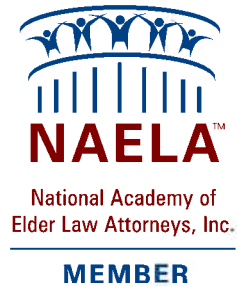


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Evicted Mom Fights Back, But Fails to Prove Case

A recent Texas court case displays an unfortunate struggle between a mother and her caregiver son over whether she could continue to live at home. Their failure to get good elder law counsel to assist in forming their understandings into an agreement resulted in a lawsuit and ultimately in her losing her home.

Brian Moneyhon lived with his seventy-five year old mother, Patricia, serving as her caregiver. After Patricia sold her home in Houston, Texas, she and Brian moved to Lake Jackson, where she bought a home and placed it in Brian's name. Brian married Cheryl shortly thereafter and Cheryl moved in. Several months later, Brian and Cheryl's relationship with Patricia deteriorated as Patricia's care needs increased. (They alleged that she began to physically and verbally abuse them.) Hoping to "encourage" Patricia to move to assisted living, Brian and Cheryl served Patricia with a notice of eviction.

Patricia then sued Brian and Cheryl seeking an injunction to prevent the eviction and seeking to impose a "constructive trust" over the home. (A constructive trust arises when a person obtains ownership of property by unlawful means, and the court finds that they merely hold the property for the benefit of the original owner.) Patricia maintained that Brian had induced her to give him the house by fraud and misrepresentation by promising that she could stay in the home with him for her lifetime, and that she should deed it to him just in case "something happened to her." Brian and Cheryl responded that the home was Brian's sole and separate property, and that Patricia had made an unconditional gift of the property to Brian.

Following a non-jury trial, the court found that Brian breached a duty based on a fiduciary relationship (that is, a particularly close relationship of trust and responsibility), that the conveyance to Brian from Patricia was a fraudulent conveyance, and that Patricia did not intend to make an absolute gift. The trial judge issued the injunction and ordered that the home be re-conveyed to Patricia.

On appeal, the appeals court found that Patricia had not alleged the existence of a fiduciary relationship, or breach of such a relationship, in her pleadings. In determining whether the issue was tried by consent of the parties, the court found that no evidence of a fiduciary relationship was submitted. The issue was first mentioned by Patricia's lawyer in closing argument. Accordingly, the trial court erred in granting relief on that basis. As the trial court's finding of fraud was premised on breach of a fiduciary duty, that ruling was likewise unsustainable. The trial court's order awarding Patricia equitable relief and conveying back to her title to the home, was reversed.

Moneyhon v. Moneyhon, 2009 Tex. App. LEXIS 990, NO. 14-06-00873-CV, (February 12, 2009)

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