EVEN THE BRIGHTEST MINDS CAN SUFFER FROM DEMENTIA

Recently, Justice Sandra Day O'Connor, the first woman appointed to the United States Supreme Court, wrote a letter addressed to "Friends and fellow Americans" discussing her diagnosis with the beginning stages of dementia. In her letter, Justice O'Connor explained that her condition is "probably Alzheimer's disease."

Justice O'Connor, age 88, was appointed to the Supreme Court by President Ronald Reagan in 1981. Since retiring from the Supreme Court in 2006, Justice O'Conner has continued to demonstrate her commitment to public service. In 2010, Justice O'Conner began the iCivics program, which she describes as an educational program designed "to teach the core principles of civics to middle and high school students with free online interactive games and curriculum that make learning relevant and remarkably effective." As explained in her recent letter, Justice O'Connor believes her diagnosis means she can no longer help to lead this cause, but she believes the program will continue to flourish under new leadership. More information on the iCivics program can be found at www.icivics.org.

The sad news regarding Justice O'Connor's diagnosis reminds us that even the brightest minds are not immune to the devastating impacts of Alzheimer's disease and other forms of dementia. Justice O'Connor's letter might also serve as inspiration for those who suffer from dementia or who have family members or other loved ones who suffer from such conditions. You can find the full letter here.

It is important to acknowledge the significant impacts that this tragic disease can have on families and on our society as a whole. As our nation's baby boomers continue to age, the number of people impacted by dementia will likely increase significantly. According to the Alzheimer's Association, there are currently about 5.7 million people suffering from Alzheimer's disease in the United States, and that number is expected to double by 2050.

We would do well to heed one of the statements that Justice O'Connor made in her letter: "It's not enough to understand [the effects of dementia], you've got to do something." At O'Neil Cannon, we remain committed to helping to protect the legacies of those who suffer from this disease. Unfortunately, there are times when a family member or other acquaintance might attempt to take advantage of a person suffering from dementia by exerting undue influence to gain a financial benefit. These attempts to take advantage might involve unauthorized transfers or withdrawals of money from an elderly person's accounts, or improperly seeking to elicit changes to a will, trust, or other legal document. While many people diagnosed with dementia remain capable of changing their estate plans for some period of time after they are diagnosed, if such changes are the result of undue influence, then those who are impacted may have the right to pursue relief in court.

If you would like to further discuss this article, please feel free to contact Attorney Trevor Lippman at 414-276-5000 or Trevor.Lippman@wilaw.com.

FAMILY SECURES LARGE SETTLEMENT IN CONTENTIOUS INHERITANCE DISPUTE

The extended family of a reclusive millionaire secured a large settlement on the eve of trial. As reported by the Milwaukee Journal Sentinel, when LeRoy Ern died at the age of 92, he purportedly left his entire $1.6 million estate to his financial advisor. At the time of the changes, Mr. Ern suffered from dementia and lived the life of a hermit. According to the allegations, soon after meeting the financial advisor, Mr. Ern nominated the financial advisor as his financial and health care power of attorney. Eventually, the financial advisor obtained an interest in 100 percent of Mr. Ern's estate upon Mr. Ern's death.

As is often the case in disputes such as this, the purported transfers to the financial advisor to take place upon Mr. Ern's death occurred through a series of different mechanisms. Here, it involved a revised will identifying the financial advisor as the personal representative and sole beneficiary as well as changes to the beneficiary designation on multiple annuity policies. Other common mechanisms may include the retitling of accounts from the name of the decedent or his or her trust into a joint account, payable-on-death account, or transfer-on-death account to the alleged wrongdoer or a change in beneficiary designation on a life insurance policy.

After Mr. Ern died, the financial advisor filed the will and sought to serve as the estate's special administrator. Mr. Ern's family members objected to the will on the basis the financial advisor obtained a 100 percent interest in the estate in bad faith. As the newspaper points out, the family and the financial advisor settled on the eve of the scheduled trial that was set to begin this week. As part of the settlement, the family will receive the bulk of Mr. Ern's estate. It is evident that had Mr. Ern's family not taken court action to assert their rights, they would have received nothing. Instead, they secured a settlement worth almost $1.5 million.

If you would like more information on this topic, you are welcome to call Trevor Lippman at 414-276-5000 or trevor.lippman@wilaw.com.

PROTECTING THE ELDERLY FROM FRAUD BY CAREGIVERS

In what has become an all-too-common story, it was recently reported that a 92 year-old Wisconsin woman suffering from dementia was defrauded by her caregiver. The caregiver, who allegedly stole $25,000, recently pled guilty to fraud and identity theft. More details on the story, which was reported by Milwaukee WISN 12, can be found here.

Like many who suffer from dementia, the victim of this crime was living in her home, with the assistance of caregivers. While most caregivers are certainly professional and trustworthy, in this case, the caregiver—Andrea Gooseberry who worked for Home Care Assistance—allegedly was not.

The criminal complaint alleges that the caregiver used Marilyn's debit card and identity to steal approximately $25,000 through 47 separate ATM transactions, all of which occurred over the course of one month. According to victim's son, Marilyn was no longer capable of using an ATM card on her own.

The sad news does not end there, unfortunately. The police are also investigating whether four family friends stole another $20,000 from Marilyn.

There are steps that can be taken to reduce the risk that a loved one will be defrauded. For one thing, it is important that steps be taken to monitor a loved one's bank account to identify suspicious transactions. In addition, arrangements can be made to have a financial power of attorney put in place. If necessary, court proceedings can also be filed to seek the court appointment of a representative to take charge of the finances of one who is no longer able to handle his or her finances alone.

Whenever fraudulent activity of the sort described above is discovered, it is important to contact the local authorities. In addition, depending on the circumstances, the filing of a lawsuit may be the best option to put yourself in a position to investigate suspected fraud, particularly if that fraud is not discovered until after your loved one has passed.

If you would like more information on this topic, you are welcome to call Trevor Lippman at 414-276-5000 or trevor.lippman@wilaw.com

WOMAN WITH DEMENTIA LOSES HOME AFTER ALLEGEDLY UNKNOWINGLY SIGNING OVER DEED: RESOURCES TO PROTECT YOUR LOVED ONES FROM ELDER FINANCIAL ABUSE

In March 2017, Milwaukee WISN 12 reported a heart-wrenching story about a criminal investigation alleging two neighbors defrauded a 92-year-old woman suffering from dementia.

According to the allegations, they acquired her home as a gift through a deed and gained control of her nearly $2 million in assets through the execution of a durable power of attorney document. The neighbors then boxed the woman's belongings up, moved her out of the home she grew up in, and used her funds to remodel the house. You can read the full story here.

Unfortunately, this is an all-too-common story in the world of inheritance litigation. I regularly receive calls from previously unsuspecting individuals who have just realized that a loved one was financially abused during the victim's most helpless moments. Sometimes we are fortunate enough to suspect this while the victim is still alive so we can try to do something about it. More often than not, nobody recognizes this until after the victim has died. The shock usually comes when this person receives the victim's purported estate planning documents—whether a will or a trust, or their amendments—that dramatically change the expected inheritance of some or all of the victim's family members.

This type of situation happens more than many expect. As we become more aware of this problem through stories such as this and learn more about the effects of dementia and other diseases, it is important that we as a society are mindful of this issue. Of course every person, including our oldest population, has the right to do with their property as they wish. It needs to be as a result of his or her free will, however, and not at the hands of an individual with ulterior motives.

In the right circumstances, civil litigation may be the best way to position yourself to thoroughly investigate these matters. This is particularly so if you did not have reason to suspect the abuse until after the victim has died. Unlike the example above, criminal prosecutors are often limited in their ability to conduct a thorough investigation into matters involving a person's rightful estate. The obligation is often on the aggrieved person to protect his or her own rights.

I encourage you to look at the various resources referenced in the article and in your community if you fear a loved one or you are potential victims of financial abuse.

If you would like more information on this topic you can contact Trevor Lippman at 414-276-5000 or trevor.lippman@wilaw.com

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ATTORNEY TREVOR C. LIPPMAN SELECTED AS PARTICIPANT IN THE G. LANE WARE LEADERSHIP ACADEMY

We are pleased to announce that Trevor C. Lippman was selected to participate in the inaugural class of the G. Lane Ware Leadership Academy. Trevor was 1 of 23 attorneys chosen to participate in this program.

The Wisconsin State Bar's Development Committee recently developed the G. Lane Ware Leadership Academy as an inclusive leadership development training program. The committee's objectives in creating this program are to empower participants with the skills, strategies, and resources to become effective leaders in all walks of life.

The G. Lane Ware Leadership Academy is a multi-session training program designed to help lawyers enhance their leadership skills, to build professional networks, to inspire involvement, and to foster professional development. The inaugural class will begin the program this November and end in the spring of 2017.

This is a great opportunity for Trevor to enhance his practice and enrich his career, and he is excited to be a participant.

THE NOMINATIONS ARE IN FOR THE LEADERSHIP DEVELOPMENT SUMMIT

Our very own Trevor Lippman was 1 of 24 attorneys selected by the State Bar of Wisconsin's Leadership Development Committee to participate in this year's Leadership Development Summit. This nomination follows up on Trevor's recent three-year appointment by the State Bar President, Mr. Ralph Cagle, to serve on the Continuing Legal Education Committee of the State Bar of Wisconsin.

Trevor was selected to participate in the Leadership Development Summit because his nominator felt that he has demonstrated a commitment to civic-mindedness, has shown a capacity to lead, and possesses the personality and leadership skills that make others want to follow his direction. These are attributes the State Bar of Wisconsin seeks in developing the next generation of its leaders.

The Summit will be held on Friday, April 1, 2016, at the Monona Terrace in Madison for the purpose of developing and encouraging the next generation of leaders both for the State Bar and in the legal profession. The Summit brings participants together with key State Bar leaders for direct interaction and discussion on leadership in the State Bar and legal community today.

A FAMILY MATTER: PROTECTING AN ELDERLY PARENT WITH DEMENTIA FROM FINANCIAL ABUSE

As Baby Boomers continue to age, an increasing number of elderly Americans and their families are forced to deal with the devastating effects of dementia. According to the National Center on Elder Abuse, approximately 5.1 million Americans over the age of 65 suffer from some form of dementia. In addition, nearly half of all individuals over the age of 85, the fastest growing segment of our population, currently suffer from Alzheimer's disease or some other type of dementia. Many of these individuals do not have a will or a trust, nor have they executed power of attorney documentation. Conversely, many others have planned ahead, going to great lengths to ensure that "everything is taken care of" in advance for their families.

Today, advance planning commonly includes nominating an individual to be a Durable Power of Attorney. This approach allows one (assuming mental competency is intact) to choose the person who will manage his or her affairs and assets if that person is unable to do so adequately in the future. Appointing a Durable Power of Attorney in advance alleviates the need for the initiation of public proceedings to address the elder individual's mental capacity.

In many cases, it is common for one or more of an elderly parent's adult children to step in and help manage the parent's affairs, particularly when the elderly parent's spouse has passed. Oftentimes, due to the proximity of one child to the parent's residence, a strong relationship with the parent, or for a multitude of other possible reasons, one child ends up visiting with and assisting an elderly parent more than other children. That child might even

live with the parent. In those cases, the elderly parent will frequently name this child as his or her Durable Power of Attorney.

Unfortunately, with vulnerability comes opportunity. Provided with suddenly unfettered access to significant funds from numerous accounts and sometimes very little oversight, there can be disputes between adult children about how an elderly parent's assets and financial affairs are being handled.

It goes without saying that every family with multiple siblings has unique dynamics that may change over time. It is not uncommon for siblings to grow apart over the years due to differences in lifestyles, ideologies, or personalities. On the other hand, sometimes, siblings become each other's best friends, talking to each other nearly every day. These unique family dynamics can sometimes play a role in disputes over estate planning matters, especially after one parent has passed and the other parent is suffering from some infirmity associated with an advanced age.

These family dynamics sometimes manifest themselves into unfortunate scenarios. At its extreme, the most troubling situation is when there are allegations that one child is stealing from an elderly parent. This may lead to a problem that inheritance trial attorneys are all too familiar with — most or all of an elderly parent's assets slowly dissipate, not necessarily on expenses associated with caring for the parent.

Imagine, for instance, that a doctor just recently diagnosed an elderly mother with Alzheimer's disease. The husband, and father, passed away years earlier. The mother has $500,000 in assets at the time of her diagnosis. She has four children and drafted a will after her husband passed away indicating that it is her wish to leave one-fourth her estate to each of her children. At the same time, the mother has named one child (Child A) as her Durable Power of Attorney. After the Alzheimer's diagnosis, two doctors sign a Statement of Incapacity, which results in Child A taking over all of the mother's financial affairs. The mother passes away one year later, and in the estate proceedings, Children B, C, and D learn that each of them will receive $25,000 — far less than they had expected. Children B, C, and D concede that Child A legitimately spent $100,000 on their mother's medical care and other living expenses. But where did the other $300,000 go? Some family members do not want to broach the subject because they find it to be an uncomfortable discussion. Nobody wants to wrongly accuse a family member of such an egregious act. Moreover, family members may feel they are being "greedy" if they initiate a legal proceeding involving property that, to that point, had never belonged to them.

There is more to consider, however. Parents often spend a lifetime working, saving, and investing in hopes of being able to provide loved ones with financial support after they pass. Is it fair to a parent's legacy to walk away to avoid the confrontation? Ultimately, this is the very personal and difficult decision many adult children have to make.

There are several things one can do to try to protect against such situations:

- **Ask Questions**
  If you get the sense that somebody is taking advantage of an ailing parent, ask that person questions. Stay involved to the extent you can. If you believe there are unusual or suspicious circumstances surrounding an elderly parent, take note of them. One who might otherwise take advantage of an elderly parent might not do so if he or she knows that others are regularly checking on the status of the parent's care and financial matters.

- **Talk to Your Parent**
  The effects of dementia are unquestionably devastating, but, to a point, an ailing parent may still have the capacity to sense when something is wrong. On occasion, talk with your elderly parent outside the presence of the caretaker or power of attorney. If your parent never answers the phone or somebody refuses to let you inside your parent's home, continue your efforts to initiate contact.

- **Look for the Signs of Improper Purchases**
  Not every purchase that a caretaker makes should cause immediate suspicion. But, if one who is appointed Durable Power of Attorney suddenly buys a new luxury car, takes an expensive vacation, or engages in other activity that is clearly out of the ordinary, you should inquire. Try to engage in honest and open conversations with all of your family members about these matters. If concerns remain, it may be time to consider other arrangements.

- **Inquire as to Whether the Durable Power of Attorney Documentation Includes Gifting Powers**
  If your parent signed a Durable Power of Attorney document, ask whether the document specifically grants the person appointed the Durable Power of Attorney the power to make gifts on their behalf. While a Durable Power of Attorney document can provide an individual with expansive power over the finances of the elderly parent, the more general language typically seen in these documents often will not provide the Durable Power of Attorney with the authority to make gifts to himself, herself, or to others. If an elderly parent wants to give the Durable Power of Attorney the authority to give gifts, this must be stated explicitly in the Power of Attorney document. Any person who is considering granting such expansive powers to a loved one needs to give such matters very careful consideration.

Unfortunately, elder financial abuse is all too real. This abuse can have devastating consequences both on the ailing parent and on their families. Be mindful of the potential problem. Naivety is not a sufficient excuse when it comes to caring for those who need our help the most. There are legal avenues you can take to try to protect the rights of your parents and your parents' beneficiaries.

If you have any questions, please contact Attorney Trevor Lippman at O'Neil Cannon at 414-276-5000.

LANDLORDS TAKE ACTION! SIGNIFICANT CHANGES IN WISCONSIN LANDLORD/TENANT LAWS CAME INTO EFFECT MARCH 1, 2014

Wisconsin Act 76 went into effect on March 1, 2014. This Act makes numerous changes to Wisconsin's landlord/tenant law, Chapter 704 of the Wisconsin statutes. There are a number of changes that have an immediate impact on the ordinary course of a landlord's business that landlords and their counsel should consider.

First, Wis. Stat. § 704.05 potentially expands a landlord's ability to treat a tenant's personal property as abandoned in an eviction action in the absence of a written agreement to the contrary. The statute's technical revisions have arguably broadened the circumstances which trigger a landlord's rights with respect to abandoned property.

Second, the law now addresses costs associated with "infestation of insects or other pests, due to the acts or inaction of the tenant…" The landlord may elect to allow the tenant to repair such damage at his or her own cost, or alternatively, may take such action as is necessary to repair such damage and seek reimbursement for the reasonable costs associated with such action.

Third, while landlords are still required to provide a check-in sheet to new tenants, landlords no longer need to provide a "standardized information" check-in sheet.

Finally, the Act created Wis. Stat. § 704.14 which requires a "Notice of Domestic Abuse Protection" be included in all residential rental agreements. The required notice sets forth protections for tenants facing eviction in certain instances of domestic abuse as well as tenant termination rights pursuant to Wis. Stat. § 704.16.

Copies of the new legislation can be read here. There are a number of other changes landlords and their attorneys will find particularly of interest. Further information about this bill and its impact on Wisconsin landlords can be obtained by contacting any member of our firm's Real Estate Practice Group, or if a dispute has arisen, by reaching out to our firm's Litigation Practice Group.