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State of Minnesota

In Court of Appeals

In re the Estate of:

Richard L. Perrin,

Decedent.

BRIEF AND APPENDIX OF RESPONDENT

DAVID E. CULBERT (#20278)
7401 Metro Boulevard, Suite 485
Minneapolis, MN 55439
Tel: (952) 546-5440
Fax: (952) 746-4180

Attorney for Respondent Perrin Estate

LORI SWANSON
Attorney General, State of Minnesota

CYNTHIA B. JAHNKE (#0294858)
Assistant Attorney General
445 Minnesota Street, Suite 900
St. Paul, MN 55101-2127
Tel: (651) 757-1468
Fax: (651) 296-1410

Attorneys for Appellant Commissioner, Minnesota Department of Human Services

MICHAEL FREEMAN
Hennepin County Attorney

LON ERICKSON (#0140004)
Assistant Hennepin County Attorney
A2000 Government Center
300 South Sixth Street
Minneapolis, MN 55487
(612) 348-9653

Attorneys for Appellant Hennepin County

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LEGAL ISSUE

Whether the District Court erred when it determined that federal law as construed and applied by the Minnesota Supreme Court in the *Estate of Barg*, 752 N.W.2nd 52 (Minn. 2008) *rehearing denied* July 21, 2008, *cert. denied sub nom Vos v. Barg* 129 S. Ct. 2859, 2009 WL 1835179 (June 29, 2009)(hereafter 'the Barg case"), does not permit Hennepin County's claim for recovery of medical assistance to be allowed against the estate of a surviving spouse who never received medical assistance benefits when there is no evidence that assets owned by the predeceased medical assistance spouse transferred to the surviving spouse at the time of the medical assistance spouse's death.

The District Court determined that Hennepin County's claim under Minnesota Statutes, whether under section 256B.15, subdivision 1a, or 519.05, for recovery of medical assistance benefits correctly paid must be disallowed in full as a result of the Minnesota Supreme Court's decision in the Barg case.

Apposite Authority:

42 U.S.C. § 1396p(b)

In Re Estate of Barg, 752 N.W.2d 52 (Minn. 2008) *rehearing denied* July 21, 2008, *cert denied*, 129 S. Ct. 2859, 2009 WL 1835178.

Minn Stat. § 256B.15, subd. 1a (2008).

Minn. Stat. § 519.05 (2008)

INTRODUCTION

This case involves the application of the plain language of the federal statute that restricts State recovery of medical assistance benefits correctly paid. The material facts in this case are similar to the material facts reviewed by the Minnesota Supreme Court in the Barg case. Although the Estate against which the claim is asserted is different, the government attempt to recover medical assistance benefits correctly paid is no different in theory and the claims and claimants are no different in legal significance or distinction from the theory, claims and claimants in the Barg case. The legal issues in dispute in this case are essentially the same legal issues and the same arguments that were presented in the Barg case, except that the Commissioner of Human Services and Hennepin County are now asserting a different theory to justify allowance of the medical assistance claim.

STATEMENT OF THE CASE

The Statement of the Case in the Brief, Addendum, and Appendix of Appellant Commissioner of the Minnesota Department of Human Services (hereafter "the Commissioner's Brief") is sufficient for this Appeal.

STATEMENT OF FACTS

"To facilitate consideration and resolution" of this case, the Commissioner's Brief contains a lengthy recitation of the "context and background for Medicaid recovery." Commissioner's Brief, pp. 4-19. This recitation is not relevant or helpful to resolution of this case. There is no need for the Court of Appeals to consider this information or to construe the plain language of the federal statutes that apply to recovery of medical assistance benefits correctly paid. The Minnesota Supreme Court already has done so. The background information in the Commissioner's Brief in this case was briefed at great length by the Commissioner in the Barg case. Minnesota Commissioner of Human Services' *Amicus Curiae* Brief, Appendix and Addendum, the Barg case. The Minnesota Supreme Court had all this background information and argument in front of it when it decided the Barg case. The Court of Appeals is bound to follow Minnesota Supreme Court precedent. *Brainerd Daily Dispatch v. Dehen*, 693 N.W.2d 435 (Minn. App. 2005) citing *Jendro v. Honeywell, Inc.* 392 N.W.2d 688, 691 n. 1 (Minn. App. 1986), *rev. denied* (Minn. Nov. 19, 1986). When the Minnesota Supreme Court has construed a federal statute, the Court of Appeals is bound to follow the same construction. It would be inappropriate to re-litigate the construction of the federal and state statutes that apply to and govern this case.

The remainder of the Commissioner's Statement of Facts, starting at p. 17 of the Commissioner's Brief is accurate, but omits important material facts.

At the hearing held on August 31, 2009, before Hennepin County District Court Referee Bruce Kruger, to consider Hennepin County's Motion For Allowance of a Claim Previously Disallowed, Hennepin County by and through Assistant County Attorney Lon M. Erickson, and David E. Culbert, Personal Representative and attorney for the Estate, stipulated in open court that there were no material facts in dispute and that the matter could be decided by the Court on the law as though submitted on cross-motions for Summary Judgment. Resp. App., Transcript of Proceedings, Hearing of August 31, 2009, pp. 2-3; *See also* Order of the District Court dated February 3, 2010, ¶ 2 at p. 2; Order of the District Court dated June 3, 2010, Memorandum of Law, § I, at p. 2. At the time of the Stipulation, there was no evidence in the record regarding the assets owned by the predeceased spouse Dorothy Perrin at the time of her death. Hennepin County asserted that its claim against the Estate of Richard Perrin could and should be allowed as a matter of law. The Commissioner's Brief at p. 21 acknowledges that the parties agree on the material facts of this case; but the only facts in the record of the this case are the facts provided by the Affidavit of Sandra L. Henrikson introduced by the Estate without objection by counsel for Hennepin County or the Commissioner at the hearing on May 29, 2010. Res. App.,

Henrikson Affidavit. According to Henrikson's Affidavit no assets of any provable value transferred from the Estate of Dorothy Perrin to Richard Perrin at the time of Dorothy's death. Henrikson Affidavit at p. 2, ¶¶ 6-7. Neither the Commissioner nor the County has produced any evidence to the contrary. No evidence of any transfer of such assets exists.

On February 3, 2010, the Honorable Jay M. Quam, Judge of District Court, issued the Order recommended by Referee Krueger. The Order of February 3 disallowed and denied Hennepin County's claim in full. Hennepin County's argument that its medical assistance claim should be allowed under Minnesota Statutes section 519.05(a) was denied under the precedents established in the Barg case and the doctrine of *res judicata.*

On February 16, 2010, Hennepin County filed a Motion for Review under Minn. Stat. § 484.70, subd. 7, for review of the February 3, 2010 Order. On March 1, 2010, the Commissioner filed a Motion to Intervene, which was granted by the District Court's Order dated March 15, 2010.

On March 29, 2010, Hennepin County's Motion for Review was heard before Judge Quam. David E. Culbert appeared on behalf of the Estate. Lon M. Erickson, Assistant Hennepin County Attorney appeared on behalf of Hennepin County. Cynthia B. Jahnke, Assistant Attorney General, appeared on behalf of

Intervenor Commissioner of Human Services. All three participated in oral argument without limitation.

On June 3, 2010, Judge Quam affirmed the February 3, 2010, Order denying and disallowing the medical assistance claim in full. In the June 3rd Order, the claim was denied and disallowed under the authority of the Barg case, but instead of applying the doctrine of *res judicata,* the Court applied the doctrine of *collateral estoppel* against the Commissioner and Hennepin County. Both the February 3rd Order and the June 3rd Order treated the Commissioner and Hennepin County as parties in privity to the claimants in the Barg case. The Commissioner and Hennepin County were served with a written notice of the filing of the Order on June 7, 2010.

On August 4, 2010, the Commissioner appealed the February 3rd Order as affirmed by the June 3rd Order.

SCOPE OF REVIEW

When a case is decided on stipulated facts, the only issue on appeal is whether the trial court erred in its application of the law. *City of Pine Springs v. One 1992 Haley Davidson, VIN: 1HD1DJL0ny510116, License No. 20438MC,* 555 N.W.2d 749 (Minn. App. 1996). The Court of Appeals reviews the District Court's application of the law *de novo.*

Although the Court of Appeals reviews the law applied by the District Court *de novo*, in this case, the Court of Appeals must follow Minnesota Supreme Court precedent regarding construction of the applicable federal and state statutes and their impact on recovery of medical assistance benefits as set forth in the Barg case. *Brainerd Daily Dispatch v. Dehen,* 693 N.W.2d 435, 439-440 (Minn. App. 2005) citing *Jendro v. Honeywell, Inc.* 392 N.W.2d 688, 691 n. 1 (Minn. App. 1986), *rev. denied* (Minn. Nov. 19, 1986).

Although the trial court's determination regarding the availability of collateral estoppel is not binding on this Court, once the reviewing court determines that collateral estoppel is available, the decision to apply collateral estoppel is left to the trial court's discretion. *Regents of the Univ. of Minn.* 283 N.W.2d 201, 207 (1986). The trial court's discretion will be reversed only upon a determination that the trial court abused its discretion. *Saudi Am. Bank v. Azhari,* 460 N.W.2d 90, 92 (Minn. App. 1990); *see Green v. City of Coon Rapids,* 485 N.W.2d 712, 718 (Minn. App. 1992).

Summary judgment must be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. The parties in this case have stipulated to the facts and there are no material facts in dispute. The parties

have chosen to submit this case on the law and the facts (or lack thereof) in the record. Therefore, the only issue is "whether a party is entitled to judgment as a matter of law." *In re Collier*, 726 N.W.2d 799, 803 (Minn. 2007).

ARGUMENT

I. THE COMMISSIONER OF HUMAN SERVICES IS BOUND BY THE STIPULATIONS MADE BY HENNEPIN COUNTY IN THE MARCH 29, 2010, HEARING

A. THE COMMISSIONER OF HUMAN SERVICES AND HENNEPIN COUNTY ARE PART OF THE SAME UNIFIED SYSTEM FOR RECOVERY OF MEDICAL ASSISTANCE BENEFITS CORRECTLY PAID.

The Commissioner of Human Services and each of the 87 Minnesota counties play separate but combined roles in the administration of the medical assistance program. Each one is part of the statutory framework for recovery of medical assistance benefits as part of the administration of Minnesota's medical assistance program. To participate in the federal medical assistance program, each State must develop a State Plan to govern administration of the medical assistance program within that State. 42 U.S.C. §1396.

A State Plan must conform to the requirements set forth in federal law at 42 U.S.C. §1396a. Among those requirements are the following:

1396a. State plans for medical assistance

(a) Contents

> A State plan for medical assistance must –
>
> (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;
>
> ***
>
> (5) either provide for the establishment or designation of a single State agency to administer or to supervise the administration of the plan; or provide for the establishment or designation of a single State agency to administer or to supervise the administration of the plan, except that the determination of eligibility for medical assistance under the plan shall be made by the State or local agency administering the State plan . . . .
>
> ***
>
> (18) comply with the provisions of section 1396p of this title with respect to liens, adjustments and recoveries of medical assistance correctly paid, transfers of assets, and treatment of certain trusts; (emphasis added)
>
> ***

To comply with 42 U.S.C. §1396a(a)(5), Minnesota has designated the Commissioner of Human Services as the State Agency responsible for supervision of the administration of the Minnesota medical assistance program. Minn. Stat. §§256B.02, 256B.04 (2008). The Minnesota Department of Human Services and its employees derive all their powers to administer the medical assistance program at the state level by delegation from the Commissioner of Human Services. The County agencies are nothing more than local administrative units of the State medical assistance program. Minn. Stat. §256B.05 (2008). These statutes have not been

amended subsequent to the death of Dorothy Perrin or her spouse Richard Perrin and remain the same to this date. The following statutes demonstrate the relationship between the Commissioner of Human Services and the various counties:

Minn. Stat. §256B.02 DEFINITIONS

***

Subd. 5. State agency. "State agency" means the commissioner of human services.

Subd. 6. County agency. "County agency" means a local social service agency operating under and pursuant to the provisions of chapter 393.

***

Minn. Stat. §256B.04 DUTIES OF STATE AGENCY

Subdivision 1. General. The state agency shall supervise the administration of medical assistance for eligible recipients by the county agencies hereunder.

***

Minn. Stat. §256B.05 ADMINSTRATION BY COUNTY AGENCIES

Subdivision 1. The county agencies shall administer medical assistance in their respective counties under the supervision of the state agency and the commissioner of human services as specified in section 256.01. ...(emphasis added)

Minn. Stat. §256.01 COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES.

Subdivision 1. Powers transferred. ...The commissioner of human services is hereby constituted the "state agency" as defined by the Social Security Act of the United States and the laws of this state.

Subd. 2. Specific powers. ... [T]he commissioner of human services shall carry out the specific duties in paragraphs (1) through (cc):

(a) Administer and supervise all forms of public assistance provided for by state law and other welfare activities or services as are vested in the commissioner. ... In addition to administering and supervising human services activities vested by law in the department, the commissioner shall have the authority to:

(1) require county agency participation in training and technical assistance programs to promote compliance with statutes, rules, federal laws, regulations, and policies governing human services;

(2) monitor, and on an ongoing basis, the performance of county agencies in the operation and administration of human services, enforce compliance with statutes, rules, federal laws, regulations, and policies governing welfare services and promote excellence of administration and program operation. (emphasis added)

* * *

Minn. Stat. § 256B.15 CLAIMS AGAINST ESTATES.

Subd. 1a. Estates subject to claims.

* * *

(f) . . . Notwithstanding any law or rule to the contrary, a state or county agency with a claim under this section must be a creditor under section 524.6-307. Any statute of limitations that purports to limit any county agency or the state agency, or both, to recover for medical assistance granted hereunder shall not apply to any claim made hereunder for reimbursement for any medical assistance granted hereunder. . . . . Counties are entitled to one-half of the nonfederal share of medical assistance collections from estates that are directly attributable to county efforts. . .(emphasis added)

* * *

Subd. 9. Commissioner's intervention.

> The commissioner shall be permitted to intervene as a party in any proceeding involving recovery of medical assistance upon filing a notice of intervention and serving such notice on the other parties.[1]

The terms "state agency" and "county agency" are used together and interchangeably throughout Minn. Stat. § 256B.15. This statute makes clear that the counties recover medical assistance benefits under the supervision and control of the Commissioner of Human Services and not as independent agencies. In effect, Hennepin County is acting as an extension of the Commissioner for purposes of recovering medical assistance benefits. In effect, the counties and the Commissioner are treated as one and the same for purposes of recovery of medical assistance benefits.

B. THE ASSISTANT HENNEPIN COUNTY ATTORNEY WAS ACTING AS COLLECTION AGENT FOR THE ENTIRE MEDICAL ASSISTANCE PROGRAM AT THE HEARING ON AUGUST 31, 2009.

The Assistant Hennepin County Attorney was acting on behalf of the Hennepin County Collection Unit when he appeared at the hearing on August 31, 2009. By appearing on behalf of Hennepin County and agreeing to the Stipulations made by the parties at that hearing, he was representing to the Court that he had authority to bind Hennepin County, the Hennepin

[1] Subd. 9 was added to Minn. Stat. § 256B.15 by Laws of Minnesota 2009, Ch. 79, Art. 5, Sec. 43, effective July 1, 2009. The Commissioner was allowed to intervene in the present case by request under Rule 24.02, Minn. R.Civ. Pro.

County Medical Assistance Collection Unit and, by extension, the Commissioner of Human Services. To argue otherwise would mean that no county collection unit or county attorney has authority to pursue or collect a medical assistance claim or settle a dispute over a medical assistance claim without the active involvement of the Commissioner acting as the State Agency. The Assistant County Attorney was acting as an agent for the Commissioner under the statutes, rules and the facts of this case. Minn. Stat. § 256.01 subd (2) clause (a) (4), Minn. R. 9505.0135 subp 4 (2009). When the Assistant County Attorney agreed to the Stipulations made in open court, these Stipulations became part of the law of this case.

C. THE COMMISSIONER OF HUMAN SERVICES CANNOT DISAVOW THE STIPULATIONS MADE BY THE ASSISTANT HENNEPIN COUNTY ATTORNEY AT THE AUGUST 31, 2009, HEARING.

When the Commissioner sought intervention in this case, he made no objection to the previous Stipulations made by the Assistant County Attorney. At the hearing on May 29, 2010, the Assistant County Attorney and Counsel for the Commissioner sat at the same counsel table and divided and coordinated their presentations to the Court. Neither the Assistant County Attorney nor the Commissioner's attorney made any effort to argue that any material facts remained in dispute or were needed to decide this

case. They limited their arguments to arguments that Minn. Stat. § 519.05 was an alternative theory of recovery in this case, that *res judicata* was not applicable to this case, and that the District Court followed the wrong procedure by not first allowing the claim as presented and then determining whether any assets could be found in the surviving spouse's estate to satisfy the medical assistance claim. Neither counsel raised or discussed the impact of the Stipulations made at the hearing on August 29, 2010.

Because of the statutory framework and working relationship between the Commissioner and Hennepin County for the purpose of medical assistance estate recovery, Hennepin County and the Commissioner should be treated as one and the same agency for purposes of this appeal. Under the law of agency, the representations made by the Assistant County Attorney at the hearing on August 31, 2009, and the failure of the Commissioner to object to those Stipulations, bind the Commissioner to those Stipulations. Based on those Stipulations and the facts not in evidence at the time of the Stipulations, there is no evidence in the record of this case that any assets owned by Dorothy Perrin at the time of her death transferred to her spouse Richard Perrin at the time of her death or afterwards.

II. THE DISTRICT COURT DID NOT ERR IN APPLYING THE HOLDINGS IN THE BARG CASE TO THIS CASE

A. THE HOLDINGS IN THE BARG CASE

In *Barg,* the Minnesota Supreme Court was asked for the first time to construe the provisions of 42 U.S.C. § 1396p(b)(1)(B), as it might apply to recovery of medical assistance benefits correctly paid. The stipulated facts in the Barg case were similar to the stipulated facts in this case, with the exception that a modest amount of assets transferred to the surviving spouse on the death of the medical assistance spouse in the Barg case, whereas in this case there is no evidence that any assets transferred from the medical assistance spouse to the surviving spouse when the medical assistance spouse died. The only asset of significant value in the surviving spouse's Estate was the homestead, which had been transferred to the surviving spouse prior to the death of the predeceased medical assistance spouse. The County was asserting an estate recovery claim under Minn. Stat. § 256B.15 against the estate of a surviving spouse who never received medical assistance benefits in an attempt to recover medical assistance benefits paid on behalf of the predeceased spouse. Mille Lacs County and the Commissioner (as Amicus) argued that the 1993 amendments to the federal statute expanded rather than limited the states' authority to pursue estate

recovery of medical assistance benefits. Slip Opinion at 13, *Barg* at 52. The Estate and the Amici Curiae argued that no recovery was allowed against the estate of a surviving spouse who never received medical assistance benefits. Alternatively, the Estate and the Amici Curiae argued that recovery against the estate of a surviving spouse was limited to assets in which the predeceased spouse had a legal title or interest at the time of death, to the extent of the interest, and that the assets must transfer at the time of the predeceased spouse's death to the surviving spouse. Slip Opinion at 13-14, *Barg* at 52-53. The issues presented in the Barg case are summarized by the Court at Slip Opinion 14-15, *Barg* at 53-54.

To reach the Barg Court's holding that Minn. Stat. § 256B.15, subd. 2 was in conflict with federal law and therefore pre-empted to the extent of the conflict, the Court had to reach numerous holdings and conclusions of law that were essential to its final resolution of the case. Among these holdings and conclusions are the following:

First, the Court held that the federal statute establishes a general prohibition against recovery of correctly paid Medicaid benefits, subject to three specified exceptions, citing 42 U.S.C. § 1396p(b)(1). Slip Opinion at 17, *Barg* at 64.

Second, only the exception in 42 U.S.C. § 1396(b)(1)(B) applies to recovery against a surviving spouse's estate. Slip Opinion at 18, *Barg* at 65. Despite the Court's observation that the plain language of the exception in 42 U.S.C. § 1396(b)(1)(B) "comported more closely" with an interpretation of the language that would bar any claim against the estate of a surviving spouse for benefits paid on behalf of a predeceased spouse, the Court concluded, in recognition of the split of authority in other jurisdictions, that the federal exception did not prevent a claim from being asserted against the estate of a surviving spouse. Slip Opinion at 25, *Barg* at 68[2].

Third, the Court held that "there is no principled basis on which to interpret the federal law to allow recovery of assets in which the Medicaid recipient did not have an interest at the time of her death."

> Accordingly, we hold that Minn. Stat. § 256B.15, subd. 2, is partially preempted to the extent that it authorizes recovery from the surviving spouse's estate of assets that the recipient owned as marital property or as jointly-owned property *at any time* during the marriage (emphasis by the Court). To be recoverable the assets must have been subject to an interest of the Medicaid recipient at the time of her death. Slip Opinion at 30-31, Barg at 71.

Fourthly, the Court held:

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[2] "Accordingly, we hold that federal law does not preclude all recovery from the estate of a surviving spouse, and the authorization in subdivision 1a to make a claim against the estate of a surviving spouse is therefore not preempted." Slip Opinion at p. 25. It does not follow, however, that allowing a claim to be filed requires that the claim be allowed after it is filed.

> [T]hat for an interest to be traceable to and recoverable from a surviving spouse's estate, the interest must be (1) an interest recognized by law, (2) which the Medicaid recipient held at the time of death, and (3) that resulted in a conveyance of an interest of some value to the surviving spouse that occurred as a result of the recipient's death.[3] Further, to the extent the interest is not part of the standard probate estate, Minnesota law must have expanded the definition of estate to include the interest,[4] as authorized by section 1396p(b)(4). Slip Opinion at 33, *Barg* at 72.

B. THE DISTRICT COURT PROPERLY APPLIED THE BARG HOLDINGS TO THIS CASE.

The District Court clearly recognized that federal law as construed and applied by the Barg case also applied to this case. Order of February 3rd , 2010, Finding No. 2 at p. 2. "Counsel further agreed that the validity of the claim was controlled by the Minnesota Supreme Court's decision in *In re Estate of Barg, . . .* because the interest of the surviving spouse herein, like that in *Barg*, was not marital property or jointly owned property." In the absence of any evidence or even colorable claim that identifiable assets of value transferred from the Estate of Dorothy Perrin to her surviving spouse Richard when Dorothy died, the facts of this case do not permit a claim against the Estate of Dorothy Perrin to be allowed under the holdings of the Barg case. The District Court relied on the Stipulations made by the parties at the hearing on August 29, 2009, to determine that the

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[3] The Court reached the earlier conclusion that marital property rights, under then applicable Minnesota law, dissipated at death rather than transferring to the surviving spouse. Slip Opinion at 34.

[4] As noted in the Commissioner's Brief at footnote 7, p. 21, Minn. Stat.§§ 256B.15 and 519.05 were amended in 2009. The amendments do not apply to this case.

medical assistance claim could not be allowed under Minn. Stat. § 256B.15 as partially preempted in the Barg case. Order of June 3, 2010, at 2. The District Court then went on to consider whether the claim could be allowed under Minn. Stat. § 519.05.

III.THE DISTRICT COURT CORRECTLY APPLIED THE DOCTRINE OF COLLATERAL ESTOPPEL TO BAR A CLAIM UNDER MINN. STAT. 519.05

A. THE BARG COURT CONSIDERED AND DISCARDED MINN. STAT. 519.05 AS AN ALTERNATIVE THEORY ALLOWING RECOVERY OF MEDICAL ASSISTANCE BENEFITS.

To reach the question of application of collateral estoppel against the County and the Commissioner on the issue of Minn. Stat. § 519.05 as an alternative theory of recovery, the District Court first had to determine whether the Barg Court left open the question whether Minn. Stat. § 519.05 was a viable alternative theory under which medical assistance benefits correctly paid could be recovered independent of the preempted provisions of Minn. Stat. § 256B.15. The District Court was provided with copies of relevant portions of the briefs filed by the Estate and the County in the Barg case. The briefs clearly showed that the availability of Minn. Stat. § 519.05 as an alternative, independent source of recovery was argued to the Court. It was also clear to the District Court that the Barg opinion does not discuss or even mention Minn. Stat. § 519.05.

From this silence, the Commissioner argues that the Barg decision failed to reach a judgment on the merits of a claim for recovery of medical assistance benefits under Minn. Stat. § 519.05. App. Brief, 25ff.

The Commissioner confuses silence with the lack of need to discuss an alternative theory of recovery that lacks merit.

The Barg Court clearly recognized that preemption of state law by federal law is generally disfavored. Slip Opinion, 15-16, *Barg* at 64. Mille Lacs County offered an alternative theory of recovery that would have allowed the Barg Court to avoid conflict preemption analysis of Minn. Stat. § 256B.15.

The Barg Court, after lengthy discussion of the federal statute and the cases construing it in other states, did not accept the alternative theory of recovery or it would have grounded its opinion on that theory. This was not by mistake or inadvertence or intentional omission to allow the theory to be litigated another day.

The Barg Court reached its final holding as follows:

> "We conclude that Dolores had no interest in assets at the time of her death that were part of a probate estate or an expanded estate definition permissible under federal law, and therefore there is no basis for the County's'claim against the estate." (Emphasis Added) Slip Opinion at 34, *Barg* at 72.

B. HENNEPIN COUNTY AND THE COMMISSIONER ARE PROPER PARTIES FOR APPLICATION OF COLLATERAL ESTOPPEL ON THE ISSUES DECIDED BY THE BARG COURT.

Collateral estoppel is appropriate when the following apply: "(1) the issue was identical to one in a prior adjudication; (2) there was a final judgment on the merits; (3) the estopped party was a party in privity with a party to the prior adjudication; and (4) the stopped party was given a full and fair opportunity to be heard on the adjudicated issue." *Ellis v. Minneapolis Comm'n on Civil Rights*, 319 N.W.2d 702, 704 (Minn. 1982) (quoting *Victory Highway Village, Inc. v. Weaver*, 480 F. Supp. 71, 74 (D. Minn. 1979)). All the elements of collateral estoppel are met in this case.

First, the issue of whether the surviving spouse's estate is responsible for recovery of medical assistance benefits correctly paid for the predeceased spouse is identical in both the Barg case and this case.

Second, the Minnesota Supreme Court made a final judgment on the merits based on the lengthy briefs filed by the parties and the amici. Mille Lacs County petitioned for certiorari, but the United States Supreme Court denied certiorari after the United States submitted its Amicus brief arguing that the decision of the Minnesota Supreme Court was correct.

Third, although Hennepin County was not a direct party to the Barg Case, the Commissioner, as a vigorous amicus, clearly was. Hennepin County is bound

by the decision in the Barg case because it is in privity with Mille Lacs County and the Commissioner, for the purpose of proper administration of the medical assistance estate recovery program in Minnesota.

Black's Law Dictionary with Pronunciations Sixth Edition defines privity as follows:

> In its broadest sense, "privity" is defined as mutual or successive relationships to the same right of property, or such an identification of interest of one person with another as to represent the same legal right. *Petersen v. Fee Intern., Ltd.*, D.C.Okl., 435 F. Supp. 938, 942. Derivative interest founded on, or growing out of, contract, connection, or bond of union between parties; mutuality of interest. *Hodgson v. Midwest Oil Co.*, C.C.A.Wyo., 17 F.2d 71, 75. Thus, the executor is in privity with the testator, the heir with the ancestor, the assignee with the assignor, the donee with the donor, and the lessee with the lessor. *Litchfield v. Crane*, 123 U.S. 549, 8 S.Ct. 2310, 31 L.Ed. 199.

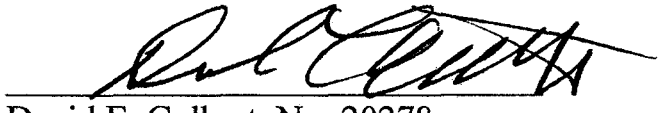
Under the statutory framework discussed in this Brief at Section I.A., the Commissioner is in privity with each county which litigates a medical assistance dispute, and each County is in privity with the commissioner with respect to such litigation. To allow otherwise would be to allow each of the 87 County agencies to litigate the same disputed medical assistance issue in 87 separate adjudications. The medical assistance estate recovery program should only be allowed one bite of each disputed apple.

CONCLUSION

The Commissioner is attempting to re-litigate issues that were decided in the Barg case adversely to the Commissioner and the County. The District Court recognized this attempt for what it is and applied the doctrine of collateral estoppel to avoid wasting any more judicial resources. The District Court committed no reversible error. The Estate is entitled to summary judgment as a matter of law. For these reasons, Respondent Estate of Perrin requests that this Court affirm the District Court Order of June 3, 2010, denying and disallowing the County and the Commissioner's claim against the Estate of Perrin in full.

Dated: November 24, 2010

Respectfully submitted,



David E. Culbert, No. 20278
7401 Metro Boulevard, Suite 485
Minneapolis, MN 55439
Tel: (952) 546-5440
Fax: (952) 746-4180

Attorney for Estate of
Richard L. Perrin

CERTIFICATE OF COMPLIANCE

WITH MINN. R. APP. PRO. 132.01, SUBD. 3

The undersigned certifies that the Brief submitted herein contains 5,199 words and complies with the type/volume limitations of the Minnesota Rules of Appellate Procedure 132. This Brief was prepared using a proportional spaced font size of 13 pt. The word count is stated in reliance on Microsoft Word 2000, the word processing system used to prepared this Brief.

David E. Culbert