

An Open Letter from an LWP™ Member

Tuesday Feb. 16th, I got the call every parent spends their whole life trying to avoid. My 16 year old daughter had just been in an accident, she was t-boned by an industrial dump truck. I was in the middle of signing 2 trusts and the 5 core documents that go with it. I was able to run out the door immediately, everyone in the office knew immediately, as I ran down the hallway barking orders, all I heard back was “I got it, its covered, just go” from my team. I was about a mile from the scene and arrived before the ambulance to find my daughter pinned in her Jeep by a crumpled door, her jeep bent in a V shape at the drivers door. It was a direct hit to her. The police held me back. I could hear her screams, see her tiny body fractured and bloody... They got her to the hospital and I didn't leave her side for 5 days (except 1 time for 1 hour to shower and grab necessities). I haven't left her side since we got home. I haven't worried about the office, I haven't had any panic stricken calls, I haven't even checked my email except for a very few times. The peace of mind I feel being able to focus only on my injured child, only on her needs and her wants, is something I never dreamed was possible as a lawyer, a business owner and a small law firm.

Having the Lawyers with Purpose processes and systems in place, having my amazing team eat,

sleep and drink the Lawyers with Purpose way, knowing they all know what to do and how to do it has been a huge blessing. We haven't skipped a beat at the office, still on financial target, clients are happy (one dropped off \$50 and a little card for my daughter), referral sources came to the hospital to offer their blessings and services, Doctors who refer to us came to the ER to check on her, one even called in the best plastic surgeon in the area to consult on her facial lacerations! Because of Lawyers with Purpose we were able to do good works for our medical community and referrals, so much so that our now great friends in the medical community rallied to our side.

By the time I come back to the office I will have been out suddenly for almost 3 weeks. I don't know any small business owners or small law firms that could sustain that kind of sudden change in the office. Lawyers with Purpose is a process and system of how to do amazing work for your clients, so much so that you get to focus on the relationship with them and they turn into friends and family.

Again, I can't ever repay my Amazing Team for everything they continue to do; Elizabeth Camp, Jessica Henry, Susan Suniga, Kristin Landrum, Heather Thompson and Sarah DeLa Rosa.

Alzheimer's disease is a global epidemic. Worldwide, 47 million people are living with the disease, including over 5 million Americans. In the United States alone, more than 15 million Americans are serving as caregivers – a physically, emotionally and financially draining role. To honor all those facing Alzheimer's, Lawyers With Purpose is participating in The Longest Day®, a sunrise-to-sunset event that takes place on June 20 during Practice With Purpose. Please join us in the fight against Alzheimer's by signing up for the LWP team. Use your strong voice as an elder care advocate to fight for our clients, our families and our communities. Your support of The Longest Day will help the Alzheimer's Association to enhance care and support and advance critical research for all those affected by this devastating disease. We will honor all of those that have suffered as part of Practice With Purpose on June 20th, in San Diego and across the country.

Member of the Month

Debra Robinson — Johns Creek, GA

WHAT IS THE GREATEST SUCCESS YOU'VE HAD SINCE JOINING LWP?

For many years I was in practice with a series of different partners. When I finally broke free and went on my own, I was searching for new and better ways to run my practice. Molly Hall reached out to me at just the right time, and I believed LWP was a perfect fit for my needs. Within a few months, I increased my fees, made a scheduling template and stopped interrupting my work flow to answer client calls, and became a much more efficient practitioner.

WHAT IS YOUR FAVORITE LWP TOOL?

My team and I are gearing up to start having workshops. We moved to new offices in January, with a large enough room to hold workshops in-house. We have watched Dave's videos together several times, and are in the process of editing and printing all the wonderful material made available by LWP. Now all I have to do is learn to tell the jokes.

HOW HAS BEING PART OF LWP IMPACTED YOUR TEAM AND YOUR PRACTICE?

We are having more frequent staff meetings, I'm sharing more educational material with my team because I realized the more they understand, the more they can take on. We made a list of everything that needed to be done to start having workshops, and everyone pitched in and did even more than I expected.

SHARE SOMETHING ABOUT YOURSELF THAT MOST PEOPLE DON'T KNOW ABOUT YOU.

Most people don't know that my mother was inspirational in how I interact with my elderly clients. My mother met the love of her life when she was 84 and he was 87. They had three wonderful years together before his health failed. They were head over heels in love, and a joy to watch. I learned from them that no matter what your age, life can still bring wonderful surprises if you are open to taking chances.

WHAT IS YOUR FAVORITE BOOK AND HOW DID IT IMPACT YOUR LIFE?

My favorite book is Little Women - I read it as a teenager and it made me want to be a writer like Jo...maybe someday



NEW MEMBERS THAT HAVE JOINED SINCE JANUARY

- ▶ **Tim Murray** — Winamac, IN
- ▶ **Lissette Diaz** — Woodland Park, NJ
- ▶ **Andrew Sigerson** — Omaha, NE
- ▶ **Brian Isaacson** — Seattle, WA
- ▶ **James Shields** — Pittsburgh, PA
- ▶ **Jeff Busch** — Elk Grove, CA

EVENTS NOT TO BE MISSED

- Monday, April 4th (4pm EST) — **Understanding and Utilizing the Funding Road Map**
- Wednesday, April 6th (12pm EST) — **Annual VA Submission of Medical Expenses**
- Thursday, April 7th (3pm EST) — **Protecting IRAs After Clark v. Rameker**

Nadeau v. Thorne - No Reason To Fear

by David J. Zumpano Esq, CPA, Co-Owner Lawyers With Purpose

The recent Massachusetts decision in *Nadeau v. Thorne* considering a primary residence held in a Grantor trust as an available resource and thereby disqualifying the Medicaid applicant has the Medicaid industry in turmoil. A careful review, however, will calm any fears that this in anyway changes what we have always known about Medicaid.

It is common that cases that come out of Massachusetts create ripples through America because of what appear to be extreme applications of Medicaid law. While we cannot ignore the Massachusetts courts, we must instead understand the theory in which they are able to make decisions such as these. First, Medicaid is federal law and, in accordance with USC 1396D, sets out all of the relevant laws related to Medicaid benefits. However, the federal Medicaid laws explicitly state that all interpretations of the law will be determined at the state level. That is where the leeway is granted for states to make decisions that would that otherwise appear extreme.

In the *Nadeau* case, the Court relies specifically on Massachusetts statute Section 130 Code Mass Regs 520.023(C)(1). The statute treats an applicant's "former home" that was deeded into an irrevocable trust differently from other assets. What's interesting about this case is nowhere does it discuss the exemption of the primary residence in determining the applicant's eligibility. It could be asserted therefore that under this specific Massachusetts regulation any primary residence deeded to a trust loses its residential exemption status for the applicant. Whether we agree with that or not is not our call, as the State of Massachusetts has the authority to interpret the federal regulations in this manner. So the *Nadeau* case in front of us really has little to no application outside of Massachusetts other than to force the rest of us to understand the context of the contextual authority of the individual state Medicaid agency.

A second element of this case is that the court was ready, willing and quickly abrogated interpretation of the federal Medicaid laws to the Medicaid department rather than to the court. Specifically stating, "this court must also give due weight to the expertise technical, competent and specialized knowledge of the agency as well as to the discretionary authority conferred upon it". The court relies on the former *Doherty* decision to reassert its authority that if applicant does not occupy

their home then their home is available. Again the significant issue here is that it really does relate to the federal statute which says any right of the applicant to benefit in any way shall be deemed available to the maximum amount that the applicant can benefit. In this case the court took the use of the house and extended that to assess the full value of the home as countable. That's a stretch but nonetheless, regardless of this court's decision, Medicaid planning still allows one to place a house into an irrevocable trust as a viable planning technique. While most organizations will scream and yell and say no I propose three options in light of this case.

First, outside of Massachusetts one should feel relatively confident that they can continue to transfer a home to an irrevocable trust and reserve the right to live there in the trust without concern. What's unique in the *Nadeau* case is that there is a specific Massachusetts statute and case precedent which includes the home and does not provide as exemption under the federal statute. So to throw the baby out with the bathwater and stop doing this if you are not in the state that has such a specific statute would be an ultraconservative approach. A second option going forward is to continue to do Medicaid planning as you always have, continue to convey the home to the irrevocable trust but instead of reserving the right to live there, just create a simple lease agreement between the Medicaid applicant and the trust. This would eliminate the entire fact pattern that arose in the *Nadeau* case. In fact, the lease payments to the trust would not be considered uncompensated transfers and it would allow the grantor to still live in their house. The core elements will be that the Grantor/Medicaid applicant would have to pay all the expenses on the house and maintain the taxes, insurance, etc. and one should do his best to ensure that the value of the rental is an arm's length amount. And a third option is to convey the real estate to the trust but reserve a life estate to the grantor in the deed. This approach ensures that the "remainder interest" is conveyed to the trust, not the present interest, and no rights need be maintained under the trust for the benefit of the grantor. This is the simplest approach.

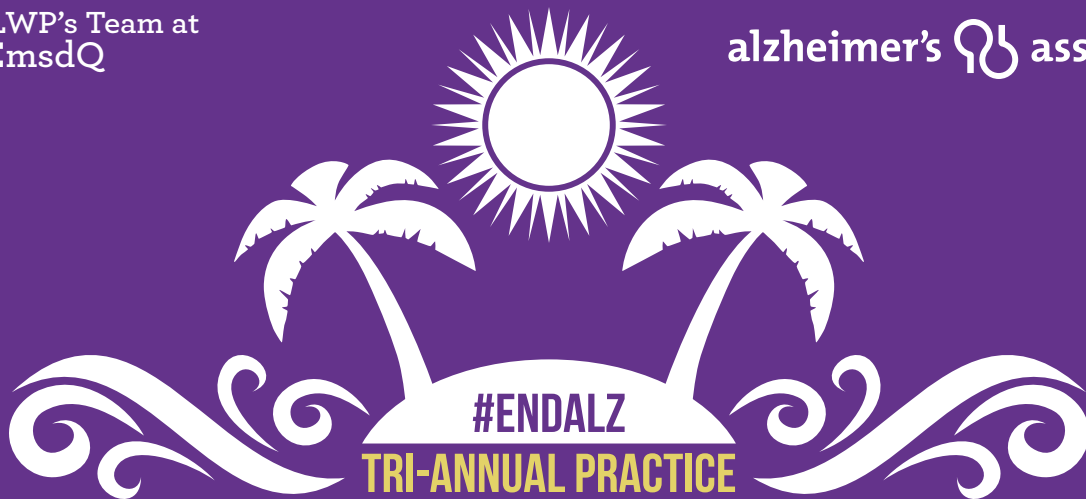
So if we look at cases like this it is important not to panic and run for the hills, remember your clients need you. They come to you for what you can do not for what you can't do and we as lawyers must analyze the law, examine our options and then implement a solution that the law and the client desires.

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