

CASE NO. A04-2491

State of Minnesota  
In Court of Appeals

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DAVID ANDERSON,

*Defendant-Appellant,*

vs.

NORTHFIELD CARE CENTER, INC., A Minnesota Corporation,

*Plaintiff-Respondent.*

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

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**RESPONDENT'S BRIEF AND APPENDIX**

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## **STATEMENT OF THE ISSUE**

Does Appellant David Anderson's purposeful and knowing failure to timely pay Respondent Northfield Care Center, Inc. from his mother's assets and income as directed by Rice County make Appellant David Anderson liable to Respondent Northfield Care Center, Inc. for its costs of care and costs of collection pursuant to the parties' contract and Minn. Stat. §§ 144.6501 and 523.21?

The District Court held David Anderson is liable to Respondent Northfield Care Center, Inc. for its costs of care and costs of collection because he breached the parties' contract and his duties pursuant to Minn. Stat. §§ 144.6501 and 523.21.

Minn. Stat. § 144.6501.

Minn. Stat. § 523.21.

Rule 56.03 of the Minnesota Rules of Civil Procedure.

Rule 119 of the Minnesota General Rules of Practice – District Courts.

## **STATEMENT OF THE CASE**

On August 30, 2004, Appellant David Anderson (Anderson) and Respondent Northfield Care Center, Inc. (Northfield) brought cross motions for summary judgment in Hennepin County District Court, the Honorable Marilyn Brown Rosenbaum presiding, and Anderson brought a motion to amend his answer and counterclaim. On October 22, 2004, Judge Rosenbaum ruled in

favor of Northfield granting summary judgment against Anderson and awarding Northfield judgment for its services and its costs of collection, including its attorneys' fees, pursuant to the parties' contract, Minn. Stat. §§ 144.6501 and 523.21, Rule 56.03 of the Minnesota Rules of Civil Procedure and Rule 119 of the Minnesota General Rules of Practice – The District Courts.<sup>1</sup> Judge Rosenbaum also dismissed Anderson's motions for summary judgment and to amend his answer and counterclaim and awarded Northfield additional costs pursuant to Rule 524(b) of the Minnesota General Rules of Practice – The District Courts.<sup>2</sup> Anderson appeals the District Court's summary judgment and attorneys' fees award in favor of Northfield but does not appeal the District Court's denial of his motions for summary judgment or to amend his answer and counterclaim or the District Court's award of additional costs pursuant to Rule 524(b).

### **STATEMENT OF FACTS**

#### **A. The Parties.**

Northfield is a Minnesota corporation engaged in managing and operating a nursing home providing health care, personal care and related

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<sup>1</sup> Order and Memorandum of the District Court dated October 22, 2004 (Order) at Appellant's Appendix (AA) 00012-23 and Supplemental Order of the District Court dated November 15, 2004 (Supp. Order) at Respondent's Appendix (RA) 1-2.

<sup>2</sup> Order at AA 00012-00023.

services.<sup>3</sup> Resident, a vulnerable adult,<sup>4</sup> resided at Northfield from January 12, 2001 through March 30, 2003.<sup>5</sup> Anderson is Resident's son and, at all times relevant, was his mother's attorney-in-fact under Power of Attorney<sup>6</sup> and had control of and access to his mothers assets and income.<sup>7</sup>

Anderson, an attorney himself, reviewed and signed Northfield's Admission Agreement (Agreement) on behalf of and in the place of Resident as Resident's Legal Representative and in his own capacity as Resident's Responsible Party and attorney-in-fact under Power of Attorney.<sup>8</sup> When Anderson entered into the Agreement he was already Resident's attorney-in-fact under Power of Attorney and had direct access to and control of Resident's assets and income.<sup>9</sup>

#### **B. The Agreement.**

Before Resident was admitted to Northfield, Anderson entered into the Agreement as Resident's Legal Representative, Responsible Party and attorney-in-fact under Power of Attorney.<sup>10</sup> When Anderson entered into the Agreement

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<sup>3</sup> Affidavit of Denise Budd (Budd Aff.) at AA 00009 at ¶ 2; Northfield's Amended Complaint (Complaint) at AA 00040.

<sup>4</sup> Order at AA 00014. Minn. Stat. § 626.5572, Subd. 21 defines any resident of a skilled nursing facility as a "vulnerable adult."

<sup>5</sup> Order at AA 00014; Budd Aff. at AA 00010 at ¶ 4; Complaint at AA 00040-41.

<sup>6</sup> Order at AA 00014; Affidavit of Belinda Peterson (Peterson Aff.) at RA 26-42 at ¶¶ 5 and 6, Exhs. A and B.

<sup>7</sup> Order at AA 00014, 00016 and 00020; Peterson Aff. at RA 26-42 at ¶¶ 5 and 6, Exhs. A and B.

<sup>8</sup> Order at AA 00014, 00016 and 00020; Peterson Aff. at RA 26, 32, 33 and 35 at ¶ 6, Exh. A, § IX, Signatures and Status Sheet.

<sup>9</sup> Order at AA 00014; Peterson Aff. at RA 26, 41 and 42 at ¶ 6, Exh. B.

<sup>10</sup> Order at AA 00014; Peterson Aff. at RA 26-40 at ¶ 6, Exh. A.

he had direct access to and control of Resident's assets and income.<sup>11</sup> Per Northfield's standard practice, Northfield gave Resident and Anderson admission information, including a copy of the Agreement, while Resident and Anderson considered Northfield's facility.<sup>12</sup> Northfield encouraged Resident and Anderson to review the Agreement in detail and ask questions before signing it.<sup>13</sup> Anderson signed the clear and easily understandable Agreement of his own volition.<sup>14</sup> Northfield did not require Anderson execute the Agreement as a condition of Resident's admission.<sup>15</sup>

As plainly shown throughout the Agreement, Anderson agreed to fully pay Northfield for "any monthly income minus allowances, as directed by the Medical Assistance program"<sup>16</sup> and to pay for such services provided "by the 10<sup>th</sup> of the month."<sup>17</sup> Anderson also agreed to pay Northfield late charges and any collection costs, including attorney's fees, incurred in recovering amounts due.<sup>18</sup> Because Resident was receiving Medical Assistance benefits, Anderson agreed

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<sup>11</sup> Order at AA 00014, 00016 and 00020; Peterson Aff. at RA 26-42 at ¶ 6, Exhs. A and B.

<sup>12</sup> Peterson Aff. at RA 25 and 26 at ¶¶ 2-6.

<sup>13</sup> Peterson Aff. at RA 25, 26 and 32 at ¶¶ 3 and 6, Exh. A, § IX.

<sup>14</sup> Order at AA 00014 and 00020; Peterson Aff. at RA 26, 32 and 33 at ¶ 6, Exh. A, § IX and Signatures.

<sup>15</sup> Peterson Aff. at RA 26 at ¶ 4.

<sup>16</sup> Order at AA 00014-16 and 00019-20; Peterson Aff. at RA 26, 28, 30, 23, 33 and 35 at ¶ 6, Exh. A, § III, ¶ 3.2.2, § IX, Signatures and Status Sheet.

<sup>17</sup> Peterson Aff. at RA 26, 28, 32, 33 and 35 at ¶ 6, Exh. A, § III, ¶ 3.1.1, § IX, Signatures and Status Sheet.

<sup>18</sup> Order at AA 00015 and 00022-23; Peterson Aff. at RA 26, 30, 32, 33 and 35 at ¶ 6, Exh. A, § IV, § IX, Signatures and Status Sheet.

he was jointly and severally liable for these obligations.<sup>19</sup> During Resident's stay at Northfield, Anderson controlled all of Resident's assets and income.<sup>20</sup>

### **C. Medical Assistance.**

At all times relevant, Resident was receiving Medical Assistance benefits from Rice County.<sup>21</sup> Accordingly, Rice County determined the amount Resident and Anderson were to pay Northfield from Resident's assets and income as Resident's "spenddown" amount<sup>22</sup> in order for Resident to continue to qualify for Medical Assistance benefits.<sup>23</sup> Rice County also directed Resident and Anderson to directly pay Northfield this amount on a monthly basis and sent Resident and Anderson multiple notices of the same.<sup>24</sup> This spenddown amount is not calculated by Northfield.<sup>25</sup> As Anderson agrees in his brief,<sup>26</sup> Anderson,

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<sup>19</sup> Peterson Aff. at RA 26, 28, 29, 32, 33 and 35 at ¶ 6, Exh. A, § III, ¶ 3.2, § IX, Signatures and Status Sheet.

<sup>20</sup> Order at AA 00014, 00016 and 00020; Peterson Aff. at RA 26-42 at ¶ 6, Exhs. A and B.

<sup>21</sup> Order at AA 00014, 00016 and 00020; Budd Aff. at AA 00009-10 at ¶¶ 3, 5 and 6 and RA 43-84 at Exhs. A and B.

<sup>22</sup> Order at AA 00014, 00016 and 00020; Budd Aff. at AA 00009-10 at ¶¶ 3 and 5 and RA 43-83 at Exh. A; Affidavit of Robert Rodè (Rodè Aff.) at RA 99, 110-11 at ¶ 4 and Exh. 5. This "spenddown" amount is also known as "resident's resources" and "lrc/LTC (long term care) obligation."

<sup>23</sup> Order at AA 00014 and 00016; Budd Aff. at AA 00009-10 at ¶¶ 3, 5 and 6 and RA 43-83 at Exhs. A and B; Rodè Aff. RA 99, 100-11 at ¶ 4, Exh. 5; Peterson Aff. at RA 26, 28, 29, 32, 33 and 35 at ¶ 6, Exh. A, § III, ¶ 3.2.1, § IX, Signatures and Status Sheet.

<sup>24</sup> Order at AA 00016 and 00020; Budd Aff. at AA 00009-10 at ¶¶ 3 and 5 and RA 43-92 at Exh. A.

<sup>25</sup> Order at 00016; Budd Aff. at AA 00009-10 at ¶¶ 3 and 5-8 and RA 43-92 at Exhs. A-C; Rodè Aff. at RA 99, 110-11 at ¶ 4, Exh. 5; Peterson Aff. at RA 26, 28 and 29 at ¶ 6, Exh. A., § III, ¶ 3.2.1.

<sup>26</sup> Appellant's Brief at pg. 5.

however, failed and refused to pay Northfield this spenddown amount in its entirety<sup>27</sup> and this unpaid spenddown and unpaid room differential costs constitute the amount due and owing Northfield for its services.<sup>28</sup> The District Court found Resident had ample assets and income to timely pay Northfield for the debt at issue and Anderson failed to timely pay Northfield.<sup>29</sup>

**D. The Debt.**

Northfield sought to recover its costs for its services provided to Resident and its costs of collection, including its attorneys' fees and costs. During this collection process, Northfield sent Anderson timely statements demanding the amount Anderson owed Northfield, for its services, most of which was for unpaid spenddown, and for its costs of collection, all recoverable under the Agreement.<sup>30</sup>

**E. Procedural History and Anderson's Counterclaims.**

When Anderson failed and refused to abide by the Agreement, Northfield sought legal counsel and assistance to collect the amounts owed for its services and its collection costs.<sup>31</sup> Because of the amount of the principal debt for Northfield's services, Northfield pursued Anderson in conciliation court and was

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<sup>27</sup> Order at AA 00016 and 00019-20; Budd Aff. at AA 00010 at ¶¶ 7-9 and RA 43-97 at Exhs. A-D.

<sup>28</sup> Order at AA 00016 and 00019-20; Budd Aff. at AA 00010 at ¶¶ 5-9 and RA 43-97 at Exhs. A-D.

<sup>29</sup> Order at AA 00012-23.

<sup>30</sup> Order at AA 00020; Budd Aff. at AA 00010 at ¶¶ 5-9 and RA at 43-97 at Exhs. A-D; Appellant's Brief at pg. 5.

<sup>31</sup> Budd Aff. at AA 00010-11 at ¶¶ 9-13.

awarded a judgment.<sup>32</sup> Anderson then appealed the judgment to the District Court by filing a Demand for Removal of Case to District Court and subsequently asserted counterclaims forcing Northfield to again seek legal counsel.<sup>33</sup> Anderson agreed to dismiss his first set of counterclaims just prior to the August 30, 2004 hearing<sup>34</sup> and the District Court denied Anderson's motion to amend his answer to include additional counterclaims.<sup>35</sup>

### **STANDARD OF REVIEW**

Appellant is correct in his statement of the standard of review for the District Court's decision on the parties' cross-summary judgment motions. Since this is an appeal of a decision on a motion for summary judgment, this Court must consider whether there are any genuine issues of material fact and whether the District Court erred in its application of the law.<sup>36</sup> In this case, since both parties moved for summary judgment, the parties agree there are no material facts in dispute. In cases where there are no material facts in dispute, this Court reviews the District Court's application of the law *de novo*.<sup>37</sup>

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<sup>32</sup> Order at AA 00016-17; Budd Aff. at AA 00011 at ¶¶ 12 and 13.

<sup>33</sup> Order at AA 00016-17; Budd Aff. at AA 00011 at ¶ 13.

<sup>34</sup> Order at AA 00012, 00017-18 and 00020-22; Rodè Aff. at RA 98, 104 and 105 at ¶ 2 and Exh. 1.

<sup>35</sup> Order at AA 00012-23.

<sup>36</sup> Offerdahl v. University of Minn. Hosps. & Clinics, 426 N.W.2d 425, 427 (Minn. 1988); Minn. R. Civ. P. 56.03.

<sup>37</sup> Hubred v. Control Data Corp., 442 N.W.2d 308, 310 (Minn. 1989).

As to the District Court's award of attorneys' fees, however, this Court should not reverse the District Court's award absent an abuse of discretion.<sup>38</sup>

### **ARGUMENT**

Because Anderson, an attorney himself, entered into and executed the Agreement with Northfield as Legal Representative in the place of and on behalf of Resident and in his own capacity as Resident's Responsible Party and attorney-in-fact under Power of Attorney and Anderson knowingly and purposely failed to timely pay Northfield Resident's monthly spenddown income as determined by Rice County pursuant to the Agreement and Minn. Stat. § 144.6501, Anderson is liable to Northfield for its costs of care. For these same reasons, pursuant to the Agreement and Minn. Stat. § 523.21, as Resident's Legal Representative, Anderson is liable to Northfield for its costs of care and its costs of collection. Contrary to Anderson's argument at the District Court that "[t]here is no statute" or "contract provision" imposing any liability on Anderson and his current argument to this Court,<sup>39</sup> Northfield did not require Anderson to guarantee payment from his own assets and income.

#### **I. THE PARTIES' AGREEMENT CLEARLY HOLDS ANDERSON LIABLE FOR THE DEBT AT ISSUE BECAUSE HE KNOWINGLY**

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<sup>38</sup> Becker v. Alloy Hardfacing & Eng'g Co., 401 N.W.2d 655, 661 (Minn. 1987); Independent School Dist. No. 404 v. Castor, 670 N.W. 2d 758, 763 (Minn. Ct. App. 2003); Duluth Superior Erection, Inc. v. Concrete Restorers, Inc., 665 N.W.2d 528, 539 (Minn. Ct. App. 2003).

<sup>39</sup> August 30, 2004, Hearing Transcript (Hearing Transcript) at RA 15, lines 17-23; Appellant's Brief.

**AND PURPOSELY FAILED TO TIMELY PAY NORTHFIELD WITH RESIDENT'S "SPENDDOWN" INCOME WHICH ANDERSON CONTROLLED.**

**A. As Resident's Legal Representative, Anderson Stepped-Into Resident's Shoes and Executed the Agreement on Resident's Behalf Undertaking Resident's Obligations Under the Agreement.<sup>40</sup>**

Anderson, Resident's attorney-in-fact under Power of Attorney, knew what he was doing when he signed the Agreement on behalf of Resident as her Legal Representative.<sup>41</sup> As Resident's Legal Representative, Anderson stepped into Resident's shoes and executed the Agreement on Resident's behalf obligating himself to everything Resident was otherwise obligated to under the Agreement.<sup>42</sup> Throughout the Agreement, Resident and Legal Representative are synonymous and used interchangeably<sup>43</sup> and their duties, obligations and responsibilities owed to Northfield are the same.<sup>44</sup>

As Resident's Legal Representative, Anderson agreed to be liable to Northfield to the extent he failed to perform under the Agreement.<sup>45</sup> Anderson

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<sup>40</sup> Order at AA 00012-23; Peterson Aff. RA 26, 27, 32 and 33 at ¶ 6, Exh. A, Signatures and Status Sheet.

<sup>41</sup> Order at 00014 and 00020; Peterson Aff. RA 25, 26, 32, 33 and 35 at ¶¶ 2-6, Exh. A, § IX, Signatures and Status Sheet, Exh. B.

<sup>42</sup> Order at AA 00014, 00020 and 00022; Peterson Aff. at RA 26, 33 and 35 at ¶ 6, Exh. A, Signatures and Status Sheet.

<sup>43</sup> Peterson Aff. at RA 26-40 at ¶ 6, Exh. A.

<sup>44</sup> Peterson Aff. at RA 26, 33 and 35 at ¶ 6, Exh. A, Signatures and Status Sheet. See also, Minn. Stat. § 144.6501, Subd. 1 (c) which states: "Legal Representative' means an attorney-in-fact under a valid power of attorney executed by the prospective resident."

<sup>45</sup> Order at AA 00014-15, 00020 and 00022; Peterson Aff. at RA 26, 28-30, 32, 33 and 35 at ¶ 6, Exh. A, § III, § IX, Signatures and Status Sheet.

also agreed to pay Northfield late charges and its costs of collection under the Agreement if he failed to perform and/or if he otherwise failed to timely and fully-pay Northfield *from Resident's assets and income* all amounts due and owing under the Agreement.<sup>46</sup>

All parties agree the dispute arises from Anderson's non-payment of Resident's spenddown.<sup>47</sup> At all times relevant, Anderson knew he was supposed to pay Northfield for its services with Resident's assets and income and had the ability to do so.<sup>48</sup> Anderson's failure and refusal to timely pay Northfield is a breach of the Agreement making him personally liable to Northfield.<sup>49</sup>

**B. As Resident's Responsible Party, Anderson Agreed He Would Be Liable to Northfield for Resident's Costs of Care if Anderson Failed to Timely Pay Northfield Resident's Income and Assets or Abide By and Cooperate With Rice County to Qualify and Maintain Resident's Medical Assistance Eligibility.**

As Resident's Responsible Party under the Agreement, Anderson obligated himself to additional responsibilities including joint and several liability if he failed to fulfill his duties.<sup>50</sup> Specifically, the Agreement states:

The Resident and the Responsible Party . . . certify that: . . .  
they have read and do understand this entire Agreement . . .

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<sup>46</sup> Order at AA 00014-15, 00020 and 00022; Peterson Aff. at RA 26, 30, 32, 33 and 35 at ¶ 6, Exh. A, § IV, § IX, Signatures and Status Sheet.

<sup>47</sup> Order at AA 00016; Appellant's Brief at pg. 5.

<sup>48</sup> Order at AA 00014-16 and 00019-20; Budd Aff. at AA 00009-11 at ¶¶ 3-12 and RA 43-92 at Exhs. A-C.

<sup>49</sup> Order at AA 00014-16 and 00019-20; Peterson Aff. at RA 26-40 at ¶ 6 and Exh. A.

<sup>50</sup> Peterson Aff. at RA 26-30, 32, 33 and 35 at ¶ 6, Exh. A, § III, § IX, Signatures and Status Sheet.

[and] [t]hey agree to be responsible for performing the duties and obligations they have undertaken in this Agreement . . .<sup>51</sup>

The duties of the Responsible Party are detailed at various places in the Admission Agreement. Please read this Agreement carefully. 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 Assistance, the Responsible Party will be liable to the Facility for the Resident's costs . . .<sup>52</sup>

If the Resident is a recipient of Medical Assistance or Medicare at the time of admission, the Resident and the Responsible Party, if any, will be jointly and severally responsible [for maintaining Medical Assistance benefits and paying Northfield Resident's spenddown as directed by the County].<sup>53</sup>

Responsible Party: Desires to act for Resident with respect to certain duties and obligations of the Resident as set forth in this Agreement. The Responsible Party has access to the Resident's income and assets and agrees to apply the Resident's income and assets to pay for the Resident's care and, if necessary, complete an application for Medical Assistance on behalf of the Resident. The Responsible Party will be personally liable to the facility only to the extent that the Resident's income or assets are misapplied.<sup>54</sup>

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,

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<sup>51</sup> Order at AA 00014-15 and 00019; Peterson Aff. at RA 26-32 at ¶ 6, Exhibit A, § IX, ¶¶ 9.1 and 9.2.

<sup>52</sup> Order at AA 00014-15 and 00019; Peterson Aff. at RA 26 and 33 at ¶ 6, Exhibit A, Signatures.

<sup>53</sup> Order at AA 00014-15 and 00019; Peterson Aff. at RA 26, 29 and 30 at ¶ 6, Exh. A, § III, ¶¶ 3.2-3.2.3.

<sup>54</sup> Order at AA 00014-15 and 00019; Peterson Aff. at RA 26 and 35 at ¶ 6, Exh. A, Status Sheet.

which Anderson controlled.<sup>55</sup> Anderson made these decisions in the face of the Agreement, Northfield's demands for payment and Rice County's directives.<sup>56</sup> As such, Anderson is liable to Northfield.<sup>57</sup>

**C. The Agreement is Not Contrary to Any State or Federal Law.**

Anderson argues the Agreement violates state and federal law because it requires an unconditional guarantee from a responsible party to pay for the services provided to a resident from the responsible party's assets and income as a condition of admission. This, however, is not the case. While the legislature encourages facilities and responsible parties to contract for services provided to residents,<sup>58</sup> Northfield did not (and does not) require a responsible party to execute its Agreement as a condition of admission.<sup>59</sup> After meeting with Northfield and reviewing the Agreement, Anderson executed the Agreement of his own volition knowing he was voluntarily obligating himself to the terms and conditions of the Agreement as Legal Representative, attorney-in-fact and Responsible Party. In addition and in this case, Anderson is only liable to

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<sup>55</sup> Order at AA 00014-16, 00019-20 and 00022-23.

<sup>56</sup> Order at AA 00012-23; Appellant's Brief at pg. 5; Peterson Aff. at RA 26-40 at ¶ 6 and Exhs. A; Bud. Aff. at AA 00009-11 ¶¶ 3-12 and RA 43-84 at Exhs. A and B.

<sup>57</sup> Order at AA 00012-23; Peterson Aff. at RA 26-40 at ¶ 6 and Exh. A.

<sup>58</sup> Minn. Stat. § 144.6501, Subd. 4 (a): "Before or at the time of admission, the facility shall make reasonable efforts to . . . obtain on the admission contract the signature of . . . the person who is to be admitted to the facility and the responsible party."

<sup>59</sup> Peterson Aff. at RA 26 at ¶ 4.

Northfield because he knowingly refused to timely and fully-pay Northfield *from Resident's assets and income*.<sup>60</sup>

These facts strikingly resemble Sunrise Healthcare Corp. v. Azarigian,<sup>61</sup> the case Anderson brings to our attention. In Sunrise, the court found the responsible party liable to the nursing home pursuant to their admission agreement.<sup>62</sup> Just like Sunrise, the Agreement in this case is unambiguous and obligated Anderson to use *Resident's* assets and income for payment of Northfield's services.<sup>63</sup> As in Sunrise, and unlike Hinners v. Manor of Lake City, Inc.,<sup>64</sup> the other case Anderson cites as authority, Northfield's Agreement does not violate federal law because it does not require Anderson, as Resident's Responsible Party, to unconditionally guarantee payment for Northfield's services from his own proceeds.<sup>65</sup>

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<sup>60</sup> Order at AA 00012-23; Appellant's Brief at pg. 5; Peterson Aff. at RA 26-40 at ¶ 6 and Exh. A; Budd Aff. at AA 00010-11 at ¶¶ 5-13 and RA 43-92 at Exhs. A-C. This reasoning appears to be the same logic Anderson uses in his argument regarding an "agent-trustee" relationship stating "[a]n agent co-acting as trustee holds title to property for the benefit of the principal. They are liable for failure to commit the property they hold to the purpose ascribed to it by the principal." Appellant's brief at pg. 18, citing *Restatement of the Law, Second, Agency* § 14B. The only addition Northfield would add to this analysis is Anderson expressly assumed responsibility under the Agreement when he signed it and already had fiduciary duties as Resident's attorney-in-fact. See e.g., Sunrise Healthcare Corp. v. Azarigian, 821 A.2d 835, 840 (Conn. Ct. App. 2003).

<sup>61</sup> 821 A.2d 835 (Conn. Ct. App. 2003).

<sup>62</sup> Sunrise Healthcare Corp. v. Azarigian, 821 A.2d 835, 839-40 (Conn. Ct. App. 2003).

<sup>63</sup> Id. at 840-41.

<sup>64</sup> 548 N.W.2d 573 (Iowa 1996).

<sup>65</sup> Sunrise 821 A.2d at 840-41 (Conn. Ct. App. 2003) (distinguishing Hinners v. Manor of Lake City, Inc., 548 N.W.2d 573 (Iowa 1996)).

**II. THE STATUTE AND LEGISLATIVE INTENT ARE CLEAR AND UNAMBIGUOUS: ANDERSON IS LIABLE TO NORTHFIELD PURSUANT TO MINN. STAT. § 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.**

When he entered into the Agreement, Anderson agreed to be Resident's "Responsible Party" as defined both in Minnesota law and in the Agreement.<sup>66</sup>

Minn. Stat. § 144.6501 defines a responsible party as:

a person who has access to the resident's income and assets and who agrees to apply the resident's income and assets to pay for the resident's care or who agrees to make and complete an application for medical assistance on behalf of the resident.<sup>67</sup>

Pursuant to Minn. Stat. § 144.6501, a responsible party is liable to a facility for resident's costs if:

. . . the responsible party has signed the admission contract and **fails to make timely payment of the facility obligation**, or knowingly fails to spenddown the resident's assets appropriately for the purpose of obtaining medical assistance, then the **responsible party shall be liable** to the facility for the resident's costs of care which are not paid by medical assistance.<sup>68</sup>

Clearly the legislature intends to hold a responsible party personally liable if he fails to timely pay a facility or fails to spenddown a resident's assets or otherwise

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<sup>66</sup> Order at AA 00014 and 00019-20; Peterson Aff. at RA 26-40 at ¶ 6, Exh. A.

<sup>67</sup> Minn. Stat. § 144.6501, Subd. 1(d).

<sup>68</sup> Minn. Stat. § 144.6501, Subd. 4(d) (emphasis added).

obtain or maintain Medical Assistance benefits for the resident.<sup>69</sup> This is for the protection of the resident who is, by definition, a vulnerable adult.<sup>70</sup>

When Anderson entered into the Agreement he agreed to timely pay Northfield from Resident's assets and income and to maintain Resident's Medical Assistance benefits, which included cooperating with Rice County and following Rice County's directions to pay Northfield Resident's monthly spenddown amounts from Resident's assets and income.<sup>71</sup> Anderson, however, refused to timely pay Northfield despite his control of and access to Resident's assets and income and Rice County's clear directives to do the same.<sup>72</sup> Anderson made these decisions believing Resident was benefiting from Northfield's services provided at his request and knowing Resident's assets and income were owed to Northfield for its services.<sup>73</sup> These are exactly the types of acts Minn. Stat. § 144.6501 and the Agreement contemplate to hold Anderson, as Resident's Responsible Party, liable for the debt at issue. This legislative intent and effect also tracks with other clear and long-established legislative intent to hold the agent in an "agent-trustee" relationship liable if the agent control's the principal's

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<sup>69</sup> Minn. Stat. § 144.6501.

<sup>70</sup> Minn. Stat. § 626.5572, Subd. 21.

<sup>71</sup> Order at AA 00014-16 and 00019-20; Peterson Aff. at RA 25-30, 32, 33 and 35 at ¶¶ 3-6, Exh. A, § III, ¶¶ 3.2-3.2.3, § IX, Signatures and Status Sheet; Budd Aff. at AA 00009-10 at ¶¶ 3 and 5-8 and RA at 43-92 at Exhs. A-C; Rodè Aff. at RA 99, 100-11 at ¶ 4, Exh. 5.

<sup>72</sup> Order at 00014, 00016 and 00019-20; Budd Aff. at AA 00009-10 at ¶¶ 3-9 and RA 43-97 at Exhs. A-D.

<sup>73</sup> Budd Aff. at AA 00009-10 at ¶¶ 3-9 and RA 25-30, 32, 33 and 35 at Exhs. A-D; Rodè Aff. at RA 99, 110-11 at ¶ 4, Exh. 5; Peterson Aff. at RA at 25-30, 32, 33 and 35 at ¶¶ 3-6, Exh. A, § III, § IX, Signatures and Status Sheet.

property for the benefit of the principle but does not use the principal's property as ascribed by the principal.<sup>74</sup>

**III. AS RESIDENT'S ATTORNEY-IN-FACT, ANDERSON IS LIABLE TO NORTHFIELD PURSUANT TO MINN. STAT. § 523.21 BECAUSE ANDERSON KNEW OF RESIDENT'S AND HIS OWN CONTRACTUAL OBLIGATIONS TO PAY NORTHFIELD AND PURPOSELY DECIDED NOT TO TIMELY PAY NORTHFIELD WITH RESIDENT'S SUFFICIENT ASSETS AND INCOME KNOWING HIS FAILURE TO DO SO INJURED NORTHFIELD.**

An attorney-in-fact under Power of Attorney is personally liable to a nursing home for a resident's costs if the attorney-in-fact breached his duties pursuant to Minn. Stat. § 523.21, which states:

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<sup>74</sup> See e.g., Minn. Stat. § 609.2335, Subd. 1 (1) (financial exploitation of a vulnerable adult) placing liability on a party, including a responsible party pursuant to Minn. Stat. § 144.6501, who has a fiduciary duty to use the "financial resources of the vulnerable adult to provide food, clothing, shelter, health care, therapeutic conduct or supervision for the vulnerable adult"; Minn. Stat. § 626.5572, Subd. 9 (a) defining "financial exploitation" as a "breach of a fiduciary obligation recognized elsewhere in law, including pertinent regulations, contractual obligations, documented consent by a competent person, or the obligations of a responsible party under section 144.6501"; Minn. Stat. § 523.21 (duties of an attorney-in-fact) holding an attorney-in-fact "personally liable to any person, including the principal, who is injured by an action taken by the attorney-in-fact in bad faith under the power of attorney or by the attorney-in-facts failure to account when the attorney-in-fact has a duty to account"; Minn. Stat. § 524.5-430 Subd. (b) (personal liability of a conservator) holding a conservator/guardian "personally liable for obligations arising from ownership or control of property of the estate or for other acts or omissions occurring in the course of administration of the estate only if personally at fault"; and Minn. Stat. § 501B.151, Subd. 1(b) holding a trustee liable if the trustee does not act with reasonable reliance on the terms of the trust. See also, discussion *infra* at § III and *supra* at § I, C; Appellant's Brief at pg. 18; Sunrise Healthcare Corp. v. Azarigian, 821 A.2d 835, 840 (Conn. Ct. App. 2003).

. . . [t]he attorney-in-fact is personally liable to any person, including the principal, who is injured by an action taken by the attorney-in-fact in bad faith under power of attorney.<sup>75</sup>

Pursuant to the Agreement and his dealings and representations with Northfield and Rice County, Anderson agreed he had access to and control of Resident's income and assets and to timely pay Northfield for its services provided to Resident from said income and assets.<sup>76</sup>

Anderson, who controlled Resident's sufficient assets and income to timely pay Northfield, knew and agreed to his and Resident's obligations and knew of the growing debt at issue since its inception. Anderson, however, purposefully chose not to timely pay Northfield even though Resident had the assets and income to do so and knew Northfield was being harmed and was incurring additional expenses in trying to collect the debt.<sup>77</sup> This is exactly the type of "injury" the Minnesota Legislature intended to protect against when it made an attorney-in-fact under Power of Attorney personally liable under Minn. Stat. § 523.21. As such, Anderson is personally liable to Northfield who was directly injured by his bad-faith acts as Resident's attorney-in-fact.<sup>78</sup>

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<sup>75</sup> Minn. Stat. § 523.21.

<sup>76</sup> Order at AA 00014-16 and 00019-20; Peterson Aff. at RA 26-30, 32, 33 and 35 at ¶ 6, Exh. A, § III, § IV, § IX, Signatures and Status Sheet, Exh. B; Budd Aff. at AA 00009-10 at ¶¶ 3 and 5-7 and RA 43-84 at Exhs. A and B; Rodè Aff. at RA 99, 100-11 at ¶ 4, Exh. 5.

<sup>77</sup> Order at AA 00016 and 00019-20; Appellant's Brief at pg. 5; Budd Aff. at AA 00009-11 at ¶¶ 3-13 and RA 43-97 at Exhs. A-D.

<sup>78</sup> Minn. Stat § 523.21.

#### IV. THE DISTRICT COURT PROPERLY AWARDED NORTHFIELD ITS ATTORNEYS' FEES AND COSTS.

Northfield is entitled to its costs of collection, including its attorneys' fees and costs, pursuant to the Agreement.<sup>79</sup> Northfield is also entitled to its costs of collection, including its attorneys' fees, pursuant to Minn. Stat. § 523.21, as these costs are part of its "injury" directly caused by Anderson's acts of bad faith.<sup>80</sup>

The District Court appropriately assessed Northfield's fees request in light of Northfield's overall success; the necessity and usefulness of Northfield's activity in the case; and the efficiency with which Northfield's counsel conducted that activity.<sup>81</sup> The District Court also considered the prevailing market rate for similar services in a community where the litigation took place when performed by "lawyers of reasonable comparable skill, experience, and reputation."<sup>82</sup>

Northfield complied with Rule 119 of the Minnesota Rules of General Practice by making its application for the award of attorneys' fees pursuant to the

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<sup>79</sup>Order at AA 00014-15 and 00019-20; Supp. Order at RA 1-2; Peterson Aff. at RA 26, 27, 30, 32, 33 and 35 at ¶ 6 and Exh. A, §§ III, IV and IX and Signatures and Status Sheet. See also, NewMech Co., Inc. v. Independent Sch. Dist. No. 206, 558 N.W.2d 22, 25 (Minn. Ct. App. 1997)(stating "it is well-established that, in general, there must be either statutory or contractual authority before attorney fees will be awarded."); Van Vickle v. C.W. Scheurer & Sons, Inc., 556 N.W.2d 238, 242 (Minn. Ct. App. 1996) (describing the "American Rule" that attorneys' fees and costs are recoverable when authorized by contract or statute).

<sup>80</sup> See discussion supra § III.

<sup>81</sup> Order at AA 00012-23; Supp. Order at RA 1-2. See also, Jenkins v. Missouri, 127 F. 3<sup>rd</sup> 709, 718 (8<sup>th</sup> Cir. 1997).

<sup>82</sup> Order at AA 00023; Supp. Order at RA 1-2. See also, McDonald v. Armentrout, 860 F. 2d 1456, 1458-59 (8<sup>th</sup> Cir. 1988).

Agreement by its motion<sup>83</sup> and providing the District Court and Anderson the required supporting papers and documents<sup>84</sup> and memorandum of law.<sup>85</sup> The District Court made specific findings regarding the hourly rates for fees incurred by Northfield and determined they were reasonable and within the prevailing market rate for similar services in the community when “performed by lawyers of reasonable comparable skill, experience and reputation.”<sup>86</sup> When Anderson failed to respond to Northfield’s fees request, the District Court gave Anderson multiple chances to address the reasonableness of Northfield’s request.<sup>87</sup>

After considering Anderson’s unfounded complaints to the District Court about Northfield’s fees request (which are the same arguments Anderson raises in this appeal), the District Court awarded Northfield its request. The District

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<sup>83</sup> Minn. Gen. R. Prac. 119.01 – The District Courts.

<sup>84</sup> Minn. Gen. R. Prac. 119.02 – The District Courts.

<sup>85</sup> Minn. Gen. R. Prac. 119.04 – The District Courts.

<sup>86</sup> Order at AA 00023 stating:

Northfield’s attorney has submitted his affidavit, which includes the description of the firm, the individuals in the firm who have worked on this matter, and the hourly billing rates of each. Northfield’s attorney has stated why the amounts reflected in the invoices are reasonable under the circumstances surrounding the collection of this debt. The fees are broken down to reflect the rate and time spent by each provider.

See also, Supp. Order at RA 1-2; Rodè Aff. at RA 99-103 and 129-56 at ¶¶ 6-11 and Exh. 8; McDonald v. Armentrout, 860 F. 2d 1456, 1458-59 (8<sup>th</sup> Cir. 1988).

<sup>87</sup> Hearing Transcript at RA 20, lines 1-7 (giving Anderson an additional 16 days, until September 15, 2004, to respond); Order at AA 00013 (giving Anderson an additional 13 days to respond from the date of the Order and in excess of two (2) months from the August 30, 2004 hearing).

Court did not make the award to penalize Anderson. Rather, the District Court independently evaluated the evidence making specific findings. The District Court recognized this was not a run-of-the-mill “standard collection” action and found Northfield’s request for fees and costs was reasonable.<sup>88</sup> The District Court reviewed Northfield’s submissions and the evidence and arguments from all parties regarding Northfield’s fees request and concluded Northfield’s fees request was reasonable and justified in light of Northfield being forced into this lawsuit with an uncooperative and litigious party who appealed the original conciliation court judgment to District Court, brought (and finally dismissed) a baseless counterclaim, conducted discovery (written and a deposition) and attempted to bring additional baseless counterclaims.<sup>89</sup> Clearly the District Court

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<sup>88</sup> Supp. Order at RA 1-2 at ¶¶ 2-5.

<sup>89</sup> Supp. Order at RA 1-2 at ¶¶ 3 and 4 stating:

3. Based upon a review of the billing records and the level of experience and expertise of the professionals working on this matter for [Northfield], the fees and costs appear to be reasonable.
4. After a review of the pleadings, the number of hearings and appearances and the nature of the claims, defenses and counterclaims, the fees and costs appear to be reasonable and necessary.

See also, Order at AA 00012, 00017-18 and 00020-22; Budd Aff. at AA 00011 at ¶¶ 10-13; Rodè Aff. at 98, 99 and 104-09 at ¶¶ 2 and 3 and Exhs. 1-4.

did not abuse its discretion in awarding Northfield its fees request and this Court should not reverse the District Court's award.<sup>90</sup>

### CONCLUSION

Hoping to avoid his liability under the Agreement and Minn. Stat. §§ 144.6501 and 523.21, Anderson ineffectively, but optimistically, reads the Agreement and Minn. Stat. § 144.6501 contrary to the clear and unambiguous language of the Agreement and statute. Under several different headings and in many different ways, Anderson argues the Agreement and the statute are unfair and violate both state and federal law because he did not unconditionally "guarantee" payment to Northfield from his own personal income and assets. Anderson's interpretation, however, is contrary to the clear and plain language of the Agreement and the statute and the intent of the legislature. The only reasonable interpretation of the Agreement and statute is that adopted by the District Court in this case: Anderson is personally liable for the debt at issue because he violated Minn. Stat. §§ 144.6501 and 523.21 and knowingly breached the Agreement with Northfield when he willfully refused to timely pay amounts due and owing for Northfield's services provided Resident at Anderson's demand from Resident's sufficient assets and income that Anderson

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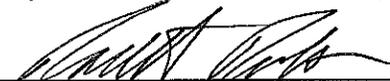
<sup>90</sup> Becker v. Alloy Hardfacing & Eng'g Co., 401 N.W.2d 655, 661 (Minn. 1987); Independent School Dist. No. 404 v. Castor, 670 N.W. 2d 758, 763 (Minn. Ct. App. 2003); Duluth Superior Erection, Inc. v. Concrete Restorers, Inc., 665 N.W.2d 528, 539 (Minn. Ct. App. 2003).

controlled. In doing so, the District Court correctly granted Northfield's motion for summary judgment and awarded Northfield its costs for its services and attorneys' fees pursuant to Rule 56.03 of the Minnesota Rules of Civil Procedure and Rule 119 of the Minnesota Rules of General Practice. Accordingly, Northfield requests this Court affirm the District Court's grant of summary judgment and award.

Dated: 4/27/05.

Respectfully submitted,

**VOIGT, JENSEN & KLEGON, LLC**

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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).