[Cite as *In re Estate of Anderson*, 2020-Ohio-6924.]

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
SHELBY COUNTY

IN RE: THE ESTATE OF:

BETTY L. ANDERSON,
DECEASED.

[EMILY S. WORK - APPELLANT].

CASE NO. 17-20-03

O P I N I O N

Appeal from Shelby County Common Pleas Court
Probate Division
Trial Court No. 2018 EST 00215

Judgment Affirmed

Date of Decision: December 28, 2020

APPEARANCES:

Royce A. Link **for Appellant**

Stanley R Evans **for Appellee**

SHAW, P.J.

{¶1} Appellant, Emily S. Work ("Emily"), appeals the January 16, 2020 judgment of the Shelby County Court of Common Pleas, Probate Division, ruling on her exceptions to the inventory of the estate of her grandmother, Betty L. Anderson, (the "Estate"), and approving the inventory submitted by the Estate Administrator. On appeal, Emily claims the trial court erred in determining that the child support arrearages owed to Betty were assets of Betty's Estate. These child support arrearages were owed to Betty by Emily's father during a time when Betty was Emily's legal guardian. On appeal, Emily contends that the child support arrearages are her personal property and should not have been included in the inventory of Betty's Estate.

Relevant Facts

{¶2} The parties stipulated to the admission of several exhibits which illustrate the following facts. The deceased, Betty Anderson, was the mother of Donna Work ("Donna"). Donna was married to Chris Work ("Chris"). Emily (born in 1991) and her brother ("Bradley" born in 1982) who are now adults were born from the Work marriage.

{¶3} In December of 1994, Donna Work and Chris Work entered into a Shared Parenting Plan and a Judgment Entry/Decree of Shared Parenting was subsequently issued by the Shelby County Domestic Relations Court. Under the

terms of the Shared Parenting Plan, Chris was to pay Donna child support in the amount of $139.77 per week for Emily and her brother, who were minor children at the time. The Domestic Relations Court ordered the Shelby County Child Support Enforcement Agency ("SCCSEA") to collect the child support from Chris.

{¶4} On May 19, 1995, the Shelby County Domestic Relations Court issued an Order-Entry stating that Donna and Chris had reconciled, and therefore Chris' child support obligation was to cease effective immediately. However, the Domestic Relations Court's Order noted that a child support arrearage of $419.71 remained. The Domestic Relations Court further ordered that "should the parties separate, the original support Order shall be reinstated the first day following the separation." (Ex. B). Although not expressly stated, the record suggests that Donna and Chris separated shortly thereafter and that SCCSEA actively attempted to collect child support payments from Chris as evidenced by an August 4, 1995 Order from the Shelby County Domestic Relations Court permitting SCCSEA to withhold $100 per week from Chris's unemployment compensation earnings. (Ex. D).

{¶5} Donna died in 1996. The record indicates that Chris was convicted of manslaughter for causing Donna's death and was subsequently incarcerated for a period of time.

{¶6} On July 30, 1997, the Domestic Relations Court transferred the case to the Shelby County Juvenile/Probate Court. Betty Anderson was appointed Emily's

guardian. As a result, Betty became the obligee on the child support owed by Chris for Emily. The record reveals that Betty was appointed the legal guardian of Emily's brother, Bradley, who was nine years older, and suggests that Betty also became the obligee on the child support order relating to Bradley. The record further indicates Bradley apparently spent two years under the custody of his paternal grandfather while Betty remained his legal guardian. However, legal custody of Bradley was transferred by consent of the parties to Betty in 2000. (Ex. 12). Bradley turned eighteen shortly thereafter.

{¶7} It should also be noted that during his incarceration and the years that followed, Chris unsuccessfully petitioned the court to have his child support obligation terminated. In one 1999 order overruling Chris' motion to terminate or suspend the child support order, the Probate Court stated:

> **As a result of the criminal act of Chris Work, he caused the children to lose the physical and monetary support of their mother. The children lost his physical support because of his incarceration for the crime involving the death of their mother and he requests the Court to terminate his duty to provide monetary support. It is clear that Mr. Work should not have his support obligation modified or terminated during his incarceration and that the Child Support Enforcement Agency shall be permitted to take whatever steps is necessary to collect the support both during and after his incarceration.**

(Doc. No. 56, Ex. J).

{¶8} Betty remained Emily's court-appointed guardian until June 30, 2006. At that time, the guardianship of Emily under Betty was terminated. Emily's Aunt was appointed as successor guardian.

{¶9} On February 2, 2009, the Shelby County Juvenile/Probate Court issued an Order/Entry terminating the guardianship over Emily on the basis that she had attained the age of majority and there was no longer a need for a guardianship.

{¶10} On May 29, 2016, Betty Anderson died intestate, and the record indicates that she was not married at the time of her death.[1]

{¶11} On March 30, 2018, Emily filed an affidavit in the Probate Court seeking to waive her right to the uncollected child support arrearages owed by her father, and requesting the court distribute to her any child support payments which were collected by SCCSEA for her benefit.

Procedural History

{¶12} On November 14, 2018, special counsel for the attorney general applied to be appointed the Administrator of Betty's Estate in order to recover from the Estate the costs of Medicaid services received by Betty during her life.

{¶13} On January 29, 2019, the trial court approved and appointed special counsel for the attorney general as Administrator of the Estate under the authority

[1] There appears to be some discrepancy in the record as to whether Betty died on May 29, 2016 or June 1, 2016, however this discrepancy is inconsequential to issues raised on appeal.

of R.C. 2113.06(C).[2] The record indicates that the Ohio Department of Medicaid subsequently filed a claim against the Estate to recover $33,046.71 for Medicaid services provided to Betty during her lifetime.

{¶14} On August 1, 2019, the Administrator filed an Inventory and Appraisal listing as the only asset of the Estate intangible personal property in the form of arrearages in child support owed to Betty by Chris Work in the amount of $60,683.38 for the care of Emily and Bradley when they were minors. Specifically, the Schedule of Assets filed by the Administrator stated that, as calculated by the SCCSEA, Betty was owed $49.973.46 for Emily and $10,709.92 for her brother from their father as June 30, 2006.[3]

{¶15} On August 9, 2019, Emily filed Exceptions to the Inventory, claiming that the child support arrearages are not an asset of the Estate.

{¶16} On October 25, 2019, the trial court held a hearing on Emily's Exceptions to the Inventory, where the parties stipulated to several exhibits which the court admitted into evidence. There was no testimony presented by either party.

[2] R.C. 2113.06(C) states, in relevant part, that "[i]f there are no persons entitled to administration * * * the court shall commit the administration to some suitable person who is a resident of the state, or to the attorney general or the attorney general's designee, if the department of medicaid is seeking to recover the costs of medicaid services from the deceased pursuant to section 5162.21 or 5162.211 of the Revised Code. The person granted administration may be a creditor of the estate."

[3] The parties later stipulated to an exhibit establishing an October 10, 2019 calculation by the SCCSEA that the amount of child support arrears owed by Chris was $45,089.84 for Emily, and $8,732.18 for her brother. The difference owed reflects the amount collected by the SCCSEA from Chris since the June, 30, 2006 calculation.

The trial court ordered each party to submit its respective proposed findings of fact and conclusions of law.

{¶17} On January 16, 2020, the trial court issued a judgment entry finding that Betty was the obligee on the child support arrearages at the time of her death, and that the child support arrearages owed to her were reduced to judgment. Accordingly, the trial court concluded that the child support arrearages were properly included in the inventory of the Estate by the Administrator.

{¶18} It is from this judgment entry that Emily filed her notice of appeal, asserting the following assignments of error.

ASSIGNMENT OF ERROR NO. 1

THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY NOT DECLARING THAT EMILY WORK IS EMANCIPATED BENEFICIARY, BETTY ANDERSON IS DECEASED, THE ARREARAGES HEREIN HAVE NOT BEEN REDUCED TO JUDGMENT, AND THE ARREARAGES THEREFORE PASS OUTSIDE THE ESTATE OF BETTY ANDERSON.

ASSIGNMENT OF ERROR NO. II

THE TRIAL COURT ERRED BY NOT APPLYING THE ANTKOWIAK STANDARD TO FIND THAT EMILY WORK WAS ENTITLED TO A PRESUMPTION THAT SHE WAS DENIED THE STANDARD OF LIVING TO WHICH SHE WAS ENTITLED, AND HAD SUPERIOR CLAIM TO THE ARREARAGE.

ASSIGNMENT OF ERROR NO. III

THE TRIAL COURT ERRED BY FINDING THAT THE ARREARAGES WERE PROPERLY REDUCED TO JUDGMENT.

ASSIGNMENT OF ERROR NO. IV

THE TRIAL COURT ERRED IN ASSERTING THAT THE ISSUE BEFORE THE COURT WAS WHETHER THE ARREARAGES WERE ASSETS OF THE ESTATE OF BETTY ANDERSON, AND THEN FINDING THAT BETTY ANDERSON WAS THE OBLIGEE OF THE ARREARAGES, AND THE ARREARAGES WERE PROPERLY INCLUDED IN THE INVENTORY.

{¶19} For ease of discussion, we elect to address the assignments of error together.

First, Second, Third, and Fourth Assignments of Error

Standard of Review

{¶20} Generally, this Court reviews a trial court's ruling on a party's exceptions to an inventory filing under an abuse of discretion standard. *In re Estate of Buckner*, 12th Dist. No. CA2008-07-074, 2009-Ohio-2447, ¶ 23; *In re Estate of Workman*, 4th Dist. No. 07CA39, 2008-Ohio-3351, ¶ 13. Abuse of discretion connotes more than an error of law or judgment; it implies the trial court's attitude was arbitrary, unconscionable, or unreasonable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). The party disputing the inventory typically has the burden of going forward with evidence that challenges the estate's inventory. *Workman* at

¶ 14; citing *In re Estate of Hass*, 10th Dist. Franklin No. 07AP–512, 2007-Ohio-7011, ¶ 43; *Napier v. Watkins*, 2nd Dist. Montgomery No. 20122, 2004-Ohio-4685, ¶ 15.

{¶21} However, if the issue for our review "clearly presents a question of law * * * we review the probate court's decision *de novo*." *In re Estate of Shelton*, 154 Ohio App.3d 188, 2003-Ohio-4593, ¶ 8 (11th Dist.). In this case, the question of law presented is whether Betty had a legal interest in the child support arrearages at the time of her death and therefore whether the child support arrearages are includable as an asset in the Estate's inventory.

Positions of Parties

{¶22} On appeal, Emily relies almost exclusively upon the holding of the Sixth Appellate District in *In re Estate of Antkowiak*, 95 Ohio App. 3d 546 (6th Dist. 1994). The issue presented in *Antkowiak* was whether child support arrearages that had accumulated during appellant's minority were an asset of his deceased mother's estate or passed to appellant outside the estate following her death. *Id*. at 550-551. The appellant in *Antkowiak* was the decedent-obligee's adult son who filed a declaratory judgment action in probate court against the child support enforcement agency, seeking to have the child support arrearages accumulated during his minority (which his father had owed to his mother as the custodial parent) declared his separate property rather than part of his deceased mother's estate. *Id*. at 548.

The stepfather, to whom the mother had bequeathed her entire estate, was granted leave to intervene. *Id*.

{¶23} The Sixth District concluded that there was a "corollary presumption" that accumulated child support arrearages passed to the appellant outside his deceased mother's estate. Specifically, the court in *Antkowiak* reasoned:

> **Upon the death of a custodial parent, the question is not whether a support obligation should be avoided, but whether the child-beneficiary has been provided all that is due. As with the proposition that a living custodial parent's claims for arrearages are founded in the parent's advancement of funds, proof that a child has been denied the standard of living to which he or she was entitled is impractical, if not impossible. Even so, it takes no advanced application of economics to conclude that, in all but the most affluent families, a custodial parent does not have the financial capacity to fully compensate for the absence of child support payments. * * * Therefore, we hold that the existence of a child support arrearage upon the beneficiary's emancipation and the death of a custodial parent establishes a prima facie case that the emancipated child has been denied the standard of living to which he or she was entitled. When the statutory beneficiary of child support is found to have been so denied the benefits of a child support award, he or she has a superior claim to the arrearages. * * * [T]he right to collect support arrearages passes directly to the emancipated beneficiary upon the death of the custodial parent.**

Id. at 553-54.

{¶24} However, the Sixth District also recognized that this "right to collect" applied only when the child support "arrearages" had not been "reduced to judgment" prior the decedent-obligee's death. Thus, according to the rationale stated in *Antkowiak*, where the arrearages were reduced to judgment, the "judgment"

became part of the estate and the right to collect arrearages did not pass to the emancipated child outside the decedent-obligee's estate:

> **It should be noted that our holding creating this corollary presumption applies only in those cases where the custodial parent has died and only when there is an emancipated beneficiary. A custodial parent who during his or her lifetime wishes to claim arrearages may do so by having the arrearages reduced to judgment. Such judgment would then become part of a deceased custodial parent's estate.**

Id. at 554.

{¶25} In the case *sub judice*, Emily maintains the trial court erred in finding that the child support arrearages owed to Betty had been reduced to judgment *prior to her death*, which was essential to the rationale expressed by court in *Antkowiak*. Therefore, she argues that the trial court erred when it failed to apply the "corollary presumption" set out by the court in *Antkowiak*, which directs the child support arrearage to pass outside the estate to the emancipated child rather than to the deceased parent's estate, or in this case Betty's Estate.

{¶26} In response, the Estate argues that not only is the holding in *Antkowiak* non-binding authority upon this Court, but also that the court in *Antkowiak* specifically limited its holding to the facts in that case, which are readily distinguishable from the ones in this case. The Estate further argues that the "corollary presumption" set forth in *Antkowiak* deviates from the general rule that a child support arrearage is an asset owned by the obligee. *See*, *Miller v. Miller*, 73

Ohio App.3d 721, 723-25 (4th Dist. 1991); *see also, J.V. v. J.B.*, 8th Dist. Cuyahoga No. 101232, 2015-Ohio-310, ¶ 4 (noting that the parent-obligee, not the child, is real party in interest to the claim for child support.); *Reed v. Morgan*, 12th Dist. Butler No. CA2008-09-233, 2009-Ohio-4130, ¶ 12-13; *In re Guardianship of Ward*, 5th Dist. Fairfield No. 14-CA-19, 2015-Ohio-848, ¶ 14; *Crister v. Crister*, 7th Dist. Jefferson No. 98 JE 17 (Mar. 21, 2000); *Seegert v. Zietlow*, 95 Ohio App.3d 451, 463-64 (8th Dist. 1994).

{¶27} The Estate argues that this general rule is supported by a presumption that the child was clothed, fed, and generally accorded the necessities of life by the child support obligee. In other words, absent evidence to the contrary, under the general rule it is presumed that the child was provided the requisite support and necessities by the obligee despite the absence of timely child support payments from obligor. *Miller* at 724-25; *Sutherell v. Sutherell*, 11th Dist. Lake No. 97-L-296 (June 11, 1999); *Seegert* at 463; *Crister*, *supra*. The Estate further argues that Emily presented no testimony to rebut this presumption, but instead the evidence admitted by the court upon the parties' stipulation indicated that Betty appropriately tended to the needs of Emily and Bradley when she was their guardian. (Ex. 13).

{¶28} This notwithstanding, the Estate asserts that even if the holding in *Antkowiak* was binding precedent on this Court, the child support arrearages owed by Chris as obligor to Betty as obligee were properly reduced to judgment several

times in judgment entries noting Chris's default on the child support payments and acknowledging Betty as the obligee on the child support arrearages, and evidenced by accountings submitted to the probate court by the SCCSEA. *See* R.C. 3123.18.[4] The Estate further contends the general rule that a child support arrearage is an asset owned by the obligee does not require the arrearages to be *reduced to judgment prior* to the obligee's death in order to be a valid probate asset included in the decedent-obligee's estate.

{¶29} The trial court found persuasive the Estate's argument regarding the applicability of the general child support rule to the facts of this case. Specifically, the trial court made the following determination in its judgment entry.

> **The presumption that Betty Anderson had to, and did, endure the hardship and financial obligation to meet the needs of the subject minor children has not been credibly rebutted. Accordingly, the arrearages are for her intended benefit and, if she were alive, would continue to be paid to her today.**
>
> **The arrearages were properly reduced to judgment. As such the Administrator has properly included them in the inventory of the estate.**

(Doc. No. 38).

[4] Revised Code section 2313.18 states that "[i]f a court or child support enforcement agency made a final and enforceable determination under sections 3123.02 to 3123.071 of the Revised Code as those sections existed prior to the effective date of this section or makes a final and enforceable determination under sections 3123.01 to 3123.07 of the Revised Code that an obligor is in default under a support order, each payment or installment that was due and unpaid under the support order that is the basis for the default determination plus any arrearage amounts that accrue after the default determination and during the period of default shall be a final judgment which has the full force, effects, and attributes of a judgment entered by a court of this state for which execution may issue under Title XXIII of the Revised Code."

Analysis

{¶30} In considering the arguments presented by the parties, we simply do not find *Antkowiak* to be instructive in this instance. As previously noted, the court in *Antkowiak* limited its holding to the specific facts presented in that case. Moreover, since its issuance in 1994, few courts have cited *Antkowiak* as authority and those that have recognized the "corollary presumption" as a departure from general rule and declined to incorporate it into their jurisprudence.

{¶31} *See e.g.*, *Sweeney v. Sweeney*, 8th Dist. Cuyahoga No. 103389, 2016-Ohio-1384, ¶ 34; *Reed v. Morgan*, 12th Dist. Butler No. CA2008-09-233, 2009-Ohio-4130, ¶ 13; *In re Harbour*, 227 B.R. 131, 132 (Bankr. S.D. Ohio 1998)(recognizing *Antkowiak* as a "narrow exception" to the general rule, but declining to apply it); *see also*, *Costello v. McDonald*, 196 W. Va. 450, 455, 741 (1996) (in which the Supreme Court of Appeals of West Virginia specifically declined to follow the rationale expressed in *Antkowiak*, instead concluding that "there should be a presumption that when the obligor fails to make his or her child support payments as ordered, the obligee assumed that additional burden in such a manner as to protect the welfare of the child, and his or her estate is, therefore, entitled to recoup the child support arrearage which accrued prior to the death of the oblige"); *Urias v. Neito*, N.M. App. No. A-1-CA-37091, 2018 WL 5993932, ¶ 11 (Ct. of App. New Mex. Dec. 23, 2018)(finding *Antkowiak* unpersuasive).

{¶32} Nevertheless, in addition to responding to the arguments advanced by Emily on appeal regarding case law and legal presumptions pertaining to child support arrearages, the Estate also highlights a unique circumstance in the instant case that is not addressed in the aforementioned cases. Specifically, the Estate argues this case involves a claim pursuant to the Medicaid Estate Recovery Program promulgated by the General Assembly under R.C. 5126.21. As previously noted, the Estate was opened by special counsel for the attorney general on behalf of the Ohio Department of Medicaid to recoup Medicaid funds under the Medicaid Estate Recovery Program that were expended to Betty during her lifetime. Therefore, the Estate argues that the issue of whether Betty's legal interest in the child support arrearages are includable in her estate as a traditional "probate asset" is inconsequential because the General Assembly chose to expansively define what assets are included in an "estate" subject to the Medicaid Estate Recovery Program. We agree with the Estate that this critical distinction is dispositive of the issue on appeal.

Medicaid Estate Recovery Program

{¶33} Recently, the Second Appellate District has succinctly discussed the legal authority regarding the application of the Medicaid Estate Recovery Program to this issue.

> **"Initially, Ohio's Medicaid Estate Recovery Program permitted recoupment solely from assets within the decedent's probate**

estate." [*Phillips v. McCarthy*, 12th Dist. Preble No. CA2015-08-017,] 2016-Ohio-2994, 55 N.E.3d 20, at ¶ 10. In 2005, "Ohio * * * elected to implement the broader definition of 'estate' to include non-probate assets. * * * In fact, 'Ohio's laws on recovery of estate assets for Medicaid reimbursement are among the most aggressive in the county.' " *Admr., State Medicaid Estate Recovery Program v. Miracle*, [4th Dist. Washington No. 14CA1], 2015-Ohio-1516, 31 N.E.3d 658, ¶ 11 (4th Dist.), quoting *In re Estate of Centorbi*, 129 Ohio St.3d 78, 2011-Ohio-2267, 950 N.E.2d 505, ¶ 26.

R.C. 5162.21(A)(1) defines "Estate" as follows:

(a) All real and personal property and other asserts to be administered under Title XXI of the Revised Code and property that would be administered under that title if not for section 2113.03 or 2113.031 of the Revised Code;

(b) *Any other* real and *personal property and other assets in which an individual had any legal title or interest at the time of death* (to the extent of the interest), including assets conveyed to a survivor, heir, or assign of the individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, *or other arrangement.*

***See also* Ohio Adm.Code 5160:1-2-07(B)(1)(a)-(b).**

In an effort to further supplant the common law principle of divestiture of certain interests upon death, R.C. 5162.21(A)(5) provides: " 'Time of death' shall not be construed to mean a time after which a legal title or interest in real or personal property or other asset may pass by survivorship or other operation of law due to the death of the decedent or terminate by reason of the decedent's death." *See Phillips* at ¶ 13. "Patently, by implementing the 2005 amendments, the General Assembly exhibited its intent to circumvent [that] longstanding tenant of common law * * *." *Phillips* at ¶ 14. "Indeed, the inclusion of the nebulous phrase 'or other arrangements' at the close of [R.C. 5162.21(A)(1)(b)2] suggests the legislature's resolve to vitiate any

> **asylum previously accorded nonprobate assets in the face of Medicaid recovery. * * *." *Id.***

Ohio Dep't of Medicaid v. French, 2d Dist. Darke No. 2019-CA-4, 2020-Ohio-2744, ¶ 54-56 (emphasis added), *appeal not accepted*, 160 Ohio St.3d 1407, 2020-Ohio-4574.

{¶34} Therefore, notwithstanding the seemingly divergent legal presumptions underpinning the categorization of child support arrearages as a probate asset, we conclude that under the expanded definition of "estate" in R.C. 5162.21(A)(1)(b), which includes non-probate assets, Betty's legal interest in the child support arrearages owed to her as guardian-obligee for Emily and Bradley represented a quantifiable asset for the purposes of the Medicaid Estate Recovery Program. [5]

{¶35} For the reasons stated above, we do not find that the trial court erred when it declined to apply the *Antkowiak* "corollary presumption" in determining that the child support arrearages are includable in the inventory of the Estate. Notably, *Antkowiak* did not involve a claim for the recoupment of Medicaid expenses and was decided over two decades before the General Assembly's

[5] Moreover, with respect to the fourth assignment of error, we conclude that Emily has failed to advance any compelling reason to accept her position that Chris's child support arrearage related to Bradley should not be included in the inventory of the Estate. The parties stipulated to exhibits, including judgment entries that demonstrate Betty was Bradley's guardian during his age of minority and provided for Bradley's care and basic needs. Furthermore, Bradley has failed to challenge Betty's legal interest to the child support arrearage related to his guardianship, despite having the opportunity to do so as an "interested person" who may file an exception to the estate inventory under R.C. 2115.16.

enactment of the most recent version of the Medicaid Estate Recovery Program, the provisions of which we find to be determinative in this case. As a result, the majority would note that it respectfully disagrees with and declines to adopt the position of the dissent suggesting that the trial court, in some unspecified manner, needs to address or make any further determination as to whether the child support arrearages are probate or non-probate assets.

{¶36} Accordingly, for reasons other than the ones stated by the trial court in its judgment entry, we conclude that the trial court did not err when it approved the Administrator's inventory listing the child support arrearages owed by Chris Work as an asset of Betty's Estate.

{¶37} Based on the foregoing, the assignments of error are overruled and the judgment is affirmed.

Judgment Affirmed

ZIMMERMAN, J.J., concurs.

/jlr

WILLAMOWSKI, J., concurs in part, dissenting in part.

{¶38} I concur with the majority that the child support arrearage owed by Chris, for the support of Bradley and Emily, and accruing to Betty Anderson prior to June 30, 2006, is part of the assets reachable by the State for the purpose of

Medicaid recovery. I also agree that Emily has no standing to assert that Chris's child support arrearage related to Bradley should not be included in the inventory of the estate. However, I would more closely review the issue of whether the asset is a probate asset, and thus included in the inventory, or a nonprobate asset. Certainly, part of the arrearage accrued between 2006 and 2009, when Betty Anderson was no longer Emily's guardian and Emily was the ward of her aunt, who was appointed as her successor guardian until Emily emancipated in 2009. Further, while the issue of whether the asset is a probate or nonprobate asset is not relevant to Medicaid recovery, it is relevant as to who receives the remainder of the asset after Medicaid is reimbursed. By affirming that the entire arrearage belongs in the inventory, we are presuming it is a probate asset, belonging to Betty Anderson at the time of her death, without fully addressing the matter. I disagree and believe a determination as to whether the asset is probate or nonprobate needs to be fully considered and properly determined. This determination would affect the distribution of the right to the remainder. For this reason, I concur only as to the determination that the child support arrearage accruing to Betty Anderson prior to June 30, 2006, while she was the guardian of Bradley and Emily is an asset reachable by the State for the purpose of Medicaid recovery. I dissent as to the approval of the inventory without further evaluation by this court.