

JUL 28 2010

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF DOUGLAS DISTRICT COURT DOUGLAS COUNTY SEVENTH JUDICIAL DISTRICT

FILED

Douglas County,

AUG 04 2010

Plaintiff,

Court Administrator

Court File No.: 21-CV-09-477

v.

Deputy

Alexandra Kjerstyn Lindgren and
Bruce Dale Lindgren,

**ORDER GRANTING DEFENDANT'S
SUMMARY JUDGMENT MOTION**

Defendants.

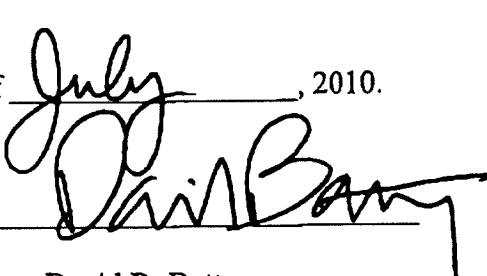
The above-entitled matter came on for hearing on May 19, 2010 on cross motions for Summary Judgment. A hearing was held in front of the Honorable David R. Battey at the Douglas County Courthouse, Alexandria, Minnesota. Plaintiff, Douglas County, was represented by attorney Megan Burkhammer. Defendant Alexandra Lindgren was represented by attorney JoEllen Doebbert. Defendant Bruce Lindgren was present and unrepresented. The matter was taken under advisement on Defendant's Motion for Summary Judgment on May 12, 2010.

Based upon the file and records herein, the Court hereby makes the following:

ORDER

1. Plaintiff's Motion for Partial Summary Judgment is DENIED.
2. Defendant's Motion for Summary Judgment is GRANTED.
3. The attached Memorandum is hereby incorporated by reference, and approved in all respects.

It is so ORDERED this 28th day of July, 2010.

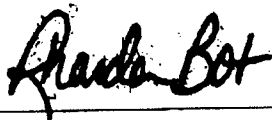


Hon. David R. Battey
Judge of District Court

JUDGMENT

I hereby certify that the foregoing Order constitutes the Judgment of this Court.

Dated: Aug 4, 2010



Rhonda Bot

Douglas County Court Administrator

By: [Handwritten Signature]

Deputy Court Administrator

MEMORANDUM

Plaintiff Douglas County brings this claim against Defendants Alexandra Lindgren and Bruce Lindgren, alleging it is entitled to recover the value of certain gifts given to Defendants by their mother. The parties agree that this is a legal issue, and for the purpose of this motion, none of the facts are disputed. Douglas County moved for partial summary judgment with respect to the gifted homestead, alleging that, pursuant to Minnesota Statutes section 256B.0595, subd. 4b(5), Defendants are required to pay a portion of their mother's long-term medical assistance, originally paid for by Medicaid. Defendants move for summary judgment, claiming that section 256B.0595, subd. 4b(5) is preempted by federal law.

Facts

On December 31, 2003, Dale and Marlys Lindgren ("Mr. Lindgren and Mrs. Lindgren"), transferred an undivided one-half interest in their home to their children, Alexandra and Bruce Lindgren ("Defendants"). On March 18, 2004, Mr. and Mrs. Lindgren transferred the rest of their interest in the home to Defendants. At the time, the house was valued at \$109,000.

On November 19, 2004, Mrs. Lindgren was admitted to the Bethany Home, a nursing facility in Alexandria, Minnesota. Alexandra Lindgren then applied for long-term care benefits on her mother's behalf beginning in January, 2006. Douglas County approved the application. However, because of the uncompensated transfers, Minnesota and Federal law required Mrs. Lindgren be subject to a penalty period during which she was ineligible for medical assistance.

Despite the statutorily-mandated ineligibility period, Bethany Home requested a waiver of the penalty period because continued denial of eligibility would lead to undue hardship. Mrs. Lindgren's bills were not being paid, and she was facing eviction. Douglas County granted the waiver, and at the same time informed Mrs. Lindgren that the case would be referred to the

Douglas County Attorney's office. During the thirty six months following the homestead's transfer, Mrs. Lindgren received \$53,893.30 in government-paid medical assistance. Eventually Mrs. Lindgren passed away on October 13, 2009, and this action was brought by Douglas County against Defendants, the recipients of the transfer, pursuant to Minnesota Statutes section 256B.0595, subd. 4b(5) to recover the \$53,893.30.

Analysis

MINNESOTA STATUTES SECTION 256B.0595, SUBD. 4b(5) IS PREEMPTED, AND SUMMARY JUDGMENT IS APPROPRIATE

A. Summary Judgment Standard

"Summary judgment is appropriate when the evidence, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Stringer v. Minnesota Vikings Football Club, LLC*, 705 N.W.2d 746, 753 (Minn. 2005) (citing Minn. R. Civ. P. 56.03). A court is to examine all "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits" in passing on a motion for summary judgment. Minn. R. Civ. P. 56.03. Summary judgment should be granted only when it is clear no fact issue remains, and it would be unnecessary to inquire further into the facts. *Larson v. Independent School Dist. No. 314, Braham*, 252 N.W.2d 128, 130 (Minn. 1977).

For the purpose of these Motions, the only issue this Court must decide is whether Minnesota's statutorily-created claim being asserted against Defendants is preempted by Federal law. If that provision is not preempted, then it is clear that Defendants are liable. If the provision is preempted, Defendant is entitled to summary judgment.

B. Minnesota's Statutory Cause Of Action Against Transferees Under Minnesota Statutes Section 256B.0595, subd. 4b(5) Directly Conflicts With Federal Law And Is Preempted

Medical assistance, better known as Medicaid, is an "enormously complicated" program. *Stephenson v. Shalala*, 87 F.3d 350, 356 (9th Cir. 1996). To properly rule on these Motions, it is essential to understand the relevant statutory framework governing Medicaid. In 1965, Congress enacted Medicaid as a part of the Social Security Act. *In re Estate of Barg*, 752 N.W.2d 52, 58 (Minn. 2008). The program is jointly funded with the states. *Id.* To receive funding, a state must create a medical assistance plan by enacting legislation and rules governing Medicaid within the state, and submit that plan to the United States Secretary of Health and Human Services. *Id.* (citing 42 U.S.C. § 1396). Each state administers its own plan, however those plans must comply with the Federal law. 42 U.S.C. § 1396(a). Relevant to this case is section 1396a(18), which requires that states "comply with the provisions of section 1396p of this title with respect to liens, adjustments and *recoveries of medical assistance correctly paid.*" (emphasis added).

In Minnesota, medical assistance for needy persons is governed by Chapter 256B. Eligibility for medical assistance is governed by Minnesota Statutes sections 256B.055-256B.057. When a person believes that she is eligible under one of these sections, she may apply for assistance. Even if someone is otherwise eligible, that person may be deemed ineligible if she transferred property for less than fair market value within seventy-two months prior to the application. Minn. Stat. § 256B.0595. The person is deemed to be ineligible for an amount of time based on the amount of the uncompensated transfer. *Id.* subd. 2(b). Despite this penalty period, the determining agency must waive that penalty period if not doing so would cause undue hardship. *Id.* at subd. 4b(5). When the penalty is waived, a cause of action arises

against the transferee for any amount of medical assistance paid within seventy-two months from the date of application for assistance, or for the uncompensated amount, whichever is less. *Id.*

Defendant asserts that 42 U.S.C. § 1396p preempts Minnesota Statutes section 256B.0595. To make this determination, the Court must look at the language of those sections.

Federal Law – 42 U.S.C. § 1396p

Section 1396p addresses, among other things, a state's ability to recoup correctly paid medical assistance. Specifically, subdivision (b)(1) states:

“No adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan may be made, except that the State shall seek adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan in the case of the following individuals:

- (A) [Inapplicable exception].
- (B) [Inapplicable exception].
- (C) [Inapplicable exception].”

Minnesota Law – Minn. Stat. § 256B.0595, subd. 4b(5)

Minnesota Statutes section 256B.0595 governs prohibitions on and penalties for transferring property within a specified time period prior to applying for medical assistance. It also enumerates exceptions to this prohibition. Subdivision 4b(5) is one of those exceptions. It states:

“[A person or a person's spouse who made a transfer prohibited by subdivision 1b is not ineligible for medical assistance services if] the local agency determines that denial of eligibility for medical assistance services would cause undue hardship and grants a waiver of a penalty resulting from a transfer for less than fair market value because there exists an imminent threat to the individual's health and well-being...*When a waiver is granted, a cause of action exists against the person to whom the assets were transferred for that portion of medical assistance services granted within 72 months of the date the transferor applied for medical assistance and satisfied all other requirements for eligibility, or the amount of the uncompensated transfer, whichever is less, together with the costs incurred due to the action. The action shall be brought by the state unless the state delegates this*

responsibility to the local agency responsible for providing medical assistance under this chapter.” (emphasis added).

Preemption Standard

Defendants allege that Federal law, specifically 42 U.S.C. § 1396p, preempts Minnesota’s statutory cause of action set forth in Minnesota Statutes section 256B.0595, subd. 4b(5). The preemption doctrine is rooted in the Supremacy Clause of the United States Constitution¹, and invalidates any state law contradicting or interfering with an Act of Congress. *Cipollone v. Liggett Group*, 505 U.S. 504, 516 (1992) (“state law that conflicts with federal law is ‘without effect.’”) (citation omitted). Congressional intent is the basis by which the Court determines whether a state law is preempted. *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 96 (1992). Preemption is generally disfavored, unless the Congress clearly intended it. *Cipollone*, 505 U.S. at 516.

There are three main categories of preemption: (1) express preemption, which occurs when Congress specifically states its intent to preempt in the text of the Federal law; (2) field preemption, which applies when the federal regulatory scheme is so pervasive that it “occupies the field” in that area of law; and (3) conflict preemption, which applies when state and federal law directly conflict, making it impossible to comply with the requirements of both. *English v. General Elec. Co.*, 496 U.S. 92, 98-99 (1990). A preemption analysis requires an examination of Congressional intent, using both the text and purpose of the statute. *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 484-5 (1996). Defendants argue that the conflict preemption doctrine applies, and preempts Minnesota’s statutory cause of action in section 256B.0595, subd. 4b(5).

The language of 42 U.S.C. § 1396p(b)(1) is clear. It directs that states shall not recover correctly-paid medical assistance unless recovery would fall under one of the three listed

¹ The “Constitution, and the Laws of the United States which shall be made in Pursuance thereof...shall be the supreme Law of the Land.” U.S. Const. Art. VI, cl. 2.

exceptions. *Id.* (“No adjustment or recovery of *any medical assistance correctly paid* on behalf of an individual under the State plan may be made...”) (emphasis added). There is no dispute that Minnesota’s statutory cause of action against a transferee who received property from a medical assistance recipient does not fall within one of the exceptions listed in section 1396p(b)(1). Thus, bringing an action against a transferee under Minnesota’s section 256B.0595, subd. 4b(5) conflicts with the Federal mandate prohibiting recovery under the State plan for correctly-paid medical assistance. Even in light of the presumption against preemption, this Court fails to see how bringing a cause of action pursuant to section 256B.0595, subd. 4b(5) would not violate 42 U.S.C. § 1396p(b)(1). Minnesota’s statutory cause of action under section 256B.0595, subd. 4b(5) is preempted by 42 U.S.C. § 1396p(b).

The County argues that “section 256.0595 does not conflict with and is not preempted by the federal estate recovery laws embodied in 42 U.S.C. § 1396p because Minnesota Statutes section 256.0595 has nothing whatsoever to with estate recovery.” Pl.’s Mem. Supp. Sum. J. 8. This statement, however, misinterprets section 1396p. Section 1396p does not simply apply to recovering from an individual’s estate, it bars a state’s attempt to recover *any medical assistance correctly paid*. *See* 42 U.S.C. § 1396p(b)(1) (“No adjustment or recovery of *any medical assistance correctly paid* on behalf of an individual under the State plan may be made...”) (emphasis added). This prefatory language is not qualified or limited, and it applies to any attempt by a state to recover correctly-paid medical assistance.

When bringing a cause of action under section 256B.0595, subd. 4b(5), it is impossible to comply with 42 U.S.C. § 1396p(b), and the conflict preemption doctrine requires this Court find the cause of action created by section 256B.0595, subd. 4b(5) preempted.

Legislative Intent and Policy

The County argues that legislative intent and public policy dictate a finding that the cause of action created by section 256B.0595 subd. 4b(5) not be preempted. For this proposition, the County cites a portion of the House Report for the Medicare Catastrophic Coverage Act of 1988 ("MCCA"), which states, "in the view of the Committee, Medicaid—an entitlement program for the poor—should not facilitate the transfer of accumulated wealth from nursing home patients to their non-dependent children." H.R. Rep. No. 100-105, at 73 (1988), *reprinted in* 1988 U.S.C.C.A.N. 857, 896. While this quote is on-point, it must be taken in context. The relevant portion of the MCCA was added to the bill because a number of states were not effectively utilizing the ineligibility period for medical assistance recipients who transferred property for less than market value. *Id.* Thus, the MCCA created a mandatory ineligibility period for those people who disposed of assets for less than fair market value.

The County is correct; Congress was in fact concerned that people would transfer assets for less than fair market value. However it addressed the issue by requiring a period of ineligibility for those who did. It did not leave open the possibility for states to create separate claims against third parties for medical assistance correctly paid. The Court acknowledges that, from a policy standpoint, preempting Minnesota's cause of action against transferees could lead to individuals transferring large amounts of assets to non-dependent children in hopes of receiving publicly-funded assistance; however, it is clear Congress considered this, and added the ineligibility period to combat this potential problem.

For those reasons, the Court finds that 42 U.S.C. section 1396p(b) preempts Minnesota Statutes section 256B.0595, subd. 4b(5). Because section 256B.0595, subd. 4b(5) is preempted, summary judgment is granted in favor of the Defendants.

State of Minnesota
Douglas County

District Court
Seventh Judicial District

Court File Number: **21-CV-09-477**

Case Type: Civil Other/Misc.

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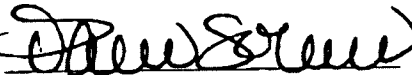
**Notice of Entry of
Judgment**

**In Re: DOUGLAS COUNTY vs Alexandra Kjerstyn Lindgren, Bruce Dale
Lindgren**

You are notified that judgment was entered on August 04, 2010 .

Dated: August 4, 2010

Court Administrator

By: 

Deputy Court Administrator
Douglas County District Court
305 8th Avenue W
Alexandria MN 56308
320-762-3033

cc: MEGAN ELIZABETH BURKHAMMER

A true and correct copy of this notice has been served by mail upon the parties herein at the last known address of each, pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.