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*MENDENHALL*

*VS*

*MUNNS*

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## NEWS

# Polk keeps watchful eye on pending elder abuse cases

By GAIL KENNY  
The Daily Courier

PRESCOTT — Sheila Polk made elder abuse one of the central issues of her campaign.

And while she can't comment on any particular case, such as Mendenhall vs. Munn, a civil elder abuse case that starts this week in Yavapai County Superior Court, the Yavapai County Attorney is keeping her eyes on a number of actions in the legal system on this topic.

Polk, a deputy county attorney whom voters elected in November, discussed elder abuse with a variety of organizations in the past year.

Her object was to educate and caution both seniors and the agencies that serve them about what elder abuse is, how it can occur, and how to prevent it.

Polk used the example of one case she prosecuted, State vs. Haywood and Light, as an example of how, in that case, young people befriended and took advantage of a senior. They moved into her home and cleared out her bank accounts.

After explaining how this happened, Polk showed how investigators followed a trail of bank account balances, phone calls, deterioration of the senior's home and relationships, adult protective service red flags, and other signs to come

to an indictment and later convictions for the crime of elder abuse.

"Most often, the abuser is not a stranger to the senior," Polk said. "It's a person the senior knows, a relative or friend. And most often, the victim is physically disabled."

She said criminal prosecution of elder abuse is a difficult and time-consuming task for local law-enforcement agencies.

If that weren't enough of a challenge, she believes the number of cases in Yavapai County is on the rise. Thus, one of her first actions was to appoint one professional in her office as the contact person for law enforcement people to work with on elder abuse.

Then she met with a variety of agencies and officials who might be the first observers of a potential elder abuse situation.

Later this year, if the Board of Supervisors approves the position, Polk will add an investigator in the County Attorney's office to work with the various police offices on crimes against the elderly.

If you have a concern that you, or someone you know might be a victim of elder abuse, contact the Yavapai County Attorney's Office at 771-3344.

# Elder abuse trial starts Wednesday

By GAIL KENNY  
The Daily Courier

PRESCOTT — If you believe him, Ray Mendenhall is a 93-year-old Chino Valley victim whose granddaughter and her husband asked him to come live with them in late 1996 and over the course of three years, abused him and coerced him to turn over more than \$600,000 in retirement assets to them.

Believe Cynthia and Kirk Munn, Mendenhall's granddaughter and her husband,

however, and Mendenhall is an elderly relative whose interests the Munns had at heart when they invited him to live with them in Chino Valley in late 1996 — and after offering them many wonderful gifts, Mendenhall turned on them and sued them.

Starting Wednesday, a jury will have to listen to the witnesses, view the evidence, and decide who will prevail in the

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civil suit in Yavapai County Superior Court.

Mendenhall, through his attorney, Chris Jensen and his firm, charges elder abuse, breach of fiduciary responsibility, conversion and infliction of emotional abuse against Cynthia and Kirk Munn, with assault and battery claims against Kirk Munn.

The Munns, represented by Mark Goodman and the Goodman law firm, deny the charges and say the elderly man gave them nice gifts, then had a change of heart after a falling out with them and started a suit.

Ray Mendenhall and his wife, Deseret, moved to Chino Valley in December 1996.

Both Mendenhall and the Munns agree it was the best decision they could make at the time.

The task of caring for his terminally ill wife was just too much for Mendenhall alone in California, and the Munns' Chino Valley home fit their needs.

At first, the Mendenhalls lived in an Airstream trailer on the Munns' property. When the heater failed, the seniors moved into the Munns' home. Mendenhall admits he offered to pay for the reasonable cost of housing, but the Munns refused his offer.

That's where two sides' stories begin to diverge. Mendenhall, through his attorney Jensen, says the Munns had him go to Prescott and make Cynthia Munn successor and beneficiary of the Mendenhall trust, and give her power of attorney over his financial affairs.

The Munns, however, say they merely agreed to the Mendenhalls' wishes and transported them to the attorneys' office.

Deseret Mendenhall took a turn for the worse on April 2, 1997, and went to Yavapai Regional Medical Center with swollen legs. She died several days later, at the Munns' home, on April 7.

On her death, Ray Mendenhall went to his safe, in which he kept as much as \$85,000, to take money out to bury his wife. He found the money missing.

He and Cynthia Munn both had keys to the safe, but Mendenhall usually kept his key unguarded, on the head of the bed. And a number of people

had been in the house, the Munns say.

Mendenhall alleges that Cynthia or Kirk Munn took the money. But the Munns say they believed it could have been Kim Savory, who had been in the house.

Cynthia Munn, a municipal court employee, privately asked Chino Valley Police Chief Pat Huntsman her advice, since Savory's boyfriend, Roy Abbott, is the Chino Valley magistrate.

Huntsman said in a deposition that she told Cynthia Munn the relationship would be a conflict, and that she should report it to another agency as soon as possible.

However, the Munns did not report the theft to a police agency, but instead hired a private fingerprint expert to examine the crime scene.

When the expert didn't turn up any usable evidence, they didn't pursue the issue with another agency. In the case documents, Mendenhall alleges that this was just one time that the Munns breached their fiduciary responsibility.

Either, the Munns were covering up their own theft of his cash, or they didn't pursue an

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official investigation that might have turned up the thief, Mendenhall claims.

Over the next two and a half years, the Munns paid off their mortgage, added onto their home, bought commercial property, built and opened the Chino Valley "Grease Gun" auto shop with the intent to franchise the shops, had college funds set up for their daughters, and received joint title to a vehicle and a vacation home in Utah.

The Munns say the property and improvements were wonderful gifts from Mendenhall to them and his great-granddaughters.

They claim he told them he saw the money as "already theirs," and he wanted to make these decisions while he was living and avoid estate taxes later.

Things started turning ugly in June 1999, when the Munns went to Lake Havasu for the weekend. Mendenhall let the dog, which had been sprayed by a skunk, in the house, and the Munns came home and were angry with him.

After staying up most of the night to clean the carpets and furniture of the stench, Munn

became angry when Mendenhall parked a car half in and half out of the driveway after driving to breakfast.

Munn says he asked for the keys to move the car and Mendenhall started yelling and throwing his arms up in the air and lost his balance and fell.

Mendenhall remembers the incident differently. He says Kirk Munn tried to wrest the keys from him, knocked him down and pulled the keys from his hands.

He went to the neighbor's, called the police, moved out of the Munns' home for a day, and after talking with police, moved back in.

Tension continued to build, and the two had a second confrontation over some work Mendenhall was doing on his camper about five months later. Specifically, Mendenhall was using acetone to clean his brushes and the Munns had told him they didn't want the material at their home.

Munn said he confronted Mendenhall outside and continued to argue with him as Mendenhall went in the house.

Mendenhall contends their fight went further, as Munn went into the bedroom and con-

tinued to verbally abuse him. When he turned away, he said, Kirk straddled him on his bed and held him, forcing him to listen to the abuse and obscenities.

The final confrontation came Christmas Day 1999, when Mendenhall made himself breakfast.

The Munns were surprised, they stated, as they expected they would all have breakfast together. Another argument started.

The Munns said Mendenhall went to his room, then left the home without telling them where he was going. They later found out he had moved in with Cynthia's mother, Barbara Smith, his son's ex-wife.

Mendenhall again recalls the incident somewhat differently. After forgetting it was Christmas Day and making breakfast, Mendenhall faced his grandson-in-law's anger a final time. Kirk became irate and ordered Mendenhall to move out, which he did.

Two days later, Munn, who still had power of attorney on Mendenhall's accounts, transferred \$14,000 of Mendenhall's money into her own separate account. Later in the day, she tried to empty the account, bank records say, and the bank officials questioned the transfer.

Two weeks later, Mendenhall signed papers taking Munn's power of attorney away, and soon began working with a lawyer.

Attorney Chris Jenkins filed the civil lawsuit in Yavapai County Superior Court March 28, 2000.

According to the claim, the Munns coerced Mendenhall to sign over, or stole between \$621,790.52 and \$647,500 in accounts and assets. Besides all of his assets, Mendenhall also is asking for punitive damages and all costs.

The Munns' attorneys say the claim constitutes harassment. The defendants merely accepted gifts they were offered and took care of Mendenhall's needs.

"Any action taken by the defendants (the Munns) with respect to plaintiff (Mendenhall) was in good faith and based upon legitimate and lawful reasons," the Munns' response to the claim states.

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April 17, 2001

# Jury to decide whether pair abused its elderly relative

By GAIL KENNY  
The Daily Courier

PRESCOTT — Both prosecution and defense attorneys gave opening statements Wednesday in an alleged elder abuse case in Yavapai County Superior Court Division 4.

Chris Jensen, attorney for plaintiff Ray Mendenhall, gave the jurors an overview of how Mendenhall's granddaughter and her husband, Cindy and Kirk Munn, allegedly exploited an incapacitated, vulnerable senior.

He explained how the Munns served in a position of trust and confidence to Mendenhall and his wife, Deseret, before she died.

But from that position of trust and confidence, the Munns took advantage of Mendenhall, Jensen charged, taking \$753,028 in

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assets over a three-year period.

Mendenhall left the Munn home on Christmas Day 1999, after numerous episodes of physical and emotional abuse, Jensen alleged. That's when he began to understand the financial implications, he said.

"When he found out he didn't have the money, that's when he started figuring out what had happened," Jensen told the jurors.

However, Mark Goodman, who represents the Munns, contended that Mendenhall was neither vulnerable nor incapacitated throughout most of the

three years he lived with the Munns in Chino Valley.

The Munns gave Mendenhall a home and care throughout the time he lived with them.

While something happened in June 1999 to change Mendenhall's emotional and mental stability, that was after he knowingly made a series of voluntary gifts to the Munns, Goodman contended.

Those gifts included paying off their mortgage and several debts; joint tenancy with survivorship rights to vehicles, property and banking accounts; and land and buildings for their Grease Gun business.

"He (Mendenhall) had access to his money at all times and he knew how much he had and where it was being spent," Goodman said.

The opening statements followed a smooth morning of juror selection.

Just 16 of the initial 75 potential jurors disqualified themselves for a number of health, employment or travel-related reasons.

After that, the court disqualified only a trio of the initial 18 jurors for various impartiality issues.

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# Elderly plaintiff says kin took advantage of him

By GAIL KENNY  
The Daily Courier

PRESCOTT — The Division 4 courtroom of Yavapai County Superior Court resembles a judicial museum.

The spectator seats are deep-colored wooden auditorium seats, complete with wire hat racks underneath. The matching wooden jurors seats are only slightly more comfortable. Gold-gilded iron grates cover old heat registers in the back of the room.

The ceiling towers above the chambers, about a full story over the historical judges' portraits on the west wall.

And the clock over the entrance is permanently frozen at 7:18, as if something momentous occurred at that time of day in the courtroom's past.

Raymond Mendenhall came into that setting Thursday to begin testifying in his case, alleging his granddaughter and her husband exploited his impaired mental and physical condition to abuse him and take more than \$750,000 of his assets.

Mendenhall, 93, seemed to fit the settings as he walked slowly, with a cane, to the front of the room.

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The sound in the room, echoing wildly off antique-white painted acoustical panels, didn't help the hearing-impaired Mendenhall, whose attorney Chris Jensen brought the podium close to his client in the witness box.

Mendenhall explained why he and his wife came to live with his granddaughter, Cindy Munn, and her husband, Kirk. He said his health problems prevented him from giving adequate care to Deseret, who had a heart condition, and from taking care of himself.

Another grandchild wanted to put him in a nursing home. And as a Los Angeles Water and Power employee, he inspected the plumbing in "old folks' homes," finding them unsanitary and inadequate. His sister-in-law was too old to care for Deseret and him on top of his brother Frank, who had Alzheimer's. So he accepted Cindy and Kirk Munn's offer to come live with them.

"They were so glad to have us, wanted to have us for life," Mendenhall said of the Munns.

Mendenhall needed coaching during his testimony, both from

Jensen and Judge Raymond Weaver.

Later in the day, Adult Protective Services investigator Reed Hawkes would tell the jury that even two years ago, Mendenhall remembered events, but didn't always get the sequence right.

Mendenhall said he offered to pay for room and board, but the Munns refused. But when they wanted to add on to their cramped home, but had no resources, Mendenhall said he was willing to pay for it.

"I wanted to make them happy," he said.

Keeping the peace and making the Munns happy was a constant theme during his testimony. He was uncomfortable with checking accounts, preferring a single savings account, but acceded to his granddaughter's wishes to open account after account — there would be nine in all after three years.

He saw the money going too fast and tried to close some accounts. But his granddaughter refused to sign as a joint tenant, so he gave in and reopened them.

Through it all, Mendenhall testified, he still viewed Cindy Munn as

the little girl who played with his dog in Deseret's and his backyard.

Jensen asked Mendenhall why he didn't call the police or insist on a resolution when more than \$60,000 was missing from his safe in April 1997, just after Deseret died.

"At the time, I wasn't Ray Mendenhall because of my wife's death," he said. "I was devastated."

He said he understood the power of attorney differently, as something that Cindy could use after he and Deseret died. He cannot recall signing any papers to give half interest in his vacation home in Beaver, Utah, to the Munns. And he loaned the Munns the money for the Grease Gun auto shop and its property, because he didn't like to see Cindy Munn working hard and Kirk Munn at home.

By June 1999, everything changed, Mendenhall said. The Munns found fault with everything he did. And the abuse started, beginning with an alleged assault that month.

Hawkes, from Adult Protective Service, said that after investigating the complaint, he closed the case. He said he believed Mendenhall misinterpreted Kirk Munn's attempt to prevent him from falling

as an assault.

But Hawkes said he did find a number of risk factors in the home, from a lack of quality or consistency in the care, to Kirk Munn's constant access to Mendenhall.

He did find that Mendenhall exhibited signs of impairment, but not enough to support abuse, neglect or exploitation, although he didn't investigate any financial allegations. He advised the Munns to seek out supportive services and not let the daily burden of care overwhelm them.

Also Thursday, the jury heard from Pat Huntsman, Chino Valley police chief, who talked about two police reports and her confidential conversation with Cindy Munn after Mendenhall discovered the money was missing from his safe.

And they listened to neighbor Tracy Meyer tell about the day in June 1999 when Mendenhall came to her home to have her call the police to report Kirk Munn's alleged assault.

Mendenhall will finish testifying in his side of the case today.

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April 24, 2001

# Mendenhall completes his story in abuse case

By GAIL KENNY  
The Daily Courier

PRESCOTT — Ray Mendenhall finished his testimony Friday in his part of the alleged elder abuse civil case in Yavapai County Superior Court.

Mendenhall, 93, is suing his granddaughter, Cindy Munn, and her husband, Kirk, on allegations that they exploited and abused him, using most of his retirement savings for personal and business advantages.

The Munns contend they paid for his room and board

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for three years, along with the costs of personal trips.

On Friday, Mendenhall told the jury that on Christmas Day 1999, he got up and made his own breakfast. That angered the Munns, he said, and he retreated to his trailer.

Kirk Munn followed him to the trailer and ordered him to "get the hell out of there and get in my car and never come back." That's when he left. He didn't just move out for no reason, as the defendants claim, he said.

In June 1999, when Mendenhall alleged Kirk Munn had assaulted him, he left the home and stayed with his ex-daughter-in-law Barbara Smith for a day. At the time, she had given him a key and told him to use it if he ever needed it.

But on Christmas he went to a café in Chino Valley to think things out. Finding the place closed for the holiday, he sat in his car outside the restaurant for a long time, thinking about his options.

He thought about other relatives' homes. He considered just going to stay in a motel. Then he remembered the key, and decided to go there for a time and make a long-term plan.

Since Smith was in California for Christmas, he stopped in at

one of her neighbors and let them know he had a key, he said, just so they wouldn't be concerned. Smith arrived home that night.

In the next few weeks, Mendenhall said Smith nursed him back to health. The tension, lack of regular meals and other factors left him weak, even fainting several times.

Mendenhall countered the defendant's claims about their contributions. He paid for motels, food and gas on trips. He bought dinners and new furniture for the home. As for room and board, his offers to help were constantly denied, he said.

He told the jury he couldn't remember how much money went into the home remodel or a car purchase.

He said he thought he had two accounts, when his attorney Chris Jensen told the jury during the opening statement that they would find nine accounts connected to this case.

And when Jensen said the defense will suggest he drew out more than \$100,000 in June 1999 from the college fund he set up for the Munns' daughters, Mendenhall was indignant.

"Me drawing that out? No sir!" he replied.

Afterward, Kim Savory testified. Savory was a friend of the Munns

who stayed and helped around the home in April 1997, after Ray Mendenhall's wife, Deseret, died.

Savory took Mendenhall shopping for flowers, new shoes and other things he needed for the funeral. Defense attorney Mark Goodman led her through those shopping trips receipt by receipt on his cross-examination.

She cleaned the house, including Mendenhall's room, but claimed she didn't know about a safe — until some time that week when Mendenhall screamed from his room that money was missing.

About \$60,000 in cash had been in a safe under his bed. She claimed she helped him check the safe for a false bottom, then look around the bedroom. Her boyfriend, Judge Roy Abbott came to pick her up, and she told him.

Abbott told Munn about the missing money when she arrived home soon after. When directly asked, Savory, who had a couple of bad check convictions years earlier, said she had not been in the safe earlier, nor did she take any money.

The trial continues in Yavapai County Superior Court Division 4 Tuesday.

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# Finances dominate testimony in abuse case

By GAIL KENNY  
The Daily Courier

PRESCOTT — The theme for Tuesday's continuing testimony in the Mendenhall vs. Munn civil elder abuse trial could have been "Show me the money."

For hours, plaintiff Ray Mendenhall's attorney Chris Jensen walked co-defendant Cindy Munn through her Quickbook software printouts, talking about balances in nine accounts in the

case, and what money transferred between the accounts.

That followed continuing testimony by Maria Ross, a Bank One official who formerly managed the Chino Valley branch.

Ross talked about Mendenhall's banking practices, and Mendenhall's and Munn's bank records. Ross told the jury that every month, Mendenhall came

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into Bank One and made deposits from his pension and Social Security checks. He would keep part of his checks in cash.

Mendenhall, who is now 93, usually came into the bank alone, Ross said. But like clockwork, bank officials would help him with his deposit slip, asking him how much he wanted in the account, how much he wanted in cash.

In December 1998, Mendenhall asked to close a checking account. Ross said Mendenhall told her "he was having problems at home and he wanted to be a sole owner on his account."

Ross said to be the sole owner, Mendenhall would have to get Cindy Munn to sign a form, agreeing to that. The account remained a joint account, Ross said.

Later in the day, when Munn testified, she said Mendenhall never asked her to sign the form.

Kirk and Cindy Munn's attorney, Mark Goodman, asked Ross if Mendenhall could get information while he was in the bank about his accounts. Ross said he could.

Then, on Dec. 27, 1999, two days after Mendenhall left the Munns' home, Ross described

two more banking transactions. By on-line transfer, the kind someone with a home computer could process, \$14,000 left one joint account of Munn and Mendenhall for a separate Munn account, Ross said.

Later in the day, a second transaction occurred from another Mendenhall/Munn account. The bank reversed this one, Ross said, because the \$4,300 amount would have overdrawn the account.

Munn began testifying about their agreement to allow the Mendenhalls to live with them.

The Mendenhalls, Ray and his wife Deseret, who died in April 1997, came to live with the Munns in Chino Valley in late December 1997.

Within weeks, Munn explained, she and her husband Kirk had signed a contract with contractor Tim Eikens to expand the home with two more bedrooms, a bathroom and a garage to replace the existing one they were remodeling into a great room.

Mendenhall agreed to pay for the addition, Munn said. The contract, for more than \$46,000, stated that the remodel would expand the 1,936-square-foot home by 1,360 square feet — a 63 percent increase. Munn disputed those figures.

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She also disputed that Ray and Deseret Mendenhall, married 60 years, always shared a bedroom, since she said the addition was for separate bedrooms for her grandparents.

Munn said they never made written promissory notes about the remodel, about the money for paying off their mortgage, or for the purchase of land or building for the Grease Gun. She said she never talked to attorneys about setting up such documents.

After going through a lengthy accounting of money into the nine accounts during the three years, and transfers between the accounts, Jensen noted that the net expenditures after taking out the transfers were more than \$586,000.

Late in the day, Jensen halted Munn's testimony to let expert witness William C. Wennerholm testify.

Wennerholm, a psychotherapist with certifications in social work, related his conversations

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with Mendenhall that virtually mirrored Mendenhall's earlier testimony.

He said he believes that Mendenhall suffered from isolation, even within the family. He didn't turn to anyone after his wife's death, and became more and more depressed. The family situation became increasingly stressful until he decided to leave.

"I think the most devastating thing to him was that he felt abandoned by Cynthia Munn,"

Wennerholm said.

He said he diagnosed Mendenhall with severe depression and a post-traumatic stress disorder. Today, Goodman will cross-examine Wennerholm, and Munn's testimony will resume in Yavapai County Superior Court Division 4.

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# Elder abuse case still focuses on money

By GAIL KENNY  
The Daily Courier

PRESCOTT — Like a builder laying a foundation, Raymond Mendenhall's attorney brought in two expert witnesses Wednesday to cement the foundation of the financial claims he made in his opening statements in the alleged elder abuse case a week earlier.

Pamela Johnston, a certified private fiduciary, and Anne King, an accountant, talked about the reviews they made of the practices and finances throughout the time that Ray-

mond Mendenhall, now 93, lived with his granddaughter, Cindy Munn and her husband, Kirk, in Chino Valley from 1997 to 1999.

Johnston, who also has experience in the legal and banking fields, said most of her career experience has involved working with seniors, first as a probate paralegal and then as a probate specialist in a bank's trust department.

Johnston said a fiduciary takes the responsibility for

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another's affairs. In her position as a private fiduciary, certified by the Arizona Supreme Court, she serves as a court-appointed conservator in some cases, at the request of family or others.

After reviewing the complaint, answer, depositions, other case material and interviewing Mendenhall, Johnston said she concluded that the Munns overstepped in several ways the fiduciary responsibilities they assumed.

For example, she said the Munns mixed Mendenhall's finances with theirs in a practice known as co-mingling accounts, something the law forbids her to do as a certified private fiduciary, she said.

In addition, she said the Munns' claim that Mendenhall owes them more than \$600 a month for room and board in a house in which he paid for remodeling expenses appears excessive. She also questioned three years of care-giving costs at \$6 per

hour for 12 hours per day that the Munns claim in set-off costs.

In cross-examination, the Munns' attorney, Mark Goodman, asked Johnston if she was aware of the level of care they provided, or what services.

She responded that she believed she had a pretty clear picture from the depositions and interviews with Mendenhall.

He asked if she was aware of any special training the Munns received for their fiduciary duties.

"I don't think it requires someone to be a certified private fiduciary to understand the importance of keeping records," Johnston said.

Later in the day, King, an accountant, said she reviewed financial records, tax returns and depositions to account for the nine separate accounts and the Mendenhall and Munn finances from 1997 to 1999.

Out of that information, she was able to draw conclusions

about the two parties' starting finances, their incomes during the three years, and their final assets.

Her conclusions reflected Jensen's opening statement last week, that Mendenhall had approximately \$700,000 in assets when he moved into the Munn home and \$140,000 in income over the three years, but less than \$86,000 in assets as of Dec. 31, 1999.

Meanwhile, she testified, the Munns had about \$23,000 in assets when Mendenhall moved in at the start of 1997, income of about \$134,000 over the three years, and approximately \$510,000 in assets on Dec. 31, 1999.

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# Judge allows elder abuse case to continue

By GAIL KENNY  
The Daily Courier

PRESCOTT — Like spring cleaning in the courtroom, Judge Raymond Weaver dusted off the plaintiff's claims in a civil elder abuse case Friday morning and brushed away a few items.

For the most part, Weaver denied defense claims that the plaintiff failed to make a case during the first half of the Mendenhall vs. Munn suit, in

which 93-year old Ray Mendenhall of Chino Valley alleges that his granddaughter, Cindy Munn, and her husband, Kirk, abused him physically and improperly used the majority of his assets.

Weaver granted defense attorney Mark Goodman's motion to remove the mortgage payment from the claims against the Munns. Mendenhall ada-

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mantly testified, and Cindy Munn agreed, that the mortgage payment was a gift.

Weaver removed Kirk Munn from the claim that both Munns were de facto conservators. No evidence showed that he handled the various bank accounts and transactions, Weaver said.

Weaver denied Goodman's other mid-trial motions.

During testimony Friday, Bill Hobbs, an investigator for the Yavapai County Attorney's Office, said Mendenhall visited him on Feb. 2, 2000, claiming that the Munns had financially exploited and physically abused him.

Hobbs said Mendenhall admitted he knew Cindy Munn was using some of his money. He vaguely remembered some things, but Hobbs believed he authorized or allowed the use of his money.

After getting Mendenhall's story, Hobbs investigated the allegations. He looked into the Chino Valley police records and talked to someone from Adult Protective Services.

He talked to Kirk Munn two days later. The conversation, early on Feb. 4, 2000, in the Munns' driveway, didn't last long, Hobbs recalled. The Munns were upset over the allegations and had decided to retain an attorney.

On cross-examination, Hobbs said he didn't know if Mendenhall knew how much of his money the Munns used. He said he had not

seen photos of Mendenhall's bruised arms after a June 1999 episode between Kirk Munn and Mendenhall.

And he said he wasn't aware that the Munns' home mortgage balloon payment was due one week after Mendenhall paid it off.

He responded to Mendenhall's attorney, Chris Jensen, that if Mendenhall feared losing the home in which he was living, and that caused him to pay off the mortgage, it possibly was coercion.

Hobbs said the Yavapai County Attorney's Office investigation still is open, pending this civil case. However, he is not the investigator now.

Other witnesses Friday included Jill Chavez, a neighbor at the Beaver, Utah, vacation home, and friends of the Munns, Doug and Mary Howard and Frank and Janel Dellara.

Doug and Mary Howard each testified that they visited the Munns hundreds of times over the years, often coming over day after day, at unannounced times, and participating in fishing and hunting trips.

The Howards are close friends, more like family,

Mary Howard said. Doug Howard is the manager of Kirk Munn's business, The Grease Gun in Chino Valley.

Both testified that they saw Kirk as a caring, respectful companion for Mendenhall. They never witnessed abuse or saw the Munns trying to isolate or deprive him.

**'What Grandpa wanted, he got.'**  
**-Doug Howard, friend of defendants Kirk and Cindy Munn, on the notion that plaintiff Ray Mendenhall, Cindy Munn's grandfather, was a victim of physical and monetary abuse**

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"What Grandpa (Mendenhall) wanted, he got," Doug Howard said.

But when Mary Howard repeated nearly that identical phrase later in the day, the words that Goodman spoke over and over during his opening statement, jurors and others raised their eyebrows.

Jensen asked Mary Howard about it on cross-examination, and she said it was her own thought. And on redirect, Goodman confirmed with her that he hadn't rehearsed her for testimony earlier.

Frank and Janel Dellara testified that they knew the Munns, and had, on occasion, had Cindy Munn notarize documents. On one occasion, the Dellaras witnessed some documents that Mendenhall signed.

Frank Dellara said he hardly remembered the occasion, but Janel Dellara said she remembered and Mendenhall seemed to be alert and aware of the signing.

And Jill Chavez, who lives next door to the Beaver, Utah, vacation home Mendenhall owned and now co-owns with Cindy Munn, said she saw Mendenhall's wife, Deseret, physically decline over the years.

The decline wasn't nearly so marked with Mendenhall, except mentally from 1998 to 1999, she said.

She recalls Mendenhall talking about wanting to give the vacation home to the Munns. She also described the work that Kirk Munn did on the house on working/vacation trips there with Mendenhall.

The trial resumes Wednesday in Yavapai County Superior Court Division 4.

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April 27, 2001

## Mendenhall vs. Munn

# Plaintiff rests in elder abuse trial

By GAIL KENNY  
The Daily Courier

PRESCOTT — The plaintiff's side rested its case Thursday after a full day of testimony during the trial's sixth day in Ray Mendenhall's alleged elder abuse case in Yavapai County Superior Court.

The 93-year-old Chino Valley man, with his attorney, Chris Jensen, charges that his granddaughter, Cindy Munn, and her husband, Kirk, took advantage of a vulnerable, elderly man, abused him and converted the majority of his

assets.

This morning, Judge Raymond Weaver will face a number of motions from the defense, alleging that the plaintiff's witnesses failed to prove their side's claims during their portion of the trial.

In Thursday's testimony, Dr. Virginia Conners, a neuropsychologist, talked about her examination of Mendenhall in January 2001.

Conners examined Mendenhall for five hours, giving him a battery

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of psychological tests.

In some areas, he functioned at a below-average range. In others he performed at or below 1 percent, a severely impaired score.

She determined that while his immediate working memory is intact, allowing him to carry on a conversation, his frontal lobe functions are negatively affected, impairing his reasoning skills and memory.

She determined that the culprit is a neuro-degenerative disorder: most likely Alzheimer's disease or a related frontal-temporal lobe degeneration.

"There is something going on in the brain that is compromising brain function," Conners said.

Based on the tests, Conners said, this isn't just advanced age. Publishers norm the tests for 92- to 97-year-old people, and Mendenhall scores significantly below the norm. And she told Jensen she didn't believe that Mendenhall could have been purposely falsify-

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call, it wouldn't be surprising to her. Often, people who see a senior patient — family or even doctors — don't recognize the person's actual reasoning deficits.

Goodman showed Conners portions of Mendenhall's taped depositions in August and September 2000. Conners agreed that it took cognitive function to make those decisions that Goodman picked out.

However, on redirect questioning, Jensen asked whether

Goodman also ascertained that Conners had not spoken to the Munns or their friends or neighbors, or looked over other reports in drawing her conclusions.

Goodman asked if Conners knew that Mendenhall's regular physician doesn't agree that he is impaired.

Conners said that even though Mendenhall's primary care doctor didn't make that

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call, it wouldn't be surprising to her. Often, people who see a senior patient — family or even doctors — don't recognize the person's actual reasoning deficits.

Goodman showed Conners portions of Mendenhall's taped depositions in August and September 2000. Conners agreed that it took cognitive function to make those decisions that Goodman picked out.

However, on redirect questioning, Jensen asked whether people with neuropsychologi-

cal disorders have cognitive function. She said they do, and agreed that just because a person thought through something, it doesn't mean he wasn't impaired.

Earlier in the day, Goodman cross-examined Anne King, an accountant and Internal Revenue Service enrolled agent.

Goodman walked King through a listing of expenses, then asked some questions of accounting practices.

After Goodman asked whether a typical person would be able to account for all money in numerous accounts over a three-year period, King

told him that if a person has assumed this duty, it's a trust.

On redirect to Jensen, she made an even stronger statement about a person who has assumed the care and financial trust for an elder relative, such as Cindy Munn did for Mendenhall.

"I would expect the job to be impeccable," she said. "I would expect it to be better than one would do for one's self."

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May 4, 2001

# Elder abuse trial nears end

By GAIL KENNY  
The Daily Courier

PRESCOTT — Chino Valley resident Cindy Munn finished her testimony Thursday after nearly two days on the stand in Yavapai County Superior Court.

Munn and her husband, Kirk, stand accused of elder abuse and conversion of retirement money and other assets from her grandfather, Ray Mendenhall, in the civil case.

Mendenhall, 93, lived with the Munns from late December 1996 to Christmas Day 1999. In between, Mendenhall claims, the couple took advantage of his vulnerable state, reducing his assets of more than \$700,000 to less than

\$100,000.

On Wednesday, Munn told defense attorney Mark Goodman that she never has served as an accountant or professional bookkeeper, neither at a funeral home in California nor in the Chino Valley Municipal Court.

Thursday, however, when asked about her title with the funeral home, she responded that she was accounts receivable and accounts payable manager.

"An accountant?" Jensen questioned. Munn responded that she was a manager, not an accountant.

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## • ELDER

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Wednesday, Goodman asked her about the accounts named in the case — nine in all. Six of them, she said, were Mendenhall's, or joint accounts. Three of them were Munn accounts, she said.

Munn denied that she ever used any of Mendenhall's money without his permission. The money was mixed in the accounts, she agreed, but that was because her grandfather wanted it to benefit all of them.

Goodman asked her what her grandfather said about that.

"That it was all in one pot," Munn said. "We were family."

Goodman showed a variety of photos throughout the three years, demonstrating Menden-

hall celebrating occasions from early 1997 to late 1999. He asked Munn when he became unhappy. Not during the time he was with the Munns, she said.

"He's unhappy now," she said.

Thursday, Jensen challenged that Munn and her husband never could have afforded the improvements they made, or their lifestyle of multiple cars and boats, a large home addition, spas and pools, a newly constructed business, and vacations, if Mendenhall hadn't come to live with them.

"Yes, I could agree with that," she said. "Grandpa was with us, and he wanted us to be happy."

Time reared its head in the case both days, both in attorneys' attempts to nail down actual dates of events and for the trial

schedule. On Thursday, the attorneys each took a shot at trying to frame an incident that involved Mendenhall's use of acetone. In a delayed police report, Mendenhall said he believed he was using acetone to fix his camper on Christmas Eve Day 2000 when Kirk Munn verbally abused, then assaulted him.

Cindy Munn, who denied her husband's wrongdoing, had reported buying disposable brushes for her grandfather as early as mid-November 2000. She said she believes her husband confronted her grandfather over the acetone a day or so after Thanksgiving.

Jensen said that Kirk Munn stated in his deposition that he was hanging Christmas lights at the time. Could it have been the

# Testimony concludes in alleged elder-abuse case

By GAIL KENNY

The Daily Courier

PRESCOTT — The defense rested Friday in an alleged elder abuse case in Yavapai County Superior Court.

After a lengthy examination of defendant Kirk Munn by both his attorney Mark Goodman and plaintiff's attorney Chris Jensen, the testimony in the case finished on the trial's 10th day.

Tuesday, Judge Raymond Weaver will

meet with the attorneys to prepare final juror instructions, which he will hand out Tuesday afternoon. The jurors should begin deliberations late Tuesday afternoon and continue Wednesday.

Kirk Munn told jurors he met Ray Mendenhall, his wife's grandfather, when he and Cindy still were in high school. However, they didn't do much

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with Ray Mendenhall and his wife, Deseret, until the seniors called them in the fall of 1996 and asked for their help.

Kirk said he went to southern California to find the Mendenhalls struggling. They didn't have a working car. They had very little food in their home, had dirty sheets on their beds and needed baths.

Goodman focused Kirk Munn's testimony on his efforts as a caretaker. Munn was always present at Mendenhall's side, he testified, providing an arm for Mendenhall, now 93, to brace himself with.

It was in that same spirit, Munn said, that he tried to catch Mendenhall in July 1999, when he fell in the yard.

Munn had asked for Mendenhall's keys to repark his car after he left it partially in the road, Munn said.

Munn said Mendenhall became agitated, throwing his arms in the air and losing his balance. He grabbed for the elderly man, and both went down.

That was the day after the family came home and found their skunk-sprayed dog had been in the house during their trip to Lake Havasu.

The next day, the Munns became concerned about Mendenhall when he took off, walking. Later they would find that Mendenhall went to a neighbor's to have her call the police to report the incident as an assault.

Munn agreed with his wife that they needed to look into her grandfather's mental health. They contacted his doctor and a number of agencies for help.

Jensen used this episode on cross-examination to try to show the jury the plaintiff's claim that the Munns controlled Mendenhall's movements. Why was it an issue that Mendenhall was walking down the street, he asked Munn.

Munn said his grandfather never walked anywhere. His older daughter woke him with that

information that Mendenhall was walking down Palomino Road.

"My daughter was almost in tears," he said. "He (Mendenhall) had never done that."

Jensen asked him about his businesses and their financial viability. He had an auto upholstery business that closed in Southern California. He also closed the doors of an auto repair business but continued to operate it from his vehicle.

Asked about the financial soundness of the Grease Gun, the lube and repair business that the plaintiff alleges Munn built with his money, Kirk Munn told Jensen he would have to ask questions about its profits to his accountant, that he didn't know that information.

Jensen also asked about the Munns' debts in 1997, and Kirk Munn's gambling habit.

Munn said when Cindy's grandmother died in April 1997, he knew about two judgments, but not two tax liens against the couple for his failure to pay sales tax for Munn's Automotive.

Munn left Chino Valley on April 5, 1997, when he learned the hospital was sending Deseret Mendenhall home, home to die, she said. Munn — who never took off on his wife like that previously — arrived back home a week later, after his wife's grandmother's funeral.

Jensen asked him his whereabouts during that time. Munn said planned to go to his parent's home, south of Reno, Nev. But he didn't make it that far — taking a one-way plane trip to Las Vegas.

Munn said he paid cash for the entire trip. Jensen asked him if that was the cash from Mendenhall's safe, about \$60,000 that turned up missing during Munn's absence that week.

Munn denied taking the money or trying to arrange a cover-up by not calling the police about the theft.

"I had some money," he said, explaining how he paid for the week in Las Vegas. "I worked on people's cars."

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May 10, 2001

# Elder abuse trial drags on; jury has the case

By GAIL KENNY  
The Daily Courier

PRESCOTT — By the 12th day of a scheduled 10-day alleged elder abuse trial, civility was wearing thin as attorneys argued their final points and Navapai County Superior Court Division 4 staff prepared jury instructions and verdict forms.

After more objections to a proposed 36th jury instruction from attorneys Chris Jensen and Mark Goodman, Judge Raymond Weaver told the pair how he was going to word it, "and that's final."

More than an hour later, the jury filed in for closing arguments in the case. As they settled on an array of seat cushions, the nine of them also seemed worn down, after attorneys wrangled the entire day Tuesday over words, and the jury went home without hearing any of the promised closing arguments.

Wednesday, the lawyers challenged the jury to read carefully the evidence most favorable to their respective sides as they started deliberations.

Jensen, who represents plaintiff Ray Mendenhall, told the jury this case is about greed and a betrayal of trust.

"Follow the trail of money," he said. "It tells you everything you need to know in this case."

Jensen told the jury he proved that the Munns started with nearly nothing — except the opportunity they saw when the Mendenhalls moved in.

Within days, they were building onto their Chino Valley home, opening joint accounts and laying a foundation that would continue for three years.

He pulled out net worth statements for both Mendenhall and the Munns both before and after Mendenhall lived with the

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Munns.

He showed the sheet of transactions with a portion of Mendenhall's money, showing how it filtered through account after account.

Those transactions were difficult enough for Munn to follow, he said, but almost impossible for Mendenhall, a vulnerable adult suffering from a neuro-degenerative disorder that affected his ability to reason and see the long-range picture.

He asked the jury to consider not only monetary damages, but also triple punitive damages.

"That will punish the Munns and send a message to the community that this sort of thing is not going to be tolerated," Jensen said.

But the Munns' attorney, Mark Goodman, saw things differently, calling it a case of an angry man who changed his mind about gifts to his granddaughter and her family.

"He's angry, and that's why we're here," he said. "That's one of the reasons why we're here."

Goodman said Jensen failed to prove anything, and instead

is relying on theories and accusations, not facts.

Theories, like his theory about the Munns using multiple checking accounts. Accusations, like his implication that Kirk Munn stole money from Mendenhall's safe.

Mendenhall himself said he's not accusing the Munns of doing anything wrong the first 18 months.

That period encompasses most of what the jury will have to decide: accounts, the remodel, the theft of money, the deed for the Utah vacation home, the college fund, the land for the Grease Gun business, pay-off of judgments and more.

And the defense will concede that the Munns have more now than when Mendenhall moved in. Mendenhall wanted it that way, he said. Goodman said Mendenhall wanted to see the Munns happy, and benefiting from his gifts while he was alive.

The jury began deliberating late Wednesday afternoon, and will continue deliberations today.

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# Jury awards \$400k in elder abuse case

May 11, 2001

By GAIL KENNY

The Daily Courier

PRESCOTT — The courthouse chimes pealed 4 o'clock Thursday as the jury filed into the Yavapai County Superior Court Division 4 courtroom with its verdict.

Almost exactly 24 hours after the jury began deliberations, it returned a verdict in favor of 93-year-old plaintiff Ray Mendenhall on a civil claim of elder abuse by financial exploitation, and awarded Mendenhall \$400,000.

The amount nearly mirrors the assets

that plaintiff attorney Chris Jensen demonstrated that Cindy and Kirk Munn benefited from Mendenhall's three-year stay with them, minus their mortgage payoff.

The court determined early in the trial that Mendenhall adamantly stated that payoff was a gift to his granddaughter and her family.

The jury also decided for the plaintiff on his claim of conversion — wrongful control of property, but didn't award any

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money, apparently grouping its entire award under the elder abuse claim.

Jurors denied the second claim of elder abuse, that the Munns endangered or injured Mendenhall's health by neglect, abuse or exploitation, or failed to report these issues. They similarly denied that the Munns intentionally inflicted emotional distress, and failed to support Mendenhall's claim of assault and battery.

The jury denied the Munns' claims of recoupment and set-off for their care and travel on behalf of Mendenhall for three years, from 1997 to 1999.

After Mark Goodman, attorney for the Munns, had the court poll the jurors on the verdicts, Judge Raymond Weaver thanked the nine people who made up the jury and excused them after 13 days of trial and deliberation.

After the verdicts, Mendenhall's attorney Jensen had to repeat and explain the jury's decisions to Mendenhall, who has a severe hearing loss.

Meanwhile, the Munns were smiling and laughing, and Cindy Munn hugged Goodman.

After the jury left, Goodman asked the judge to release the injunctions the court imposed on the vacation home in Beaver, Utah, the Munns' Lake Havasu property and the Grease Gun auto repair business in Chino Valley.

Jensen argued that these properties will be the only opportunities for Mendenhall to recover the \$400,000 jury award.

He said he would be asking the court to create a constructive trust so Mendenhall could collect the judgment at his advanced age, so the court should maintain the legal control over these properties.

Weaver agreed with Jensen's argument and denied Goodman's motion.

Goodman and the Munns refused to comment after the trial.

However, the plaintiffs welcomed questions. Jensen called this case an important step in educating the public about elder abuse laws.

"It seems that there is a reluctance on the part of the police, physicians, bankers and others to fully enforce the elder abuse laws," Jensen said.

Overall, the jury was very responsive to their presentation of elder abuse by family members.

"We're very pleased with the verdict, because it awards all the money that we could hope to collect from the Munns," he said.

"We're disappointed that the jury chose not to award three times the damages as the elder abuse laws permit, in order to punish the wrongdoer, even

those the Munns would not have been able to pay any more than the \$400,000 that was awarded."

Mendenhall said he's pleased, but he would have liked to see the jury award punitive damages.

"They needed to be made an example of," Mendenhall said. "During the whole time I lived there, I tried to be a gentleman, to treat those people like a gentleman and a lady and their girls with respect."

However, he said he didn't realize fully until late 1999 and after he left their home on Christmas Day 1999 how they exploited him.

"I was putting it in the front of the bank, and they were taking it out the back," he said, as he slowly walked out of the courthouse.

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