

Durable Power of Attorney Cases

- In re Patton, 2014 WL 4803146
 - Ms. Richmond used her durable power of attorney to convey real property owned by Mr. Patton to herself and another for no consideration.
 - Did the Durable Power of Attorney (“DPOA”) authorize Ms. Richmond to make gifts?
 - DPOA
 - Within the DPOA, the language suggests that it was Mr. Patton’s intent to allow for his daughter to make gifts through the DPOA.
 - According to the court, this language related to the health care portion of the DPOA.
 - Accordingly, the court said language within the DPOA relating to gifts must be very explicit.
 - Note: The holder of the DPOA may make gifts to himself/herself if the Respondent had a history of doing so.
- Ralston v. Hobbs, 306 S.W.3d 213 (Tenn. Ct. App. 2009)
 - Defendant used a DPOA in order to add himself to Plaintiff’s checking and savings account so that he would have signatory privileges out of convenience.
- In re Estate of Davis, 2013 WL 5827640
 - Decedent executed a DPOA in 1996 making Mr. Davis her true and lawful agent and attorney.
 - Mr. Davis used this grant to transfer more than \$260,000 in cash from accounts in Decedent’s name. Mr. Davis used \$125,000 of this to purchase a condo jointly for himself and Decedent and, upon her death, would be Mr. Davis’s condo.
 - In reviewing Mr. Davis’s request for one year’s maintenance, the Court found that the money Mr. Davis obtained from his DPOA and transfer from inter vivos trust, outweighed the request of one year’s maintenance and, therefore, barred him from receiving the maintenance.
- Copas v. Copas, 2012 WL 171966
 - Issue:
 - “Whether the son of decedent breached his fiduciary duty under [DPOA] and as personal representative of decedent’s estate.”
 - Using his DPOA, the decedent’s son sold three pieces of property. Additionally, Decedent’s son misappropriated \$863,469.38. He used the money to buy his daughter a Lexus, to pay income taxes, and to buy a Mercedes for himself, among other things.
 - The trial court found that decedent’s son used his power of attorney in an abusive manner to benefit himself. The Court found that the money was not used to benefit Decedent. The Court of Appeals upheld the Trial Court’s finding and claimed that Decedent’s Son did not produce any evidence establishing that he exercised the utmost good faith in handling his mother’s property and money.
- In re Conservatorship Hathaway, 2014 WL 3513380
 - The Ward was diagnosed with a mild cognitive impairment. Following, Ward executed a DPOA in which he appointed Petitioner as the agent.
 - Petitioner used the DPOA to sign a Bill of Sale for Mr. Hathaway’s pick up truck.

- Holding:
 - The trial court found that Petitioner never actually had a DPOA. Within the DPOA, a vesting clause was included in which the DPOA became effective upon disability or incapacity as certified by a medical doctor. While the Ward had a medical condition, it was never certified in writing. Petitioner, thus, never had a DPOA.

DO NOT FORGET:

- In re Conservatorship of Groves, 109 S.W.3d 317
 - In this case, an elderly individual is taken advantage of by her brother in law.
 - This case is important for its distinction between functional capacity and decision making.
 - Functional Capacity:
 - Functional capacity relates to a person's ability to take care of oneself and her property.
 - Taking care of oneself involves the activities of daily life.
 - These activities include personal hygiene, obtaining nourishment, mobility, and addressing routine healthcare needs.
 - Emphasis here should be placed on a person's ability to carry out essential activities in the home and not just in the doctor's office or courtroom
 - In terms of property, functional capacity looks at caring for and managing personal property, real property, and finances.
 - First step is to identify the property. From here, the court should look at whether the person can make or communicate decisions regarding the property without wasting or dissipating the property.
 - Decision Making
 - Decision making relates to one's ability to make and communicate decisions with regard to caring for oneself and property.
 - There are four separate abilities involved in decision making:
 - (1) ability to take in and understand information
 - (2) ability to process the information in accordance with his or her own personal values and goals
 - (3) ability to make a decision based on the information; and
 - (4) ability to communicate the decision