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WHITE PAPER ALERT

ELDER ABUSE - STATUTE OF LIMITATIONS

2 YEAR STATUTE OF LIMITATIONS FOR DEPENDANT ADULT-ELDER ABUSE

Benun v. Superior Court (04 C.D.O.S. 9359)

Sam Benun filed suit alleging elder abuse and related claims. Mr. Benun claimed his mother, Fortune Benun, was abused while a resident of Country Villa resulting in her death within days of her discharge from the facility. Benun alleged Country Villa employees committed multiple acts of elder abuse when handling his mother and that her poor mental condition rendered her insane during her residency thus tolling the limitations period.

Country Villa filed a motion seeking judgment on the pleadings as to the cause of action for elder abuse on the basis that the statute of limitations expired prior to Mr. Benun's filing of the suit. Country Villa argued that the governing statute of limitations required an action for injury against a health care provider, based upon professional negligence, be brought within three years after the date of injury or one year after the injury's discovery, whichever occurs first. CCP § 340.5. Country Villa further argued the statute of limitations tolling provision for insanity did not extend the time to commence the action.

Benun argued that, under the recent Supreme Court case Covenant Care, the limitations period for professional negligence actions (CCP § 340.5) only applies to actions against health care providers based on professional negligence, and his action was for elder abuse against Country Villa in their capacities as elder custodians.

The court of appeal held that Benun's elder abuse claim was not governed by the limitations period applicable to professional negligence actions against health care providers (CCP § 340.5). The court reasoned that California Supreme Court cases regarding the elder abuse statute have established that a cause of action for custodial elder abuse, whether against a health care provider or not, is a separate and distinct cause of action from one for professional negligence against a health care provider. The court noted that the Elder Abuse Act has an independent purpose of establishing heightened remedies protecting a particularly vulnerable part of the population from gross mistreatment and governs abuse or neglect committed with greater culpability than acts of simple professional negligence. The Court therefore concluded that the two year statute of limitations on actions for assault, battery or

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injury to an individual caused by a wrongful act (CCP § 335.1) was facially applicable to elder abuse actions and that the limitations period is tolled during periods of insanity.

Bottom Line: This case stands for the proposition that the standard 2 year statute of limitations for a tort (CCP§ 335.1) applies to causes of action for Elder Abuse. However, neither the parties nor the court addressed the potential application of California's 3 year statute of limitations (CCP § 338) for suits imposing liability based upon a statute. The California Supreme Court has been clear in their past discussions of the Dependant Adult-Elder Abuse cause of action as being solely a creature of statute (W&I § 15600, et seq.). As a result, we continue to believe, that if and when this issue is raised by the plaintiffs' bar the court will find a 3 year limitation period applies to Elder Abuse actions under CCP § 338.

Note: This opinion is not final. It may be withdrawn from publication, rehearing may be granted or the Supreme Court may grant review in which case the opinion would be unavailable for use as authority.

If you have any questions or desire further information on this, or any other topic, please contact:

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