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Vulnerable Older Adults, Abusive Guardians

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By SUSAN B. GARLAND JULY 28, 2017

Richard and Terri Black at their home in Cornelius, N.C. Credit Travis Dove for The New York Times

Terri Black had always planned to care for her widowed father in her home if he ever became too frail to care for himself. In June 2013, Mrs. Black, an only child, decided it was time: Her father's longtime companion in Las Vegas had informed her that she could no longer handle his dementia, diabetes and other health issues, and asked the daughter to take him.

Not long before, Mrs. Black discovered that the companion, Helen Natko, had transferred \$200,000 from her father's bank account — a move that would eventually end in a criminal conviction.

But when Mrs. Black and her husband, Richard, flew to Las Vegas to take her father, Delford Mencarelli, to their home in Cornelius, N.C., Ms. Natko refused to let them in the house, according to an account Mrs. Black filed with the Clark County District Court, in Nevada. The Blacks called the Las Vegas police, and the officers who showed up told Mrs. Black that her only recourse was obtaining legal guardianship.

And thus began a harrowing two-year odyssey in the guardianship system. Soon after Mrs. Black filed a court petition, Ms. Natko countered with her own petition. A judge ordered a trial and appointed a temporary professional guardian. Mr. Mencarelli continued to live with Ms. Natko.

Mrs. Black's experience is far from unusual: The Government Accountability Office has found that state guardianship systems across the country are rife with exploitation. State courts appoint guardians to protect the vulnerable, but the G.A.O. has identified hundreds of cases of negligence, as well as physical and financial abuse.

In Mrs. Black's case, the guardian set a schedule for telephone calls between father and daughter. Once, Mrs. Black recalled, when she sought permission to take her father to a restaurant, the guardian and lawyers on both sides negotiated the terms, racking up, she estimated, \$2,500 in fees. "I was treated like a criminal for wanting to take my dad out for dinner," Mrs. Black said in an interview. The outing never occurred.

During a 12-day trial in June 2014, Mrs. Black's lawyers submitted evidence that Ms. Natko had neglected Mr. Mencarelli's medical needs. Casino records also showed that she had amassed thousands of dollars in gambling losses. And according to bank documents, Mr. Mencarelli had transferred two checks totaling \$200,000 from a Pennsylvania account he held jointly with Mrs.

Black to a new joint account with Ms. Natko. At the time of the transfers, neurological tests showed, Mr. Mencarelli was too cognitively impaired to know what he was signing. At one point, according to court papers, Ms. Natko transferred \$195,000 to her own account but eventually moved it back to the joint account on the advice of her lawyers.

Mrs. Black holds a photo of herself with her husband, Rick; their son, Dan; and her father, Delford Mencarelli. The Blacks found themselves in a guardianship battle trying to protect Mrs. Black's elderly father and his assets that spanned years and cost them hundreds of thousands of dollars. They have since been lobbying for regulations that will help others in a similar situation. Credit Travis Dove for The New York Times

Ms. Natko and her lawyer did not respond to requests for comment. In a deposition in November 2013, Ms. Natko said that she and Mr. Mencarelli had decided to open a joint account in July 2012 with \$150,000 from the account he held with his daughter. He had been hospitalized a couple of months earlier, and they decided he should have money in Las Vegas in case of an "emergency," she said. Ms. Natko also said that they had lived together for a long time, and "he wanted to make sure I was taken care of if something happened to him."

In a huge blow to Mrs. Black, the judge awarded sole guardianship to Ms. Natko on July 11, 2014 — even while noting that Mr. Mencarelli had lacked cognitive capacity at the time of the transfers. The judge ordered the money moved to a guardianship account, which Ms. Natko came to control substantially as the guardian.

Mrs. Black, who is 56 and a retired accountant, was devastated. "I felt such emotional stress that this was my loved one and that there was nothing I could do to help him," she said.

Ms. Natko remained guardian even after prosecutors, three months later, charged her with felony exploitation of a vulnerable person, accusing her of taking thousands of dollars from Mr. Mencarelli. A jury convicted Ms. Natko in April on the exploitation charge, as well as on theft for the \$195,000 transfer to her personal account. She is scheduled to be sentenced on Monday.

Mr. Mencarelli remained in Ms. Natko's house until he died, on July 3, 2015, at age 84.

Though state laws differ, a judge who rules that a person is cognitively impaired can appoint a guardian, sometimes a company, to oversee the person's well-being. The guardian can decide to sell the ward's house and move him or her into a nursing home. The guardian can also choose which of the ward's friends and relatives can visit.

The National Center for State Courts, a nonprofit think tank, estimates that guardians across the country supervise 1.3 million adults and an aggregate of \$50 billion of their assets. Brenda K. Uekert, the center's principal court research consultant, said that with the "aging of the baby boomers and the onset of dementia, we expect those numbers to go up."

In November 2016, the G.A.O. reported that in eight cases it examined in six states, guardians were found to have stolen more than \$600,000 from their elderly wards. A 2010 G.A.O. report found that from 1990 to 2010 guardians in 20 cases stole \$5.4 million.

One reason for guardianship exploitation: a lack of money for oversight, according to Dr. Uekert and other reform advocates. State courts cannot afford to hire enough people to monitor the well-being of wards and to scrutinize the guardians' stewardship of assets. They also say that many judges, who usually preside in probate or family court, do not have the time or expertise to conduct more than a cursory review before granting a guardianship petition.

The paperwork from Mr. and Mrs. Black's guardianship battle fills several boxes at their home.
Credit Travis Dove for The New York Times

More than 10 percent of guardians are professionals, who typically charge hourly fees of \$70 to \$150, which are paid from a ward's assets. About 75 percent are family members or friends.

The costs, which can include the guardian's legal expenditures, can sap or erase an older person's savings. By the time he died, Mr. Mencarelli's \$480,000 nest egg had dwindled to about \$60,000.

As reports of guardian exploitation mount, court experts and advocates for the elderly are pushing for better judicial oversight. Dr. Uekert's group is training judges to find alternatives to full guardianship. She is also working with several states to create automated systems that would detect misspending.

In Minnesota, the Conservator Account Auditing Program requires the state's 5,500 court-appointed guardians to file electronic annual reports on their expenses and on the \$900 million in assets they manage. Before the system started in 2011, guardians would file boxes of receipts with the local courts — or not file at all, said Cate Boyko, the program manager.

Ms. Boyko said nine auditors, assisted by a computer program, look for red flags like high fees and questionable expenses. "If someone with Alzheimer's disease is in a nursing home and the guardian has reported vehicle expenses, does that make sense?" Ms. Boyko said.

In Texas, the state's top judge, alarmed by reports of abuse, asked the legislature in 2015 to fund a two-year pilot project designed to improve court oversight of guardianship cases. Its four compliance specialists have worked with courts in eleven of Texas' 254 counties since November 2015. "As soon as judges found out about the project, they begged us to come," said David Slayton, the project manager.

Auditors found that 48 percent of the cases were missing annual accountings. In about 10 percent, auditors uncovered misappropriation of funds, Mr. Slayton said.

Based on those findings, the Texas legislature this year approved \$5 million for the hiring of 31 staff members to monitor nearly 55,000 guardians and \$5 billion in assets statewide. On June 15, Gov. Greg Abbott used his line item veto to strike the funding from the budget bill, noting in his veto statement that the "creation of a new state bureaucracy should be a last resort."

Richard Black became so enraged by his experience in Nevada that he left a well-paying job to push for guardianship reforms full time. He is now the volunteer executive director of Americans Against Abusive Probate Guardianship, lobbying legislatures and counseling families engulfed in guardian disputes. "If this can happen to my family, it can happen to anyone," he said.