1999 WL 33980671 (Ariz.Super.) (Trial Motion, Memorandum and Affidavit)
Superior Court of Arizona.
Cochise County

State of Arizona, Plaintiff,
v.
Janice L. WILSON, Defendant.

No. CR-98-000550.
May 4, 1999.

**Motion in Limine to Preclude Testimony Regarding the Victim's Commitment at Charter Hospital, Daniel Lewis's Behavior, Testimony of Charter Staff, Nursing Expert, Probate Expert and Cochise County Attorney's Decision**

Assigned to the Honorable Paul Banales.

The State of Arizona by and through the Attorney General, JANET NAPOLITANO, and her assistant. SYLVIA E. GOODWIN, as set forth in the attached Memorandum of Points and Authorities, respectfully requests *in limine* the court to preclude any testimony regarding the victim's incarceration at Charter Hospital, including testimony from the physicians and other staff. The State also requests the defense be precluded from calling a Nursing Expert and a Probate Expert as neither of these individuals have been made available to be interviewed and their testimony is not relevant.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**FACTS:**

On June 16, 1994, the Court approved *Janice Lorraine Wilson's* Application for Guardian and Conservator of Lloyd R. Lewis and Vera J. Lewis. Mr. Lloyd was in ill health and required more care than his 78-year-old wife could provide. Ms. Lewis had suffered three strokes and although in good health, Lloyd's care was more than she could handle. Also in the home was Daniel Lewis, their adult son, who was brain damaged as the result of a motorcycle accident. Daniel injuries were so severe that he qualified for SSI. His father was his representative payee for his benefits. While basically independent, he did require some assistance in activities of daily living. However, his level of impairment did not require that either a conservator or guardian be appointed for him.

The issue regarding Daniel's need for a conservator/guardian was raised at the hearing held on June 16, 1994. At that hearing, as reflected in the Minute Entry, *Ms. Wilson was told that it was inappropriate for her to be Guardian and Conservator of Daniel Lewis and she needed to divorce herself from his affairs.* She took no steps to do so although at that time, she had obtained an Power of Attorney from Daniel and had made arrangement to become his representative payee. In spite of the court's directive to divorce herself from his affairs, she continued to handle his finances.

Shortly after the Application for Guardian was approved for Vera and Lloyd Lewis, Ms. Wilson through a business she started solely to provide care to Vera and Lloyd Lewis, began twenty-four hour supervision of Mr. and Mrs. Lewis and also Daniel. The supervision consisted of an individual stationed in the residence who was responsible for monitoring and charting the actions and behavior of Lloyd, Vera and Daniel Lewis. Families members of Ms. Wilson were hired as sitters/caregivers as well as friends of Ms. Wilson, strangers and one set of the Lewis neighbors.

On November 29, 1994, Lloyd Lewis died. Shortly after his death, *Ms. Wilson* through F. Joseph Walsh who replaced William Lakosill, her previous attorney, petitioned the court for treatment for Vera and Daniel in a locked facility. The reason given the court for this treatment was that Vera and Daniel were allegedly suicidal. According to the defendant, Vera and Daniel informed her and selected sitters/caregivers of their intentions to commit suicide. Vera and Daniel were placed at Charter Hospital where they remained illegally for approximately 15 days. They were placed in Charter hospital pursuant to Title 14 which only authorizes placement for 2 hours. After 72 hours, they can only remain under a title 36 commitment order. No such order was obtained. They were released because the hospital was unable to obtain a court order to keep them any longer. At the time of their detention in Charter, *Ms. Wilson* represented in pleadings and in an affidavit that she either was the conservator/ guardian of Daniel Lewis or that the proceedings for conservatorship/guardianship as to Daniel were in the final stages. In actuality, there was no pending action to establish either a conservatorship or guardianship of Daniel. It was also interesting to note, the pleadings filed by Ms. Wilson's attorney, F. Joseph Walsh, substituted Daniel's name in the caption for Lloyd's name. [1] Neither the Judge or court staff caught the substitution. At no point did Ms. Wilson, bring this matter to the attention of the court or others. In mid January of 1995, Ms. Wilson obtained letters of guardianship and conservatorship for Vera and Daniel Lewis.

In January of 1995, neighbors of Vera and Daniel Lewis became so concerned with defendant's mistreatment of Vera and Daniel, they decided to take action. The neighbors contributed to a defense fund in order to hire an attorney for Daniel and Vera. At least one neighbor was threatened with legal action by the defendant for attempting to help Daniel. In addition, Adult Protective Services (APS) was contacted and a complaint was filed. When APS visited the Lewis home, immediate steps were taken to protect Daniel and Vera Lewis from the defendant, including freezing Vera' bank account. The Public Fiduciary was contacted and asked to intervene. When the defendant learned Vera's account had been frozen, she removed approximately $4,600 from Daniel's account. When asked by Deputy Lara, why she had taken money from Daniel's account, Ms. Wilson gave conflicting statements. Initially, she told Deputy Lara, she had taken the money to buy clothes for Daniel and Lloyd Lewis who was deceased. Later, she changed her story and said they money had been taken to make payroll.

On January 30, 1995, the Public Fiduciary was appointed Temporary Successor Guardian and Conservator in this matter. On February 6, 1995, an order Quashing Letter of Appointment of Conservator/or Guardian for Daniel H. Lewis was issued. Following appointment of the Public Fiduciary, this matter was referred for criminal prosecution.

The Cochise County Grand Jury indicted Janice Wilson for defrauding and exploiting Vera Lewis and the estate of Lloyd Lewis from May 1994 through March 1995 of more than $56,000. In addition the grand jury, indicted Janice Wilson for defrauding and exploiting, $4,600 from Daniel Lewis on January 28, 1995.

**ARGUMENT:**

Only relevant evidence is admissible. Rule 401, Arizona Rules of Evidence. The exclusion of irrelevant evidence does not deny a defendant the sixth Amendment right to present evidence. In *State v. West*, the Arizona Supreme Court found that because the means of a victim's death precluded suicide, evidence of victims' suicidal tendencies was not relevant, and exclusion of that evidence did not infringe upon defendants' right to present evidence. Arizona Courtroom Evidence Manual, 3rd Ed., Crane McClennen, citing *State v. West*, 176 Ariz. 432, 862 P.2d 192 (1993).

Even evidence that has some relevance is inadmissible if the probative value is substantially outweighed by the danger of unfair prejudice, if that evidence poses the danger of confusing issues or misleading the jurors, if it would cause undue delay or waste of time, or if it would be cumulative. Rule 403, Arizona Rules of Evidence. For example in the case of *State v. Zuck*, the Arizona Supreme Court found no abuse of discretion when the trial court excluded cross-examination on witnesses' psychiatric history. Arizona Courtroom Evidence Manual, 3rd Ed., Crane McClennen, citing *State v. Zuck*, 134 Ariz. 509, 658 P.2d 162 (1982). This motion is brought to exclude certain categories of evidence as being either irrelevant or whose probative value is substantially outweighed by the danger of unfair prejudice.

**TESTIMONY REGARDING THE VICTIMS' COMMITMENT AT CHARTER HOSPITAL**

The defendant has disclosed that she will introduce evidence of Vera and Daniel Lewis' commitment to Charter Hospital. Their commitment to a locked facility is irrelevant to the issue at hand, whether the defendant defrauded or exploited the victim's in this case. Additionally it is irrelevant to the charges involving Daniel because that charged offense did not occur until after Daniel was discharged from the Charter Hospital. Finally because the need and efficacy of the commitment is the subject of a civil action, the State would object to any testimony about the commitment or any alleged treatment recommendations resulting from their illegal incarceration in the facility. In addition, Vera and Daniel Lewis were committed *solely* based on the statements and representations made by the defendant. At the time of placement, there was no independent fact finding done by the hospital to verify the accuracy of the statements made by the defendant. After the commitment, with the exception of the care providers selected by the defendant to provide affidavits and relatives who lived either out of the country or the state, again there was no independent fact finding. In the interviews with the alleged treating physicians, both acknowledge that the primary source of information was the defendant, her staff and the family. In addition, neither has personal knowledge of the financial dealings conducted by the defendant on behalf of Vera and Daniel Lewis.

**DANIEL LEWIS' BEHAVIOR**

There is no question that Daniel Lewis' behavior reflects the brain injury caused by the motorcycle accident. However, his personal habits are not relevant to the issue of whether the defendant defrauded or exploited him. Introduction of Mr. Lewis' behavior would serve no legitimate purpose and would needlessly denigrate an already vulnerable adult. The defendant's theft of his money can not be justified or excused because Daniel raised his voice, wore his boxer shorts around his home or because he was angry at the way he was being treated.

**TESTIMONY OF CHARTER STAFF**

Just as the fact of the commitment of Vera and Daniel to the Charter Hospital is irrelevant, the observations of the staff during their involuntary stay is irrelevant, Staff has no direct or personal knowledge of the defendant handling of the Lewis' money or other property. There is not evidence of any type of discharge plan which involved the hospital in any type of continuing care. With the exception of the defendant neglecting to pay all the bills associated with Vera and Daniel's unnecessary incarceration, there was not additional contact after Vera and Daniel were freed.

**NURSING EXPERT**

Whether the defendant provided nursing care is not an issue. By her own admission, the defendant has previously testified that the individuals hired were not licensed professionals and at best could be described as sitters or companions. There was no nursing care provided. They did not dispense medication, bath, dress, provide therapy or any activity remotely associated with the provision of nursing care. The employees of Jan's Health Care acted as jailers ostensively there to ensure the Lewis were safe. It is not clear from whom or what they were being protected. As a result, any testimony provided by a nursing expert is irrelevant to the issue of financial exploitation. If the issue is whether or not the sitters needed to be there 24 hours per day, that question must be answered by the treating physician, not by a nursing expert. As a result, an expert on nursing care would provide no relevant evidence. Finally, this person has had no first hand knowledge of the financial practices or arrangements the defendant had with the Lewis family.

**PROBATE EXPERT**

Although this case involved a probate proceeding, the issues of fraud and exploitation do not involve issues of probate law nor does any defense to the charges arise from the interpretation of the probate law. Therefore, the offering of a probate expert would only confuse the jury and introduce irrelevant material into the case.

## COUNTY ATTORNEY'S DECISION TO DECLINE PROSECUTION

The Cochise County Attorney's Office declined prosecution of this case citing concerns about the court's role in this matter and ability to prove up the charges. The State would respectfully request that testimony regarding this decision be precluded. It is not unusual for the County to decline prosecution based on their workloads, focus and expertise in certain areas. Unlike the County Attorney's Office, the Attorney General's Office has been prosecuting these types of cases for a considerable period time. To allow testimony that the County Attorney's Office declined to prosecution, creates the impression that there was some deficiency in the case which was why the *local* prosecutor wouldn't proceed and the State was now in involved. In addition, it places the State in the position of having to litigate the whole issue of the court's role in fraud perpetrated on the court by the defendant. The county's decision is not material to the issue at hand.

## CONCLUSION:

The court has wide discretion to determine the materiality of evidence. The State is asking this court to exercise its discretion and rule that the above matters and witness offer nothing probative to the issues for the jury.

Footnotes

1 In interview with F. Joseph Walsh, on April 26, 1999, he stated that he believed there was a pending probate action for Daniel because he had allegedly seen a bill from William Lakosill for conservatorship/guardianship of Daniel.

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