

California Supreme Court Ruling Protects Assets of the Elderly From Fraud and Undue Influence

By Jessica Garrison, LA Times Staff Writer
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Three days before she died, 97-year-old Carmel Bosco changed her will to leave the lion's share of her \$450,000 estate to a Riverside couple, old friends who had tended her bedsores and administered her morphine in her last weeks.

Bosco's family sued, and on Monday the California Supreme Court ruled that caregivers cannot benefit from changes in wills made by dependent elderly people in their final days — even if they are longtime personal friends of the deceased.

The ruling follows a 1993 state law, intended to protect the elderly from fraud, which presumes caregivers used undue influence if they received last-minute bequests from those they tend. In order to inherit, "care custodians" must prove they did not employ fraud or duress.

"Regrettably, preexisting personal friendship is no guarantee against the exercise of fraud, menace, duress or undue influence over dependent adults," Justice Kathryn M. Werdegar wrote in her majority opinion. The law, she added, "makes practical sense in a society that is experiencing a rise in elder abuse cases."

Justice Carol Corrigan, dissented, writing that "in terms of public policy, it seems unwise to penalize good Samaritans by making them less eligible to receive the gratitude of those they help the kinder they have been."

Chief Justice Ron George took the unusual step of calling on the Legislature to clarify the law. Still, he affirmed the majority's decision. George quoted lawyers for Bosco's relatives, saying that the inheritance of longtime friends James Foley and Ann Erman represented a "classic case of what the Legislature was trying to protect against."

Advocates for the elderly cheered the decision.

"It's an additional layer of protection for dependent and vulnerable seniors," said Mitch Kamin, executive director of Bet Tzedek, which provides legal services to the elderly. The law, he noted, doesn't preclude caregivers from receiving a bequest, it just "creates an additional legal hurdle."

And such a hurdle, added Carole Herman, founder of the Foundation for Aiding the Elderly, won't "deter someone who has good intentions.... The ones who are pure of heart, it's not going to make a difference."

Bosco died Sept. 28, 2001, leaving no children.

In 1991, she had created a trust for her sister. She had not mentioned Foley or Erman in that document or in any of the amendments she made between 1991 and 2001.

Three months before she died, she named Foley as a successor co-trustee. Over the next few months, Bosco amended her will three times, on each occasion giving more to Foley. During that time, she also moved out of her Alhambra home and into the Riverside house that Foley shared with Erman.

They took care of her, preparing her meals, administering medication and helping change her diapers, according to the ruling. They also went through her mail and handled her financial and investment affairs, including her bank accounts. Three days before she died, her will was changed again to name Foley and Erman each as 50% residuary beneficiaries of her trust,

meaning they would receive the bulk of the estate.

Bosco's family sued, saying Foley and Erman had exerted undue influence over their aging relative who was gravely ill and heavily sedated when she changed her will for the last time. Her family also argued that Foley and Erman were "care custodians" and faced a higher legal standard.

Foley said he was a friend of Bosco's "performing acts of kindness on a purely volunteer basis as good friends often do for others," according to court papers. A trial court sided with him. The family appealed, and the Court of Appeal reversed the decision, ruling that Foley and Erman were "care custodians" and had failed to prove that they did not use undue influence. Foley then appealed to the state Supreme Court.

David English, a professor at the University of Missouri Law School and expert in elder law and estate planning, said to his knowledge, no other state besides California presumes that care custodians have dark motives. He agreed with George that the Legislature should revisit and clarify the law. Foley's lawyer, Donna Bader, expressed disappointment at the ruling, which she said seemed to punish those who provided exemplary service to elderly friends in the last months of their lives. "Someone who provides trivial care is OK and will be rewarded," she said. "But someone who provides greater long-term care will be penalized."