

**#26512**  
**STATEMENT OF THE ISSUES**

**I. DID THE TRIAL COURT ERR IN CONCLUDING THAT ARLINE SHIPMAN WAS NOT ENTITLED TO AN ELECTIVE SHARE BECAUSE SHE RECEIVED HER "FAIR SHARE" OF MARITAL ESTATE WHEN EUGENE SPENT DOWN RESOURCES TO QUALIFY FOR MEDICAID?**

The trial court ruled that the surviving spouse was not entitled to an elective share because she already received her fair share as a result of the couple spending down their assets to qualify for Medicaid Long-Term Care. (SR 175)

**Most Relevant Cases:**

Estate of Amundson, 2001 S.D. 18, 621 N.W.2d 882.  
In re Estate of Smith, 401 N.W.2d 736 (S.D. 1987).  
Estate of Elvik, 587 N.W.2d 587 (S.D. 1998).

**Most Relevant Statutes:**

SDCL § 29A-2-202.  
SDCL § 30-5A-5.

**II: DID THE TRIAL COURT ERR IN NOT ALLOWING THE SURVIVING SPOUSE TO REVOKE THE DISCLAIMER?**

The trial court ruled that a disclaimer cannot be revoked if other persons interested in the estate would be prejudiced. (SR 171)

**Most Relevant Cases:**

Estate of Berg, 355 N.W.2d 13 (S.D. 1984).  
Striegel v State Dep't of Social Services, 515 N.W.2d 245 (SD 1994).  
I.G. v DHS, 900 A.2d 840 (N.J.Super.AD, 2006).

**Most Relevant Statutes:**

SDCL § 29A-2-801.