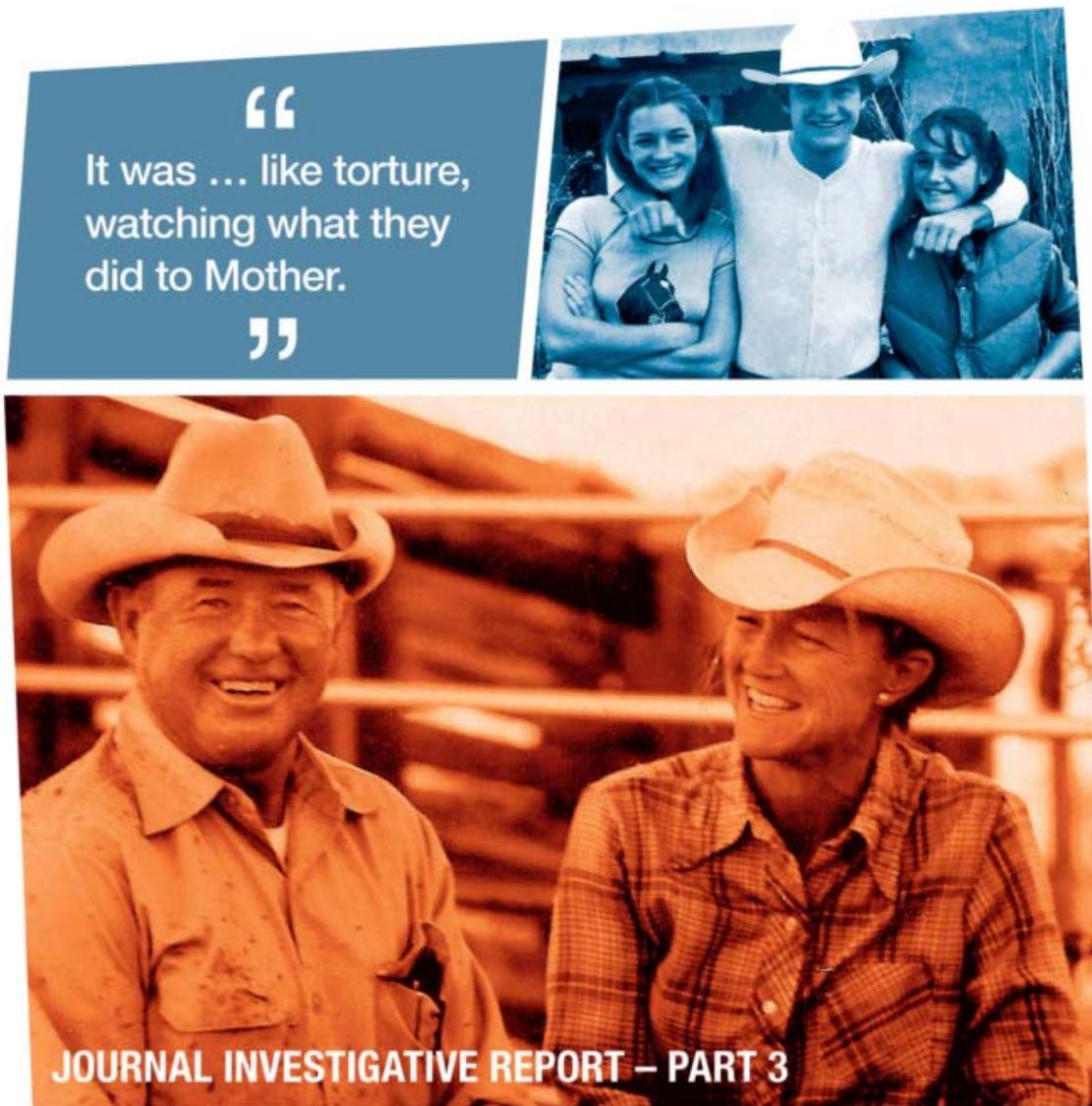


Remember Me

Family members say they were shut out

By Diane Dimond / Albuquerque Journal

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TOP: Photo taken in the late 1970s of the three youngest Darnell children — Emily, Cliff and Mary. BOTTOM: Married in 1958, Casey and Blair Darnell raised champion quarter horses on their 17-acre ranch in the bosque on the west side of the Rio Grande. (Courtesy of the Darnell family)

Editor's note: Investigative journalist Diane Dimond, whose weekly syndicated column on crime and justice appears in the Journal, is preparing a book on the nation's elder guardianship system. It's a system designed to protect the elderly from the unscrupulous. But as Dimond discovered, it can be dominated by a core group of court-appointed, for-profit professionals who are accused of isolating family members and draining the elders' estates. New Mexico is no exception.

This is the third installment of a five-part Albuquerque Journal series.

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Blair and her husband, Clarence “Casey” Darnell, loved horses. They met in the late 1950s when Blair, a handsome, vibrant transplant from New Orleans, attended the University of New Mexico’s anthropology program.

She and her 2-year-old daughter, Kris, visited the Darnell stables to buy a horse. But after the animal tossed Blair, she took it back, demanding that Casey break the horse or give her a refund.

Casey, a World War II bomber pilot, was smitten by Blair’s spirit. They married at a friend’s North Valley home on Jan. 27, 1958. Casey adopted little Kris, and the couple started their own family on the 17-acre Darnell ranch nestled in the bosque (near what is now Coors and Paseo del Norte), where champion quarter horses were raised and trained. They had three children on that ranch: Cliff, Emily and Mary, in that order.

“My mother was active in 4-H and took in lots of wayward kids to come work the ranch,” Mary Darnell recalls. “My dad was vice president of the American Quarter Horse Association and was inducted into the Quarter Horse Hall of Fame in 2009.” Casey Darnell died in August 2001.



ABOVE RIGHT: Casey Darnell and his children sometime in the 1960s. Clockwise from right, Mary, Emily, Cliff and Kris Darnell. TOP LEFT: A few of the trophies and awards the Darnell horses accumulated over the years. BOTTOM LEFT: Blair Darnell remained active until her later years. Here,

she returned to New Orleans to mark the 50th anniversary of being crowned “Queen of Proteus.” INSET:
Casey Darnell (Courtesy of the Darnell Family)

Not long after her husband passed away, Blair was kicked by a horse and hit her head on a railroad tie when she fell. She was unconscious for about 30 minutes, but in her tough cowgirl fashion, refused medical treatment. In later years, Mary came to believe their mother’s forgetfulness was a byproduct of a brain bleed suffered during that accident.

Brother Cliff remembers he and his half-sister, Kris Darnell-Kreger, taking their mother to a doctor in 2005 or 2006 and being told she displayed early signs of dementia, not Alzheimer’s. Nevertheless, no one denied Blair was having cognitive difficulties in her later years and needed assistance.

Emily and Mary say they were more than willing to help care for their mother but say they were shut out after Kris got the court involved. Kris Darnell-Kreger has declined several requests to be interviewed for this story.

Under the Uniform Probate Code, proceedings in elder guardianship cases are sequestered, meaning none of the parties is allowed to speak about the case.

But the Journal has learned that on Jan. 6, 2010, a petition was filed in the court of Judge Beatrice Brickhouse by attorney Gregory MacKenzie on behalf of daughter, Kris. In it, he painted a dire picture of 78-year-old Blair Darnell’s situation. The petition accused Mary, her mother’s primary caregiver, of seriously neglecting her mother’s medical needs and “self-dealing” by directing her mother into questionable financial transactions. MacKenzie also accused Emily and Cliff of less serious actions that adversely affected their mother.

The next day, Judge Brickhouse granted the petition, appointed a temporary guardian/conservator, a so-called court visitor and a psychologist to perform a neuropsychological exam of Blair Darnell. She had not appeared before the judge but was immediately referred to in court documents as “an adult incapacitated person.” No hearing was ever held to determine whether any of the allegations against the adult children was true.

By Jan. 7, the system was in full motion and Blair Darnell would lose all ability to control the final years of her life.

In the original petition, Judge Brickhouse was told that Mary lived on the Darnells’ 17-acre ranch free of rent and owed her mother more than \$200,000.



Attorney MacKenzie specifically mentioned two suspect land deals he said Mary orchestrated that were financially detrimental to her mother. One transaction involved a North Carolina property sold to a cousin that netted Blair about \$156,000, money that was then invested in land Mary owned in Corrales. The second charge against Mary was that she had "acted as a realtor" and listed the Darnell family's 17-acre ranch in the bosque for sale, hoping to reap a sizable commission for herself.

Mary has had a real estate license for 20 years but denies doing anything that would harm her mother's financial interests.

"So from Day One, (MacKenzie's allegations) just set everything against me with the judge," Mary said. "Why would (Judge Brickhouse) ever believe me on anything I say? And there's no truth to it. No shred of evidence ever entered, no audit. It's all hearsay."

Chief Judge Nan Nash of Albuquerque's 2nd Judicial District, responding to written questions from the Journal, said, "The guardianship petition is not taken at face value. The statutory framework includes precautions to keep that from happening."

Siblings Emily and Cliff disagree, saying the negative portrayal of their sister, Mary, was completely untrue and none of them was given an opportunity to address the court to set the record straight. From his home in Arkansas, Cliff said that all the siblings, including Kris, along with their mother, had fully discussed both land transactions and had agreed to go forward.

"It wasn't a hidden thing ... it wasn't a crooked thing," Cliff said. "Mary had the power of attorney. ... She had all the authority to do what she did. We all knew what was happening."

"They say you did all these horrible things and then say, 'Now we have to come in and hire all these people to help your mom,' " Emily Darnell told the Journal. "They make it all about the money, which it never was. It was a trauma, like torture, watching what they did to Mother."

Far and away the most outlandish charge, according to Cliff, Emily and Mary, was the whispered story that Mary had taken \$1 million from her mother's accounts. Mary said she tracked the rumor, via longtime ranch staff, to caretakers hired by the court-appointed elder guardian firm Decades LLC.

Decades President and CEO Nancy Oriola said that she could not talk about specific cases, but that Decades strives to hire professional staff, and that Decades takes all complaints seriously and tries to address them.

Yet the allegations came back to haunt Mary Darnell.

During a telephone call with the Journal in June, attorney Darryl Millet, who was appointed permanent conservator in the Darnell case, outlined an eerily similar allegation without mentioning any names.

"There were allegations ... substantial allegations that family members had taken substantial financial advantage of their mother," Millet said.

"When I looked at the numbers the first conservator (Decades) came up with after their investigation," he said, "It appeared to me that there was well over \$1 million missing from Mom's estate."

The three youngest Darnell siblings say that's impossible, because Blair had no major liquid cash reserves – her wealth mostly was tied up in the land and horses. According to her children, Blair lived comfortably off the income from two family trusts administered in South Carolina and Louisiana, between \$60,000 and \$80,000 a year, plus her monthly Social Security benefits, which were as high as \$968.

Cliff Darnell opined that if an attorney had information that someone had stolen a million dollars from an incapacitated elderly person, "They should have been going after an indictment, but no one did."

System insiders

The day Kris Darnell-Kreger's petition was filed, Judge Brickhouse appointed everyone attorney MacKenzie recommended.

Attorney Ruth Pregenzer was named Blair Darnell's guardian ad litem to represent her interests in court. Decades became Blair's temporary conservator for 90 days, during which time an evaluation was to be conducted to determine whether guardianship should be made permanent.

The judge also appointed MacKenzie's choices of Susan Stuart of Decisions in Care LLC as court visitor to help assess the family situation and Rex Swanda, Ph.D., to conduct the neuropsychological testing of Blair Darnell.

Lawyers and others familiar with the system, which is highly secretive, say it is rare for the court-appointed team to come up with findings that stop or reverse the guardianship process.

The three Darnell siblings said that at first they were delighted to learn their mother was getting a court-appointed lawyer to look out for her best interests. But then they learned that Pregenzer also had represented Decades in the past. So had attorney MacKenzie. When the family's conflict-of-interest complaint was raised with the court, Judge Brickhouse found no reason to change her guardian ad litem appointment. The judge declared Blair Darnell an "incapacitated person" and made her a permanent ward of the court.

During an interview at her law office last month, Pregenzer told the Journal it is not unusual in a guardian/conservator case for one of the attorneys to have had a previous relationship with one of the parties.

Given Albuquerque's relatively small community of elder law attorneys, she said, "It is our practice to disclose that information up front so that everyone knows it. If there ever is an objection to my being able to provide an unbiased report, then I say I don't want to have anything to do with

this."

Asked how often Decades LLC had been recommended for appointment by MacKenzie, Oriola said she would estimate that he had referred 10 or fewer cases to Decades in the past 10 years. And she did not believe he had "referred a guardian or conservator case to us in several years."

Dr. Rex Swanda did not respond to telephone and written requests for comment. Susan Stuart of Decisions in Care declined an interview, writing in an email, "I feel it would be impossible to have a discussion with you without running the risk of disclosing matters that are protected by statute."

Decades' Oriola responded only to written questions submitted by the Journal and defended the system, saying, "The professional guardian system was developed in the late '80s in response to the enormous abuse occurring against our elders by family members."

Oriola could not comment on any individual case due to strict confidentiality, which is enforced on all elder guardianship cases to ensure the ward's privacy.

But she said that in "most every case, family conflict is the reason Decades is appointed."

She said her company's obligation was to the elder person, and that in many cases it is almost certain some family members will be unhappy with some of her company's decisions.

The Journal was told by a court spokesman that the New Mexico code of judicial conduct prohibited Judge Brickhouse from commenting on the case.

Repeats

Many of these same names surfaced as the Journal investigated other New Mexico families' complaints, indicating a revolving cast of for-profit specialists in the elder care arena. Complaints of cronyism were commonly heard.

"They all know each other, and recommend each other, and never contradict what the other one says," said one woman who tended to her father but moved out of state after his death.

And the worst part, she said, is that "the judges just accept what they say as gospel."

Pregenzer, a veteran of elder law, reminds that it is an area that is fraught with understandable emotion.

"What these family members are suggesting really goes to the heart of whether our judiciary has integrity or not. And also whether our judges are intelligent and are able to ask cogent questions about what's going on," she said. "I just don't buy into this (idea) that the system is rigged against the family. ... Judges have to make hard decisions with imperfect evidence and imperfect families."

No relief

Multiple families caught up in the elder guardianship system told the Journal their complaints to the bar association, various state legislators, regulatory boards, the district attorney, the Albuquerque Police Department, the attorney general and the Governor's Office produced no relief.

To the three youngest Darnell children, facing the group of elder care professionals appointed by Judge Brickhouse was intimidating and made them feel as though events surrounding their mother's fate were spiraling out of control.

"They are to assess whether you need a guardianship or not," Mary said. "Well, all those people get paid by your (parent's) estate. They get paid if there's a conflict. They get paid if they find that a guardianship is needed."

If a court visitor's final report concludes the family is not suitable to care for the elder, then, as Mary put it, "Her company gets put in as the guardian for, like, \$40,000 to \$50,000 a year. So what's the incentive for her ever to rule that you're OK and that you don't need them?" Mary asked and answered, "None."

That's what happened in the Darnell case. Court visitor Susan Stuart ultimately was assigned as permanent guardian.

For a while, the court allowed sisters Emily and Kris to be their mother's guardian, but ultimately, that did not work out when Kris resigned.

Stuart had determined that sisters Mary and Emily were "too close" and their relationship might pose a "family conflict," so she told the court they were not suitable to act as co-guardians for their mother. In the end, Judge Brickhouse moved Stuart from the court visitor position to guardian. Financial records provided by the Darnells show that for the period between January 2010 and August 2011, Stuart's Decisions in Care was paid \$52,119.69 from Blair Darnell's estate.

In April 2010, Judge Brickhouse again took attorney MacKenzie's recommendation and named Albuquerque lawyer Darryl Millet as the permanent conservator for 78-year-old Blair Darnell.

Millet is an imposing man. One family member who dealt with him said, "Millet goes after people like a pit bull," and others who have dealt with him agree.

Millett, however, says he is a dedicated professional with an excellent reputation.

Cliff Darnell is not a member of Millett's fan club.

Cliff, who like his father trains horses, described Millet's demeanor as always aggressive and mercurial. "He's one way in front of the court; he is another way in front of men ... and he can't handle a woman who's got backbone," he said.

TOMORROW: Part 4

One court appointee, multiple allegations of intimidation, financial impropriety and questionable behavior from family members.

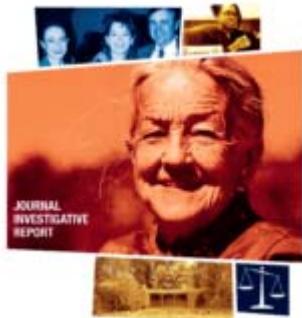


DIANE DIMOND is an Albuquerque native and recipient of the American Bar Association's Silver Gavel Award. She has covered some of the nation's biggest stories — including the murder of JonBenét Ramsey, the Michael Jackson case and the Bush-Gore election recount in Florida — in a career that has included Court TV, MSNBC and the "Today" show. She is the author of three books on the criminal justice system. Dimond's column on crime and justice appears in the Journal every Saturday.

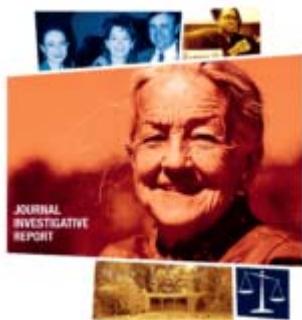
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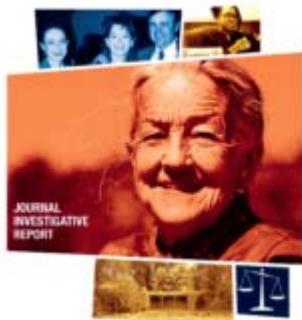


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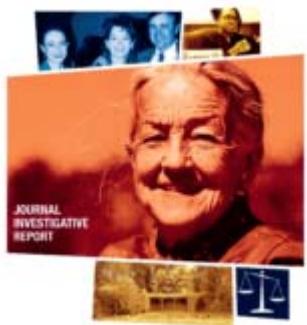


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