



STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

LORI SWANSON
ATTORNEY GENERAL

August 4, 2010

SUITE 900
445 MINNESOTA STREET
ST. PAUL, MN 55101-2127
TELEPHONE: (651) 297-1075

Frederick K. Grittner
Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Rev. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155

Re: *In re Estate of Richard L. Perrin, Decedent*
Hennepin County District Court File No. 27-PA-PR-06-1482
Appellate Courts File No. _____

Dear Mr. Grittner:

Enclosed for filing in the above-referenced matter, please find:

1. The original and two copies of the Notice of Appeal to the Court of Appeals;
2. The original and two copies of the Statement of the Case of Appellant Commissioner of the Minnesota Department of Human Services;
3. Certified copies of the Orders; and
4. Affidavit of Service by U.S. Mail.

Please note that no cost bond is required because appellant is the State of Minnesota pursuant to Minn. R. Civ. P. 107.02(e) and that no filing fee is required by the State pursuant to Minn. R. Civ. P. 103.01, subd. 3(d).

By copy of this letter, parties are served with the above-named documents and the Hennepin County Court Administrator of Records is served with the Notice of Appeal for filing with the Hennepin County District Court.

Sincerely,

CYNTHIA B. JAHNKE
Assistant Attorney General
Atty. Reg. No. 0294858
(651) 757-1468 (Voice)
(651) 297-4139 (Fax)

Encs.

cc: Hennepin County Court Administrator (*Notice of Appeal only*)
David E. Culbert, Esq., Personal Representative for Respondent Perrin Estate
Lon M. Erickson, Assistant Hennepin County Attorney

AG: #2673290-v1

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Case Type: Probate
The Honorable Jay M. Quam

In re Estate of Richard L. Perrin,
Decedent.

**NOTICE OF APPEAL TO THE
COURT OF APPEALS**

TRIAL COURT CASE NUMBER:
17-PA-PR-06-1482

DATE OF ORDER:
June 3, 2010

DATE OF FILING OF ORDER BY
DISTRICT COURT ADMINISTRATOR:
June 3, 2010

TO: Frederick K. Grittner
Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155-6102

PLEASE TAKE NOTICE that the Commissioner of the Minnesota Department of Human Services ("Commissioner") hereby appeals to the Court of Appeals of the State of Minnesota from an order of the Hennepin County District Court dated February 3, 2010, which was affirmed on June 3, 2010, on post-decision review pursuant to Minnesota Statutes section 484.70, subdivision 7. The Commissioner was served with a written notice of the filing of the order on June 7, 2010.

Dated: August 4, 2010.


ATTORNEY FOR PERRIN ESTATE:

ATTORNEYS FOR COMMISSIONER
OF THE MINNESOTA DEPARTMENT
OF HUMAN SERVICES:

DAVID E. CULBERT
Attorney at Law
Atty. Reg. No. 0020278

LORI SWANSON
Attorney General
State of Minnesota

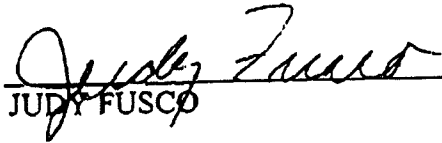
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AG: #2673290-v1

Mark Thompson
Court Administrator
Hennepin County Government Center
1251 Court Tower
300 South Sixth Street
Minneapolis, MN 55487


JUDY FUSCO

Subscribed and sworn to before
me on August 4, 2010.


NOTARY PUBLIC

AG: #2673290-v1



STATE OF MINNESOTA
IN COURT OF APPEALS

In re Estate of Richard L. Perrin,
Decedent.

STATEMENT OF THE CASE OF
APPELLANT COMMISSIONER OF
THE MINNESOTA DEPARTMENT
OF HUMAN SERVICES

TRIAL COURT CASE NUMBER:
17-PA-PR-06-1482

APPELLATE COURT CASE NUMBER: _____

1. Court or agency of case origination and name of presiding judge or hearing officer.

Hennepin County District Court, Honorable Jay A. Quam, Judge of District Court, presiding.

2. Jurisdictional statement.

(A) Appeal from district court.

Statute, rule or other authority authorizing appeal:

Minn. R. Civ. App. 104.01, subd. 1.

Date of entry of judgment or date of service of notice of filing of order from which appeal is taken:

Appellant Commissioner of the Minnesota Department of Human Services ("Commissioner") appeals the district court dated June 3, 2010, for file number 27-PA-PR-06-1482, affirming the court's February 3, 2010 order. The order was filed by the Hennepin County District Court Administrator on June 3, 2010. See attached certified copies of orders. Notice of filing of the June 3, 2010, order was served on Hennepin County on June 7, 2010.

Authority fixing time limit for filing notice of appeal (specify applicable rule or statute):

Minn. R. Civ. App. 104.01, subs. 1 and 2.

Date of filing any motion that tolls appeal time:

On February 16, 2010, Hennepin County filed a Notice of Motion and Motion for Review of the February 3, 2010 order under Minnesota Statutes section 484.70, subdivision 7.

Date of filing of order deciding tolling motion and date of service of notice of filing:

The Hennepin County District Court issued its order on June 3, 2010. Counsel served the notice of filing on June 7, 2010.

(B) Certiorari appeal.

Not Applicable.

(C) Other appellate proceedings.

Not Applicable.

(D) Finality of order or judgment.

Does the judgment or orders to be reviewed dispose of all claims by and against all parties, including attorney fees? Yes (x) No ()

If no:

Did the district court order entry of a final partial judgment for immediate appeal?

Not applicable.

If no, is the order or judgment appealed from reviewable under any exception to the finality rule? Yes () No ()

Not Applicable.

If yes, cite rule, statute, or other authority authorizing appeal:

Not Applicable.

(E) Criminal only:

Has a sentence been imposed or imposition of sentence stayed? Yes () No ()

Not Applicable.

3. **State type of litigation and designate any statutes at issue.**

This litigation involves a claim against the Richard L. Perrin estate for recovery of medical assistance benefits paid to Dorothy Perrin, a pre-deceased spouse, under Minnesota Statutes sections 256B.15 and 519.05(a).

4. **Brief description of claims, defenses, issues litigated and result below. For criminal cases, specify whether conviction was for a misdemeanor, gross misdemeanor, or felony offense.**

On September 27, 2006, Hennepin County filed a Written Statement of Claim against the estate of Richard L. Perrin in the amount of \$276,408.16 for recovery of medical assistance benefits paid on behalf of his pre-deceased spouse, Dorothy Perrin, under Minnesota Statutes section 256B.15.

On January 25, 2007, the Perrin estate disallowed the recovery claim by Hennepin County. Hennepin County challenged the disallowance. The matter was continued until the resolution of *In re Barg*, 752 N.W.2d 52 (Minn. 2008) *rehearing denied* July 21, 2008, *cert. denied* June 29, 2009, which also contemplated recovery of medical assistance benefits to a pre-deceased spouse.

Hennepin County maintained its challenge against the estate's denial of the medical assistance recovery claim post-*Barg*. The matter was heard by Referee Bruce Kruger on August 31, 2009. On February 3, 2010, the Hennepin County District Court issued an order by Referee Krueger and signed by Judge Jay M. Quam, disallowing and denying Hennepin County's claim and declining to hear the merits of Hennepin County's argument on the applicability of Minnesota Statutes section 519.05(a) under the doctrine of *res judicata*.

On February 16, 2010, Hennepin County filed a timely Motion for Review under Minnesota Statutes section 484.70, subdivision 7, for review of the order. On March 1, 2010, the Commissioner filed a Notice of Intervention, which was granted.

On June 3, 2010, after briefing and hearing, the Hennepin County District Court affirmed its February 3, 2010 order denying and disallowing the claim and declining to hear the merits of Hennepin County's argument on the applicability of Minnesota Statutes section 519.05(a), under the doctrine of *collateral estoppel*. The District Court abandoned its holding under the doctrine of *res judicata*. The Commissioner was served with a written notice of the filing of the order on June 7, 2010.

The Commissioner appeals both the disallowance of the claim and the District Court's decision to deny a hearing on the merits of the County's claim under Minnesota Statutes section 519.05(a).

5. List specific issues proposed to be raised on appeal.

Whether the district court erred in denying and disallowing Hennepin County's claim for medical assistance benefits.

Whether the district court erred in concluding that the doctrine of collateral estoppel was available and should preclude Hennepin County's arguments on the merits.

6. Related appeals.

List all prior or pending appeals arising from the same action as this appeal. If none, so state.

None.

List any known pending appeals in separate actions raising similar issues to this appeal. If none are known, so state.

None known.

7. Contents of record.

Is a transcript necessary to review the issues on appeal? Yes (x) No ()

If yes, full (x) or partial () transcript?

Has the transcript already been delivered to the parties and filed with the trial court administrator? Yes () No (x)

If not, has it been ordered from the court reporter? Yes (x) No ()

See attached letters.

If a transcript is unavailable, is a statement of the proceedings under Rule 110.03 necessary? Yes () No ()

Not Applicable.

In lieu of the record as defined in Rule 110.01, have the parties agreed to prepare a statement of the record pursuant to Rule 110.04? Yes () No ()

Not Applicable.

8. **Is oral argument requested? Yes (x) No ()**

If so, is argument requested at a location other than that provided in Rule 134.09, subd. 2? Yes () No (x)

If yes, state where argument is requested:

Not Applicable.

9. **Identify the type of brief to be filed.**

Formal brief under Rule 128.02. (x)

Informal brief under Rule 128.01, subd. 1 (must be accompanied by motion to accept unless submitted by claimant for reemployment benefits). ()

Trial memoranda, supplemented by a short letter argument, under Rule 128.01, subd. 2. ()

10. **Names, addresses, zip codes and telephone numbers of attorney for appellant and respondent.**

**FOR APPELLANT
COMMISSIONER OF THE
MINNESOTA DEPARTMENT
OF HUMAN SERVICES:**

CYNTHIA B. JAHNKE
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445 Minnesota Street, Suite 900
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(651) 757-1468

FOR RESPONDENT PERRIN ESTATE:


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(952) 546-5440

**FOR APPELLANT
HENNEPIN COUNTY:**

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(612) 348-9653

Dated: August 4, 2010.

LORI SWANSON
Attorney General
State of Minnesota


CYNTHIA B. JAHNKE
Assistant Attorney General
Atty. Reg. No. 0294858

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ATTORNEYS FOR THE COMMISSIONER
OF THE MINNESOTA DEPARTMENT
OF HUMAN SERVICES

AG: #2673290-v1

FILED

STATE OF MINNESOTA
COUNTY OF HENNEPIN

2010 JUN 23 AM 8:50

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

In Re the Estate of:
Richard L. Perrin,

Decedent.

ORDER

Court File Number: 27-PAPR-06-1482
Judge Jay M. Quam

This matter came on for a motion hearing before the Honorable Jay M. Quam, Judge of District Court, on March 29, 2010.

APPEARANCES

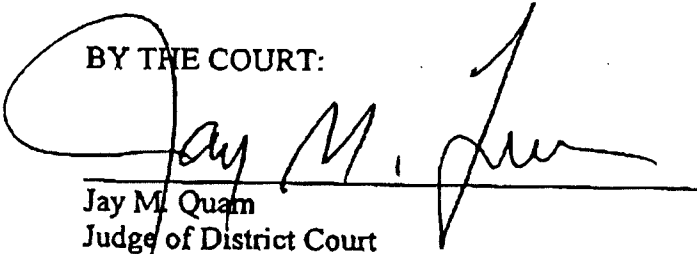
David E. Culbert, Esq. appeared as Personal Representative for the Estate of Richard L. Perin. Lon Erickson, Assistant Hennepin County Attorneys, appeared on behalf of Claimant Hennepin County Human Services Department. Cynthia Jahnke, Assistant Attorney General, appeared on behalf of Intervener Office of the Attorney General.

Based upon all files, records and proceedings herein, the Court makes the following:

ORDER:

1. The Court's Order, filed in this matter on February 3, 2010, is upheld.
2. The attached Memorandum of Law is incorporated herein.

BY THE COURT:



Jay M. Quam
Judge of District Court
Mental Health Division
Dated: May 3, 2010

Page 3

STATE OF MINNESOTA, COUNTY OF HENNEPIN
Certified to be a true and correct copy of the original
document(s) consisting of 5 pages
on file and of record in my office.

JUN 3 2010

District Administrator:

By Leanne Jasso Deputy

08/03/2010 14:34 3327404100 DAVID E. COLEMAN

MEMORANDUM OF LAW

This matter is before the Court on Hennepin County Human Services Department's Motion for Review of Order. Because the relitigation of Hennepin County Human Services Department's claim against the Estate of Richard L. Perrin for repayment of Medical Assistance, rightly paid out on behalf of Mr. Perrin's pre-deceased spouse, is barred by collateral estoppel, and its claim was properly disallowed and denied, the Court upholds its February 3, 2010, Order.

I. *Background Information.*

On September 19, 2006, Petitioner David E. Culbert, Esq. filed a Petition for Formal Probate of Will and for Formal Appointment of Personal Representative which requested, in relevant part, that he be appointed personal representative of the Estate of Richard L. Perrin in a supervised administration. This appointment was uncontested and Mr. Culbert accepted the appointment as personal representative on September 26, 2006.

Following the appropriate publication of Notice to Creditors by Mr. Culbert, Hennepin County Human Services Department ("Claimant") filed a Written Statement of Claim in this matter on or about September 28, 2006, making a \$276,408 claim on the estate of Decedent Richard L. Perrin ("Decedent"). This amount represents the total Medical Assistance paid on behalf of Decedent's pre-deceased spouse¹. In an Amended Notice of Disallowance or Partial Allowance of Claim, filed September 4, 2009, Mr. Culbert denied Claimant's claim in its entirety. Claimant disputed the appropriateness of this disallowance, asserting that its claim was proper and should be honored.

On February 3, 2010, the Court, in an opinion authored by District Court Referee Bruce Kruger and co-signed by Judge Jay Quam, filed an Order Disallowing and Denying Claim. This Order disallowed and denied Claimant's claim in its entirety. Specifically, this Order found that there were no factual disputes between the parties and that they agreed, in light of the Minnesota Supreme Court's ruling in *In Re the Estate of Barg*, 752 N.W.2d 52 (Minn. 2008), cert. den. 129 S.Ct. 2859, WL 1835179 (June 29, 2009), the Claimant could not recover under § Minn. Stat. § 256B.15, subd. 2. February 3, 2010, Order, ¶¶ 2-3, p. 2. The Court further addressed Claimant's contention that its claim should be allowed pursuant to Minn. Stat. § 519.05(a), stating that this

¹ Decedent did not receive Medical Assistance on his own behalf at any time.

claim was briefed and argued to – and resolved by – the Minnesota Supreme Court in *Barg*, and that further litigation of such claim is barred by *res judicata*. *Id.* at pp. 3-4.

On February 16, 2010, Claimant filed a Motion for Review of Order pursuant to Minn. Stat. § 484.70, subd. 7(d), contending that the Court's February 3, 2010, Order was contrary to law.² The Court heard this motion on March 29, 2010. In essence, Claimant requests the Court review the February 3, 2010, Order and expound on why Minn. Stat. § 519.05(a) does – or does not – validate its claim on Decedent's estate. Claimant's state that the Court's *res judicata* and privity analyses and conclusions, as contained in the February 3, 2010, Order, are contrary to law, that their claims are not barred by the doctrines of *res judicata* and/or collateral estoppel, and that the Court should have addressed its § 519.05(a) argument on its merits.

II. *The doctrine of res judicata does not apply.*

To apply the doctrine of *res judicata* – and thus bar Claimant's from bringing any subsequent claim – all the following elements must be met: "(1) the earlier claim involved the same set of factual circumstances; (2) the earlier claim involved the same parties or their privies; (3) there was final judgment on the merits; (4) the estopped party had a full and fair opportunity to litigate the matter." *Hauschidt v. Beckingham*, 686 N.W.2d 829, 840 (Minn. 2004). Parties in privity with one another must be so closely aligned and related that a judgment affecting one party affects the other.

The Court's February 3, 2010, Order found that there was privity between Claimants and the Mille Lacs Family Services and Welfare Department, the claimants in *Barg*. *In Re the Estate of Barg*, 752 N.W.2d at 56. The Court's order is silent on the relationship or privity between the Perrin and the Barg estates.

Privity requires that "a person to be so identified in interest with another that he represents the same legal right." *State v. Joseph*, 636 N.W.2d 322, 327 n.2 (Minn. 2001); see also *Margo-Kraft Distributors, Inc. v. Minneapolis Gas Co.*, 200 N.W.2d 45, 48 (Minn. 1972) (citing Rest. Judg. § 83, which states that privity exist between parties when a party has control over a proceeding although they are not parties to the action itself, whose interests are represented by a party to the action, and/or they are successors in interest to those having derivative claims.).

² On February 16, 2010, Mr. Cuthbert filed a Motion requesting an award of attorneys' fees and sanctions against Claimant. This request shall be addressed via separate order of the Court.

Based on the record before the Court, the Court finds that there is no privity between the Perrin and Barg estates. Although similarly situated – in that both estates involved a claim for repayment of Medical Assistance³ paid on behalf of a pre-deceased spouse – the estates are unrelated: neither estate is directly benefitted or harmed by the actions affecting the other. Accordingly, *res judicata* does not apply in this matter.

III. *The doctrine of collateral estoppels does apply.*

Collateral estoppel, or issue preclusion, applies when the following elements are met: “(1) the issue was identical to one in a prior adjudication; (2) there was a final judgment on the merits; (3) the estopped party was a party or in privity with a party to the prior adjudication; and (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue.” *Williams v. Comm’r of Pub. Safety*, 333 N.W.2d 619, 621 (Minn. 1983) (quoting *Victory Highway Village, Inc. v. Weaver*, 480 F.Supp. 71, 74 (D. Minn. 1979)). Here, all the elements are met and therefore Claimants should be barred from re-litigating their Medical Assistance claim based on Minn. Stat. § 519.05(a). Specifically, the elements of collateral estoppel are met in this case as follows:

1. The issue of whether the estate of an married individual, who did not personally receive Medical Assistance, should be responsible for repaying Medical Assistance paid out to a pre-deceased spouse is identical in both *Barg* and the present case. Both pre-deceased spouses transferred their interest in the martial homestead to the surviving spouse prior to their application for and receipt of Medical Assistance. Both claimants made a claim for repayment of the Medical Assistance on the estate of the surviving (non-recipient) spouse based on Minn. Stat. § 256B.15, subd. 2 and/or Minn. Stat. § 519.05(a). Indeed, the claims were so identical and so close together in time that the parties to the present matter agreed to continue the litigation in this case pending the Minnesota Supreme Court’s ruling on *Barg*.
2. As noted in the Court’s February 3, 2010, Order, there was final judgment on the merits: the issue of a claim pursuant to Minn. Stat. § 519.05(a) was briefed and

³ The claim in *Barg* was for the repayment of Medicaid monies paid on behalf of the pre-deceased spouse. In Minnesota, the Medicaid program is more commonly referred to as Medical Assistance. For the sake of clarity, Medicaid and Minnesota Care shall be used interchangeably in this Order.

argued before the Minnesota Supreme Court, and it could have been argued at the trial court. This claim was appealed to the United States Supreme Court, which declined review of the Minnesota Supreme Court's ruling. Although the Minnesota Supreme Court was silent as to its basis for denying the Barg claimant's based on Minn. Stat. § 519.05(a), it did make a final judgment on the merits of the case, as contained in its 25 page opinion, issued May 30, 2008, in *Barg*.

3. The claimants in the Barg and Perrin estates are in privity with one another. As the Court correctly reasoned in its February 3, 2010, Order:

Privity signifies that the relationship between two or more persons is such that a judgment involving one of them may justly be conclusive upon the other, although the other was not a party to the lawsuit. The Federal Medicaid Program (Medical Assistance in Minnesota) requires the states to develop a plan that, among other things, designates [a] single state agency to administer or supervise the administration of the plan. 42 U.S.C. § 1396a. Minnesota has designated the Minnesota Commissioner of Human Services as such agency. Minn. Stat. §§ 256B.01, 256B.02 and 256B.05. It has further provided that the counties shall administer medical assistance under the supervision of the Commissioner of Human Services. Minn. Stat. § 256B.05. Each county is therefore in privity with the Commissioner, and with each other in the administration of the Medical Assistance program. The Hennepin County Department of Economic Assistance is in privity with Mill Lacs County, the *Barg* claimant."

February 3, 2010, Order, ¶ 8, p. 4.

4. Claimant, the estopped party, was given a full and fair opportunity to brief and argue its claim on Minn. Stat. § 519.05(a) throughout all stages of litigation in the *Barg* case. Claimant makes no assertion that this opportunity was curtailed or otherwise infringed upon.

Based on the foregoing, the Court finds that Claimants are barred from relitigating their claim for repayment of Medical Assistance from Decedent's estate under Minn. Stat. § 519.05(a) by the doctrine of collateral estoppel, and that the Court's February 3, 2010, Order is upheld for the reasons outlined herein.

~J.M.Q.

FILED

STATE OF MINNESOTA

2010 FEB -3 AM 9:25

COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
PROBATE-MENTAL HEALTH DIVISION

In re: Estate of

**ORDER DISALLOWING AND
DENYING CLAIM**Richard L. Perrin,
Deceased

File No. 27-PA-PR-06-1482

This matter came before the court on August 31, 2009 on the Petition of David E. Culbert for an Order Permitting Him to Disallow the Claim after the filing of a Petition for Allowance After Disallowance.

Petitioner appeared personally *pro se*; Hennepin County Department of Economic Assistance, the Claimant, appeared by its attorney, Lon M. Erickson, Assistant Hennepin County Attorney. As discussed below, the matter was submitted on legal memoranda, the last of which was due on November 6, 2009.

The matter was referred for hearing to Bruce Kruger, District Court Referee, who now reports to the Court recommending the following Findings and Order:

FINDINGS

1. Decedent died testate on July 11, 2006, survived by three daughters. His will was formally probated and David E. Culbert was formally appointed personal representative by this court's order dated December 5, 2006. The Hennepin County Department of Economic Assistance presented its claim against the estate, which claim was based upon Medical Assistance benefits provided to decedent's predeceased spouse (decedent was not a recipient of Medical Assistance). The personal representative disallowed the claim in part. An amended claim was filed, and there was some confusion

as to whether it had been disallowed. Pursuant to an agreement of counsel, the parties agreed that the amended claim should be deemed disallowed, and the amended claim should be heard upon its merits. This was confirmed by this court's order dated August 31, 2009.

2. Counsel further agreed that there was no dispute as to the facts upon which the claim was based nor as to the amount of the claim. Medical Assistance benefits were provided by Hennepin County to decedent's spouse in the total amount of \$276,408.16. Counsel further agreed that the validity of the claim was controlled by the Minnesota Supreme Court's decision in *In re. Estate of Barg*, 752 N.W.2d 52 (Minn. 2008), cert. den. 129 S.Ct. 2859, WL 1835179 (June 29, 2009), because the interest of the surviving spouse herein, like that in *Barg*, was not marital property or jointly owned property. Pursuant to these agreements, the matter was submitted to the court on the basis of legal memoranda, the last of which was timely submitted to the court on November 6, 2009.

3. In the memoranda submitted to the court, counsel further agreed that *Barg* established that the instant claim was barred if it was being made pursuant to Minn. Stat. §256B.15, subdiv. 2, a part of the Medical Assistance statutory provisions. The amended claim, however, is based on Minn. Stat. § 519.05(a), a part of the family law statutory provisions. Minn. Stat. § 519.05(a). See Claimant's Memorandum of Law in Support of Allowance of Claim dated October 9, 2009, p. 3. That statute generally provides that a spouse is not responsible for the debts of the other spouse, but continues, "Where husband and wife are living together, they shall be jointly and severally liable for necessary medical services that have been furnished to either spouse...."

4. The personal representative argues that *Barg* also bars a claim under § 519.05(a), because the issue was raised and argued in *Barg*, and is therefore barred under

the doctrine of res judicata.

5. Counsel admit that the Minnesota Supreme Court opinion in *Barg* is absolutely silent on § 519.05(a). The personal representative, however, notes that the issue was raised in the briefs submitted by the *Barg* parties, and he cites the relevant sections of such briefs. Appellant's Brief, Appendix and Addendum, pp. 45-46; Respondent's Brief and Addendum, pp. 50-51; Appellant's Reply Brief and Addendum, pp. 22-24; and Appellant's Supplemental Response Brief, p. 10. Copies of these pages were attached as Exhibits A -D to the Personal Representative's Memorandum of Law in Support of Disallowance of Claim, dated October 30, 2009. Despite the silence of the *Barg* opinion, the claim of Mille Lacs County was based alternatively on a recovery under Minn. Stat. § 256B.15 (the Medical Assistance provisions) and/or under Minn. Stat. § 519.05(a) (the family law provisions). It was, in any event, a claim for Medical Assistance benefits provided.

6. Res judicata operates when: (a) the previous litigation involved the same claim, (b) the previous litigation involved the same parties or parties in privity with the current parties, (c) there was a final judgment on the merits, and (d) the estopped or barred party had the full and fair opportunity to litigate the matter. See, e.g., *State v. Joseph*, 636 N.W.2d 322 (Minn. 2001).

7. As noted earlier, the issue of a claim under § 519.05(a) was briefed and argued before the Minnesota Supreme Court, and it could or should have been argued at the trial court. Although the Supreme Court was silent, it did not specifically exclude a determination of the § 519(a) claim. It did disallow the Medical Assistance claim against the estate of Francis E. Barg. Given the facts that the matter was litigated at the trial court, was appealed to the Minnesota Supreme Court, and was appealed to the United States Supreme Court, there was most certainly a final judgment on the merits. Mille Lacs

County also most certainly had the full and fair opportunity to litigate its § 519.05(a) claim.

8. As stated in Black's Law Dictionary, privity is defined as mutual or successive relationships to the same right of property or such an identification of interest of one person with another as to represent the same legal right. Privity signifies that the relationship between two or more persons is such that a judgment involving one of them may justly be conclusive upon the other, although the other was not a party to the lawsuit. The Federal Medicaid Program (Medical Assistance in Minnesota) requires the states to develop a plan that, among other things, designates single state agency to administer or supervise the administration of the plan. 42U.S.C. § 1396a. Minnesota has designated the Minnesota Commissioner of Human Services as such agency. Minn. Stat. §§ 256B.01, 256B.02 and 256 B.04. It has further provided that the counties shall administer medical assistance under the supervision of the Commissioner of Human Services. Minn. Stat. § 256B.05. Each county is therefore in privity with the Commissioner, and with each other in the administration of the Medical Assistance program. The Hennepin County Department of Economic Assistance is in privity with Mille Lacs County, the *Barg* claimant.

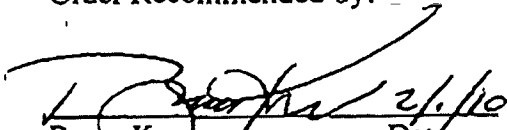
9. The instant claim of the Hennepin County Department of Economic Assistance, whether asserted under Minn. Stat. § 256.15 or Minn. Stat. § 519.05(a) is barred by the judgment in *Barg*, and should be disallowed and denied.

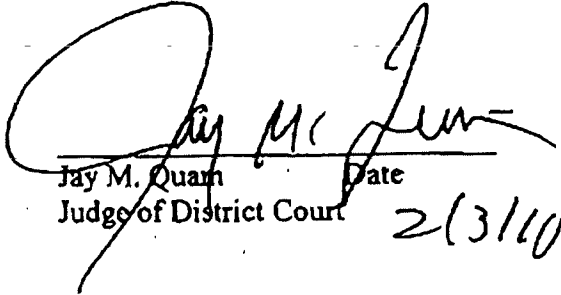
IT IS THEREFORE ORDERED

The Claim of the Hennepin County Department of Economic Assistance for Medical Assistance benefits provided to decedent's predeceased spouse is disallowed and

denied.

Findings Submitted and
Order Recommended by:

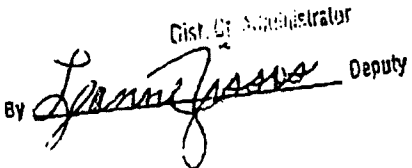

 Bruce Kruger Date 2/1/10
 District Court Referee


 Jay M. Quam Date 2/3/10
 Judge of District Court



STATE OF MINNESOTA, COUNTY OF HENNEPIN
 Certified to be a true and correct copy of the original
 document (it consists of 5 pages)
 on file and of record as follows:

AUG - 3 2010

Dist. Ct. Administrator
 By  Deputy

AFFIDAVIT OF SERVICE BY U.S. MAIL

Re: *In re Estate of Richard L. Perrin, Decedent*
Hennepin County District Court File No. 27-PA-PR-06-1482
Appellate Courts File No. _____

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Judy Fusco, being first duly sworn, deposes and says:

That at the City of St. Paul, County of Ramsey and State of Minnesota, on August 4, 2010, she caused to be served the:

1. Notice of Appeal to the Court of Appeals;
2. Statement of the Case of Appellant Commissioner of the Minnesota Department of Human Services; and
3. Certified copies of Hennepin County District Court Orders, dated February 3, 2010 and June 3, 2010

by depositing the same in the United States mail at said city and state, true and correct copies thereof, properly enveloped with prepaid first class postage, and addressed to:

David E. Culbert
Attorney at Law
7401 Metro Boulevard, Suite 485
Minneapolis, MN 55439

Lon M. Erickson
Assistant Hennepin County Attorney
A2000 Government Center
300 South Sixth Street
Minneapolis, MN 55487

Also on August 4, 2010, I served the Hennepin County Court Administrator of Record with the Notice of Appeal in this matter, by depositing the same in the United States mail at said city and state, a true and correct copy thereof, properly enveloped with prepaid first class postage, and addressed to:



STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

LORI SWANSON
ATTORNEY GENERAL

August 4, 2010

SUITE 900
445 MINNESOTA STREET
ST. PAUL, MN 55101-2127
TELEPHONE: (651) 297-1075

Kathy deGroot, Court Reporter
District Court
Hennepin County Government Center
300 South Sixth Street
Minneapolis, MN 55487

Re: *In re Estate of Richard L. Perrin, Decedent*
Hennepin County District Court File No. 27-PA-PR-06-1482

Dear Ms. deGroot:

This letter is to formally request preparation of an original and three copies of the transcript of proceedings before Referee Bruce Kruger on August 31, 2009 in the above-entitled matter. Pursuant to Minnesota Statutes section 357.13, subdivision 2, the State of Minnesota is not obligated to make advance payment of fees, costs, or charges to any county or municipal official for services, acts, or duties to be rendered. I would, therefore, appreciate you forwarding the invoice for payment of the transcript to me at the address above.

Pursuant to Minnesota Rule of Civil Appellate Procedure 110.02, subdivision 2, enclosed please find a Certificate as to Transcript for your signature and filing with the Minnesota Court of Appeals.

Thank you for your assistance in this matter.

Sincerely,

CYNTHIA B. JAHNKE
Assistant Attorney General
Atty. Reg. No. 0294858
(651) 757-1468 (Voice)
(651) 297-4139 (Fax)

Enc.

cc: Hennepin County Court Administrator (w/o enc.)
David E. Culbert, Esq., Personal Representative for Respondent Perrin Estate (w/o enc.)
Lon M. Erickson, Assistant Hennepin County Attorney (w/o enc.)

AG: #2673290-v1



STATE OF MINNESOTA
COURT OF APPEALS

DAVID E. CULBERT
7401 Metro Boulevard Suite 485
Minneapolis MN 55439

NOTICE OF CASE FILING
Trial Court Case # 27-PA-PR-06-
1482
Case Type: Other

Case Title: In re the Estate of: Richard L. Perrin, Decedent
Case Filed: August 5, 2010

You are notified that case number A10-1352 has been assigned to this matter. Please include this number on all subsequent filings, including correspondence, to this office. Also, please include your attorney registration number on all filings.

The appendix to your brief must have pages numbered consecutively from beginning to end and must contain an index. Failure to comply may result in rejection of the appendix.

This office will send notice to the trial court administrator when transmission of the trial court records and exhibits are required.

IF ANY DEFICIENCIES ARE NOTED ABOVE, THEY MUST BE CORRECTED BY THE FILING PARTY (OR AS OTHERWISE NOTED) WITHIN TEN DAYS. FAILURE TO COMPLY WITH THIS NOTICE, ALL APPLICABLE RULES, COURT NOTICES, AND ORDERS MAY RESULT IN THE IMPOSITION OF SANCTIONS.

Dated: August 6, 2010

BY THE COURT:

Frederick K. Grittner
Office of the Clerk of the Appellate Courts
305 Minnesota Judicial Center
St. Paul, Minnesota 55155

NOTICE REGARDING ORAL ARGUMENTS IN THE COURT OF APPEALS

Cases may be scheduled as soon as one responsive brief is filed. Minn. App. Spec. R. Pract. 1. Oral hearings are now scheduled 30-240 days from the filing of the first responsive brief. Counsel must advise the court, in writing, of potential scheduling conflicts before the case is scheduled. *Id.* Counsel may give notice of scheduling conflicts (a) by letter when filing their briefs, (b) by separate letter received by the court before the first responsive brief was filed, or (c) by completing this form and returning it before the case is scheduled. Counsel have a continuing duty to update notices of potential conflicts until an appeal has been scheduled.

If counsel fail to notify the court of potential scheduling conflicts before a case is set for argument, postponement will be granted only for *extreme emergency*. To obtain a postponement, counsel must establish that they are suddenly and unexpectedly unavailable for unpredictable reasons, such as a medical emergency.

Case Name: _____

Case No.: _____

Attorney Providing Information: _____

Which Party Does Attorney Represent?: _____

Check One:

_____ Unavailable for oral arguments on: _____
OR

_____ No conflicts to be considered in setting oral arguments

Date: _____ (signature)

Copies served on: _____ (name) at

_____ (address)

Personally/By Mail (select one) on _____ (date)

Return to: Clerk of the Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King, Jr., Blvd.
St. Paul, MN 55155

**DO NOT USE THIS FORM TO SUBMIT OTHER INFORMATION, INCLUDING
CHANGE OF ADDRESS**