

Cambridge lawyer gratified by win for dying client

By: Kris Olson October 29, 2015



LEONARD FRISOLI

Cambridge lawyer Leonard A. Frisoli calls it the most gratifying win of his 18-year career. He only regrets that his client will be unable to enjoy the spoils of his victory.

Frisoli and colleague Zaheer Samee recently secured a verdict on behalf of Gail M. Fournier, recovering — at least in theory — more than a million dollars that her longtime life partner, John P. “Jack” Clinton, had intended to leave her upon his death last year.

But should Fournier’s adversary, Jack’s son, John M. Clinton, decide to appeal the Middlesex Superior Court jury’s decision, the pancreatic cancer that has Fournier under hospice care likely will have taken her life.

When Frisoli recently visited his client for her approval to substitute her videotaped deposition for live testimony, he walked in on Fournier’s doctor explaining how her pain could be treated either in the hospital or at home, but that she had only a matter of weeks to live.

“It was the saddest thing I’ve ever heard,” he says.

After a six-day trial, the jury concluded that John M. Clinton had obtained a power of attorney, which enabled him to remove Fournier’s name from accounts she and Jack had held jointly and empty them of \$1,039,000.

The case turned on a series of events that unfolded quickly, beginning in October 2013, when Jack executed a power of attorney, health-care proxy and will, dividing his estate equally between his son and Fournier, whom he had dated for 38 years and with whom he had lived in Watertown for 23 years. Fournier had become Jack’s caretaker as his health declined due to strokes, seizures, Parkinson’s disease and the onset of dementia. About a week later, Fournier got her cancer diagnosis.

Believing she would no longer be able to tend to Jack’s needs, Fournier arranged for Jack’s son to care for him at his house in Plymouth. The defense theory at trial: this was Fournier breaking things off with Jack, kicking him out of the apartment they shared. The subsequent effective unwinding of his estate plan to his son’s sole benefit, the theory went, was in keeping with Jack’s wishes.

The jury didn’t buy it.

Frisoli and Samee demonstrated to the jury that Jack had not been kicked out; rather, Fournier took pains to explain Jack’s medical needs to his son. And, in what would later reveal itself to be an unwitting misstep, she also made John aware for the first time of the extent of his father’s wealth.

By the end of the trial, the jury apparently was convinced that the son had then embarked on a plot to remove Fournier from the equation, aided by his mother — Jack’s ex-wife — and her attorney, Francis X. Olivieri of Somerville, who showed up at the Plymouth assisted living facility into which his son had checked him, leaving with a power of attorney that granted John authority over his father’s affairs, according to Frisoli.

Frisoli says the son wasted little time, beginning to transfer funds out of Fournier and Jack’s joint accounts and into new accounts under his sole control the very next day. He also replaced Fournier’s name with his own as beneficiary on Jack’s IRA and CD accounts.

According to Frisoli, the son also took steps to prevent Fournier and Jack from communicating with one another, placing Fournier’s name on a “no call” list while Jack was in a Plymouth hospital and also moving his father to two other facilities where the father did not have a telephone.

Other actions also helped cast the son in a negative light, Frisoli says. There was the Do Not Resuscitate order he signed as his father’s health-care proxy on Christmas Eve 2013, while his father was in the hospital. Then, on the day his father died the following May, his priority apparently was not notifying Fournier but rather attempting to deposit a

\$140,000 check written on a Fidelity account his father and Fournier held jointly, a transaction that the institution

blocked.

The legal battle, Frisoli says, was rough, with the defense opposing motions for a speedy trial and to have video of Fournier's deposition played for the jury. On the other hand, he notes, the defense never introduced any evidence that father and son had been particularly close, leaving unchecked testimony from nursing home staff and others who had heard Jack accuse his son of stealing his money.

Frisoli credits Judge Joshua I. Wall with keeping the wheels of justice moving, bringing the case to trial in 14 months and even sending the attorneys revised jury instructions on a Sunday afternoon.

Calls to the younger Clinton's lawyer, Craig E. Rourke of Saugus, and Olivieri were not returned as of press time.

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