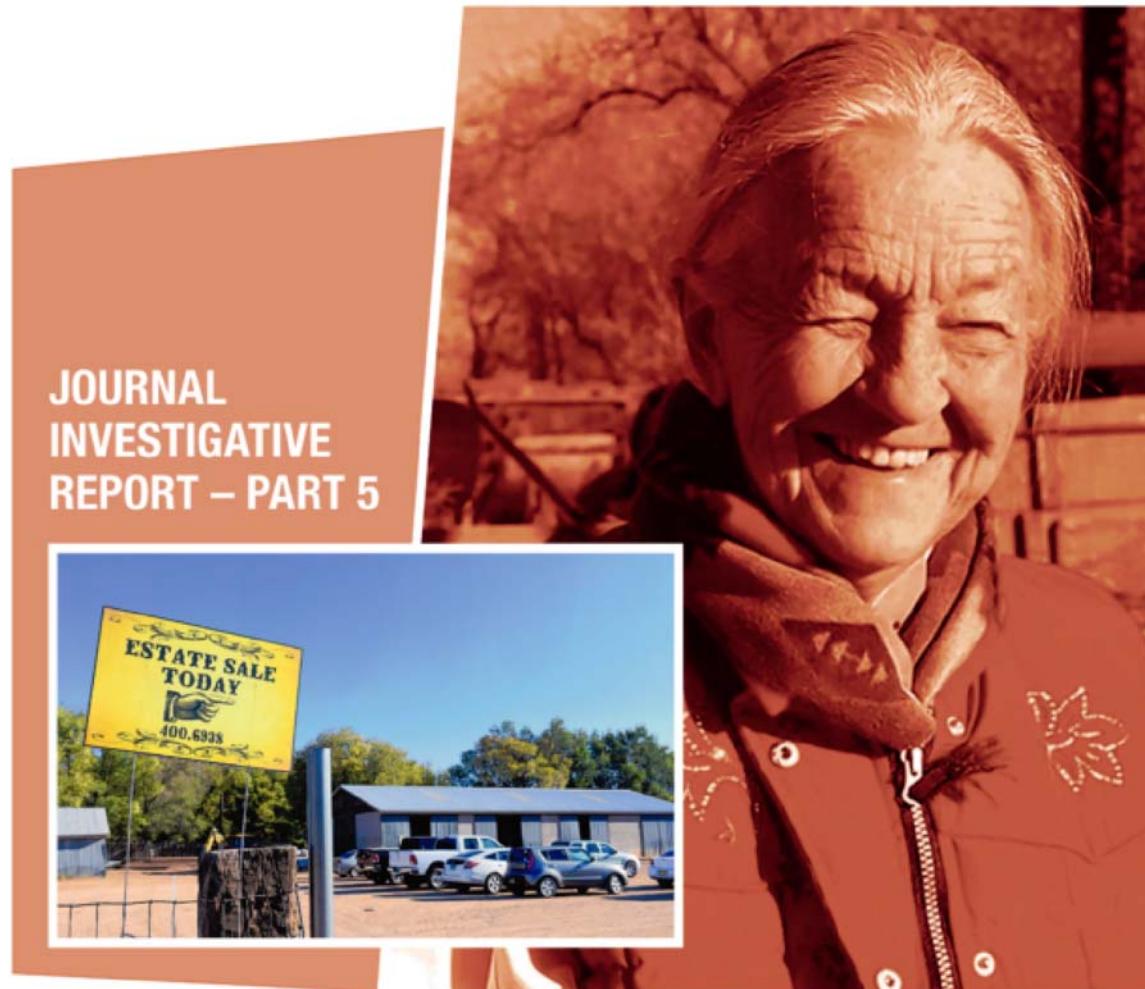


Remember Me

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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