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ESTATE RECOVERY FROM NON-RECIPIENT SPOUSE'S ESTATE

A recent decision from the Minnesota Supreme Court highlights some important distinctions regarding Medicaid estate recovery from the estates of non-recipient spouses. In *In re the Estate of Francis E. Barg*, (A05-2346, May 30, 2008), the county Family Services and Welfare Department (County) filed a claim against the estate of Francis Barg (the "Estate") to recover Medicaid benefits paid to his wife. Mr. Barg's estate allowed the claim in part, and disallowed the rest.

During their marriage, the Bargs took title to two parcels of real property as joint tenants. Dolores Barg entered a nursing home in October 2001 and applied for Medicaid in December 2001. Mr. Barg executed a new will in February 2002, leaving his estate to his descendants, with no provision for Mrs. Barg. Mrs. Barg transferred her joint tenancy interest in the real property in July of 2002, and her daughter, as guardian of Mrs. Barg's estate, removed Mrs. Barg's name from certificates of deposit held jointly with Mr. Barg. Mrs. Barg died in January of 2004, after receiving over \$100,000 in Medicaid benefits. Mr. Barg died in May of 2004, never having received Medicaid benefits. The county filed a claim against Mr. Barg's estate for the full value of the Medicaid benefits that Mrs. Barg received. The Estate disallowed \$44,533.53 of the claim and allowed \$63,880. The county petitioned for an allowance of the full claim, asserting that the entire value of the marital property (the real property and certificates of deposit) was subject to its claim because Mrs. Barg's joint tenancy interest gave her a right to the use of the entire property. The district court evaluated Mrs. Barg's interest in the property as a life estate and upheld the partial disallowance. The court of appeals said that Mrs. Barg retained a joint tenancy interest in the real property at the time of her death and remanded the case to determine the amount of the allowable claim.

The Minnesota Supreme Court first considered whether the Minnesota law regarding estate recovery was preempted by federal law. Minnesota law stated

that “on the death of the survivor of a married couple, either or both of whom received medical assistance ... the total paid for medical assistance rendered for the person and spouse shall be filed as a claim against the estate of the [recipient] or *the estate of the surviving spouse.*” (emphasis added). Further, a claim against the estate of the surviving spouse may be made up to “the value of the assets of the estate that were marital property or jointly owned property *at any time during the marriage.*” (emphasis added). The Court analyzed the decisions of courts in other states and determined that there is a split in the courts regarding whether states can recover against the estates of surviving spouses. The Court held that federal law does not preclude all recovery from the estate of a surviving spouse.

The Court next considered whether the scope of recovery from a surviving spouse’s estate allowed under Minnesota law is consistent with federal law, because Minnesota law allows recovery of “the value of assets of the estate that were marital or jointly owned property *at any time during the marriage.*” (emphasis added). The Court found it significant that only one court has found that federal law authorizes recovery from a surviving spouse’s estate of assets that were jointly owned during the marriage but transferred by the recipient spouse prior to his or her death. The Court reviewed the provisions of the 1993 amendments to 42 U.S.C. § 1396p(b) that expanded the definition of “estate” to include not only the recipient’s probate estate, but also, at the option of the state, “any other real and personal property and other assets in which the individual had any legal title or interest *at the time of death* (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the deceased individual though joint tenancy, tenancy in common, survivorship, life estate, living trust, or *other arrangement.*” (emphasis added). The Court construed the statute to mean that “other arrangements” refers to other means by which assets are transferred to the list of recipients of the conveyance (a survivor, heir, or assign of the deceased individual) at the individual’s death. The Court concluded that there is no basis to interpret federal law to permit recovery of assets in which the Medicaid recipient did not have an interest at the time of his or her death. As such, property transferred prior to death would not be part of the recipient’s estate. The Court held that federal law partially preempted Minnesota law “to the extent that it authorizes recovery from the surviving spouse’s estate of assets that the recipient owned as marital property or jointly-owned property *at any time* during the marriage. To be recoverable, the assets must have been subject to an interest of the Medicaid recipient at the time of her death.”

The Court then considered the issue of whether Mrs. Berg had any interest in property at the time of her death that would be subject to estate recovery. The Court, based on its interpretation of “other arrangements” under federal law, concluded that Mrs. Berg “did not retain a joint tenancy interest in the property at the time of her death, because that interest was effectively and legally transferred before her death.” The Court then considered whether Mrs. Berg had any other interest in the property at the time of her death that could be part of expanded estate recovery. The Court determined that “for an interest to be traceable to and recoverable from a surviving spouse’s estate, the interest must be (1) an interest recognized by law, (2) which the Medicaid recipient held at the time of death, and (3) that resulted in a conveyance of an interest of some value to the surviving spouse that occurred as a result of the recipient’s death.” The Court concluded that Mrs. Berg’s joint ownership in the real property and

certificates of deposit no longer existed at the time of her death. The county therefore had no basis for any of its claim against the estate. It should be noted that because the estate allowed part of the claim, and only challenged the part of the claim it disallowed, the estate could not seek a reversal of the claim that it allowed for the first time in the Minnesota Supreme Court.

The attorneys at Oast & Hook can assist client with their estate, financial, insurance, long-term care and veterans' benefits planning, as well as their estate and trust administration needs.

Ask Allie

O&H: Allie, an important anniversary happened on July 1st concerning pets. Do you know what it is?

Allie: Of course I do. July 1st is the anniversary of the date in 2006 that Virginia law first permitted people to establish pet trusts. Virginia Code Section 55-544.08 permits people to set up trusts for their pets that can be enforced under the law. Prior to this law's enactment, pets were treated as property and could not benefit directly from trusts. Pet trusts can be an important part of estate planning for people who share their homes and lives with pets.



Please feel free to e-mail your questions to Allie at: allie@oasthook.com.

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