

MSBA ELDER LAW SECTION E-NEWSLETTER
June 28, 2011

Vol. 4, No. 25

E-Newsletter Editorial Staff:

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ITEMS OF INTEREST

In a recent article, Adam Rohne adeptly provided us with a legal analysis of what guardianships and custodianships are in Minnesota. I had hoped, in this article, to share with you some practical advice to help clients who are squeezed by the distinction that is sometimes made between the two. However, I'm not going to do that. Primarily because I have not found the silver bullet; well, actually in one situation I have. So, I am going to provide a brief analysis (argument) that I have suggested grandparent clients make to their employer or benefits provider, and then, as previously forewarned, share a few grandparent facts (grandparents are often the clients making these types of inquiries) that are astounding. Here goes...

First,

1. Understanding why an employer/benefits provider would make a distinction between guardianship and custody and helping the client talk with the provider.
 - a. Guardianship is more legal: this is not true. Both guardianship and custody require the ruling of a court.
 - b. Guardianship is more permanent: this is not true. An incompetent parent may become competent again and guardianship could be revoked. Also, custody arrangements can be temporary or permanent.
 - c. The employer/benefits provider might say that in a guardianship the child is REALLY a part of the family, a REAL family member. In neither a guardianship nor a custodianship does a child become your legal child. Only through adoption is this accomplished. If an insurance carrier/benefits provider were to make this argument, their policy would require adoption, not guardianship.
 - d. The employer/benefits provider might say that in a custodianship there is a parent who should be providing insurance for the child instead of you. But that is a legal illogical argument because, in both a custodianship and guardianship, the parent remains legally obligated to provide financial support.

2. Ask the employer/insurance carrier/benefits provider to explain exactly why they require guardianship as opposed to custodianship. They might simply, in the end, say that it is their preference. Or, as I experienced even this week, they might say that they really don't make a distinction. Rather, they simply want a legal, court document stating that the child "is yours." This happens to be the position of FAFSA, or Federal Student Aid, the one silver bullet in my legal career!
 - a. Other items to ask your employer/benefits provider:
 - i. Are there contractual provisions between the employer and insurance company that dictate the use of a particular legal term?
 - ii. Does the insurance company, employer, etc really mean "adoption" rather than guardianship?

Second, some grandparent caretaker facts:

Nationally

- 2002 5.8 million children in the United States lived with their grandparents.
 2.4 million - the grandparents were the primary caregivers.¹[1] Of these, 1.27 million provided this care without any parent present.²[2]
- 2006 6.7 million children raised in grandparent or relative-headed households.³[3]
 2.68 million - the grandparents were the primary caregivers.⁴[4]

Minnesota

- 2006 39.3% of grandparents living in Minnesota were responsible for the care of their grandchildren.⁵[5]
 37,621 children (3% of all children in Minnesota) being cared for by a grandparent.⁶[6]

1[1] U.S. Census Bureau: "Grandparents Living With Grandchildren: 2000," Census Brief, <http://www.census.gov/prod/2003pubs/c2kbr-31.pdf>; U.S. Census Bureau: "Grandparents Living With Grandchildren: 2000," Census Brief, <http://www.census.gov/prod/2003pubs/c2kbr-31.pdf>.

2[2] U.S. Census Bureau: "Children's Living Arrangements and Characteristics: March 2002," <http://www.census.gov/prod/2003pubs/p20-547.pdf>.

3[3] Generations United Website, <http://www.gu.org/OURWORK/Grandfamilies/GrandfamiliesStatistics.aspx>.

4[4] U.S. Census Bureau: Percent of Grandparents Responsible for their Grandchildren: 2006, http://factfinder.census.gov/servlet/GRTTable?_bm=y&-geo_id=01000US&-_box_head_nbr=R1001&-ds_name=ACS_2006_EST_G00_&-redoLog=false&-format=US-30&-mt_name=ACS_2003_EST_G00_R45_US30.

5[5] Id.

6[6] 2006 American Community Survey, Table B09006: Relationship to Householder for Children under 18 in Households, http://factfinder.census.gov/servlet/DatasetMainPageServlet?_program=ACS&-submenuId=&-lang=en&-ts=.

2007 33,975 children were living in grandparent-headed households (2.6% of all children in the state).^{7[7]} 17, 682 grandparents were responsible for their grandchildren (2,250 in Minneapolis, 1,514 in St. Paul).

14,008 children lived with another relative caregiver.

81[1] Id.

Submitted by Joel Button, Esq.

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Wells Fargo drops reverse mortgages citing ‘unpredictable’ home prices

San Francisco Business Times - by Mark Calvey

Date: Thursday, June 16, 2011, 2:42pm PDT

http://www.bizjournals.com/profiles/company/us/ca/san_francisco/wells_fargo/20470/ said Thursday that it’s exiting the reverse mortgage business, citing “today’s unpredictable home values.” The San Francisco bank also said another factor was the restrictions making it difficult to determine seniors’ ability to pay property taxes, home insurance and other obligations of homeownership. The decision means 1,000 employees will have to find new jobs within the bank or leave the company.

Earlier this year,

http://www.bizjournals.com/profiles/company/us/nc/charlotte/bank_of_america/3216319/, (NYSE: BAC) the nation’s largest mortgage servicer, also exited the reverse mortgage business.

Wells (NYSE: WFC) will continue servicing existing reverse mortgages, but will stop taking applications for new loans June 30.

Last year, the volume of reverse mortgages at Wells represented just 2.2 percent of the bank’s retail mortgage business and about 1.2 percent of overall mortgage volume. The bank, the nation’s largest originator of home mortgages, began extending reverse mortgages in 1990. The government created the reverse mortgage program in 1987 to help house rich, cash poor senior citizens borrow against their home equity to generate a lump sum or a stream of monthly income. The loan is repaid when the home is sold after the borrower moves or dies. “We will continue to provide options for seniors who wish to determine ways to access the equity in their homes,” said Franklin Codel, executive vice president and head of national consumer lending at Wells.

But Wells Fargo’s exit signals the up-ending of business models created over decades of generally rising asset values. Many baby boomers see the equity in their home as a source of cash through reverse mortgages to buttress their golden years. But in dropping reverse

^{7[7]} “Grandfacts: A State Fact Sheet for Grandparents and Other Relatives Raising Children; Minnesota, September 2007,”

<http://www.grandfactsheets.org/doc/Minnesota%2007%20New%20Template.pdf>. U.S. Census Bureau data from the 2006 American Community Survey indicated that in 2006, there were 37,621 children (or 3% of all children) under 18 in Minnesota being cared for by a grandparent.

mortgages, Wells says the “reverse mortgage program was designed in a different economic time.”

Submitted by Paulette Joyer, Esq.
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LINK OF THE WEEK

American Bar Association & American Psychological Association Joint Project: Assessment of Older Adults with Diminished Capacity: Handbook for Lawyers
[Florida Probate & Trust Litigation Blog]

Summary:

A central issue driving almost every will or trust contest is whether the person signing the document knew what he was doing. In other words, did he have testamentary capacity? Any probate judge whose been on the job for more...

View the entire entry:

<http://www.flprobatelitigation.com/2011/06/articles/new-probate-cases/contested-guardianship-proceedings/american-bar-association-american-psychological-association-joint-project-assessment-of-older-adults-with-diminished-capacity-handbook-for-lawyers/index.html>

Submitted by Jennifer L. Wright, Esq.
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ELDER LAW NEWS

For AARP, A 'Monumental' Shift On Social Security?

<http://www.npr.org/2011/06/24/137395740/for-aarp-a-monumental-shift-on-social-security?sc=17&f=1001>

Court: Grandparents are not equal to parents

<http://www.startribune.com/local/minneapolis/124233038.html>

When grandparents, parents fight

http://minnesota.publicradio.org/collections/special/columns/news_cut/archive/2011/06/when_grandparents_parents_figh.shtml

Get answers to your long term care options questions

<http://www.echopress.com/event/article/id/85761/>

Twin Cities program helps patients discuss end-of-life planning

<http://minnesota.publicradio.org/display/web/2011/06/23/health-care-directive/>

Little Falls Nursing Home Gets Cited for Neglect

<http://kstp.com/article/stories/s2166494.shtml>

As Minnesota boomers age, mobility options inadequate, says report

<http://www.echopress.com/event/article/id/85583/group/News/>

ELDER LAW CASES

The following published decision was released by the Minnesota Court of Appeals on June 20, 2011:

A10-1129

In re the Minor Child: C. D. G. D., born September 20, 2008

Roxanne Marie Givens, third party petitioner, Respondent, vs. Anthony Michael Darst, Appellant.

ROSS, Judge

1. A district court abuses its discretion by treating a grandparent essentially as a noncustodial parent when calculating the amount and arrangement of grandparent visitation under Minnesota Statutes section 257C.08, subdivision 1 (2010).

2. A grandparent visitation schedule ordered against a custodial parent's wishes under Minnesota Statutes section 257C.08, subdivision 1, may be so substantial in quantity and intrusive in structure that it necessarily exceeds the district court's discretionary authority limiting grandparent visitation to schedules that do not interfere

with the parent-child relationship.

3. A district court abuses its discretion by ordering grandparent visitation under Minnesota Statutes section 257C.08, subdivision 1, without giving presumptive deference to the parent's determination as to visitation or without receiving proof by clear and convincing evidence that the visitation will not interfere with the parent-child relationship.

Reversed and remanded.

The opinion is available at

<http://www.mncourts.gov/opinions/coa/current/opa101129-0620.pdf>

The following unpublished decision was released by the Minnesota Court of Appeals on June 20, 2011:

A10-2029

In re: Estate of Michael G. Wolf.

JOHNSON, Chief Judge

Joseph Howard Yennie filed a claim against the estate of Michael G.

Wolf to obtain reimbursement for expenditures he made on repairs to Wolf's home and for mortgage payments he made on Wolf's behalf. The district court concluded that two other claims have priority over Yennie's claim: a statutory claim to exempt property filed by Wolf's daughter and the fees and expenses of administration incurred by the personal representative of the estate. We affirm.

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2010).

The opinion is available at

<http://www.mncourts.gov/opinions/coa/current/opa102029-0620.pdf>

STATUTES, REGULATIONS, BULLETINS

There are no Statutes, Regulations, or Bulletins to report this week.

UPCOMING EVENTS AND CLE PROGRAMS

Minnesota State Bar Association

2011 Elder Law Institute

SAVE THE DATE: October 6 and 7, 2011

The Elder Law Institute (ELI), a collaboration between the MSBA's Elder Law Section and Minnesota Continuing Legal Education, is an annual conference designed to provide educational and networking opportunities for attorneys and others interested in the practice of Elder Law. The ELI offers a wide range of educational programming, ranging from discussions of nursing home and Medical Assistance issues to legislative updates and policy analysis. ELI Attendees receive from nine to eleven Continuing Legal Education credits, depending upon the length of the conference.

Stay tuned for more information and online registration.

ELDER LAW SECTION ACTIVITIES

MA COMMITTEE MEETING: The next MA Committee meeting will be at 3:30 p.m. on Tuesday, June 28, 2011. Topics for the meeting may be submitted to MA Committee Chair, Cathryn Reher, at 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. 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, August 19, 2011. The meeting will be held 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 Suzy Scheller, Chair, at: suzy@schellerlegalsolutions.com.

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>.