

2008 WL 7818607 (Ariz.Super.) (Trial Pleading)
Superior Court of Arizona.
Pima County

In re the Matter of the Guardianship and Conservatorship of: Lorna A. WIGHT.
Patricia A. Flores, in her capacity as Guardian and Conservator for Lorna A. Wight, Plaintiff,

v.

Ruth Duffield and J. Dan O'Neill, Defendants.

No. C20086805.
September 29, 2008.

Complaint

Holly E. Wertz, ASB: 023043, PCB:65832, The Law Offices of Holly E. Wertz, LLC, P.O. Box 1225, Cortaro, Arizona 85652, Telephone: (520) 579-1221, Facsimile: (520) 670-1397, Attorney for Patricia A. Flores.

COMES NOW, Plaintiff, PATRICIA A. FLORES, in her capacity as Guardian and Conservator for Lorna A. Wight, and does hereby file this complaint against Defendants, RUTH DUFFIELD and J. DAN O'NEILL for financial exploitation of a vulnerable adult in violation of [Arizona Revised Statutes §46-456](#).

1. Defendant Duffield was named as Durable Power of Attorney for Lorna A. Wight on April 29, 2005 through a document prepared by Defendant O'Neill.
2. Based on a suspicion of money mismanagement by Defendant Duffield as well as Defendant Duffield's contention that she wished to be removed from that position, Plaintiff was appointed as financial and health care power of attorney for Lorna A. Wight in documents dated December 27, 2008. (See Exhibit 1 and 2)
3. After the new powers of attorney were signed, Defendant Duffield consistently and doggedly with assistance from her attorney, Defendant O'Neill, attempted to reaffirm her position as financial power of attorney.
4. Defendant O'Neill, who consistently represented to Plaintiff and Plaintiff's attorney that he represented Defendant Duffield (See Exhibit 3 and 4), insisted that the Durable Power of Attorney that he drafted was the valid and operative power of attorney. Defendant O'Neill had the Durable Power of Attorney recorded on March 31, 2008 in order to attempt to trump the powers of attorney executed by Lorna A. Wight on December 27, 2008. (See Exhibit 5)
5. Defendants both interfered with Plaintiff's ability to perform her duties as financial power of attorney for Lorna A. Wight. Defendant O'Neill went so far as to submit the recorded power of attorney to Morgan Stanley in an attempt to obstruct Plaintiff's ability to access the funds in the Morgan Stanley account. Defendant O'Neill was unfortunately successful in his effort to mislead Morgan Stanley and the brokerage firm ruled that the invalid power of attorney in favor of Defendant Duffield was the valid power of attorney. This gave Defendant Duffield access to the majority of Lorna A. Wight's funds.
6. Due to the continual interference and harassment by Defendants, Plaintiff was forced to petition the Court for appointment of a Guardian and Conservator. After a full investigation and hearing, Plaintiff was appointed by the Court as Guardian and Conservator for Lorna A. Wight on July 16, 2008.

7. On June 3, 2008, prior to Plaintiff's appointment, Defendant O'Neill directed Defendant Duffield to transfer \$1,090.00 from the Morgan Stanley brokerage account into his business account for payment of Defendant Duffield's legal fees. (See Exhibit 6) Plaintiff had no recourse to stop this transaction since Morgan Stanley was honoring Defendant Duffield's power of attorney.

Pursuant to [Arizona Revised Statutes §46-451](#), Lorna A. Wight is a vulnerable adult. According to the investigation performed during the Guardianship/Conservatorship proceedings, Ms. Wight suffers from Dementia of Alzheimer's type. The Court has already ruled that Ms. Wight is an incapacitated and vulnerable adult when Plaintiff was appointed as Guardian and Conservator. In fact Ms. Wight never realized that Defendants were interfering with Plaintiff's ability to perform her duties.

Defendant Duffield was in a position of trust and confidence due to the fact that she was acting in a fiduciary capacity for Ms. Wight while performing functions as a power of attorney. Defendant O'Neill was also in a position of trust and confidence due to the fact that he assumed the duty to provide for the proper care of Ms. Wight's assets when he inserted himself in this matter and provided misleading information to Morgan Stanley.

There was clear exploitation by both Defendants in this matter by virtue of the illegal and improper withdrawal of Ms. Wight's funds by Defendant Duffield for payment of her own legal fees incurred by Defendant O'Neill. In violation of Arizona Revised Statutes §46456(B), Defendants used their position of trust and confidence, and by deception, knowingly took control and use of Ms. Wight's assets with the intent to permanently deprive Ms. Wight of those assets. Therefore both Defendants are clearly guilty of theft as provided in [Arizona Revised Statutes §13-1802](#).

Ms. Wight was unable to protect herself from this exploitation due to her mental impairment which is precisely why the Court found that a Guardianship and Conservatorship was appropriate in this case.

But for the interference from Defendants, Plaintiff would have been able to perform her duties as power of attorney. But for the interference from Defendants, Plaintiff would not have had to petition the Court for appointment of a Guardian and Conservator and expend Ms. Wight's funds for that appointment.

WHEREFORE based on the aforementioned facts, Plaintiff respectfully requests that this Court:

1. Find Defendants guilty of financial exploitation of a vulnerable adult under [Arizona Revised Statutes §46-456](#).
2. Find Defendants guilty of theft as provided in [Arizona Revised Statutes §13-1802](#).
3. Award Plaintiff, in her capacity as Guardian and Conservator for Lorna A. Wight, damages pursuant to Arizona Revised Statutes §46456(C) equaling three times the amount of the monetary damages as follows:

a.	Morgan Stanley Withdrawal	\$1090.00
b.	Fees Associated with the filing of the Guardianship/Conservatorship petition	\$3446.64
c.	Total	\$4536.64
d.	Treble Damages	\$13,609.92

4. Award Plaintiff, in her capacity as Guardian and Conservator for Lorna A. Wight, attorney's fees and costs for the filing of this Complaint.

5. Grant such other and further relief as this Court deems just and proper under the circumstances.

DATED this 24th day of September, 2008.

<<signature>>

Patricia A. Flores, Plaintiff

Guardian/Conservator for Lorna A. Wight

STATE OF ARIZONA)
) ss.
COUNTY of PIMA)

I, PATRICIA A. FLORES, being first sworn upon my oath, depose and say: I am the Plaintiff in the above-captioned matter, that I have read the foregoing Complaint and believe the contents to be true and correct to the best of my knowledge, information, and belief.

<<signature>>

Patricia A. Flores, Plaintiff

Guardian/Conservator for Lorna A. Wight

SUBSCRIBED and SWORN to before me on this 24th day of September, 2008 by PATRICIA A. FLORES.

<<signature>>

Notary Pub

My Commission Expires: Jan 13, 2009