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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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In the Matter of the Estate of:

DOMINGO A. RODRIGUEZ, *Deceased.*

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JOHN M. RODRIGUEZ, as the personal representative of the ESTATE OF  
DOMINGO A. RODRIGUEZ, *Plaintiff/Appellee,*

*v.*

MANUEL GRACA and MANUELA C. GRACA, husband and wife,  
*Defendants/Appellants.*

No. 1 CA-CV 14-0562  
FILED 11-3-2015

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Appeal from the Superior Court in Maricopa County  
No. PB2012-001760  
The Honorable Lori Horn Bustamante, Judge

**AFFIRMED**

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COUNSEL

Jones, Skelton & Hochuli, P.L.C., Phoenix  
By Eileen Dennis GilBride  
*Co-Counsel for Plaintiff/Appellee*

Schmitt Schneck Smyth Casey & Even, P.C., Phoenix  
By James L. Williams, Jeffrey M. Schneck  
*Co-Counsel for Plaintiff/Appellee*

Murphy Law Firm, Inc., Phoenix  
By Thomas J. Murphy  
*Counsel for Defendants/Appellants*

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**MEMORANDUM DECISION**

Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Kenton D. Jones and Judge Samuel A. Thumma joined.

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**S W A N N**, Judge:

¶1 Defendants/Appellants Manuel and Manuela Graca challenge the superior court's judgment ordering them to repay monies to the Estate of Domingo A. Rodriguez and awarding attorney's fees to the estate. Because the court did not clearly err in finding that the Gracas violated the Adult Protective Services Act and breached their fiduciary duty, we affirm.

**FACTS AND PROCEDURAL HISTORY**

¶2 Domingo, an immigrant from Spain who did not speak or write English, was the father of three adult children: John Rodriguez, Santiago Rodriguez, and Manuela Graca.

¶3 After the death of his wife in 2001, Domingo began living with Manuela and Manuel Graca. At that time he was 80 years old, required a pacemaker for a heart condition, and needed assistance managing his finances. Over the next ten years, the Gracas provided all of Domingo's care: arranged for and transported him to all medical appointments, administered his medications, assisted in all of his social and recreational activities, and cared for his dog. Manuela quit her job in 2001 to care for Domingo, but she eventually returned to work part-time and, later, full-time.

¶4 The Gracas sold Domingo's house in 2002, and used a portion of the proceeds to expand their home to accommodate Domingo and to make other improvements. They later sold their residence and used the proceeds to purchase a new home. During the time Domingo lived with them, the Gracas relied on Domingo's savings, monthly pension, and Social Security income to supplement their income and help with household expenses, but they did not keep an accounting of Domingo's funds.

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¶5 After Domingo's death in 2012, John had himself appointed the personal representative of Domingo's estate. In that capacity, he filed a complaint against the Gracas alleging that during the ten years they cared for Domingo they violated A.R.S. §§ 46-451 to -459, violated Arizona's Adult Protective Services Act (APSA), violated A.R.S. § 14-3709, breached their fiduciary duty to Domingo, converted his funds, and enriched themselves with his assets. The Gracas denied the allegations and counterclaimed for the value of their caregiver services.

¶6 Following a one-day bench trial, the superior court found the Gracas had violated A.R.S. § 46-456 and breached their fiduciary duty to Domingo, ordering them to reimburse Domingo's estate \$15,527.26. The court's judgment against the Gracas added \$35,000 for attorney's fees incurred by the estate in the action.

¶7 The Gracas appeal.

### DISCUSSION

¶8 The Gracas challenge the superior court's findings that they violated APSA and breached their fiduciary duty, arguing the court misapplied Arizona law and unconstitutionally impaired their agreement with Domingo.

¶9 We review the superior court's legal conclusions de novo, but we accept its factual findings unless they are clearly erroneous. *In re Estate of Newman*, 219 Ariz. 260, 265, ¶ 13 (App. 2008). A finding of fact "is not clearly erroneous if substantial evidence supports it, even if substantial conflicting evidence exists." *Kocher v. Dep't of Revenue*, 206 Ariz. 480, 482, ¶ 9 (App. 2003).

I. THE SUPERIOR COURT DID NOT ERR BY FINDING THAT THE GRACAS VIOLATED A.R.S. § 46-456 AND BREACHED THEIR FIDUCIARY DUTY.

¶10 The Gracas argue the court erred as a matter of law in finding that they violated APSA and breached their fiduciary duty to Domingo because the court applied the current version of A.R.S. § 46-456, and because Domingo consented to the arrangement, receiving the benefit of his bargain.

¶11 The current version of A.R.S. § 46-456, adopted by the Arizona legislature in 2009, provides that a person in a position of trust and confidence to a vulnerable adult may only use the vulnerable adult's assets

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for the adult's sole benefit. A.R.S. § 46-456; *see* 2009 Ariz. Sess. Laws, ch. 119, § 9 (1st Reg. Sess.). Before that change, A.R.S. § 46-456 required a person in a position of trust and confidence to a vulnerable adult to act for that adult's benefit to the same extent as a trustee, pursuant to title 14, chapter 7. 1996 Ariz. Sess. Laws, ch. 274, § 1 (2d Reg. Sess.). That is, the trustee must deal with the trust assets as a prudent person dealing with the property of another. *Davis v. Zlatos*, 211 Ariz. 519, 527, ¶ 33 (App. 2005) (quoting A.R.S. §14-7302).<sup>1</sup> In *Newman v. Newman*, we determined the defendant breached this standard by "failing to keep clear and accurate records, commingling funds, and engaging in transactions that benefited him without advising [the vulnerable adult] to seek the help of a family member or lawyer." *Newman v. Newman*, 219 Ariz. 260, 270, ¶ 35 (App. 2008).

¶12 The Gracas argue the court erred as a matter of law by applying the "sole benefit" rather than the "prudent person" requirement because the current version of A.R.S. § 46-456 was enacted after many of the relevant events occurred in this matter. *See* A.R.S. § 1-244 ("No statute is retroactive unless expressly declared therein."). Although the superior court cited the current version of A.R.S. § 46-456 in its ruling, it does not appear to have applied the "sole benefit" standard. The ruling stated "[l]iability under A.R.S. § 46-456 is imposed for 'failure to keep clear and accurate records, commingling funds and engaging in [self-benefiting] transactions. . .'" and found that Manuela had engaged in those actions, a finding consistent with the "prudent person" standard. Further, we need not decide whether the court would have erred by applying the "sole benefit" standard because, under either version of A.R.S. § 46-456, the evidence supports the court's decision.

¶13 The parties did not dispute that Domingo needed assistance managing his health care, finances, and other activities beginning in 2001, or that he was a vulnerable adult during the last two years of his life, as he was suffering from dementia. The Gracas admitted they functioned as conservators for Domingo and managed his finances during the ten years he lived with them, but they could not fully account for their use of Domingo's money. They admitted to commingling his funds with theirs and using a portion of Domingo's assets for their own benefit. Accordingly, the superior court's determination that the Gracas violated A.R.S. § 46-456

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<sup>1</sup> The legislature repealed the provisions referenced by A.R.S. § 46-456, namely A.R.S. §§ 14-7201 et seq., effective January 1, 2009. *See* 2008 Ariz. Sess. Laws, ch. 247, §15 (2d Reg. Sess.).

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and breached the fiduciary duty they owed Domingo was not clearly erroneous under either version of A.R.S. § 46-456. *Kocher*, 206 Ariz. at 482, ¶ 9.

¶14 We are not persuaded by the Gracas' assertion that this case is distinct from *Newman* because Domingo had access to legal counsel. The evidence shows that Manuela took Domingo to an attorney she selected only to conduct the sale of his home and prepare a power of attorney. Moreover, the fact that Domingo may have consented to the arrangement and received caregiver services in exchange for the Gracas' use of his funds does not undermine the court's rulings.<sup>2</sup> The Gracas received money from Domingo despite their fiduciary relationship and consequently were required to explain how Domingo benefited from those transfers. *Davis*, 211 Ariz. at 528, ¶ 36. The Gracas offered some evidence of the value of their services and the amounts they spent for Domingo's benefit, but the superior court found they had not shown that Domingo received goods and services equal to the full value of the money they received from him. That determination is not clearly erroneous. *Kocher*, 206 Ariz. at 482, ¶ 9; *see also* A.R.S. § 14-11009 (A trustee may be liable to beneficiary for breach of trust despite the beneficiary's consent to the transaction if the beneficiary did not know of the material facts relating to the breach.); Restatement (Second) of Trusts § 216 (1959) (stating that the consent of a trust beneficiary does not relieve the trustee of liability for self-dealing unless the transaction was fair and reasonable).

II. THE SUPERIOR COURT'S APPLICATION OF A.R.S. § 46-456 WAS NOT AN UNCONSTITUTIONAL IMPAIRMENT OF CONTRACT.

¶15 We also reject the Gracas' argument that the superior court's application of A.R.S. § 46-456 was an unconstitutional impairment of their contract with Domingo because it imposed a formal accounting requirement that the parties did not contemplate in their agreement. *See* Ariz. Const. art. II, § 25 (prohibiting the enactment of a law that impairs a contractual obligation); *Hawk v. PC Vill. Ass'n, Inc.*, 233 Ariz. 94, 98, ¶ 14 (App. 2013) (A contractual impairment exists when a statute has the effect

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<sup>2</sup> We disagree with the Gracas that the record establishes that Domingo understood and consented to their use of his money. The parties agreed that Domingo was "unsuited to manage his own financial affairs." Manuela's assertion that she kept him informed of his finances, "in a general way," does not support the notion that Domingo understood the nature and extent of the Gracas' transactions or consented to them.

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of rewriting antecedent contracts, thereby changing the substantive rights of the parties to existing contracts.).

¶16 Although the Gracas presented evidence of an agreement that Domingo would live with them and they would provide caregiver services to him, they presented no evidence that Domingo agreed that they could take his savings and income, commingle his funds with theirs, and use a portion of his assets for their benefit without accounting for any expenditures. Given Domingo's status as a vulnerable adult and the Gracas' fiduciary relationship with him, the superior court did not clearly err by applying A.R.S. § 46-456 and requiring the Gracas to explain how Domingo benefited from their use of his money. *Davis*, 211 Ariz. at 528, ¶ 36.

III. THE SUPERIOR COURT CORRECTLY CONCLUDED THAT THE POWER OF ATTORNEY DID NOT PROVIDE A SAFE HARBOR FOR THE GRACAS.

¶17 Finally, the Gracas contend the superior court erred in finding they violated A.R.S. § 46-456 because their actions were authorized by Domingo's durable financial power of attorney. Arizona law provides that a person in a position of trust and confidence to a vulnerable adult may only use the vulnerable adult's assets for that adult's benefit unless the transaction is specifically authorized by the adult's valid durable power of attorney. A.R.S. § 46-456(A)(2). Domingo's power of attorney did not specifically authorize the transactions at issue in this matter. Further, the Gracas admitted they only acted under the authority of the power of attorney to admit Domingo to a nursing home and obtain bank statements for this litigation. Accordingly, we reject their argument that the superior court erred as a matter of law in its application of A.R.S. § 46-456 in this matter.

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**CONCLUSION**

¶18 For the foregoing reasons, we affirm.

¶19 Pursuant to A.R.S. § 46-456(B), we grant the Estate's request for an award of attorney's fees and costs on appeal upon its compliance with ARCAP 21.



Ruth A. Willingham · Clerk of the Court  
FILED : ama