

NO. A05-2346

State of Minnesota  
In Court of Appeals

In Re

Estate of Frances E. Barg  
a/k/a Frances Edward Barg

APPELLANT'S REPLY BRIEF

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## ARGUMENT

Respondent's brief is nonresponsive to Mille Lacs County's arguments that Minnesota state law uses the concept of marital property to determine the extent of the recoverable interest from a surviving community spouse's estate. Respondent's arguments should be accorded no weight in resolving the question before the Court.

### I. QUESTIONS OF LAW ARE SUBJECT TO *DE NOVO* REVIEW.

While Respondent conveniently posits that the applicable standard of review is whether the district court acted within its discretion by partially denying the Medicaid claim, Resp. Br. at 3-4, there is no authority to suggest that this Court is bound by the lower court's decision.

*Estate of Gullberg*, 652 N.W.2d 709 (Minn. Ct. App. 2002) is instructive, but not dispositive of the issues currently before this Court on review. In that case, this Court held that Minnesota Statutes section 256B.15, subdivision 2, permitted claims against a surviving spouse's estate only "to the extent of the value of the recipient's interest in marital or jointly owned property at the time of the recipient's death." See *Gullberg*, 652 N.W.2d at 714. In so ruling, this Court determined that the institutionalized spouse had a legal interest in the community spouse's estate at the time of his death that is subject to later recovery. *Id.* at 713. As support, the Court cited principles of marital property and intestacy law. *Id.* The Court further held that the state's estate recovery statute was preempted insofar as it permitted recovery beyond this value. *Id.* at 714. This Court remanded the case to determine the value of Walter Gullberg's interest in the homestead

at the time of his death, indicating that the County's claim was limited to recovery "to the extent of that interest," which was not defined by the Court. *Id.*

The question before this Court after *Gullberg* concerns how this interest is to be valued under 42 U.S.C. §1396p(b) and applicable state law. This is a legal question requiring statutory construction and interpretation; such questions are reviewed de novo. *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 393 (Minn. 1998). A district court's decision does not bind this court upon de novo review. *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996); *see also Western Insulation Services Inc. v. Central Nat. Ins. Co. of Omaha*, 460 N.W.2d 355, 357 (Minn. Ct. App. 1990) (stating trial court's conclusions of law not binding on appellate court and may be reviewed de novo). Moreover, the district court here has made no factual determinations. *See* Appellant's Appendix AA1-6 (Stipulated Facts). Thus, this case involves the application of law (construing state and federal estate recovery statutes) to stipulated facts. Such application is a question of law that an appellate court reviews de novo. *Morton Bldgs., Inc. v. Comm'r of Revenue*, 488 N.W.2d 254, 257 (Minn. 1992). As a legal query remains unresolved, this Court should address that question as provided for by law.

Respondent cites no authority for the proposition that this Court is bound by the district court's treatment of a legal issue. Instead, Respondent appears to infer a discretionary standard from the *Gullberg* opinion. This reading is faulty for a number of reasons. First, *Gullberg* did not fully address the statutory interpretation of the "extent of the interest" held by the recipient spouse in the surviving spouse's estate as it was not an

issue directly before the Court. It was neither raised on appeal nor was it argued by either party during the Court's initial review. *See Gullberg*, 652 N.W.2d at 712 (stating issue as one of preemption of federal law). Thus, there remains an outstanding legal issue after *Gullberg* which this Court may properly consider. Second, the Court explicitly framed the issue before it in *Gullberg* as one of federal preemption, a question of statutory construction to be reviewed de novo. *See Gullberg*, 652 N.W.2d at 712. A de novo review in the present case is consistent with that well-settled principle. Third, while *Gullberg* discussed two sources for its conclusion that the institutionalized spouse continued to have an interest in homestead property even without formally being on the title, this discussion can in no way be construed as giving the district court the right to completely *disregard* marital property, as it did here, despite the legislature's express use of that term to define the extent of the recoverable interest. Nowhere in the opinion are district courts given discretion to choose *which* method to use in valuing this interest. Respondent has previously acknowledged that *Gullberg* did not "settle" the manner in which a district court should resolve these claims, despite what Respondent now suggests. *See Estate's Dist. Ct. Mem. of Law*, p. 9 ("the Court did not set out any method for determining the interest of a medical assistance recipient spouse in the assets of a surviving community spouse"). Finally, by remanding *Gullberg*, this Court properly returned the matter for further proceedings consistent with its rejection of the district court's legal conclusion that no claim was allowable. *Gullberg*, 652 N.W.2d at 715. Such remand is not the equivalent of granting district courts the ability to completely reject the existence of marital property interests under the guise of a case-by-case

determination. There is no basis, express or implied, for arguing that this Court is bound by the lower court's decision or that this matter involves merely an exercise of discretion.

## **II. RESPONDENT'S ARGUMENTS ON SPOUSAL RECOVERIES ARE IRRELEVANT.**

Respondent's central argument appears to be an attempt to relitigate the question of whether Minnesota can make claims for recoveries against the estates of surviving community spouses. Resp. Br. at 12-13, 19-27. Such arguments, however, are irrelevant because this Court has already answered the question in the affirmative: spousal recoveries are consistent with federal law and permitted whether or not the institutionalized spouse has formal title to assets eventually remaining in the community spouse's estate at the time of death. *Estate of Gullberg*, 652 N.W.2d 709 (Minn. Ct. App. 2002); *Estate of Jobe*, 590 N.W.2d 162 (Minn. Ct. App. 1999), *Estate of Brandt*, No. C5-98-1924 (Minn. Ct. App. April 20, 1999). The only question in this appeal is the scope of recovery, not whether recovery can be made at all.

Also, Respondent's reliance on opinions from Wisconsin and Illinois intermediate courts is unwarranted. First, the *Budney* decision predates both *Jobe* and *Gullberg*. *Estate of Budney*, 541 N.W.2d 245 (Wis. App. 1995). This Court correctly declined to adopt that approach in both cases. Second, if Respondent were to look further east than Wisconsin and Illinois, he might consider that the Ohio Court of Appeals, like this Court, has rejected the central argument of *Budney*. *Ohio Dep't of Job and Family Servs. v. Tulz*, 787 N.E.2d 1262, 1265-66 (Ohio Ct. App. 2003). Finally, Respondent prematurely relies on *Hines v. Dep't of Public Aid*, 831 N.E.2d 641 (Ill. Ct. App. 2005). The Illinois

Supreme Court granted review and a decision from that court is pending. *Hines v. Dep't of Public Aid*, 839 N.E.2d 1024 (2005) (granting review). Even if *Hines* is affirmed, it is of no persuasive authority in Minnesota because *Jobe* and *Gullberg* have already ruled on the question of allowing spousal recoveries.

### **III. RESPONDENT INCORRECTLY ASSERTS THAT MEDICAL ASSISTANCE DOES NOT INVOLVE COUNTY FUNDS.**

Respondent asserts, without supporting authority, that no county funds are involved in Medical Assistance, Resp. Br. at 5, and that county property taxes pay no share of Medical Assistance. Resp. Br. at 48. These statements are incorrect. Medical Assistance is administered by county social service agencies. Minn. Stat. § 256B.05 (2004). Half of administrative costs is borne by counties and half is covered by federal funds. Minnesota counties are required by law to establish an annual “county medical assistance fund and levy taxes and fix a rate therefor[e] sufficient to produce the full amount of such item . . . sufficient to pay in full the county share of assistance and administrative expense for the ensuing year.” Minn. Stat. § 256B.20 (2004). Specifically, counties also bear a share of the cost of medical assistance services that are not paid by federal funds. Minn. Stat. § 256B.19, subd. 1 (2004). Minnesota’s centralized disbursement of Medical Assistance payments includes county funds. Minn. Stat. § 256B.041, subd. 2 (2004) (establishing a state treasury account for medical assistance into which “federal funds, state funds, *county funds*, and other moneys” are deposited (emphasis added)). As the President of the National Association of Counties recently pointed out, “Local governments contribute to the Medicaid program along a

spectrum that moves from service delivery to finance.” Bill Hansell, “Medicaid’s Local Burden,” *Governing* 12 (March 2006).

#### **IV. ESTATE RECOVERY IS SIGNIFICANT FOR MEDICAID.**

Respondent also attempts to diminish the significance of estate recoveries by comparing the amounts recovered to overall Medicaid spending. Resp. Br. at 46-49. First, the nearly twenty-five million dollars recovered by Minnesota is significant. U.S. Dep’t of Health & Human Servs., *Medicaid Estate Recovery Collections* at 10 (2005). The enormity of overall state and federal Medicaid spending should not be used to argue that “recoveries are not a significant factor in the operation and the continuation” of Medicaid programs. Resp. Br. at 48. For example, 20,000 people in Idaho -- including nursing home residents -- were affected by what Respondent may describe as an “insignificant” cut of seven million dollars from Medicaid for the dental care that had provided them dentures. Travis Purser, “For Some, Medicaid Cuts Could Mean No Teeth,” *Idaho Mountain Express* (April 17, 2002).<sup>1</sup>

Second, Respondent’s suggestion that estate recovery is unimportant to Medicaid because the amounts recovered are deposited in the general fund is a non sequitur. The Minnesota Legislature generally disfavors the type of dedicated funding that Respondent suggests is necessary. That a social welfare program like Medicaid is dependent on appropriations from the general fund does not mean that the Legislature is unaware of

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<sup>1</sup> Also available at: <http://www.mtexpress.com/2002/02-04-17/02-04-17dentalcare.htm>.

deposits from estate recovery or that the Legislature does not consider estate recoveries in making budget decisions.

Third, Respondent's use of statistics is misleading. Because Medicaid is intended for those with few resources, sometimes there will be little or nothing from which an estate recovery can be made. For those who, like here, had significant non-cash assets when applying for Medicaid, estate recovery is proportionately significant. Here, for example, there are sufficient marital assets to achieve complete recovery of Dolores Barg's Medicaid benefits. The General Accounting Office (GAO) estimated that "as much as two-thirds of the amount spent for nursing home care for Medicaid recipients who owned a home could be recovered from their estates or the estates of their spouses." GAO, *Medicaid: Recoveries From Nursing Home Residents' Estates Could Offset Program Costs* at 3 (1989). Therefore, for cases like this one, estate recovery is indeed significant.

Fourth, Minnesota's allocation to counties of one-half the state share of estate recoveries attributable to county efforts does not diminish the important interests served by estate recovery. Effective estate recovery discourages efforts by some to shelter resources from being used for long-term care at the expense of taxpayers. Thus, in addition to the actual amounts recovered, estate recovery has the added benefit of encouraging use of private resources to pay for care before turning to social welfare. It has been long-recognized that allowing counties to keep twenty-five percent of the recoveries accounts for Minnesota's top-ranking among states in estate recoveries. See U.S. Dep't of Health & Human Servs., Office of Inspector General, *Medicaid Estate*

*Recoveries: National Program Inspection* at 44-45 (1988) (“This incentive system may help to account for Minnesota’s third place rank among Medicaid estate recovery programs.”).

Allowing counties to retain a share of estate recoveries attributable to their efforts recognizes both the expenses of counties for administering Medical Assistance and the costs associated with making claims and litigating recoveries. Relying on counties to perform estate recoveries is a reasonable allocation of responsibilities because county workers are more likely to effectively cases.

Finally, estate recoveries have a significant nonmonetary value. Effective recovery efforts further public support for Medicaid which, as Respondent notes, is dependent on the Legislature’s allocations from the general fund. Judge Minge, in his special concurrence in *Gullberg*, acknowledged the importance of avoiding a public perception that social welfare, meant for those with no other resources, is being used by those who have used estate planning to shelter assets for their heirs. He wrote, “The all-together human temptation to take advantage of a generous government program . . . breeds cynicism in the larger community.” *Gullberg*, 652 N.W.2d at 715 (Minge, J., concurring specially).

**V. RESPONDENT’S HCFA LETTERS HAVE NO PRECEDENTIAL VALUE AND SHOULD BE AFFORDED NO CONSIDERATION BY THIS COURT.**

Respondent finally argues that the letters submitted from the Department of Human Health and Services Health Care Financing Administration (HCFA) should be part of this Court’s review. As these letters were determined by the district court to be

nothing more than “personal opinions” without precedential value, they should be afforded no consideration by this Court.

Issues of admissibility of evidence do fall within the district court’s discretion. Here, the record clearly demonstrates that the district court gave little to no weight to these letters upon ruling them admissible and this Court should act in kind. At oral arguments before the district court, the Honorable Steven P. Ruble considered the County’s motion to strike and ultimately permitted the admission of the HCFA letters, at the same time acknowledging his intent to give them only very limited weight. He indicated that if the matter had been brought before a jury he would have excluded the letters altogether as prejudicial. Judge Ruble went on to discuss the non-binding nature of these letters:

THE COURT: I think that prejudicial question becomes minimized, that the intempt (sic) of the Court to be mislead as to the value and the weight to be given these opinions, and that’s what they are, not official opinions but personal opinions, wouldn’t—can be balanced. I think—hopefully at this point I understand the difference between argument by opinion and argument of a—as an authority. So I’m not gonna exclude them. But they’ll be received. But the weight will be given the weight of more of an argumentative opinion as opposed to a—any authoritative opinion that has precedential value on the Court.

*See* Oral Argument and Motion Hearing Transcript, pp. 6-7. Notably, the district court made no reference to the letters in its memorandum and did not appear to use them as support for its decision.

The letters at issue are responses—provided without the corresponding letters of inquiry—“regarding whether transfers from a community spouse in any manner make the institutionalized spouse ineligible for continued medical assistance benefits.” Resp. Br. at

51. They address Medicaid eligibility only; they do not seek to discuss the impact of estate recovery on a community spouse's decision to do "whatever he or she wants" with these resources. These personal responses to the complex interplay of spousal anti-impoverishment and estate recovery are a selective look at the issues before this Court and have no authoritative value. The district court saw fit to admit these documents but afforded them little to no weight in its decision. For these reasons, as well as those cited in the Appellant's district court brief, they should be given little to no consideration by this Court as well.

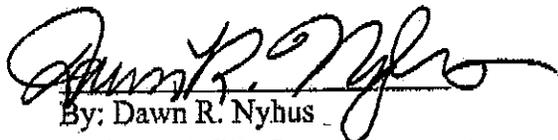
### CONCLUSION

For the reasons set forth above, Mille Lacs County respectfully requests that this Court reverse the district court's Order and Judgment and remand this matter to the district court for payment of its estate recovery claim in full.

Dated: 4/5/00

Respectfully submitted,

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