Purchase of Real Estate at Discounted Price did not Constitute Financial Elder Abuse

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In an unpublished decision, the California Court of Appeal recently held that the purchase of real estate from an 85 year old man at a discounted price did not constitute elder abuse. *Steinbach v. Thomas*, California Court of Appeal, First Appellate District, A125293, filed 1/12/11). In his will, Herbert Thomas left his estate to his granddaughter Annalise. Thomas died in 2005 at age 85. Only a few months before his death, Thomas sold two adjoining parcels of land (his home was on one of the parcels) to Loretta Steinbach, mother of Thomas' neighbor Camille Steinbach.

The record in the trial court showed that Camille had been extremely helpful to Thomas for several years. She had him over for Thanksgiving and Christmas, helped him run errands, and took him to lunch or dinner every week. In contrast, Thomas had much less contact with his grandaughter. He had not seen her for four years prior to his death and she last spoke to him three months before his death. Thomas had told Camille he was not close to his family.

Thomas had been in danger of losing his home. He could not afford to pay the mortgage and maintain the home and it was in terrible condition – it lacked running water and needed a new roof, stucco, dry wall and wiring. He had been unable to sell it; he wanted to sell it so that he had money to live on. He wished to keep a life estate so that he could remain on the property until he died.

Thomas asked Camille if her mother Loretta would purchase the property. Loretta initially had no desire to purchase the property, but eventually agreed to do so. She purchased the property for $315,000. An attorney prepared a purchase and sale agreement for Thomas and Loretta. The transaction closed, although the deed did not reflect the life estate for Thomas. Thomas remained on the property until his death. Annalise then filed suit against Camille and Loretta for elder abuse, claiming Thomas did not receive fair value for the property; Loretta filed a quiet title action. The two cases were consolidated.

Loretta's appraiser valued the property at $450,00 without taking into account a life estate. The appraiser testified the life estate could reduce the value of the property by 35%. Annalise's appraiser valued the house at $650,000; however, the appraiser had never been inside the property and likewise did not take into account the effect a life estate would have on the value of the property. After a three day trial, the trial court denied the claim for elder abuse and quieted title in Loretta.

At the time of the events in question, California Welfare and Institutions Code section 15610.30 provided that a person committed elder abuse if a person took, appropriated or retained "real or personal property of an elder…to a wrongful use or with intent to defraud or both." A wrongful use was defined as taking the property in bad faith, that is, when the person knew or should have known the elder had the right to the property. After trial, but before the trial court issued its decision, the statute was amended to provide that elder abuse occurs when someone takes an elder's property "for a wrongful use or with intent to defraud," or by "undue influence."

The Court of Appeal, reviewing the record on a substantial evidence standard, found that Thomas sold the home because he wanted to do so, not because Loretta or Camille pressured him to sell, that is, they did not use "undue influence." Likewise, the "discount" on the sale price was due to the terrible condition of the property and the impact of the life estate. Although the life estate was not reflected in the deed, the court indicated that appeared to be by virtue of an error by the title company, not something done or induced by Loretta. Further, Thomas had received the benefit of the life estate, as he remained in the home until his death.

On this record, the court of appeal found that substantial evidence existed to support the trial court's conclusion that Camille and Loretta had not committed elder abuse. There was no showing that Loretta or Camille abused Thomas' trust. Thomas appeared to be mentally competent. He was eager to sell his property. There was no evidence Loretta or Camille took advantage of him to obtain undue benefit for themselves. Both versions of the statute required that the property be taken "wrongly". Here, instead of taking the property wrongly or attempting to defraud Thomas, they give him exactly what he wanted - money from the sale of the home to support himself and a place to live until he passed.

In short, this case reveals that not every transaction with an elder will be found to constitute elder abuse, even if the person dealing with the elder obtains – or appears to gain – substantial benefit from the transaction. Rather, the court will consider who initiated the transaction, were the terms fair, and was the other party or recipient of any benefit a logical object of consideration, favor or affection of the elder.