

**IN THE CIRCUIT COURT IN AND FOR OKALOOSA COUNTY, FLORIDA
PROBATE DIVISION**

In Re: ESTATE OF

Case No. 2006 CP 000157

RUSSELL FRED WHITE,
Deceased.

FINAL JUDGMENT

THIS CAUSE having come before the Court by non-jury trial on October 20, 2008 on Plaintiff's Complaint for Violation of Florida Statute Annotated Chapter 415, the Plaintiff, MARTIN WHITE, having been present and represented by G. "Bud" Day and the Defendant, IDA MARIE KREISER, having been present and represented by James Campbell, the pleadings having been reviewed, testimony of witnesses and arguments of counsel being heard and the Court having been advised in the premises, it is hereby

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D. W. HOWARD
CLERK OF CIRCUIT COURT
OKALOOSA COUNTY FL
MAY 17 2009

ORDERED and ADJUDGED:

1. That the Court finds that the Plaintiff is the prevailing party, and is awarded the Sixty Six Thousand One Hundred Seventy Two and 04/100 Dollars (\$66,172.04) which is presently deposited with the Clerk of Court of Okaloosa County, by previous order of Judge G. Robert Barron since February 13, 2006.

2. That this was an action to recover the sum of Sixty Six Thousand One Hundred Seventy Two and 04/100 Dollars (\$66,172.04) which was acquired by the Defendant through the Certificates of Deposit belonging to Russell White, age 79 years, while terminally ill with advanced cancer and being intravenously administered



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Morphine, Phenergan, and Lortab. Mr. White died four days after signing a joint account document for the Defendant, who was his caretaker. Defendant claimed this a gift.

2. In arriving at judgment, this Court has reviewed the Florida case law on the issue of the law of gifting. The court specifically reviewed the Supreme Court case of Booth vs. Carrington, 81 So. 2d 662 (1955) which found that the Donee of gifts was required to show that the gifts made by Mrs. Davall were not made during a time when the Donor was in a state of overindulgence due to liquor or drugs in the form of sleeping pills. The Supreme Court further ruled in that case that the Donee must demonstrate her case by "clear, positive and satisfactory proof." The Supreme Court found the Donee's proof to fall short of that standard.

3. This Court further reviewed the First District Court of Appeal case of Josephson vs. Kuhner, 139 So. 2d 440 (1962) and written by Judge Rawls. The Honorable William F. Stone, trial judge in the instant case, finds that the factual matters at issue in the present case, have much in common with Josephson. The putative Donors in both cases were quite elderly, unclean, and a history of urinating in strange ways and places. Further, the timing of the gifts before death (90 days in the case of George Kuhner and 4 days in the present case of Russell White); when Mr. White was in a critical medical condition and under the influence of Morphine, Phenergan, and Lortab; makes the case before this trial court highly analogous to Josephson. Based on the facts before them, and the previous case of Booth vs. Carrington, the First District Court found that the Donee must show by clear and convincing evidence that at the time the Donor made a purported gift, that the Donor had the capacity to make the gift.

In the instant case, the Defendant argued that the Deceased Russell White's physician Dr. Wayne Justice was the best witness to verify the Deceased Russell White's capacity to gift his property. The Court finds that based on the evidence presented that Doctor Justice's opinion was not well founded, due to his lack of knowledge about an extensive medical history that included mental illness. The only witness to the actual transaction was the notary public, Wesley Caraway. Mr. Caraway asked some very basic questions of Mr. White about whether he knew and understood and could read the document, but Mr. Caraway had difficulty completely understanding Mr. White's responses to these questions. The Court finds Mr. Caraway's testimony unpersuasive.

4. Undertaking the complete and total circumstances, the Court finds that the Defendant did not meet the burden to demonstrate that she received the gift at a time when Mr. White's mental capacity could not be questioned. When considering the volume of evidence questioning his competence at the time of the gift, the Defendant failed her obligation to overcome this evidence by clear and convincing proof. This being so, the Court finds for the Plaintiff, and suppresses the gifts, and awards the Plaintiff the sum of Sixty Six Thousand One Hundred Seventy Two and 04/100 Dollars (\$66,172.04) which was ordered into the registry of the Clerk of Court by Judge G. Robert Barron at the Injunction Hearing in February 2006.

5. The Court further finds that Plaintiff has proved facts under Florida Statute Annotated 415.102 by a preponderance of the evidence, showing:

a. That by Defendant's admission she was a caregiver as defined by statute;

b. That by undisputed overwhelming evidence, Decedent Russell White was a vulnerable adult due to mental illness and a diminished physical condition;

c. That a fiduciary relation existed between Defendant and Russell White and that Defendant admitted creating a document to have access to his checking account;

d. That Russell White lacked the capacity to consent;

e. That Defendant exploited Russell White by preparing documents to make her joint owner of two Certificates of Deposit in the combined amount of Sixty Six Thousand One Hundred Seventy Two and 04/100 Dollars (\$66,172.04), (admitted by Defendant); and

f. That she unlawfully cashed in the Certificates of Deposit in the name of Russell White and obtained two cashier's checks totaling Sixty Six Thousand One Hundred Seventy Two and 04/100 Dollars (\$66,172.04) and deposited them in her account at the Okaloosa County Teacher's Credit Union in Fort Walton Beach, Florida, with the intent to permanently deprive the Estate of Russell White of its use, (admitted by Defendant.

6. That Florida Statute 415.102 provides for costs and attorney fees for the prevailing party Estate of Russell White.

DONE and ORDERED in Chambers, Shalimar, Okaloosa County, Florida this

1 day of MAY, 2009.


WILLIAM F. STONE
CIRCUIT COURT JUDGE

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to G. "Bud" Day, Day & Meade, P. A., 32 Beal Parkway SW, Fort Walton Beach, Florida 32548 and James C. Campbell, #4 Eleventh Avenue, Suite 2, Shalimar, Florida 32579 by regular U.S. mail this 6 day of May, 2009.

CLERK OF COURT

By: *Debra Roper*
Deputy Clerk 

CERTIFIED A TRUE
AND CORRECT COPY
DONNA M. BROWN
CLERK OF COURT

BY: *Donna M. Brown*
DEPUTY CLERK

DATE 5-8-09