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State of Minnesota  
In Court of Appeals

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VANCE F. GELLERT AND CARL A. GELLERT,  
*Respondents,*

v.

LILLI ANN EGINTON, ET AL.,  
*Defendants,*

CHARLES W. EGINTON,  
*Appellant.*

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**APPELLANT CHARLES W. EGINTON'S REPLY BRIEF**

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## LEGAL ARGUMENT

**I. RESPONDENTS' LACK OF CAPACITY CLAIM IGNORES THE LEGAL EFFECT OF THE RESTORATION TO CAPACITY ORDER, ERRONEOUSLY INFLATES THE CAPACITY STANDARD WITH RESPECT TO A GIFT DEED, INCORRECTLY SHIFTS THE BURDEN OF PROVING CAPACITY, AND IS UNSUPPORTED BY RELEVANT EVIDENCE.**

Respondents' argument perpetuates the same errors of law requiring reversal of the district court's Findings of Fact, Conclusions of Law, and Order for Judgment.

Respondents incorrectly argue that: (1) a restoration to capacity essentially has no legal effect; (2) a heightened standard of capacity applies to the execution of gift deeds; and (3) the burden of establishing capacity to execute a gift deed rests with the Appellant.

Respondents' incapacity claim is further unsupported by the relevant evidence elicited at trial. For the reasons set forth below, each of these arguments fails. This Court should reject Respondents' erroneous arguments and the district court's Findings of Fact, Conclusions of Law, and Order for Judgment.

**A. Both the Court and Respondents Ignore the Legal Effect of the July 28, 2003 Restoration to Capacity Order.**

Respondents misapprehend the nature of Appellant's argument with respect to the effect of the July 28, 2003 Restoration to Capacity Order. Respondents characterize Appellant's argument as a request for a *per se* irrebuttable presumption that Marie M. Moldenhauer had capacity to execute a deed on August 4, 2003 given her July 28, 2003 restoration to capacity. (Respondents' Memorandum of Law at p. 28) (emphasis added). Appellant does not argue that the presumption created by the restoration to capacity is irrebuttable under such circumstances. Instead, Appellant's point is that the Court, by

restoring Marie M. Moldenhauer to capacity on July 28, 2003, restored the legal presumption of capacity enjoyed by individuals under Minnesota law—shifting the burden to any complaining party to prove otherwise. See Jasperson v. Jacobson, 27 N.W.2d 788, 792 (Minn. 1947); Minn. Stat. §§ 524.5-310(a), 524.5-409(a)(1) (once a person is restored to capacity, the only way the person can be placed back under guardianship or conservatorship is to prove by clear and convincing evidence that the person no longer has capacity).

In order to overcome this presumption, Respondents carried the burden at trial of identifying some evidence indicating a subsequent loss of that capacity in the seven short days between July 28, 2003 and August 4, 2003—just as they would if the Court had never adjudicated a loss of capacity for Marie M. Moldenhauer. Even Respondents concede, however, that there is no evidence that Marie M. Moldenhauer's condition was in any way different on August 4, 2003 from her condition in July 2003 (before the restoration) and September 2003 (after the restoration). (Respondents' Memorandum of Law at p. 23). This is precisely Appellant's point—there is no evidence establishing a subsequent loss of capacity in the week following the July 28, 2003 restoration. Both the district court and Respondents rely on facts prior to the restoration hearing that purport to evidence incapacity to execute a deed—facts that became irrelevant with the entry of the restoration order. Both Respondents—and the district court in its findings of fact—ignore the fact that the Dakota County District Court restored Marie M. Moldenhauer's capacity on July 28, 2003. This is an error of law under the circumstances of this case.

Respondents claim that the above argument was specifically rejected by this Court in the probate matter, *In re Estate of Moldenhauer*, No. A08-0263, slip op. at 4 (Minn. Ct. App. Jan. 27, 2009). This Court in the Moldenhauer opinion, however, indicated that there was no irrebuttable presumption of capacity established by the restoration order such that the September 5, 2003 will signed by Mrs. Moldenhauer was *per se* valid.<sup>1</sup> As set forth above, Appellants do not request an irrebuttable presumption stemming from the restoration order such that the August 4, 2003 deed is deemed *per se* valid. Instead, Appellant asserts that the findings of fact do not cite to any evidence negating the district court's determination on July 28, 2003 that Marie M. Moldenhauer had sufficient capacity to conduct her affairs one week later.

**B. Respondents Erroneously Argue A Heightened Standard of Capacity to Execute a Gift Deed.**

Respondents improperly inflate the capacity necessary for execution of a gift deed under Minnesota law. Under Minnesota law, a grantor has sufficient capacity to execute a deed if she had enough mental capacity to understand to a reasonable extent the nature and effect of what she was doing. Trimbo v. Trimbo, 50 N.W. 350, 351 (Minn. 1891); Macklett v. Temple, 1 N.W.2d 415, 417 (Minn. 1941); Youngren v. Youngren, 556 N.W.2d 228, 232 (Minn. Ct. App. 1996). Respondents assert, however, that the proper standard for evaluating capacity to execute a gift deed is "higher than that for making a

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<sup>1</sup> In its opinion, the Court noted that Vance Gellert and Carl Gellert did not receive proper notice of the restoration hearing. This Court should note, however, that Paul Leutgeb testified that he sent timely notice of the hearing to both Vance Gellert and Carl Gellert in compliance with statutory requirements, but that the notices were subsequently returned to him by the U.S. post office following the restoration hearing.

will” in that the donor must not only have the mental capacity to execute a will, but must also be “capable of understanding the effect that the gift may have on the future financial security of the donor and anyone who may be dependent on the donor.” (Respondents’ Memorandum of Law at p. 20). Respondents assert a testamentary standard of capacity with respect to the execution of a gift deed. Respondents cite no Minnesota legal authority for the above propositions—and in fact, do not cite any case with such a holding.

Respondents do, however, claim that the Minnesota decision of Young v. Otto supports applying a capacity standard “at least as demanding as the testamentary standard” to gift transfers. 59 N.W. 199 (Minn. 1894) (Respondents’ Memorandum of Law at p. 20). A review of this case, however, reveals that the Court utilized a testamentary standard under very particular circumstances in which the grantor of the gift deed executed three instruments disposing of his property—including a will and two bills of sale transferring property—in anticipation of impending death and for purposes of disposing of all his property “with a view to that event.” Young, 59 N.W. at 200. In fact, the court specifically noted that the circumstances of this particular case justified applying the testamentary standard, and that such heightened requirements were not necessary for execution of an ordinary contract. Id. The court in Trimbo v. Trimbo—the other case cited by Respondents on the capacity standard for gift deeds—similarly underscores that the general rule for capacity in deed cases is “simply that [the grantor] must have enough to understand in a reasonable manner the nature and effect of what he

was doing.” 50 N.W. at 351. In Trimbo, the court simply suggested that in cases of “continuous mental imbecility” inflating the capacity standard may be appropriate. Id.

Unlike the above-referenced cases, there is no evidence here indicating that Marie M. Moldenhauer executed the Deed at issue in order to dispose of property in anticipation of impending death or conditions of “continuous mental imbecility.” The evidence is, in fact, to the contrary. At the time she executed the Deed, Marie M. Moldenhauer had been restored to capacity a little over a week earlier and lived until October of 2006. Dr. Evje, Mrs. Moldenhauer’s primary care physician, noted in December of 2003 that she did not exhibit symptoms of incapacity. (Tr.1 Ex. 50). These circumstances do not meet any narrow exception that may exist under Minnesota law for applying a heightened capacity standard as suggested by Respondents based on the facts in Young and Trimbo. 59 N.W.2d at 311-312. The proper standard for determining capacity to execute a deed—even a gift deed—simply requires that the grantor have sufficient capacity to understand to a reasonable extent the nature and effect of what she is doing. Trimbo, 50 N.W. at 351; Macklett, 1 N.W.2d at 417; Youngren, 556 N.W.2d at 232.<sup>2</sup>

Respondents misstate the law and fail to acknowledge that the capacity to execute a deed is less than the capacity to execute a will. Respondents bear the burden of presenting evidence to rebut the legal presumption of capacity, but they failed to carry

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<sup>2</sup> Respondents also claim that the cases cited by Appellant “make it appear more difficult for a court to find a person did not have capacity to make a gift deed than is the case” and seeks to distinguish the cases cited by Appellant with respect to the execution of the deeds. (Respondents’ Memorandum at p. 29). None of Respondents attempts to distinguish Appellant’s cases, however, invalidate the legal principles set forth in those cases.

this burden at trial. Respondents, therefore, attempt to change the legal presumptions of capacity to fit the facts of their case. Respondents' argument is in error, and this court should reject that argument.

**C. Respondents Erroneously Place The Burden Of Proving Capacity On Appellant.**

Respondents' argument regarding capacity relies upon a fundamental error of law. Respondents assert that the proponent of a deed has the burden of proving capacity. (See, e.g., Respondents' Memorandum of Law at p. 25, 30). Minnesota law establishes the opposite burden. Under Minnesota law, the individual seeking to set aside a deed has the burden of proving facts to justify invalidating the deed. Macklett, 1 N.W.2d at 417; Trimbo, 50 N.W. at 351.

By Court Order dated July 28, 2003, the Honorable Thomas Lacy restored Marie M. Moldenhauer to capacity and held she therefore had a legal presumption of sufficient capacity to sign the Deed at issue. Marie M. Moldenhauer signed a deed that the law presumes to be valid absent some evidence rebutting that presumption. Respondents bore the burden of presenting such evidence at trial, but were unable to do so. At trial, Respondents failed to present any evidence that Marie M. Moldenhauer lost her capacity to execute a deed between July 28, 2003 (the day she was restored to capacity) and just seven (7) days later, August 4, 2003, the day the Deed was signed. Respondents admit that Marie M. Moldenhauer's conditions remained the same from July of 2003 through September of 2003 (Respondents' Memorandum at p. 23). By their own admission, Respondents offered no credible evidence of incapacity after the Court restored Marie M.

Moldenhauer to capacity on July 28, 2003. Respondents' suggestion that the proponents of the Deed bear the burden of proving capacity is an error of law and emphasizes the legal and factual insufficiency of the district court decision.

**D. Respondents Fail to Present Relevant Evidence for the Time Period Following the Restoration to Capacity.**

Respondents rely heavily on facts prior to the July 28, 2003 restoration to capacity to justify the assertion that Marie M. Moldenhauer lacked capacity on the day she executed the Deed—August 4, 2003. The parties do not dispute Mrs. Moldenhauer's declined cognitive functioning in 2001 immediately following her fall and surgery. Respondents, however, only rely on facts during that period of uncontested incapacity and refuse to present facts during the 2003 period of time when Marie M. Moldenhauer was restored to capacity and executed the Deed at issue. As set forth above, during that time period, Mrs. Moldenhauer enjoyed an un-rebutted legal presumption of capacity. Absent evidence of incapacity during the relevant time period between the restoration of capacity and execution of the Deed, the district court's determination and Respondents' arguments regarding incapacity are clearly erroneous.

In particular, Respondents argue that the expert testimony establishes lack of capacity—it does not. The record is devoid of any expert testimony rebutting the presumption of capacity after the Court restored Mrs. Moldenhauer to capacity. The medical testimony offered at trial merely verifies that Marie M. Moldenhauer was old and had certain deficiencies, but that does not translate to a finding that she lacked capacity during the relevant time period. Borstead v. Ulstad, 45 N.W.2d 828, 832 (Minn. 1951)

(neither forgetfulness nor failure of memory themselves take away the right to dispose of property.) The medical testimony simply explains that Mrs. Moldenhauer may have been forgetful and establishes the eventual cause of her death. It does not, however, establish any loss of capacity directly following her July 28, 2003 restoration to capacity, nor does it indicate her capacity during the days on or around the date the deed was signed. In fact, neither Dr. Evje nor Dr. Shepherd saw Marie M. Moldenhauer for any significant amount of time during this period. Dr. Evje, however, examined Marie M. Moldenhauer as late as December of 2003 and noted no incapacity at the time of that office visit. (Tr. Ex. 50). Respondents bore the burden of establishing evidence indicating incapacity, and they failed to do so. In addition, numerous other individuals—as set forth in Appellant’s opening brief—further confirm capacity during the August and September 2003 time period.

**II. RESPONDENTS’ AND THE DISTRICT COURT’S REFUSAL TO FOLLOW APPLICABLE LAW REGARDING DELIVERY OF A DEED CONSTITUTES REVERSIBLE ERROR.**

Despite Respondents’ arguments to the contrary, the law and facts of this case unequivocally support a finding of delivery. Respondents go to great lengths in an attempt to distinguish the cases relied on by Appellant for the following propositions: (1) actual, physical delivery is not a necessary element of a valid delivery; and (2) a valid delivery can occur where a deed is properly delivered to or received by an agent of either party of the deed. Such attempts fail—none of Respondents’ arguments undercut the various court holdings regarding delivery of a deed.

For example, Respondents' discussion of Ingersoll v. Odendahl, 162 N.W. 525 (Minn. 1917), states that that the decedent deeded his property to his daughter and only heir before he died, but that the daughter would receive the property regardless of the deed's validity. (Respondents' Memorandum at p. 33). This discussion further indicates that the deed was delivered to an agent with instructions to be recorded. (Id.) Neither of the above facts in any way changes the underlying legal principles set forth in the Ingersoll case: that delivery to an agent for the grantee is delivery to the grantee; and that no particular ceremony or formality is necessary to complete delivery of a deed where acts or words evidence the grantor's intentions to part with the property. 162 N.W. at 526. Similarly, Respondents recital of certain facts in the Cloutier v. Charest, 294 N.W. 457 (Minn. 1940), and Barnard v. Thompson, 90 N.W. 574 (Minn. 1902), cases in no way counsels the reversal of the applicable precedent established in those cases: that delivery does not require a manual transfer of the deed.

Eventually, even Respondents concede that leaving a deed with a grantor's attorney can constitute delivery—though Respondents' make this concession with the claim that the attorney must have explicit instructions to record such deed under these circumstances. This is incorrect. References to any requirement of recording a deed and Paul Leutgeb's corresponding failure to record the Deed in the present case is nothing more than a red herring designed to mislead the Court's analysis. There is no requirement under Minnesota law that a deed must be recorded in order to validly transfer property—the only time recording becomes an issue is where a party claims title to a property subsequently recorded in the name of another party. In any event, West St. Paul

city ordinance would have permitted recording of the property as transferred to Lilli Ann Eginton by the Deed at issue.

The simple fact remains that under well-settled Minnesota law, the fact that Lilli Ann Eginton did not physically possess the Deed at issue at the time of Marie M. Moldenhauer's death and the fact that the Deed was not yet recorded in no way invalidates the deed. Mrs. Moldenhauer manifested her intent to dispose of the property to Lilli Ann Eginton in several ways: (1) by the request that she be present at the Deed execution; (2) by the physical delivery of the Deed to Lilli Ann Eginton and/or Paul Leutgeb on behalf of Lilli Ann Eginton; and (3) by confirming her intent to dispossess herself of full ownership of the homestead by including it in the September 5, 2003 will.<sup>3</sup>

In the alternative, Respondents also argue that Lilli Ann Eginton's behavior indicates that she did not accept the Deed at issue in this case. As support for this argument, Respondents point to the fact that Lilli Ann Eginton neglected to disclose the transfer of the homestead in joint tenancy in the inventory and accountings she filed in her mother's second conservatorship and her initial listing of the homestead as a probate asset. (Respondents' Memorandum at p. 35). Ms. Eginton testified, however, that the above errors were inadvertent in nature and she corrected the errors (where possible)

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<sup>3</sup> Respondents' claim that the inclusion of the homestead property in the September 5, 2003 will evidences Mr. Leutgeb's belief that the Deed was invalid. (Respondents' Memorandum of Law at p. 35). The inclusion of the homestead asset in the will—regardless of Mr. Leutgeb's beliefs as to why it was done—are irrelevant to this Court's delivery analysis with respect to the August 4, 2003 Deed. If delivery was properly completed on the day of the Deed execution, the inclusion of the homestead in the September 5, 2003 will was of no particular force and effect, though either tool properly disposes of the asset in favor of Lilli Ann Eginton.

upon discovery of the discrepancies. (T.2 121- 124; 143-145). Respondents further argue that because Marie Moldenhauer paid the real estate taxes, insurance, and taxes on the house, this somehow evidences Ms. Eginton's rejection of the Deed transferring the house in joint tenancy. There is no particular legal requirement, however, obligating Ms. Eginton to make any particular contribution to the homestead in order to maintain her joint tenancy.

Both Respondents and the district court wholly ignore the legal principles regarding "delivery" of the Deed at issue. This failure to apply well-settled law constitutes legal error. As a result, Appellant respectfully requests this Court reverse the district court's legal conclusion regarding delivery and determine that the August 4, 2003 deed was properly delivered and accepted. In the alternative, the Court should grant a new trial on this issue.

**III. IT WAS REVERSIBLE ERROR BY THE DISTRICT COURT TO ORDER PAYMENT OF VANCE F. GELLERT AND CARL A. GELLERT'S ATTORNEYS' FEES BY THE ESTATE.**

The lower court improperly ordered the payment of Respondents' attorneys' fees out of the estate of Marie M. Moldenhauer. The lower court based its authority to make such an award on an incorrect interpretation of Minn. Stat. § 524.3-720. A more reasonable interpretation of this statute makes it evident that Respondents are not entitled to attorneys' fees under it. This statute was implemented to serve as a narrow exception to the general rule that each party bears their own attorneys' fees by allowing fees only in certain probate matters. The statute was not drafted (as Respondents have argued) to provide for allowance of attorneys' fees in non-probate civil matters such as bankruptcy,

divorce, workers' compensation, child support, evictions, condemnations or any other civil matter. This statute was narrowly drafted to limit payment of attorneys' fees to (1) probate matters only (2) when all beneficiaries of an estate benefit from the action, (3) as opposed to when only one or some of the beneficiaries are benefited. These requirements ensure that this statute is not used to fund the bickering among beneficiaries as to how estate assets are to be distributed.

The relevant provisions of Minn. Stat. § 524.3-720, entitled Expenses in Estate Litigation, state:

... When after demand the personal representative refuses to prosecute or pursue a claim or asset of the estate or a claim is made against the personal representative on behalf of the estate and any interested person shall then by a separate attorney prosecute or pursue and recover such fund or asset for the benefit of the estate, or when, and to the extent that, the services of an attorney for any interested person contribute to the benefit of the estate, as such, as distinguished from the personal benefit of such person, such attorney shall be paid such compensation from the estate ...”

**A. Respondents' Interpretation of Minn. Stat. § 524.3-720 Would Improperly Expand The Reach Of This Statute To Include Actions Outside of The Probate Court.**

The award of Respondents' attorneys' fees is inappropriate under Minn. Stat. § 524.3-720, because the underlying action was not a probate court action. Rather, this is a civil case that contests the relevancy of a deed.

Respondents attempt to overcome this limitation by asserting that even though this is a statute found under Minnesota's probate code, entitled **Expenses in Estate Litigation**, it can be used to award attorneys' fees in any type of action that ultimately involves estate assets. This assertion, that would greatly expand the reach of a statute

that is a narrow exception to the general rule against the award of attorneys' fees, is made without a single legal citation to support it. Respondents have not pointed to a single case in which attorneys' fees were awarded in a non-probate court action under this statute. Rather, they have just provided a couple of theoretical examples. (Brief of Respondents ("Resp. Br.") at p. 38). If Respondents' argument is adopted, then the statute applies to any civil matter such as bankruptcy, divorce, workers' compensation, child support, evictions, condemnations, or any other civil matter, which, in effect, eliminates the "American Rule" for attorney fees in this state. Such an application of the statute will take a narrowly defined statute for the payment of attorneys' fees in probate proceedings to completely re-write applicable law for the payment of attorneys' fees in all civil proceedings.

Respondents rely on Minn. Stat. § 645.51 as support for their assertion that the title of the statute, Expenses in Estate Litigation, should be given no weight in determining to which actions this statute can apply. However, Minn. Stat. § 645.51, only holds that the title of a section is not part of the statute, it does not provide that the title can not be considered to determine the applicability of a statute. In fact, section 645.51 provides that the headnote does indicate the contents of the section. Therefore, in this case, the title indicates that Minn. Stat. § 524.3-720, explains the payment of expenses in estate litigation.

Respondents also assert that the fact that this statute is modeled after the Uniform Probate Code is of limited weight because the statute has been modified. This is a baseless argument. The modification, which added additional instances when fees could

be awarded in estate litigation, in no way changed that this section is part of the probate code and is not part of any general civil statutes.

Rather than adopting the Respondents' argument to ignore the obvious intentions of this statute and the complete lack of legal precedent, this Court should rule that this statute only allows for the award of attorneys' fees in probate court matters. To rule otherwise would be to create a gaping hole in the American Rule on attorneys' fees with no ascertainable limitation to all civil proceedings. Section 524.3-720 would go from serving as a narrow exception to the award of attorneys' fees in probate matters to a greatly expanded avenue for pursuing attorneys' fees in all kinds of actions.

**B. Respondents Incorrectly Argue That They Are Entitled To Attorneys' Fees Based On The Personal Representative's Refusal To Prosecute The Action.**

In Appellant's initial brief to this Court, Appellant argues that Respondent is not entitled to fees under the provision of Minn. Stat. § 524.3-720 that states that "to the extent that, the services of an attorney for any interested person contribute to the benefit of the estate, as such, as distinguished from the personal benefit of such person, such attorney shall be paid such compensation from the estate . . . ."

Respondents have argued that this is not the provision that they are relying on to support their award of attorneys' fees, but rather, that they are entitled to fees under the provision in section 524.3-720 that states "[w]hen after demand the personal representative refuses to prosecute or pursue a claim or asset of the estate or a claim is made against the personal representative on behalf of the estate and any interested person

shall then by a separate attorney prosecute or pursue and recover such fund or asset for the benefit of the estate . . . .”

The facts of this case prevent Respondents from being entitled to attorneys’ fees under this provision. First, Respondents commenced this action before demanding that the personal representative pursue it. In fact, the Respondents commenced this action before a personal representative was even appointed. (Resp. Br. at p. 16). Additionally, the personal representative never refused to try this case. (Resp. Br. at p. 17). Rather, the personal representative was ordered not to pursue to this case by the court. (Resp. Br. at p. 17).

The part of the statute relied upon by the Respondents was designed to compensate individuals that pursue derivative actions that are the duty of the personal representative to prosecute. See Uselman v. Uselman, 404 N.W.2d 130, 137-38 (Minn. 1990) (overruled on other grounds) (In general, beneficiaries of a trust can not maintain an action against third-parties that commit a tort or other wrong against trust property because it is an action that is derivative in nature and should be pursued by the trustee. Therefore, the beneficiary is limited to bringing an action against the trustee and third-party tortfeasor as co-defendants.) The real estate action is not such a derivative action because it was started before the probate began and before a personal representative was appointed. Thus, the statute does not apply because the beneficiary did not pursue the action in a derivative manner to redress a breach of duty by the personal representative for failure to pursue the action. The action was pursued by private litigants on their own accord before the personal representative was appointed therefore the statute does not

apply. The personal representative's services were not needed as the matter was in civil court with private litigants and thus the narrow application of the statute can not apply in this case.

Even if the facts were somehow different, and Respondents could arguably fall under this provision, it still includes the requirement that the fees were incurred for the "benefit of the estate." Respondents try to avoid this requirement by arguing that "for the benefit of the estate" has two different meanings within this statute. (Resp. Br. at p. 42). They argue that because this reference to the benefit of the estate does not include the further explanatory phrase, "as distinguished from the personal benefit of such person," it somehow has a different meaning within this provision. This argument ignores basic principles of statutory construction. It defies common sense to give the identical phrase, used twice in the same statute, two different meanings. For the foregoing reasons, this Court should reverse the lower court and hold that Respondents are not entitled to payment of their attorneys' fees under Minn. Stat. § 524.3-720.

**C. Respondents' Interpretation of Minn. Stat. § 524.3-720 Essentially Removes The Requirement That Any Fees Incurred Be "For The Benefit Of The Estate."**

Section 524.3-720 requires that before the attorneys' fees of an interested person can be paid by the estate, it must be established that the fees were incurred for the benefit of the estate. The third provision of this section further clarifies this requirement by providing that the fees incurred by the estate be for the benefit of the estate, "as distinguished from the personal benefit of such person."

In their reply brief, Respondents' interpretation of the statute ignores this requirement. Respondents argue that the only determination for courts to make in deciding whether or not to award fees is whether assets were recaptured for the estate.

Respondents also misconstrue Appellant's interpretation of what "for the benefit of" means by stating that Appellant argues that a party must be disinterested to be entitled to attorneys' fees. (Resp. Br. at p. 39-40). This simply is not Appellant's position. In fact, Appellant acknowledges that there will likely never be a situation where a person disputing the distribution of assets of an estate will be disinterested in the outcome. Rather, Appellant has advocated for an interpretation of "for the benefit of the estate" that has already been adopted by several courts that have analyzed this requirement. Specifically, Appellant asserts that an action is for the benefit of the estate when the action benefits all of the beneficiaries of the estate opposed to only benefiting one or some of the beneficiaries. This interpretation supports the equitable principle that those who receive the benefits of an action should equally bear the burdens of such an action.

Respondents' attempts at distinguishing the cases relied on by Appellant in support of this interpretation only serve to highlight the strength of these cases as support for Appellant's position. Respondents first attempt to distinguish a handful of these cases based of their outcome—that attorneys' fees were ultimately paid out of the estate. (Resp. Br. at p. 43). The outcome of the case, however, is based on the particular facts of those cases and in no way takes away from the legal principles contained within these cases that Appellant relied upon them for—that all beneficiaries of an estate must be

benefited before attorneys' fees can be awarded. In this case, at least one beneficiary is harmed by the ruling.

Respondents next try to deal summarily with the cases where payment of attorneys' fees was not allowed, by stating that these cases did not deal with the recapture of estate assets. (Resp. Br. at p. 43). Appellant cited to these cases to assist this Court in interpreting what the phrase "for the benefit of the estate" means. Therefore, whether or not these cases also dealt with recapturing estate assets, does not take away from the legal reasoning contained within these cases in determining when an action was for the benefit of an estate.

Based on the foregoing, this Court should reverse the lower court and find that the actions of Respondents were not for the benefit of the estate and therefore, payment of their attorneys' fees was inappropriate under Minn. Stat. § 524.3-720.

### CONCLUSION

As a matter of law, the district court fundamentally erred in its failure to recognize the effect of Marie M. Moldenhauer's July 28, 2003 restoration to capacity. The district court's findings of fact do not overcome the rebuttable presumption of capacity established on July 28, 2003. Respondents' arguments perpetuate the same error by refusing to address this presumption. The district court also disregarded significant probative evidence establishing capacity on the date of the deed execution—August 4, 2003—and wholly failed to make the necessary findings regarding any incapacity on that date. Due to the district court's legal and factual errors, Charles W. Eginton respectfully requests this Court reverse the district court's determination, conclude Marie M.

Moldenhauer possessed sufficient capacity to execute a Deed on August 4, 2003, and that the Deed was properly delivered such that Lilli Ann Eginton is entitled to retain the homestead property at issue in this case. Charles W. Eginton also requests this Court to reverse the award for payment of Respondent's attorneys' fees because the statute relied upon by the district court does not apply to this general civil proceeding related to the validity of a deed.

DATED: February 11, 2009

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that the brief served in the above-entitled matter on February 11, 2009, conforms to the requirements of Minn. R. Civ. App P. 132.01, Subd. 1 and 3, for a brief produced with a Times New Roman font with 13 point type. The length of this brief is 396 lines and 5,041 words. This brief was prepared using Microsoft 2003 word processing software.

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