

CASE NO. A04-2491

State of Minnesota
In Court of Appeals

DAVID ANDERSON,

Defendant-Appellant,

vs.

NORTHFIELD CARE CENTER, INC., A Minnesota Corporation,

Plaintiff-Respondent.

(Hennepin County Court File No.: AC 04-000171)

APPELLANT'S REPLY BRIEF AND APPENDIX

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TABLE OF CONTENTS

TABLE OF CONTENTS..... 1

TABLE OF AUTHORITES 2

INTRODUCTION 3

ARGUMENT..... 3

 I. NORTHFIELD NOW CONCEDES THAT THE PROPER STANDARD FOR
 IMPOSING LIABILITY REQUIRES A “KNOWING FAILURE TO SPENDDOWN”;
 WHICH THE TRIAL COURT EXPRESSLY DECLINED TO FIND..... 3

 II. NORTHFIELD CANNOT NOW PRESENT AN ARGUMENT FOR LIABILITY
 UNDER MINN. STATS. § 523.21 BECAUSE THE COURT DID NOT FIND ANY SUCH
 VIOLATION; AND A FACT QUESTION EXISTS. 5

 III. RESPONDENT’S BRIEF MISSTATES FACT AND LAW..... 6

 IV. NORTHFIELD CANNOT RECOVER ATTORNEYS’ FEES FROM ANDERSON... 6

CONCLUSION..... 7

TABLE OF AUTHORITIES

Cases

DLH, Inc. vs. Russ, 566 N.W.2d 60, 69-70 (Minn. 1997)..... 6

INTRODUCTION

Respondent's Brief attempts to misstate the law and the conclusions of the trial court to rectify a clear error in application of the law and genuine issue as to a material fact. The findings of the trial court are clearly deficient to find liability under Minn. Stat. 144.6501 subd. 4(d) because the court expressly declined to make any finding regarding Appellant's use of Resident's assets.

ARGUMENT

I. NORTHFIELD NOW CONCEDES THAT THE PROPER STANDARD FOR IMPOSING LIABILITY REQUIRES A "KNOWING FAILURE TO SPENDDOWN"; WHICH THE TRIAL COURT EXPRESSLY DECLINED TO FIND.

Anderson appealed the Court's determination that he was liable for his mother's obligations to Northfield on the grounds the trial court had no basis for finding that Anderson failed to "spenddown" his mother's income and assets.

In its Memorandum¹ the trial court stated that the Court "need not rule on whether Anderson failed to spenddown appropriately, because, whatever the reason for the gap in coverage, Anderson is liable as the Responsible Party under the statute and the first clause of the duties² under the Agreement and the statute." (Order at 9; A00020).

¹ The trial court noted that Anderson claimed that the Agreement does not contain a personal guarantee, that he acted in good faith, did not violate any fiduciary duties and did not misapply Resident's assets. (Memorandum at 6; A00017).

² The so-called duties are not clearly and unambiguously defined. (Memorandum at 3; A00014). All that is stated is that, "The duties of the Responsible Party are detailed at various places in the Admission Agreement." (*Id.*). This obviously adds nothing and certainly does not define the duties. Most importantly this section goes on to provide a clear limitation by stating, "If the Responsible Party fails to make timely payment *using the Resident's income and assets or knowingly fails to spenddown the Resident's assets appropriately for the purpose of obtaining Medical*

The Court did not make any findings and declined even to look at the facts to determine whether Anderson knowingly and intentionally failed to spenddown his mother's income and assets.

After Anderson pointed out that the federal and state law prohibited the trial court from holding Anderson liable as a "responsible party" for his mother's debt as an absolute guarantor, Northfield now seemingly recognizes that this Court must reverse, because it misstated the facts and obfuscated the proceedings, by arguing that the Court *did* find Anderson failed to spenddown his mother's estate, which the Court obviously did not do.

However artfully Northfield tries to avoid the law it admits in its Brief that the only applicable standard is the knowing failure to spenddown the estate. Here are few glaring examples. Northfield labels Argument I: "THE PARTIES' AGREEMENT CLEARLY HOLDS ANDERSON LIABLE ...BECAUSE HE KNOWINGLY AND PURPOSELY FAILED TO TIMELY PAY NORTHFIELD WITH RESIDENT'S "SPENDDOWN" INCOME WHICH ANDERSON CONTROLLED." (Respondent's Brief at 9). Likewise, Northfield argues, "All parties agree the dispute arises from Anderson's non-payment of Resident's spenddown." (*Id* at 10). Northfield cites as authority for this categorical statement the Order at AA00016 and Appellant's Brief at 5. (*Id* fn. 47). However, page 5 of the Trial Court's Memorandum (AA00016) does not contain any finding by the trial court (and certainly no admission) that Anderson failed to spenddown his mother's estate. Further, an examination of page 5 of the Appellant's Brief states exactly the opposite of what Northfield alleges. At page 5 Anderson's Brief states, "The Order on appeal *declined* to make findings on questions of the amount of Resident's assets remaining and the appropriateness of Appellant's application of assets to the

Assistance, the Responsible Party will be liable to the Facility for the cost of care which are not paid for by third party payers." (Id.) (emphasis supplied)

spenddown.” (Appellant’s Brief at 5). Likewise, Northfield states, “As the District Court found and all parties agree, Anderson knowingly did not timely pay Northfield for its services with Resident’s assets and income, which Anderson controlled.” (Respondent’s Brief at 12). Northfield cites the Order at AA00014-16, 00019-20 and 00022-23. Yet there is no such finding or admission. Likewise, Northfield concedes the point by stating, “[A]nderson is only liable to Northfield because he knowingly refused to timely and fully pay Northfield *from Resident’s assets and income*.” (Respondent’s Brief at 13) (emphasis in original). As with the other citations, Respondent’s citation provides no support for the statement.³ Furthermore, Northfield concedes this point in Argument II by arguing that, “ [A]NDERSON IS LIABLE TO NORTHFIELD PURSUANT TO MINN. STATS. § 144.6501 BECAUSE ANDERSON HAD ACCESS TO AND CONTROL OF RESIDENT’S ASSETS AND INCOME AND KNOWINGLY AND PURPOSELY FAILED TO TIMELY PAY NORTHFIELD WITH RESIDENT’S ASSETS AND INCOME.” (Respondent’s Brief at 14.)

In making these statements, Respondent ignores the fact that the trial court *did not rule*, in fact *expressly declined to rule*, that Anderson knowingly or purposefully failed to pay from the Resident’s assets. This question of fact is essential to Respondent’s claim, and the findings of fact issued by the trial court leave it unanswered.

II. NORTHFIELD CANNOT NOW PRESENT AN ARGUMENT FOR LIABILITY UNDER MINN. STATS. § 523.21 BECAUSE THE COURT DID NOT FIND ANY SUCH VIOLATION; AND A FACT QUESTION EXISTS.

Northfield recognizes that it has lost any possibility of support for a claim under its Agreement because it violated state and federal law and, therefore, has resorted to arguing for liability under Minn. Stats. § 523.21. (Respondent’s Brief at 16-17).

³ For example, Respondent cites all of the pages of the Order and Memorandum. (Respondent’s Brief at 13, fn. 60).

However, the trial court did not make any such finding or order, a fact that Northfield concedes by not citing to any portion of the Order for such a legal argument. (*Id.*). Even if Northfield could make such an argument Northfield admits there is a fact question. Northfield now acknowledges that the statute in question requires a showing of “injur[ry] by an action taken by the attorney-in fact in *bad faith* under power of attorney.” (Respondent’s Brief at 17). There is no allegation or citation to any finding of bad faith. (*Id.*).

III. RESPONDENT’S BRIEF MISSTATES FACT AND LAW.

Respondent’s Brief (at page 9) reiterates its argument below that Resident and Legal Representatives are interchangeable terms. This is false and misleading as Appellant’s Brief states at page 17.

IV. NORTHFIELD CANNOT RECOVER ATTORNEYS’ FEES FROM ANDERSON.

Northfield argues it is entitled to recover attorneys’ fees despite the statutory prohibition against imposing liability on a “Responsible Party.” (See discussion above).

The trial court found Anderson liable for costs and fees based solely on Paragraph 4.2 “Collection costs.” (Memorandum at 11; A00022). The Court did, however, allow Anderson to respond to the reasonableness of the requested fees. (*Id.* at 12). Northfield’s argument that Minn. Stats. § 523.21 has no application because the trial court never adopted this approach or basis.

Furthermore, Paragraph 4.2 expressly provides, “The *Resident* will pay... collection costs...including reasonable attorneys’ fees and late charges” (Order at 4; A00015). As noted above, Northfield concedes that the trial court cannot find Anderson to have personally guaranteed payment of his mother’s obligations separate and distinct from his duty to pay down her estate in good faith. Given this point, Northfield must also concede that the trial court erred

in imposing liability without any finding of Anderson's intention and knowing failure to spenddown his mother's estate.

VI. THE COURT MUST REVERSE THE TRIAL COURT AND GRANT ANDERSON SUMMARY JUDGMENT.

Anderson submitted undisputed evidence that Rice County Social Services allowed Anderson to spend the mother's income and assets for his mother's rental property expenses. (Exhibit D; ARA000001).⁴ Anderson also submitted an undisputed exhibit showing all of Resident's income and expenses demonstrating that Resident's income and assets were used solely for purposes of paying permitted rental property expenses and \$1,652.00 in payment of miscellaneous personal expenses. (Exhibit E; ARA000002)⁵. Northfield failed to produce any evidence to rebut this undisputed evidence. Since Northfield now conceded that the appropriate standard under the contract and the statute requires a showing by Northfield that Anderson knowingly failed to spenddown his mother's estate, which Northfield failed to even attempt to show, the Court must reverse the trial court and grant Anderson summary judgment on all claims, including any claims for attorneys' fees. *DLH, Inc. vs. Russ*, 566 N.W.2d 60, 69-70 (Minn. 1997).

CONCLUSION

For all of the reasons stated above the Court should reverse the trial court and hold as a matter of law that Anderson cannot be held responsible for his mother's obligations to Northfield. In the alternative, the Court should reverse the trial court and remand with clear instructions regarding the limited obligations of Anderson as a "responsible party" under federal and Minnesota law.

⁴ Attached to Mr. Anderson's Affidavit on July 28, 2004 (ARA00003-00004)

⁵ *Ibid.*

Dated: May 9, 2005.

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