

COURT OF APPEALS
STATE OF WASHINGTON
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Court of Appeals No. 70138-0
King County Superior Court No. 12-2-17504-7 SEA

70138-0

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

Estera Grandinaru,

Appellant,

v.

Washington State
Department of Social and Health Services,

Respondent.

APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Bruce Heller, Judge

APPELLANT'S REPLY BRIEF

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I. INTRODUCTION

Comes now Appellant, Estera Grandinaru, by and through undersigned counsel, and submits to this Court the following reply to the State's response to her opening brief.

II. ARGUMENT

A. **The Board of Appeals Found as Fact that Ms. Grandinaru was Attempting to Commit Suicide When She Ingested Elaine's Morphine.**

In its "Counterstatement of the Case," the State pays lip service to the well-established legal principle that findings of fact are verities on appeal. State's Response Brief ("Response") at 2 (citing Kitsap Cnty. v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 138 Wn. App. 863, 872 (2007)). Nonetheless, in an attempt to obfuscate the simple question before the Court and escape the logical implications of the Board of Appeals's ("BOA") decision, the State tries to cast doubt on the factual findings made by the trier of fact, by arguing that it is unclear from the record below whether the BOA concluded that Ms. Grandinaru ingested Elaine's morphine for the purpose of committing suicide. Id at 14. But, there can be no doubt that the Board of Appeals ("BOA") found as fact that Ms. Grandinaru ingested the morphine in question for the sole

purpose of committing suicide. In its Conclusions of Law (“CL”), the Board expressly states:

At the time of the drug theft, the Appellant was in emotional and physical pain and *wanted to commit suicide*. By stealing Elaine’s morphine, she gained an opportunity to reduce her pain and *carry out her suicide decision*. Because the Appellant specifically acquired the morphine in order to gain this opportunity, it must be concluded that she financially exploited Elaine.

CL 10 (emphasis added). Based on the language cited above, it cannot be clearer that the BOA concluded that Ms. Grandinaru ingested Elaine’s morphine in an attempt to commit suicide. In light of this factual finding, the question before the Court is simple: Does the use of a vulnerable adult’s property for the purpose of committing suicide constitute financial exploitation within the meaning of RCW 74.34.020(6)? Because that question must be answered in the negative, this Court should reverse the BOA’s decision in this case, and dismiss the proceedings against Ms. Grandinaru.

B. Because Suicide is Not Financially Advantageous Ms. Grandinaru’s Actions did not Constitute Financial Exploitation.

RCW 74.34.020(6) defines the term “financial exploitation” as:

[T]he 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). Because the terms “profit” and “advantage” are not defined in the statute, the dispute in this case turns on whether Ms. Grandinaru’s actions can be classified as profitable or advantageous under the plain meaning of those terms. The BOA applied the dictionary definition of the term “advantage” to reach its conclusion. Defining the term “advantage” as used in the statute to mean “benefit, gain, especially benefit resulting from some course of action,” based on the Webster’s Dictionary definition, the BOA reasoned that taking Elaine’s morphine was advantageous within the meaning of RCW 74.34.020(6), because it allowed Ms. Grandinaru’s to “gain” the opportunity to commit suicide. See CL 10.

As explained in Ms. Grandinaru’s brief, construing the term “advantage” as used in the statute to bring within its scope Ms. Grandinaru’s actions violates the canons of statutory construction, and reads the word “advantage” out of context. It is nothing short of absurd to define the word “advantage” to include, as a matter of law, a suicide attempt. This is especially so when the term “advantage” appears in a statute that prohibits the financial exploitation of vulnerable adults.

The State asserts that Ms. Grandinaru’s construction of the term “advantage” is incorrect because Ms. Grandinaru wanted to end her life at

the time she ingested Elaine's morphine and taking Elaine's morphine was therefore advantageous to her. See Response at 14. But, the term "advantage" cannot be looked at in a vacuum. See State v. Smith, 48 Wn. App. 33, 35 (1987). Washington Courts have held that where a dictionary definition is used to define a term that appears in a statute, the dictionary definition must be applied in view of the context in which the statutory term is used. State v. Rhodes, 58 Wn. App. 913, 920 (1990) ("In determining the meaning of a word used in a particular instance, a court must consider the subject matter in connection with which the word is used as well as the context of the statute in which it appears."). Because the word "advantage" in RCW 74.34.020(6) is being construed in a statute that defines the term "financial exploitation," that term cannot be interpreted to mean anything other than financial advantage. See id. Because the State does not argue that Ms. Grandinaru gained any financial (or even tangible) benefits from her suicide attempt, her actions cannot be pigeonholed into the definition of "financial exploitation," as that term is used in RCW 74.34.020(6).

The State attempts to compare Ms. Grandinaru's actions to those of a person who repeatedly takes a vulnerable adult's medicine to support his or her drug habit. See Response at 15. But, such a comparison is inappropriate. First, the record of the proceedings in this case

unequivocally establishes that Ms. Grandinaru was not engaged in the practice of drug diversion, i.e., the taking of drugs from patients to support a drug addiction or for distribution. See Transcript of Proceedings (“TR”) at 40, 51. Second, the practice of systematically diverting a vulnerable adult’s prescription medications in order to support a drug addiction or for distribution is qualitatively different from taking a small amount of a vulnerable’s adult medicine in a single, isolated suicide attempt. While a person who takes a vulnerable adult’s medication to support a drug habit financially profits by repeatedly taking a vulnerable adults prescriptions and thereby reducing the out-of-pocket costs of his or her addiction, Ms. Grandinaru enjoyed no such financial benefits. Perhaps more importantly, a person who systematically diverts a vulnerable adult’s drugs harms the vulnerable adult by continually depriving the vulnerable adult of required medication. It bears repeating that the amount of morphine taken by Ms. Grandinaru during her suicide attempt was approximately one cubic centimeter. See FF 7-8. The remaining morphine was returned to Elaine. Finally, because Elaine did not actually require morphine as part of her treatment, there was absolutely no detriment to Elaine or to Elaine’s finances. See FF 3, 7.

The State further asserts that it is inappropriate to look to the examples of financial exploitation provided in RCW 74.34.020(6) in

construing the meaning of the term “financial exploitation” in Ms. Grandinaru’s case, because Ms. Grandinaru’s case was decided before those examples were written into the statute. See Response at 17 – 18. But, courts frequently look to subsequent amendments to determine legislative intent. State v. Barr, 99 Wn.2d 75, 78 – 79 (1983). As explained in Ms. Grandinaru’s opening brief, all of the examples of financial exploitation provided in RCW 74.34.020(6) contemplate some financial harm to the vulnerable adult. The State’s reliance on RCW 74.34.020(6)(c) is misplaced. That provision states that financial exploitation includes:

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.

RCW 74.34.020(6)(c). The provision’s reference to “capacity to consent to release” of interests in “property, income, resources, or trust funds” makes clear, just like the examples of financial exploitations provided in RCW 74.34.020(6)(a) and (b), that the evil that the Legislature sought to address in enacting the statute was threats to the financial assets of vulnerable adults.

Simply put, because Ms. Grandinaru's suicide attempt did not financially benefit Ms. Grandinaru or financially harm Elaine, it cannot be classified as "financial exploitation" within the meaning of RCW 74.34.020(6).

III. CONCLUSION

For the foregoing reasons and for the reasons set forth in Ms. Grandinaru's opening brief the Court should reverse the order of the Board of Appeals and dismiss the proceedings against Ms. Grandinaru.

DATED this 18th day of September, 2013.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the date listed below, I served by United States Mail one copy of the foregoing on:

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DATED this 18th day of September, 2013.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'Teymur Askerov', written over a horizontal line.

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