

Case Summaries: Abuse, Neglect, and Exploitation of Adults

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Adult Protective Services

1. Matter of S.C., ___ N.C. App. ___ (Jan. 7, 2020)

Held: Affirmed

- Facts: DSS received a report that respondent was unable to care for himself and make medical decisions. Respondent was in the hospital with multiple infections and was cutting away his own flesh with scissors. Court issued order authorizing DSS to provide protective services. GAL appealed.
- Subject matter jurisdiction/specificity of petition: Respondent argued that the petition failed to include specific details about the lack of individuals “able, responsible, and willing [] to perform or obtain ... essential services” for a disabled adult. Further argued that the APS statutes, taken together, create “a jurisdictional prerequisite similar to the verification requirement of GS 7B-1104, applicable to petitions for termination of parental rights.” Court rejected this argument, stating that it would create a verification requirement that is “unsupported by the text of GS 108A-105.” Would also undermine the purpose of the act and create practical challenges for DSS. “Compliance with such a rule would presumably require an undefined number of people to be identified and details about those people to be set out in allegations in a petition....”
- Findings: Respondent argued that findings were not specific enough to support the court’s conclusion that he was a “disabled adult in need of protective services.” The judge added one handwritten note to the typewritten findings on the AOC form (AOC-CV-773). Court rejected the argument, concluding that even though the trial court added little to the form, “the order contained ultimate findings of sufficient specificity to authorize the Department to provide protective services.”
- Mootness: The opinion included a footnote explaining that the appeal is not moot even though the conditions significantly changed since the time of the APS order. The appeal presents questions “capable of repetition yet evading review if the court held otherwise.” Such appeals “must meet two requirements: ‘(1) the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party would be subjected to the same action again.’”
- Connections: APS

2. Matter of Lowery, 300 S.E.2d 469 (N.C. App. 1983)

Held: Vacated and remanded

- Facts: Disabled 21-year old respondent lived with grandparents. Respondent's disability income was the primary source of income for the grandparents. DSS received referral regarding respondent and arranged for her to join a workshop. Grandparents physically punished her for doing so (beating, spanking). DSS petitioned court for order to provide protective services and enjoin interference by her grandparents (caretakers). Trial court dismissed the case, finding that the beatings were not abusive and there was no evidence of exploitation. County appealed.
- Findings: The appeals court vacated and remanded the case for a new hearing on all allegations. It held that the trial "judge did not make sufficient definitive findings regarding the facts and circumstances of this case to enable us to determine whether his conclusion is correct."
- Connections: APS

Criminal

1. State v. Stubbs, ___ N.C. App. ___ (June 2, 2020)

Held: Affirmed

- Facts: Elderly mother lived with daughter. APS report received alleging caretaker neglect. Social worker found the mother confined to a heavily soiled bed, with open wounds, and complaining of pain. Mother agreed to be admitted to the hospital, where she subsequently died. Daughter convicted of caretaker neglect pursuant to GS 14-32.3.
- "Caretaker": Defendant (daughter) appealed the conviction, arguing that the prosecution did not present sufficient evidence that she was her mother's caretaker. The statute defines caretaker as "a person who has the responsibility for the care of a disabled or elder adult as the result of a family relationship or who has assumed responsibility for the care of a disabled or elder adult voluntarily or by contract." The court explained that the "definition creates two paths to becoming a caretaker: (1) assuming responsibility for the care of an elderly person voluntarily or by contract or (2) becoming responsible for the care of an elderly person as a result of a family relationship – a de facto caretaker relationship."

- Facts supported caretaker status: The court heard evidence that the mother had been living with the daughter for four years, the daughter bought groceries, helped her mother apply for economic services, secure a life insurance policy, and manage other financial matters, and she bathed her mother to a limited extent. The daughter was not, however, involved in her mother's medical care and she did not have any knowledge of her medications or doctors. The mother was extremely private and resistant to accepting assistance. The daughter was not raised by the mother but met her when she was a teenager. The court held that there was sufficient evidence of a caretaker relationship to send the question to the jury for consideration.
- Connections: APS, law enforcement

2. **State v. Norwood, 257 N.C. App. 389 (2018) (Unpublished)**

Held: Affirmed in part, remanded in part for correction of a clerical error

- Facts: Defendant met elderly woman in the summer of 2013 and quickly befriended her by doing work around her house, taking a trip, and running her errands. She granted him power of attorney and funds were transferred from her account to his business account. Nephew filed for guardianship. Defendant convicted of exploitation of an older adult pursuant to G.S. 14-112.2(b).
- Elements of crime: The court interpreted the relevant subsection of the statute to require the following elements:
 - Stands in a position of trust and confidence with an older or disabled adult,
 - Knowingly, by deception or intimidation,
 - Obtains, uses, or attempts to obtain or use the funds, assets, or property of the older or disabled adult,
 - With the intent to temporarily or permanently deprive the older or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the older or disabled adult.
- Subject matter jurisdiction/specificity of indictment: Defendant argued that the indictment did not include specific information or evidence regarding the nature of the deception or intimidation involved in the alleged exploitation. Court rejected the argument, explaining that "an indictment for a particular offense [is] not required to state specific evidentiary allegations."
- Connections: Guardianship, law enforcement

3. State v. Forte, 206 N.C. App. 699 (2010)

Held: Affirmed

- Facts: Defendant helped elderly victim with chores, renovations, driving, banking, paying bills, grocery shopping, and other activities. He made medical and dental appointments for the victim and helped him purchase a headstone. Over the course of almost three years, victim wrote multiple checks to Defendant totaling more than \$45,000. Defendant found guilty on three charges of exploitation of an elder adult pursuant to GS 14-32.3.
- Statute revised: The statute (G.S. 14-32.3) was revised in 2005 to shift the provisions related to exploitation to G.S. 14-112.2. Because of these changes, the holdings in this case related to the definition of “elder adult” and “caretaker” in the context of exploitation are no longer relevant. The discussion in the case about the meaning of the term “caretaker” is, however, still useful when considering how the same term may be interpreted in the context of abuse and neglect by a caretaker, which is still included in GS 14-32.3.
- “Caretaker”: The statutory definition provides that a person may be considered a caretaker if the person has “assumed the responsibility for the care of an elder adult voluntarily or by contract.” The court held that the constellation of services Defendant provided to the victim were sufficient to put the question to the jury.
- Competency of an older witness: Defendant argued that the victim was not competent to testify due to age and incoherence. The court rejected this argument and focused on the body of case law involving competency of child witnesses and the importance of ensuring that the witness has the capacity to understand the difference between telling the truth and lying.
- Connections: Law enforcement, civil remedy (power of attorney to daughter after exploitation discovered)