
IN THE SUPREME COURT
OF THE STATE OF NORTH DAKOTA

Harold Ring)
)
 Appellant,)
)
 vs.) Supreme Court No. 20200072
)
 North Dakota Department of)
 Human Services,)
)
 Appellee.)

APPEAL FROM THE DISTRICT COURT
NORTHEAST JUDICIAL DISTRICT
RENVILLE COUNTY, NORTH DAKOTA
THE HONORABLE ANTHONY SWAIN BENSON PRESIDING

SUPPLEMENTAL BRIEF OF THE APPELLANT ON REMAND

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TABLE OF CONTENTS

Table of Authorities ii

Statement of the Issues 1

Statement of the Case 1

Statement of the Facts..... 1

Summary of Argument 2

Law and Argument 3

 I. Whether Ring’s appeal of his denial of Medicaid coverage by the North Dakota
 Department of Human Services survives his death 3

 II. Whether substitution of a party should be ordered due to Ring’s death during the
 pendency of his administrative appeal under N.D.R.Civ.P. 25..... 3

Conclusion 8

TABLE OF AUTHORITIES

North Dakota Statutes

N.D.Cent.Code § 28-01-26.1 ¶12
N.D.Cent.Code Chapter 28-32 ¶10, ¶16, ¶24
N.D.Cent.Code § 28-32-46. ¶10, ¶17
N.D.Cent.Code § 28-32-46(8). ¶9, ¶15, ¶33
N.D.Cent.Code § 28-32-49. ¶9, ¶15, ¶17, ¶33
N.D.Cent.Code § 30.1-01-06 ¶19

North Dakota Code

N.D.A.C. § 75-01-03. ¶19
N.D.A.C. § 75-01-03-03 (9) ¶19, ¶30
N.D.A.C. § 75-01-03-03 (10) ¶19, ¶30
N.D.A.C. § 75-02-02.1-02 (1)(e) ¶21
N.D.A.C. § 75-02-02.1-02.1 ¶22

North Dakota Rules

N.D.R.Civ.P. 3 ¶10
N.D.R.Civ.P. 25 ¶1, ¶9, ¶14, ¶15, ¶27, ¶33, ¶34
N.D.R.Civ.P 81(b) ¶16

North Dakota Cases

Estate of Gross v. ND Dept. of Human Services,
2004 ND 190. ¶25, ¶30
Harold Ring v. North Dakota Department of Human Services,
2020 ND 217 ¶2 ¶22

Other

In the Estate of Harold Lloyd Ring,
Dist Ct. Case No. 38-2020-PR-00003. ¶28
NDDHS Policy Manual
Right to Appeal and Fair Hearing 448-01-30-10 ¶23, ¶29, ¶30

STATEMENT OF THE ISSUES

[1] I. Whether Ring's appeal of his denial of Medicaid coverage by the North Dakota Department of Human Services survives his death.

[2] II. Whether substitution of a party should be ordered due to Ring's death during the pendency of his administrative appeal under N.D.R.Civ.P. 25.

STATEMENT OF CASE ON REMAND

[3] Harold's application for Medicaid was denied and appealed in January of 2019. A hearing was held on March 21, 2019, in the Good Samaritan Nursing Home. R. 1. Administrative Law Judge Jeanne McLean upheld the North Dakota Department of Human Services' (Department) denial. ALJ McLean's decision is the Department's final decision. R. 148.

[4] Harold sought judicial review of the Department's denial in District Court for Renville County. R. 159. The Honorable Anthony Swain Benson affirmed the Department's decision denying Harold Medicaid coverage. R. 162. Harold timely filed this appeal on March 6, 2020. On October 21, 2020, the Supreme Court remanded the case to the district court with instructions. S.Ct docket entry 20. The district court entered an order on remand with the Supreme Court on March 4, 2021. S.Ct docket entry 23. The Supreme Court allowed the parties to file supplemental briefs. S.Ct docket entry 27 and 30.

STATEMENT OF FACTS

[5] There has been no evidentiary proceeding since the March 21, 2019, administrative hearing. No witnesses were sworn to testify. No evidence was received by the court in the normal manner. Only emails were submitted to the court. Dist.Ct. Doc#59-65.

[6] The emails were made in good faith during a time that the undersigned learned he no longer had a client. The emails clearly established that Harold Ring died before Judge Benson made his decision and not after as was reference in an email. If the Department's intent was to embarrass the undersigned, mission accomplished. I was embarrassed in the way I had to learn of a client's death. As the emails indicate, the undersigned had not made contact with Harold's daughter until just prior to filing the notice of appeal. The undersigned had no client until this contact was made.

[7] Nancy Ring was the only child that testified at Harold administrative hearing. Nancy was the one child Harold trusted to be his power of attorney. R. 37-54. Harold Ring passed away on November 16, 2019. Dist.Ct. Doc#60. The undersign would ask the court to consider the email exchange as evidence the Department accepted Nancy to succeed Harold in his administrative appeal.

[8] The emails took place after the district court issued a decision on January 6, 2020 and before a notice of appeal was made on March 6, 2020, without objection by the Department.

SUMMARY OF ARGUMENT

[9] Once the district court rendered the decision the case goes back to the Department for disposition. Whether that be issuing benefits or collecting overpayments or such other necessary action. N.D.Cent.Code § 28-32-46(8). This period of time, up and until Harold filed his notice of appeal belongs to the Department. Once the notice of appeal is filed with the supreme court, it comes under the jurisdiction of North Dakota highest court. N.D.Cent.Code § 28-32-49. During this in between period, the Department's regulations and policies are controlling. Nancy Ring

succeeded Harold in his effort of seeking judicial review of the Department's denial of Medicaid. The need to seek a substitution pursuant Rule 25 N.D.R.Civ.P. was not necessary.

LEGAL ARGUMENT

[10] Harold Ring's case involves a request for judicial review of an administrative agency decision pursuant to the North Dakota Administrative Agencies Practices Act. N.D.Cent.Code Chapter 28-32. It is not a civil claim initiated pursuant to Rule 3 of N.D.R.Civ.P. The district court on remand is limited to the actions of an appellate court and lacks the authority to go beyond the administrative record. N.D.Cent.Code § 28-32-46.

[11] I. Ring's appeal of his denial of Medicaid coverage by the North Dakota Department of Human Services survives his death.

[12] No action or claim for relief, except for breach of promise, alienation of affections, libel, and slander, abates by the death of a party or of a person who might have been a party had such death not occurred. N.D.Cent.Code § 28-01-26.1. Furthermore, if a Medicaid claim did not survive a applicant's death there would be no purpose for the policies and regulations on succession.

[13] The Department did not oppose or object to Harold's claim surviving his death.

[14] II. Substitution of a party under N.D.R.Civ.P. 25, is not necessary.

[15] Once the district court rendered a decision the case goes back to the Department for disposition. Whether that be issuing benefits or collecting overpayments or such other necessary action. N.D.Cent.Code § 28-32-46(8). This period of time, up and until Harold filed his notice of appeal belongs to the Department. Once the notice of appeal is filed with the supreme court, it comes under the jurisdiction of North Dakota highest court. N.D.Cent.Code § 28-32-49. During

this in between period, the Departments regulations and policies are controlling. Nancy Ring succeeded Harold in his effort of seeking judicial review of the Department's denial of Medicaid. The need to seek a substitution pursuant Rule 25 N.D.R.Civ.P. was not necessary.

[16] The North Dakota Administrative Agencies Practices Act provides no guidance for a course of action when an appellant dies pending an administrative appeal. See, N.D.C.C. Chapter 28-32. The North Dakota Rules of Civil Procedure apply to administrative appeals when the Rules are not in conflict with the Administrative Agencies Practice Act. N.D.R.Civ.P 81(b). It must be noted, the only references in the AAPA to the rules of civil procedure concern service of process.

[17] Sections 28-32-46 and 28-32-49 of the N.D.Cent.Code, specifically provides the authority to reviewing courts. The district court in an appeal of an agency decision has the same authority as the supreme court but only during pendency of the review. There being no specific rule of civil procedure addressing Harold's facts, leaves the reviewing court to the administrative agency to determine an appropriate successor.

[18] The undersigned communicated with the Department regarding Harold's death and discussed Nancy as a successor. Dist.Ct. Doc#59-65. The Department made no objection to Nancy serving as Harold's successor. Dist.Ct. Doc#59-65. The Department in stipulating to dismiss civil no. 38-2020-PR-00003, did so because they accepted Nancy Ring as Harold's successor. Dist.Ct. Doc#59-65. There was no need for a special administrator because Nancy Ring was willing to succeed her father's appeal. Dist.Ct. Doc#59-65. Nevertheless a remand to the Department would have been appropriate to determine whether Nancy Ring was an appropriate successor.

[19] The North Dakota Administrative Code provides some guidance. See, N.D.A.C. § 75-01-03. “ If a claimant dies after a request for a fair hearing has been filed by the claimant, and before the decision of the department has been rendered in the case, the proceedings may be continued on behalf of the claimant's estate, or any successor, as that term is defined in North Dakota Century Code section 30.1-01-06, of the claimant if a personal representative of the estate has been appointed.” N.D.A.C. § 75-01-03-03 (9). The code as provides that “any successor” of a dissatisfied deceased claimant can request a fair hearing. N.D.A.C. § 75-01-03-03 (10). These code sections do not limit “any successor[‘s]” ability to continue the appeal.

[20] Harold Ring was 96 years old and as a result of being financially exploited had no estate. This would be typical of a vulnerable adult being financially exploited and having to apply for Medicaid for long term care. Without adequate protection for vulnerable adults this will continue to be North Dakota’s future.

[21] The Department actually allows for applications for coverage even when the recipient is deceased. “A relative or other interested party may file an application in behalf of a deceased individual to cover medical costs incurred prior to the deceased individual's death.” N.D.A.C. § 75-02-02.1-02 (1)(e).

[22] In making an application the Department places a duty on the applicant to establish eligibility. N.D.A.C. § 75-02-02.1-02.1. Certainly, the Department could not limit the applicant’s duty by denying the right to name a successor. “Ring's daughter, Nancy Ring, filed a second Medicaid application on Ring's behalf in November 2018.” Harold Ring v. North Dakota Department of Human Services, 2020 ND 217 ¶2.

[23] The North Dakota Department of Human Services' Policy Manual in pertinent part reads: "If an applicant or recipient dies before a request for a fair hearing is filed, the appointed representative of the estate, or any successor of the applicant or recipient if no representative has been appointed, may file a request for appeal." See NDDHS Policy Manual Right to Appeal and Fair Hearing 448-01-30-10.

[24] Any successor may continue the proceedings. There is no additional requirement. No added requirement that the Appellant file a complaint pursuant to the Rules of Civil Procedure. There is nothing additional required. If there were additional or different requirements pertaining to the judicial review of the agency decision; those requirements must be set out in the North Dakota Administrative Agencies Practices Act. N.D.Cent.Code Chapter 28-32. Nancy Ring should not be deterred from having her father's appeal heard.

[25] In the Estate of Gross v. ND Dept. of Human Services, establish precedent to be followed. In the Estate of Gross, the Department did not object to the continuance of Gross's appeal after his death. Similarly, George Gross died after his administrative hearing and during the judicial review of his administrative appeal. See, Estate of Gross v. ND Dept. of Human Services, 2004 ND 190. George Gross died December 27, 2003. Id. at ¶ 2. A review of the district court docket sheet shows the appeal was filed on July 21, 2003, and judgment was not entered until December 3, 2004. Register of Actions, Case No. 24-03-C-00120.

[26] There are no docket entries in the district court record indicating a notice of death or a substitution of party. There is no indication of any objection by the North Dakota Department of Human Services. Register of Actions, Case No. 24-03-C-00120. The North Dakota Supreme Court docket was also void of any such entry on record. Docket No. 20040071.

[27] The Supreme Court's decision only states, "He died pending the appeal to the district court, and his Estate was substituted as the appellant." Id. at ¶ 4. Again there is no docket entry evidencing a substitution pursuant to Rule 25, N.D.R.Civ.P.

[28] From documents entered in Case No. 38-2020-PR-00003, In the Estate of Harold Lloyd Ring, it seems clear the Department new Harold Ring was deceased. From the administrative record the Department knew his daughter, Nancy Ring was his only family support acting as his POA and testifying at his hearing. Nancy as the Department concluded in Case No. 38-2020-PR-00003 was Harold's appropriate successor in this administrative appeal.

[29] The Department argued that additional procedures must take place for Nancy Ring to be recognized as Harold's successor, ignoring it's own policies. See, NDDHS Policy Manual § 448-01-30-10. Yet during the period between January 6, 2020, and March 6, 2020, only the Department could establish what procedures must be followed. Failing to provide a form and ignoring opposing counsel's offer of succession is not in the spirit of the Department's policies and regulations on succession. Social Security provides claimants representatives or family members with form HA-539. Medicare provides form HHS-772. The Veteran's Administration provides form 21P-0847. The Department literally has hundreds of forms on nd.gov/eforms available to the public but no form for the succession of an appellant in an administrative hearing.

[30] Harold's successor must be allowed to rely on NDDHS Policy Manual § 448-01-30-10 and N.D.A.C. § 75-01-03-03 (9)(10). Harold's successor must be allowed to rely on the Department's past conduct in similar situations. Estate of Gross v. ND Dept. of Human Services, 2004 ND 190.

[31] Finally this being an administrative appeal it begs the question whether a reviewing court has the discretion to order a substitution of party. It is well known, the Supreme Court does not review the decision of the district court; it reviews the decision of the agency. Consequently, must a reviewing court remand Ring to the Department to determine whether Nancy Ring is the proper successor. In the present case the record clearly establishes that Nancy Ring is the only choice to succeed her father's appeal but what if there were two choices.

CONCLUSION

[32] There is no dispute that Harold Ring's appeal survives his death.

[33] Again, once the district court rendered the decision the case goes back to the Department for disposition. Whether that be issuing benefits or collecting overpayments or such other necessary action. N.D.Cent.Code § 28-32-46(8). This period of time, up and until Harold filed his notice of appeal belongs to the Department. Once the notice of appeal is filed with the supreme court, it comes under the jurisdiction of North Dakota highest court. N.D.Cent.Code § 28-32-49. During this in between period, the Department's regulations and policies are controlling. Nancy Ring succeeded Harold in his effort of seeking judicial review of the Department's denial of Medicaid. The need to seek a substitution pursuant Rule 25 N.D.R.Civ.P. was not necessary.

[34] The appellant respectfully requests that court reverse the district court dismissal of the appeal and that Rule 25 substitution was not necessary under the facts of this case. The appellant further requests that the court either remand the appeal to the North Dakota Department of Human Services to determine an appropriate successor or in the alternative rely on the clear evidence that Nancy Ring is the only appropriate successor to Harold Rings appeal.

Dated this 28th day of April, 2021.

Respectfully Submitted by:

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STATE OF NORTH DAKOTA

Harold Ring,)	
)	
Appellant,)	Supreme Court No. 20200072
)	
vs.)	CERTIFICATE OF SERVICE
)	
North Dakota Department of Human)	
Services,)	
)	
Appellee.)	

The undersigned attorney, does hereby certify that a true and correct copy of the above and foregoing SUPPLEMENTAL BRIEF OF THE APPELLANT ON REMAND was served upon following persons by electronic mail and/or through the Odyssey Electronic File and Serve System on the 28th day of April 2021:

Tiffany Joy Grossman
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Dated this 28th day of April, 2021.

Richard R. LeMay

LEGAL SERVICES OF N.D.
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