

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NICHOLE MARIE KEGERREIS,

Defendant-Appellant.

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UNPUBLISHED

July 30, 2009

No. 284528

Wayne Circuit Court

LC No. 07-013020-FH

Before: Fitzgerald, P.J., and Talbot and Shapiro, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of second-degree vulnerable adult abuse, MCL 750.145n(2), and was sentenced to four years' probation, with the first six months in jail. Defendant appeals as of right, challenging only the sufficiency of the evidence. We affirm.

MCL 750.145n(2) provides in pertinent part:

(2) A caregiver or other person with authority over the vulnerable adult is guilty of vulnerable adult abuse in the second degree if the reckless act or reckless failure to act of the caregiver or other person with authority over the vulnerable adult causes serious physical harm or serious mental harm to a vulnerable adult.

In turn, for purposes of this statute, "reckless act or reckless failure to act" is defined as

conduct that demonstrates a deliberate disregard of the likelihood that the natural tendency of the act or failure to act is to cause physical harm, serious physical harm, or serious mental harm.

And MCL 750.145m(r) defines "serious physical harm" as "a physical injury that threatens the life of a vulnerable adult, that causes substantial bodily disfigurement, or that seriously impairs the functioning or well-being of the vulnerable adult."

Defendant acknowledges that she was a caregiver for Marjorie Kochik, an amputee with dementia and Alzheimer's, and that Kochik was a vulnerable adult. Further, defendant concedes that the evidence may have established that physical harm occurred to Kochik, but she claims

that the evidence was insufficient to show a reckless act or reckless failure to act, and was insufficient to establish that she was the cause of any serious physical harm to Kochik.

The record indicates that emergency responders summoned to defendant's home noted that Kochik's room smelled of vomit, which was present upon her clothing, as well as feces. Kochik was having trouble breathing and was "not well." She was dirty, had a "stench" from her body, had overgrown toenails, and her hair was matted and full of lice. She was found lying on a stained mattress with no sheets in a room that was filthy and in disarray. The windows to the room were closed and the room did not have a fan, even though the outside temperature was in the 80s. Kochik was taken to the emergency room while suffering from respiratory failure and severe dehydration. At that time, she was wearing a dirty bra and pants or shorts that appeared to be soaked with urine. She also suffered from body lice, sepsis, conjunctivitis, a rash in her inner ear, a urinary tract infection, an anal rash, and a yeast infection. A doctor had examined Kochik four months earlier and had given her a clean bill of health. However, defendant admittedly suffered from fibromyalgia, and an inference arises that this impeded her ability to care for Kochik during the interim. The trial court concluded that, as a result, defendant had a responsibility to see that Kochik received alternative care. The trial court reasonably inferred that defendant did not arrange for alternative care because she needed Kochik's social security income to meet her own expenses. This established a reckless failure to act. Moreover, we agree with the trial court's inference, based on the extent of Kochik's problems, that those problems did not appear suddenly. It was reasonable to infer that the problems developed and became more serious over the time during which defendant did not or could not provide adequate care and failed to seek alternative care. Thus, the evidence was sufficient to support the conclusion that defendant's failure to act resulted in Kochik's serious physical problems.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Michael J. Talbot

/s/ Douglas B. Shapiro