An Overview of the Florida Statutes Dealing with Elder Abuse

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Historically, Florida has a large retirement population most of whom are over the age of 65. As many retirees grow older, they suffer from diminished capacity and become susceptible to being taken advantage of. Florida has two statutes designed to protect those people at risk. This article is limited to focusing on aging as the cause of susceptibility rather than other disabilities that may affect a person.

Chapter 415 of the Florida Statutes is titled “Adult Protective Services”. This statute does not specifically deal with age classifications but protects “vulnerable adults”. A vulnerable adult is defined as “a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.”

Chapter 825 of the Florida Statutes is titled “Abuse, Neglect, and Exploitation of Elderly Persons and Disabled Adults”. This statute defines an elderly person as someone 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person’s own care or protection is impaired. This is a criminal statute but Florida Statute 772.11 provides a civil remedy for a violation of Chapter 825.

Both statutes speak of an adult being “impaired”. Chapter 415 tries to further define being “impaired” as when an adult “does not have the ability to perform the normal activities of daily living or to provide for his or her own care or protection” because of the “infirmities of aging. This is a wide open definition which should not be a high hurdle to overcome.

1 415.102(27)
Chapter 825 seems to limit this definition slightly by imposing a minimum age requirement of a person being at least 60 years old and who is suffering from the infirmities of aging as manifested by advanced age, if the ability of the person to provide adequately for the person’s own care or protection is impaired. Again, this language is circuitous and as long as you can establish that the “elderly person” was taken advantage of the argument can be made this “elderly person” was impaired. Again, not a high hurdle.

Chapter 415 mostly focuses on mandatory reporting requirements for abuse, protective investigations by the state and interventions by the state. However, near the end of this chapter is a provision that provides for civil actions that can be brought on behalf of “the vulnerable adult with the consent of that person or that person’s guardian, or by the personal representative of the estate of a deceased victim without regard to whether the cause of death resulted from the abuse, neglect, or exploitation.” The action would be against the perpetrator who abused, neglected, or exploited a vulnerable adult. This section does not define the action brought but would appear that all the plaintiff must prove is that the “vulnerable adult” was abused, neglected or exploited. A plaintiff can recover actual damages on behalf of the vulnerable adult but even if those damages are small the vulnerable adult can also recover punitive damages “for any deprivation of or infringement on the rights of a vulnerable adult.” The prevailing party is entitled to an award of attorney’s fees and costs.

Fla. Stat. 772.11 provides for a civil remedy for any person who proves by clear and convincing evidence he or she has been injured by reason of a violation of Fla. Stat. 825.103(1). The cause of action under this section is for actual damages trebled, with a minimum amount of damages of $200.00 plus attorney’s fees and costs. Punitive damages are not allowed under Chapter 825. If the plaintiff brings an action not founded on substantial fact or legal support, the Defendant would be entitled to attorney’s fees and costs. Interestingly, unlike Chapter 415, the cause of action is not extended to a personal representative on behalf of a deceased victim.

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2 415.1111
3 415.1111
Chapter 415, provides that a vulnerable adult (or the guardian or personal representative) has a cause of action against the perpetrator based upon abuse, neglect or exploitation as defined in Chapter 415.

Chapter 415 defines Abuse as “any willful act or threatened act by a relative, caregiver, or household member which causes or is likely to cause significant impairment to a vulnerable adult’s physical, mental, or emotional health. Abuse includes acts and omissions.” 4 825.102 defines abuse of the elderly as an intentional infliction of physical or psychological injury upon an elderly person, or an intentional act that could reasonably be expected to result in physical or psychological injury or active encouragement of any person to commit an act that results in physical or psychological injury. I am unsure of what the damages would be or how those damaged would be proven in a civil action for abuse.

Fla. Stat. 415.102(16) defines Neglect as “the failure or omission on the part of the caregiver or vulnerable adult to provide the care, supervision, and services necessary to maintain the physical and mental health of the vulnerable adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, which a prudent person would consider essential for the well-being of a vulnerable adult. The term ‘neglect’ also means the failure of a caregiver or vulnerable adult to reasonably try to protect a vulnerable adult from abuse, neglect, or exploitation by others.” 5 Fla. Stat. 825.102(3) has a similar definition.

Exploitation is where much litigation will be focused. Exploitation in Chapter 415 is defined as meaning a person who “stands in a position of trust and confidence with a vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, a vulnerable adult’s funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult; or knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, the vulnerable adult’s funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult.”

4 415.102(1)
5 415.102(16)
Exploitation is further defined as including “breaches of fiduciary relationships, such as the misuse of a power of attorney or the abuse of guardianship duties, resulting in the unauthorized appropriation, sale, or transfer of property; the unauthorized taking of personal assets; misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult from a personal or joint account; or intentional or negligent failure to effectively use a vulnerable adult’s income and assets for the necessities required for that person’s support and maintenance.”

This last definition of exploitation should give all fiduciaries pause. If the beneficiary of a trust or the principal under a durable power of attorney is someone suffering from the “infirmities of aging” and the trustee or agent breaches a fiduciary duty owed to that beneficiary or principal, then that trustee or agent might face a lawsuit for exploitation and be subject to punitive damages besides any of the other civil cause of action such as breach of fiduciary duty.

Under Chapter 825, exploitation is defined as “knowingly obtaining or using, or endeavoring to obtain or use, an elderly person’s or disabled adult’s funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person.” This exploitation must be by a person who stands in a position of trust and confidence with the elderly person or who has a business relationship with the elderly person or by a person who knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent.

Exploitation under Chapter 825 also means a “breach of a fiduciary duty” to an elderly person by the person’s guardian, trustee who is an individual, or agent under a power of attorney which results in an unauthorized appropriation, sale, or transfer of property.” An unauthorized appropriation occurs when the elderly person does not receive the reasonably equivalent financial value in goods or services, or when the fiduciary violates any of the following duties:

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6 415.102(8)(b)
7 825.103(1)
1. For agents appointed under chapter 709:
   a. Committing fraud in obtaining their appointments
   b. Abusing their powers;
   c. Wasting, embezzling, or intentionally mismanaging the assets of the principal or beneficiary; or
   d. Acting contrary to the principal's sole benefit or best interest.

2. For guardians and trustees who are individuals and who are appointed under chapter 736 or chapter 744:
   a. Committing fraud in obtaining their appointments;
   b. Abusing their powers; or
   c. Wasting, embezzling, or intentionally mismanaging the assets of the ward or beneficiary of the trust;

Exploitation is further defined in Chapter 825 as misappropriating, misusing, or transferring without authorization money belonging to an elderly person from an account in which the elderly person placed the funds, owned the funds, and was the sole contributor or payee of the funds before the misappropriation, misuse, or unauthorized transfer. The accounts considered are personal accounts; joint accounts created with the intent that only the elderly person enjoys all rights, interests, and claims to moneys deposited into such account; or convenience accounts created under s. 655.80.8

Exploitation can also be found when a caregiver or a person who stands in a position of trust and confidence with the elderly person intentionally or negligently fails to effectively use an elderly person's income and assets for the necessities required for that person's support and maintenance.9

Chapter 825 also creates a permissive presumption of exploitation when "any inter vivos transfer of money or property valued in excess of $10,000 at the time of the transfer, whether in a single transaction or multiple transactions, by a person age 65 or older to a non-relative whom the transferor knew for fewer than 2 years before the first

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8 825.103(1)(d)
9 825.103(1)(e)
transfer and for which the transferor did not receive the reasonably equivalent financial value in goods or services creates a permissive presumption that the transfer was the result of exploitation."  

This permissive presumption applies regardless of whether the transfer or transfers are denoted by the parties as a gift or loan, except that it does not apply to a valid loan evidenced in writing that includes definite repayment dates. However, if repayment of any such loan is in default, in whole or in part, for over 65 days, the presumption applies.

These statutes dealing with elder abuse are broad and will undoubtedly become the basis for much litigation. As litigation develops in this area one adverse consequence could be the reluctance of honest caregivers to get involved in the affairs of the elderly. Professional caregivers may be especially reluctant to get involved when considering Fla. Stat. 709.2112(4) which prohibits most individual professional caregivers given a durable power of attorney from receiving compensation.

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10 825.103(2)
11 825.103(2)(a)