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SUPREME COURT OF THE STATE OF WASHINGTON

ESTERA GRADINARU,

Petitioner,

v.

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH
SERVICES,

Respondent.

ANSWER TO PETITION FOR REVIEW

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 ORIGINAL

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I. INTRODUCTION

The Petitioner, Estera Gradinaru, was the co-owner of an adult family home where Elaine, a vulnerable adult, was a resident. Ms. Gradinaru took morphine that was prescribed for Elaine and ingested it in a failed suicide attempt. In an administrative proceeding, the Respondent, the Department of Social and Health Services (Department), determined that this action constituted financial exploitation of a vulnerable adult. Ms. Gradinaru appealed this decision to the superior court, and then later the Court of Appeals, both of which affirmed the Department's decision and final order.

Ms. Gradinaru now requests that this Court accept review to consider whether the Court of Appeals correctly determined that a caretaker's use of a vulnerable adult's property to further the caretaker's own goal, even if that goal is self-destructive, constitutes financial exploitation. Ms. Gradinaru's request for review fails to meet any of the criteria for review under RAP 13.4(b), and should be denied.

II. RESTATEMENT OF ISSUES PRESENTED FOR REVIEW

This case is not appropriate for review under RAP 13.4(b). But if review were granted, the only issue presented would be:

Did the Department err when it concluded that a caretaker's use of a vulnerable adult's property to further the caretaker's own goal, even if self-destructive,

constitutes financial exploitation as defined by former RCW 74.34.020(6) (2010)?

III. RESTATEMENT OF FACTS

A. Ms. Gradinaru Took And Ingested A Vulnerable Adult's Medication

In October 2010, Ms. Gradinaru was the co-owner of the Bellevue Rose Adult Family Home (Bellevue Rose Home). Elaine was a resident of that long term care facility. Administrative Record (AR) at 2. Elaine was 91 years old, suffered from dementia, and was in hospice care. AR at 2. As a result, Elaine's Negotiated Care Plan was amended to provide that her hospice nurse would dispense her medications to her. Elaine's medications included "comfort medications," prescribed for end-of-life treatment. Included in the comfort medications was a vial of liquid morphine. *Id.*

At that time, Ms. Gradinaru was emotionally distressed, and she was also in physical pain. She wanted her pain to stop. AR at 4. Ms. Gradinaru took Elaine's morphine from the adult family home and went to a local Park-and-Ride station. *Id.* She took one-half capful of the morphine, which made her feel sleepy. *Id.* Ms. Gradinaru's father soon arrived at the Park-and-Ride and took her back to his home. *Id.* One-half capful of morphine would have eased Ms. Gradinaru's physical pain and made her feel sleepy, but would not have killed her. *Id.*

Ms. Gradinaru was still in physical pain when she arrived at her father's home, so her brother took her to Overlake Hospital. She was initially admitted to the hospital based upon her physical pain. After she told the hospital staff treating her that she had taken the morphine in a failed suicide attempt, she was admitted to the psychiatric unit. *Id.* It is uncontested that Ms. Gradinaru took Elaine's morphine to ease her own physical and emotional distress. AR at 4-5. Ms. Gradinaru's physical pain is closely correlated to her psychological pain and her physical distress is exacerbated when she is emotionally distressed. AR at 4.

B. The Adult Family Home Licensing Investigation Verified Ms. Gradinaru Took Elaine's Medication

The Department received an anonymous complaint alleging that Ms. Gradinaru took an adult family home resident's medications in a failed suicide attempt. AR at 3. Katherine Ander is an adult family home licensing complaint investigator, and she went to the Bellevue Rose Home to investigate. *Id.* When Ms. Ander arrived, Elaine was the only resident who was prescribed a narcotic drug, morphine, to address end-of-life issues. *Id.* Ms. Ander looked at Elaine's vial of morphine. The seal on the vial was broken, and it appeared as if approximately one cc of morphine was missing. AR at 4. Ms. Ander interviewed Elaine's hospice nurse and learned that Elaine did not yet need any of the comfort

medications that had been prescribed for her. *Id.* Ms. Ander later interviewed Ms. Gradinaru after she had been discharged from Overlake Hospital. *Id.* Ms. Gradinaru admitted to taking and ingesting Elaine's morphine and that, on the date she took the morphine, Ms. Gradinaru was in physical and emotional pain and she wanted it to stop. Verbatim Report of Proceedings (VRP) at 23. This investigation led to the revocation of Ms. Gradinaru's adult family home license. VRP at 32.

C. The Department's Resident And Client Protection Program Found Ms. Gradinaru Took Elaine's Medication for Her Own Use

The Resident and Client Protection Program within the Department investigates allegations that adult family home residents have been abused, neglected, or financially exploited by individuals working in an adult family home. WAC 388-76-11000.¹ These investigations are separate from licensing investigations like the one described above. Mary Moran is the Resident and Client Protection Program Investigator who was assigned to investigate. Ms. Gradinaru told Ms. Moran that she took Elaine's morphine and ingested it. VRP at 60-61. Based on her investigation,

¹ If the allegations against an individual are substantiated, the Department makes a preliminary finding of abuse, neglect, or exploitation. *See* WAC 388-76-11005. Any individual with access to a long-term care facility is eligible for a finding of abuse, neglect, exploitation, or financial exploitation, regardless of whether the individual is a licensed provider. WAC 388-76-11000. Specifically, providers, employees of the adult family home, entity representatives, anyone affiliated with a provider, and caregivers, are all subject to such findings. *Id.*

Ms. Moran concluded that Elaine was a vulnerable adult, Ms. Gradinaru ingested some of Elaine's medications for her own purpose, and Elaine did not benefit or profit from Ms. Gradinaru's actions. AR at 5. Based on this investigation, the Department found that Ms. Gradinaru financially exploited Elaine when she took property of value, specifically the morphine medication, for her own use. *See* AR at 103.

D. The Administrative Proceeding And Appeals

The Department notified Ms. Gradinaru of the finding of financial exploitation against her, and her right to appeal. Ms. Gradinaru appealed both the revocation of her adult family home license and the finding of financial exploitation to the Office of Administrative Hearings. VRP at 5. The issue of the adult family home license was resolved with a dismissal of the appeal. VRP at 5-6. The only issue remaining for the administrative hearing was whether the finding of financial exploitation was correct.

During the hearing, the facts were largely stipulated and Ms. Gradinaru exercised her Fifth Amendment right to not incriminate herself. She refused to testify regarding the theft of the drugs. VRP at 13-16. The Administrative Law Judge issued an initial decision reversing the Department's finding of financial exploitation. AR at 37-45. The Department requested Board of Appeals review of the initial order

because there were errors in both the findings of fact and the conclusions of law. AR at 26-35. The Board of Appeals issued a Review Decision and Final Order that reversed the initial order, and affirmed the finding of financial exploitation against Ms. Gradinaru for taking Elaine's morphine medication for her own use. AR at 1-12.

Upon review, King County Superior Court Judge Bruce Heller affirmed the Department's Review Decision and Final Order. Clerk's Papers (CP) at 41-43. The Court of Appeals also affirmed the agency's order holding that, when a caretaker uses a vulnerable adult's property to further the caretaker's own goal, even if self-destructive, such use constitutes financial exploitation as defined by former RCW 74.34.020(6) (2010).

IV. REASONS WHY REVIEW SHOULD BE DENIED

A. The Case Does Not Satisfy RAP 13.4(b) Criteria

Ms. Gradinaru requests discretionary review under the criteria stated in RAP 13.4(b)(1), (4). Petition for Review at 5, 13. Under these grounds for review, a petition will be accepted by this Court only if the decision of the Court of Appeals is in conflict with a decision of this Court, or the petition involves an issue of substantial public interest that should be determined by this Court. RAP 13.4(b)(1), (4). These grounds do not justify discretionary review of this case.

1. The Court of Appeals' Holding Does Not Conflict With A Decision of The Supreme Court

The Petitioner's basic contention is that the Court of Appeals' ruling conflicts with Supreme Court precedent regarding statutory construction. However, the Court of Appeals faithfully applied this Court's statutory construction rulings to conclude that Ms. Gradinaru committed financial exploitation. Discretionary Review under RAP 13.4(b)(1) is not justified when the Court of Appeals' decision utilizes well-established legal principles.

a. The Ordinary Meaning of "Advantage" Does Not Require An Objectively Positive Outcome

Former RCW 74.34.020(6) (2010)² defined "financial exploitation" as "the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than for the vulnerable adult's profit or advantage." The terms "advantage" is undefined in chapter 74.34 RCW.

² The definition of financial exploitation was expanded, effective July 22, 2011, to include the ability to make a finding against an entity and, to also make a finding against someone for improperly controlling or withholding property, income, resources, or trust funds. Therefore, the current definition of financial exploitation is "the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage." RCW 74.34.020(6) (emphasis added). Three non-exclusive examples were also added to the definition. These amendments to the statute were effective after the agency action in this case and do not change the outcome here.

Under the principles of statutory construction, when a statutory term is undefined, the court may look to a dictionary for its ordinary meaning. *In re Estate of Blessing*, 174 Wn.2d 228, 231, 273 P.3d 975 (2012) (internal citations omitted).

Citing to the dictionary definition, the Court of Appeals determined that “advantage” in the financial exploitation definition means “a more favorable or improved position or condition . . . benefit, profit, or gain of any kind.” *Gradinaru v. State, Dep’t of Soc. & Health Servs.*, ___ Wn. App. ___, 325 P.3d 209, 211 (2014). The Court of Appeals then correctly determined that, in the context of chapter 74.34 RCW, a person engaging in the unauthorized use of a vulnerable adult’s property receives an advantage when that use benefits or facilitates the goals of the person using the property, whether or not that goal is wise or healthy. *Id.*

Ms. Gradinaru contends that this interpretation of financial exploitation, which is based on the dictionary definition of “advantage,” conflicts with the plain meaning of the word “advantage” as it is used within former RCW 74.34.020(6) (2010). This theory appears to be based on the concept that suicide is inherently self-destructive and cannot be considered a benefit or gain for a person, even if that individual wishes to die and steals a vulnerable adult’s property to further that goal. *See* Petition for Review at 7. While the Court of Appeals noted that suicide

was a self-destructive act, it also pointed out that there is nothing in the financial exploitation statute that requires a court or the Department to take into consideration whether or not the illegal or improper use of the vulnerable adult's property was helpful or harmful to the individual using it. *Gradinaru*, 325 P.3d at 211-12. This is consistent with the intent of the statute, which is to protect vulnerable adults. The ultimate impact on the person who exploited the vulnerable adult is simply not relevant. As a result, the Court of Appeals properly recognized that it would be absurd to determine that the definition of financial exploitation excludes when an individual takes and ingests a vulnerable adult's medication for a harmful purpose. *Gradinaru*, 325 P.3d at 212.

In response to Ms. Gradinaru's assertion that this interpretation of the statute is absurd, the Court of Appeals noted that financial exploitation occurs where a caregiver takes and ingests a vulnerable adult's medication to feed the caregiver's own substance abuse. *Id.* If taking and ingesting a vulnerable adult's medication for the self-destructive purpose of substance abuse supports a finding of financial exploitation, then certainly doing the same thing for the self-destructive purpose of committing suicide must also qualify as a financial exploitation. Therefore, this result is not absurd, but in fact

consistent with the purpose of the statute: to protect a vulnerable adult who is unable to protect herself by penalizing an individual who improperly or illegally uses that vulnerable adult's property for her own purpose in a way that does not benefit the vulnerable adult.

Gradinaru, 325 P.3d at 213.

Arguably, the act of stealing property from anyone, least of all a vulnerable adult, is objectively self-destructive because stealing can lead to many potential negative outcomes, like going to jail or being barred from working in certain settings. Simply because an action is self-destructive, it does not become a defense to a finding of financial exploitation.

b. Monetary Benefit Or Monetary Profit Are Not Required To Meet The Statutory Definition Of Financial Exploitation

Ms. Gradinaru also contends that the Court of Appeals erred because the plain language rule requires that the benefit or advantage that Ms. Gradinaru received be "quantifiable in monetary terms." She asserts that to determine otherwise would eliminate the word "financial" from the statute and violate the plain language rule and the rule against superfluity. Petition for Review at 9-10, 12. This position ignores that "financial exploitation" is a term of art that is expressly defined in statute, rather than two undefined words that could otherwise be accorded their plain and

ordinary meanings. It is an axiom of statutory interpretation that, where a term is defined, the Court uses the statutory definition. *U.S. v. Hoffman*, 154 Wn.2d 730, 741, 116 P.3d 999 (2005). Therefore, the Court of Appeals properly analyzed the term “financial exploitation” to mean exactly what it is statutorily defined to mean: “the illegal or improper use of the *property*, income, *resources*, or trust funds of the vulnerable adult by any person for any person’s profit or advantage other than for the vulnerable adult’s profit or advantage.” Former RCW 74.34.020(6) (2010) (emphasis added).

As she argued before the Court of Appeals, Ms. Gradinaru cites to two non-exclusive examples of financial exploitation, which were added to the definition of financial exploitation more than two months after the preliminary finding of financial exploitation was made against her, to support the position that any advantage or profit must be monetary.³ Petition for Review at 10-11. Even if the non-exclusive examples in the 2011 amendments applied at the time a finding was made against Ms. Gradinaru, she only cites to two of the three new examples. The third new example, at RCW 74.34.020(6)(c), actually supports the position that the advantage or benefit does not need to be monetary.

³ The preliminary finding was made against Ms. Gradinaru on May 2, 2011. AR at 103. Amendments to the definition of financial exploitation, to include three non-exclusive examples, became effective on July 22, 2011. Laws of 2011, ch. 170, § 1 at 3.

RCW 74.34.020(6)(c) states that another example of financial exploitation is:

Obtaining or using a vulnerable adult's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the vulnerable adult lacks the capacity to consent to the release or use of his or her property, income, resources, or trust funds.

As the Court of Appeals noted,

[T]he nonexclusive list of examples were not part of the statute when the Department determined that Gradinaru committed financial exploitation. Furthermore, the examples include the use of a vulnerable adult's "property, income, resources, or trust funds," and are not limited to "financial assets. Therefore, the recently added examples do not support a different result

Gradinaru, 325 P.3d at 212.

2. There Is No Issue Of Substantial Public Interest That Should Be Determined By The Supreme Court

Ms. Gradinaru claims that this case involves an issue of substantial public interest that should be determined by this Court because it is a question of first impression impacting the protection of vulnerable adults, which is of great concern to the people of Washington State. Petition for Review at 13. While she is correct in her assertion that, in general, the treatment of vulnerable adults is of substantial public interest, that alone does not justify review of this particular case by this Court under RAP 13.4(b)(4).

Ms. Gradinaru has failed to establish why further direction is needed from this Court on this issue at this time. This Court has already provided direction on the principles of statutory construction through the cases that the Court of Appeals relied upon to render its decision. Because Ms. Gradinaru has not established that the decision of the Court of Appeals conflicts with any other decisions of either this Court or the Court of Appeals, there is no need for this Court to weigh in further at this time, and discretionary review should be denied.

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V. CONCLUSION

This case does not warrant review by this Court. The Court of Appeals used well-settled legal principles concerning statutory construction to determine that a caretaker who uses a vulnerable adult's property to further the caretaker's own goal, even if self-destructive, commits financial exploitation as defined by former RCW 74.34.020(6) (2010). Ms. Gradinaru's petition for review fails to meet the criteria required for granting review under RAP 13.4(b)(1), (4). The Department asks this Court to deny review.

RESPECTFULLY SUBMITTED this 4th day of August, 2014.

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I certify that on August 4, 2014, with telephonic permission, I e-mailed a copy of the foregoing Answer to Petition for Review to: timaskerov@crblack.com, Teymur Gasanovich Askerov, and to crb@crblack.com, Christopher Robert Black, Law Office of Christopher Black, PLLC, 705 2nd Ave., Suite 1111, Seattle, WA, 98104-1720 with a copy sent via U.S. Postal Service, postage prepaid.


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Attached for filing please find: Estera Gradinaru v. State, Department of Social & Health Services, Cause No. 90391-3

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"People may not always remember exactly what you said or what you did, but they will always remember how you made them feel." Maya Angelou.

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