

NORRIS HUGGINS,

Cal #: 07-10-14 (47A)

Petitioner,

-against-

Index No.: L&T 91343/13

JULIAN RANDOLPH and ASHLEY RICHMOND,

Papers: OSC (1)

Respondents.

HON. SUSAN F. AVERY, JHC

In this licensee proceeding, respondent, Ms. Ashley Richmond, moves by order to show cause to stay execution of the warrant of eviction. Respondent, Mr. Julian Randolph, is the son of the petitioner. Respondent-movant, Ms. Ashley Richmond, is the mother of two (2) of the petitioner's grandchildren.¹ Petitioner is the tenant of record of the premises which are the subject of this action. Counsel for the petitioner previously informed the court that the petitioner is 72 years of age.

Previously, counsel for petitioner moved for summary judgment.² In his affidavit in support of his motion for summary judgment, petitioner stated that he feared his son and that he cannot return home until his son is removed from the premises. He stated that "my son has in the past threatened my health and safety, forced me to sign a power of attorney and taken other steps to put me in fear of him."³

Additionally, in support of his motion for summary judgement, petitioner submitted an

¹ The court file demonstrates that respondent, Mr. Randolph, is the son of the petitioner. However, the relationship between the co-respondent's to each other has not been precisely defined, therefore, this court will refer to them as either co-respondents or partner(s).

² Prior to moving for summary judgment, the respondent's demanded a traverse hearing on the issue of service of process. The matter was referred to a trial part where a hearing was held, which resulted in a finding that respondents' were properly served with process (see, decision of Judge McClanahan dated October 15, 2013). The matter was then referred back to this resolution part for further proceedings.

³ Affidavit of Norris Huggins, sworn to March 24, 2014 at ¶4.

affidavit of Ms. Martha John. In her affidavit, Ms. John stated that she is the owner of the building in which the subject premises is located, and that Mr. Huggins is her brother, and has been the tenant of record at the premises since before March of 2007, at ¶¶2-3 (prior to her ownership of the building).

In opposition to petitioner's motion for summary judgment, respondents orally argued that the allegations in petitioner's affidavit are incorrect and that "an aunt of theirs" (presumably Ms. John) forced petitioner to commence this proceeding.

As, the petitioner met his evidentiary burden, this court granted summary judgment in petitioner's favor and permitted the warrant of eviction to issue forthwith. Noting that elder abuse is alarmingly on the rise, this court declined to stay execution of the warrant.

The markings on the court file indicate that the warrant of eviction issued on June 6, 2014. Subsequently, respondent, Ms. Ashley Richmond, filed an order to show cause seeking a stay of execution of the warrant of eviction. The application was returnable on June 26, 2014. On that date, petitioner failed to appear. However, since service of the order to show cause was untimely, this court denied the motion. Ms. Richmond then filed the instant order to show cause seeking a further stay of the execution of the warrant of eviction.

Because of the seriousness of the allegations Ms. Richmond asserted in her applications, this court will consider all of Ms. Richmond's submissions in reaching the instant decision.

In support of her prior application, movant attached two (2) un-notarized documents in addition to her affidavit. As the documents are not notarized, they are of nominal evidentiary value. However, because in this proceeding there are serious allegations of a senior in fear of returning to his home as a result of the respondents' behavior, coupled with the strong statements contained in the documents, these allegations will be considered by the court.

The first document submitted with Ms. Richmond's initial application is a letter, purported to be signed by Mr. Clayton A. John. Mr. John claims to be the landlord of the subject premises and states that he has not seen Mr. Julian Randolph at the premises since April 29, 2014.⁴ At oral argument on July 8, 2014, Ms. Richmond requested to submit into evidence, additional statements that she claimed support her contention that Mr. Randolph no longer resides at the premises. As discussed below, since Mr. Randolph's occupancy at the premises is irrelevant to the determination of this court, this court declined to accept the document(s) into evidence.

The second document submitted by Ms. Richmond in her prior application, is a two (2) page statement, with her name appearing on the bottom of the second page above a signature line. This court finds the assertions in her statement, as well as the allegations in her affidavit, to be quite disturbing.

In her affidavit in support of her prior application, Ms. Richmond stated that the co-respondent, "Julian Randolph does not reside in the apartment anymore and I have further proof of perjury by the petitioner" (at ¶3). Additionally, Ms. Richmond states "I have clear evidence of perjury on the petitioner's behalf" (at ¶3). Similarly, the last sentence of the first paragraph of her two (2) page statement reads as follows: "I have discovered evidence that proves the petitioner has committed perjury." In the next paragraph, Ms. Richmond states: "[o]n 10/14/2013⁵] Julian, our children and I visited Norris at the hospital. At that time we spoke clearly about the details about this case. Both parties consented to a recording. In this recording⁶] that is 8 min. 35 sec. Norris Huggins clearly states that he is not and has never been in fear of his life. Norris also states that he never told his lawyer that he was in fear."

⁴ Mr. John does not explain how he can recall the exact date that he last saw Mr. Randolph at the premises.

⁵ This court notes that this date is one (1) day before Judge McClanahan held a traverse hearing, where he found service of process was proper, see footnote 2 above.

⁶ To the extent a recording may exist, the contents thereof, bear no relevance to the instant determination.

The third paragraph of Ms. Richmond's statement claims that Mr. Randolph no longer resides at the premises and has not resided at the premises since April 29, 2014.⁷ Ms. Richmond then concludes that "even if Norris changes his mind about being in fear of his son, the 'fear' has been removed. Norris is welcome to be in his apartment and always has been. His sister Martha John is threatening Norris to evict his son and family [based upon her jealousy]."⁸

In the second to last paragraph of her statement, Ms. Richmond states: "I personally have been nothing but kind to Norris by going above and beyond to ensure his well being.... at the time I was caring for Norris everyday, I was pregnant."

In the affidavit in support of the application currently before the court, Ms. Richmond states: "I am asking to be able to stay at the residence based on I have proof (*sic*) of perjury on the petitioner's behalf" (§3b); and "Julian moved to CA because we separated due to the extreme amount of stress this case has put on our family and relationship" (§4).

Combining Ms. Richmond's submissions in support of her applications, Ms. Richmond believes that she is entitled to continued occupancy of the premises because: (1) Mr. Randolph, the source of petitioner's fear, moved out; (2) petitioner lied (presumably about being in fear of Mr. Randolph); (3) at some point, Ms. Richmond was petitioner's daily caretaker; and (4) as a result of commencing this action, petitioner caused her and Mr. Randolph to separate.

Notwithstanding the strong language in her submissions, at oral argument, Ms. Richmond, seemed to soften her position and requested three (3) months to vacate the premises.

Petitioner orally opposed respondent's application. Counsel for the petitioner stated that

⁷ This court's recollection, is that at oral argument on petitioner's summary judgment motion, on April 9, 2014, Mr. Randolph stated that he was not willing to agree to vacate the premises, yet less than three (3) weeks later, Ms. Richmond claims that "Julian moved to California on 4/29/14" *see* paragraph 3 of her two (2) page statement.

⁸ On the second page of her two (2) page statement Ms. Richmond states that Ms. John has a son who "is currently serving 20 years for murder" and therefore she is jealous of petitioner's relationship with his son (co respondent, Mr. Randolph) and forcing him (petitioner) to bring this action, *see also*, the last sentence of the first page of Ms. Richmond's two (2) page statement.

his client did not authorize him to agree to provide respondents any additional time to vacate the premises. Additionally, Mr. Davis, counsel for the petitioner, strongly objected to granting respondents three (3) months to vacate the premises.

Following petitioner's oral opposition to Ms. Richmond's request for a three (month) stay of execution of the warrant of eviction, Ms. Richmond then requested two (2) months to vacate. Ms. Richmond gave no reason for her change of mind and her current willingness to vacate the premises. However, as the parties were unable to enter into a stipulation, this court adjourned the matter from July 8, 2014 to July 10, 2014, for the court to issue its decision on the record.

Previously in a decision dated April 9, 2014, this court granted petitioner's motion for summary judgment. This court's decision not to grant any stay of execution of the warrant of eviction was largely based upon the petitioner's allegations of elder abuse. It must be emphasized that "[t]he protection of elderly persons from abuse and exploitation is a matter of significant public concern. '[E]lder abuse, including the financial exploitation of elderly individuals ... is an often well hidden problem, in part because the perpetrator of such conduct is in many cases a member of the victim's family'"⁹

While "[e]fforts to redress elder abuse are still in their infancy"¹⁰ "[e]ffective interventions can prevent or stop elder abuse."¹¹ Indeed, "[i]n cooperation with the New York City Police Department, Adult Protective Services ("APS"), the New York City Department for the Aging, medical professionals and social service agencies, The Elder Abuse Unit of the New York County District Attorney's Office investigates and prosecutes all kinds of crime involving elderly victims."¹² Additionally, "[i]f our community is serious about protecting its most

⁹ *Mabel R. v Rayshawn D.*, 33 Misc3d 1023 (Fam Ct NY County [2011]) *citing Campbell v Thomas*, 73 AD3d 103 (2nd Dept [2010]); *see also, Boyce v Fernandes*, 77 F3d 946 (7th Cir [1996]).

¹⁰ *In re Doar*, 39 Misc3d 1242(A) (Sup Ct Kings County [2013]).

¹¹ American Psychological Association, *Elder Abuse and Neglect, In Search of Solutions* (2014).

¹² See, <http://manhattanda.org/resources-victims-elder-abuse>

vulnerable adults, new initiatives and coordinated strategies must ... be developed and implemented.”¹³

Many states recognize an independent cause of action predicated upon an allegation of elder abuse.¹⁴ While the Penal Law of New York State makes it a crime for a caretaker to endanger the welfare of a vulnerable senior person,¹⁵ New York State does not have a statute recognizing an independent civil cause of action predicated upon an allegation of elder abuse.¹⁶ However, case law supports, that the courts, as part of the community, need not wait for the enactment of such a statute. Rather, as ordered by Judge A. Gail Prudenti, as the Presiding Justice of the Appellate Division, “[i]t is an old, old principle that a court, even in the absence of express statutory warrant, must not ‘allow itself to be made the instrument of wrong...’”¹⁷ Therefore, in compliance with Justice Prudenti’s mandate in *Campbell*, it is incumbent upon judges and court personal to recognize the signs of possible elder abuse and act to protect society's vulnerable seniors¹⁸ (a vulnerable senior, as defined by the Penal Code is “a person 60 years of age or older who is suffering from a disease or infirmity associated with advanced age...”).¹⁹

In *Campbell, supra*, the court addressed the issue of a 72 year old man, suffering from diminished mental capacity, who was taken advantage of, by a person in a position of trust. Similarly, in the case at bar, this court is called upon to address the special needs of a 72 year old

¹³ *In re Doar*, 39 Misc3d 1242(A) (Sup Ct Kings County [2013]).

¹⁴ 113 ALR5th 431, *Validity, Construction, and Application of State Civil and Criminal Elder Abuse Laws* (originally published in 2003).

¹⁵ NY Penal Law §§260.30; 260.32.

¹⁶ *Campbell v Thomas, supra*, “New York, however, does not yet have a statute specifically addressing [this] situation.”

¹⁷ *Campbell v Thomas, supra*, at 119.

¹⁸ For a comprehensive listing of laws throughout the United States addressing elder abuse and neglect, see, *Elder Mistreatment: Abuse, Neglect, and Exploitation in an Aging America*, at appendix B, <http://www.ncbi.nlm.nih.gov/books/NBK98799/>

¹⁹ NY Penal Law §260.30.

man who alleges that a member of his immediate family has abused him. Accordingly, in compliance with the requirement of the current Chief Administrative Judge, this court deems petitioner, Mr. Huggins, to be a potential vulnerable senior. This court so rules, notwithstanding, that, unlike the elder in *Campbell*, there is nothing before the court to indicate that Mr. Huggins is suffering from a particular symptom or symptoms, associated with advanced age.²⁰

In the case at bar, petitioner, a vulnerable senior, states that he is in fear of his son and that his son forced him to sign a power of attorney. The court record reflects that petitioner's son, his son's partner (the respondents) and their children, moved in to the petitioner's home and resided therein with the petitioner. Although the record is not clear as to when Mr. Huggins first began to fear his son, Mr. Huggins currently maintains that he fled his home as a result of that fear, and feels that he cannot return to the home in which he has resided in, since prior to March of 2007, until his son and all other occupants are removed from the premises.

The “[a]buse of elders takes many different forms.”²¹ It can be physical (causing an elder to feel fear); financial (forcing an elder to sign a power of attorney); neglectful (neglecting the needs and wishes of an elder); and emotional (causing an elder to feel ashamed or belittled).²² Additionally, it is widely held that “[e]lder abuse tends to take place where the senior lives: most often in the home where abusers are often adult children”²³ and often by caretakers.²⁴

As a result of the many forms of elder abuse, this court finds it quite disturbing that Ms. Richmond states, that because Mr. Huggins claimed that he “fear[ed] ... his son, [and] the ‘fear’

²⁰ Additionally, the burden of proof in a criminal proceeding is the higher standard, of proof beyond a reasonable doubt, whereas in civil proceedings, the burden of proof by the lesser standard of proof by a preponderance of the evidence.

²¹ See, http://www.helpguide.org/mental/elder_abuse_physical_emotional_sexual_neglect.htm

²² See, Adult Protective Services website, at <http://www.ocfs.state.ny.us/main/psa/adultabuse.asp>

²³ http://www.helpguide.org/mental/elder_abuse_physical_emotional_sexual_neglect.htm

²⁴ See, Penal Law §260.32 stating that it is a crime for a caretaker to “endanger the welfare of a vulnerable senior person;” *Campbell v Thomas*, 73 AD3d 103 (2nd Dept [2010]) “results of one study indicate that in approximately 65% of substantiated cases of elder abuse, the alleged offender was an ‘adult child’ [or] ‘other family member’ ... of the victim” at fn 1.

has been removed [since his son moved out in April][] Norris is welcome to be in his apartment and always has been.”²⁵ Ms. Richmond’s conclusion demonstrates a lack of understanding and sensitivity to the needs of this potential vulnerable senior as well as a misunderstanding of the law.

Mr. Huggins wants to return to the home that he has known since before he invited his son and his son’s partner to reside there with him. Ms. Richmond’s conclusion that Mr. Huggins is free to return to the premises because Mr. Randolph moved out, therefore the reason for the “fear” no longer exists, demonstrates that she fails to grasp, that as long she remains at the premises, regardless of whether Mr. Randolph is there, that the home Mr. Huggins knew, it is not *HIS* home. Mr. Huggins has the right to live in his home with the occupants of his choosing, or if he so chooses, no other occupants at all. Mr. Huggins is entitled to be the sole decision maker as to which guests, if any, are invited into his home.

As Mr. Huggins chose to bring this action against his son and his son’s partner, this court can only conclude that he will be “welcome to be in his apartment” when it is free of all occupants.

While Ms. Richmond states “I was caring for Norris everyday” this court takes no position as to whether she falls within the definition of a caretaker. This court deems Ms. Richmond’s insensitivity to Mr. Huggins desire to live in the home that he once knew, in the way that he once knew it, to be neglectful of Mr. Huggins’ wishes.

Ms. Richmond’s assertions that she can prove that the 72 year old petitioner committed perjury because she has a “tape; which demonstrates that Mr. Huggins did not fear his son” is irrelevant to petitioner’s superior right to possession of the premises.²⁶ Mr. Huggins, as the

²⁵ Ms. Richmond’s two (2) page statement at ¶3.

²⁶ Although Ms. Richmond expressed to this court that she is willing to vacate the premises, at oral argument on her current order to show cause, on July 8, 2014, Ms. Richmond sought to submit the “perjury proving tape” into evidence. This court denied Ms. Richmond’s request.

tenant of record, has the right to revoke the respondents' licence to occupy the premise, regardless of fear.

The 72 year old petitioner wanted respondents' to move out of his apartment. He hired a lawyer to achieve this goal. A predicate notice requiring respondents to vacate the premises was served. Respondents failed to vacate the premises. A notice of petition and petition seeking possession of the premises was then served. Respondent's did not vacate the premises or stipulate to vacate by a date certain. Rather, respondents demanded a traverse hearing.²⁷ Clearly, respondents' believe that their needs are superior to the needs of the 72 year old petitioner, a senior, who opened his home to respondents' and respondents' family.

Moreover, following the issuance of the warrant of eviction, respondent, Ms. Richmond, filed documents with the court accusing the 72 year old petitioner of committing the serious crime of perjury²⁸ as well as being the cause of the break-up of her partnership with Mr. Randolph. Being accused of criminal behavior²⁹ as well as being blamed as the reason for the break-up of a relationship, may cause the person being so accused, to feel ashamed and belittled.

This court does not begrudge respondents' their rights to defend this action, demand a traverse or refuse to voluntarily vacate the premises. Nor does this court begrudge respondents' their right to file as many order to show cause applications as they deem appropriate and seek as many stays of the execution of the warrant of eviction, as respondents' deem fit. Similarly, respondent's have the right to express their beliefs (the facts as they see them) in support of their applications seeking stays of the warrant of eviction. However doing so, gives this court reason

²⁷ See above at footnote 2.

²⁸ "[F]irst-degree perjury, [is] a class D felony." People v Perino, 76 AD3d 456 (1 Dept [2010]); Penal Law §210.15.

²⁹ It is also troubling to this court that based upon the claimed statements on the tape, Ms. Richmond accuses the 72 year old petitioner of committing the crime of perjury. Ms. Richmond could have just as readily concluded that petitioner merely wanted a peaceful hospital visit with his family, and wished to enjoy his time with his grandchildren while he was recuperating in the hospital, so he made such statements to ensure a pleasant family visit. Indeed, this is a much kinder and sensitive explanation of such statements.

to pause.

Respondents' willingness to publicly act contrary to petitioner's wishes before this court, and to cause petitioner possible public shame by stating in court documents³⁰ that the petitioner caused their break-up, and committed a serious crime, may be illustrative of the way respondents treat petitioner in private, behind closed doors, in the subject premises, in his home. Based upon the foregoing, it is within this court's purview to conclude that Mr. Huggins is not being treated with the respect and dignity that he deserves.³¹ The current situation is unhealthy for this 72 year old petitioner, and must not continue.

Based upon the foregoing, the respondent has failed to assert a meritorious defense to this action, nor set forth a basis for any further stays in this proceeding.

Accordingly, in the interest of justice, the respondent's order to show cause is denied, stays are vacated, warrant may execute following service of the marshal's notice, to give respondents an opportunity to vacate the premises with dignity.

The foregoing constitutes the decision and order of the court.

Dated: Brooklyn, New York
July 10, 2014

_____/s/_____
Susan F. Avery, J.H.C.

³⁰ Court documents are a matter of public record.

³¹ This court is mindful that family dynamics can be complicated, and in some families the dynamics are more complicated than others, however, this court would be doing a disservice to the public it is duty bound to serve and protect, if it permitted the family members of this senior, to continue to mistreat this elder.