

2008 WL 8675138 (Alaska Super.) (Expert Report and Affidavit)
Superior Court of Alaska.
Anchorage County

Noelle COVINGTON and Dana Scofield as Temporary Guardians and Conservators of Curtis N. Carley,

v.

Reggie L CHAMBERS.

No. 3An-07-8381 CI.

July 11, 2008.

(Report or Affidavit of David J. Sperbeck, Ph.D.)

Case Type: Fraud & Misrepresentation >> Fraud - Fraud & Misrepresentation

Case Type: Personal Property >> Conversion

Case Type: Fiduciary Duty >> Other Fiduciary Duty

Jurisdiction: Anchorage County, Alaska

Name of Expert: [David J. Sperbeck, Ph.D.](#)

Area of Expertise: Health Care-Physicians & Health Professionals >>Psychologist

Area of Expertise: Health Care-Physicians & Health Professionals >>Neuropsychologist

Representing: Plaintiff

Tonja Woelber, Attorney at Law

1400 West Benson Blvd. Suite 380

Anchorage, Alaska 99503

Dear Ms. Woelber

Referral Question: At your request, I have prepared this report for the purpose of evaluating the progression, nature, and course of Curtis N. Carley's diagnosed condition, namely Dementia of the Alzheimer's Type, from 2003 to the present.

In light of Mr. Carley's Dementia of the Alzheimer's Type, first identified in 2003, you have asked me to evaluate Mr. Carley's vulnerability to undue influence at the time of the real estate transaction with Reggie I. Chambers. You have asked me to evaluate Mr. Carley's capacity to participate in either a gift or a commercial transaction in October 2006 when Mr. Chambers obtained title to Mr. Carley's triplex for a nominal sum.

Qualifications: I am attaching to this report a copy of my current Curriculum Vitae. I have been a licensed clinical psychologist in the State of Alaska since 1984. I was trained at the University of Rochester where I earned my Ph.D. and M.S. degrees. I have speciality training and expertise in the specialty area of neurocognitive changes which occur with normal and abnormal aging, having published and/or presented 18 original professional conference presentations, research articles, and/ or book chapters in the areas of social and neurocognitive functioning, health care maintenance, and institutional dependency of elderly persons. I am a Fellow of the National Academy of Neuropsychology. Additionally, I served the State of Alaska as the Chief Forensic Psychologist in all criminal matters from July, 1984 until my retirement from the State of Alaska in August, 2003. Since my retirement from the State of Alaska, I have been in private practice specializing in the clinical neuropsychological assessment of

children, adolescents, and adults. I presently serve as the Director of Psychological Services at the North Star Behavioral Health Hospital where I specialize in inpatient neuropsychological evaluations of children and adolescents. I have attached a copy of all formal appearances made by me in the past four years, as well as a copy of my forensic charges description. I have been an active Associate Clinical Professor of Psychiatry at the University of Washington School of Medicine since 1987, presently serving as the Coordinator of the UW Child and Adolescent Child Psychiatry Fellowship in Alaska.

Records and Statements Reviewed: Your office provided me with the following documents to review pursuant to Case # 3AN 07-8381 CI:

1. Plaintiff's Intial Disclosures
2. Memorandum in Support of Motion for Consolidation of Case and for a Protective Order
3. Affidavit of Reggie Chambers
4. [Civil Rule 26 \(a\)](#) Disclosures
5. Offer of Judgment
6. Answer To First Amended Complaint
7. Joint Report of the Parties on ADR
8. Report of the Visitor
9. Opposition to Defendant's Motion for a Consolidation of Cases and for a Protective Order
10. Findings and Order of Temporary Guardianship
11. Order Denying Permission to Review Case File and Revoking Power of Attorney
12. Reply of Defendant to Opposition to Defendant's Motion for Consolidation of Cases and for a Protective Order
13. First Amended Complaint
14. Second Amended Complaint
15. Motion for Sequestration of Rents and Profits from the Harrison Street Triplex
16. Notice of Filing Six Affidavits in Support of Motion for Sequestration of Rents
17. Order Granting Motion for Sequestration of Rents and Profits from the Harrison Street Triplex
18. All medical records pertaining to the diagnosis and treatment of Curtis N. Carley for the relevant period.
19. Neuropsychological, psychiatric, neurological and/or medical consultations performed by Dr. Paul Craig (9/18/2003), Dr. Priscilla Baldwin (7/23/2003, 8/11/2003), Dr. Shane Anderson (5/26/2007), Dr. Dwight Gurley (6/11/2007), and Dr. Thomas M. Boyd (10/30/2007)

20. Affidavit of Susan Vigneau, Curtis Carley's Certified Public Accountant

21. Affidavits of Mini Card, Myron Farrell, Corine Farrell John Smithhsler, and Sylvia Swatosch.

Findings:

1. Mr. Carley suffers from Dementia of the Alzheimer's Type. This progressively debilitating neurological condition was first noted by his doctors in July 2003 when Dr. Sharonlyn H. Baldwin noted that Mr. Carley demonstrated significant memory and concentration problems, confabulation, repetitive speech, and memory lapses representative of dementia.

Mr. Carley's Dementia Alzheimer's-Type was first diagnosed on August 11, 2003 when Mr. Carley's primary care provider, Sharonlyn H. Baldwin, M.D. from the 3rd Medical Group Internal Medicine Clinic at Elemendorf Air Force Base noted that Mr. Carley "...has dementia/Alzheimer's disease..." Dr. Baldwin further noted that the "...pt's. family has believed he has shown signs of dementia for at least a year...he is very disorganized and has fallen behind in some of his bill payments...they (Mr. Carley's family) are planning on moving him to Oregon to live with his daughter Noelle Covington and are in town to disposition his possessions this week...encouraged Dana to continue with this, also encouraged her to establish POA for medical decisions as well as non-medical decisions..."

2. On September 18, 2003, Dr. Paul Craig noted that Mr. Carley suffered from short term memory problems serious enough to conclude that "...it would be in his (Mr. Carley's) interest to establish a conservatorship allowing, a trusted family member to help him deal with financial matters..." Dr. Craig further opined that Mr. Carley's memory problems were most likely "...the harbinger of Alzheimer's-type dementia..."

3. By 5/26/07, Mr. Carley's condition had progressively deteriorated to the point where it was documented by his internal medicine physician Shane K. Anderson, M.D. who noted that "...he has a history of Alzheimer's disease, which seems to be getting much worse...he has multiple episodes of getting lost while driving around town...he is eventually able to find himself home after he drives along enough and finds a road that he is familiar with...he has had multiple episodes of confusion and forgetting names that he should otherwise know... he has had multiple epsiodes where he has been swindled out of money-- the patient and family at this time fee] it is best for the patient to go to a nursing facility or assisted Jiving.-"

4. By May 30, 2007 Mr. Carley's mental status has deteriorated to the point of evidence of very significant impairments (Mini-Mental Status Examination-20/30). He was subsequently placed in an assisted living facility in Oregon where he remains to this day.

5. Information presented by Susan Vigneau, CPA detailed her very specific recollections of Mr. Carley's deteriorating mental and cognitive status. She denoted in her affidavit that as early as 2003, Mr. Carley had become uncharacteristically unreliable, inefficient and non-communicative. She recalled that in 2004, "...Mr. Carley could not follow through with reminders no matter how many times I made them, or whether the reminders were written or oral..." She specifically recalled a conversation she had had with Mr. Carley on 5/17/ 2005 at 9:35 a.m. when "...Mr. Carley telephoned me. I took notes of the conversation. He was extremely upset. He told me that his house was 'in the process of foreclosure' and that 'Reggie Chambers wanted to buy his house but had a low-ball figure for the purchase of the housed...' He then told me that "Reggie is is the process of foreclosure.' Mr. Carley said he 'did not know what to do.' I told him to call his attorney..."

6. Information provided through multiple affidavits from (financially and legally) independent friends and neighbors (Mini Card, Corine and Myron Farrell, John Smithisler, Sylvia Swatosch) of Mr. Carley reflect increasingly obvious paranoia, disorganization, disorientation, memory problems, uncharacteristic personal hygiene and property neglect and frank confusion displayed by Mr. Carley.

The observations noted by these affiants clearly reflect a pattern of progressively increasing and debilitating cognitive deterioration in everyday activities beginning around 2002-3.

Conclusions: The information presented above was produced by licensed medical professionals and friends/neighbors who attested to their dear recollections of the steady decline in adaptive, cognitive, emotional, decisional, and intellectual capacities displayed by Curtis N. Carley over the past five years. The statements and records reviewed and summarized above are consistent with my professional understanding of the steady and predictable decline in cognitive and intellectual functioning that accompanies progressive dementia of the Alzheimer's type.

Although dementia patients can and do display intervals of lucidity in the early and even middle stages of dementia, these intervals become increasingly shorter as the disease progresses. The intervals of lucidity usually do not include complicated problem solving or analysis of financial/property assets.

It is noteworthy to me that Mr. Carley was consistently described by his treating physicians and friends as a highly intelligent and autonomous man determined to live independently. Those who knew him best when he still was able to live at home (i.e. the people who spent the most time with him on a daily basis) described him as increasingly disoriented, confused, indecisive, and neglectful of details, hygiene, maintenance, etc. As is the case with patients who suffer from dementia, new information, changing information, concentration, abstract information (legal/financial), keeping track of time and details, making change from a dollar, and/ or new experiences are extremely vulnerable to memory loss, even in the first stages of the disease. Information that has been held in long-term memory such as autobiographical memory, can remain intact and available for retrieval, often until the middle/moderate stages of dementia.

Mr. Carley's examining physicians consistently noted, in their contemporaneously written chart notes and consultations, that as early as July 2003, Mr. Carley was unable to reliably recall information provided to him three minutes earlier. He was advised by Drs. Baldwin and Craig to defer to his family for important decisions concerning his financial affairs and concerning medical decision-making.

Affidavits from close friends, neighbors, and his tax accountant of many years clearly reveal that Mr. Carley became depressed, disengaged, and increasingly unable to remain oriented or engaged on a daily basis in his business and personal affairs. Neighbors described increasing disinterest, withdrawal, confusion, and disorientation characteristic of the early and middle stages of dementia. He required frequent re-direction in his own neighborhood. He reportedly forgot the names and faces of neighbors who had lived by him and with whom he had routinely interacted for years. Typical of middle stage dementia, Mr. Carley became increasingly confused, disoriented, and dependent.

It is highly likely, and consistent with the affidavits reviewed, that Mr. Carley's dementia was present prior to his formal diagnosis of Alzheimer's Dementia in July 2003. He clearly has progressed to the point of requiring total or near total care at this time. In the intervening years (2003-8), Mr. Carley clearly progressed from the early stages of dementia to the middle stage of dementia as evidenced by his disorientation, confusion, apathy, paranoia, and severe memory problems.

Opinions About Legal Questions:

In light of the evidence reviewed and summarized above, I offer the following opinions about the legal questions posed:

1. It is more probable than not that as a consequence of his progressive Dementia of the Alzheimer's Type first diagnosed in July 2003, Curtis N. Carley did not possess the mental, cognitive, or intellectual capacities necessary to participate in a gift or commercial transaction in October 2006 at which time Reggie T. Chambers obtained title to Mr. Carley's triplex for a nominal amount.

2. It is very dear that as Curtis N. Carley's dementia progressively worsened over time, he became increasingly disoriented, dependent, and susceptible to the influence and input of others. It is more probable than not that in October 2006, Curtis N. Carley was unusually susceptible to undue influence by Reggie I. Chambers owing to his progressive and rapidly declining physical health, progressively declining mental abilities, and obviously declining cognitive capacity to process and/or retain even simple information, transactions, and concepts regarding his medical, personal, social, and business affairs.

I hope that these observations and conclusions assist you in your understanding and management of this complicated case. Please don't hesitate to contact me immediately if I may be of further assistance to you in this matter.

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.