



## **A Scenario Highlighting the Court's Drastic Change to Conservatorship**

**By Christina B. Yee, Esq.**

The story starts just like any other. Mom, who had been diagnosed with dementia a couple of years prior, met a man while out on a walk (we'll call him "Stranger"). Within a couple of weeks, Stranger moved into Mom's house and professed his love to Mom, and proposed. Mom was a widow and, between her pension and retirement assets, along with those of her late husband, she enjoyed a monthly income stream of approximately \$15,000 a month. Stranger, on the other hand (it would later be discovered), was essentially homeless; when he met Mom he was sleeping on a cot in someone's garage. Investigators at the local police department would also later obtain recordings where Stranger was coaching Mom while she was on calls to her financial institutions asking about how to access more of her retirement income.

To say Mom's children were alarmed is an understatement. Mom's children decided to pursue a conservatorship to protect Mom, and to get the authority to evict Stranger from the house. The court immediately granted a temporary conservatorship, with a hearing set 6 months later to determine the necessity and appropriateness for a permanent conservator of Mom's person and estate.

When seeking a conservatorship, two conservatorships can be applied for: (1) conservatorship of the person; and (2) conservatorship of the estate. In proceedings for the conservatorship of the person, the court evaluates the proposed conservatee's ability to take care of his/her own needs: shelter, food, medical care, and whether they may be subject to undue influence. In proceedings for the conservatorship of the estate, the court evaluates the proposed conservatee's ability to manage and handle their financial affairs, such as paying bills and collecting income. A proposed conservator can apply to be the conservator of the person, estate, or both.

In Mom's case, her daughter applied to be the conservator of her person and estate. Mom was clearly lacking in judgment by allowing Stranger to move into her home after only a couple of weeks and was demonstrating a lack of ability to make independent decisions by allowing herself to be coached by Stranger.

While this case may seem clear-cut, the court has drastically changed its approach to conservatorships over the last few years. The past approach would see a conservatorship granted, whereby all of a conservatee's rights would be stripped away, and the conservatee would then have to apply to the court to reinstate certain rights. Under the court's new approach, it will only take away those rights it deems necessary for the protection of the conservatee and only if harm has been shown to have occurred to the conservatee.

In this case, the court was highly reluctant to grant a conservatorship because no physical harm had come to Mom with Stranger living in the house, and the Stranger had not blatantly stolen any of Mom's money. Even though Mom was withdrawing thousands of dollars and giving the money to Stranger, the court deemed this "Mom's right to do." The court did not view this as Stranger stealing Mom's money but rather as a "gift" from Mom, which she had a right to do.

It is also important to note that as is standard in all conservatorship cases, a lawyer is appointed by the Court for Mom. Mom retained the sufficient capacity to communicate with her lawyer and oppose her daughter's application to be the conservator. While Mom does have dementia, dementia is a disease with varying levels of seriousness. In the eyes of the court, a diagnosis of dementia or Alzheimer's does not automatically warrant a conservatorship. Unless actual harm can be shown, the courts are now highly reluctant to grant a conservatorship and take away the rights of a conservatee. Of course, common sense would say that once harm has occurred, for instance, someone has taken money from the elder, it is nearly impossible to recover that money.

In Mom's case, the court struck and approved a compromise. We found an independent third party to assist Mom in managing her money and paying her bills. We were able to get the court to approve several protections and parameters, which balances Mom's right to have access to a significant portion of her monthly income while at the same time protecting her from allowing Stranger full access to all of her money (which was what he was angling for). While Mom still receives a significant amount of discretionary cash every month, her family has had to accept that Mom can give that money away as she chooses.

As for Stranger's living situation, unfortunately, the court's point of view is that Mom can choose who she wants to spend time with. Mom's children remain an active and involved part of her life, and though they do not spend time with Stranger, staying close to Mom is a key part of protecting Mom. Manipulators such as Stranger count on families stepping away from their loved ones to fill the void, thus allowing them to isolate the vulnerable elder further.

In exchange, the conservatorship application was dismissed without prejudice. This means, in the future, if necessary, Mom's children can apply again for a conservatorship. Retaining the right to do so was a key negotiating point for the children as Mom's disease is progressive, so no one can predict what Mom's needs will be in the future.

Looking back now, it's hard to say if applying for a conservatorship was worth it, but it is doubtful that the compromise that was struck would have been achieved if a conservatorship wasn't putting pressure on everyone involved. It is also important to note that Mom has a detailed estate plan which the court was able to rely upon to help determine Mom's wishes. For now, Mom is protected, but it's hard to say what the future will bring as her disease progresses.

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Property owners will now be taxed at a rate of 4% on properties sold or transferred for more than \$5 million and at a rate of 5.5% on properties sold or transferred for more than \$10 million. The new tax applies to all real estate sales. These sales include residential homes, commercial buildings, and vacant land transactions. This tax rate is among the highest in the country.

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