

STATE OF MINNESOTA
COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT
DISTRICT COURT

In Re: Estate of

**NOTICE OF RELATED APPEAL
TO COURT OF APPEALS**

Richard L. Perrin

**TRIAL COURT CASE NUMBER:
27-PA-PR-06-1482**

Decedent

**DATE OR ORDER OR JUDGMENT
BEING CHALLENGED:**

June 3, 2010.

APPELLATE COURT


FILE NUMBER: A10-1352

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

Please take notice that the Estate of Richard L. Perrin, Respondent appeals to the Minnesota Court of Appeals and seeks review of the order of Hennepin County District Court, which was filed on the date noted above and denying Hennepin County's Motion for Review of Order Disallowing and Denying Claim by Hennepin County by Order dated February 3, 2010 and upheld by Order dated June 3, 2010.

For issues preserved see Respondent's Statement of the Case, paragraph 5.

Dated: August 16, 2010



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STATE OF MINNESOTA
IN COURT OF APPEALS

In Re: Estate of

Richard L. Perrin,

Decedent.

STATEMENT OF THE CASE
OF RESPONDENT

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

APPELLATE COURT CASE NUMBER:
A10-1352

1. Court or agency of case origination and name of preceding 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. 103.02, subd. 2

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

District Court Order dated June 3, 2010, affirming February 3, 2010 Order. The Order was filed June 3, 2010 and Notice of Filing served on Hennepin County on June 7, 2010.

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

Not Applicable.

(D) Finality of order or judgment.

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

If no:

The District Court did not award attorney fees to the *Estate of Richard L. Perrin*

Did the district court order entry of a final partial judgment from immediate appeal pursuant to MINN. R. CIV. APP. P. 104.01? Yes No

If yes, provide date of order:

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

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

(D)Criminal only

Not Applicable.

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

This litigation involves a claim against the Estate of Richard L. Perrin for recovery of medical assistance benefits paid on behalf of Dorothy Perrin, predeceased spouse, under 42 U.S.C. §§ 1396b (1) and (4), and Minn. Stat. §§ 256B.01, 256B.02, 256B.04, 256B.05, 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, 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 on his pre-

deceased spouse, Dorothy Perrin, under Minnesota Statutes section 256B.15. The same claim was then asserted under Minn. Stat. § 519.05.

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 involved a claim for recovery of medical assistance benefits paid on behalf of a pre-deceased spouse.

Hennepin County maintained its challenge against the estate's denial of the medical assistance recovery claim after *Barg* became final. The matter was heard by Referee Bruce Kruger on August 31, 2009. The County and the Estate agreed to the facts and agreed that the matter would be submitted on briefs. The material facts were not in dispute. Briefs were submitted and on February 3, 2010, the Hennepin County District Court issued an order recommended by Referee Krueger and signed by Judge Jay M. Quam, disallowing and denying Hennepin County's claim in full. Hennepin County's claim that the medical assistance claim could be recovered under Minnesota Statutes section 519.05(a) was denied under the authority of the *Barg* decision and authority of the doctrine of *res judicata*.

On February 16, 2010, Hennepin County filed a Motion for Review under Minnesota Statutes, section 484.70, subdivision 7, for review of the February 3, 2010 order. On March 1, 2010, the Commissioner filed a Notice to Intervene, which was granted by Order dated March 15, 2010.

On March 29, 2010, Hennepin County's Motion for Review was heard before The Honorable Jay M. Quam, Judge of District Court. David E. Culbert appeared on behalf of The Estate of Richard L. Perrin; Lon M. Erickson, Assistant Hennepin County Attorney appeared on behalf of the Claimant Hennepin County; Cynthia Jahnke, Assistant Attorney General appeared on behalf of Intervenor Commissioner of Human Resources. All three counsel participated in oral argument.

On June 3, 2010, the Hennepin County District Court affirmed its February 3, 2010, order denying and disallowing the claim under the authority of the *Barg* decision, not under the doctrine of *res judicata*, but under the doctrine of *collateral estoppel* against parties in privity to a previous decision of the Minnesota Supreme Court (The *Barg* case). The Commissioner and

08/18/2010 10:00
Hennepin County were served with a written notice of the filing of the order on June 7, 2010.

On July 7, 2010, the Commissioner served a Notice of Motion and Motion to Amend the Findings of Fact and Order pursuant to Minnesota Rules of Civ. P. 52.02. The motion requested the Court to amend the February 3, 2010, and June 3, 2010, Orders. The Estate filed a Motion to Deny and Dismiss With Prejudice the Commissioner's Motion to Amend Findings of Fact and Order and requested also such other and further relief as the Court deems just and equitable. The Estate in its memorandum requested attorney fees due to the fact that the Commissioner is re-litigated the matter by a "second shot". On August 3, 2010 the Commissioner served a Notice of Withdrawal of Motion and Motion to Amend Findings of Fact and Order.

On August 4, 2010, the Commissioner appealed to the Court of Appeals from the Order of the Hennepin County District Court dated February 3, 2010, which was affirmed by Order dated June 3, 2010. The estate has not withdrawn its pending motion.

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

(a) Whether the District Court Order of June 3, 2010, is an appealable order.

The District Court did not consider this issue.

(b) Whether the District Court, in determining whether Hennepin County's medical assistance claim should be allowed or disallowed against the decedent's estate, followed procedures requested by stipulation of Hennepin County and the decedent's Personal Representative.

The District Court followed the procedures requested by stipulation of Hennepin County and the Personal Representative made in open court at the hearing held on August 31, 2009.

(c) Whether the Minnesota Commissioner of Human Services and the counties which administer the Minnesota Medical Assistance program under the Commissioner's supervision and control under Minn. Stat. Ch. 256B are sufficiently related in identify and interest to be in privity to each other.

The District Court in its Order dated February 3, 2010, and again in its Order dated June 3, 2010, found that the Minnesota Commissioner of Human Services and the various counties are in privity with each other for purposes of collecting medical assistance benefits from estates of decedents.

- (d) Whether the Commissioner of Human Services should be bound by the Stipulation made by Hennepin County prior to the Commissioner's intervention as a party.

The District Court did not make any Findings of Fact or Conclusions of Law on this question.

- (e) Whether the Minnesota Commissioner of Human Services, Mille Lacs County and Hennepin County are in privity to each other for purposes of collecting medical assistance benefits from estates of decedents.

The District Court, in its Order dated February 3, 2010, and again in its Order dated June 3, 2010, found that the Minnesota Commissioner of Human Services, Mille Lacs County and Hennepin County are in privity each with each other for purposes of administering the Minnesota Medical Assistance Program.

- (f) Whether Hennepin County is the agent of the Minnesota Commissioner of Human Services for purposes of recovering medical assistance from the estates of decedents under 42 U.S.C. § 1396 and Minn. Stat. §§ 256B.01, 256B.02, 256B.04, 256B.05 and the law of agency.

The District Court did not make any Findings of Fact or Conclusions of Law on this question.

- (g) Whether the Minnesota Supreme Court in *In Re Estate of Barg*, 752 N.W.2d 52 (Minn. 2008), cert. denied, 1295 Ct. 2859, 2009 WL 1835179 (June 29, 2005) considered whether Minn. Stat. 519.05 (2008) was in conflict with federal medical assistance estate recovery law.

The question whether Minn. Stat. 519.05 (2008) was an alternate theory allowing recovery of medical assistance benefits from the estate of a community spouse who did not receive medical assistance benefits was briefed and argued in the *Barg* case. The Minnesota

Supreme Court construed federal and state statutes to determine that Minn. Stat. 256B.15 was in conflict with federal law. The Minnesota Supreme Court did not make any specific statements regarding the applicability of Minn. Stat. 519.05 as an alternative theory of recovery, despite the urging of Mille Lacs County, but did not allow recovery under Minn. Stat. 519.05 as an alternative theory of recovery.

- (h) Whether the District Court erred in disallowing and denying Hennepin County's medical assistance claim in full under the doctrine of collateral estoppel.

The District Court in its Order of June 3, 2010, disallowed Hennepin County's medical assistance claim against the decedent's estate in full, on the basis of the Minnesota Supreme Court's holdings in *Barg*, and application of the *Barg* case against Hennepin County under the doctrines of privity and collateral estoppel.

- (i) Whether under the Minnesota Supreme Court's holdings in *Barg* Hennepin County should be allowed to assert a medical assistance claim against the estate of a surviving spouse who never received medical assistance benefits without introducing any evidence that assets of value owned by the recipient of medical assistance transferred to the surviving spouse at the time of the recipient's death.

The District Court in its Order of June 3, 2010, in accordance with the stipulation of Hennepin County and the Personal Representative that no material facts were in dispute and with no evidence in the record of assets of value transferring from the recipient's estate to the surviving spouse's estate, and that the allowance or disallowance of the County's claim could be decided as a matter of law under cross-motions for summary judgment, applied the holdings of the Minnesota Supreme Court in the *Barg* case to disallow and deny Hennepin County's medical assistance claim against the surviving spouse's estate in full.

6. Related appeals.

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

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 No

If yes, full or partial transcript?

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

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

Ordered by Appellant

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 No

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

If yes, state where argument is requested:

Not Applicable

9. Identify the type of brief to be filed.

Formal brief under Rule 128.02.

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 number of attorney for appellant
and respondent.**

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COMMISSIONER OF THE
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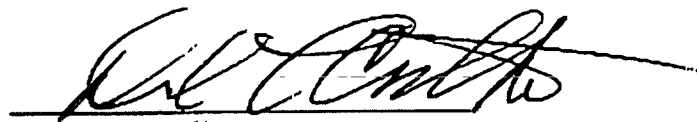
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Dated: August 10, 2010



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