

NO. A08-1691

STATE OF MINNESOTA

IN COURT OF APPEALS

In Re

Estate of Sylvester G. Grote

APPELLANT'S REPLY BRIEF

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**THE COMMISSIONER'S ARGUMENTS FOR EXPANSIVE
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SUPPORTED BY THE PLAIN LANGUAGE OF 42 USC§1396(p)(a)-
(e) AND MINN. STAT.§256B.15, AS APPLIED IN MINNESOTA
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The Commissioner argues that Estate of Barg, 722 N.W.2d 492 (Minn. Ct. App. 2006; hereinafter referred to as "Barg Ct. App") and 752N. W. 2d 52 (Minn. 2008; hereinafter referred to as "Barg Sup.Ct.") are not relevant to this case because both Mr. Grote and Mrs. Grote received Medicaid benefits, and because Mrs. Barg transferred her interest in the joint tenancy property to Mr. Barg prior to her death. (Respondent's Brief, page 7).

Minn. Stat.§256B.15(2) limits recovery to assets owned by the recipient and non-recipient spouse to assets the couple owned during their marriage. Thus, if a surviving spouse received an inheritance following the death of the recipient, that asset would be excluded from the assets from which recovery could be obtained. The limitation set out in §256B.15(2) addresses only the time when an asset was acquired- meaning that only assets acquired during the years and months of the survivor and recipient's marriage can be looked to for recovery. Neither Barg nor the other Minnesota Medicaid recovery decisions concern situations wherein a County sought recovery from assets which a surviving spouse acquired following the death of the recipient spouse. Therefore, for purposes of analyzing and

applying Minnesota case law, the limitation does not distinguish Barg and the other decisions from the facts of this case.

Both Barg Ct.App. and Estate of Gullberg, 652 N.W.2d 709 (Minn.Ct.App. 2002) address the issue of valuation of the recipient's interest in real property. Although the recipient had transferred the interest prior to death, the Court treated the interest as if still owned at death. Barg Sup.Ct. provides an extensive analysis of the limitations on recovery which controls for this court in making a determination of what portion, if any, of the County's claim may be recovered (See Barg, Sup Ct. at 69-72)

The Commissioner argues that the 2003 and 2005 amendments to Minn. Stat. 256B.15 are not relevant to deciding this case (Respondent's Brief, page 10), and that no action was required by Minnesota to implement the 1996 amendments to 42USC§1396p (Respondent's Brief, page 16). The 2003 and 2005 amendments were relied on in both Barg Ct. App. and Barg Sup. Ct. in determining the recipient's interest from which Medicaid recovery can be obtained. Barg Sup Ct., states:

...in 2003 the Minnesota legislature amended section 256B.15 by extending the definition of estate for Medicaid recovery purposes to include assets owned by a recipient spouse in joint tenancy or life estate at the time of her death.... The amendments do not mention the other forms of conveyance at death listed in the federal definition of 'estate,' except that the 'right of survivorship' is mentioned with respect to joint tenancies...Thus, the legislature chose only to include two forms of ownership in the expanded definition of estate." Barg Sup.Ct. at 73.

The County's Petition following disallowance of the claim states that "it seeks payment pursuant to MN Stat§256B.15." (See Respondent's Appendix, pages 1 and 2). Since the basis of the County's claim is the entire section of the statute, all subdivisions should be considered in determining what property may be applied to recovery.

The Commissioner asks this Court to read Estate of Jobe, 590 N.W.2d 162 (Minn.Ct. App. 1999) in a vacuum, and to disregard subsequent Minnesota decisions (Respondent Brief, page 11).

The Jobe decision fails to consider 42 USC§1396p(b)(4)(B) which limits recovery "to the extent of such interest" owned by a recipient at the time of her death. The Jobe decision was written prior to the 2003 and 2005 amendments to Minn. Stat. 256B.15, and, therefore, makes no determination of how those amendments limit the joint tenancy interest from which recovery may be obtained. The Jobe decision was modified in the Gullberg decision. In Gullberg, the Court of Appeals determined that the meaning of "to the extent of such interest [of the recipient]" was something less than the total value of the property, but left it to the District Court on remand to determine the value of that interest (Gullberg at 714). Barg Ct. App. determined that the value of the joint tenancy interest available for recovery is ½ of the asset's value at the time of the recipient's death.

The Commissioner would certainly prefer that this Court limit its analysis in this case to Jobe. Such a limited analysis would, however, fail to consider the actions of Minnesota courts and the legislature in the nine years since Jobe was decided.

In advocating for an expansive interpretation, the Commissioner asserts that the 1993 amendments to 42USC§1396p were adopted in the context of many states having “mature” collection programs, and that the amendments simply incorporated those mature programs into the federal law. (Respondent’s Brief, page 13) This assertion is made in the absence of any accounting of the states’ collection programs, or discussion of legislative history of the amendments to support this assertion.

The Commissioner asks the Court to graft the definition of “assets” set forth in 42USC§1396p(e)(1) onto Minnesota law to include all assets of both Mr. and Mrs. Grote in the property which is available for recovery. (Respondent’s Brief, pages 12-13).

The Commissioner’s argument for such an expansive reach was rejected by the Supreme Court in Barg Sup. Ct. (Barg at 68). This argument would also mean that the language in 42USC§p(b)(4)(B) is meaningless- there would no reason to set out optional sources of recovery that a State may choose to implement under (b)(4)(B) if all assets were included by the definition of “assets” in (e)(1).

The Commissioner's argument would take the Court away from the plain meaning of the language; in interpreting the law, the Court must if at all possible give effect to every word Congress used. (Barg Sup.Ct. 68,70)

The Commissioner attempts to bolster this argument by reference to the Transmittal of approval by the Secretary of U.S .Department of Health and Human Services of the Minnesota recovery provisions (see Commissioner's Brief at 14-15; Addendum RA8-RA22). The Appellant has moved to strike that portion of the Respondent's Addendum and his argument based on the Addendum.

In the Transmittal, the Secretary approves the collection from all assets in a surviving spouse's estate if the assets can be "traced" to assets in which the recipient had an interest at some time. In Barg Sup Ct., the Court rejected this expansive interpretation of assets which may be reached for payment of a claim. In sum, it is the plain language of the statutes and Appellate decisions, not a transmittal from the Center for Medicaid and Medicare Services that must be applied to determine the County's claim.

Finally, the Commissioner argues that the entire present value of the joint tenancy assets must be applied to the claim. The Appellant's primary argument is that none of Mrs. Grote's interest may be applied to pay the claim. If, however, the Court determines that a portion of the property must be applied, that portion is limited to one-half of the value as of her death.

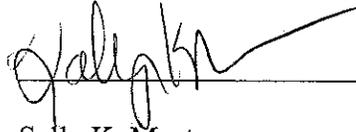
In Barg Ct. App., the Court applied the date of death value to determine the value of Mrs. Barg's joint tenancy interest. (Barg Ct. App. at 497) Barg Ct. App. was decided three years after her death. Although the Supreme Court determined that Mrs. Barg owned no interest at her death, the Supreme Court approved the method used by Court of Appeals to determine the value of the joint tenancy interest- real property principles informed by principles of probate law. (Barg Sup.Ct. at 72)

The Respondent has submitted copies of County Assessor values of the two parcels owned by Mr. and Mrs. Grote. The purpose of the Assessor's Valuation is to determine what portion of the real estate tax levy by local governments each property owner will pay. The process by which the County Assessor values the property and that value ultimately determines the portion of the tax levy the property owner pays is set out in Minn. Stat. Chapters 272-275. The valuation is part of the taxation process, not for the purpose of determining a price for which to sell the property. Therefore, the submissions are not a basis on which this Court may determine value.

In addition, the Appellant has moved to strike the portions of the Respondent's Addendum and Brief concerning claims of the 2008 value of the Grote property because it was not part of the trial record.

CERTIFICATE OF COMPLIANCE
WITH MINN. R. APP. P 132.01, Subd. 3

The undersigned certifies that the brief submitted herein is less than 20 pages in length, and contains 1515 words as required by the limitations of the Minnesota Rules of Appellate Procedure 132.



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