

CA T
No. 2010-TS-00335

IN THE SUPREME COURT OF MISSISSIPPI

MISSISSIPPI DIVISION OF MEDICAID IN THE OFFICE OF THE GOVERNOR
Appellant

v.

ESTATE OF ARLYN E. DARBY, DECEASED, LINDA DARBY STINSON,
EXECUTRIX
Appellee

On Appeal from the Chancery Court of DeSoto County

BRIEF FOR APPELLANT

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State of Mississippi

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ORAL ARGUMENT NOT REQUESTED

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	iii
STATEMENT OF THE ISSUES.....	1
STATEMENT OF THE CASE.....	2
Procedural History.....	2
Statement of Facts.....	3
SUMMARY OF THE ARGUMENT.....	5
ARGUMENT	
I. The Division of Medicaid filed a valid claim against the Estate of Arlyn E. Darby.....	6
II. The Chancery Court incorrectly determined that the real property owned by Arlyn E. Darby in DeSoto County was not subject to Medicaid's claim because it was "exempt property".....	8
III. If the real property was correctly considered to be "exempt property" the exemption was waived by Linda Stinson Darby when she entered into a contractual relationship with the Division of Medicaid on behalf of Arlyn E. Darby so that Mr. Darby could become eligible for Medicaid benefits.....	12
CONCLUSION.....	14

TABLE OF AUTHORITIES

Cases

<u><i>Weaver v. Blackburn</i></u> 294 So. 2d 786 (Miss. 1994).....	8
<u><i>Felder et ux v. Felder's Estate et al.</i></u> 13 So. 2d 823 (Miss. 1943).....	8
<u><i>Norris v. Callahan</i></u> 59 Miss. 140 (1881).....	8
<u><i>Crismand v. Mauldin</i></u> 94 So. 1 (Miss. 1922).....	8
<u><i>In the Matter of Franzke</i></u> 634 So. 2d 117 (Miss. 1994).....	8
<u><i>Equal Access for El Paso, Incorporated v. Hawkins</i></u> 562 F 3d 724 (Tex. 2009).....	10
<u><i>State of Mississippi, ex rel. Jim Hood, et al. v. Madison County, et al.</i></u> 2001-CA-01422-SCT (Miss. 2004).....	11

Statutes

42 USC §1396 p (b).....	1, 2, 5, 6, 9
Miss. Code Ann. §43-13-317.....	1, 2, 5, 6, 9, 12
Miss. Code Ann. §85-3-21.....	2, 5, 8
Miss. Code Ann. §91-1-21.....	8
Miss. Code Ann. §91-7-149.....	8
Miss. Code Ann. §85-3-49.....	9

STATEMENT OF THE ISSUES

- I. Did the Division of Medicaid appropriately file a claim against the Estate of Arlyn E. Darby pursuant to the provisions of 42 USC §1396 p (b) and §43-13-317 of the Mississippi Code annotated, as amended?
- II. Was the Chancery Court correct in determining that the real property Mr. Darby owned in DeSoto County was “exempt property” when none of Mr. Darby’s heirs reside in or on the property?
- III. If the Chancery Court correctly determined that the real property in DeSoto County was “exempt property” had the exemption been waived as a result of the contractual relationship that resulted when Linda Darby Stinson filed an application for Medicaid eligibility for Mr. Darby in which it was acknowledged that Medicaid would seek recovery of the amounts it paid for Mr. Darby’s care after his death?

STATEMENT OF THE CASE

Procedural History

Arlyn E. Darby was a resident of Sardis Community Nursing Home at the time of his death on May 20, 2009. Mr. Darby had been receiving Medicaid benefits while he was a resident of Sardis Community Nursing Home. After his death, pursuant to the provisions of 42 USC §1396 p (b) and §43-13-317 of the Mississippi Code annotated, as amended, Medicaid filed a claim of \$123,716.13 against the Estate of Arlyn E. Darby in Cause Number 09-06-1179 in the DeSoto County Chancery Court on October 12, 2009 (record 3). This claim represented the total amount Medicaid had expended for Mr. Darby's medical care after he reached the age of fifty-five (55) years and was receiving Medicaid long-term care benefits.

On October 19, 2009, Linda Darby Stinson, as Executrix of the Estate of Arlyn E. Darby filed an Objection to Probated Claim (record 8) stating that the real property Mr. Darby owned was valued at less than \$75,000.00 and was thus exempt property under the provisions of §85-3-21 of the Mississippi Code Annotated, as amended, and thus was not subject to Medicaid's claim. On October 26, 2009, the Division of Medicaid filed its Answer to Objection to Probated Claim (record 23) stating that the real property was not exempt property since none of Mr. Darby's heirs were living in his home and declaring it as their homestead.

On December 1, 2009, Linda Darby Stinson, as Executrix of the Estate of Arlyn E. Darby filed a Motion for Summary Judgment (record 28) and a Memorandum Brief in Support of Motion for Summary Judgment (record 45) asking that the Chancery Court determine that the claim of the Division of Medicaid was not valid because none of the

assets of the estate were subject to Medicaid's claim. Medicaid filed its Answer to Motion for Summary Judgment (record 53) and its Memorandum Brief in Support of Answer to Motion for Summary Judgment (record 56) on December 28, 2009, contesting that assertion that the real property was exempt and stating that even if considered exempt by the Court, Linda Darby Stinson had waived the exemption as a part of the contractual relationship that was created when she submitted an application for Medicaid benefits on behalf of Arlyn E. Darby.

On January 19, 2010, a hearing on the motions was held before the Honorable Mitchell M. Lundy, Jr. in the DeSoto County Courthouse in Hernando, Mississippi (record 51). Thereafter on January 28, 2010, the Court issued its Opinion (record 86) that because the real property was "exempt property" to Mr. Darby, it remained "exempt property" even after his death since he left the property by Will to his children and grandchildren. The Court granted the Motion for Summary Judgment ruling that the real property was free and clear of Medicaid's claim.

The Division of Medicaid then filed its Notice of Appeal on February 19, 2010 (record 88).

Statement of Facts

Linda Darby Stinson's application for Medicaid benefits dated July 12, 2006, was received by Medicaid on July 28, 2006 (record 73-77). Mr. Darby was a resident of Sardis Community Nursing Home at the time of the application and he remained a resident of Sardis Community Nursing Home until his death on May 20, 2009. Mr. Darby first became eligible for Medicaid long-term care benefits in the nursing home as of August 1, 2006. During the period that he was a resident of the nursing home

Medicaid paid a total of \$123,716.13 for his care. After Mr. Darby passed away and Medicaid was notified that an estate proceeding had been opened, a claim of \$123,716.13 was filed in Mr. Darby's estate proceeding in Cause Number 09-06-1179 (record 3).

In the initial application form signed and submitted by Linda Darby Stinson on behalf of Mr. Darby (record 77) and in subsequent redetermination forms signed and submitted to Medicaid (record 85) in connection with its determination of Mr. Darby's continuing eligibility for Medicaid benefits, the following statement was contained:

I understand that upon my death the Division of Medicaid has the legal right to seek recovery from my estate for services paid by Medicaid in the absence of a legal surviving spouse or a legal surviving dependent.

Consideration will be made for hardship cases. An estate consists of real & personal property. The Estate Recovery provision applies to Medicaid recipients age 55 or older and in a nursing facility or enrolled in a Home and Community Based Services Waiver program at the time of death.

SUMMARY OF THE ARGUMENT

This is a case of first impression before the Supreme Court in the State of Mississippi. Three primary issues are presented to the Court for consideration. On the first issue Medicaid contends that it is entitled to seek recovery of the amounts it paid for Mr. Darby's medical care based on the provisions of 42 USC §1396 p (b) and §43-13-317 of the Mississippi Code Annotated, as amended. Medicaid received the Notice to Creditors on September 19, 2009, and filed its claim of \$123,716.13 on October 12, 2009, (record 3) less than one month after the receipt of the notice and well within ninety (90) days of the receipt of the notice.

Second is the determination of whether the real property Mr. Darby owned and declared as his homestead continued to be exempt property based on the provisions of §85-3-21 of the Mississippi Code Annotated, as amended, after Mr. Darby's death even though none of his children or grandchildren was residing in the home and declaring it as their homestead. Thirdly, even if the property is considered as exempt property after Mr. Darby's death, was the exemption waived by Mr. Darby as a result of the contractual relation that resulted from the application and redetermination forms submitted by Linda Darby Stinson on Mr. Darby's behalf in which it was acknowledged that Medicaid had a right to recover the expenses it paid from the estate assets.

ARGUMENT

I. The Division of Medicaid is entitled to reimbursement from Mr. Darby's estate for the long-term nursing care, medical and prescription drug expenses it paid for his care.

The Division of Medicaid is authorized to seek reimbursement from Mr. Darby's estate for long-term nursing care, medical and prescription drug expenses under both Federal and State law. The Omnibus Budget Reconciliation Act of 1993 (hereinafter referred to as OBRA 1993) is a Federal mandate that became effective October 1, 1993. It states in part that the Division of Medicaid is required to seek recovery of payments for nursing home services, home and community-based services and related hospital and prescription drug services from the estate of a deceased Medicaid recipient who was fifty-five (55) years of age or older when the assistance was received. This Federal mandate is codified at 42 USC §1396p (b).

OBRA 1993 also required the States to pass this mandate into State law in order to maintain Federal funding for Medicaid. The Mississippi legislature enacted Medicaid's authority to recover effective July 1, 1994. This authority can be found at §43-13-317 of the Mississippi Code of 1972. Pursuant to OBRA 1993 and §43-13-317 of the Mississippi Code Annotated, the Division of Medicaid is entitled to reimbursement from Mr. Darby's estate for the long-term nursing home care, medical and prescription drug expenses it paid for his care. Medicaid appropriately filed its claim of \$123,716.13 in the estate proceeding in DeSoto County Chancery Court on October 12, 2009, (record 3) less than one month after receiving the Notice to Creditors on September 19, 2009 and well within the ninety (90) day probate period. In an effort to settle this matter by letter

dated October 6, 2009, to Ralph E. Chapman, Esq. (record 12-13) Medicaid agreed to accept payment of \$17,444.50 from the estate to satisfy its claim, or to accept payment of one-half (1/2) of the net proceeds received from the sale of the property in the event the family preferred to sell the real property.

It is Medicaid's position that under provisions of State and Federal law it is entitled to reimbursement from Mr. Darby's estate and that its claim was timely filed.

II. The Chancery Court incorrectly determined that the real property owned by Arlyn E. Darby in DeSoto County was not subject to Medicaid's claim because it was "exempt property".

Mississippi's homestead exemption statute, §85-3-21 of the Mississippi Code Annotated, as amended provides that a householder is entitled to hold exempt from seizure or sale, under execution or attachment, the land and buildings **owned and occupied as a residence by him, or her** (emphasis added). Medicaid submits to the Court that in filing its claim in this proceeding it has taken no action to seize or sell the real property owned or occupied by Mr. Darby, under execution or attachment. Mr. Darby is deceased; he no longer occupies the property. Medicaid as a creditor of the estate has properly filed its claim in this matter pursuant to §91-7-149 of the Mississippi Code of 1972. Further, the purpose of the homestead exemption statute is to provide a "family shield" Weaver v. Blackburn, 294 So.2d 786, (Miss. 1994), See also, Felder et ux v. Felder's Estate et al., 13 So. 2d 823 (Miss. 1943); Norris v. Callahan, 59 Miss. 140 (1881) (chief object of exemption law is to secure a home for the children during their infancy). Since no individual in the class of persons designated in §91-1-21 of the Mississippi Code Annotated is occupying the house as their residence, Medicaid would submit that based upon Mississippi Case law they are not entitled to exempt the property from Medicaid's claim. As heirs to the estate that is subject to Medicaid's claim Mr. Darby's children and grandchild have themselves become debtors and cannot avail themselves of the homestead exception if not actually residing in the home. Crismand v. Mauldin, 94 So. 1 (Miss. 1922). In the Matter of Estate of Franzke, 634 So. 2d 117 (Miss. 1994), the Mississippi Supreme Court held that if there were a surviving spouse,

child or grandchildren who were entitled to claim the exemption, §85-3-49 of the Mississippi Code of 1972 would apply (emphasis added).

While Mr. Darby may have been survived by children and a grandchild who would be entitled to claim the exemption if they occupied the residence, none of them are occupying the residence. As a result, since neither Mr. Darby's children nor his grandchild occupies the residence, homestead exemption does not apply and the residence should be subject to Medicaid's claim.

As mentioned previously, the Division of Medicaid filed its claim as a result of the OBRA 1993 federal mandate set out at 42 USC 1396p (b) and as codified in state law. This statute makes no provision for the exclusion of assets from the recovery as a result of the provisions of Mississippi's homestead exemption statutes. However, Congress did allow for exemptions from recovery if there was a surviving spouse or child under the age of 21 or a child who is blind or permanent and totally disabled and if such individuals are residing in the recipient's home. These exemptions are similar to the homestead exemptions. The exemptions provided under state law at §43-13-317 of the Mississippi Code Annotated are similar to those provided under federal law and are similar to provisions for homestead exemption. If either a child or grandchild of Mr. Darby were living in his home and considering it as their homestead, Medicaid would agree that its claim did not apply to the real property.

Medicaid's claim was filed pursuant to the authority found in both 42 USC 1396p (b) and §43-13-317 of the Mississippi Code Annotated so that Medicaid can be reimbursed by the estate for long-term nursing care and medical care expenses provided on Mr. Darby's behalf. Medicaid submits that the requirements of federal law are

controlling in this matter and that the homestead exemption statutes do not affect Medicaid's right to recover from the estate.

In addition, when an individual applies for Medicaid, the only asset of significant value that the individual is allowed to own and still be eligible for Medicaid benefits is a residence. If the estate were then to be allowed to consider the residence as exempt upon the death of the Medicaid recipient, there would be no purpose to the aforementioned federal and state statutes and regulations. Allowing the residence of a deceased Medicaid recipient to be exempt from Medicaid's claim due to the application of the homestead exemption provisions of Mississippi law would effectively end the estate recovery efforts of the Division of Medicaid and could threaten Medicaid's future federal funding. A state does not have to participate in the Medicaid program; but once it does, then it must abide by all applicable federal rules that apply Equal Access for El Paso, Incorporated v. Hawkins, 562 F3d 724 (Tex. 2009). Again, the state is required by federal law to pursue these claims. The Executrix's position, that is to allow the heirs to claim the homestead exemption and thereby defeat Medicaid's lawful claim, is contrary to Congressional and Legislative intent and is contrary to public policy. Members of a Medicaid recipient's family should not be allowed to profit by claiming property as homestead when they do not reside there thus depriving Medicaid of the right to recover some of the taxpayer's money that was expended for the recipient's care.

Both the federal and state statutes regarding Medicaid's estate recovery were enacted subsequent to the statutes regarding the homestead exemption. Had the U.S. Congress and the Mississippi Legislature intended for the homestead exemption to be claimed by a surviving spouse or a child over the age of 21 who is not living in the home,

these legislative bodies could have done so. However, these legislative bodies did not include these individuals among the exemptions. As a principle of statutory construction, when the court is faced with interpreting conflicts between statutes, pursuant to the Supremacy Clause, the federal law supersedes the state law, and as between conflicting state statutes, the statute which is more recent and more specific controls. When two state statutes encompass the same subject matter, one statute being more general and one statute being more specific, and the statutes are inconsistent with each other, the more specific statute will control. State of Mississippi, ex rel. Jim Hood, et al. v. Madison County, et al., 2001-CA-01422-SCT (¶22) (Miss. 2004). The application of this principle leads to the conclusion that Medicaid's claim must stand and that it cannot be extinguished by the homestead exemption claim of certain heirs who are not residing in the home. The statute under which Petitioner claims the homestead exemption is the more general statute and does not control over the more specific statute relied upon by Medicaid.

The Chancery Court in issuing its Opinion on January 28, 2010, offered no explanation of its reasoning in making the determination that the property continued to be "exempt property" after Mr. Darby's death.

III. If the real property was correctly considered to be “exempt property” by the Chancery Court of DeSoto County, the exemption was waived by Linda Stinson Darby when she entered into a contractual relationship with the Division of Medicaid on behalf of Arlyn E. Darby so that Mr. Darby could become eligible for Medicaid benefits.

In applying for Medicaid benefits for her father, petitioner Linda Stinson Darby acting on her father's behalf signed an application form (record 73-77). In the section Assignment of Rights to Third Party Payment, Cooperation Requirement & Estate Recovery Requirement, the statement is made that “I (we) understand that upon my/our death, the Division of Medicaid has the legal right to seek recovery from my estate for services paid by Medicaid in the absence of a legal surviving spouse or a legal surviving dependent. Consideration will be made for hardship cases. An estate consists of real & personal property. Estate recovery applies to nursing homes, home and community based waiver clients age 55 or older”. A legal surviving spouse or a legal surviving dependent refers to the provisions of §43-13-317 of the Mississippi Code Annotated, as amended stating that “The claim shall be waived by the division (a) if there is a surviving spouse; or (b) if there is a surviving dependent who is under the age of twenty-one (21) years or who is blind or disabled; or (c) as provided by federal law and regulation, it is determined by the division or court order that there is undue hardship”. None of these conditions for a waiver of Medicaid's claim is present in this case. In the initial application for Medicaid eligibility dated June 12, 2006, (record page 77) and when Medicaid periodically made a redetermination of Mr. Darby's eligibility Ms. Stinson signed a form (i.e. record 85), that contained the same statement. In entering into this contractual

relationship with Medicaid Mr. Darby, through his representative Ms. Stinson, agreed that if Medicaid paid sums for Mr. Darby's Medical care, he understood that his assets including both real and personal property would be subject to Medicaid's estate recovery claim. The family cannot have it both ways. That is, they cannot expect federal and state taxpayers to foot the bill for their loved one's care while the family keeps all the property at the loved ones death after never paying a dime.

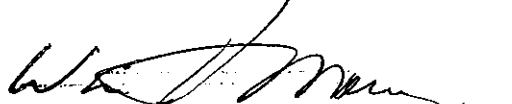
The Chancery Court in issuing its Opinion on January 28, 2010, offered no explanation of its reasoning in making the determination that the property while the property continued to be "exempt property" after Mr. Darby's death, Mr. Darby had not waived that determination when applying for Medicaid eligibility.

CONCLUSION

For the reasons set forth above, the Appellant, the Mississippi Division of Medicaid in the Office of the Governor and Attorney General Jim Hood request that the judgment of the Chancery Court be reversed and that Medicaid be allowed to seek recovery from the value of the real property.

Respectfully submitted, this the 18th day of June, 2010.

BY: Jim Hood,
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