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## **Deed to Child in Exchange for Promise to Care for Parent Set Aside**

Parents may wish to encourage a child to provide care for the parent by giving property or compensation to the child. A recent court case points out the conflicts that can arise and the need for careful legal help when trying to make such an arrangement work.

Myrna Martin (the “grantor”), a recent widow, went to live with her friend due to complications from her Multiple Sclerosis. Her son, Robert (the “grantee”), who lived in Pennsylvania, moved to Alabama along with his wife and three children to care for his mother after quitting his job and selling his family home. Robert moved in with Myrna and used \$25,911.26 of his own money to improve her home, adding a bedroom, bathroom and deck. Myrna quit-claim deeded her home to Robert, intending to reserve a life estate for herself (but this provision did not make it on the Deed that was filed). Problems arose between Myrna and Robert, causing Robert, along with his family, to move back to Pennsylvania. Myrna filed a court motion to set aside the deed transfer. The trial court set aside the deed, awarding Robert the \$25,911.26 he had invested to improve the property, but denied other measures of damages sought by Robert. The Court of Appeals upheld the trial court, stating that Alabama statutory law clearly contemplated a grantor’s right to set aside a conveyance where the conveyance is based on the grantee’s promise that he/she will support the grantor for life. The Court clarified that the law does not require Myrna to show that Robert failed to fulfill his end of the bargain. The Court of Appeals agreed that Myrna was obligated to repay Robert the \$25,911.26 invested in the property, and the Court sent the case back to the lower court to recalculate the amount Robert should recover on account of his payments of mortgage, property taxes, homeowner’s insurance, and termite treatment related to the property. The Court of Appeals also found that Robert did not provide specific evidence as to his losses attributable to leaving his job, moving to Alabama and from the sale of their house, for which reason he could not be reimbursed for those damages.

Question: Does this result encourage or discourage a child from leaping to his parent’s assistance? Does it further the public policy of encouraging children to get involved in their parents’ care? Early consultation with an experienced elder law attorney by the parent can result in identifying the potential conflicts and the best alternative plan to protect the parent’s interests while being fair to the child. To loosely paraphrase an old adage – An ounce of planning can save a pound of litigation!

Martin v. Martin, 2061089, 2008 Ala. Civ. App. LEXIS 387 (June 20, 2008)