

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT  
NO: 2021-P-1159

Essex ss.

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CARLA CASEY,

Plaintiff-Appellant,

v.

PAMELA PAPAMECHAIL, MARY LOU SUDDERS, SECRETARY OF THE  
MASSACHUSETTS EXECUTIVE OFFICE OF HEALTH AND HUMAN  
SERVICES, AND OFFICE OF MEDICAID/MASSHEALTH THIRD PARTY  
RECOVERY UNIT,

Defendants-Appellees.

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ON APPEAL FROM A JUDGMENT OF THE LAND COURT

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BRIEF OF PLAINTIFF-APPELLANT CARLA CASEY

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Dated: March 1, 2022

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**STATEMENT OF THE ISSUES**

Did the Land Court correctly rule that the Office of Medicaid/MassHealth Third Party Recovery Unit is entitled to recover the cost of medical benefits when the sole basis for said recovery arises from a scrivener's error on a deed that the Land Court reformed *nunc pro tunc*?

## **STATEMENT OF THE CASE**

This is an action to reform a deed to real property to correct a scrivener's error, and thereby remove a cloud on title to real property owned by plaintiff and appellant Carla Casey ("Casey"), which had been deeded to her by her mother, Mary Papamechail ("Papamechail"). R.A.1:349. This action is brought against defendants and appellees Pamela Papamechail, Mary Lou Sudders, Secretary of the Massachusetts Executive Office of Health and Human Services, and Office of Medicaid/MassHealth Third Party Recovery Unit (together, "MassHealth").

On November 20, 2018, Casey filed her complaint, which included causes of action for reformation and quiet title to a property located at 19 Hingston Street, Peabody, Massachusetts 01960 (hereafter, the "Subject Property"). R.A.1:9-21. MassHealth answered the complaint on January 8, 2019, and asserted a counterclaim for the recovery of Medicaid benefits in the amount of \$176,499.79, pursuant to M.G.L. c. 118E, Section 31(d). R.A.1:28-32. On April 9, 2019, the Land Court granted the parties' joint motion and entered an Order allowing for the subject property to be sold and the sale proceeds held in escrow. R.A.1:50-53.

On May 15, 2019, Casey filed a Motion for Summary Judgment requesting that the scrivener's error be reformed *nunc pro tunc* and that judgment be entered declaring that the Subject Property was not included in the probate estate of Papamechail. R.A.1:56-119. MassHealth filed a joint Opposition and Motion for Summary Judgment on June 18, 2019, requesting that judgment be entered that it was entitled to recover the cost of Papamechail's Medicaid benefits from the value of the subject property. R.A.1:120-314. Casey filed an Opposition

to MassHealth's Motion on July 18, 2019. R.A.1:326-339. No Reply briefs were filed by either side. Oral argument on these Motions was heard on July 29, 2019. R.A.1:376. On June 1, 2021, the Court entered judgment in MassHealth's favor by ordering that the deed for the Subject Property was reformed *nunc pro tunc*, but that notwithstanding this reformation MassHealth was entitled to recover from the value of the Subject Property. R.A.1:345-366. The decision was appealed on July 30, 2021. R.A.1:367-79.

### **STATEMENT OF FACTS**

The following facts are undisputed. On March 13, 2003, Papamechail signed a deed to convey her interest in the Subject Property to Casey, reserving a life estate for herself. R.A.1:349. Papamechail was the sole owner of the Subject Property at the time of the transfer. R.A.1:348. Papamechail turned 65 on November 16, 1989, which qualified her to receive medical benefits from MassHealth. R.A.1:349. By the time of her passing on August 12, 2018, MassHealth had paid benefits to her totaling to \$176,499.79. R.A.1:349. In relevant part, MassHealth first began providing benefits for services qualifying as those provided by a “nursing facility” as defined in 130 Mass. Code Regs. 520.019 on December 1, 2008, at the earliest. R.A.1:252.

Papamechail passed on August 12, 2018. R.A.1:77. Her estate was never probated. Casey, following Papamechail’s passing, discovered a scrivener’s error in the deed for the Subject Property, as the metes and bounds describing the Subject Property incorrectly referred to an unrelated property. R.A.1:64-75, 349. It was determined that the error could not be corrected under M.G.L. c. 183, § 5B. Casey filed the underlying Land Court action to correct the deed, and named MassHealth as a defendant in order to ensure that MassHealth received notice of this action. R.A.1:9-21. MassHealth filed a counterclaim on January 8, 2019, seeking to recover the cost of the aforementioned benefits under M.G.L. c. 118E, § 31. R.A.1:28-32. MassHealth never took any action to attach a lien to the subject property or make any claim against the estate pursuant to M.G.L. c. 118E, § 32(b). R.A.1:386.

## **ARGUMENT**

### **I. STANDARD OF REVIEW**

This Court reviews a grant of summary judgment *de novo*. Surabian Realty Co., Inc. v. NGM Ins. Co., 462 Mass. 715, 718 (2012). This Court must decide “whether, viewing the evidence in the light most favorable to the nonmoving party, all material facts have been established and the moving party is entitled to a judgment as a matter of law. Mass. R. Civ. P. 56(c). [This Court] may consider any ground supporting the judgment.” Beal v. Board of Selectmen of Hingham, 419 Mass. 535, 539 (1995) (quoting Augat, Inc. v. Liberty Mut. Ins. Co., 410 Mass. 117, 120 (1991) (further citations omitted)). This Court may affirm the ruling on any ground, even if it differs from the reasons relied upon by the motion judge. Hawthorne’s, Inc. v. Warrenton Realty, Inc., 414 Mass. 200, 210 n.6 (1993).

### **II. OVERVIEW**

The dispute at bar can be boiled down to two questions: 1) is MassHealth entitled to recover benefits under M.G.L. c. 118E, § 31 when its ability to make said recovery is due solely to a third party’s scrivener’s error; and 2) is MassHealth authorized by any statute or regulation to recover from the value of the Subject Property? As detailed below, the answer to both of these questions must be in the negative.

**A. REFORMATION OF THE SUBJECT PROPERTY'S DEED TAKES THE SUBJECT PROPERTY OUTSIDE OF MASSHEALTH'S REACH**

This issues presented in this appeal largely focus on whether the Land Court was correct in determining that it would prejudice MassHealth to allow the reformation of the Subject Property's deed due to the 2003 scrivener's error. As discussed in further detail below the answer to this question must be "no," as the Land Court's decision provides MassHealth with a windfall that it would not otherwise be entitled to gain.

1. Reformation of a Deed Is Justified When There Is a Scrivener's Error

The Land Court, in its Decision on the Motions for Summary Judgment, correctly found that there was no evidence contradicting the contention that there was a scrivener's error, noting that Papamechail (due to the *nunc pro tunc* reformation) did not actually own the property described in the erroneous section and referencing the affidavits of the grantee and the attorney who drafted the deed. It concluded that "[t]here is no dispute here that there was a clear scrivener's error in the 2003 deed." R.A.1:350. With this established, and the request for the error to be corrected, the Land Court examined whether the Subject Property's deed could and should be reformed. It is not disputed that a mistake of a scrivener is sufficient to warrant reformation. Berman v. Sandler, 379 Mass. 506, 510 (1980).

Once it was determined that reformation was proper, the next step was to determine the practical impact of the reformation. The Land Court correctly noted that reformation of the deed "relates back to the day of the first execution of the

reformed instrument.” Hillside Co-op. Bank v. Cavanaugh, 232 Mass. 157, 161 (1919). The only relevant exception to such relation back “is the limitation thereon to the effect that reformation will not be allowed where the rights of intervening lienors will be adversely affected thereby.” Gen. Builders Supply Co. v. Arlington Co-op. Bank, 359 Mass. 691, 696 (1971).

2. MassHealth Would Not Be Prejudiced by the Reformation of the Deed

MassHealth improperly received a windfall when the Land Court granted its Motion for Summary Judgment, and would not be “prejudiced” by the reformation of the deed as indicated by the Land Court. Despite reaching the conclusion that reformation was appropriate and that MassHealth had no statutory right to recover from the Subject Property, the Land Court looked to equity principles and fashioned a ruling that granted the reformation *nunc pro tunc* dating back to the original transfer, but nonetheless allowed MassHealth to recover from the property as if the reformation had not occurred.

The Land Court justified this contradictory ruling by looking to the holding in General Builders Supply Co. v. Arlington Co-operative Bank. R.A.1:353-362. That case involved real property subject to multiple mortgages, where one of the mortgagors sought to reform a mortgage that described the incorrect property. The reformation, if granted, would have resulted in a net benefit to that mortgagor to the detriment of other mortgagors. The Supreme Judicial Court held that “the bank is not entitled to reformation to the prejudice of these three holders of junior liens,” after determining that these junior lien holders were bona fide purchasers for value and had no notice of the other parties’ mutual

mistake. *Id.* at 697-98. The Court permitted the reformation as to the mortgagee and the initial mortgagor, but only to the extent that this reformation did not prejudice the junior mortgagors. The Land Court applied this ruling and reached the conclusion that MassHealth was an “innocent third party” whose rights would be unfairly interfered with if the Subject Property’s deed was reformed, and that any reformation should not impair its ability to recover the \$176,499.79 in benefits paid on behalf of Papamechail. R.A.1:345-362.

*a. Errors in Application of General Builders: Life Estate Extinguishes Interest in Property*

The Land Court made several errors in its decision on Summary Judgment. First, it incorrectly determined that MassHealth had any mechanism by which to recover these benefits from the value of the Subject Property. The Land Court in Est. of Koutoukis v. Sec'y of Exec. Off. of Health & Hum. Servs. examined a similar situation and correctly came to a different conclusion than that reached by the lower court here. Estate of Koutoukis vs. Sec'y of Executive Office of Health & Human Servs., Mass. Land Ct., No. 20 MISC 000004 (RBF) (Sept. 17, 2021). In that case, Mr. and Mrs. Koutoukis intended to deed a property to their children while retaining a life estate in the property. Later, after the passing of Mr. Koutoukis, it was discovered that a scrivener’s error gave the parents more than a life estate interest in the property. Probate was filed to correct the error, and MassHealth filed a claim against the estate. In determining that the property was not a “countable asset” for MassHealth to recover against, the Land Court held that “the retention by an applicant of a life estate in his or her primary residence does not render the property a countable asset.” *Id.* at \*6.

Here, the Land Court in the underlying action was faced with similar circumstances. As with the Koutoukis case, the present case involves an undisputed scrivener's error that needed correction via reformation, a MassHealth beneficiary who held a life estate in a property up until the time of her death, and MassHealth's attempting to recover against the value of that property as a result of the scrivener's error. Consistent with the reasoning and determination in Koutoukis, the Subject Property properly should not constitute a countable asset for purposes of MassHealth.

*b. Errors in Application of General Builders: Illogical Outcomes*

There is no basis in law or policy to support the conclusion that a drafting error in a recorded document, which is attributable wholly to a third party and not to either the grantee or grantor, could grant a government agency the authority to insert rights of recovery in a decades old transaction. The Land Court concluded that MassHealth's "right" to the Subject Property was solely the result of its "right, and indeed the statutory duty, to recover benefits from decedent recipients' estates." R.A.1:355. Not only does this incorrectly assume that MassHealth had any rights relating to the Subject Property but for the scrivener's error, it results in inappropriate outcomes. By way of example, suppose that Person A attempted to transfer property to Person B, but due to a scrivener's error Person C's name was inserted as the grantee. Under the Land Court's ruling, if these Persons attempted to reform the deed then MassHealth could assert recovery rights, pursuant to the authority granted it in M.G.L. c. 118E, § 31 and 130 Mass. Code Regs. 520.019, against Person B for the medical benefits paid to Person C. This is obviously

nonsensical, and flies in the spirit of the General Builders ruling by incorrectly concluding that it would be unfair to prevent MassHealth from recovering funds regardless of the statutory basis for said recovery.

*c. Errors in Interpretation of General Builders: Fairness*

Next, there is the root question of fairness. The General Builders ruling was based on the notion that it was unfair to correct a deed in a manner that harmed those who both had a vested interest in the property and who had relied upon the erroneous formulation of the deed. Id. at 697. MassHealth argued that it should be treated the same as the unwitting junior mortgagees on the grounds that it was denied the opportunity to “assess whether a lien should be recorded” on the Subject Property. R.A.1:126. This argument assumes that MassHealth had a vested interest and relied upon the deed with the scrivener’s error. However, MassHealth admits that it had no such reliance and had not asserted any lien on the Subject Property, distinguishing it from the clear-cut facts set forth in General Builders (where it was undisputed that the mortgagees had innocently relied upon the deed). R.A.1:386. As will be explained in more detail below, MassHealth has no legal right to recover any benefits paid to Papamechail. Absent such a right, it is unfair and prejudicial to Plaintiff for the Land Court to grant such presumed rights to MassHealth.

*d. Errors in Interpretation of General Builders: Expansion of Statutory Authority*

Finally, the outcome sought by MassHealth (and granted by the Land Court) improperly attempts to expand MassHealth’s rights and powers beyond the authority granted to it by the Legislature. The Land Court’s ruling on summary

judgment gives MassHealth a previously-unrecognized ability to recover the cost of medical benefits that A) were never part of an estate, and B) had not been owned by the recipient of the benefits for decades, because C) of the need to ensure that MassHealth could recover the cost of the benefits from someone. The Land Court accomplished this by taking the equitable rule from General Builders, that harms arising from reformation as to bona fide purchasers for value should be minimized, and grafting it onto MassHealth's statutory authority.

The Supreme Judicial Court has recently cautioned against MassHealth's attempts to expand its authority to recover the cost of benefits beyond what was authorized by the legislature. Matter of Estate of Kendall, 486 Mass. 522 (2020). In Kendall, MassHealth argued that it should be granted broad authority to recover benefits, and that hindrances to this mission (such as statutes of limitations) should be minimized. The Court dismissed this position, noting that "the Legislature has already acknowledged [MassHealth's] concern and done a cost-benefit analysis, and we do not question the statutes they chose to enact after assessing the risks." Id. at 532. Here, as in Kendall, there is no statutory authority supporting MassHealth's position, and adopting its position would result in a broad expansion of MassHealth's powers that cannot be reasonably inferred from any of its enabling statutes. There is no reason in law or public policy justifying MassHealth's expansion of powers beyond what the Legislature authorized, and even less reason to do so based on equitable principles alone.

**B. MASSHEALTH CANNOT RECOVER UNDER CHAPTER 118E**

Even if one accepts the Land Court’s application of General Builders to these facts, summary judgment should still not have been entered in MassHealth’s favor. Neither Section 31 nor Section 32 of Chapter 118E grants MassHealth the right or authority to recover the value of Papamechail’s benefits against the Subject Property.

**1. Section 31 Allows for Recovery Only Against an Estate**

MassHealth, in order to recover funds from a person’s estate, must root its claim in its statutory and regulatory authority. MassHealth’s Motion for Summary Judgment argued that its vehicle of recovery of the \$176,499.79 it paid in benefits to Papamechail is the authority granted by M.G.L. c. 118E, § 31(b). This Section allows MassHealth to recover the cost of medical benefits from “the estate of an individual who was sixty-five years of age or older when he or she received such assistance.”

The Land Court’s decision incorrectly adopted MassHealth’s argument that MassHealth could recover under the above statutory framework. R.A.1:361-362. MassHealth, under Section 31, can only recover from Papamechail’s estate. If there are no assets in her estate, then MassHealth has nothing to recover from. With respect to the Subject Property, it is not disputed that Papamechail retained a life estate interest following the 2003 transfer. This interest extinguished upon her death. *See* 31 C.J.S. Estates § 36. There is therefore nothing for MassHealth to recover from Papamechail’s estate with respect to the Subject Property, as she no longer held any interest in the Subject Property.

2. Section 32 Allows for Recovery Only When An Estate is in Probate

Since it is well-established that any lien imposed by MassHealth on the Subject Property would have expired upon Papamechail's death, the appropriate method of recovery would have been under M.G.L. c. 118E, § 32. Wells Fargo Bank, N.A. v. Green, 2020 WL 1903828, at \*11 (Mass. Land Ct. Apr. 17, 2020). Section 32 sets forth the method for MassHealth to recover from a person's estate, and notably requires that the estate be in probate, either initiated by the decedent's heirs or by MassHealth within one year of the decedent's passing. *Id.* at § 32(b). MassHealth did not follow the process set forth in Section 32, and therefore cannot attempt to recover the value of Papamechail's benefits under this Section.

MassHealth's rights to recover against the estate are also subject to a strict three-year statute of limitations. M.G.L. ch. 190B, § 3-108; *see also* Matter of Estate of Kendall, 486 Mass. 522, 523 (2020). While MassHealth did file Counter-Claims to recover under Section 31, it did not petition to open an estate or designate a public administrator under Section 32(i). The Supreme Judicial Court held in the Kendall case that Section 3-108's statute of limitations, read in light of MassHealth's statutory framework, applied fully to MassHealth's right to recover the value of medical benefits. The Court further noted that the burden was on MassHealth to either intervene in an estate proceeding or move to designate a public administrator within the three-year time limit. *Id.* at 531. Here, there was no probate of Papamechail's estate and no effort by MassHealth to designate a public administrator. The statute of limitations has since run, leaving MassHealth

without the right to recover against Papamechail's estate (in addition to the fact that, as discussed in detail above, the Subject Property was not part of her estate).

**c. MASSHEALTH CANNOT RECOVER AGAINST THE PROPERTY THROUGH ITS "LOOK BACK" AUTHORITY**

Lacking any other power to access the Subject Property, MassHealth must now turn to those statutes and regulations that guard against beneficiaries' attempts to hide assets from MassHealth's estate recovery unit. MassHealth's regulations authorize a "look back" period when determining eligibility , with the regulation stating as follows:

(B) Look-back Period. Transfers of resources are subject to a look-back period, beginning on the first date the individual is both a nursing-facility resident and has applied for or is receiving MassHealth Standard.

- (1) For transfers occurring before February 8, 2006, this period generally extends back in time for 36 months.
- (2) For transfers of resources occurring on or after February 8, 2006, the period generally extends back in time for 60 months. The 60-month look-back period will begin to be phased in on February 8, 2009. Beginning on March 8, 2009, applicants will be asked to provide verifications of their assets for the 37 months prior to the application. As each month passes, the look-back period will increase by one month until the full 60 months is reached on February 8, 2011. 130 Mass. Code Regs. 520.019.

It is important to note that the transfer regulations do not provide MassHealth with a right to recover assets post-death, as MassHealth is attempting to do here. Rather, the transfer regulations solely provide MassHealth with the ability to deny an applicant's benefit coverage request in the event that assets are impermissibly transferred within the look-back period. Because this is a post-death recovery action, the transfer regulations do not apply.

Even assuming that the transfer regulations would somehow permit MassHealth to seek recovery of the Subject Property in this case (which they do

not), the Subject Property was transferred well outside of the look-back period so the transfer regulations do not apply in any event. The Subject Property was transferred in March of 2003, with such transfer date being affirmed by the Land Court when it reformed the deed to correct the scrivener's error. Therefore, as the Subject Property was transferred almost twenty years ago, MassHealth's look-back period argument is insufficient to reach back to unwind the transfer of the Subject Property. Because the transfer occurred before February 8, 2006, the look-back period only extends back three years; however, even if one applied the lengthier look-back period of five years under subsection (B)(2), the transfer of the Subject Property would still fall outside this period.

The unambiguous language in these statutes means that MassHealth is not empowered to utilize the transfer rules to recover from the value of the Subject Property to recoup its payments on Papamechail's behalf. Even if the transfer regulations did apply, MassHealth's only remedy would be to deny medical coverage for Papamechail for a period of time. Because she is already deceased and this action amounts to a recovery attempt by MassHealth, the only statutory authority that could conceivably apply to grant MassHealth with any relief is that under the estate recovery rules. However, as discussed above, because Papamechail did not have a probate estate from which MassHealth could recover, the agency's recovery attempts fail on this basis as well. It is also important to note that MassHealth's arguments regarding the applicability of the transfer regulations to the present case were raised for the Land Court's consideration, but were ignored in its Order on the Motions for Summary Judgment.

## **CONCLUSION**

For the foregoing reasons, the Appellant Carla Casey requests that this Honorable Court reverse the judgment of the Land Court, enter Summary Judgment in her favor, and award Appellant Carla Casey her costs and attorney's fees to the extent authorized by law.

Respectfully submitted,

MORRISON MAHONEY LLP

Date: March 1, 2022

/s/ Daniel J. Ashby

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**CERTIFICATE OF COMPLIANCE**

I, Daniel J. Ashby, hereby certify I complied with the rules of the court that pertain to the filing of briefs, including, but not limited to: Mass. R.A.P. 16(a)(6), Mass. R.A.P. 16(e); Mass. R.A.P. 16(f); Mass. R.A.P. 16(h); Mass. R.A.P. 18 and Mass. R.A.P. 20.

Date: March 1, 2022

By: /s/ Daniel J. Ashby

Edwin F. Landers, Jr.

Daniel J. Ashby

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed the foregoing document through the ECF system and notice will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

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