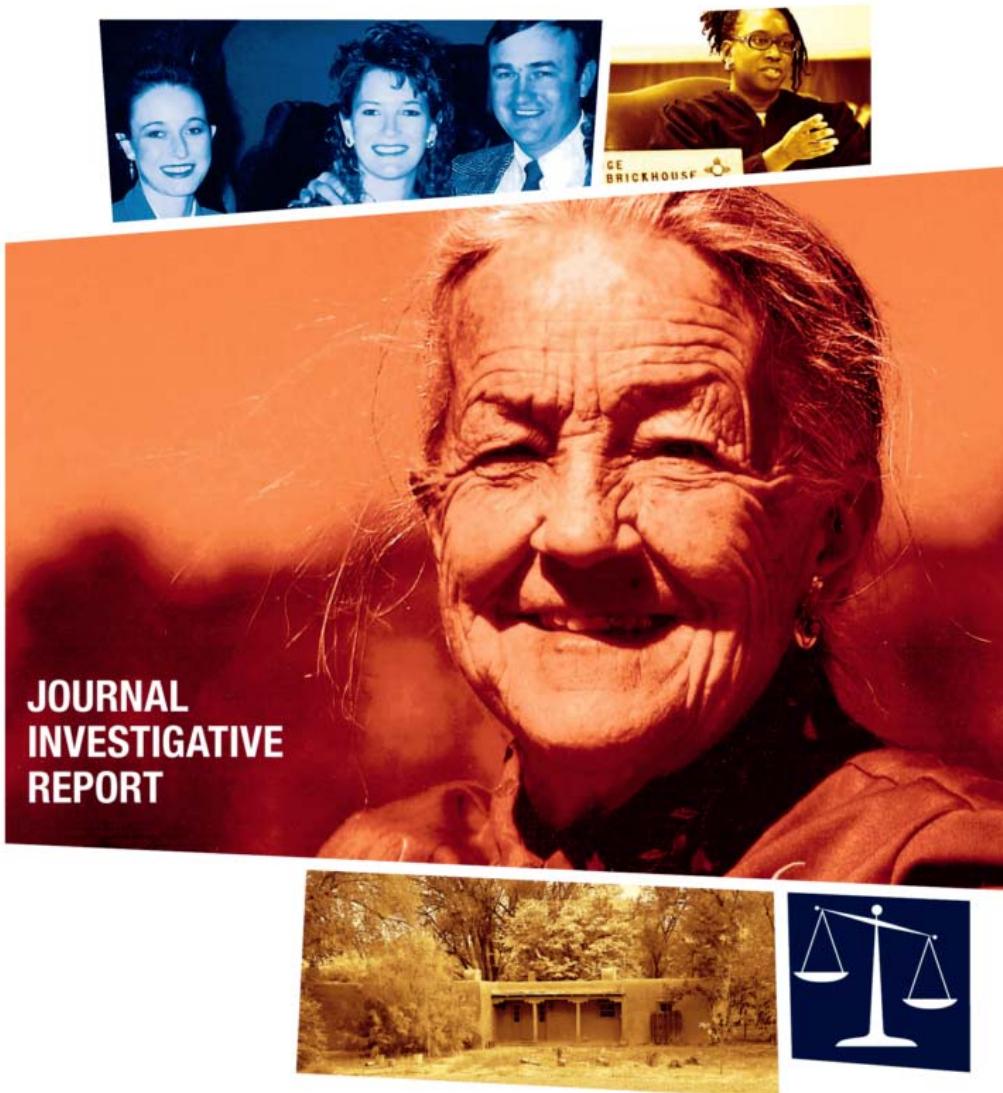


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Who guards the guardians?

By Diane Dimond / Albuquerque Journal

Published: Sunday, November 27th, 2016 at 12:05am
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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 first installment of a five-part Albuquerque Journal series.

On the late afternoon of Jan. 8, 2010, Mary Darnell was in her small ranch home in Albuquerque's bosque, indulging a cousin who was practicing her sales pitch for Ginsu knives.

Mary, one of four Darnell children, had moved back to the 17-acre horse ranch where she had grown up to become the on-site caretaker for her 78-year-old mother, Blair Darnell, who had been experiencing memory problems.

As the cousin wrapped up her cutlery presentation, Mary noticed several cars parked in front of the larger home where her mother lived about 500 feet away. Bracing the cold, Mary, then 45, headed out to check on her mother and see who had come to visit. What she encountered would change their lives forever.

In her mother's house, around the kitchen table, sat a group of unfamiliar women from an elder care company called Decades LLC.

"All these people were walking around (Mother's) house looking at everything, and I thought, this is weird," Mary said. "They hand me a stack of papers. A woman named Nancy Oriola from Decades told me there had been a court hearing and (Mother) was being put under temporary guardianship and conservatorship."

Mary said she had no idea what the woman was talking about, but among the group



Mary Darnell

of strangers in the room she saw a familiar face. Mary remembers the moment precisely. "My older sister, Kris, was there, and I was, like, 'What have you done?'"

Unbeknown to the rest of the Darnell family, Kris Darnell-Kreger's attorney, Gregory MacKenzie, had filed an emergency petition with the court two days earlier. In it, MacKenzie asked District Judge Beatrice Brickhouse to appoint professional outsiders to handle Blair's affairs – both an attorney to act as guardian ad litem to look out for the elderly woman's personal protection and a financial conservator to control her estimated \$5 million estate.

MacKenzie alleged both financial and medical improprieties, primarily against Mary Darnell, as reasons for court intervention. A review of the court docket from that time period does not list an actual hearing being held.

The next day, Jan. 7, 2010, Judge Brickhouse signed an order granting the appointments MacKenzie sought. MacKenzie's petition cites no law to substantiate the need for an emergency intervention or for it to be granted without a hearing. But the wheels of New Mexico's elder guardianship system had been set in motion, and for the next 90 days three court appointees, including a qualified health care professional, were instructed to assess Blair Darnell's situation.



District Judge Beatrice Brickhouse granted a petition to appoint professional outsiders to handle Blair Darnell's affairs. (Morgan Petroski/Albuquerque Journal)

Although the case was presented as an emergency, a full court hearing would not be held for nearly six weeks. Nonetheless, according to court documents reviewed by the Journal, Blair Darnell was already being referred to as an "adult incapacitated person."

On Feb. 16, Mary Darnell, two of her other siblings and their mother went to that initial hearing to try to understand what was happening. None was allowed to address the court to defend against the allegations made in MacKenzie's petition. The siblings' motion to remove the temporary guardian and conservator so they could continue to care for their mother was denied. At this hearing, Mary says, Judge Brickhouse received recommendations from her three temporary appointees and without speaking directly to Blair Darnell or any of her four adult children made the temporary guardianship a permanent arrangement.

District Judge Nan Nash, chief of the 2nd Judicial District Court in Albuquerque, responded to written questions from the Journal about the initial steps in the



Nan Nash

guardian system. Asked whether a judge requires a petitioning attorney to substantiate allegations made against family members, she wrote, “The guardianship petition is not taken at face value. The statutory framework includes precautions to keep that from happening.”

Asked under what circumstances a judge decides the potentially incapacitated person need not be present in court, Judge Nash wrote, “Considerations include extreme physical or mental disability.”

Mary Darnell insists her mother, who she says was suffering from early stages of dementia at that point, was perfectly capable of appearing in court.

Oriola, CEO of Decades LLC, which was brought in for Blair Darnell’s case, said in an email response to the Journal her firm provides high-quality care and defended the professional guardian system, saying it was created to protect elders from abuse by family members.

‘Ward of the court’

The legal effect of Brickhouse’s ruling was to immediately reduce Blair to protected-person status, a “ward of the court,” and strip her of all her civil rights. Blair Darnell lost her right to manage her own money, sign a contract, vote, marry, decide where she could travel, who could come into her home and what doctors and medicines she could use. Every aspect of her life was to be decided by court appointees who were strangers.

Suddenly, Blair Darnell had fewer rights than a convicted murderer.

“Everyone was being very quiet and hush-hush and scurrying around,” Mary remembered of that January afternoon she stumbled upon the baffling scene in her mother’s home. “And then they whisked Mother off because they thought my sister and I were going to get into an argument and they didn’t want her to be affected by our conversations. I’m, like, ‘Where are you taking her?’ And they said, ‘We don’t have to disclose that.’ ”

Close examination of the secretive court process that overtook Blair Darnell in her final years is both illuminating and frightening because it could happen without notice to any family with an elderly parent. It is a process designed to protect the elderly, but many New Mexico families say it does the opposite, draining hard-earned estates and often isolating seniors from the loved ones who are most familiar with their wishes.

Secrecy rules

Under New Mexico’s Uniform Probate Code, District Court proceedings that deal with cases like Blair Darnell’s are sealed off from public scrutiny to preserve the allegedly incapacitated person’s privacy. Each elder guardianship case that goes before a judge is routinely “sequestered,” meaning no court records are available for public inspection and all court proceedings are closed to the public.

None of the regular network of attorneys who appear, none of their clients and no witnesses or parties to the proceedings are allowed to speak about what has occurred in court. If they do, they face the threat of contempt-of-court charges, hefty fines and even jail. One woman says she was fined \$20,000 for confiding in a friend about the sequestered guardianship case in which she was involved.

Lawyers who speak about a particular case face disciplinary action.

A complete picture of what happens to the elderly after they enter this system is difficult to piece together without access to public documents. Therefore, the story can be told only through those family members and attorneys who dare to break the wall of secrecy.



The Darnells' home in the Albuquerque bosque is where Casey and Blair Darnell raised their four children, Kris, Cliff, Emily and Mary. (Dean Hanson/Albuquerque Journal)

Complex web

In multiple cases reviewed during a 10-month investigation, a complex web of legal maneuvering surfaced. Family members said that once the guardianship system got underway, the situation was both intimidating and overwhelming.

They were at a loss as to what kind of lawyer to hire. They felt powerless to stop the domino effect of the system on their elderly parent. Many complained that their loved one was kept isolated by court appointees and that visitations were curbed or supervised. They claimed family members were often unfairly labeled as scheming and money-hungry or "in conflict" with one another and, therefore, untrustworthy.

Some of the same for-profit professionals figure prominently in the stories told by those willing to speak.

A handful of judges hear these guardianship cases, and the same few attorneys initiate the proceedings, usually on behalf of a brother or sister who is squabbling with siblings about what is best for their aging parent. Those lawyers, in turn, recommend the court appoint from the same limited pool of guardians ad litem, permanent guardians, conservators, trustees, psychological evaluators and what are called court visitors.

In the cases examined by the Journal, judges routinely agreed to the recommendations of the petitioning attorney. The appointees are given almost absolute power to decide how the elderly wards spend their final days and how their estates – often valued in the millions – are handled.

“It really is a cottage industry,” said one Albuquerque legal insider with knowledge of the system, adding that the fees charged by these professionals “is outrageous.” That lawyer, and several others, spoke on the condition of anonymity, fearful their pending and future cases might be jeopardized if they spoke openly.

Another New Mexico attorney who represents families trying to navigate the process, but who is not among the usual network of lawyers attached to these cases, said, “It’s like the Soviet Union circa 1950. The secrecy is so oppressive.”

One lawyer who recently finished a long, complicated guardianship case in Albuquerque said he was appalled at how this part of the court system operates.

“I would characterize it as avarice-ridden,” he said. “There’s a very different dynamic in these cases than any other I’ve ever seen in a courtroom.”

No checks and balances

The courts are often the destination of last resort for family members fighting over power of attorney, estate matters or simply what to do with Mom or Dad. But even only children simply looking for legal status to conduct an elderly parent’s financial affairs have become snarled in this secretive system. What they often find is an inescapable nightmare that can last for years and can continue well after their loved one has died.

One retired Albuquerque attorney told the Journal that a family member had, in his words, “kidnapped” his now-deceased mother, overmedicated her and forged documents to take control of her estate. He says he sought advice from a lawyer with expertise in the guardian/conservatorship arena and that attorney, as a professional courtesy, warned him away from asking for the court’s help. “I discovered … there are no checks and balances,” he said.

“It’s whatever the lawyers can get and grab. They just keep billing (and) … don’t care if you report them to the ethics board.”

Desperate to help his mother during her final days, the attorney said, he went to District Attorney Kari Brandenburg. He said she told him the case was “too complicated” to pursue.

He then turned to the state’s top law enforcement officer. The office of Attorney General Hector Balderas looked into the complaint and responded with a completely redacted conclusion and a letter that said the AG lacked jurisdiction.

The letter went on to say the AG’s Office is “aware of the number of exploitation cases involving family members that occur outside the facility-exploitation context and agree that it is an issue of importance.”

Defending the system

Trust and estate litigation specialist MacKenzie, who initiated the Darnell guardianship, has extensive experience in the system. He said he could not discuss any particular case but told the Journal, “I think the system is not perfect. You know, most systems aren’t, and there’s certainly need for improvement. But the policy and the law is to impose a guardian and conservator only when it is really a last resort and under the least restrictive means.” MacKenzie says it’s the only way to truly protect an elderly person who is surrounded by a dysfunctional home environment.

But complaints from a growing number of New Mexico families cannot be ignored. They vigorously disagree that New Mexico courts impose guardian and conservatorships only as a "last resort" or that they are the "least restrictive" possible. They question what the frequently used "dysfunctional" label really means. Family members are particularly angry about secretive initial hearings at which they say they were unfairly demonized and not given a chance to rebut inflammatory allegations. Several adult children told the Journal they petitioned the court for the right to continue to care for their aging parent only to be told it was too late to change the judge's order.

Costly lawyers must be hired by the children of wards if they want to contest the ruling, but lawyers who spoke with the Journal said such challenges are rarely successful. Relatives also complained that their loved one's doctors and familiar service providers were routinely dismissed and replaced by hired strangers, causing anxiety and isolation for the elderly person. All the family members who spoke to the Journal claimed they were routinely bullied by court appointees who twisted their words and actions into something sinister, finding family conflict and dysfunction at every turn. Perhaps most perplexing to these adult children is how their parent's well-thought-out retirement preparations were ignored.

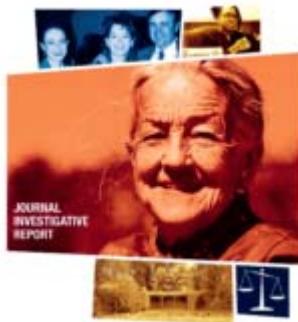
Wills, trusts, powers of attorney and other carefully compiled legal documents reviewed by the Journal were, in effect, overridden by the for-profit guardians and conservators, according to family members.

Though the documents were drawn up years earlier when the ward was of sound mind and body, the court appointees are allowed to disregard them. Guardians and conservators alone decide what should be spent, on what and when.

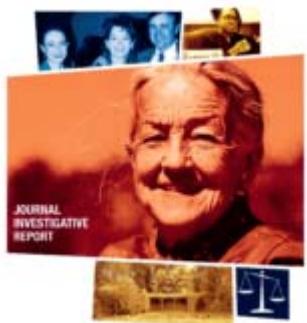
TOMORROW: Part 2: Follow the Money

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Cottage industry of guardians, conservators and caretakers can quickly drain estates



Court appointees have incredible power over elderly 'wards'... *continue reading »*



Pulling the curtain back on what families call “court-sponsored robbery.”



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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Cottage industry of guardians, conservators and caretakers can quickly drain estates

By Diane Dimond / Albuquerque Journal

Published: Monday, November 28th, 2016 at 12:05am
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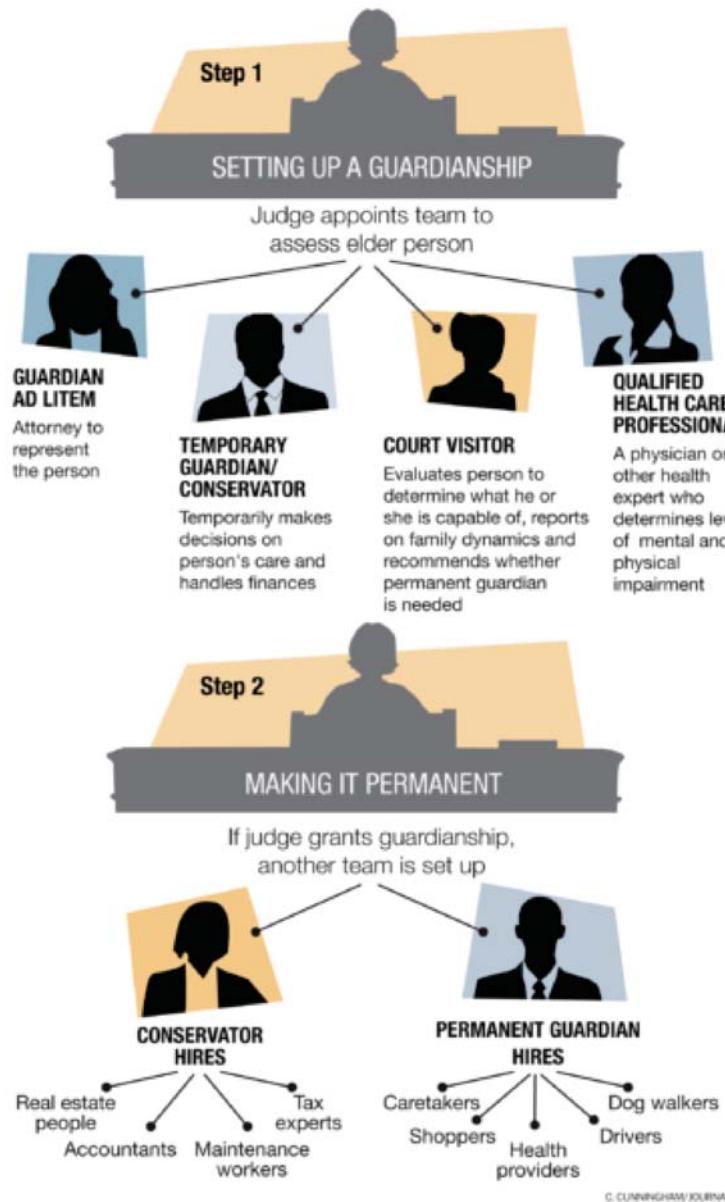
Editor's note: Investigative journalist Diane Dimond, whose weekly syndicated column on crime and justice appears in the Journal, is preparing a book on the nation's elder guardianship system. It's a system designed to protect the elderly from the unscrupulous. But as Dimond discovered, it can be dominated 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 second installment of a five-part Albuquerque Journal series.

When a family dispute over what to do with an elderly parent winds up in a New Mexico court, the lives of all involved can change dramatically.

It begins when a lawyer representing a family member, often a son or daughter, who is seeking the court's involvement files a petition asking a district judge to appoint a guardian and a conservator to take over the elder person's affairs.

What many families don't initially realize is just how much power these court appointees have over the elderly "wards of the court."



C. CUNNINGHAM/JOURNAL

During a 10-month investigation of elder guardianship cases in New Mexico, the

Journal heard consistent complaints.

Family members who did not initiate the proceeding said they were shut out of the process and their loved one was almost immediately isolated by court-appointed strangers. These adult children of wards were stunned to learn their parent's hard-earned estate was used to bankroll the entire process, a cottage industry of for-profit elder care service providers.

Fee after fee

Among the first bills paid for by the incapacitated elder is the hourly fee for those newly appointed to run his or her life. It is routine for a New Mexico attorney associated with this type of case to earn \$300 an hour or more, a guardian and conservator about \$200 an hour each.

According to lawyers familiar with the system, the elder – frequently pre-diagnosed with some sort of diminished mental capacity – also must pay for his or her own neuropsychological exam by what's called a qualified health care professional. That routinely costs close to \$1,000.

The costs for a court visitor, the court appointee who helps investigate the family dynamic, can run about \$2,000 a month. Payments to one court visitor reviewed by the Journal topped more than \$14,400. Initial costs for all these professionals add up quickly, and the appointees become inexorably enmeshed in the elder's care.

Once those for-profit professionals are in place, they communicate with the judge about their findings and ask permission to take certain major actions, such as liquidating the senior's stocks or moving the ward to a different living arrangement.

In some cases, the elder's house is sold and the person is moved to a care facility, chosen by the court appointees. If they are allowed to stay in their home, they then must pay the cadre of support personnel the guardian and conservator are allowed to hire: in-home caretakers, personal shoppers, dog walkers, landscapers, pool maintenance companies and messenger or delivery services.

In one case reviewed by the Journal, a daughter of a now-deceased elderly man who became a ward of the court says her father was charged for both a dog walker for his tiny Yorkie and a separate service that picked up the dog's waste. She says he also paid for pool maintenance for a backyard pool no one used and a messenger service to pick up his prescriptions at a nearby pharmacy that offered free delivery.

Several family members say supervision of the extra personnel is lacking.

"My mother was routinely fed a diet of McDonald's and Taco Bell," one woman said about her now-deceased mother. "Where the hundreds of dollars in groceries we paid for went is anyone's guess." She also complained that of the dozens of caretakers in and out of her mother's home, "some fell asleep on the job, items disappeared from the home and some even wore Mom's clothes. There was no one to complain to because the guardian and the conservator wouldn't talk to me."

The conservator handling the estate of a 78-year-old woman who lived on a ranch in Albuquerque's bosque used her money to install satellite TV after caretakers complained the elderly woman's television didn't get enough channels. Conservator records reflect the monthly charge of nearly \$90.

Nancy Oriola is the CEO of Decades LLC, an elder care agency that accepts court appointments to act as elder guardians and/or conservators and handled that case. She told the Journal that Decades hires various outside caretaker agencies and admitted that "from time to time, we may encounter a problem with an employee from an agency. But when those problems occur, we try diligently to rectify the issues."

It is not unusual for in-home care to drain an estate of more than \$120,000 a year. One attorney claimed the cost of care for his client's wealthy parent who had been declared incapacitated topped \$600,000 in one calendar year.

"The home care costs were absolutely unconscionable, insane," according to this Albuquerque lawyer, who is familiar with the process. "The annual cost was in the hundreds of thousands of dollars for this woman to stay in her own home," he said. An example he offered were the supermarket bills – "\$400 worth of groceries a week ... for a 98-pound lady," he said. "That's \$1,600 a month!"

Secrecy is king

Public court documents outline a pending civil suit stemming from an elder care case managed by Decades. Both the company and Oriola, its CEO, are named in the suit.

The case stems from the firm's services to a now-deceased wealthy woman whose estate was worth millions. The plaintiff alleges "that over a nine-year period Defendants mismanaged and abused Decades' position as the appointed guardian of and conservator for the decedent."

On a state website, the docket entry for this case lists the complaint as being for "Breach of Fiduciary Duty, Negligence, Unfair Practices and Accounting."

But the rest of this case is sealed – initially at the request of the petitioner, who later asked to open it up. District Judge Alan Malott declined to do so. It is not clear why, because the sealing order itself, along with any reasons for the decision, is also sealed. Malott did not respond to the Journal's request for comment.

In its response to the attempt to unseal court records, Decades calls the idea "patently flawed" and insists, "The plain language of the statutes and rules states that all records in the G/C (guardian and conservator) proceeding 'shall be confidential' and does so automatically."

If Decades prevails in keeping all the guardian/conservator documents secret, it is unclear how the civil suit can proceed in a public courtroom.

Asked to comment on the suit, Decades CEO Oriola, responding to written questions from the Journal, wrote, "It would be inappropriate to comment on the pending litigation but we will say that we believe strongly that the allegations made in that claim have no merit."

Oriola further referenced the civil suit and said, "Decades provided its client with top quality care and under Decades management she lived to be well over 100 years of age in the comfort of her own home."

In a 2007 lawsuit, Decades was alleged to have engaged in breach of fiduciary responsibility for violating court-imposed specific duties for the estate of Jeffrey Harnar, a deceased person. Decades was the case manager and co-conservator of that estate.

"The wishes of Helen Harnar were to preserve her assets so that she could remain living at home yet Decades LLC, by failing to take steps to preserve her assets, violated (her) wishes," according to the suit.

Decades also allegedly failed to file the required state reports and "did not timely file any of the court-ordered tax returns for Helen Harnar." Decades denied the allegations, and court records show the matter subsequently was dismissed.

Honor system

In some instances described to the Journal, the adult children who did not initiate the court proceeding were later banned by guardians from visiting or phoning their elderly parent because, they were told, they might "upset" their mom or dad.

As one who has been through the process put it, "Usually, the first one to the courthouse has all the rights. The rest of the kids get screwed."

When the elder's assessable money begins to run out, the conservator can, with court approval and without consulting the ward or the family, dip into trust accounts or put the elder's home up for sale, including all the contents. If the children want a keepsake from the home, they are told they must buy it from their parent's estate, the price of the item set by the conservator.

The daughter of an elderly dementia patient in Albuquerque told the Journal that her mother was perfectly comfortable and well cared-for in her original nursing home when suddenly, and without explanation, the court-appointed guardian moved her to what the daughter felt was a substandard home in the Rio Rancho area early one morning. (See photos above.)



The daughter of an elderly dementia patient said her mother was moved without her consent from a home where she had a specially decorated single room, left, to this crowded room in a home in the Rio Rancho area, above, which she had to share with a terminally ill patient. (Courtesy of Family)

The woman longed for her specially decorated single room where she had been living, her daughter said. At the new facility, she was housed with a terminally ill roommate in a double room crammed with tubes, medical equipment and medical waste. She soon developed bed sores and had chronic trouble with her feet. The worried daughter alerted an ombudsman with the New Mexico Aging and Long Term Services Department, who finally intervened and forced improvements.

If an adult child challenges his or her parent's care or the handling of the elder's finances, the guardian or conservator has the right to hire their own attorney to defend themselves. That additional lawyer is also paid for out of the ward's estate. In other words, any challenge by an heir depletes their inheritance so they have every incentive not to go back to court to ask the judge to change the arrangement.

Defending the system



“
THERE'S BEEN A LOT OF CRITIQUE ABOUT THIS SYSTEM AS BEING THIS STAR CHAMBER KIND OF SYSTEM THAT IS DESIGNED TO KEEP CONFIDENTIAL INFORMATION FROM FAMILY MEMBERS SO THAT THE PROFESSIONAL CAN PREY UPON THE ELTERS. IN MY EXPERIENCE THAT'S NOT THE WAY THE SYSTEM IS USED.

ATTORNEY **GREGORY MACKENZIE**

Attorney Gregory MacKenzie, a veteran trust and estate litigation specialist, insists the system is not difficult for family members to navigate and is not adversarial.

“There's been a lot of critique about this system as being this star chamber kind of system that is designed to keep confidential information from family members so that the professional can prey upon the elders,” he said. “In my experience, that's not the way the system is used.”

The judges who appoint guardians and conservators ultimately are responsible for approving all actions and expenditures. But as the unhappy relative of a now-deceased father put it, “The judges don't take the time to analyze anything ... they just rubber-stamp whatever the guardian says or spends, no questions asked. It's like court-sponsored robbery.”



“
I THINK OUR JUDGES ARE EXTREMELY COMPASSIONATE AND CONCERNED ABOUT THE COSTS. OFTEN THE EXPENSIVE PROCEEDINGS ARE ... BECAUSE THERE ... IS HUGE CONFLICT AMONG THE CHILDREN OF THE PROTECTED PERSON.

ATTORNEY **RUTH PREGENZER**

Attorney Ruth Pregenzer says all the lawyers at her law firm are concerned about how “enormously expensive” these proceedings can become, but she vigorously defends the judges who handle these delicate cases.

“I think our judges are extremely compassionate and concerned about the costs,” she said during an interview in her Albuquerque office. “Often the expensive proceedings are those proceedings that are expensive because there ... is huge conflict among the children of the protected person.”

Oriola of Decades LLC also defended judges her company encounters, saying they “display remarkable levels of care, compassion and patience in these cases.”

During the Journal's investigation, there were many complaints regarding how court-appointed conservators and trustees handled the wards' estates. While there is a requirement for each appointee to file an annual report with the judge assigned to the case, family members provided copies of those documents that appear to be incomplete.

According to one veteran CPA's sworn affidavit to the court in a recent case, “The documents submitted ... if they are to be a financial accounting are inaccurate and substantively deficient ... nothing more than the printout of a check register.”

Presiding Civil Court Judge Shannon Bacon in Albuquerque said she scans all appointees' report forms and admits they are “not terribly detailed.”

She told the Journal that because "New Mexico doesn't have three cents to rub together" there is no in-depth review or audit performed. Asked if it is an honor system between judge and appointee, she said, "It is."

Family members said they were frustrated they were not given a chance to directly address the judge because, they claimed, the judges only want to hear from the lawyers. In some cases, close family members say neither they nor their parent knew there was going to be a guardianship hearing. That is counter to New Mexico statute (NMSA 1978, 45-5-405), which specifically says both the person to be protected and any adult children be given written notice 14 days in advance.

Nan Nash, chief judge of the 2nd Judicial District in Albuquerque, responding to written questions from the Journal, insisted, "The judges follow the law regarding who is provided notice of hearings."

TOMORROW: Part 3 – Life Under Court Control

Inside the sad guardianship saga of Blair Darnell.

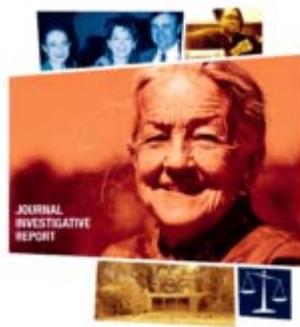


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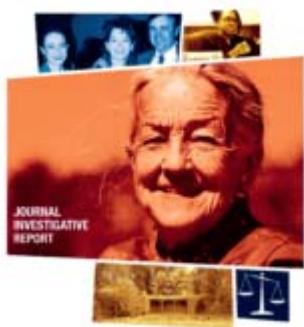
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Who guards the guardians?



System designed to protect the elderly can tear families apart... *continue reading »*



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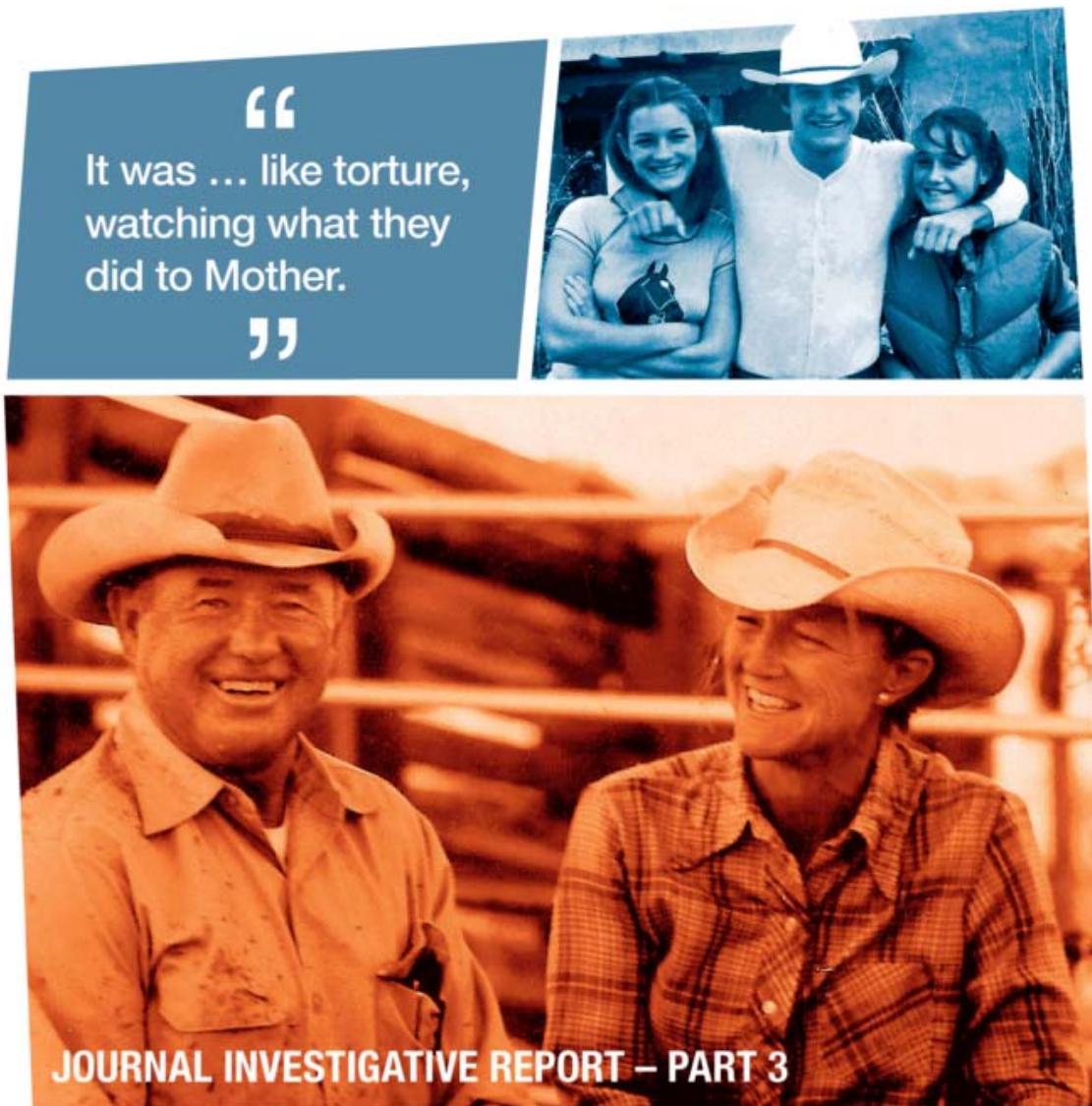
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Remember Me

Family members say they were shut out

By Diane Dimond / Albuquerque Journal

Monday, November 28th, 2016 at 11:41pm



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)

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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.

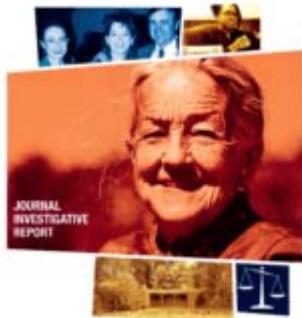


DIANE DIMOND is an Albuquerque native and recipient of the American Bar Association's Silver Gavel Award. She has covered some of the nation's biggest stories — including the murder of JonBenét Ramsey, the Michael Jackson case and the Bush-Gore election recount in Florida — in a career that has included 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.

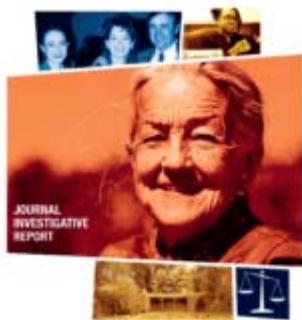
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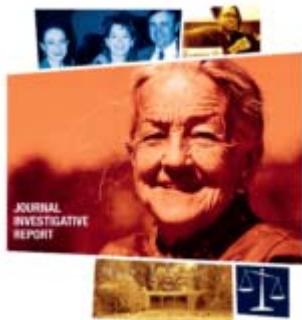


System designed to protect the elderly can tear families apart... *continue reading »*

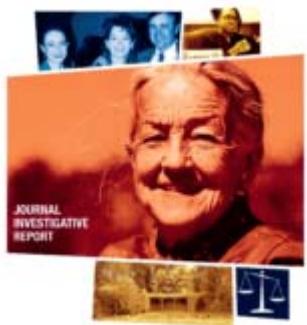


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Cottage industry of guardians, conservators and caretakers can quickly drain estates



Court appointees have incredible power over elderly 'wards'... *continue reading »*



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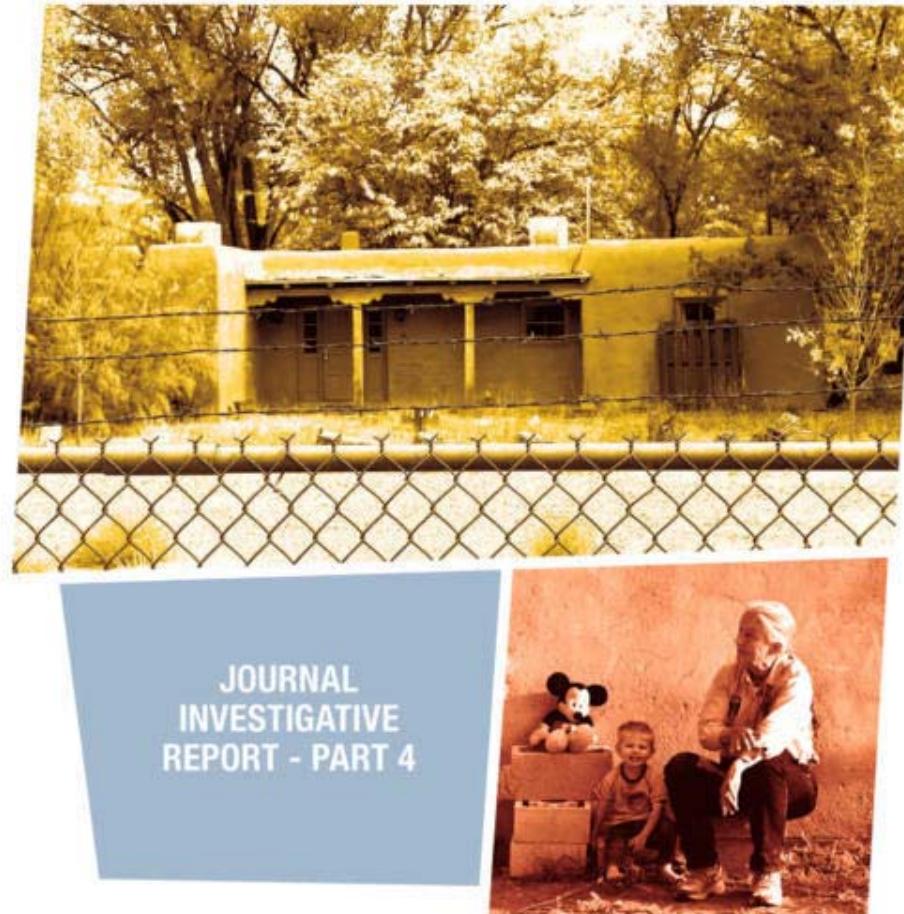
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Remember Me

Family members feel helpless when court takes control

By Diane Dimond / Albuquerque Journal

Wednesday, November 30th, 2016 at 12:02am



RIGHT: Blair Darnell with her grandson, Casey, on the ranch where she raised her children. TOP: The Darnell family's now-empty home. (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 fourth installment of a five-part Albuquerque Journal series.

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A person might take great care in planning his or her final years. How they want to spend their money, or whom they want to give it to.

But for those elderly who are declared incapacitated and become "wards" of the court under New Mexico's guardianship system for the elderly, they will have little – if any – say in how their money is spent and whether there is any left for their heirs or others they wanted to give it to.

Set up to protect the most vulnerable elderly citizens, the system has helped countless New Mexico families deal with the care of their aging and mentally challenged loved ones, even in the face of emotional family conflict.

But the system is steeped in secrecy, and the judge who presides over the civil division at state District Court in Albuquerque admits court appointees are allowed to operate on an honor system because of the heavy caseload and lack of court resources.

Once the elderly person is declared incapacitated, the system enlists a group of lawyers, a guardian, conservator, various caretakers, a health care professional and what's called a court visitor – all paid for out of the elder's estate. The appointed conservator pays all the bills.



Judge Shannon Bacon

Court appointees have been known to earn well into six-figure salaries, per case, depending on the longevity of the ward.

District Judge Shannon Bacon told the Journal that eight of the 10 judges who hear such cases in Albuquerque currently handle a caseload totaling more than 1,000 cases each.

A 10-month investigation reveals the extraordinary power and control some of these for-profit court appointees exercise over their wards.

Once the elderly people are labeled “incapacitated,” they immediately lose their civil rights. They can no longer travel alone, vote, enter contracts, decide who their doctors will be, who can visit their home or how to spend their own money. All those decisions are made by the guardian and conservator.

Many court appointees are part of a cottage industry of elder care service providers whose names repeatedly cropped up during the Journal’s discussions with unhappy and frustrated family members.

The family members say they have been pushed aside, falsely accused of neglecting or stealing from their loved one, denied the right to defend themselves against false accusations and in some cases barred from seeing their parent during their final stage of life. These family members also say it is painful and gives them a sense of helplessness as they watch their parent’s end-of-life plans being revoked and their estates drained to pay for services they don’t believe are needed.

Under vaguely written sections of the Uniform Probate Code, all proceedings in these elder guardianship cases are sequestered, held in strict secrecy, to protect the privacy of the ward. All involved, from family members and lawyers to guardians and caretakers, are warned they may face fines and/or disciplinary action if they speak about their case to anyone. Despite the restrictions, several families said they felt compelled to come forward to tell their stories.

Controversial conservator

Albuquerque lawyer Darryl Millet is a frequent court appointee serving as both a conservator and a trustee. He is no stranger to controversy. Members of several different families who have had contact with Millet accuse him of sloppy accounting, questionable business and real estate practices, and arrogant and bullying tactics against both the ward and relatives – even threats of arrest.



Darryl Millet in a mid-1990s photo from Journal archives, left, and from a more recent YouTube video.

Millet told the Journal the sequestration rule prohibits him from fully discussing most cases. He insists his job is not to focus on what the family wants but, rather, on what is in the best interest of the ward. He said the complaints against him are an “unfair characterization.”

"I have worked very hard all my life as an attorney to be honest and straightforward," Millet said. "I have a great reputation with the judges and other attorneys in town. When I am appointed as conservator, the reason ... is because the family members have shown they are untrustworthy with respect to their parent's money."

Millet says there are only four dissatisfied women who don't like him because he "didn't give them what they wanted ... and now they are smearing me all over the internet."

Millet has gotten two websites devoted to complaints against him taken down.

Mary Darnell, a daughter of one of his wards, says that a few months after her mother died she was pressured to remove a negative online comment she had posted about Millet's professional conduct.

On Jan. 12, 2016, Millet wrote an email to her lawyer, Patrick Westerfield, saying, "Here is one ... posting from Mary Darnell that must be dealt with." Fearful that the conservator Millet might hold up final disposition of her mother's estate, Mary says, she relented and removed the post.

It would take another eight months before the estate was finally settled.

Westerfield has refused several requests for an interview and in a recent email wrote, "The problems with the Guardianship system are prime examples of problems with the entire civil litigation system in New Mexico and beyond. I do believe it is a violation of the rules of ethics for me to discuss with you my representation of any current or former clients."

In another set of emails obtained by the Albuquerque Journal, dated Oct. 30, 2013, attorney Millet appears annoyed at the daughter of a deceased ward who asked for clarification of her mother's \$5,000 funeral expense. She notes that the \$1,000 cremation fee was prepaid and the services were held at her mother's home, so no extra costs should have been charged. She writes again to say she wants to come by his office to collect a \$216 check to cover the cost of printing and mailing out her mother's memorial service announcement.

Millet's response to this woman who had recently lost her mother: "As to your argumentative and occasionally insulting emails, if they continue, I will block your incoming emails. If that happens, you will have to rely on the US mail to communicate with me. Further, you are prohibited from coming to my office for any reason without my prior permission. If you disregard this instruction, you will subject yourself to a criminal trespass charge."

On the same day, the woman got an email from her attorney, Gregory MacKenzie, announcing he was quitting her case. MacKenzie had recommended the judge appoint Millet to this case.

"I think we should part ways at this point," MacKenzie wrote. "I am, frankly, just not at a point where I am comfortable dealing with the intense emotions that this case involves."

In an unrelated trust case, Millet petitioned the court to disinherit one of the deceased ward's six adult children, a daughter who alleged that some of her siblings had stolen substantial amounts of money from her physician father's multimillion-dollar estate. She challenged Millet's proposed distribution of the funds until she could obtain an independent forensic audit. This woman was then forbidden to see her father during the final months of his life.

Millet told the Journal that the doctor's trust specifically called for disinheritance of anyone who challenged the trust and that he was duty-bound to act. Millet admits District Judge Nan Nash did not agree. She declared that disinheritance was "too extreme" and reinstated the daughter's standing. Nearly three years after the doctor's death, his estate is still tied up in court awaiting that audit.

MONEY FLOWS OUT

Here are some of the expenses paid out of Blair Darnell's estate over five years.

This sampling alone topped

\$666,000

\$175,000
to conservator Daryll Millet's Albuquerque Advocates

\$12,175
to Ruth Pregenzer, acting as the court-appointed Guardian Ad Litem

\$497,464
for in-home caretakers

In another case, a family estimated their loved one's estate paid out **\$88,000** over 18 months in professional fees alone. (That did not include the caretaker costs.) Here are some of the expenses:

\$28,167
to conservator Daryll Millet

\$36,354
to Decisions in Care, which was appointed permanent guardian

\$2,118
to the court visitor

\$1,083
to Rex Swanda Ph.D. as Qualified Health Care Professional for a neuropsychological exam

C. CUNNINGHAM/JOURNAL

Tax dispute

In yet another Millet conservatorship case, two daughters of a ward said they received phone calls in early January 2015 informing them taxes had not been paid on property their mother, who was in an Albuquerque nursing home, owned in Texas. Foreclosure on the \$350,000 commercial lot was imminent.

Millet had been the woman's conservator for 25 months, but for unknown reasons, the taxes had not been paid. One of the daughters told the Journal she had become "deathly afraid" of Millet so it was decided that her 6-foot-4 brother-in-law would email the conservator to inform him of the past-due bill and ask for its immediate payment.

The email exchange swiftly became confrontational, with Millet calling the family “irresponsible.” On Jan. 13, 2015, the man appointed by Judge Clay Campbell to take care of the elderly woman’s financial obligations wrote to the family: “Because you chose not to be civil, rather to engage in personal attacks and to demand that I take action (which you have no right or authority to do) I have set my email controls to send any emails from you directly to spam. We have spoken our last to each other.”

Asked about this particular case, Millet told the Journal that because it was a sequestered case he could not speak about it. But he added, “I have one person that I am responsible to more than any other, and that is the mom or the dad who I have been appointed conservator for. I have to think about them first and the kids second.”

During an 18-month period during which Millet served as conservator for that particular estate, court documents obtained by the Journal show, Millet paid himself \$28,167.13. Decisions in Care LLC, appointed as the permanent guardian by Judge Campbell, was paid \$36,354.54. Outside legal fees amounted to \$20,398.15. In addition, the court visitor earned \$2,118.49 and the qualified health care professional, Rex Swanda, Ph.D., received \$1,083.38 for conducting a neuropsychological exam of the ward.

In a year and a half, this woman’s estate paid out more than \$88,000 in professional fees. The eldest daughter had petitioned the court for permission to continue to care for her mother’s physical and financial needs, but she was denied after the court visitor reported that she and her sister had a “history of conflict” and recommended permanent court supervision.

Final rest

After enduring five years under the rule of strangers, including several court-appointed guardians and more than 70 different caretakers in and out of her home, Blair Darnell died Nov. 18, 2015, at the age of 85. Her world had already shrunk. In October 2011, Mary, who had long taken care of her mother, was ordered by Millet to move off the property along with her longtime companion Dick Churchill and their young son, Casey.

Blair’s three youngest adult children say she had felt trapped and isolated as conservator Millet had surrounded her home with a tall chain-link fence as he prepared to sell off the rest of her 17-acre property.

And her guardian had not allowed her to attend her granddaughter’s funeral in Arkansas. The once free-wheeling and gregarious Blair was, according to her three youngest children, “living a nightmare.”

Big-ticket expenses

Working from what are described as jumbled and incomplete accounting sheets, the Darnell siblings Cliff, Emily and Mary calculate that over five years their mother’s estate paid out at least \$497,464 for in-home caretakers.

Financial documents obtained by the Journal showed conservator Millet issued checks totaling more than \$175,000 to his own Albuquerque Advocates during the course of his court appointment. The accounting, from May 2010 through April 2016, is not complete, so the total is likely higher.

“The professionals should not be allowed to feast off your whole estate until the ward dies,” Mary Darnell said. “It is barbaric and corrupt.”

TOMORROW Part 5: The Disappearing Inheritance

Critics of today’s guardianship/conservatorship system say it is the largest shift of wealth away from heirs America has ever seen.

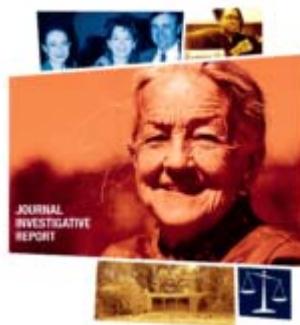


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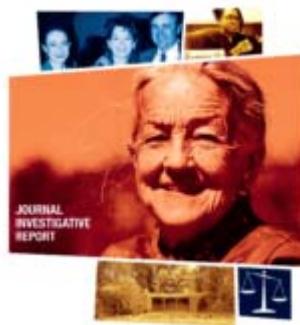
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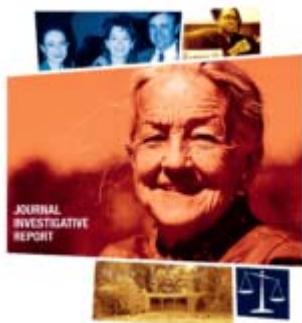


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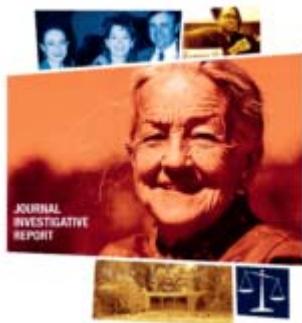


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Cottage industry of guardians, conservators and caretakers can quickly drain estates

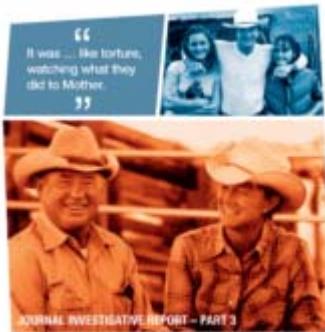


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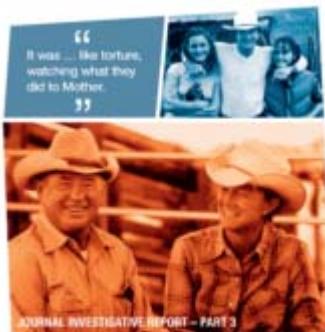


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Family members say they were shut out



Children say they were forced to watch helplessly as aged mother's \$5 million estate was nearly drained dry by court-appointed... *continue reading »*



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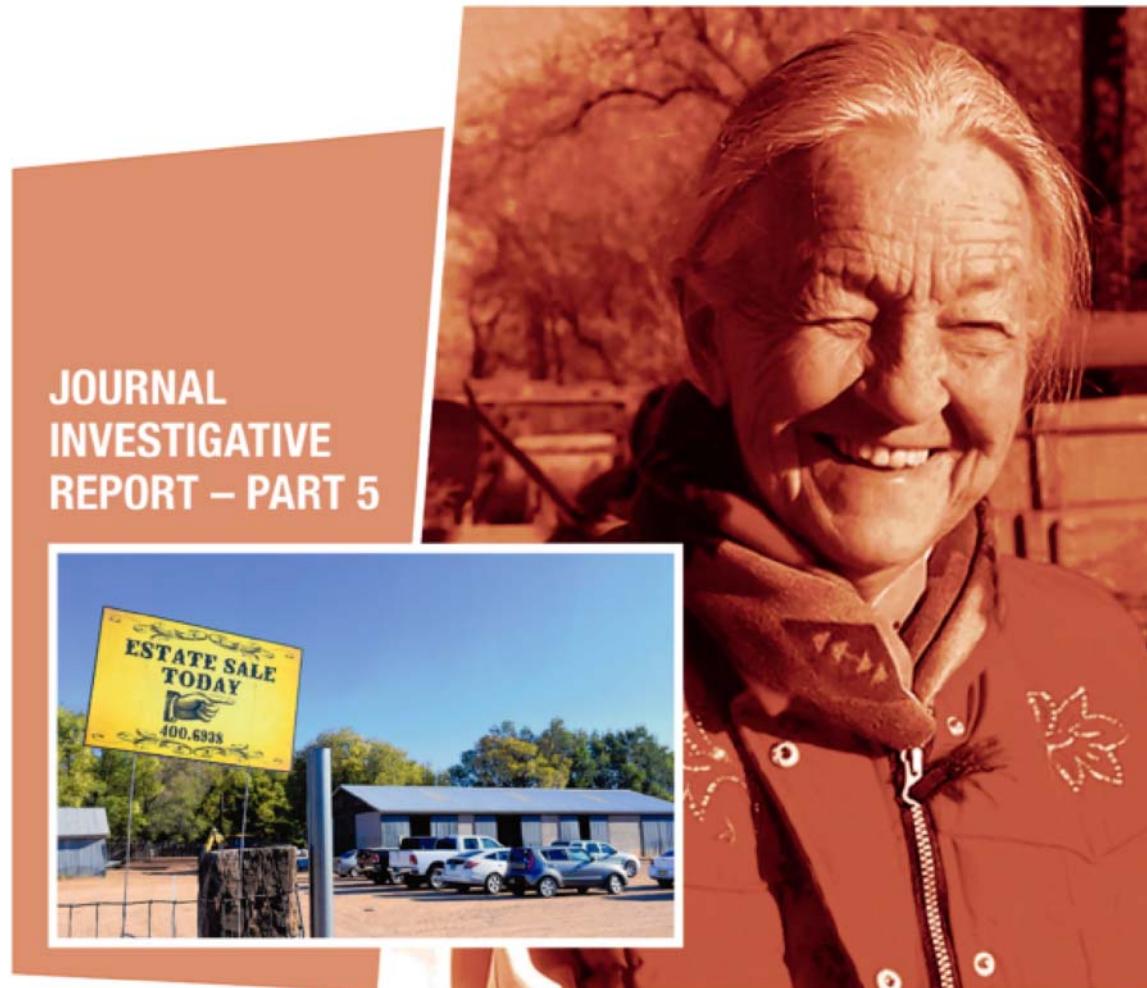
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Remember Me

Families feel steamrolled as estates disappear

By Diane Dimond / Albuquerque Journal

Wednesday, November 30th, 2016 at 11:49pm



TOP: Blair Darnell. LEFT: After Blair Darnell's death, many of her treasured items in her home were moved to a barn in Corrales, where an estate sale was held just last month. (Dean Hanson/Albuquerque

Journal) (Photo of Blair Darnell is 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 final installment of a five-part Albuquerque Journal series.

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Blair Darnell died on Nov. 18, 2015, at the age of 85. After a lifetime spent as a cowgirl and raising champion quarter horses with her husband, Casey, the last five years of her life were spent under a court-ordered guardianship and conservatorship program approved by District Judge Beatrice Brickhouse.

After Blair Darnell's eldest daughter, Kris Darnell-Kreger, disagreed with her siblings about what was best for their widowed mother and took the matter to court in January 2010, the once close-knit family fractured.

Blair, suffering early stages of dementia, was declared "incapacitated" by Judge Brickhouse, who appointed a team of for-profit professionals to, literally, take over every facet of Blair Darnell's life. As a "ward" of the court, Mrs. Darnell lost her civil rights to make her own decisions.

The Darnell estate, estimated at \$5 million when the court stepped in, dwindled to less than \$750,000. The monies were spent to pay for Blair's simple living expenses – even though she had trust and Social Security income – and for a team of court-appointed guardianship professionals. The finances were administered by a powerful court-appointed conservator named Darryl Millet.

Today, Casey and Blair Darnell's three youngest children – Cliff, Emily and Mary – continue to seethe about how their parent's beloved 17-acre ranch was divided up, dismantled and finally sold off without their consent by conservator Millet – even though a family trust was in place. Kris Darnell-Kreger has declined Journal requests to be interviewed.

Millett told the Journal he was faithful in his duties to do what was best for Blair Darnell. Court officials said Judge Brickhouse could not comment on the case.

The Darnells' cherished childhood ranch was a prime bosque property with an extensive pasture and access to the Rio Grande. It has been described as beautiful, unique and supportive of migratory bird habitat. The events that led to the family's losing the property can be tracked by court documents and other information uncovered by the Journal during a 10-month investigation. It is a complicated legal trail that, the three Darnell siblings say, was fraught with emotion and frustration and was extremely expensive for them to traverse.



The Darnell property was sold to a buyer in the fall of 2013 in what the family said was a “sweetheart” deal. The buyer sold it in April 2015 to the New Mexico Game and Fish Department for double the price. (Dean Hanson/Albuquerque Journal)

Property sale

On March 20, 2013, Darryl Millet filed a motion with Judge Brickhouse requesting a hearing to approve his plan to sell the bulk of the Darnell ranch, about 15 acres. Under rules of the Uniform Probate Code, all guardian proceedings in New Mexico are strictly sequestered, kept secret, to protect the privacy of the ward.

Despite the secrecy, and the rule that a conservator may act independently of the family and is only required to report to the judge, Cliff, Mary and Emily Darnell learned that Millet had received a \$1.54 million offer on the property from a man named Jay Rembe. Mary, who has had her real estate license for 20 years, felt that price was way too low. Through her attorney, Mary let the judge know of her professional opinion and that there was someone ready to offer much more for the ranch.

- On April 8, 2013, a sworn affidavit was filed with the court informing the judge that the Darnells’ longtime neighbor, Denny Gentry, was prepared to offer \$1.7 million for the 15-acre plot held in Casey Darnell’s “A” Trust. Gentry told the court he had expressed an interest in buying the property years earlier and that Blair Darnell had “indicated that when the property was listed, we would have first right of refusal against any offer.”
- On April 10, Mary Darnell asked the court to hold a hearing on the matter. The next day, she filed an emergency motion to force the conservator to reveal documents related to his proposed sale.

- On May 13, Judge Brickhouse held a closed hearing on conservator Millet's motion for approval of sale. Also on this day, Cliff Darnell filed his opposition to the proposed plan.
- On June 25, after a flurry of back-and-forth pleadings and affidavits, Judge Brickhouse approved the \$1.54 million offer from Rembe.

Despite that, there was no sale at this point. Because there is no transparency in this process, there is no public information available to explain why a higher offer was not pursued. And there is no way to determine why both the \$1.54 million offer and the \$1.7 million proposal ultimately fell through.



Mary Darnell with her partner, Dick Churchill, and their son, Casey. Mary was the primary caregiver for her mother, Blair Darnell, until her mother was placed under state guardianship. (Courtesy of the Darnell family)

‘Suspect’

On July 31, Mary Darnell, confused and concerned about the process, received an opinion from a real estate lawyer she consulted about the conservator's fiduciary responsibility to her family. In an email reviewed by the Journal, the Albuquerque attorney wrote that after reviewing all the information Mary had sent, he considered the sale proposal Millett had submitted to the court to be “suspect,” and said Millett should have engaged a Realtor as an independent third party.

In his letter to Mary Darnell, John Lieuwen wrote, “It is blackletter law that a trustee owes a fiduciary duty to both the present income beneficiary (Blair Darnell) and the remaindermen (the heirs). Even if the trustee’s primary charge is the current beneficiary, he cannot do anything which will compromise the remaindermen’s interest.”

On Oct. 29, Mary, with the blessing of brother Cliff and sister Emily, filed a motion asking Judge Brickhouse to require Millet to produce financial information or, in the alternative, to remove him as conservator/trustee.

The next day, before the judge could consider the motion, Millet closed on a deal to sell the Darnell ranch to Tom L. Stromei for the even lower price of \$1.4 million.

According to the purchase agreement, the sale included the entire ranch – all 17 acres, including Blair Darnell’s home and the two-acre parcel on which the home still sits. This, even though the two-acre parcel and home were protected separately in the family’s “B” Trust.

Included in the cash deal was a life estate deed allowing Blair to remain in her home on a fenced-in, one-acre parcel until she died. Upon her death, the home and land would automatically pass to Stromei.

The three youngest Darnell children call it “a suspect, sweetheart deal,” but they were powerless to stop it.

When contacted by the Journal, Stromei said he knew nothing about the back story of the land. “The property was put on the market by a real estate broker, and I purchased the property, and that’s the end of it,” he said. Stromei said he had never had any other dealings with conservator Millet, and as the conversation abruptly ended, he added, “I don’t appreciate the accusations those people make around here.”

At the beginning of the Darnell saga, Kris Darnell-Kreger’s attorney, Greg MacKenzie, provided a verified petition to the court saying the Darnell land was worth some \$300,000 an acre. That’s about \$5.1 million.

Five years later, in an improved real estate market, the conservator sold it for approximately \$82,000 an acre at the \$1.4 million price.

In the summer of 2015, Bernalillo County records show, Stromei resold the land to the New Mexico Game and Fish Department for \$2.8 million. That price calculates to about \$165,000 an acre, double the price Stromei paid. Transcripts of the Sept. 29, 2015, New Mexico State Game Commission meeting reveal that Stromei, the new owner of the Darnell ranch, originally listed the property for sale at \$3.5 million and the commissioners were delighted to have gotten it for the lower price of \$2.8 million.

The record describes the ranch this way: “The property represents one of the largest underdeveloped parcels of land fronting the Rio Grande River in this area. It provides prime access to the river and Albuquerque’s Cottonwood Bosque, supports multiple species of migratory waterfowl including many duck species, Canada geese, and sandhill crane.”

‘All by design’

The three youngest Darnell heirs, worried that the real estate deal could come back to have major tax repercussions for them, refused to sign a final settlement agreement because conservator Millet insisted he be granted protection – a waiver of liability against future legal action – before closing out the estate and disbursing the inheritance.



Blair Darnell holds her grandson, Casey, who is Mary Darnell's only child. (Courtesy of the Darnell family)

Family members believe that demanding heirs to sign such a document under adversarial circumstances calls into play a state statute that says, in part, “A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent: (1) it was induced by improper conduct of the trustee.”

Mary's lawyer wrote to her in April 2016 urging her to stop her repeated requests for a full accounting of her mother's finances and questioning the conservator's actions.

“Millet and all the other lawyers made this a complex litigation case that has many layers. All by design,” Patrick Westerfield wrote. “I do strongly recommend that you do agree to settle and move on.”

Millet and other lawyers involved in guardianship matters say they cannot speak about individual cases, but that they are professionals dedicated to protecting the wards.

The three youngest Darnell siblings decided to fight on. They sought out a veteran certified public accountant with three decades of experience in estate and trust work to pore over the incomplete financial ledgers Millet had provided.

In a sworn statement, he declared to Judge Brickhouse, “The documents submitted by Mr. Millet, if they are to be a financial accounting, are inaccurate and substantively deficient … nothing more than the printout of a check register.”

Cliff, Emily and Mary continued to insist that the court order a full accounting. Then they learned how much that would cost them.

At the end of June 2016, Albuquerque's Modrall law firm filed court papers on behalf of Millet to terminate his duties, approve all actions he had taken as Blair Darnell's conservator and trustee and to release him from any liability.

The motion also asked Judge Brickhouse to approve setting aside \$100,000 for final attorney's fees and to pay for the requested accounting. That last request rankled Cliff, Emily and Mary, who said they believe a conservator's duties should have included keeping a good accounting all along.

Cliff complains not about any one person but the system.

"If you have no transparency, you can't expect judges and lawyers to self-regulate," he said. "With their hourly wage, there's no incentive to get it done. It is wrong that (the system) is not transparent."

Not wanting to have to set aside an additional \$100,000 of their inheritance, Cliff, Emily and Mary had what one described as a "come-to-Jesus meeting." As the first anniversary of their mother's death neared, they realized the longer they fought the more money they would lose.

They decided to hold their noses and sign a final settlement in which they agreed not to take future legal action against conservator Millet. In return, the Modrall firm's request to withhold \$100,000 was dropped.

District Judge Shannon Bacon, in an interview with the Journal, discussed the court's inability to audit the appointed conservator's annual reports. She said it is essentially an honor system between the judge and the appointed representatives and said eight of 10 judges in Albuquerque who hear guardianship cases each have more than a total of 1,000 cases on their dockets.

"New Mexico doesn't have three cents to rub together," Judge Bacon said. "Every year we ask the Legislature for more money, and every year we don't get it."

Guardians and conservators are not licensed in New Mexico, although they may have acquired various certifications. Some of those certificates can be purchased online after taking a short exam.

Nancy Oriola, CEO of the elder care firm Decades LLC, which handled some of the Darnell case, said she is a proponent of licensure for guardians ad litem and court visitors. She said she is one of fewer than 100 professionals in the United States who are certified as Master Guardians.

Mostly gone

Court documents reviewed by the Journal show that when Decades was appointed as the first guardian/conservator for Blair Darnell, the firm initially valued her estate at between \$4 million and \$5 million. Recently obtained financial statements indicate the remaining balance is now less than \$750,000, to be split four ways.

On Sept. 30, Judge Brickhouse signed the agreement officially terminating the guardianship and conservatorship of Blair Darnell. It had been nearly six years of court involvement with the Darnell family and about 11 months since Blair Darnell's death.

"I want it to be over," Emily told the Journal. "I want to get on with our lives ... (but) they have a way of perpetuating things," she said. "How do you fight this if you are a normal human being? What do they want? They already got (Mother). They took her final years ... and almost all her money. Aren't there some checks and balances that say enough is enough?"

COMING SUNDAY: Are there solutions?

This concludes the Journal's five-part series on the problems and heartache many families experienced after their elder loved ones became wards of the state of New Mexico. On Sunday, reporter Diane Dimond offers some solutions proposed by affected families and advocates ready to fight for change.

- Part One: Who guards the guardians?
- Part Two: Court appointees have incredible power
- Part Three: Family members say they were shut out
- Part Four: Family members feel helpless when court takes control



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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