

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Matter of:

WANDA D. LINDQUIST,
An Adult/Appellant/Appellee,

GREG MATHIAS, et al.,
Plaintiffs/Appellants/Appellees,

v.

KYLE LINDQUIST,
Defendant/Appellant/Appellee.

No. 1 CA-CV 22-0213
FILED 2-28-2023

Appeal from the Superior Court in Maricopa County
No. CV2021-007789, PB2020-002627
The Honorable Dean M. Fink, Judge

REVERSED AND REMANDED

COUNSEL

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Counsel for Appellees Greg Mathias and Todd Mathias

OPINION

Presiding Judge David D. Weinzweig delivered the opinion of the Court, in which Judge Randall M. Howe and Judge D. Steven Williams joined.

WEINZWEIG, Judge:

¶1 The Adult Protective Services Act (“APSA”) requires that persons in a position of trust and confidence to a vulnerable adult must use the vulnerable adult’s assets solely for the benefit of the vulnerable adult and not for their own benefit. A.R.S. § 46-456(A). APSA creates a private cause of action for a vulnerable adult to pursue damages against those who violate this directive. A.R.S. § 46-456(B). APSA authorizes an interested person to petition the superior court for leave to file an action on behalf of a vulnerable adult when neither the vulnerable adult or her appointed representatives have sued. A.R.S. § 46-456(G). We hold today that leave should not be granted to an interested person until the court finds that the individual who needs protection is a vulnerable adult; and when that issue is contested, the court must first hold an evidentiary hearing.

FACTS AND PROCEDURAL BACKGROUND

¶2 Wanda Lindquist (“Mother”) was born in 1942. She has three sons: Greg Mathias, Todd Mathias and Kyle Lindquist. Greg is the oldest; Kyle is the youngest. Kyle returned to live with Mother in September 2018.

¶3 Mother signed two powers of attorney in 2019. Greg supplied the first, which Mother signed in April 2019, designating Greg to run her financial affairs. Kyle downloaded the second, which Mother signed in May 2019, designating Kyle to run her financial affairs and revoking Greg’s authority.

¶4 After learning about the second power of attorney, Greg and Todd drove to Mother’s house, where, as Mother later described, “they were both very intimidating to me[,] threatening me into doing what [G]reg wants or there will be hell to pay, but not necessarily in those words.” Mother thus requested and secured an order of protection against Greg in late June. The order of protection prohibited Greg from from contacting Mother or visiting her home.

¶5 Around this time, Mother was diagnosed with Parkinson’s disease, but the disease had not progressed. Mother’s personal physician,

LINDQUIST v. MATHIAS, et al.
Opinion of the Court

Dr. Amjad Riaz, described her mind as “sound,” and found she could “make medical and financial decisions for herself.”

First Action

¶6 After that diagnosis, Greg and Todd accused Kyle of misappropriating Mother’s assets, and Greg petitioned the superior court to appoint a guardian and conservator for Mother. Greg alleged that Mother was incapacitated and “unable to manage her own estate and affairs” due to “cognitive impairment and reduced mental efficiency.”

¶7 Mother hired counsel and opposed the petition. The court appointed two physicians to examine Mother and report on her condition, including Dr. Riaz, her personal physician, and a neurologist. Dr. Riaz confirmed the Parkinson’s diagnosis, but reiterated that Mother “does not have dementia,” and could “make appropriate judgments that will protect her financially.” Dr. Riaz added that Mother could live alone, drive a car, obtain food and pay her bills. The neurologist did not examine Mother, but a physician assistant examined her and reported: “Brief testing in office suggests mild cognitive impairment.”

¶8 The superior court held an evidentiary hearing on July 30, 2019. At the hearing, Mother stipulated that Kyle should be appointed as her temporary guardian for five weeks. She did so on the advice of her counsel “to avoid Greg’s choice of temporary guardian.” Based on this stipulation, the court entered the temporary guardianship, finding Mother was “an incapacitated person because of mental and physical disabilities,” and “unable to make or communicate responsible decisions concerning her person and financial affairs.”

¶9 Five weeks later, the temporary guardianship expired and Mother regained control over her affairs. Mother then moved to dismiss Greg’s conservatorship action. Greg opposed her motion, arguing “there is a genuine issue of material fact [about] whether [Mother] is incapacitated, vulnerable and is not able to make her own decisions concerning her person and finances.” The court dismissed Greg’s conservatorship action with prejudice because “the issue of temporary appointments ha[d] previously been adjudicated.”

¶10 Greg appealed from that dismissal, but Mother and Greg entered a settlement agreement in late December 2019. Greg agreed to dismiss his appeal, Mother agreed to release Greg from the order of protection, and the parties agreed to bear their own attorney fees and expenses.

LINDQUIST v. MATHIAS, et al.
Opinion of the Court

Second Action

¶11 Six months later, Greg and Todd filed this action. They petitioned the superior court under APSA for leave to file a civil action against Kyle for financial exploitation on Mother’s behalf, alleging “[Mother] is a vulnerable adult and susceptible to Kyle’s influence.” Their proposed complaint sought damages from Kyle and an order severing and terminating his beneficiary interest in Mother’s assets.

¶12 Mother and Kyle appeared in the action through separate counsel and moved to dismiss the petition, insisting that Mother could make her own decisions and was not a vulnerable adult.

¶13 In March 2021, after briefing and oral argument, the superior court both denied the motion to dismiss *and* granted the petition for leave, thus empowering Greg and Todd to sue Kyle for financial exploitation on Mother’s behalf. The court acknowledged an evidentiary hearing would be necessary to determine whether Mother was a vulnerable adult, but concluded it must assume she was a vulnerable adult on a motion to dismiss because it “will be a necessary element to proving a financial exploitation claim.”

Third Action

¶14 Greg and Todd then filed a civil action against Kyle for financial exploitation on Mother’s behalf. Six months later, however, Mother petitioned the superior court to substitute into that case as the named plaintiff, replacing Greg and Todd. The court granted her motion, reasoning that Mother had “priority to file the [APSA] action,” and Greg and Todd had yet to prove that Mother “lacked the capacity to act of her own behalf.”

¶15 Mother and Kyle timely appealed the order granting Greg and Todd leave to file the financial exploitation complaint under APSA. We have jurisdiction. *See* A.R.S. § 12-2101(A)(1).¹

¹ Greg and Todd cross-appealed the order substituting Mother as the named plaintiff in the separate financial exploitation action. Without reaching the issue of our jurisdiction over that cross-appeal, we do not reach its merits given our holding in this opinion.

DISCUSSION

¶16 This appeal raises an issue of statutory interpretation. Our review is de novo. See *S. Ariz. Home Builders Ass’n v. Town of Marana*, 522 P.3d 671, 674, ¶ 16 (Ariz. 2023). When interpreting a statute, we aim to discern and effect the legislature’s intent. *Stambaugh v. Killian*, 242 Ariz. 508, 509, ¶ 7 (2017). We apply the plain meaning of a statute when clear and unambiguous. *Id.* “Statutory interpretation requires us to determine the meaning of the words the legislature chose to use. We do so neither narrowly nor liberally, but rather according to the plain meaning of the words in their broader statutory context, unless the legislature directs us to do otherwise.” *Town of Marana*, 522 P.3d at 676, ¶ 31.

¶17 APSA was passed to protect vulnerable adults from abuse, neglect and exploitation. See A.R.S. §§ 46-101 to 46-908; see also *Fadely v. Encompass Heath Valley of the Sun Rehab. Hosp.*, 253 Ariz. 515, 521, ¶ 22 (App. 2022) (“APSA is strong medicine for a serious malady – a statutory elixir of criminal penalties and civil remedies, legislatively prescribed to ‘protect[] vulnerable adults’ from neglect, abuse or exploitation.”). We broadly interpret APSA’s remedial provisions to accomplish the legislature’s purpose. See *In re Est. of Winn*, 214 Ariz. 149, 150, ¶ 5 (2007). A vulnerable adult is defined as “an individual who is eighteen years of age or older and who is unable to protect himself from abuse, neglect or exploitation by others because of a physical or mental impairment.” See A.R.S. § 46-451(A)(12).

¶18 Section 46-456(A) directs that persons in “a position of trust and confidence to a vulnerable adult shall use the vulnerable adult’s assets solely for the benefit of the vulnerable adult,” unless one of four exceptions apply. Section 46-456(B) creates an enforcement mechanism for the vulnerable adult to pursue “actual damages and reasonable costs and attorney fees” against a person who violates this standard.

¶19 Section 46-456(G) designates three “priority” plaintiffs to assert this claim for damages: “The vulnerable adult or the duly appointed conservator or personal representative of the vulnerable adult’s estate has priority to, and may file, a civil action under this section.” When a vulnerable adult or her representatives do not sue under this section, however, § 46-456(G) provides a mechanism for an “interested person” to step into the vulnerable adult’s shoes:

If an action is not filed by the vulnerable adult or the duly appointed conservator or personal representative of the

LINDQUIST v. MATHIAS, et al.
Opinion of the Court

vulnerable adult's estate, any other interested person, as defined in section 14-1201, may petition the court for leave to file an action on behalf of the vulnerable adult or the vulnerable adult's estate. Notice of the hearing on the petition shall comply with section 14-1401.

¶20 In this case, the superior court granted Greg and Todd's petition for leave to sue Kyle on Mother's behalf without finding that Mother was a vulnerable adult. That was error. The plain language of § 46-456(G) requires the superior court to make three findings *before* it grants an interested person's petition to sue on behalf of a vulnerable adult: (1) the petitioner must qualify as an "interested person" under A.R.S. § 14-1201(33), (2) the individual to be protected must be a "vulnerable adult," and (3) neither the vulnerable adult nor "a duly appointed conservator or personal representative" must have have filed an action against the proposed defendant under § 46-456(B).

¶21 This interpretation is confirmed by APSA's spirit and purpose. *See Hayes v. Cont'l Ins. Co.*, 178 Ariz. 264, 268 (1994). APSA was passed to protect vulnerable adults. *See Est. of Winn*, 214 Ariz. at 150, ¶ 5. It was not passed to annoy or harass senior citizens who are not vulnerable adults, and we will not adopt an interpretation "at odds with the legislature's intent." *See State v. Estrada*, 201 Ariz. 247, 251, ¶ 19 (2001).

¶22 Even so, Greg and Todd contend we should affirm because the superior court was required to assume the truth of all allegations in their petition under Arizona Rule of Civil Procedure 12(b)(6), including their allegation that Mother was a vulnerable adult. But that argument conflates two distinct issues. On top of denying the motion to dismiss, the court granted affirmative relief, empowering Greg and Todd to sue Kyle in Mother's name. Section 46-456(G) contemplates such relief only after the petitioner proves all three elements set forth above, including that Mother was a vulnerable adult.

¶23 If the superior court grants leave after finding all three elements under § 46-456(G), the interested person will file the complaint against the defendant under § 46-456(A) and (B). At that point, on a Rule 12(b)(6) motion to dismiss, the court must assume all well-pled allegations are true, including that the defendant held a position of trust and confidence to the vulnerable adult and misused the vulnerable adult's assets.

LINDQUIST v. MATHIAS, et al.
Opinion of the Court

¶24 Greg and Todd also contend that a recent opinion, *In re Stephens Revocable Tr.*, 249 Ariz. 523 (App. 2020), required the superior court to assume Mother was a vulnerable adult. We disagree. In that case, neither party disputed whether the petition for leave concerned a vulnerable adult because the adult died before the petition was filed and a court had found the adult was incapacitated in a contested guardianship proceeding shortly before his death. *Id.* at 525, 526, ¶¶ 5, 11; see A.R.S. § 46-451(A)(12) (“Vulnerable adult includes an incapacitated person.”). In this case, by contrast, Mother hired counsel and appeared in the action, insisting she was not a vulnerable adult and could make her own decisions.

¶25 Because the superior court granted a contested petition for leave under § 46-456(G) before it found that Mother was a “vulnerable adult” under § 46-451(A)(12), we reverse and remand for the court to hold an evidentiary hearing and decide that issue.

CONCLUSION

¶26 For the forgoing reasons, we reverse the superior court’s order granting leave and remand for proceedings consistent with this opinion.

¶27 Kyle and Wanda also request an award of attorney fees on appeal under A.R.S. § 12-349 and § 14-1105, which we decline in our discretion. As the prevailing parties, however, Kyle and Wanda may recover their costs on appeal upon compliance with ARCAP 21.



AMY M. WOOD • Clerk of the Court
FILED: AA