

# MSBA ELDER LAW SECTION E-NEWSLETTER

## NOVEMBER 11, 2008

### E-Newsletter Editorial Staff:

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### **THE BARG UPDATE: BARG GENERATES FIRST OFFSPRING**

By Julian J. Zweber

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The recent Minnesota Supreme Court decision in the case of *In re the Estate of Francis E. Barg*, 752 N.W.2d 52 (Minn. 2008), has opened the door for reconsideration of the Court of Appeals decision in the *Estate of Jobe*, 590 N.W.2d 162 (Minn. Ct. App. 1999).

In *Jobe*, the Court of Appeals allowed a medical assistance claim against the full value of a community spouse's homestead which had been held in joint tenancy between the MA spouse and the community spouse until the MA spouse's death. The Court of Appeals held that the full value of the homestead could be subjected to recovery by the county MA collection unit. The Court of Appeals cited the *Thompson* and *Wirtz* cases in North Dakota in support of its conclusion. In the recent unanimous *Barg* decision, the Minnesota Supreme Court explicitly refused to follow the reasoning of the North Dakota cases and held that federal law restricted a state's authority to recover MA benefits from the estate of a community spouse who never received MA benefits. In holding that Minn. Stat. 256B.15 was in conflict with federal law, the Minnesota Supreme Court held that MA recovery from the estate of a community spouse was limited to the value of assets which transferred to the community spouse at the time of the MA spouse's death. The Court of Appeals, in its decision below, held that the interest of a deceased spouse in a homestead which was held in joint tenancy was one-half of the value of the property rather than the entire value of the property. The Supreme Court's decision reduced the claim even further because the homestead had been transferred to the community spouse prior to the MA spouse's death.

Attorney Sally Mortenson of Burnsville is now representing the Personal Representative of the Estate of Sylvester G. Grote in an appeal from an order of the Chisago County District Court which allowed the entire value of the community spouse's homestead to be subjected to a medical assistance claim. The homestead had been held in joint tenancy until the MA spouse's death. *In re the Estate of Sylvester G. Grote*, Court of Appeals Docket No. A08-1691. The Estate is challenging the claim in its entirety because the definition of "estate" under Minn. Stat. 256B.15 was not amended to include joint tenancies after death until August 1, 2003. In the alternative, the Estate is arguing that

only half the value of the homestead should be subjected to recovery. The Estate's brief was filed October 26, 2008. Chisago County's brief is due by November 26, 2008.

In a related development, on November 3, 2008, Mille Lacs County and the Minnesota Commissioner of Human Services filed petitions with the United States Supreme Court to obtain a Writ of Certiorari to review the *Barg* decision. The petition seeks review on the grounds that the Minnesota Supreme Court misconstrued federal law. See *Leo Voss, Director, Mille Lacs County, Minnesota, Family Services and Welfare Department, Applicant v. Michael F. Barg*, Docket No. 08A298. The *Barg* saga continues.

## **ELDER LAW HANDBOOK NOW AVAILABLE**

The "new and improved" Elder Law Handbook, published by Minnesota Continuing Legal Education, is now available. The handbook is edited by section members Laurie Hanson, Cathryn Reher, Jeff Schmidt, and Julian Zweber, and is widely viewed as the primary authority on elder law in Minnesota. Topics covered in the handbook include: long-term care planning; senior housing options and long-term care settings; paying for long-term care; Medical Assistance programs, services, and eligibility; Marital issues in the context of Medical Assistance; Medical Assistance eligibility and transfer of assets; and more. The cost of this valuable reference tool is \$185. The Handbook is available online at:

<http://www.minncle.org/AABuy1.asp?ITEMTYPE=P&ITEMNMBR=5096409&lArticleID=>

## **ELDER LAW NEWS**

Medicare Part D enrollment starts on November 15.

<http://www.dl-online.com/articles/index.cfm?id=39172&section=news>

Senator opens investigation into AARP insurance.

[http://www.startribune.com/business/33860639.html?elr=KArksLckD8EQDUoaEyqyP4O:DW3ckUiD3aPc:\\_Yyc:aUUsA](http://www.startribune.com/business/33860639.html?elr=KArksLckD8EQDUoaEyqyP4O:DW3ckUiD3aPc:_Yyc:aUUsA)

There is a new networking group for grandparents caring for grandchildren with disabilities.

[http://www.shakopeenews.com/news/general\\_news/new\\_group\\_grandparents\\_caring\\_grandchildren\\_disabilities-7495](http://www.shakopeenews.com/news/general_news/new_group_grandparents_caring_grandchildren_disabilities-7495)

Nursing home firm is being sued over marketing in Twin Cities.

[http://www.twincities.com/ci\\_10860771?source=most\\_email](http://www.twincities.com/ci_10860771?source=most_email)

## **UPCOMING EVENTS AND CLE PROGRAMS**

### **Guardianships & Conservatorships**

Sponsored by Ramsey County Bar Association. Presented by: Paulette Joyer, MAO  
Legal Services with Volunteers of America; Marya Robben, Lindquist & Venum, PLLP  
Friday, November 14, 2008 - 12:30 to 3:00 p.m.  
First National Bank Building Training Room, 5th Street Entrance, 332 Minnesota Street,  
St. Paul

Application made for 2 Standard CLE credits  
More information and registration available at:  
<http://www.ramseybar.org/cles.html#november>.

### **The New Transfer on Death Deed (TODD) Legislation**

#### **Video Replays**

November 14, 2008 - Alexandria, Marshall, Willmar, Moorhead  
November 18, 2008 - Hibbing, St. Cloud  
November 21, 2008 - Albert Lea, Park Rapids  
November 25, 2008 - Minneapolis  
January 15, 2009 - Mankato  
January 23, 2009 - Duluth

For more information and online registration, go to:  
<http://www.minncle.org/SeminarsSearch.asp> or call 800-759-8840.

### **8th Annual National Aging and Law Conference - Setting the Agenda: Advocating for Elders After the Election**

Sponsored by the AARP Foundation, the American Bar Association Commission on Law and Aging, National Senior Citizens Law Center, The Center for Social Gerontology, Center for Medicare Advocacy, Inc., NAELA, National Consumer Law Center, and the National Association of State Units on Aging  
Wednesday through Saturday, December 3-6, 2008  
Doubletree Hotel, Arlington, Virginia  
More information and registration is available at: [www.aarp.org/nltp](http://www.aarp.org/nltp)

## ELDER LAW SECTION ACTIVITIES

**LEGISLATIVE COMMITTEE MEETING.** The next Legislative Committee meeting will be at noon on Wednesday, November 19, 2008, at the offices of Garvey and Boggio, P.A., 9995 Lyndale Avenue South, Bloomington. Section members are welcome to attend. Please RSVP by November 18, 2008, to Peter Hendricks at 952-881-4996 or [phendricks@gblawoffice.com](mailto:phendricks@gblawoffice.com).

**GOVERNING COUNCIL MEETING:** The next meeting of the Elder Law Section Governing Council will be at 3:30 p.m. on Friday, December 12, 2008, at the MAO offices, 2021 E. Hennepin, Suite 200, Minneapolis. All members are welcome to attend. To participate by phone, please contact Karla Nelson with Schmitz & Schmidt. P.A., at 651-291-2405.

**MA COMMITTEE MEETING:** The next MA Committee meeting will be at 3:30 p.m. on Tuesday, December 16, 2008, at the MAO Offices, 2021 E. Hennepin, Suite 200, Minneapolis. Topics for the meeting may be submitted to MA Committee Chair, Cathryn Reher, at [creher@mnellderlaw.com](mailto: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.

## MINNESOTA CASES

*Following is an unpublished Minnesota Court of Appeals case released on Tuesday, November 4, 2008.*

A07-2022

**In re: Conservatorship of James W. Kleven**

JOHNSON, Judge

The City of Minneapolis condemned the home owned and occupied by James W.. Kleven. Kleven took no steps to regain possession. A social worker petitioned the district court for the appointment of a limited guardian of Kleven's person and a conservator of Kleven's estate. After an evidentiary hearing, the district court granted the petition and appointed First Fiduciary Corporation (FFC) to be Kleven's limited guardian and conservator. Kleven appeals. We

conclude that the district court did not clearly err in its findings of fact and did not abuse its discretion by appointing a limited guardian and conservator, although we also conclude that the conservator's powers are slightly overbroad. Therefore, as modified, we affirm.

The case is available at: <http://www.mncourts.gov/opinions/coa/current/opa072022-1104.pdf>

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

## **STATUTES, REGULATIONS, BULLETINS**

**MEDICARE FAQ UPDATE NOTIFICATONS: MEDICARE PREMIUMS AND COINSURANCE RATES FOR 2009.** The official U.S. Government Site for People with Medicare now lists the 2009 Medicare Part A and Part B premiums, and the Medicare Deductible and Coinsurance Amounts for 2009. More information is available at:

[http://questions.medicare.gov/cgi-bin/medicare.cfg/php/enduser/std\\_adp.php?p\\_faqid=2100](http://questions.medicare.gov/cgi-bin/medicare.cfg/php/enduser/std_adp.php?p_faqid=2100)

**CENTERS FOR MEDICARE & MEDICAID SERVICES: MEDICARE & YOU 2009.** The official government Medicare handbook is now available online to the general public. This 128-page booklet contains information about 2009 Medicare costs, what Medicare covers, health and prescription drug plans, individuals' Medicare rights, and fraud and identity theft. The handbook is available at:

<http://www.medicare.gov/Publications/Pubs/pdf/10050.pdf>

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**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>

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Please send eNewsletter contributions by noon on Saturday of each week to Vicki McIntyre at [vmcintyre2@yahoo.com](mailto:vmcintyre2@yahoo.com).

If you do not wish to receive this eNewsletter, send your request to be removed from the mailing list to Kim Basting at [kbasting@statebar.gen.mn.us](mailto:kbasting@statebar.gen.mn.us)