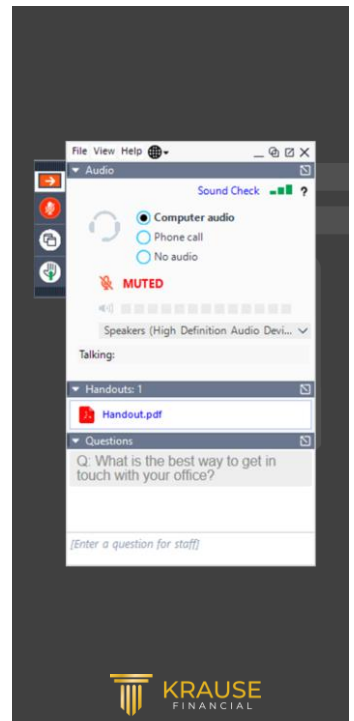


1

Interactive Agenda

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



2



Elder Law Debrief

February 2025

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



3

About Us

Krause Financial is an attorney-led firm that provides asset preservation solutions for estate planning and elder law attorneys and their clients. Using our specialized insurance products, resources, and support, we help attorneys streamline the process of advising clients planning for long-term care.

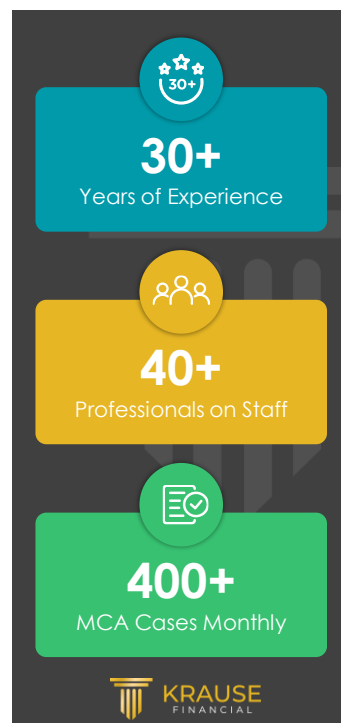
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4



A top-down view of a white desk with various office supplies. On the left is a laptop keyboard and a spiral notebook with a pen. In the center is a large yellow rectangle containing the title. On the right is a cup of black coffee, a clipboard, and some paper clips. A small green plant is in the top left corner.

Elder Law Cases

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5

A top-down view of a white marble desk. On the left is a wooden gavel resting on a yellow folder. On the right is a laptop keyboard. In the center is a large white rectangle containing the title and case information.

Matter of Estate of Beck

557 P.3d 1255
Supreme Court of Montana

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Case Facts

- On July 11, 2022, Jesse Beck sent Jason Beck a phone video recording of himself, in which Jesse stated:

I, Jesse Beck, if anything happens to me whatsoever, I give all my possessions, everything, to Jason Beck, my brother. Christina Fontineau does not get one thing, not one thing.
- On July 15, 2022, Jesse crashed his motorcycle and died as he was then struck by the responding officer. He was survived by his only child, Alexia.



7

Case Facts

- In July 2022, Alexia filed and was appointed as personal representative of Jesse's intestate estate.
- In October 2023, Jason filed a complaint seeking to intervene and petition a formal probate based on the video recording as an enforceable will, which would make him sole devisee and to be appointed personal representative and to remove Alexia as PR.
- Alexia filed an objection arguing the video did not qualify as a will under statute.



8

Case Facts

- The District Court entered an order explaining Jason was seeking to probate the will under the statute. It noted the statute cited was titled “writings intended as wills” and permitted probate even if not executed in compliance with other statutory requirements as a “document or writing added upon a document” but including a video under that statute makes no sense.
- It ruled that the statute does not allow a video to be considered as a document or writing upon a document that was intended as a will.
- Jason's petition to probate Jesse's video recording was denied.



9

Holding

- The court reviews relevant statutes regarding formalities of will execution and writings intended as wills and highlights that both statutes are focused on the having proper “documents”.
- Jason argues that the terms “documents or writing” contrasted with language in the execution statute establishes the legislature's intent to allow non-written documents, such as video and audio recordings, to also qualify as intended wills.



10

Holding

- Jason also points to dictionary definitions of electronic documents and the UPC stating that they should liberally construed and applied to promote its underlying purposes and policies. He argues this should include video recordings as documents – to further the purpose of honoring testamentary intent and promote justice.
- Alexia argues that a document is a document and at a minimum must be capable of both being written upon and signed and that the legislature did not state any intent to include video or audio recordings as valid testamentary instruments.



11

Holding

- The Uniform Laws Commission has produced the Uniform Electronic Wills Act (UEWA) to bring estate planning into the digital age but still requires a testator to make a will that is readable as text at the time the testator electronically signs the document, a signature and two witnesses with electronic signature.
- Montana has not adopted the UEWA.



12

Holding

- No state has authorized a nonwritten, video will, nor approval of such will has been made by any court applying the UPC.
- The statute's plain language and its structure and context clearly imply that a document is a physical paper or possibly digital file on which words are produced, and which would be capable of being signed and witnessed, thus not extending to video or audio recording.



13

Holding

- The video was neither written, signed or witnessed by anyone, or accompanied by documentation attempting to do those things.
- Montana statute and the UPC requires a will to be a document and the court finds no clear basis to extend that definition to a video recording lacking any form of statutory authentication, even under a liberal construction of the provision.
- Jason's petition was properly denied.



14

Scott v. Scott

SC-2024-0246
Supreme Court of Alabama

Case Facts

- Jeanetta is the administratrix of the Estate of Willie Scott.
- Jimmy Scott filed a complaint against Jeanetta in October 2021 stating that Willie had signed a promissory note to pay Jimmy \$67,000 by March 24, 2020.
- Jeanetta countered by filing defenses that the note was not properly executed and should not be enforceable.
- Jimmy responded with an affidavit of his own and of two witnesses stating Willie executed the note, appeared to be competent, did so voluntarily and Willie expressed his understanding of its contents.

Case Facts

- Jeanetta then filed a response stating there was a genuine issue of material fact whether Willie signed the note. She attached her own affidavit and one from Venessa Tyner.
- Jeanetta's affidavit stated her late husband's name is not signed on the promissory note but it is printed.
- Venessa Tyner stated she had seen him execute documents for 30 years and this was not his signature (also mentions he was MURDERED!!!).



17

Case Facts

- After some procedural wrangling, Jimmy was awarded a summary judgement in his favor and Jeanneta filed a motion to set it aside.



18

Holding

- Jeanetta argues that the summary judgment should be set aside because she submitted affidavits that countered Jimmy's motion for summary judgement and there is a genuine issue of material fact. The court should not be determining the creditability of witnesses.
- In its ruling in favor of summary judgment for Jimmy, the circuit court stated that Jimmy had provided three affidavits from three witnesses who personally witnessed Willie sign the promissory note and in response Willie's estranged wife testified the signature did not appear to be Willie's.



19

Holding

- The circuit court would have had to make its decision that there was no genuine issue of material fact by determining that Jimmy's witnesses were credible and Jeanetta and her witness was not.
- It is well established the court may not undertake credibility assessments in reviewing testimonial evidence submitted in favor, and in opposition to, a motion for summary judgment, whereas making such assessments is one of the key functions of the trial jury.



20

Holding

- Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in their favor.



21

Holding

- Because Jimmy presented affidavits stating that the signature on the promissory note was Willie's and Jeanetta presented contradictory affidavits stating that the signature on the promissory note was not Willie's, there was a genuine issue of material fact as to whether the signature on the promissory note was actually Willie's.
- Summary judgement is reversed.



22

In re Estate of Nothnagel

No. 367551, Unpublished
Court of Appeals of Michigan

Case Facts

- Marilyn Nothnagel, died December 31, 2020. Before her death, she was under a conservatorship with her daughter, Patricia Rogers, serving as conservator, until January 2019. Then, Brenda Miller, a professional fiduciary, was appointed as conservator until Marilyn's death.
- For a period of time, Marilyn was receiving Medicaid benefits and living in a county run nursing home but she was determined ineligible for benefits. She then moved to a different home and paid privately for her care until she passed away.

Case Facts

- In February 2021, Rogers filed an informal probate and was issued letters as personal representative.
- DHS filed a statement and proof of claim for Medicaid services rendered in the amount of \$182,049.
- Attorney, James Modrall filed a statement and proof of claim for legal services in the amount of \$22,876.20.
- In June 2022, Rogers filed a petition to resign as PR and appoint Miller as successor PR.



25

Case Facts

- In January 2023, Miller filed a petition for complete estate settlement, detailing the schedule for payment of properly presented claims. She listed DHHS as third creditor to be compensated \$181,910.35 and Attorney Modrall \$0 due to insufficient funds.
- Attorney Modrall filed an objection because his legal services should be considered a higher priority than DHHS's claim per statute. DHHS responded citing a different statute claiming in fact they had priority.



26

Case Facts

- During a hearing, Attorney Modrall stated he did not collect his payment while Marilyn was alive because he knew she had been disqualified for Medicaid and there was a concern that her funds would not outlast her.
- He argued in his brief that as a court of equity, the court should consider the he purposefully held back on pursuing collection of his bills for legal fees to ensure that she would have sufficient funds for her care.



27

Case Facts

- Had his claim been made during her lifetime he would have priority.
- The probate court ruled for Attorney Modrell stating:

At the end of the day, the estate's not going to any family member of the decedent. Because the battle is it either all goes to the State of Michigan as reimbursement for Medicaid or it gets dived [sic] up, with the bulk still going to the State, but \$22,000 and change going to [appellee] for his—attorney fees. In this matter, the Court views its role as one of equity. Ms. Brenda Miller testified that it appears that [appellee] essentially sat on his attorney fees out of concern for the protected individual as he did not wish to deplete all of her funds.



28

Holding –

- The provisions relevant to this case are within Article III, [MCL 700.3101 et seq.](#), which governs probate of wills and estate administration, and Article V, [MCL 700.5101 et seq.](#), which pertains to the protection of an individual under disability and their property.



29

Holding –

- In relevant part, [MCL 700.5429](#) provides:
 - (6) If a protected individual dies while under conservatorship, upon petition of the conservator and with or without notice, the court may hear a claim for burial expense or another claim as the court considers advisable. Upon hearing the claim, the court may enter an order allowing or disallowing the claim or a part of it and may provide in an order of allowance that the claim or a part of it shall be paid immediately if payment can be made without injury or serious inconvenience to the protected individual's estate.
- Stated alternatively, MCL 700.5429 provides a procedure for a claimant to follow when seeking payment on a claim against a protected individual or against the estate.



30

Holding –

- [MCL 700.3805](#) sets forth the priority of claim payments. In relevant part, [MCL 700.3805](#) provides:

(1) If the applicable estate property is insufficient to pay all claims and allowances in full, the personal representative shall make payment in the following order of priority:

- (a) Costs and expenses of administration.
- (b) Reasonable funeral and burial expenses.
- (c) Homestead allowance.
- (d) Family allowance.
- (e) Exempt property.



31

Holding –

(f) Debts and taxes with priority under federal law, including, but not limited to, medical assistance payments that are subject to adjustment or recovery from an estate under section 1917 of the social security act, [42 USC 1396p](#).

(g) Reasonable and necessary medical and hospital expenses of the decedent's last illness, including a compensation of persons attending the decedent.

(h) Debts and taxes with priority under other laws of this state.

(i) All other claims



32

Holding –

- The DHHS's claim falls under [MCL 700.3805\(1\)\(f\)](#) because it relates to the MMERP. Appellee's claim falls under [MCL 700.3805\(1\)\(i\)](#) because it cannot be classified as an administration expense when his legal services were incurred while decedent was alive.
- Rather, the parties challenge whether [MCL 700.5429\(6\)](#) may essentially override the order of priority under [MCL 700.3805](#), such that appellee's predeath legal fees were properly compensated before the DHHS's medical assistance payments. We conclude that the probate court erred when it entered its order of allowance providing that appellee's claim be paid pursuant to [MCL 700.5429\(6\)](#).



33

Holding –

- The plain language of [MCL 700.5429](#) reflects that it pertains to claims against a protected person during his or her lifetime, as opposed to the appropriate means of distributing the estate of protected persons after their death.
- Appellee provided legal services to decedent's conservators, Rogers and Miller, regarding Medicaid eligibility greater than one year before decedent's death. However, appellee failed to collect fees until after the administration of decedent's estate; therefore, his claims are not the type contemplated in [MCL 700.5429\(6\)](#).



34

Holding –

- While appellee advanced that, as a court of equity, the probate court was permitted to consider the circumstances surrounding his delay in seeking compensation for his legal services, equitable courts are not exempt from following the plain language of a statute.
- Thus, appellee's conduct, while admirable, remains subject to the priority provision delineated under [MCL 700.3805](#). The DHHS maintained a valid MMERP claim, and pursuant to [MCL 700.3805](#), its claim was of a higher priority than appellee's claim when determining the appropriate distribution of decedent's estate.



35

Reich v. Reich

105 Cal.App.5th 1282
Court of Appeal, Second District, Division 2,
California

36

Case Facts

- On September 2003, Thomas Reich created a revocable trust (Trust) that provided that:
 1. His ex-wife, his brother and his nephew are to receive a total of \$1.5 million in specific, cash gifts; and
 2. Thomas's daughter Shannon Reich or if Shannon dies before Thomas, his granddaughter Leah Tesi, is to receive any residue of the trust assets in separate trusts.

Case Facts

- Thomas maintained an IRA and completed a form designating Shannon and Leah's separate trusts as equal beneficiaries.
- He then married his "longtime close acquaintance" Pamela Reich on November 2020 and he died on July 2, 2021. He did not update his documents during this short marriage.
- When he died the IRA had a balance of around \$1.5 million. The IRA is Thomas's separate property.

Case Facts

- Pamala filed a petition that sought an omitted spouse's share of Thomas's estate and argued that the proceeds from the IRA were part of the estate because those proceeds had been marshalled through the Trust before they could pass to Shannon and Leah's separate trusts.
- Shannon argued that the IRA proceeds pass directly to the trusts and hence not through the trust such that they fell outside of Thomas's estate for purpose of calculating the omitted spouse's share.

Case Facts

- The trial court ruled that the IRA's proceeds can sometimes be included in a decedent's estate and that the IRA proceeds in this case would pass to the sub-trusts of the Trust and thus essentially be paid into the actual trust.
- The parties settled some of the case and Pamela received over \$188,000 but the fight continued over the IRA proceeds.
- Pamela then refiled her claims in a different procedure and that judge ruled that the IRA proceeds were not subject to the omitted spouses share as non-probate assets and the other ruling was not controlling.
- Pamela appeals and the cases are consolidated into this case.

Holding –

- It is the policy of California that spouses are to provide for one another and a person's failure to provide for their surviving spouse in their testamentary instruments is strongly disfavored and thus generally presumed to be the product of oversight, accident, mistake or unexpected change of condition rather than intent.
- California law has mandated a partial revocation of any will or trust by operation of law in order to provide the omitted spouse a share of the decedent's estate while simultaneously trying to preserve as much of the decedent's pre-marital estate plan as feasible.

Holding –

- The probate code states that an omitted spouse is entitled to one-half of the decedent's community and quasi-community property and a share of the decedent's separate property equal in value to what the omitted spouse would have received had the decedent died intestate.
- The omitted spouse's share is to be drawn first from any portion of the decedent's estate not disposed of by will or trust, but if that's not sufficient, then the omitted spouse's share is to be taken from all beneficiaries of the decedent's testamentary instruments.

Holding –

- For the purposes of this case the estate includes the decedent's probate "estate" and all property held in or passing by any revocable trust that becomes irrevocable on the death of the decedent.
- IRA proceeds are not part of the probate estate and are specifically named as nonprobate transfers in the code and California law has long treated them as such.

Holding –

- Although IRA proceeds can sometimes pass through a trust that becomes irrevocable upon death, such as when the designated beneficiary is the IRA owner's trust. However, the IRA proceeds in this case never became part of the Trust for purposes of calculating Pamela's omitted spouse's share.
- Pamela's argument that the IRA proceeds did pass through the Trust and are part of the Trust because the beneficiaries of the proceeds are the sub-trusts which were created by the Trust is rejected.

Holding –

- We see no reason why Thomas's decision to kill two birds with one stone by creating the separate trusts in the Trust document itself should lead to a different result when the IRA proceeds are still passing directly from the IRA to those separate trusts and, importantly, not through the Trust.
- Nor does it matter that the beneficiaries are the separate trusts for Shannon and Leah rather than them as individuals – the proceeds are not passing through the Trust.
- She makes additional similar arguments about the IRA proceeds passing “through” the Trust but are all rejected by the court.

I.M. v. Division of Medical Assistance and Health Services

Docket No. A-0150-23
Superior Court of New Jersey, Appellate
Division

Case Facts

- Appellant lived in an assisted living facility and applied for Medicaid benefits.
- Part of the application process for community-based Medicaid benefits was to provide the cost of her "medical costs" separate from the cost of room and board.
- The County Medicaid worker reached out to the assisted living facility and was provided information that the medical costs were only \$75 per day of the full assisted living daily charge.

Case Facts

- The application was denied because appellant's monthly income of \$8,993.45 was over the amount needed to cover the \$75 per day for medical costs - \$2,523 per month.
- After the denial, the applicant requested an itemized billing from the assisted living facility that showed that charges for room and board were between \$176.25 - \$255 per day, assistance with daily living at \$40 per day and medication management at \$35 per day.

Case Facts

- On appeal, the ALJ ruled the appellant's income was too high and explained that assisted living facilities are considered community-based services such that individuals are responsible for paying their own room and board costs.
- At the next level of administrative appeal, the appellant argued that the actual medical daily rate was \$330 and that the ALJ made the decision based on an erroneous view of what medical expenses are and on a fundamental misapprehension of how billing at an assisted living facility works.

Case Facts

- The ALJ decision was affirmed by the agency because there was not additional evidence of higher medical costs.
- The appellant then filed for an appeal to the courts stating that the income in the appellant's QIT should not be counted as income and that the reliance on the \$75 daily medical care rate was insufficient along with other arguments.

Holding –

- The argument regarding how income is counted that has been deposited in a QIT was not considered due to a lack of preserving that argument for appeal.
- The court was also unpersuaded that the daily medical costs of \$75 per day was unsupported by credible evidence in the record, based on misinterpreted information, and was arbitrary, capricious and unreasonable.

Holding –

- All of the statements from the assisted living facility state that the daily rate for medical costs is \$75 and the rest of the charges are for room and board not covered by Medicaid.
- The decisions made by the ALJ and the agency are left undisturbed.



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2025 SSI and Spousal Impoverishment Standards

Figures increased 2.5 percent from 2024

- **SSI Benefit Rate:**
 - Single \$967
 - Couple 1,450
- **Income Cap:** \$2,901
- **CSRA:**
 - Minimum Resource \$31,584
 - Max Resource Standard \$157,920
- **Home Equity Limits:**
 - Minimum \$730,000
 - Max \$1,097,000

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Michigan Raised Individual Resource Allowance

- Michigan Department of Health and Human Services will quadruple the current asset limits for an individual.
- The limit has been \$2,000 and was increased to \$9,660 effective February 1, 2025.
- The numbers has been the same since 1974 and follows a trend of states raising their individual resource allowance.



55

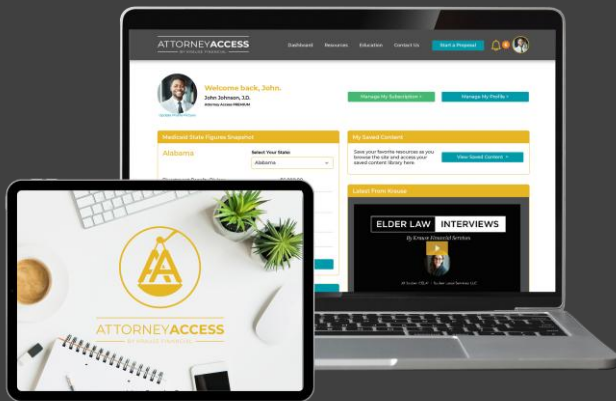
Trump Nominated Dr. Oz to Run CMS

- Dr. Oz was a surgeon and was a television talk show host. He ran an unsuccessful bid Senate bid in 2022.
- He hasn't made many policy statements other than favoring privatization through Medicare advantage plans.
- He will go before the Senate Finance Committee for a confirmation hearing.
- That hearing has not yet been scheduled (from what I can tell).



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