

MSBA ELDER LAW SECTION E-NEWSLETTER
April 26, 2011

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ITEM OF INTEREST

COURT OF APPEALS AFFIRMS DISTRICT COURT IN ESTATE OF PERRIN

On April 19, 2011, the Court of Appeals released its eagerly awaited decision in *In re Estate of Richard L. Perrin*, Appellate Court File No. A10-1352. The Court of Appeals held that the District Court did not err in applying the doctrine of collateral estoppel to disallow and deny in full Hennepin County's MA estate recovery claim against the estate of a surviving community spouse who did not receive MA and whose estate did not include any property owned by the MA spouse at the time of the MA spouse's death.

At issue in the appeal was 1) whether Minn. Stat. § 519.05 (2008) provided a theory of recovery separate and distinct from recovery under Minn. Stat. § 256B.15 against the estate of a surviving community spouse to recover benefits paid for the predeceased MA spouse, and 2) whether the District Court erred by applying the decision in *In re Estate of Barg*, 752 N.W.2d (Minn. 2008) and the doctrine of collateral estoppel to disallow and deny Hennepin County's MA claim in full. The Court of Appeals affirmed the District Court on all issues.

In a footnote, the Court of Appeals noted that the 2009 amendments to Minn. Stat. § 519.05 do not apply to the *Perrin* case because they were not made retroactive. By extension, the 2009 amendments would not apply to any other estate recovery case where the MA spouse died prior to July 1, 2009, the effective date of the 2009 amendments (the Court of Appeals cited August 1, 2009, by mistake).

The Commissioner of Human Services now has 30 days (to May 19) to petition the Minnesota Supreme Court for Review. The Estate is represented by Attorney David E. Culbert of Edina, Minnesota, and the Commissioner of Human Services and Hennepin County are represented by Assistant Attorney General Cynthia Jahnke.

Here is the link to the Court of Appeal's decision:

<http://www.mncourts.gov/opinions/coa/current/opa101352-0419.pdf>.

Submitted by Julian J. Zweber, Esq.
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Medical Assistance Committee Meeting Schedule Change

Due to scheduling and meeting space availability, the next Medical Assistance Committee meeting, originally scheduled for Tuesday, June 21, 2011, has been rescheduled to Tuesday, June 28, 2011. The meeting time of 3:30 p.m. and the meeting location, 1900 Central Ave Northeast, Minneapolis, MN, remain the same. See **ELDER LAW SECTION ACTIVITIES** in this E-Newsletter for further information.

LINK OF THE WEEK

Minnesota Department of Veterans Affairs

This link is to the Minnesota Department of Veterans Affairs. Many people are veterans or are spouses of veterans and draw benefits from the State of Minnesota and the US Veterans Administration. This week's link is a site that explains veterans' benefits and veterans' homes. While an attorney does need to be certified with the VA to aid a veteran in VA matters, it is important to keep veterans' benefits and homes in mind when you have a client that is a veteran. Thank you to all of you who have served our country.

The link is available at: [Minnesota Department of Veterans Affairs](#).

Submitted by Sarah J. Leonard
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ELDER LAW NEWS

Stroke survival may be better if you know your neighbors
<http://www.latimes.com/health/boostershots/la-heb-stroke-neighborhood-20110417,0,1811037.story>

Obama administration eases pain of Medicare cuts
http://www.google.com/hostednews/ap/article/ALeqM5hhNpY7bWLGIMMCl_3vWYrSfqdbBg?docId=d1568f282e6f4201a1bcaea32112b5d0

Minn. nursing home program minimizes medication

<http://minnesota.publicradio.org/display/web/2011/04/22/nursing-home-program/?refid=0>

New Medicare rules tighten screening for home health care services

<http://minnesota.publicradio.org/display/web/2011/04/21/health-care-reform-doctor-patient-visits/>

Morrison County outstanding senior citizens sought

<http://brainerddispatch.com/news/2011-04-21/morrison-county-outstanding-senior-citizens-sought>

Dayton hears concerns of seniors over budget cuts

<http://minnesota.publicradio.org/display/web/2011/04/19/dayton-hears-seniors-concerns/>

MINNESOTA CASES

The following is a published decision released by the Minnesota Court of Appeals on Tuesday, April 19, 2011:

A10-1352

In re the Estate of: Richard L. Perrin, Decedent.

RANDALL, Judge

1. When parties agree that there are no factual disputes and the adjudication of an issue in their case is controlled by the disposition of another action, the district court does not err in adjudicating the issue in accordance with such disposition.
2. For purposes of determining the availability of the doctrine of collateral estoppel, an issue is finally adjudicated on the merits in a prior action when that issue was briefed and argued to the court as an alternative theory for relief and its determination is necessarily implied by the court's resolution of the case.

Affirmed.

From the Opinion:

Appellant commissioner of the Minnesota Department of Human Services argues that the district court erred when it (1) disallowed and denied Hennepin County's (the county) original claim for recovery of medical assistance benefits based on its claim that the district court erroneously interpreted the supreme court's alternative claim for recovery was barred by the doctrine of collateral estoppels. We conclude that the district court properly disallowed and denied the county's original claim based on Barg. Barg finally adjudicated the merits of the county's alternative claim for recovery. We therefore affirm.

This opinion is available at: <http://www.mncourts.gov/opinions/coa/current/opa101352-0419.pdf>.

The following is an unpublished opinion released by the Minnesota Court of Appeals on Tuesday, April 19, 2011:

A10-1531

In re: Pearl F. Dynan Living Trust

HALBROOKS, Judge

Appellant, Melvin J. Rouillard, challenges the district court's order allowing a \$200,000 partial distribution of the trust assets of his late wife, Pearl F. Dynan, to one of her nine children, respondent, Antoinette Moore. Appellant claims that the partial distribution breaches a settlement agreement that prohibits any trust distributions until after his death. Because we conclude that the terms of the settlement agreement bar such a partial distribution, we reverse.

This opinion is available at: <http://www.mncourts.gov/opinions/coa/current/opa101531-0419.pdf>

Unpublished opinions may not be cited except as provided by Minn. Stat. Section 480A.08, Subd. 3 (2009).

STATUTES, REGULATIONS, BULLETINS

There are no Statutes, Regulations, or Bulletins to report this week.

UPCOMING EVENTS AND CLE PROGRAMS

Hennepin County Bar Association

Webcast CLE

Live Replay: Elder Law, 2011 and Beyond

May 12, 2011

Contact information: <https://www.hcba.org/Calendar/Signup.aspx?EventNo=3584>

Ramsey County Bar Association

Dealing with Elderly Parents

June 8, 2011

Contact information:

https://netforum.avectra.com/eWeb/DynamicPage.aspx?Site=RCBA&WebCode=EventDetail&evt_key=50a28f4a-6eda-49a1-80d0-2f2aae562239

**Minnesota State Bar Association
Probate & Trust Law Section Conference**

June 6 & 7, 2011

Contact Information: <http://www.minncle.org/seminardetail.aspx?ID=100641101>

ELDER LAW SECTION ACTIVITIES

MA COMMITTEE MEETING: The next MA Committee meeting will be at 3:30 p.m. on Tuesday, June 28, 2011. Topics for the meeting may be submitted to MA Committee Chair, Cathryn Reher, at creher@mnellderlaw.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. Please be reminded that the meeting location is: Estate & Elder Law Services (formerly MAO Legal Services), Monroe Village, 1900 Central Avenue NE, Suite 106, Minneapolis, Minnesota 55418. There are a few parking spaces behind the building and lots of street parking. People should walk to the back of the building and come to the back door which faces directly into the meeting room.

GOVERNING COUNCIL: The next meeting of the Elder Law Section Governing Council will be 3:30 p.m. on Friday, April 29, 2011, at Estate & Elder Law Services (formerly MAO Legal Services), Monroe Village, 1900 Central Avenue NE, Suite 106, Minneapolis, Minnesota 55418. There are a few parking spaces behind the building and lots of street parking. People should walk to the back of the building and come to the back door which faces directly into the meeting room. For further information, please contact Jennifer Wright, Chair, at jlwright1@stthomas.edu.

ELDER LAW SECTION ANNUAL MEETING: The 2011 Annual Meeting of the Elder Law Section will be held at 3:30 p.m. on Friday, June 17, 2011, at the offices of Estate & Elder Law Services (formerly MAO Legal Services), located at Monroe Village, 1900 Central Avenue NE, Suite 106, Minneapolis. Please note the meeting date and location changes. There are a few parking spaces behind the building and lots of street parking. People should walk to the back of the building and come to the back door which faces directly into the meeting room. For further information, please contact Vicki McIntyre, Esq. at vmcintyre2@yahoo.com.

DON'T FORGET THAT THE ELDER LAW WEBSITE IS A GREAT RESOURCE. Here's what you can find on the Website: Links to the DHS Health Care Programs Manual, the DHS Bulletin on treatment of uncompensated transfers, the Minnesota Bankers Association Compliance Bulletin on Powers of Attorney, legislative summary; Practice Links to organizations such as NAELA, ABA Commission on Law and Aging, 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://www.mnbar.org/sections/elder-law/index.asp>

Please send E-Newsletter contributions by 10 p.m. on Sunday of each week to Marjorie Austin at mj@mjaustinlaw.com.

If you do not wish to receive this E-Newsletter, send your request to be removed from the mailing list to Elyse Farnsworth at efarnsworth@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://www2.mnbar.org/sections/elder-law/newsletter.asp>.