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Summary of Department of Human Resources v. Ullmer, 120 Nev. Adv. Rep. 16

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Department of Human Resources v. Ullmer, 120 Nev. Adv. Rep. 16, 87
P.3d 1045 (2004).¹

PROPERTY

Summary

Appeal of an order granting a motion for injunctive relief.

Disposition/Outcome

Affirmed in part, reversed in part. The district court prematurely considered a motion for injunctive relief to prohibit appellant from placing liens on homes of deceased Medicaid recipients before the notification period for the class action ended, therefore granting injunctive relief was improper as to the class. However, the court affirmed the injunctive relief with respect to two individual parties of the class because the liens appellant placed on their homes were overbroad.

Factual and Procedural History

Appellant State of Nevada, Department of Human Resources, Welfare Division (NSWD), provided Harold Ullmer (Mr. Ullmer) with Medicaid benefits until his death. At the time of Mr. Ullmer's death, he owned his home with his wife Agnes (Ms. Ullmer), in joint tenancy. After Mr. Ullmer's death, Ms. Ullmer continued to live in the house.

NSWD subsequently recorded a notice of lis pendens and filed a verified petition to impose a lien on the property to protect future recovery by NSW of the Medicaid benefits paid on Mr. Ullmer's behalf. Ms. Ullmer filed a class action counterclaim against NSW to permanently enjoin it from placing liens on the homes of Medicaid recipients' surviving spouses. The district court certified the class pursuant to NRCP 23(b)(3), and consolidated it with the *Parco* case, a similar case involving Medicaid recovery from a decedent's estate.

Before the class notification period had lapsed, Ms. Ullmer's motion for issuance of a permanent injunction that sought declaratory and injunctive relief to prevent NSW from obtaining liens against class members was granted. NSW appealed.

Discussion

The supreme court affirmed as to the Ullmer and Parco cases, and reversed as to the class. Regarding the class, the court stated that the district court prematurely considered the motion for injunctive relief before the class notification ended. However, the court held that it was proper for the district court to consider the Ullmer and Parco cases individually.

The federal and Nevada Medicaid recovery statutes provide that the government may not recover benefits paid for medical care of a decedent until the death of the

¹ By Mike Feliciano

decedent's spouse.² The court held that imposing a lien before the surviving spouse's death is not an impermissible recovery. This is because a lien does not allow the government to recover payments made for medical treatment. It does, however, bind the property to the debt and provides notice that a party besides the owner has an interest in the home.

However, the court held the liens in the *Ullmer* and *Parco* cases were improper for two reasons. First, the notice of lis pendens and the lien did not correctly identify the precise legal interest that NSWDC was claiming. Second, the notice of lis pendens, lien proceedings, and the lien itself failed to provide that NSWDC would release the lien upon the surviving spouse's demand for a bone fide transaction. The court concluded that the two foregoing factors made the liens overbroad and hence violated the policy of state and federal laws against spousal impoverishment.

Conclusion

In *Ullmer*, the supreme court held that NSWDC may impose a lien on a Medicaid recipient's property when NSWDC has a legitimate interest in the property. However, to further the policy against spousal impoverishment, the notice of lis pendens, lien proceedings, and the lien itself must provide clear and unequivocal notice the government will release the lien upon the surviving spouse's demand for a bone fide transaction and must accurately state the government's interest in the property.

² 42 U.S.C. § 1396(p)(b) (2003); Nev. Rev. Stat. 422.2935(2) (2003).