



# Superior Court of New Jersey

## Appellate Division

Docket No.: A-1344-24

MARY D. FOREST	:	
and TARKETIA AJAI,	:	CIVIL ACTION
	:	
Plaintiffs,	:	ON APPEAL FROM AN ORDER OF
	:	THE SUPERIOR COURT OF NEW
	:	JERSEY, CHANCERY DIVISION,
v.	:	ESSEX COUNTY, GENERAL
	:	EQUITY PART.
DIVISION OF MEDICAL	:	
ASSISTANCE AND HEALTH	:	
SERVICES, ET AL.,	:	DOCKET NO.: ESX-C-172-24
	:	
Defendants.	:	Sat Below
	:	HON. LISA M. ADUBATO, J.S.C.

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**BRIEF ON BEHALF OF MARY D. FOREST AND  
TARKETIA AJAYI, APPELLANTS**

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1. The brief dated August 1, 2024, is included pursuant to R. 2:6-1(a)(2) only because the matter of whether certain issues were raised in the trial court is germane to the appeal.

2. The brief dated October 16, 2024, is included pursuant to R. 2:6-1(a)(2) only because the matter of whether certain issues were raised in the trial court

is germane to the appeal.

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### PROCEDURAL HISTORY

The Plaintiffs, Mary D. Forest and Tarketia Ajayi, are named beneficiaries under the Last Will and Testament of their Father, Clerveaux S. Benoit. The house held by his estate was formerly held as tenants by the entireties by Clerveaux S. Benoit and his wife, Philomene Benoit until the time of her passing.

After the late death of Clerveaux S. Benoit, his estate, through the Administrator, C.T.A., sold the house in 2021. Since then the Administrator, C.T.A., has held proceeds in escrow because of a lien. The lien relates to his predeceased wife, Philomene Benoit, who received benefits for her care from Medicaid, which was administered by the New Jersey Division of Medical Assistance and Health Care Services.

Over the following years, the Administrator, C.T.A., wrote several letters to the Division of Medical Assistance and Health Care Services relating to the lien. The letters asked if the asserted lien would be enforced.

Because the Administrator, C.T.A., had not taken further steps, on August 1, 2024, the Plaintiffs filed a Verified Complaint, Pa1, in Superior Court, Essex Vicinage, Chancery Division, General Equity Part, which was given Docket Number ESX-C-172-24. An Order to Show Cause, Pa20, was

entered on August 7, 2024, and served. A Certification of Service of Pleadings, Pa25, was filed on September 5, 2024.

A Letter Brief in Support of Declaratory Judgment on Asserted Lien was filed by the Plaintiff on August 1, 2024. Pa80. This is included in the Appendix pursuant to Court Rule 2:6-1(a)(2).

The New Jersey Division of Medical Assistance and Health Services (“DMAHS”), appearing through the New Jersey Attorney General, did not file an answer, but did file a letter brief in opposition, Pa33, which made certain allegations of fact and which had attached copies of certain documents.

There was a hearing over two days, October 21, 2024, 1T, and November 13, 2T.

The Plaintiffs filed a Certification of Attorney Services dated October 17, 2024, Pa41, seeking an award of attorney fees and costs to be paid from the escrowed funds.

The Division of Medical Assistance and Health Services filed a Supplemental Response dated October 30, 2024, Pa48, addressing issues raised during the hearing. This again made certain allegations of fact and had attached copies of certain documents.

On December 5, 2024, the Court issued an Order on Application for Counsel Fees and Costs, Pa61, denying the Plaintiff's application for counsel

fees. There was an attached Statement of Reasons.

On December 10, the Superior Court, Chancery Division issued an Judgment on Return Date of Order to Show Cause under which it refused to lift the Medicaid lien and denied all relief sought. Pa59. There was no written opinion. The Judgment indicated that the reasons were stated on the record, which is found in the transcript of November 13, 2024, 2T.

A timely Notice of Appeal was filed, and an Amended Notice of Appeal was dated January 15, 2025. Pa67.

The certification of Transcript Completion was filed January 27, 2025. Pa79.

STATEMENT OF FACTS

In 1986, Clerveaux S. Benoit and Philomene Benoit, husband and wife, acquired a house as tenants by the entirety. Pa1, Deed at Pa9.

Mrs. Benoit developed serious medical issues, and received Medicaid benefits from the New Jersey Division of Medical Assistance and Health Services.

Mrs. Benoit then passed away in 2012. She was older than 65, but her specific date of birth was redacted from the public record. Pa56. She left Clerveaux S. Benoit as her surviving spouse, and as the sole owner of the house as the surviving tenant by the entireties. Clerveaux S. Benoit then passed away on June 8, 2017.

Two of his children were named as Executors under his Last Will and Testament. In 2019, more than a year after the passing of Clerveaux S. Benoit in 2017, the Division of Medical Assistance and Health Services for the first time recorded a judgment lien against the “Estate of Philomene Benoit”. Pa38, Pa40, Pa40(2).

Later in 2019, the original two co-executors were removed by an Order of the Probate Part of Superior Court. This action was brought by two of his daughters, Mary D. Forest and Tarketia Ajayi. They were not children of

Philomene Benoit. The Court appointed Drew Bauman, Esq., as Administrator, C.T.A.

The Administrator, C.T.A., sold the house in February, 2021. An escrow was held for the lien asserted by the Division of Medical Assistance and Health Services.

Over the following three years, the Administrator, C.T.A., wrote several times to the Division of Medical Assistance and Health Services addressing whether the lien is effective under these circumstances.

On July 31, 2024, an employee of the Division of Medical Assistance and Health Services advised the Administrator that the State of New Jersey would not lift the asserted lien.

**LEGAL ARGUMENT**

**POINT ONE**

**BY STATUTE AND REGULATION, MEDICAID  
RECOVERY IS ONLY ALLOWED WHEN  
THERE IS NO SURVIVING SPOUSE.**

**(2T39-8 to 13; 2T44-4 to 24) (raised at Pa81)**

By statute and regulation, Medicaid recovery is only allowed when there is no surviving spouse. N.J.S.A. 30:4D-7.2a(1)(a)(2); N.J.A.C. 10:49-14.1(a)(1).

But in reviewing this matter, a hypothetical should first be considered. Posit that the deceased recipient of Medicaid benefits did not leave a surviving spouse, and she owned a house in which she had resided, and that she was survived by a granddaughter and a grandniece, both of whom had been living in the house as their only residence for years.

A Medicaid recovery lien could be placed on the house. However, the Division of Medical Assistance and Health Services (“DMAHS”) has chosen to institute its own policy that the lien would be valid, but that the lien would not be enforced to compel a sale of the house until the granddaughter and grandniece pass away, or vacate the property, or the property is voluntarily

sold.

This policy is not in the statute, but is in the following regulation:

“10:49-14.1 - Recovery of payments correctly made.

. . .

“(g) Effective for estates pending on or created after October 4, 1999, if a family member of a deceased Medicaid beneficiary has, prior to the beneficiary's death, continuously resided in a home owned by the beneficiary at the time of the beneficiary's death, and that home was the beneficiary's primary residence, and was and remains the family member's primary residence, the Division may record a lien against the property, but will not enforce the lien until the property is voluntarily sold, or the resident family member either dies or vacates the property.” [emphasis added].

There is no corresponding policy in the statute. This is only the decision of the policy of the Division of Medical Assistance and Health Care Services.

The prohibition on Medicaid recovery when there is a surviving spouse is in the statute, and was enacted by the legislators voting for it. The statute, N.J.S.A. 30:4D-7.2a(1)(a)(2), is as follows:

“10:4D-7.2a Encumbrances, recovery limited against certain estates.

“1. No encumbrance or recovery shall be imposed against or sought from the estate of a deceased recipient for assistance correctly paid under:

“a. The "New Jersey Medical Assistance and Health Services Act," P.L.1968, c.413 (C.30:4D-1 et seq.), under any of the following circumstances:

. . . .

“(2) in the case of a recipient who became deceased on or after the effective date of P.L.1995, c.289, if there is a surviving spouse or a surviving child who is under the age of 21 or is blind or permanently and totally disabled, except for assistance incorrectly or illegally paid, or for third party liability recovery sought under P.L.1968, c.413 (C.30:4D-1 et seq.);”  
[emphasis added].

The statute is clear and unambiguous. The legislators who voted for it believed that there would be no Medicaid recovery from the beneficiary's estate when there was a surviving spouse. The best indication of the legislative intent are the words of the statute.

The regulation, under N.J.A.C. Section 10:49-14.1(a)(1), is similar:

“Section 10:49-14.1 - Recovery of payments correctly made

“(a) Correctly paid benefits shall only be recoverable from the estate of an individual who was 65 years of age or older when the individual received medical assistance if:

“1. The individual leaves no surviving spouse;”  
[emphasis added].

The statute and the regulation are both clear and unambiguous. There is no exception or qualification about this anywhere in the regulations.

The plaintiffs-appellants took this position in the case below. Pa81. In the case below, counsel for the DMAHS made a response to the citation of the clear words of the statute, and the clear words of the regulation that “No” encumbrance or recovery could be made when there is a surviving spouse. Letter of October 30, 2024; T2-17.

The response was that “These exceptions only defer the estate lien; they do not dissolve the lien.” Letter of October 30, 2024, page 2 at bottom.

There is absolutely nothing in the statute or the regulations to support the position of the counsel for DMAHS. There is no ambiguity in the statute or regulations.

Above, under this same point heading, a hypothetical was posited as to what would occur if the deceased person left no surviving spouse, but a granddaughter and a grandniece who resided in the house. There is a regulation, N.J.A.C. 10:49-14.1(g) which is cited above in full, which states that when a family member has been residing in the house, there will be no enforcement of the lien until they leave or the house is voluntarily sold.

The DMAHS has promulgated that regulation, N.J.A.C. 10:49-14.1(g), regarding “family members”, without any corresponding statute, as its own policy and position as to how to enforce the liens.

Counsel for DMAHS now takes the position that its own policy and enforcement provision of N.J.A.C. 10:49-14.1(g), regarding “family members”, not only overcomes the very clear and unambiguous exemption for spouses in its own regulation, N.J.A.C. 10:49-14.1(a), but actually overcomes the completely clear and unambiguous words of the complete exemption for spouses in the statute, N.J.S.A. 30:4D-7.2a(1)(a)(2), which says: “No encumbrance or recovery shall be imposed against or sought from the estate of a deceased recipient . . . if there is a surviving spouse”. [emphasis added].

New Jersey Courts will give deference to promulgated regulations. In re Election Law Enforcement Com’n Advisory Opinion No. 01-2008, 201 N.J. 254, 262 (2010); New Jersey Ass’n of School Adm’rs v. Schundler, 211 N.J. 535, 549 (2012). However, this deference does not exist when the regulations are simply inconsistent with the plain words of the statute.

Further, there was no hearing or quasi-judicial determination at which the representatives of the estate or any interested parties appeared or participated, so there is no deference to a hearing determination.

Regulations are given deference with respect to the interpretation of statutes. But there should be no deference to the view of the statute or regulations by every attorney or employee for the State of New Jersey regarding a matter.

Regulations have been considered by the entire agency in question, and are subject to certain regulatory processes.

Notably, the expressed view of an agency with respect to the interpretation of a statute or regulation should not be entitled to deference when the agency is seeking such regulation to collect money on behalf of the State, as the department would not then be regulating under the State's police powers to regulate some activity within the State, but instead would be acting to protect the State's own financial interests.

**POINT TWO**

**THE STATUTE DOES NOT INCLUDE ENTIRETIES  
PROPERTY AT ALL, AND THE REGULATIONS  
DO NOT INCLUDE IT, BUT ONLY INSTRUCTS  
EMPLOYEES TO TAKE THAT POSITION  
WHEN FILING DOCUMENTS.**

**(2T41-6) (raised Pa88, Section F)**

The regulations provide a definition of the word “estate” and includes “any other real or personal property or other assets in which the Medicaid beneficiary had any legal title or interest at the time of death to the extent of that interest”.

The statute, at N.J.S.A. 30:4D-7.2(a)(3) does include joint property as subject to recovery, but makes no mention of any kind at all regarding entireties property. There must be a reason for this. The reason is that the statute elsewhere says that if there is a surviving spouse, no recovery shall be claimed.

Very significantly, the regulations at N.J.A.C. 10:49-14.1(L)(2) includes joint property, where it describes what property is includible. But here it does not say that entireties property is includible. There must be a reason for this. If the regulations intended that entireties property would be included within the

word “estate”, it is here that it would be included. It did not. The drafters of the regulations would have known about the statutory exemption for spouses.

The statute and regulations indicate that an interest in joint property is subject to a Medicaid recovery lien. Joint property may or may not be with a spouse. Joint property is also not like tenancy by the entireties property, because joint property may be severed by one owner selling his or her interest.

But the regulations have a very strange element, and there must be a reason for this. This very strange part is found where the regulations for the procedures for filing a lien.

As described above, the regulations do not state, where it would have logically been stated, that entireties property is subject to recovery. There is cryptic statement and unusual statement in the regulations, where it gives instructions to its employees who file the liens, to take a position on the liens, that the lien applies to the whole property held by the entireties. Although it gives the instruction to file the claim that way, it does not actually say that entireties property is in fact subject to recovery, the same way that it says the joint property is so subject.

N.J.A.C. 10:49-14(m) states:

“If the deceased Medicaid beneficiary held a tenancy-by-the-entirety or joint tenancy with a right of survivorship, then the lien shall state that it encumbers all of the property”.

[emphasis added].

This is the same as the limitation regarding uncertain claims. The Regulation does not say that in N.J.A.C. 10:49-14(m) that recovery can be obtained against an entire property when the decedent's interest therein is unclear.

The Regulation does not say that the recovery can be obtained against an entire property in a tenancy by the entirety, only that a lien should be asserted.

It appears that the intent of the Regulation was that the Division wished to make a claim about tenancy by the entirety property, but was aware this might well be beyond the actual legal powers of the Division.”

The reason is that the drafters of the regulations knew that the words of the statute indicated a complete exemption for anything going to a spouse. The Division was testing the waters, without taking a clear position, which was one not supported by the statute.

A further point in the Regulations shows the uncertain basis for the Division to make a claim against tenancy by the entirety property.

N.J.A.C. 10:49-14(n)(1) states that the term “estate” does not include:

“(1) A life estate in which the beneficiary held an interest during his or her lifetime, but which expired upon the Medicaid beneficiary's' death”.

A tenancy by the entireties has elements of both a life estate, and survivorship. If a life estate does not cause the entire property to be subject to Medicaid recovery, neither should a tenancy by the entireties.

**POINT THREE**

**IT CAN NOT BE SAID THAT THE LATE  
MR. BENOIT'S RIGHTS WERE NOT AFFECTED  
BY THE MEDICAID RECOVERY ACTION, IF HE  
DOES NOT HAVE A RIGHT TO DISPOSE  
OF HIS PROPERTY AFTER HIS LIFETIME.**

**(2T39-9; 2T25-21 and 2T40-17)**

**(raised by Defendant, 2T17-5 and 2T34-8)**

Much of the position of the State depends upon a stated or implied claim that the State is not infringing on the property rights of Clerveaux S. Benoit because the State is willing to wait until his passing before taking his property.

The property rights of Mr. Benoit as the surviving spouse, was not only to become the sole owner for his lifetime, but the right to leave the property to those persons he selected in his Last Will and Testament. He did not merely hold a life estate in the house.

At the hearing below, the State attempted to claim that it was not taking Mr. Benoit's property at all, it was just taking it after he died.

The Constitution of the State of New Jersey allows property rights, including a right of disposition.

It is entirely inconsistent with concepts of a right to hold property, if the State of New Jersey merely allows Mr. Benoit the use of the property for his lifetime only, and takes the entire property as a remainder on his passing.

The argument of the State of New Jersey that it is only taking from the Estate of the debtor is simply not true. Giving a entirely new meaning to the word Estate cannot be used to effectuate a taking.

It was stated in *National City Bank of New York v. Del Sorto*, 16 N.J. 530, 541 (1954):

“It is, of course, axiomatic that the right of property protected by our Federal and State Constitutions includes the right to dispose of it and the right of disposition is protected equally with the ownership. 11 Am. Jur., Constitutional Law, sec. 335, pp. 1146-1147. Cf. *Cameron v. International, etc.*, Union No. 384, 118 N.J.Eq. 11, 22-23 (E.&A. 1935).”

Not only did Mr. Benoit have a right to become the sole owner upon surviving his wife, but he had a right to dispose of his property, by leaving it by Will to the persons he selected by way of his Last Will and Testament.

**POINT FOUR**

**MEDICAID LIEN MAY NOT BE ENFORCED,  
AS SUCH LIEN WAS NOT “FILED” WITHIN  
THREE YEARS OF THE NOTICE OF THE  
DEATH OF PHILOMENE BENOIT.**

**(2T11-12); (2T25-18 to 2T26-14)  
(raised Pa81)**

Pursuant to N.J.S.A. 30:4D-7.2(a)(1), a lien may be “filed” against the estate of a recipient who received services at or after age 65 years.

The respondent was required by regulation to file any asserted lien within three years after receiving actual written notice of the death of the Medicaid beneficiary, but it has failed to produce copies of the written notices.

The regulation, at N.J.A.C. 10:49-14.1(d) states:

“Effective for estates created on or after October 4, 1999, the Division shall file any claim or lien against an estate under this section within three years after receiving actual written notice from the personal representative of the estate or any other interested party of the death of the Medicaid beneficiary.” [emphasis added].

The facts of the matter show that the State was aware in 2012 by written notice of the death of Philomene Benoit, and itself sent regular mail letters to

the family members of Philomene Benoit shortly after her death in 2012. However, a lien was recorded only in 2019. Pa38, Pa40, Pa40(2), 2T11-13.

The State claims that the letter to the family members shortly after 2012 constituted a “filing”. However, such a term implies that it should have been recorded somewhere, and not be merely correspondence to a private party.

The lien in this matter was not even filed with the county clerk until at least several months after Clerveaux S. Benoit passed away.

A “lien” can only be a “lien” if it is recorded, and not merely sent to the debtor or the debtor's representative.

N.J.S.A. 30:4D-7.4, which was not raised in the proceeding below, shows that the word “filed” in the context of a “lien” being “filed” refers to a “filing” with the register of deeds or mortgages.

N.J.S.A. 30:4D-7.4 states in full as follows:

“30:4D-7.4. Filing Liens; attachment to property

“All liens or certificates of debt under section 7 of this amendatory and supplementary act shall be filed with the clerk or register of deeds and mortgages of the county wherein the affected property is located, or with the clerk of the superior court, and shall immediately attach to and become binding upon all the property whether real or personal of the party against whom said

lien or certificate of debt is filed. If it is believed that said party chargeable under said lien or certificate of debt has an interest or estate whether vested or contingent in property within the State, but the exact location of said property is not known, then said liens or certificates of debt may be filed with the clerk of the Superior Court and shall become binding upon all said property of said party chargeable under said lien or certificate of debt wherever situated within the State.”

[emphasis added]

The section 7 of the amendatory and supplementary act was N.J.S.A. 30:4D-7.2.

Because of the failure to obey the requirement of filing the lien with the clerk or register of deeds within three years of notice to the State of the death of Philomene Benoit, the lien is not legally effective.

**POINT FIVE**

**THE NATURE OF A TENANCY-BY-THE-ENTIRETIES  
MUST BE CONSIDERED TO RESOLVE THE CASE  
IF THE QUESTION OF THE SCOPE OF A MEDICAID  
LIEN IS REACHED.**

**(2T42-11) (raised Pa85, Pa87-89)**

The cases concerning tendency by the entirety's property are entirely inconsistent with the claims of the State of New Jersey in this case.

The nature of a tenancy-by-the-entireties is that upon the death of the first spouse to die, the entire property passes to the surviving spouse.

If both spouses have consented to a mortgage, or if there is a lien or judgment against the names of both spouses, then the surviving spouse takes the property subject to such a mortgage, or such a lien, or such a judgment.

In 1976, the Supreme Court of New Jersey decided *Newman v. Chase*, 70 N.J. 254 (1976), concerning the tenants-by-the-entireties property, and the rights of a creditor of one of the two living spouses. The change in the law in the *Newman* case was actually modest, in that it held that a creditor could generally not obtain a partition of property held by the entireties if that property was a family residence, even if the creditor had levied on all the rights of the debtor spouse.

*Newman* left open the possibility that by equity a creditor might be able to cause a partition of other types of property held by the entireties, such a non-

residential investment property.

The significance of the Newman decision for the present case is that Newman specifically left in place the long-standing principals of various cited cases, particularly *King v. Greene*, 30 N.J. 395 (1959), that the only remaining remedy of the creditor with respect to entireties property was to obtain the survivorship right of the debtor spouse, and an accounting for one-half of the rental value prior to the passing of the first spouse to die. Newman 70 N.J. at 260.

On January 5, 1988, a new statute, N.J.S.A. 46:3-17.2 to 17.4, concerning tenancies by the entireties was enacted. Such statute became effective ninety days after its adoption, and applies only to "all tenancies which are created on or after" that effective date. L.1987, c. 357.

Part of the new statute enacted in 1988 was N.J.S.A. 46:3-17.4, which in full states:

“46:3-17.4. Written consent of both spouses

“Neither spouse may sever, alienate, or otherwise affect their interest in the tenancy by entirety during the marriage or upon separation without the written consent of both spouses.”

This partially overturned *Newman v. Chase*, 70 N.J. 254 (1976), because N.J.S.A. 46:3-17.4 prevented partition by a creditor of any entireties property, even non-residential investment property. See *Jimenez v. Jimenez*, 454 N.J.Super. 432, 435 (App. Div. 2018). *Jimenez* did not disturb the principles

restated in Newman, particularly King v. Greene, 30 N.J. 395 (1959), that the only remedy remaining right of a creditor (after partition was no longer available) was to obtain the survivorship right of the debtor spouse, and an accounting for one-half of the rental value prior to the passing of the first spouse to die.

“In sum, New Jersey allows the creditors of either spouse to reach his interest in entireties property, subject, however, to the other spouse's right of survivorship.” [emphasis added]. In re Etoll (Straffi, Trustee v. Etoll), 425 B.R. 743, 748 (Bankr. D.N.J. 2010) (reviewing the history of tenancy-by-the-entirety law in New Jersey).

**POINT SIX**

**IT IS NOT NECESSARY TO REACH ANY  
CONSTITUTIONAL ISSUES IN THIS CASE, AS THE  
REGULATIONS AS SOUGHT TO BE ENFORCED  
WOULD BE INVALID AS BEING INCONSISTENT  
WITH LONG-STANDING LAW.**

**(2T6-7 to 2T7-9; 2T43-19; 2T44-5,  
and 2T52-23) (raised Pa85-86, 88)**

Property is a bundle of sticks according to a long held legal doctrine. Raleigh Avenue Beach Assn. v. Atlantis Beach Club, 185 N.J. 40 (2005).

In the present situation, when the State of New Jersey, by way of its own regulations, seeks an “expansive” concept of a decedent's estate. However, the concept of one person's property cannot be expanded, without actually taking someone else's sticks and property rights. This is what makes the regulation invalid.

There are a variety of means by which an interest in property may be divided between two persons.

It may be divided or defined in-kind physically as when land is subdivided, with a metes and bounds description.

A property interest may be defined by time, such as the granting of a term of years, followed by a remainder.

Property may be defined according to lives, such as a life estate measured by a person's lifetime, followed by a remainder thereafter. Read v. Rice, 31 N.J.L. 28 (Sup. 1864); Den ex dem. Micheau v. Crawford, 8 N.J.L. 90 (Sup. 1825).

A tenancy-by-the-entirety is more complex than the foregoing forms of definition, but its attributes and limitations are just as clearly defined. King v. Greene, 30 N.J. 395 (1959).

When the State of New Jersey pursues a claim against its debtor, and it attempts to give an entirely new meaning to the word “estate” which is wholly unknown in existing legal concepts, then it can enforce its newly-invented definition only by taking the property rights of a person who is not the debtor.

It may well pursue a social welfare goal, such as providing more funds to the State to offset the costs of the care of the debtor. Nevertheless, it is still a taking.

The fact that there is a statute that authorizes the taking or even a regulation that authorizes the taking, does not mean that it is not a taking.

In the case below there were various fine points raised regarding the words of the Medicaid statutes, and the regulations issued by the State of New Jersey.

It is not necessary to address the fine points of the statutes or the regulations to resolve this appeal.

If the issue is reached that the property rights of someone other than the debtor, this case can and should be resolved by addressing three simple questions, which are:

1. May a claim by a creditor against a debtor spouse in a tenancy-by-the-entireties impair the survivorship rights of the other, a non-debtor spouse, if the non-debtor spouse survives the debtor spouse? The description of the nature of tenancy-by-the-entireties in *King v. Greene*, 30 N.J. 395 (1959) makes clear that the answer to this is no.

2. Does the claim of the Division of Medical Assistance and Health Services in this case impair the rights of the late Clerveaux S. Benoit, who was the surviving spouse in a tenancy-by-the-entireties here? The answer is clearly yes, even if the lien against Mr. Benoit's property rights is enforced after his death.

3. Does the Division of Medical Assistance and Health Services, through its regulations, have the power to make its claim stronger than the claims of other ordinary creditors. The answer must be no. Moreover, these are only regulations, and not a statute.

The most correct approach to these issues might be found through the analysis in the *Jimenez* case.

As described previously, *Newman v. Chase*, 70 N.J. 254 (1976), allowed a creditor, in at least some situations, to cause an execution sale of the interest

of one of the owners of an interest in tenancy-by-the-entireties property. The purchaser at the execution sale could then pursue a partition action. 70 N.J. at 260.

Subsequently, a new statute was enacted in 1987 and became effective in 1988, which provided that neither spouse could sever or alienate a tenancy by the entirety property except with the consent of both spouses. This statute was N.J.S.A. 46:3-17.4, and it became effective 90 days after it was enacted.

*Jimenez v. Jimenez*, 454 N.J.Super. 432, 435 (App.Div. 2018) held that the new statute, N.J.S.A. 46:3-17.4, which prevented a severance or alienation by one spouse alone, meant that a creditor or purchaser at an execution sale could not obtain the partition relief which *Newman v. Chase* allowed in at least some situations.

The new statute, N.J.S.A. 46:3-17.4, acted only prospectively. If it was retroactive, it would have changed the relative property rights in tenancy-by-the-entireties property, and the elements of such ownership are very sensitive to the persons involved.

As stated in *DeMartino v. Division of Medical Assistance and Health Services*, 373 N.J.Super. 210 (App.Div. 2004):

“Since the enactment of the 1993 Omnibus Budget Reconciliation Act, federal Medicaid law has required participating states to enact certain "estate" recovery provisions as part of their medical assistance plans. See 42 U.S.C.A. 1396p(b)(1), 42 U.S.C.A. 1396a(a)(18) and 42 U.S.C.A. 1396c.”

The New Jersey statute regarding Medicaid recovery, with the broader definition of “estate” in response to OBRA '93, was the new version of N.J.S.A. 30:4D-7.2(a)(3), which was part of P.L. 1995, Chapter 289, Section 1, which was enacted in 1995, and made retroactive to April 1, 1995. Pa91, Pa92, Pa93.

This was adopted after and pursuant to 42 U.S.C. 1396p(b)(1)(B), which was part of “OBRA '93”.

The New Jersey statute regarding Medicaid recovery, and the new 1995 definition of “estate”, greatly affected the relative property rights of persons involved in holding an existing interest in entireties property, in a way, similar to the above-mentioned statute regarding the partition of a tenancy-by-the-entireties.

The Medicaid recovery statute altered the property rights of the persons involved, and those persons who took title as tenants-by-the-entireties subsequent to the enactments that 1995 statute, were prospectively on notice of the limitation of their property rights with respect to the State of New Jersey as a creditor.

Persons who took title as tenants-by-the-entireties after the enactment of the new Medicaid recovery statute with its new 1995 definition of “estate” had notice of the limitations of their property rights, and would not have a constitutional or statutory argument against the creditor claim of the State of New Jersey.

As described above, the new definition of “estate” was part of P.L. 1995, c. 289. The previous version of the statute, without any definition of “estate”, was the 1992 version, found at P.L. 1992, c. 115, Pa94.

Clerveaux S. Benoit and Philomene Benoit took title in 1986. Pa9. They, and their successors, do have a claim that the elevated and expanded creditor rights of the State of New Jersey, created after Clerveaux S. Benoit and Philomene Benoit took title, was contrary to their statutory and constitutional rights.

**POINT SEVEN**

**BY DEFINITION, AN “EXPANSIVE” VIEW OF THE DECEDENT'S PROPERTY RIGHTS, AS APPLIED, RESULTS IN A TAKING OF PROPERTY FROM OTHER PERSONS, AND IS CONSTITUTIONALLY IMPERMISSIBLE. THIS IS NOT A “REGULATORY TAKING” CASE.**

**(2T43-5 to 7) (raised at Pa87, 89-90 and 1T17-5)**

Both the federal and state constitutions protect against a governmental taking of private property without just compensation. U.S. Constitution, Amendments V and XIV; New Jersey Constitution, Article I, Section 20. The New Jersey constitutional protection is coextensive with its federal counterpart. Klumpp v. Borough of Avalon, 202 N.J. 390, 405(2010); Mansoldo v. State, 187 N.J. 50, 58 (2006)

This is not a “regulatory taking” case, even though regulations issued by the State of New Jersey are involved. There is nothing in this matter in which there is a loss in value of a person's property because of the way the State of New Jersey is regulating the use of it, or exercising ordinary police powers.

A constitutional taking may occur via a physical taking or a regulatory taking. Takings are more easily found when the government takes title to or physically occupies a property. Klumpp v. Borough of Avalon, 202 N.J. 390, 405 (2010). Moreover, there is a long standing distinction between acquisitions of property for public use, on the one hand, and regulations prohibiting private uses, on the other, makes it inappropriate to treat cases

involving physical takings as controlling precedents for the evaluation of a claim that there has been a “regulatory taking.” *JWC Fitness, LLC v. Murphy*, 469 N.J. Super. 414 (App.Div. 2021), cert. den., 251 N.J. 201 (2022); *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 323 (2002).

The present situation is one which the case law refers to as a physical taking. The actions being taken by the State of New Jersey in the present matter do not constitute pursuing police powers or regulatory powers.

Instead, the State is only acting as a creditor. But instead of acting merely as a ordinary creditor, the State is asserting a point of law in the form of regulations to levy on property as a creditor, but use its regulations to redefine in an entirely new way what is the debtor's property, when actually it is the property of a different person under long-standing legal doctrines.

The State's own redefinition of what is the debtor's property is then being used to the point that it is actually levying on a property interest that the debtor never held. As a result the State is taking a property interest from a person other than the debtor. This constitutes a physical taking under the caselaw, such that compensation must be paid, or the State must be prohibited from pursuing the taking.

The redefinition of the debtor's property interest is being done by the State acting as a regular creditor, but only for the purposes of benefiting the State's own property interests. When it expands the rights of a creditor, but only for its own benefit, it is abusing its powers.

When the State acts to pursue its rights as a creditor, but then uses regulatory power to change the rules of the game merely to increase its own property rights, and rewrites the clear definitions of property rights, it is acting arbitrarily and capriciously.

If the statute and regulations are valid, then the State has changed the nature of a tenancy-by-the-entireties, and the new definition of the nature of such property rights should be applied prospectively, not retroactively as it would change the nature of property rights, which were created before there ever was such a thing as Medicaid recovery under the 1993 OBRA Act.

Yet the State of New Jersey claims a power to collect a debt owed by the debtor spouse from the surviving spouse even where the amount of the debt might exceed 1/2 of the value of the entire property and even when the debtor spouse dies first.

**POINT EIGHT**

**THE DeMARTINO CASE WAS CORRECTLY  
DECIDED, BUT IS DISTINGUISHABLE  
AS RELATING TO AN “ARRANGEMENT”.**

**(not raised below)**

One of the cases in New Jersey regarding Medicaid recovery is DeMartino v. Division of Medical Assistance and Health Services, 373 N.J.Super. 210 (App.Div. 2004).

Michael DeMartino and Anne DeMartino were married. Michael DeMartino began receiving Medicaid assistance. Michael gave his interest in the martial home to Anne in September, 1999, and in April, 2000 Michael entered a nursing home and began to receive Medicaid benefits. Anne died in October, 2000. The house was sold for an net amount of \$60,700.00, and the net estate was \$58,000.00.

Michael had a right to a spouse's elective share of one-third of the “augmented estate”, N.J.S. 3B:8-1. Pursuant to N.J.S.A. 3B:8-17, when a surviving spouse is entitled to an elective share, that share may be satisfied by providing a trust income interest for life for the benefit of that surviving spouse. Pursuant to N.J.S.A. 3B:8-17, such a lifetime trust income interest is valued for purposes of the computation of the satisfaction of the elective share at fifty (50%) percent on the dollar.

Under Anne's will, two-thirds of the value of her estate funded the trust

for Michael. As a result, Michael's interest in the house, which was funded with the proceeds from Michael's interest in the house given within the five-year look-back period, which may be pulled-back pursuant to N.J.A.C. 10:49-14.1(n)(3).

The Court in DeMartino stated:

“As we understand it, the purpose of the regulation is to allow the Division to recover the cost of Medicaid benefits from the assets in a testamentary trust where the trust has been employed as an "arrangement" to transfer the assets of a Medicaid recipient to a survivor, heir or assign. One of the assumptions underlying the regulation is that, if the Medicaid recipient had an interest in the trust assets within the five-year "look back" period, the trust probably is being employed as an "arrangement" to transfer the recipient's assets to the recipient's survivors, heirs or assigns. . . . The trust was little more than a vehicle to convey Michael's assets to his children upon his death, thereby avoiding any potential claim for estate recovery.”

The gift of the house within the look-back period, followed by a transfer by his wife back to his interest with only an income interest constituted an arrangement of a singular plan to convey Michael's assets to his children upon his death, thereby avoiding any potential claim for estate recovery.

This shows that the overall plan was intended to defraud Medicaid. This is comparable to transactions in fraud of creditors, or as seen in tax matters by use of step-transaction analysis.

The step-transaction doctrine states that when interrelated yet formally distinct steps in an integrated transaction may not be considered independently of the overall transaction. By thus linking together all interdependent steps with legal or business significance, rather than taking them in isolation, federal tax liability may be based on a realistic view of the entire transaction.” Commissioner v. Clark, 489 U.S. 726 (1989).

The same type of transaction can be compared to identify transfers in fraud of creditors, or common law fraud. N.J.S.A. 25:2-3; Jugan v. Friedman, 275 N.J.Super. 556 (App.Div. 1994), cert. denied, 138 N.J. 271.

There was no such “arrangement” with Philomene Benoit to avoid Medicaid recovery. The couple only acquired a house as tenants by the entirety without any plan to avoid Medicaid recovery.

**POINT NINE**

**COUNSEL FEES AND COSTS SHOULD BE ALLOWED TO THE PLAINTIFFS, IF ONLY BECAUSE OF THE UNCERTAIN MEANING OF THE EXEMPTION FOR ANYTHING PASSING TO A SPOUSE.**

**(Pa63 to Pa66)**

In this matter, counsel fees should be allowed out of the fund in court pursuant to Rule 4:42-9(a)(2), as it was necessary to determine the respective rights in the fund, and the denial by the trial court was an abuse of discretion.

Counsel fees were considered permissible in DeMartino, 373 N.J.Super. 210 (App.Div. 2004).

“The Estate also seeks to deduct the Trustees' commissions and legal fees allocable to this litigation. In our view, these issues should be addressed in the first instance by the trial court. The Estate has not substantiated its claim for expenses or the amounts allegedly paid for Michael's care. The Estate has not presented an affidavit of services to support a claim for counsel fees. Moreover, there is an issue as to whether the Division's lien should be reduced by the cost of the Estates' unsuccessful challenge to the validity of the lien. These issues should be addressed by the trial court on remand.”

**CONCLUSIONS**

For the foregoing reasons, the judgment of the Court below should be reversed, and the matter should be remanded for a finding of the quantum of attorneys fees and costs to be awarded.

/s/ John L. Pritchard, Esq.

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John L. Pritchard, Esq.

Attorney for the Plaintiffs-Appellants

April 14, 2025

8400-BR1

MARY D. FOREST AND  
TARKETIA AJAI,

Plaintiffs-Appellants,

v.

DIVISION OF MEDICAL  
ASSISTANCE AND HEALTH  
SERVICES,

Respondent-Respondent.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1344-24

Civil Action

ON APPEAL FROM AN ORDER  
OF THE SUPERIOR COURT OF  
NEW JERSEY, CHANCERY DIVISION,  
ESSEX COUNTY

DOCKET NO. BELOW: ESX-C-172-24

SAT BELOW: HON. LISA M.  
ABDUBATO, J.S.C.

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BRIEF OF RESPONDENT DMAHS

Date Submitted: June 18, 2025

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## **PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS**<sup>1</sup>

Appellants, Mary D. Forest and Tarketia Ajai, appeal the December 5 and December 10, 2024 orders of the trial court which upheld the validity of Respondent Division of Medical Assistance and Health Services' ("DMAHS") priority estate lien and rejected Appellants' argument that DMAHS is not entitled to recover from the proceeds of the sale of property because it was held as tenancy-by-the-entirety. Those determinations were correct and should be affirmed.

Mrs. Philomene Benoit was a Medicaid beneficiary up to the date of her death on May 3, 2012. (Pa4; Pa38).<sup>2</sup> At the time of her death, Mrs. Benoit and her husband, Mr. Clerveaux Benoit, owned real property at 13-15 Essex Street in Irvington ("Irvington Property") which they acquired in 1986 and held as tenants-by-the-entirety. (Pa1-9).

After Mrs. Benoit's death, DMAHS sent notices to the Irvington Property on June 29, 2012, August 16, 2012, October 9, 2012, and November 14, 2012. (Pa56). Due to the passage of time, DMAHS does not have the notices sent to

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<sup>1</sup> Because they are closely related, the procedural history and facts are presented together for efficiency and the court's convenience.

<sup>2</sup> "Pa" refers to Appellants' Appendix; "Pb" refers to Appellants' Brief; and "1T" refers to the October 21, 2024 hearing transcript; and "2T" refers to the November 13, 2024 hearing transcript.

the Irvington Property (2T10:10-24), but can confirm that the notices referenced the Medicaid lien, and request the personal representative of the estate to identify assets, surviving spouse or children with disabilities.<sup>3</sup> Because Mrs. Benoit had a surviving spouse DMAHS deferred its enforcement of the lien. (Ibid.)

On or about April 1, 2019, Tamarra Henry, alleged executrix of Mrs. Benoit's estate, advised DMAHS that Mr. Benoit passed away in June 2017. (Pa57-58). Ms. Henry further stated that she had been "told by a Medicaid representative back in 2012 that there was a possibility [that] a lien would be placed on [her] mom's home to cover the healthcare costs she incurred." (Pa58; 2T11:5-14). On or about April 29, 2019, after receiving written confirmation of the surviving spouse's passing, and in accordance with the controlling law, DMAHS docketed a lien on the Irvington Property. (Pa8; Pa40). DMAHS holds a priority estate lien of \$415,501.30 for correctly paid Medicaid benefits paid

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<sup>3</sup> Because DMAHS will not immediately seek recovery if there is a surviving spouse or a surviving child under the age of 21, or child who is permanently disabled, repayment is postponed. Therefore, the notice requests this information from the personal representative.

[https://www.nj.gov/humanservices/dmahs/clients/The\\_NJ\\_Medicaid\\_Program\\_and\\_Estate\\_Recovery\\_What\\_You\\_Should\\_Know.pdf](https://www.nj.gov/humanservices/dmahs/clients/The_NJ_Medicaid_Program_and_Estate_Recovery_What_You_Should_Know.pdf)

on Mrs. Benoit's behalf from August 1, 2003, to May 3, 2012. (Pa36-Pa40(2)). There is no dispute as to the total lien amount. (2T18:13-17).

On or about February 4, 2021, the Irvington Property was sold for approximately \$302,000, and the court-appointed administrator<sup>4</sup> of Mr. Benoit's estate placed the net proceeds of the sale in escrow. (Pa12-15). To date, most of the funds remain in escrow as the estates of Mr. Benoit and Mrs. Benoit have not been settled. (Pb13).

On or about August 1, 2024, Appellants, who are beneficiaries of Mr. Benoit's estate, filed an Order to Show Cause application seeking a declaratory judgment that the Medicaid estate lien be determined "not legally effective against any interest in the Estate of Clerveaux S. Benoit, or in the Premises, or any part of the proceeds of the sale of the Premises" and for attorneys' fees. (Pa5). The pleadings argued that because the Irvington Property was held by the married couple as a tenancy-by-the-entirety, Mr. Benoit owned 100% of the home and Mrs. Benoit's Medicaid lien, which was recorded approximately seven years after her passing, could not be placed on the Irvington Property. (Pa1-7).

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<sup>4</sup> DMAHS is not familiar with the entire procedural history and litigation to remove Mr. Benoit's children as executors of his estate. It is DMAHS's understanding that the court-appointed administrator sold the Irvington Property in February 2021.

The trial court denied Appellants' application, finding DMAHS's priority lien claim valid and enforceable. (Pa59-66). The court concluded that Plaintiffs have not proffered any established legal basis to depart from the settled federal and state regulatory schemes for the Medicaid program. (2T44:4-11). DMAHS adhered to the statutory and regulatory requirements in providing a "necessary service benefit" to Mrs. Benoit, and then sought recovery from her estate for the services provided. (2T44:12-22).

This appeal followed. (Pa67-79).

## ARGUMENT

### **I. FEDERAL AND STATE MEDICAID LAW BROADLY DEFINE "ESTATE" TO INCLUDE PROPERTY HELD AS TENANCY-BY-THE-ENTIRETY PERMITTING DMAHS TO PLACE AN ESTATE LIEN FOR RECOVERY.**

A trial court's determinations of legal issues, including the applicability and interpretation of statutes, are reviewed de novo. Kocanowski v. Twp. of Bridgewater, 237 N.J. 3, 9 (2019); State v. Fuqua, 234 N.J. 583, 591 (2018). "A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019) (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)). Here, the trial court's interpretation of the Medicaid estate lien statutes is a legal issue. While not

entitled to special deference, the trial court's decision wholly comports with controlling law and should be affirmed.

Below, Appellants' primary argument to dissolve the subject Medicaid estate lien centered on their claim that DMAHS cannot place an estate lien on a property held as tenancy-by-the-entirety. (2T6:8-18). However, as the trial court correctly explained:

In the initial argument, and frankly, the only argument that was really raised by the plaintiff, the argument centers on the propriety or the legality of the State attaching proceeds . . . the argument being that tenancy by the entirety then prevents the State from looking to that asset because title upon option of law with tenancy of entirety would have passed to the surviving spouse.

. . .

As pointed out in the filings of the State the regulations, the statutes that are in effect with respect to that argument . . . that the tenancy by the entirety actually for purposes of Medicaid lien actually does in fact attach to the entirety of the property.

[2T6:8-7:2.]

By way of background, "it is well recognized that 'Medicaid, enacted in 1965 as Title XIX of the Social Security Act, [42 U.S.C. §§ 1396 to 1396w-6], is designed to provide medical assistance to persons whose income and resources are insufficient to meet the costs of necessary care and services.'" Estate of Dizon v. Dep't of Human Servs., \_\_ N.J. Super. \_\_, at \*9 (App. Div. 2025) (citing G.C. v. Div. of Med. Assistance & Health Servs., 249 N.J. 20, 26

(2021) (quoting Atkins v. Rivera, 477 U.S. 154, 156 (1986))). DMAHS administers New Jersey's Medicaid program pursuant to the New Jersey Medical Assistance and Health Services Act. N.J.S.A. 30:4D-1 to -42.

A State that elects to participate in the Medicaid program, must comply with the requirements of federal Medicaid law to receive federal Medicaid funds. D.C. v. Div. of Med. Assistance & Health Servs., 464 N.J. Super. 343, 354 (App. Div. 2020) (quoting Harris v. McRae, 448 U.S. 297, 301 (1980)). That law requires participating States and the administering agencies to enact estate recovery provisions as part of their medical assistance plans. Estate of DeMartino v. Div. of Med. Assistance & Health Servs., 373 N.J. Super. 210, 217 (App. Div. 2004). For New Jersey to satisfy the federal estate recovery requirements, it must define a decedent's "estate" to include at least "all real and personal property and other assets included within the individual's estate, as defined for purposes of State probate law." In re Est. of Brown, 448 N.J. Super. 252, 258 (App. Div. 2017) (quoting 42 U.S.C.A § 1396p(b)(4)(A)).

42 U.S.C.A. § 1396p(b)(4)(B) requires participating States to broadly define "estate" to include "any other real and personal property and other assets in which the individual had any legal interest at the time of death . . . , including such assets conveyed to a survivor, heir, or assign of the deceased." As such, the New Jersey counterpart reiterates that the term "estate" includes

all real and personal property and other assets included in the recipient's estate as defined in [N.J.S.A.] 3B:1-1, as well as any other real and personal property and other assets in which the recipient had any legal title or interest at the time of death, to the extent of that interest, including assets conveyed to a survivor, heir, or assign of the recipient through joint tenancy, tenancy in common, survivorship, life state, living trust or other arrangement.

[N.J.S.A. 30:4D-7.2(a)(3) (emphasis added).]

The statute further notes exclusions of specific assets that are not part of the "estate" for Medicaid purposes.<sup>5</sup> Ibid.

DMAHS has enacted estate recovery regulations which espouse the broad definition of "estate" as stated in the federal and state Medicaid law – to include all real property in which the Medicaid beneficiary had any legal title or interest at the time of death, including assets conveyed to a survivor through any arrangement. N.J.A.C. 10:49-14.1(1)(1) and (2). For even more clarity for Medicaid beneficiaries, DMAHS explicitly notes that "estate" includes "any proceeds from the sale of any such property which remain in the estate of the survivor, heir, or assign of the [Medicaid] beneficiary." N.J.A.C. 10:49-14.1(1)(2).

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<sup>5</sup> While not applicable here, the term "estate" specifically excludes reparations or restitution by victims of National Socialist persecution. See N.J.S.A. 30:4D-7.2(a)(3).

Significantly, the recovery regulation anticipates situations precisely like the case at bar – where real property is held by tenancy-by-the-entirety – and expressly provides that where “the deceased Medicaid beneficiary held a tenancy-by-the-entirety or joint tenancy with a right of survivorship, then the lien shall state that it encumbers all of the property.” N.J.A.C. 10:49-14.1(m) (emphasis added).

Appellants posit that since 42 U.S.C.A § 1396p(b)(4)(A) and (B) and N.J.S.A. 30:4D-7.2(a)(3) do not plainly state that recovery is permissible on a property held by tenancy-by-the-entirety, but do mention arrangements like joint tenancy and tenancy in common, that DMAHS is forbidden from placing an estate lien on a tenancy-by-the-entirety property. (Pb24-25). Appellants wholly ignore the controlling law.

First, the federal Medicaid law has directed participating States and their administering agencies to enact statutes and regulations to outline estate recovery provisions and to broadly define “estate.” With this directive, New Jersey Legislature has defined “estate” in the same broad manner that the federal regulations have defined it, and further included what is not part of the estate. See N.J.S.A. 30:4D-7.2(a)(3). Appellants have failed to show – and, given N.J.A.C. 10:49-14.1(m), cannot show – that a property held by tenancy-by-the-entirety is excluded from the definition of “estate.” Ibid.

Second, for Medicaid purposes, the regulation defines the term “estate” to include any real property which the Medicaid beneficiary had a legal title or interest at the time of death, and specifies that the estate includes any proceeds from the sale of any such property which remain in the estate of the survivor. N.J.A.C. 10:49-14.1(1)(2). Even more explicitly, the regulation includes a provision that states that when a lien is filed on an estate where the Medicaid beneficiary held a tenancy-by-the-entirety property, then the lien shall encumber all the property. N.J.A.C. 10:49-14.1(m).

Appellants acknowledge N.J.A.C. 10:49-14.1(m), but asks the Court to find that “[a]lthough it gives the instruction to file a claim that way, it does not actually say that entireties property is in fact subject to recovery.” (Pb25). Appellants offer no federal or state statute, regulation, or case law to support its view that a property held as a tenancy-by-the-entirety is not subject to Medicaid estate recovery. Appellants’ theory begs the question: Why would the regulations provide instruction on how to file an estate lien on a tenancy-by-the-entirety property if it is not subject to recovery?

Appellants rely on Newman v. Chase, 70 N.J. 254 (1976) to argue that a creditor of the debtor spouse cannot force a partition of the property if it is a family residence. (Pb33). Newman was superseded by statute, N.J.S.A. 46:3-17.4. (Ibid.) Newman was also partially reversed by Jiminez v. Jiminez, 454

N.J. Super. 432, 437-38 (App. Div. 2018) in which the court referenced the statute and held that neither spouse could sever or alienate their shared interests in the tenancy-by-the-entireties property without consent of the other. (Pb33-35). The Jiminez court relied on the legislature's intent to elevate the interests of the married couple over the interests of a single spouse's creditor. Jiminez, 454 N.J. Super at 438. Appellants also cite to In re Etoll, 425 B.R. 743, 748 (Bankr. D.N.J. 2010) which prohibited the appointed Trustee of chapter 7 bankruptcy filing to sell the tenancy-by-the-entirety property to pay debts. (Pb35). Appellants' reliance upon Etoll is similarly misplaced because there is no bankruptcy filing here to warrant application of bankruptcy codes, and no request from DMAHS to sell the Irvington Property for a personal debt.

As the trial court confirmed here, Newman, Jiminez, and N.J.S.A. 46:3-17.4 do not speak to Medicaid estate liens. (2T31:2-4). Furthermore, the Medicaid estate lien is a statutory lien which is different from, for instance, a personal credit card debt or business loan. See N.J.S.A. 30:4D-7.2 (the statute authorizes a lien to be imposed upon the "estate of the deceased recipient"). DMAHS appropriately placed an estate lien on Mrs. Benoit's Irvington Property pursuant to governing Medicaid law: (1) 42 U.S.C.A. § 1396p(b)(4)(B) (defining "estate" as "any other real and personal property and other assets in which the individual had any legal interest at the time of death . . . , including

such assets conveyed to a survivor, heir, or assign of the deceased”); (2) N.J.S.A. 30:4D-7.2(a)(3) (defining “estate” to include any real property in which the recipient had any legal title or interest at the time of death, to the extent of that interest, including assets conveyed to a survivor, heir, or assign of the recipient through joint tenancy, tenancy in common, survivorship, life state, living trust or other arrangement); (3) N.J.A.C. 10:49-14.1(l)(2) (defining “estate” to include any real property which the Medicaid beneficiary had a legal title or interest at the time of death, specifying that the estate includes any proceeds from the sale of any such property which remain in the estate of the survivor); (4) N.J.A.C. 10:49-14.1(m) (permitting encumbrance or lien on the entire property held by tenancy-by-the-entirety); and (5) DeMartino, 373 N.J. Super. at 220-22 (finding that the assets of the testamentary trust are part of the expansive meaning and intent of “other arrangement” included in the broad definition of “estate” under 42 U.S.C.A. § 1396p(b)(4)(B) and N.J.S.A. 30:4D-7.2(a)(3)). In short, the controlling law is both abundant and abundantly clear.

Appellants appear to argue that DeMartino is not pertinent to this case because “other arrangement” in the statutory language could be read to mean the Medicaid recipient’s “arrangement” to fraudulently transfer assets to recipient survivors, heirs, or assigns to avoid a potential claim for estate recovery – which Mrs. Benoit did not do. (Pb46-47). Initially, this argument was not raised below

and should be disregarded by this court. See Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973); Selective Ins. Co. of Am. v. Rothman, 208 N.J. 580, 586 (2012). Appellants' amorphous argument also fails on its merits. This court's discussion and findings in DeMartino are directly on point to Mrs. Benoit's estate lien because this court upheld the expansive definition of "estate" promulgated by United States Congress and New Jersey Legislature to include all other property or asset arrangements not listed, like assets in Anne DeMartino's testamentary trust. 373 N.J. Super. at 220-22. Just as a testamentary trust was acknowledged an "other arrangement" for a recoverable Medicaid estate lien, a tenancy-by-the-entirety property is too. 42 U.S.C.A. § 1396p(b)(4)(B); N.J.S.A. 30:4D-7.2(a)(3); N.J.A.C. 10:49-14.1(1)(2); N.J.A.C. 10:49-14.1(m).

Lastly, Appellants seem to argue that the expansive definitions of "estate" were enacted in or after 1995, should not apply because Mr. and Mrs. Benoit acquired their tenancy-by-the-entirety property in 1986. (Pb39-41). This argument fails to acknowledge that Mrs. Benoit became a Medicaid beneficiary in 2003, (Pa36-40), at which time – and during each annual eligibility redetermination – she was provided with the estate recovery provisions. Most notably, the statutory definitions of "estate" were, and continue to be, publicly

available and accessible long before and after Mrs. Benoit began receiving Medicaid benefits.<sup>6</sup>

Because the trial court's decision that the Medicaid estate lien on a tenancy-by-entirety property owned by Mrs. Benoit at the time of her death is valid, recoverable, and supported by abundant, well-established law, this court should affirm the trial court's December 5 and 10, 2024 orders.

**II. FEDERAL AND STATE STATUTORY LANGUAGE ONLY DEFERS ENFORCEMENT OF THE MEDICAID ESTATE LIEN WHEN THERE IS A SURVIVING SPOUSE.**

Appellants argument that Medicaid recovery is not allowed when there the recipient leaves a surviving spouse, would alter the federal statute to now mean that if there is a surviving spouse, the Medicaid estate lien is forever dissolved. (Pb18-23). Appellants are mistaken.

As discussed, federal Medicaid law requires participating States to enact recovery provisions. 42 U.S.C.A. § 1396p(b)(1); 42 U.S.C.A. § 1396a(a)(18); 42 U.S.C.A. § 1396c. Federal Medicaid law requires participating States to seek recovery from an individual's estate of any medical assistance correctly paid on behalf of the individual who was 55 years of age or older when receiving the assistance. 42 U.S.C. § 1396p(b)(1)(B). "States may recover Medicaid benefits

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<sup>6</sup> See footnote 3.

after the death of the recipient’s surviving spouse provided that the Medicaid recipient leaves ‘no surviving child who is under the age 21, or . . . is blind or permanently and totally disabled.’” DeMartino, 373 N.J. Super. at 217 (citing 42 U.S.C.A. § 1396p(b)(2)) (emphasis added). That limitation balances the need to protect the public fisc without inflicting an undue hardship upon the vulnerable groups identified therein.

In accordance with the federal program requirements, New Jersey has enacted statutes and regulations to delineate DMAHS’s authority to recover Medicaid payments, including when – not if – recovery is possible if the recipient leaves a surviving spouse. See, e.g. N.J.S.A. 30:4D-7.2a and N.J.A.C. 10:49-14.1(g). The plain language in the federal Medicaid law states that recovery “may be made only after the death of the individual’s surviving spouse.” 42 U.S.C.A. § 1396p(b)(2) (emphasis added).

Appellants preferred reading the statute would dissolve liens when the recipient leaves a surviving spouse and also render meaningless the text of 42 U.S.C.A. § 1396p(b)(2) which provides that recovery “may be made only after the death of the individual’s surviving spouse.” The court should reject that construction of the law. A statute must be construed in a sensible fashion to give meaning to its provisions. State v. Harper, 229 N.J. 228, 237-38 (2017).

Not only is Appellants’ argument contrary to the clear statutory language,

it is also contrary to the broad authority granted to DMAHS to take all necessary action for Medicaid estate recovery. The New Jersey Legislature empowers DMAHS with the broadest authority to “take all necessary action to recover the cost of benefits correctly provided to a recipient from the estate of said recipient.” N.J.S.A. 30:4D-7(j). The United States Congress also gave states “‘wide latitude’ in seeking estate recoveries.” DeMartino, 373 N.J. Super at 219 (internal citations omitted). Appellants’ position that Medicaid estate liens be waived due to a surviving spouse contravenes the legislative intent of federal and state Medicaid laws, both of which contemplate wide-reaching estate recovery authority.

Here, DMAHS learned in January 2013 that Mrs. Benoit has a surviving spouse, and accordingly deferred enforcement of the estate lien. (Pa56). In accordance with 42 U.S.C.A. § 1396p(b)(2)(A), N.J.S.A 30:4D-7.2a(1)(a), and N.J.A.C. 10:49-14.1(g), DMAHS waited to learn of the surviving spouse’s passing before enforcing the lien. (Pa57-58). Specifically, on or about April 1, 2019, the executrix of Mrs. Benoit’s estate notified DMAHS staff that Mr. Benoit passed away in June 2017. (Ibid.) Ms. Henry further stated that she was aware of the Medicaid lien, noting she had been “told by a Medicaid representative back in 2012 that there was a possibility [that] a lien would be placed on [her] mom’s home to cover the healthcare costs she incurred.” (Pa58).

After receiving written confirmation of the surviving spouse's passing, DMAHS docketed its priority lien against the Irvington Property. (Pa8; Pa40).

DMAHS's actions were in accordance with the well-established and controlling law emphasizing deferral – not absolute waiver – of the estate lien due to a surviving spouse. As it comported with all controlling law, this court should affirm the trial court's decision that the subject Medicaid estate lien is valid and recoverable.

### **III. THERE IS NO CONSTITUTIONAL QUESTION BEFORE THIS COURT.**

Appellants argue that if the proceeds of the Irvington Property sale become part of Mrs. Benoit's estate to pay towards the Medicaid lien, then Mr. Benoit's interests and rights are unjustly diminished in violation of the United States and New Jersey Constitutions. (Pb28-29; Pb36-44). Their arguments are unavailing.

At the hearing, the trial court explained to the Plaintiffs that the Medicaid lien cannot be avoided because the program is seeking reimbursement for services provided when the beneficiary needed it most. (2T40:15-41:8). The program did not require that the beneficiary or surviving spouse pay for the services by selling the family home; but now that the property is voluntarily sold by the estate, the property sale proceeds "reverts back" to the beneficiary's

estate to reimburse for services provided during her lifetime. (Ibid.)

Therefore, the sale proceeds of the tenancy-by-entirety property, currently held in escrow, fund Mrs. Benoit's estate and go towards reimbursement for her Medicaid benefits she received during her lifetime. That result is fully consistent with 42 U.S.C.A. § 1396p(b)(2)(A), N.J.S.A 30:4D-7.2a(1)(a), and N.J.A.C. 10:49-14.1(g) regarding deferral of enforcement of the beneficiary's Medicaid lien due to surviving spouse.

Appellants make the fleeting constitutional argument that the estate lien infringes on Mr. Benoit's alleged "right to dispose of his property on his passing," (Pb28-29), and constitutes a physical taking of the Irvington Property title, (Pb42-44), but these arguments were not briefed or ruled on by the trial court. See Nieder, 62 N.J. at 234 (a reviewing court will not consider questions or issues not properly presented to the trial court). In fact, here, the trial court specifically stated:

First of all, I do not find the legislation is unconstitutional. If that's what you are asking. I don't know if you asked me to do that in the papers. I don't think you did. I think you said they didn't follow what they were suppose --- or that the procedure wasn't followed or that the tenancy by the entirety – it wasn't a constitutional argument. It was a statutory argument that under our laws tenancy by the entirety means that they couldn't attach it. It is not in front of me. I am not dealing with the constitutionality of that.

[2T43:5-17 (emphasis added).]

Even if this court considers this argument, it must fail. In raising the argument that the imposition of an estate lien constitutes a physical taking of the Irvington Property, Appellants raise a per se taking claim. Per se takings involve an absolute appropriation or extinguishing of an owner's property rights, and fall into "two relatively narrow categories" of action, Lingle v. Chevron U.S.A. Inc., 544 U.S. 528, 538 (2005): scenarios where the government has undertaken or authorized "a permanent physical occupation of property," Ark. Game & Fish Comm'n v. United States, 568 U.S. 23, 31 (2012), or taken action "that completely deprive[s] an owner of 'all economically beneficial us[e]' of her property," Lingle, 544 U.S. at 538 (quoting Lucas v. S. Carolina Coastal Council, 505 U.S. 1003, 1019 (1992)). Appellants cannot fit their argument into either category, as the facts clearly demonstrate that the Irvington Property was voluntarily sold by the beneficiaries, and nor have the beneficiaries been deprived of all economically beneficial use since there the proceeds of the sale will be distributed for various estate payments.

Accordingly, Appellants' inchoate argument regarding Mr. Benoit's property rights or physical takings arising out of the United States Constitution or New Jersey Constitution should be disregarded.

**IV. DMAHS PROVIDED TIMELY NOTICE OF CLAIM TO THE EXECUTOR AND RECORDED THE ESTATE LIEN AFTER DEATH OF THE SURVIVING SPOUSE IN ACCORDANCE WITH FEDERAL AND STATE REQUIREMENTS AT ALL MATERIAL TIMES.**

Appellants argue that the Medicaid estate lien is unenforceable because the lien was recorded on the subject property in April 2019, approximately seven years after Mrs. Benoit's death. (Pb30-32). However, Appellants fail to acknowledge that the notice of claim was provided to the executor of Mrs. Benoit's estate in 2012, the lien was recorded upon notice of the surviving spouse's death, and the Irvington Property was not sold until 2021. Appellants further ignore that the executrix of Mrs. Benoit's estate, Mrs. Henry, acknowledged that she was expressly aware of the estate lien and that it impacted the Irvington Property – before DMAHS recorded the lien. (Pa58). Appellants can cite no authority that mandates the statutory lien be recorded in order for it to be recoverable. (See 2T14:20-15:3).

To the contrary, DMAHS may record a lien, but it is not required to do so. See N.J.A.C. 10:49-14.1(g). DMAHS often receives reimbursement for a Medicaid estate lien without recording a lien at all. (2T19:18-25). There are also no time limitations anywhere in the federal or state statutes for DMAHS to record a lien for recovery. DMAHS, most often, tries to record a lien before a

property is sold or before an estate has made its distributions, but may also record a lien after the estate is settled to collect from the beneficiaries. This is because DMAHS is dependent on the personal representatives of the estate to provide information about the death of the recipient, assets, and final accountings. If DMAHS decides to record a lien, then N.J.S.A. 30:4D-7.4 instructs the agency to file it with the county clerk or county register wherein the affected property is located, as it did here. (Pa40). In short, the statutory lien exists with or without it being recorded with the Superior Court.

DMAHS is not required to record a lien, but instead required to provide timely notice of claim. The estate recovery regulation states that DMAHS “shall file any claim or lien against the estate for Medicaid payments correctly made within 90 days after receiving actual written notice” of the death of the Medicaid beneficiary. N.J.A.C. 10:49-14.1(d) (amended as of May 20, 2013, to “three years” instead of “90 days”). (Pa52-54). As such, on June 9, 2012, DMAHS sent the first notice to Evens Benoit at the Irvington Property after Mrs. Benoit’s death on May 3, 2012. (Pa56). It sent subsequent notices to the Irvington Property on August 16, October 9, and November 14, 2012. (Ibid.)

As required by the controlling regulations, DMAHS filed a claim by sending notices of the lien to the personal representative and/or executor of Mrs. Benoit’s estate. See DeMartino, 373 N.J. Super. at 224 (finding that DMAHS’s

notice to the estate was consistent to the federal requirements as set forth by the Center for Medicare and Medicaid Services under Transmittal 63 requiring that notice of proposed recovery should be served on the executor or personal representative of the estate).

The trial court explained: “I don’t think this ever will come down on the side of the plaintiffs didn’t know or that somehow it was a surprise or, more importantly, that the agency did not follow their own interpretation of the regulations. So, I am going to reject the plaintiff’s argument with respect to notice, which, by the way, again for the record, that was my issue raised. That was not raised in the original argument by the plaintiffs.” (2T26:7-15).

The executor of Mrs. Benoit’s estate necessarily received timely notice of the lien, because at some point prior to January 11, 2013, DMAHS received information that Mrs. Benoit’s surviving spouse was still living at the residence, so the “Estate Recovery Response Status” was updated indicating “Surviving Spouse.” (Pa56). DMAHS cannot verify, due to the passage of time, who responded to DMAHS’s notices, but on or about April 1, 2019, Tamarra Henry spoke with DMAHS staff that she was aware “back in 2012 that there was a possibility [that] a lien would be placed on [her] mom’s home to cover the healthcare costs she incurred.” (Pa58).

Moreover, in April 2019, Ms. Henry then informed DMAHS staff that Mr. Benoit passed away in June 2017. (Pa57-58). Upon written notification that the surviving spouse had passed, DMAHS then immediately recorded the lien. (Pa8; Pa40; Pa58). Even after DMAHS recorded the lien on the Irvington Property, Mr. and Mrs. Benoit's children continued litigate in probate court leading to the court's appointment of Mr. Bauman to administer Mr. Benoit's estate. (Pa1-Pa5). The Irvington Property was not sold until two years after the Medicaid estate lien was recorded, and the proceeds of the sale were placed in escrow because the lien was properly recorded. (Pa5).

This court should reject Appellants' argument that Respondent is precluded from recovery because the date the lien was recorded is irrelevant. The Medicaid estate lien is valid and enforceable.

**V. ATTORNEY'S FEES WERE CORRECTLY DENIED BY THE TRIAL COURT.**

Appellants have not identified any statutory right to attorney's fees yet claim that the trial court's denial of attorney's fees with their Order to Show Cause application was an abuse of discretion. (Pb48; Pa41-47; Pa63-66). Appellants seek attorney's fees through the fund in court exception under Rule 4:42-9(a)(2). The trial court specifically noted that Appellants argue "that the 'action by plaintiffs was necessary to resolve the issue on a point of law on

which there was no clear authority and plausible arguments on each side.’ The court did not make such a finding.” (Pa64). Furthermore, the trial court “reject[ed] plaintiffs’ argument that by filing this application, the plaintiffs were seeking to advance the interests of others, including DMAHS.” (Pa65). As such, no fund in court exception should apply, and the American Rule requiring litigants, like Appellants, to be held responsible for their own attorney’s fees must prevail. Mason v. City of Hoboken, 196 N.J. 51, 70 (2008); (Pa64-65).

Moreover, as Respondent explained to the trial court, attorney’s fees are generally considered as administrative costs and reimbursable from the estate’s assets when the estate is settled. (Pa64). Pursuant to N.J.S.A. 3B:22-2, if an estate is insolvent, the order of priority claims permit administrative costs to be paid before the Medicaid lien. Ibid. Counsel’s application for attorney’s fees, to the extent the fees relate to estate administration, can be made in probate court when the final accounting of the income and distributions are decided and Mrs. and Mr. Benoit’s estates are resolved. (Pa66).

Because Appellants articulate no cognizable basis for a grant of attorney’s fees, their demand for same must be denied.

**CONCLUSION**

For the foregoing reasons, this court should affirm the trial court's December 5 and 10, 2024 orders upholding the validity of DMAHS's priority estate lien.

Respectfully submitted,

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Deputy Attorney General

Dated: June 18, 2025

# Superior Court of New Jersey

## Appellate Division

Docket No.: A-1344-24

MARY D. FOREST	:	
and TARKETIA AJAI,	:	CIVIL ACTION
	:	
Plaintiffs,	:	ON APPEAL FROM AN ORDER OF
	:	THE SUPERIOR COURT OF NEW
v.	:	JERSEY, CHANCERY DIVISION,
	:	ESSEX COUNTY, GENERAL
DIVISION OF MEDICAL	:	EQUITY PART.
ASSISTANCE AND HEALTH	:	
SERVICES, ET AL.,	:	DOCKET NO.: ESX-C-172-24
	:	
Defendants.	:	Sat Below
	:	HON. LISA M. ADUBATO, J.S.C.

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**REPLY BRIEF ON BEHALF OF MARY D. FOREST AND  
TARKETIA AJAYI, APPELLANTS**

**Date Submitted: July 7, 2025**

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**LEGAL ARGUMENT ON REPLY**

**POINT ONE IN REPLY**

**THE RESPONDENT'S BRIEF FILED BY  
THE ATTORNEY GENERAL INCORRECTLY  
CLAIMS THAT THE APPELLANTS DID NOT  
RAISE CONSTITUTIONAL ARGUMENTS BELOW.**

In their brief on appeal, the Plaintiffs-Appellants argued that the interpretation of the statute and regulations as interpreted by the State of New Jersey results in an unconstitutional taking of property. Pb28-29; Pb36-44.

As described below, two briefs filed by the Plaintiffs-Appellants in the trial court raised the matter of the constitutional property rights, and the constitutional rights were raised in oral argument below.

The Defendant-Respondent, the State of New Jersey, claims that the constitutional issues were not raised by the Plaintiffs-Appellants below. Db16-Db17.

There are four ways that the constitutional issues could affect the outcome of this matter, being:

- a. That the statute or regulations are unconstitutional;

b. That the application of the statute and regulations as interpreted by the State of New Jersey in the present case is unconstitutional;

c. That there is ambiguity in the statutes (particularly with respect to the absence in the statutes of any reference to a tenancy by the entireties), and that any ambiguity in the statutes on this point should be resolved so that it does not result in an unconstitutional taking; and

d. That there is ambiguity in the regulations (particularly with respect to the instruction to the employees of the State of New Jersey to take the position that the interest of the surviving spouse, who is not a debtor, is subject to the lien, but without the regulations stating in the appropriate place that the interest in tenancy by the entireties property is subject to the lien) and that any such ambiguity in the regulations on this point should be resolved so that it does not result in an unconstitutional taking.

Clerveaux S. Benoit and Philomene Benoit were married, and in 1986 they purchased as tenants by the entirety a house located in Irvington, New Jersey. Pa1; Pa9.

The deed read that the grantees were “Clerveaux Benoit and Philomene Benoit, h/w”. Pa9.

Philomene Benoit became ill and began receiving Medicaid benefits. She died in 2012. Clerveaux S. Benoit survived her and as such he became the sole owner of the premises. He then passed away in 2019. Pa4.

The house, along with the rest of Mr. Benoit's estate passed pursuant to his last will and testament which was admitted to probate. Pa3. Pursuant to the terms of such last will and testament letters testamentary were issued to two of his children. However they were both removed by the Superior Court, which appointed Drew Bowman, Esq., as Administrator, C.T.A. Pa3.

In 2019, which was 7 years after the death of Ms. Benoit, and more than a year after the passing of Mr. Benoit, the State of New Jersey recorded a lien against Philomene Benoit. Pa4; Pa8. As described in the appellants' brief this time period was beyond that allowed by law.

The Administrator C.T.A. sold the house in 2021. Pa5. Because of the asserted lien, the Administrator C.T.A. held some or all of the net proceeds in escrow.

As of August, 2024, there had been no resolution to the issue of whether the Medicaid lien was enforceable. The Plaintiffs, being two beneficiaries of the estate then commenced this action. Pa1.

The pleadings filed by the Plaintiffs showed a claim that the asserted lien was a violation of the rights of Mr. Benoit and the successors of his estate.

Two briefs filed by the Plaintiffs in the trial court each raised the matter of the constitutional property rights of the Plaintiffs.

The Plaintiff's brief dated August 1, 2024, in the trial court below, Pa80-83, clearly asserted at Pa82 that the claim against the late Philomene Benoit,

and her estate, could not be enforced against the estate of another person, Clerveaux S. Benoit, or the property rights he held as the surviving tenant by the entirety. That assertion, and the following statements regarding property rights made in the August 1, 2024, letter each found at Pa82, clearly implicated the asserted property rights, which are constitutional rights:

“In with tenancy by the entirety property, the judgment lien could not burden the interest of Clerveaux S. Benoit. It could not be a lien on his right of survivorship. *Newman v. Chase*, 70 N.J. 254, 259-260 (1976).” Pa82.

“In sum, New Jersey allows the creditors of either spouse to reach his interest in entirety property, subject, however, to the other spouse's right of survivorship.” Pa82.

The second brief filed by the Plaintiffs in the trial court below, dated October 16, 2024, Pa84-90, which was filed prior to either days of the oral argument, specifically argued the rights under the Constitution of the United States and the Constitution of New Jersey.

During the course of the return date hearing on the Order to Show Cause, which occurred over two days, Plaintiffs counsel repeatedly raised the matter of the constitutionality of the Medicaid lien.

During that hearing, the trial court first ruled against the claim of an unconstitutional taking, and then thereafter asserted that the issue had not been raised even as the Plaintiffs counsel was arguing it. 2T43:5-17.

The Plaintiffs-Appellants' brief included an analysis that the character and attributes of a tenancy by the entireties under New Jersey law arguably changed in 1995 when the Medicaid recovery statute and regulations were enacted, and that thereafter, everyone was on notice that the survivor's interest in tenancy by the entireties property was subject to a lien for Medicaid benefits provided to the first spouse to pass away. Pb39-40.

However, that change in the character and attributes of a tenancy by the entireties could only apply prospectively, after the enactment in 1995, or else it would constitute a taking of property interests of the surviving spouse, who was entitled to the ownership of the entire property once the first spouse passes away. Pb40.

**POINT TWO IN REPLY**

**THE COURT SHOULD LIBERALLY CONSIDER  
WHETHER CONSTITUTIONAL ARGUMENTS  
WERE RAISED BELOW.**

Even apart from any special consideration for constitutional issues, if the question is raised as to whether a certain issue was raised by the Plaintiff in the trial court below, then the determination of the matter should be governed by whether the issue was even arguably raised by the Plaintiffs.

With respect to a motion for dismissal of a complaint for failure to state a claim under R. 4:6-2(e), the standard of judging whether a plaintiff has made a claim is to be interpreted as to whether such a claim “may be gleaned from the pleadings”. That same standard must be applied to the question of whether an issue has been raised by a plaintiff such that it may be heard on appeal.

In *Printing Mart v. Sharp Electronics*, 116 N.J. 739, 746 (1989), it was stated:

“We approach our review of the judgment below mindful of the test for determining the adequacy of a pleading: whether a cause of action is “suggested” by the facts. *Velantzas v. Colgate-Palmolive Co.*, 109 N.J. 189, 192 (1988). In reviewing a complaint dismissed under Rule 4:6-2(e) our inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint. *Rieder v. Department of Transp.*, 221 N.J. Super. 547,

552 (App.Div. 1987). However, a reviewing court "searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." *Di Cristofaro v. Laurel Grove Memorial Park*, 43 N.J. Super. 244, 252 (App.Div. 1957)."

As described above, the verified complaint and the initial brief of the Plaintiffs-Appellants claimed that the lien could not be enforced because it would infringe on the property rights of the late Clerveaux S. Benoit and the beneficiaries of his estate. There should be no doubt that constitutional issues were raised in the verified complaint and the initial brief.

Further with respect to constitutional issues, the Appellate Division should strain to find that such issues should be heard.

**POINT THREE IN REPLY**

**THE APPELLATE DIVISION SHOULD CONSIDER  
THE CONSTITUTIONAL ISSUES, AS THEY RAISE  
SIGNIFICANT ISSUE OF PUBLIC INTEREST,  
AND THE ISSUES HAVE BEEN RAISED ON  
NOTICE TO THE ATTORNEY GENERAL.**

The points raised above in this Reply Brief show that the property rights of the late Mr. Benoit from the initial pleadings and brief were clearly asserted and gave full notice that constitutional issues were being raised. Further the constitutional rights were asserted in the brief filed with the trial court on August 1, 2024, Pa80.

Further, it was shown above that the standard as to whether a claim was made should be viewed with liberality. But there can be no doubt that the Attorney General was aware that constitutional rights were being asserted by the Plaintiffs-Appellants.

Even after these points, the Court should find that the constitutional issues should be considered as being a matter of public importance.

Of particular concern, there is the argument that the Medicaid recovery statutes from 1995, and the attendant regulations, may have changed the character and attributes of a tenancy by the entirety. The analysis by the Court of such a change in the character of a tenancy by the entirety would contribute to the public interest.

Even if the Appellate Division was to determine that the constitutional issues were not raised in the trial court below, the following authorities show that the issues should or may be addressed in the public interest:

State v. O'Hagen, 380 N.J.Super. 133, 139 (App.Div. 2005), *aff'd*, 189 N.J. 140 (2007) (particularly allowing constitutional issues to be considered).

D'Ambrosio v. Department of Health, 403 N.J.Super. 321, 332-334 (App.Div. 2008).

Berardo v. City of Jersey City, 76 N.J.Super. 341, 354 (App.Div 2023).

In any event, the State of New Jersey can not complain that it was not on notice of the constitutional issues.

The Appellate Division should consider the constitutional issues as they raise important issues of public policy and these issues have been raised on notice to the Attorney General. That resolution may be by way of a ruling which is to be applied prospectively only.

CONCLUSIONS

For the foregoing reasons, the judgment of the Court below should be reversed, and the matter should be remanded for a finding of the quantum of attorneys fees and costs to be awarded.



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July 7, 2025

8400-Reply2