“REGAINING CONTROL WHEN DEMENTIA, MARRIAGE AND MONEY ARE MINGLED”

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Question: My 86 year old mother and her 88 year old boyfriend have been together for about ten years. Even though he proposed to her about a year after they met, my mom declined. She told us that he was reckless with his money and she didn’t want to end up being responsible for his spending habits. They chose to live together, split expenses, and keep their finances apart. She did amend her trust to leave him something, but I was to be in charge. A few years ago my mom was diagnosed with vascular dementia after suffering a stroke. I had to slowly start taking over her bill paying. Everything was going fine until last Thanksgiving, when her boyfriend asked me for money from my mom’s account to pay some of his bills. I told him I could only give him money for shared expenses. He seemed to be ok with it. About a week later, my mom was uncharacteristically nasty to me. Things went from bad to worse. I received a letter from my mom’s attorney that the boyfriend is now her husband and trustee and I’m not welcome to visit my mother at “their” house, which is the house my parents bought together. I called her lawyer, but he wouldn’t talk to me. I called my mom, but her boyfriend answered. He told me she doesn’t want to talk to me and if I didn’t leave them alone, he would get a restraining order. I talked with two attorneys that said the husband will win because he’s got the advantage. How can that be true when my mom has dementia and I’m sure she didn’t know what she was doing? I’m sick over this because I feel like I should have seen this coming. Is there something I can do?

Answer: You have options you need to pursue immediately. These sham marriages usually involve a much younger individual marrying an elderly person with dementia. However, these cases of later in life marriages to a partner with dementia have become more common. That is not to say that someone with dementia can’t get married. However, it becomes more complicated because the mental capacity to marry comes into question; there are issues of separate property; risks associated with credit card and other debts of the new spouse; and issues of support should the relationship go south. Unfortunately, love isn’t the only thing that comes into play.

In order to regain control of your mother’s finances, the Probate Court must issue an order to restore you as her financial agent over all of her income and assets. Since your mom has a trust, you would need to initiate a trust proceeding, as well as a conservatorship proceeding to accomplish these goals.
To gain control of the trust, you would need to file a request to be the temporary trustee. As the temporary trustee, you will have authority to protect her trust income and assets. If the majority of her assets and income are held in the trust, this would cut off her husband’s ability to access those funds to pay his debts. Although your appointment as temporary trustee provides immediate protection of your mom’s trust finances, it is only an interim step pending a determination of which trust document is valid. As such, you need to invalidate the “new” amendment to restore the original trust and her “real” amendment naming you as the successor trustee.

Becoming the temporary trustee is significant, however, it’s not comprehensive. You also need to address the marriage issues, take preventive steps to protect your mom’s finances from any credit her new husband may attempt to take out in his name and/or her name; and have the ability to deal with non-trust assets and income, like pensions and IRA’s. To have this authority, you would need to become your mom’s court-appointed temporary conservator. Much like the temporary trustee, appointment as the temporary conservator is only an interim step. To have more permanent authority of your mom’s finances, you would need to become her general conservator. This is true even if your mom has a power of attorney for finance naming you as her agent.

Although the financial issues are paramount in your mom’s situation, you would also want to have a court determination as to who will be your mother’s medical decision maker. Again, this is important even if your mother already has an advance health care directive naming you as her agent. This will also help to address your visitation issue.

I strongly encourage you to consult with an attorney that understands conservatorship and trust law, as well as the legal significance of family law issues. Understand that since your mom and her boyfriend are seniors and have been together for some time, you have to be sensitive to the emotional and health impact of these proceedings. When you add your mom’s capacity issue into the mix, the right approach is key to not only accomplishing your goal to protect your mom, but also avoiding or minimizing any negative impact on her. Best of luck.