

Homophobia or Expedience? Sonoma County Goes on Trial

by Loree Cook-Daniels*

Given the family conflicts common in cases that end up in the public guardian's office, it may be something of a miracle that the Sonoma County (CA) Public Guardian has only had one lawsuit filed against it in more than 25 years. Unfortunately for it, this is a case that has gotten nationwide attention from government officials, the general public, and, especially, the lesbian, gay, bisexual, and transgender (LGBT) community.

Scull-Greene Case

It began on the morning of April 27, 2008. A sheriff's report states Harold Scull, 88, and Clay M. Greene, 77, were drinking vodka and orange juice on the porch of the home they had shared for 20 years. Scull was somehow injured, and Greene called the paramedics, who took him to the hospital. The hospital, finding a black eye and multiple contusions and abrasions and perhaps relying on the paramedics' report, suspected domestic violence and reported the case to the sheriff's office, APS, and the county's public guardian.

Exactly how Scull was injured is the first pivot on which this case turns. Kate Kendall, executive director of the National Center for Lesbian Rights (NCLR), states that Harold had endured open heart surgery, was on a number of medications that made him unsteady and uncomfortable, had suffered an earlier fall from which he was still bruised and recovering, and was in seriously declining physical and mental health.

[W]hen Harold fell on the front porch steps of their home, he did not want Clay to call an ambulance. But Clay knew that the fall was serious and that medical attention was required. He did what any of us would do—he called the paramedics.

Harold, Kendall says, "in a fury, told the paramedics that Clay had pushed him." (Email, Apr. 29, 2010.) A longtime friend of the two men later told a reporter that, while Scull had once been "gregarious and charismatic," he had become "grumpy" due to bad health and early dementia. (L. Pearlman, "No Reason to Separate Gay Couple, Friend Says," Bay Area Reporter, Apr. 29, 2010.)

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The sheriff's report says that Scull reported that Greene had hit his face and body with closed fists and told him, "I'm gonna kill you." However, the report went on, Scull seemed confused or possibly on medication, he refused to press charges, and he said that "he just wanted to go home." (Paul Payne, "Gay Rights Advocates Bombard County With Questions," Press Democrat, Apr. 22, 2010) (Payne I.)

Conservatorship Petition

The Press Democrat also reported that, in "a supplemental report, a social worker told deputies Greene had been abusive to the victim and should receive alcohol or drug treatment and a psychiatric evaluation." The social worker also noted that Greene had refused offers for help from APS. (Payne I, supra.)

The district attorney declined to prosecute the case, but the public guardian's office stepped in. According to the court complaint Greene's lawyers filed, the guardian's office petitioned the court for conservatorship of Scull's estate, including asking for specific powers. The petition alleges that "Scull was unable to care for himself or resist undue influence, suffered from a cognitive disorder, delirium, depression, and dementia." (*Greene v. County of Sonoma*, No. SPR-81815 (Cal. Superior Ct.) (first amended complaint); http://www.NCLRights.org/site/DocServer/Greene_v_Sonoma_County.pdf?docID=7461, p. 8.)

Greene alleges that:

Despite knowledge of [Scull's] weakened condition and compromised mental functioning, [the public guardian staff] . . . prepared and induced Decedent Scull to sign legal documents, including but not limited to, a "Nomination of Conservator." (*Greene*, supra, at 9.)

The conservatorship petition also alleged Greene had committed physical and financial abuse of Scull and was a danger to him. (*Greene*, supra, at 9.) (It's interesting to note that no other publicly available reports address the financial abuse charge.)

The court granted very limited conservator powers, allowing the public guardian to liquidate only one account to pay for Scull's housing costs and denying the other requests, allegedly

because the public guardian had "failed to demonstrate any factual necessity for those powers or how [granting them] would benefit the conservatee." (*Greene*, supra, at 9.) The court also directed the public guardian to file for conservatorship of the person for Scull, a directive that was apparently not followed.

Possible Public Guardian Misfeasance

Greene also alleges that the public guardian exceeded the powers granted to it by the court and failed to comply with court orders and procedures, instead liquidating all of Greene's and Scull's accounts and auctioning off all of their possessions without required inventorying, appraising, and reporting. (*Greene*, supra, at 10-11.)

The complaint alleges that the household possessions were worth over \$216,000. Although Greene said he was unable to get an accounting of what was sold, the county's lawyer told a reporter that the proceeds were about \$35,800. (Paul Payne, "Lawsuit Ignites Firestorm in Gay Community Against Sonoma County," Press Democrat, Apr. 20, 2010.) It is not clear who placed Scull in a nursing home, but he died there in August.

The public guardian took other actions concerning Greene. The complaint states that public guardian staff "falsely represented" that Greene suffered from dementia, was unable to manage his personal or financial affairs, and that they misled others "to believe [Greene] was the subject of a conservatorship... [and that they were his] legal representative." (*Greene*, supra, at 11-12.)

The first time they met Greene, they induced him to name the public guardian his representative payee for Social Security. When they later "physically removed" Greene from his home and placed him in an assisted living facility, they allegedly kept his truck, left him without money, and "restrict[ed] and limit[ed] his movements and communication with his friends, family, and the general public." (*Greene*, supra, at 13.) The complaint says the county officials:

made false representations and promises concerning Plaintiff

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Greene's living situation, falsely representing to Plaintiff that he had no other choice of places to reside, [and that Greene] believed these false representations, believed he had no choice in the matter, and felt intimidated and threatened by Defendants. (**Greene**, supra, at 13.)

They apparently did not petition for conservatorship of Greene until September (even though they apparently moved him in April); the petition was dismissed in November, three months after Scull died. (**Greene**, supra, at 24.)

Emotionally Wrenching Details

Some of the most emotionally inflammatory charges are in the details:

After removing all of Plaintiff Greene's personal belongings from his private residence, but before placing Plaintiff Greene at [the assisted living facility], Defendant County left Plaintiff Greene at his private residence for some days, alone and without any of his household possessions, including but not limited to bedding or a bed for sleeping. (**Greene**, supra, at 51.)

Included among the personal property that was either sold or disposed of was Greene's clothing, "including but not limited to his coats, underwear, pants, shirts, shoes." (**Greene**, supra, at 51.) County officials allegedly said of the two men's property while they were taking possession of it, "this would look nice in my living room," and "my wife will love this." (**Greene**, supra, at 17.)

When Plaintiff Greene intervened and objected to the removal, unknown individuals, agents, and employees of Defendants laughed at Plaintiff Greene and denied his right to object to the removal. When Plaintiff Greene attempted to notify [Scull] of the actions of Defendants in removing said property, he was discouraged and prevented from communicating with [Scull] and from inquiring after and recovering said property. (**Greene**, supra, at 17.)

The men's "two beloved cats" are referenced many times in the complaint. One passage describes how they were:

tak[en] forcibly by their necks and [put] into a truck in Plaintiff

Greene's presence. Said unknown male employee and agent pushed Plaintiff Greene to the ground when he told them to stop. Said unknown male employee and agent laughed at Plaintiff and Plaintiff's distress. (**Greene**, supra, at 16.)

The complaint does not say what happened to the cats, although the county's attorney told a reporter that Sissy and Tiger went to live with Scull in his nursing home. One died, and the "other was taken in by a neighbor." (Pearlman, supra.)

In all, the complaint charges the county, four named county employees, the auction house, the assisted living facility, and "Does 1 through 50" with 20 crimes, including the following:

- Elder financial abuse;
- Breach of fiduciary duty;
- Fraud;
- Violation of state and federal guarantees of due process;
- Intentional and negligent infliction of emotional distress;
- Violation of patients' bill of rights;
- Conversion;
- Conspiracy;
- False imprisonment;
- Negligence;
- Failure to discharge mandatory duty; and
- Elder abuse. (**Greene**, supra, at 1.)

Homophobia or Something Else?

Although what is currently known about the case certainly raises questions about how well the abuse allegations were investigated, whether the public guardian's office took lawful actions concerning both Scull and Greene, and why certain documents (like inventories and accountings) have not been produced, what makes the case "hot" is its allegations of homophobia.

Greene's complaint says county officials made and/or "ratified" derogatory references to Greene's sexual orientation and age, stating, "you know how those 'gay boys are,' and rolling their eyes and smirking." (**Greene**, supra, at 14.)

[They] disparaged and demeaned [him], calling him a "crazy old man," said he had "dementia," and was a "lost cause," laughed at him, and told him to "shut up and go to your room." (**Greene**, supra, at 12.)

At one point, **Greene** alleges, one official "stated verbally in the presence

of [Greene] and others that [their] landlord 'didn't want queers in his house.'" (**Greene**, supra, at 14.)

Despite Greene holding Scull's power of attorney for health care, he was "separated from and prevent[ed] from visiting with his dying partner, and was not apprised of his condition or consulted regarding his care." (**Greene**, supra, at 15.) Indeed, the complaint alleges, the county did not even inform Greene of Scull's death until several days after it occurred, and then:

failed and refused to allow his long time friend, Plaintiff Biggerstaff to comfort him or remain with him when he was notified of his partner's passing. (**Greene**, supra, at 16.)

The complaint alleges that the defendants knew about Scull and Greene's partnership from 2007, although there is no publicly available information on how they learned of the couple prior to Scull's fall in April 2008. (**Greene**, supra, at 19.) **Greene** charges that they:

with deliberate callousness and indifference and a desire to humiliate and disparage Plaintiff Greene and Decedent and their personal relationship, separated them from each other, hindered and interfered with their contact and communication with each other, separated them from their property, including their beloved pet cats, and denied them physical, emotional, and financial support of each other, causing great physical and emotional suffering. (**Greene**, supra, at 20.)

Unruh Act Charges

It is this allegation—legally, a violation of California's Unruh Civil Rights Act, denying Greene's "rights to be free from sexual orientation discrimination in [their] access to the full and equal advantages, privileges, and facilities of a business establishment as guaranteed by Civil Code section 51"—that brought this case to the attention of the National Center for Lesbian Rights (NCLR), which in April 2010, launched a wildly successful campaign to bring publicity to the case.

Not only did dozens of blogs write about Greene and Scull and more than 20,000 Facebook users sign up for

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updates on the case, but the very first Congressional briefing on LGBT aging (April 22, 2010) opened with a discussion of how the couple was mistreated by county officials. Many people said the case was an example of why gay marriage needs to be legalized—to protect elderly same-sex couples like Greene and Scull.

The last is ironic on two counts. First, Scull and Greene had completed some of the documents same-sex older couples are told to complete, including (presumably durable) health care powers of attorney (POA). While couples in a marriage might be treated more humanely than couples who have just a health care POA, that is not guaranteed.

Second, despite the complaint's allegations that county workers acted out of homophobia, Greene does not call himself gay. Advocates have been quoted saying that gay people Greene's age are often "not open about their homosexuality" (which is true), but Greene's statements seem to go further than that. The initial sheriff's report stated, "Greene said he had a romantic relationship with [Scull] about 10 years ago and now the two were simply living together to share expenses." (Payne I, supra.)

He told a reporter from the New York Times that he did not know what Proposition 8 was (it invalidated a short-lived California law permitting same-sex marriages) and said of Scull:

We weren't a married couple. Why are you making a big deal out of this? We were just roommates. (S. James, "Wrapped in a Rainbow Flag Against His Will?," NY Times, May 7, 2010) (James I.)

If Greene called them "roommates," it's hard to fault county workers for using the term themselves.

Case Implications

President Obama issued an order on April 15, 2010, essentially guaranteeing LGBT couples the right to be at each other's hospital bedside. Advocates have already cited the Greene/Scull case in calling for an expansion of this order to include other health care settings and:

used news about the Sonoma lawsuit to ratchet up pressure on Congress and the Obama Administration to repeal the anti-gay federal Defense of Marriage Act and push

for full marriage rights for same-sex couples. (M. Bajko, "Political Notes: Advocates Want Broader Hospital Visitation Policy," Bay Area Reporter, Apr. 29, 2010.)

At least one member of Congress is watching the case: Wisconsin's Tammy Baldwin contacted LGBT advocacy groups in her district to identify other cases of discrimination against aging LGBT couples and is preparing omnibus legislation to protect the rights of such couples in a range of settings.

Holes in Case

If the court does not rule in Greene's favor, the pretrial publicity will leave the LGBT community with the sense that "the system" does not work for sexual and gender minorities, even if the ruling is based on new information that has not previously been publicized. And, that is likely—combing the documents to tie one piece of information to another exposed numerous holes.

For instance, it was reported that Scull and Greene had named each other executors of their wills, but Jannette Biggerstaff, a longtime friend of the couple, is listed on the complaint as executor of Scull's estate. How and why was Greene replaced? Similarly, although the complaint itself and much of the media implies Scull and Greene never saw each other after his fall and that Greene was deliberately isolated in order to be more easily controlled, the county's lawyer maintains Greene "asked for help" and that the couple were allowed to see each other. (Pearlman, supra.)

Unreliable Source? Greene himself is not wholly reliable: The New York Times reporter called Greene "a vulnerable, traumatized soul," and said he "accused me [the reporter] several times of working for the county and suggested I was there to put a bullet in his head." (James I, supra.) A long-time friend said:

[Greene is] an absolute shell of the person I knew three years ago. He has absolutely been terrorized. He was subject to a situation that I don't think many people would be able to withstand.

His lawyer admitted that, while Greene moved out of assisted living into his own studio apartment about a year ago, he sometimes wanders around Guerneville asking passersby if they have seen his truck or Mr. Scull. (S. James, "An Unlikely Plaintiff. At Issue? He Dares Not Speak Its

Name," NY Times, May 6, 2010.) It's not clear if he ever received the substance abuse evaluations and treatment a "social worker" recommended.

Errors Due to Expedience. There is also a distinct possibility that the major errors made in this case were caused not by homophobia but by expedience. Greene's complaint even suggests this possibility, noting that:

Defendant County further encouraged and directed said employees and agents. . .to administer cases assigned to OPC [the Office of Public Conservator] as expeditiously and economically as possible, without regard to the rights and desires of the involved seniors and others, to utilize the services of preferred vendors, regardless of the suitability for a particular individual case, and to manage the estate(s) of the individuals in their care for the convenience of the OPC and Defendant County. (Greene, supra, at 19-20.)

Settlement

A \$600,000 settlement in Greene's suit against the Sonoma County Public Guardian program was announced July 22, 2010. The county denied discrimination but conceded that procedural errors were made in the sale of the property. Under the settlement, Clay Greene receives \$275,000; attorneys' fees are \$300,000; and Scull's estate receives the balance. (See Paul Payne, "Guerneville Man Settles Suit Against Sonoma County for \$600,000," <http://www.PressDemocrat.com/article/20100722/ARTICLES/100729795/1033?p=all&tc=p> gall (Jul. 22, 2010).)

Summary

This case should lead to a great deal of public education. Many of those who commented on blogs about the case felt if there had been physical abuse, there would have been a criminal prosecution and a restraining order; these commentators believe the absence of these means Greene is incorrect. I did not notice responses that explained how seldom domestic violence cases are prosecuted or why not all abuse victims seek or obtain restraining orders. And, of course, there was no discussion of what—beyond a lawsuit or widespread publicity—elders can do if county officials treat them with a marked lack of respect or even with prejudice. ■