

IN THE IOWA SUPREME COURT

No. 22-1331

Scott County No. TRPR080347

IN THE MATTER OF THE
MEDICAL ASSISTANCE POOLED
SPECIAL NEEDS TRUST OF

STEVEN MULLER,

**APPEAL FROM THE IOWA DISTRICT COURT
FOR SCOTT COUNTY
THE HONORABLE PATRICK A. MCELYEA, DISTRICT JUDGE**

APPELLANT'S FINAL REPLY BRIEF

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INTRODUCTION

Trustee and Appellant, the Center for Special Needs Trusts Administration, Inc. (“the Center”), rests largely on its argument as presented in its brief before this Court. However, the Center herein replies to Appellee the Iowa Department of Human Services’ (“DHS”) brief by addressing DHS’s: (1) use of inapposite legal authority as precedent; (2) implied argument that variance within the federal regulation somehow indicates a defect; and (3) reliance on Iowa Code § 633C.2 without referencing the statute’s first sentence.

ARGUMENT

A. THE *LEWIS, REESE, AND PFOSER* CASES ARE NOT ANALOGOUS TO THE CASE AT HAND AND DO NOT SUPPORT THE PROPOSITIONS FOR WHICH DHS OFFERS THEM.

To the extent that DHS cites legal support for its arguments, it most frequently relies upon *Lewis v. Alexander*, 685 F.3d 325, 331 (3d Cir. 2012). and *National Foundation for Special Needs Integrity, Inc. v. Reese*, 881 F.3d 1023, 1025 (7th Cir. 2018). Neither case is from Iowa or the Eighth Circuit Court of Appeals. Thus neither is binding on this Court. More importantly, both cases are readily distinguishable from and inapplicable to the matter at hand.

DHS's reliance on *Lewis* is misplaced. First, in *Lewis*, the Third Circuit Court of Appeals expressly endorsed the same reading of the statute as Trustee in this matter: "Congress intended to permit special needs trusts—at the discretion of the trust—to retain up to 100% of the residual after the death of the disabled beneficiary." *Lewis v. Alexander*, 685 F.3d 325, 348 (3d Cir. 2012). ("Permitting the States to choose how much the trust can retain would eviscerate [the protective function of 42 U.S.C. § 1396p(d)(4)(C)(iv)]. . . . We cannot believe Congress would intentionally cripple its statute in that manner."). The appellate court also recognized and documented the rationale behind Congress's action, "By pooling these small accounts for investment and management purposes, overhead and expenses are reduced and more money is available to the beneficiary." *Id.* at 333.

In keeping with this recognition, the appellate court held that Congress "did not intend to allow additional burdens targeted specifically at special needs trusts" and that, therefore, much of Pennsylvania's statute was preempted by federal law. *Id.* at 331, 334, 347. The Third Circuit Court of Appeals also recognized that "[t]here is necessarily some tension" between this conclusion and the fact that states retain their general ability to regulate trusts. *Id.* at 347. As such, the appellate court ruled that it was not contrary to the will of Congress for Pennsylvania to use its law governing trusts (or non-

profits) to “petition the court for an order terminating the trust” in the limited event that the legal requirements were not met or if the trustee refused to make payments for the special needs of the beneficiary. *Id.* at 352 (citing Section 1414(c)).

Second, the case at hand and the *Lewis* case are factually distinct from each other. *Lewis* considers a statute passed by the state of Pennsylvania and referred to as Section 1414 that “sought to regulate pooled trusts (and special needs trusts more generally)” and was challenged as being preempted by federal law. *Id.* at 334. This posture is a critical difference between the two cases—in the case before this court, the attempt at additional oversight of pooled special needs trusts comes from a single state agency, whereas in *Lewis*, the Pennsylvania legislature had passed a statute regarding 42 U.S.C. § 1396p(d). *Lewis* is not applicable to the case now before this Court; to the extent this Court does find *Lewis* persuasive, the case does not support the propositions argued by DHS.

DHS’s reliance on *Reese* is equally misplaced, for two reasons. First, the litigation in *Reese* was between the beneficiary/decedent’s Estate and the trustee of the special needs trust, whereas this matter is a dispute between the Trustee and a state agency. *Reese*, 881 F.3d at 1025. Moreover, the question presented to the Seventh Circuit Court of Appeals was whether the decedent’s

contract with the trustee was ambiguous, and if so, whether the remainder of the sub-account should have been retained by the trust or distributed to the decedent's Estate upon her death. *Id.* at 1026. The appellate court's analysis entirely concerns contractual ambiguity and the application of contract interpretation principles to the trust agreement. *Id.* at 1029–30. Those issues do not remotely resemble the legal issues currently before this Court. Additionally, the trust agreement language in *Reese* further differentiates that case from Mr. Muller's case as it (unlike Muller's trust agreement) states that the trust "shall not retain any portion of the Beneficiary's trust Sub-Account upon his or her death" and requires that the state of Missouri be reimbursed "up to the full amount that it has expended on the Beneficiary." *Id.* at 1026.

Second, the Seventh Circuit Court of Appeals' statement of the law governing special needs trusts in *Reese* was incomplete. The *Reese* Court referenced 42 U.S.C. § 1396p(d)(4)(C)(iv) only in the context of explaining what a special needs trust is and without quoting the relevant regulation in full. The *Reese* Court stated (again, without quoting the regulation), "But upon a beneficiary's death, the trustee must reimburse the state for any medical assistance the state provided." *Id.* at 1026 (citing but not quoting 42 U.S.C. § 1396p(d)(4)(C)(iv)). The Court in *Reese* presented an incomplete statement

of the law by not including a quotation to the full passage. The full regulation provides:

To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the State from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the State plan under this subchapter.

42 U.S.C. § 1396p(d)(4)(C)(iv) (emphasis added). Any reliance on the statement of the law in *Reese* necessarily indicates reliance on the full text of the statutory provision cited by the Seventh Circuit, which is quoted in full immediately above. Thus, reliance on *Reese* in fact recognizes the trust's right to retain funds upon the death of the beneficiary prior to a state's reimbursement.¹ *Reese* is not applicable to the issues now before this Court, and even if it were, it does not stand for the propositions DHS wants it to.

In addition to *Lewis* and *Reese*, DHS also cites to a Minnesota state court case, *Pfoser v. Harpstead*. 953 N.W.2d 507 (Minn. 2021). Like *Lewis* and *Reese*, *Pfoser* is distinguishable from Mr. Muller's case. First, Minnesota's statutory scheme includes a pay-back provision similar to Missouri's, which was reflected in the trust agreement at issue.² *See id.* at 522;

¹ The Seventh Circuit Court of Appeals did not mention or consider whether any such reimbursement regulation or statute Missouri may have is preempted by federal law.

² The Minnesota Supreme Court does not consider the question of whether the pay-back provision is preempted by federal law, nor does it provide an explanation of how such a provision is in harmony with

see also Minn. Stat. § 256B.056, subd. 3b(d). Second, the question before the Minnesota Supreme Court was whether the decedent’s funding of the trust violated asset transfer rules, a question not before this Court. *Id.* at 514. *Pfoser’s* analysis is not analogous to the analysis required to reach a conclusion regarding the issues in this case.

B. CONGRESS INTENDED SUBPART (4)(C) TO DIFFER FROM SUBPARTS (4)(A) AND (4)(B) AND NO NEGATIVE INFERENCE CAN BE DRAWN FROM THAT INTENTIONAL VARIATION.

DHS mentions that § 1369p(d)(4) defines three types of special needs trusts at (4)(A), (4)(B), and (4)(C). (Appellee’s Brief, p. 20) The first two types, at (4)(A) and (4)(B), are governed by a provision specifically requiring the trust to repay the State for medical assistance paid on behalf of the beneficiary upon that individual’s death. 42 U.S.C. § 1396p(d)(4)(A), (B). As fully explained in prior briefing and discussed above, Congress added a protective provision to (4)(C) owing to the unique nature of the instrument specifically allowing the trust to retain funds after the beneficiary’s death. *Id.* at (4)(C) (“To the extent that amounts remaining in the beneficiary’s account upon the death of the beneficiary are not retained by the trust, . . .). DHS appears to argue that there is something wrong with (4)(C) because it differs

the federal regulatory language beyond the use of an “accord” signal. *Pfoser v. Harpstead*. 953 N.W.2d 507, 522 (Minn. 2021).

from (4)(A) and (4)(B). (Appellee’s Brief, p. 20 (“The language for pooled special needs trusts described in (4)(C) varies from the others in the same section.”)).

DHS dangles this red herring without any legal support. What DHS implies flies in the face of standard statutory interpretation—the fact that (4)(C) differs from (4)(A) and (4)(B) is not indicative of a defect in (4)(C) because courts ““presume statutes or rules do not contain superfluous words.”” *Iowa Insurance Institute v. Core Group of Iowa Association for Justice*, 867 N.W.2d 58, 75 (Iowa 2015) (citing *State v. McKinley*, 860 N.W.2d 874, 882 (Iowa 2015) and Iowa Code § 4.4(2) (“[t]he entire statute is intended to be effective”)). Congress is presumed to have included the retention clause in (4)(C) because it meant the statute to function as such.

C. IOWA’S TRUST CODE REQUIRES ALL STATE REGULATION OF POOLED SPECIAL NEEDS TRUSTS TO BE “NO MORE RESTRICTIVE THAN SPECIFIED UNDER FEDERAL LAW” AND THEREFORE THE CENTER APPROPRIATELY RETAINED THE FUNDS AND PROVIDED AN ADEQUATE ACCOUNTING.

The first sentence of Iowa Code § 633C.2 provides, “Any income or assets added to or received by and any income or principal retained in a medical assistance special needs trust shall be used in accordance with a standard that is no more restrictive than specified under federal law.” The

Iowa legislature has explicitly stated that whatever additional burdens the state chooses to add to the regulation of pooled special needs trusts cannot restrict federal regulations—the same regulations that mandate the trust’s ability to retain the funds of a deceased beneficiary for the benefit of other trust members. Simply put, once the individual beneficiary is deceased, federal law clearly allows for retention by the trust, and Iowa courts overseeing such trusts cannot infringe upon that ability in a manner that is inconsistent with federal law.

DHS’s argument is premised on its position that this retention procedure is a bug within the trust structure rather than a feature. As explained by the Eighth Circuit Court of Appeals and quoted by DHS, once a beneficiary has died, the funds “may be **kept** by the non-profit for the benefit of other pooled-trust beneficiaries.” *See Olson*, 676 F.3d at 695 (emphasis added). Each beneficiary, while alive, has a trust sub-account for purposes of tracking their funds. However, the money belonging to all the beneficiaries is always pooled and held in a master account (or “co-mingled”) for purposes of investment and management to maximize earnings and minimize overhead costs. The fact that sub-accounts are designated to track individual beneficiary’s contributions does not change that fact. When a beneficiary dies and their sub-account is eliminated (following payment of all their eligible

bills), those funds do not actually change location. They remain in the master account with all other funds for the reasons stated above. There is no nefarious transfer of funds. The only way for the trust and the trustee to comply with federal regulations is to fund beneficiaries' needs from the main master account while tracking individual beneficiary's contributions within a designated sub-account for accounting purposes. Beneficiary funding always comes from that main trust account, which is where the funds are located both during a beneficiary's life and after their death.

CONCLUSION

The Center has presented its argument as to the errors present in the District Court's summary judgment order in its prior briefing. Herein, the Center responds to three points presented by DHS in its resistance brief, namely DHS's: (1) use of inapposite legal authority as precedent; (2) implied argument that variance within the federal regulation somehow indicates a defect; and (3) reliance on Iowa Code § 633C.2 without referencing the statute's first sentence. For these reasons and those presented in the Center's appellate brief, the Center asks that the Court reverse the District Court and find that the Center was entitled to summary judgment in its favor.

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

This brief contains 2,049 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman, size 14.

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CERTIFICATE OF FILING AND CERTIFICATE OF SERVICE

The undersigned certifies that on the 20th of December, 2022, the foregoing Appellant’s Final Reply Brief was filed with the Clerk of the Iowa Supreme Court by using the EDMS system and all persons who have filed appearances/attorneys of record will have service be accomplished by the EDMS system.

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