

FILED

STATE OF MINNESOTA

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COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
PROBATE-MENTAL HEALTH DIVISION

In re: Estate of

**ORDER DISALLOWING AND
DENYING CLAIM**

Richard L. Perrin,
Deceased

File No. 27-PA-PR-06-1482

This matter came before the court on August 31, 2009 on the Petition of David E. Culbert for an Order Permitting Him to Disallow the Claim after the filing of a Petition for Allowance After Disallowance.

Petitioner appeared personally *pro se*; Hennepin County Department of Economic Assistance, the Claimant, appeared by its attorney, Lon M. Erickson, Assistant Hennepin County Attorney. As discussed below, the matter was submitted on legal memoranda, the last of which was due on November 6, 2009.

The matter was referred for hearing to Bruce Kruger, District Court Referee, who now reports to the Court recommending the following **Findings and Order**:

FINDINGS

1. Decedent died testate on July 11, 2006, survived by three daughters. His will was formally probated and David E. Culbert was formally appointed personal representative by this court's order dated December 5, 2006. The Hennepin County Department of Economic Assistance presented its claim against the estate, which claim was based upon Medical Assistance benefits provided to decedent's predeceased spouse (decedent was not a recipient of Medical Assistance). The personal representative disallowed the claim in part. An amended claim was filed, and there was some confusion

as to whether it had been disallowed. Pursuant to an agreement of counsel, the parties agreed that the amended claim should be deemed disallowed, and the amended claim should be heard upon its merits. This was confirmed by this court's order dated August 31, 2009.

2. Counsel further agreed that there was no dispute as to the facts upon which the claim was based nor as to the amount of the claim. Medical Assistance benefits were provided by Hennepin County to decedent's spouse in the total amount of \$276,408.16. Counsel further agreed that the validity of the claim was controlled by the Minnesota Supreme Court's decision in *In re. Estate of Barg*, 752 N.W.2d 52 (Minn. 2008), *cert. den.* 129 S.Ct. 2859, WL 1835179 (June 29, 2009), because the interest of the surviving spouse herein, like that in *Barg*, was not marital property or jointly owned property. Pursuant to these agreements, the matter was submitted to the court on the basis of legal memoranda, the last of which was timely submitted to the court on November 6, 2009.

3. In the memoranda submitted to the court, counsel further agreed that *Barg* established that the instant claim was barred if it was being made pursuant to Minn. Stat. §256B.15, subdiv. 2, a part of the Medical Assistance statutory provisions. The amended claim, however, is based on Minn. Stat. § 519.05(a), a part of the family law statutory provisions. Minn. Stat § 519.05(a). See Claimant's Memorandum of Law in Support of Allowance of Claim dated October 9, 2009, p. 3. That statute generally provides that a spouse is not responsible for the debts of the other spouse, but continues, "Where husband and wife are living together, they shall be jointly and severally liable for necessary medical services that have been furnished to either spouse...."

4. The personal representative argues that *Barg* also bars a claim under § 519.05(a), because the issue was raised and argued in *Barg*, and is therefore barred under

the doctrine of res judicata.

5. Counsel admit that the Minnesota Supreme Court opinion in *Barg* is absolutely silent on § 519.05(a). The personal representative, however, notes that the issue was raised the briefs submitted by the *Barg* parties, and he cites the relevant sections of such briefs. Appellant's Brief, Appendix and Addendum, pp. 45-46; Respondent's Brief and Addendum, pp. 50-51; Appellant's Reply Brief and Addendum, pp. 22-24; and Appellant's Supplemental Response Brief, p. 10. Copies of these pages were attached as Exhibits A -D to the Personal Representative's Memorandum of Law in Support of Disallowance of Claim, dated October 30, 2009. Despite the silence of the *Barg* opinion, the claim of Mille Lacs County was based alternatively on a recovery under Minn. Stat. § 256B.15 (the Medical Assistance provisions) and/or under Minn. Stat. § 519.05(a) (the family law provisions). It was, in any event, a claim for Medical Assistance benefits provided.

6. Res judicata operates when: (a) the previous litigation involved the same claim, (b) the previous litigation involved the same parties or parties in privity with the current parties, (c) there was a final judgment on the merits, and (d) the estopped or barred party had the full and fair opportunity to litigate the matter. See, e.g., *State v. Joseph*, 636 N.W.2d 322 (Minn. 2001).

7. As noted earlier, the issue of a claim under § 519.05(a) was briefed and argued before the Minnesota Supreme Court, and it could or should have been argued at the trial court. Although the Supreme Court was silent, it did not specifically exclude a determination of the § 519(a) claim. It did disallow the Medical Assistance claim against the estate of Francis E. Barg. Given the facts that the matter was litigated at the trial court, was appealed to the Minnesota Supreme Court, and was appealed to the United States Supreme Court, there was most certainly a final judgment on the merits. Mille Lacs

County also most certainly had the full and fair opportunity to litigate its § 519.05(a) claim.

8. As stated in Black's Law Dictionary, privity is defined as mutual or successive relationships to the same right of property or such an identification of interest of one person with another as to represent the same legal right. Privity signifies that the relationship between two or more persons is such that a judgment involving one of them may justly be conclusive upon the other, although the other was not a party to the lawsuit. The Federal Medicaid Program (Medical Assistance in Minnesota) requires the states to develop a plan that, among other things, designates single state agency to administer or supervise the administration of the plan. 42U.S.C. § 1396a. Minnesota has designated the Minnesota Commissioner of Human Services as such agency. Minn. Stat. §§ 256B.01, 256B.02 and 256 B.04. It has further provided that the counties shall administer medical assistance under the supervision of the Commissioner of Human Services. Minn. Stat. § 256B.05. Each county is therefore in privity with the Commissioner, and with each other in the administration of the Medical Assistance program. The Hennepin County Department of Economic Assistance is in privity with Mille Lacs County, the *Barg* claimant.

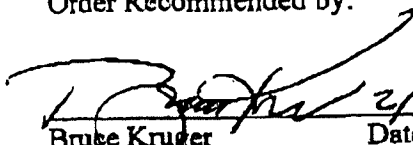
9. The instant claim of the Hennepin County Department of Economic Assistance, whether asserted under Minn. Stat. § 256.15 or Minn. Stat. § 519.05(a) is barred by the judgment in *Barg*, and should be disallowed and denied.

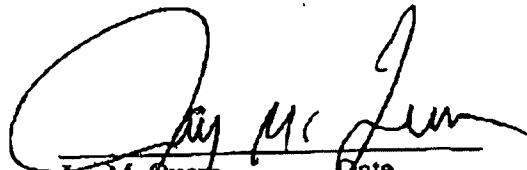
IT IS THEREFORE ORDERED

The Claim of the Hennepin County Department of Economic Assistance for Medical Assistance benefits provided to decedent's predeceased spouse is disallowed and

denied.

Findings Submitted and
Order Recommended by:


Bruce Kruger Date
District Court Referee 2/1/10


Jay M. Quam Date
Judge of District Court 2/3/10

