it on page 7 of 13 in my brief at the very bottom, the Court states in this case, it clearly appears that the temporary relief was, in fact, actually furnished by some good samaritan other than the overseers who in seeking such temporary relief removed said injured person to a hospital.

So the -- this good samaritan removed him to the hospital, that's the temporary relief, Your Honor.

This -- if these poor relief statutes are going to be interpreted that a county that a person just happens to be in, there's some analysis done by Mr. Nelson about ties to the community and so forth. That wasn't done in Roane.

There's no precedence saying any analysis needs to be done as far as was this person living there versus being a

resident or were they just passing through.

If we want that analysis to be done, then somebody needs to go to the legislature and have these statutes changed from that residence.

THE COURT: In Roane, wasn't it -- didn't the Supreme Court point out that it was -- they were temporary? They were passing through on a train. The train wrecked, they had no intent to stay in the county, and I think there was a quote about immediate -- they entered the county and immediately removed -- were removed from the county.

MR. VOGEL: There may have been that quote, but that wasn't part of the analysis into why that Hutchinson County did not need to provide relief. They didn't do an analysis into that ties to the community. It's strictly are they a resident or not.

Because if we remove the residency requirement and make the county where a person happens to be pay all medical bills, what's the purpose of the residency requirement? There isn't one.

Because then Avera can come after Sully County and say you need to pay all these medical bills, just like they're doing here, and we don't have to worry about determining residency or finding out where his residence is. You deal with that. That's not how the statutes work.

In order for the assistance to apply when you look at

50

the statutes, specifically when you look at 28-13-3, it says any -- you know, except as otherwise provided in this chapter, any person in order to be entitled to assistance shall have established residency. Okay. That talks about assistance.

And then we have the medical indigency statute that says to receive assistance, you need to be medically indigent.

So you tie these together in order for these statutes to apply, you need to have established residency. He didn't here. He's a non-resident. It's undisputed.

Sully County is only responsible for temporary relief on complaint made to them if he is lying in distress or sick therein without friends or money. We can't ignore the whole statute. He had friends to transport him and provide temporary relief.

With regard to the new federal laws about it's not voluntary care anymore, that's not part of the analysis, I think. These hospitals have provided millions of dollars in federal funding to treat people.

The county has not, and to say that the county receives some benefit from this individual paying taxes and stuff, the county doesn't need sales tax, but none of that is part of the record.

The record is clear that he was transported by a

51

friend. He wasn't lying sick and distressed in this county and we have to look at this abuse of discretion, which is a high standard. This isn't the Court de novo saying, well, I would have done it this way.

Was it arbitrary, capricious, or did the commission manifestly abuse its discretion. They did not in making this determination.

This is a temporary relief statute. Like I've indicated, good samaritan statute like Roane talks about good samaritan providing temporary relief.

THE COURT: 28-13-37.

MR. VOGEL: Correct.

THE COURT: We have -- the Court included, continuously used the word residency. The statute doesn't actually say that. The statute used the word inhabitant.

MR. VOGEL: It does.

THE COURT: Which is defined differently.

MR. VOGEL: After I submitted my brief -- and that's never been brought up by Mr. Nelson. After I submitted my brief, I did a dictionary search and inhabitant does include residency. One of the ways to say it's inhabitant is by residency.

So in my opinion, it is the same thing. They've waived that argument anyway. Avera hasn't --

THE COURT: Inhabitant is also though one that occupies a

52

particular place regularly and routinely for a period of time.

MR. VOGEL: I think we're tying back into then in order to be -- in order for a county to have to pay all the medical bills, you have to be a resident. You have to have a residency.

This statute says if you're not an inhabitant, then we have to provide temporary relief.

So that's why it's been defined as residency because that's how the rest of the statutes speak and that's part of the definition of inhabitant is residency as well.

THE COURT: Where did you get the definition from? Do you know?

MR. VOGEL: I believe it was Miriam, but I forget, Your Honor.

THE COURT: All right. Go ahead.

MR. VOGEL: So that's why there was not an abuse of discretion here in denying the application based on 28-13-37.

Moving on to the next portion, the denial based on indigency by design. Mr. Nelson keeps talking about the county rebutted stuff. There's no duty for the county to rebut anything at this point. We didn't appeal anything.

The statute pertaining to the indigent by design, I cited in my brief. Number one, it talks about presumed

53

insurable unless the individual can produce sufficient evidence to show that the individual was declined major medical insurance.

Okay. That wasn't provided. I understand that wasn't part of the decision. I'm not saying it was, but I'm pointing that out to the Court. That wasn't provided.

Mr. Nelson points out, well, the county needs to do this in-depth analysis. They may very well need to, but, first of all, the individual needs to show that they tried to get insurance and they couldn't.

Second, and they don't qualify for any -- the individual did not qualify for any guaranteed major medical insurance available for any legal or (indiscernible) right.

So what we have here is Ms. Peterson, who submitted an affidavit and some information, and at the commission meeting clarified about a special enrollment period when you look at the transcript.

I forgot exactly what page it's on, but a special enrollment period for an individual who is outside the open enrollment period who applies for Medicaid and it is denied.

I know Avera submitted today, well, he could have applied for it. Well, he couldn't apply, he would have qualified. That wasn't submitted to the county that he applied for Medicaid and it was accepted or denied.

If you're denied Medicaid, there's a special enrollment period that the Affordable Care Act allows for a person to apply for the Affordable Care Act.

That was provided by Ms. Peterson through her advice to the commission because she's hired by Sully County to provide these services to them.

So to say she didn't provide any documentation or so forth, there's no requirement that she needs to provide some documentation.

I mean, a search of the internet will show that there is a special enrollment period if you apply for Medicaid and get denied.

So that was the basis for indigent by design. This person was insurable under the Affordable Care Act.

We're talking about household size, you know, the burden was not on Sully County to produce any information here. It was on the applicant through Avera to provide information through the county that this person qualified or this application should have been granted.

And they -- Avera keeps saying, well, it was a household of three or five. I'm not even sure what you're saying, but nothing was submitted about this individual's income from Mexico, if that's where he is residing when he wasn't a resident of the United States.

All that was submitted was the United States pay where

he was living here by himself. That's a household of one. So that's how the analysis was done.

But, frankly, at the commission meeting that was submitted at the commission meeting and as part of the transcript or official record, there was an analysis done if he was a household of three and he still qualified for the Affordable Care Act.

It's part of the record so that makes him indigent by design.

So we look at both of those and it's clear that the county commission did not abuse its discretion. That's the standard for abuse of discretion, they did not in either analysis.

They did -- frankly, I don't think they needed to go on to the indigent by design statute because he's not a resident. And in order to do that analysis per the statutes, qualify for assistance, you need to be a resident and then to do a medical indigency statute, high standard you can't -- you have to be a resident.

This statute talks about -- 28-13-37 talks about temporary relief if they're lying sick therein or in distress without friends or money. Clearly he had friends.

So for those reasons, Your Honor, we would submit that there's -- you should affirm, because this is an appeal, you should affirm the county's decision on 28-13-37, and

frankly, we don't even need to go any further.

The county essentially did a belt and suspenders approach and said, well, if the Court thinks this isn't right, we still can fall back on this so we don't have to get sent back down and handed another analysis.

Thank you.

THE COURT: Mr. Vogel, is it your position then that under temporary -- the definition of temporary relief is used, the county's only obligation is to get that individual and move them on?

MR. VOGEL: Whatever temporary relief the person may require at that time. It's case by case. It's hard for me it say, yeah, that's what they have to do.

In a case such as this, if the county would have been notified or -- say, for instance, the sheriff's deputy would have been notified to provide temporary relief to that person or get an ambulance there, call an ambulance for that person and get him transported for care. That's temporary relief. That's what we talk about in Roane.

That's the obligation of a county when a person isn't a resident. We're not going to -- these counties are relying on taxpayer money and spend it frugally. To put medical care back on a county where the full medical care isn't the intention of this statute. It's to make sure this person doesn't die or suffer.

THE COURT: But transferring this individual wouldn't have provided him any relief. Transferring -- move the individual on to a facility doesn't provide any relief. The care in the facility is what provides relief.

And had Sully County had a facility that was capable of providing that, that's where he would have went; right?

MR. VOGEL: Certainly. But Sully County still would not have been --

THE COURT: But he would be lying sick here still?

MR. VOGEL: Correct. And they would only need to provide temporary relief.

THE COURT: What's temporary relief for what I -- I guess I deem -- I'm not a medical expert in any way, of an appendix that's about to burst?

MR. VOGEL: I'm reading Roane to say the temporary relief is getting this person to a doctor's care.

And to -- what would need to happen then if he's transported then from -- say Sully County had a hospital and was transported to whatever Sanford or Avera or if it's a community hospital that's here, their application would have to be to the county of his residency to get his full medical -- his full medical payments paid.

Like I said, otherwise, why do we even have a residency requirement if we're just going to say, well, wherever you're at, they have to pay and they can sort it

out later. Then there's no point in determining residency, remove that whole term, nobody needs to do that.

Avera doesn't and the applicant doesn't, just apply to the county where they came from, let them deal with it. That's where we need to know where this temporary relief is to get him somewhere for the care he needs.

THE COURT: Isn't that over generalizing the statutes significantly? If you have a resident of Pennington County who is driving through Sully County, gets in an accident, doesn't have insurance, you're going to go back to Pennington County, the county of residency.

MR. VOGEL: Correct. That's my --

THE COURT: If you have an individual who doesn't have a residency, homeless or otherwise, they're driving through Sully County, they don't want them to leave them to die; right?

MR. VOGEL: Yes.

THE COURT: So they want the county to provide that care.

MR. VOGEL: Yes.

THE COURT: How is a homeless person any different than -- without a county of residency, any different than an immigrant who is here legally?

MR. VOGEL: My point is if we want to differentiate between someone who is here legally and maybe has more ties to the community, we need to legislate that. Not through the

Court.

Your example with the someone passing through Sully County, it's going back to Pennington County to pay it because that's his residency. That's my point.

THE COURT: But that's why we have a distinction between residency, non-residency, and inhabitant; right?

MR. VOGEL: I'm sorry, I couldn't hear the last part.

THE COURT: That's why we have the distinction between residency, non-residency, and maybe inhabitants; right?

MR. VOGEL: You said inhabitants?

THE COURT: Yes.

MR. VOGEL: I think it still ties back to -- we're talking about medical bills that Avera is seeking here. This statute says when a person is lying in distress therein, they need temporary relief.

Well, Avera is not this person lying in distress that needs provided temporary relief to. That's why I'm saying the statute is about very temporary relief in transporting, that amount repayment of medical bills about this other statutes like residency talks about.

These are meant to be good samaritan statutes for a county if a person happens to be in their county and gets sick, they're not going to become liable for their full medical bills just because that person was in that county regardless of if it's passing through or living there

temporarily to work. The place that's responsible for them if they're medically indigent is the county of residency.

And what Avera's issue here is he doesn't have a county of residency in South Dakota. He is, I believe, a Mexican citizen. I don't know. None of that has been submitted for sure. But they need to go to Mexico to get paid. I don't know if they can.

That's my point here. Avera keeps coming back to Sully County saying it's your fault. You need to pay, you, you, you. No. We only need to do temporary relief if he's lying in distress without friends. That's the purpose of that without friends or money so that they can get friends to help with transportation or money to help them out.

If we're going to tie this in, like I said, with the full blown medical payment statutes, there's no point in having a residency requirement. There's no point in having the statute.

Because we just say if a person is in the county and they're sick and they're medically indigent, that county pays for them. Then we don't need to worry about anything else.

And maybe you can have another statute saying maybe that county can go and try to get paid by the county that they're a resident of but the county can sort that out. That's not what the statutes say. It's not the county's

obligation to sort this out later.

THE COURT: With regard to the person lying sick -- and the statutes actually address that. The statutes allow the hospital to make these applications on behalf of the person; right?

MR. VOGEL: Those are the applications under the medical indigency statutes. That's why we're dealing with two different things here.

First of all, they need to prove residency to apply under those statutes -- to qualify under those statutes.

THE COURT: I think we're reading two different chapters.

Show me what you're relying on to say that.

MR. VOGEL: 28-13-3 indicates that except as otherwise provided in this chapter, any person in order to be entitled to assistance shall have established residency in the state where the application is made. We're talking -- that's talking about an application.

28-13-37 is talking about a complaint made to the county, not an application. In fact, maybe they didn't even need to review this application, but they did on the complaint made to the county commissioners if we look at 28-13-37.

It shall be the duty of the county commissioners on complaint made to them that any person not an inhabitant of their county is lying sick therein or in distress.

62

That's why I'm trying to differentiate these two statutes. This not the same type of statutes as the residency statutes where you provide full payment for the medical bills to a hospital.

This is a temporary statute where you need to make sure a person doesn't suffer or isn't in distress in your county. You need to provide them with that temporary relief, not full blown medical treatment.

THE COURT: All right. Anything else?

MR. VOGEL: The only thing I would point out is this an abuse of discretion. This is high standard. And from the county's decision in the review, that's the reason they denied it.

Number one, when the complaint was made, he was not lying in distress in the county.

Number two, this individual had a friend so he was not without friends. So it's -- in my opinion, the county did not abuse its discretion in making that denial.

As for the Affordable Care Act, Ms. Peterson presented information that he could have applied if he had been denied Medicaid.

And if he was denied Medicaid, he could have applied for the Affordable Care Act and he would have qualified. It's in her statements. It's in the information sheet. So the county did not abuse its discretion.

63

THE COURT: All right. Thank you.

Mr. Nelson, do you want to reply?

MR. NELSON: First and foremost, look at the first four or five words in 28-13-3, except as otherwise provided in this chapter. Avera submits that 37 is as otherwise provided in this chapter.

Clearly all the statutes flow after 28-13-3 deal with residency, deal with the bulk, if you will, of what type of cases or appeals are going to be covered by this chapter.

But you have to not only ignore the language except as otherwise provided in the chapter appearing in section 3 and the full language of section 37 in order to give any credence to Mr. Vogel's argument.

As far as the standard of review, it's generally well accepted in South Dakota that the more specific statute controls over the more general or broad statute.

Avera submits that 7-8-30, 28-13-40, and 28-13-1.4 are clearly more specific and on topic for the standard of review for county poor relief claims.

And governed over the abuse of discretion standard which is replayed throughout the drainage issues and the highway vacation issues and other cases cited by Mr. Vogel.

This is a disputed case, clearly. It's disputed based upon the hospital request for payment being denied. The hospital directly asked for payment.

64

What seems to be glossed over here though is J.R. actually completed, with the help of an interpreter, a county specific application and that should be in the record. That should be part of what the county commissioners looked at.

That's where he talked about coming here for 12 years working in the groundskeeping for Sutton Bay. That's where he talked about he and two other brothers and their families living on 20 acres of ground down in Mexico, each of them with a house that they tried to raise corn on.

So as far as, you know, what other income is out there, what else could he have afforded. Well, obviously, he's coming all the way up to South Dakota to earn money because it is far and away superior to whatever income that is available to him down there or he wouldn't have done it for 12 years.

Essentially, under the standard of review for Mr. Vogel to say, well, you can't consider 1.4 and you can't consider subsection 40, he is challenging them as being unconstitutional and he has to provide prior written notice under statute to do so and that's never been done by the county.

THE COURT: Didn't he say 1.4 actually applies a higher standard?

MR. NELSON: He said he wasn't sure if some of the

65

provisions did, and some may.

I didn't compare the two because Avera's position is the abuse of discretion doesn't apply. It's apples and oranges as far as the issue.

37 talks about duty of the county commissioners on complaint made to them. Well, clearly, the notice of the hospitalization has been treated as the complaint made to them. It's never been challenged to a sufficiency.

It was received timely within the statutory 15 days, which is required under the other statutes, specifically 34.1.

But now there seems to be an argument or attempt to try and distinguish the two and say, well, you still got to come back and be on temporary relief to actually establish residency or approve residency.

The county had 12 years to identify and get to know J.R. Twelve years to experience him living here, him providing support to local economy. Him paying taxes of whatever kind, and spending money to live.

Avera had less than 12 days after he presents to the threshold of their emergency department and goes immediately into surgery for an appendix which had already burst involving him being full of sepsis. He almost died.

There's no doubt that temporary relief, whether driving him there or, you know, for a heart attack victim,

66

apparently, giving him aspirin, that's temporary relief, I guess.

As the Court correctly noted, the assistance or relief that happens is in the hospital. We're not talking about a three month or a six month hospitalization where clearly you might be well beyond what temporary relief is, but temporary relief has never been defined or decided by this Court, South Dakota Supreme Court, as far as I know, wouldn't in connection to the county poor relief appeals or claims.

Avera would submit that the temporary relief has to be the relief that is provided to take care of the illness or situation that has arisen.

If Mr. Vogel and the county's position is accepted, then apparently the county is off the hook because Ms. Falcon transported him first to the clinic here but then down to the hospital and out of sight, out of mind.

They have no more obligation. She took care of that. She transported him. She's a friend. The statute's not met. It still doesn't address required surgery. It required acute inpatient care and treatment.

Essentially, there's $76,000 in charges that if this was an otherwise insured individual or privately insured individual, Avera would have been paid.

The hospital has costs, the loan drops down to 40,536.

67

We're not even talking about that. We're fighting, and have been fighting for years, over less than $14,000 which is the Medicaid rate, which by the way, J.R. would not have qualified for even if he had applied. That's pretty obvious.

On the issue of the ACA being available or being there, you know, you can't simply provide a consultant's opinion and say that's gospel, especially when it's challenged by Avera.

It's challenged and provided written authority from the government's own ACA website which clearly shows enrollment period is closed March 31st of 2014 before he even gets here.

If you look at subsection D, as in David, under the -- sorry, 6D under 28-13-27, that's the criteria that the county is arguing he failed to meet and resulting to be indigent by design.

That says has failed to purchase available major medical insurance. It's got to be available. They're dropping their hat all the way down to the ACA. The open enrollment period is closed. It's not available.

They're arguing through her opinion that if he'd applied for Medicaid and been denied, he could have applied outside of the open enrollment period. That's one person's unsworn opinion. Let's have a citation, please. Let's

68

have authority. We haven't been able to find it. Avera cannot find it.

Even Exhibit C to Peterson's own affidavit or written submission on page 15, black and white, says you can get more information about the ACA and health insurance --

THE COURT: Slow down. Thank you.

MR. NELSON: You can get more information about the ACA and health insurance at www.healthcare.gov, official website of the health insurance marketplace.

Sorry. I read the wrong paragraph. Now let's talk about how to get health insurance. Remember, you can enroll in Medicaid or CHIP any time. Period. You can only enroll in a marketplace plan during open enrollment periods, which are generally three months long and begin in the fall.

There's no footnote. There's no asterisk. There's no, oh, by the way if you first tried for Medicaid and denied, this doesn't apply.

It's contradictory and it's documentation which Peterson submitted herself to the commissioners. So I don't think it's too much to ask for controlling written authority to say regardless of that statement on page 15 of the ACA's website, this special little carve out exists that if you did apply for Medicaid and denied, you can apply any time for the ACA. We're apparently not entitled

69

to that because the county doesn't have to rebut that.

As far as commercial insurance, again, that might have been something, had he the wherewithal to afford it, that would have fit the bill as being available major medical health insurance, but the county never computed that financial circumstance under 32.11, and that statute says the county shall.

So from the standpoint of any Blue Cross Blue Shield anthem, whatever commercial plans are here, that has all been waived and walked away from by the county because they shall do a calculation form under 32-11. They never did.

They never argued commercial insurance was available. Avera would submit probably because the premium was multiple, multiple times above what the ACA was, and clearly with J.R. under the federal poverty guidelines that was not something he could afford.

So, again, we've got a record where they're relying on the ACA being available based upon a consultant's opinion without any written citation or authority to anything. Just her experience and her opinion.

If that doesn't qualify either as clearly exercise of discretion that required some authority or not resulting in being effected by an error of law given the questions or concerns about her affidavit and whether it meets the minimum requirements, or whether it's just clearly

erroneous in light of the entire evidence of the record.

Again, any one of those criteria Avera submits are met by the factual record that's there.

The only way you -- the county's argument that you have to come back around and look at residency and establish residency in order to get more than, quote, unquote, temporary assistance which means it's arbitrarily defined and includes claims to request to be paid for medical care if 37 does not exist. But it does exist.

And if the county has a concern with it or wants to challenge it, they need to give prior notice of it being unconstitutional and challenge it and they need to go to the legislature to change it, but it is on the books and it exists the way it exists.

There is no definition anywhere the county has cited about what constitutes temporary relief. It doesn't say, as the Court suggested, well, would that be getting a bus ticket or just moving him down the road or moving to the hospital. Is that relief.

There's no language in Roane which specifically said, you know, the county was not involved in getting them temporary relief, voluntarily did that. Relief is beyond simply getting them down the road or getting them to a medical provider.

In this case, Mr. Vogel admits, it's case by case, but

in a case where a heart attack happens, obviously, Avera would submit that treating and taking care of the heart attack is the temporary relief that resolves the issue.

In this case where J.R.'s appendix had already burst and he's full of sepsis, simply getting him to the hospital is not enough temporary relief as the nature of the case may require.

Mr. Vogel admits that that statute is there so that the counties don't let people die. Well, how else would J.R. have survived if Avera had not provided surgery, acute inpatient care, and treatment for those 11 days, and, again, not on a voluntary basis.

You know, he makes a comment that hospitals are provided millions of dollars to take care of these patients. There's no authority in the record for that. There's no citation or argument ever made before in the record for that.

If we want to get into the tens of millions of dollars that are adjusted off or not paid for care and treatment by Avera facilities, we can talk about that.

But we also then need to talk about the fact that Sutton Bay has clearly brought anywhere from 80 to 100 thousand dollars more in tax revenue to the two respective counties it lies in, and that's according to published newspapers articles.

It seems to me that the county can enjoy the tax revenues on the one side, but there ought to be some responsibility for individuals on the other side.

Again, Avera is simply existing down there and they can't turn away patients that are brought to the emergency department threshold.

County's relief is, in fact, to go after the county of residence in Mexico where J.R. is a resident. Statutes exist under Chapter 28-14 to allow the county to do that.

Why should that burden be put on Avera when Avera has absolutely no economic history, economic impact, involvement of any kind with J.R. other than him presenting to the emergency department without insurance and coming from Sully County because he's up here for his 12th year to be working and being a groundskeeper at Sutton Bay.

We respectfully request that the Court review under the standard it deems applicable the county commissioners deny the decision, and based on the facts that are in the record that Avera has argued, reverse that decision and direct the county commissioners provide assistance.

Thank you.

THE COURT: Brief last word, Mr. Vogel.

MR. VOGEL: The only thing I have to say is addressing the --

THE COURT: Would you speak up? I got the air going back

here, and you pointed that out with me. Thank you.

But so if I sound like I'm yelling, I don't mean to, but I have it going right in my ear.

MR. VOGEL: No, I can hear it too.

Your Honor, the only brief thing I would have to say is Avera seems to be turning this around into the county's appeal saying we need to provide proof of this and proof of that. We didn't appeal anything. Avera did. That's who applied, J.R., not the county.

And one other thing with regard to temporary relief, frankly, and the inhabitant, neither of those issues were brought up by Avera appeal here. Really, I think they're outside this appeal.

With regard to temporary relief thinking about, and Mr. Nelson said the county can then go after a different -- to Mexico to get reimbursed under the medical indigency and residency statutes.

But when you look at temporary relief, just a hypothetical is we talked about the ambulance. If Onida Ambulance transport provides temporary relief in getting this individual to a hospital and there's an ambulance bill, that's then submitted to Sully County, potentially, Sully County would have to pay that and potentially try to get that money from his residency county.

And in this case, they may be stuck with it because he

has a county of residency in South Dakota.

We're trying to liken temporary relief to full blown medical care. And when you look at Roane -- this is my position and the county's position. When you look at Roane, when you look at the statute and the language of the statute, there has to be a reason for a separate statute about non-residents.

The reason is it's only temporary to make sure that person isn't suffering in your county, you need to get them help.

So we would ask that it be affirmed, Your Honor.

THE COURT: I've actually decided that I am going to take this under advisement and I'm going to schedule a conference call where I'll give an oral decision.

I have just a couple of things that I -- that you put in my mind that I want to clarify before I give the decision.

You can both appear telephonically at the decision and it will simply be just that. No argument is going to be heard, nothing else. You guys had lots of time today.

So we're going to -- I'll just provide my decision orally, and then we will proceed from there.

It shouldn't take more than ten minutes to provide.

August 26th? It's next Friday.

MR. VOGEL: I'm not available that day, Judge. Sorry.

THE COURT: How about the 29th?

MR. VOGEL: Any time.

MR. NELSON: August?

THE COURT: Yes.

MR. VOGEL: All day that day works for me, Judge.

THE COURT: August 29th at, let's do 11 a.m.

MR. VOGEL: Is it the Court's preference that we call in or...

THE COURT: We're going to give you a conference call number.

You guys haven't had those -- you guys haven't had a conference call yet, have you?

MR. VOGEL: No, Your Honor.

THE COURT: All right. We'll get the conference call number to you with the ID and you can just call into that number at 11 a.m. Okay?

MR. VOGEL: Thanks, Judge.

THE COURT: All right. Thank you.

(End of proceedings.)

CERTIFICATE OF REPORTER

I, Jessica Paulsen, RPR, Official Court Reporter in and for the State of South Dakota, do hereby certify that the Transcript of Oral Argument contained on the foregoing pages was reduced to stenographic writing by me and thereafter transcribed; that said proceedings commenced on the 18th day of August, 2022, in Onida, South Dakota, and that the foregoing is a full, true, and complete transcript of my shorthand notes of the proceedings had at the time and place set forth above.

Dated this 15th day of December, 2022.

/s/Jess Paulsen
Jess Paulsen, RPR
Official Court Reporter

$

$14,000 [1] - 67:2
$19,790 [1] - 37:22
$2,000 [1] - 34:2
$76,000 [1] - 66:22

'

'14 [1] - 37:9
'21 [1] - 37:8

1

1 [2] - 8:22, 10:23
1-26 [1] - 8:4
1-26-33 [4] - 18:21, 19:14, 28:2, 28:4
1.4 [9] - 24:4, 24:6, 24:7, 24:13, 27:5, 27:15, 39:16, 64:18, 64:23
10 [2] - 40:9, 42:19
100 [1] - 71:22
104 [1] - 34:13
11 [3] - 71:11, 75:6, 75:16
12 [5] - 35:19, 64:6, 64:16, 65:16, 65:20
121 [1] - 42:19
12th [1] - 72:14
13 [1] - 48:13
15 [6] - 25:11, 34:24, 36:24, 65:9, 68:4, 68:22
154 [1] - 37:16
16 [1] - 34:24
1884 [1] - 16:25
19 [1] - 33:24
1918 [1] - 34:12
1963 [1] - 42:19
1st [1] - 10:18

2

20 [1] - 64:9
2014 [8] - 12:12, 21:9, 21:10, 25:5, 26:1, 33:12, 33:13, 37:22, 67:12
2015 [2] - 12:13
2016 [1] - 14:16
2020 [1] - 10:16
2021 [3] - 12:14, 12:16, 12:22
2022 [4] - 8:22, 10:12, 10:22, 10:23
25th [1] - 10:16
26th [1] - 74:24
28 [2] - 10:22, 34:18
28-13 [3] - 24:3, 27:7
28-13-1.3 [1] - 26:7
28-13-1.4 [6] - 27:13, 29:10, 30:7, 43:20, 44:17, 63:17
28-13-27 [1] - 67:15
28-13-3 [4] - 50:1, 61:13, 63:4, 63:7
28-13-32.11 [1] - 32:25
28-13-37 [10] - 30:18, 30:21, 45:20, 46:5, 51:11, 52:19, 55:20, 55:25, 61:18, 61:22
28-13-40 [1] - 63:17
28-14 [1] - 72:9
29th [2] - 75:1, 75:6

3

3 [1] - 63:11
30 [3] - 19:14, 20:10, 30:14
30th [2] - 11:3, 12:22
31 [4] - 21:10, 25:5, 26:1, 33:13
31st [2] - 10:12, 67:12
32 [1] - 30:15
32-11 [1] - 69:11
32.11 [2] - 39:20, 69:6
33 [1] - 30:16
34.1 [1] - 65:11
37 [4] - 63:5, 63:12, 65:5, 70:9

4

4 [3] - 26:10, 39:9, 39:17
40 [2] - 24:4, 64:19
40,536 [1] - 66:25
4th [1] - 18:14

5

5 [2] - 30:8, 39:12
5th [1] - 18:15

6

6 [1] - 39:13
6D [1] - 67:15

7

7 [1] - 48:13
7-8-29 [2] - 20:16, 28:13
7-8-30 [9] - 23:20, 23:25, 27:10, 27:12, 29:9, 29:18, 29:21, 43:20, 63:17

8

8 [1] - 34:1
80 [1] - 71:22

9

95 [1] - 6:23
98 [1] - 6:23

A

a.m [2] - 75:6, 75:16
Aberdeen [2] - 14:19, 31:24
able [5] - 6:20, 7:16, 7:25, 24:24, 68:1
abscess [1] - 4:9
absolutely [2] - 16:21, 72:11
abuse [27] - 13:8, 14:3, 14:5, 24:7, 27:8, 27:18, 29:16, 42:1, 42:15, 43:6, 43:7, 43:25, 44:8, 44:14, 44:22, 44:25, 45:3, 51:2, 51:6, 52:17, 55:11, 55:12, 62:11, 62:18, 62:25, 63:20, 65:3
abused [1] - 13:16
abusing [1] - 45:10
ACA [26] - 21:1, 21:4, 21:11, 21:20, 24:19, 25:2, 25:5, 26:14, 26:23, 27:1, 33:7, 33:10, 33:14, 33:18, 34:4, 34:6, 37:8, 39:23, 67:6, 67:11, 67:20, 68:5, 68:7, 68:25, 69:14, 69:18
ACA's [1] - 66:23
accept [1] - 32:11
accepted [5] - 8:6, 47:15, 53:25, 63:15, 66:14
accepting [1] - 11:23
access [1] - 18:9
accident [5] - 34:21, 35:7, 36:2, 58:9
according [1] - 71:24
accurate [1] - 33:22
acres [1] - 64:9
Act [6] - 54:2, 54:3, 54:14, 55:7, 62:19, 62:23
acted [1] - 43:5
action [1] - 43:15
actual [1] - 29:2
acute [2] - 66:21, 71:10
add [1] - 12:4
added [1] - 48:8
addition [1] - 28:16
additional [8] - 5:5, 7:1, 7:14, 12:10, 19:23, 28:10, 28:15, 28:25
additions [4] - 12:4, 19:25, 20:4, 28:4
address [4] - 14:18, 40:19, 61:3, 66:20
addressed [1] - 12:8
addresses [4] - 16:17, 16:18, 17:12, 25:25
addressing [1] - 72:23
adjudicating [1] - 42:4
adjusted [1] - 71:19
administration [1] - 43:3
administrative [12] - 8:4, 10:1, 13:11, 19:1, 22:12, 22:19, 41:16, 41:19, 42:1, 42:13, 43:4, 43:15
admission [1] - 17:23
admits [2] - 70:25, 71:8
adopt [1] - 31:5
advice [1] - 54:4
advisement [1] - 74:13
advocated [1] - 17:2
affected [1] - 39:10
affiant [2] - 6:9
affidavit [31] - 6:2, 6:7, 6:12, 6:13, 8:8, 8:23, 9:3, 10:14, 10:19, 10:22, 11:5, 14:22, 15:8, 15:11, 16:2, 16:8, 16:17, 17:11, 17:16, 20:24, 22:1, 23:7, 23:13, 28:18, 36:23, 39:4, 39:6, 47:14, 53:15, 68:3, 69:24
affidavits [1] - 20:25
affirm [2] - 55:24, 55:25
affirmation [1] - 39:1
affirmed [1] - 74:11
afford [2] - 69:3, 69:16
Affordable [8] - 54:2, 54:3, 54:14, 55:7, 62:19, 62:23
afforded [2] - 24:20, 64:12
Agar [6] - 14:14, 14:15, 14:18, 15:22, 15:25, 16:5
agency [7] - 8:4, 12:4, 13:11, 19:1, 19:16, 22:12, 39:22
agent's [1] - 33:3
ago [1] - 34:13
agreement [3] - 31:22, 32:4, 32:5
ahead [8] - 6:11, 8:21, 20:23, 23:16, 30:13, 32:1, 38:22, 52:16
air [4] - 6:2, 6:16, 40:17, 72:25
alleging [1] - 29:12
allow [9] - 7:24, 20:3, 28:4, 28:6, 28:10, 28:25, 38:5, 61:3, 72:9
allowed [5] - 19:15, 20:6, 28:13, 38:13, 42:12
allows [2] - 12:4, 54:2
almost [1] - 65:23
alternative [2] - 22:3, 27:1
Ambulance [5] - 4:3, 46:25, 47:2, 47:3, 73:20
ambulance [7] - 4:7, 4:14, 47:4, 56:17, 73:19, 73:21
amended [2] - 29:18, 30:1
amendment [5] - 23:20, 23:25, 24:2, 27:9, 40:25
America [1] - 47:23
amount [2] - 28:16, 59:19
ample [2] - 13:22, 15:3
analysis [16] - 33:7, 41:12, 43:10, 43:11, 48:22, 48:24, 49:2, 49:12, 49:13, 50:18, 53:8, 55:2, 55:5, 55:13, 55:16, 56:5
answer [3] - 5:6, 27:21, 34:7
answered [1] - 17:23
anthem [1] - 69:9
anticipated [1] - 7:16
anyway [1] - 51:24
apologize [3] - 6:4, 9:16, 11:12
apparent [1] - 33:11
Appeal [1] - 19:15
appeal [27] - 5:10, 10:1, 11:17, 11:25, 12:25, 13:1, 13:2,

13:14, 14:5, 19:12, 20:6, 20:12, 22:23, 27:10, 28:3, 28:8, 28:11, 29:2, 29:5, 41:12, 42:23, 52:23, 55:24, 73:7, 73:8, 73:12, 73:13
appealed [2] - 28:21, 42:21
appeals [4] - 40:23, 43:21, 63:9, 66:9
appear [1] - 74:18
appeared [1] - 7:19
appearing [1] - 63:11
appendectomy [1] - 17:9
appendix [4] - 4:9, 57:13, 65:22, 71:4
apples [1] - 65:3
applicable [3] - 21:4, 23:21, 72:17
applicant [3] - 24:9, 54:17, 58:3
application [17] - 11:24, 12:12, 13:8, 22:11, 37:12, 37:24, 37:25, 42:8, 43:16, 52:18, 54:19, 57:20, 61:16, 61:17, 61:19, 61:20, 64:3
applications [3] - 29:20, 61:4, 61:6
applied [17] - 21:19, 21:20, 25:7, 33:17, 33:18, 34:4, 34:5, 34:6, 40:1, 53:23, 53:25, 62:20, 62:22, 67:4, 67:23, 73:9
applies [3] - 29:21, 53:20, 64:23
apply [16] - 29:17, 30:7, 34:15, 36:6, 39:16, 49:25, 50:10, 53:23, 54:3, 54:11, 58:3, 61:9, 65:3, 68:18, 68:24, 68:25
approach [1] - 56:3
appropriate [1] - 45:5
appropriately [1] - 7:3
approve [1] - 65:15
April [1] - 21:12
arbitrarily [2] - 43:6, 70:7
arbitrary [1] - 51:5
area [1] - 39:10
argue [1] - 39:10
argued [3] - 38:4, 69:12, 72:19
arguing [3] - 24:14, 67:16, 67:22
argument [17] - 6:21, 14:4, 14:24, 16:21, 30:5, 32:2, 33:5, 33:7, 33:14, 39:20, 44:16, 51:24, 63:13, 65:12, 70:4, 71:16, 74:19
arisen [1] - 66:13
arrived [1] - 21:12
article [2] - 14:14, 21:23
articles [2] - 21:8, 71:25
asleep [1] - 35:1
aspirin [1] - 66:1
assembly [1] - 20:1
assets [1] - 34:2
assistance [11] - 22:4, 40:4, 49:25, 50:3, 50:5, 50:7, 55:17, 61:15, 66:3, 70:7, 72:20
assume [1] - 4:22
asterisk [1] - 68:16
attached [5] - 5:23, 6:24, 9:2, 10:21, 11:5
attachment [1] - 38:16
attachments [1] - 5:15
attack [3] - 65:25, 71:1, 71:3
attempt [1] - 65:12
audible [1] - 37:9
auditor [5] - 5:14, 8:16, 11:1, 11:3, 31:12
August [4] - 12:12, 74:24, 75:3, 75:6
authority [13] - 4:19, 20:5, 20:15, 25:8, 27:17, 33:21, 34:4, 67:10, 68:1, 68:22, 69:19, 69:22, 71:15
authorize [1] - 28:14
available [19] - 16:24, 17:18, 24:19, 25:2, 25:3, 26:1, 33:2, 33:14, 40:1, 53:13, 64:15, 67:6, 67:18, 67:19, 67:21, 69:4, 69:12, 69:18, 74:25
Avera [61] - 4:22, 5:3, 7:1, 9:5, 10:4, 12:15, 12:23, 14:9, 18:9, 18:18, 21:24, 22:23, 23:11, 24:22, 24:25, 25:3, 29:9, 29:15, 30:6, 31:2, 31:23, 31:24, 32:8, 33:9, 36:6, 38:25, 39:5, 39:15, 40:3, 43:9, 46:14, 47:23, 49:20, 51:24, 53:22, 54:17, 54:20, 57:19, 58:3, 59:13, 59:16, 60:8, 63:5, 63:17, 65:20, 66:11, 66:24, 67:9, 68:1, 69:13, 70:2, 71:1, 71:10, 71:20, 72:4, 72:10, 72:19, 73:6, 73:8, 73:12
Avera's [9] - 5:23, 14:24, 15:16, 21:17, 28:1, 36:10, 47:22, 60:3, 65:2
aware [4] - 4:4, 4:11, 46:9, 46:13

B

backwards [1] - 24:24
base [1] - 15:24
based [9] - 26:6, 36:13, 37:19, 39:5, 52:18, 52:20, 63:23, 69:18, 72:18
basis [4] - 28:2, 32:21, 54:13, 71:12
bay [4] - 32:18, 64:7, 71:22, 72:15
became [1] - 46:13
becker [2] - 10:15, 10:19
become [1] - 59:23
begin [2] - 25:17, 68:14
behalf [5] - 9:4, 9:6, 14:1, 40:4, 61:4
behind [1] - 40:18
behold [1] - 18:9
below [5] - 26:18, 33:23, 43:25, 44:8
belt [1] - 56:2
benefit [1] - 50:22
better [2] - 11:20, 31:12
between [12] - 7:15, 12:19, 16:2, 28:17, 35:8, 36:4, 42:5, 42:6, 43:1, 58:23, 59:5, 59:8
beyond [3] - 5:7, 66:6, 70:22
bill [4] - 4:14, 47:4, 69:4, 73:22
bills [8] - 37:11, 49:18, 49:21, 52:5, 59:13, 59:19, 59:24, 62:4
black [1] - 68:4
bleed [1] - 5:9
blown [4] - 23:9, 60:15, 62:8, 74:2
blue [2] - 69:8
board [6] - 12:18, 33:16, 41:5, 42:18, 42:20, 43:5
bodies [1] - 43:2
bolsters [1] - 14:24
book [1] - 19:5
books [1] - 70:13
borders [1] - 36:3
bottom [3] - 6:11, 19:7, 48:13
bought [1] - 33:6
boxes [1] - 4:24
branch [1] - 43:1
Brant [1] - 10:14
brass [1] - 21:1
breadwinner [1] - 38:8
brief [18] - 6:4, 12:9, 13:6, 14:25, 24:1, 34:10, 34:11, 38:15, 38:16, 40:11, 45:21, 48:13, 51:18, 51:19, 52:25, 72:22, 73:5
briefed [1] - 40:20
briefs [1] - 35:10
bring [2] - 19:4, 22:6
bringing [1] - 18:7
broad [1] - 63:16
brothers [1] - 64:8
brought [6] - 17:14, 40:21, 51:19, 71:22, 72:5, 73:12
Brown [3] - 42:10, 42:18, 42:21
build [1] - 38:10
bulk [1] - 63:8
burden [6] - 22:23, 43:24, 44:10, 44:21, 54:16, 72:10
burdens [1] - 44:19
burned [1] - 16:25
burst [3] - 57:14, 65:23, 71:4
bursting [1] - 4:9
bus [1] - 70:17
but.. [1] - 47:24

C

calculated [2] - 37:7, 39:19
Calculated [1] - 37:11
calculation [2] - 33:1, 69:11
cannot [3] - 41:9, 43:14, 68:2
capable [1] - 57:5
capricious [1] - 51:5
car [1] - 18:13
Care [6] - 54:2, 54:3, 54:14, 55:7, 62:19, 62:23
care [31] - 16:19, 16:24, 18:10, 18:19, 31:7, 31:16, 32:6, 32:9, 32:15, 34:18, 35:9, 35:12, 35:15, 47:18, 50:18, 56:18, 56:23, 57:4, 57:16, 58:6, 58:18, 66:12, 66:18, 66:21, 70:9, 71:2, 71:11, 71:14, 71:19, 74:3
cars [1] - 34:20
carve [1] - 68:23
carved [1] - 27:10
case [33] - 4:8, 4:11, 4:19, 13:20, 24:14, 26:5, 34:13, 34:17, 34:23, 35:24, 38:7, 40:24, 42:17, 42:19, 43:8, 48:3, 48:5, 48:6, 48:14, 56:12, 56:14, 63:23, 70:25, 71:1, 71:4, 71:6, 73:25
cases [10] - 10:2, 22:12, 23:19, 23:22, 27:7, 36:5, 41:2, 41:20, 63:9, 63:22
casual [1] - 4:12
categories [1] - 24:11
cell [3] - 14:20, 18:10, 18:13
certain [2] - 9:23, 16:6
certainly [3] - 8:6, 38:6, 57:7
challenge [2] - 70:11, 70:12
challenged [4] - 27:4, 65:8, 67:9, 67:10
challenging [1] - 64:19
chance [1] - 27:20
change [2] - 36:15, 70:13
changed [2] - 37:10, 49:4
changes [1] - 48:7
Chapter [4] - 8:4, 24:3, 27:7, 72:9
chapter [6] - 50:3, 61:14, 63:5, 63:6, 63:9, 63:11
chapters [1] - 61:11
charges [1] - 66:22
checking [1] - 18:8
checkmarks [1] -

38:16
checks [1] - 38:17
child [1] - 37:25
CHIP [3] - 25:14, 36:25, 68:12
chronologically [1] - 31:1
circuit [4] - 34:22, 36:8, 42:24, 44:4
circumstance [1] - 69:6
citation [5] - 25:8, 42:18, 67:25, 69:19, 71:16
cite [2] - 12:8, 48:5
cited [19] - 4:15, 4:19, 12:3, 22:12, 23:19, 27:7, 27:17, 35:10, 38:15, 40:22, 40:24, 41:3, 45:21, 45:22, 48:7, 52:25, 63:22, 70:15
cites [2] - 28:1, 42:17
citizen [1] - 60:5
claim [4] - 4:12, 30:17, 35:6, 36:13
claims [3] - 63:19, 66:10, 70:8
clarified [1] - 53:16
clarify [2] - 8:1, 74:16
clean [1] - 5:11
clear [9] - 5:12, 5:18, 6:22, 9:24, 10:3, 18:6, 27:23, 50:25, 55:10
clearly [35] - 4:8, 4:15, 7:16, 19:12, 20:10, 30:7, 30:9, 30:11, 31:17, 32:8, 32:13, 32:17, 33:23, 35:13, 36:11, 37:12, 37:22, 39:12, 39:14, 44:9, 44:13, 44:23, 45:7, 48:14, 55:22, 63:7, 63:18, 63:23, 65:6, 66:5, 67:11, 69:15, 69:21, 69:25, 71:22
clinic [5] - 16:19, 16:23, 31:10, 31:19, 66:16
closed [7] - 21:10, 21:11, 25:5, 25:25, 33:13, 67:12, 67:21
closest [1] - 17:7
code [1] - 19:4
combination [1] - 28:6
comfortable [1] - 11:14
coming [8] - 8:13, 21:2, 41:22, 41:24, 60:8, 64:6, 64:13, 72:13
comment [1] - 71:13
comments [1] - 41:23
commercial [6] - 32:21, 33:1, 39:19, 69:2, 69:9, 69:12
commercially [1] - 33:6
commission [33] - 4:1, 5:15, 5:19, 5:21, 5:24, 6:23, 7:20, 8:14, 8:25, 10:4, 11:2, 11:23, 12:20, 12:21, 12:24, 13:23, 14:1, 22:11, 22:18, 23:1, 23:15, 26:11, 28:19, 38:22, 41:13, 42:11, 44:7, 51:5, 53:15, 54:5, 55:3, 55:4, 55:11
commission's [2] - 13:8, 28:10
commissioner's [3] - 29:22, 43:18, 45:22
commissioners [25] - 7:23, 8:3, 8:6, 9:13, 16:10, 18:4, 21:2, 23:24, 25:21, 29:1, 30:17, 36:21, 38:20, 40:23, 42:14, 43:16, 45:18, 47:7, 61:21, 61:23, 64:5, 65:5, 68:20, 72:17, 72:20
commissions [1] - 40:23
communicated [1] - 20:9
communication [1] - 12:19
community [5] - 14:17, 48:23, 49:14, 57:20, 58:25
comp [3] - 4:9, 4:11, 4:12
compare [2] - 43:19, 65:2
complaint [12] - 30:20, 30:23, 46:6, 46:22, 47:10, 50:13, 61:18, 61:21, 61:24, 62:14, 65:6, 65:7
complete [5] - 5:3, 9:1, 9:14, 11:21, 22:8
completed [1] - 64:2
comply [1] - 24:25
computed [1] - 69:5
concern [1] - 70:10
concerned [2] - 27:6, 31:13
concerns [2] - 22:16, 69:24
conclusion [1] - 24:25
conclusions [1] - 24:10
conclusory [1] - 21:24
conditional [6] - 23:22, 29:25, 30:3, 41:1, 41:13, 43:12
conference [4] - 74:14, 75:9, 75:12, 75:14
confidential [1] - 10:18
confused [1] - 26:4
confusing [2] - 5:11, 21:1
connection [1] - 66:9
conservative [1] - 16:19
consider [5] - 11:2, 27:3, 37:6, 64:18, 64:19
consideration [2] - 39:7, 42:9
considerations [1] - 28:25
considered [6] - 9:12, 10:4, 22:11, 25:20, 28:16, 44:20
considering [2] - 38:11, 43:16
constitutes [1] - 70:16
Constitutional [2] - 41:9, 41:10
construction [1] - 38:9
consultant [2] - 23:2, 33:16
consultant's [2] - 67:7, 69:18
consulting [1] - 23:4
contained [1] - 15:15
contends [1] - 29:16
contested [2] - 29:4, 38:24
continue [1] - 12:7
continuously [1] - 51:13
contracted [1] - 31:23
contradictory [1] - 68:19
contrary [1] - 41:23
contributing [1] - 35:21
control [2] - 16:21, 32:1
controlling [5] - 23:21, 36:5, 41:2, 48:6, 68:21
controls [1] - 63:16
controversy [2] - 42:5, 42:6
conundrum [2] - 47:21
copy [2] - 9:18, 19:17
corn [1] - 64:10
corner [1] - 4:24
correct [4] - 16:4, 51:12, 57:10, 58:12
corrections [3] - 19:24, 20:3, 28:5
correctly [1] - 66:3
corresponded [1] - 10:24
costs [2] - 19:23, 66:25
counsel [1] - 7:15
Counsel [1] - 30:16
counties [4] - 42:10, 56:21, 71:9, 71:24
country [1] - 15:5
County [58] - 4:2, 4:3, 4:14, 9:7, 9:8, 9:13, 11:20, 14:1, 14:15, 15:9, 15:17, 15:22, 16:12, 16:16, 17:7, 17:13, 24:18, 31:24, 32:7, 34:20, 34:21, 34:23, 35:18, 35:22, 35:24, 35:25, 36:1, 36:3, 39:11, 42:10, 42:18, 42:21, 46:2, 46:14, 46:18, 46:22, 47:10, 47:16, 47:17, 49:12, 49:20, 50:12, 54:5, 54:16, 57:5, 57:7, 57:18, 58:8, 58:9, 58:11, 58:15, 59:3, 60:9, 72:14, 73:22, 73:23
county [132] - 4:19, 4:24, 7:23, 8:3, 15:22, 16:24, 16:25, 17:4, 21:18, 22:7, 22:23, 23:24, 24:7, 26:20, 26:21, 27:17, 29:12, 29:21, 30:18, 30:24, 31:3, 31:8, 31:21, 32:5, 32:10, 32:22, 32:24, 32:25, 33:20, 34:3, 34:7, 34:10, 35:6, 35:7, 35:17, 36:13, 37:5, 38:7, 39:18, 40:23, 41:13, 42:9, 42:11, 42:13, 43:15, 44:7, 46:2, 46:5, 46:7, 46:9, 46:10, 46:13, 46:23, 47:4, 47:7, 47:9, 47:11, 47:20, 47:22, 47:24, 48:10, 48:11, 48:21, 49:8, 49:9, 49:10, 49:17, 50:21, 50:23, 51:1, 52:4, 52:22, 53:7, 53:24, 54:18, 55:11, 56:2, 56:14, 56:20, 56:23, 57:21, 58:4, 58:11, 58:18, 58:21, 59:22, 59:24, 60:2, 60:4, 60:18, 60:19, 60:23, 60:24, 61:19, 61:21, 61:23, 61:25, 62:7, 62:15, 62:17, 62:25, 63:19, 64:3, 64:4, 64:22, 65:5, 65:16, 66:9, 66:15, 67:16, 69:1, 69:5, 69:7, 69:10, 70:10, 70:15, 70:21, 72:1, 72:7, 72:9, 72:17, 72:20, 73:9, 73:15, 73:24, 74:1, 74:9
county's [18] - 11:19, 16:20, 22:3, 22:9, 22:21, 24:9, 31:5, 37:12, 37:25, 55:25, 56:9, 60:25, 62:12, 66:14, 70:4, 72:7, 73:6, 74:4
County's [1] - 47:21
couple [3] - 17:21, 36:18, 74:15
court [5] - 33:9, 34:23, 36:7, 42:24, 44:4
COURT [67] - 5:6, 7:4, 7:8, 7:12, 8:10, 8:16, 8:21, 9:19, 9:21, 9:23, 10:6, 11:7, 11:10, 11:14, 14:9, 14:12, 15:8, 15:12, 15:14, 15:19, 15:21, 16:7, 17:14, 18:20, 19:14, 20:16, 20:18, 20:20, 20:23, 22:5, 23:18, 25:19, 25:22, 26:3, 26:10, 27:14, 27:20, 28:1, 29:21, 29:24, 30:3, 30:7, 30:13, 40:7, 40:12, 40:14, 40:17, 43:19, 44:16, 44:23, 45:7, 45:16, 47:19, 47:25, 49:5, 51:11, 51:13, 51:17, 51:25, 52:12, 52:16, 56:7, 57:1, 57:9, 57:12, 58:7, 58:13, 58:18, 58:20,

59:5, 59:8, 59:11, 61:2, 61:11, 62:9, 63:1, 64:23, 68:6, 72:22, 72:25, 74:12, 75:1, 75:4, 75:6, 75:9, 75:14, 75:18
Court [59] - 5:11, 5:25, 6:19, 6:22, 11:6, 11:20, 11:21, 12:4, 12:16, 13:3, 13:7, 13:10, 13:13, 13:15, 14:14, 18:15, 19:16, 19:19, 19:22, 19:24, 20:3, 20:9, 24:12, 27:3, 27:5, 27:9, 28:4, 28:9, 29:7, 29:15, 30:21, 30:25, 33:9, 34:15, 34:22, 35:14, 36:9, 39:7, 41:7, 41:17, 42:2, 42:25, 43:23, 43:24, 45:4, 45:6, 48:14, 49:5, 51:3, 51:13, 53:6, 56:3, 59:1, 66:3, 66:8, 70:17, 72:16
Court's [4] - 20:2, 27:15, 28:16, 75:7
court's [1] - 13:11
Courts [1] - 41:20
covered [1] - 63:9
create [1] - 11:20
creating [1] - 42:20
credence [1] - 63:13
credibility [1] - 39:1
criteria [4] - 27:3, 29:12, 67:15, 70:2
cross [5] - 7:5, 7:17, 8:5, 17:19, 69:8
cross-examine [2] - 7:5, 7:17
cross-examined [1] - 8:5

D

Dakota [8] - 14:19, 45:4, 45:6, 60:4, 63:15, 64:13, 66:8, 74:1
data [1] - 37:8
date [2] - 11:4, 19:11
dated [2] - 10:18, 10:22
daughter [1] - 37:13
David [1] - 67:14
days [5] - 16:22, 19:14, 65:9, 65:20, 71:11
de [22] - 13:12, 13:15, 14:4, 24:2, 27:6, 27:12, 27:14, 27:15, 29:9, 29:24, 30:5, 40:22, 41:6, 41:7, 42:24, 43:13, 43:14, 43:25, 44:3, 44:4, 44:8, 51:3
dead [1] - 35:3
deal [5] - 31:19, 49:23, 58:4, 63:7, 63:8
dealing [3] - 30:3, 33:1, 61:7
December [3] - 11:3, 12:22, 30:14
decide [1] - 47:5
decided [5] - 18:15, 23:20, 36:18, 66:7, 74:12
decides [1] - 29:15
decision [22] - 11:22, 28:10, 28:11, 28:12, 34:11, 38:22, 41:4, 42:13, 44:5, 44:6, 44:11, 44:13, 45:22, 53:5, 55:25, 62:12, 72:18, 72:19, 74:14, 74:17, 74:18, 74:21
decisions [5] - 22:20, 24:10, 29:20, 29:22, 36:7
declined [2] - 32:19, 53:2
deem [1] - 57:13
deems [1] - 72:17
defined [5] - 26:7, 51:17, 52:9, 66:7, 70:8
defines [1] - 20:7
definition [8] - 26:6, 27:4, 29:13, 39:17, 52:11, 52:12, 56:8, 70:15
degree [1] - 45:2
delegating [1] - 17:1
denial [9] - 13:8, 26:11, 29:2, 36:14, 45:17, 45:19, 45:25, 52:20, 62:18
denials [2] - 26:11, 43:18
denied [21] - 11:24, 12:12, 21:19, 28:23, 30:17, 33:17, 34:5, 34:6, 40:2, 45:24, 53:21, 53:25, 54:1, 54:12, 62:13, 62:21, 62:22, 63:24, 67:23, 68:18, 68:24
deny [2] - 36:13, 72:18
denying [4] - 11:23, 22:3, 24:16, 52:18
department [6] - 24:23, 31:16, 32:12, 65:21, 72:6, 72:13
Department [1] - 10:13
deposes [1] - 6:10
depth [1] - 53:8
deputy [1] - 56:15
design [10] - 26:10, 26:13, 27:2, 29:12, 52:21, 52:24, 54:13, 55:9, 55:15, 67:17
determination [5] - 13:14, 41:15, 41:17, 43:4, 51:7
determinations [1] - 43:3
determine [2] - 29:8, 41:18
determined [2] - 41:7, 41:15
determining [3] - 41:20, 49:22, 58:1
developed [1] - 42:20
dictate [1] - 38:21
dictionary [1] - 51:20
die [3] - 56:25, 58:15, 71:9
died [2] - 31:18, 65:23
difference [3] - 16:2, 35:13, 36:1
differences [3] - 34:15, 35:8, 36:4
different [20] - 15:5, 15:14, 15:20, 21:7, 24:4, 24:5, 24:11, 35:4, 36:7, 36:18, 41:14, 42:4, 45:10, 46:4, 46:23, 58:20, 58:21, 61:8, 61:11, 73:15
differentiate [2] - 58:23, 62:1
differently [1] - 51:17
direct [3] - 30:21, 40:4, 72:20
directed [3] - 31:11, 31:20, 32:12
direction [3] - 5:12, 28:13, 31:15
directly [1] - 63:25
discounted [1] - 31:25
discretion [34] - 13:9, 13:16, 14:3, 14:6, 24:7, 27:8, 27:16, 27:18, 29:16, 30:10, 39:14, 42:2, 42:15, 43:6, 43:7, 44:1, 44:8, 44:14, 44:22, 44:25, 45:3, 45:8, 45:10, 51:2, 51:6, 52:18, 55:11, 55:12, 62:11, 62:18, 62:25, 63:20, 65:3, 69:22
discuss [1] - 19:25
discussed [1] - 7:15
discussion [2] - 33:11, 38:21
discussions [1] - 36:16
dispute [1] - 17:18
disputed [3] - 37:23, 63:23
disputes [1] - 47:8
disputing [4] - 16:5, 26:16, 26:17, 26:19
distinction [2] - 59:5, 59:8
distinguish [1] - 65:13
distress [9] - 48:10, 50:13, 55:22, 59:14, 59:16, 60:11, 61:25, 62:6, 62:15
distressed [3] - 46:2, 46:10, 51:1
district [1] - 42:21
ditch [1] - 35:1
doctor [5] - 16:23, 17:10, 31:10, 31:19, 32:13
doctor's [1] - 57:16
doctrine [2] - 41:9, 41:11
doctrines [1] - 41:10
document [3] - 6:6, 33:2, 38:19
documentation [5] - 7:3, 25:4, 54:7, 54:9, 68:19
documenting [1] - 37:13
documents [7] - 5:20, 5:22, 9:4, 9:6, 23:6, 34:4
dollars [6] - 33:25, 34:1, 50:19, 71:14, 71:18, 71:23
done [16] - 11:24, 33:4, 41:12, 43:10, 43:11, 43:14, 43:15, 48:22, 48:23, 48:25, 49:2, 51:4, 55:2, 55:5, 64:15, 64:21
doubt [1] - 65:24
down [14] - 7:22, 31:11, 34:14, 39:21, 56:5, 64:9, 64:15, 66:17, 66:25, 67:20, 68:6, 70:18, 70:23, 72:4
Dr [1] - 10:14
dr [1] - 10:19
drainage [6] - 22:14, 23:23, 41:4, 41:24, 63:21
driver [1] - 34:25
driving [4] - 34:25, 58:9, 58:14, 65:25
dropping [1] - 67:20
drops [1] - 66:25
drove [1] - 16:3
duly [1] - 6:9
Dunker [1] - 42:18
during [4] - 16:6, 25:15, 37:1, 68:13
duty [5] - 17:2, 46:5, 52:22, 61:23, 65:5

E

e-mailed [1] - 9:17
ear [1] - 73:3
earn [1] - 64:13
economic [2] - 72:11
economy [2] - 35:21, 65:18
ED [1] - 31:4
education [2] - 42:18, 42:20
effected [1] - 69:23
efforts [2] - 15:7, 18:17
eight [2] - 13:20, 15:3
either [4] - 25:20, 34:24, 55:12, 69:21
electronic [1] - 19:17
eligibility [1] - 33:1
eliminate [2] - 27:1, 29:11
eliminates [1] - 16:9
emergency [11] - 17:3, 17:9, 24:23, 31:15, 32:8, 32:12, 32:15, 35:8, 65:21, 72:5, 72:13
employer [1] - 32:18
employer-offered [1] - 32:18
EMTALA [1] - 35:10
enacted [1] - 35:10
end [1] - 75:19
ended [2] - 12:11, 35:6
enjoy [1] - 72:1
enroll [6] - 25:14, 25:15, 36:24, 37:1, 68:12, 68:13
enrollment [20] - 21:9, 21:11, 21:21, 25:6,

25:16, 25:25, 33:12, 33:18, 34:7, 37:2, 39:24, 53:16, 53:19, 53:20, 54:2, 54:11, 67:12, 67:21, 67:24, 68:13
entered [1] - 49:9
entire [8] - 9:9, 19:17, 26:5, 30:11, 36:12, 39:13, 47:18, 70:1
entitled [3] - 50:3, 61:15, 68:25
erroneous [8] - 30:7, 30:11, 36:12, 39:13, 44:10, 44:13, 44:23, 70:1
error [2] - 30:11, 69:23
errors [1] - 37:7
especially [1] - 67:8
essentially [14] - 13:14, 18:3, 21:9, 21:11, 21:24, 22:2, 29:7, 31:6, 33:5, 39:25, 44:6, 56:2, 64:17, 66:22
establish [3] - 47:13, 65:14, 70:6
established [4] - 16:11, 50:4, 50:10, 61:15
evidence [11] - 28:10, 28:25, 29:1, 30:12, 36:12, 39:13, 44:6, 44:12, 47:13, 53:2, 70:1
evidentiary [1] - 8:7
exact [1] - 10:9
exactly [4] - 5:10, 45:12, 45:14, 53:18
examine [2] - 7:5, 7:17
examined [1] - 8:5
example [1] - 59:2
excellent [1] - 6:1
except [5] - 29:19, 50:2, 61:13, 63:4, 63:10
excuse [5] - 9:11, 14:15, 25:10, 43:23, 44:21
executive [1] - 10:17
exercise [4] - 30:10, 39:14, 45:8, 69:21
exhibit [2] - 10:6, 10:21
Exhibit [11] - 8:25, 9:2, 9:4, 9:6, 9:8, 10:21, 25:10, 25:18, 36:23, 68:3
exhibits [2] - 6:25, 15:15
Exhibits [2] - 8:23, 10:8
exist [4] - 34:9, 70:9, 72:9
existing [1] - 72:4
exists [3] - 68:23, 70:14
expenses [2] - 38:6, 38:11
experience [4] - 23:3, 25:8, 65:17, 69:20
expert [2] - 17:20, 57:13
expressly [1] - 17:10
extremely [1] - 9:24

F

face [2] - 17:22, 18:5
facilities [1] - 71:20
facility [3] - 57:3, 57:4, 57:5
fact [16] - 4:7, 7:18, 21:14, 25:25, 27:8, 29:11, 32:3, 33:2, 33:12, 39:3, 39:6, 41:2, 48:15, 61:19, 71:21, 72:7
facts [6] - 6:20, 27:17, 39:6, 44:12, 47:7, 72:18
factual [1] - 70:3
factually [1] - 39:5
failed [2] - 67:16, 67:18
Falcon [10] - 14:11, 14:14, 14:20, 15:4, 15:5, 15:8, 16:2, 23:12, 31:17, 66:16
fall [4] - 25:17, 37:3, 56:4, 68:15
families [1] - 64:9
far [12] - 6:17, 7:2, 11:16, 17:17, 33:21, 48:25, 63:14, 64:11, 64:14, 65:4, 66:8, 69:2
fault [1] - 60:9
favor [1] - 36:10
favorably [1] - 17:1
February [1] - 10:22
federal [6] - 26:18, 33:24, 38:3, 50:17, 50:20, 69:15
fell [1] - 34:25
fighting [2] - 67:1, 67:2
file [1] - 22:17
filed [4] - 8:24, 9:18, 10:23, 11:5
filing [1] - 9:20
filled [1] - 37:24
filling [1] - 37:13
final [1] - 38:19
finality [1] - 13:25
finally [3] - 18:11, 36:17, 38:24
financial [2] - 32:25, 69:6
fire [1] - 10:13
first [15] - 12:12, 18:14, 24:21, 29:6, 30:17, 40:19, 41:18, 45:18, 46:1, 53:9, 61:9, 63:3, 66:16, 68:17
fit [1] - 69:4
five [2] - 54:21, 63:4
fixated [1] - 34:11
flat [1] - 36:14
flow [1] - 63:7
follow [1] - 31:14
follows [1] - 6:10
footnote [1] - 68:16
foremost [2] - 46:1, 63:3
forget [3] - 23:25, 34:24, 52:14
forgot [1] - 53:18
form [4] - 24:19, 33:1, 39:19, 69:11
formal [2] - 8:2, 38:24
formula [1] - 38:15
forth [3] - 44:10, 48:23, 54:8
four [2] - 36:6, 63:3
frankly [8] - 10:15, 14:23, 20:8, 47:12, 55:3, 55:14, 56:1, 73:11
Friday [1] - 74:24
friend [12] - 14:25, 16:18, 31:9, 46:3, 46:16, 46:17, 46:19, 51:1, 62:16, 66:19
friends [12] - 15:1, 16:15, 46:19, 48:9, 50:14, 50:15, 55:22, 60:11, 60:12, 62:17
front [1] - 20:14
frugally [1] - 56:22
full [14] - 20:5, 20:8, 23:9, 56:23, 57:21, 57:22, 59:23, 60:15, 62:3, 62:8, 63:12, 65:23, 71:5, 74:2
fuller [1] - 5:2
funding [1] - 50:20
furnished [1] - 48:15

G

gasoline [1] - 35:20
gather [2] - 12:23, 13:22
gathered [1] - 12:15
general [1] - 63:16
generalizing [1] - 58:7
generally [5] - 25:16, 37:2, 42:3, 63:14, 68:14
given [1] - 69:23
glossed [1] - 64:1
goal [1] - 32:10
Google [3] - 14:18, 17:17, 18:12
Googled [2] - 17:15, 17:17
gospel [1] - 67:8
governed [1] - 63:20
government [1] - 43:2
government's [2] - 25:4, 67:11
granted [4] - 5:4, 19:13, 40:5, 54:19
granting [2] - 4:20, 11:23
greater [1] - 44:3
groceries [1] - 35:20
ground [1] - 64:9
grounds [1] - 26:25
groundskeeper [1] - 72:15
groundskeeping [1] - 64:7
guaranteed [1] - 53:12
guess [9] - 4:7, 7:13, 8:5, 15:22, 17:18, 19:7, 20:13, 57:12, 66:2
guidelines [6] - 26:18, 33:24, 37:17, 37:21, 38:3, 69:15
guts [1] - 22:2
guys [3] - 74:20, 75:11

H

half [1] - 13:21
hand [2] - 11:18
handed [2] - 34:14, 56:5
handled [1] - 31:13
hands [1] - 40:10
handy [1] - 20:14
Hanson [2] - 34:23, 35:7
hard [1] - 56:12
hat [1] - 67:20
head [1] - 11:16
health [8] - 25:13, 32:18, 32:20, 68:5, 68:8, 68:9, 68:11, 69:5
healthcare.gov [5] - 21:7, 21:23, 25:4, 33:10, 37:4
hear [4] - 12:20, 13:24, 59:7, 73:4
heard [1] - 74:20
hearing [23] - 4:17, 5:1, 6:16, 7:14, 8:2, 8:3, 8:11, 9:11, 12:10, 12:14, 12:16, 12:20, 16:10, 19:11, 19:12, 21:2, 21:15, 22:10, 23:10, 30:14, 36:9, 38:25, 41:25
hearings [3] - 22:14, 28:19, 28:20
hearsay [1] - 23:13
heart [3] - 65:25, 71:1, 71:2
help [4] - 60:13, 64:2, 74:10
helping [1] - 14:16
herself [2] - 37:5, 68:20
hide [1] - 15:6
high [6] - 13:9, 27:19, 42:15, 51:3, 55:18, 62:11
higher [4] - 44:10, 44:25, 64:23
highest [1] - 24:6
highway [2] - 23:23, 63:22
himself [1] - 55:1
hints [1] - 33:19
hired [1] - 54:5
history [1] - 72:11
hit [1] - 11:16
hobos [1] - 34:18
hold [1] - 42:25
home [1] - 37:14
homeless [2] - 58:14, 58:20
homemade [1] - 6:12
honest [1] - 44:19
Honor [27] - 8:20, 9:3, 9:16, 10:20, 11:9, 11:12, 11:15, 13:17, 16:4, 16:8, 20:19, 20:21, 23:17, 26:9, 27:25, 29:7, 40:13, 40:16, 43:22, 44:19, 48:5, 48:19, 52:15, 55:23, 73:5, 74:11, 75:13
hook [1] - 66:15

hospital [29] - 14:24, 15:18, 17:3, 17:5, 17:7, 17:11, 17:21, 31:11, 31:18, 31:21, 35:8, 35:9, 35:11, 36:3, 46:21, 48:17, 48:19, 57:18, 57:20, 61:4, 62:4, 63:24, 63:25, 66:4, 66:17, 66:25, 70:19, 71:5, 73:21
hospitalization [5] - 12:11, 13:20, 28:17, 65:7, 66:5
hospitals [3] - 35:4, 50:19, 71:13
hours [1] - 21:6
house [1] - 64:10
household [12] - 37:11, 37:19, 37:20, 37:21, 37:23, 38:1, 38:2, 38:13, 54:15, 54:21, 55:1, 55:6
households [1] - 38:5
Hughes [1] - 46:14
hundred [1] - 34:1
husband [1] - 38:8
Hutchinson [6] - 34:20, 34:21, 35:24, 35:25, 36:1, 49:12
hypothetical [1] - 73:19

I

I-90 [1] - 34:25
ID [1] - 75:15
idea [1] - 23:12
identical [1] - 36:8
identify [2] - 30:19, 65:16
ignore [2] - 50:14, 63:10
ill [2] - 4:4, 16:12
illness [1] - 66:12
immediate [1] - 49:9
immediately [3] - 31:20, 49:9, 65:22
immigrant [1] - 58:22
impact [1] - 72:11
implied [1] - 4:2
impliedly [1] - 4:5
important [3] - 18:19, 21:14, 22:1
impossibility [1] - 24:21
impossible [2] - 31:1, 39:12
in-depth [1] - 53:8
include [2] - 18:25, 51:20
included [3] - 8:23, 11:4, 51:13
includes [2] - 10:14, 70:8
including [1] - 29:3
income [9] - 26:18, 34:1, 37:11, 37:17, 37:19, 38:12, 54:23, 64:11, 64:14
incorrect [1] - 45:1
incur [1] - 38:12
indicated [1] - 51:9
indicates [2] - 40:24, 61:13
indigence [2] - 24:15, 43:21
indigency [8] - 44:18, 50:6, 52:21, 55:18, 61:7, 73:16
indigent [18] - 26:4, 26:6, 26:10, 26:13, 26:15, 26:17, 27:2, 29:11, 29:13, 39:18, 50:8, 52:24, 54:13, 55:8, 55:15, 60:2, 60:19, 67:17
indiscernible [1] - 53:13
individual [18] - 14:10, 26:6, 32:20, 33:6, 50:22, 53:1, 53:2, 53:9, 53:12, 53:19, 56:9, 57:1, 57:3, 58:13, 62:16, 66:23, 66:24, 73:21
individual's [1] - 54:22
individuals [5] - 35:23, 41:24, 42:5, 42:22, 72:3
information [19] - 4:23, 8:1, 12:15, 12:24, 13:16, 13:22, 13:25, 14:23, 15:4, 21:2, 21:15, 23:3, 53:15, 54:16, 54:18, 62:20, 62:24, 68:5, 68:7
inhabitant [11] - 46:6, 47:9, 51:15, 51:20, 51:21, 51:25, 52:7, 52:11, 59:6, 61:24, 73:11
inhabitants [2] - 59:9, 59:10
initial [1] - 25:19
injured [1] - 48:17
inpatient [2] - 66:21, 71:11
inserting [2] - 44:5, 44:11
instance [1] - 56:15
instantly [1] - 35:3
insulated [1] - 31:7
insurable [2] - 53:1, 54:14
insurance [26] - 24:19, 25:13, 26:13, 26:24, 32:17, 32:18, 32:20, 33:3, 33:4, 33:6, 39:1, 39:19, 39:22, 53:3, 53:10, 53:13, 58:10, 67:19, 68:5, 68:8, 68:9, 68:11, 69:2, 69:5, 69:12, 72:13
insured [2] - 66:23
intent [1] - 49:8
intention [1] - 56:24
interesting [1] - 21:17
internet [1] - 54:10
interpretation [2] - 25:1, 31:6
interpreted [2] - 45:14, 48:21
interpreter [2] - 18:1, 64:2
interrupt [1] - 30:13
introduced [1] - 8:11
investigation [2] - 38:18, 38:21
involved [3] - 17:24, 18:7, 23:22, 28:17, 34:17, 36:8, 36:17, 70:21
involvement [2] - 16:21, 72:12
involving [1] - 65:23
irregularities [1] - 7:2
issue [15] - 6:14, 8:19, 16:22, 17:14, 18:10, 26:19, 26:23, 32:2, 32:17, 36:8, 41:24, 60:3, 65:4, 67:6, 71:3
issues [6] - 4:25, 7:1, 16:9, 63:21, 63:22, 73:11
itself [1] - 44:5

J

J.R [25] - 4:8, 14:23, 14:25, 15:17, 21:5, 21:11, 22:4, 29:11, 31:17, 32:19, 33:25, 35:17, 37:8, 37:16, 38:5, 39:11, 40:4, 64:1, 65:17, 67:3, 69:15, 71:10, 72:8, 72:12, 73:9
J.R.'s [3] - 16:18, 37:11, 71:4
January [2] - 10:12, 12:14
Jess [1] - 40:9
job [3] - 4:10, 13:11, 38:12
Judge [2] - 74:25, 75:17
judge [1] - 75:5
judicial [6] - 22:20, 33:10, 41:16, 42:14, 43:1
jurat [1] - 6:8
justify [1] - 27:18

K

keeps [3] - 52:21, 54:20, 60:8
kept [1] - 20:11
kind [9] - 5:9, 6:12, 10:1, 11:16, 11:18, 37:9, 43:7, 65:19, 72:12
kinds [1] - 21:1
knowledge [1] - 21:15
knows [1] - 16:16

L

Lamb [2] - 8:22, 10:22
lamb [2] - 7:10, 11:5
lamb's [1] - 23:7
language [14] - 6:8, 19:4, 19:8, 24:13, 27:11, 29:19, 30:1, 30:21, 45:11, 48:9, 63:10, 63:12, 70:20, 74:5
last [4] - 17:21, 27:20, 59:7, 72:22
law [4] - 20:7, 30:11, 39:10, 69:23
laws [1] - 50:17
least [6] - 6:17, 10:8, 28:19, 33:13, 37:23, 38:20
leave [2] - 46:11, 58:15
legal [1] - 53:13
legally [2] - 58:22, 58:24
legislate [2] - 41:10, 58:25
legislature [3] - 43:14, 49:3, 70:13
legislatures [1] - 41:9
length [1] - 19:6
less [2] - 65:20, 67:2
lesser [3] - 44:21, 45:2
letter [6] - 5:14, 8:16, 10:13, 12:13, 45:23, 46:25
level [3] - 24:7, 26:17, 45:15
liable [1] - 59:23
lies [1] - 71:24
life [1] - 31:7
light [5] - 11:8, 30:11, 36:12, 39:13, 70:1
liken [1] - 74:2
limit [2] - 19:22
limitation [1] - 4:17
line [1] - 19:7
listed [2] - 24:16, 41:6
listened [2] - 36:22
lists [1] - 24:10
live [3] - 65:19
lived [3] - 14:14, 15:25, 16:5
lives [1] - 15:21
living [6] - 35:19, 48:25, 55:1, 59:25, 64:9, 65:17
loan [1] - 66:25
local [1] - 65:18
look [30] - 24:3, 27:2, 32:22, 34:10, 34:23, 36:11, 36:18, 38:6, 39:7, 43:1, 43:8, 44:20, 45:1, 45:19, 46:4, 48:3, 48:12, 49:25, 50:1, 51:2, 53:17, 55:10, 61:21, 63:3, 67:14, 70:5, 73:18, 74:3, 74:4, 74:5
looked [7] - 8:14, 9:17, 17:20, 18:5, 19:7, 39:19, 64:5
looking [6] - 8:13, 10:11, 17:1, 37:18, 42:15
looks [3] - 6:12, 21:4, 32:15
loudly [1] - 40:17
low [1] - 18:8
lower [2] - 43:24, 43:25
Luke's [3] - 17:11, 18:9, 31:24
Lupe [1] - 23:12
lying [22] - 24:18, 26:21, 30:19, 30:24, 46:1, 46:7, 46:9, 46:18, 46:23, 47:9, 47:16, 48:10, 50:13,

51:1, 55:21, 57:9, 59:14, 59:16, 60:11, 61:2, 61:25, 62:15

M

mailed [2] - 9:17
maintain [1] - 38:5
major [4] - 53:2, 53:12, 67:18, 69:4
mandates [2] - 32:25, 44:2
manifested [1] - 43:6
manifestly [1] - 51:6
March [6] - 8:22, 10:18, 10:23, 21:10, 25:5, 26:1, 33:13, 67:12
marketplace [4] - 25:15, 37:1, 68:9, 68:13
Mary's [3] - 9:5, 31:23, 46:14
material [1] - 36:1
materials [1] - 11:2
math [1] - 37:18
matter [2] - 28:20, 28:21
maybes [1] - 38:20
McKennan [1] - 35:4
McLaen [2] - 41:3, 43:8
mean [6] - 12:1, 15:21, 20:8, 23:14, 54:10, 73:2
means [1] - 70:7
meant [1] - 59:21
media [2] - 17:20, 18:12
Medicaid [20] - 21:19, 25:7, 25:14, 33:17, 33:23, 33:25, 34:5, 36:24, 40:1, 53:20, 53:25, 54:1, 54:11, 62:21, 62:22, 67:3, 67:23, 68:12, 68:17, 68:24
medical [38] - 15:23, 16:19, 16:24, 18:10, 24:15, 31:7, 31:15, 32:6, 32:8, 35:15, 43:21, 44:18, 47:18, 49:18, 49:21, 50:6, 52:4, 53:3, 53:12, 55:18, 56:23, 57:13, 57:22, 59:13, 59:19, 59:24, 60:15, 61:6, 62:4, 62:8, 67:19, 69:4, 70:9, 70:24, 73:16, 74:3
medically [9] - 26:4, 26:6, 26:14, 26:17, 29:13, 39:18, 50:7, 60:2, 60:19
meet [3] - 8:7, 39:3, 67:16
meeting [11] - 9:1, 9:12, 10:25, 11:3, 22:11, 22:22, 41:15, 53:16, 55:3, 55:4
meets [3] - 6:6, 45:15, 69:24
mention [1] - 40:21
mentioned [1] - 24:1
message [1] - 18:14
met [4] - 29:14, 39:18, 66:20, 70:2
metaphysically [1] - 31:1
Mexican [2] - 34:24, 60:5
Mexico [7] - 18:1, 18:2, 54:23, 60:6, 64:9, 72:8, 73:16
mid [1] - 21:12
mid-April [1] - 21:12
middle [1] - 37:10
might [5] - 21:4, 32:1, 34:15, 66:6, 69:2
millions [3] - 50:19, 71:14, 71:18
mind [2] - 66:17, 74:16
minimum [4] - 6:6, 8:7, 39:3, 69:25
minute [1] - 40:9
minutes [3] - 9:8, 16:14, 74:23
Miriam [1] - 52:14
modified [2] - 27:13, 29:10
modify [1] - 24:8
money [10] - 46:17, 48:9, 50:14, 55:22, 56:22, 60:12, 60:13, 64:13, 65:19, 73:24
month [3] - 34:1, 66:5
months [5] - 16:1, 25:16, 35:18, 37:2, 68:14
morphed [1] - 43:7
mostly [1] - 5:23
motion [19] - 4:15, 4:16, 4:20, 5:4, 5:7, 5:8, 11:10, 11:17, 12:1, 13:4, 14:7, 19:10, 20:13, 27:21, 27:25, 28:1, 28:22, 40:4
motions [1] - 5:23
move [5] - 19:8, 29:2, 43:18, 56:10, 57:2
moved [3] - 18:1, 18:2, 45:24
moves [1] - 48:2
moving [4] - 45:17, 52:20, 70:18
MR [68] - 5:25, 7:7, 7:10, 7:13, 8:15, 8:20, 8:22, 9:20, 9:22, 10:5, 10:20, 11:9, 11:12, 11:15, 14:11, 14:13, 15:11, 15:13, 15:17, 15:20, 16:4, 16:8, 17:16, 19:3, 20:7, 20:17, 20:19, 20:21, 20:22, 20:24, 22:6, 23:17, 23:19, 25:20, 25:24, 26:9, 26:12, 27:15, 27:23, 29:7, 29:23, 30:1, 30:5, 30:9, 30:14, 40:13, 40:16, 40:19, 43:22, 44:18, 44:24, 45:9, 45:17, 47:20, 48:2, 49:11, 51:12, 51:16, 51:18, 52:3, 52:14, 52:17, 56:11, 57:7, 57:10, 57:15, 58:12, 58:17, 58:19, 58:23, 59:7, 59:10, 59:12, 61:6, 61:13, 62:10, 63:3, 64:25, 68:7, 72:23, 73:4, 74:25, 75:2, 75:3, 75:5, 75:7, 75:13, 75:17
multiple [3] - 10:9, 69:14
must [2] - 19:10, 30:23

N

N.W.2d [1] - 42:19
nail [1] - 11:16
name [1] - 17:22
narrow [1] - 27:9
nationals [1] - 34:24
nature [1] - 71:6
need [33] - 17:25, 22:24, 26:22, 32:15, 45:5, 45:19, 46:12, 49:13, 49:21, 50:7, 50:10, 50:23, 53:8, 55:17, 56:1, 57:10, 57:17, 58:5, 58:25, 59:15, 60:6, 60:9, 60:10, 60:20, 61:9, 61:20, 62:5, 62:7, 70:11, 70:12, 71:21, 73:7, 74:9
needed [4] - 5:13, 12:24, 46:20, 55:14
needs [13] - 13:25, 39:7, 41:12, 41:14, 41:18, 48:24, 49:3, 53:7, 53:9, 54:8, 58:2, 58:6, 59:17
negatively [1] - 17:2
negotiations [1] - 36:16
Nelson [21] - 5:6, 9:5, 10:24, 11:8, 12:3, 12:7, 12:20, 13:21, 14:13, 14:21, 16:7, 20:18, 29:5, 40:21, 42:6, 48:22, 51:19, 52:21, 53:7, 63:2, 73:15
NELSON [30] - 5:25, 7:7, 7:10, 7:13, 11:9, 16:8, 17:16, 19:3, 20:7, 20:17, 20:19, 20:22, 20:24, 23:17, 23:19, 25:20, 25:24, 26:9, 26:12, 27:15, 29:7, 29:23, 30:1, 30:5, 30:9, 30:14, 63:3, 64:25, 68:7, 75:3
never [15] - 6:17, 7:15, 14:21, 21:22, 32:22, 39:18, 39:19, 39:20, 51:18, 64:21, 65:8, 66:7, 69:5, 69:11, 69:12
new [5] - 28:11, 30:1, 42:20, 47:14, 50:17
newspapers [1] - 71:25
next [2] - 52:20, 74:24
niece [1] - 37:25
nobody [1] - 58:2
non [10] - 17:4, 31:8, 32:7, 45:20, 47:8, 47:25, 50:11, 59:6, 59:9, 74:7
non-residency [3] - 47:25, 59:6, 59:9
non-resident [4] - 31:8, 45:20, 47:8, 50:11
non-residents [3] - 17:4, 32:7, 74:7
none [2] - 50:23, 60:5
notary [1] - 6:11
note [2] - 7:18, 24:12
noted [1] - 66:3
nothing [8] - 13:24, 27:7, 32:3, 32:4, 32:19, 33:19, 54:22, 74:20
Notice [1] - 19:15
notice [10] - 16:22, 24:18, 26:20, 31:2, 31:25, 33:10, 39:11, 64:21, 65:6, 70:11
notified [3] - 46:3, 56:15, 56:16
notwithstanding [1] - 43:20
November [1] - 10:25
novo [22] - 13:12, 13:15, 14:4, 24:2, 27:6, 27:12, 27:14, 27:15, 29:9, 29:24, 30:5, 40:22, 41:6, 41:7, 42:24, 43:13, 43:14, 43:25, 44:3, 44:4, 44:9, 51:3
number [16] - 12:3, 13:6, 14:19, 14:20, 18:10, 24:17, 26:19, 32:17, 34:13, 46:19, 52:25, 62:14, 62:16, 75:10, 75:15, 75:16
numbers [2] - 14:21, 37:8

O

oath [1] - 6:10
object [2] - 8:10, 22:16
objecting [2] - 12:2, 41:24
objection [1] - 41:22
objections [2] - 22:17, 41:23
objective [1] - 32:10
objects [1] - 29:15
obligation [5] - 30:18, 56:9, 56:20, 61:1, 66:18
obvious [1] - 67:5
obviously [5] - 6:19, 24:21, 27:16, 64:12, 71:1
occupies [1] - 51:25
occurred [1] - 32:14
occurrence [1] - 34:22
odd [2] - 23:11, 33:24
Odyssey [2] - 8:24, 9:18
offered [1] - 32:18
office [3] - 9:16, 12:17, 33:3
officer [1] - 14:13
officers [1] - 6:19

official [3] - 9:8, 55:5, 68:8
old [1] - 48:6
once [1] - 28:21
one [50] - 6:14, 7:8, 10:7, 12:3, 13:6, 13:11, 18:4, 18:20, 20:22, 20:24, 20:25, 22:6, 23:19, 24:6, 24:17, 24:21, 26:11, 26:19, 30:9, 32:17, 32:21, 33:13, 34:13, 35:23, 37:11, 37:19, 38:13, 38:20, 39:15, 40:21, 41:3, 41:16, 42:17, 44:23, 45:23, 46:13, 46:19, 47:8, 49:19, 51:21, 51:25, 52:25, 55:1, 62:14, 67:24, 70:2, 72:2, 73:10
Onida [9] - 4:3, 10:12, 14:16, 16:20, 46:25, 47:1, 47:3, 73:19
open [13] - 21:9, 21:20, 25:6, 25:15, 25:25, 33:18, 34:6, 37:2, 39:24, 53:19, 67:20, 67:24, 68:13
opening [1] - 24:13
opinion [11] - 11:18, 21:24, 41:17, 45:9, 51:23, 62:17, 67:8, 67:22, 67:25, 69:18, 69:20
opinions [1] - 43:24
opportunity [1] - 7:5
opposed [3] - 13:5, 14:2, 23:16
opposing [2] - 13:17, 14:7
option [1] - 34:8
or.. [1] - 75:8
oral [3] - 7:15, 33:15, 74:14
orally [1] - 74:22
oranges [1] - 65:4
order [11] - 21:16, 33:9, 49:25, 50:3, 50:9, 52:3, 52:4, 55:16, 61:14, 63:12, 70:6
original [1] - 11:19
otherwise [10] - 21:13, 38:7, 50:2, 57:23, 58:14, 61:13, 63:4, 63:5, 63:11, 66:23
ought [1] - 72:2
ourselves [2] - 7:16, 43:5
outlined [4] - 13:6, 14:25, 45:3, 45:6
outside [6] - 21:20, 33:18, 34:6, 53:19, 67:24, 73:13
overlook [1] - 39:8
overlooked [2] - 25:21, 37:5
overpass [1] - 35:2
overseers [1] - 48:16
own [5] - 25:4, 25:17, 37:12, 67:11, 68:3

P

page [7] - 25:11, 36:24, 45:23, 48:13, 53:18, 68:4, 68:22
pages [2] - 21:7, 30:15
paid [6] - 57:22, 60:7, 60:23, 66:24, 70:6, 71:19
paragraph [1] - 68:10
paralegal [2] - 6:3, 17:20
part [16] - 5:25, 8:18, 12:13, 12:25, 25:19, 25:24, 47:13, 49:12, 50:18, 50:24, 52:10, 53:5, 55:4, 55:8, 59:7, 64:4
particular [1] - 52:1
parties [4] - 5:19, 19:18, 29:4, 42:7
party [4] - 18:23, 19:8, 19:21, 23:13
passed [1] - 39:24
passing [4] - 49:1, 49:7, 59:2, 59:25
patient [1] - 30:23
patients [2] - 71:15, 72:5
pay [8] - 49:17, 49:21, 52:4, 54:25, 57:25, 59:3, 60:9, 73:23
paying [5] - 35:6, 35:19, 47:18, 50:22, 65:18
payment [5] - 35:12, 60:15, 62:3, 63:24, 63:25
payments [1] - 57:22
pays [1] - 60:20
peace [1] - 35:5
Pennington [3] - 58:8, 58:11, 59:3
people [4] - 22:16, 32:11, 50:20, 71:9
per [3] - 34:1, 43:23, 55:16
percent [2] - 6:23, 37:16
period [16] - 16:6, 21:21, 33:12, 33:18, 34:7, 39:24, 52:1, 53:16, 53:19, 53:20, 54:2, 54:11, 67:12, 67:21, 67:24, 68:12
periods [3] - 25:16, 37:2, 68:14
permit [7] - 19:24, 27:12, 29:25, 30:4, 41:1, 41:14, 43:12
permits [1] - 23:22
person [38] - 13:11, 26:21, 29:13, 30:19, 31:3, 31:4, 31:9, 31:14, 31:15, 37:12, 37:19, 46:6, 48:17, 48:21, 48:25, 49:17, 50:3, 54:3, 54:14, 54:18, 56:11, 56:17, 56:18, 56:20, 56:25, 57:16, 58:20, 59:14, 59:16, 59:22, 59:24, 60:18, 61:2, 61:5, 61:14, 61:24, 62:6, 74:9
person's [1] - 67:24
pertain [1] - 43:12
pertained [1] - 41:4
pertaining [2] - 42:23, 52:24
pertains [1] - 44:18
Peterson [20] - 6:3, 6:16, 7:6, 7:19, 7:24, 7:25, 8:8, 21:3, 21:18, 21:25, 23:1, 25:7, 33:16, 36:21, 37:5, 38:4, 53:14, 54:4, 62:19, 68:20
Peterson's [8] - 6:24, 25:11, 25:17, 36:23, 37:15, 38:14, 39:1, 68:3
petition [1] - 12:21
petitioned [1] - 41:21
petitions [2] - 22:13, 22:14
phone [3] - 14:19, 14:20, 18:13
physician [3] - 32:6, 34:17, 35:15
picked [4] - 4:4, 4:8, 15:9, 33:3
Pierre [5] - 16:15, 17:11, 31:11, 31:18, 31:20
place [4] - 12:22, 17:22, 52:1, 60:1
plan [3] - 25:15, 37:1, 68:13
plans [1] - 69:9
play [1] - 24:14
pleading [1] - 8:8
pleadings [2] - 5:5, 5:24
plenty [1] - 12:11
plus [1] - 6:23
point [17] - 4:1, 18:3, 20:9, 20:22, 27:4, 27:23, 28:12, 28:24, 49:6, 52:23, 58:1, 58:23, 59:4, 60:8, 60:15, 60:16, 62:10
pointed [1] - 73:1
pointing [1] - 53:6
points [1] - 53:7
poor [9] - 23:2, 23:4, 38:7, 42:8, 43:17, 45:20, 48:20, 63:19, 66:9
portion [1] - 52:20
position [13] - 11:19, 13:7, 22:9, 22:21, 31:5, 32:24, 44:16, 45:7, 56:7, 65:2, 66:14, 74:4
possible [3] - 7:12, 28:9, 37:17
potential [1] - 36:18
potentially [3] - 9:11, 73:22, 73:23
Potter [2] - 17:7, 31:24
poverty [6] - 26:18, 33:24, 37:17, 37:21, 38:3, 69:15
powers [4] - 41:8, 41:11, 43:1, 44:1
precedence [1] - 48:24
preclude [1] - 4:20
preference [3] - 9:19, 11:13, 75:7
preferences [1] - 9:17
prejudiced [1] - 24:9
premise [1] - 24:13
premium [1] - 69:13
premiums [2] - 33:2, 37:7
presence [1] - 6:18
present [4] - 12:21, 12:24, 13:22, 46:7
presented [4] - 23:15, 46:24, 47:7, 62:19
presenting [2] - 31:4, 72:12
presents [1] - 65:20
presumed [1] - 52:25
pretty [6] - 5:12, 7:21, 18:6, 27:23, 40:20, 67:4
previously [3] - 8:19, 10:15, 28:20
primarily [1] - 36:21
primary [6] - 26:25, 29:18, 32:10, 34:10, 38:8
printed [1] - 10:7
privately [1] - 66:23
problem [2] - 26:12, 44:9
procedural [1] - 7:2
procedure [2] - 7:4, 30:10
proceed [3] - 5:13, 40:12, 74:22
proceeding [1] - 19:18
proceedings [3] - 19:19, 28:14, 75:19
process [1] - 20:12
processed [1] - 44:5
produce [3] - 6:20, 53:1, 54:16
prong [1] - 33:14
proof [4] - 22:24, 35:12, 73:7
proponent [1] - 22:17
prove [1] - 61:9
provide [28] - 11:1, 17:3, 18:24, 22:24, 31:2, 32:6, 34:3, 35:12, 46:12, 49:13, 50:15, 52:8, 54:6, 54:7, 54:8, 54:17, 56:16, 57:3, 57:10, 58:18, 62:3, 62:7, 64:20, 67:7, 72:20, 73:7, 74:21, 74:23
provided [26] - 5:16, 18:25, 19:1, 20:3, 21:22, 23:2, 23:7, 29:1, 33:20, 36:20, 46:20, 50:2, 50:19, 53:4, 53:6, 54:4, 57:2, 59:17, 61:14, 63:4, 63:5, 63:11, 66:12, 67:10, 71:10, 71:14
provider [1] - 70:24
provides [3] - 18:23, 57:4, 73:20
providing [5] - 5:17, 34:17, 51:10, 57:6, 65:18
provision [2] - 21:9, 35:15
provisions [1] - 65:1
prudent [1] - 31:14
published [1] - 71:24

purchase [1] - 67:18
purchased [2] - 32:20, 39:22
purchasing [2] - 35:20
purported [1] - 8:8
purpose [3] - 47:25, 49:18, 60:11
pursuant [1] - 33:8
put [6] - 14:22, 21:3, 41:22, 56:22, 72:10, 74:15

Q

qualifications [1] - 39:4
qualified [6] - 33:25, 53:24, 54:18, 55:6, 62:23, 67:4
qualify [5] - 53:11, 53:12, 55:17, 61:10, 69:21
quasi [4] - 22:20, 41:16, 42:14
quasi-judicial [4] - 22:20, 41:16, 42:14
queen [1] - 35:5
questions [7] - 4:25, 7:2, 7:20, 7:24, 16:9, 17:24, 69:23
quickly [1] - 17:15
quote [3] - 49:8, 49:11, 70:6
quoted [1] - 48:13
quotes [2] - 6:2, 6:16

R

railroad [2] - 34:19, 36:2
raise [2] - 7:21, 64:10
raised [5] - 5:1, 6:3, 16:9, 18:4, 32:22
raises [1] - 6:1
raising [1] - 6:5
rate [2] - 31:25, 67:3
rationale [2] - 22:3, 41:8
rationalize [1] - 11:22
re [1] - 12:20
re-hear [1] - 12:20
reach [1] - 38:23
reached [2] - 14:21, 38:23
read [3] - 28:5, 46:16, 68:10
readily [1] - 33:11
reading [6] - 4:2, 12:7, 20:2, 21:6, 57:15, 61:11
reads [1] - 28:4
ready [1] - 40:12
real [1] - 6:5
realistically [1] - 15:14
really [5] - 4:10, 13:17, 32:22, 45:13, 73:12
reason [19] - 4:22, 12:5, 12:9, 14:2, 14:9, 15:2, 24:15, 26:2, 29:18, 44:3, 45:18, 45:19, 45:25, 46:1, 62:12, 74:6, 74:8
reasons [8] - 5:2, 11:1, 14:7, 19:13, 22:1, 24:17, 40:3, 55:23
reattached [1] - 9:3
rebut [3] - 34:3, 52:23, 69:1
rebutted [1] - 52:22
receive [2] - 9:25, 50:7
received [1] - 65:9
receives [1] - 50:22
recent [3] - 18:9, 34:22, 41:3
recently [1] - 17:19
recess [2] - 40:9, 40:11
recognize [1] - 32:11
recommendation [2] - 6:25, 30:16
record [78] - 4:21, 4:23, 5:3, 5:4, 5:8, 5:10, 5:11, 5:15, 5:18, 7:3, 9:9, 9:14, 9:24, 9:25, 10:15, 11:11, 11:18, 11:20, 11:21, 12:2, 12:5, 12:25, 13:1, 13:3, 13:4, 13:13, 14:8, 15:21, 16:11, 18:22, 18:24, 18:25, 19:5, 19:6, 19:9, 19:16, 19:17, 19:19, 19:22, 19:25, 20:1, 20:3, 20:4, 20:5, 20:8, 22:2, 22:8, 23:8, 23:16, 25:19, 25:23, 25:24, 27:25, 28:5, 28:7, 30:12, 32:3, 32:5, 33:8, 36:12, 39:13, 40:14, 47:13, 50:24, 50:25, 55:5, 55:8, 64:4, 69:17, 70:1, 70:3, 71:15, 71:17, 72:19
records [9] - 10:3, 10:5, 10:11, 15:16, 15:23, 18:8, 28:8, 28:15, 42:10
rectify [1] - 44:15
refer [1] - 30:15
referenced [1] - 20:15
references [1] - 40:22
referred [1] - 5:20
referring [1] - 10:5
refusing [1] - 19:21
regard [7] - 6:1, 11:10, 48:12, 50:17, 61:2, 73:10, 73:14
regarding [2] - 14:5, 43:21
regardless [2] - 59:25, 68:22
regular [1] - 7:4
regularly [1] - 52:1
reimbursed [1] - 73:16
relating [1] - 29:25
relay [1] - 7:24
relaying [1] - 19:2
relied [4] - 6:23, 18:21, 23:4, 44:12
relief [58] - 23:2, 23:4, 38:7, 42:8, 43:17, 45:21, 46:12, 46:20, 46:24, 48:2, 48:15, 48:17, 48:19, 48:20, 49:13, 50:12, 50:16, 51:8, 51:10, 52:8, 55:21, 56:8, 56:11, 56:16, 56:19, 57:2, 57:3, 57:4, 57:11, 57:12, 57:15, 58:5, 59:15, 59:17, 59:18, 60:10, 62:8, 63:19, 65:14, 65:24, 66:1, 66:3, 66:6, 66:7, 66:9, 66:11, 66:12, 70:16, 70:19, 70:22, 71:3, 71:6, 72:7, 73:10, 73:14, 73:18, 73:20, 74:2
rely [2] - 23:11, 39:23
relying [5] - 23:12, 26:12, 56:22, 61:12, 69:17
remain [1] - 11:13
remainder [1] - 35:3
remake [1] - 44:11
remaking [1] - 44:6
remand [6] - 11:19, 12:10, 12:17, 12:23, 13:21, 45:25
remanded [3] - 13:19, 22:7, 28:21
remanding [1] - 5:12
remember [4] - 25:14, 36:6, 36:24, 68:11
remotely [1] - 33:19
remove [2] - 49:16, 58:2
removed [4] - 48:17, 48:18, 49:10
rent [1] - 35:19
repayment [1] - 59:19
replayed [1] - 63:21
reply [3] - 6:4, 24:1, 63:2
REPORTER [1] - 40:17
request [4] - 7:4, 63:24, 70:8, 72:16
requesting [1] - 27:14
requests [2] - 5:3, 40:3
require [3] - 19:24, 56:12, 71:7
required [6] - 39:20, 42:23, 65:10, 66:20, 66:21, 69:22
requirement [5] - 49:16, 49:19, 54:8, 57:24, 60:16
requirements [2] - 6:7, 69:25
requires [1] - 38:18
requiring [1] - 4:5
rescheduled [1] - 11:1
research [2] - 21:6, 45:12
residence [3] - 49:4, 49:23, 72:8
residency [41] - 26:19, 47:20, 47:24, 47:25, 49:16, 49:18, 49:23, 50:4, 50:10, 51:14, 51:21, 51:22, 52:6, 52:9, 52:11, 57:21, 57:24, 58:1, 58:11, 58:14, 58:21, 59:4, 59:6, 59:9, 59:20, 60:2, 60:4, 60:16, 61:9, 61:15, 62:3, 63:8, 65:15, 70:5, 70:6, 73:17, 73:24, 74:1
resident [19] - 31:8, 36:14, 45:20, 45:24, 46:11, 47:8, 47:22, 49:1, 49:15, 50:11, 52:5, 54:24, 55:16, 55:17, 55:19, 56:21, 58:8, 60:24, 72:8
residents [6] - 14:16, 17:4, 32:7, 74:7
residing [1] - 54:23
resists [1] - 29:16
resolves [1] - 71:3
resources [1] - 21:8
respectfully [3] - 5:3, 40:3, 72:16
respective [1] - 71:23
respond [4] - 7:19, 7:20, 21:16, 22:5
response [2] - 21:16, 21:18
responses [2] - 5:23, 17:16
responsibility [2] - 17:2, 72:3
responsible [5] - 4:6, 47:4, 47:18, 50:12, 60:1
rest [2] - 40:9, 52:10
restrictions [1] - 4:18
result [3] - 28:22, 30:14, 38:23
resulting [2] - 67:16, 69:22
revenue [1] - 71:23
revenues [1] - 72:2
reverse [3] - 24:8, 24:24, 72:19
review [34] - 13:7, 13:12, 13:18, 18:23, 19:18, 19:19, 24:2, 24:5, 27:6, 27:12, 27:14, 27:18, 28:9, 29:3, 29:8, 29:25, 40:19, 41:6, 42:1, 42:11, 43:4, 43:14, 44:2, 44:4, 44:21, 44:25, 45:3, 45:5, 61:20, 62:12, 63:14, 63:19, 64:17, 72:16
reviewed [6] - 5:16, 5:19, 5:21, 5:24, 11:22
reviewing [6] - 5:18, 13:15, 19:16, 43:13, 44:6, 44:12
reviews [1] - 24:5
ridiculous [1] - 38:13
riding [1] - 34:19
right-of-way [1] - 41:21
rights [2] - 24:8, 42:4
road [4] - 38:8, 38:9, 70:18, 70:23
roads [2] - 22:13, 23:23
Roane [17] - 34:11, 35:8, 35:14, 48:2, 48:3, 48:5, 48:8, 48:12, 48:23, 49:5, 51:9, 56:19, 57:15, 70:20, 74:3, 74:5

routes [1] - 36:19
routinely [1] - 52:1
rule [1] - 31:14
ruled [1] - 36:9

S

sales [1] - 50:23
samaritan [7] - 46:8, 48:4, 48:16, 48:18, 51:9, 51:10, 59:21
Sanford [2] - 35:4, 57:19
Sarah [1] - 6:3
saw [1] - 6:22
schedule [1] - 74:13
school [1] - 42:21
SDCL [1] - 28:2
seal [1] - 6:11
search [2] - 51:20, 54:10
searched [1] - 14:18
seasonal [1] - 16:6
seated [1] - 11:13
second [3] - 6:15, 42:25, 53:11
secondly [4] - 16:18, 24:19, 25:2, 39:23
section [2] - 63:11, 63:12
see [5] - 13:2, 18:5, 18:15, 30:22, 44:7
seeing [1] - 6:4
seeking [3] - 47:23, 48:16, 59:13
sent [1] - 56:5
sentences [1] - 28:6
separate [1] - 74:6
separation [4] - 41:8, 41:11, 43:1, 44:1
sepsis [2] - 65:23, 71:5
September [1] - 10:16
seriously [1] - 39:7
service [1] - 19:14
services [2] - 17:3, 54:6
set [2] - 10:24, 19:11
setting [1] - 12:20
several [2] - 10:8, 24:10
shall [6] - 19:16, 50:4, 61:15, 61:23, 69:7, 69:11
sheered [1] - 35:2
sheet [3] - 17:22, 18:5, 62:24
sheriff's [1] - 56:15
shield [1] - 69:8
short [3] - 19:5, 24:23, 29:19
shortened [7] - 18:24, 19:20, 20:2, 20:4, 28:7
shortly [1] - 10:17
shot [1] - 18:8
show [5] - 47:1, 53:2, 53:9, 54:10, 61:12
shows [1] - 67:11
shut [1] - 7:21
sick [19] - 16:11, 24:18, 26:21, 30:19, 30:24, 46:2, 46:7, 46:18, 47:9, 47:11, 47:16, 50:14, 51:1, 55:21, 57:9, 59:23, 60:19, 61:2, 61:25
side [2] - 72:2, 72:3
sight [1] - 66:17
significantly [1] - 58:8
similar [1] - 45:10
simply [7] - 28:11, 35:6, 67:7, 70:23, 71:5, 72:4, 74:19
single [2] - 34:25, 39:25
sit [2] - 31:9, 46:10
sitting [1] - 18:18
situation [2] - 32:9, 66:13
six [5] - 12:14, 16:1, 35:18, 36:7, 66:5
size [1] - 54:15
slow [1] - 68:6
social [2] - 17:20, 18:12
someone [6] - 6:13, 41:21, 46:9, 47:17, 58:24, 59:2
somewhat [2] - 5:7, 5:8
somewhere [4] - 5:14, 38:10, 39:21, 58:6
sorry [7] - 20:22, 24:1, 30:13, 59:7, 67:15, 68:10, 74:25
sort [3] - 57:25, 60:24, 61:1
sound [1] - 73:2
South [8] - 14:19, 45:4, 45:6, 60:4, 63:15, 64:13, 66:8, 74:1
sovereign [1] - 6:10
space [1] - 24:24
special [8] - 27:11, 29:20, 53:16, 53:18, 54:1, 54:11, 68:23
specific [5] - 11:3, 27:9, 63:15, 63:18, 64:3
specifically [7] - 29:21, 30:15, 43:21, 44:20, 50:1, 65:10, 70:20
spend [1] - 56:22
spending [2] - 21:6, 65:19
St [6] - 9:5, 17:11, 18:9, 31:23, 31:24, 46:14
stand [1] - 28:8
standard [31] - 13:7, 13:9, 13:18, 14:3, 27:8, 27:18, 27:19, 29:3, 29:8, 29:10, 29:17, 30:8, 39:9, 40:19, 40:22, 41:6, 41:14, 42:16, 44:21, 45:2, 45:5, 51:3, 55:12, 55:18, 62:11, 63:14, 63:18, 63:20, 64:17, 64:24, 72:17
standards [5] - 8:7, 24:5, 27:5, 29:10, 36:11
standpoint [2] - 21:17, 69:8
stands [1] - 27:13
start [1] - 12:1
started [3] - 7:19, 7:20, 47:11
starting [1] - 10:12
state [3] - 30:22, 48:9, 61:16
statement [8] - 21:25, 25:12, 26:3, 26:4, 33:20, 33:22, 37:16, 68:22
statements [2] - 23:12, 62:24
states [6] - 6:10, 12:5, 19:14, 30:18, 43:20, 48:14
States [3] - 47:23, 54:24, 54:25
statute [52] - 9:15, 12:3, 12:7, 18:20, 18:23, 19:3, 19:8, 20:11, 20:15, 25:1, 31:6, 38:4, 40:22, 40:25, 42:12, 42:22, 42:23, 43:23, 44:2, 45:20, 46:5, 46:8, 46:16, 46:24, 47:6, 48:7, 50:6, 50:15, 51:8, 51:9, 51:14, 51:15, 52:7, 52:24, 55:15, 55:18, 55:20, 56:24, 59:14, 59:18, 60:17, 60:22, 62:5, 63:15, 63:16, 64:21, 69:6, 71:8, 74:5, 74:6
statute's [1] - 66:19
statutes [32] - 4:15, 13:12, 18:21, 24:4, 41:6, 43:13, 45:21, 48:1, 48:20, 49:3, 49:24, 50:1, 50:9, 52:10, 55:17, 58:7, 59:20, 59:21, 60:15, 60:25, 61:3, 61:7, 61:10, 62:2, 62:3, 63:7, 65:10, 72:8, 73:17
statutory [2] - 41:5, 65:9
stay [1] - 49:8
step [1] - 46:13
still [15] - 8:13, 26:19, 26:21, 27:13, 31:3, 39:11, 41:2, 48:10, 55:6, 56:4, 57:7, 57:9, 59:12, 65:13, 66:20
stipulate [1] - 19:21
stipulation [1] - 19:18
street [1] - 39:21
strictly [1] - 49:14
strikes [1] - 23:11
stuck [1] - 73:25
stuff [2] - 50:23, 52:22
sub [2] - 26:10, 30:8
submission [4] - 25:11, 25:18, 37:4, 68:4
submissions [6] - 6:24, 10:8, 21:4, 33:15, 36:20, 37:15, 38:14, 39:2
submit [18] - 4:7, 8:7, 23:20, 27:9, 27:16, 30:25, 32:4, 36:5, 39:17, 41:18, 43:22, 45:18, 55:23, 66:11, 69:13, 71:2
submits [8] - 21:24, 29:9, 32:8, 38:25, 39:15, 63:5, 63:17, 70:2
submitted [31] - 5:20, 5:22, 8:14, 8:22, 9:4, 9:6, 9:10, 10:4, 10:9, 10:12, 25:3, 28:18, 36:6, 38:4, 38:19, 39:5, 42:8, 47:1, 47:14, 51:18, 51:19, 53:14, 53:22, 53:24, 54:22, 54:25, 55:4, 60:6, 68:20, 73:22
submitting [1] - 41:22
subsection [4] - 39:9, 39:17, 64:19, 67:14
subsections [2] - 39:16, 45:14
subsequent [1] - 19:24
substantial [2] - 24:8, 36:4
substantiate [1] - 22:24
substantiated [1] - 21:25
suffer [2] - 56:25, 62:6
suffering [1] - 74:9
sufficiency [1] - 65:8
sufficient [1] - 53:1
suggested [1] - 70:17
Sully [44] - 4:2, 4:3, 4:14, 9:7, 9:8, 9:13, 11:20, 14:1, 14:15, 15:9, 15:17, 15:22, 16:12, 16:16, 16:25, 17:13, 24:18, 32:7, 35:18, 35:22, 36:3, 39:11, 46:2, 46:18, 46:22, 47:10, 47:16, 47:17, 47:21, 49:20, 50:12, 54:5, 54:16, 57:5, 57:7, 57:18, 58:9, 58:15, 59:3, 60:9, 72:14, 73:22, 73:23
summary [2] - 10:17, 31:5
superior [1] - 64:14
supervisors [1] - 41:5
supplement [16] - 5:8, 11:11, 11:17, 12:2, 12:6, 12:9, 13:5, 13:13, 14:8, 19:9, 20:25, 22:2, 25:22, 27:22, 28:1, 28:22
supplementation [1] - 28:2
supplemented [5] - 4:23, 5:4, 18:25, 20:6, 23:9, 33:8
supplementing [5] - 4:20, 18:21, 23:16, 25:24, 27:25
support [2] - 15:9, 65:18
supported [1] - 31:22
supporting [1] - 38:1
supports [3] - 21:23, 33:20, 33:21
Supreme [9] - 13:3, 13:10, 42:25, 43:23,

43:24, 45:4, 45:6, 49:5, 66:8
surgery [3] - 65:22, 66:20, 71:10
surgical [1] - 34:18
survived [1] - 71:10
suspenders [1] - 56:2
Sutton [4] - 32:18, 64:7, 71:22, 72:15
swing [1] - 31:12
sworn [9] - 6:9, 6:17, 22:10, 22:15, 22:21, 22:22, 23:10, 23:13, 41:25

T

talks [15] - 19:3, 19:5, 19:10, 24:7, 29:19, 38:16, 48:3, 48:10, 50:4, 51:9, 52:25, 55:20, 59:20, 65:5
tangentially [1] - 34:16
tax [3] - 50:23, 71:23, 72:1
taxed [1] - 19:22
taxes [2] - 50:22, 65:18
taxpayer [1] - 56:22
telephone [1] - 7:20
telephonically [1] - 74:18
temporarily [1] - 60:1
temporary [46] - 46:12, 46:20, 46:24, 48:2, 48:15, 48:17, 48:19, 49:6, 50:12, 50:16, 51:8, 51:10, 52:8, 55:21, 56:8, 56:11, 56:16, 56:19, 57:11, 57:12, 57:15, 58:5, 59:15, 59:17, 59:18, 60:10, 62:5, 62:7, 65:14, 65:24, 66:1, 66:6, 66:7, 66:11, 70:7, 70:16, 70:22, 71:3, 71:6, 73:10, 73:14, 73:18, 73:20, 74:2, 74:8
ten [2] - 16:22, 74:23
tens [1] - 71:18
tense [1] - 46:7
term [2] - 43:7, 58:2
testified [2] - 7:10, 21:3
testify [1] - 6:20
testimony [8] - 6:15, 7:15, 22:10, 22:15, 22:21, 22:22, 23:10, 41:25
text [1] - 18:14
theirs [1] - 23:2
themselves [1] - 31:7
therefore [1] - 42:14
therein [3] - 24:18, 26:22, 30:19, 46:7, 50:14, 55:21, 59:14, 61:25
they've [5] - 12:11, 15:3, 24:15, 51:23
thinking [1] - 73:14
thinks [2] - 34:15, 56:3
third [1] - 23:13
third-party [1] - 23:13
thoroughly [1] - 40:20
thousand [2] - 33:24, 71:23
three [13] - 25:16, 35:2, 35:4, 37:2, 37:14, 37:22, 37:23, 38:2, 39:15, 54:21, 55:6, 66:5, 68:14
threshold [5] - 24:23, 31:4, 33:23, 65:21, 72:6
throughout [1] - 63:21
ticket [1] - 70:18
tie [4] - 11:18, 34:20, 50:9, 60:14
tied [1] - 4:11
ties [6] - 13:17, 35:17, 48:22, 49:14, 58:24, 59:12
timeframe [2] - 19:10, 30:22
timeframes [2] - 20:10
timely [1] - 65:9
today [4] - 35:9, 47:5, 53:22, 74:20
together [1] - 50:9
took [4] - 12:22, 18:8, 31:10, 66:18
top [2] - 34:19, 35:2
topic [1] - 63:18
township [8] - 41:3, 41:5, 41:13, 41:20, 42:17, 43:8, 43:11, 43:12
townships [2] - 22:13, 43:9
train [2] - 49:7
transcript [11] - 6:22, 7:18, 8:17, 8:25, 9:1, 9:10, 9:14, 23:6, 30:15, 53:17, 55:5
transcripts [1] - 28:14
transferring [2] - 57:1, 57:2
transients [1] - 34:19
transmit [1] - 19:16
transport [3] - 46:19, 50:15, 73:20
transportation [2] - 46:21, 60:13
transported [12] - 14:23, 46:3, 46:16, 47:1, 47:3, 47:17, 50:25, 56:18, 57:18, 57:19, 66:16, 66:19
transporting [1] - 59:18
treat [1] - 50:20
treated [1] - 65:7
treating [1] - 71:2
treatment [15] - 4:5, 16:19, 18:10, 31:8, 31:16, 32:6, 32:9, 34:18, 35:9, 35:13, 35:16, 62:8, 66:21, 71:11, 71:19
trial [2] - 13:11, 42:23
tried [5] - 6:13, 18:3, 53:9, 64:10, 68:17
troy [2] - 42:17, 43:12
trucker [1] - 38:9
truer [1] - 5:2
try [5] - 17:25, 18:17, 60:23, 65:13, 73:23
trying [6] - 8:1, 15:6, 16:18, 37:17, 62:1, 74:2
turn [1] - 72:5
turning [1] - 73:6
Twelve [1] - 65:17
twelve [1] - 16:1
two [24] - 5:5, 7:21, 16:8, 16:25, 17:16, 23:19, 24:4, 24:17, 26:25, 28:19, 35:2, 36:5, 38:5, 38:20, 46:4, 61:7, 61:11, 62:1, 62:16, 64:8, 65:2, 65:13, 71:23
tying [1] - 52:3
type [4] - 27:12, 29:20, 62:2, 63:8
typical [2] - 9:25, 10:2
typically [1] - 23:24

U

unconstitutional [3] - 44:17, 64:20, 70:12
under [37] - 6:9, 8:4, 13:12, 19:18, 27:5, 27:7, 27:12, 27:15, 29:9, 29:10, 31:15, 35:1, 37:7, 38:2, 39:16, 39:20, 42:1, 47:6, 54:14, 56:7, 61:6, 61:10, 64:17, 64:21, 65:10, 67:14, 67:15, 69:6, 69:11, 69:15, 72:9, 72:16, 73:16, 74:13
understood [3] - 8:2, 11:21, 29:3
undisputed [1] - 50:11
United [3] - 47:23, 54:24, 54:25
unlawful [1] - 30:10
unless [6] - 7:10, 27:10, 29:25, 40:25, 41:13, 53:1
unpaid [1] - 4:14
unquote [1] - 70:7
unreasonable [1] - 28:24
unreasonably [2] - 19:21, 43:5
unsworn [1] - 67:25
unwarranted [2] - 39:14, 45:8
up [23] - 4:4, 4:8, 15:10, 16:23, 17:7, 17:14, 17:17, 17:22, 18:3, 21:8, 21:16, 22:6, 26:3, 33:7, 35:1, 35:6, 37:16, 40:21, 51:19, 64:13, 72:14, 72:25, 73:12

V

vacate [2] - 22:13, 41:21
vacation [1] - 63:22
vagabonds [1] - 34:18
van [3] - 34:25, 35:1
variance [1] - 27:12
versus [3] - 19:5, 22:20, 48:25
victim [1] - 65:25
visiting [1] - 16:14
VOGEL [58] - 8:15, 8:20, 8:22, 9:20, 9:22, 10:5, 10:20, 11:12, 11:15, 14:11, 14:13, 15:11, 15:13, 15:17, 15:20, 16:4, 20:21, 22:6, 27:23, 40:13, 40:16, 40:19, 43:22, 44:18, 44:24, 45:9, 45:17, 47:20, 48:2, 49:11, 51:12, 51:16, 51:18, 52:3, 52:14, 52:17, 56:11, 57:7, 57:10, 57:15, 58:12, 58:17, 58:19, 58:23, 59:7, 59:10, 59:12, 61:6, 61:13, 62:10, 72:23, 73:4, 74:25, 75:2, 75:5, 75:7, 75:13, 75:17
Vogel [24] - 6:19, 6:25, 8:12, 11:10, 17:14, 18:16, 20:20, 22:5, 23:19, 24:12, 27:20, 30:16, 36:17, 36:22, 40:8, 40:15, 43:19, 56:7, 63:22, 64:18, 66:14, 70:25, 71:8, 72:22
Vogel's [1] - 63:13
voice [1] - 22:16
voluntarily [2] - 34:17, 70:22
voluntary [4] - 35:9, 35:15, 50:18, 71:12

W

wait [1] - 40:8
waived [3] - 33:5, 51:24, 69:10
walked [3] - 33:3, 39:21, 69:10
wall [1] - 38:10
wants [5] - 18:15, 23:11, 24:7, 34:22, 70:10
warranted [1] - 30:10
wary [1] - 27:8
watchman [1] - 14:16
ways [1] - 51:21
website [6] - 25:5, 33:10, 33:11, 67:11, 68:8, 68:23
welfare [2] - 35:22, 42:10
wherewithal [1] - 69:3
white [4] - 41:3, 43:8, 43:11, 68:4
whole [3] - 20:11, 50:15, 58:2
wholeheartedly [1] - 39:24
wife [1] - 37:14
witness [1] - 8:6
witnesses [1] - 7:6
wittler [1] - 9:1
word [4] - 6:15, 51:14, 51:15, 72:22
words [1] - 63:4
worker [1] - 38:10
works [1] - 75:5
worry [2] - 49:22, 60:20

worst [1] - 4:13
wrecked [1] - 49:7
writing [2] - 6:24, 21:22
written [13] - 21:3, 25:11, 33:15, 33:21, 36:23, 37:15, 38:14, 39:2, 64:20, 67:10, 68:3, 68:21, 69:19
www.healthcare.gov [1] - 68:8

Y

year [7] - 12:23, 13:21, 16:1, 23:25, 35:18, 39:25, 72:14
years [14] - 12:14, 13:21, 15:3, 16:1, 17:21, 34:13, 35:19, 36:13, 36:16, 64:6, 64:16, 65:16, 65:17, 67:2
yelling [1] - 73:2
yourself [1] - 44:11

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT	
	SS		
COUNTY OF SULLY	)	SIXTH JUDICIAL CIRCUIT	

AVERA ST. MARY'S HOSPITAL, Plaintiff, vs. SULLY COUNTY, SOUTH DAKOTA (J.R.), Defendant.	)	59CIV18-11
	)	TRANSCRIPT OF BENCH DECISION

BEFORE: THE HONORABLE CHRISTIE KLINGER
Judge of the Sixth Judicial Circuit, in Pierre, South Dakota, on the 29th day of August, 2022.

APPEARANCES:

MR. ROBERT NELSON
Po Box 1843
Sioux Falls, SD 57101
Counsel for the Plaintiff.

MR. RYAN VOGEL
PO Box 1030
Aberdeen, SD 57402
Counsel for the Defendant.

Jess Paulsen, RPR
Official Court Reporter
PO Box 1238
Pierre, SD 57501
605-773-8227
jessica.paulsen@ujs.state.sd.us

PROCEEDINGS

THE COURT: All right. We're going to get started. We're going to be in session in 59CIV18-11, Avera St. Mary's Hospital v. Sully County, South Dakota.

Go ahead, counsel, note your appearance for the record, starting with Avera St. Mary's.

MR. NELSON: Thank you, Your Honor. Robert R. Nelson, an attorney in Sioux Falls, South Dakota.

MR. VOGEL: Thanks, Judge. Ryan Vogel on behalf of Sully County.

THE COURT: All right. This is the time and place that was scheduled for the Court to give an opinion with regard to an appeal from Sully County Commissioners' decision regarding payment or non-payment for medical fees for J.R.

The Court has had an opportunity to review the filings and consider the argument that was made.

Mr. Nelson, are you in agreement to having this decision provided by the Court via the telephone conference?

MR. NELSON: I'm not sure I understand the question, Your Honor. Are you not going to -- well, I guess, number one, is it recorded?

But number two then, is it anticipated that you won't issue a written memorandum decision?

THE COURT: I'm not issuing a written memorandum, no.

MR. NELSON: Okay.

THE COURT: I'm giving you my oral decision and I will appoint one of you to provide the Findings and Conclusions.

Jess is --

MR. NELSON: I understand.

THE COURT: Jess is recording this.

You have the right to have this heard in Sully County. If you want to come back to Sully County, I can wait and have my decision at that time.

But that's not going to change the fact that it's going to be an oral decision, which one of the parties will be doing the Findings and Conclusions.

MR. NELSON: No, I didn't understand that was the nature of the question, Your Honor.

It's fine being issued today at this time by telephone, yes.

THE COURT: All right. Thank you.

Mr. Vogel.

MR. VOGEL: It's fine with me as well, Your Honor.

THE COURT: All right. As the Court stated, it's reviewed the entire file, considered the argument of counsel at the hearing and issues now the Findings and Conclusions and decision.

The underlying issue is medical treatment from August 13, 2014, through August 15, 2014, of J.R. The

Sully County Commission considered some documents. The file itself is somewhat confusing; however, at a minimum, the Sully County Commission considered the documents that were filed by affidavit of Susan Lamb.

In addition, it's clear to this Court that the Sully County Commission considered Mr. Nelson's executive summary, as that was referred to in the transcript on page 16, line 14.

Sarah Peterson provided statements at the hearing and her work was also considered in reviewing the file in its totality. The Court has also considered these.

The Court agrees that there's nothing that allows the county to look at dual residency with regard to J.R. The county's decision based on the minutes was to deny Avera's claim for J.R. in that he was not a resident of Sully County, and, therefore, they needed to consider whether he was lying sick in the county when the complaint was made.

The Sully County Commission decided, and decision was that he was not lying sick -- J.R. was not lying sick in the county when it was made, and as a result, the claim was denied.

In addition, the Sully County Commission went on to consider whether J.R. was indigent by design as a result of failing to apply for the ACA and had determined that that

was, in fact, the case, and, therefore, provided two basis for the denial of St. Mary's claim.

In providing this, the Sully County Commission did not take sworn testimony, nor did it make any Findings as to credibility. A majority of the documents were submitted by affidavit and/or other documents.

The Court's first question as brought up by counsel was the standard of review that applies. Sully County Commission is an administrative agency, and the question with regard to standard of review, therefore, becomes whether it's an administrative action versus a quasi-judicial action. An administrative action would bring in the arbitrary abuse of discretion quasi-judicial as a de novo review.

Avera's argument that 7-8-30 would provide de novo review is found to be not supported. 28-13-1.4 specifically states notwithstanding 7-8-30 and goes on to direct the discretion of appeal in medical cases.

But based on case law, the Court goes back to whether this was a quasi-judicial or a non-quasi-judicial administrative action by the Sully County Commissioners.

In looking at that, the Court has looked to the decision that -- and the underlying issue to be a non-quasi-judicial.

We look to whether it's a future change, change in

existing conditions by making a new rule to be adopted thereafter, whether it's something that resembles what courts customarily do, and whether there's an exercise of discretion over a matter of policy.

Quasi-judicial is an investigation, declares, and enforces liabilities as they stand on the present or past facts, and under laws already in existence.

It could have been determined in an original action in the circuit court or resembles what courts customarily do. They served as a role of an adjudicatory body or adjudicates the rights between specific individuals.

In reviewing the Sully County commission's decision, it's clear that this Court -- or it's clear to this Court that this was a quasi-judicial decision from the Sully County Commissioners. They investigated facts. They are -- they presented and made a decision based on present or future facts under the laws that are currently in existence under chapter 28-13. They adjudicated the rights of Avera, but, also, J.R.

They certainly -- their function certainly appeared to be -- resemble that of what a court ordinarily would do and simply by not taking sworn testimony under oath, that can't be avoided.

The question as to whether this particular action could actually have been brought directly to circuit court

based on SDCL 28-13-40, but at a minimum, it certainly resembles something that the circuit court generally does, and as a result, the Court has decided this is a quasi-judicial action therefore bringing a de novo review.

The Court has reviewed the entirety of the file that's appropriately -- that was appropriately before the Sully County Commission at the time of the decision and makes the following Findings and Conclusions.

J.R. was a citizen of Mexico. He was working validly in the U.S. on a work visa. He was employed at Sutton Bay Golf for approximately ten years prior to 2014.

During those ten years, he lived in the U.S. six months of the year in Sully County with a group of individuals of 10 to 12 individuals that were in the same or similar situation and they lived in a school in Agar, South Dakota.

He's not a resident of Sully County at the time of his medical bills. He was employed by Sutton Bay from April 15th of 2014 through October 15th of 2014 at $12 an hour. He worked full-time as the weather would allow, but was a seasonal worker.

He -- there was no insurance offered to him at Sutton Bay.

He was given a Social Security number and filed taxes, and he was provided a work permit. He had no insurance in

Mexico. He was -- the only evidence in the file was that he was not aware and no insurance was offered to him when he came to the U.S.

His 2014 income was $19,624.90. At a minimum, he has a three person household. He had $3,000 in savings, and a 1994 Ford Ranger worth approximately $2,000.

He was hospitalized on August 13th of 2014 through the 25th of 2014 for acute appendicitis with perforation and had immediate surgery to address the issue upon being brought to the hospital.

He had -- J.R. has no assets or payments. He left the U.S. shortly after being hospitalized.

The address at the hospital listed Agar as his home. He has no steady employment in Mexico. No ownership of land in Mexico, but the land he lives on is an inheritance with low income with plumbing.

There was an emergent need for his treatment that was established by the affidavits of Dr. Carda and Becker. The record establishes that J.R. was brought from Sully County, where he was living, to the ER at Avera St. Mary's.

Who or how he was transported from Sully County is not contained within the records. There is a lot of inference regarding Ms. Lupe, who may or may not have brought him. In the records, she is listed as an interpreter. There's no actual evidence on who brought J.R. to the ER room on

the day in question.

He, however, was brought in with abdominal pain, nausea, vomiting, and the medical professionals determined it was an acute appendicitis with perforation and systemic inflammatory response syndrome. He had immediate treatment with a surgery that same day.

The Onida ambulance did not transport J.R. to the hospital. J.R.'s wife maintained residency in Mexico, was a housewife and did not work.

Sarah Peterson was a Sully County consultant and she's the Coddington County director for poor relief fund. She recommended J.R. failed to purchase health insurance per 28-17 -- or 28-13-27.

The basis for her opinion was provided on a statement at the hearing as his failure to apply for ACA. The basis of her opinion, as was filed in the record, is -- it can't be read. It's not clear. Her second page, it's absolutely unable to be read, so the record is not clear.

Based on the filing that's with regard to Ms. Peterson's opinion, it's not clear what that was other than what was at the -- said at the hearing. That was that the ACA applied and J.R. could apply any time. The record does reflect some documents regarding the ACA and abilities to apply for that.

Based on what was provided to this Court,

10

Ms. Peterson's opinion that J.R. could apply for the ACA at any time is unsupported by the documents that she submitted. The documents that were submitted with regard to the ACA support that the marketplace for the ACA, the premiums varied depending upon the plan available. They -- the premiums varied depending upon the adjustment for family size and age.

The calculator actually submitted was for 2021 and not 2014. There's a difference in years and what was provided for in 2014 is unknown by this Court.

Where the person applying lives would affect the cost. The calculation did not include any -- does not include any inheritance. Therefore, the issue regarding J.R.'s land is a non-issue because it would have been inheritance regardless.

J.R. would have been a valid non-immigrant -- or he would have been a valid immigrant eligible for the ACA lawful -- if he was lawfully present in the U.S., which he was.

He may have had a five year waiting period for the Medicaid application, which then would affect an ACA application.

The documents provided that the Court went back to with regard to the ACA several times was that an ACA application was noted in the documents and it specifically

11

stated that Medicaid could be applied for at any time; however, ACA application could only enroll during open enrollment and those were three months long and began in the fall. That's page 15 of how to get insurance.

J.R. would not have been in the U.S. during that time period, and as a result, the ACA -- whether the ACA was available to him based on the evidence in front of the Court is questionable.

The Court, however, relies on J.R.'s statement to the hospital, which is the only evidence of what was actually provided to J.R. upon entering into the U.S. was that he did not recall any insurance ever being provided as an option.

That's the only evidence in front of the Court, and as a result, the Court cannot find that there was any ACA insurance actually provided to him upon entry.

The county denied Avera's application on two statutes. SDCL 28-13-1.3, whether there was indigency by design; in 28-13-1.1, whether J.R. was lying sick -- I'm sorry -- 28-13-37, whether he was lying sick when complaint was made, and whether he had friends or money.

The facts do not support that J.R. had money to pay these bills.

As far as friends goes, it's unclear whether he had any friends. It's unclear how he got there, and so the

12

Court cannot support that he had any friends available to him.

Lying sick at the time of the complaint, that's not how the Court reads the statute; however, it does -- SDCL 28-13-37 does not solely control the outcome of this case.

The Court has relied upon Roane, which is 40 S.D. 297 and has reviewed that in detail. The complaint was made to Sully County for the first time at the application. At the time of that complaint, the hospitalization had already occurred.

The major question in this case comes down to whether J.R. had to be lying sick in Sully County at the time that the complaint was made or at the time of the illness or whether what temporary relief was required to be provided.

This Court has authority to apply the law as it currently stands. This Court does not have authority to make new case law or to apply the law as it thinks the Supreme Court would do or in light of the significant changes from 1918 to 2022.

The Court has reviewed Roane, and although it initially appears that the Supreme Court focused on the transient individuals being temporarily in the county, the ultimate decision from the Supreme Court in Roane was that the County was not provided an opportunity or provided with notice of the illness while the individual remained in the

13

county.

The individuals were removed without any type of notice being provided to the Board of Overseers which is similar to the Sully County Commission.

There's -- specifically, the Supreme Court said there's no showing that the notice was given at the time when said injured persons were in, in that case, Hutchinson County.

The Court went on to say that without the knowledge or consent of the overseers, that there was no statutory relief. And went on to further actually say that temporary relief was, in fact, furnished by some good samaritan who, in seeking the temporary relief, removed the injured person from the county. J.R. was removed from Sully County without notice to the Sully County Commissioners.

Ultimately, the Supreme Court in Roane touched on that it was transient individuals who were temporarily in Hutchinson County; however, that wasn't the basis for their decision.

The current law as it stands is that the individuals were removed from the county at the time that the temporary relief was sought, and as a result, that county could not be held responsible for the medical bills pursuant to statute 28-13-37 which is nearly identical to what it was in 1918.

Based on J.R. not being in Sully County, the fact that he was removed for medical attention, that would not render Sully County liable on the grounds of statutory duty. As in the absence of some action on the part of the county commissioners, authorizing or consenting to that removal and care, there's no statutory authority pursuant to SDCL 28-13-37 in Roane.

As this Court has said, it's my job and authority -- the only authority I have is to enforce the law as it currently stands. It's not my job to change the law as I believe the Supreme Court may apply it. And it's not my job to change the law where the legislature -- when it's legislative action that needs to be taken instead.

As a result, I am going to affirm the Sully County Commissioners' decision to deny this claim, understanding that I -- it's not this Court's intent -- it's not -- this Court doesn't believe that this is what the intent was of this statute, but that's the current law as it sits and it's not my job to change that, so you'll have to do that through either the Supreme Court or the legislature.

Any questions, Mr. Nelson?

MR. NELSON: No. I just don't know whether the Court recalled or wants to address the fact that there is no hospital within Sully County since 1840-whatever for the commissioners to have discharged their statutory duties to

a non-resident as Hutchinson County did back in 1918.

THE COURT: Thank you for pointing that out.

The Court does find that there is no hospital in Sully County that could have treated this type of action -- or this type of medical condition.

Unfortunately, based on Roane, that doesn't change the Court's decision, but that is a Finding of Fact that was supported by the evidence.

I fully understand, Mr. Nelson, your argument regarding voluntary and the hospital. I -- this Court doesn't necessarily disagree with your argument.

This Court's sole duty is to enforce the law as it currently exists, and that law says that as it currently exists in this Court's multiple readings of Roane over the weekend is that for the removal of J.R. without notice, or giving the commissioners the ability to address the situation under 28-13-37, does not provide statutory authority for payment. And as a result, I am going to continue the affirmance.

If this is appealed, I fully -- I look forward to seeing that decision and whether the law is updated based on the current status or the current moveability of more people of moving from county to county and the lack of hospital within Sully County, but this Court does not believe it has the authority to enter any other decision at

this point.

Mr. Vogel, any questions?

MR. VOGEL: No, Your Honor.

THE COURT: All right. Mr. Vogel, you need to do the Findings and Conclusions, please.

MR. VOGEL: When will they be due by, Your Honor?

THE COURT: Well, statutorily, they'll be due within 10 days, So I don't know if you're asking for more time or...

MR. VOGEL: No, I am not.

THE COURT: All right. Yeah, we'll stick with the 10 days and you guys can keep this case moving.

MR. VOGEL: All right. Thanks, Judge.

THE COURT: All right. Thank you.

We'll be in recess.

MR. NELSON: Thank you, Your Honor.

(End of proceedings.)

CERTIFICATE OF REPORTER

I, Jessica Paulsen, RPR, Official Court Reporter in and for the State of South Dakota, do hereby certify that the Transcript of Bench Decision contained on the foregoing pages was reduced to stenographic writing by me and thereafter transcribed; that said proceedings commenced on the 29th day of August, 2022, in Pierre, South Dakota, and that the foregoing is a full, true, and complete transcript of my shorthand notes of the proceedings had at the time and place set forth above.

Dated this 2nd day of September, 2022.

/s/Jess Paulsen
Jess Paulsen, RPR
Official Court Reporter

THE

South Dakota Revised Code

1919

Prepared and Annotated by a Code Commission Consisting of
Dick Haney, Chief Reviser, John B. Hanten and
G. N. Williamson, Assistant Revisers,
and Enacted at the Sixteenth
Legislative Session

The Constitution of the United States, the Enabling Act, the
Constitution of the State of South Dakota, a
Description of County Boundaries
and Rules of Court

Published by Authority of the Legislature Under the Supervision of
the Chief Reviser

In Two Volumes

VOL. 2

Pierre, S. Dak.
HIPPLE PRINTING COMPANY,
1919.

Rev. Pol. C.	Rev. C.	Rev. Pol. C.	Rev. C.	Rev. Pol. C.	Rev. C.	Rev. Pol. C.	Rev. C.	Rev. Pol. C.	Rev. C.
§2271	§7004	§2547	§8289	§2718	§8362	§2830	§10080	§3017	§8160
2272	7005	2648	8290	2719	8363	2821	10081	3018	8161
2273	7006	2649	8291	2720	8364	2822	10082	3058	10519
2532	8726	2650	8292	2721	8272	2823	10083	3060	10529
2533	8727	2651	8293	2722	8377	2824	10084	3101	10516
2534	8728	2652	8294	2723	8378	2825	10085	3102	10525
2535	8729	2653	8295	2724	8379	2826	10086	3113	10340
2536	8730	2654	8296	2725	8380	2827	10087	3114	10341
2537	8731	2655	8297	2726	8381	2828	10088	3115	10342
2538	8732	2656	8298	2727	8382	2829	10089	3116	10343
2539	8733	2657	8299	2728	8365	2830	10090	3117	10344
2540	8734	2658	8300	2729	8366	2831	10091	3118	10345
2541	8735	2659	8301	2730	8367	2832	10092	3119	10346
2542	8736	2660	8302	2731	8368	2833	10093	3121	10347
2543	8737	2661	8303	2747	8223	2862	3963	3122	10348
2544	8738	2662	8304	2748	8223	2863	3964	3123	5907
2545	8739	2663	8305	2749	8223	2864	3965	3141	10349
2546	8740	2664	8306	2755	8321	2865	3966	3142	10351
2547	8741	2665	8307	2756	8322	2856	3967	3143	10350
2548	8742	2666	8308	2757	8323	2932	8127	3144	10352
2549	8743	2667	8309	2758	8373	2933	8128	3145	10353
2550	8744	2668	8310	2759	8374	2934	8129	3146	10354
2551	8745	2669	8311	2760	8375	2935	8130	3147	4388
2552	8746	2670	8312	§2761	10035	2936	8131	3148	4389
2553	8747	2671	8313	2762	10036	2937	8132	3149	4390
2554	8748	2672	8314	2763	10037	2938	8133	3150	4391
2555	8749	2673	8315	2764	10038	2939	8134	3151	4392
2556	8750	2674	8316	2765	10039	2940	8135	3152	10355
2557	8751	2675	8317	2766	10040	2941	8136	3153	10356
2558	8752	2676	8318	2767	10041	2942	8137	3154	10357
2559	8753	2677	8319	2768	10042	2943	8138	3155	10358
2560	8754	2679	8320	2769	10043	2944	8139	3156	10359
2561	8755	2681	8326	2770	10044	2945	8140	3157	10360
2562	8756	2682	8327	2771	10045	2946	8141	3158	10361
2573	1631	2683	8328	2772	10047	2947	8142	3160	10362
2574	1632	2684	8329	2773	10048	2948	8147	3163	8218
2575	1633	2685	8330	2774	10049	2949	8148	3164	8218
2576	1634	2686	8331	2776	10050	2950	8149	3165	8219
2577	1635	2687	8332	2777	10051	2951	8150	3166	10365
2578	1636	2688	8333	2781	10052	2952	8151	3167	10369
2579	1639	2689	8334	2782	10053	2953	8152	3168	10374
2580	1642	2690	8335	2783	10054	2954	8153	3169	10378
2581	8721	2691	8336	2784	10055	2955	8155	3170	10379
2582	8721	2692	8337	2786	10056	2956	8156	3171	10380
2583	8722	2693	8338	2787	10057	2957	8157	3172	10381
2584	8723	2694	8339	2788	10058	2958	8162	3173	10382
2585	8724	2695	8340	2789	10059	2959	8163	3174	10383
2586	8725	2696	8341	2790	10059	2960	8164	3175	10384
2623	8204	2697	8342	2791	10060	2961	8165	3176	10405
2624	8205	2698	8343	2794	10061	2962	8166	3177	10406
2625	8206	2699	8344	2795	10062	2963	8167	3178	10407
2626	8207	2700	8345	2796	10063	2964	8168	3179	10408
2629	8273	2701	8346	2797	10064	2965	8169	3180	10409
2630	8274	2702	8347	2798	10065	2966	8170	3182	10410
2631	8275	2703	8348	2806	10066	2967	8171	3185	10416
2632	8276	2704	8349	2807	10067	2968	8172	3186	10417
2633	8277	2705	8350	2808	10068	2969	8173	3188	10418
2634	8278	2706	8351	2809	10069	2970	8174	3189	10419
2636	8279	2707	8352	2810	10070	2971	8175	3190	10411
2637	8280	2709	8353	2811	10071	2972	8176	3191	10412
2638	8281	2710	8354	2812	10072		8180	3192	10413
2639	8282	2711	8355	2813	10073	2973	8177	3193	10414
2640	8283	2712	8356	2814	10074	2974	8178	3194	10415
2641	8284	2713	8357	2815	10075	2975	8179	3195	10415
2642	8285	2714	8358	2816	10076	2976	8180	3196	8263
2643	8286	2715	8359	2817	10077	3014	8158	3215	449
2645	8287	2716	8360	2818	10078	3015	8158	3216	450
2646	8288	2717	8361	2819	10079	3016	8159	3217	451

they shall provide the same relief as is customary in cases where a legal settlement has been obtained.

Source: § 18, Ch. 33, Pol. C.; § 2162, C. L., § 2773, Rev. Pol. C.

Cost of relief given a poor person, while temporarily in county, is not recoverable from the county of his lawful settlement. Hamlin County v. Clark County, 1 S. D. 131, 45 N. W. 329.

§ 10048. Justice to Issue Warrant. Upon complaint of any county commissioner, any justice of the peace may issue his warrant, directed to and to be executed by any constable or by any other person therein designated, to cause any poor person found in the county, likely to become a public charge and having no legal settlement therein, to be sent, at the expense of the county, to the place where such person belongs, if the same can be conveniently done; but if he or she cannot be removed, such person shall be relieved by such commissioners whenever such relief is needed.

Source: § 14, Ch. 33, Pol. C., § 2153, C. L., § 2773, Rev. Pol. C.

Hamlin County v. Clark County, 1 S. D. 131, 45 N. W. 329.

§ 10049. Appeal from Order of Justice. If the commissioners of any county to which any poor person shall have been removed, as above provided, shall feel themselves aggrieved by such order of removal, they may, at any time within twenty days after such removal shall be known to them, appeal from the decision of the justice ordering such removal, to the circuit court for the county whence the removal was ordered to be made, such appeal to be taken, tried and determined as in other cases of appeal from a judgment of a justice of the peace, and the order of removal may be vacated or affirmed according to the law and right of the case.

Source: § 15, Ch. 33, Pol. C.; § 2154, C. L., § 2774, Rev. Pol. C.

§ 10050. Defective Order. If the order of removal is defective, the court shall permit the same to be amended without costs and after such amendment is made the appeal shall be heard and determined as if such order had not been defective.

Source: § 17, Ch. 33, Pol. C.; § 2156, C. L., § 2776, Rev. Pol. C.

§ 10051. Removal—Duty of Commissioners. If any person be removed by virtue of the provisions of this chapter, from any county to any other place within this state, by warrant or order under the hand of any justice of the peace as provided in this chapter, the county commissioners of the county to which such person shall be removed are required to receive such person if he have a legal settlement in their county.

Source: § 18, Ch. 33, Pol. C., § 2157, C. L., § 2777, Rev. Pol. C.

§ 10052. Nonresident Sick or Dying. It shall be the duty of the county commissioners, on complaint made to them that any person not an inhabitant of their county is lying sick therein or in distress, without friends or money, so that he or she is likely to suffer, to examine into the case of such person and grant such temporary relief as the nature of the case may require; and if any person shall die within any county, who shall not have money or means necessary to defray his or her funeral expenses, and whose relatives or friends are unable or unwilling to defray the same, it shall be the duty of the commissioners of such county, after having given notice to the dean of the department of medicine of the state university, as provided in section 5595, and received no requisition from such dean, to employ some person to provide for and superintend the burial of such deceased person, and the necessary and reasonable expenses thereof shall be paid by the county treasurer, upon the order of such commissioners; and if the decedent shall have had a settlement in a county in this state different from that in which he died, the county paying such

funeral expenses shall be reimbursed by the county in which the decedent had a settlement; provided, that when the person so dying shall be an honorably discharged United States soldier, sailor, marine or aviator, the funeral shall be conducted and expenses paid as provided in article 3, chapter 3, of this part.

Source: § 22, Ch. 33, Pol. C.; § 2161, C. L.; § 2781, Rev. Pol. C.; § 2, Ch. 256, 1915.
Duty is imposed upon a county, in addition to legal duty of supporting its own poor and indigent. Hamlin County v. Clark County, 1 S. D. 131, 45 N. W. 329.
No obligation on part of county to pay for services rendered by another county to a transient of the first county. Roane v. Hutchinson Co., 40 S. D. —, 167 N. W. 188.

§ 10053. Poor Farm—Purchase—Election. It shall be lawful for the board of county commissioners, whenever it may deem it advisable, after having submitted the question to the legal voters of the county at a special election called for the purpose, if at such election a majority of the legal voters voting thereon shall vote in favor of the proposition, to purchase a tract of land in the name of the county and thereon to build, establish and organize an asylum for the poor, and to employ some humane and responsible person to take charge of the same upon such terms and under such restrictions as the board shall consider most advantageous for the interests of the county, who shall be called the superintendent of the county asylum; and when two or more counties shall have jointly purchased any tract of land and erected an asylum for the poor of their respective counties, they shall have the power to continue such joint ownership during their pleasure; and it shall be lawful for the county commissioners of two or more counties, after having been so authorized by a majority of the legal voters of their respective counties in the manner prescribed in this section, to jointly purchase lands and erect asylums, and to do such other things necessary and proper for the relief of the poor within the counties forming such joint ownership as are by this chapter provided for their respective counties.

Source: § 23, Ch. 33, Pol. C.; § 2162, C. L.; § 2782, Rev. Pol. C.
State v. Borstad, 27 N. D. 533, 147 N. W. 380, Ann. Cas. 1916B, 1014.

§ 10054. Superintendent. It shall be the duty of such superintendent to receive into his care and custody all poor persons who may become a county charge, and to take such measures for the employment and support of said persons and to perform such other duties as the board of county commissioners shall from time to time order, establish and direct, consistent with the laws of this state.

Source: § 24, Ch. 33, Pol. C.; § 2163, C. L.; § 2783, Rev. Pol. C.
Obligation rests towards one temporarily in county. Hamlin County v. Clark County, 1 S. D. 131, 45 N. W. 329.

§ 10055. Physician. It shall be the duty of the county commissioners to appoint annually a well-qualified physician to attend the county asylum, and allow him a reasonable compensation for his services.

Source: § 25, Ch. 33, Pol. C.; § 2164, C. L.; § 2784, Rev. Pol. C.

§ 10056. Tax for Purchase. To raise the sum necessary for the purchase of land and the erection and furnishing of buildings for such asylum, the board of county commissioners shall have power to assess a tax on all taxable property within the county, not exceeding five hundred dollars, unless the amount of taxes to be assessed shall be submitted to a vote of the people at the special election held pursuant to section 10053 and a majority of all the votes cast at such election be in favor of such assessment.

Source: § 27, Ch. 33, Pol. C.; § 2166, C. L.; § 2786, Rev. Pol. C.

§ 10057. All Poor at Asylum. As soon as the necessary provisions

§ 10044. Appeal.
§ 10045. When Settlement Uncertain.
§ 10046. Rules Governing County Hospital.
§ 10047. Temporary Relief.
§ 10048. Justice to Issue Warrant.
§ 10049. Appeal from Order of Justice.
§ 10050. Defective Order.
§ 10051. Removal—Duty of Commissioners.
§ 10052. Nonresident Sick or Dying.
§ 10053. Poor Farm—Purchase—Election.
§ 10054. Superintendent.
§ 10055. Physician.
§ 10056. Tax for Purchase.
§ 10057. All Poor at Asylum.
§ 10058. Superintendent—Bond.
§ 10059. Education of Inmates.
§ 10060. Poor Farm Discontinued.
§ 10061. Visitors of Poor.
§ 10062. Compensation.
§ 10063. Sending Poor Persons out of County.
§ 10064. Violation—Penalty.
§ 10065. Bringing into County—Penalty.

§ 10035. Supervision. The county commissioners shall have supervision of the poor and shall perform all the duties with reference to the poor within their respective counties that may be prescribed by law.

Source: §§ 1, 2, Ch. 33, Pol. C.; § 2141, C. L.; § 2761, Rev. Pol. C.

Duty is purely statutory and extends only so far as specified by law. Roane v. Hutchinson Co., 40 S. D. —, 167 N. W. 168.

§ 10036. Suits by or Against Commissioners. In all actions or proceedings in favor of or against any such commissioners, pertaining to or connected with the poor of their respective counties, the same shall be conducted in favor of or against such county in its corporate name.

Source: § 3, Ch. 33, Pol. C.; § 2142, C. L.; § 2762, Rev. Pol. C.

§ 10037. Counties Bound to Support. Every county shall relieve and support all poor and indigent persons lawfully settled therein, whenever they shall stand in need thereof, and the board of county commissioners may raise money for the support and employment of the poor as provided in section 6749; provided, that in any case where any county shall furnish relief to any person under the laws of this state providing for the support of the poor, such county shall have a claim against the person so relieved for the value of such relief, which may be enforced against any property, not exempt from execution, which such person may have or later acquire.

Source: § 4, Ch. 33, Pol. C.; § 2143, C. L.; § 2763, Rev. Pol. C.; § 1, Ch. 256, 1915.

County not liable for services to transient. Roane v. Hutchinson Co., 40 S. D. —, 167 N. W. 168.

Acceptance of service by one removed to pest house by order of commissioners makes patient liable for medicine and services of physician. Ostland v. Porter, 4 Dak. 98, 25 N. W. 731.

County not bound for unauthorized relief furnished. St. Luke's Hospital Assn. v. Grand Forks County, 8 N. D. 241, 77 N. W. 598.

No legal duty imposed upon a county to provide relief or support to one who has a legal settlement therein while without the county. Hamlin County v. Clark County, 1 S. D. 131, 45 N. W. 329.

Liability of relatives for support of paupers. 64 Am. Dec. 279.

Settlement as affecting liability for support during epidemic. 26 L. R. A. (N. S.) 729.

Effect on liability for support of pauper of division of territory of municipality, town or county. 39 L. R. A. (N. S.) 290.

Right to compensation from public for relief furnished poor person, in cases not provided for by law or where there has been no compliance with statutory prerequisites. 38 L. R. S. (N. S.) 161.

Liability of public for medical services to indigent person in absence of notice or request. 9 L. R. A. (N. S.) 1234.

Right to use public funds to relieve persons not entirely without means of their own. 27 L. R. A. (N. S.) 1079.

Liability of alleged pauper, or his estate, to pay for support or gifts obtained on the ground of poverty. 55 L. R. A. 570.

Right of counsel, assigned to defend indigent person, to compensation from public, in absence of statute. 36 L. R. A. (N. S.) 377.

§ 10038. Legal Settlement. Legal settlements may be acquired in any county so as to oblige such county to relieve and support the person acquiring such settlement, in case he is poor and stands in need of relief, as follows:

1. A married woman shall always follow and have the settlement of her husband if he has any within the state, otherwise her own at the time of her marriage, and if she then had any settlement it shall not be lost or suspended by the marriage; and in case the wife shall be removed to the place of her settlement and the husband shall want relief, he shall receive it in the place where his wife shall have the settlement.

2. Legitimate children shall follow and have the settlement of their father, if he has any within the state, until they shall gain a settlement

Introduced by: Senators Halverson, Aker, Flowers, Frederick, Hutmacher, Kloucek, Lange, Lawler, Olson, Shoener, Symens, Thompson, and Vitter and Representatives Belatti, Apa, Barker, Brosz, Brown (Jarvis), Chicoine, Crisp, Davis, Diedrich, Duniphan, Fiegen, Gabriel, Hagen, Lee, Madden, Matthews, Monroe, Volesky, and Waltman

An Act to define medical indigence.

Section 1. That § 28-13-1.1 be amended to read as follows:

28-13-1.1. For the purposes of this chapter, an indigent or poor person is any person who does not have sufficient money, credit , or property to ~~furnish support or does not have anyone able to support him to whom he is entitled to look for support or is unable to~~ be self-supporting; who has no one to look to who is legally required to provide support; or who is unable to be self-supporting through work because of illness or injury. In applying this definition, each county shall establish reasonable eligibility standards for county poor relief. ~~However, such standards shall be consistent with relevant federal statutes, case law and the provisions of this section and § 28-13-1.2.~~

Section 2. That § 28-13-16 be amended to read as follows:

28-13-16. The county commissioners in each county ~~shall have the oversight and~~ are responsible for the care and relief of all poor persons in the county ~~so~~ as provided by this chapter as long as those persons remain ~~a county charge, and shall see that those persons are properly relieved and taken care of in the manner provided by law, and shall perform all the duties with reference to such poor persons that may be prescribed by law. The commissioners may adopt reasonable standards for the amount, scope and duration of emergency and nonemergency medical and remedial services~~ eligible . The commissioners may designate a county official to assist in the coordination of poor relief information with other counties.

Section 3. That § 28-13-27 be amended to read as follows:

28-13-27. Terms used in ~~§§ 28-13-27 to 28-13-36, inclusive,~~ this chapter mean:

(1) Actual cost of hospitalization, the actual cost to a hospital of providing ~~hospitalization to an~~ hospital services to a medically indigent person, determined by applying the ratios of costs to charges appearing on the statement of costs required in § 28-13-28 to charges at ~~such~~ the hospital in effect at the time ~~such hospitalization is~~ the hospital services are provided;

(2) ~~Emergency case, hospitalization provided under circumstances certified by a duly licensed physician exercising competent medical judgment, showing that a patient's life or health would be threatened by delaying immediate treatment~~ Emergency hospital services, treatment in the most appropriate hospital available to meet the emergency need. The physician, physician assistant, or nurse practitioner on duty or on call at the hospital must determine whether the individual requires emergency hospital care. The need for emergency hospital care is established if the absence of emergency care is expected to result in death, additional serious jeopardy to the individual's health, serious impairment to the individual's bodily functions, or serious dysfunction of any bodily organ or part. The term does not include care for which

treatment is available and routinely provided in a clinic or physician's office ;

(3) Hospital, any hospital licensed as such by the state in which it is located;

(4) Household, the patient, minor children of the patient living with the patient, and anyone else living with the patient to whom the patient has the legal right to look for support;

(5) Nonemergency care, hospitalization which is medically necessary and recommended by a ~~duly licensed~~ physician licensed under chapter 36-4 but does not require immediate care or attention ;

(6) Indigent by design, an individual who meets any one of the following criteria:

(a) Is able to work but has chosen not to work;

(b) Is a student at a postsecondary institution who has chosen not to purchase health insurance;

(c) Has failed to purchase health insurance which was made available through the individual's employer; or

(d) Has transferred resources for purposes of establishing eligibility for medical assistance available under the provisions of this chapter. The lookback period for making this determination includes the thirty-six month period immediately prior to the onset of the individual's illness and continues through the period of time for which the individual is requesting services .

Section 4. That chapter 28-13 be amended by adding thereto a NEW SECTION to read as follows:

A medically indigent person is one who meets the following criteria:

(1) Requires medically necessary hospital services for which no public or private third- party coverage, such as insurance, veterans' assistance, medicaid, or medicare, is available which covers the actual cost of hospitalization;

(2) Has no ability or only limited ability, as determined under the provisions of this chapter, to pay a debt for hospitalization;

(3) Has not voluntarily reduced or eliminated ownership or control of an asset for the purpose of establishing eligibility;

(4) Is not indigent by design; and

(5) Is not a veteran or a member of a Native American tribe who is eligible or would have been eligible for services through the Veterans' Administration or the Indian Health Service if the services had been applied for within seventy-two hours of the person's admission.

Section 5. That chapter 28-13 be amended by adding thereto a NEW SECTION to read as follows:

Medically necessary hospital services are services provided in a hospital which meet the following criteria:

(1) Are consistent with the person's symptoms, diagnosis, condition, or injury;

(2) Are recognized as the prevailing standard and are consistent with generally accepted professional medical standards of the provider's peer group;

(3) Are provided in response to a life-threatening condition; to treat pain, injury, illness, or infection; to treat a condition which would result in physical or mental

disability; or to achieve a level of physical or mental function consistent with prevailing standards for the diagnosis or condition;

(4) Are not furnished primarily for the convenience of the person or the provider; and

(5) There is no other equally effective course of treatment available or suitable for the person needing the services which is more conservative or substantially less costly.

A county shall rely on the attending physician's determination as to medical necessity of hospital services unless evidence exists to the contrary.

Section 6. That chapter 28-13 be amended by adding thereto a NEW SECTION to read as follows:

Except for the costs of emergency hospital services, a county may adopt guidelines which define the amount, scope, and duration of medical and remedial services available to eligible persons and the basis for and extent of payments made to providers by counties on behalf of eligible persons.

Section 7. That § 28-13-28 be amended to read as follows:

28-13-28. ~~No~~ A hospital may avail itself of the provisions of ~~§§ 28-13-27 to 28-13-36, inclusive,~~ this chapter for purposes of determining payment for hospitalization of ~~any~~ a medically indigent person ~~unless such~~ only if the hospital has filed a detailed statement of costs with the secretary of ~~health a detailed statement of costs, in such form as~~ social services in the form prescribed by the secretary ~~shall from time to time prescribe~~. The statement of costs shall compute and set forth the ratios of costs to charges for the hospital's fiscal year covered by the statement of costs. The statement of costs shall be filed with the secretary at least annually, unless such period is extended or otherwise provided by the secretary, but a hospital may file ~~such~~ a detailed statement of costs ~~,~~ or amendments ~~thereto as often as once in~~ to such a statement once every six months.

Section 8. That § 28-13-29 be amended to read as follows:

28-13-29. ~~For the purpose of §§ 28-13-27 to 28-13-36, inclusive, the~~ The amount of reimbursement for hospital services ~~shall be equal to~~ is the amount calculated pursuant to section 16 of this Act. It may not exceed the actual cost of hospitalization as defined in subdivision 28-13-27(1) or an amount established by the secretary of the Department of Social Services, whichever is less. The amount established by the secretary shall be based on medicaid payment methodology. ~~In no event, however, may any hospital have any right, under §§ 28-13-27 to 28-13-36, inclusive, to maintain any claim against any county for any amount whatsoever in excess of~~ A hospital may not maintain a claim against a county for any amount which exceeds the usual ordinary and reasonable charge for any ~~item of such hospitalization services, even though the same is less than such~~ hospital service, even if the charge is less than the hospital's actual cost of hospitalization ~~as defined in subdivision 28-13-27(1). If such~~. If the hospital furnishes hospital services to medically indigent persons residing in the county in which ~~such~~ the hospital is located at rates less than ~~the actual cost of hospitalization, determined as provided herein, then such~~ the rates provided for in this section, the hospital shall furnish such hospital services to all medically indigent persons at the same rates ~~, regardless of any other provisions hereof~~.

Section 9. That § 28-13-32.3 be amended to read as follows:

28-13-32.3. ~~In order for a person to be entitled to poor relief assistance in the event of hospitalization, he shall make, or there shall be made on his behalf, an application to the county of his residency. The contents of the~~

~~application shall be established by the county.~~ To receive assistance under this chapter for the costs of hospitalization, a person must be medically indigent as defined in section 4 of this Act. The person or someone acting on behalf of the person shall apply to the person's county of residence for assistance.

Section 10. That § 28-13-32.4 be amended to read as follows:

28-13-32.4. An application made by a hospital on behalf of ~~an indigent~~ a medically indigent person pursuant to § 28-13-32.3 shall be submitted to the county auditor within one year of the discharge of the indigent. The application shall include:

(1) The notice of hospitalization as provided in § 28-13-34.1;

(2) The dates of hospitalization;

(3) The final diagnosis;

(4) The cost of hospital services; and

(5) Any financial information in the possession of the hospital concerning the patient or the responsible party, ~~in the possession of the hospital,~~ including the availability of insurance coverage ~~, if known~~.

The county may not require the hospital to provide more information concerning such a medically indigent person than is contained in the application provided for in this section and the release of information provided for in section 26 of this Act.

Section 11. That § 28-13-33 be amended to read as follows:

28-13-33. Subject to the provisions of ~~§§ 28-13-28 to 28-13-32, inclusive,~~ this chapter and except as ~~hereinafter~~ expressly provided, ~~whenever hospitalization for an indigent person has been furnished by a hospital in any emergency case~~ if a hospital furnishes emergency hospital services to a medically indigent person, the county where the medically indigent person has established residency ~~shall be~~ is liable to the hospital for the ~~expense~~ reimbursement of the hospitalization. In the case of nonemergency ~~hospitalization assistance~~ care, the county of residence ~~shall be~~ is liable only to the extent that the board of county commissioners, in good faith, approves ~~any~~ an application for assistance. If a county provides payment for nonemergency services, the services shall be approved by the county before the services are provided. To the extent that the county provides payment to a hospital, the county ~~shall have~~ has the same remedies for the recovery of ~~such~~ the expense as are provided by ~~statute~~ chapter 28-14 for the recovery of money expended for the relief and support of poor and indigent persons.

Section 12. That chapter 28-13 be amended by adding thereto a NEW SECTION to read as follows:

For purposes of determining medical indigence, the county shall establish an annual income guideline for the person which is derived as follows:

(1) Using the housing index established in section 13 of this Act, determine the housing index for the person's county of residence. Multiply the county index by three hundred six dollars, the median gross rent of residences in South Dakota in 1996;

(2) Using the federal poverty guidelines established in 43 Federal Register 8,286 (March 4, 1996), determine the federal poverty level for the household size and multiply that figure by one hundred seventy-five percent; and

(3) Add the results of subdivisions (1) and (2) of this section and multiply by twelve.

Section 13. That chapter 28-13 be amended by adding thereto a NEW SECTION to read as

follows:

The housing index for each county is as follows:

COUNTY	HOUSING INDEX
Aurora	0.65
Beadle	0.91
Bennett	0.86
Bon Homme	0.71
Brookings	0.96
Brown	0.95
Brule	0.80
Buffalo	0.77
Butte	0.91
Campbell	0.74
Charles Mix	0.65
Clark	0.72
Clay	0.95
Codington	0.92
Corson	0.47
Custer	1.03
Davison	0.90
Day	0.78
Deuel	0.79
Dewey	0.89
Douglas	0.69
Edmunds	0.71
Fall River	0.89
Faulk	0.66
Grant	0.81
Gregory	0.68
Haakon	0.80
Hamlin	0.70
Hand	0.70
Hanson	0.96
Harding	0.70
Hughes	1.03

Hutchinson	0.72
Hyde	0.75
Jackson	0.84
Jerauld	0.61
Jones	0.76
Kingsbury	0.67
Lake	0.78
Lawrence	1.00
Lincoln	0.93
Lyman	0.77
Marshall	0.72
McCook	0.73
McPherson	0.58
Meade	1.03
Mellette	0.74
Miner	0.65
Minnehaha	1.23
Moody	0.79
Pennington	1.26
Perkins	0.65
Potter	0.86
Roberts	0.70
Sanborn	0.67
Shannon	0.81
Spink	0.82
Stanley	1.06
Sully	0.82
Todd	0.79
Tripp	0.83
Turner	0.78
Union	0.87
Walworth	0.97
Yankton	0.93
Ziebach	0.82

Section 14. That chapter 28-13 be amended by adding thereto a NEW SECTION to read as follows:

For the purpose of determining a household's income, the county shall consider all sources of income, including the following:

(1) Compensation paid to household members for personal services, whether designated as gross salary, wages, commissions, bonus, or otherwise;

(2) Net income from self-employment, including profit or loss from a business, farm, or profession;

(3) Income from seasonal employment;

(4) Periodic payments from pensions or retirement programs, including social security, veterans' benefits, disability payments, and insurance contracts;

(5) Income from annuities or trusts, except for a trust held by a third party for the benefit of the minor children of the household;

(6) Interest, dividends, rents, royalties, or other gain derived from investments or capital assets;

(7) Gain or loss from the sale, trade, or conversion of capital assets;

(8) Unemployment insurance benefits and strike benefits;

(9) Workers' compensation benefits and settlements;

(10) Alimony and child support payments received; and

(11) School grants and stipends which are used for food, clothing, and housing but not for books and tuition.

A federal income tax return is the preferred source for determining earnings. If a federal income tax return is not representative of current earnings, the county may also require pay stubs which include gross and net earnings.

Section 15. That chapter 28-13 be amended by adding thereto a NEW SECTION to read as follows:

For the purpose of determining a household's resources, the county shall consider all resources, including:

(1) Equity value of the household's primary residence, excluding the homestead exemption provided for in subdivision (2) of § 43-45-3;

(2) Equity value of other real property;

(3) Equity value of major recreational and other leisure equipment including watercraft, campers, recreational vehicles, all-terrain vehicles, and snowmobiles;

(4) Equity value, in excess of five thousand dollars, of all motor vehicles;

(5) Personal assets, including cash in excess of one-half month's income, stocks, securities, accounts and notes due the person or the person's household, cash values of life insurance policies, collectible judicial judgments in favor of the person or the person's household, and monetary gifts;

(6) Equity value of business property, including real estate, equipment, and inventory; and

(7) Equity value of household goods and personal property beyond that which is reasonably essential for everyday living and self-support.

Equity value is determined by subtracting an asset's outstanding indebtedness from its fair market value.

The county shall subtract five thousand dollars from the total of the household's countable resources to determine the household's adjusted resources.

Section 16. That chapter 28-13 be amended by adding thereto a NEW SECTION to read as follows:

A county is financially responsible only for the hospitalization expense which is beyond the person's ability to pay. A person's ability to pay is determined according to the following:

(1) Determine the household's contributions for taxes, social security, medicare, and payments to other standard retirement programs. A household's contribution for taxes is limited to the amount of taxes payable for the actual number of dependents in the household;

(2) Determine the household's expenses, including actual rent paid or scheduled principal and interest payments for a personal residence plus property taxes and homeowner's insurance costs; all utilities; child care expenses related to work schedules; grocery expenses up to the maximum allowed under the Food Stamp Program's Thrifty Food Plan as specified in 60 Federal Register 2,733 (January 11, 1995), plus household supplies and toiletries; basic auto expenses, gasoline, and upkeep; employee-paid health, life, and auto insurance payments; installment payments for medical bills; recurring expenses for medicine and medical care; court-ordered child support and alimony paid; automobile installment payments for one vehicle; clothing, reasonable in relation to the household's income; and installment payments, limited to necessary household items required by the household to maintain the needs of everyday living and reasonable in relation to the household's income;

(3) Determine the amount of a household's discretionary income by subtracting the sum of the household's contributions and expenses from the household's income determined according to section 14 of this Act. Divide the amount of the household's discretionary income in half and multiply the resulting amount by forty-four dollars and ninety-six cents. The result added to the household's adjusted resources determined according to section 15 of this Act equals the household's ability to pay the debt and constitutes the household's share of the hospital bill. The amount of forty-four dollars and ninety-six cents represents the amount of medical or hospital expenses which can be amortized over sixty months at twelve percent annual interest per dollar of payment.

The amount of the county's obligation is determined by subtracting the amount of the household's ability to pay from the hospital charges computed according to § 28-13-29. If the household defaults on the payment of its share of the hospital bill, a hospital may not pursue a collection action against the county for the defaulted payment.

Section 17. That § 28-13-34.1 be amended to read as follows:

28-13-34.1. If hospitalization is furnished to ~~an~~ a medically indigent person, the county is not liable for the cost of ~~such~~ the hospitalization unless, within fifteen days in the case of an emergency admission ~~or within seven days in the case of a nonemergency admission~~, notice of ~~such~~ the hospitalization is mailed to the auditor of the county. The notice shall contain:

(1) The name and last known address of the patient or the patient's guardian;

(2) The name and address of the responsible party, if known;

(3) The name of the attending physician;
(4) The nature and degree of severity of the illness;
(5) The anticipated diagnostic or therapeutic services required;
(6) The location at which the services are to be provided;
(7) The estimated ~~cost of~~ reimbursement for the services; and
(8) A statement that the hospital has ~~incurred of~~ asked the patient or the responsible party, if known, ~~as to~~ whether the patient ~~is a veteran or~~ has served in any branch of the military, is potentially eligible for Indian Health Service benefits, or is a member of a Native American tribe and a statement of the information received in response to ~~such~~ the inquiry.

Section 18. That § 28-13-35 be amended to read as follows:

28-13-35. ~~In any case of such hospitalization, when such county, through any duly authorized officer or other employee, makes a reasonable arrangement for adequate and suitable care and removal of such indigent person elsewhere and notifies the hospital thereof in writing, and the hospital unreasonably fails or refuses to extend cooperation to effect such changed arrangement, there shall be no liability on such county for any hospitalization, subsequent to such failure or refusal.~~ In any case of hospitalization of a medically indigent person, the county, through any elected officer or through an employee, may arrange for adequate and suitable care of the person elsewhere. If the county notifies the hospital in writing of its arrangement for the removal of the medically indigent person and the hospital unreasonably fails or refuses to cooperate in effecting the change, the county is not liable for any hospitalization subsequent to the hospital's failure or refusal to cooperate.

Section 19. That § 28-13-36 be amended to read as follows:

28-13-36. Nothing in ~~§§ 28-13-27 to 28-13-35, inclusive, shall be construed to prevent or preclude any~~ this chapter precludes a hospital and ~~any~~ a county from entering into ~~any~~ a reasonable and suitable arrangement, contract, or agreement for hospitalization of medically indigent persons at other ~~and different~~ rates than provided ~~by said sections~~ under this chapter, or ~~to abrogate or impair~~ abrogates or impairs any rights or remedies of either ~~such~~ the county or ~~such~~ the hospital under any such arrangement, contract, or agreement.

Section 20. That § 28-13-38.1 be amended to read as follows:

28-13-38.1. Hospitals located outside ~~of the State of~~ South Dakota are eligible for reimbursement from the county where the medically indigent person has established residency only if the hospital provides services which are not available in ~~the State of~~ South Dakota or the hospital is approved by the county of ~~the indigent's~~ residence of the medically indigent person as providing a reasonable or cost-effective service.

Section 21. That § 28-13-44 be amended to read as follows:

28-13-44. ~~No county is liable for any expenses of any person if such expenses have been discharged in bankruptcy, unless the person is indigent as defined by § 28-13-1.1.~~ The fact that an individual has filed a petition in bankruptcy or has received a discharge in bankruptcy under Title 11 of the United States Code is not admissible evidence in a proceeding under this chapter and may not be considered in making a determination of indigency.

Section 22. That chapter 28-13 be amended by adding thereto a NEW SECTION to read as follows:

If an individual is indigent by design, the individual is ineligible for medical assistance under the provisions of this chapter and there may be no other criteria used to determine

eligibility.

Section 23. That § 28-13-30 be amended to read as follows:

28-13-30. The secretary of ~~health~~ social services shall make such investigation as ~~he deems~~ necessary, and shall approve the statement of costs only if ~~he finds it as~~ the statement is accurate, complete and reliable as could reasonably be expected, and that it discloses, as nearly as may be reasonably determined, the ratios of costs to charges for the hospital's fiscal year covered by the statement of costs. In granting approval, the secretary may modify any items in the statement ~~as he finds~~ which require such modification and shall provide written notice of any such modification to the respective hospital.

Section 24. That § 28-13-31 be amended to read as follows:

28-13-31. No statement of costs, or amendment thereto, may take effect until approved by the secretary of ~~health~~ social services and the expiration of thirty days from the filing thereof, and thereafter, for purposes of ~~§§ 28-13-27 to 28-13-36, inclusive~~ this chapter, shall remain in full force and effect until the next statement of costs, or amendment thereto, filed by the hospital pursuant to § 28-13-28 is approved by the secretary. Any such statement of costs, or amendments thereto, shall be a public record and be available for inspection at any time in behalf of any board of county commissioners.

Section 25. That § 28-13-32 be amended to read as follows:

28-13-32. Any board of county commissioners may at any time file, with the secretary of ~~health~~ social services and the hospital concerned, objections in writing to any such statement of costs, any items therein, or amended thereto, which objections shall be passed upon by the secretary.

Section 26. That chapter 28-13 be amended by adding thereto a NEW SECTION to read as follows:

If submitting a notice under the provisions of § 28-13-34.1, the hospital shall make every reasonable effort to secure from the patient, and to include with the notice, a release of information form which has been signed by the patient or the patient's authorized representative. The form shall authorize persons, agencies, or institutions to release, to the county, the patient's social security number, the social security number of other household members, medical information concerning the patient, and financial information concerning the patient or members of the patient's household.

Section 27. That chapter 28-13 be amended by adding thereto a NEW SECTION to read as follows:

A county may review the need for emergency room treatment, an admission, a transfer, a continued stay, or inpatient surgical services. At its option, a county may request the Department of Social Services to provide the needed reviews on the county's behalf. In either case, the review shall be conducted by or under the supervision of a physician licensed under chapter 36-4, and shall be consistent with generally accepted medical practice guidelines.

Section 28. That chapter 28-13 be amended by adding thereto a NEW SECTION to read as follows:

No county is liable for the payment of any experimental procedures or experimental modes of treatment provided on behalf of a medically indigent person.

Section 29. That chapter 28-13 be amended by adding thereto a NEW SECTION to read as follows:

Notwithstanding § 7-8-30, in any appeal regarding medical indigence, the circuit court may affirm or remand for further proceedings, or the court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the county's findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority of the county;

(3) Made upon unlawful procedure;

(4) Affected by other error of law;

(5) Clearly erroneous in light of the entire evidence in the record; or

(6) Clearly unwarranted exercise of discretion.

Section 30. That chapter 28-13 be amended by adding thereto a NEW SECTION to read as follows:

If submitting a bill to a county for medically necessary hospital services provided on behalf of a person who is medically indigent, the hospital must first demonstrate that it has exhausted all avenues of payment including accepting reasonable monthly payments from the person who does not have the ability to pay the hospital in one lump sum at the time of discharge.

Treaty of Fort Sully

Treaty between, the United States of America and the Yanktonai Band of Dakota or Sioux Indians. Concluded at Fort Sully, October 20, 1865.

Art. I. The Yanktonai band of Dakota or Sioux Indians, represented in council, hereby acknowledge themselves to be subject to the exclusive jurisdiction and authority of The United States, and hereby obligate and bind themselves, individually and collectively, not only to cease all hostilities against the persons and property of its citizens, but to use their influence, and, if requisite, physical force, to prevent other bands of Dakota Indians, or other adjacent tribes, from making hostile demonstrations against the Government or people of The United States.[8]

In 1866 old Fort Sully was temporarily under the command of the Department of the Platte before being assigned to the Department of Dakota in the new Division of Missouri.

Fort Sully II

The later, or new Fort Sully, Established July 25, 1866. Its-erection was begun in July, 1866, but it was not completed until 1868. The site of the new fort 44°35′17″N 100°35′24″W, in present-day Sully County, was much more suitable and healthful than the old Fort Sully, Indeed, it was an ideal spot for a fort for defense. It stood on an elevated plateau about 160 feet (49 m) above a wide and beautiful valley of the Missouri. Its site was also about the same elevation above much of the surrounding prairie. This Fort Sully was for many years one of the main military forts in Dakota.[2]

Location

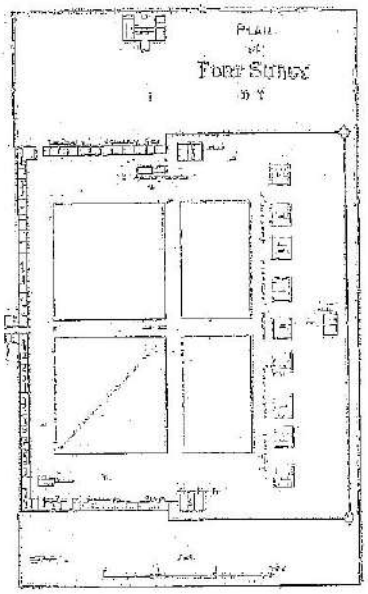
Fort Sully was situated on the east bank of the Missouri River, twenty miles (32 km) below the mouth of Cheyenne River; latitude 44° 30' north, longitude 100° 50' west, at an elevation above the sea of about 2,000 feet (610 m). The nearest town is Yancton, 300 miles (480 km) below by river. The nearest posts are Fort Randall, 200 miles (320 km) below, and Fort Rice, about the same distance above. The post was about halfway between the head of navigation (Fort Benton) and the mouth of the Missouri, and is 1,480 miles (2,380 km) above St. Louis. It is built on the "third terrace," a level plateau, 160 feet (49 m) above low-water mark, and about the same distance below the summit level proper. On the south the surface slopes rapidly into a deep ravine, dry, except in early spring. On the west the descent is abrupt to the second terrace, a strip one hundred yards wide, on which are the stables, granary, saw-mill, smithy, interpreter's house, tavern, etc. Still further below was the river bottom, of varying width, frequently subject to overflow, moderately well timbered and very fertile. Here the company and hospital gardens are situated.[9]

Latitude 44 degrees, 37 minutes; longitude, 100 degrees, 36 minutes. On the left bank of the Missouri river. Postoffice and telegraph station at post. Nearest town, Springfield, Dakota, 220 miles (350 km) distant by wagon road, Yankton, Dakota, (terminus of the Dakota Southern R. R.), distant 262 miles (422 km) by land, and 351 by Missouri river; Sioux City, Iowa, 343 miles (552 km) distant by land. 575 miles (925 km) by Missouri river.[4]

Description

The post was intended for four companies. The men's quarters consist of two buildings, each 350 feet (110 m) long by 17 feet (5.2 m) wide, placed end to end, with an interval of 15 feet (4.6 m), which forms the sallyport. They are built of cottonwood logs, covered with pine siding, are lathed and plastered, the ceilings

being 12 feet (3.7 m) high. Transverse partitions divide the buildings into dormitories, mess-rooms, kitchens, &c. The squad-rooms measure 20 by 17 feet (5.2 m), are intended for 16 men each, allowing about 255 cubic feet (7.2 m^3) air space per man. The experiment was tried for one company of removing the partitions and throwing the small rooms into one, but it was thought that this weakened the building too much. There were no wash or bath-rooms. Ablution must be performed out of doors. It was in contemplation to build a piazza for each building. The dormitories were fitted with rough wooden double bunks in two tiers. The privies, ordinary earth latrines, are 75 yards distant. The ventilation of the barracks were very defective. There were three sets of laundresses' quarters, in a large one-story house similar to the officers' quarters.[9]



Plan of Fort Sully

For officers' quarters there are nine detached frame buildings, built of pine, on brick foundations, with cellars underneath. Each set has a back building of one story, as a kitchen. All the rooms are lathed and plastered. Three of the houses are one and a half stories high, and contain each four rooms, a hall, store-room, and pantry. Two cottages are of one story, while two others, of one and a half stories, are divided each into two sets of quarters of four rooms. None of these quarters have bath-rooms. The guard and prison-rooms are in the ends of the barrack building next the sally-port. The prisoners' room is 15 by 15 feet (4.6 m). The quartermaster's store-houses, two in number, measure 230 by 22 feet (6.7 m) and 120 by 24 feet (7.3 m). The commissary's store-houses, also two in number, measure 228 by 17 feet (5.2 m) and 50 by 22 feet (6.7 m).[9]

The hospital was located near the brink of the ravine, to the south of the post.

History

22nd Infantry

7 years 1866-1873

1st Infantry

4 years 1874-1879

11th Infantry

9 years 1879-1887

In December, 1878, Company A, Eleventh Infantry, changed station from Fort Bennett (late Cheyenne Agency) to Fort Sully. October 1879 At Fort Sully, D. T., Companies A and K of the Eleventh Infantry.

In December, 1879, the headquarters, band, and Companies G and I, Eleventh Infantry, changed station from Fort Bennett to Fort Sully, D. T.

February 12, 1884, at Fort Sully a fire, originating accidentally in the quarters of Company A, Eleventh Infantry, destroyed the quarters of Company A and the adjoining quarters of the band, Eleventh Infantry, the post guard-house, the store-room, one squad-room, orderly-room, and kitchen of Company E, Eleventh Infantry, and all except one squad-room and the mess-room of Company K, Eleventh Infantry. February 14, Company A was transferred to Fort Bennett, temporarily, for quarters, arriving at the latter post on the same day. Distance traveled, 7 miles (11 km).

12th Infantry

12 years 1887-1894

On October 20, 1894, Major Gageby and Companies B, C, and D of the Twelfth Infantry left Fort Sully en route to Fort Niobrara, Nebraska leaving Fort Sully abandoned.

Notes

1. DAKOTA EXPEDITIONS OF SIBLEY AND SULLY
2. *South Dakota historical collections*, Volume 1, South Dakota State Historical Society, South Dakota, Dept. of History, State Publishing Co., 1902.
3. Flickinger, Robert Elliott, *The pioneer history of Pocahontas County, Iowa: from the time of its earliest settlement to the present time*, Issue 1991 of Western Americana, frontier history of the trans-Mississippi West, 1550-1900, G. Sanborn, 1904.
4. *South Dakota historical collections*, Volume 8, South Dakota State Historical Society, South Dakota Dept. of History, 1916.
5. 7th Iowa Regiment Cavalry
6. Innis, Ben, *Bloody Knife: Custer's favorite scout*, Smoky Water Press, 1994.
7. *Roster of the thirtieth Wisconsin Infantry Volunteers: mustered in, October 18, 1862, Madison, Wis., mustered out, September 20, 1865, Louisville, Ky*, M.J. Cantwell, for the Association, 1896
8. *British and foreign state papers*, Volume 56, Great Britain Foreign Office, H.M.S.O., 1870.
9. Billings, John Shaw, *A report on barracks and hospitals: with descriptions of military posts*, United States Surgeon-General's Office, 1870.

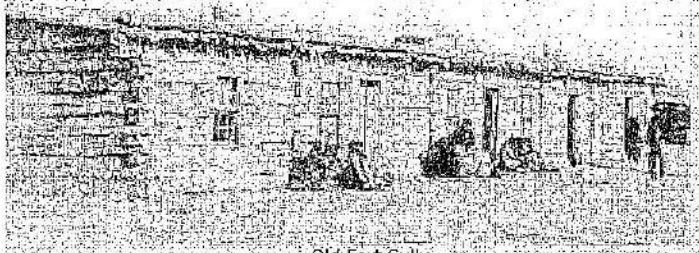
Front Façade of Fort Sully Hospital, Sully County

Item Description

Title(s)
Front Façade of Fort Sully Hospital, Sully County

Identifier
2011-10-12-324

Old Fort Sully



Old Fort Sully
South Dakota Game, Fish and Parks

By the 1840's, thousands of people were travelling west, but they initially posed little threat to the Plains Indians, because they did not settle on the Plains but instead headed to California and Oregon. Once they did begin to stake claims to land on the Plains, the Indians acted to protect their lands, and conflict erupted between the American Indians and pioneers. Old Fort Sully was one of a series of military forts established to keep peace on the Northern Plains.

Following the Dakota War of 1862, also referred to as the Sioux Uprising, the War Department sent two large contingents of soldiers to pursue any American Indians perceived as hostile. General Alfred E. Sully, who led one of the detachments, had orders to pacify regions of North and South Dakota. On September 3rd, 1863, Sully's troops attacked and defeated a band of American Indians at Whitestone Hill in North Dakota. After the battle, most of the men were sent downstream to garrison Fort Randall near the South Dakota/Nebraska border. The remaining troops constructed Old Fort Sully east of Pierre using cottonwood logs.

JAMES ROANE,
Plaintiff and respondent,
v.
HUTCHINSON COUNTY,
Defendant and appellant.
[40 S.D 297, 167 N.W. 168]

South Dakota Supreme Court
Appeal from Circuit Court, Hutchinson County, SD
Hon. Robert B. Tripp, Judge
#4233--Reversed

W. H. Glynn
Attorneys for Appellant.

French, Orvis & French
Attorneys for Respondent.

Opinion filed April 2, 1918

[40 S.D. 298-299]
McCOY, J.

The allegations contained in plaintiff's complaint show that on the 23Rd day of July, 1916, a freight train of the Chicago, Milwaukee & St. Paul Railway Company was wrecked in Hutchinson county, and that a large number of men riding on the top of the cars were seriously injure as the result of said wreck; that each of the said 28 of said injured persons, at the time of said injury, was, and ever since has been, without property and wholly insolvent, and that nothing whatever could or can be collected from either of them; that the physical injuries so received by each of said persons were of such a character that prompt medical and surgical attention was necessary; that each of said persons was on the same day of said wreck conveyed to a hospital at the city of Yankton, in Yankton county, this state, and plaintiff was called upon to professionally treat and [40 S.D. 300] care for each of said persons at said hospital; that plaintiff rendered surgical attention to each of said injured persons at said hospital aggregating the sum of $796; and that on the day of said accident one of the county commissioners of Hutchinson county was informed of said accident and that said county would be expected to pay the expense and care of said injured persons; that prior to the beginning of this action plaintiff, made an

itemized statement and claim for the amount of said professional services performed for and on account of said injured persons, duly verified, and presented the same to the board of county commissioners of said Hutchinson county; and that said claim was rejected by said board, which refused to allow the same or any part thereof. To which complaint defendant county interposed a general demurrer on the ground that the same does not state facts sufficient to constitute a cause of action. From an order overruling said demurrer the defendant appeals.

It is the contention of appellant that the obligation of a county to furnish care and relief for poor and indigent persons found within such county is purely statutory, and that there is no statute law in this state authorizing the payment by the county for services voluntarily rendered by any one in caring for such poor in the absence of an express or implied contract made, in the manner provided by law, with the proper county officers binding and obligating the county to pay for such services. We are of the opinion and so hold, that the appellant is right in this contention.

Section 2761, Pol. Code, provides that the county commissioners of the several counties of the state shall be the overseers of the poor within the several counties, and shall perform all the duties with reference to the poor, within the respective counties, that may be prescribed by law. As must be observed, this section of the statute excludes any and all persons, other than county commissioners, from performing the duties of a county with reference to the poor. Section 2763, Pol. Cade, provides that every county shall relieve and support all poor and indigent persons, lawfully settled therein, whenever they stand in need thereof. This section, in connection with said section 2761, fixes and casts upon the county the legal duty and obligation of supporting and caring for the poor lawfully settled in such county, [40 S.D. 301] such duty to be carried out and performed only by the county commissioners acting as overseers of the poor. It will be observed that the complaint in question does not allege that the said injured persons were lawfully settled in Hutchinson county at the time they were injured therein; but from the allegations it appeals that these injured polities, on the 23d day of July, 1916, were riding on the tops of freight cars composing the freight train incidentally passing through said county. From common knowledge and observation it may be inferred that such persons were not then lawfully settled in Hutchinson county, nor inhabitants thereof, and that the duty of the county fixed by statute found in section 2763 is not applicable to said injured persons, or poor of this class; and we must look elsewhere in the statute to ascertain the statutory duty of the county in relation to caring for poor who are at the time not inhabitants of such county. There can be no duty resting upon the county to care for noninhabitant poor unless prescribed by statute. Hamlin County v. Clark County, I S. D. 131, 45 N.W. 329. The only provision of our statute in relation to the care of the poor who are not inhabitants of the county is found in section 2781, Pol. Code, as amended by chapter 256, Laws of 1915, which provides as follows:

"It shall be the duty of the overseers of the poor, on complaint made to them that

> any person not an inhabitant of their county is lying sick therein or in distress, ... to examine into the case of such person and grant such temporary relief as the nature of the same may require."

It must be observed from a reading of this section of the statute that the only authority conferred, upon any one to act for the county in making examination and caring for and granting temporary relief to persons sick or in distress, found in such county, but who are not then inhabitants thereof, is placed in the hands, of the overseers of the poor. The respondent's right to recovery must stand or fall under the provisions of this section of the statute. The liability of the county to pay for services rendered in granting relief to such sick and distressed persons is dependent upon an examination and granting such relief by the overseers of the poor. There does not appear to be any provision in this statute for exceptional urgent cases, or cases where the public officers failed to act, as in Maine, where it is expressly provided [40 S.D. 302] by statute that when officials fail to do their duty, any person may, after giving due notice, render assistance, and the county shall be unable therefor. We have no such statute; besides, there is no showing in this case that the board of overseers of Hutchinson county was ever notified or failed to render assistance to the injured persons in question. The allegation of the complaint is that one of the county commissioners of Hutchinson county was informed that the accident had occurred and that his county would be expected to pay the expenses incurred in caring for said persons. There is no showing that this notice was given at a time when said injured persons were in Hutchinson county, or that the overseers of that county failed to perform their duties of making examination and granting relief. There is no showing that the commissioners of Hutchinson county were ever given or had any opportunity to make the examination or grant relief to said injured persons or to perform their duties with reference to said injured poor, as provided for by the statute. Also, it will be observed that the said injured persons were actually lying sick and in distress in Yankton county at the time respondent was called upon to care for them. It nowhere appears that the officials of Hutchinson county in any manner authorized or caused the said injured persons to be removed to Yankton.

We are of the view that, when a poor person is found to be lying sick and in distress in any particular county, for the purposes of granting temporary relief to him under section 2781 of the statute it is wholly immaterial from whence such injured person came or in what other county he may have contracted, his sickness, unless possibly it might be material to ascertain the county of his legal residence. The fact that a train in passing through Hutchinson county accidentally left the track, thereby causing injury to indigent 'persons who were strangers to Hutchinson county, and who were immediately removed to Yankton county for medical attention, would not render Hutchinson county liable on the ground of statutory duty, in the absence of some action on the part of the board of county commissioners of Hutchinson county authorizing or assenting to such removal and care in Yankton county. Cerro Gordo Co. v. Boone Co., 152 Iowa, 692, 133 N.W.

532, 39 L.R.A. (NS) 161, Ann. Gas. 1913C, 79. If the overseers of the poor of Hutchinson county had taken [40 S.D. 303] charge of these injured persons while they were in their county, and for the purpose of granting and rendering assistance to them had caused their removal to Yankton county and had there requested respondent to care for them, then we would have a different case; but there is no showing that anything of this nature occurred. Hence we are of the view that the court erred in overruling the demurrer to the complaint.

In *Hamlin County v. Clark County*, 1 S.D. 131, 45 N.W. 329, this court held that Clark county was not liable for care and attention rendered in caring for a resident of Clark county who was temporarily in Hamlin county. In that case it was contended by appellant that no right of action existed at common law by one municipality against another to recover for temporary or other relief furnished a poor person while out of the county of his settlement, and that as no remedy was given by our laws in such cases no right of recovery existed.

It was urged on the part of respondent that, though our statutes had not in terms provided for the repayment of expenses so incurred, it had made it the legal duty of the county to relieve and support all poor and indigent persons lawfully settled therein, and that consequently there was an implied promise on the part of a county to reimburse another county for the expense incurred in furnishing temporary relief to a person who had legal residence in the former county. The holding in that case was with the appellant that no statute existed authorizing such payment. It would certainly seem, therefore, that, if a county was not obligate to pay for care and keeping of a legal resident of the county while temporarily absent in another county, no liability could exist for the payment of services rendered in caring for one who was not an inhabitant of the county at all. These views seem to be sustained by ample judicial authority. St. Luke's Hospital v. Grand Forks County, 8 N.D. 241, 77 N.W. 598. In that case the court said:

> "It being necessary, then, to render a county liable as a debtor for aid furnished to a pauper, either that there be a statute authorizing any person to give it at the expense of the county, or that it is extended pursuant to the request of some one having authority to act, it is plain that, in the absence of both, the complaint did not state a cause of, action." [40 S.D. 304]

In the case of Moon v. Board, 97 Ind,. 176, the Supreme Court of Indiana said:

> "A claim against a county for services can exist only where there is a contract, or where there is a statute providing ... and directing compensation. No person can voluntarily perform services for a county, and demand compensation, except in cases provided by statute, and one who demands compensation for services rendered to a county must show a contract made under due authority of law with the proper officers, or else show a statute making provision for such services."

In Miller v. Somerset, 14 Mass. 396, and in Kittredge v. Newbury, 14 Mass. 448, the Supreme Court of Massachusetts said:

> "Since towns are not liable by the common law to support paupers, no compensation can be recovered for a surgical operation performed on a pauper without application to the overseers, even where the operation is immediately necessary."

The following decisions also sustain our holding in this case: Hull v. Oneida Co., 19 Johns. (NY) 259, 10 Am. Dec. 223; Morgan County v. Seaton, 122 Ind. 521, 24 N.E. 213; Cerro Gordo Co. v. Boone Co., 152 Iowa, 692, 133 N.W. 132, 39 L.R.A. (NS) 161, Ann. Cas. 1913C, and note.; *Patrick v. Boldwin*, 109 Wis. 342, 85 N.W. 274, 53 L.R.A. 613. In *Cerro Gordo Co. v. Boone Co., supra*, being a case in principle identical with this, the Supreme Count of Iowa held that a county is under no implied duty to reimburse another for expenses incurred in relief of paupers who first become in need of aid within its borders; that to render a county liable for aid furnished to a pauper it must be supplied at the instance of the officers designated by statute to have charge of the poor.

From the provisions of section 2781 it is clear that it is only temporary relief that is authorized to be furnished by the overseers, upon complaint made to them, where persons are found lying sick and in need of such temporary relief that the overseers are authorized to charge the county in the case of nonresidents. It is only for temporary relief that the overseers are authorized to charge the county in the case of nonresidents. In this case it cleanly appears that temporary relief was in fact actually furnished by some good Samaritan, [40 S.D. 305] other than the overseers of Hutchinson county, who in seeking such temporary relief removed said injured persons to a hospital in Yankton county, and, so far as shown by the record, without the knowledge or consent of the said overseers. These injured persons were so removed beyond and outside of the jurisdiction of Hutchinson county and the overseers thereof. The decisions herein cited sustain the proposition, under statutes like section 2781, that where some one else, other than the overseers, furnishes the temporary relief that might have been furnished by the overseers, but was not, the county cannot be charged for such temporary relief voluntarily furnished by some other person, however humane might have been the act of such other person; that the county can only be charged by and through the acts of its Overseers amounting to express or implied authorization of the temporary relief. No such authorization seems to have been made in this case. There is no provision made for urgent cases by section 2781, or any other provision of our statute law. The Massachusetts cases, supra, are clear and direct on this point; that is, that provision for urgent cases cannot be read into the statute by the court; this being a case where there must be some statutory authority for charging the county where relief was furnished a nonresident person by some one other than the prescribed county officer.

The order appealed from is reversed, and the cause remanded for further procedure in harmony with this, decision.

WHITING, P. J., and GATES J. (concurring specially).

As we read the majority opinion, it holds that, regardless of the apparent necessity of removal to Yankton county, regardless of any imminent or actual danger to the patient's life that might result from delay, and regardless of neglect or refusal to act on the part of the overseer or overseers, of the poor, a surgeon giving aid to one who is unable to pay for such services cannot recover of the county wherein he lay injured.

With possibly one exception (Maine) the courts recognize a fact which every humane people should be glad to proclaim, namely, that there is a moral obligation resting upon society to care for the needy and helpless in its midst, and this regardless of whether the unfortunate has, a legal settlement in the particular political subdivision where he may chance to be situate. On the [40 S.D. 306] other hand, the, courts are unanimous, we think, in holding that it is only by virtue of statute that there can exist a legal duty. So holding it would seem that some courts have placed the statutory method for invoking the execution of the duty ahead of, and of more importance than, the duty itself, and so doing have seemed to hold that there can be no legal duty upon which a legal liability can be predicated without there be an express contract entered into in accordance with the statute. In this it seems to us that such courts have erred. That our statute creates a legal duty upon the county to give aid to a proper party regardless of the place of his settlement was fully recognized in *Hamlin County v. Clark County*, 11 S.D. 131, 45 N.W. 329. Such statutes, being enacted in the interests of humanity and mercy, should receive a liberal construction so as to carry into effect their humane and beneficent objects. Ogden v. Weber Co., 26 Utah, 129, 72 Pac. 433.

In the majority opinion there is cited the opinion in the case of Cerro Gordo Co. v. Boone Co., 152 Iowa, 692, 133 N.W. 132, 39 L.R.A. (NS) 161, Ann. Cas. 1913C, 79, and the notes thereto attached. The opinion in that case in no manner deals with the question of the right of one to afford relief in an emergency case and to collect compensation without previous contract with or authority from an overseer. The notes do go into this question. The author of such notes makes the statement that:

> "Without one exception, the cases seem unanimously to hold that the existence of an emergency rendering relief necessary before proper steps can be taken to charge the public, or the refusal of relief by public officers, gives a person furnishing relief no right to compensation in the absence of statutory provision for such case."

An examination of the authorities cited in such notes discloses that the large majority thereof do not support the law as above stated.

Upon the other hand, the author of such notes is absolutely wrong in his statement that there is but one authority supporting what we believe to be the correct law. We believe the law to be that, when the statute imposes a legal duty, and there is such an emergency as prevents the getting of an express contract, or [40 S.D. 307] the proper authorities refuse or neglect to perform the legal duty, there arises an implied promise, founded on the legal duty, to pay for necessary services. This has been held in numerous decisions upon statutes which, like ours, impose upon some official the task of carrying out the duty. We can do no better than to refer to opinion's so holding. A reading of the facts upon which such opinions are based, and a comparison of the wording of particular statutes involved with the wording of our statute, satisfies us that these opinions are exactly in point, and that the overwhelming weight of authority supports the rule of law for which we contend. Board of Com'rs v. Denebrink, 15 Wyo 342, 89 Pac. 7, 9 L.R.A. (NS) 1234; *Newcomer v. Jefferson Twp.*, 181 Ind. 1, 103 N.E. 843, Ann. Cas. 1916D, 181; *Robbins v. Town of Homer*, 95 Minn. 201, 103 N.W. 1023; County of Christian v. Rockwell, 25 Ill. App. 20; County of Clinton v. Pace, 59 Ill. App. 576; County of Madison v. Haskell, 63 Ill. App. 657; *Trustees v. Aaron Ogden*, 5 Ohio, 23; Board of Sup'rs v. Gilbert, 70 Miss. 791, 12 South. 593.

Being of the opinion that the complaint was insufficient to state a cause of action even under the law for which we contend, we concur in the result announced in the majority opinion.

Hamlin County v. Clark County, 1 S.D. 131, 45 N.W. 329 (1890)

HAMLIN COUNTY,
Plaintiff/Respondent,
v.
CLARK COUNTY
Defendant/Appellant.
[1 S.D. 131, 45 N.W. 329]

South Dakota Supreme Court
Appeal From District Court, Codington County, SD
Hon. James Spencer, Judge.
Reversed.

William McGann, S. B. Van Buskirk
Attorneys for appellant.

J. P. Cheever, W. S. Glass
Attorneys for respondent.

Argued Feb. 14, 1890; Opinion filed May 12, 1890

[1 S.D. 132, 133]
CORSON, P. J.

The defendant and appellant appeals from a judgment rendered against it and in favor of plaintiff, reversing a decision of the board of county commissioners of Clark County, disallowing plaintiff's claim for the expenses incurred by the plaintiff for relief furnished one Luther, who had a legal settlement in defendant county. The facts as found by the referee, to whom the case was referred, are in substance as follows: That on the 13th day of December. 1881, one Charles Luther, a resident of Clark County, and then temporarily residing in Hamlin County, fell from the roof of a building upon which he was at work, breaking his leg, and receiving other injuries; that on the day following complaint was made to O. C. Swift, chairman of the board of county commissioners of Hamlin County, that said Luther was lying in said county sick and in distress, without friends or money, and that he was not a resident of said county; that said Swift examined said case, [1 S.D. 134] and found the complaint to be true, and granted, as such chairman, such temporary relief as the nature of the case required; that said Luther was a poor person, virtually without money and absolutely without friends; that said Hamlin County caused necessary surgical and medical aid and attendance, and also nurses,

clothing, and board, to be furnished him to the amount of $680.53, and that the relief so furnished him was reasonably worth that sum, and that the same was allowed and paid by said Hamlin county; that such relief was furnished said Luther until March 31, 1885, when he was removed to said Clark County by said Hamlin County, and that said removal of said Luther was made as soon as it was safe to his health and life to do so; that soon after the injury to Luther notice was given by said Hamlin County to said Clark County of his condition, and that relief was being furnished him by said Hamlin County, and that he had a legal settlement in said Clark County; that said Clark County made no provision for said Luther while he was so being relieved by said Hamlin County, and refused to remove him, and that no order for his removal, as provided by the Compiled Laws, was at any time applied for or obtained by the overseers of the poor of said Hamlin County. The findings of fact, reported by the referee, were adopted by the court, and upon them the court stated as its conclusions of law that the defendant was liable to the plaintiff for the amount so expended in the temporary relief of said Luther, and entered judgment for plaintiff as before stated.

The appellant has assigned numerous errors, but the view we take of the case only renders it necessary to consider one, and that is as follows: "The court erred in giving judgment against the defendant in this action, for that, even though all. the findings of fact are true, the plaintiff is not entitled to judgment herein." The question, therefore, presented for our determination is, is Clark county legally liable, for the relief so furnished to the man Luther, to Hamlin county, in the absence of any express provision of the Compiled Laws creating such liability? It is contended by the learned counsel for appellant that no right of action existed at common law, by one municipality [1 S.D. 135] against another to recover for temporary or other relief furnished a poor person while out of the county of his settlement, and that, as no remedy is given by our Compiled Laws in such a case except that provided in Section 2153, no right of recovery exists. It is urged on the part of the learned counsel for the respondent that, though our, statute has not in terms provided for the repayment of expenses so incurred. it has made it the legal duty of the county "to relieve and support all poor and indigent persons lawfully settled therein," and that, consequently there is an implied promise on the part of a county to reimburse another county for the expenses incurred in furnishing temporary relief to a person who has a legal settlement in the former county. The Sections of the Compiled Laws bearing upon this question are as follows: § 2143 provides:

> "Every county shall relieve and support all poor and indigent persons lawfully settled therein whenever they shall stand in need thereof."

Section 2152 provides:

> "Whenever any person entitled to temporary relief as a pauper shall be in any county in which he or she has not a legal settlement, the overseers of the poor

> thereof may, if the same is deemed advisable, grant such relief by placing him or her temporarily in the poor-house of such county, if there be one; but if there be no poor-house, then they shall provide the same relief as is customary in cases where a legal settlement has been obtained."

Section 2153 provides:

> "Upon complaint of any overseer of the poor any justice of the peace may issue his warrant, directed to and to be executed by any constable, or by any other person therein designated, to cause any poor person found in the county of such overseers, likely to become a public charge, and having no legal settlement therein, to be sent and charged at the expense of the county to the place where such person belongs if the same can be conveniently done; but, if he or she can not be removed, such person shall be relieved by said overseers whenever such relief is needed."

Section 2161 provides:

> "It shall be the duty of the overseers of the poor, on complaint made to them that any person not an inhabitant of their county is lying sick therein, or in distress, without friends or money, so that he or she is likely [1 S.D. 136] to suffer, to examine into the case of such person, and grant such temporary relief as the nature of the same may require; and if any person shall die within any county, who shall not have money or means necessary to defray his or her funeral expenses, it shall be the duty of the overseers of the poor of such county to employ some person to provide for and superintend the burial of such deceased person; and the necessary and reasonable expenses thereof shall be paid by the county treasurer upon the order of such overseers."

It will be observed from an examination of these sections that it is made the duty of the county—first, to relieve and support all poor and indigent persons lawfully settled therein; second, to relieve, temporarily, poor and indigent persons, not lawfully settled therein, but who stand in need of aid therein; third, to grant temporary relief to persons not inhabitants of the county, lying sick or in distress therein, without friends or money; and, fourth, that authority is given the county to remove, on proper proceedings taken, poor and indigent persons, liable to become a public charge, to the county in which such persons have a legal settlement. It will be further observed that in the sections cited, except Section 2161, "poor" or "poor and indigent" persons are referred to, while in the latter section the words "any person" are used as designating the persons entitled to temporary relief under that section. This latter section, therefore, seems to contemplate that persons who are not in the class designated as "poor and indigent" persons may, from accident, sickness, or other misfortune, require temporary relief in a county of which such

persons may not be inhabitants. It is quite clear from the findings of the referee in this case that the man Luther was within this class, and that the temporary relief furnished him was under the provisions of the latter section. The legal duty imposed upon a county to grant temporary relief to such persons, as are designated in Section 2161, is quite as obligatory upon the county as the duty imposed of relieving all poor and indigent persons lawfully settled therein. The duty, in either case, is imposed in positive terms. The legal duty of a county to relieve and support the [1 S.D. 137] poor and indigent lawfully settled therein seems to be limited to the poor and indigent within the county, there being no pro-visions in the law requiring a county to provide for its poor outside of the county; and a county, neither upon notice or otherwise, is required to remove a person having a legal settlement therein from a county where he is, or is liable to become, a public charge, but such duty of removal is imposed upon the county in which such person may be. In our opinion the legal duty to furnish temporary relief to a person sick or in distress, and without friends or money, is imposed upon the county, in addition to the duty of providing relief and support for its own poor and indigent, and is placed as an additional burden upon such county. This is quite apparent from the fact that no provision is made for reimbursing a county for the relief so furnished, and that no provision is made for any notice to be given to the county in which such person has a legal settlement. That this is the proper construction of our statute is confirmed by the further fact that in adopting a system of poor laws our legislature has followed substantially the system in force in the State of Indiana, in which no provisions are made for reimbursing municipalities for the expenses incurred for relief furnished in cases like the one at bar, in preference to the system in force in many of the states, where provisions are made for such reimbursement, and the method of proceedings to enforce the remedy are fully and specifically pointed out. If we are correct in our construction of the statute, Hamlin County has furnished no relief to the man Luther which it was the legal duty of Clark County to have furnished. It has only furnished the relief legally imposed upon it, to furnish to one lying sick and in distress, without friends or money, therein, though not an inhabitant of that county. The obligation or duty of a county to relieve and support the poor and indigent is purely statutory, and to make a county liable the case must fall within the liability created pursuant to and in the manner prescribed by the statute. Coolidge v. Mahaska Co., 24 Iowa, 211; *Mitchell v. Cornville*, 12 Mass. 333; *Miller v. Somerset*, 14 Mass. 396; *Kellogg v. St. George*, 28 Me. 255; *Ives v. Wallingford*, 8 Vt. 224. There are [1 S.D. 138] none of the elements of a contract, express or implied, in a demand for the support or relief of the poor. The liability, if any, originates solely in the positive provisions of the statute. City of Augusta v. Chelsea, 47 Me. 367. The duty of supporting the poor, aiding poor people, or those temporarily requiring assistance, may be imposed by the legislature upon counties or towns in such manner as it may deem expedient. There is no question of moral obligation involved, nor any question of absolute right as between the counties. It is simply a question of public policy, and, being such, is entirely within the control of the legislature.

We are therefore of the opinion that the judgment in this case should be reversed. Judgment reversed, with instructions to the court below to conform its conclusions of law to the views expressed in this opinion, and to render judgment on the findings in favor of the defendant.

All the judges concurring, except Bennett, J., who did not sit in this case, nor take any part in the decision.

law. But any proper instruction may be obtained by a party upon request, and a judgment will not be reversed except for injurious error, which we do not find in this record.

PER CURIAM.—Upon the foregoing opinion, the judgment is affirmed, at the costs of the appellants.

Filed Sept. 18, 1884.

No. 11,624.

MOON v. THE BOARD OF COMMISSIONERS OF HOWARD COUNTY.

COUNTY COMMISSIONERS.—*Claim for Services.—Contract.*—One claiming for services rendered to a county must show a contract under due authority of law made with the proper officer, or else a statutory provision for such services.

SAME.—*Authority to Contract.—Agents.*—The general, though not unlimited, authority to contract for a county, is vested in the board of commissioners under the statute, but other agents are named in certain cases.

DRAINAGE.—*Viewers.—Appointment of Surveyor.—Services.—Compensation.—Statute Construed.*—If the viewers appointed under the drainage act, section 4286, R. S. 1881, have authority to employ a surveyor, such employment is limited to the terms and purposes specified in the act. As their authority is not general, and it is at the utmost limited to the appointment, and does not authorize them to indicate the work nor fix the compensation, the statute fixes both. It does not authorize the surveyor to examine the records or prepare report of viewers.

SAME.—*Petitioners.—Land-Owners.*—Section 4274, R. S. 1881, requires the petitioners for the establishment of a ditch to obtain the names of land-owners.

PRACTICE.—*Evidence.—New Trial.*—A finding on the evidence can only be reviewed where there is a motion for a new trial.

SAME.—*Costs.—Appeal from Commissioners.—Judgment.—Presumption.*—Where the record does not show that the judgment on appeal was a different judgment from that given by the board of county commissioners, no error in taxing appellant with the costs appears. Presumptions in favor of the trial court must be overcome.

From the Howard Circuit Court.

J. C. Blacklidge, W. E. Blacklidge, M. Bell and *W. C. Purdum*, for appellant.

M. Garrigus, for appellee.

ELLIOTT, C. J.—The appellant claims that the appellee is indebted to him for services rendered as a surveyor in proceedings to establish a ditch, and in his complaint sets forth several items; some of these were allowed, and others, on motion, were struck from the complaint. The rejected items were for services in examining the record to ascertain the names of owners of lands adjacent to the proposed ditch, and for services in preparing reports of the viewers.

A claim against a county for services can exist only where there is a contract, or where there is a statute providing for them and directing compensation. No person can voluntarily perform services for a county and demand compensation except in cases provided for by statute, and one who demands compensation for services rendered to a county must show a contract made under due authority of law with the proper officers, or else show a statute making provision for such services. The right to a recovery is not made out by showing the beneficial character of the services, but the claimant must also show either a contract or a statute making provision for such services. It must also be made to appear in cases where a contract is relied on, that the contract was within the scope of the authority of the officers or agents who assumed to make it.

The general authority to contract on behalf of the county is vested in the board of commissioners, and that body possesses extensive, but by no means unlimited, powers. *Nixon* v. *State, ex rel.*, 96 Ind. 111. The authority of the board is that conferred by statute, and it is, as a general rule, the authorized representative of the county in the matter of making contracts for services, although there are cases where the authority is conferred upon other agents. In the present instance the contract with the appellant was made with viewers appointed under the drainage act, and conceding that the authority to employ a surveyor is in the viewers, a point we do not decide, still it is clear that they can do no more than

employ him under the terms and for the purposes specified in the statute. As the viewers have no general powers upon this subject they can do only what the statute directs, and that, at the utmost, is to appoint the surveyor. What services he shall perform, and what compensation he shall receive, can not be fixed by the viewers, for their authority, granting it to go that far, terminates with the appointment. It is evident, therefore, that no recovery can be had upon the ground that the viewers designated the services and promised compensation.

The statute provides what services the surveyor shall perform, and designates the rate of compensation. The provisions of the act are, perhaps, not altogether clear, and, in some particulars, are incomplete, but we can not supply deficiencies nor remedy defects; we must act upon the statute as it exists, and not as it might seem to us it should be. Counsel's arguments as to what should be in the statute might have weight with the Legislature, who can change the law, but they can have none with courts, who are bound by what has been enacted. We are, therefore, to ascertain what the statute is. The only provision regarding the duties of the surveyor that we have been able to find is in section 4286 (R. S. 1881), but we find nothing in that section, even when construed with the utmost liberality, that makes it the duty of the surveyor to examine the records or prepare the reports of the viewers. That section provides that the surveyor shall assist the viewers in certain matters and shall make all calculations, measurements, estimates, and do such other work as pertains to his profession, as is necessary for the information of the viewers, but we find nothing in it providing that the surveyor shall prepare the report. It is his duty to do all the work pertaining to his profession and requiring professional skill and knowledge that may be necessary to supply the viewers with sufficient foundation for their judgment and report, but it is not his duty to make out the report itself. Nor is there anything in the section that

makes it the duty of the surveyor to obtain the names of land-owners, and the provisions of section 4274 in terms casts that duty upon the petitioners for the establishment of the ditch. We are not required to decide what it is necessary for the surveyor to do in ascertaining facts in the line of his profession for the information of the viewers, for no such question is before us. What we do decide is that the surveyor is not charged with the duty of preparing the reports of the viewers or of ascertaining the names of the land-owners. This is the question, clearly defined and plainly marked, that is presented by the ruling on the motion to strike out. The items rejected are for services in making the reports and for examining the record to ascertain the names of land-owners, and not for supplying the viewers with information and facts within the line of the appellant's profession; on the contrary, the items left standing clearly indicate that for professional services rendered in ascertaining and imparting such information a recovery was awarded.

The duties of the surveyor are fixed by the statute, and it is only for services performed in the discharge of such duties that he is entitled to compensation. The statute is carefully worded, and so worded as to strictly confine the compensation for services performed under it.

A finding on the evidence can only be reviewed where there is a proper motion for a new trial, and here there is no motion at all.

We can not say that any error was committed by the court in taxing appellant with costs, for the reason that there is nothing in the record showing that the judgment on appeal was not the same as that rendered by the board of commissioners. Presumptions are always made in favor of the rulings of the trial court, and the appellant who impugns them must affirmatively show facts overcoming these presumptions. It is true that the appellant testified that his claim had not been paid, but this is far from showing that it had not been allowed. Indeed, the fair inference from the record is that

an allowance had been made covering all the items of the complaint except those which we hold not recoverable, and this corresponds with appellant's statement in his brief; at all events we are unable to see any affirmative fact impugning the ruling of the court. Judgment affirmed.

Filed Sept. 26, 1884.

---

97 180
110 667

No. 11,108.

Borchus et al. v. The Huntington Building, Loan and Savings Association.

Practice.—*Motion to Strike Out Interrogatories.—Bill of Exceptions.*—A motion to strike out interrogatories, and the ruling thereon, must be embraced in a bill of exceptions to save the question on appeal.

Same.—*New Trial.*—Where error is assigned upon the overruling of a motion for a new trial, and the grounds stated in the motion are excessive damages, insufficient evidence, finding contrary to law, and error in admitting testimony, and there is no bill of exceptions filed, no question is presented.

Master Commissioner.—*Evidence.—Bill of Exceptions.—Practice.*—Evidence admitted before a commissioner is not before the court unless preserved by bill of exceptions or by the commissioner in his report.

Same.—*Testimony.—Record.*—A motion to make the testimony taken before a commissioner part of the record must be made before the court, on request, has acted upon the report and made a finding and judgment.

Same.—*Evidence.—Report.—Waiver.*—Where the cause was referred to a special commissioner to report the facts and the evidence, and the facts alone were reported, the court might, on motion, or at its own instance, have required the commissioner to report the evidence; but where such action was not taken the error is waived.

Same.—*Evidence before Commissioner.*—A judge has no power to sign a bill of exceptions containing evidence taken before a commissioner, but not brought before the court in a proper manner, and which was not before the court when the court made its finding upon the facts as reported by the commissioner.

Same.—*Submission to Court.—Conclusions of Law.*—Where the commissioner reports his facts without the evidence, and the issues are submitted to the court for trial upon the findings, the court can not be required to state conclusions of law thereon, and such conclusions, if stated, are surplusage.

claims too much and the plaintiff concedes too little. In view of our conclusions already announced, it becomes unnecessary for us to find definitely upon it. If the full amount claimed by defendant were allowed, it would still leave a recovery to the plaintiff of about $1,250 as of the date of the trial below and including one year's interest. The amount allowed by the trial court is $1,247.

The plaintiff has not appealed, and he cannot recover a larger judgment here than he obtained in the court below. It is sufficient to say, therefore, that he is entitled to the amount awarded him by the trial court.

The decree entered below is therefore *affirmed*.

CERRO GORDO COUNTY, Appellant, v. BOONE COUNTY.

Poor persons: RELIEF: STATUTORY PROVISIONS. Legal liability for
1 care of the poor is governed entirely by statute, and a county can only be charged with such expense by a compliance therewith.

Same: TRANSIENT POOR: RECOVERY FOR CARE. The statutes do *not* pro-
2 vide for relief to transient paupers, and recovery therefor must be based upon some promise to pay, either express or implied, and must be established by satisfactory evidence. Mere failure of one county to provide such relief is not a circumstance tending to establish its liability to another county for aid furnished: Nor will the fact that officers of one county furnished a transient poor person with transportation to another county constitute the basis for an implied contract to reimburse the latter for such aid.

Appeal from Story District Court.—HON. C. G. LEE, Judge.

WEDNESDAY, NOVEMBER 15, 1911.

ACTION to recover expenses for care and medical treatment of a nonresident pauper resulted in the dismissal of the petition. Plaintiff appeals.—*Affirmed*.

Fitchpatrick & McCall, J. C. Robinson and *Robt. M. Witwer*, for appellant.

Harpel & Cederquist and *E. H. Addison*, for appellee.

Ladd, J.—In January, 1908, William R. Wood, after examining the timber on an island in the Des Moines river, near Fraser, with a view of contracting to cut it, broke through the ice and wet his feet. Being unable to find a lodging place, after walking several miles, he crawled into a straw stack, and remained during the night. In the morning both feet were frozen. After walking two or three miles, he caught a ride into Boone. He then had but $1.50, and after procuring a lunch inquired for a physician. Being advised by the chief of police that the county physician was out of town, he remained at the police station until the next morning, and at about 11 o'clock a. m. was examined by the county physician, who seems to have properly dressed his feet, and said he "would have to get him into a hospital." Upon his return to the station, J. W. Keigley, a member of the board of supervisors to whom had been assigned the duty of looking after the poor in that vicinity, conversed with him concerning the care of his feet, and was told by Wood that the county physician had said he would get him into a hospital. To this the officer responded, "Did he say that?" His feet were painful throughout the day (Sunday), and at about 11 o'clock a. m. Monday the county physician, in response to a message, opened one or two blisters and dressed his feet again, and upon ascertaining he had formerly lived in Wisconsin inquired if he wished to return there, and said he would talk with the supervisor about it. At about 5 o'clock in the afternoon, the chief of police informed him, "We are going to send you away on the 5:30 train," took him to the depot, and gave him a ticket to Nevada, the county seat of Story county. Keigley paid the chief of police the

forty-eight cents expended for the ticket, and thereafter was reimbursed by the county on claim presented. Upon reaching Nevada, Wood obtained food, and slept that night in a livery stable. In the morning the city marshal, after building a fire, took him to the city hall, where he was examined by a local physician and his feet dressed. In the evening, money was raised by the marshal, from which he bought him a ticket to Mason City, and furnished him money to pay his way to Wisconsin. He was put aboard the train, and arrived at Mason City the next morning in a condition such as to preclude proceeding farther. At the instance of the humane officers of that county, he was taken to a hospital, and accorded the consideration and given the care and treatment usually bestowed in civilized communities on the unfortunate.

The story reads like the parable of the man who was wounded and left by the wayside half dead. The priest and the Levite passed by on the other side; but the good Samaritan "had compassion on him, . . . bound up his wounds, pouring in oil and wine, . . . and brought him to an inn, and took care of him."

It was found necessary to amputate both feet, and the expenses incurred by Cerro Gordo county for his treatment, surgical operations, and subsequent care amounted to $713.95. For this amount, judgment is sought against Boone county, on the theory that it was obligated, upon discovering the condition of this nonresident pauper, and having begun caring for him, to furnish him such care and treatment as was essential to restore him to health, and that, instead of discharging such obligation, its officers, at a cost of a few cents, compelled him to move on, and as a consequence plaintiff was at the expense stated. Upon showing the facts as recited, verdict was directed for defendant, and subsequently judgment entered thereon.

1. POOR PERSONS: relief: statutory provisions.

The showing as made was not at all complimentary to

the officers of Boone county, but, as no evidence was introduced in its behalf, there may be circumstances somewhat extenuating their conduct in casting a helpless man, sorely in need of medical aid, adrift, in order to evade the expenditure of a few dollars. The statutes provide adequate relief for paupers applying for succor having settlement in a county of this state, and if this is afforded by a county other than of the pauper's settlement, recovery may be had of the latter. Section 2228, Code. But the county only becomes liable upon compliance with the statutes; that is, the liability of any county is purely statutory. *Cooledge v. Mahaska County*, 24 Iowa, 211; *Cerro Gordo County v. Wright County*, 50 Iowa, 439; *Otis v. Strafford*, 10 N. H. 352; *Mansfield v. Sac County*, 60 Iowa, 11; *Gawley v. Jones Co.*, 60 Iowa, 159.

The care of the poor was not a municipal function at the common law. Matters of charity were thought more appropriate for the church. It was ordained by the ancient kings that "the poor should be sustained by parsons, rectors of the church, and by parishioners, so that none of them die for want of sustenance." Later, and supposedly about the time of Henry VIII, the law seems to have made paupers a charge on certain municipalities. Blackstone, in 1765, said: "The law not only regards life and member and protects every man in the enjoyment of them, but also furnishes him with everything necessary for their support. For there is no man so indigent or wretched, but he may demand a supply sufficient for all the necessaries of life from the more opulent part of the community, by means of the several statutes enacted for the relief of the poor." 1 Blackstone Com. 131, (10th Eng. Ed.)

Undoubtedly, the Legislature is endowed with power to create liability on the part of the county for the care of the poor, and to determine under what circumstances one county shall be liable to another. *Town of Fox v. Town of Kendall*, 97 Ill., 72. But, in the absence of such pro-

visions, the obligation to pay any expenses incurred, no matter how meritorious the claim, is not to be implied, for the corporation is under neither a moral nor legal obligation to care for the poor. "Whatever may be the duty of individuals, from religious or charitable considerations, it is certain the public is bound by no moral obligations to support the poor of the community. That duty being legal and of positive institution is to be carried no farther than the express provisions of the poor laws." *Overseers of Poor v. Overseers of Poor*, 3 Serg. & R. (Pa.) 117.

2. SAME: transient poor: recovery for care.

The only statutory provision authorizing the relief of the transient poor is found in section 2225 of the Code: "A person coming from another state, and not having become a citizen of, nor having a settlement in the state, applying for relief, may be sent to the state whence he came, at the expense of the county, under an order of the district court or judge; otherwise, he is to be temporarily relieved in the county where he applies." The manner of relief is prescribed in section 2230: "The township trustees of each township, subject to general rules that may be adopted by the board of supervisors, shall provide for the relief of such poor persons in their respective townships as should not, in their judgment, be sent to the county poor house. But where a city is embraced, in whole or in part, within the limits of any township, the board of supervisors may appoint an overseer of the poor, who shall have within said city or part thereof, all the powers and duties conferred by this chapter on the township trustees. The relief may be either in the form of food, rent or clothing, fuel and lights, medical attendance or in money, and shall not exceed two dollars per week for each person for whom relief is thus furnished, exclusive of medical attendance." All moneys expended are to be paid out of the county treasury (section 2232, Code), and "when relief is granted by a county to a poor person having a settlement in another

county" recovery may be had of the latter for the reasonable expenses so incurred. Section 2228, Code.

But reimbursement for aid extended to a transient pauper is not directed, and, if plaintiff is entitled thereto, this must be owing to an implied promise on the part of Boone county to repay Cerro Gordo county. Cases may be found where an individual who has furnished the necessities of life to a pauper, after a municipality has omitted to discharge such duty, has been permitted to recover the value thereof, but in most of these this was contemplated by the statute authorizing the relief. Our statutes direct by what officers relief shall be furnished, and there is no ground for charging the county, unless it is supplied by these, or at their instance. *Beetham v. Lincoln,* 16 Me. 137; *Hamilton County v. Meyers,* 23 Neb. 718, (37 N. W. 623); *Copple v. Davie County,* 138 N. C. 127, (50 S. E. 574); *Cantrell v. Clark County,* 47 Ark. 239, (1 S. W. 200); *Kittredge v. Newbury,* 14 Mass. 448; *Gourley v. Allen,* 5 Cow. (N. Y.) 644. See note to *Board of Commissioners of Sheridan County v. Denebrink,* 9 L. R. A. (N. S.) 1234; *Patrick v. Baldwin,* 109 Wis. 342, (85 N. W. 274, 53 L. R. A. 613); *Overseers of Poor v. Overseers of Poor,* 3 Serg. & R. (Pa.) 117. As well said in *Patrick v. Baldwin, supra*: "While an implied contract is sufficient, as indicated, it must be established, if one endeavors to recover upon it, the same as any other implied contract. The statute creates a liability to relieve destitute persons, but not a liability to individuals who may voluntarily perform that service. It empowers appropriate agents of municipalities to make their liability effective by necessary contracts to that end, and imposes upon such agents the duty to exercise such power. If they refuse to do so, they are doubtless amenable in some way for such misconduct, but the law gives no private person the right to perform the duty of such officers. *Otis v. Strafford,* 10 N. H. 352. Performance of that duty by the person designated by

law is absolutely essential to create a binding obligation upon the municipality to compensate one for relieving a poor person, legally entitled to relief at its expense. . . . There is no more reason for holding that a person may aid a pauper, upon the supervisors of the town in which such pauper has a legal settlement neglecting their duty, and hold such town liable therefor, than for holding that one may repair the highways of a town, because its supervisors neglect their duty in that respect, and recover of such town therefor. The duty of the municipality in both cases is regulated by statute, and in neither case can it be bound to a private person for services rendered, except by contract made as contemplated by law."

The cases holding to the contrary seem to overlook the circumstance that the relief is purely statutory; that the duty to extend relief is expressed in general terms, leaving the occasion, method, and extent of relief to the judgment and discretion of the local officers; and therefore, to create a binding pecuniary obligation, there must be a contract to that effect, or services must have been rendered at the request of officers authorized to enter into the agreement. See *Seagraves v. Alton,* 13 Ill., 366; *Ogden v. Weber County,* 26 Utah 129, (72 Pac. 433); *Shreve v. Budd,* 7 N. J. Law, 431; *Trustees of Cincinnati Township v. Ogden,* 5 Ham. (Ohio) 23.

Doubtless some provision for emergencies exacting quick action should be made, but that is a matter for the Legislature and not the courts. It is not pretended that anything was done for Wood at the instance of the officers of Boone county, so that a promise to pay is not to be implied. Undoubtedly Boone county should have given him proper medical treatment. *Brock v. Jones County,* 145 Iowa, 397; *Overseers of Poor v. Overseers of Poor,* 114 Pa. 394, (6 Atl. 475). He there became helpless and a fit subject for relief. The duty to extend it was then immediately cast upon the defendant. But from its failure

or refusal to respond, as both the law and the dictates of humanity required, an obligation to pay another individual or county is not to be inferred. Public charity is bestowed in this state as a duty, rather than as a corporate obligation, and therefore the extent of relief, as well as its character, is left to the discretion and judgment of the officers charged with the care of the helpless. Such officers may not delegate that duty to others (*Sloan v. Webster County*, 61 Iowa, 738) and, as seen, because of the omission thereof, succor may not be given by another, not at their instance, at the public expense. That the officers of Boone county may have been neglectful of the dire needs of Wood, who had never before asked alms, did not charge it with the expense incurred by an individual or another county in giving him the care and treatment his condition required. Nor can the circumstance that its officers gave him a ticket to Nevada be construed as a request to Cerro Gordo county to furnish relief.

By casting the unfortunate adrift, they avoided a manifest duty, and, though this may have resulted in putting the burden on another county, it cannot be said to have been assumed at the request of the officers of Boone county. The cause differs from those relied on by appellant. In *Overseers of Poor of Pittstown v. Overseers of Plattsburgh*, 15 Johns. (N. Y.) 436, the defendants procured an order of court, transferring a transient pauper to Pittstown, and, as a consequence, he was maintained by the overseers thereof. Subsequently the order was quashed, and the court held that recovery could be had against the overseers procuring the order, on the principle "that a burden has unjustly been thrown upon Pittstown by the procurement of the overseers of the poor of Plattsburgh; that, the pauper having no legal settlement in this state, it was their duty to have exonerated Pittstown of the burden they had cast upon them."

In Sheldon v. Fairfax, 21 Vt. 102, several towns

joined in maintaining a poor farm within the limits of Sheldon; each agreeing to pay its share of the expense. In 1837, the town of Fairfax sent a foreign pauper and family in need of relief there, and they, or a part of them, were cared for at the poor farm until the termination of the arrangement in April, 1846. The town of Fairfax failed to remove them, and refused to pay the expense of their care, but the court held it liable, saying: "The duty of the town of Fairfax to take the pauper away when the temporary purpose for which he was sent was accomplished is necessarily implied from the contract between the two towns; and the town of Sheldon having suffered injury by the breach of that duty is entitled to compensation. I apprehend there is no doubt but that upon acknowledged legal principles the plaintiff's claim is well sustained. It rests on the common doctrine that, when one party sustains an injury by the culpable misconduct or negligence of another, the party injured may recover compensation from it by an action on the case." There is nothing in the record to bring the case within the principle recognized in either of these decisions. The officers of defendant did no more than neglect and omit to perform the statutory duty imposed, and, nothing having been done by plaintiff at their instance or request, the court rightly held that there could be no recovery.—*Affirmed.*

Sherwin, C. J., took no part.

J. C. FEAR v. ALICE FEAR, Appellant.

Specific performance: ANTENUPTIAL CONTRACT: FRAUD: EVIDENCE. An antenuptial contract by which the parties mutually agree to relinquish and make no claim to any interest in the property of the other, and to join, one with the other, in the conveyance of their respective properties, may be enforced in equity, when

ST. LUKE'S HOSPITAL ASSOCIATION *vs.* GRAND FORKS COUNTY.

Opinion filed December 8, 1898.

Supplies Furnished Pauper—Liability of County.

To entitle one to recover from a county for services or supplies furnished to a pauper to whom such county owes the duty of support and care under the statute, it must appear that the services rendered and relief given were in pursuance of an authorization proceeding from some one having authority to bind the county.

Appeal from District Court, Grand Forks County; *Fisk*, J.

Action by St. Luke's Hospital Association against Grand Forks County. From a judgment sustaining a demurrer to the complaint, plaintiff appeals.

Affirmed.

J. A. Sorley, for appellant.

J. G. Hamilton, for respondent.

YOUNG, J. The District Court sustained a demurrer to the complaint in this action, interposed upon the ground that the complaint did not state facts sufficient to constitute a cause of action. The correctness of that order is challenged in this appeal. The plaintiff, a corporation, conducting a hospital at Grand Forks, sued the defendant county to recover for care, nursing, board, and lodging furnished by it in 1897 in its hospital, to an alleged pauper. It is needless to set out the particular allegations of the complaint. For the purpose of this decision, it may be conceded that the complaint shows that the support was given as alleged, and to one to whom, under the statutes, the defendant county owed the duty of extending relief. It does not state, however, that such relief was extended at the instance or request of any one having authority to bind the county. On the other hand, it shows affirmatively that authorization was refused on behalf of the county. Under these facts, the complaint fails to set out a legal liability. Counties owe no other duties to the poor, and incur no other liabilities for their support, than those imposed by statute. This was expressed in *Hamlin Co.* v. *Clark Co.*, 1 S. D. 131, 45 N. W. Rep. 329, in the following language: "The obligation or duty of a county to relieve and support the poor and indigent is purely statutory, and, to make a county liable, the case must fall within the liability created pursuant to and in the manner prescribed by the statute." In *Moon* v. *Board*, 97 Ind. 176, that Court said: "A claim against a county for services can exist only where there is a contract, or where there is a statute providing and directing compensation. No person can voluntarily perform service for a county, and demand compensation, except in cases provided by statute, and one who demands compensation for

services rendered to a county must show a contract made under due authority of law with the proper officers, or else show a statute making provision for such services. It must also be made to appear in cases where a contract is relied upon that the contract was within the scope of the authority of the officers or agents who assumed to make it." Numerous cases, similar to the one at bar, have arisen wherein persons have sought to recover for relief furnished either to paupers or those to whom the county owed the duty of giving relief. Uniformly, recovery has been denied. *Kellogg* v. *Inhabitants of St. George*, 28 Me. 255; *Proprietors of Twp. No. 6* v. *Jones*, 12 Mass. 334; *Miller* v. *Inhabitants of Somerset*, 14 Mass. 396; *Hamilton Co.* v. *Meyers* (Neb.) 37 N. W. Rep. 623; *Roberts* v. *Commissioners*, 10 Kan. 33; *Board* v. *Plaut*, 42 Ill. 324; *Gage Co.* v. *Fulton* (Neb.) 19 N. W. Rep. 781; *Hendricks* v. *Board* (Kan. Sup.) 11 Pac. Rep. 450; *Mansfield* v. *Sac Co.* (Iowa) 14 N. W. Rep. 73; *Bentley* v. *Board*, 25 Minn. 259; *Board* v. *Weeldon*, 15 Ind. 147. The state of Wisconsin seems to have departed from the weight of authority in *Mappes* v. *Iowa Co.* (Wis.) 1 N. W. Rep. 359, and *Davis* v. *Town of Scott* (Wis.) 18 N. W. Rep. 530; but that Court, in *McCaffrey* v. *Town of Shields* (Wis.) 12 N. W. Rep. 54, held that a county was not liable to one who without authorization furnished supplies to a pauper; and later, in *Beach* v. *Town of Neenah* (Wis.) 64 N. W. Rep. 319, Cassody, J., who wrote the opinion in *Davis* v. *Town of Scott*, supra, in permitting a recovery based upon an implied agreement with the supervisors arising from their knowledge of and consent to the rendition of the services to the pauper, by the party seeking to recover, cited the preceding Wisconsin cases as expressly upholding that view. Some states, notably Maine, have extended the method of giving relief to paupers, by expressly providing that, when public officials shall fail or neglect to do their duty, any person may, after giving due notice, render assistance, and the county shall be liable. The legislation of North Dakota does not go to that extent. Article 1, c. 22, Rev. Codes, provides the persons to whom, the officers by whom, and the manner in which, the county extends its bounty to the poor. It does not include authority to those who are not therein charged with that duty, to determine who are paupers, and to furnish them succor at the expense of the county.

Other interesting points are discussed in the briefs of counsel, but that already disposed of is so fatal to the cause of action that their consideration would be without benefit. It being necessary, then, to render a county liable as a debtor for aid furnished to a pauper, either that there be a statute authorizing any person to give it at the expense of the county, or that it was extended pursuant to the request of some one having authority to act, it is plain that, in the absence of both, the complaint did not state a cause of action. The order sustaining the demurrer is affirmed. All concur.

(77 N. W. Rep. 598.)

der the will of the testator, and that the court erred in its conclusions of law upon the facts found.

Judgment reversed, with directions to the circuit court to render a decree for the appellant quieting title to the land in controversy as against any claim of the appellees.

Filed March 14, 1890.

No. 13,749.

MORGAN COUNTY *v.* SEATON.

COUNTY.—*Poor Person.—Medical Services Rendered to.—When not Liable for.—County Commissioners.*—A county is not liable to a physician for medical services rendered by him to a poor person, when the physician employed by the board of county commissioners to attend the poor as required by statute refused to act, and when the township trustee declined to employ the plaintiff.

SAME.—*State Benefactions.—How to be Administered.*—The benefactions of the State are to be dispensed in pursuance of a carefully devised plan, provided for in the statute, which is to be executed by officers designated by the law, and not according to the individual notion of any citizen as to what humanity may require.

SAME.—*Township Trustee.—Overseer of the Poor.—Duties of in Respect to Poor Persons.—County Commissioners.*—The township trustees are made by statute overseers of the poor within their respective townships. To them as such overseers, the law confides the duty of determining who are poor persons entitled to relief, and their decision can only be reversed by application to the board of county commissioners in the manner provided for in section 6071, R. S. 1881.

SAME.—*Medical Services.—When County Commissioners can Allow for.—Overseer of the Poor.—Power of to Employ Physician.*—Section 5764, R. S. 1881, prohibits the board of county commissioners from allowing any claim of a physician for services, except in pursuance of a contract of employment therein authorized to be made, and the overseer of the poor has power to employ a physician only in the event the board of commis-

122 521
161 152

sioners fail to make suitable provision for attendance upon the poor by contract.

Olds, J., dissents.

From the Morgan Circuit Court.

L. Ferguson, for appellant.

G. A. Adams and *J. S. Newby*, for appellee.

Mitchell, C. J.—This is an appeal from a judgment in favor of Dr. Grafton W. Seaton against Morgan county. The judgment is predicated upon a claim for professional services rendered in the treatment of a poor person, residing in Gregg township, in the above county.

It appears from the complaint that a poor person, in the township above named, became seriously ill, and was in urgent need of medicines and medical treatment, which she had no means to procure. The county commissioners had employed a competent physician to attend upon the poor of the township, but it is averred that the physician so employed, when called upon to treat the poor person in question, refused to give her the necessary medicine and attention, or any attention at all, notwithstanding he knew that she was a poor person, dependent upon the township for treatment. Thereupon, the averment in the complaint is, the "plaintiff out of humanity and proper regard for her in her said sick and dying condition, called upon the township trustee for said township to interfere in her behalf, and tendered his services to said trustee for her benefit, and offered to treat her under his employment for her benefit." It is averred that although the township trustee was fully aware of the sick and necessitous condition of the poor person, and that she needed immediate attention and care, he refused to extend any aid, and declined to employ the plaintiff, placing his refusal upon the ground that he had no right to employ any one, because of the previous employment by the board of commissioners of another physician, whose duty it was to attend the poor. The plaintiff thereupon, in order

to save the life of the poor person and prevent her from suffering, rendered her medical attention for a period of about three months, for which he demanded and recovered a judgment for one hundred and twenty dollars against the county.

The question is, whether or not, upon the facts stated, the county became liable to pay for the services of the plaintiff, rendered in the manner and under the circumstances detailed.

The argument in support of the judgment is predicated on section 6069, R. S. 1881, in which it is provided that, "Every county shall relieve and support all poor and indigent persons lawfully settled therein, whenever they shall stand in need thereof."

While it is true that it is made the duty of every county in the State to relieve and support the poor and indigent, the method by which support and relief are to be administered is distinctly pointed out by law. In the first place, the township trustees of the several townships are made overseers of the poor within their respective townships. Section 6066, R. S. 1881. The overseer of the poor in each township is specially charged with the oversight and care of all poor persons in his township, and is required to see that they are relieved and taken care of in the manner provided by law. Section 6071. He is required to enter in the poor-book of his township all poor persons who are unable to take care of themselves, and who in his judgment will be entitled to relief, and in case he refuses to enter any person on the poor-book who may be supposed, or who supposes himself, to be entitled to relief, the board of commissioners may, upon application, direct the overseer to receive such person on the poor list. It will thus be seen that the law imposes the duty of determining who are poor persons, entitled to relief, primarily upon the township trustee, acting as overseer of the poor, and provides a particular method by which his judgment may be reversed by application to the county board in case he refuses to recognize a person as poor, who ought to be entered

on his list. It is made the duty of the overseer on complaint made to him that any one not an inhabitant of the township, is sick and in distress, to examine into the case and grant such temporary relief as the nature of the case may require. *Board, etc.*, v. *Jennings*, 104 Ind. 108. Other sections of the law might be referred to, but it is enough to say that an examination of the statute discloses that the benefactions of the State are to be dispensed in pursuance of a carefully devised plan, which is to be executed by officers designated by the law, and not according to the individual notions of any citizen as to what humanity may require. To the overseer of the poor the law confides the duty of deciding who are poor persons entitled to relief, and his decision can be reversed only in the manner pointed out. According to the provisions of section 5764, R. S. 1881, it is specially made the duty of the board of commissioners "to contract with one or more skillful physicians, having knowledge of surgery, to attend upon all prisoners confined in jail, or paupers in the county asylum, and may also contract with physicians to attend upon the poor generally in the county; and no claim of a physician or surgeon, for such services, shall be allowed by such board except in pursuance of the terms of such contract: *Provided*, That this section shall not be so construed as to prevent the overseers of the poor, or any one of them, in townships not otherwise provided for, from employing such medical or surgical services as paupers within his or their jurisdiction may require." As will be seen, this section in terms prohibits the board of commissioners from allowing any claim of a physician for services, except in pursuance of a contract of employment, therein authorized to be made, and it has been uniformly held that the overseer of the poor has power to employ a physician only in the event the board of commissioners fail to make suitable provision for attendance upon the poor by contract. *Board, etc.*, v. *Boynton*, 30 Ind. 359; *Board, etc.*, v. *Hon*, 87 Ind. 356. In case the physician employed is not accessible,

and an emergency is deemed to exist, or if he refuses for any reason to act, the overseer of the poor may employ a physician, in case of urgent necessity, to treat one in need of medical aid, and in the absence of fraud, the county will be bound by his judgment and liable for the physician's services, even though a physician had been employed by the county. *Board, etc.*, v. *Seaton*, 90 Ind. 158; *Washburn* v. *Board, etc.*, 104 Ind. 321.

It has been held, and with eminent propriety, that where the overseer of the poor, in the exercise of his discretion, decided that an individual was a poor person, and entitled to relief under the poor laws of the State, and in pursuance of such decision, employed a physician to render medical aid, his judgment was conclusive on the county unless connivance or fraud could be shown. *Commissioners, etc.*, v. *Holman*, 34 Ind. 256; *Board, etc.*, v. *Hon, supra.*

If the county is concluded by the decision of the overseer when he determines that an individual is entitled to relief and employs a physician, it follows, as a necessary corollary, that the physician must also be concluded from recovering from the county, when the overseer refuses or decides not to employ him.

Now, while the complaint abounds in statements that the person to whom medical aid was furnished was a "pauper" and a "poor person," it is nowhere averred that she had been admitted to the list of poor persons, or that the overseer had in any way determined that she was entitled to receive temporary relief. It does, however, distinctly appear that he refused to employ the plaintiff to administer relief. Accepting the statements in the complaint as true, and conceding that the person relieved was a poor person, within the meaning of the law, it may be that the overseer made a mistake in refusing to employ a physician, but that concession still leaves the plaintiff without any right of action against the county, which is maintainable only upon the ground of an express or implied contract of employment, by one hav-

ing competent authority to that end. It can not be that over and above all the various provisions which point out the method for ascertaining and relieving the poor, and supplying them with medical and surgical aid, counties still remain liable to any one who can show that the overseer made a mistake in refusing to employ him, and who proceeded notwithstanding the refusal, from motives of humanity, to relieve a poor person in distress.

It can not be that it was intended that courts and juries should hold the overseer under surveillance, and determine, at last, who are poor persons, entitled to relief, and whether or not the officers to whom the care, oversight and relief of the unfortunate are committed have decided wisely in each or any particular case. To affirm that it was, is to declare that the statutory system for the relief and care of the poor is no system at all.

The Legislature, upon whom the duty of making provision for the poor and unfortunate is imposed, has adopted what seemed to it adequate means for the discharge of that duty through agencies specially designated for that purpose. Beyond the enforcement of obligations arising, and rights accruing through the agencies appointed, the courts have no supervising control over the subject.

The complaint did not state facts sufficient to constitute a cause of action.

The judgment is therefore reversed, with costs.

OLDS, J., dissents.

Filed March 14, 1890.

to be no reason why the master of a small vessel, plying from *Braintree* or *Weymouth* to *Boston*, should be exempt, which would not in a great measure apply as well to teamsters who should carry on the same business in wagons and carts.

Proceedings affirmed. (a)

(a) [*Bayley* vs *Merritt*, 2 *Pick.* 597. — *Commonwealth* vs. *Douglass*, 17 *Mass. Rep.* 49. — ED.]

NATHANIEL MILLER *versus* THE INHABITANTS OF SOMERSET.

A surgeon, who had performed a difficult operation on a pauper, not resident in the town where he had his settlement, without the application of the overseers of such town, has no right of action therefor against the town.

THIS was an action of *assumpsit* by the plaintiff, a surgeon, and an inhabitant of *Franklin*, in this county, for a surgical operation performed on a pauper, having his settlement in *Somerset*; and it was submitted to the determination of the Court upon the following facts, agreed by the parties: —

* *Joseph Simmons*, the pauper, had his legal settle- [*397] ment in the town of *Somerset* at the time of the operation hereafter mentioned; and that town furnished him partial support, by paying his father, with whom he resided in *Rehoboth*, fifty cents per week, by agreement, towards his board, he being at that time a minor. The said *Joseph* had for many years labored under the malady of a stone in the bladder, and from this cause was very weak and much emaciated

In the month of December, 1812, on a consultation of several respectable physicians, it was their opinion that the only chance to preserve his life was speedily to perform on him the operation of lithotomy; which operation was the next day performed by the plaintiff. In the usual time, after considerable additional expense to the defendants, the said *Joseph* was relieved from his said malady by the said operation, and restored to health.

The day preceding the performance of said operation, application was made to the chairman of the overseers of the poor of *Somerset*, stating the opinion of the consulting physicians, and the necessity of the operation being speedily performed upon the said *Joseph*, and requesting the consent and aid of the overseers. But the said overseers refused to consent, or to do any thing about the matter, until the question should be laid before the town, and their opinion

339

taken thereon, which the said chairman proposed to do at an adjourned town meeting thirteen days afterwards.

The selectmen of *Somerset* afterwards, by a letter to the plaintiff, stated that the town would not allow him any thing, but that they would make him a present of twelve dollars for his services on that occasion, as an act of humanity for the relief of the boy.

The plaintiff travelled from his home, in *Franklin*, thirty-five miles, to perform said operation, at the request of a brother of the pauper, there being no physician or surgeon in the town of *Somerset* who was accustomed to perform operations of this kind.

If, upon these facts, the Court should be of opinion
[*398] * that the plaintiff was entitled to recover in this action, the defendants were to be defaulted, and the plaintiff's damages to be settled by referees; otherwise the plaintiff was to become nonsuit.

Hastings, for the plaintiff. The defendants probably rely on the decision in the case of *Mitchell* vs. *Cornville*; (1) but the present case stands on distinct ground from that. In that case, any person might have furnished the relief as well as *Mitchell*. But in the present case, none but a surgeon could have performed the operation, and the case finds that there was no competent one in *Somerset*. In that case, it seems to be granted that *Mitchell* might have had his remedy against the adjoining town of *Garland*. But in the present case, the pauper was virtually resident in *Somerset*, within the case of *Marlborough* vs. *Rutland*, (2) since he was supported under contract with that town.

It must be taken for granted that the legislature intended to make provision that every poor person in distress within the commonwealth should have the necessary relief. As, in the present case, there was no inhabitant of the town capable of affording it, the plaintiff is entitled to recover on the common principles of humanity, although the case may not be within the letter of the statute, or of any decision upon its construction.

If a case of this kind is inadvertently omitted in the statute, the plaintiff may entitle himself by the common law. At common law, the overseers are personally bound for the relief of casual poor as the towns are by our law; and in the case of *Simmons* vs. *Wilmott & Al.* (3) it was decided that, if a person, not a parish officer, takes care of a person coming within that description, and for whom the parish officers would be liable to provide, he shall recover against them the expenses incurred on such an occasion. Our

(1) 12 *Mass. Rep.* 333. (2) 11 *Mass. Rep.* 483. (3) 3 *Esp. Rep.* 91.

statute makes no distinction between casual and other paupers. (4)

Richardson, for the defendants, did not rely wholly on the case of *Mitchell* vs. *Corneille*, although he thought it a strong case for the defendants. The plaintiff, to entitle himself to a recovery, must show an *express promise of the de- [*399] fendants, by their overseers, or he must bring himself within the provisions of the statute. He has proved no express promise, and the statute gives no action to one not an inhabitant of the town in which the pauper has his settlement, against such town. If the plaintiff was an inhabitant of *Rehoboth*, he might have a legal claim against that town; but under the circumstances of this case, the law has made no provision for him, and he is without remedy.

Hastings, in reply. This case of a necessary surgical operation is not within the provisions as to the relief of ordinary wants, and giving the right of action against the town where the pauper may be casually found. The overseers had no right to object to the performance of an operation immediately necessary to preserve the life of a human creature. It is most extravagant that it should be in their power, for the sake of saving a paltry charge upon their town, to cause a pauper's death with impunity, or tax others, of more humanity, for the means of preserving his life.

PARKER, C. J. The difficulty in this case is, that the statute of 1793, c. 59, which alone creates the obligation on towns to support poor persons lawfully settled therein, has provided no such remedy as this action contemplates. The right of action is given only to such towns as afford the relief pursuant to their duty, as prescribed in the ninth section of that statute, and to such inhabitants as may have furnished the relief, when the overseers of the town primarily or subsequently liable shall refuse.

This is a case probably not foreseen by the legislature, where a difficult operation is to be performed, and no skilful surgeon lives within the town in which the pauper resides, or within that in which he has his settlement.

It is an unfortunate omission. But it is not in our power to supply it. For towns are not liable, by the common law, to support paupers; nor does any promise arise in law; because there is no duty created, except what is prescribed by the statute itself.

Plaintiff nonsuit.

(4) 3 *B. & P.* 250, note. — *Bull N. P.* 147, *Watson* vs. *Turner*. — 1 *Selw. N. P.* 50, 51.

plaintiff having procured his enlargement for the purpose of settling the debt, the most gross injustice would be done; and the creditors would, in point of fact, be cheated out of their judgment. But we think the case free from all doubt; and judgment must therefore be rendered on the verdict.

THOMAS KITTREDGE *versus* THE INHABITANTS OF NEWBURY.

Where a pauper had immediate need of a surgical operation, in a town in which he was not legally settled, and the same was performed by a surgeon not belonging to such town, without being requested by the overseers of the poor, the town was holden not liable; and the surgeon not having made a demand within three months, it was holden, that the town would not have been liable, if he had been an inhabitant of the town.

THIS was an action of *assumpsit* for surgical aid rendered to one *Thomas Dennett*, a poor person belonging to the town of *Newburyport*, but having need of immediate relief in *Newbury*.

Trial was had upon the general issue before *Putnam*, J., at the last April term at *Ipswich*; when it was in evidence that the said *Dennett* was a boy, who worked at a woollen manufactory in *Newbury*; and received an injury from the explosion of some gunpowder there, which rendered it necessary to amputate his leg immediately, and before there would have been an opportunity to apply to the overseers of the poor of *Newbury* for their directions; that the plaintiff performed the service at the request of the attending physician; and that the same was reasonably worth the sum demanded.

It was also proved that the plaintiff gave notice of his claim to, and demanded payment of it from, the overseers of the [*449] poor of *Newbury*, within two years, *but not within three months, after the service was rendered. But it was in evidence that one of the said overseers was informed of the situation of the said *Dennett*, and that he was in distress, and stood in need of immediate relief, within ten days after he was wounded. The said overseer, however, testified that he did not understand that any claim was then intended to be made against the town, or any application to him as an overseer, and that he gave no notice of the information he had received to the board of overseers.

The defendants contended, at the trial, that the plaintiff, not being an inhabitant of *Newbury*, but of another town, never had any right of action against them; that, if he had, he was bound to notify

them within three months, that they might have notified and recovered of the town of *Newburyport*, where the pauper had his legal settlement; and that towns are not liable, even to individual inhabitants, until after notice.

The plaintiff gave no evidence of any express promise, but contended that the defendants were bound by law to afford immediate relief to persons in distress; and that the aid rendered by him in this case was under such circumstances as would raise a promise, by implication, on the part of the defendants to pay.

A verdict was taken for the defendants, which was to be set aside, and they were to be defaulted, if the whole Court should be of opinion that the plaintiff was entitled to recover upon the foregoing evidence; otherwise judgment was to be according to the verdict.

Cummings, for the plaintiff, argued that the defendants were bound by law to furnish the necessary aid and relief to this pauper, under the circumstances of the case; and the plaintiff having done the service, which they were under legal obligations to see performed, there was a sufficient consideration to support the action, although no request be shown to have been made by the defendants. (1) From the cases referred to, it will appear that the plaintiff had a legal right of action *against the defendants, [*450] upon the performance of the service; and as to the requisition of notice within three months, it has no application to a case like the present, but wholly relates to actions between towns. (2)

Moseley, for the defendants. The whole obligation on towns to support or relieve paupers is grounded on the provisions of our own statutes; and every person or corporation, claiming remuneration on such account, must bring their case within those statutes. The plaintiff, not being a citizen of *Newbury*, has no right of action against the defendants, the provision, in case of relief by an individual, being confined to inhabitants of the town. But even this provision has no operation until after notice and request made to the overseers. (3) That notice should be in season, if defendants were liable at all, for them to have their legal remedy over against the town of the pauper's settlement.

Per Curiam. Towns are under no moral obligation to pay for the support or cure of paupers; especially of such as have their

(1) 1 *H. Black.* 90, *Jenkins* vs. *Tucker* — 8 *D. & E.* 308, *Exall* vs. *Partridge & Al* 3 *Esp. Rep.* 89, *Houlditch & Al.* vs. *Milne.* — 3 *B. & P.* 253, *Wennall* vs. *Adn.*

(2) *Stat.* 1793, c. 59, § 9.

(3) 2 *Mass. Rep.* 547, *Cargill* vs. *Wiscasset.* — *Ibid.* 567, *Doggett* vs. *Dedham* 12 *Mass. Rep.* 333, *Mitchell* vs. *Cornville.*

legal settlement in other towns. The legal obligation is created by statute, and it exists, and can be enforced, only according to the provisions of the statute. The town is answerable to an individual only when the overseers have been applied to, and until they shall furnish the supply.

The case of a sudden necessity for medical or surgical relief seems to have been overlooked by the legislature. The remedy now is, for the person applying to the physician or surgeon to pay him, and if an inhabitant, to demand a reimbursement from the town. Cases of this nature, however, seem to require a further interposition of the legislature.

But the plaintiff in the present case has no right of action, even if the supposed legal obligation of the defendants to provide this relief had been made out. For in that case he should have made his demand seasonably for the defendants to have had their remedy against the town of *Newburyport*, where the pauper had
[* 451] his * lawful settlement. Not having done this, he is not even in an equitable point of view, entitled to recover

Judgment on the verdict.

Daniel A. White, Esq., Judge, &c., *versus* Francis Quarles.

Where an action is instituted by a judge of probate, upon a bond given to his predecessor in office, the Court will presume it to be a probate bond within the provision of the statute of 1786, c. 55, § 3, requiring such actions to be commenced in this Court; and such actions, if commenced in the Common Pleas, are not to be sustained.

The plaintiff, in an action originally commenced in the Common Pleas, declares in debt upon a bond dated November 13, 1806, made by the defendant, and two others since deceased, payable to *Samuel Holten*, Esq., then judge of probate for this county, and to his successors in said office; and avers that he is the lawful successor of the said *Holten* in the said office. The condition of the bond (a copy of which came up in the case) reciting that the Supreme Judicial Court, on the petition of *John Fullington*, the principal in the bond, had authorized him, as guardian of one *Mary Brown*, a minor, to sell certain real estate of the said minor, was, that he should observe and comply with the directions of the law concerning the sale of real estate by executors, &c., and should account for the proceeds, &c., agreeable to law.

384

It is unnecessary here to inquire which one of these provisions is applicable to the present case. Either one of them brings the east quarter post south of the lake, and south of the meander post, as is shown by reference to the map, Exhibit J. Due east and west means a mean course between the north and south boundaries of the section, where such boundaries are ascertained and fixed. It is so held in the circulars of information issued by the general land office of the United States, June 2, 1887, December 9, 1890, and October 16, 1896, and the same rule is laid down by standard writers on surveying.

This corner being established south of the lake, the defendants' whole contention must fail. The S. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ becomes a normal quarter, with its north line established on a mean line between the south line of the section and the east and west quarter line.

By the Court.— Judgment affirmed.

PATRICK, Appellant, vs. TOWN OF BALDWIN, Respondent.

February 7 — February 26, 1901.

(1, 2) *Justices' courts: Notice of appeal: Towns.* (3–5) *Poor laws: Support of pauper by private person: Liability of municipality: Implied contract.*

1. Mistakes in a notice of appeal from a judgment rendered in justice's court do not render such notice ineffective if it contains enough to identify, with reasonable certainty, the judgment, the parties, and the court, and to show that it was made by the party appealing, personally, or by some person or persons duly authorized, in behalf of such party.
2. A notice of appeal from a judgment rendered in justice's court against a town, signed by three persons with the word "Supervisor" under the last signature, the signatures and the official designation being so located that if the plural number were used

instead of the singular it would clearly indicate that all signed officially, shows with reasonable certainly that it was so signed, where there is no indication in the notice to the contrary.

3. There is no legal obligation resting on a municipal corporation to maintain or relieve poor persons in the absence of a statute creating one, and the court has no power, upon the ground of moral obligations or the equities of any given case, to hold such a corporation liable to a private person who may have relieved or supported a poor person.

4. Where the law imposes on a municipality the duty of maintaining poor persons, and designates officers thereof to act in its behalf in the performance of such duty, their mere neglect will not operate as an implied request to a private party to supply a needy person's wants, upon which such party can act and hold the municipality liable as upon an implied contract.

5. The statute requiring each town in this state to support poor persons in certain cases, and the supervisors thereof to see that such support is furnished, does not permit a private party to aid or relieve such a person at the expense of the town without a contract to that effect, made between him and such supervisors or a majority thereof.

[Syllabus by MARSHALL, J.]

APPEAL from a judgment of the circuit court for St. Croix county: E. W. HELMS, Circuit Judge. *Affirmed.*

The cause was commenced against the defendant town in justice's court, wherein such proceedings were had that judgment was duly rendered in plaintiff's favor for $101 damages and $20.91 costs, for services rendered as a physician in attending Richard Bruaas, a poor person having a legal settlement in said town, without any direction or employment by the supervisors of said town, or either of them, and, so far as the complaint states the facts, without any notice to such supervisors or either of them, or any knowledge on their part of the rendition of such services or the necessity therefor.

Within the time required by law an appeal from such judgment was attempted to be taken by the supervisors of the town to the circuit court. Each of such supervisors made

an affidavit in due form of law for the purposes of such appeal, in which he testified that he made such affidavit in his official capacity. Such affidavits, with a paper intended as a notice of appeal in the action, were duly served on the justice. Such notice of appeal was signed as follows: "P. C. Finvold, Wm. Ferg, Jacob De Jong, Supervisor of the *Town of Baldwin*, Defendant." Such notice and affidavits were recognized by the justice to be in due form of law, and sufficient to perfect an appeal from said judgment on the part of defendant, and the papers were accordingly certified to the circuit court.

When the cause came on for trial in such court, plaintiff's attorneys moved for an order dismissing the appeal because the notice thereof was insufficient, which motion was denied, due exception being taken to the court's ruling. In due time objection was made to the reception of any evidence because the complaint failed to state facts sufficient to constitute a cause of action against defendant. The objection was sustained. Plaintiff's counsel then made application for leave to amend the complaint by alleging that on December 23, 1898, plaintiff caused the chairman of the board of supervisors of the town to be notified of the necessity for immediate medical services to be rendered to Richard Bruaas and of the fact of his being a proper subject for relief by the town, as a pauper. The application was denied. Judgment was thereupon rendered dismissing the action, with costs. Plaintiff's counsel excepted to each of the court's adverse rulings, including that on a motion made for a new trial.

For the appellant there were briefs by *E. B. Kinney* and *A. J Kinney*, and oral argument by *A. J. Kinney*.

James A. Frear, for the respondent.

MARSHALL, J. The notice of appeal was sufficient. Strict accuracy is by no means necessary in such a paper in order

to confer jurisdiction upon the appellate court. Mistakes, however numerous, are immaterial if the notice yet contains enough to fairly identify the judgment, the parties, and the court, and to show that it was made by the party appealing, or some one authorized to do so, which authority need not expressly appear, it being sufficient if it be fairly inferable from the language of the notice and the manner in which it is signed. The law in that regard is too well settled to need any citation of authority to support it. The alleged defect in the notice is that it was not signed by the town of *Baldwin*, using the name of the town, or showing that some person or persons acted in the matter as agent or agents for the town, having authority so to do. A corporation must of necessity act by an agent, and that agent need not necessarily be an officer of the corporation, nor need any proof of the agency accompany the notice. If there is enough in a notice of appeal to indicate that it was made by a person assuming to act as agent of the appellant, though the agent in signing used only his name as such, his authority will be presumed till the contrary is shown. *Benjamin v. Houston*, 24 Wis. 309. The notice in question was signed by three persons, with the word "Supervisor" under the last signature, indicating that at least such signer acted in his official capacity for the town. We think it is fairly inferable that all the signers acted officially, and that by mistake the singular number was used instead of plural in specifying the official character.

The contention is made that, inasmuch as by sec. 1499, Stats. 1898, the defendant was required to relieve Bruaas, no notice of his necessities to its supervisors was necessary to create a legal liability to one who voluntarily, from motives of humanity, administered to his wants, and that since by sec. 1501 such supervisors were required to see that he was properly relieved, neglect on their part, after receiving notice from plaintiff of circumstances calling for action to that

end, was tantamount to a request to plaintiff to perform the service required. To support those propositions, *Mappes v. Iowa Co.* 47 Wis. 31, is cited. That, with what is said in *Davis v. Scott*, 59 Wis. 604, supports both propositions. If they declare the law correctly, the judgment appealed from is wrong. In the first case mentioned the claimant supported an aged woman, who was a pauper, without notifying the municipal officers of the facts, and without knowledge on his part that such person's relatives had failed to comply with an order made according to law requiring them to support her, rendering it necessary for public relief to be furnished, and without the claimant knowing that she was a pauper. The court held that such ignorance excused the claimant for not giving notice of the situation to the municipal authorities; that he was entitled to recover upon the ground of the legal obligation alone; that in view of such obligation the only thing that could preclude the claimant from recovering would be negligence on his part in failing to notify the proper officers so as to give them an opportunity to perform their duty in the matter, and that the claimant was not chargeable with such negligence, since he did not know that the person relieved was a pauper. No authority was cited to support the decision. *Meyer v. Prairie du Chien*, 9 Wis. 233, was referred to on the general subject of the legal duty of a town to support paupers having a legal settlement therein. Such case does not refer even remotely to the principle upon which the *Mappes Case* turned, it being held in effect that a contract between the town authorities and the party furnishing the relief was necessary to give the latter a legal claim against the former. There was a recovery in the court below, and no bill of exceptions on the appeal. In that situation this court said that it would be presumed that a proper contract was made entitling the claimant to recover. The rule of the *Mappes Case*, to its full extent, has never been followed in this court, or at all

here, except in *Davis v. Scott*. In several cases it has been in effect overruled by holdings that a claim against a municipality for the relief of a pauper must be based on an express or implied contract, actually made between the claimant and the proper officials.

Cases exist holding that a public corporation may be held liable without even notice to its officers having authority to act in its behalf, of the necessity for relief to be given a pauper, but they are based on statutes to that effect, as, for instance, by sec. 12, ch. 16, R. S. Vt. 1840, in force when *Charlestown v. Lunenburgh*, 23 Vt. 525, was decided, it is provided that in certain emergencies a person furnishing relief to a pauper, until the lapse of a reasonable time for notifying the proper public officers of such pauper's needs, can recover therefor of the municipality in which such relief is furnished, and that if, after such notice, such officers neglect to perform their duty, he can continue to furnish such relief and look to such municipality for his pay. We have no such statute. There is much judicial authority to the effect that if one furnish necessary relief to a poor person, after notice to the public officers of the pauper's needs and neglect on their part to perform their duty, he may recover therefor as on an implied contract. Most of such authority, however, is based on statutes, as, for examples, sec. 18, ch. 46, R. S. Mass. 1836, in force when *Smith v. Colerain*, 9 Met. 492, was decided, provides that, "every town shall be held to pay any expense, which shall be necessarily incurred, for the relief of a pauper, by any person who is not liable by law for his support, after notice and request made to the overseers of the said town, and until provision shall be made by them;" sec. 4, part 1, ch. 2, tit. 15, Gen. Stats. Conn. 1875, in force when *Wile v. Southbury*, 43 Conn. 53, was decided, was to the effect that, 'any person relieving a poor person after notice to the proper public officers of the needs of such poor person and a neglect of such

officers to perform the duty, may recover therefor upon an implied contract;' sec. 48, ch. 32, R. S. Me. 1841, in force when *Perley v. Oldtown*, 49 Me. 31, was decided, is to the same effect; but in *Beetham v. Lincoln*, 16 Me. 137, it was decided that in the absence of a statute making it the duty of a municipality to relieve a poor person standing in need thereof, and neglect of its proper officers to attend to the matter, after receiving notice of such need, sufficient to constitute an implied request by such officers to another to furnish relief, such circumstances do not create contract relations between such municipality and such other upon which the latter can recover of the former. *Seagraves v. Alton*, 13 Ill. 366, is to the opposite effect, but it is not a well-considered case, as is evidenced by the fact that none of the authorities cited supports the conclusion reached. It holds that the legal obligation of a municipality to support a poor person, and neglect of its officers to act in its behalf, is sufficient to warrant the court in inferring a promise by such officers, to one who stands in place of the municipality and prevents the suffering that would otherwise result from the neglect of its agents, to compensate him therefor. The case went to the full extent of holding that such a promise will be inferred in certain emergency cases even in the absence of any neglect on the part of municipal officers. The decision followed closely the lines of those cases we have referred to that are based on statutes, seemingly ignoring the rule often laid down that, while there is a strong moral obligation resting upon organized society to relieve all poor persons in its midst standing in need thereof, there is no legal obligation to do so in the absence of a statute creating it, and that the courts cannot go further than the legislative will has been expressed.

To what extent, under what circumstances, at what place, and by what agencies poor persons shall be relieved at the expense of the public, are all purely legislative questions.

When the legislature has gone no further than to create a legal obligation to support poor persons, and to designate municipal agents to incur the necessary obligations to that end, no such obligation can exist without some clearly expressed municipal consent given by such agents. In short, where the statute contemplates that all liabilities for the support of the poor shall rest on contract, that is the exclusive way of incurring them, and a meeting of minds is just as essential to such a contract as to any other. The doctrine thus stated is generally recognized as controlling. In *Overseers of the Poor of North Whitehall v. Overseers of the Poor of South Whitehall*, 3 Serg. & R. 117, often cited on the subject discussed, it was said, "Whatever may be the duty of individuals, from religious or charitable considerations, it is certain the public is bound by no moral obligation to support the poor of the community. That duty, being legal and of positive institution, is to be carried no further than the express provisions of the poor laws." In *Smith v. Colerain*, 9 Met. 432, the situation was this: The statute expressly made a town liable on an implied contract in certain but not in all cases of a person furnishing necessary relief to a pauper whom such town was legally bound to support. Relief was furnished to such a person by a private party, the officers of the town having refused to do so. The person relieved was not at the time located where the law required as a condition of an implied contract to pay for such relief, when furnished by a private party, though he was where the overseers of the poor placed him and might have continued to support him. In deciding the case Chief Justice SHAW said: "There was no express undertaking to pay the plaintiff; and whether a contract could be implied depends upon the statute liability . . . It has been too often decided to be now questioned, that the liability of towns to support poor persons is founded upon and limited by statute, and is not to be enlarged or modified by any supposed moral obligation."

In *McCaffrey v. Shields*, 54 Wis. 645, it was said that, "the defendant town cannot be held liable . . . unless its supervisors, or at least two of them, requested" the service to be performed. The court did not feel called upon to overrule *Mappes v. Iowa Co.*, because the facts in the two cases were different, though it seems that the principle involved, of whether a contract is necessary upon which to found a legal liability against a town for the relief of a poor person, was decided differently in the one case than in the other.

In *Dakota v. Winneconne*, 55 Wis. 522, it was held that a contract is necessary to a liability of the kind in question, though it is not necessary that the supervisors act in a body in making it; that if one supervisor request the service to be rendered, with the knowledge and tacit consent of another, and the person furnishing the relief rely upon the conduct of the two as a joint request, it is within reason to say that there is a meeting of minds, and a contract made.

In *Davis v. Scott*, 59 Wis. 604, the court held squarely that the liability of a town to compensate a person furnishing support to a proper subject for relief as a poor person, is fixed by notice to the supervisors to take charge of such subject, and their neglect to do so. It was said that the case was distinguishable from *McCaffrey v. Shields*. That is true as to the facts, but why it is as to the principle of whether some clear indication of a request to furnish relief is necessary to a contract obligation of the town to pay the person performing that service, is not perceived. It seems that an error was committed in that case. Secs. 1513, 1514, R. S. 1878, not now in force, were in substance as follows: 'If any poor person shall become a charge for support to a town in which he has no legal settlement, any town in this state in which such person has such settlement shall be liable over to the former upon condition of its supervisors giving to at least one of the latter's supervisors notice of

the facts and requiring them to take charge of such person. If he shall not be so taken charge of within thirty days after such notice, and all expenses be paid up to such taking, the delinquent town shall be liable to the other for such expenses and all others incurred while such person remains a public charge.' *Dakota v. Winneconne, supra*, arose under such statutes. The defense was made that the plaintiff was not entitled to recover because it did not, acting by its full board of supervisors, contract for the relief furnished and audit the expense thereof. This court, after deciding that a request by two of the supervisors of the town to furnish the relief satisfied all the requisites of a contract under the previous decisions of the court, said that the town ultimately liable could not be heard to complain of any irregularity in regard to making the contract and auditing the claims by the town primarily liable, since the person relieved was a legitimate charge upon the former, and notice to its supervisors of the facts, and a request of them to take charge of such person, was all that was necessary to fix its liability to the plaintiff town. This language was used: "The plaintiff town having given the defendant town the requisite notice to take charge of the pauper, the liability of the latter became fixed." 'It could not, by neglecting its own legal duty, compel the plaintiff to make the expenditure in question, and then defeat its claim therefor because such expenditure was not made by authority of the full board.' The court properly said, on the facts of that case, that notice to the town in which the pauper had a legal settlement fixed its liability to the town primarily liable for the relief, because such was the express mandate of the statute. In *Davis v. Scott* the liability was claimed under secs. 1499, 1501. Only that part of *Dakota v. Winneconne* holding that a contract between the supervisors of the plaintiff and the person furnishing the relief was requisite to its liability therefor to such person, applied. The idea that the part holding that notice

to the town responsible over fixed its liability to the town primarily liable, applied, manifestly was a mistake. For that reason the case cannot be considered as authority ruling the case before us.

In *Jones v. Lind*, 79 Wis. 64, there was proof of a general request by the chairman of the board of supervisors to furnish relief and make monthly reports. Relief was furnished on the faith of such request, reports thereof were made, and bills therefor paid, up to the expiration of such chairman's term of office. He and his associate supervisors supposed that the arrangement was to end with their term of office. He testified to that as a conclusion, though there was nothing in what was said between him and the claimant indicating that the contract was not to continue so long as necessary. Such claimant supposed it was not to terminate without express notice to that effect, if the necessity continued. He was never notified to discontinue his service. The need therefor remained unchanged, and the person served continued to be a proper town charge. The action was for services rendered after the term of office of the supervisors employing the claimant expired. It was held that he was not entitled to recover, the court saying: "As a town can only be chargeable for services rendered by virtue of some contract therefor, we think the circuit court was clearly justified in holding that plaintiff had no cause of action."

In *Beach v. Neenah*, 90 Wis. 623, there was notice to the chairman of the town and a promise by him that the destitute persons should have whatever they needed; and it was said that the evidence was sufficient to show that the supervisors of the town consented that the person giving notice, and to whom the declaration was made, should care for such persons at the expense of the town until they were otherwise cared for.

It is believed that the law, that an obligation against a

town for services rendered in relieving a poor person who is entitled by law to be so relieved can only be incurred in the manner indicated in the statute, was recognized and correctly declared in *Meyer v. Prairie du Chien*, 9 Wis. 233; *McCaffrey v. Shields*, 54 Wis. 645; *Dakota v. Winneconne*, 55 Wis. 522; *Jones v. Lind*, 79 Wis. 64; *Beach v. Neenah*, 90 Wis. 623; and *Putney Bros. Co. v. Milwaukee Co.* 108 Wis. 554; that the agents empowered to act for the municipality in such matters must, either by express contract or by some act or acts from which a contract can be reasonably inferred, bind such municipality, or it cannot be bound at all. Mere passive neglect is not sufficient.

The statute, as has been said, does not indicate that the supervisors must act in a body in contracting for the relief of a poor person. The nature of the duty in such cases is not consistent with such a requirement. The statute must have a reasonable, sensible construction, in view of the duty imposed. It says "the supervisors" shall see that poor persons are taken care of as required by law. That clearly indicates that at least a majority must consent to relief being furnished to a pauper at the expense of their town in order to bind it. If one supervisor acts with the knowledge and consent of another, given either expressly or by his keeping silent when good faith requires him to speak, it may properly be inferred that the two concur in the matter and that there is a sufficient meeting of minds between the proper municipal agents and the person furnishing relief to satisfy all the essentials of a contract. While an implied contract is sufficient, as indicated, it must be established, if one endeavors to recover upon it, the same as any other implied contract. The statute creates a liability to relieve destitute persons, but not a liability to individuals who may voluntarily perform that service. It empowers appropriate agents of municipalities to make their liability effective by necessary contracts to that end, and imposes upon such

agents the duty to exercise such power. If they refuse to do so, they are doubtless amenable in some way for such misconduct, but the law gives no private person the right to perform the duty of such officers. *Otis v. Strafford*, 10 N. H. 352. Performance of that duty by the person designated by law is absolutely essential to create a binding obligation upon the municipality to compensate one for relieving a poor person, legally entitled to relief at its expense. If the statutes on the subject are defective, it is not for the court to judicially extend them. They came to us from Massachusetts indirectly, having been adopted by Michigan, then by this state. It must be presumed that there was a purpose in making the change which we have pointed out between the Massachusetts statutes and our own, for, without the change, mere neglect of the supervisors of a town to act when they ought to act for the relief of a poor person, would give a private party, not liable by law to furnish such relief, and residing in such town, the right to do so at the expense thereof. There is no more reason for holding that a person may aid a pauper, upon the supervisors of the town in which such pauper has a legal settlement neglecting their duty, and hold such town liable therefor, than for holding that one may repair the highways of a town because its supervisors neglect their duty in that respect, and recover of such town therefor. The duty of the municipality in both cases is regulated by statute, and in neither case can it be bound to a private person for services rendered except by contract made as contemplated by law.

From what has been said it follows that the complaint was insufficient and that the objection to any evidence under it was proper. There was not even a suggestion in the complaint that the supervisors of the respondent town had notice of the necessity for furnishing the relief for which the claim was made. The application for leave to amend was properly denied, if for no other reason, because it alleged

mere notice to the chairman of the board of supervisors of the respondent, that Bruaas was a proper town charge and stood in immediate need of relief as such, and that the person giving such notice, the appellant here, was under no legal obligation to furnish such relief. The amendment followed closely the line of decisions to which we have referred, based on express statutes creating a liability under such circumstances. *Smith v. Colerain*, 9 Met. 432.

By the Court.— The judgment is affirmed.

GLENWOOD MANUFACTURING COMPANY, Appellant, vs. SYME and others, imp., Respondents.

February 8—February 26, 1901.

Corporations: Officers: Purchase of corporate notes for individual benefit: Collateral securities: Equity: Remedy at law: Laches: Pleading.

1. Certain guarantors of the notes of a corporation had pledged stock in the corporation and an interest in a partnership as collateral security for said notes and also for their individual indebtedness to the pledgee. The president of the corporation, who was also one of the guarantors of said notes and who had an interest in said partnership, purchased for himself, from the pledgee, said corporate notes and also the pledged collaterals, for less than their true value. The corporation was a going concern, but was embarrassed for want of ready money and unable to pay its debts as they matured. It was alleged that the president made no effort to purchase the corporate notes and collaterals for the benefit of the corporation, although he knew such a purchase would greatly benefit the corporation and all its stockholders, but purchased for himself without the consent of any of the other stockholders. It did not appear that the corporation had any legal right to have the collaterals remain pledged for the security of its debt. *Held*, that the purchase of such collaterals by the president of the corporation did not in any way conflict with any duty he owed to it, and it had no enforceable interest therein.

BOARD OF COUNTY COMMISSIONERS OF SHERIDAN COUNTY v. DENEBRINK.

POOR AND PAUPERS—NON-RESIDENT SICK PERSONS—LIABILITY FOR CARE IN EMERGENCY CASE—SERVICES RENDERED BY PHYSICIAN—IMPLIED CONTRACT—PRESENTATION OF CLAIM TO COUNTY BOARD—ALLEGATION IN THE PETITION.

1. The notice of the sickness in the county of a non-resident person without means, upon receiving which the county board is required to provide the necessary assistance, is not for the purpose of fixing the county's liability for such assistance furnished by third parties, but to enable the board to act promptly in deserving cases. (R. S. 1899, Sec. 1260.)
2. Where, in case of a serious accident suffered in the county by a non-resident without means, requiring immediate medical and surgical attention to save his life, notice before the giving of such attention is impossible because the board is not in session, the county is liable to a physician for the reasonable value of services rendered the sufferer, shown to have been imperatively required without delay.
3. It is to be presumed that a physician performing services immediately required to save the life of a non-resident sick person without means did so with the expectation of payment by the county, where the same are performed with knowledge that the county board is authorized by statute to extend assistance to such person at the county's expense.
4. Where a request by the county board for the performance of services by a third party in attending to the immediate necessities of a person without means falling sick or suffering an accident in the county is impossible because the board is not in session, such a request is not essential to a recovery from the county of the value of such services, but the liability in such case arises from the moral and legal obligation of the county to provide the attention, its failure to do so, and the rendering of the required emergency service by the party with the expectation of being reimbursed therefor, a promise to pay in such case being presumed.
5. As against a demurrer, an allegation in a petition for the recovery of a claim against a county for medical and surgical attention to a person alleged to have been entitled thereto at the county's expense, sufficiently alleges the pre-

sentation of the claim to the county board, which states that a verified claim for the said medical and surgical services so rendered and performed was filed with the county clerk of the county and presented to the defendant, and that a copy of the claim is not attached to the petition for the reason that the same has been mislaid or lost, it not appearing that the claim embraced more than one item, and the services are alleged to have been rendered on the same day.

[Decided March 19, 1907.] (89 Pac., 7.)

ERROR to the District Court, Sheridan County, HON. CARROLL H. PARMELEE, Judge.

F. Denebrink, a physician, sued the County of Sheridan for medical and surgical services performed for a non-resident person without means, who had been seriously injured in the county and required immediate attention at the hands of a physician to save his life. A demurrer to the petition was overruled, whereupon the defendant refused to further plead and judgment was rendered for the plaintiff. The defendant prosecuted error. The facts are stated in the opinion.

James A. Burgess, County and Prosecuting Attorney, for the plaintiff in error. (*Charles A. Kutcher,* of counsel.)

The county's liability for medical services to a poor person or pauper is statutory, there being no such liability at common law. (Board v. Board, 6 Wyo., 254; 22 Ency. L., 1008.) The plaintiff below must therefore bring himself within the statute to authorize a recovery. (Kechler v. Stumme, 36 N. Y. Super., 337.) The action is based upon Section 1260, Revised Statutes of 1899, but sufficient facts are not pleaded to bring the case under its provisions. Notice to the sheriff was not notice to the board. (Mechem on Agency, 718; Mechem Pub. Off., 846.) There is no allegation of notice to the board. It is essential that the facts showing notice should be set out; a mere conclusion is insufficient. (Lawson v. Townes, 3 Ala., 373; Rapalye v.

Bailey, 3 Conn., 438; McCormick v. Tate, 20 Ill., 334; Cruger v. Ry. Co., 12 N. Y., 190.) A demurrer does not admit legal conclusions, but only facts well pleaded. (Phillips Code Pl., 302.)

Notice was necessary to constitute a cause of action. (Board v. Board, 6 Wyo., 262.) And it must be shown to have been given as soon as practicable, to impose on the county a legal obligation. The allegation as to presentation of the claim is insufficient, since it does not show it to have been itemized. (R. S. 1899, Secs. 1062, 1216; Const., Art. 16, Sec. 7; Houtz v. Board, 11 Wyo., 168.) Therefore, it does not appear that suit was authorized. (5 Ency. Pl. & Pr., 297, and cases cited; 11 Cyc., 602; Bank v. Custer, 17 Pac., 551 (Mont.)

E. E. Enterline, for defendant in error.

Notice to the board was not necessary in this emergency case; but notice was given to one of the board's appointed agents in such matters, which was all that could have been given at the time, as the board itself was not in session. The board was authorized to appoint an agent for such cases. (R. S. 1899, Sec. 1258.) The facts alleged show liability on the part of the county. (Robbins v. Town (Minn.), 103 N. W., 1023.) The presentation of the claim is sufficiently alleged.

SCOTT, JUSTICE.

This action was originally brought in the District Court of Sheridan County by the defendant in error, plaintiff below, against the plaintiff in error, defendant below, to recover the sum of seventy-five dollars for medical and surgical services rendered to a non-resident person who had fallen sick in that county from an accident and was without any money or means to pay therefor. A demurrer was interposed to the petition and upon hearing was overruled, to which an exception was duly taken and the defendant electing to stand upon the ruling, judgment was rendered

in favor of the plaintiff. The defendant brings the case here upon error.

It is alleged in the petition that plaintiff is and was at all times mentioned therein a duly licensed and practicing physician and surgeon in the State of Wyoming and was engaged in the practice of his profession in the County of Sheridan, in said state. "That on or about the 28th day of November, A. D. 1904, one George Perkins received severe bodily injuries in the County of Sheridan, Wyoming, by then and there having his left arm run over by a railway train, and that the said George Perkins, by reason thereof, then and there did fall sick in the said county and state; that the said George Perkins then and there did not have any money or property to pay his board, nursing and medical attention, and that said defendant then and there had due notice thereof." That prior thereto the defendant had duly appointed the sheriff, county and prosecuting attorney, and one of its members as its agents to oversee and provide for the poor and indigent of the county. "That on the said 28th day of November, 1904, the said George Perkins, after receiving said bodily injuries, required prompt medical and surgical attention to save his life; that the said defendant, acting through one of its said agents, namely, A. J. Neilsen, sheriff of said county, took charge and custody of the said George Perkins on behalf of said defendant; that on said date and while the said Perkins was in the charge and custody of the said defendant, acting through its said agent, the sheriff of said county, this plaintiff, with the full knowledge and consent of the defendant, acting through its agent aforesaid, in order to save the life of the said Perkins amputated the injured arm of the said Perkins as such physician and surgeon, and then and there gave the said Perkins the surgical and medical attention required, the said plaintiff being then and there assisted by Dr. W. A. Miller; that at said time the defendant was not in session and no other notice could have been given than to its agent aforesaid." That the said medical and surgical attention so

rendered and performed was reasonably worth the sum of $50, and that the plaintiff on February 8, 1905, filed with the county clerk of said county and presented to the defendant a verified claim against the county for the medical and surgical services so rendered, and "that a copy of said claim is not attached hereto for the reason that the same has been mislaid or lost. That the claim has not been paid and that the amount thereof, together with interest thereon from February 8, 1905, is due from defendant to the plaintiff."

There is a second cause of action in which it is alleged that Dr. W. A. Miller, a duly licensed and practicing physician and surgeon, assisted Dr. Denebrink in performing the operation, for which he made a charge of $25, and which claim was presented in the same manner to the board of commissioners and not paid, the other allegations being practically the same, except that this claim has been duly assigned to Dr. Denebrink, who brought the suit.

1. Section 1260, Revised Statutes, is as follows: "When any non-resident of this state, or any other person not coming within the definition of a pauper, shall fall sick in any county in this state, not having money or property to pay his board, nursing or medical attendance, the county commissioners, upon notice thereof, shall provide such assistance as they may deem necessary, by contract or otherwise; and if such person shall die, said commissioners shall cause to be given to such person decent burial. And said commissioners shall make such allowance for board, nursing, medical attendance and burial expenses as they may deem just and equitable; *Provided,* That claims for such services shall be presented and acted upon in the same manner as other claims against the county; *Provided, further,* That said commissioners may, in their discretion, contract with some suitable person or persons, for such services, in the case of all sick persons coming within the provisions of this section."

It is urged that no notice was given to the board of county commissioners and that the services were not per-

formed by the request of the board or of anyone having authority to bind the county. The board not being in session at the time of the accident, it is reasonable to presume that notice could not have been given to the board of the condition Perkins was in until long after the possibility of saving his life had passed. The case was one of emergency, so alleged in the petition and conceded by the demurrer, requiring prompt action, and Dr. Denebrink took charge of the patient for the purpose of amputating, and he and his assistant did amputate the arm, all of which was necessary to save the life of the injured man, and all of which was done with the knowledge and consent of one of the duly appointed agents of the county to oversee and provide for the poor and indigent of said county. It is urged in behalf of plaintiff in error that the agent was such for a restricted purpose and that his authority extended only to the poor and indigent residing within the county and that he had no authority to act or bind the county in cases coming under Section 1260, *supra*. Such, undoubtedly, is a correct interpretation of the statute; but the liability of the county arises in such cases by reason of the failure of the county to furnish a physician when the exigencies of the case require immediate surgical and medical treatment. The amputation was done in order to save the life of the injured man. The services were urgent, imperative, and admitted of no delay. The board was not in session and there was no opportunity to notify it or for it to take action until it reconvened. The provision in such cases that "the county commissioners upon notice shall provide such assistance as they may deem necessary" is purely one of regulation in view of the attending circumstances in each particular case and does not make one a volunteer merely who out of a spirit of humanity in an emergency case furnishes succor until the proper authorities can act in the premises. The liability and duty to care for the nonresident sick is statutory and exists by reason of their condition. The statutory notice serves as an aid to the county

in the proper performance of this duty in caring and providing for the person entitled thereto in pursuance of and in accordance with the statutes regulating such matters. Such knowledge may come to the board in other ways, but that would not lessen its obligation or duty to perform its trust nor lessen the county's liability. The notice contemplated is not for the purpose of fixing the liability of the county for necessary assistance rendered by third parties prior to its being given, but to enable the commissioners to render prompt assistance in deserving cases. The very ground upon which the board is authorized to give assistance is that the person is sick and hasn't money or property to pay his board, nursing or medical attendance, and that fact being known to the person who comes to his relief, until the board can be notified so that it may provide for his wants, it must be assumed that the person furnishing the relief did so with the expectation of being re-imbursed by the county. We must presume that within the terms of this section the provision authorizing assistance covers the time between his falling sick and a notice of his condition given as promptly as the circumstances of the case will permit. The Legislature evidently intended this class of cases should be attended to, yet it has failed to point out the method of giving prompt assistance in an emergency case. In such case the object, purpose and policy of the law is clear, and, although the statute is silent as to the method of giving speedy and needed relief, its object and purpose ought not for that reason to be defeated. As was said by the Supreme Court of Minnesota in Robbins v. Town of Homer, 103 N. W., 1023, "It is true that the obligations to provide for the poor are statutory. These, as we have indicated, are matters of regulation; but, when there can be no regulation from the very nature of the case, it must be that necessity will supersede the exercise of statutory authority, and immediate aid for the sick person should be furnished. A deprivation of it might inure not only to injure the poor

person, but to the detriment of the public, for delay in the treatment of the injured party might entail added pecuniary burdens."

It is not alleged in the petition that the services were performed at the request of the defendant. As the board of county commissioners were not in session at the time, no such request could be made. The case falls within the exception that such request was necessary for contract liability. It was both the moral and legal obligation of the board to furnish a physician for the injured man, and upon its failure to do so Dr. Denebrink and his assistant performed the services which the exigencies of the case required to save a human life with the expectation of being reimbursed therefor. In such cases there is always a legal presumption of a promise to pay without any proof that such promise has been made or the services requested by the party sought to be charged. (15 A. & E. Ency. of Law (2d Ed.), 1081.) Upon the facts the case is different from Hamilton County v. Meyers (Neb.), 37 N. W., 623. In that case the action was for continuous medical treatment, and during the time the services were being rendered the physician gave no notice to the board of county commissioners, although the board was in session in the immediate vicinity of where the destitute person was sick, nor were the services performed by direction of the overseer of the poor. The statute in that case was different in that it made it the duty of the overseer to furnish relief to a non-resident falling sick and without means to care for himself. In Robbins v. Town of Homer (Minn.), *supra*, a case almost identical upon the facts, the question was upon the sufficiency of the complaint. That court said: "It is true that ordinarily there must be a request from a person authorized to make the same to constitute a basis for contract liability, but there are some exceptions to this rule, as where a person lies under a moral and legal obligation to do an act, and another does it for him, under such circumstances of urgent necessity that humanity and decency ad-

mit of no time for delay. Here the law will imply a promise to pay without proof that it has been made, when there was an expectation of reimbursement. (15 A. & E. Ency. of Law (2d Ed.), 1081.) A very familiar illustration of this rule is where a person furnishes the means for the burial of the dead, when no request comes from the person legally liable to perform the obligation. In such cases it has been held that the person furnishing the services may recover to the extent of the expenditures incurred. (Gould v. Moulahan, 53 N. J. Eq., 341; 33 Atl., 483; Bradshaw v. Beard, 12 C. B., 344; Ambrose v. Kerrison, 10 C. B., 776; Price, 3 Y. & J., 28; Patterson v. Patterson, 59 N. Y., 582; 17 Am. Rep., 384.)

"If Lessard, the poor person in this instance, had died and the supervisors had been absent, we have little doubt that a person providing for his burial would have a legal claim against the town; and, upon the same reasons, why not a physician whose ministrations in a pressing emergency seek to avoid what may result in his death? The supervisors, upon whom the duty to name the physician was imposed under legal as well as moral obligations, had not provided for the same, and we have no doubt that it should be held that the physician who immediately answered the call of emergency, perhaps to save life, or diminish the increase of expenditure against the public, would have a valid claim for compensation.

"Having reached the conclusion that it was the duty of the supervisors of the defendant town to provide a physician, it reasonably appearing that an emergency arose when it was impossible for them to do so, we hold that the conclusion follows that there was a legal duty on the part of the town to pay such reasonable claims for the services of plaintiff as he may be able to establish at least until the board of supervisors can be notified and appropriately act in the premises."

The opinion in that case meets the argument of the plaintiff in error so completely that it would seem un-

necessary to discuss this branch of the case any further. It was sufficient to allege the facts showing the immediate necessity for the services rendered and the impossibility of a precedent request or promise to pay. To hold that such request was necessary to maintain the action would, under the circumstances as shown in the petition, be inhuman and shocking to all sense of decency and render the statute less effective than it was evidently intended. Such request was in the nature of an impossible condition precedent and sufficiently appears by allegations in the petition. In principle the question is the same as in those cases upon contract where a condition precedent has not been performed and a valid excuse for such non-performance is alleged. (9 Cyc. Tit. Averment and Fulfilment of Conditions, 719; 4 Ency. P. & P., 629.)

2. It is urged that the petition fails to show the presentation of the account sued on to the defendant below. Section 7, Article 16, of the Constitution, provides that "no bills, claims, accounts or demands against * * * any county * * * shall be audited, allowed or paid until a full itemized statement in writing, verified by affidavit, shall be filed with the officer or officers whose duty it may be to audit the same." It is so provided by Section 1062, R. S. 1899. The county commissioners were the officers authorized to audit and allow the claim involved in this suit (Sec. 1142, R. S. 1899); and it was the duty of the county clerk to file the account, whether audited or not. (Sec. 1143, R. S. 1899.) It is provided by Section 1216, R. S. 1899, that: "All claims held by a person, or persons, company or corporation against a county, shall be presented for audit and allowance to the board of county commissioners of the proper county, as provided by law, before any action in any court shall be maintained thereon * * *." The last provision was construed by this court in Houtz v. Commissioners, 11 Wyo., 168, where it is said: "We do not perceive how it is possible to avoid the peremptory language of Section 1216 and to permit an action to be maintained

within its purview without positively disregarding the terms of the statute." It appears from the petition that each of the claims sued on was duly verified and filed with the county clerk, the one of Dr. Denebrink on February 8, 1905, and that of Dr. Miller on January 3, 1905, and presented to the defendant. It is further alleged in each court "that a copy of said claim is not attached hereto for the reason that the same is mislaid or lost." It thus appears that the original verified claims were in the possession of the defendant and the allegation must refer to the originals, for if they are where they should be copies of them could be very easily obtained. The pleader does not, however, rely on the short form of pleading authorized by statute in an action upon an account. (Sec. 3560, R. S. 1899.) The attaching of a copy of the account as an exhibit would not, therefore, supply necessary allegations unless it was expressly made a part of the petition. The allegation in both counts is to the effect that the required surgical and medical attendance was rendered on November 28, 1904. No charge is made for anything but services, and those services were rendered on the same day. There is no distinct item for medical attention, and giving the words a fair and reasonable construction, in view of the other allegations of the petition, such attention was co-existent in point of time connected with and necessarily required in the performance of the operation. There is no charge nor attempt to charge for medical services or attendance subsequent to that time. It could very properly be said to constitute but one item, for such an operation would carry with it the duty to do all that was necessary to successfully perform it. The demurrer admits that the account was duly verified, filed and presented to the board for allowance. From the allegations in the petition one item would be all that is necessary in such an account to satisfy the law requiring accounts against the county to be fully itemized. A fair and reasonable construction of the petition would, in the absence of any defense upon the merits, lead one to the conclusion that the

account must have been presented for allowance in accordance with the requirements of the statutes. It having been so presented, the right to maintain the action accrued to the plaintiff.

The demurrer was properly overruled, and the judgment will be affirmed. *Affirmed.*

POTTER, C. J., and BEARD, J., concur.

APRIL TERM, 1907.

FROST v. HOUX ET AL.

BROKERS—REAL ESTATE AGENTS—COMMISSIONS.

1. A real estate agent with whom property is listed for sale upon an agreed commission performs his part of the contract upon producing a purchaser who is able, ready and willing to purchase at the price named, and on terms of payment satisfactory to the seller.
2. The agent's right to an agreed commission for the sale of real estate will not be defeated by the fact that the seller had failed or refused to furnish the agent with the terms of payment which would be acceptable, where the seller accepts the terms offered by a purchaser produced by the agent, or the purchaser takes the property on the seller's terms, at the price at which the agent was authorized to sell.
3. Nor will the right to the commission be defeated by the fact that before the unconditional listing of the property with the agent, the purchaser produced by him had written the owner about the property and been informed that it was for sale on certain conditions, nothing further having been done or said by the owner in negotiating the sale previous to the listing, and the evidence showing that he did not then regard the party writing him as a prospective purchaser.

[Decided April 15, 1907.] (89 Pac., 568.)

error in the ruling upon certain questions put to jurors as to how they would be inclined to decide the case if the evidence were equally balanced and that such a question should be accompanied by a statement of the legal rule involved. The remaining points, as to the admission of testimony that a minor son of deceased is a cripple, the testimony of experts, the impeaching testimony and that the damages are excessive, are overruled.

The condition of the son might be considered in determining the extent of support necessarily required during minority and perhaps afterward.

The expert testimony was relevant and tended to throw light upon an important point in issue, and the impeaching testimony was sufficiently within the range of the questions put to the witness sought to be impeached. The damages, while fully as high as warranted by the evidence, do not appear to us so high as to call for unfavorable comment.

For the giving of the 7th instruction the judgment will be reversed and the cause remanded.

Reversed and remanded.

---

25 20
59 578

25 20
63 661

25 20
66 388

COUNTY OF CHRISTIAN
v.
CHARLES V. ROCKWELL.

Paupers—Medical Services—Emergency—Action against County—Recovery—Costs.

1. Where a physician has rendered necessary services, in an emergency, to a minor whose mother is dead and whose father is idle and worthless and does not provide for his children, he may, in the first instance, maintain an action against the county for such part of his bill as the county is liable to pay, although he has property sufficient to pay part of the bill.

2. When a county is sued as defendant it is within the terms of Sec. 7, Chap. 33, R. S., and judgment may be rendered against it for costs.

[Opinion filed February 17, 1887.]

IN ERROR to the Circuit Court of Christian County; the Hon. J. J. PHILLIPS, Judge, presiding.

Mr. JOHN G. DRENNAN, State's Attorney, for plaintiff in error.

The court certainly erred in rendering judgment against the defendant for costs. Sec. 17, Chap. 33, R. S.; People v. Coulters, 9 Ill. App. 39; Cumberland County v. Edwards, 76 Ill. 545.

Mr. W. M. PROVINE, for defendant in error.

WALL, J. This was an action in assumpsit against the County of Christian to recover pay for professional services rendered by the plaintiff as surgeon to one Robert Watts, an alleged pauper. The case was tried by the court, a jury being waived, and there was a judgment for plaintiff for $50 and costs, from which an appeal is prosecuted by the county.

It appeared in evidence that the alleged pauper was a boy aged about eleven years old who had been seriously injured by the accidental discharge of a gun. His mother was dead and his father an idle, worthless person wholly without means, had neglected to provide for him, and for a considerable time he had been without a fixed home, going from one place to another and dependent upon charity for his support.

When the accident occurred he was near the house of one Wright, a farmer, by whom he was cared for, and who sent for the plaintiff. It was found that to save the boy's life it was necessary to amputate the injured leg, and it was important that this should be done promptly.

There was no time to apply for aid to any county official nor was there any attempt to do so, but the operation was performed without delay and with such skill that a rapid recovery ensued. This service was worth $125. The boy had no property except an undivided interest in a small tract of land, which interest was worth about $75. It is clear that if he had been wholly without property he would have been a proper subject for county support and that the emergency was such as-

to warrant immediate action of the plaintiff without waiting to confer with county officials. Ch. 107, Secs. 14, 23 and 24, R. S.; Seagraves v. City of Alton, 13 Ill. 366, 371; Board of Supervisors v. Reynolds, 49 Ill. 186; Perry County v. City of Du Quoin, 99 Ill. 479.

It is urged, however, that as the boy had a property interest worth $75, he was not within the provision of the law. His estate was inadequate to supply his necessities.

Suppose he had but $5 worth of property, would it be said that he was thereby deprived of the protection of the law? Manifestly he was *pro tanto* within the statute. Then was it necessary for the plaintiff to exhaust the estate before presenting his demand against the county? We think not, and that it was competent for him to sue the county in the first instance, and recover such proportion of his claim as the county would in the end be liable to pay. The allowance made by the court was justified by the proof in the case.

It is objected that it was error to render a judgment against the county for costs. The section cited in support of this proposition, Sec. 17, Ch. 33, and the case referred to in the same connection, would be in point if this were an action in which the county sues as plaintiff.

Where, however, the county is sued as defendant it is within the terms of Sec. 7, and if the plaintiff recovers his debt or damages, he will also recover costs of suit.

The judgment will be affirmed.

Judgment affirmed.

G. W. MONTGOMERY AND H. C. CRAIG, PARTNERS,
v.
W. L. BLACK ET AL., PARTNERS.

Partnership—Issue as to Existence of—Evidence—Practice.

1. Where the question at issue is whether several persons are partners, the declarations or admissions of one of them in reference to the existence of the partnership, are inadmissible as against the others.

and is a question of fact. Archibald case, *supra*. That fact has been determined by the court below against appellant, with which finding we are not disposed to differ.

It is contended, however, that Lufkin had no authority to make the contract shown by the receipt, and testified to by the witnesses. Appellant "can't keep its cake and eat it." It has the note, obtained under the agreement shown, which, as found by the court, discharged the contract indebtedness. It has not offered to surrender the note.

The petition seeks to enforce the contract indebtedness, represented by the Browning note, which extinguished that indebtedness. Outside of that question, however, it is thought there is sufficient evidence to show Lufkin had the authority to make the contract shown by the evidence. This is not like the case decided by the Appellate Court of the Third District—Davis & Rankin Building and Manufacturing Company v. The Colusa Dairy Association and Joseph F. Dietrick, 55 Ill. App. 591.

The decree is affirmed.

County of Clinton v. J. T. Pace.

1. PAUPERS—*Physician's Bills—Liability of the County.*—Under Sec. 24, Chap. 107, R. S., entitled "Paupers," before a physician is entitled to pay for medical services rendered to one not a pauper, it must appear the person treated does not come within the definition of a pauper; that he has fallen sick and has neither money nor property with which to pay for medical aid.

2. SAME—*Duty of Town Officers.*—Under such circumstances it becomes the duty of the overseer of the poor of the town to give, or cause to be given, to the sick person, such assistance as he may deem necessary and proper, subject to such rules as the county board may prescribe.

3. SAME—*Rules of the County Board—Presumptions.*—In a suit against a county, under Chapter 104, R. S., entitled "Paupers," it is to be presumed that the county board had not prescribed any rules or regulations relating to paupers, from the fact that none were offered in evidence.

4. SAME—*Liability of the County.*—A county is liable for necessary services rendered by a physician, where prompt and immediate action is required, without notice to, or permission from, the overseer of the poor.

5. OVERSEER OF THE POOR—*Power to Contract—Services Rendered and to be Rendered.*—Notice to the overseer of the poor and application for authority to treat a person at the expense of the county, should be made within a reasonable time after the necessity arises, but the fact that the overseer may not have given the authority for some weeks after receiving the notice, is immaterial. His authority to bind the county, in a proper case, for services to be rendered, as well as for those already rendered, is ample.

6. EVIDENCE—*The Weight of.*—Questions of the weight of the testimony are for the court, when exercising the functions of a jury; the decision of a court sitting as a jury, and passing upon questions of fact, can not be set aside by the Appellate Court unless the finding is manifestly against the weight of the evidence.

7. DEFENSES—*Partial Allowance of a Claim by a County Board.*—The fact that a claim presented to the county and allowed in part was not duly sworn to, is no defense in an original action on the *quantum meruit* in the Circuit Court.

8. PLEADING—*Common Counts Sufficient.*—In an action against a county for services rendered to a poor person under the pauper act, a declaration containing the common counts only, is sufficient.

9. COSTS—*Against a County.*—In an action against a county for services rendered under the pauper act, when the county is unsuccessful, the costs are properly adjudged against it.

Assumpsit, for services rendered. Appeal from the Circuit Court of Clinton County; the Hon. ALONZO S. WILDERMAN, Judge, presiding. Heard in this court at the February term, 1895. Affirmed. Opinion filed July 1, 1895.

M. P. MURRAY, attorney for appellant.

VAN HOOREBEKE & FORD, attorneys for appellee.

MR. PRESIDING JUSTICE SCOFIELD DELIVERED THE OPINION OF THE COURT.

Under section 24 of the act in relation to paupers, before a physician is entitled to be paid for medical services rendered to one not a pauper, it must appear:

1. That he does not come within the definition of a pauper.

2. That he has fallen sick.

3. That he has neither money nor property with which to pay for medical aid.

Under such circumstances, it becomes the duty of the overseer of the town to give, or cause to be given, to the sick person, such assistance as he may deem necessary and proper, subject to such rules and regulations as the county board may prescribe.

In this case, Anton Felltrop was not a pauper within the definition of the word; he fell sick—that is to say his leg was broken—and he had neither money nor property with which to pay for medical aid. It is to be presumed that the county board had not prescribed any rules or regulations for such cases, inasmuch as no such rules or regulations were offered in evidence, which would certainly have been done if such rules or regulations were in existence and were favorable, as a matter of defense, to appellant. The County of Perry v. City of Du Quoin, 99 Ill. 479.

Thus it appears that the facts satisfy all the requirements of the statute, and concur to create a liability on the part of appellant, unless it was obligatory on appellee, the attending physician, to obtain authority from Nordman, the supervisor and *ex officio* overseer of the poor of the town, to treat the patient, and to obtain such authority either before the commencement of the treatment, or, if the case was one of overruling necessity, as soon thereafter as practicable.

The third, fifth and eleventh propositions of law presented to the court by appellant and marked refused, presented the theory that no recovery could be had for any services whatever, rendered without permission from the overseer of the poor. This is not the law. The county has been held to a liability for necessary services rendered by a physician where prompt and immediate action is required, without notice to, or permission from, the overseer of the poor. County of Christian v. Rockwell, 25 Ill. App. 20, and County of Fayette v. Morton, 53 Id. 552. Under these authorities, appellant was clearly liable for the first services rendered by appellee in the treatment of Felltrop. Hence the court properly refused to hold the proposition of law mentioned above.

But it is contended by appellant that Felltrop was hurt on January 7th; that appellee began treating him on that

day and continued his visits daily, and sometimes twice a day, during the remainder of January, and thereafter with less frequency till the 21st of May; that appellee gave no notice to the overseer of what he was doing, and sought not to obtain authority to treat Felltrop till the last week of February; and that such authority was not given until the 1st of March, and was prospective only. It is true that the overseer testified to facts from which the disputed portions of the foregoing statements might be deduced.

On the other hand, appellee testified that he told Nordman, within two or three, or three or four days after the accident, that he did not know what the man's financial condition was, but that he, appellee, would expect pay for his services, and that Nordman promised to go and see Felltrop; that "he said he would go out and see about it."

Now if the court acted upon appellee's testimony, there is sufficient justification for a finding that an emergency had arisen requiring immediate action, and that application for authority to treat the patient at the expense of the county was made within a reasonable time thereafter. The fact that the overseer may not have given the authority for some weeks after notice to him is immaterial. The physician had done his duty, and the delay of the overseer could not be held to relieve the county from discharging its duty under the law, toward the necessitous.

But it is said that the testimony of Nordman was entitled to more weight than that of appellee. But this was a question for the court, exercising the functions of a jury. The decision of the court, sitting as a jury and passing upon questions of fact, can not be set aside by an appellate court unless the finding is manifestly against the weight of the evidence. But the decision of the case does not rest on this proposition alone. Nordham admits that, during the first week of March, he authorized appellee to treat Felltrop. It is argued that this authority related solely to the future, and that, if it did not, the agreement to pay for past services would not be binding upon the county.

Nordman testified that Felltrop was not under his care as

overseer; that he, the witness, had not "received" Felltrop as a pauper before visiting him in March, at which time he asked the sick man whether he had any means or not, and was answered in the negative, and that he accepted Felltrop as a pauper from the 1st of March. These statements amount to no more than that Nordman had not acted on the case prior to the 1st of March; they do not go to the extent of showing that the authority given on March 1st was not an action on the whole case, a determination by the overseer that the assistance theretofore given, as well as that to be given thereafter, was necessary and proper. In this view of the matter, the fact that Nordman certified to the whole account of appellee as correct, when the same was presented to the county board, is entitled to great weight, not as binding upon appellant, but as showing that the authority given by the overseer was to have a retrospective as well as a prospective effect.

We see no reason why the overseer, who is required to cause such assistance to be rendered as he may deem necessary and proper, may not examine into the case while the treatment, originating in an emergency, is progressing, and accept past services while contracting for a continuation thereof in the future. The chief object of the statute is to have the judgment of the overseer on the case, based on his personal knowledge, to prevent imposition on the county, and this object is accomplished if a personal examination is made before the necessity for county aid has terminated. We deem it unnecessary to notice with particularity the other points presented in appellant's brief. Even if the claim presented to and allowed in part by the county board was not duly sworn to, this is no defense in an original action on the *quantum meruit* in the Circuit Court. Supervisors La Salle Co. v. Reynolds, 49 Ill. 186, and County of Grundy v. Hughes, 8 Bradw. 34. We hold also that in such case, a declaration containing the common counts is sufficient, and that the costs are properly adjudged against the county.

The judgment is affirmed.

authority, so far as we are advised, for supposing that it has been abrogated or modified in this State. We have considered the cases specially cited, but time would not permit even a cursory examination of the many noted in 22 Am. & Eng. Enc. of Law, 806-7, and appended to the case of Phipps v. Jones, 20 Pa. St. 260, as reported in 59 Am. Decisions, 711. It must suffice to say that we discover no difference of opinion as to the common law rule, and that such of the cases as were not in equity, where it is different, were under statutes, expressly authorizing them. If the law of Illinois did not empower the plaintiffs to maintain this action in their own names alone, of course the constitution of the association could not do it. Judgment affirmed.

County of Madison v. William A. Haskell.

63 657
64 99

63 657
115 547

1. COUNTIES—*Liable for Aid Furnished to Persons Injured.*—A physician who renders medical aid to persons injured by an explosion when the emergency is such as to warrant an immediate action without waiting to confer with the proper officials, may recover of the county a reasonable compensation for his services.

Assumpsit, for services rendered. Appeal from the Circuit Court of Jersey County; the Hon. GEORGE W. HERDMAN, Judge, presiding. Heard in this court at the May term, 1895. Affirmed. Opinion filed December 6, 1895.

E. B. GLASS and KROME & TERRY, attorneys for appellant.

ALEXANDER W. HOPE and HENRY S. BAKER, JR., attorneys for appellee.

MR. PRESIDING JUSTICE PLEASANTS DELIVERED THE OPINION OF THE COURT.

About nine o'clock in the forenoon of January 21, 1893, a passenger train of the C., C., C. & St. L. R. R. Co., ran into an open switch, striking some freight cars standing on it at

Wann station, which is in Woodriver township, adjoining that of Alton, and within a few miles of the city. Among the freight cars were several carrying tanks of coal oil and gasoline. By the collision the engineer was killed, some passengers injured and some cars, both freight and passenger, set on fire. The accident drew a crowd of people from Alton and the neighborhood to the scene. About noon one of the tanks exploded, and the burning oil was thrown upon the people standing around as spectators, by which quite a number were fatally and others severely injured. Appellee, who was the physician and surgeon of the railroad company for Alton township, was there attending professionally to passengers who had been hurt by the collision, and with other physicians immediately proceeded to render the medical and surgical attention required for the persons who were injured by the subsequent explosion. He ordered and obtained from the company a special train and had twenty of the sufferers conveyed to St. Joseph's Hospital at Alton, of which he was the regular physician and surgeon, and where they were thereafter attended by him and four other physicians. Six of these patients died of their injuries in the course of the first night and following day. Others died later, from the same cause, and still others were, from time to time, discharged. By the 12th of March, only seven remained under treatment. Until that time five physicians had regularly attended to those still there, but after that day only two, appellee and Dr. Halliborton, who continued to do so until the 14th day of June, 1893.

For these services and materials furnished in connection with them, appellee brought this suit in the Alton City Court, from which the venue was changed by agreement to the Circuit Court of Jersey County, where on trial without a jury he obtained a finding and judgment for $611.50, which included $78 for materials furnished.

The action was brought under Sec. 24 of the Pauper Act, which provides that "when any non-resident, or any person not coming within the definition of a pauper, of any county or town, shall fall sick, not having money or prop-

erty to pay his board, nursing and medical aid, the overseer of the poor of the town or precinct in which he may be, shall give or cause to be given to him such assistance as they may deem necessary and proper, or cause him to be conveyed to his home, subject to such rules and regulations as the county board may prescribe, and if he shall die, cause him to be decently buried." R. S., Ch. 107.

The declaration was in two counts, of which the first, after stating that the persons named, who were not paupers, but were unable to pay, etc., fell sick in the county of Madison, and that thereupon the overseers of the poor in the townships of Woodriver and Alton by virtue of the statute had undertaken to provide them with such medical attendance and medicines as were necessary and proper, averred that the plaintiff, "being requested and authorized so to do, did furnish to said parties such medical attendance and medicines," etc. The second, after stating the names and conditions of the parties as in the first, averred that in said county they "became and fell sick, and it became necessary to immediately furnish to said parties medical attendance and advice and medicines; that plaintiff, who is a regularly licensed physician, thereupon gave to said parties "such as they required, and that $800 was a reasonable charge therefor.

The plea was the general issue, with notice of intention to prove under it, in substance, that the parties named were injured by the explosion of oil tanks on a side track of the C., C., C. & St. L. R. R. Co., in Woodriver township; that on the same day they were removed to the hospital in Alton township; that the county supervisors had a competent physician to furnish, free of charge, the medical services required for them in Alton township, who was in said township during all the time of their alleged treatment; that plaintiff was during all that time the physician of said railroad company, and that his services in the premises were rendered on its behalf; that the survivors of those parties and the representatives of the deceased are prosecuting it for damages sustained by reason of said injuries; that said

parties were transferred by it from Woodriver to Alton township; and that plaintiff had been paid for all his services and medicines for which the defendant is in anywise liable by law to pay.

On the part of the defendant no evidence was offered, but the case was submitted on that introduced by plaintiff, and certain propositions of law asked to be held by the court.

It is insisted that no recovery could properly be had under the first count for want of proof that plaintiff was "requested and authorized" to furnish medical attendance, advice and medicines as alleged; and if it could under the second, it must be upon the theory that he parties were entitled to call upon the county for relief and that the urgency of their need did not admit of delay until request could be made of those appointed by law to furnish it, in which case the liability would be only for what was rendered and furnished until the proper authorities could be called upon to act. And it is contended that under this section, the overseer of the poor is the only person authorized to furnish the aid provided for, and he, only in accordance with the rules and regulations prescribed by the county board; for which proposition some cases are cited relating to the county's liability for aid furnished by private persons, upon their own motion, to technical "paupers." Rayburn v. Davis, 2 Brad. 548; Seagreaves v. City of Alton, 13 Ill. 372. We think that whatever bearing they have upon this case, which is brought under another provision, made for those who are not paupers, is clearly in support of appellee's claim as it is shown by the evidence. For they both except extreme cases, and if this was not shown to be one, none ever was or can be.

By the section referred to the legislature made it absolutely obligatory upon the county to make all necessary and proper provision for persons of the classes and in the condition of the sufferers in this case. It can not avoid the liability so imposed, by its own failure to appoint necessary agents or prescribe regulations as to the manner of doing it. County of Perry v. The City of Duquoin, 99 Ill.

486–8; County of Christian v. Rockwell, 25 Ill. App. 20. If the defense is that the provision was not made or not furnished in accordance with the rules and regulations prescribed by the board of supervisors, "it is incumbent on it (the county) to show that the county board prescribed reasonable rules and regulations on the subject, and what they were," as was said in the Perry Co. case, cited, pp. 487–8. Here there was no "defiance" by appellee of such rules and regulations, as in DeWitt Co. v. Rice, 91 Ill. 529. It does not appear that the county board of Madison county had prescribed any. At the time of the accident the overseer of the poor of Woodriver, where it occurred, was absent in Texas. Appellee, having finished the work for which he was sent there, was sitting in a passenger car waiting for an engine to go into town. He did not know that any one was injured by the explosion until a little boy came in and told him to come quick. He took possession of a freight car used as an express office, told somebody to run for cotton and buckets of water, and directed that none but those burned should be admitted. "They came in one after another until the car was full, screaming with pain. Some of them were stark naked. Some were burned from their heads to their toes—every particle of the surface burned." He made a temporary dressing and applied it to their burns. Many of them could not stand the shock of the extreme cold, so he asked Mr. Castle of the "Big Four" to give him a train as quick as he could, which was done, and he took them to Alton. He telephoned for the city ambulance, got express wagons and whatever he could get hold of, and had them conveyed to the hospital, where physicians (word having been sent in) were already gathered.

Such was the statement of appellee, and is given in almost his exact words. Any rule or regulation of the county board which would have required a moment's delay on his part, if he had been informed of it, and that the overseer of the poor was within speaking distance, would have been unreasonable, and he unworthy of a place in his profession if he had thought of it before acting. These people were

entitled to medical aid if it could be had, on the instant and at the county's expense. County of Christian v. Rockwell, *supra*.

Appellee's action was sanctioned and approved by the proper authorities as soon as it was known to them—by the overseer of the poor of Woodriver township, immediately on his return from Texas, and by the overseer of Alton township immediately after the patients were brought to Alton. He found the doctors attending to them and sanctioned everything they did; told two of them to "do everything they could to help these people out;" and says, "if there had been more doctors I would have liked it—there wasn't doctors enough."

Appellee's attendance and services continued to be necessary and proper until June 14th. He continued to attend some thereafter, without charge. The charge he made and sued for was reasonable—he says hardly more than one-sixth of the usual charge in like cases, where the patient is treated at his home and able to pay. He did not render any of the service sued for on behalf of the railroad company. It owed these unfortunates no contract duty. He was not directed by the company, nor required by his engagement as its physician and surgeon to attend to them. The evidence of [illegible] clear, positive and undisputed.

[illegible]re was no material error in refusing or modifying the propositions of law submitted on behalf of appellant; and if there was, the finding was required by the evidence. The judgment will therefore be affirmed.

Fred Schmaedeke v. The People.

1. INTOXICATING LIQUORS—*Sale to Habitual Drunkards.*—The sale of liquor to a person in the habit of getting intoxicated is not authorized as a converse proposition by the act of 1887, which declares that whoever, outside of the incorporated limits of any city, town or village, sells any intoxicating liquors of any kind in any quantity less than five gallons and in the original package as put up by the manufacturer, shall be fined, etc.

Statement of the case.

which a decree dismissing the bill was rendered and relied on as an adjudication, or as a pending suit, was fatally defective. The complainant could not take any benefit from it. It was founded on an affidavit pleaded as a tender for the taxes of 1891, which had no reference to the Natchez, Jackson & Columbus Railroad, but to a different one. The demurrer to the bill was rightly sustained on this ground, and the decree sustaining the demurrer and dismissing the bill in that case, now here on appeal, will be affirmed.

We reverse the decrees made in this case sustaining the plea and the demurrer, and dismissing the bill, and remand the case for further proceedings in the court below in accordance with this opinion. The defendant may answer within thirty days after mandate filed in the chancery court.

Reversed and remanded.

---

70 791
s88 49
88 50

BOARD OF SUPERVISORS OF LEE COUNTY *v.* GILBERT & BONNER.

COUNTY. *Liability for services to pauper. Emergency. Code* 1880, § 626.

Where no steps have been taken to declare one who is indigent and helpless a pauper, and, owing to his physical condition, he cannot be removed to the poor-house, but requires immediate surgical attention, which is bestowed in the emergency, the county is chargeable therefor. Code 1880, § 626.

FROM the circuit court of Lee county.

HON. LOCK E. HOUSTON, Judge.

Gilbert & Bonner, partners in the practice of medicine, made application to the board of supervisors of Lee county for an allowance of $55, as compensation for services in amputating the leg of a pauper. The allowance was refused, and an appeal was taken to the circuit court, where the case was tried by the court without a jury, resulting in a judg-

Brief for appellants.

ment in favor of plaintiffs for the amount claimed, from which the county appeals.

The facts out of which the claim arose are these: In January, 1892, an old negro living in the county was, at that time, and had been for a long while, an object of charity, wholly dependent upon the public, and without relatives to whom he could look for support. He had previously lost one leg, and the remaining leg became badly ulcerated. Being reduced to a condition of great feebleness, he was permitted by the sheriff of the county to occupy one of the lower rooms of the jail. His condition grew worse, and appellees, having been called in, found that it was necessary to amputate the leg, which they did. Their testimony showed that immediate amputation was necessary; that, without it, there was no chance of recovery, and that, with it, the chances were meager. The old man survived the operation only about five days. Meantime, before his death, he was regularly declared a pauper by the board of supervisors. There was testimony that, some time before that, he had refused to go to the poor-house, but, at the time of the operation, and just before, his condition was such that he could not be removed.

Section 626, code 1880, which was in force at the time the services were rendered, is as follows: "The board of supervisors may allow, as far as may be deemed right, the claims of persons who have taken care of, fed, clothed, administered to or buried such paupers as were, at the time, proper subjects for relief, but could not be removed to the poor-house."

J. L. Finley, for appellants.

The proof shows that the old man could have been removed to the poor-house, if he had consented to be moved before he fell into the hands of the doctors. The attention of the board of supervisors had not even been called to his condition. The principle contended for by the counsel for appellees will apply wherever able-bodied men meet with accident

or misfortune, and, being unable to pay physicians, have operations of this kind performed. *Reynolds* v. *Alcorn County*, 59 Miss., 132.

Clayton & Anderson, for appellees.

Section 626, code 1880, was intended to cover just such exceptional cases as this. See *Jones* v. *DeSoto County*, 60 Miss., 409. *Reynolds* v. *Alcorn County*, 50 *Ib.*, 132, recognizes that the allowance is proper wherever removal to the poor-house is impossible. Both reason and justice demand that the fee of appellees should be paid by the county. That this is a reasonable fee is admitted.

WOODS, J., delivered the opinion of the court.

The record presents one of the rare cases in which a surgeon's bill for services to a pauper is a proper charge against a county. It clearly appears that no steps had been taken by any county officer, or other person, to have the poor old man declared a pauper and removed to the poor-house, in the manner prescribed by law, or in any other manner. His pitiable condition rendered prompt action on the part of the surgeons necessary, and the dangerous state of the limb amputated made it impossible to remove him at the time to the county poor-house, regard being had to his life. Humanity demanded that what was done should be done, and then and there. It was a case of genuine emergency, in which the county should be held answerable for the fee. The fee is indisputably reasonable.

Affirmed.

is not the result of any fraud or false representations on its part, still plaintiff has the right to stand on the contract, and recover such damages as the failure and inability of defendant to perform has caused him. The question was presented in Fleckten v. Spicer, 63 Minn. 454, 65 N. W. 926. The court there said, in substance, after speaking of the English rule on the subject, that the doctrine of the American courts has been less liberal to the vendor. A general rule usually applied is that of adequate damages for the actual injury, or, as it is sometimes expressed, "damages for the loss of the bargain." No fraud on the part of the grantor in that case was shown.

Our conclusions are that the uncontroverted facts in the case entitle plaintiff to a verdict, and that it was error for the court to set it aside. It is therefore ordered that the order appealed from be reversed, and cause remanded, with directions to the court below to enter judgment for the plaintiff on the verdict.

CHARLES P. ROBBINS v. TOWN OF HOMER.[2]

June 16, 1905.

Nos. 14,308—(68).

Town Poor—Medical Attendance.

Where the town supervisors are required to provide for the care and support of the poor therein, and have no regular physician to attend its paupers, and a pauper suffers from an accident which requires the immediate attention of a surgeon, who renders services to relieve the necessity, he may recover reasonable compensation from the town, although he had not been requested by the authorities to attend the patient.

Appeal by plaintiff from a judgment of the district court for Winona county dismissing the action, entered pursuant to the order of Snow, J. Reversed and remanded for further proceedings.

William Burns, for appellant.

George T. Simpson and *Earl Simpson,* for respondent.

[1] Reported in 103 N. W. 1023.

LOVELY, J.

This is an action against a town having legal charge of a pauper to recover for his medical and surgical treatment furnished by a physician. There was a general demurrer to the complaint, which was sustained, and judgment ordered dismissing the action. This appeal is from that judgment.

It is set forth that Richard Lessard was a resident of the town of Homer, and for a period of five years prior thereto had a legal settlement therein; that the plaintiff, a physician, rendered surgical and medical treatment for Lessard, who had had no means of support for more than one year prior thereto, and was during such time a public charge upon the town; that under the laws of the state the supervisors of Homer, by virtue of their office, were superintendents of the poor; that the medical and surgical treatment rendered Lessard was under great emergency. It also appears from an account rendered, attached to an exhibit, that Lessard was suffering from a fracture of the right hip joint, and was taken (presumably from necessity) immediately to the Winona Hospital by the physician, and thereafter removed to the county poor farm by the town authorities. While the allegations of fact showing the emergency might have been more fully set forth, it still, upon a liberal construction of the challenged pleading, appears to have been a case where there was an urgent requirement for a physician's services, and the surgical treatment bestowed. Moreover, upon the views of the trial court in its memorandum, the liability of defendant was regarded as solely statutory, and that it was essential there should be a previous determination by the supervisors that the poor person was entitled to the physician's aid by the town, and to what extent such relief should have been granted. Upon this ground the court withheld the right of plaintiff to amend, since the alleged services were rendered without direction or authority of the supervisors.

The matter being thus presented we shall treat the exigency for the services performed as being urgent, imperative, and admitting of no delay. The able counsel for the defendant insists that a request by the supervisors of the plaintiff was necessary, even though the accident in which he was injured occurred at night, and distinctive action by the board would probably have required such delay as would have rendered any benefit to the patient very doubtful.

From the first organization of our state, the duty to take care of the needy and indigent has been recognized, and delegated to certain public officials in their representative capacity. From the start the political division charged with this obligation has been the county, and, to effectuate this, the commissioners of the several counties of the state were declared to be vested with the "exclusive superintendence of the poor in their respective counties." Section 1, c. 16, St. 1851. This language has been followed ever since, in the expressed imposition of the duty which the state assumed and has always recognized in accordance with the humane purposes of all civilized governments. In some instances the plan has been departed from, where the citizens of particular counties secured legislative changes for the supposed reason that the burdens on the towns were unjustly large, as compared with those of cities therein. Such was the case in Winona county, where, under chapter 479, p. 1083, Sp. Laws 1891, the supervisors of the several towns were made superintendents of the poor, instead of the county commissioners. This act further provides, in substance, that such supervisors, if they desire, may use the county poorhouse which had theretofore been provided for paupers, in any desirable case. But it seems in this particular instance that the poverty of the indigent person was not made the cause of removal to the county poorhouse until after his injury. No provision was made for the appointment of a physician for the defendant town, as we are authorized in assuming from the record and argument of counsel.

In chapter 172, p. 177, Laws 1899, it is prescribed that county physicians shall be appointed by the county commissioners to attend upon the poor when necessary; and it was therein specifically provided that, in case of emergency, where any poor person had become a county charge, and should be suddenly injured or afflicted, and so require immediate treatment before the arrival of the proper county physician, any reputable or duly licensed surgeon who should prescribe for or treat such injured or afflicted person might receive compensation from the board, with added provisions for notice by the emergency physician. Then follows a further proviso that this act shall not apply to counties caring for the poor by the township system. The title to this act makes no reference to other than county physicians, and the last proviso was undoubtedly thrown in, ex industria, to protect counties, rather than to lay down or limit a rule of liability with

reference to towns where such municipalities are required to support the poor. The view is not to be tolerated, under well-settled constitutional limitations, that a class distinction in behalf of counties and to discriminate as to towns was created by this proviso, so it may be dismissed as having no tendency to show that there was a legislative purpose to relieve the town supervisors from the obligation imposed upon the county board in emergency cases. The most that can be said of this legislation relative to county physicians is that it is an indication of the policy of the state to provide for an apparent and reasonable requirement to protect the unfortunate poor where injury and sudden sickness may prevent the attendance of the regularly appointed physician whose duty is to look after these charges of the state, and without any such statute the reason therefor is plain and apparent. The impulses of humanity, the dictates of natural justice, as well as the pecuniary interest of the municipal body upon whom the duty is imposed, demand that, where the officials having charge of the poor are unable to act in a case of pressing urgency, the course indicated ought to be pursued, and should be justified, if it can be done upon any reasonable legal grounds.

The duty to provide for the poor thus imposed by statute was undoubtedly intended to regulate the obligation, rather than to permit an evasion of it. This goes upon statement. Neither the county commissioners, where the county system prevails, nor the town supervisors, where they are the superintendents of the poor, can turn their backs upon the proper claim of the poor person. The officials may and should exercise their judgment to prevent improper persons from having relief, but for those who require it they are required to perform this function honestly and efficiently. But a case may arise where such officials cannot, in the nature of things, perform the trust. Under such circumstances, it does not seem just or consistent with sound public policy that the duty should not be performed at all, nor can it be said that the unfortunate pauper who has met with an accident requiring instant succor is to be remediless. The county or town must provide for him as soon as may be. To decline this mandate of humanity and duty wilfully by those upon whom it is imposed would subject such officials to prosecution for misconduct in office.

The same reason exists in the case of the poor of a town as of a

county for calling a physician where the exigency exists, but in the one instance it has been provided for; in the other it has not. It is true that the obligations to provide for the poor are statutory. These, as we have indicated, are matters of regulation; but, where there can be no regulation from the very nature of the case, it must be that necessity will supersede the exercise of statutory authority, and immediate aid for the sick person should be furnished. A deprivation of it might inure not only to injure the poor person, but to the detriment of the public, for delay in the treatment of the injured party might entail added pecuniary burdens.

It is true that ordinarily there must be a request from a person authorized to make the same to constitute a basis for contract liability, but there are some exceptions to this rule, as where a person lies under a moral and legal obligation to do an act, and another does it for him, under such circumstances of urgent necessity that humanity and decency admit of no time for delay. Here the law will imply a promise to pay without proof that it has been made, when there was an expectation of reimbursement. 22 Am. & Eng. Enc. (2d Ed.) 1009. A very familiar illustration of this rule is where a person furnishes the means of burial of the dead, when no request to do so comes from the person legally liable to perform the obligation. In such cases it has been held that the person furnishing the services may recover to the extent of the expenditures incurred. Gould v. Moulahan, 53 N. J. Eq. 341, 33 Atl. 483; Bradshaw v. Beard, 12 C. B. (N. S.) 344; Ambrose v. Kerrison, 10 C. B. 776; Jenkins v. Tucker, 1 H. Bl. 90; Rogers v. Price, 3 Y. & J. *28; Patterson v. Patterson, 59 N. Y. 574.

If Lessard, the poor person in this instance, had died, and the supervisors had been absent, we have little doubt that a person providing for his burial would have a legal claim against the town; and, upon the same reasons, why not a physician whose ministrations in a pressing emergency seek to avoid what may result in his death. The supervisors upon whom the duty to secure the physician was imposed under legal as well as moral obligations had not provided for the same, and we have no doubt that it should be held that the physician who immediately answered the call of emergency, perhaps to save life, or diminish the increase of expenditures against the public, would have a valid claim for compensation.

Having reached the conclusion that it was the duty of the supervisors of the defendant town to provide a physician, it reasonably appearing that an emergency arose where it was impossible for them to do so, we hold that the conclusion follows that there was a legal duty on the part of the town to pay such reasonable claim for the services of plaintiff as he may be able to establish, at least until the board of supervisors can be notified and appropriately act in the premises. The demurrer should have been overruled.

The judgment appealed from is reversed, and the cause remanded for further proceedings.

WILLIAM F. HUNT v. HAUSER MALTING COMPANY.[1]

June 16, 1905.

Nos. 14,313—(139).

Former Decision.

The decision in Hunt v. Hauser Malting Co., 90 Minn. 282, holding, where the latter corporation had, without authority, purchased stock and received dividends thereon for a number of years in the Commercial Bank of St. Paul, it was estopped from denying its constitutional liability, authorized under chapter 272, p. 315, Laws 1899, adhered to and followed.

Estoppel.

Held, upon the evidence in this case tending to show that when the Commercial Bank was reorganized, its name was changed, and the surrender of a specified number of shares of stock by each holder, as well as the retention and return or repurchase of stock by defendant to aid in restoring its impaired capital, that the malting company, by participating in the reorganization scheme, was further estopped from denying its stockholder's liability.

Question Immaterial.

Held, that whether or not proof of the manner in which the defendant corporation assented to its agreement to reorganize and change of name was appropriately made was immaterial, and without prejudice to the defendant's rights in this case.

[1] Reported in 103 N. W. 1032.

CASES DECIDED

IN THE

SUPREME COURT

OF THE

STATE OF INDIANA,

AT INDIANAPOLIS, NOVEMBER TERM, 1913, IN THE NINETY-EIGHTH YEAR OF THE STATE.

NEWCOMER ET AL. *v.* JEFFERSON TOWNSHIP, TIPTON COUNTY.

[No. 22,529. Filed January 6, 1914.]

1. PAUPERS.—*Support.—Liability of Township.—Application for Relief.*—While it is a general rule that a claim against a township can only be founded on a contract with the proper officer acting within the scope of his authority, under §9741 *et seq.* Burns 1908, Acts 1901 p. 323, relating to the care of the poor and designating the township trustee the overseer of the poor in his township, the trustee is required to furnish prompt medical and surgical attention in case of necessity to the poor of his township outside of public institutions, and the township is liable for the reasonable value of medical and surgical attention rendered to a poor person of the township in an emergency without opportunity to communicate with the trustee. p. 4.
2. PAUPERS.—*Support.—Liability of Township.—Application for Relief.*—The provisions of §9741 *et seq.* Burns 1908, Acts 1901 p. 323, relating to the care of the poor, are not controlled by the county reform law of 1899, §5918 *et seq.* Burns 1908, Acts 1899 p. 348, since it refers to county expenditures alone and has no reference to the mandatory requirements of the later act except that township expenditures by the overseer of the poor, in the absence of authority by the board of county commissioners, are limited in certain cases to temporary aid not exceeding $15. (*Board, etc.* v. *Hunter* [1903], 161 Ind. 478, distinguished.) p. 6.

From Tipton Circuit Court; *Leroy B. Nash*, Judge.

Action by Martin V. Newcomer and another against Jefferson Township, Tipton County. From a judgment for de-

fendant, the plaintiffs appeal. (Transferred from the Appellate Court under §1405 Burns 1908, Acts 1901 p. 590.) *Reversed.*

Gifford & Gifford, for appellants.

John P. Kemp and *Charles Kemp*, for appellee.

MYERS, J.—Appellants were copartners in the practice of medicine and surgery, duly licensed. A boy fourteen years of age, a resident of appellee's township, while riding on a freight train, without right, fell off. His right leg was crushed off just below the knee, and the heel and sole of the left foot were crushed. Suit was instituted by appellants against the township for surgical and medical attention rendered the boy, by a complaint which after alleging the foregoing facts, alleged that in October, 1906, the boy was about fourteen years of age, had no money, property or means of any kind, character or description, and no expectancy of any kind. That his father was a resident of the township, but had no home to which to remove the boy, had no money or property of any kind or character, but was wholly and entirely destitute of means of any kind or description. That the boy was removed to the home of one Bunch of Jefferson Township, and there cared for by the said Bunch as a matter of charity. That the boy had no relatives that were able to care for him. That in a few moments after the injury hereinbefore described, plaintiffs were called to the boy, and found him suffering, with a copious hemorrhage from the leg which had been crushed off. That the physical condition of the boy was such that delay in the treatment was sure to result in death to the boy from hemorrhage, and from the effects of the shock. That it was about ten miles to the township trustee of Jefferson Township, and that there was no means of reaching him by telephone or otherwise, except to visit him by buggy, or some like conveyance. That the accident occurred about nine o'clock at night, and that a delay necessary even to telephone, had there been a line of telephone, or to com-

municate by other means, might and would have resulted in the death of the boy. That under the emergencies existing, plaintiffs took charge of the boy, amputated the leg that was crushed, just below the knee, and dressed the same; also amputated and removed the mashed sole and heel of the other foot, giving it the necessary dressing, and rendering all the services necessary and proper. That they remained with him all night, caring for him, and giving him such restoratives and stimulants as were proper and necessary on account of the emergency and urgency of the case as hereinbefore set out; that there was an appropriation by the advisory board of the township of Jefferson for the purpose of paying medical expenses for indigent and poor persons of said township for each of the years 1906, 1907, 1908 and 1909; that defendant during the year 1906, had no physician employed to treat the poor of said township. That the trustee of Cicero Township resided eight miles from the city of Tipton, and that there was no means of communicating with him, except by messenger, traveling by horse and buggy, or some such transportation, and the boy would have died before communication could have passed between said trustee and these plaintiffs. That plaintiffs knew that the boy's life depended upon the prompt treatment of his said injuries, that they also knew he was a pauper, but believed the defendant was liable for the services, rendered under the emergency of the case; they rendered such services on the credit of the defendant, and not otherwise; that they have frequently demanded pay for their services from said township, which demand has been refused; that the services in the amputation of said leg, and dressing the foot, and medical services rendered at said time are of the value of $150, which is due and unpaid, and demand is made therefor. A demurrer for want of facts was sustained to this complaint, and the ruling is the sole alleged error presented. The suit was begun February 15, 1908.

It is the contention of appellee that townships are not liable for relief to poor or necessitous persons outside of public institutions for surgical or medical aid, however necessitous, irrespective of the circumstances or conditions, unless it is directed by the overseer of the poor; that he is the sole and conclusive judge of the necessity, and as to whom he will or will not employ to render aid, and as to whether aid shall be rendered. It may be conceded as a general rule that a claim against a county or township, can only be founded upon a contract with the proper officer under authority of a statute, acting within the scope of his statutory authority, or upon a statute. Prior to the enactment of 1901 (Acts 1901 p. 323, §9741 *et seq.* Burns 1908), we had in this State a number of disconnected statutes touching the subject of the care of the poor, and poor relief, and the burial of the poor and destitute sailors and soldiers, but by that act the entire subject was revised. Prior to that time the expense of care and burial of the poor was chargeable against the counties, as were also, and are yet, the charges for the interment of indigent soldiers and sailors. Since the passage of that act, the expense of care and burial of the poor other than soldiers and sailors, is chargeable against the township of which they are residents, or in which their demise occurs. §§9746, 9773, 9774, 9778 Burns 1908, Acts 1901 p. 323, Acts 1907 p. 330. This act was probably passed in view of prior holdings of this and the Appellate Court, notably in *Sherfey, etc., Co.* v. *Board, etc.* (1901), 26 Ind. App. 66, 59 N. E. 186. The act also covers the subject of temporary aid, as to which there are restrictions imposed, in cases outside of county asylums, and in committing to those institutions. §§9744, 9747, 9756, 9761-9763 Burns 1908, Acts 1901 p. 323. This act repeals all former laws on the subjects, and comports more with our ideas of benefactions and aid to the distressed and necessitous. It goes farther than any previous act. By §9746, *supra*, the overseer is

1.

given oversight of the poor of his township, and required to see that they are properly relieved and taken care of in the manner provided by law, and elsewhere in the act it is pointed out what he shall do. It then provides for cases of necessity, and for prompt provision of medical and surgical attendance and medicines for all poor in his township, outside of public institutions. Now suppose that no one but the trustee is authorized to act, and he is absent, or cannot be found, and death is imminent, unless aid is given. Shall the person be permitted to die, because the overseer cannot be found? Or, suppose he is found, and for reasons of his own, or because he thinks it unnecessary, refuses to employ aid, is it enough to say that the law will be satisfied by prosecuting him criminally for failure to discharge a plain statutory duty, even though a human life is sacrificed? The services of a surgeon or physician cannot be required as a matter of charity, and in the meantime death ensues. It is probably different where there is an opportunity, by reason of conditions, to communicate with the overseer, or where he can have an opportunity to examine into the conditions; there he should be called on. But suppose in an emergency he refuses for any cause, to act, or cannot be reached. The law is just as mandatory that the relief shall be given at the expense of the township, as it is that the overseer shall provide it. It is therefore the law's mandate in such an emergency as is here shown, which raises an implied liability to one who renders such necessary and prompt service as is here shown, for the reasonable value of the service. It is not a voluntary service, but an obligation imposed by law. *Board, etc.*, v. *Cole* (1893), 9 Ind. App. 474, 36 N. E. 912. It may also be granted that the obligation does not arise upon the request of some one other than the overseer, but it is imposed by the statute, where the circumstances are such as disclose the necessity for prompt action by those who are capable of judging of the necessity and impending peril.

But it is said that the provisions of the act of 1901 are expressly controlled by the county reform law of 1899, and are aimed to be part of a county system, and that any payment for services not directed by the overseer, is a voluntary payment, prohibited by the county reform act of 1899. §5918 *et seq.* Burns 1908, and especially §5950 Burns 1908, Acts 1899 *p.* 343. In the first place, it is to be observed that that act refers to county expenditures, and has no reference to the mandatory requirements of a later statute, as to township expenditures, except that overseers are limited in expenditures in certain cases to temporary aid, not exceeding $15 except upon authority of boards of commissioners, but burials and some other exceptions are made. §§9747, 9748, 9751, 9752 Burns 1908, Acts 1901 p. 323. The general plan is, to provide in the county asylums for the poor, as provided in §9744, *supra,* but the act indicates its acknowledgment of other necessitous conditions, which may arise. Our holding in no wise conflicts with the county reform act, or with the case of *Board, etc.,* v. *Hunter* (1903), 161 Ind. 478, 68 N. E. 1022. That case arose after both the acts of 1899 and 1901 went into effect, and was not one for expenses of temporary relief, limited by the act of 1901 to $15, but the claim was for services alleged to have been rendered the county, after the county reform act was passed, which repealed the former law as to the expense of care for the insane, outside of the county institutions, and expressly prohibited its allowance. This was doubtless also due to the existence of other acts at that time expressly providing for the care of the insane in the State institutions (§§3691-3739 Burns 1908, §§2842-2878 R. S. 1881, and amendments thereto [Acts 1889 p. 391, Acts 1901 p. 529], and other acts there to be found), which, also, doubtless repealed the portion of the section of the act of 1855 (Acts 1855 p. 133, §5145 R. S. 1881) involved in that case.

The judgment is reversed with instructions to the court

below to overrule the demurrer to the complaint, and for further proceedings not inconsistent with this opinion.

NOTE.—Reported in 103 N. E. 843. See, also, under (1) 30 Cyc. 1150; (2) 30 Cyc. 1128. As to law of vagrancy, see 137 Am. St. 940. As to the question of the right to compensation from public for relief furnished poor person, in cases not provided for by law, or where there has been no compliance with statutory prerequisites, see 39 L. R. A. (N. S.) 161. As to the liability of the public for medical services to indigent person in absence of notice or request, see 9 L. R. A. (N. S.) 1234.

CITY OF HUNTINGTON *v.* CLINE ET AL.

[No. 22,574. Filed January 8, 1914.]

1. APPEAL.—*Briefs.—Assignment of Errors.—Questions Not Considered.*—The court will not consider questions presented by assignment of errors containing twenty-seven specifications, where the transcript is in inextricable confusion, and appellant's brief does not comply with Rule 22 of the Supreme Court, providing that after a concise statement of the record presenting every error and exception relied on, appellant's brief shall contain, under a separate heading of each error relied on, separately numbered propositions or points, stated concisely, and without argument or elaboration. p. 8.

From Huntington Circuit Court; *Levi Mock*, Special Judge.

Proceeding by the City of Huntington for the construction of a sewer. From a judgment of the circuit court modifying and reducing the assessments against the property of John Q. Cline and others, the city appeals. (Transferred from the Appellate Court under §1394 Burns 1908, Acts 1901 p. 565.) *Affirmed.*

Emmett O. King and *C. W. Watkins*, for appellant.

J. B. Kenner, Lesh & Lesh and *Cline & Cline*, for appellees.

Cox, J.—This was a proceeding by appellant to construct a sanitary sewer in certain of its streets, under the provisions of the act of May 15, 1901 (Acts 1901 p. 534, §§3623a-

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF HANSON)

IN CIRCUIT COURT

FIRST JUDICIAL CIRCUIT

QUEEN OF PEACE HOSPITAL AND PRESENTATION SISTERS and rec... INCORPORATED d/b/a MCKENNAN HOSPITAL, [illegible] 2006 RAMONA SCHROEDER Clerk of Circuit Court Plaintiff, v. HANSON COUNTY, SOUTH DAKOTA, (Asuncion Canseco-Baiz, Jose Rafael Chirino, Nicasio Pulido, Jose Marques, Marino Cantoraral, Leonel Garcia, Osmel E. Artiaga, Ceasar Rodriques, Faustino Salazar, Mario Moreno, Sergio Moreno, Fabian Castillo, Amado Moreno, Cesareo Rodriquez-Real a/k/a Raal, Defendant.	CIV. 93-22 ORDER OF DISMISSAL

The above-referenced matter having been commenced in Circuit Court by the filing of a Notice of Appeal and Appeal Bond, and the parties have agreed to dismissal of this action pursuant to settlement and payment of the underlying accounts in this matter, and the Court having reviewed all records and files herein, good cause appearing therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that the above-referenced matter commenced in Circuit Court is hereby dismissed with prejudice, each party to bear their own attorney fees and costs, if any.

Dated this 1 day of Feb, 2006.

BY THE COURT:

CIRCUIT COURT JUDGE

ATTEST:
Ramona Schroeder - Clerk of Courts

By Ramona Schroeder
~~Deputy~~

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF HANSON)

IN CIRCUIT COURT

FIRST JUDICIAL CIRCUIT

QUEEN OF PEACE HOSPITAL AND PRESENTATION SISTERS, INCORPORATED d/b/a MCKENNAN HOSPITAL, Plaintiff, v. HANSON COUNTY, SOUTH DAKOTA, (Asuncion Canseco-Baiz, Jose Rafael Chirino, Nicasio Pulido, Jose Marques, Marino Cantoraral, Leonel Garcia, Osmel E. Artiaga, Ceasar Rodriques, Faustino Salazar, Mario Moreno, Sergio Moreno, Fabian Castillo, Amado Moreno, Cesareo Rodriquez-Real a/k/a Raal, Defendant.	Filed in Circuit Court and recorded in Book ____ of _____ Page _____ CIV. 93-22 STIPULATION OF DISMISSAL

COMES NOW the above-referenced Plaintiff by and through its counsel of record, Robert R. Nelson, and the above-referenced Defendant, by and through its counsel of record, James Davies, Hanson County State's Attorney, and hereby stipulate and agree that pursuant to settlement and payment of the underlying accounts in the amount of $22,546.90, Plaintiff agrees to dismiss its claim with prejudice, each party to bear their own costs, if any.

Dated this 18th day of January, 2006.

Robert R. Nelson
Attorney at Law
P.O. Box 1843
Sioux Falls, SD 57101-1843
Attorney for Plaintiff

Dated this 19 day of January, 2006.

James Davies
Hanson County State's Attorney
P.O. Box 277
Alexandria, SD 57311
Attorney for Defendant

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF POTTER)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

AVERA HEART HOSPITAL OF SOUTH DAKOTA AND AVERA ST. LUKE'S HOSPITAL, Plaintiffs, v. POTTER COUNTY, SOUTH DAKOTA, (B.R.A.), Defendant.	53CIV12-000057 ORDER

This matter came on for hearing of Avera Heart Hospital's and Avera St. Luke's (Avera) Motion for Order Directing Assistance pursuant to SDCL 28-13-40, for the hospitalization of B.R.A. , a non-resident of this Country and Potter County on a work visa, who suffered a heart attack while working in Potter County. Avera appeared through their counsel, Robert R. Nelson, Sioux Falls, and Potter County appeared through its counsel, States Attorney Craig Smith.

The Court reviewed Avera's Motion, supporting affidavits, statutes and cases cited, and Potter County's Motion/Objection and supporting affidavits, and heard oral argument by respective counsel. The parties advising the Court that they have informally waived Findings of Fact and Conclusions of Law, good cause otherwise appearing therefore, it is hereby,

ORDERED, ADJUDGED, AND DECREED, that Potter County is legally responsible for the hospitalization provided by Avera to B.R.A., a medically indigent person, as a result of his heart attack in Potter County, pursuant to SDCL 28-13-1 et. seq., and specifically SDCL 28-13-37. As such, it is not necessary for this Court to determine if B.R.A. was a legal resident of Potter County under SDCL Ch. 28-13 at the time of his hospitalization; and it is further

ORDERED, ADJUDGED, AND DECREED, that Potter County shall pay Avera's claims for hospitalization provided to B.R.A. at the lesser of actual cost, or pursuant to medicaid payment methodology as provided in SDCL 28-13-29, together with any taxable disbursements provided by law.

Let Judgment be entered accordingly.

BY THE COURT:
Signed: 10/18/2017 3:20:21 PM

CIRCUIT COURT JUDGE

Attest:
Westphal, Kathie
Clerk/Deputy

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF WALWORTH)

FILED
MAY 27 2009
SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM
5TH CIRCUIT CLERK OF COURT

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

AVERA ST. LUKE'S HOSPITAL and ABERDEEN SURGICAL ASSOCIATES, L.L.P., Plaintiffs, v. WALWORTH COUNTY, SOUTH DAKOTA, (R.H.) Defendant.	CIV. 01-89 ORDER OF DISMISSAL

The above-referenced matter having been commenced in Circuit Court by the filing of a Notice of Appeal and Appeal Bond, and the parties have agreed to dismissal of this action pursuant to settlement and payment of the underlying accounts in this matter, and the Court having reviewed all records and files herein, good cause appearing therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that the above-referenced matter commenced in Circuit Court is hereby dismissed with prejudice, each party to bear their own attorney fees and costs, if any.

Dated this 22nd day of May, 2009.

BY THE COURT:

HONORABLE SCOTT P. MYREN
CIRCUIT COURT JUDGE

ATTEST:
Marlys Rau - Clerk of Courts

By Deputy

FILED

MAY 27 2009

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM
5TH CIRCUIT CLERK OF COURT

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF WALWORTH)

IN CIRCUIT COURT

FIFTH JUDICIAL CIRCUIT

AVERA ST. LUKE'S HOSPITAL and ABERDEEN SURGICAL ASSOCIATES, L.L.P., Plaintiffs, v. WALWORTH COUNTY, SOUTH DAKOTA, (R.H.) Defendant.	CIV. 01-89 STIPULATION OF DISMISSAL

COMES NOW the above-referenced Plaintiff by and through its counsel of record, Robert R. Nelson, and the above-referenced Defendant, by and through its counsel of record, Christopher Jansen, Walworth County State's Attorney, and hereby stipulate and agree that pursuant to settlement and payment of the underlying accounts in the amount of $25,000.00 from Defendant, Plaintiff agrees to dismiss its claim with prejudice, each party to bear their own costs, if any.

Dated this 21st day of April, 2009.

Robert R. Nelson
Attorney at Law
P.O. Box 1843
Sioux Falls, SD 57101-1843
Attorney for Plaintiff

Dated this 18th day of April, 2009.

Christopher Jansen
Walworth County State's Attorney
P.O. Box 424
Selby, SD 57472-0424
Attorney for Defendant

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS IS A COMMUNICATION FROM A DEBT COLLECTOR

STATE OF SOUTH DAKOTA
CIRCUIT COURT, POTTER CO.
FILED
JUL 09 2001
Kathie Nesseth Clerk
By _____ Deputy

C00041
29

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF POTTER)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

JANICE KELLER, as Guardian of CHARLES KELLER, Petitioner, v. POTTER COUNTY, SOUTH DAKOTA, Respondent.	CIV. 00-41 ORDER

The above-referenced matter having come on for hearing of Petitioner's Statement of Issues on Appeal, on Thursday, May 22, 2001 at 1:30 PM, the Honorable James W. Anderson, Circuit Court Judge, presiding; the Petitioner, Janice Keller, as Guardian of Charles Keller, personally present and represented by her counsel, Robert Nelson, attorney at law, Sioux Falls, South Dakota, and Rory King, attorney at law, Aberdeen, South Dakota, and the Respondent, attending in person through its Board of County Commissioners and being represented by its counsel of record, Craig E. Smith, Potter County State's Attorney; the Petitioner having duly served and filed a Statement of Issues on Appeal together with a Notice of Hearing thereon and Petitioner's Statement of Issues on Appeal being supported by an Affidavit of Janice Keller as Guardian of Charles Keller, an Affidavit of John Vidoloff, M.D., as attending/treating physician of Charles Keller, an Affidavit of Mary Vidoloff as office manager for John Vidoloff, M.D., and an Affidavit of Robert R. Nelson, counsel for the Petitioner, together with all exhibits and documents attached thereto, all of which were duly served upon Respondent by and through their State's Attorney and filed herein; and

The Court having reviewed the Petitioner's Statement of Issues on Appeal, Affidavits with attached exhibits and documents in support thereof, having further heard the oral testimony of Petitioner, Janice Keller, reviewed the exhibits introduced by Respondent Potter County, and

the written brief submitted by Petitioner, and finally, having heard oral argument of counsel for the respective parties, and the Court having entered its Findings of Fact and Conclusions of Law, good cause otherwise appearing therefore, it is hereby,

ORDERED, ADJUDGED AND DECREED, that the decision of the Potter County Board of County Commissioners made at an October 3, 2000 meeting denying an Application for Poor Relief Assistance filed Janice Keller, Petitioner herein, was wrongful, not in good faith, and clearly erroneous based upon the entire evidence in the record including but not limited to, the totality of circumstances involving Charles Keller's financial status, and present or future hope of ever being able to repay the hospital bill, both at the time of the hospitalization in August of 1993 and when the bill became due, and on such grounds is hereby overruled pursuant to SDCL § 28-13-40; and it is further,

ORDERED, ADJUDGED AND DECREED, that Potter County shall pay directly to Avera St. Luke's Hospital on behalf of Charles W. Keller the outstanding principal account balance for hospitalization, medical care and treatment provided Charles Keller from August 24, 1993 through July 5, 1994, which amount is $186,558.40, said sum to be reduced and paid pursuant to the actual cost of hospitalization as provided in SDCL § 28-13-29 (as the statute existed in 1993), the Hospital's Statement of Cost then on file with the Department of Health in Pierre, and Hospital Requests for Payment as appropriate in the sum of $120,663.64, and, it is further,

ORDERED, ADJUDGED AND DECREED, that Respondent Potter County shall provide assistance to Charles W. Keller for his attending/treating physician bill which remains outstanding in the principal dollar amount of $2,290.99 for John C. Vidoloff, M.D., pursuant to the Affidavit of Mary Vidoloff on file herein, and Section IX(E)(4) of the Indigent Health Care Guidelines and Application Form adopted by the Potter County Commission on August 7, 1990, such payment to be directly from Potter County to Dr. Vidoloff.

Dated this 6 day of July, 2001.

BY THE COURT

JAMES W. ANDERSON
CIRCUIT COURT JUDGE

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.

ATTEST:
Kathie Westphal - Clerk of Courts
Kathie Westphal

By _____
Deputy

Civ 00-41
37

STATE OF SOUTH DAKOTA) STATE OF SOUTH DAKOTA CIRCUIT COURT, POTTER CO. FILED SEP 17 2001 Kathi Wesselhoft Clerk By Deputy
:SS
COUNTY OF POTTER) IN CIRCUIT COURT SIXTH JUDICIAL CIRCUIT

JANICE KELLER, as Guardian of CHARLES KELLER, Petitioner, v. POTTER COUNTY, SOUTH DAKOTA, Respondent.	CIV. 00-41 STIPULATION OF SETTLEMENT

COMES NOW the above-referenced Petitioner by and through her counsel of record, Robert R. Nelson and Rory King, and the above-referenced Respondent, by and through its counsel of record, Craig Smith, Potter County State's Attorney, and hereby stipulate and agree that following Judgment being entered against Potter County for payment of county poor relief claims of Charles Keller and subsequent to disputes between the parties as to the actual cost or dollar amount of reimbursement which should be paid pursuant to the Judgment on the claims of Petitioner, Janice Keller as Guardian of Charles Keller, the parties have reached agreement and stipulation pursuant to payment of $114,020.77 of which $107,377.90 which has been received and $6,642.87 which is to be paid simultaneously with this Stipulation, that all claims of the Petitioner, Janice Keller as Guardian of Charles Keller, are hereby resolved, settled and satisfied in full.

Dated this 18th day of September, 2001.

Robert R. Nelson
Attorney at Law
P.O. Box 1843
Sioux Falls, SD 57101-1843

Rory King
Siegel, Barnett & Schutz
P.O. Box 490
Aberdeen, SD 57402
Counsel for Janice Keller

Dated this 19th day of September, 2001.

Craig E. Smith
Potter County State's Attorney
P.O. Box 205
Gettysburg, SD 57442
Counsel for Respondent

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF WALWORTH)

IN CIRCUIT COURT

FIFTH JUDICIAL CIRCUIT

AVERA ST. LUKE'S HOSPITAL, Plaintiff, v. WALWORTH COUNTY, SOUTH DAKOTA (C.R.), Defendant.	64CIV17-000008 NOTICE OF ENTRY OF ORDER AND JUDGMENT

PLEASE TAKE NOTICE that an Order and Judgment were entered by the Honorable Scott P. Myren on the 14th day of November, 2017, a true and correct copy of which is attached hereto and by this reference made a part hereof as fully as if set forth at length and detail herein, has been entered, filed and recorded in the above action in the office of the above-entitled Court.

Dated this 15th day of November, 2017.

Robert R. Nelson
Robert.Nelson@Avera.org
212 East 11th Street, Suite 200
Sioux Falls, SD 57104
(605) 322-4621
Attorney for Plaintiff

Robert R. Nelson, Attorney for Plaintiffs, hereby certifies that on the 15th day of November, 2017, he served a true and correct copy of the Notice of Entry of Order and Judgment in the above-referenced matter using the Odyssey filing system and served by electronic serviced intended as service on the parties as follows:

Mr. James Hare
Walworth County State's Attorney
P.O. Box 424
Selby, SD 57472-0424

Dated this 15th day of November, 2017.

Robert R. Nelson

2. C.R., at the time of hospitalization, had not made the final decision to return to South Dakota full-time.

3. C.R. had not reached the "state of mind" to live in or be a South Dakota resident full-time at the time of hospitalization.

4. At the time of emergency hospitalization for a nonresident of Walworth County, an immediate call or notice to the County is not plausible. Avera did timely submit a Notice of Hospitalization within seven days of admission of C.R. to the County.

5. C.R. was clearly lying ill in the County having presented to the Emergency Department of the Mobridge Regional Hospital. In the Emergency Department, the physician asked C.R. whether she wanted to be transferred to Bismarck or Aberdeen. When C.R. questioned the physician, she indicated C.R. could either go to one of those facilities for surgery immediately, or "go home and die."

6. C.R. was transferred to Avera, St. Luke's Hospital and underwent emergency appendectomy surgery the evening of November 20, 2015.

If any of the above Findings of Fact are deemed to be Conclusions of Law, or the Conclusions of Law set forth below are deemed to be Findings of Fact, they shall be incorporated in the respective section just as if set forth at length.

Based upon the above Findings of Fact, the Court enters its

CONCLUSIONS OF LAW

1. C.R. was medically indigent and not indigent by design based on her voluntary decrease from full-time employment to part-time in order to assist her ailing parents in Walworth County, South Dakota, which decrease in employment ultimately resulting in C.R. losing her health insurance with her Colorado employer.

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF WALWORTH)

IN CIRCUIT COURT

FIFTH JUDICIAL CIRCUIT

AVERA ST. LUKE'S HOSPITAL, Plaintiff, v. WALWORTH COUNTY, SOUTH DAKOTA (C.R.), Defendant.	64CIV17-000008 JUDGMENT

The above matter came on for hearing on Tuesday, October 31, 2017 of Avera St. Luke's Hospital's (Avera) Motion for Order Directing Assistance. Avera appeared by and through its counsel of record, Robert R. Nelson, Sioux Falls, South Dakota, and Walworth County appeared through its counsel, States Attorney James Hare, Selby, South Dakota.

The Court having entered its Findings of Fact and Conclusions of Law, the parties having waived the entry of further Findings of Fact and Conclusions of Law on the record, and directing that the Commissioners of Walworth County, South Dakota should pay this claim, it is hereby

ORDERED, ADJUDGED AND DECREED, that the Commissioners of Walworth County shall pay to Avera St. Luke's Hospital the principal sum of $5,489.08. (actual voucher/cost amount of $6,539.08, less $1,050.00 received after C.R.'s hospitalization from AFLAC), pursuant to SDCL 28-13-29 as the lesser amount compared to Medicaid payment methodology, and it is further

ORDERED, ADJUGED AND DECREED that the Commissioners of Walworth County pay one-half of total taxable disbursements, per stipulation of counsel for the respective parties, of $658.70, making a total judgment or payment to Avera St. Luke's of $6,147.78.

Dated this 14th day of November, 2017

BY THE COURT

Attest:
Ackerman, Gwenn
Clerk/Deputy

Signed: 11/14/2017 11:15:16 AM

CIRCUIT COURT JUDGE

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF GRANT)

IN CIRCUIT COURT

THIRD JUDICIAL CIRCUIT

AVERA HEART HOSPITAL OF SOUTH DAKOTA, Plaintiff, v. GRANT COUNTY, SOUTH DAKOTA, (J.D.), Defendant.	25CIV21-000054 ORDER OF DISMISSAL

The above-referenced matter having been commenced in Circuit Court by the filing of a Notice of Appeal and Appeal Bond, and the parties have agreed to dismissal of this action, and the Court having reviewed the signed Stipulation of Settlement and all records and files herein, good cause appearing therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that the above-referenced matter commenced in Circuit Court is hereby dismissed with prejudice.

2/17/2022 10:56:07 AM

Attest:
Johnson, Donna
Clerk/Deputy

BY THE COURT:

CIRCUIT COURT JUDGE

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF GRANT)

IN CIRCUIT COURT

THIRD JUDICIAL CIRCUIT

AVERA HEART HOSPITAL OF SOUTH DAKOTA, Plaintiff, v. GRANT COUNTY, SOUTH DAKOTA, (J.D.), Defendant.	25CIV21-000054 STIPULATION OF SETTLEMENT AND DISMISSAL

COMES NOW the above-referenced Plaintiff by and through its counsel of record, Robert R. Nelson, and the above-referenced Defendant, by and through its counsel of record, Mark Reedstrom, Grant County Deputy State's Attorney, and hereby stipulate and agree that pursuant to settlement of $42,771.16, and after deducting payment from J.D. of $5,233.40, a total payment of $28,384.56 by Grant County to Avera Heart Hospital of South Dakota (7/2-3/2017, 8/13-14/2018 and 9/11-12/2020 dates of service) and payment of $9,153.20 to Milbank Area Hospital, Plaintiff agrees to dismiss its claim with prejudice, each party to bear their own costs, if any.

Dated this 17 day of January, 2022.

Robert R. Nelson
Robert.Nelson@Avera.org
212 East 11th Street, Suite 200
Sioux Falls, SD 57104
(605) 322-4621
Attorney for Plaintiff

Dated this 31 day of January, 2022.

Mark Reedstrom
Grant County Deputy State's Attorney
210 E. 5th Avenue
Milbank, SD 57252
mark@reedstromlaw.com
Attorney for Defendant

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
: SS
COUNTY OF GRANT) THIRD JUDICIAL CIRCUIT

AVERA HEART HOSPITAL OF SOUTH DAKOTA, Plaintiff, v. GRANT COUNTY, SOUTH DAKOTA, (J.D.) Defendant.	49CIV___ - ___ STIPULATION OF SETTLEMENT AND DISMISSAL

COMES NOW the above-referenced Plaintiff by and through its counsel of record, Robert R. Nelson, and the above-referenced Defendant, by and through its counsel of record, Mark Reedstrom, Grant County Deputy State's Attorney, and hereby stipulate and agree that pursuant to settlement and payment in the amount of $3,573.04 by Grant County to Avera Heart Hospital of South Dakota, Plaintiff agrees to dismiss its claim with prejudice, each party to bear their own costs, if any.

Dated this 12 day of January, 2022.

Robert R. Nelson
Robert.Nelson@Avera.org
212 East 11th Street, Suite 200
Sioux Falls, SD 57104
(605) 322-4621
Attorney for Plaintiff

Dated this 31 day of January, 2022.

Mark Reedstrom
Grant County Deputy State's Attorney
210 E. 5th Avenue
Milbank, SD 57252
mark@reedstromlaw.com
Attorney for Defendant

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF GRANT)

IN CIRCUIT COURT

THIRD JUDICIAL CIRCUIT

AVERA ST. LUKE'S HOSPITAL AND AVERA MCKENNAN HOSPITAL, Plaintiffs, v. GRANT COUNTY, SOUTH DAKOTA, (J.D.), Defendant.	25CIV18-000045 ORDER OF DISMISSAL

The above-referenced matter having been commenced in Circuit Court by the filing of a Notice of Appeal and Appeal Bonds, and the parties have agreed to dismissal of this action, and the Court having reviewed the signed Stipulation for Settlement and all records and files herein, good cause appearing therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that the above-referenced matter commenced in Circuit Court is hereby dismissed with prejudice.

2/11/2022 10:52:25 AM

Attest:
Johnson, Donna
Clerk/Deputy

BY THE COURT:

CIRCUIT COURT JUDGE

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF GRANT)

IN CIRCUIT COURT

THIRD JUDICIAL CIRCUIT

AVERA ST. LUKE'S HOSPITAL AND AVERA MCKENNAN HOSPITAL, Plaintiffs, v. GRANT COUNTY, SOUTH DAKOTA, (J.D.), Defendant.	25CIV18-000045 STIPULATION OF SETTLEMENT AND DISMISSAL

COMES NOW the above-referenced Plaintiffs by and through their counsel of record, Robert R. Nelson, and the above-referenced Defendant, by and through its counsel of record, Mark Reedstrom, Grant County Deputy State's Attorney, and hereby stipulate and agree that pursuant to settlement and payment of $47,226.59 ($21,004.63 to Avera St. Luke's Hospital, $12,701.52 to Avera McKennan Hospital and $3,573.04 to Avera Heart Hospital of South Dakota) by Grant County, Plaintiffs (and Avera Heart Hospital of South Dakota) agree to dismiss their claims with prejudice, each party to bear their own costs, if any (less J.D.'s household ability to pay pursuant to County eligibility calculations of $9,847.40).

Dated this 12 day of January, 2022.

Robert R. Nelson

Robert R. Nelson
Robert.Nelson@Avera.org
212 East 11th Street, Suite 200
Sioux Falls, SD 57104
(605) 322-4621
Attorney for Plaintiffs

Dated this 31 day of January, 2022.

Mark Reedstrom

Mark Reedstrom
Grant County Deputy State's Attorney
210 E. 5th Avenue
Milbank, SD 57252
mark@reedstromlaw.com
Attorney for Defendant

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF GRANT)

IN CIRCUIT COURT
THIRD JUDICIAL CIRCUIT

AVERA MILBANK AREA HOSPITAL, Plaintiff, v. GRANT COUNTY, SOUTH DAKOTA, (J.D.) Defendant.	49CIV___ – ____ STIPULATION OF SETTLEMENT AND DISMISSAL

COMES NOW the above-referenced Plaintiff by and through its counsel of record, Robert R. Nelson, and the above-referenced Defendant, by and through its counsel of record, Mark Reedstrom, Grant County Deputy State's Attorney, and hereby stipulate and agree that pursuant to settlement and payment in the amount of $9,153.20 by Grant County to Avera Milbank Area Hospital, Plaintiff agrees to dismiss its claim with prejudice, each party to bear their own costs, if any.

Dated this 12 day of January, 2022.

Robert R. Nelson
Robert.Nelson@Avera.org
212 East 11th Street, Suite 200
Sioux Falls, SD 57104
(605) 322-4621
Attorney for Plaintiff

Dated this 31 day of January, 2022.

Mark Reedstrom
Grant County Deputy State's Attorney
210 E. 5th Avenue
Milbank, SD 57252
mark@reedstromlaw.com
Attorney for Defendant

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF MINNEHAHA)

IN CIRCUIT COURT

SECOND JUDICIAL CIRCUIT

AVERA HEART HOSPITAL OF SOUTH DAKOTA, Plaintiff, v. MINNEHAHA COUNTY, SOUTH DAKOTA, (E.F.), Defendant.	49CIV10-1310 ORDER OF DISMISSAL

The above-referenced matter having been commenced in Circuit Court by the filing of a Notice of Appeal and Appeal Bond, and the parties have agreed to dismissal of this action, and the Court having reviewed the signed Stipulation of Settlement and Dismissal, and all records and files herein, good cause appearing therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that the above-referenced matter commenced in Circuit Court is hereby dismissed with prejudice.

Dated this 4 day of February 2022.

BY THE COURT:

CIRCUIT COURT JUDGE

ATTEST:
Angelia Gries - Clerk of Courts

By: Russell
Deputy

FILED
FEB 07 2022
Minnehaha County, S.D.
Clerk Circuit Court

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF MINNEHAHA)

IN CIRCUIT COURT

SECOND JUDICIAL CIRCUIT

AVERA HEART HOSPITAL OF SOUTH DAKOTA, Plaintiff, v. MINNEHAHA COUNTY, SOUTH DAKOTA, (E.F.), Defendant.	49CIV10-1310 STIPULATION SETTLEMENT AND OF DISMISSAL

COMES NOW the above-referenced Plaintiff by and through its counsel of record, Robert R. Nelson, and the above-referenced Defendant, by and through its counsel of record, Michael Thompson, Minnehaha County Deputy State's Attorney, and hereby stipulate that pursuant to payment in the amount of $53,383.00 plus disbursements of $117.32 from Minnehaha County. Plaintiff stipulates and agrees to waive prejudgment interest. Plaintiff agrees to dismiss this case with prejudice designated as set forth above.

Dated this 5 day of January, 2022.

Robert R. Nelson
Robert.Nelson@Avera.org
212 East 11th Street, Suite 200
Sioux Falls, SD 57104
(605) 322-4621
Attorney for Plaintiff

Dated this 18th day of January, 2022.

Michael Thompson
Deputy State's Attorney
Minnehaha County State's Attorney
521 North Main Avenue, Suite 200
Sioux Falls, SD 57104
mthompson@minnehahacounty.org
Attorney for Defendant

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	: SS	
COUNTY OF HUGHES	)	SIXTH JUDICIAL CIRCUIT

AVERA ST. MARY'S HOSPITAL, Plaintiff, v. HUGHES COUNTY, SOUTH DAKOTA, (M.B.), Defendant.	32CIV14-000126 STIPULATION FOR SETTLEMENT AND DISMISSAL

COMES NOW the above-referenced Plaintiff, through their counsel of record, Robert R. Nelson, and the above-referenced Defendant, through its counsel of record, Laura C. Rowe, Hughes County Deputy State's Attorney, and hereby stipulate and agree that pursuant to payment in the amount of $16,302.65 from Hughes County, Plaintiff agrees to dismiss this case as set forth above. The parties are responsible for their own attorney's fees and costs.

Dated this 4 day of ~~March~~ April, 2022.

Robert R. Nelson
212 East 11th Street, Suite 200
Sioux Falls, SD 57104
Telephone: (605) 322-4607
Email: robert.nelson@avera.org
Attorney for Plaintiff

Dated this 30 day of March, 2022.

Laura C. Rowe
Hughes County Deputy State's Attorney
104 East Capitol
Pierre, SD 57501
Attorney for Defendant

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF HUGHES)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

AVERA ST. MARY'S HOSPITAL, Plaintiff, v. HUGHES COUNTY, SOUTH DAKOTA, (M.B.), Defendant.	32CIV14-000126 ORDER OF DISMISSAL

The above-referenced matter having been commenced in Circuit Court by the filing of a Notice of Appeal and Appeal Bond, and the parties have agreed to settlement and dismissal of this action, and the Court having reviewed all records and files herein, good cause appearing therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that the above-referenced matter commenced in Circuit Court, it is hereby dismissed with each party to bear their own attorney fees and costs, if any.

BY THE COURT:
4/21/2022 10:48:56 AM
Christie Klinger
CIRCUIT COURT JUDGE

Attest:
Deuter-Cross, TaraJo
Clerk/Deputy

IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

* * * *

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

FEB 3 2023

Clerk

AVERA ST. MARY'S HOSPITAL, Plaintiff and Appellant,	**ORDER GRANTING MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF**
vs.	**#30152**
SULLY COUNTY, SOUTH DAKOTA, Defendant and Appellee.	

South Dakota Association of Healthcare Organizations having served and filed a motion for leave to file an amicus curiae brief in the above-entitled matter, and the Court having considered the motion and being fully advised in the premises, now, therefore, it is

ORDERED that said motion be and it is hereby granted.

IT IS FURTHER ORDERED that Amicus Curiae South Dakota Association of Healthcare Organizations' brief shall be due for service and filing no later than February 17, 2023.

IT IS FURTHER ORDERED that appellee's response brief shall be due for service and filing 45 days from service of Amicus Curiae Brief.

DATED at Pierre, South Dakota, this 3rd day of February, 2023.

BY THE COURT:

Steven R. Jensen, Chief Justice

ATTEST:

Clerk of the Supreme Court
(SEAL)

PARTICIPATING: Chief Justice Steven R. Jensen, Justices Janine M. Kern, Mark E. Salter, Patricia J. DeVaney and Scott P. Myren.

Gallagher, Sarah

From: SCNotice
Sent: Friday, February 3, 2023 10:00 AM
To: Robert.Nelson@avera.org; James Moore; RVogel@rwwsh.com
Cc: Paula Haight; Kirstin Lange; Kristy Thielsen
Subject: #30152, Avera v. Sully County
Attachments: 30152 Amicus Order.pdf

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

Appeal No. 30152

AVERA ST. MARY'S HOSPITAL,

Appellant,

v.

SULLY COUNTY, SOUTH DAKOTA,

Appellee.

Appeal from the Circuit Court, Sixth Judicial Circuit
Sully County, South Dakota

THE HONORABLE CHRISTINA L. KLINGER
Circuit Court Judge

BRIEF OF *AMICUS CURIAE* SOUTH DAKOTA ASSOCIATION OF HEALTHCARE ORGANIZATIONS IN SUPPORT OF APPELLANT

Robert R. Nelson
Attorney at Law
212 East 11th Street, Suite 200
Sioux Falls, SD 57104
Ph. (605) 322-4621
Attorney for Appellant

Ryan S. Vogel
Zach Peterson
Richardson, Wyly, Wise, Sauck & Hieb, LLP
P.O. Box 1030
Aberdeen, SD 57402-1030
Ph. (605) 225-6310
Attorneys for Appellee

James E. Moore
Justin G. Smith
Christopher A. Dabney
Woods, Fuller, Shultz & Smith P.C.
300 S. Phillips Avenue, Suite 300
P.O. Box 5027
Sioux Falls, SD 57117-5027
Ph. (605) 336-3890
Attorneys for Amicus Curiae SDAHO

Notice of Appeal filed October 26, 2022

Table of Contents

Table of Contents i

Table of Authorities ii

Interest of the Amicus Curiae 1

Summary of the Case 1

Argument 2

1. The Legislature already abrogated *Roane v. Hutchinson County* 4

2. Alternatively, if *Roane* has not already been abrogated, it should be overruled. 5

   a. *Roane* conflicts with the plain language of SDCL § 28-13-37. 5

   b. *Roane* conflicts with prior and subsequent cases. 9

   c. *Roane* is inconsistent with federal legislation. 11

   d. *Roane* is contrary to public policy. 12

Conclusion 13

Certificate of Compliance 14

Certificate of Service 15

Table of Authorities

Cases

AEG Processing Ctr. No. 58, Inc. v. S.D. Dep't of Revenue & Regul.,
2013 S.D. 75, 838 N.W.2d 843 5

Bartron Clinic v. Kallemeyn,
245 N.W. 393 (S.D. 1932) 4, 8, 10, 11, 13

Hamlin Cnty. v. Clark Cnty.,
45 N.W. 329 (S.D. 1890) ..... passim

Nelson v. Sch. Bd. of Hill City Sch. Dist. No. 51-2,
459 N.W.2d 451 (S.D. 1990) 5

Roane v. Hutchinson Cnty.,
167 N.W.2d 168 (S.D. 1918) ..... passim

Sioux Valley Hosp. Ass'n v. Tripp Cnty.,
404 N.W.2d 519 (S.D. 1987) 3

Statutes

Dakota Compiled Laws, Pol. Code § 2143 (1887) 2

Dakota Compiled Laws, Pol. Code § 2152 (1887) 2

Dakota Compiled Laws, Pol. Code § 2161 (1887) 2, 3

S.D. Rev. Codes, Pol. Code § 2761 (1903) 7

S.D. Rev. Codes, Pol. Code § 2781 (1903) 6, 7, 8, 9

SDCL § 28-13-1 ..... 2, 3, 12, 13

SDCL § 28-13-32.3 ..... 4, 13

SDCL § 28-13-32.4 4

SDCL § 28-13-33 ..... 3, 4, 5

SDCL § 28-13-34.1 4

SDCL § 28-13-37 ..... passim

SDCL § 28-13-38 ..... 2, 3, 12

Federal Statutes

42 U.S.C. § 1395dd..... 11

Interest of the Amicus Curiae

The South Dakota Association of Healthcare Organizations is a trade association whose members include nonprofit hospitals in the State of South Dakota. The Association serves its members through information, education, and advocacy on a variety of healthcare-related issues. In this case, the circuit court held that a county does not have a duty under SDCL chapter 28-13 to extend poor relief to a medically indigent person who receives emergency hospital services unless a county commissioner consents before treatment. The Association is concerned that affirming the court's decision would negatively affect the operations of hospitals across South Dakota by shifting the financial burden of caring for medically indigent people from the counties to healthcare providers.

In the Association's view, this appeal presents a broad issue: whether a county can be held liable for the cost of emergency hospital services rendered to a medically indigent person without preauthorization from the county. This issue can be decided based on statutory language imposing on counties a duty to care for medically indigent people. The contrary decision in *Roane v. Hutchinson* County, 167 N.W.2d 168 (S.D. 1918), which the circuit court held it must follow, has already been abrogated by the Legislature. Alternatively, *Roane* should be overruled as contrary to state statute, poorly reasoned, contrary to current federal law, and against public policy. The Association therefore joins Avera in arguing that the circuit court's decision should be reversed.

Summary of the Case

This case involves a medically indigent person who became ill while living and working in, but not a resident of, Sully County. At the direction of a medical professional in Onida, the patient was transported to neighboring Hughes County, where

he underwent emergency surgery and hospitalization at Avera St. Mary's Hospital in Pierre. Avera notified Sully County once during the hospitalization and again shortly after. Also after the hospitalization, the patient and Avera applied to Sully County for poor relief under SDCL chapter 28-13, which relief the County denied. Avera appealed, and the circuit court, the Honorable Christina L. Klinger, held that under *Roane v. Hutchinson County*, 167 N.W. 168 (S.D. 1918), Sully County had no duty to offer poor relief because Avera did not apply before treating the medically indigent person, while the patient was still in Sully County.

Argument

Under SDCL chapter 28-13, counties in South Dakota have a duty to relieve and support the poor. As previously explained by this Court, this duty is embodied in what are now SDCL §§ 28-13-1, -37, and -38:

> [I]t is made the duty of the county—*First*, to relieve and support all poor and indigent persons lawfully settled therein; *second*, to relieve, temporarily, poor and indigent persons, not lawfully settled therein, but who stand in need of aid therein; *third*, to grant temporary relief to persons not inhabitants of the county, lying sick or in distress therein, without friends or money ….

Hamlin Cnty. v. Clark Cnty., 45 N.W. 329, 331 (S.D. 1890) (discussing Dakota Compiled Laws, Pol. Code §§ 2143, 2152, 2161 (1887)). The poor who are residents of a county are entitled to ongoing relief. Dakota Compiled Laws, Pol. Code § 2143. This statute survives as SDCL § 28-13-1. The poor who are not residents of the county are entitled to the same relief as a resident but on a temporary basis. Dakota Compiled Laws, Pol. Code § 2152. This statute survives as SDCL § 28-13-38. And other nonresidents who are not necessarily poor but who nevertheless find themselves "lying sick or in distress" and temporarily without money or friends are entitled to "temporary relief as the nature of the

[case] may require." Dakota Compiled Laws, Pol. Code § 2161. This statute survives as SDCL § 28-13-37.

In 1918, while considering an appeal involving the predecessor to SDCL § 28-13-37, this Court held:

> [T]he obligation of a county to furnish care and relief for poor and indigent persons found within such county is purely statutory, and … there is no statute law in this state authorizing the payment by the county for services voluntarily rendered by any one in caring for such poor in the absence of an express or implied contract made, in the manner provided by law, with the proper county officers binding and obligating the county to pay for such services.

Roane, 167 N.W. at 168. Although *Roane* involved only SDCL § 28-13-37, the Court's holding was equally applicable to SDCL §§ 28-13-1 and -38. *See Sioux Valley Hosp. Ass'n v. Tripp Cnty.*, 404 N.W.2d 519, 521 (S.D. 1987) (applying *Roane* to chapter 28-13 generally). Relying on *Roane*, the circuit court in the present case essentially held that preauthorization is required for a county to be liable for the cost of emergency hospital services.

Respectfully, this Court should reverse the circuit court's decision. The Legislature abrogated *Roane* in 1953 by enacting what is now SDCL § 28-13-33. And if *Roane* has not already been abrogated, it should be overruled. *Roane* was wrong to impose a preauthorization requirement to poor relief under SDCL chapter 28-13, including SDCL § 28-13-37, the statute on which Avera relies. *Roane's* view that chapter 28-13 merely gives a county sole authority to contract for the care of medically indigent people is at odds with that chapter's plain language, which explicitly establishes a county's *duty* to provide poor relief. *Roane's* restrictive treatment of the chapter also conflicts with this Court's earlier decision in *Hamlin County v. Clark County*, 45 N.W.

329 (S.D. 1890), as well as the later decision *Bartron Clinic v. Kallemeyn*, 245 N.W. 393 (S.D. 1932). Moreover, interpreting SDCL § 28-13-37 as requiring preauthorization for emergency hospital services is contrary to federal law. In any event, the continued application of *Roane* is contrary to public policy.

1. The Legislature already abrogated *Roane v. Hutchinson County*.

As noted above, *Roane* held that a county is not liable "for services voluntarily rendered by any one in caring for [the] poor in the absence of an express or implied contract made[.]" 167 N.W. at 168. But since *Roane*, the Legislature has specified that if someone qualifies for assistance under chapter 28-13, then a county can be held liable for the cost of emergency hospital services *without* preauthorization.

> Subject to the provisions of this chapter and except as expressly provided, *if a hospital furnishes emergency hospital services to a medically indigent person, the county where the medically indigent person has established residency is liable to the hospital for the reimbursement of the hospitalization.* In the case of nonemergency care, the county of residence is liable only to the extent that the board of county commissioners, in good faith, approves an application for assistance. If a county provides payment for nonemergency services, the services shall be approved by the county before the services are provided. To the extent that the county provides payment to a hospital, the county has the same remedies for the recovery of the expense as are provided by chapter 28-14 for the recovery of money expended for the relief and support of poor and indigent persons.

SDCL § 28-13-33 (emphasis added). When a hospital provides emergency services to a medically indigent patient, the hospital has up to fifteen days after admitting the patient to notify a county of the hospitalization. SDCL § 28-13-34.1. The hospital then has up to one year after discharging the patient to apply on the patient's behalf to a county for assistance. SDCL § 28-13-32.4. And a patient that instead applies for assistance on his or her own has up to two years after being discharged to apply to a county for assistance. SDCL § 28-13-32.3.

This Court presumes the Legislature was aware of *Roane* when enacting SDCL § 28-13-33, *AEG Processing Ctr. No. 58, Inc. v. S.D. Dep't of Revenue & Regul.*, 2013 S.D. 75, ¶ 12, 838 N.W.2d 843, 848, and the Court also presumes the Legislature intended SDCL § 28-13-33 to be effective, *Nelson v. Sch. Bd. of Hill City Sch. Dist. No. 51-2*, 459 N.W.2d 451, 455 (S.D. 1990). Statutes that require notification *after* admission, and an application for relief *after* discharge, are clearly incompatible with *Roane's* holding that a county must be notified and presented with an application for relief *before* treatment. Consequently, the passage of SDCL § 28-13-33 functionally abrogated *Roane*.

2. Alternatively, if *Roane* has not already been abrogated, it should be overruled.

a. *Roane* conflicts with the plain language of SDCL § 28-13-37.

Under SDCL § 28-13-37, all counties have a duty to grant relief to nonresidents in distress. The present version of this statute states:

> *It shall be the duty of the county commissioners*, on complaint made to them that any person not an inhabitant of their county is lying sick therein or in distress, without friends or money, so that he is likely to suffer, to examine into the case of such person and grant such temporary relief as the nature of the case may require.

SDCL § 28-13-37 (emphasis added). As is apparent from the emphasized text, this statute uses the mandatory word *shall* to impose explicitly a *duty* on the county commissioners to examine any report of a sick or dying nonresident in the county and to grant appropriate relief. Noticeably absent from this statute is any qualification of, or precondition to, the imposition of this duty. While the commissioners may have discretion in determining what relief the case requires, they do not have discretion *not* to examine a complaint and grant necessary relief.

This Court, as composed in 1918, held a different view of SDCL § 28-13-37's predecessor. In *Roane v. Hutchinson County*, twenty-eight men were seriously injured when the freight train they were riding on top of wrecked in Hutchinson County. 167 N.W. at 168. Because their injuries required "prompt medical and surgical attention[,]" the men were transported to the hospital in neighboring Yankton County where they received medical care. *Id.* The men were "without property and wholly insolvent" and consequently, unable to pay for their care. *Id.* The same day as the accident, one of the Hutchinson County commissioners was notified of the accident and informed that the hospital intended to bill Hutchinson County. *Id.* When later presented with the claim, the board of county commissioners rejected it. *Id.* It appears that a trial court held in favor of the hospital because the County appealed to the South Dakota Supreme Court. *Id.*

On appeal, the County argued that its duty to provide poor relief was purely statutory and that

> there is no statute law in this state authorizing the payment by the county for services voluntarily rendered by any one in caring for such poor in the absence of an express or implied contract made, in the manner provided by law, with the proper county officers binding and obligating the county to pay for such services.

Id. This Court agreed. The Court confirmed that "[t]here can be no duty resting upon the county to care for noninhabitant poor unless prescribed by statute[,]" and claimed that "[t]he only provision of our statute in relation to the care of the poor who are not inhabitants of the county is found in section 2781, Pol. Code[.]" *Roane*, 167 N.W. at 169 (citing *Hamlin Cnty.*, 45 N.W. 329). Section 2781 stated:

> It shall be the duty of the overseers of the poor, on complaint made to them that any person not an inhabitant of their county is lying sick therein

> or in distress, without friends or money, so that he or she is likely to suffer, to examine into the case of such person and grant such temporary relief as the nature of the same may require ….

S.D. Rev. Codes, Pol. Code § 2781 (1903).[1]

The *Roane* Court read § 2781 as conferring on the county commissioners sole "authority"—rather than imposing a *duty*—in "making examination and caring for and granting temporary relief to persons sick or in distress, found in such county, but who are not then inhabitants thereof[.]" 167 N.W. at 169. From this premise, the Court reasoned that a county's liability is conditioned on the commissioners examining a complaint and granting relief: "The liability of the county to pay for services rendered in granting relief to such sick and distressed persons is dependent upon an examination and granting such relief by the overseers of the poor." *Id.* From this perspective, the Court observed: "There does not appear to be any provision in this statute for exceptional urgent cases, or cases where the public officers failed to act …." *Id.* The Court also observed that "[t]here is no showing that … notice was given at a time when said injured persons were in Hutchinson county" or that "the commissioners of Hutchinson county were ever given or had any opportunity to make the examination or grant relief[.]" *Id.* Thus, the Court concluded: "[T]he county can only be charged by and through the acts of its overseers amounting to express or implied authorization of the temporary relief." *Id.* at 170.

The *Roane* Court's reasoning is flawed. As noted above, the plain language of SDCL § 28-13-37 explicitly imposes a mandatory *duty* to examine a complaint and grant

---

[1] The "overseers of the poor" in each county were the county's commissioners. S.D. Rev. Codes, Pol. Code § 2761 (1903).

appropriate relief, while *Roane* treats the statute as merely granting *authority* to contract for the care of a sick nonresident. *See Bartron Clinic*, 245 N.W. at 395 (characterizing *Roane* as holding "that there is no law authorizing a county to pay for services voluntarily rendered to an indigent person unless such services were rendered *pursuant to a contract*, express or implied" (emphasis added)). In essence, *Roane* made § 2781's duty discretionary: if a county has a duty to examine a complaint and grant relief only when it examines a complaint and grants relief, then it can avoid its "duty" by simply not examining a complaint or granting relief. *See Roane*, 167 N.W. at 169 (implying a county escapes liability "where the public officers fail[] to act"). A discretionary duty is not a duty at all. And *Roane's* additional requirements that a claim for relief must be made before administering emergency hospital services and while the sick or injured person is within the county have no basis in § 2781. *Roane* does not cite § 2781 or quote any part of it for these propositions; rather, they stem from *Roane's* view of § 2781 as granting sole authority to a county to contract for the future care of a medically indigent person. Simply put, by imposing temporal and geographic preconditions on the statutory duty established by § 2781, *Roane* substantively changed the statute.

Moreover, *Roane* offers no explanation for why a county cannot perform its duty to examine a complaint and retroactively authorize appropriate relief. In *Roane*, for example, the commissioners could have investigated the claim by observing the crash site; interviewing the injured, the caregivers, and other witnesses; and reviewing medical notes and logs presented by the attending doctor in Yankton. And when a person needs emergency hospital services, the "temporary relief" required is just that—emergency medical care from a qualified healthcare provider. Unless the county commissioners

were themselves such providers, the only relief they could have provided to discharge their statutory duty under § 2781 would have been to pay the medically indigent person's medical expenses, which can be done just as easily—if not more so—after treatment is complete and the full cost thereof is known. So contrary to *Roane*, the Hutchinson County commissioners certainly had the opportunity to provide relief in the form of paying the medical expenses at issue.

This argument applies with even greater force in the present case. The modern age's capacity for storing and sharing information—especially visual and audio recordings—makes the effort required of a county to examine a claim for poor relief almost trivial. And again, unless one of Sully County's commissioners were a surgeon capable of treating a ruptured appendix, the required relief in this case consisted of no more than paying a medical professional to render emergency medical care.

Roane's holding that SDCL § 28-13-37 merely gives a county sole authority to contract for the future care of medically indigent nonresidents is at odds with that statute's plain language, which explicitly establishes a county's *duty* to provide poor relief.

b. *Roane* conflicts with prior and subsequent cases.

Roane's contract-based view of SDCL § 28-13-37, that a county essentially cannot be held liable for emergency care rendered by a third party without the county's preauthorization, is also inconsistent with the Court's prior and subsequent view of what is now chapter 28-13. While only three of five justices on the *Roane* Court held that a "county can only be charged by and through the acts of its overseers amounting to express or implied authorization"—i.e., a contract—the Court in *Hamlin County* had

already unanimously held that "[t]here are none of the elements of a contract, express or implied, in a demand for the support or relief of the poor. The liability, if any, originates solely in the positive provisions of the statute." 45 N.W. at 331. In other words, a county has a duty to examine a complaint and grant necessary relief not because it chooses to but because statute requires it.

Another decision involving Hamlin County offers the other bookend of contrary authority. In *Bartron Clinic v. Kallemeyn*, 245 N.W. 393 (S.D. 1932), the sheriff of Hamlin County arrived at an accident involving a vehicle illegally transporting alcohol and learned that the injured occupants had been transported by passersby to neighboring Codington County for treatment at the hospital in Watertown. The sheriff took custody of the men but left them hospitalized for approximately three months. *Id.* at 394. While the hospital also provided beds for the guards assigned to the prisoners, the sheriff never specifically requested or agreed to pay for the hospital's services. *Id.* Similar to the poor-relief statutes, the sheriff was required by statute to provide "nursing when required, and all necessaries for the comfort and welfare of the prisoners[.]" *Id.* at 395. When the hospital presented the bill, the sheriff refused to pay.

On appeal to this Court, the sheriff cited *Roane* for the proposition that because he never specifically requested the hospital's services, there was no contract, express or implied, and therefore, he could not be held liable. *Bartron Clinic*, 245 N.W. at 395. A unanimous Court acknowledged *Roane's* holding but refused to apply it:

> Conceding the rule of such cases, we are unable to see that they are in point here. The duty to furnish necessary care for the prisoner is placed by statute upon the sheriff or his deputy. It arises the moment the prisoner is apprehended and continues until his discharge. If the sheriff is under an obligation to pay appellant, such obligation need not rest upon contract,

> express or implied. It arises from the fact that the sheriff was under a duty to furnish necessaries to his prisoner.

Id. Likewise, as discussed above, a county's obligation to pay a hospital that renders emergency services to an indigent person need not rest upon contract, express or implied, either—it has nothing to do with contract, *Hamlin Cnty.*, 45 N.W. at 331—because it too arises from the fact that the county is under a statutory duty to furnish relief to such person.

Roane's view that a county can be held liable only under an express or implied contract simply cannot be reconciled with the Court's prior and subsequent decisions holding that a county's duty to grant relief to a medically indigent nonresident does not derive from the actions of county officials but are mandated by statute.

c. *Roane* is inconsistent with federal legislation.

Federal law enacted after *Roane* further complicates the matter. Congress enacted the Emergency Medical Treatment and Labor Act (EMTALA) in 1986. Under EMTALA, any hospital that participates in Medicare is *required* to screen and offer stabilizing treatment for emergency medical conditions to *anyone*—not just Medicare recipients—who presents at an emergency room. 42 U.S.C. § 1395dd. The Centers for Medicare & Medicaid Services is the largest healthcare payer in the United States, and most hospitals throughout the nation—including Avera St. Mary's Hospital—participate in Medicare. EMTALA requires that when a person presents at a hospital with an emergency medical condition the hospital is capable of treating, "the hospital must provide … within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition[.]" 42 U.S.C. § 1395dd(b)(1)(A). No provision is made for withholding emergency hospital

services while awaiting preauthorization from a payer. In the present case, it is undisputed that the medically indigent person presented with a medical emergency that Avera was capable of treating. Therefore, *Roane* demanded of Avera what EMTALA forbids: withholding emergency hospital services until receiving permission from county commissioners. If Avera had waited in this case, the patient would have been long dead before receiving a response from the county.

d. *Roane* is contrary to public policy.

Continuing to apply *Roane* to require preauthorization of emergency hospital services undermines the policy underpinning South Dakota's poor-relief statutes. The Legislature obviously intended chapter 28-13 to require the counties of this state to offer relief to those who need it most. As Presiding Judge Whiting observed in his special concurrence in *Roane*:

> [T]the courts recognize a fact which every humane people should be glad to proclaim, namely, that there is a moral obligation resting upon society to care for the needy and helpless in its midst .... That our statute creates a legal duty upon the county to give aid to a proper party regardless of the place of his settlement was fully recognized in Hamlin County v. Clark County. Such statutes, being enacted in the interests of humanity and mercy, should receive a liberal construction so as to carry into effect their humane and beneficent objects.

Roane, 167 N.W. at 171 (Whiting, P.J., concurring specially). Yet under *Roane*, a county can avoid all liability by simply doing nothing. *Id.* at 169 (holding a county is not liable when it fails to act). *Roane* disincentivizes a county from taking immediate action to assist a nonresident sick person, which delay could seriously and negatively affect the patient's prognosis. And while nonresidents who qualify for relief under SDCL § 28-13-37 would have to delay critical care to await preauthorization that may never come, other nonresidents of a county (under SDCL § 28-13-38)—and all residents (under SDCL § 28-

13-1)—would be able to seek necessary emergency hospital services immediately and then apply for relief after the fact under, e.g., SDCL § 28-13-32.3.

Conclusion

The Association respectfully asks the Court to reverse the circuit court's decision. *Roane* has already been abrogated. Alternatively, *Roane* should be overruled to the extent that it requires a hospital to obtain preauthorization before rendering emergency hospital services to a medically indigent nonresident. No such requirement is found in the plain language of SDCL § 28-13-37. And *Roane's* view that a county can be held liable only under an express or implied contract simply cannot be reconciled with the Court's prior and subsequent decisions like *Hamlin County v. Clark County* or *Bartron Clinic v. Kallemeyn*, which hold that a county's duty to grant relief to a medically indigent nonresident does not derive from the actions of a county's commissioners but is mandated by statute. This approach would also be consistent with EMTALA, which requires a hospital to stabilize any patient presenting with an emergency medical condition. And overruling *Roane* would prevent a county from avoiding liability through inaction.

Dated this 17th day of February, 2023.

WOODS, FULLER, SHULTZ & SMITH P.C.

By /s/ James E. Moore

James E. Moore
Justin G. Smith
Christopher A. Dabney
300 South Phillips Avenue, Suite 300
Sioux Falls, SD 57117-5027
Phone (605) 336-3890
James.Moore@woodsfuller.com
Justin.Smith@woodsfuller.com
Chris.Dabney@woodsfuller.com
Attorneys for Amicus Curiae, South Dakota Association of Healthcare Organizations

Certificate of Compliance

In accordance with SDCL § 15-26A-66(b)(4), I certify that this brief complies with the requirements set forth in the South Dakota Codified Laws. This brief was prepared using Microsoft Word 2010, Times New Roman (12 point) and contains 3,955 words, excluding the table of contents, table of authorities, jurisdictional statement, statement of legal issues and certificates of counsel. I have relied on the word and character count of the word-processing program to prepare this certificate.

/s/ James E. Moore
One of the Attorneys for Amicus Curiae, South Dakota Association of Healthcare Organizations

Certificate of Service

I hereby certify that on the 17th day of February, 2023, the foregoing Brief of *Amicus Curiae* South Dakota Association of Healthcare Organization in Support of Appellant was filed and served electronically through the Odyssey File and Serve system upon the following:

Robert R. Nelson
Attorney at Law
212 East 11th Street, Suite 200
Sioux Falls, SD 57104
robert.nelson@avera.org
Attorney for Appellant

Ryan S. Vogel
Zach Peterson
Richardson, Wyly, Wise, Sauck & Hieb, LLP
P.O. Box 1030
Aberdeen, SD 57402-1030
rvogel@rwwsh.com
zpeterson@rwwsh.com
Attorneys for Appellee

/s/ James E. Moore
One of the Attorneys for Amicus Curiae, South Dakota Association of Healthcare Organizations

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

AVERA ST. MARY'S HOSPITAL,

Appellant,

-vs-

SULLY COUNTY, SOUTH DAKOTA,

Appellee.

Appeal No. 30152

APPEAL FROM THE CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT
SULLY COUNTY, SOUTH DAKOTA

THE CHRISTINA L. KLINGER
CIRCUIT COURT JUDGE

APPELLEE'S BRIEF

Robert R. Nelson
Attorney at Law
212 East 11th Street, Suite 200
Sioux Falls, SD 57104
Telephone 605-322-4621
Email: robert.nelson@avera.org
Attorneys for Appellant

Ryan S. Vogel
Zachary W. Peterson
Richardson, Wyly, Wise, Sauck & Hieb, LLP
Post Office Box 1030
Aberdeen, SD 57402-1030
Telephone: 605-225-6310
Email: rvogel@rwwsh.com
zpeterson@rwwsh.com
Attorneys for Appellee

James E. Moore
Justin G. Smith
Christopher A. Dabney
Woods, Fuller, Shultz & Smith, P.C.
Post Office Box 5027
Sioux Falls, SD 57117-5027
Telephone: 605-336-2890
Email: james.moore@woodsfuller.com
justin.smith@woodsfuller.com
chris.dabney@woodsfuller.com
Attorneys for Amicus Curiae, South Dakota Association of Healthcare Organizations

---

NOTICE OF APPEAL FILED
OCTOBER 26, 2022

TABLE OF CONTENTS

	Page
Preliminary Statement.	1
Jurisdictional Statement	1
Questions Presented.	2
Statement of the Case.	3
Statement of Facts	4
Argument	8
A. THE COUNTY CORRECTLY DETERMINED THAT SDCL 28-13-37 DOES NOT REQUIRE IT TO REIMBURSE AVERA FOR J.R.'S HOSPITALIZATION.	8
1. The Legislature purposefully enacted SDCL 28-13-37 to impose a different duty on counties with respect to non-residents.	8
2. J.R. was not lying sick or in distress in Sully County, without friends or money, when a complaint was made to the County.	16
3. Avera and SDAHO's criticisms of Roane are inconsequential to the outcome of this case.	19
a. Roane was not legislatively abrogated.	19
b. Overruling Roane does not change SDCL 28-13-37 or the result in this case.	20
B. BECAUSE THE COUNTY'S CONSIDERATION OF THE APPLICATION IS NOT QUASI-JUDICIAL, THE CIRCUIT COURT APPLIED THE WRONG STANDARD OF REVIEW	22

C. THE CIRCUIT COURT SUBSTITUTED ITS JUDGMENT 24

Conclusion 29

Certificate of Compliance. 30

Certificate of Service 31

TABLE OF AUTHORITIES

STATUTES:	**Page(s)**
SDCL 15-26A-3(1)	1
SDCL 15-26A-22	1
SDCL Chapter 28-13	8, 9, 12, 22
SDCL 28-13-1	9
SDCL 28-13-2	10
SDCL 28-13-3	10
SDCL 28-13-5	10
SDCL 28-13-8	10
SDCL 28-13-12.	10
SDCL 28-13-14.	10
SDCL 28-13-16.1.	10
SDCL 28-13-16.2.	10
SDCL 28-13-18.	10
SDCL 28-13-27.	6, 12
SDCL 28-13-27(6)(d).	2, 3, 25, 27, 28
SDCL 28-13-32.3.	6, 10, 11, 19, 25
SDCL 28-13-32.4.	6, 11, 19, 25
SDCL 28-13-32.11	6
SDCL 28-13-33.	3, 11, 13, 14, 19, 20

SDCL 28-13-34.1. 19

SDCL 28-13-37. 2-29
passim

SDCL 28-13-38. . . . . 14, 15

CASES:

Bartron Clinic v. Kallemeyn, 60 S.D. 598,
245 N.W. 393 (1932). 20

Carmody v. Lake Cnty. Bd. of Comm'rs,
2020 S.D. 3, 938 N.W.2d 433. . . . . 2, 3, 23

Dunker v. Brown Cnty. Bd. of Ed., 80 S.D. 193,
121 N.W.2d 10 (1963) 22

Farm Bureau Life Ins. Co. v. Dolly,
2018 S.D. 28, 910 N.W.2d 196 12

In re Petition of Famous Brands, Inc.,
347 N.W.2d 882 (S.D. 1984) 12-13

In re Pooled Advoc. Tr., 2012 S.D. 24,
813 N.W.2d 130 13

Magellan Pipeline Co. v. S.D. Dep't of Revenue
& Reg., 2013 S.D. 68, 837 N.W.2d 402 13

Martinmaas v. Engelmann, 2000 S.D. 85,
612 N.W.2d 600 9

McLaen v. White Twp., 2022 S.D. 26,
974 N.W.2d 714 . . . . . 2, 3, 22,
23, 24, 25

Moss v. Guttormson, 1996 S.D. 76, 551 N.W.2d 14. 9

Motor Vehicle Mfrs. Ass'n of U.S., Inc. v.
State Farm Mut. Auto. Ins. Co., 463 U.S. 29
(1983) 24

Nelson v. School Bd. of Hill City Sch. Dist.,
459 N.W.2d 451 (S.D. 1990) 16

Person v. Peterson, 296 N.W.2d 537 (S.D. 1980) . 15

Rapid City Educ. Ass'n v. Rapid City Sch. Dist., 522 N.W.2d 494 (S.D. 1994). 15

Richardson v. Richardson, 2017 S.D. 92, 906 N.W.2d 369 21

Roane v. Hutchinson County, 167 N.W.2d 168 (S.D. 1918). . . . . 2-22 passim

St. Paul Ramsey v. Pennington County, 402 N.W.2d 340 (S.D. 1987) 9

Schafer v. Deuel Cnty. Bd. of Comm'rs, 2006 S.D. 106, 725 N.W.2d 241. 15

Sioux Valley Hospital Association v. Davison County, 298 N.W.2d 85 (S.D. 1980). 9

State v. Quinn, 2001 S.D. 25, 623 N.W.2d 36. . . 15

State v. Troy Twp., 2017 S.D. 50, 900 N.W.2d 840 . . . . . 2, 3, 22, 24

Wheeler v. Farmers Mut. Ins. Co., 2012 S.D. 83, 824 N.W.2d 102 . . . . . 13, 26

OTHER AUTHORITY:

2A Norman J. Singer, Sutherland Statutory Construction § 46.06, 181-92 (6th ed. 2000). . 13, 26

PRELIMINARY STATEMENT

In this brief, the Appellant, Avera St. Mary's, will be referred to as "Avera." The Appellee, Sully County, will be referred to as the "County." Amicus Curiae South Dakota Association of Healthcare Organizations will be referred to as "SDAHO." The Sully County Clerk of Courts' record will be referred to by the initials "SR" and the corresponding page numbers. The individual whose medical expenses are at issue in this appeal will be referred to as "J.R."

JURISDICTIONAL STATEMENT

This is an appeal from the Circuit Court's September 27, 2022 Order Affirming Decision of Sully County Board of County Commissioners. (SR 851-852.) Notice of Entry was served on September 28, 2022. (SR 863-864.) Avera served and filed its Notice of Appeal on October 26, 2022. (SR 871-872.) This Court may exercise jurisdiction pursuant to SDCL 15-26A-3(1), because the Circuit Court entered final judgment affirming the County's decision.

The County preserved its right to seek review of the Circuit Court's Order by filing and serving a Notice of Review on November 15, 2022. The Notice of Review is timely under SDCL 15-26A-22, as it was filed within 20 days after service of Avera's Notice of Appeal.

QUESTIONS PRESENTED

I. WHETHER THE CIRCUIT COURT CORRECTLY AFFIRMED THE COUNTY'S DECISION TO DENY AVERA'S APPLICATION.

The Circuit Court determined that, because the County's first notice from Avera came well after J.R. became sick and was hospitalized, J.R. was not lying sick or in distress in Sully County such that he was entitled to temporary relief from the County, and SDCL 28-13-37 is inapplicable.

Roane v. Hutchinson County, 167 N.W.2d 168 (S.D. 1918).

SDCL 28-13-37.

II. WHETHER THE CIRCUIT COURT ERRED BY APPLYING A DE NOVO STANDARD OF REVIEW WHEN CONSIDERING AVERA'S APPEAL, INSTEAD OF LIMITING THE REVIEW TO WHETHER THE COUNTY ACTED UNREASONABLY, ARBITRARILY, OR MANIFESTLY ABUSED ITS DISCRETION.

The Circuit Court reviewed the matter de novo based on its conclusion that the Sully County Board of Commissioners acted in a quasi-judicial fashion in considering the application for assistance.

McLaen v. White Twp., 2022 S.D. 26, 974 N.W.2d 714.

Carmody v. Lake Cnty. Bd. of Comm'rs, 2020 S.D. 3, 938 N.W.2d 433.

State v. Troy Twp., 2017 S.D. 50, 900 N.W.2d 840.

III. WHETHER THE CIRCUIT COURT ERRED BY WEIGHING EVIDENCE AND SUBSTITUTING THE COURT'S OWN JUDGMENT FOR THAT OF THE COUNTY.

The County voted to deny the application for assistance because J.R. was not lying sick or in distress in Sully County without friends or money, and because J.R. was indigent by design under SDCL 28-13-27(6)(d). Instead of reviewing the County's decision for abuse of discretion, the Circuit

Court examined the evidence on this subject de novo and substituted its own judgment.

McLaen v. White Twp., 2022 S.D. 26, 974 N.W.2d 714.

Carmody v. Lake Cnty. Bd. of Comm'rs, 2020 S.D. 3, 938 N.W.2d 433.

State v. Troy Twp., 2017 S.D. 50, 900 N.W.2d 840.

SDCL 28-13-37.

SDCL 28-13-27(6)(d).

STATEMENT OF THE CASE

On March 23, 2015, Avera filed a Notice of Appeal regarding the County's decision to deny a County Application for Assistance ("Application") submitted on behalf of "J.R." (SR 2.) A hearing on Avera's appeal was held before the Circuit Court, the Honorable Christina Klinger, presiding, on January 6, 2021. (SR 202-246). Following the January 6, 2021 hearing, Judge Klinger remanded the matter to the County to provide the Court with more facts on which the County based its decision to deny the Application. (SR 247-248.)[1]

[1] The Application was initially denied by the Sully County Commission pursuant to a letter dated March 3, 2015. (SR 438.) This letter denied the Application because J.R. was not a resident of Sully County. (Id.) The medical indigent's establishment of residency is a requirement for a county to be liable for reimbursement for emergency hospitalization. See SDCL 28-13-33.

On December 30, 2021, the County held a regularly scheduled meeting during which the Application was discussed. (SR 254-289; SR 584-589.) Avera was given an opportunity to provide information to the County prior to the meeting. (SR 433-492.) After receiving and considering the materials submitted and the statements made at the meeting, the County again denied the Application. (SR 421-424; 588.)

On January 14, 2022, Avera filed its Amended Notice of Appeal from Sully County Board of County Commissioners. (SR 297-298.) The Sully County Auditor furnished the official transcript of the December 30, 2021 meeting, which was filed on March 1, 2022. (SR 389-589.) A hearing on Plaintiff's Motion for Order Directing Assistance was initially set for May 2, 2022 and subsequently rescheduled for August 18, 2022. (SR 590, 633.) Following the August 18, 2022 hearing, Judge Klinger reconvened with counsel on August 29, 2022, and announced her decision to affirm the County's decision. (SR 808-824.)

STATEMENT OF FACTS

This appeal stems from Avera's pursuit of reimbursement for expenses J.R. incurred during a hospitalization at Avera St. Mary's Hospital in Pierre, South Dakota from August 14, 2014 to August 25, 2014. (SR 33-64.) It is

undisputed that J.R. is not a resident of Sully County. Nonetheless, Avera contends the County is obligated to reimburse it for J.R.'s hospitalization under SDCL 28-13-37.

J.R. came to Sully County annually on a work Visa. (SR 434.) Beginning in 2004, J.R. became employed at Sutton Bay Golf Resort as a seasonal employee, working as a groundskeeper and maintenance worker from approximately April 15 to October 15 each year. (SR 434-435.) While in the United States working, J.R. lived at an old school house in Agar, South Dakota, with a number of other individuals. (Id.)

J.R. was admitted to the emergency room at St. Mary's Hospital on August 14, 2014. (SR 526.) He was not transported there by the Onida Fire Department Ambulance, which is the only ambulance service in Sully County. (SR 494.) Rather, Avera asserts that J.R. was taken to the hospital by Lupe Falcon. (SR 637.) Ms. Falcon lived in Agar across a ball field from the old schoolhouse where J.R. lived when he was in the area working. (SR 628.) Ms. Falcon characterized J.R. as an "acquaintance," with whom she visited and watched TV. (Id.)

While at St. Mary's, J.R. was treated for Acute Appendicitis with perforation and necrosis. (SR 434.) Avera provided notice of J.R.'s hospitalization to the

County on August 22, 2014. (Appellant's Brief, at 5; SR 332.) Avera submitted the Application on October 29, 2014. (SR 329-330.)

The County consulted with Sarah Petersen, who is the Codington County Director for Poor Relief and serves on the review committee for Catastrophic County Poor Relief Program. (SR 108-109.) Petersen reviewed the Application relating to J.R., conducted an analysis consistent with SDCL 28-13-32.11, and recommended non-payment. (Id.)

Petersen's recommendation was based first on the fact that J.R. did not meet the residency requirement of 28-13-32.3 and 28-13-32.4. (Id.) As such, the County has no liability for the cost of hospitalization. (Id.)

Petersen's recommendation was also based upon J.R.'s failure to purchase health insurance, which Petersen asserted was available to J.R. through the Affordable Care Act. (Id.) There was no evidence produced to the County showing that J.R. was declined major medical insurance by an insurance company and J.R. did not qualify for any guarantees of major medical insurance available through any legal or contractual right that was not exercised. Thus, he was presumed insurable. See SDCL 28-13-27.

Petersen was present via video conference for the County's December 30, 2021 meeting, and the County

questioned Petersen regarding her conclusions. (SR 416-420.) Petersen noted that she updated her computations, and for a household size of 3 in 2014, the rate that J.R. would have to pay under the Affordable Care Act was $393/year or $32/month for a Silver Plan, and $0 for a Bronze Plan. (SR 417; 580.) She explained that, when an individual immigrant comes to the United States, they are able to apply for Medicaid, and a denial of Medicaid coverage renders the individual eligible to apply under the Affordable Care Act. (SR 417.)

After considering the written materials and the presentations at the December 30, 2021 meeting, the County denied the Application on two grounds. First, the County found that J.R. was not lying sick or in distress without friends in Sully County at the time the County was first notified, and as such, SDCL 28-13-37's requirement that the County provide temporary relief did not apply. (SR 421-424; 588.) Second, the County found that J.R. was indigent by design pursuant to SDCL 28-13-27(6)(d), in that he had the ability and means to purchase health insurance through the Affordable Care Act but failed to do so. (Id.)

Avera appealed the County's decision to Circuit Court.

ARGUMENT

A. THE COUNTY CORRECTLY DETERMINED THAT SDCL 28-13-37 DOES NOT REQUIRE IT TO REIMBURSE AVERA FOR J.R.'S HOSPITALIZATION.

Considering the facts presented to the County and the plain language of SDCL 28-13-37, the County properly denied Avera's Application. As argued below in Section C., the County did not abuse its discretion. But its decision can be affirmed under any standard of review for two reasons: (1) J.R., a non-resident, was not lying sick or in distress in Sully County when a complaint was made to the County; and (2) J.R. was not without friends. When the Court considers the entirety of SDCL Chapter 28-13 and considers SDCL 28-13-37's plain language, it will understand why Avera and SDAHO's invitations to overrule Roane v. Hutchinson County, 167 N.W. 168 (S.D. 1918), or judicially rewrite the law to expand the County's obligations should be rejected.

1. The Legislature purposefully enacted SDCL 28-13-37 to impose a different duty on counties with respect to non-residents.

To accept the position advocated by Avera and SDAHO would mean that SDCL Chapter 28-13 puts the County in the exact same position whether it is considering costs of hospitalization for residents or non-residents. But that is not how the law is written. It is not the Court's

prerogative to rewrite the law. See Martinmaas v. Engelmann, 2000 S.D. 85, ¶ 49, 612 N.W.2d 600, 611 (quoting Moss v. Guttormson, 1996 S.D. 76, ¶ 10, 551 N.W.2d 14, 17)("The intent of a statute is determined from what the legislature said, rather than what the courts think it should have said, and the court must confine itself to the language used.").

In St. Paul Ramsey v. Pennington County, 402 N.W.2d 340 (S.D. 1987), this Court clarified that entitlement to reimbursement is statutory. "It is well settled in South Dakota that, 'the obligation to support poor persons results not from the common law, but from statutes providing for their care from public funds.'" Id. at 342 (quoting Sioux Valley Hospital Association v. Davison County, 298 N.W.2d 85, 86 (S.D. 1980) (further citations omitted)). "'No liability exists for reimbursement for relief furnished unless *there is a statute authorizing the reimbursement* or the relief is furnished pursuant to the request of someone having authority to act.'" Id. (Emphasis added.)

Chapter 28-13 creates different responsibilities for counties, depending upon whether an indigent person has established residence. SDCL 28-13-1 begins the chapter with the statement that "[e]very county shall relieve and support all poor and indigent persons *who have established residency therein* . . . and who have made application to the county,

whenever they shall stand in need." (Emphasis added.) SDCL 28-13-2 then states that "[a] person may establish a residency in any county so as to oblige such county to relieve and support him, in case he is poor and stands in need of relief, as provided in §§ 28-13-3 to 28-13-16.2, inclusive." SDCL 28-13-3 states: "Except as otherwise provided in this chapter, any person, in order to be entitled to assistance, *shall have an established residency in the state*, and in the county where the application is made." (Emphasis added.) It also sets forth criteria for the county commission to evaluate in determining residency. Residency is discussed in numerous statutes that follow. See SDCL 28-13-5 (children's residency); SDCL 28-13-8 (continuance of residency); SDCL 28-13-12 (acceptance of public assistance does not establish residency); SDCL 28-13-14 (being a patient of a health care facility does not establish residency); SDCL 28-13-16.1 (county's authority to impose a waiting period to investigate residency); SDCL 28-13-18 (auditor's duty to make information available to investigate residency).

More to the point of this case, SDCL 28-13-32.3 requires that a person be medically indigent for a hospital to recover costs of hospitalization, and specifies that "[t]he person or someone acting on behalf of the person

shall apply to the person's *county of residence* for assistance within two years of the date of the hospital's discharge of the person." (Emphasis added.) SDCL 28-13-32.4 incorporates SDCL 28-13-32.3 and sets forth the requirements for the application, which is to be submitted to the county auditor in the person's county of residence. SDCL 28-13-33 states, in part: "Subject to the provisions of this chapter and except as expressly provided, if a hospital furnishes emergency hospital services to a medically indigent person, *the county where the medically indigent person has established residency* is liable to the hospital for the reimbursement of the hospitalization." SDCL 28-13-33. (Emphasis added.)

The language is clear: the responsibility for reimbursing hospitalization expenses falls on the county where the medically indigent person has *established residency*.

Conversely, SDCL 28-13-37 sets up a different duty in a different context. It is a "distress statute" written to address a person who is "not an inhabitant of [the] county":

> It shall be the duty of the county commissioners, on complaint made to them that any person not an inhabitant of their county is lying sick therein or in distress, without friends or money, so that he is likely to suffer, to examine into the case

> of such person and grant such temporary relief as the nature of the case may require.

SDCL 28-13-27.

This statute creates a duty in a narrow setting, namely, where a nonresident of a county is in a state of distress and lacks the ability to get help independently or through friends. In the case of a person found in a county in such a state of distress, upon complaint, the county owes a duty to "examine into the case of such person and grant such *temporary* relief as the nature of the case may require." Id. (Emphasis added.)

Contrary to the interpretation advocated by Avera and SDAHO, the language of SDCL 28-13-37 does not create county liability for charges associated with a nonresident's hospitalization in the same way the County owes for a medically indigent resident who qualifies under SDCL Chapter 28-13. It defies basic tenets of statutory interpretation to read SDCL 28-13-37 to burden a county with the same duties for a nonresident such as J.R. as a medically indigent resident of Sully County.

First, Avera's and SDAHO's interpretation ignores the plain language of the statute. "'This [C]ourt assumes that statutes mean what they say and that legislators have said what they meant.'" Farm Bureau Life Ins. Co. v. Dolly, 2018 S.D. 28, ¶ 9, 910 N.W.2d 196, 199-200 (quoting In re

Petition of Famous Brands, Inc., 347 N.W.2d 882, 885 (S.D. 1984)). "'When interpreting a statute, we begin with the plain language and structure of the statute.'" Id. (quoting Magellan Pipeline Co. v. S.D. Dep't of Revenue & Reg., 2013 S.D. 68, ¶ 9, 837 N.W.2d 402, 404 (quoting In re Pooled Advoc. Tr., 2012 S.D. 24, ¶ 32, 813 N.W.2d 130, 141)).

Unlike SDCL 28-13-33, the plain language of SDCL 28-13-37 does not obligate the County to reimburse hospitalization expenses. Rather, it requires the County to examine the situation and grant such *temporary relief* as the nature of the case may require. The Legislature's decision to use the phrase "temporary relief" cannot be overlooked or ignored. As this Court noted:

> A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, . . . No clause, sentence or word shall be construed as superfluous, void or insignificant if the construction can be found which will give force to and preserve all the words of the statute. While every word of a statute must be presumed to have been used for a purpose, it is also the case that every word excluded from a statute must be presumed to have been excluded for a purpose.

Wheeler v. Farmers Mut. Ins. Co., 2012 S.D. 83, ¶ 21, 824 N.W.2d 102, 108-09 (quoting 2A Norman J. Singer, Sutherland Statutory Construction § 46.06, 181-92 (6th ed. 2000)).

The Legislature could have written SDCL 28-13-37 to state that the county where any distressed nonresident is

found "is liable to the hospital for the reimbursement of the hospitalization," as it did in SDCL 28-13-33. Or, it could have included a provision in SDCL 28-13-33 to require the county to reimburse hospitalization expenses for non-residents found in the county in a state of distress. The Legislature did neither of these things. It required "temporary relief," which should be reasonably interpreted to mean getting the person the help they need at that particular time, whether that is transportation to a hospital, temporary shelter, or whatever the situation calls for. But the language of SDCL 28-13-37 cannot be stretched to create a County duty to reimburse a medical provider for hospitalization costs of a nonresident who was taken to the hospital without the County even knowing about it.

In fact, even in situations where SDCL 28-13-37 applies (not here), the Legislature made clear that the county's decision whether or not to grant the same relief as it would to its residents is discretionary. See SDCL 28-13-38 (" . . .the commissioners thereof **may, if the same is deemed advisable**, grant such relief by providing the same relief as is customary in cases where persons have established residency in the state and county.") (Emphasis added.) Avera argues that the County was *required* to provide the same relief as is customary in cases where

persons have established residency. (Appellant's Brief, at 24.) Avera is wrong. The word "may" in a statute is given a permissive or discretionary meaning. It is not obligatory or mandatory as is the word "shall." See Person v. Peterson, 296 N.W.2d 537 (S.D. 1980). If the use of the word "may" instead of "shall" was not clear enough, the term "may" is followed by "if the same is deemed advisable." The plain language of SDCL 28-13-37 and SDCL 28-13-38 does not support a conclusion that the County owed a statutory duty to pay J.R.'s hospitalization expenses.[2]

Second, to interpret SDCL 28-13-37 to make the county liable for the hospitalization expenses of a non-resident makes the residency requirements that pervade the chapter utterly meaningless. "[T]here is a presumption against a construction which would render a statute ineffective or meaningless." Rapid City Educ. Ass'n v. Rapid City Sch. Dist., 522 N.W.2d 494, 498 (S.D. 1994)

---

[2] In reality, SDCL 28-13-38 is how the Legislature *authorized* counties to pay nonresident hospitalization expenses if it is deemed advisable. "Counties are creatures of statute and have no inherent authority." Schafer v. Deuel Cnty. Bd. of Comm'rs, 2006 S.D. 106, ¶ 15, 725 N.W.2d 241, 248. "They have 'only such powers as are expressly conferred [] by statute and such as may be reasonably implied from those expressly granted.'" Id. (quoting State v. Quinn, 2001 S.D. 25, ¶ 10, 623 N.W.2d 36, 38)(further citations omitted). Without SDCL 28-13-38, a County would be acting outside its authority by paying costs for nonresident hospitalization.

(citing Nelson v. School Bd. of Hill City Sch. Dist., 459 N.W.2d 451, 455 (S.D. 1990)). Indeed, why would the Legislature devote so much attention to county residency if all that is necessary for Avera to bill a county for hospitalization is a pivot to SDCL 28-13-37?

Under SDCL 28-13-37, the Legislature crafted a narrow duty when a county is confronted with a nonresident in distress, namely, to examine the situation and grant such temporary relief as the situation requires. For the reasons that follow, that duty was not triggered in this case.

2. J.R. was not lying sick or in distress in Sully County, without friends or money, when a complaint was made to the County.

Although this case turns on statutory interpretation, there is authority that is directly on point and supports the County's position. The predecessor to SDCL 28-13-37 was analyzed by this Court in Roane. The statute at issue in Roane stated, "It shall be the duty of the overseers of the poor, on complaint made to them that any person not an inhabitant of their county is lying sick therein or in distress, to examine into the case of such person and grant such temporary relief as the nature of the same may require." Id. at 169.

In Roane, non-residents were injured while in Hutchinson County and transported, by someone other than

Hutchinson County, to a doctor's office in Yankton County. After being transported to Yankton County, the commissioners of Hutchinson County were informed of the injured persons. The doctor who assisted the injured persons submitted a claim to Hutchinson County for payment of the services rendered to the non-residents. Hutchinson County denied payment, and this Court upheld the denial. In affirming, the Court reasoned:

> [B]esides, there is no showing in this case that the board of overseers of Hutchinson County was ever notified or failed to render assistance to the injured persons in question. The allegation of the complaint is that one of the county commissioners of Hutchinson County was informed that the accident had occurred and that his county would be expected to pay the expenses incurred in caring for said persons. There is no showing that this notice was given at a time when said injured persons were in Hutchinson County, or that the overseers of that county failed to perform their duties of making examination and granting relief . . .
>
> Also, it will be observed that the said injured persons were actually lying sick and in distress in Yankton County at the time respondent was called upon to care for them . . .
>
> We are of the view that, when a poor person is found to be lying sick and in distress in any particular county, for the purposes of granting temporary relief to him under section 2781 of the statute it is wholly immaterial from whence such injured person came or in what other county he may have contracted his sickness, unless possibly it might be material to ascertain the county of his legal residence.

Id. at 169.

Similarly, this case includes undisputed facts that take it outside SDCL 28-13-37. The County was not notified until several days after J.R. became sick. J.R. was actually lying sick in Hughes County when Sully County officials were notified. He was not transported by Sully County's ambulance. (SR 494.) Rather, Avera submitted an affidavit which confirmed that J.R. was transported to Avera St. Mary's by a woman named Lupe Falcon, a friend who lived across the street. (SR 628-629.) Ms. Falcon was not J.R.'s only friend in Sully County. Avera furnished evidence that J.R. came to the United States annually "with a group of 10 or 12 people," and the group lived together at an old school house in Agar, South Dakota. (SR 434.) The suggestion that J.R. was without friends, which seems to have been accepted by the Circuit Court (SR 818-819), flatly ignores the record.

The record before this Court is the same record that was before the County. It makes clear that J.R. was not lying sick or in distress in Sully County when the County was made aware of J.R.'s condition. Sully County was notified several days later. Further, J.R. had friends in Sully County, and he was transported to the hospital in Hughes County by a friend. Avera cannot plausibly argue otherwise; it furnished the evidence.

3. Avera and SDAHO's criticisms of Roane are inconsequential to the outcome of this case.

a. Roane was not legislatively abrogated.

SDAHO claims that SDCL 28-13-33 abrogates Roane. Reading SDCL 28-13-33 to abrogate Roane or otherwise expand the county's duty under SDCL 28-13-37 is to make an apples to oranges comparison.

SDCL 28-13-33 is confined to a county's obligation to reimburse when a hospital has furnished emergency care to a county resident: " . . . if a hospital furnishes emergency hospital services to a medically indigent person, **the county where the medically indigent person has established residency** is liable to the hospital for the reimbursement of the hospitalization." (Emphasis added.) The county's duties to nonresidents are discussed in SDCL 28-13-37. SDCL 28-13-33 does not change the obligations to nonresidents in any way.

SDAHO goes on to point out that the sections detailing how a hospital is to seek reimbursement, namely, SDCL 28-13-34.1, SDCL 28-13-32.3, and SDCL 28-13-32.4, allow for the claim to be made after hospitalization. Missing from the discussion is the language from SDCL 28-13-32.3 requiring the application be provided to the person's **county of residence**. Again, the county's reimbursement duty for hospitalization expenses is limited to medical indigents who

are county *residents*. By enacting SDCL 28-13-33, the Legislature did not change a county's limited duty to provide temporary relief to nonresidents who are found in a state of distress without friends.

b. Overruling Roane does not change SDCL 28-13-37 or the result in this case.

Avera and SDAHO are not aggrieved by the Roane decision; they are aggrieved by the way SDCL 28-13-37 is written. That is not something the Court can change. Recognizing that, they make every attempt to distinguish and discredit Roane. These efforts are unavailing.

Avera spills considerable ink parsing the facts of Roane and other aged authority it believes undermines Roane. (Appellant's Brief, at 8-18.) Differing facts and the Roane Court's failure to be persuaded by authority from other states are inconsequential to the analysis this Court must perform here. These things do not change the facts of this case or the language of SDCL 28-13-37. Similarly, SDAHO's reliance on a sheriff's statutory duty to furnish care for prisoners hardly advances the discussion on what SDCL 28-13-37 requires. See Bartron Clinic v. Kallemeyn, 60 S.D. 598, 245 N.W. 393 (1932). The Bartron Court wisely distinguished Roane, because it involved an entirely different statute.

Arguments that Roane violates public policy ignore that it is the South Dakota Legislature's role to set public

policy. Richardson v. Richardson, 2017 S.D. 92, ¶ 16, 906 N.W.2d 369, 374. The Legislature created the County's duty vis-a-vis nonresidents in distress. It determined that a County's duty is triggered when a complaint is made "that any person not an inhabitant of their county is lying sick therein or in distress, without friends or money, so that he is likely to suffer." SDAHO argues that the Roane Court substantively changed the statute by imposing temporal and geographic preconditions. Not so. The language "**is** lying sick **therein** or **in distress**" connotes an ongoing situation in the county calling for action.

Further, both Avera and SDAHO conflate the obligation to provide "temporary relief" with a statutory duty to reimburse nonresident hospitalization expenses any time a nonresident is taken from the county to the hospital for emergency care. It is Avera and SDAHO who are trying to substantively change the statute.

Regardless of the Court's feelings about the Roane decision, there is no reason to overrule it. Applying the plain language of SDCL 28-13-37 as it is written to the facts of this case, it is clear that the statute is inapplicable to J.R. J.R. was not lying sick in Sully County without friends. Avera and SDAHO ask the Court to make counties liable for nonresident medical indigents'

hospitalizations in the same fashion as resident medical indigents' hospitalizations. That relief doesn't come from this Court overruling Roane; it can only come from the South Dakota Legislature changing the law.

B. BECAUSE THE COUNTY'S CONSIDERATION OF THE APPLICATION IS NOT QUASI-JUDICIAL, THE CIRCUIT COURT APPLIED THE WRONG STANDARD OF REVIEW.

The decision of whether or not to approve or deny an application under SDCL Chapter 28-13 is an administrative decision, not a quasi-judicial one. As such, the separation of powers doctrine requires that the review of the County's decision be confined to whether the County abused its discretion. "Abuse of discretion review" is limited to determining whether the administrative board 'has acted unreasonably, arbitrarily, or has manifestly abused its discretion[.]'"" McLaen v. White Twp., 2022 S.D. 26, ¶ 43, 974 N.W.2d 714, 728 (quoting State v. Troy Twp., 2017 S.D. 50, ¶ 17, 900 N.W.2d 840, 848 (quoting Dunker v. Brown Cnty. Bd. of Ed., 80 S.D. 193, 203, 121 N.W.2d 10, 17 (1963))).

This standard has been applied in numerous recent decisions of this Court. Beginning in Troy Twp., the Court clarified that the judiciary's authority to review an administrative body's decision de novo depends on whether the action was quasi-judicial or non-quasi-judicial. Id. at ¶ 24, 900 N.W.2d at 850. In Troy Twp., the Court found that

"a township's vacation of a highway is not a quasi-judicial act." Id. at ¶ 22, 900 N.W.2d at 849.

The Court also found that a county's issuance of a drainage permit constitutes an administrative act. In Carmody v. Lake Cnty. Bd. of Comm'rs, 2020 S.D. 3, 938 N.W.2d 433, the Court held that "[i]t is antithetical to maintaining the separation of powers to have a circuit court decide whether to issue a drainage permit." Id. at ¶ 29, 938 N.W.2d at 442. "Because, here, the Board's decision to grant the drainage permits was not akin to 'the ordinary business of courts,' the circuit court did not err when it found that the appropriate standard of review was abuse of discretion[.]" Id.

Most recently, in McLaen v. White Township, the Court stated: "The Township's decision in response to the McLaens' request to install culverts under Township roads and drain into a Township right-of-way was administrative in nature." Id. at ¶ 42, 974 N.W.2d at 727-28. "The decision did not involve adjudicating existing rights between specific individuals, and the McLaens could not have asked the circuit court in the first instance to approve their request." Id. "Because the Township's decision was one of policy, the circuit court properly applied the abuse of discretion standard of review." Id.

Similarly, the County's handling of a request for temporary relief does not involve quasi-judicial decision-making. The County is not adjudicating a dispute between parties in this setting. Circuit Courts do not ordinarily involve themselves in decisions regarding whether individuals satisfy the requirements for temporary relief. Rather, that is a function of the executive branch, namely, the Board of County Commissioners. Decision-making on this level involves administrative decision-making, not the County serving a role as an adjudicatory body. As such, the County's decision regarding Avera's Application should have been reviewed only for abuse of discretion.

C. THE CIRCUIT COURT SUBSTITUTED ITS JUDGMENT.

The abuse of discretion standard is narrow. "[T]hus, 'a court is not to substitute its judgment for that of an agency.'" McLaen v. White Twp., 2022 S.D. 26, ¶ 43, 974 N.W.2d at 728 (quoting Troy Township, 2017 S.D. 50, ¶ 33, 900 N.W.2d at 852-53). The County must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made. See Troy Twp., 2017 S.D. 50, ¶ 33, 900 N.W.2d at 853 (quoting Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983)). On review, a decision is arbitrary "if the

[County] has relied on factors which [the Legislature] has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the [County], or is so implausible that it could not be ascribed to a difference in view or the product of . . . expertise." Id. (citation omitted). As the party challenging the County's decision, Avera has the burden of proving that an abuse of discretion occurred. McLaen, 2022 S.D. 26, ¶ 47, 974 N.W.2d at 728.

The Circuit Court's review of the County's decision failed to honor this standard. In particular, the Circuit Court reviewed evidence de novo and came to its own factual conclusions that: (1) it was unclear that J.R. had any friends, and (2) J.R. was not indigent by design under SDCL 28-13-27(6)(d).[3] (SR 849.) The Circuit Court reached these conclusions despite evidence before the County that fully supported the County's conclusions to the contrary.

[3] It should be noted that Avera has repeatedly admitted that J.R. was not a resident of Sully County. Because J.R. was not a resident of Sully County, the application for his hospitalization expenses should have been denied outright under SDCL 28-13-32.3 and 28-13-32.4, as more thoroughly discussed in Section A.1., *supra*. Indigence by design is simply an additional ground that supports denial.

First, the record is clear that J.R. had friends. He lived in Agar with a number of other individuals. "J.R. arrives every summer with a group of 10 or 12 people, who come to work for the season at Sutton Bay Golf. This group lived at an old school house in Agar, South Dakota, Sully County." (SR 434.) Avera explained to the Circuit Court that J.R. was transported to the hospital by another friend. (SR 637.) The County's conclusion that J.R. had friends was not counter to evidence. The Circuit Court should not have simply cast that conclusion aside.

The significance of this error is borne out by the briefing. Avera and SDAHO largely ignore the "without friends" language in SDCL 28-13-37. But it is a factor that our Legislature clearly intended the County to consider. Again, "[n]o clause, sentence or word shall be construed as superfluous, void or insignificant if the construction can be found which will give force to and preserve all the words of the statute." Wheeler, 2012 S.D. 83, ¶ 21, 824 N.W.2d at 108-09 (quoting 2A Norman J. Singer, Sutherland Statutory Construction § 46.06, 181-92 (6th ed. 2000)). The County gave consideration to this factor, and it was error for the Circuit Court to reject the County's factual finding out-of-hand.

Second, the County considered relevant and probative evidence that J.R. was indigent by design. An individual is "indigent by design" if he, *inter alia*, "[h]as failed to purchase available major medical health insurance although the individual was insurable and was financially able, pursuant to § 28-13-32.11, to purchase the insurance." SDCL 28-13-27(6)(d). J.R. is presumed insurable because the record contains no evidence showing "[J.R.] was declined major medical insurance by an insurance company and [J.R.] did not qualify for any guarantees of major medical insurance available through any legal or contractual right that was not exercised[.]" Id.

The absence of evidence rebutting the presumption of insurability should end the inquiry. The County was well within its discretion to deny the Application based on the presumption outlined in SDCL 28-13-27(6)(d) that J.R. was insurable and he failed to purchase insurance. The Circuit Court did not address this presumption in her ruling. (SR 846-850.)

But even if the dearth of evidence to rebut the presumption in SDCL 28-13-27(6)(d) is overlooked, the Circuit Court was not permitted to simply cast aside the County's findings on this issue and render her own. Avera's argument below focused solely on its misconception that J.R.

could not have enrolled in ACA due to being outside the enrollment period. Evidence presented to the County showed Avera was incorrect. Specifically, Sarah Petersen, who is the Codington County Director for Poor Relief and serves on the review committee for Catastrophic County Poor Relief Program (CCPR), was present via video conference for the County's December 30, 2021 meeting and explained that J.R. had the ability to procure coverage through the ACA for $32/month for a Silver Plan, and $0 for a Bronze Plan. (SR 416-420; 580.) She also explained that, when an individual immigrant comes to the United States, they are able to apply for Medicaid, and a denial of Medicaid coverage renders the individual eligible to apply under the ACA. (SR 417.)

If properly reviewed under an abuse of discretion standard, the County's decision should have been affirmed on all grounds. The information provided to the County constituted relevant data and provided satisfactory explanations for the County's actions. The County did not abuse its discretion in denying the Application due to J.R. having friends, within the meaning of SDCL 28-13-37, and being indigent by design pursuant to SDCL 28-13-27(6)(d). The Circuit Court's refusal to affirm the County on this basis was error.

CONCLUSION

The County's decision should be affirmed for two distinct reasons. First, under the plain language of SDCL 28-13-37, the County did not have a duty to reimburse Avera for J.R.'s hospitalization. In this regard, the Circuit Court's judgment was correct. Second, under the abuse of discretion review, the County's decision must be affirmed because it had a satisfactory explanation for its action which included a rational connection between the facts found and the choice made.

Respectfully submitted this 3rd day of April, 2023.

RICHARDSON, WYLY, WISE, SAUCK & HIEB, LLP

By /s/ Zachary W. Peterson

By /s/ Ryan S. Vogel
Attorneys for Appellee

One Court Street
Post Office Box 1030
Aberdeen, SD 57402-1030
Telephone No. 605-225-6310
Email: zpeterson@rwwsh.com
rvogel@rwwsh.com

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Brief complies with SDCL 15-26A-66(4). This Brief is 29 pages long, exclusive of the Table of Contents, Table of Authorities, Certificate of Compliance and Certificate of Service, is typeset in Courier New (12 pt.) and contains 6,161 words. The word processing software used to prepare this Brief is Word Perfect.

Dated this 3rd day of April, 2023.

RICHARDSON, WYLY, WISE, SAUCK & HIEB, LLP

By /s/ Zachary W. Peterson
Attorneys for Appellee

One Court Street
Post Office Box 1030
Aberdeen, SD 57402-1030
Telephone No. 605-225-6310
e-mail: zpeterson@rwwsh.com

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Appellee, hereby certifies that on the 3rd day of April, 2023, a true and correct copy of **APPELLEE'S BRIEF** was served and filed via the Odyssey file and serve system on:

(robert.nelson@avera.org)
Robert R. Nelson
Attorney at Law

(james.moore@woodsfuller.com)
(justin.smith@woodsfuller.com)
(chris.dabney@woodsfuller.com)
James E. Moore
Justin G. Smith
Christopher A. Dabney
Woods, Fuller, Shultz & Smith, P.C.
Post Office Box 5027
Sioux Falls, SD 57117-5027
Telephone: 605-336-2890

and the original of **APPELLEE'S BRIEF** was mailed by first-class mail, postage prepaid, to Ms. Shirley Jameson-Fergel, Clerk of the Supreme Court, Supreme Court of South Dakota, State Capitol Building, 500 East Capitol Avenue, Pierre, SD 57501-5070. An electronic version of the Brief was also electronically transmitted in Word Perfect format to the Clerk of the Supreme Court.

Dated at Aberdeen, South Dakota, this 3rd day of April, 2023.

RICHARDSON, WYLY, WISE, SAUCK & HIEB, LLP

By /s/ Zachary W. Peterson
Attorneys for Appellee

IN THE SUPREME COURT OF THE
STATE OF SOUTH DAKOTA
APPEAL #30152

****

AVERA ST. MARY'S HOSPITAL,
APPELLANT,
VS
SULLY COUNTY, SOUTH DAKOTA,
APPELLEE.

****

APPEAL FROM CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT
SULLY COUNTY, SOUTH DAKOTA, THE HONORABLE
CHRISTINA L. KLINGER, CIRCUIT COURT JUDGE, PRESIDING

****

APPELLANT'S REPLY BRIEF

****

Robert R. Nelson
Attorney for Plaintiff/Appellant
212 East 11th Street, Suite 200
Sioux Falls, SD 57104
Robert.Nelson@Avera.org
(605) 322-4621

James E. Moore and Justin G. Smith
Attorneys for Amicus Curiae, South Dakota
Association of Healthcare Organizations
300 South Phillips Avenue, Suite 300
Sioux Falls, SD 57117-5027
James.moore@woodsfuller.com and
Justin.smith@woodsfuller.com
605-336-3890

Mr. Ryan S. Vogel
Attorney for Defendant/Appellee
P.O.Box 1030
Aberdeen, SD 57402-1030
rvogel@rwwsh.com
(605) 225-6310

****

NOTICE OF APPEAL FILED October 26, 2022

****

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT 1

COUNTY'S JURISDICTIONAL STATEMENT 1

COUNTY'S QUESTIONS PRESENTED 1

COUNTY'S STATEMENT OF THE CASE 2

COUNTY'S STATEMENT OF FACTS 2

COUNTY'S ARGUMENTS 3

A. THE COUNTY CORRECTLY DETERMINED THAT SDCL 28-13-37 DOES NOT REQUIRE IT TO REIMBURSE AVERA FOR J.R.'S EMERGENCY HOSPITALIZATION. 3

1. The Legislature purposefully enacted SDCL 28-13-37 to impose a different duty on counties with respect to non-residents. 5

2. J.R. was lying sick or in distress in Sully County, without friends or money, when a complaint was made to the County. 9

3. Avera and SDAHO's criticisms of Roane are not inconsequential to the outcome of this case. 11

B. BECAUSE THE COUNTY'S CONSIDERATION OF THE APPLICATION IS NOT QUASI-JUDICIAL, THE CIRCUIT COURT APPLIED THE WRONG STANDARD OF REVIEW 14

C. THE CIRCUIT COURT SUBSTITUTED ITS JUDGMENT. 16

CONCLUSION 18

TABLE OF AUTHORITIES

Statutes

124 Stat. 119 (May, 2010) 3, 17
15-26A-62 1
42 USC § 1395 dd 6
SDC 1939 5
SDCL 15-26A-12 ..... 13, 18
SDCL 15-26A-22 14
SDCL 15-26A-3(1) 1, 14
SDCL 15-26A-3(4) 1
SDCL 15-26A-6 11
SDCL 15-26A-60(6) 5, 11
SDCL 15-26A-61 5
SDCL 28-13-1.4 14
SDCL 28-13-3 5
SDCL 28-13-32.3 ..... 3, 5, 16
SDCL 28-13-32.4 ..... 3, 5, 16, 17
SDCL 28-13-33 ..... 2, 5, 6, 7
SDCL 28-13-37 ..... passim
SDCL 28-13-38 ..... passim
SDCL 28-13-40 14
SDCL 7-8-29 14
SDCL Ch. 1-26 16
Sec. 2761, Pol. Code 4

Cases

Cerro Gordo County v Boone County, 152 Iowa 692 (1911) 6
Hamlin County v. Clark County, 1 S.D. 131, 45 NW 329 11
In re Estate of Smith, 401 NW2d 736, 740 (SD 1987) 5
Lager v. Menards, Inc., 2018 SD 53, ¶ 22 16
Nelson v. Hill City Sch. Dist. 459 N.W.2d 451 14
Roane v. Hutchinson County, 40 S.D. 297, 167 N.W. 168 (1918) ..... passim
Sioux Valley Hosp. Ass'n. v. Jones Co. (309 N.W. 2d 835 (SD 1981) 14
Sioux Valley Hosp. Ass'n. v. Lake Co. (533 N.W. 2d 161 (SD 1995) 14
US West Communications, Inc. v. Public Utilities Comm'n., 505 NW2d 115, 122-23 (SD 1993) 10

PRELIMINARY STATEMENT

Appellant, Avera St. Mary's Hospital (Avera) submits this Reply Brief pursuant to SDCL 15-26A-62.

COUNTY'S JURISDICTIONAL STATEMENT

This Court lacks jurisdiction to hear the issues noticed for review by County specifically denominated as II. and III., page 2 in its Brief. County erroneously references SDCL 15-26A-3(1), "A judgment," as grounds supporting the exercise of this Court's jurisdiction. The trial Court below did not enter any judgment in Avera's favor, or deny one favorable to County, but simply signed an Order (CR 851). The only judgment in the record was one proposed by Avera and denied by the Court (CR 862). County toggles back and forth in the same paragraph between referencing a judgment and an order. (County Brief @ 1).

Only SDCL 15-26A-3(4) applies in this case to allow County to assert jurisdiction of this Court, and County would be challenged to demonstrate how the trial court's Order "... affecting[ed] a substantial right, ..." of the County given that the Order affirmed County's denial decision. If this Court agrees, a substantial portion of County's Brief (pp. 22-29) may be readily dismissed.

COUNTY'S QUESTIONS PRESENTED

Avera contests part of County's Brief here. First, Issue I., the Circuit Court never determined much less stated "...SDCL 28-13-37 is inapplicable." (emphasis added). That determination or conclusion is nowhere in the record. (CR 254-289, 808-824). Second, Issues II. and III. are essentially the same issue. As discussed *infra*, Avera submits the *de novo* standard of review was proper for county poor relief matters (not involving medical

indigency), and that the real problem is the Roane v. Hutchinson County, 40 S.D. 297, 167 N.W. 168 (1918) decision. As the sole basis for the Circuit Court affirming the County's denial, it is distinguishable and not controlling precedent.

COUNTY'S STATEMENT OF THE CASE

Avera contests Fn 1 of this section where County states "[t]he medical indigent's establishment of residency is a requirement for a County to be liable for reimbursement for emergency hospitalization. See SDCL 28-13-33." This is a naked legal assertion neither supported by statutory language or case precedent.

The Statement of this case may be succinctly summarized in three sentences. J.R., a nonresident of Sully County, experienced a life-threatening medical illness requiring emergency hospitalization not available within County. County has a statutory duty to grant temporary relief to nonresidents under SDCL 28-13-37, which read in conjunction with SDCL 28-13-38, may include emergency hospitalization for nonresidents. County believes it has no statutory duty to provide hospitalization to a nonresident.

COUNTY'S STATEMENT OF FACTS

Avera contests a number of items stated as facts in County's Brief. First, concerning County's consultant, Sarah Petersen, County represents to this Court that Ms. Petersen "...**is** the Codington County Director for Poor Relief..." (emphasis added). (County Brief @ 6). Depending on what your definition of "is" is, and given the substantial ink spilled by County in discussing this single word in SDCL 28-13-37, it is noteworthy that Ms. Petersen resigned/was removed from that position effective November 24, 2020, just 14 days after submitting her Affidavit to County, and 36 days before the December 30, 2022 County hearing in this matter. (*See* Codington County

Commission minutes, November 24, 2020; CR 108-109). The following glaring errors existed in Ms. Petersen's presentation to the County and County's decision which go unmentioned in its brief:

- Peterson recommended no County liability for the cost of hospitalization because J.R. did not meet the residency requirements of SDCL 28-13-32.3 and SDCL 28-13-32.4 (despite there being no mention of residency requirements under either SDCL 28-13-37 or SDCL 28-13-38); and

- Petersen advised County J.R. was indigent by design due to his failure to purchase health insurance "available to J.R. through the Affordable Care Act." In determining J.R. had the financial ability to purchase health insurance through the Patient Protection and Affordable Care Act (ACA) 124 Stat. 119 (May, 2010) Petersen erroneously used: 2021 financial data; omitted a 50% premium adjustment for smokers (CR 532, 534, 539), and used a household size of one (1) for J.R. versus three (3). (CR 112). Petersen also omitted the fact ACA open enrollment formally closed December 31, 2013, and was not available to J.R. to enroll in mid to late April 2014 when he arrived in County, based upon written materials she herself provided. (CR 155); and

- County asserts in its Brief that Petersen concluded if J.R. as an individual immigrant to the United States, had applied for Medicaid and been denied, he would have been able to apply under the ACA. (County Brief @ 7; CR @ 417).

No written documentation produced by Petersen confirmed this possibility outside the formal enrollment period. Finally, without any express evidence in the record, County states as a fact that the County determined J.R. was not "without friends in Sully County at the time the County was first notified..." (County Brief @ 7).

COUNTY'S ARGUMENTS

A. THE COUNTY CORRECTLY DETERMINED THAT SDCL 28-13-37 DOES NOT REQUIRE IT TO REIMBURSE AVERA FOR J.R.'S EMERGENCY HOSPITALIZATION.

County asserts it correctly determined (the second time (CR 254-289)) that SDCL 28-13-37 did not require it to provide temporary assistance in the nature of emergency hospitalization to J.R. for two reasons: (1) J.R. was not within Sully County when first

notified of his illness; and (2) J.R. was not without friends. County is wrong, and it knows it is wrong. The settled record is wholly devoid of any fact in evidence to allow County to determine J.R. was not without "friends." J.R. came to County regularly with 10 to 12 other workers, which County tries to elevate to the level of "friends;" however, not one of those individuals volunteered to transport J.R. first to the medical clinic in Onida, and then immediately to the emergency department of Avera in Pierre, due to J.R.'s life-threatening illness. County also mischaracterizes the individual who transported J.R. to Avera as a "friend" when that individual in her own affidavit referred to herself as an "acquaintance." This "fact shifting" fails miserably. (County Brief @ 18). County's other rationale, that they did not receive notice or complaint while J.R. was "lying sick or in distress in Sully County," is an oxymoron. This is not the order of the language in the statute. Further, how does Avera provide notice to County before Avera itself had notice? IF Sully County had an operational hospital within its borders, or even had contractual agreements with hospitals lying outside County's borders to discharge County's legal duty (recognized in Roane), County might have an argument. But Roane, in reviewing Sec. 2761, Pol. Code (discussed the commissioners of the several counties as overseers of the poor, and that they ". . . shall perform all the duties with reference to the poor, **within their respective counties**, that may be prescribed by law." (emphasis added). Roane @ 300. What then is County's response to how it intended to discharge its legal duty to J.R. in the instant case? There certainly is no duty placed upon Avera by this statute. County "may not avoid the liability so imposed, by its own failure to appoint necessary agents or prescribe regulations as to the manner of doing it." (Avera Brief @ 16-17). County has expressly, if not impliedly, delegated (or defaulted) its statutory legal

duty in this area to hospitals outside County, and waived any right or entitlement to notice while the nonresident is within their borders. County has also waived this argument in failing to address it. (SDCL 15-26A-61, and SDCL 15-26A-60(6)).

1. **The Legislature purposefully enacted SDCL 28-13-37 to impose a different duty on counties with respect to non-residents.**

County is adamant that there is a "different duty" with respect to nonresidents for liability concerning hospital medical care and treatment. County cites authority for interpreting or reading all statutes in consonance with all other existing statutes, and providing meaning to every term and provision therein. Yet, when it comes to reading SDCL 28-13-37 and SDCL 28-13-38 together, County fails to make the connection. Both statutes in their present form trace back to SDC 1939. The other statutes cited by County asserted to exclude liability for hospitalization for nonresidents (SDCL 28-13-32.3 and SDCL 28-13-32.4), deal with residents, and were enacted in 1988, well after sections SDCL 28-13-37 and SDCL 28-13-38. This Court has further held, "[w]hen determining legislative intent, we must assume that the legislature in enacting a provision has in mind previously enacted statutes relating to the same subject matter." (In re Estate of Smith, 401 NW2d 736, 740 (SD 1987)). County fails to acknowledge that these two statutes appear well within the body of the statutes that deal with County residents, and that the very statute holding that residency is required for assistance, SDCL 28-13-3, begins with the preemptive language, "[e]xcept as otherwise provided in this chapter ..." (similar to the exclusion language which begins SDCL 28-13-33).

A reasonable statutory interpretation is that both SDCL 28-13-37 and SDCL 28-13-38 fall under the preemptive language "[e]xcept as otherwise provided in this chapter,..." at the beginning of SDCL 28-13-3 (and SDCL 28-13-33). To hold that there

is a residency requirement before County has a duty or legal liability to a nonresident for hospitalization under SDCL 28-13-37 and SDCL 28-13-38 is beyond circular in its reasoning and nonsensical; it requires reading words into these statutes which are not present. Hospitalization is not expressly excluded from "such temporary relief as the nature of the case may require." Roane @ 304. Moreover, under the clear and unambiguous language of SDCL 28-13-38, if County would customarily grant relief to a resident for the same emergency hospitalization, the county has a duty to grant such relief to a nonresident as temporary relief.

Avera's and SDAHO's position does not put County in the same exact situation as mandatory liability for emergency hospitalization provided to County residents. (SDCL 28-13-33). County's liability concerning residents is unlimited, both in the number of residents covered, and the cost of hospitalization per case. While SDCL 28-13-37 reads more mandatory than SDCL 28-13-38, County's liability is not unlimited as compared to residents, and it is further tempered by the term "temporary relief." While County's definition of what constitutes temporary relief certainly excludes any form of hospitalization, emergency or otherwise, the days of avoiding a nonresident with a severe medical illness or condition by purchasing a $0.48 train ticket as in Cerro Gordo County v Boone County, 152 Iowa 692 (1911) are long gone. (Avera Brief @12-13). As highlighted by SDAHO, limiting the definition of what constitutes temporary relief is also directly in conflict with Federal law. (Emergency Medical Conditions and Women in Labor Act – EMTALA, 42 USC § 1395 dd).

County rationalizes that the legislature enacted this section to impose a different duty on counties - yes, clearly, a duty to nonresidents. County also asserts that it "defies

basic tenants of statutory interpretation to read 28-13-37 to burden County with the same duties for nonresidents as a medically indigent resident." The duties are not the same as just discussed. Further, County admits SDCL 28-13-38 is how the legislature authorized counties to pay nonresident hospitalization. (County Brief Fn2 @15). But County inexplicably toggles back to SDCL 28-13-33, and numerous statutes expressly dealing with County residents, which are not even applicable to J.R., a nonresident.

The legislature used "temporary relief" in SDCL 28-13-37, and yes, the legislature imposed a duty different upon County than its duty to medical indigent residents; a DUTY to nonresidents! How is this duty different? If emergency hospitalization is provided to a medically indigent resident, County is liable to the hospital; no debate; no question; no discretion. Mandatory under SDCL 28-13-33. Under SDCL 28-13-37, County's duty is still mandatory (*see* first 5 words)-which County never acknowledges-but it is first tempered by tying the nonresident to the County, and then using the language "… and grant such temporary relief as the nature of the case may require."

It is abundantly clear from the majority of County's argument in its Brief, and its position conflating residency requirements under most sections of SDCL Ch. 28-13 to nonresidents[1] that County would define "temporary relief" as somewhere close to/less

[1] County asserts Avera's position that "temporary relief" under SDCL 28-13-37 and SDCL 28-13-38 can include hospitalization abrogates the residency requirements of all prior sections in SDCL Ch. 28-13. The distinguishing nature of County's duties are discussed supra, and these two statutes clearly deal with non-residents. County's conflating residency requirements into these two statutes renders them meaningless and corrupts the legislature's intent that they address County's duty to nonresidents, the exact argument asserted by County for Avera's position that "temporary relief" may include

than zero dollars, and certainly never, ever including any costs for hospitalization. Unless this Court wholly ignores these two statutes and case precedent, that is an untenable position to defend given the language of SDCL 28-13-37 and SDCL 28-13-38 and the facts in this case.

Where does this Court look to interpret or find a definition of "temporary relief?" While County provides no answer supported by authority, there is modifying language in SDCL 28-13-37, when read in conjunction with SDCL 28-13-38, (both statutes involve nonresidents and temporary relief) which provides guidance.

Under a straightforward, reasonable interpretation n of SDCL 28-13-38, once County determines a nonresident is entitled to temporary relief under SDCL 28-13-37, even though still discretionary under the language of SDCL 28-13-38, if County customarily would have provided hospitalization to a resident in the same situation, then this statute dictates County provide the same hospitalization to a nonresident. Read together, these two statutes may include hospitalization as temporary relief if the nature of the case requires it, and the county would customarily have provided hospitalization if the person was a resident. County's discretion under 28-13-38 must be more than simply not wanting to pay for J.R.'s hospitalization. County cannot adopt a "policy" of never providing hospitalization to non-residents (when the nature of the case may require) contrary to their statutory legal duty from the legislature recognized in Roane. Such "reasoning" does not survive review under any standard.

---

hospitalization. County's conflicting position on this argument cannot be reconciled (*cf.* County Brief @19 vs. @11-12, 19-20 and 21).

Examining the full statutory language of SDCL 28-13-37, there is no language excluding hospitalization from "temporary relief." (*See* Roane @304, where the Court discusses the medical treatment provided stating ". . . it clearly appears that temporary relief was in fact actually furnished. . .").

A hypothetical example further demonstrates the absurdity of County's position. Two individuals, one a resident of Sully County, and one a nonresident, stand side-by-side on Onida's Main Street. A car (or a horse and buggy) careen out of control severely injuring both individuals. With no hospital in Sully County, and commissioners not in session, both individuals are gathered up, and immediately taken down to Avera for emergency hospital care and treatment, without contacting any County commissioner. Neither individual has the financial ability to pay for the hospitalization, and yet County is only liable for one individual, the County resident? In County's world, there would be no liability for hospitalization received by the nonresident under any circumstances, implied by County as their "policy." (County Brief @ 23-24).

2. J.R. was not lying sick or in distress in Sully County, without friends or money, when a complaint was made to the County.

This argument by County was substantially addressed *supra* (pp. 4-6). Of note, however, whether intentionally or accidentally, County changes the order of the statute's language (above) to read "lying sick or in distress in Sully County," when the statute expressly states "lying sick therein or in distress."

Under SDCL 28-13-37, there is no express timeframe or deadline for when notice must be given to the County. The word "therein," appears only after "lying sick," and if it was intended to also modify "in distress," the legislature would have inserted it after

those words as well. Certainly J.R. was still "in distress" while hospitalized, and up to the point just prior to his discharge. Avera notified County at that time, three days prior to J.R.'s discharge. (CR 55-64). Further, the word "is" alone does not necessarily modify both clauses appearing thereafter. A reasonable interpretation of the statute would be met if Avera's notice was made to the County while J.R. was "in distress,... likely to suffer ... ," which J.R. was, still three days away from being healthy enough to discharge. Given no operational hospital inside County's borders since 1894 (CR 800-802), and no contracts with hospitals outside County's borders to discharge County's legal duties to the poor and nonresidents, County's assertion that Avera was required to give notice while J.R. was still within County is indefensible. County asserted no plan or procedure to carry out its duty differently. Further, Avera's first knowledge of J.R.'s life-threatening emergency illness was at the moment he presented to the threshold of its emergency department, already outside the County's borders. County's position would require Avera (or someone) to transport J.R. back within the County's borders, give notice to the commissioners, and then return to the emergency department of Avera, all in severe jeopardy and risk to J.R.'s life and well-being. Clearly such was not the intended result of the legislature when SDCL 28-13-37 and SDCL 28-13-38 were enacted together. When construing statutes together it is presumed that the legislature did not intend an absurd or unreasonable result. (US West Communications, Inc. v. Public Utilities Comm'n., 505 NW2d 115, 122-23 (SD 1993).

The purpose of SDCL 28-13-37 is to provide County notice sufficient "...to examine into the case of such person and grant such temporary relief as the nature of the case may require." Avera provided notice to County three days before J.R.'s discharge.

County certainly could have examined into J.R.'s case to determine whether to grant such temporary relief as his case may have required (CR @ 29). J.R.'s hospitalization was still ongoing, and County admits JR was still "lying sick" when County was notified (County Brief @ 18). The distance between Onida and Pierre is not so great that one or more commissioners could not have traveled to Avera and personally met with J.R. while still an inpatient. Finally, it is undisputed that J.R. himself, with an interpreter, completed County's specific multipage application for assistance (CR 36-54). County's right, authority, or ability to examine into J.R.'s case and gather any information it wanted was not prejudiced. (County Brief @ 18).

3. **Avera and SDAHO's criticisms of Roane are not inconsequential to the outcome of this case.**

a. Roane was not legislatively abrogated.

Significant authority cited in the Roane decision was legislatively abrogated. The Roane majority based a measurable part its holding on Hamlin County v. Clark County, 1 S.D. 131, 45 NW 329 (Roane @ 303). Enactment of SDCL 28-14-2 and 28-14-2.1 respectively in 1939 in 1984 clearly overruled the Hamilton County decision relied upon by the Roane majority.

Roane was bad precedent when it was issued, and is distinguishable from the instant case for all of the material facts highlighted by Avera (Avera Brief @ 7-10). It was the controlling authority cited by the trial court in its decision; it is neither inconsequential, nor irrelevant to the outcome of this case (County Brief @ 9-22). County's weak response fails to address the material components of Avera's argument and as such, it is conceded. (SDCL 15-26A-61 and SDCL 15-26A-60(6)). Roane is

indefensible from both a procedural and factual standpoint. Recognizing that, County simply ignores Avera's argument as "parsing facts," asserting that the language of SDCL 28-13-37 is the problem for Avera and not Roane

From a procedural standpoint, Roane was before this Court on appeal by defendant, Hutchison County, based upon the lower court's Order overruling county's demurrer to plaintiff's complaint. Procedurally, under a demurrer, the facts alleged in plaintiff's complaint are taken to be true. (*See* Black's Law Dictionary, West, 1979). Plaintiff alleged, "that on the day of said accident one of the commissioners of Hutchison County was informed of said accident and that said County would be expected to pay the expense in care for said injured persons;..." (emphasis added). Roane @ 300. In reversing the lower court's order granting plaintiff relief, the Roane court concluded "... there is no showing in this case that the board of overseers of Hutchison County was never notified or failed to render assistance to the injured persons in question." Roane @ 302. The Roane Court glossed over this allegation in plaintiff's complaint (taken as true) that notice was provided on the day of said accident, and despite the lack of any averment by Hutchison County that notice was not provided while the injured persons were in Hutchison County, reversed the lower Court's Order, and remanded the cause for further procedure in harmony with its decision.[2] Roane @ 305. Given the procedural posture, a

[2] While even SDAHO's records are scant, an October 24, 1918 Citizen-Republican newspaper article references a hospital in Tripp, within Hutchinson County, to which the commissioners may have preferred to direct the injured individuals.

more reasonable holding might have been reversing and remanding for a trial on the merits, or further proceedings to determine the (apparently "missing") fact in the record.

This reasoning by the Roane Court was also the material fact relied on by the trial court in the instant case, that County received no notice of J.R.'s condition while J.R. was still within County's borders. (CR 29). The trial court was not swayed by the physical and time-space-sequential impossibility of providing any notice to Sully County when J.R., at death's door, had already presented to the threshold of Avera's emergency department in Pierre, South Dakota. While the trial court reasoned Avera had met the underlying requirements to receive assistance for J.R. under SDCL 28-13-37 and/or SDCL 28-13-38, the trial court would look to this Court for guidance in interpreting the language of those statutes because of Roane. (Avera Brief, Fn 3 @ 23; CR 820-822). The trial court also failed to recognize Roane as distinguishable from the instant case based upon all of the material facts cited by Avera. (Avera Brief @ 7-10).

b. Overruling Roane does not change SDCL 28-13-37 or the result in this case.

This argument by County blatantly ignores the concepts of stare decisis, controlling precedent and recognition of distinguishable case authority. As the cornerstone of the trial court's decision, Avera and SDAHO are aggrieved by Roane. While not necessary to overrule it, although this Court may clearly do so, other options include modifying its holding, limiting its holding, or simply finding Roane is distinguishable and not controlling in the instant case based upon the numerous material facts cited by Avera (Avera's Brief @ 7-18; SDCL 15-26A-12).

B. BECAUSE THE COUNTY'S CONSIDERATION OF THE APPLICATION IS NOT QUASI-JUDICIAL, THE CIRCUIT COURT APPLIED THE WRONG STANDARD OF REVIEW

If this Court rejects Avera's procedural argument that this issue is not properly before this Court due to lack of jurisdiction under SDCL 15-26A-22 and SDCL 15-26A-3(1) asserted by County (discussed *supra* @ 1), Avera will address the standard of review argument.

It is well-settled that in the construction and/or interpretation of statutes, the more specific or narrow statute controls over the more general. (Nelson v. Hill City Sch. Dist. 459 N.W.2d 451). It cannot be disputed that statutes governing County Commissioners' specific duties and obligations concerning medical indigency, and in many cases, significant health or life situations, are more specific than general statutes governing County Commissioners' authority in vacating highways, granting drainage permits, installing culverts, or buying road graders. County did not cite a single case from this Court wherein the judicial/quasi-judicial analysis was applied to legal review of a County Commission decision on medical indigency. If this Court adopts County's argument that a higher standard of review is required in these cases, such decision will do violence to legislative intent, and abrogate at a minimum the following statutes and case authority:

- SDCL 28-13-40 (expressly providing for de novo review);
- SDCL 7-8-29 (expressly providing for de novo review);[3]
- Sioux Valley Hosp. Ass'n. v. Jones Co. (309 N.W. 2d 835 (SD 1981); and

[3] The potentially higher standards of review in SDCL 28-13-1.4 are not triggered or substituted for *de novo* review under SDCL 7-8-29 because County has never asserted J.R. was not medically indigent (County Brief @ 7). Further, J.R. was medically indigent based upon his income falling below 2014 Federal Poverty Guidelines for a household of 3 (when adjusted from County's initial asserted household of 1).

Sioux Valley Hosp. Ass'n. v. Lake Co. (533 N.W. 2d 161 (SD 1995).

County's assertion that a higher standard of review (above *de novo*) applies, flies in the face of authority cited by County in its brief concerning statutory construction. (County Brief @ 12-15). County's obvious intent in noticing this issue for review is to insulate itself from material financial exposure for any assistance, especially hospitalization, required by nonresidents under SDCL 28-13-37 and SDCL 28-13-38. County wants to immunize from review its "policy" of denying anything more than perhaps immediate first aid or transportation, and then, ONLY if notice or complaint is made to them WHILE the nonresident is still within County's borders; all while failing to maintain any hospital inside County or contract with hospitals outside its borders to discharge its legal duties thereunder. Despite County's admission "[i]n reality, SDCL 28-13-38 is how the Legislature authorized counties to pay nonresident hospitalization expenses . . . ," (County Brief Fn2 @ 15), County's true intent is to have zero financial exposure or responsibility in this area, regardless of County's clear duty and obligation to nonresidents to be carried out within its borders recognized by Roane.

In determining Avera's claim at the commission level, County set itself up as judge, jury, and prosecutor when it determined County's asserted right to deny payment to Avera, which already incurred substantial financial injury to discharge County's statutory duty and obligation.[4] That is quasi-judicial action, and County cannot argue otherwise.

[4] Avera's actual out of pocket "cost" to provide hospitalization to J.R. was $40,563.33; much greater than the Medicaid methodology rate of $13,732.91 County could pay and discharge its statutory duty to J.R. (CR @ 32).

County asserts that its denial decision can be affirmed under any standard of review. (County Brief @ 8). Avera initially notes this Court has held questions of law under appeals pursuant to SDCL Ch. 1-26 are reviewed *de novo*. Lager v. Menards, Inc., 2018 SD 53, ¶ 22 (citations omitted). In discussing the abuse of discretion standard, County asserts that "[t]he County must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." (citations omitted) (County Brief @ 24). Unfortunately, this is where County's disconnection occurs.

First, County continues to conflate a residency requirement into SDCL 28-13-37 and/or SDCL 28-13-38. On the basis of J.R.'s non-residency, County asserts "the application for his hospitalization expenses should have been denied outright under SDCL 28-13-32.3 and SDCL 28-13-32.4 (County's Brief Fn3 @ 25). These two statutes do not even apply to J.R. as a nonresident, and nowhere in the plain language of SDCL 28-13-37 or SDCL 28-13-38 does any residency requirement appear. This "rationale" alone should be sufficient to reverse County's denial decision as suspect, but County crosses the line further.

C. THE CIRCUIT COURT SUBSTITUTED ITS JUDGMENT.

County delegated 100% its review, analysis, and decision in this case to Sarah Petersen, a consultant who held herself out as Codington County Director for Poor Relief, a position she was removed/resigned from 36 days before County's second hearing on December 30, 2021. (Exhibit A; CR 254-289). Petersen recommended the County deny Avera's claim because J.R. did not meet the residency requirement of SDCL 28-13-32.3

and SDCL 28-13-32.4. Second, Petersen advised that under the ACA, J.R. could have secured coverage. (County Brief @7).

Petersen also advised County that "when an individual immigrant comes to the United States, they are able to apply for Medicaid, and a denial of Medicaid coverage renders the individual eligible to apply under the Affordable Care Act. (CR 417); (County Brief @ 7). Petersen never presented written documentation confirming this assertion, and never provided any premiums available for any commercial insurance to potentially cover J.R. (Exhibit C; CR 571, 575).

The gaping holes in Petersen's analysis and counsel to County are measurable. In addition to initially using 2021 (versus 2014) financial data, and calculating J.R.'s household as a household of 1 (versus 3), Petersen never addressed that J.R. was not an immigrant to this Country, but here and gone (repeatedly) on a work visa, effecting J.R. even being able to apply for Medicaid.[5] Moreover, Petersen never addressed the argument raised by Avera, taken from the written materials Petersen herself supplied to the County, that the ACA was open for enrollment only from October 1 through December 31, 2013, and was not available for J.R. to enroll in mid to end April 2014 when he arrived. (CR 575). The ACA premiums quoted by Petersen also failed to account for a 50% adjustment for smokers. (CR 532, 534, 539). County can put all the window dressing it wants on its denial decision, but failing to address material facts like J.R.'s inability to apply for Medicaid when here intermittently on a work visa, and the ACA

[5] Five year waiting period required to apply for Medicaid (CR 571 and 599).

being closed to enrollment well before J.R. even arrived in Sully County, negate any rational connection between the facts in the record and County's denial decision.

CONCLUSION

Avera respectfully requests this Court reverse the trial court's decision affirming County's denial in this case pursuant to SDCL 15-26A-12, and "assist" County in discharging its statutory duty to J.R. under SDCL 28-13-37 and SDCL 28-13-38. While this will not make Avera whole, (FN 4 *supra*) it will provide some reimbursement for hospitalization provided by Avera in discharge of County's legal duty.

Respectfully submitted this 3rd day of May, 2023.

Robert R. Nelson
Attorney for Appellant
212 East 11th Street, Suite 200
Sioux Falls, SD 57104
605) 322-4621
Robert.Nelson@avera.org