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Court Affirms That Children Cannot Sue on Behalf of a Parent Solely by Virtue of Being the Parent's Child

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A recent court decision stating that children do not have the legal standing to sue on behalf of their parents, simply by being their child and closest family member, reiterates the need for older parents and their adult children to engage in basic planning for the possibility of the parent experiencing a loss of capacity, or even diminished capacity, which could leave the parent vulnerable to exploitation. The case involved a father, his daughter, and the father's long-time significant other. The father owned a business that employed his daughter. As the father aged, the daughter became increasingly involved in the management of the business. In late 2016, the father was hospitalized after falling and there was evidence that during this time, his cognitive abilities declined. In early 2018, he suffered a stroke. Throughout these medical events, the daughter continued to manage the father's business.

Shortly after the stroke, however, the significant other appeared at the business, with a power of attorney purportedly signed by the father in 2017 (at the time that he was recovering from the first hospitalization), demanding that the daughter vacate the premises. Under the authority of the purported, suspect power of attorney, the significant other took over management of the father's business and prevented the daughter from having any further involvement.

Children Cannot Sue on Behalf of Parent

The daughter then filed a lawsuit, on behalf of her father, demanding the significant other to restore her possession and control of the father's business. The daughter focused on the power of attorney, which was executed under suspicious circumstances and which, according to the handwriting expert that the daughter retained, was not genuine.

After a year of litigation (and, presumably, a year's worth of counsel fees, not to mention fees for a handwriting expert), the court dismissed the daughter's case. At first, this may seem like a harsh result – the daughter was trying to help her father, and, after all, she was working at the business (her father's business) until the significant other showed up out of the blue. And what about that suspect power of attorney?

The court ruled that a child has no legal basis (or "standing") to sue on behalf of a parent solely by virtue of being the parent's child. In this case, the daughter was not an agent under any power of attorney; she was not her father's guardian; and she had no formal role in the business, other than

as an employee terminable at-will. Because she had no right to bring the suit, to begin with, the validity of the power of attorney was not relevant.

Advance Planning Can Avoid Confusion

The daughter can still choose to bring a second suit to be appointed as her father's guardian. While this might ultimately get her the relief she wants, it likely will not come without a fight, as the significant other likely will claim that she, and not the daughter, should be the guardian. Both cases (the case that was dismissed and the guardianship matter that likely will be filed) likely could have been avoided, or at least made simpler for the daughter, had the father engaged in some planning. For example, the father could have executed a power of attorney long before there was an issue of capacity, which would have made clear whom he wanted to act for him. While a power of attorney is revocable, it could have required that the daughter be given advance notice of any revocation, which may have made it more difficult for the significant other to improperly secure a new power of attorney under what might have been questionable circumstances. A power of attorney can also indicate the principal's preference as to who should be appointed as the principal's guardian if one should ever be needed.

More specific as to the ownership and operation of the business, the father could have transferred his ownership interest in the business to a trust, with his daughter as trustee. This would prevent the significant other (or anyone else) from taking control of the business merely with a power of attorney (if the trust were revocable, it at least would have required notice to the daughter). If the father were not comfortable giving up control of his ownership, he could have entered into an employment agreement with his daughter. Rather than being an at-will employee, who can be terminated for no cause, an employment agreement would confer rights on the daughter that she could enforce in court. For example, it could limit the circumstances under which she could be terminated, which could have prevented the significant other from pushing her out for seemingly no reason other than, due to the suspect power of attorney, she had the ability to do so.

Granted, this all assumes that the father truly wanted his daughter to take over, not his significant other and that the significant other may have gotten away with something (at least for the time being). It may be true that nothing improper took place. But that is exactly the point – when these types of questions are left completely unanswered (by the father's failure to plan), courts are left to make their best guess in determining what someone in the father's position would have wanted, and there is increased potential for improper conduct. Knowing that simply being the child and closest family member of an older parent may not give you standing to sue on behalf of or protect the parent's interests in court, make sure to have the tough conversations about who the parent wants to step in should the need ever arise.

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