

MSBA ELDER LAW SECTION E-NEWSLETTER

June 24, 2008

E-Newsletter Editorial Staff:

Newsletter Committee Chair: Jonathan Dyrud, Esq.

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THOUGHTS FROM THE OUTGOING CHAIR:

Section Members: As this MSBA year draws to a close I want to take this opportunity to thank everyone for a great year! Much has been accomplished by members who have put a lot of time into the Section: Particularly I want to thank Julian Zweber and Joel Button for writing the Section's Amicus brief in the Barg case. A lot of sweat equity went into that brief and most certainly it helped the Court understand the issues. Tom Meinz did a great job in arguing the case before the Supreme Court. If you get a chance to review the arguments on line – do it! I don't think anyone could have argued it better.

Also, I'd like to thank Jennifer Wright and the Pro Bono committee for serving as one of Minnesota's state liaisons for National Health Care Decisions Day. What an amazing success that was. The William Mitchell event had over 100 individuals filling out directives. Several section member served as volunteer attorneys at the all-day event.

Keep this event in mind for your pro bono activity next year – think about a place in your community where you could meet with people to help them fill out Health Care Directives.

I'd also like to thank Meaghan Harper at the state bar for helping us with the survey and as a result learning from all of you what you wanted from your section. We hope that more section members will get involved in the work of the section and that the activities of the Section help you with your practice.

The Medical Assistance Committee headed by Cathryn Reher meets every other month and the members love it. I could go on and on but I want to end with this: Vicki has done a fabulous job of keeping this newsletter alive and timely. If you like the newsletter...get involved! We will need writers and contributors over the years. It keeps all of us up to date with the newest regulations and laws.

I thank you for the opportunity to serve as the Chair of the Section and wish all of you a great summer.

Laurie

Editor's Note: There will be no E-Newsletter on July 1, 2008, due to the vacation of the Editor-in-Chief.

ELDER LAW NEWS

Minnesota exports innovative health-care system ideas to Germany.

http://www.minnpost.com/stories/2008/06/16/2239/minnesota-germany_connection_providing_healthy_exchange_of_ideas

A new measure of income adequacy for older Americans reveals that many are ill-prepared to retire with dignity.

<http://www.pr-inside.com/a-new-measure-of-income-adequacy-r654266.htm>

Minnesota hospitals project stroke-treatment expertise statewide despite low Medicare reimbursement rates. (Scroll down to find article)

http://www.minnpost.com/dailyglean/2008/06/16/2244/daily_glean_gop_convention_donors_clam_up_on_lobbypalooza

Thousands of Medicare health providers owe the federal government more than two billion in payroll and other back taxes.

<http://www.baltimoresun.com/business/bal-bz.medicare20jun20,0,4116184.story>

UPCOMING EVENTS AND CLE PROGRAMS

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

GOVERNING COUNCIL MEETING: The next Elder Law Section Governing Council meeting will be at 3:30 p.m. on Friday, August 8, 2008, at the MAO offices, 2021 E. Hennepin, Suite 200, Minneapolis. All members are welcome to attend. To participate by phone, please contact Laurie Hanson in advance at lhanson@mnelderlaw.com.

MEDICAL ASSISTANCE COMMITTEE MEETING: The next Medical Assistance Committee meeting will be at 3:30 p.m. on Tuesday, August 19, 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.

MINNESOTA CASES

Unpublished Minnesota Court of Appeals decisions released on June 17, 2008.

A07-1713

In re: Estate of Doris L. Prestegaard, Deceased

KLAPHAKE, Judge

Doris L. Prestegaard died on March 1, 2003, survived by her three children, respondents Stefni Westphal and Kristi Bolstad, and appellant Peter Prestegaard, who were her residuary beneficiaries. All three were appointed as personal representatives of the estate, as well as respondent U.S. Bank N.A., as corporate personal representative. Appellant contests the district court's June 29, 2007 order for complete settlement and distribution decree, arguing that the court misconstrued the provisions of the will.

Because the plain language of the will supports the district court's construction, we affirm.

The case is available at: <http://www.mncourts.gov/opinions/coa/current/opa071713-0617.pdf>

A07-0969

In re: Guardianship of Robert E. Stransky, Ward

TOUSSAINT, Chief Judge

Appellants-interested persons Bruce and Mary Bombard, Elizabeth Erhart, Keith Lindstrom, Dave Nelsen, Kevin Carlson, Jeanette Tuzinski, Pete and Kim Tuzinski, John and Betty Weis, and Arlee and Ellen Carlson challenge the district court's orders granting respondent-guardian Sheila Stransky's petition for removal of her restrictions as guardian of respondent-ward Robert E. Stransky and awarding the guardian costs and fees. Because there were no irregularities in the proceedings and because the district court did not abuse its discretion and its findings were not clearly erroneous, we affirm the district court's orders lifting the guardian's restrictions and awarding her costs and disbursements. Because the district court abused its discretion by determining that appellants acted in bad faith, we reverse the district court's order granting the guardian attorney fees.

The case is available at:

<http://www.mncourts.gov/opinions/coa/current/opa070969-0617.pdf>

A07-1304

**In re the Matter of: Steven R. Schaetzke, petitioner, Respondent,
vs. Linda Hardin, Appellant.**

MUEHLBERG, Judge

Appellant and respondent lived together for a substantial period of time as cohabitants. During their cohabitation, respondent executed a deed in favor of appellant creating joint-tenancy ownership of the parties' homestead. The parties eventually married, but this marriage was later dissolved. Appellant now challenges the district court's resolution of the matters relating to the parties' cohabitation and marriage, claiming it erred in: (1) determining that respondent's

execution of the deed did not gift an interest to her in the parties' homestead; (2) characterizing certain property shared during the parties' marriage as marital in nature; and (3) in refusing to invade respondent's nonmarital estate. We conclude the district court properly characterized the disputed property as marital property and that it acted within its discretion in refusing to invade respondent's nonmarital estate and affirm in part. But we conclude that the district court erred in deciding that the execution of the deed did not gift appellant an interest in the parties' homestead and reverse in part and remand.

The case is available at: <http://www.mncourts.gov/opinions/coa/current/opa071304-0617.pdf>

Unpublished opinions may not be cited except as provided by Minn. Stat. Section 480A.08, subd. 3 (2006).

STATUTES, REGULATIONS, BULLETINS

Nothing to report this week.

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.