

I Ain't Dead Yet! – Life and Lifestyle Decisions of Impaired Persons¹

Case Study for “Disability, Civic Responsibility, and Community Friendship” Seminar for the Society of Philosophers in America

ESSENTIAL QUESTIONS

1. Do we ever completely lose the ability to have a say in our own lives?
2. How can we know when we have reached that point?
3. Who can speak for those who have difficulty understanding what they want or may need?
4. What and to whom can we refer to when John may not be able to clarify what he wants?
5. How can one know what is in the best interest for someone else or even how that someone might want to live?
6. As confusion leads to a chaotic life, how can we continue to give life meaning and fulfillment?

BACKGROUND

John Smith is an eighty-five year old man suffering from Alzheimer's disease and cirrhosis of the liver caused by alcoholism. He has been residing in a nursing home in south Memphis for a month and a half. John was discharged from a local hospital to the nursing home. His daughter June Stanford was unaware of his discharge from the hospital, and after much effort, June located him at the nursing home and traveled there to see her father. The nursing home would not discuss John's condition, treatment or prognosis with June because they said that she John had no healthcare power of attorney and that HIPPA prevented their discussion with her without John's written permission.

John had always been an independent man who spent his life working for the railroad in Memphis and had retired from the railroad after having worked as a switchman. Before and after his retirement, he was also a construction contractor in Tippah County, Mississippi, and performed some work in Memphis, Tennessee. When he was healthy, John lived on family land near Ripley, Tippah County, Mississippi, where he hunted, fished and socialized with friends. June Stanford of St. Louis, Missouri, and Steve Smith of Ripley, Mississippi, who lives on the Smith family home place, both claim that John is their father. John has not denied their paternity, nor has he formally acknowledged it.

During the past five years as John grew ill, he depended upon his longtime girlfriend Mary Jones of Memphis, TN, to care for him. Mary took John to the hospital in Memphis when she thought he was gravely ill. Mary has had difficulty taking care of him due to her age and his deteriorating medical condition. Because of his short term memory issues, John does not always know how much he has had to drink, and Mary has not kept, or at least, been able to keep John from

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drinking. John survived the hospital stay although his doctors thought he would die there.

Steve Smith, John's son, says he wants to take care of John at the family home place in Tippah County, Mississippi. Steve is currently disabled with Parkinson's disease, and his only source of income is Social Security disability monthly. Steve maintains that nursing homes are expensive, that John is not happy in the nursing home, that his father never wanted to be placed in a nursing home, and that John would live a better life at the family home place in Mississippi. A couple of weeks after John entered the nursing home, Steve Smith and Mary Jones took John on a day trip from the nursing and visited lawyer who Steve knew in Ripley, Mississippi, who prepared a will for John. Steve and Mary have said that the will gives half of John's estate each to Steve and Mary. Steve has told June that she is not John's child biologically, that she never visited John, and that she was not acknowledged by John as his daughter. Steve tells June that the family land should stay in the family and that in John's will, John gave Steve the entire 1,000 acre tract while Mary shall receive \$25,000.00 for taking care of John. Mary told June that she thought of herself as John's wife, that she treated John as her husband, and that she should be treated as John's wife. When June contacted her father in the nursing home, he thought that June just wanted his money so he offered June \$25,000.00 to leave him alone which she did not accept.

At the present time, John maintains a joint checking account which has Mary's name on it. According to Mary, John's pension and social security payments are deposited into that account. John does not know the location of the account or the balance in it. He has no healthcare power of attorney, nor does he have a durable power of attorney. When having a conversation with John, he can occasionally understand the present moment. However, after talking to John for about fifteen minutes he gets confused with details and reverts to repeating the same themes about not being independent, not wanting anyone to know his finances, not wanting to live in a nursing home, not being able to live with Mary or hunt and fish with his friends when he wanted to. He seems to get confused late in the day and with specific details. He is adamant that he knows what he wants and does not want anyone telling him how or where he is to live. Although John does have some assets, they are not great. His land and home in Tippah County, Mississippi, are worth \$105,000.00. He receives \$2,300.00 per month in social security and pension benefits and has some money in a joint savings and checking account with Mary. However, the nursing home charges \$5,000.00 per month. Because John has said that he does not want to be in the nursing home, John has recently refused to release his funds to pay the nursing home bill. Although he receives Medicare benefits due to his age, Medicare does not pay for long-term nursing care. John is not currently eligible for Medicaid as his assets are too great to qualify. The nursing home is questioning whether they can continue to keep John in the nursing home due to the financial considerations.

ISSUES FOR JUNE STANFORD

I avoid conflict, but I do not want to abandon my father. Steve Smith, my half brother, has told everyone involved that I am not John's daughter and that a DNA test would prove that I am not his daughter. Steve tells my father that I am only after his money. I live in Missouri, and I have my

own family with school aged children. I am concerned about my father's welfare, but I cannot quit work to take care of my father. I am concerned about those around my father taking advantage of him. My father does not want to live in Missouri where he knows no one. I realize that my father needs socialization and that he will deteriorate more rapidly without doing what he enjoys and being around the people with whom he is familiar. However, I am concerned with Steve and Mary's motivations and whether my father's money will be used for his benefit. I am concerned whether Steve can fully take care of my father, whether he will be able to keep my father from drinking or whether he can keep my father from wandering off.

1. How do I help my father live well? How do I ascertain what "living well" means to my father and balance his idea of "living well" with the problems he faces?
2. How do I determine what my father wants when I am not sure what his best interests are or even if he knows what his best interests are? How do I listen to my father and learn what he wants?
3. How can I learn about my father's medical and mental conditions when my father can't or won't tell me and the medical providers cannot tell me?
4. What happens when the nursing home discharges my father, Mary can't or won't take care of him, and he refuses to be cared for in another facility?
5. How do I preserve my father's assets for his care? If he says he wants to give his assets away, can he even though it may not be in his best interests or even understand what he has or needs? Is he being pressured to do this or doing this so as to avoid conflict?
6. How can I keep from endangering my relationship with my father or the rest of my family in Mississippi? My relationships with them are already not good, but they are the only family I have outside my immediate family.
7. I doubt that I will be able to agree or cooperate with my half brother Steve or my father's girlfriend Mary Jones on issues regarding my father, but I know that if I question what they are saying about my father and what should happen with him that there will surely be a conflict.

QUESTIONS FOR THE ATTORNEY

June Stanford has asked me to travel to Memphis to meet with her father, John Smith. In preparation, I have prepared a healthcare power of attorney and a durable power of attorney so that June can learn about her father's medical condition and assist him in making healthcare and financial decisions and so that she can ascertain what her father's current financial situation is. June says that she is concerned that her father's assets will not be available or adequate to provide for her father's

care.

1. What are my obligations to Mrs. Stanford? To John Smith? To John Smith's heirs under his current will?
2. Who is my client?
3. Would a healthcare power of attorney and/or a durable power of attorney be valid if John Smith executed the same now?
4. How can I best make sure that I determine what the client's wishes are and effectively carry them out?
5. What can I do if I suspect that John Smith is being taken advantage of by others?
6. How can I be certain that June Stanford's motives are not financial as well?
7. What do I do about the will John Smith executed?
8. What do I do if I determine that June is after her father's money or that everyone is after his money regardless of whether John may need it?

QUESTIONS FOR THE TREATING PHYSICIAN

I have recently become involved in the care of Mr. Smith. He cannot remember when either Steve Smith or June Stanford last contacted him. Currently, Mr. Smith has periods of time where he is very lucid, but he also has periods of time where he experiences confusion, dementia and loss of other mental faculties. Mr. Smith says he wants to decide what he does, where he lives and how he spends his money.

Ms. Smith needs assistance living due to his current medical conditions. He enjoys social interaction, but he cannot control his drinking which will surely kill him. He also tells me that he does not want to live in the nursing home, that he does not want to give anyone power of attorney for healthcare or over his finances, that he does not trust anyone, and that he is depressed and miserable living in the nursing home. He says, "I want to fish and drink beer with my friends." He says his finances and his health are his business. He declares that all everyone wants is his money. He "likes to have a drink" but denies being an alcoholic. His immediate prognosis is uncertain. Mr. Smith tells me that he wants to live with Mary Jones, his long-time girlfriend. His son Steve Smith wants him to move back to the family place in Tippah County, Mississippi. His daughter June Stanford believes John needs to be in an assisted living facility. As his doctor, I do not know what the motives of any of these people are, and I am concerned that neither Mary nor Steve can care for John or keep John from drinking. I have no idea whether the house that Steve wants to take his

father to is suitable for a man in Mr. Smith's condition. Steve has no medical training, and he is on disability himself. I am unsure if Mr. Smith has the mental faculties to make these decisions for himself or even knows what he wants or needs. .

1. What should I do?
2. I have an obligation to Mr. Smith from a medical standpoint, but what are my obligations to Mr. Smith with respect to his financial health and well-being?
3. Who can make medical decisions for John? Am I responsible? If Mr. Smith says he does not want care which I believe he needs, I am unsure that Mr. Smith understands his condition and he refuses to have any of his family members assist him, and I am unsure that his family even knows his condition, what am I to do? Is John competent to understand what will happen to him?
4. Should I communicate with his friends, family or his attorney about Mr. Smith's current mental status? And if I should, can I under the law communicate with these people? Who can I communicate with - the son Steve Smith, June Stanford who claims to be Mr. Smith's daughter or his long-time girlfriend, Mary Jones?
5. How do I know what Mr. Smith may have wanted and expressed to family members in the past is the same things he would want today? How do I reconcile collecting statements from Steve, June and Mary about what Mr. Smith would want concerning his care and living arrangements?
6. Would my/your answers to these questions be the same if John Smith was forty (40) years old, not suffering from a life-threatening condition or Alzheimer's disease, and instead of a nursing home was in a rehab facility that he had been referred to after he recovered from an alcohol induced coma?