

IN THE COURT OF APPEALS OF IOWA

No. 1-428 / 10-1672
Filed October 5, 2011

**TOM CLARK, Administrator of the
ESTATE OF PATSY REA CLARK,
Deceased,**
Plaintiff-Appellant,

vs.

**STATE OF IOWA, DEPARTMENT
OF HUMAN SERVICES,**
Defendant-Appellee.

Appeal from the Iowa District Court for Mills County, James S. Heckerman, Judge.

The administrator of the estate of Patsy Rea Clark appeals from the district court's order denying his request for declaratory relief and finding that his asserted equitable defenses did not defeat the State's claim for Medicaid reimbursement under Iowa Code Chapter 249A (2009). **REVERSED AND REMANDED WITH DIRECTIONS.**

Richard C. Swenson of Swenson & Whitacre, P.C., Glenwood, and John M. French of Law Offices of John M. French, Council Bluffs, for appellant.

Thomas J. Miller, Attorney General, Barbara E.B. Galloway, Assistant Attorney General, and Benjamin C. Chatman of Health Management Systems, Inc., for appellee.

Heard by Vogel, P.J., and Potterfield and Danilson, JJ.

POTTERFIELD, J.

The administrator of the estate of Patsy Rea Clark appeals from the district court's order finding the Iowa Department of Human Services (DHS) could recover on its debt, created by medical assistance provided to Patsy, from the potential proceeds of the estate's separate tort claim against the State.

Patsy Rea Clark was born on October 28, 1932. She was a long-time resident of the Glenwood Resource Center, a residential facility for persons with disabilities operated by DHS. On April 25, 2005, Patsy was injured in a fall at the facility. She died on May 25, 2005. In a separate tort action filed subsequent to Patsy's death, Tom Clark, the administrator of Patsy's estate, sought damages from the State of Iowa, alleging the negligence of its employees at Glenwood was the proximate cause of Patsy's fatal injuries. That action has not been resolved, and there are neither proceeds nor a finding of liability against the State of Iowa.

As a resident of Glenwood, Patsy received medical assistance from DHS through a program commonly known as Medicaid. On March 26, 2007, DHS filed a claim in probate against Patsy's estate seeking reimbursement in the amount of \$1,148,889.05 to recover for medical assistance payments made to Patsy from July 1, 1994, to June 1, 2005.

On March 16, 2009, the estate filed a petition for declaratory judgment seeking to establish: (1) under principles of equity, DHS should be estopped from asserting its lien against any damages recovered by Patsy in her separate tort claim against the State since DHS was the alleged tortfeasor or, in the

alternative, (2) a lien could only be asserted against that portion of proceeds from the tort claim that were determined to be reimbursement for medical expenses directly attributed to the injury suffered by Patsy on April 25, 2005.

On September 14, 2010, the district court issued its order denying the estate's request for declaratory relief. The district court ruled that although rendering a decision might be "slightly premature," the request for declaratory judgment was justiciable. The court concluded DHS could recover for previous Medicaid benefits paid for Patsy from that portion of proceeds allocated to the wrongful death claim and determined to be reimbursement for medical expenses from the time of the April 2005 injury up to Patsy's death. The court further concluded DHS could recover for Medicaid benefits paid for Patsy from the entirety of the proceeds allocated to the personal injury claim. Finally, the district court noted, "Because Clark's estate fails to cite any authority supporting its general equity argument, and the court is aware of none, this argument is without merit."

Tom, as the administrator for Patsy's estate, appeals, asserting the district court erred in: (1) ruling that DHS need not comply with the requirements of Iowa Code section 249A.6 (2009) in seeking reimbursement, and (2) not considering general principles of equity as a defense to DHS's claim for Medicaid reimbursement under Iowa Code chapter 249A.

We determine the present case is not ripe for determination. An issue is ripe for determination when specific adverse claims exist and when those claims are based on present rather than speculative facts. *State v. Backes*, 601 N.W.2d

374, 375 (Iowa Ct. App. 1999). “If a claim is not ripe for adjudication, a court is without jurisdiction to hear the claim and must dismiss it.” *Iowa Coal Mining Co., Inc. v. Monroe Cnty.*, 555 N.W.2d 418, 432 (Iowa 1996).

At the present time, whether the estate will recover in its separate tort action is merely speculation. An opinion by this court regarding DHS’s ability to seek reimbursement out of tentative proceeds would be based on a contingency that may never arise. Because there has been no finding of fault in the underlying tort action and no award of proceeds, we decline to determine whether proceeds, which may or may not be awarded at a future date, would be subject to DHS’s claims against the estate under chapter 249A.

Because we find this case is not ripe for review, we reverse the district court’s order and remand for dismissal of the estate’s petition for declaratory judgment. If the estate receives proceeds as a result of its underlying tort claim, this issue would then be ripe and may be resolved at that time.

REVERSED AND REMANDED WITH DIRECTIONS.