

Cite as 2009 Ark. App. 619

**ARKANSAS COURT OF APPEALS**DIVISION II  
No. CACR08-1124

TANIA JONES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** September 30, 2009APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT  
[NO. CR-2006-385]

HONORABLE BARRY SIMS, JUDGE

AFFIRMED

**JOHN MAUZY PITTMAN, Judge**

The appellant was charged with theft by deception, first-degree forgery, and abuse of an adult. A jury found her guilty of these offenses and sentenced her to three twelve-year terms of imprisonment to be served consecutively. On appeal, she argues that there is no substantial evidence of impairment and exploitation to support her conviction of abuse of an adult, and that the trial court erred in denying her attorney's motion to be relieved.

Pursuant to Ark. Code Ann. § 5-28-103(a) (Repl. 2006), it is unlawful for any person or caregiver to abuse, neglect, or exploit any endangered or impaired person. For purposes of this statute, an "impaired" person includes one eighteen years of age or older who as a result of physical impairment is unable to protect herself from exploitation and, as a consequence of this inability to protect himself or herself, is endangered. Ark. Code Ann. § 5-28-101(7)(A) (Repl. 2006). "Exploitation" pursuant to the statutory definitions includes

Cite as 2009 Ark. App. 619

the illegal or unauthorized use or management of an adult impaired person's funds, assets, or property, or the use of an adult impaired person's power of attorney or guardianship, for the profit or advantage of the actor or another person. Ark. Code Ann. § 5-28-101(5)(A) (Repl. 2006). Exploitation of an impaired person is a Class B felony when the value of the property, asset, or resource is \$2,500 or more. Ark. Code Ann. § 5-28-103(e)(1) (Repl. 2006).

In determining the sufficiency of the evidence to support a criminal conviction, we view the evidence in the light most favorable to the State, considering only the evidence that supports the verdict, and we affirm if there is substantial evidence to support the verdict. *Wells v. State*, 93 Ark. App. 106, 217 S.W.3d 145 (2005). Substantial evidence is evidence that is forceful enough to compel reasonable minds to reach a conclusion one way or the other without having to resort to speculation or conjecture. *Id.*

Clearly, there was sufficient proof of impairment. The victim suffered from severe emphysema and chronic back trouble resulting from a spinal condition. She was incontinent and oxygen-dependent. She had poor mobility and could not drive. She was also responsible for the care of her elderly mother, who lived with her and was likewise infirm. Appellant was hired to perform personal care, housekeeping duties, and to run errands. Appellant's performance of those duties required access to the victim's automobile and bank card. As the victim's health deteriorated, her reliance on appellant increased. The finder of fact did not err in finding that the victim's physical condition rendered her unable to protect herself from exploitation.

Cite as 2009 Ark. App. 619

The evidence of exploitation is just as clear. Appellant worked for a commercial health-care agency when she was first assigned to care for the victim. As the victim's health deteriorated and her dependence increased, appellant induced the victim to hire her directly and to pay her in advance in the amount of approximately \$11,000. Appellant consistently made charges at Wal-Mart with the victim's bank card that were greatly in excess of what had been normal for the victim prior to appellant's employment, with the amounts increasing as the victim's condition declined. When the victim was hospitalized and died, appellant did not continue to care for the victim's mother or return the bank card, but instead absconded with appellant's automobile. We think that it could reasonably be inferred from this evidence that appellant did not intend to return the advance wages she convinced the victim to pay her, and we hold that her conviction is supported by substantial evidence.

Appellant also argues that the trial court erred in denying her trial counsel's motion to be relieved. We find no reversible error. In his motion to be relieved as counsel, John Wesley Hall simply stated that his client was dissatisfied with his advice and routinely demanded that his legal advice "be put in writing." He stated that he believed appellant would be better served by "somebody who she can better deal with." When the motion was denied, Mr. Hall proceeded to represent her at trial.

The right to choose counsel may not be manipulated or subverted to obstruct the orderly procedures of the court or to interfere with the fair, efficient, and effective administration of justice; the burden is on the appellant to show that the trial court abused his

Cite as 2009 Ark. App. 619

discretion in denying the motion to be relieved. *Thorne v. State*, 269 Ark. 556, 601 S.W.2d 886 (1980). In each such situation, the court must look at the particular circumstances of the case at bar and the issue must be decided on a case-by-case basis. *Id.* Here, it appears that whatever difficulty existed in the attorney-client relationship stemmed from appellant's intransigence and unreasonable demands rather than Mr. Hall's representation. There is no reason to believe that appellant would have been more cooperative with substituted counsel had the motion been granted, and there is nothing in the record to suggest that Mr. Hall failed to represent the appellant with ability and zeal. We find no abuse of discretion on this record.

Affirmed.

KINARD and BROWN, JJ., agree.