

5396 State of Vermont
 APS Investigative Summary

Investigation Number 7025

| Part 1: Investigation Participants and Investigation Conclusion | |
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| Investigator | Walter Decker |
| Alleged Victim (AV) Hereafter referred to as AV | Eleanor McDonald |
| Alleged Perpetrator (AP) Hereafter referred to as AP | John McDonald |
| Investigation Conclusion | Recommendation for Substantiation |

Part 2: Allegations Summary

- A) On April 26th, 2016, APS received a report with the following allegation: The AP (the listed AV's son) had exploited the 95 year old female AV by using the AV's personal funds over a period of time and also had the AV sign over the ownership of her private residence to him despite her diminished cognitive state.
- B) The report was assigned on April 28th, 2016.

Part 3: Investigative Sources – Interviews

- A) Patricia Sundberg, AV's daughter and new guardian (April 28th, 2016)
- B) John McDonald, AP (May 2nd and May 10th, 2016)
- C) AV, resident of Burlington, VT (May 2nd, 2016)
- D) Dave Micklas / Karen Batko, security at KeyBank (April 28th, 2016)
- E) Dr. Peter Gunther, AV's primary provider
- F) Robert Manby, Esq. – AP's attorney for transactions (July 13th, 2016)
- G) Attorney Kurt Hughes (Representing the guardians appointed by Probate Court)
- H) Attorney Diane Pallmerine (AV's Probate appointed attorney)

- 4) On May 2nd, 2016, I was enroute to the AV's residence when I received a voicemail message from a male caller who identified himself as the AP. The caller explained that he had visited his bank on the previous Friday (April 29th, 2016) and had been told that he could not draw funds from the AV's account and to contact me. (This information came from the electronic notes filed on the bank's internal systems.)
- 5) Later that morning, I arrived at the residence and was greeted by the AP. The AP invited me inside and I was introduced to the AV. The AV was noted to be awake but not verbal, nodding her head and indicating she wanted to eat her breakfast. I sat at the kitchen table and attempted to interview the AV but quickly concluded she was not oriented enough to engage in dialogue. The AP however did agree to an interview and it was digitally recorded as we discussed his family history and how he came to be living back with the AV and accessing ownership to the AV's residence and bank accounts.
- 6) In his interview, the AP indicated that his parents had always wanted him to have possession of the house, and that since he had returned to live with the AV and assist her in her daily activities since he was unemployed, he did access her funds to pay for various weekly groceries and the expenses related to the household. Further, that the AV had weekly various over-the-counter medical needs and required various supports throughout the day. The AP indicated he had added his name to the AV's checking account and then used the ATM debit card to withdrawal money at regular intervals to support the weekly expenses, estimated to occur in intervals of \$300.00 weekly when groceries, gas, or weekly co-pays were required for trips for medications, toiletries, etc. During the discussion, the AP also described how there seemed to always be a level of conflict between himself and his female siblings but that since he had returned to live with the AV the conflict had grown more strained and he now thought everything he had done to assist the AV was honest and above board.
- 7) When asked about any property transfers, the AP explained that during the previous year, (2015) he had contacted an attorney known by him since he knew that the AV and his father had always wanted him to take over possession of the family residence. The AP explained that was always the AV's intentions so he (The AP) then contacted an attorney

that he use to work with when he (the AP) sold real estate many years earlier. The AP explained that this attorney, "Rob Manby," of White River Junction, then drew up a Quit Claim deed that gave the AP joint interest in the property, and it was executed in late June of 2015. Despite being executed, that deed was not filed at the time by the AP with the local city clerk and, upon further subsequent questioning, he commented that he "didn't want her (Sundberg) to know about it." When asked about the circumstances of the property transfer, the AP explained that he alone contacted the attorney, and that the attorney then drove up from White River Junction to meet the AP and the AV in the parking lot of the St. Mark's Church on North Ave in Burlington and the deed was executed by the AV as she sat in the AP's car. At no time did the attorney ever meet privately with the AV herself, speak with her alone on the phone, nor even visit the residence to conduct the transaction. When asked why the AP would load the AV into a car and drive her to a church parking lot (an estimated one quarter mile and less than five city blocks away from the actual residence), the AP did not have a logical response. The AP later confirmed that all of the billing, attorney correspondence and elaboration as to what was needed to perform the transaction came at his direction while interacting with the attorney. The AP offered that the financial and document analysis would prove he was not intentionally stealing anything from the AV and that all funds regularly drawn down from the AV's regular social security deposits each month were for the general household expenses and that any actions he had undertaken from the period of 2015 forward were at the expressed intentions of the AV.

- 8) Dr. Peter Gunther indicated how the AV clearly had not had cognitive capacity to make informed decisions as early as February of 2014, and noted in his files of the AV not being able to recognize faces, names and had "incapacitating" levels of cognitive impairment. In addition, the medical records and Dr. Gunther's own narration described how the AV's husband had passed away on October 22nd, 2014, and yet only twelve days later, while the AV was examined again, Dr. Gunter noted on November 3rd, 2014, "(AV) Does not remember his [her husband's] death so being reminded is very hard." Dr. Gunter was certain there was no way the AV could have executed any informed decisions during any time after mid-2014. (Further examination of the AV's medical records also revealed that

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- the AP was present for several of the examinations including the one where the doctor concluded the AV was not oriented and displaying advanced cognitive decline on November 3rd, 2014.)
- 9) The AV was subsequently evaluated again by Dr. William Nash for the Court order process of guardianship on May 9th, 2016. In that matter, Dr. Nash also obtained the assessments obtained by the University of Vermont Memory Center from November of 2009, which listed the AV as having a Mini Mental State Exam score of 13 (moderate impairment) and an Alzheimer's Disease Assessment Scale score of 13. Said files noted specific deficits in language, orientation, comprehension and word recall. The files noted a recommendation for guardianship given the significant level of impairment since late 2009. *
- 10) The initial analysis of the available financial records obtained regarding the AV's accounts and assets over the last several years were compiled into three separate portions of content: regular checking account activity, an IRA account distribution, and the aforementioned residential property transfer. The regular Key Bank Advantage checking account reflected a current balance of approximately \$90,000.00 with regular monthly activity of the known deposit of the AV's social security benefit and then weekly withdrawals of \$300.00 and various small checks to pay related utilities, taxes, and the like. On its face, it did not appear that excessive or unusual transactions were occurring on the AV's regular bank checking account but there was also no known tax filing for the last year (2015), and undocumented details regarding the location of the actual checkbook register, and no details of the last payment for actual property taxes on the residence. (The matter regarding the production of certain documents and previous records by the AP to the new Court appointed co-guardians remains an issue of contention that is still being resolved separately in the Probate and Civil court filings apart from this investigation.)
- 11) However, the Actual Quit Claim Deed to the AV's residence and a witnessed IRA Distribution authorization did have significant information relating to the aspect of possible exploitation. Analysis revealed how a single, one-page "Vermont Quit Claim Deed" was executed on June 25th, 2015, signed by the AV and was witnessed by, "R Manby." The document created a joint tenant status for the AP to also have ownership of the AV's

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residential property at 4 Vine Street in Burlington (valued by the city of Burlington Clerk/treasurer's office at \$99,200.00.) The Key Bank documents also reflected how the AV had an IRA account prior to July of 2015, but that it was cashed out on July 13th, 2015, with a value of \$14,138.91 and was taken in the form of a check later endorsed by "J McDonald" (the AP.) This check was issued as payment to close the account based on a distribution form signed for and completed allegedly also by the AV on June 25th, 2015, and also witnessed by "R Manby." - It appeared both documents were witnessed at the same date/time which benefited the AP and which would have been many months after the AV was deemed by her medical providers as not having decisional capacity due to her advanced dementia. - It would be later learned that the AP did not file this deed with the City of Burlington Clerk/Treasurer until January 29th, 2016.)

- 12) Given the information, I re-approached the AP on May 10th, 2015, and he was interviewed again at the residence. During this second interview at the home the AP indicated that he did accept the IRA money from the AV, indicating that his deceased father, "Wanted me to have it" and the AP acknowledged that the form was also witnessed by attorney Manby in the church parking lot on the same day of the property transfer deed. When the AP was asked about where the IRA money went, he replied, "it's about all gone" and commented that he either used it or gave it as gifts to unspecified persons.
- 13) During the course of this investigation I contacted C. Robert Manby who is an attorney in White River Junction, VT. Attorney Manby indicated he did conduct business for the AV after he was called by the AP. Attorney Manby indicated it was the AV who was his client for any of the legal work he performed including a deed in 2015, but that he was prevented from disclosing any details despite full release that was authorized by the new court appointed guardians. Attorney Manby was then given a Discovery Order from Chittenden Probate Court to participate in an APS investigation and provide complete copy of his file to the counsel who now represented the guardians in Court, Attorney Kurt Hughes in Burlington, VT.
- 14) Attorney Manby was interviewed while at his White River Junction offices on July 13th, 2016. In the interview, Attorney Manby reiterated that the AV was technically his client for

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agreed that he witnessed some other documents that day (June 25th) including an IRA distribution but would have to refer to his full file given the lapse of time since the event. When asked about the billing for the services, attorney Manby commented that he oddly remembered how the AP had "sent cash" for the payment of the legal services. Attorney Manby also indicated that he recalled how several months later the AP also drove the AV down to his White River Junction law practice and he went out to the AP's car to again witness documents signed by the AV at the AP's request. Attorney Manby indicated that he believed it was something relating to more legal instructions such as a Power of Attorney but he would have to refer to the file but again he never met alone with the AV, spoke privately with her, or had any interaction where he could have formed his own opinion as to her cognition. At the end of the interview I commented that given the level of elaborate planning on the AP's part I offered, "Why not a trust?" and attorney Manby replied, "You know he may have had one, I'm not sure."

16) During the course of the investigation the AP indicated that he was now being represented by Attorney Peter Langrock regarding the disputed custody issue of the AV that was being processed in Chittenden Probate Court. After repeated requests from the new appointed guardians, the AP still refused to provide the AV's checkbook and any known information to date regarding any life insurance policies, the previous tax filings and other matters needed to secure the AV's assets and determine if she would qualify for other services after her finances were confirmed. Further, the Probate Court appointed attorney Diane Pallermerine as the AV's attorney in the guardianship proceeding.


17) After several months the AP still had not produced the requested documents pertaining to the AV's personal accounts, and as a result a Relief from Abuse Order (RFA) was filed on August 22nd, 2016, and was granted by Judge Martin Maley. The Court order was granted which acknowledged the case facts to date in an affidavit I submitted that included the residential property transfer value and the IRA distribution funds. The Court made a finding that the AP "had exploited" the AV and that he shall "provide the financial documents requested in defendant's possession or control." (This matter was set for a final hearing on

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hardship, whether or not the actor has actual knowledge of vulnerable status.

- 1) The overwhelming evidence concludes that the AP knowingly engaged in a series of acts over many weeks that later involved the transfer of the AV's residential property, the AV's Individual Retirement Account funds, and the establishment of a trust to benefit himself despite the AV's diminished cognitive state. The AP's actions resulted in a net profit of a residential property valued at an estimated \$200,000.00 and a specific cash account valued at just under \$15,000.00. Such conduct is also a criminal offense in nature and constitutes exploitation under chapter 6902.

| Part 10: Investigator and Reviewer Signatures | | |
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| I certify that I conducted this APS investigation and am the sole author of this document. | | |
| Walter Decker |  | 3-23-17 |
| Printed Name of Investigator | Signed Name of Investigator | Date |