



A09-937

**STATE OF MINNESOTA  
IN COURT OF APPEALS**

In Re: Estate of

WILLIAM HENRY ECKLEY IV,

Deceased.

Erlinda S. Eckley,

Appellant,

v.

Alternate Decision Makers, Inc.,

Respondent.

**APPELLANT'S BRIEF AND APPENDIX**

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CERTIFICATION OF BRIEF LENGTH

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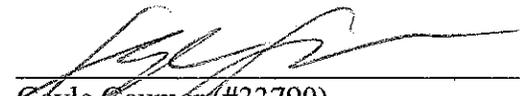
v.

Alternate Decision Makers, Inc.,

Respondent.

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs.1 and 3, for a brief produced with a proportional font. The length of this brief is 3,243 words. This brief was prepared using Microsoft Word.

DATED: August 14, 2009

  
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## LEGAL ISSUES

1. Does a legal disability as defined in Minn. Stat. § 541.15 stay running of the statute of limitations to file a notice of intent to homestead under Minn. Stat. § 510.07?

Held: No. Minn. Stat. § 541.15 does not apply to rights under Minn. Stat. § 510.07.

2. Must claims be disallowed to the extent necessary to pay family allowance and statutory selection in full in a decedent's estate?

The probate court did not address the issue although presented.

3. Are fees and costs of estate administration claims against a decedent's estate?

Held: No.

## STATEMENT OF THE CASE

This is an appeal from an Order of the Honorable Marilyn J. Kaman, District Court, Probate Division, Fourth Judicial District, adopting the recommendations of a district court referee. Titled "Order Determining Status of Decedent's Home and Allowing Final Account of Special Administrator as Modified," and filed on March 26, 2009, the Order allowed the final account of a special administrator over the objections of the surviving spouse regarding nonhomestead classification of her deceased husband's home and unpaid family allowance and statutory selection.

Notice of filing of the order appealed was served April 2, 2009. (A-85). Notice of Appeal was filed May 21, 2009. (A-86).

## STATEMENT OF FACTS

Decedent William Henry Eckley ("Bill") met his wife, Erlinda Samaniego Eckley ("Linda"), in the Philippines in 1997. (A-76-77). They corresponded throughout 1997 and 1998. (A-77). In June 1998, Bill bought a house in Northome, Minnesota and made it his home. (A-75). He visited Linda in the Philippines again in late 1998. (A-58). In October, 1999, he returned to the Philippines and married Linda on November 16, 1999 (A-73).

With her immigration pending, Bill visited Linda in the Philippines in the Fall of 2000. (A-58). While there he suffered a stroke in January 2001, was hospitalized in Manila and in March, 2001, returned to the United States for further treatment. (A-77). Shortly thereafter he suffered a major stroke and was hospitalize. (A-77). His sister, Claire Eckley ("Claire"), was appointed his guardian and conservator in September, 2001. (A-77). By Order filed September 14, 2001, the probate court found that Bill was "confused," lacked "sufficient understanding or capacity to make or communicate responsible decisions concerning his estate," and had "demonstrated behavioral deficits evidencing inability to manage his estate." (A-66). Bill was discharged to a nursing home in late 2001. (A-77). He spent the next three years, until his death on June 27, 2004, in hospitals and nursing homes. (A-58). There is no evidence he ever regained mental capacity after September 2001. (A-58).

Linda Eckley had remained in the Philippines was still in the Philippines when Bill died in June, 2004, due to immigration difficulties. (A-58). Respondent was appointed as special administrator of the decedent's estate in July, 2004. (A-70).

Linda immigrated in May, 2005, eleven months after Bill died, but was not allowed to occupy Bill's home during litigation over the validity of her marriage. (A-26). Because she

was not allowed to occupy the home, on September 29, 2005, she filed a notice of intent to homestead the property with the Koochiching County Assessor (A-37-38). On June 23, 2006, the probate court entered judgment declaring Bill and Linda's marriage valid. (A-80). Linda was given statutory selection and access to, but not possession of, the home. (A-26).

On September 26, 2006, the special administrator filed a petition to sell Bill's home as a nonhomestead asset. (A-39). Linda objected asserting her homestead exemption, and counter-petitioned for an order that the special administrator deliver the balance of unpaid statutory selection and family allowance due and that the homestead be decreed to her and the estate closed as insolvent. (A-41, 46-47). The court denied the special administrator's petition to sell Bill's home and appointed Linda as personal representative in unsupervised administration. (A-82). The special administrator did not object to the appointment of Linda as personal representative or pursue its claim that the house was nonhomestead.

At the time of his death, Bill's estate had an Inventory value of \$85,878.99, including:

Bill's home in Northome, Minnesota:	Inventory value:	\$19,400.00;
Tangible personal property:	Inventory value:	4,200.00;
Wearing Apparel:	Inventory value:	500.00;
Cash deposits	Inventory value:	56,778.99; and
One vehicle, 1997 Ford F150	Inventory value:	5,000.00

(A-14-15). The actual value of Bill's tangible personal property and clothing was \$950.00 and the actual value of his truck was \$2,000. (T-65, L. 16-20).

When special administration ended, property on hand consisted of:

Bill's home in Northome, Minnesota:	\$19,400.00 and
Cash on hand in Estate accounts:	292.74

(A-3-4).

Linda had received exempt assets of:

Family allowance in the amount of:	\$9,175.93 (T-88, L. 17);
Proceeds from sale of decedent's truck:	2,000.00(T-62,L.23-24);

Statutory selection of personal property valued at: 100.00(T-59, L. 8-15).

The remainder of Bill's tangible personal property was sold by the special administrator for \$850.00 but the proceeds of sale were not delivered to Linda. (T-16, L. 21-24). As personal representative of the formal Estate, Linda took possession of Bill's house, determined the house to be homestead and distributed it to herself as surviving spouse. The estate was closed in summer 2007. (A-26).

In August, 2008, 18 months after special administration ended by appointment of a personal representative, the special administrator filed its final account, listing Bill's home and \$292.74 as the remaining assets of the special administration. (A-1).

Linda objected to the final account, claimed Bill's home was an exempt homestead, and requested the balance of unpaid family allowance and statutory selection due her. (A-17-18 and A-19). She asserted in her objections and at hearing that claims paid but not previously allowed by the court must be disallowed to the extent necessary to meet the balance of family allowance and statutory selection due. (A-18).

The probate court held that Bill's home was not an exempt homestead. (A-64). It disallowed the claims of the special administrator for accrued and unpaid legal and special administrator fees and costs of administration and allowed the final account as amended to reflect disallowance of those claims. (A-64-65). It did not address unpaid family allowance and statutory selection issues in its order. (A-57-64).

## ARGUMENT

### I. Bill Eckley's home was his homestead until his death.

Minnesota courts construe homestead provisions liberally both because the homestead exemption is a constitutional right and because of “the strong social policy of securing the home against the uncertainties and misfortunes of life.” *Eustice v. Jewison*, 413 N.W.2d 114, 119 (Minn. App. 1987), citing *Title Ins. Co. of Minnesota v. Agora Leases, Inc.*, 320 N.W.2d 884, 885 (Minn. 1982). Debtor-creditor law is applied in determining whether property is an exempt homestead in a decedent's estate. *Estate of Riggle*, 654 N.W.2d 710, 714 (Minn. App. 2002).

Under debtor-creditor law, the house owned by a debtor as his dwelling place is exempt from debts not secured by the real estate. Minn. Stat. § 510.01. If the debtor is married, title may be in either spouse and the homestead exemption extends to both spouses. Minn. Stat. § 510.04. A spouse does not lose homestead rights by the death or abandonment of the owner spouse. Minn. Stat. § 510.06.

Temporary absence for pleasure or due to casualty does not terminate the homestead. *Muscala v. Wirtjes*, 310 N.W.2d 696, 698 (Minn. 1981). In general, when absence from the homestead extends more than six months, statute requires filing of a notice of intent to claim homestead or the homestead will be deemed abandoned. Minn. Stat. § 510.07. The six month limitations period to file the notice is stayed by legal disability. Minn. Stat. § 541.15; *Millett v. Pearson*, 143 Minn. 187, 189, 173 N.W. 411 (1919) (person under legal disability or restraint is incapable of losing a residence). *Eustice*, supra, at p. 119 (“Muscala expressly did not overrule the prior cases which granted an exemption for legal disability” but held that physical incapacity is not a legal disability to suspend 60 month limitations period in Minn. Stat. § 510.07) and

*Eustice* fn. 2 at p. 121 (“Both insanity and imprisonment are recognized disabilities which suspend running of statutes of limitations. Minn. Stat. § 541.15(2), (3)”); *Talley v. Portland Residence, Inc.*, 582 N.W.2d 590, 591 (Minn. App. 1998) (appointment of conservator does not restart running of statute of limitations against the “insane person”); *compare Muscala*, supra, at 697-698, and *Estate of Hoffman*, 354 N.W.2d 581, 583 (Minn. App. 1984) (both holding that confinement to a nursing home due to physical infirmity, as opposed to mental incapacity, does not stay the limitations period).

Bill Eckley occupied the Northome house as his homestead until he left to visit his wife in the Philippines in November 2000. The homestead exemption extended to his wife. Minn. Stat. § 510.04. He suffered a stroke in January 2001, and another sometime after recovering sufficiently to return to Minnesota in March 2001. In September 2001 the probate court found that Mr. Eckley had “suffered several strokes;” “is confused;” “lacks sufficient understanding or capacity to make or communicate reasonable decisions;” and “has demonstrated behavioral deficits evidencing inability to manage his estate.” (A-66).

“We hold that under the statute insanity means substantial inability, by reason of mental defect or deficiency, to understand one’s legal rights, manage one’s affairs, and prosecute the claim.”

*Harrington v. County of Ramsey*, 279 N.W.2d 791, 795 (Minn., 1979) (defining “insanity” under Minn. Stat. §541.15(a)(2). Mr. Eckley met the criteria for the legal disability of “insanity.”

In Minnesota mental incapacity stays the limitation period to file a notice of intent to homestead. Minn. Stat. § 541.15. As the federal bankruptcy court *In Re Mueller* noted:

“The Minnesota courts have found exception to the physical occupancy requirement in cases involving imprisonment or mental incapacity, but have refused to find exception even where the person is “compelled” to live elsewhere. The distinction is that a mentally incapacitated or incarcerated person may be unable to take the statutory steps necessary to preserve his or her homestead rights.” 215 B.R. 1018, 1025 (8<sup>th</sup> Cir., 1998).

The limitation period for Bill Eckley to file a notice of intent to homestead was stayed until he recovered from his “insanity” due to stroke or for five years, whichever first occurred. Minn. Stat. § 541.15. Disability exceptions are ‘remedial and should be liberally construed’.” *Talley*, supra, citing *Nebola v. Minnesota Iron Co.*, 102 Minn. 89, 91, 112 N.W. 880 (1907).

Except in cases of infancy, the length of the stay by legal disability is limited to five years. Minn. Stat. § 541.15. Bill Eckley died less than four years after last occupying his homestead. He was involuntarily absent from his home due to legal disability as defined in law. His homestead exemption was not lost. *Eustice* and *Talley*, supra. A homestead need not be occupied after the owner’s death to retain the exemption. *Eustice*, supra, citing *Larson v. Curran*, 121 Minn. 104, 111, 140 N.W. 337 (1913).

II. The homestead right extended to Bill Eckley’s wife.

Linda Eckley, as Bill’s wife, had the right to claim homestead but was unable to do so until mid-2005 because of a legal disability. Minn. Stat. § 510.04. Statutory prohibition is a legal disability that stays limitations periods. Minn. Stat. § 541.15. She was prohibited by statute from filing a notice of intent to homestead until granted the right to immigrate because a homestead applicant must be a resident of Minnesota. Minn. Stat. § 273.124, subd. 1. Both Bill and Linda intended that she would reside in Northome with him after their 1999 marriage. But for immigration difficulties, they would have lived together in Northome long before his first stroke in 2001. Her legal disability was lifted, and her 6 month statute of limitations to file notice of intent to homestead began to run, in May 2005. She filed notice of intent to homestead in September 2005, less than five years after Bill ceased to occupy the house, after learning that she would not be permitted to occupy the home until pending litigation the validity of her marriage to Bill was resolved in her favor.

III. Where an Estate has sufficient assets to do so, family allowance and statutory selection must be paid in full.

Family allowance of \$1,500 per month for 12 months is full family allowance in an insolvent estate. Minn. Stat. § 524.2-404. Linda Eckley received \$600 per month for nine months (\$5,400) plus payment of \$3,375.93 in immigration expenses she incurred, for a total of \$9,175.93 as and for total family allowance from the special administrator. The applicable statute calls for payment of \$18,000 in insolvent estates if there are sufficient assets to pay family allowance in full. Minn. Stat. § 524.2-404. The balance of family allowance owed to Bill's surviving spouse is \$8,824.07.

Statutory selection of property and cash having a value of \$10,000 is due a surviving spouse by statute. Minn. Stat. § 524.2-403. Linda Eckley selected personal property worth \$100 in statutory selection. The special administrator sold the remainder of Bill's personal property for \$850, but did not deliver the sale proceeds to her. The total value of statutory selection she received was \$100. Statutory selection is subject to reduction only if an estate lacks sufficient assets to pay family allowance in full. Minn. Stat. § 524.2-403 (d). She is entitled to \$9,900 in cash statutory selection.

The gross estate included \$56,778 in cash plus the homestead and personal property having an actual value of \$950. There were sufficient assets to pay family allowance and statutory selection in full with almost \$30,000 in cash assets to spare for estate administration and funeral expenses. Expenses of estate administration are classified as claims entitled to priority in insolvent estates such as Bill Eckley's. Minn. Stat. § 524.3-805.

## CONCLUSION

The Northome house Bill purchased in 1998 never lost homestead status under debtor-creditor law before Bill's death. The homestead exemption is not affected by death. Minn. Stat. § 510.06. It was an exempt homestead in his estate.

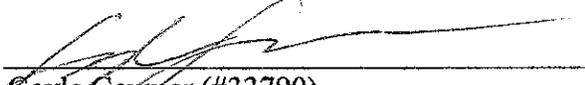
Exempt assets are not available to pay estate claims. *Sammons v. Higbie's Estate*, 103 Minn. 448, 455, 115 N.W.265, 267-68 (1908); *McBride's Estate*, 195 Minn. 319, 323, 263 N.W.105, 107 (1935); *Sevcik v. Commissioner*, 257 Minn. 92, 100, 100 N.W.2d 678, 685 (1959). The special administrator used exempt assets, family allowance and statutory selection due the surviving spouse, to pay claims in excess of available assets. Its final account must be disallowed to the extent necessary to pay the balance of family allowance and statutory selection due the surviving spouse.

Dated: August 14, 2009

Respectfully submitted,

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