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Can Undue Influence Invalidate Your Advance Directives?

Imagine this situation: while you are alive and well, you consult with an estate planning attorney and with the help of this particular attorney you develop an estate plan which includes advance directives (durable power of attorney, designation of health care surrogate and living will). As an added bonus, you develop a long-standing relationship with this estate planning attorney and you update your documents every few years in order to reflect changes that occur in your life, your legacy, your lawyer's experience and the law so your plan works the way you want it to work when you need it. Now, imagine your life progresses over many years and eventually, later in life, you develop dementia. Your expectation would most likely be that the planning you established and diligently updated while you were well would ensure that the people in your life, whom you trust, and whom have been appointed as agents in your advance directives, will be in charge to help you make the financial, legal, and health care decisions which you are no longer capable of making on your own.

In most circumstances this expectation would be justified. But, imagine the above scenario with the addition of the following facts. As your disability progresses a family member who was previously absent from your life comes back into your life and that family member, let's make him "Bad Son," proceeds to make an appointment with an attorney who is not known to you. Bad Son then takes you to meet with this attorney to execute new advance directives appointing himself as your agent under these documents and to sign a codicil to your last will and testament from which he will benefit financially. Additionally, Bad Son videotaped the signing appointment where you signed the new documents. On this video you are depicted reading from a prepared statement and looking to others in the room to answer questions that are posed to you by this unknown attorney. Imagine all of this was done the same day your physician at the nursing home in which you reside entered a note in your chart indicating you lack capacity to consent to treatment and to manage your own affairs. Further, employees of the nursing home where you reside and your long-standing attorney friend are willing to testify they were previously instructed by you, while you were well, that Bad Son was never to get any information about your estate for health care and he was never to make any decisions on your behalf. Do you think the documents you signed at the unknown attorney's office should be valid?

This is an actual case recently considered by a Florida Court. The Judge in the case ultimately determined that Bad Son's actions rose to a level of undue influence and consequently, invalidated the advance directives signed in his presence. This particular case should pave the way for undue influence to be a factor to invalidate advance directives and most importantly, so protect vulnerable individuals.