Quick Reference: Examples of Private Civil Actions Related to Elder Abuse

Injunctive Relief

Frank is 75 years old and a retired farmer. He was diagnosed with dementia. Frank owns farm equipment worth more than $50,000. He let a former employee borrow the equipment. When Frank's daughter, who is his agent under a power of attorney, asks the employee to return the equipment, he refuses and asserts that Frank sold him the equipment. Frank's daughter applies to be appointed as guardian ad litem for Frank (see Section II.B.1.b of the *Legal Framework for North Carolina's Elder Protection System*) and files a civil action to recover personal property (discussed in Section II.C.1.b.i.(b) of the *Legal Framework*) on Frank's behalf. Frank's daughter also includes in her verified civil complaint a request for both a temporary restraining order and a preliminary injunction preventing the employee from selling the property during the litigation. Frank's daughter has evidence that the employee listed the property for sale on a farming equipment auction site.

Attachment

Jane is 82 years old and lives alone in North Carolina. Thomas, a handyman who lives in Virginia, came to her home and offered to repair her leaky roof. Jane wrote him a check for $10,000 up front, and Thomas left and did not return. Jane filed a civil action in North Carolina against Thomas for fraud. Jane may consider filing an affidavit of attachment when she files the complaint against Thomas if Thomas has property in North Carolina, including bank accounts. (In practice, it will be necessary to know which bank Thomas uses in order to seize bank accounts.) If he does not have property in this state, then a North Carolina sheriff will not be able to seize any property.

Claim and Delivery

Molly is 75 years old and was diagnosed with dementia this year. She owns a diamond ring and necklace worth $40,000. While visiting Molly, her daughter, Sara, notices that the jewelry is no longer in Molly's home. Sara confronts Molly's neighbor, Patricia, about the jewelry. Patricia says that Molly gave her the jewelry two years ago to show how grateful she was that Patricia cared for and checked on her each day. Patricia says that Molly told her that she was her "real daughter" when she gave her the jewelry. Sara is appointed as Molly's guardian ad litem and files a lawsuit to recover possession of the jewelry. Sara includes in the suit an action for claim and delivery.

UNC SCHOOL OF GOVERNMENT

Lis Pendens

Mary Jones is 85 years old. She has an adult son, John Jones, who is 45. John goes to Mary with three deeds transferring unencumbered real property owned by Mary to the "Jones Family Trust." John tells Mary that the purpose of the transfer is to create tax savings for Mary. John is the only one of Mary's children who visits her often, and she is afraid that if she does not sign the deeds, he will stop visiting her. John tells Mary that she is the beneficiary of the trust when in reality, John is the trustee and the sole beneficiary of the trust. After the deeds are recorded, John immediately takes out a loan on all three properties in the amount of $250,000. Mary's daughter, Jill, becomes suspicious and does some investigating. Jill helps Mary hire an attorney, who files a civil action to undo the transactions conducted by John and recover the real property. During the litigation, Mary may consider filing a lis pendens with the court to put third parties on constructive notice that the real property is the subject of a pending lawsuit and to hinder further transfers or encumbrances by John.

Conversion

While 83-year-old Susie is in a rehabilitation facility recovering from a fall she suffered at home, her caregiver, Frank, goes to her house and takes the keys to her car (worth more than $15,000). He uses the car for months while Susie is in rehab. While using the car, Frank gets in an accident and causes $1,000 worth of damage to the car. When Susie returns home, she has to rent a car while her car is being repaired. Susie could sue Frank for conversion. If successful, she would recover damages equal to $15,000 (the value of the car when it was taken) plus interest from the time it was taken until judgment is entered.

Action to Recover Personal Property

Rather than bring an action for conversion, Susie (see example immediately above) could bring an action to recover personal property (the car). If she prevails, her relief will be return of the property plus damages ($1,000 to repair the car and $500 to rent a car).

Breach of Fiduciary Duty

Sam is 78, a widower, and lives alone. He has two children who live outside North Carolina. Sam meets a young woman at church, Anna, who offers to run errands for him and help him out around the house. Sam is showing early signs of cognitive impairment but has not been diagnosed. After a few months of helping Sam out, Anna tells Sam it would be easier for her to keep helping him if he signs a power of attorney (POA) naming her as his agent, which Sam then does. The POA gives Anna broad authority but does not give her the authority to make gifts or to change rights of survivorship. Anna then executes a deed granting an 11-acre tract of land owned by Sam to herself. She then executes a second deed conveying another tract of land to her son, Brandon. The combined value of the properties is more than $500,000. This set of facts likely meets the requirements for breach of fiduciary duty. Anna owed Sam a fiduciary duty as agent under the POA. She breached that duty by conveying the land to herself and to her son without any consideration (payment). Sam lost significant assets as a result of her breach. Even if Anna were to argue that the transfers were made as consideration for her caregiving services, the value of the services likely would not reflect a fair and reasonable price for the properties.

Constructive Fraud

Along with a claim for breach of fiduciary duty, Sam (see example immediately above) may also have a claim for constructive fraud against Anna for transferring the property to herself. Sam had a relationship of trust and confidence with Anna, his caregiver and agent under the POA. Anna exploited her position to benefit herself by transferring the property for no/inadequate consideration to herself. As a result, Sam incurred an injury, which was loss of a valuable asset without receiving adequate consideration.

Fraud

Along with conveying property to herself and her son, Anna (see the example immediately above) also transferred the money in Sam's checking account to a joint account with a right of survivorship with Anna and Sam as the owners of the account. Anna had the authority to manage Sam's account as agent under the POA but lacked the authority to change ownership and survivorship rights. Anna told Sam that she needed access to his account to help pay for things she purchased for him when she ran errands for him and that the new account had a better rate of return than his sole checking account and carried fewer penalties. Anna did not tell Sam that she added herself to the account and made it a survivorship account. Anna then used the funds in the account for her own personal needs. She concealed the true nature of the account from Sam to deceive him about her rights to the account and ownership in the account. She then used the account funds for her own benefit and not Sam's benefit, causing him injury. As a result, Sam may also have a claim for fraud.

Unfair and Deceptive Trade Practices (UDTP)

John is 89 and owns a home in a desirable neighborhood in an urban area. He has owned the home for sixty years. John suffers from memory loss. He has no family who live close by and is pretty lonely on a day-to-day basis. One day, a real estate broker knocks on his door and John invites him in. The broker says that he has clients who would like to purchase the house. He tells John that he can also serve as his agent for the sale. The broker tells John that he has conducted an appraisal of the house and that it is worth $50,000. In reality, the house is worth more than $250,000. The broker handles the closing and conveys the property to himself. There was no third-party purchaser of the house. As a result, John may have a claim for UDTP against the broker.

Undue Influence

James was 73 years old and a chronic alcoholic with bipolar disorder. He originally named his wife and son as beneficiaries of his pension and profit-sharing plans administered by his employer. He then changed the beneficiary to his caregiver. Less than one month prior to the change, he attempted to take his own life, and two weeks after the change he did just that. James lived in his own home but for two months before signing the forms was subject to the constant association and supervision of the caregiver. Prior caregivers noted that James could not care for himself—he could not use the bathroom unassisted or care for his other personal hygiene needs. When anyone had contact with James, he was always accompanied by the caregiver. James depended on the caregiver for his basic needs and was lonely because the caregiver isolated him from others most of the time. These facts likely support a claim to rescind the beneficiary designations based on undue influence of James by the caregiver.