

Court Affirmed Order Removing A Power Of Attorney Agent For Breaches Of Fiduciary Duty

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In *In re Guardianship of Delp*, a brother sued his sister over her actions as their mother's power of attorney agent. No. 02-22-00300-CV, 2023 Tex. App. LEXIS 3617 (Tex. App.—Fort Worth May 25, 2023, no pet. history). The daughter had been living in her mother's home rent free. She arranged for her mother to execute a deed transferring the home to the daughter. Shortly after that transaction, the daughter took her mother to a new attorney, and the mother signed a new statutory durable power of attorney replacing a sister with the defendant daughter as the new agent. The defendant daughter then took control of some of the mother's bank accounts, social-security payments, and credit cards. The plaintiff brother was then appointed the mother's guardian, and he filed suit to remove the defendant daughter as power of attorney agent. The probate court entered a judgment that because the defendant had "breached her fiduciary duty," the court removed her "as agent in all powers of attorney for health care and all durable powers of attorney executed by" the mother.

The court of appeals discussed the duties owned by a power of attorney agent:

Dianna does not dispute that an agent under a statutory durable power of attorney owes formal fiduciary duties to her principal and can be removed for a breach of those duties. Among them are the duties to act in good faith, to avoid conflicts, and to act loyally, which prohibits a fiduciary from using her position to benefit at the principal's expense—that is, an agent must not engage in self-dealing. Because all transactions between a fiduciary and her principal are presumptively fraudulent, the fiduciary bears the burden to establish the validity and fairness of any particular transaction in which she is involved.

Id. The court reviewed the evidence and held that there was evidence to support at least one of the findings of breach:

If even one of these findings that underlie Dianna's claimed fiduciary-duty breach enjoys sufficient evidentiary support, the probate court could have properly removed her as Trudy's agent under the 2020 POA. But we need not get into the evidence supporting these findings because Dianna's appeal fails for a more fundamental reason: she has not challenged the

probate court's additional finding that "Dianna continued to reside in Trudy's home rent free and without paying any of the expenses for the upkeep and maintenance of the home." Unchallenged fact-findings are entitled to the same weight as a jury's verdict and bind an appellate court unless either the contrary is established as a matter of law or no evidence supports the finding. In other words, we defer to unchallenged fact-findings that are supported by some evidence.

The evidence showed that after Trudy moved to a nursing home in June 2021, Dianna was using Trudy's money to pay the utilities at the Cardinal Lane home. Because the Maryanna Way property was "not habitable," Dianna was still living in Trudy's house and testified that she intended for her mother to keep paying the utilities. The evidence also showed that in addition to the utilities, Dianna continued to use Trudy's money to pay for lawncare and pool servicing at Cardinal Lane.

The probate court's unchallenged finding that Dianna continued to live on Cardinal Lane "rent free and without paying any of the expenses for the upkeep and maintenance of the home" is supported by some evidence. On this basis alone the probate court could have removed Dianna as Trudy's agent under the 2020 POA, unless Dianna established that these expenditures were fair to Trudy. We have reviewed the record and find no point at which Dianna, a fiduciary, brought forth evidence of fairness to Trudy, her principal.

Id.

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