

This is a recent exchange of emails between Jerry Frank Jones and an attorney who is representing a daughter who was the caregiver for her mother. This illustrates numerous problems that frequent occur when one person, whether family or otherwise, care for an elderly person.

Lawyer Smith wrote to Jerry Jones:

Jerry, The other question I had was whether a daughter who lived with and took care of her mother during the last years of life is entitled to any claim for her time and efforts against the mother's estate. There are only 2 sisters that are beneficiaries, and the one living with mom commingled her money and mom's to some extent and probably used some of mom's money, but with mom's permission. Now, other sister who had no part in taking care of mom is claiming misappropriation, etc. The will says 50/50. Is the loving, caring, considerate sister entitled to any reimbursement when the dollars and cents are added up? Let me know if you know anything off the top of your head. Thanks,
> Lawyer Smith

Jones's reply to Smith: My gut reaction: There ought to be some relief for your client. On the other hand here are the problems I see (and I am going to say it in a tough fashion),

1. This comes up all the time. Frequently the caregivers, after death, stick out their hands for compensation when there was no agreement (or at least no written agreement or not one that can be verified by anyone other than the deceased and the claimant.)
2. Was the caregiver doing this because they were, to use your words, "loving, caring, considerate" or for compensation?
3. The commingling is awfully hard to get around. If your client was taking care of mom I assume there is some sort of a fiduciary relationship (did she have a power of attorney?) or at least a confidential relationship. Either generally shifts all of the burdens to your client to show what happened and that it was fair. This can be complicated by the deadman's rule that you cannot testify to transactions with a dead person unless you have independent corroboration.
4. A bit more sympathetic is mom supporting your client while she was taking care of mom, but that may turn out to be the compensation.
5. I have not had to research in a long time but I generally believe "no tickie no laundry" (nothing in writing, no compensation).
6. While one child is taking care of the parent, the other children should not be expected to closely supervise or question their conduct.
7. Finally, our local judge may not be very sympathetic. He sees a variation on this all the time when a caregiver has made it into the will or where there have been substantial gifts to the caregiver. I don't think he looks on that with much favor. This is not as bad a situation provided the commingling can be straightened out and the use of funds is fairly incidently to mom and daughter living together.

Some Important questions that might effect the outcome: Would be the amount of these offsets, are there any witnesses that mom wanted daughter compensated or not charged for any uses, the qualify of care and how much would have been spent if mom had been put into a nursing home.

It does seem if good daughter is going to be charged for commingling and use of funds, that equity would allow an offset for the "quantum meruit of her efforts." At least to get her to zero.

I don't know if that wins the day but they are legitimate issues. If you research, let me know what you learn

jerry