

STATE HOSPITALS FOR THE INSANE:

Payment for confinement of indigent patients.

:A county does not have a lien
:on real estate owned by the
:entirety by inmates of such
:hospital for the payment of
:expense of the confinement
:of such persons in State
:Hospitals for the Insane.
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December 1, 1954

Honorable John R. Caslavka
Prosecuting Attorney
Dade County
Greenfield, Missouri

Dear Mr. Caslavka:

This will comply with your recent request for an opinion from this office, respecting the payment of expenses of confinement of a person of unsound mind in a hospital or other place as directed by the Probate Court of the county involved, and whether the county has a lien against the real estate owned by husband and wife as tenants by the entirety, and if so, how may the lien be enforced. Your request by letter for an opinion on this subject reads as follows:

"Recently the Probate Judge of Dade county, Missouri adjudicated a resident of this county to be of unsound mind and ordered her confined in the hospital in Springfield, Greene county, Missouri, there being no suitable place in Dade county, Missouri, for her confinement, all in accordance with section 458.160, Revised Statutes of Missouri, 1949.

"To further complicate matters this lady (and her husband who has been confined in the mental institution in Nevada, Missouri, for some years) along with her husband own certain real-estate in Everton, Dade county, Missouri, as tenants by the entireties, which has been appraised at \$1,500.00. They have several children, all except one of whom are residents outside of the state of Missouri, and who have evidenced no interest in their parents welfare.

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"A guardian has been appointed for this lady but there is no personal property to pay the expenses of her confinement until she can be removed to the hospital at Nevada, Missouri.

"Section 458.170, Revised Statutes of Missouri, 1949, indicates that the 'expenses attending such confinement shall be paid by the guardian out of his estate', but upon further checking the insanity laws I find no section or case authority to indicate Dade county, Missouri, has a lien upon this property for the payment of this expense nor anyway to get our hands upon the property to relieve the county of the liability of paying her keep.

"I am interested in two matters, to-wit:

"1. Whether Dade county has a lien upon the real-estate of the insane person subject of this letter, and her husband who also is confined in the institution at Nevada, for the payment of the cost of confinement where there is no personal property available.

"and

"2. the process necessary to enforce this lien if one there be, to defray the cost to the county,

"Your earliest possible reply will be appreciated."

Your request advises that the Probate Judge of Dade County, in this State, has made an order that a person adjudged to be a person of unsound mind be confined in a hospital at Springfield, Missouri, according to the provisions of Section 458.160, RSMo 1949. It appears that the person so adjudged to be of unsound mind by said Court and her husband are the owners of real property in Everton, Dade County, Missouri, as tenants by the entirety. It further appears that the husband of the person recently so adjudged by the Probate Court of Dade County to be a person of unsound mind, has also been adjudged to be a person of unsound

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mind and is confined, and has been so confined for a number of years, in the State Hospital for the Insane at Nevada, Missouri. Your request further advises that a guardian has been appointed for the person so adjudged to be a person of unsound mind by the Probate Court of Dade County, Missouri, but that such person has no personal property available from which her guardian may pay the expenses incident to her temporary confinement in the said hospital at Springfield, Greene County, Missouri, preparatory to her contemplated confinement, by order of the Probate Court of said Dade County, in the said State Hospital for the Insane at Nevada, Missouri, permanently. Upon this state of facts you submit for our consideration and opinion two questions, to-wit:

"1. Whether Dade county has a lien upon the real-estate of the insane person subject of this letter, and her husband who also is confined in the institution at Nevada, for the payment of the cost of confinement where there is no personal property available,

"and

"2. the process necessary to enforce this lien if one there be, to defray the cost to the county."

Confinement of an insane person in a safe and suitable place by the guardian of such person is made the duty of such guardian until the Probate Court shall make such order for the restraint, safekeeping, support and maintenance of such insane person as the circumstances of the case may require, is provided for by Section 458.150, RSMo 1949, which reads as follows:

"If any person, by lunacy or otherwise, shall be furiously mad, or so far disordered in his mind as to endanger his own person or the person or property of others, it shall be the duty of his or her guardian, or other person under whose care he or she may be, and who is bound to provide for his or her support, to confine him or her in some suitable place until the next sitting of the probate court

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for the county, who shall make such order for the restraint, support and safekeeping of such person as the circumstances of the case shall require."

Section 458.160, RSMo 1949, providing for the order of confinement of such insane person by the Judge of the Probate Court pending further orders respecting such confinement reads as follows:

"If any such person of unsound mind, as is specified in section 458.150 shall not be confined by the person having charge of him, or there be no person having such charge, any judge of a court of record, may cause such insane person to be apprehended, and may employ any person to confine him or her in some suitable place, until the probate court shall make further orders therein, as in section 458.150 specified."

Section 458.170, RSMo 1949, providing for the payment for the support of such person attendant upon such confinement reads as follows:

"The expenses attending such confinement shall be paid by the guardian out of his estate, or by the person bound to provide for and support such insane person, or the same shall be paid out of the county treasury, upon the order of the county court, after the same shall be duly certified to them by the probate court."

The two questions submitted in your request refer specifically to the real estate owned by such persons and ask that this opinion determine whether a lien exists against such property in favor of Dade County, Missouri, for the reimbursement of said county for the expenses paid by such county for the confinement of one of such persons temporarily in the Hospital in Springfield, Greene County, and in the State Hospital at Nevada, and for the cost of the confinement of the other one of such persons in the Nevada Missouri institution who, as it is said, has been there confined for some years.

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The guardian of the estate of an insane person or other person whose legal obligation it is to pay such costs may be sued and a judgment rendered against him as such guardian for such costs and recovered under execution against the individual property of his ward. But the cost of such confinement cannot be recovered by judgment and execution from property, real or personal, owned by the insane ward, in this case both being insane and the owners, by the entirety, of the real estate described in your request, for the cost of the maintenance of either of said wards in a State Hospital for the Insane. Neither of such insane persons, in this case tenants by the entirety, has any individual right or title to the property that would subject such property during coverture to the obligation of the guardian to provide for the payment for the confinement of either of them or both of them. This is the general rule, although there are some exceptions, laid down by the Courts and textwriters. 30 C.J. 564, states the following text on this subject:

"An estate by entires is defined as an estate held by husband and wife by virtue of title acquired by them jointly after marriage. It is a peculiar and anomalous estate. It is a sui generis species of tenancy. The essential characteristic of an estate by the entirety is that each spouse is seized of the whole or the entirety and not of a share, moiety, or divisible part. Each is seized per tout et non per my. There is but one estate, and, in contemplation of law, it is held by but one person. But while a tenant by the entires owns the entire estate, yet where it is owned in fee it is not greater in quantity than any other estate in fee.

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During coverture neither spouse has an estate of inheritance in property held as an estate by the entirety. * * *."

The Supreme Court of this State when this question has been before it for decision has adhered invariably to the rule. The Court in Ashbaugh vs. Ashbaugh, 273 Mo. Rep. 353, following the rule at l.c. 357 said:

"An estate by the entirety is created by a conveyance to the husband and wife by a deed in the usual form. It is one estate vested in two individuals who are by a fiction of law treated as one person, each being vested with the entire estate. Neither can dispose of it or any part of it without the concurrence of the other, and in case of the death of either the other retains the estate. It differs from a joint tenancy where the survivor succeeds to the whole estate by right of the survivorship; in an estate by entireties the whole estate continues in the survivor. The estate remains the same as it was in the first place, except that there is only one tenant of the whole estate, whereas before the death there were two."

Again, our Supreme Court in Frost vs. Frost, 200 Mo. Rep. 474, made the same holding. The Court, l.c. 481, held:

"An estate in entirety is not a joint tenancy in which each holds an individual right. A joint tenant may destroy the joint tenancy and thereby destroy the right of survivorship by conveying his right to a third person, in which event his former co-tenant and the third person to whom the conveyance is made become, as to each other, tenants in common. But neither the husband nor the wife in an estate of entirety can so destroy the character of the estate as to prevent the survivor becoming the sole owner. * * *."

We do not want to be understood as taking the position in this opinion that a husband and wife may not create a

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lien by their joint obligation or contract against real property held by them as tenants by the entirety. Mechanics' liens for materials furnished and work done on real property may attach to such property held by the entirety by husband and wife for improvements privately contracted for, and for public improvements, such as building sidewalks, enforceable against both during coverture when the contract was made by both of them while both are of sound mind. But not against such property owned by them by the entirety for the debts or obligations of one only of the two. 30 C.J. 574 states the text on that subject as follows:

"Mechanic's lien. A statutory mechanic's lien may attach to property held by husband and wife as tenants by the entirety where the contract was made or indebtedness incurred by both spouses, but not where incurred by one alone.

"Municipal lien. Where a husband and wife are owners by entirety of a lot in a city, and a municipal lien is filed against the wife alone, and judgment entered against her only, the lien is a nullity as to the husband and a sale under it passes no title."

We find no statutory or other authority of law allowing a lien to attach to real property owned by a husband and wife by the entirety in favor of a county for expense paid by such county attendant upon the confinement of either or both of such persons in a hospital or other place for the safekeeping of such insane person. All of the authorities we do find hold to the contrary, that is to say, that no such lien exists in favor of any such county. Sections 458.160 and 458.170, supra, provide that the county involved must pay the costs of such confinement. Neither of those sections, nor any other section of our statutes, gives such county a lien against the real property of such tenants by the entirety for the expense of such confinement of either or both of them as persons of unsound mind in a State Hospital for the Insane.

It appears clear from the authorities here cited and quoted that Dade County, Missouri, has no lien against the real estate of the persons named as the owners of such real estate by the entirety for the expense of the confinement of either of such persons in a hospital temporarily at

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Springfield, Missouri, by order of the Probate Court of Dade County, pending the removal of such insane person from said hospital to the State Hospital for the Insane at Nevada, Missouri, or for the expense of confinement of either or both of them at any time in said Hospital for the Insane at Nevada, Missouri. Since no lien exists against such property of such persons, the method of the enforcement of liens against real estate is not of interest here.

CONCLUSION

It is, therefore, considering the premises, the opinion of this office that Dade County, Missouri, has never had, and does not now have, a lien against the real estate of the persons described in your request as the owners thereof by the entirety for expense paid, or which may in the future be paid by said county for their confinement in hospitals for the insane by order of the Probate Court of said Dade County.

Your request for advice respecting the method of enforcement of liens against real estate need not be further considered since there is no lien in existence here.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. George W. Crowley.

Very truly yours,

JOHN M. DALTON
Attorney General

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