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In Re Estate of Wiggins Appellant's Supplemental Reply Brief Dckt. 39129

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IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF THE ESTATE OF)
VIVIAN WIGGINS AND EMERSON D.)
WIGGINS, DECEASED.)
_____)

STATE OF IDAHO, DEPARTMENT OF)
HEALTH & WELFARE,)

Petitioner-Appellant,)

v.)

LYNN WIGGINS, personal representative of)
THE ESTATE OF VIVIAN WIGGINS and)
EMERSON D. WIGGINS,)

Respondent.)
_____)

SUPREME COURT NO. 39129

APPELLANT'S SUPPLEMENTAL REPLY BRIEF

APPEAL FROM THIRD JUDICIAL DISTRICT, WASHINGTON COUNTY

THE HONORABLE LINDA COPPLE TROUT, PRESIDING

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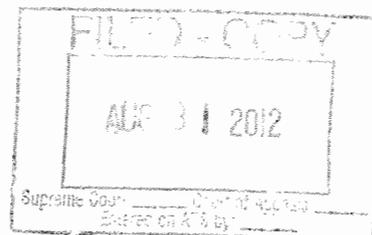


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ARGUMENT

I.

THE PERSONAL REPRESENTATIVE AGAIN CITES “FACTS” THAT ARE NOT IN THE RECORD.

In Cross-Appellant’s Reply Brief, the personal representative again refers to “facts” that are completely unsupported in the record. At pages 1 and 2, the personal representative states:

. . . there must have been an agreement between Vivian and Emerson transmuting their community property cash, equally, to their respective sole and separate properties.

* * *

In the case at bar, both Emerson and Vivian owned an equal amount of money, as separate property, after the transmutation. Also, both Emerson and Vivian were competent to complete the transmutation and both ended up with an equal share of their property after transmutation.

Cross-Appellant’s Reply Brief, pp. 1-2 (underline added). The personal representative goes on to again claim that the Department “participated” in the transmutation of the property, and uses that “fact” in an attempt to distinguish this matter from the case of *Idaho Department of Health & Welfare v. McCormick*, 2012 Opinion No. 118 (August 9, 2012). Cross-Appellant’s Reply Brief, pp. 3-4. However, none of these “facts” are in any way supported by the record in this matter. Nor is there anything in the law or rules that would presume such a state of affairs.

II.

THE EXPANDED DEFINITION OF ESTATE IS NOT LIMITED TO REAL PROPERTY.

The personal representative argues, for the first time, that the word “convey” in the expanded definition of estate can only apply to transfers of real property, and does not apply to transfers of money as occurred in this matter. “Issues not raised below but raised for the first time on appeal will not be considered or reviewed.” *Krempasky v. Nez Perce County Planning and Zoning*, 150 Idaho 231, 236, 245 P.3d 983, 988 (2010). This issue should not be considered here.

To reach the conclusion that the expanded definition of estate only applies to real property, the personal representative omits important parts of the controlling statute. At page 9 of Cross-Appellant’s Reply Brief he quotes 42 U.S.C. § 1396p(b)(4)(B)¹ as follows:

“such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.”

(emphasis by personal representative). However, this quote is out of context and leaves out important parts of the definition which, in whole, says:

(B) may include, at the option of the State (and shall include, in the case of an individual to whom paragraph (1)(C)(i) applies), any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.

¹The personal representative incorrectly cites this section as 42 U.S.C. § 1396p(b)(1)(4)(B) which does not exist.

42 U.S.C. § 1396p(b)(4)(B) (underline added). When the statute is read in context, it is clearly using the word “convey” in a less formal sense than the personal representative suggests. By its own terms, the definition includes “personal property and other assets.”

The personal representative cites Black’s Law Dictionary, 4th Edition, for a formal definition of “convey.” However, like many other such terms, usages evolve over time. The very next edition, the fifth edition of Black’s Law Dictionary, published in 1979, contains a broader definition of “convey” and omits the limitation for real property:

Convey. To transfer or deliver to another. To pass or transmit the title to property from one to another. To transfer property or the title to property by deed, bill of sale, or instrument under seal. Used popularly in sense of “assign”, “sale,” or “transfer”.

Black’s Law Dictionary, 5th Edition. (underline added).

The personal representative has suggested no rational reason for limiting the expanded definition of estate to real property, and by its own terms it clearly includes “personal property and other assets.”

III.

IDAHO DEPARTMENT OF HEALTH & WELFARE V. MCCORMICK IS DISPOSITIVE IN THIS CASE.

This court’s recent decision in *Idaho Department of Health & Welfare v. McCormick*, 2012 Opinion No. 118 (August 9, 2012) is dispositive in this case. In the *McCormick* matter, the Medicaid recipient’s community interest in her real property was purportedly conveyed to the non-Medicaid spouse before death. Applying the federal definition of assets to the expanded definition of estate, this Court held that the assets were recoverable regardless of which spouse owned them at death:

In light of the ambiguously inclusive nature of 42 U.S.C § 1396p(b)(4)(B) and the plain definition of “assets” in 42 U.S.C. § 1396(h)(1), we cannot find that federal law preempts the State from providing for recovery of assets from both spouses’ estates under I.C. § 56-218(1), including assets that were community property during the marriage. * * * More specifically to the case at hand, because the federal definition of “resources” includes the home for purposes of recovery, the state is not precluded from staking a claim to the resource at issue here—the home that was previously the community property of Martha and now rests in George’s estate. Therefore, the magistrate and district courts erred in disallowing that claim. Because we find that the Department may reach the home, regardless of which spouse owned it at death, we have no need to reach the remaining issue regarding George’s transfer via power of attorney.

* * *

For the foregoing reasons, we find that the district court erred in finding that federal law preempted the Department’s ability to recover from George’s estate what was once Martha’s community property during the marriage.

McCormick, slip. op. at 14 (citations omitted; underline added). “Resources,” of course, also includes other assets such as the money at issue here. 20 C.F.R. § 416.1201.

IV.

THE PERSONAL REPRESENTATIVE HAS ADMITTED THE ASSETS OF THIS ESTATE ARE TRACEABLE TO THE COUPLE’S COMMUNITY PROPERTY.

The personal representative contends that it would be an undue burden and “onerous and time consuming” to trace assets such as those in this case. While this is a doubtful proposition given these cases involve elderly couples of modest means, this is clearly not an issue in this case. At page 7 of Respondent’s Brief, the personal representative states, “In fact, the funds still in existence are the funds transmuted to Emerson . . .” Therefore, there is no issue as to the traceability of the assets at issue in this estate.

V.

CONCLUSION

The arguments presented in Cross-Appellant's Reply Brief do not distinguish this case from the *McCormick* matter recently decided. The Court's decision in *McCormick* is dispositive and the Department's claim against this estate should be allowed.

DATED this 31 day of August, 2012,



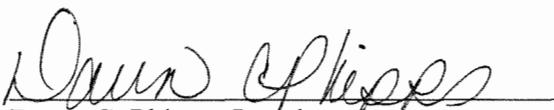
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CERTIFICATE OF MAILING

I hereby certify that two copies of the foregoing document were mailed, postage pre-paid, to the following:

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DATED this 31 day of August, 2012.



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