

P.R., et al. v. DEFENDANT LAW FIRM

FACTUAL BACKGROUND

1. Plaintiffs' sister P.R., age 45, suffered a cerebral aneurism in 2004 and became totally incapacitated.
2. After P.R. ran out of savings, Plaintiffs retained Defendant Law Firm in the latter part of 2010 initially to apply for and obtain medicaid benefits for P.R. in New Jersey under its home and community based waiver program for the traumatically brain injured.
3. P.R. received at that time income from Social Security in the amount of \$1,950.00 per month and a state teacher's pension in the amount of \$3,450.00 per month
4. In January, 2011, Defendant law firm prepared a special needs "qualified income" trust (QIT) naming P.R. as the beneficiary, one Plaintiff - sister as Trustee and the other Plaintiff - sister as successor Trustee. The trust was executed by P.R.'s mother. The Defendant Law Firm then purported to assign all of P.R.'s income to the trust and attempted to apply for the waiver program.
5. The N.J. Division of Medical Assistance and Health Services (DMAHS) informed Defendant Law Firm that it would not permit the use of the QIT to qualify for M.A. in the waiver program. Defendant Law Firm then advised Plaintiffs - sisters of the foregoing and they thereafter admitted P.R. to a nursing facility in February of 2011.
6. Defendant Law Firm advised Plaintiffs that the QIT would be effective in preserving P.R.'s income and it thereafter applied for M.A. as a medically needy applicant in N.J.'s nursing home program.
7. After attempting unsuccessfully to secure M.A. at the county level, Defendant Law Firm appealed the county board's denial and requested a hearing which ultimately also proved to be unsuccessful. The ALJ held that the Social Security could not be assigned to the trust under the Social Security Act and the state teacher's pension could not be assigned to the Trust under the Employee Retirement Income Security Act (ERISA). Accordingly, the income was countable for purposes of determining initial eligibility. The Defendant Law Firm then requested reconsideration of the decision of the Office of Administrative Law.
8. In the meantime, the Defendant Law Firm secured an opinion from the state teacher's pension board that the pension could be paid directly to the trust provided the pension was "voluntarily revocably assigned to the special needs trust."
9. Ultimately, all attempts to qualify for M.A. proved unsuccessful but by that time the nursing facility was owed \$105,000.00, and much of the money that was ineffectually assigned to the trust, was spent for P.R., but not for her care in the facility. Nursing facility then sued P.R. and Plaintiff - sisters for the outstanding balance due.

10. Plaintiff - sisters obtained other counsel and settled the underlying lawsuit by entering into a payment arrangement and agreeing to pay off the full balance from any proceeds awarded in a malpractice action.

11. Plaintiff - sisters never tried to compromise the debt allegedly owed by them through negotiation. Furthermore there was an email from their new counsel to the sisters that it really did not matter whether the debt was correctly calculated or was compromised in mitigation of damages because the Defendant Law Firm would be liable for whatever the Plaintiff - sisters paid to the nursing facility out of pocket.