

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: : ORPHANS' COURT DIVISION  
:  
ROBERT G. SHEARER, SR. : 41-15-0402

**OPINION AND ORDER**

Before the Court is a Petition to Adjudicate Incapacity and to Appoint a Guardian of the person and estate for Robert G. Shearer, Sr. The Petition was filed by Kathleen Way, Petitioner's daughter. The Petition is opposed by Mr. Shearer's son and remaining siblings. They contend that a guardianship is not necessary nor appropriate. It is without question that Mr. Shearer is incapacitated as defined by law.

Extensive hearings have been held in this matter. During the course of the hearings, it became known to the Court that prior to becoming incapacitated, on March 11, 2008, Mr. Shearer executed a General Durable Power of Attorney naming his son Timothy as agent as well as a Durable Healthcare Power of Attorney and Living Will naming his daughter Kathleen as agent. Subsequent to Mr. Shearer's incapacity, Tim Shearer notified Kathleen Way that he was revoking the Durable Healthcare Power of Attorney and Living Will pursuant to the power given to him in the General Durable Power of Attorney.

This Opinion and Order will address the validity of Timothy Shearer's actions in connection with said revocation.

Durable Healthcare Powers of Attorney are governed by the Healthcare Agents and Representatives Act. 20 Pa. C.S.A. § 5451 et seq. The Act does not

explicitly authorize the revocation of a duly executed Durable Healthcare Power of Attorney by anyone other than the principal or a court appointed guardian with approval of court. 20 Pa. C.S.A. § 5459 (a), 20 Pa. C.S.A. § 5460 (a). In fact, the Act implicitly rejects a General Durable Power of Attorney from having the authority to vacate a previously executed and valid Durable Healthcare Power of Attorney. 20 Pa. C.S.A. § 5456.

General Powers of Attorney are also governed by statute. 20 Pa. C.S.A. § 5601 et seq. Generally speaking, a principal may designate to an agent all of the powers referred to in the Act. 20 Pa. C.S.A. § 5601. These powers include the power to “renounce fiduciary positions.” 20 Pa. C.S.A. § 5602 (a) (6).

However, Powers of Attorney are to be strictly construed. *Matter of Mosteller*, 719 A.2d 1067 (Pa. Super. 1998). *In Re: Estate of Slomski*, 987 A.2d 141 (Pa. 2009). The interpretation of the Power of Attorney however must reflect and not impede with the purpose for which the agency was created. **Id.**

In the General Durable Power of Attorney at issue, it permits the agent with respect to banking and general financial powers “to renounce fiduciary positions.” This is not an authorization, contrary to what Timothy Shearer claims, to revoke the Healthcare Power of Attorney given to Kathleen Way. Strictly construing the General Durable Power of Attorney, Timothy Shearer has no authority whatsoever to revoke the Durable Healthcare Power of Attorney given to his sister. Moreover, it is consistent with his father’s intent that Timothy Shearer not have that authority.

Otherwise, it would not have been necessary for Mr. Shearer to execute both a General Durable Power of Attorney and Healthcare Power of Attorney at the same time. Clearly Mr. Shearer wanted his daughter to handle his healthcare matters and his son to handle all other matters.

Case law arguably supports this position as well. See, *Estate of Border*, 2013 Pa. Super. 94 (April 23, 2013).

Based upon the applicable statutes, the document itself and case law, the Court concludes that Timothy Shearer as his father's General Durable Power of Attorney did not have the authority to revoke his father's previously executed Durable Healthcare Power of Attorney and Living Will. Accordingly, said purported revocation is deemed invalid. The Durable Healthcare Power of Attorney and Living Will executed by Mr. Shearer and given to Kathleen G. Way is deemed to be valid.

Given such a conclusion and as indicated to the parties at the last hearing, the Court is concerned as to whether any type of guardianship would be appropriate under these circumstances. In order for a guardian to be appointed, it must be proven that the individual is incapacitated and that the individual needs guardianship services. 20 Pa. C.S. § 5512.1 (a) (3); *In Re: Perry*, 727 A.2d 539, 541 (Pa. 1999).

It appears to the Court that in light of both Powers of Attorney, which are both valid, that Mr. Shearer, Sr. may not need guardianship services. Further, it appears to the Court that in light of the Healthcare Power of Attorney given to

Kathleen Way, she has the right to select a primary care physician and to make general healthcare decisions regarding Mr. Shearer Sr's. care, custody and healthcare treatment.

**ORDER**

**AND NOW**, this 18<sup>th</sup> day of December 2015, following a hearing and for the reasons set forth herein, the Court concludes that the purported revocation by Timothy Shearer of the Durable Healthcare Power of Attorney and Living Will given by his father to Kathleen Way is invalid. The Durable Healthcare Power of Attorney is in full force and effect.

By The Court,

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Marc F. Lovecchio, Judge

cc: John Bonner, Esquire  
Kristine Waltz, Esquire  
Andrea Pulizzi, Esquire  
Gary Weber, Esquire, Lycoming Reporter