ORIGINAL

IN THE SUPREME COURT OF OHIO

Ruth Smith, Appellant, v. OHIO DEPARTMENT OF JOB AND FAMILY SERVICES, Appellee.	:	Case No. 13-1143 On Appeal from the Third District Court of Appeals, Logan County Court of Appeals Case No. 8-12-18

NOTICE OF APPEAL

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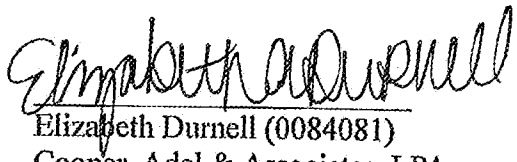
FILED
JUL 18 2013
CLERK OF COURT
SUPREME COURT OF OHIO

Notice of Appeal

Appellant Ruth Smith hereby provides notice of appeal to the Supreme Court of Ohio from a judgment entered in Court of Appeals Case No. 8-12-18 on June 3, 2013

This question involves a case of public and great general interest.



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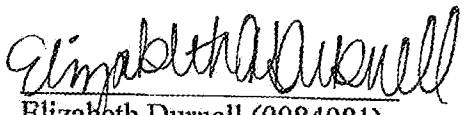
Certificate of Service

The undersigned hereby certifies that a copy of the foregoing Notice of Appeal of Appellant Ruth Smith has been served by ordinary U.S. Mail service on Amy Goldstein, Attorney for Appellee, Ohio Attorney General, Health and Human Services Section, 26th Floor, 30 East Broad Street, Columbus, Ohio 43215 this 18th day of July, 2013.



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FILED
COURT OF APPEALS
JUN 03 2013
BARB McDONALD
CLERK, LOGAN COUNTY, OHIO

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
LOGAN COUNTY

RUTH M. SMITH,

APPELLANT, **CASE NO. 8-12-18**

v.

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES, **JUDGMENT ENTRY**

APPELLEE.

This appeal, having been placed on the accelerated calendar, is being considered pursuant to App.R. 11.1(E) and Loc.R. 12. This decision is therefore rendered by summary judgment entry, which is only controlling as between the parties to this action and not subject to publication or citation as legal authority under Rule 3 of the Ohio Supreme Court Rules for the Reporting of Decisions.

Appellant, Ruth M. Smith ("Ruth"), appeals the October 22, 2012 judgment of the Logan County Court of Common Pleas affirming the administrative appeal decision of the Ohio Department of Job and Family Services finding that Appellee, the Logan County Department of Job and Family Services (the "Agency"), correctly identified an improper resource transfer which subjected Ruth to a period of restricted Medicaid coverage for her nursing home care.

The facts in this case are undisputed by the parties. On November 3, 1999, Ruth transferred her home via quit claim deed to the Frank D. and Ruth M. Smith Revocable Living Trust. Ruth and her husband, Frank, were designated as the primary trustees. Several years later, Ruth entered a nursing home care facility. Specifically, June 25, 2010, marked the beginning of Ruth's first period of continuous institutionalization for purposes of calculating Medicaid eligibility for coverage of her nursing home care. On October 15, 2010, Frank, acting as trustee, transferred the home from the trust to himself via a fiduciary deed. On January 14, 2011, Ruth applied for Medicaid coverage of her nursing home care.

The Agency subsequently conducted a resource assessment to determine the couple's "countable resources" as of Ruth's first period of continuous institutionalization—June 25, 2010. *See* OAC 5101:1-39-35. The value of the couple's countable resources was determined to be $191,371.53, resulting in a Community Spouse Resource Allowance ("CSRA") of $95,685.76. The CSRA is a capped, formula based amount of the couple's joint resources that the Community Spouse is allowed to retain to live on when the institutionalized spouse applies for Medicaid coverage of her nursing facility expenses. *See Wisconsin Dept. of Health and Family Services v. Blumer*, 534 U.S. 473, 482-83 (2002); Ohio Admin. Code 5101:1-39-36.1. [1] The home was valued at $88,500

[1] Pursuant to 5101:1-39-36.1 (B), Ruth is considered to be the "Institutionalized Spouse" and Frank is considered to be the "Community Spouse."

and was included in the resource assessment because it was deeded in the name of the revocable trust and not considered to be exempt as a resource.

The record indicates that the Agency subsequently "updated" the value of the couple's resources by using the current value of the resources as of the date of Ruth's Medicaid application—January 14, 2011. The Agency determined the "updated" value of the couple's resources to be $88,447.71, which excluded the value of the home as a resource because it was deeded in the name of the Community Spouse—i.e., Frank, on the date Ruth applied for Medicaid. As a result, the home was now considered exempt as a resource. The Agency then allocated all of the couple's current resources to Frank based on the CSRA of $95,685.76 and determined Ruth's resources to be $0, allowing for Medicaid eligibility. The Agency also determined that the transfer of the home from the revocable trust to Frank was an improper transfer and approved a restricted period of Medicaid coverage of 14.69 months for Ruth's nursing home care expenses.

Ruth requested a review of the Agency's determination. On July 8, 2011, in a state hearing decision, a hearing officer affirmed the Agency's determination of an improper transfer, but reassessed the value of the improper transfer and calculated the restricted period of Medicaid coverage to be 13.49 months. Ruth requested an administrative appeal of the state hearing decision and on September 14, 2011, a panel of three administrative appeal examiners affirmed the decision of the hearing officer.

Ruth appealed the administrative appeal decision to the Logan County Court of Common Pleas pursuant to R.C. 119.12 and R.C. 5101.35. On October 22, 2012, the trial court overruled Ruth's assignments of error and affirmed the administrative appeal decision, relying on this Court's recent opinion in *Williams v. Ohio Department of Job and Family Services*, 3d Dist. No. 8-11-18, 2012-Ohio-4659.

It is from this judgment that Ruth now appeals, asserting the following assignments of error.

ASSIGNMENT OF ERROR NO. I

THE TRIAL COURT ERRED IN AFFIRMING APPELLEE'S SEPTEMBER 14, 2011 ADMINISTRATIVE APPEAL DECISION THAT APPELLANT'S TRANSFER OF HER HOME FROM A REVOCABLE TRUST TO THE COMMUNITY SPOUSE CONSTITUTED AN IMPROPER TRANSFER OF ASSETS THAT RESULTED IN A PERIOD OF RESTRICTED ELIGIBILITY FOR MEDICAID IS NOT SUPPORTED BY RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE. THE EVIDENCE ESTABLISHES THAT THE TRANSFER OF THE PRIMARY RESIDENCE FROM A REVOCABLE TRUST TO A MEDICAID APPLICANT'S SPOUSE WAS NOT AN IMPROPER TRANSFER FOR THE PURPOSE OF MEDICAID ELIGIBILITY AND SHOULD BE TREATED THE SAME AS A TRANSFER DIRECTLY FROM THE INSTITUTIONALIZED SPOUSE TO THE COMMUNITY SPOUSE.

ASSIGNMENT OF ERROR NO. II

THE TRIAL COURT ERRED IN AFFIRMING APPELLEE'S SEPTEMBER 14, 2011 ADMINISTRATIVE APPEAL DECISION WAS NOT IN ACCORDANCE WITH LAW

BECAUSE (1) THE TRANSFER OF APPELLANT'S HOUSE FROM A REVOCABLE TRUST WAS NOT AN IMPROPER TRANSFER FOR PURPOSES OF MEDICAID ELIGIBILITY AND COVERAGE UNDER OHIO LAW; (2) OHIO ADMIN. CODE 5101:1-39-07(E) AND (G) DO NOT REQUIRE THE VALUE OF THE HOME TO BE INCLUDED WHEN DETERMINING THE AMOUNT OF RESOURCES TRANSFERRED FOR CSRA PURPOSES; (3) THE DECISION IS INOPPOSITE *[SIC]* TO AND IN VIOLATION OF OHIO ADMIN. CODE 5101:1-39-27.1 AND 5101:1-39-07, WHICH PERMIT THE TRANSFER TO ASSETS FROM A REVOCABLE TRUST TO THE COMMUNITY SPOUSE; (4) THE DECISION IS INOPPOSITE *[SIC]* TO AND IN CONFLICT WITH PRIOR DETERMINATIONS AND STATE HEARING DECISIONS BY APPELLEE WITH OTHER APPLICATIONS FOR MEDICAID BENEFITS THROUGHOUT THE STATE OF OHIO; AND (5) APPELLEE IS NOT PERMITTED TO INTERPRET ITS RULES SO AS TO REQUIRE DIFFERENT TREATMENT OF MEDICAID APPLICANTS WITHOUT A RATIONAL RELATIONSHIP TO A LEGITIMATE STATE PURPOSE.

ASSIGNMENT OF ERROR NO. III

THE TRIAL COURT ERRED IN AFFIRMING APPELLEE'S SEPTEMBER 14, 2011 ADMINISTRATIVE APPEAL DECISION AND ITS INTERPRETATION OF OHIO ADM. CODE 5101:1-39-31 & 5101:1-39-27.1 BECAUSE THE DECISIONS ARE NOT IN ACCORDANCE WITH FEDERAL MEDICAID LAW, WHICH INVALIDATES APPELLEE'S OWN RULES UNDER THE SUPREMACY CLAUSE.

ASSIGNMENT OF ERROR NO. IV

THE TRIAL COURT ERRED IN AFFIRMING APPELLEE'S AUGUST 15, 2011 *[SIC]* ADMINISTRATIVE APPEAL DECISION. THE DECISIONS IS *[SIC]* NOT IN ACCORDANCE WITH LAW AND IS IN VIOLATION OF OHIO ADMIN. CODE 5101:1-39-27.1 AND 5101:1-39-07 WHICH PERMIT THE TRANSFER OF HOMESTEAD

PROPERTY FROM A REVOCABLE TRUST TO THE COMMUNITY SPOUSE.

ASSIGNMENT OF ERROR NO. V

THE TRIAL COURT ERRED IN AFFIRMING APPELLEE'S SEPTEMBER 14, 2011 ADMINISTRATIVE APPEAL DECISION. THE DECISION IS NOT SUPPORTED BY RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE AND IS NOT IN ACCORDANCE WITH LAW BECAUSE APPELLANT HAS REBUTTED THE PRESUMPTION OF IMPROPRIETY OF THE TRANSFER PURSUANT TO OHIO ADMIN. CODE 5101:1-39-07(E) & (G).

ASSIGNMENT OF ERROR NO. VI

THE TRIAL COURT ERRED IN AFFIRMING APPELLEE'S SEPTEMBER 14, 2011 ADMINISTRATIVE APPEAL *[SIC]*. THE DECISION IS NOT SUPPORTED BY RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE AND IS NOT IN ACCORDANCE WITH LAW DUE TO THE COLLATERAL ESTOPPEL EFFECT OF APPELLEE'S PRIOR DETERMINATIONS AND STATE HEARING DECISIONS WITH OTHER APPLICATIONS FOR MEDICAID BENEFITS IN THE STATE OF OHIO AND ITS DISCRIMINTORY AND DIFFERENT TREATMENT OF MEDICAID APPLICANTS WITHOUT A RATIONAL RELATIONSHIP TO A LEGITIMATE STATE PURPOSE.

The First, Second, Third, Fourth, Fifth and Sixth Assignments of Error

This Court in *Williams v. Ohio Department of Job and Family Services*, 3d Dist. No. 8-11-18, 2012-Ohio-4659, *appeal not accepted*, ___ Ohio St.3d ___, 2012-Ohio-2178, has previously addressed the precise issues raised by Ruth in this appeal. *Williams* involved facts similar to the case sub judice. In that case, we affirmed the trial court's judgment finding that the Agency had correctly

determined that an improper transfer took place which required the imposition of a restricted period of Medicaid coverage upon the Medicaid applicant. Therefore, pursuant to our holding in *Williams*, we overrule Ruth's assignments of error and affirm the decision of the trial court.

Accordingly, for the aforementioned reasons, it is the order of this Court that the Judgment Entry of the Logan County Court of Common Pleas be, and hereby is, affirmed. Costs are assessed to Appellant for which judgment is hereby rendered. This cause is remanded to the trial court for execution of the judgment for costs.

It is further ordered that the Clerk of this Court certify a copy of this judgment entry to the trial court as the mandate prescribed by App.R. 27, and serve a copy of this judgment entry on each party to the proceedings and note the date of service in the docket as prescribed by App.R. 30.

JUDGES

WILLAMOWSKI, J., Concurs in Judgment Only

DATED: June 3, 2013

/jlr