

MSBA ELDER LAW SECTION E-NEWSLETTER

June 9, 2009

E-Newsletter Editorial Staff:

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EDITOR'S NOTE: Based on feedback from the E-newsletter survey, the "Minnesota Cases" and "Statutes Regulations, and Bulletins" sections now appear higher up in the E-Newsletter, just behind the "Elder Law News" section. The Communications Committee continues efforts to improve the website and the E-Newsletter.

REMINDER: ELDER LAW SECTION ANNUAL MEETING

The annual meeting of the Elder Law Section will be on June 9, 2009 at 1:00 p.m. at the RiverCentre in St. Paul (following the Probate and Trust Law Annual Conference). Agenda items for the meeting include voting on nominees for the Governing Council, a slate of which is available at: <http://www.mnbar.org/sections/elder-law/WhatsNew.asp>. The meeting of the new Governing Council will immediately follow the Annual Meeting.

NURSING HOME ADMISSION AGREEMENTS

The May/June 2009 issue of the *Bench & Bar* includes an article on legal issues surrounding execution of a Nursing Home Admission Agreement. The article focuses on what loved ones should know when reviewing and signing the Agreement, including who should sign and who can be liable for nursing home expenses. The article, written by Susan T. Peterson, Esq., is available at: http://mnbar.org/benchandbar/2009/mj09/nursing_home.html.

ELDER LAW NEWS

Gays and lesbians worry about discrimination in retirement
http://minnesota.publicradio.org/display/web/2009/06/05/glb_tiretment/

Kohl Seeks Regulation of Long-Term Care Insurance (Update2)
<http://www.bloomberg.com/apps/news?pid=20601213&sid=awqd14tyMyY8>

St. Paul man gets jail time for bilking ill mother (Man got a reverse mortgage, didn't pay medical bills)

http://www.twincities.com/stpaul/ci_12525082

Chris Jensen Nursing Home Won't Close

<http://www.northlandsnewscenter.com/news/local/46493202.html>

Nursing Homes Rated (The federal government is stepping up efforts to improve the quality of nursing-home care and now has an online tool consumers can use in evaluating facilities)

<http://online.wsj.com/article/SB124374474563169581.html>

4 care facilities criticized in resident deaths

http://www.twincities.com/ci_12506102?source=most_emailed

MINNESOTA CASES

The following is an unpublished decision from the Minnesota Court of Appeals released on June 2, 2009:

A08-0653

A08-2240

In re the Guardianship and/or Conservatorship of: Joseph Andreszcuk, Ward/Protected Person (A08-653), and

In re the Conservatorship of: Joseph Andreszcuk, Protected Person (A08-2240).

MUEHLBERG, Judge

This is a consolidated appeal arising from an order appointing a guardian and conservator for appellant, and from an order directing the sale of real property and denying appellant's motion to disqualify counsel for the conservator. Appellant argues that (1) there is not clear and convincing evidence to support the district court's appointment of a guardian; (2) there is not clear and convincing evidence to support the appointment of a conservator; (3) the district court failed to make specific findings that the conservator appointed for appellant is the most suitable conservator for him; (4) the district court erred in granting the petition to sell his homestead; and (5) his due process rights were violated by the assistant county attorney's simultaneous representation of the conservator, as well as the county interests in the guardianship and conservatorship petition that was unknown to appellant. We affirm.

Available at: <http://www.lawlibrary.state.mn.us/archive/ctapun/0906/opa080653-0602.pdf>

Unpublished opinions may not be cited except as provided by Minn. Stat. Section § 480A.08, Subd. 3 (2008).

The following are two published decisions from the Minnesota Court of Appeals released on June 2, 2009:

A08-1691

In re the Estate of: Sylvester G. Grote, Deceased.

Chisago County District Court, Hon. Robert G. Rancourt.

Judge James C. Harten.

The entirety of any property owned in joint tenancy at the time of death by a recipient of medical assistance benefits that has passed into the estate of the recipient's surviving spouse is available for recovery of benefits paid for the recipient.

Affirmed; motion granted in part and denied in part.

Issues statement:

1. May MAB [Medical Assistance benefits] paid for a deceased spouse be recovered from property owned in joint tenancy at the time of the recipient's death that has passed into the estate of the recipient's surviving spouse?

Holding: Yes.

2. Is recovery of MAB from property previously owned in joint tenancy by the recipient spouse and a surviving spouse from the estate of the surviving spouse limited to one-half of the total value of the property?

Holding: "The extent of the interest conveyed through joint tenancy to Sylvester by Lavina's death was her interest in the entire property, which is therefore available for MAB recovery."

3. Is the issue of using the present value of the property rather than its value at the time of Lavina's death properly before this court?"

Holding: “The county never presented its current value argument to the district court ... the issue of using current value [as of death of surviving spouse, Sylvester] rather than the value at the date of death [of the MA recipient, Lavina] is not properly before us.”

Available at: <http://www.lawlibrary.state.mn.us/archive/ctappub/0906/opa081691-0602.pdf>

A08-1407

In re: The Naomi Margolis Revocable Trust, Barry Lorberbaum, petitioner, Appellant, vs. Sherry Huff, as Special Administrator of the Estate of Jack Margolis, Respondent

Ramsey County District Court, Hon. Margaret M. Marrinan.

Judge Lawrence T. Collins.

Under Minn. Stat. § 501B.14, subd. 1(2) (2008), a trustee is generally prohibited from exercising a discretionary power to satisfy a duty of support owed by the trustee to any person. Because this prohibition merely rewrites the terms of a trust to avoid unfavorable tax consequences, public policy does not bar the enforcement of an exculpatory clause to relieve a trustee from liability based on a violation of this section. Affirmed.

Issues statement:

1. Did the district court err by determining that husband’s improper discretionary payment of wife’s nursing-home and medical expenses did not result in damages?

Holding: "The district court did not err by enforcing the trust’s exculpatory clause to relieve husband of liability for these payments."

2. Did the district court err by not reopening the record for further testimony on the successor-trustee issue?

Holding: No.

3. Does Minnesota law authorize attorney fees against a trustee in his individual capacity?

Holding: No, "[w]e have also noted that 'there is no Minnesota case requiring a trustee whose management of a trust has been challenged to pay attorney fees incurred by the successful challenger'..."

4. Did the district court abuse its discretion by awarding trustee attorney fees to husband?

Holding: "The award of trustee attorney fees to husband, based on detailed and comprehensive findings, is not an abuse of discretion."

Excerpt:

"Section 501B.14 is not a prohibition on self-dealing. It is unmistakably adapted from section 814 of the Uniform Trust Code, which is designed to "rewrite the terms of a trust that might otherwise result in adverse estate and gift tax consequences."

Available at: <http://www.lawlibrary.state.mn.us/archive/ctappub/0906/opa081407-0602.pdf>

STATUTES, REGULATIONS, BULLETINS

There are not Statutes, Regulations, or Bulletins to report this week.

UPCOMING EVENTS AND CLE PROGRAMS

Probate & Trust Law Section Conference

June 8 - 9, 2009

Saint Paul RiverCentre

Contact Information: <http://www.minncle.org/SeminarsSearch.asp> or 1 800-759-8840.

The Basics of Elder Law

Video

June 16 – Minneapolis

June 18 – Moorhead

June 19 – Brainerd

June 22 – Duluth

June 22 – St. Cloud

June 26 – Mankato

July 17 – Rochester

July 20 - Minneapolis

Contact Information: <http://www.minncle.org/SeminarsSearch.asp> or 1 800-759-8840.

Elder Law Institute

October 8-9, 2009

Minnesota CLE Conference Center

ELDER LAW SECTION ACTIVITIES

ELDER LAW SECTION ANNUAL MEETING AND GOVERNING

COUNCIL MEETING: The annual meeting of the Elder Law Section will be on June 9, 2009 at 1:00 p.m. at RiverCentre in St. Paul (following the

Probate and Trust Law Annual Conference). This meeting serves as the next Governing Council meeting as well.

MA COMMITTEE MEETING: The next MA Committee meeting will be at 3:30 p.m. on Tuesday, June 16, 2009, at the MAO Offices, 2021 E. Hennepin, Suite 200, Minneapolis. Topics for the meeting may be submitted to MA Committee Chair, Cathryn Reher, at creher@mnelderlaw.com, or faxed to 952-542-9201. For directions, or to attend by phone, please contact Tracie Fenske with Long, Reher & Hanson, P.A. at 952-929-0622.

VULNERABLE ADULT COMMITTEE MEETING: The next meeting of the Vulnerable Adult Committee will be Thursday, July 30, at Noon, at the offices of Pearson, Randall, Schumacher & LaBore, P.A., 100 S. 5th Street, Suite 1025, Minneapolis, 612.767.7500. Contact co-chairs Ken LaBore at klabore@prslegal.com or Joel Smith at joel@koslaw.com for more information.

DON'T FORGET THAT THE ELDER LAW WEBSITE IS A GREAT RESOURCE. Here's what you can find on the Website: Links under "What's New" to the DHS Health Care Programs Manual, the updated Income and Asset Eligibility Figures for Minnesota Health Care Programs, the DHS Bulletin on treatment of uncompensated transfers, the Minnesota Bankers Association Compliance Bulletin on Powers of Attorney, and a legislative summary; Practice Links to organizations such as NAELA, ABA Commission on Law and Aging, Minnesota Senior Federation; Links to Federal and State Government Agencies, Statutes, and Regulations; Meeting Notices, Listings of Officers and Council Members, Section Bylaws, and more.

To access the ELDER LAW SECTION WEBSITE

Click here: <http://www2.mnbar.org/sections/elder-law/index.asp>

Please send E-Newsletter contributions by noon on Saturday of each week to Suzy Scheller at sscheller@prslegal.com.

If you do not wish to receive this E-Newsletter, send your request to be removed from the mailing list to Kim Basting at kbasting@statebar.gen.mn.us.

Current and prior E-Newsletters are posted on the website for the MSBA Elder Law Section and are available at: <http://www.mnbar.org/sections/elder-law/newsletters.asp>.