

No. A06-0559

In The
Court of Appeals of the
State of Minnesota

**IN RE: APPEAL OF DECISION OF THE COMMISSIONER
OF HUMAN SERVICES IN THE APPEAL OF LILLIAN FLYGARE
FOR MEDICAL ASSISTANCE,**

LILLIAN FLYGARE ,

Appellant,

COUNTY OF NICOLLET,

Respondent,

MINNESOTA DEPARTMENT OF HUMAN SERVICES,

Respondent.

BRIEF OF APPELLANT

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STATEMENT OF LEGAL ISSUES

1. Whether the enactment of Minnesota Statute §501B.89 completely supplanted the existing common law concerning asset of beneficiaries from irrevocable trusts who applied for receipt of Medical Assistance benefits.

The trial court held in the AFFIRMATIVE.

Most Apposite Authority: Ly v. Nystrom, 615 N.W. 2d 302 (Minn. 2000); Minn. Stat. § 645.16

2. Given the answer to the first issue, whether Applicant Flygare is, under the facts of this case, eligible to participate in the Medical Assistance program?

The trial court held in the NEGATIVE.

Most Apposite Authority: In re Horton Irrevocable Trust, 668 N.W. 2d 208 (Minn. App. 2003); In re Leona Carlisle Trust, 498 N.W. 2d 260 (Minn. App. 1993)

STATEMENT OF THE CASE

On August 26, 2004, Lillian Flygare (“Appellant”) filed an application for medical assistance-elderly waiver with Nicollet County Social Services. A decision was made by Nicollet County via a Notice of Action on December 23, 2004, denying the application. Appellant took a timely appeal via a Notice of Appeal dated January 13, 2005 to the Minnesota Department of Human Services (“Department”). An evidentiary hearing was held on March 15, 2005 by Appeals Referee J. Philip Peterson, and a Decision of State Agency on Appeal was issued on May 25, 2005, affirming the denial of benefits.

Appellant took a timely appeal of the Department's decision to the District Court of Nicollet County, the Honorable Allison Krehbiel, pursuant to Minn. Stat. § 256.045, subd. 7. Appellant moved for summary judgment, and arguments were had on said motion on November 28, 2005. On January 17, 2006, Judge Krehbiel filed an Order affirming the decision of the Department. In response, Appellant filed this timely appeal via Notice of Appeal dated March 20, 2006.

STATEMENT OF THE FACTS

The facts in this matter are not in dispute. On August 20, 1993, Ronald J. Flygare, spouse of Appellant Lillian Flygare, executed his Last Will and Testament (hereafter "Will"). (App. p. A28). The terms of the Will provided that a portion of the estate, designated as the marital share, would be paid out to Appellant. (App. p. A19). Most of the remaining assets of the estate, designated as the family share, would be funneled into a testamentary trust (hereafter "Trust"). (App. p. A20). The Trustee of the Trust would then have discretion, subject to specific limitations, to distribute the income from the Trust to Appellant during her life and, under specific limited circumstances, to distribute the corpus of the Trust to Appellant. (App. pp. A20-A21). After her death, the remainder of the assets would be distributed to Appellant's family. (App. p. A21).

Ronald J. Flygare passed away on December 17, 1993 and the Will was probated in the Sibley County District Court. (App. p. A33). The estate was closed on December 19, 1994. From the probate proceedings the Trust, as envisioned in the Will, was created with Appellant and her son, Marcus Flygare, appointed as Trustees¹. (App. p. A20). The marital share was distributed to Appellant for her use and enjoyment.

By August 26, 2004, Appellant's health had deteriorated such as to require care in a nursing facility. By that time, Appellant had less than \$3,000 in personal assets (exclusive of Trust assets) available to her and she, through her attorney-in-fact, made an application for Medical Assistance benefits to provide payments for her nursing facility charges. That application, following a review by the Nicollet County Attorney's office, was denied based upon a finding that the assets of the Trust were available to Appellant within the meaning of the Medical Assistance rules. (App. p. A33). But for the assets of the Trust, Appellant would be eligible for Medical Assistance.

An appeal of that decision was taken to the Minnesota Department of Human Services. (App. pp. A1-A2). After the presentation of documentary evidence and argument by both sides, the hearing referee issued proposed findings and conclusions of law which the representative of the Commissioner adopted.

¹ For purposes of this litigation, the relevant Trust sections make Marcus Flygare the sole Trustee for purposes of distributions from the family share to Appellant. As such, for convenience, Marcus Flygare will be referred to as the Trustee for the Trust.

(App. pp. A3-A8). The conclusions of law included a determination that since language in the Trust violated public policy, the assets of the Trust were available to Appellant. (App. p. A6). The denial of Appellant's application for Medical Assistance was therefore affirmed. (App. p. A7).

LEGAL ARGUMENT

A. Standard of Review

Review by a court of the denial of an application for Medical Assistance is controlled by statute. Minn. Stat. § 14.69 states in relevant part that:

In a judicial review under sections 14.63 to 14.68, the court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the agency;
or
- (c) made upon unlawful procedure; or
- (d) affected by other error of law; or
- (e) unsupported by substantial evidence in view of the entire record as submitted; or
- (f) arbitrary or capricious.

Both issues presented to the court are questions as to errors of law made by the agency in its decisions in this matter denying Medical Assistance benefits to Appellant.

This court reviews questions of law *de novo*. State ex rel. McMaster v. Benson, 495 N.W.2d 613, 614 (Minn. App. 1993), *review denied* (Minn. Mar. 11, 1993). The first issue is a matter of statutory interpretation which is an issue of law. Hibbing Educ. Ass'n v. Public Employment Relations Bd., 369 N.W.2d 527, 529 (Minn. 1985). The second issue presented to the court is a question of available assets for determining eligibility for Medical Assistance which is a question of law. In re Leona Carlisle Trust, 498 N.W.2d 260, 263 (Minn. App. 1993).

B. Whether the enactment of Minnesota Statute §501B.89 completely supplanted the existing common law concerning availability of trust assets of beneficiaries from irrevocable trusts who applied for Medical Assistance benefits.

1. The Common Law Before Enactment of Minnesota Statute § 501B.89

In determining whether assets of a trust are available to a Medical Assistance applicant, case law focuses on two relevant factors: (1) the type of trust involved; and (2) the settlor's intent in creating the trust. Id. at 264. The first factor involves determining what type of trust is at issue. The general rule is that a support trust is an available asset, while a discretionary trust is not an available asset. In re Horton Irrevocable Trust, 668 N.W.2d 208, 214 (Minn. App. 2003). A support trust is considered to be an available asset because the beneficiary can

legally compel the trustee to distribute trust assets to the beneficiary. Id. The language of a support trust is generally in mandatory terms such as “will” or “shall” in direction how the trustee is to distribute trust income or principal for the support and maintenance of the beneficiary. *See e.g.* McNiff v. Olmsted County Welfare Dept., 176 N.W.2d 888, 892 (Minn. 1970); Carlisle, 498 N.W.2d at 264. The beneficiary of a discretionary trust has no such power because a discretionary trust grants the trustee absolute discretion to disburse the trust assets. Horton, 668 N.W.2d at 214. The discretionary trust language regarding the trustee’s duty to disburse trust assets is generally in discretionary terms such as “may pay.” *See e.g.* United States v. O’Shaughnessey, 517 N.W.2d 574, 577 (Minn. 1994); Horton; 668 N.W.2d at 215.

The second factor is to determine whether a trust’s assets are “available” to the beneficiary for purposes of her application for Medical Assistance. This requires the court to determine what the settlor’s intent was in creating the trust. The settlor’s intent will be carried out if it is not contrary to law and public policy. McNiff, 176 N.W.2d at 891. When the settlor’s intent is to supplement rather than supplant government financial assistance available to the trust beneficiary, courts were to give effect to the settlor’s intent and find the trust is not an available asset. Carlisle, 498 N.W.2d at 265.

2. The Enactment of Minnesota Statute § 501B.89

The 1992 legislature amended Chapter 501B to include a new provision, to be codified at 501B.89, which read as follows:

A provision in a trust created after July 1, 1992, purporting to make assets or income unavailable to a beneficiary if the beneficiary applies for or is determined eligible for public assistance or a public health care program is unenforceable.

The next legislative session, the legislature amended this new section of Chapter 501B to add two “safe” types of trusts and to rework into a new subdivision 1 the prohibition set forth in the original above language. As amended, Minn. Stat. § 501B.89, Subd. 1 (a), provided that:

Except as allowed by subdivision 2 or 3, a provision in a trust that provides for the suspension, termination, limitation, or diversion of the principal, income or beneficial interest of a beneficiary if the beneficiary applies for, is determined eligible for, or receives public assistance or benefits under a public health care program is unenforceable as against the public policy of this state, without regard to the irrevocability of the trust or the purpose for which the trust was created.

The above prohibition applied to all trust provisions created after July 1, 1992. Minn. Stat. § 501B.89, Subd. 1 (b). There has been no appellate case law interpreting or applying the above provisions since their enactment.

3. The Common Law after Minnesota Statute § 501B.89

When the Minnesota Legislature enacts legislation which supplants an area of common law, it is not presumed that the legislature intended to abrogate or modify the common law on the subject any further than that which is expressly declared or clearly indicated. Ly v. Nystrom, 615 N.W.2d 302, 314 (Minn. 2000). The courts will not extend such statutes by construction any further than the language absolutely requires. State Bank of Milan v. Sylte, 202 N.W. 70, 71 (Minn. 1925). Such a statute is to be strictly construed by the courts. Rosenberg v. Heritage Renovations, LLC., 685 N.W.2d 320, 327-28 (Minn. 2004).

In interpreting the above statutory provision, courts are to be further guided by Minn. Stat. § 645.16 which states in relevant part that “[w]hen the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.”

In comparing the plain language of Minn. Stat. § 501B.89, Subd. 1 (a) to the common law,² there does not appear to be an intended modification of the first factor, the type of trust involved. While Minn. Stat. § 501B.89 does mention that

² The legislature is presumed to know the law and to act in consideration of prior interpretation of the law. Ozmun v. Reynolds, 111 Minn. 459 (1866).

it applies regardless of the “irrevocability” of the trust, the common law considered only whether a trust was a support or a discretionary trust, not whether it was a revocable or irrevocable trust. It is not therefore “expressly declared or clearly indicated” that the legislature intended to modify the common law to eliminate or modify this first factor. At best, the legislature may have been attempting to codify common law in that the revocability or irrevocability of a trust was simply not a factor in considering availability of trust assets to an applicant for Medical Assistance.

In comparing the plain language of Minn. Stat. § 501B.89, Subd. 1 (a) further with the second common law factor, it appears that the legislature did intend to modify this factor in addition to creating a specific prohibition on enforcement of certain trust terms. In Carlisle, this court, relying on McNiff and other authority, specifically articulated that a settlor’s intent to supplement verses supplant government assistance did not violate public policy. 498 N.W. 2d at 265. In Minn. Stat. § 501B.89, the legislature stated with specificity that a provision of a trust which creates certain limitations for applicants for government benefits “is unenforceable as against the public policy of this state.” This language regarding public policy was not part of the original 1992 version of Minn. Stat. § 501B.89. The court is to presume that the legislature’s choice of words in a statute indicates its intent. In re Hildebrandt, 701 N.W.2d 293, 299 (Minn.App. 2005). It can

therefore be construed that the inclusion of the “public policy” language, in the context of the common law consideration of the “public policy” limitations on the settlor’s intent, was an intent to modify the common law, specifically the second factor.

This does not end the analysis however. While the legislature essentially overruled Carlisle (issued in March of 1993 during the 1993 legislative session) as to what public policy was, Minn. Stat. § 501B.89, Subd. 1 (a) does not go further and eliminate the intent of the settlor from all consideration. Honoring the rule of statutory construction that in modifying the common law, the legislature’s modifications are not to go any further than the language absolutely requires, a modified second factor of the common law remains.

Strictly applying the language of Minn. Stat. § 501B.89, Subd. 1 (a) to the common law second factor articulated in Carlisle would result in a requirement to look beyond the settlor’s specific intent with regard to government assistances and ascertain the settlor’s intent with regard to other sources of income by the beneficiary of a trust regardless of the income’s source. This approach would achieve the goals of Minn. Stat. § 501B.89, Subd. 1 (a) in prohibiting outright, explicit exclusion of trust assets from determinations regarding beneficiary’s eligibility for government assistance programs while still allowing for what

McNiff called the “cardinal rule” of construction to follow the settlor’s intent where the intent does not conflict with law or public policy. 176 N.W. 2d at 891.

Minn. Stat. § 501B.89, Subd. 1 (a) also added a new threshold factor to the common law scheme. Specifically, there is a new, predicate directive from the legislature that certain trust terms are unenforceable. The choice of the term “unenforceable” instead of terms such as “void” or “voidable” in Minn. Stat. § 501B.89, Subd. 1 (a), and the limitation of the unenforceable to “provisions” of trusts instead of to the trusts themselves must be noted. The trial court in this matter reasoned that just removing the offending provisions was not enough to effect the intent of the legislature and that the lack of further guidance as to how to enforce the “unenforceable” provision was a drafting oversight by the legislature. However rules of statutory construction provide that where failure of expression rather than ambiguity of expression is the vice of the enactment, courts are not free to substitute amendment for construction and thereby supply the omissions of the legislature. State v. Lucas, 589 N.W.2d 91, 94 (Minn. 1999).

A reading of the plain language of Minn. Stat. § 501B.89, without reverting to the spirit or the absurd, would require that the court make an initial inquiry as follows with regard to whether a trust provision is enforceable:

1. Does a provision in the trust provide for suspension, termination, limitation or diversion of Trust assets?

2. If so, is that provision triggered by a beneficiary applying for, being determined to be eligible for, or actually receiving public assistance or benefits under a health care program?

3. If so, then the violative provision in the trust is unenforceable.

By the clear language of Minn. Stat. § 501B.89, Subd. 1 (a), a trust which contains a prohibited provision is not void, nor does the statute permit any non-prohibited provision's deletion—it merely renders void the offending provision of the trust.

The trial court, in arriving at its conclusion on the intertwining of the common law and Minn. Stat. § 501B.89, Subd. 1 (a), placed heavy weight on what it interpreted as the legislature's intent in this matter. However, in the absence of a material ambiguity, the court is to give effect to the plain language of the statute and not substitute the "spirit" of the statute. Minn. Stat. § 645.16.

In summary, when Minn. Stat. § 501B.89, Subd. 1 (a) is interpreted in light of long standing rules of construction and in light of the pre-existing common law, the plain language of the statute provides a bright line rule that negates certain trust provisions which limit payments of benefits when beneficiaries apply for government assistance. For the trust as a whole, the common law two factor test, with the second factor modified, remains for the court to apply to the remaining enforceable terms of the trust to determine availability of the trust assets to the applicant.

C. Given the answer to the first issue, whether Applicant Flygare is, under the facts of this case, eligible to participate in the Medical Assistance program?

1. Violative Trust Provision

Appellant concedes that there is a provision in the Trust which does violate the proscriptions of Minn. Stat. § 501B.89, Subd. 1 (a). Specifically, in Article III, paragraph D, subdivision Second, the Trust document states:

In addition to the benefits hereinbefore provided for my spouse, my trustee, Marcus R. Flygare, acting alone and without my spouse for the purposes of this subdivision Second, may in his sole and exclusive discretion during the time this trust is being held for the benefit of my spouse, withdraw installments of principal from this trust from time to time and pay the same to or for the benefit of my spouse as my trustee, Marcus R. Flygare, deems necessary and advisable in order to provide for the proper support and maintenance of my spouse; **provided, nevertheless, that no such sums of principal or income shall be paid to or applied for the benefit of my spouse, except for the assets available to the trustee, in the event my spouse would be eligible for assistance under any government funded program and in such event, no such trust funds shall be so expended, and to or for the benefit of my children, for their support and maintenance.**

The receipt of the person or persons to whom such payments are made, if any, shall fully discharge the trustee for any payments so made pursuant to this section, and the person or persons to whom such payments, if any, are made need not account to any person or court for any sums so received by them. The determination of my trustee, Marcus R. Flygare, acting alone and without my spouse as aforesaid, as to the necessity or propriety of such withdrawals or principal, and as to the amounts thereof, shall be final and conclusive, and provided further, that no payment shall be made to or for the benefit of my spouse as provided in this subdivision Second, while in the judgment of my trustee, Marcus R. Flygare, there are funds reasonably available

in my said spouse's own estate or from other sources to provide for the purposes hereinbefore set forth. (emphasis added).

The highlighted section of the Trust contains two provisions. The first is an exclusion of payments to Appellant (the spouse) in the event she becomes eligible for assistance under any government funded program. The second provision is a limitation on the ultimate beneficiaries of the family share of the Trust, the children of Ronald Flygare. The first provision is void as against public policy pursuant to Minn. Stat. § 501B.89, Subd. 1 (a). However, the second provision in the highlighted section is a permissible limitation on creditors of Ronald Flygare's children (a so-called "spendthrift" provision) and does not run afoul of Minn. Stat. § 501B.89, Subd. 1 (a).

Application of Minn. Stat. § 501B.89, Subd. 1 (a) would result in the following provision from the highlighted language being struck (i.e. rendered unenforceable) from the Trust:

~~provided, nevertheless, that no such sums of principal or income shall be paid to or applied for the benefit of my spouse, except for the assets available to the trustee, in the event my spouse would be eligible for assistance under any government funded program and in such event, no such trust funds shall be so expended, and to or for the benefit of my children, for their support and maintenance.~~

By striking only the above language, the remainder of the Trust document is compliant with the requirements of Minn. Stat. § 501B.89, Subd. 1 (a). As a result, after deleting the violative provision, the court should then turn to the question of

whether under the common law, as modified by Minn. Stat. § 501B.89, Subd. 1 (a) the Trust's assets are available to Appellant for purposes of her Medical Assistance application.

2. Whether the Trust is a Discretionary or Support Trust

In the case at bar, the Trust language makes clear that the Trust is a discretionary trust. Specifically, in Article III, paragraph D, subdivision Second, the Trust document states:

In addition to the benefits hereinbefore provided for my spouse, my trustee, Marcus R. Flygare, acting alone and without my spouse for the purposes of this subdivision Second, **may in his sole and exclusive discretion** during the time this trust is being held for the benefit of my spouse, withdraw installments of principal from this trust from time to time and pay the same to or for the benefit of my spouse **as my trustee, Marcus R. Flygare, deems necessary and advisable** in order to provide for the proper support and maintenance of my spouse; provided, nevertheless, that no such sums of principal or income shall be paid to ~~or applied for the benefit of my spouse, except for the assets available to the trustee, in the event my spouse would be eligible for assistance under any government funded program and in such event, no such trust funds shall be so expended,~~ and to or for the benefit of my children, for their support and maintenance. The receipt of the person or persons to whom such payments are made, if any, shall fully discharge the trustee for any payments so made pursuant to this section, and the person or persons to whom such payments, if any, are made need not account to any person or court for any sums so received by them. **The determination of my trustee, Marcus R. Flygare, acting alone and without my spouse as aforesaid, as to the necessity or propriety of such withdrawals or principal, and as to the amounts thereof, shall be final and conclusive,** and provided further, that no payment shall be made to or for the benefit of my spouse as provided in this

subdivision Second, while in the judgment of my trustee, Marcus R. Flygare, there are funds reasonably available in my said spouse's own estate or from other sources to provide for the purposes hereinbefore set forth. (emphasis and strikeout added)

The stricken language is that of the provision which runs afoul of Minn. Stat. § 501B.89, subd. 1 (a). The highlighted language is couched in terms of a discretionary trust in that the language is discretionary and permissive and not mandatory.

Further, other language in the Trust makes clear that the Trust's beneficiaries do not have a legal entitlement to any of the trust assets unless and until they are distributed by the Trustee. Article IV, subdivision Third states:

Except to the extent a beneficiary is entitled to any distribution at his death, neither principal nor income of any trust or any beneficiary's interest therein while undistributed, in fact, shall be subject to alienation, assignment, encumbrance, appointment or anticipation by the beneficiary, nor to garnishment, attachment, execution or bankruptcy proceedings, nor to claims for alimony or support or any other claims of any creditor or person against the beneficiary, nor to any transfer, voluntary or involuntary, from the beneficiary.

This provision makes clear both to beneficiaries and to any third parties that until such time as a disbursement is made by the Trustee, the beneficiaries or any third party have no legal right to force distributions.

Marcus Flygare, as Trustee for the Trust, has been given the discretion to determine the amount and timing of any payments to be made of income and of principal. As a result, Appellant, the beneficiary, does not have any property rights

in the non-distributed trust principal or income. As a result, the Trust meets the definition of a discretionary trust under Minnesota law.

3. Determination of the Settlor's Intent.

Determination of the intent of the settlor in this matter is clear from review of directions found in enforceable provisions of the Trust. Although the settlor expressed intent to prohibit assets from going to the Appellant in the event she applied for government assistance, there is a deeper intent which stretches beyond government programs and provides limits when other means are available to the Appellant, regardless of the source of those means. The first is Article III, paragraph D, subdivision Second, in which the Trust document states:

In addition to the benefits hereinbefore provided for my spouse, my trustee, Marcus R. Flygare, acting alone and without my spouse for the purposes of this subdivision Second, may in his sole and exclusive discretion during the time this trust is being held for the benefit of my spouse, withdraw installments of principal from this trust from time to time and pay the same to or for the benefit of my spouse as my trustee, Marcus R. Flygare, deems necessary and advisable in order to provide for the proper support and maintenance of my spouse; provided, nevertheless, that no such sums of principal or income shall be paid to or applied for the benefit of my spouse, except for the assets available to the trustee, in the event my spouse would be eligible for assistance under any government funded program and in such event, no such trust funds shall be so expended, and to or for the benefit of my children, for their support and maintenance. The receipt of the person or persons to whom such payments are made, if any, shall fully discharge the trustee for any payments so made pursuant to this section, and the person or persons to whom such payments, if any, are made need not account to any person or court for any sums so

received by them. The determination of my trustee, Marcus R. Flygare, acting alone and without my spouse as aforesaid, as to the necessity or propriety of such withdrawals or principal, and as to the amounts thereof, shall be final and conclusive, and **provided further, that no payment shall be made to or for the benefit of my spouse as provided in this subdivision Second, while in the judgment of my trustee, Marcus R. Flygare, there are funds reasonably available in my said spouse's own estate or from other sources to provide for the purposes hereinbefore set forth.** (emphasis and strikeout added)

The stricken language is that of the provision which runs afoul of Minn. Stat. § 501B.89, Subd. 1 (a). The highlighted language gives the Trustee discretion in making distributions from the family share if the Trustee determines that Appellant has sufficient other funds, from whatever source, available for her needs.

The above language highlights the settlor's intent in that the Trustee would have discretion to withhold payments of trust assets to Appellant if he determined she had other assets available to her. This intent shows that the purpose of the family share was to supplement Appellant's financial resources and not be a primary financial resource itself. This intent does not violate Minn. Stat. § 501B.89, Subd. 1 (a) in that it does not target government benefit programs by a limitation—it only gives discretion to the Trustee to make or withhold distributions based on a subjective means test regardless of the source of the Appellant's means. As a result, the settlor's general intent shown in the above language should be respected by this court in finding that the Trust was intended to supplement and not supplant other financial resources, from any source, available to Appellant.

As a result, both factors weigh in favor of finding that the Trust is not available for purposes of Appellant's application for Medical Assistance. The language of the trust makes clear that it is a discretionary trust and that the settler's intent was for the Trust to supplement and not supplant Appellant's financial resources. As such, the agency and trial court's decisions that the Trust assets are available to Appellant was in error.

CONCLUSION

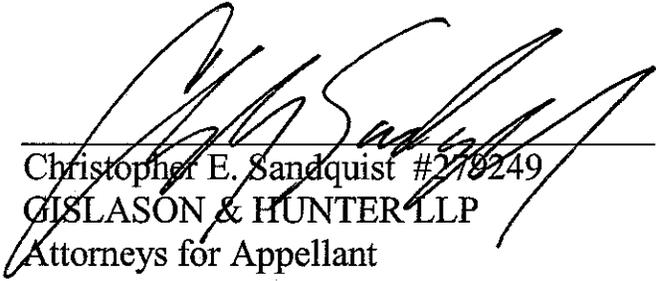
While the enactment of Minn. Stat. § 501B.89, Subd. 1 (a) modified the common law, it did not, by its plain language, supplant or completely replace the existing common law. The new law provided clear legislative guidance on what public policy was with regard to limitations on trusts. When applied to the case at bar, the Trust in question does contain one unenforceable provision, but when removed, and the remainder of the valid trust provisions are reviewed under the common law, one is left with the firm conclusion that the Trust is a discretionary trust and that the settlor intended the assets of the trust to supplement and not supplant the other assets of the Appellant, regardless of the source of those other assets.

As a result, Appellant has carried her burden that the Trust assets are not available assets to her for purposes of her application for Medical Assistance

benefits. The agency determination to the contrary should be reversed, and the Appellant should be found eligible for Medical Assistance retroactive to the date of application.

Respectfully Submitted by:

Dated: April 21, 2006.



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OF
PALMER BUS SERVICE OF LAKEVIEW, INC.**

KNOW ALL MEN BY THESE PRESENTS, that the undersigned Incorporator, being a natural person of eighteen (18) years or more, and desiring to form a body corporate under the laws of the State of Minnesota, Minnesota Statutes Chapter 302A, does hereby sign, verify, and deliver to the Secretary of State of the State of Minnesota these Articles of Incorporation.

ARTICLE I.

The name of this corporation shall be Palmer Bus Service of Lakeview, Inc.

ARTICLE II.

This corporation shall have general business purposes and may carry on any business or activity which may be lawful and permitted by the laws of the State of Minnesota.

ARTICLE III.

The registered office of the corporation shall be 213 Woodhill Court, Mankato, Minnesota 56001, and the name of the initial registered agent at such address is Floyd D. Palmer. Either the registered office or the registered agent may be changed in the manner provided by law.

ARTICLE IV.

The name and address of each Incorporator is as follows:

<u>Name</u>	<u>Address</u>
Dan J. Hoehn	Gislason & Hunter LLP 124 E. Walnut Street, Suite 200 P.O. Box 4157 Mankato, MN 56002-4157

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).