

MSBA ELDER LAW SECTION E-NEWSLETTER
March 8, 2011

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ITEM OF INTEREST

COURT OF APPEALS DECISION IN PERRIN CASE EXPECTED BY EARLY MAY

On February 2, 2011, the Court of Appeals heard oral argument in the Perrin case, in re Estate of Richard L. Perrin, Henn. Co. Dist. Ct. File No. 27-PA-PR-06-1482; Appellate Court File No. A10-1352. Judges Kevin G. Ross (presiding), Francis J. Connolly and Senior Judge R. A. (Jim) Randall heard the argument.

The issues in the Perrin case center on whether the Minnesota Supreme Court in the Barg case (In re Barg, 752 N.W.2d 52 (Minn. 2008), rehearing denied July 21, 2008, cert. denied sub nom Vos v. Barg June 29, 2009) decided that Minn. Stat. § 519.05, the general spousal liability statute, was not a separate, independent basis for recovery of medical assistance benefits otherwise recoverable under Minn. Stat. § 256B.15.

Judge Ross questioned the parties regarding the necessary inferences to be drawn from the silence in the Barg decision regarding the role of 519.05. The Commissioner argued that the silence meant that 519.05 was still available as an alternative theory of recovery that the Hennepin County Probate Court should have considered on its merits, instead of applying collateral estoppel to bar the County's MA claim against the Community Spouse's estate. The Estate noted that 519.05, as an alternative theory of recovery, was argued in Barg in the briefs submitted by both Mille Lacs County and the Estate. The Supreme Court could not have decided the case as it did if 519.05 were a viable alternative theory of recovery.

A decision in Perrin is expected by May 4, 2011. 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.

Submitted by Julian J. Zweber, Esq.

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LINK OF THE WEEK

GAO Report to the Chairman, Special Committee on Aging, U.S. Senate
Guardianships: Cases of Financial Exploitation, Neglect, and Abuse of Seniors,
September 2010

GAO found several common themes. In 6 of 20 cases, the courts failed to adequately screen potential guardians, appointing individuals with criminal convictions or significant financial problems to manage high-dollar estates. In 12 of 20 cases, the courts failed to oversee guardians once they were appointed, allowing the abuse of vulnerable seniors and their assets to continue. Lastly, in 11 of 20 cases, courts and federal agencies did not communicate effectively, or at all, with each other about abusive guardians, allowing the guardian to continue the abuse of the victim and/or others. The link is available at: <http://www.gao.gov/new.items/d101046.pdf>.

Submitted by Law Student Committee
William Mitchell College of Law
Ruthanne Vos, Committee Representative
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ELDER NEWS

Mickey Rooney claims he is victim of elder abuse
<http://www.kare11.com/news/article/911493/391/Mickey-Rooney-claims-he-is-victim-of-elder-abuse>

One in 27 Minnesota children raised by grandparents or other kin
http://brainerddispatch.com/stories/082702/sne_0827020015.shtml

A well-seasoned approach – Planning ahead, rather than leaving it to chance, can make for a more rewarding retirement
<http://www.startribune.com/local/117247898.html>

How old is old? 'Productive aging' is the new mantra for folks who don't want to give up yet
<http://www.startribune.com/lifestyle/homegarden/117247813.html>

Looking For Data On Older Americans?
http://www.agingstats.gov/agingstatsdotnet/main_site/default.aspx

Grant for aged latest about-face on health care overhaul
<http://www.startribune.com/politics/local/116706409.html>

Taking on Medicare – Tiny Kalypto Medical is in a fight with the government over billing codes

<http://www.startribune.com/lifestyle/health/117436483.html>

Medicare won't fund MRIs for patients with new MRI-safe pacemakers

<http://www.grandforksherald.com/event/article/id/194934/>

Minnesota's rate of five surgeries is higher than U.S. average

http://www.twincities.com/ci_17467183?nclick_check=1

Senior housing enticing to investors – Publicly traded Real estate investment trusts are buying up senior housing around the country

<http://www.startribune.com/business/117422358.html>

Free help with taxes will come to you

<http://www.startribune.com/local/117363858.html>

The drive to learn lasts a lifetime

<http://www.duluthnewstribune.com/event/article/id/192976/group/Sports/>

MINNESOTA CASES

The following unpublished decision was released by the Minnesota Court of Appeals on March 1, 2011

A10-1223

In re the Estate of: Gene R. Budach a/k/a Gene Budach a/k/a Gene Roy Budach, Deceased.

HUDSON, Judge

In this will contest involving the surviving children of the deceased, appellant-will contestant challenges the district court's summary judgment in favor of respondents-will proponents, arguing that the district court erred in concluding that the appellant failed to raise genuine issues of material fact regarding testamentary capacity and undue influence.

We affirm.

The decision is available at:

<http://www.lawlibrary.state.mn.us/archive/ctapun/1103/opa101223-0301.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

Minnesota State Bar Association

Medical Assistance & Long Term Care Benefits: Making Do With Less

March 8, 2011

Contact Information: <http://www.minncle.org/seminardetail.aspx?ID=101791101>

Ramsey County Bar Association

Trusts and Estates Section

March 10, 2011

Contact Information:

https://netforum.avectra.com/eWeb/DynamicPage.aspx?Site=RCBA&WebCode=EventDetail&evt_key=0171df4b-70c8-42cd-a26a-20c57e3389f2

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, April 19, 2011. Topics for the meeting may be submitted to MA Committee Chair, Cathryn Reher, at creher@mnelderlaw.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 22, 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.

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>.

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