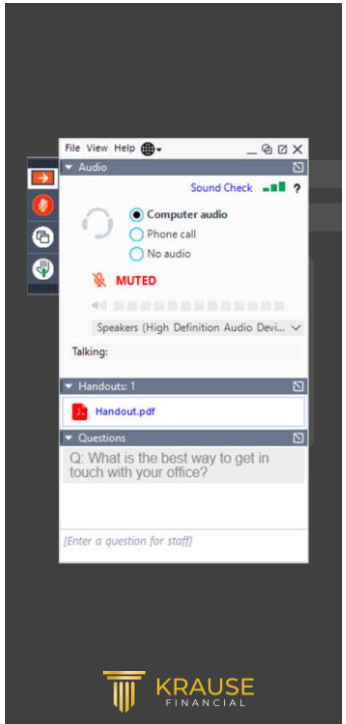


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# Interactive Agenda

Don't forget to complete the survey at the end of today's presentation!



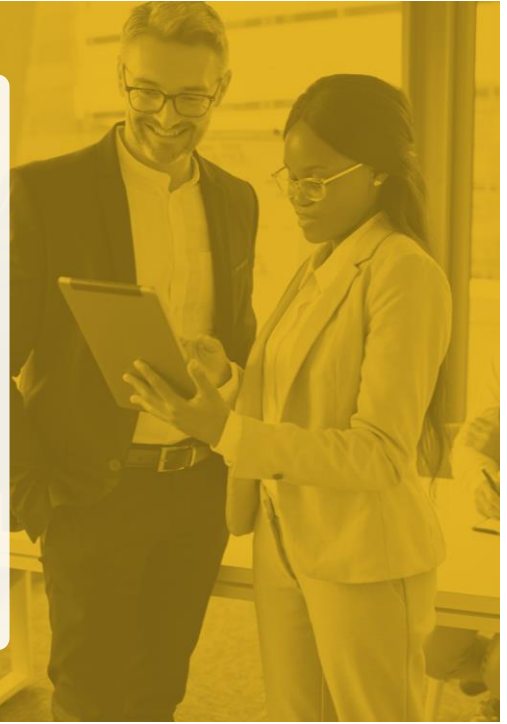
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# Elder Law Debrief

October 2024

Presented by:  
Jim Wolverton, J.D.,  
*Director of Legal Education*



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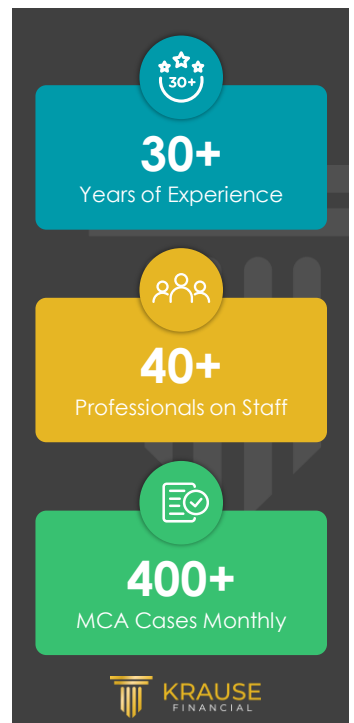
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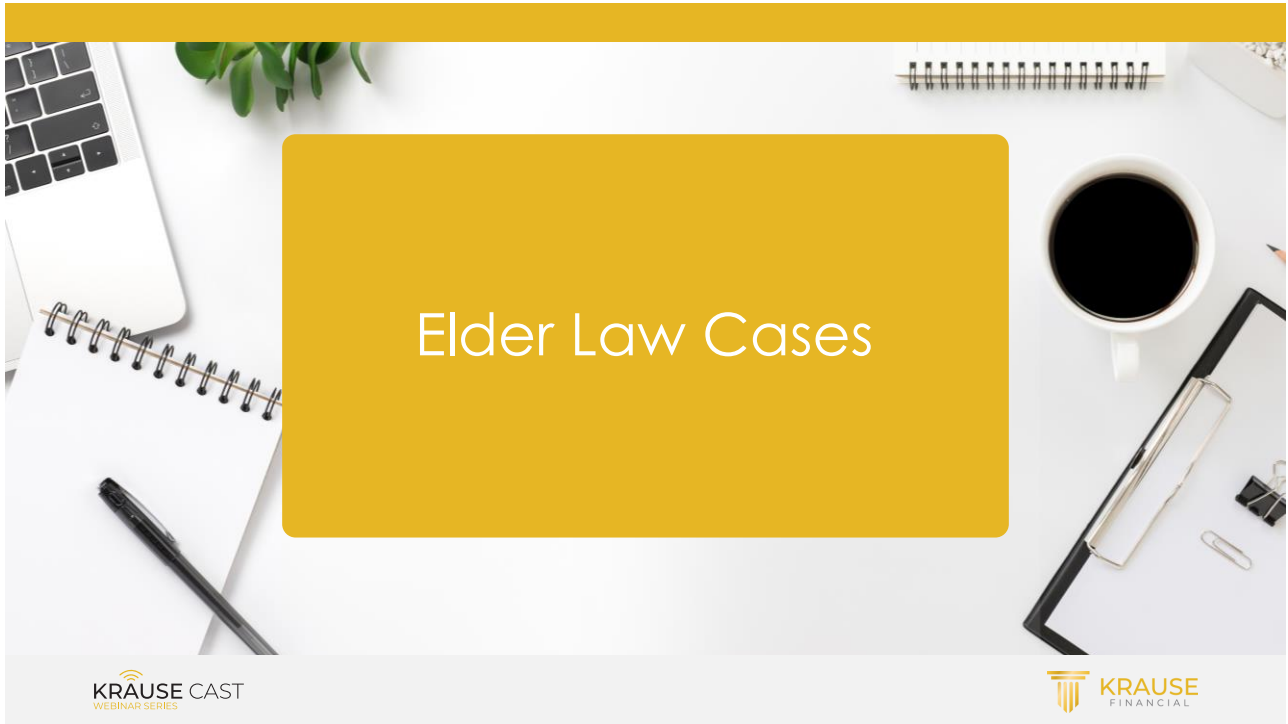


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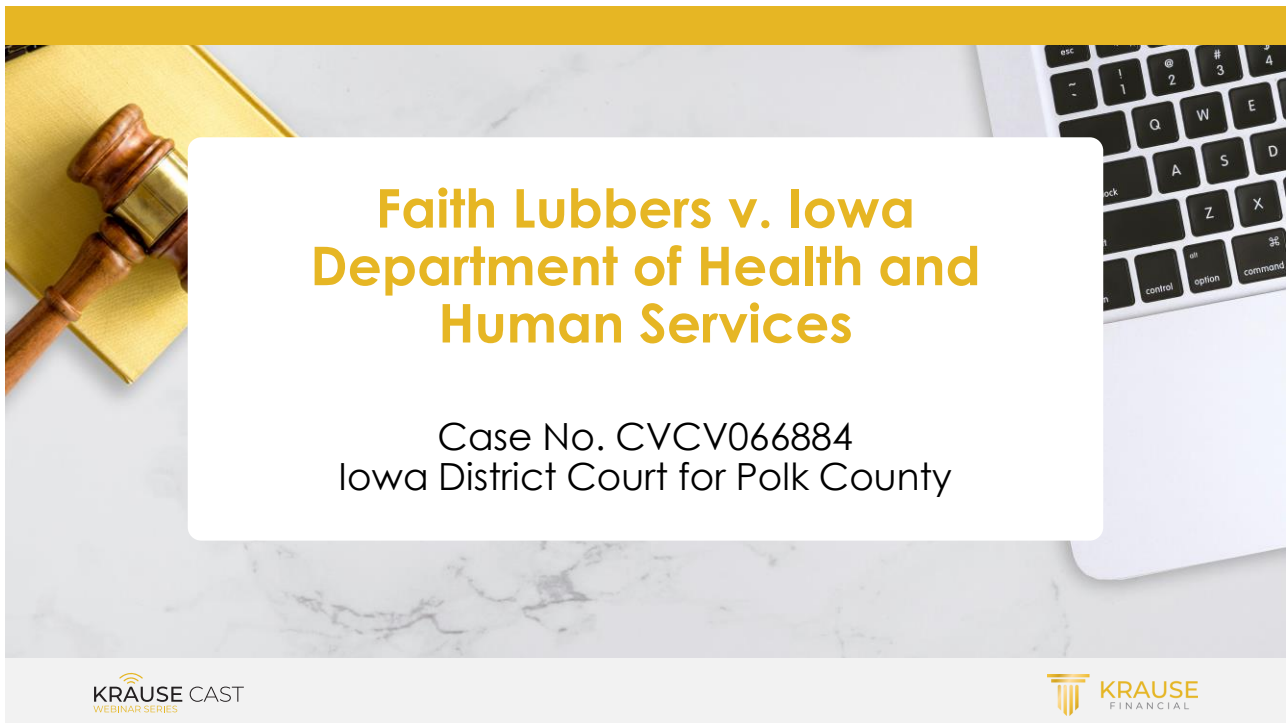


# Elder Law Cases

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# Faith Lubbers v. Iowa Department of Health and Human Services

Case No. CVCV066884  
Iowa District Court for Polk County

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## Case Facts

- Faith Lubbers applied for Medicaid in February 24, 2023.
- Her application was denied as the agency claimed she was over-resourced. This decision was appealed via interagency appeal.
- The issue is whether the Department erred when it determined that certain real estate subject to a non-transferable, non-assignable real estate installment contract should have been a countable asset for Medicaid eligibility.



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## Case Facts

- The ALJ concluded that under Iowa law the resource must be “available”.
- A resource is considered “available” under the following circumstances (Iowa Admin. Code r. 441-75.56(6)(a):
  - The applicant owns the property in part or in full and has control over it. That is, it can be occupied, rented, leased, sold, or otherwise used or disposed of at the individual’s discretion.
  - The applicant has a legal interest in a liquidated sum and has the legal ability to make the sum available for support and maintenance



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## Case Facts

- The Department's regulations specifically provide that a property sold under an installment contract for a price consistent with its fair market value is exempt as a resource per 441 IAC 75.56(4)(b).
- The ALJ concluded that there was not an indication that the installment contract price was inconsistent with the property's fair market value and that she is eligible for medical assistance and facility care.



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## Case Facts

- The Department sought further agency review. During Department review, the ALJ's decision was overturned, stating the property was available if the applicant has a legal interest in a liquidated sum and has the legal ability to make the sum available for maintenance and support per 441 IAC 75.56(6)(a).
- The Department reasoned that because the contract had a four- year term, during which time payment was to be made annually and it could be cancelled if a future payment was missed, the applicant held title until the term of the installment contract was completed. Therefore, she still owned the property and it should be considered available and a counted asset.
- The applicant filed for judicial review of the decision.



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## Holding – Agency Deference

- The district court acts in an appellate capacity to correct errors of law on the part of the agency. The courts are required to give deference to an agency interpretation of law when the agency has been clearly vested with authority to interpret a provision of law.
- If the legislature has not given the agency clear authority to interpret a provision of law, the courts may reverse the interpretation if erroneous. Here the Department is not claiming it is owed any deference regarding its interpretation of the law at issue in this case.



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## Holding – Installment Contracts

- The Medicaid Act is a federal aid program designed to help the states provide medical assistance to financially-needy individuals, with the assistance of federal funding. Participation is voluntary, but if a state decides to participate, it must comply with all federal statutory and regulatory requirements.
- Lubbers contends that she converted the farmland she had an interest in - into income for purposes of Medicaid eligibility. This was not improper and she followed a procedure that is specifically authorized by federal law.



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## Holding – Installment Contracts

- Upon review the real estate contract the repayment terms are actuarially sound, the payments are equal, there is no balloon payment and cancellation upon death is prohibited. The transaction complied with the requirements of 42 USC 1396p(c)(1)(I).
- The court concludes that the interest in the installment real estate contract was not a resource for Medicaid eligibility purposes under federal law as supported by at least three federal circuit courts.



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## Holding – Installment Contracts

- The same conclusion is reached under state law's definition of "availability".
- The record is clear that Lubbers lack control of the property in the sense that she cannot transfer or otherwise dispose of the property in her discretion because of the non-assignability and non-transferability provisions of the contract.
- The agency's point that she has the right to dispose of the property if the contract is breached is not persuasive. Rather, the focus is whether Lubbers possesses the present right to control the property and does she retain the ability to dispose of it in her discretion. Clearly the answer to both questions is "no".



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## State of Kansas v. Alonzo Union

553 P.3d 320  
Supreme Court of Kansas

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## Case Facts

- Alonzo Union met Jean Miller in 2007. They became friends and moved in together sharing their rent. After Miller began to suffer from dementia, Union acted as her caretaker and was authorized to use Miller's bank account in 2014.
- Union also became Miller's durable power of attorney.
- Miller moved into Riverbend nursing home then subsequently left leaving an outstanding balance of around \$9,000. Union set up a payment schedule with the nursing home but the payment stopped after a couple months. Miller moved back in with Union after leaving Riverbend.



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## Case Facts

- Riverbend notified DCF that there was potential abuse or neglect being committed by Union.
- Katrina Racklyeft, a social worker at DCF, opened an investigation. She interviewed both Miller and Union, looked at the finances and received an emergency guardianship and conservatorship to protect Miller and her finances.
- In November 2019, Union pled no contest to the criminal charge of mistreatment of a dependent adult. However, Miller passed away before Union's sentencing.



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## Case Facts

- At the restitution hearing, Racklyeft testified about her investigation into Miller's finances. Miller received income from social security and a pension. She testified some of the money in Miller's account was used for her care like utilities.
- She also testified that a ballpark figure of \$30,000 of ATM cash withdrawals were made and used for Walmart purchases.
- Other expenses included liquor, the YMCA, USPS, several purchases in Minnesota, a dating website, a casino, Men's Warehouse and a shoe company.



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## Case Facts

- Racklyeft testified she could not specifically account for the \$30,000 of ATM cash withdrawals but she had to presume the money was not spent for Miller.
- When she asked Union about that money, he said he spent the money on the house but never provided any receipts and she didn't know what was purchased at Walmart.
- Racklyeft asserted Union owed Riverbend \$7,632.74 for Miller's stay because at the time he was Miller's durable power of attorney and he signed the admission paperwork.



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## Case Facts

- She claimed Union owed the entire income figure missing - \$52,787.54 plus the Riverbend bill for a grand total loss of \$60,420.28.
- Union acknowledged that some of the expenditures were not for Miller but that some of the ATM withdrawals were for the house and food that he shared with her. The Walmart funds were money orders or cash used to pay for Miller's car and payments for debts owed. He drove Miller's vehicle to Minnesota several times, used Miller's money to pay for gas and to register the vehicle in Minnesota.



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## Case Facts

- Union explained he paid rent with Miller's funds and utilities but couldn't provide proof because the rental company had moved and didn't have a new phone set up.
- Union acknowledged he owed Riverbend for Miller's stay but he stopped making payments because there was a \$900 extra charge to the bill that he did not understand so he stopped paying them.
- Union also acknowledged that as a durable power of attorney he had a duty to record how he used Miller's money but he lost those records.



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## Case Facts

- The final witness was Miller's niece who visited when Miller was living with Union. She felt Miller was well cared for and never worried about Miller's financial or emotional stability.
- The court ordered Union to pay \$31,511.26 in restitution which consisted of half of the ATM withdrawals and Walmart expenses, the debt to Riverbend and the other miscellaneous expenses.



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## Case Facts

- Union appealed and a panel affirmed the restitution award. The Supreme Court then took this case up on Union's petition.



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## Holding – Restitution

- Union asserts the restitution order must be vacated because:
  - the amount owed to Reverbend was not caused by the crime of conviction; and
  - insufficient evidence supports the district court's restitution awards of half the Walmart purchases and half the ATM withdrawals.



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## Holding – Restitution

- Kansas law provides a sentencing court may order the defendant to pay restitution, which shall include, but not be limited to, damage or loss caused by a defendant's crime.
- The court's determination of restitution must be based on reliable evidence which yields a defensible restitution figure.



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## Holding – Restitution

### Riverbend

- The casual link between a defendant's crime and the restitution damages for which the defendant is held liable must satisfy the traditional elements of proximate cause: cause-in-fact and legal causation.



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## Holding – Restitution

### Riverbend

- Cause-in-fact requires proof that it is more likely than not that, but for the defendant's conduct, the result would not have occurred.
- Legal cause limits the defendant's liability even when his conduct was the cause-in-fact of a result by requiring that the defendant is only liable when it was foreseeable that the defendant's conduct might have created a risk of harm and the result of the conduct and any contributing causes were foreseeable.



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## Holding – Restitution

### Riverbend

- Union argues that Riverbend was not damaged by his conduct in committing the crime for which he was convicted.
- The crime he was convicted (mistreatment of a dependent adult) is defined by taking the property or financial resources of a dependent adult for the use of the defendant or another.



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## Holding – Restitution

### Riverbend

- For proximate cause to exist, Union's specific crime must have been the but-for cause of Riverbend's damage.
- We conclude no evidence shows Union's crime of conviction caused the Riverbend bill or caused this bill to go unpaid. Rather, it was caused by Miller's independent need for care.
- Union's crime and the unpaid bill are two independent and unrelated events.
- The portion of the restitution directing Union to pay Riverbend is vacated.



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## Holding – Restitution

### Walmart Purchases and ATM Withdrawals

- Union asserts the district court erroneously ordered him to pay one-half of all Walmart and one-half of all ATM withdrawals.
- Union argues that the burden of proof was shifted, causing him to have to prove the proper use of the funds.



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## Holding – Restitution

### Walmart Purchases and ATM Withdrawals

- The court points to evidence that Union admitted to buying liquor, shoes, taking Miller's car to Minnesota with no ascertainable benefit to anyone other than himself.
- The district court concluded that there is clear and convincing circumstantial evidence that Union spent a significant portion of Miller's money on himself and he likely used the cash to conceal this improper spending.



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## Holding – Restitution

### Walmart Purchases and ATM Withdrawals

- The court finds the testimony lacked support to specifically support the restitution award amount.
- However, they find that the restitution order is supported by substantial competent evidence when considering Union's no contest plea, the well pleaded facts of the charging document, and the district court's finding of guilt.



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## Holding – Restitution

### Walmart Purchases and ATM Withdrawals

- The crime he pleaded no contest to requires the accused misappropriated at least \$25,000 but no more than \$100,000.
- By making a no contest plea the offender admits to all the well pleaded facts of the Information for purposes of the case.
- The plea and the elements of the crime of conviction provide substantial competent evidence that, minimally, Union caused \$25,000 in damage or loss to Miller.



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## Holding – Restitution

### Walmart Purchases and ATM Withdrawals

- Not including the Riverland award, the district court ordered Union to pay \$23,878.52, slightly less than the lower limit of his crime of conviction and it is therefore affirmed.



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## Ciarleglio v. Martin

228 Conn. App. 241  
Appellate Court of Connecticut

## Case Facts

- Vincent Ciarleglio and Miriam Martin obtained a marriage license on February 7, 2019 and were married later that day.
- Vincent was eighty-two years old and Miriam was fifty-two years old.
- Two days before the marriage Vincent was infused with fentanyl and Demerol so that his physician could search his upper bowels to determine the cause of his blood loss, dizziness and general weakness.

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## Case Facts

- On the day of the marriage, the court found he was acutely ill, medically compromised and could not have made prudent decisions. He was suffering from numerous medical conditions including a seizure caused by blood infection, blood loss and dizziness, weakness, chronic anemia, difficulty breathing, fever and the beginnings of liver failure.
- He was not receiving sufficient oxygen to his brain and a doctor testified that his body was “poisoning his brain” for a period prior to the marriage.



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## Case Facts

- Vincent told his niece during his hospitalization after his wedding day that he was not married and when showed his marriage license, with his signature, he was confused and said he was tricked.
- On June 21, 2019, Vincent commenced an action to dissolve or annul the marriage on the basis that he was incompetent at the time of the marriage.
- He died intestate on August 24, 2019.
- Miriam filed a motion to dismiss the action for lack of subject matter jurisdiction which was granted.



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## Case Facts

- Less than a month later, the Probate court appointed, Steven Allinson, as administrator of the estate and he moved to open the case and substitute the estate as the party plaintiff which was granted.
- The lower court found the testimony of Miriam and the witness who performed the ceremony without credit and not believable.
- The court found the decedent was not competent to marry on the basis of the overwhelming evidence and concluded that he did not possess a sufficient mental capacity to understand and comprehend the consequences of the marriage or to consent to the marriage.
- The court rendered judgment annulling the marriage and this appeal followed.



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## Holding –

- The first point of appeal is whether the defendant – Vincent's estate - has subject matter jurisdiction because the plaintiff lacked standing to continue the annulment action following Vincent's death.
- The relevant statute provides that a cause of action or right of action shall not be lost or destroyed by the death of any person.
- Both principles of equity and judicial precedent support the proposition that the administrator of an estate properly may maintain an annulment action initiated by a decedent plaintiff.



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## Holding –

- There is an exception to this principal of standing - if the purpose of the case is defeated or rendered useless by the death of the party.
- Miriam claims that the case is useless because a marriage is dissolved by death.
- This court disagrees in this case because Vincent, prior to his death, took action to protect his assets by seeking exclusive possession of his premises, the return of personal items, and to enjoin Miriam from collecting rent on his properties.



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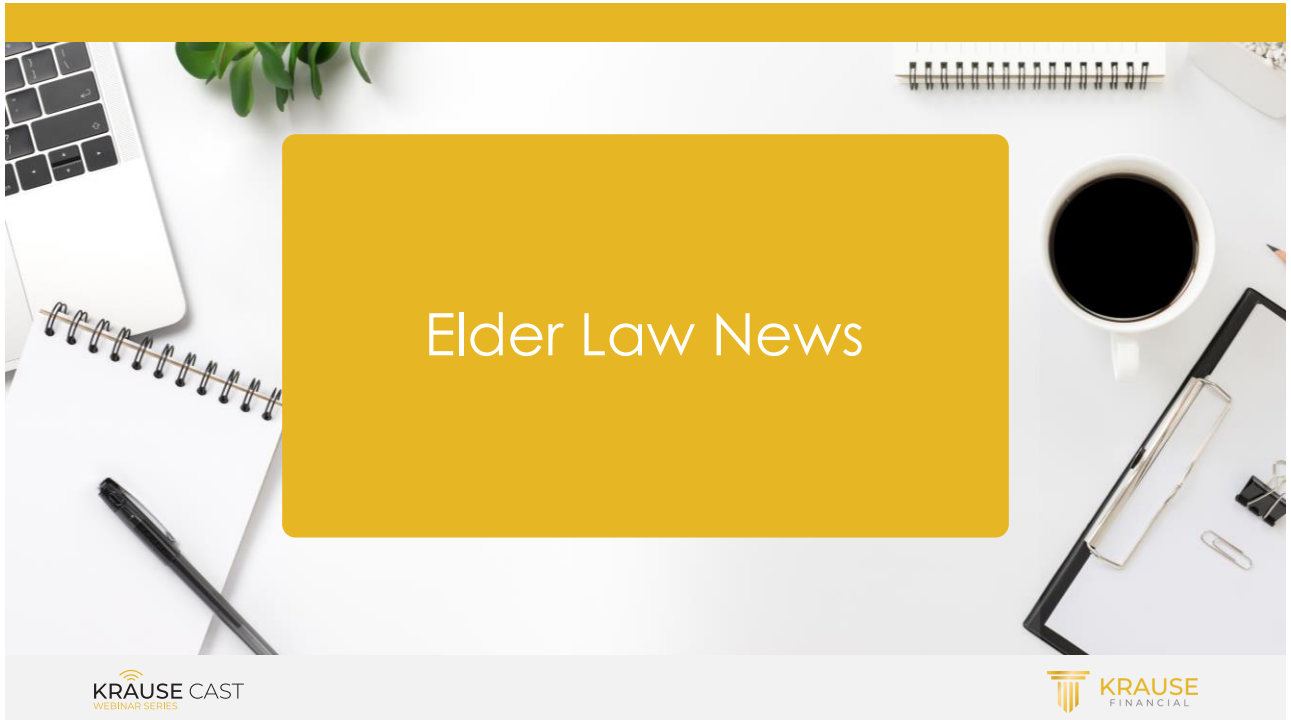
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## Holding –

- The court also found that because Vincent had initiated a claim for an annulment before he passed away, he did not waive the voidable defect of the marriage.
- The final ground for appeal Miriam made was based on the standard of evidence. The court found this objection was not properly preserved as she had a chance to correct the lower court on that issue during the evidentiary hearings on the case and deferred to the court's discretion.
- The lower court's judgment annulling the marriage is affirmed.



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## Indiana Final Rule Change Makes Community Spouse IRA's Countable Resources

- In 2020, the Indiana Family & Social Services Administration was set to make a rule change to make community spouse retirement accounts countable resources for Medicaid qualification computation.
- In July 2020, the rule change was delayed.
- Effective July 26, 2024, Final Rules added 405 IAC 2-3-26(d) which states "retirement account of either or both spouses have an ownership interest in are included in the total value of resources."

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## No Food Reduction for In-Kind Support

- The Social Security Administration updated its regulations to remove food from the calculations of In-Kind Support and Maintenance (ISM) for SSI benefits.
- Only shelter expenses (room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services) will be considered for ISM deductions.
- The rule went into effect September 20, 2024.
- Social Security benefits and SSI payments will increase 2.5 percent Cost of Living Adjustment (COLA) in 2025.



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## Temp. Injunction Issued in Govoni Case

- Leo Govoni and other members of the Directed Benefits Foundation, Inc. have been sued personally by the Florida Attorney General for their role in stealing over \$143 million from special needs trusts.
- A temporary injunction was issued in the case to force the sale of real property in Florida and Kentucky to recoup some funds via liens up to \$2 million.
- Govoni's personal assets were not frozen as originally requested by the Florida Attorney General.
- However, there was an order issued in the bankruptcy case to pay attorneys fees to Akerman LLP of over \$600,000.



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## What the Outcome of the Election Could Mean for Medicaid

- Neither campaign has released in-depth policy position papers regarding Medicaid or any specific changes to long-term care programs.
- KFF released a report after reviewing the Trump and Biden-Harris administrations historical budget and legislative proposals.
- On October 8, 2024, the Harris campaign released a fact sheet titled *A Historic Medicare at Home Plan to Support the Sandwich Generation* – the proposal outlines the importance of providing care at home and using Medicare as the funding source.



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