

When Older Adults Make Bad Decisions

By D. Chalgian © 2023

When new clients come in and tell me that an older adult in their family is allowing a ne'er-do-well family member to live with them, and that the ne'er-do-well is financially exploiting the elder, we have "the talk".

The goal of "the talk" is to help this anxious client distinguish between the types of decisions older people make, and which ones a lawyer can do something about.

We start with the proposition that older people want to exercise autonomy in their choices, like they always have. And to the extent they can still understand the consequences of their decisions, they are entitled to do so. As I often tell clients struggling with concerns about older loved ones: Just because someone is old doesn't mean they can't make bad decisions. We all do that.

As a lawyer, all I can do is advise a client as to the circumstances that have to exist in order for a court to intervene and protect the older adult, and then, if those circumstances exist, represent the client in those proceedings.

But a court will only get involved to protect people from their own decisions if it can be shown that because of some problem with the way their brain works, they no longer have the wherewithal to make rational decisions. That's why courts often require medical evidence, such as a diagnosis of Alzheimer's disease

or proof of some other form of age-related cognitive impairment, before allowing a case to be filed. Without that, a court has no authority to tell someone what they can or cannot do, no matter how objectively bad their decisions may appear to be to those around them.

When a client comes in and describes a situation in which they believe the older adult is being exploited, we start with a discussion of whether that older adult has displayed any signs of cognitive impairment. Often there is evidence of cognitive impairment, either because of a diagnosis that has already been made, or simply by way of the elder's behaviors. In those cases, going to court may be an option.

But in those cases where the elder has not been formally diagnosed, and where there is no other evidence to suggest that the elder's mental faculties are declining, the consultation turns to helping the client empathize with the situation in which the older adult finds themselves, and reflecting on the question: Why, if they are not cognitively impaired, are they allowing themselves to be taken advantage of?

Typically, the answer is a combination of one or more of the following:

They want the company

It's hard to understate the mental health implications of loneliness in older adults. While a minority of elders



enjoy being alone, most old people (old and young) want someone to talk to. If the elder doesn't have sufficient contact with friends or family members, they may decide that having a less-than-ideal roommate is better than having no human interaction at all.

As I tell clients, sometimes it's just a matter of having someone to eat chips and watch Jeopardy with them.

When clients might suggest that they, or some other friends or family members could fill that void, I try to help them see the options through the eyes of the elder. From what I have seen, elders will typically make compromises on the company they keep in order to have someone near them who isn't trying to tell them what to do, or pass judgment on the way they decide to live. Often, for all their other defects, a ne'er-do-well may fit that bill more than others.

They want this ne'er-do-well to be happy

Sometimes it's more (or also) about the needs of the ne'er-do-well. An adult child who never launched, or who launched and failed, moves back home and becomes financially dependent on the parent. Or a grandchild is struggling in life and doesn't have any place else to turn. A competent adult (including an older adult) is free to sacrifice their own best interests to provide security for a person they love. I tell clients that I imagine the older adult may be thinking: S/he may be a ne'er-do-well, but they're my ne'er-do-well.

The fear of losing control

Maybe the biggest issue is the sense of control that having someone live in the home may provide the elder. Every elder

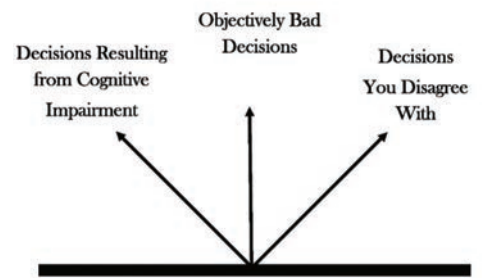
knows (or suspects) that some well-meaning family member is whispering about when the elder will get to the point of needing institutional care, and the vast majority of elders live in fear of the day that they will be forced to move out of their home. Having someone live with them who can get the groceries, help them up if they fall, or just help them feel safe at night, is often the main motivator for allowing someone to move into the house. I find that to be true even when the elder knows that their roommate is taking advantage of the situation for their own purposes.

Not Always in the Family

Similar dynamics and issues come up at times when the concerning relationship is with someone other than a familiar friend or family member. Similar concerns may come up when an older adult is dating or decides to get married. In some of those cases, an older person may well understand that the other party to the relationship is not in it for love, but is looking for financial security or some other benefit from the relationship. The point is: If they can understand what's going on, and make a decision to stay with that person notwithstanding, there really isn't anything the law can do to "protect" them.

Conclusion

Clients often express concerns about decisions that older friends and family members are making. Sometimes there is a remedy for their concerns through the legal process. But not always. Lawyers and courts can only intervene when an elder's decision is a product of a cognitive condition which impairs their capacity to understand the consequences of their choices.



In explaining when lawyers and courts can get involved in protecting older adults from dangerous decisions, I try to help clients distinguish between the types of decisions that can be a cause for concern.



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