

MSBA ELDER LAW SECTION E-NEWSLETTER

June 3, 2008

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BARG OPINION RELEASED

The Minnesota Supreme Court released its long-awaited decision in *Estate of Frances E. Barg* on Friday, May 30, 2008. The unanimous decision holds that Minn. Stat. 256B.15, the medical assistance estate recovery statute, is partially pre-empted by federal law. A summary of the decision appears under "Minnesota Cases," below, and commentary will be provided in future issues of the newsletter. The full decision is available at:

<http://www.mncourts.gov/opinions/sc/current/OPA052346-0530.pdf>

REMEMBERING TOM WILSON

A Tribute from Linda Bogut

Thomas Bennett Wilson, III
Attorney at Law
Worthy Adversary
Friend

Tom died at the age of 61 from lung cancer. He is survived by his wife, friend, and law partner, Gayle Gaumer, sons Toby and Ryan (Michelle) Wilson; and daughter, Corinne Wilson.

Tom was well known and admired around the Hennepin County Probate Court. He served on the Hennepin County Commitment Defense Panel and was passionate in his representation of clients facing commitment. He served as a court appointed attorney representing people with disabilities when a petition was filed to have a guardian or conservator appointed for them. In 1987, the Minnesota Mental Health Association recognized Tom with the Outstanding Legal Services to Adolescents Award. That was just one of many honors Tom received.

Tom served on numerous boards and belonged to countless organizations and associations, including the Elder Law Council. He was recognized as a "Super Lawyer" in employment, social security and elder law in 1991.

If you found yourself in a contested hearing with Thomas Bennett Wilson III as the opposing counsel, you knew you were in for a tough battle. After you came up against him in a contested matter you quickly became aware of his trial skills; thus he developed the respect of many trial attorneys.

Tom was a very active person who never missed any of his children's school activities. He coached youth teams in a variety of sports and was the 2001 Girls Soccer Section 5AA Coach of the year.

Tom was first and foremost a family man, but to those of us who remember seeing him walk the court house halls with his pony tail and tennis shoes, he was a respected and worthy adversary who always worked for the best interest of his clients.

He will be greatly missed.

Editors Note: Services for Tom will be held at 4:30 p.m. on Thursday, June 5, 2008, at the Colonial Church of Edina, 6200 Colonial Way, Edina, Minnesota.

ELDER LAW NEWS

When money goes missing from a vulnerable adult, sometimes investigators need look no further than a close relative or longtime family friend and caregiver.

http://www.twincities.com/ci_9408658

Minnesota's rural communities face harsh Medicare cuts to skilled nursing care.

http://insurancenewsnet.com/article.asp?n=1&neID=200805281680.2_19730034c1ada8b
[c](#)

UCare is holding informational meetings in June about its UCare for Seniors Medicare Advantage plan.

<http://www.businessnorth.com/pr.asp?RID=2764>

Health Partners central Minnesota clinics are among Minnesota 's top performers in health care quality for Medicare patients.

<http://www.sctimes.com/apps/pbcs.dll/article?AID=/20080519/BUSINESS/105190043/1003>

UPCOMING EVENTS AND CLE PROGRAMS

Medical Assistance Update

Presented by Julian Zweber

Monday, June 9, 2008

Probate and Trust Law Section Conference
RiverCentre, 175 W. Kellogg Blvd., St. Paul
Information and online registration available at: www.minncle.org

Estate Recovery Basics

Presented by Peter Hendricks
Tuesday, June 10, 2008
Probate and Trust Law Section Conference
RiverCentre, 175 W. Kellogg Blvd., St. Paul
Information and online registration available at: www.minncle.org

Elder Mediation Training

Sponsored by The Center for Elder Justice and Policy and the Center for Negotiation and Justice at William Mitchell College of Law
Friday and Saturday, June 13-14, 2008
William Mitchell College of Law, St. Paul
The training has been approved for 12.75 CLE Credits
Information and online registration available at:
<http://www.wmitchellalumni.net/NetCommunity/SSLPage.aspx?pid=244&srcid=244>

Top Ten Legal Issues for You and Your Aging Parents

Presented by Laurie Hanson, Long Reher & Hanson, and Kim Dayton, William Mitchell College of Law
Monday, June 16, 2008 - 3:30-4:30 p.m.
2008 Annual MSBA Convention, Duluth Entertainment Convention Center, 350 Harbor Drive, Duluth
Information and registration available at: <http://www2.mnbar.org/convention/CLE.asp>

Age and Disabilities Odyssey

Co-presented by Minnesota DHS's Continuing Care Division and the Minnesota Board on Aging
Monday, Tuesday, Wednesday, August 18 - 20, 2008, Duluth, Minnesota
A comprehensive education and networking event for those working in the fields of aging and disabilities throughout Minnesota.
More information available at:
http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=dhs16_140408

Elder Law Institute 2008

Co-presented by the Elder Law Section of the MSBA and Minnesota CLE
Thursday and Friday, October 2-3, 2008
Minnesota CLE Conference Center, 3rd floor City Center, Minneapolis
MARK YOUR CALENDARS and watch this site for more information.

ELDER LAW SECTION ACTIVITIES

ANNUAL MEETING. The Governing Council Meeting and Annual Meeting of the Elder Law Section will begin at 1:00 p.m. on Tuesday, June 10, 2008, at RiverCentre in St. Paul, in conjunction with the Probate and Trust Law Section Conference. All Elder Law Section members are encouraged to attend and to vote for new officers and Governing Council members. This is the final meeting of the 2008 year; the new MSBA year begins on July 1, 2008.

MEDICAL ASSISTANCE COMMITTEE: The next Medical Assistance Committee meeting will be at 3:30 p.m. on Tuesday, June 17, 2008, at the MAO offices, 2021 E. Hennepin, Suite 200, Minneapolis. For directions, or to attend by phone, please contact Tracie Fenske with Long, Reher & Hanson, P.A. at 952-929-0622.

ELDER LAW INSTITUTE PLANNING COMMITTEE. The next meeting of the ELI Planning Committee will be at 11:30 a.m. on Thursday, June 19, 2008, at the Minnesota CLE offices, 2550 University Avenue West, Suite 160S, St. Paul. Anyone interested in attending should contact Lynne O'Connell at loconnell@minncle.org.

MINNESOTA CASES

The following is a Minnesota Supreme Court decision released on May 30, 2008.

A05-2346

Court of Appeals

In re the Estate of: Francis E. Barg, a/k/a Francis Edward Barg

MEYER, Justice.

1. Federal Medicaid law does not preclude all recovery from the estate of a surviving spouse of a Medicaid recipient, and the authorization in Minn. Stat. § 256B.15, subd. 1a (2006), to make a claim against the estate of a surviving spouse, is therefore not preempted.
 2. Federal law limits the scope of recovery from the estate of a nonrecipient spouse. Minnesota Statutes § 256B.15, subd. 2 (2006), is partially preempted to the extent that it authorizes recovery from the surviving spouse's estate of assets in which the deceased Medicaid recipient did not have a legal interest at the time of death.
 3. At the time of her death, Dolores Barg had no interest in property that can form the basis for recovery against the estate of Francis Barg.
- Affirmed in part and reversed in part.

Took no part, Anderson, Paul H., and Dietzen, JJ.

The full *Barg* opinion is available at:

<http://www.mncourts.gov/opinions/sc/current/OPA052346-0530.pdf>

The following is an unpublished Minnesota Court of Appeals decision dated May 27, 2008.

A07-1249

In re the Estate of: Nievedia Crystal Ross, Deceased.

SHUMAKER, Judge

Appellant challenges the district court's order for summary judgment in favor of the estate. On appeal, she argues that her claim against the estate is valid as a charitable subscription, enforceable under the theory of promissory estoppel, and also a valid unilateral contract. She further contends that the district court erroneously denied her claim for sales tax on two vehicles gifted to her. Because we find that the district court did not err in its disposition, we affirm.

The full decision is available at:

<http://www.mncourts.gov/opinions/coa/current/opa071249-0527.pdf>

The following is a Minnesota Supreme Court decision released on May 29, 2008.

A06-1235

Court of Appeals

Auto Owners Insurance Company, Respondent, vs. Chong Suk Perry, Appellant.

G. BARRY ANDERSON, Justice

The district court did not err in concluding that the definition of “dependent” in Minn. Stat. § 65B.44, subd. 6 (2006), is limited to a decedent’s surviving spouse and children and that a decedent’s girlfriend, with whom he resided, is thus not entitled to survivors’ economic loss benefits under the Minnesota No-Fault Automobile Insurance Act, Minn. Stat. §§ 65B.41-.71 (2006).

Affirmed.

Dissenting, Justices Alan C. Page and Helen M. Meyer.

Took no part, Justice Christopher J. Dietzen.

The following is from the dissent by Justice Page and joined by Justice Meyer:

*** “Perhaps most absurd, under the court’s reading of the statute, is the example of the couple, married for 60 years, in their 90s, and the husband, no longer able to live in their home, lives in an assisted living facility. If the wife dies as a result of a motor vehicle accident, the husband, even though he would be a surviving spouse at the time of the wife’s death, would not be eligible for survivors’ benefits because he could not establish dependency under the court’s holding. Such disparate results are not only absurd, they serve to highlight the fact that the legislative goal of relieving the severe economic distress of uncompensated victims is not met.” ***

The full case is available at: <http://www.mncourts.gov/opinions/sc/current/OPA061235-0529.pdf>

STATUTES, REGULATIONS, BULLETINS

DHS BULLETIN #08-21-04: CHANGES IN THE TREATMENT OF ANNUITIES FOR MEDICAL ASSISTANCE PAYMENT OF LONG-TERM CARE SERVICES ELIGIBILITY AND BENEFIT RECOVERY ANNOUNCED. This bulletin, dated 5/27/08, contains new disclosure requirements and treatment of certain annuities relating to eligibility for Medical Assistance payment of long-term care services and benefit recovery under the federal Deficit Reduction Act of 2005 (DRA). The bulletin is available at:

http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs16_141440.pdf

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 eNewsletter contributions by noon on Saturday of each week to Vicki McIntyre at vmcintyre2@yahoo.com.