

FILED

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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs August 1, 2024

**ANITA BUCHANAN, NEXT OF KIN OF LUCY ANITA LEACH,
DECEASED, AND ON BEHALF OF THE WRONGFUL DEATH
BENEFICIARIES OF LUCY ANITA LEACH v. FRANKLIN OPERATING
GROUP, LLC ET AL.**

**Appeal from the Circuit Court for Williamson County
No. 20CV-405 Joseph A. Woodruff, Judge**

No. M2022-01017-COA-R9-CV

W. NEAL MCBRAYER, J., concurring.

I concur in the decision to reverse the order compelling arbitration. I write separately to address the interpretation of the durable power of attorney by which the decedent, Lucy Leach, designated her daughter, Anita Buchanan, as her attorney-in-fact. In arguing whether the durable power of attorney authorized Ms. Buchanan to sign an arbitration agreement associated with Ms. Leach's admission into a nursing home, the parties contend that *Owens v. National Health Corp.*, 263 S.W.3d 876 (Tenn. 2007) controls. The majority describes *Owens* as "helpful background" in that "the trial court's order and much of the parties' arguments on appeal center around that case." But, in my view, *Owens* also provides important context for interpreting the durable power of attorney.

Courts interpret powers of attorney using the same rules of construction generally applicable to other written instruments and "in accordance with the prevailing laws relating to the act authorized." *Owens*, 263 S.W.3d at 884; *see also Williams v. Smyrna Residential*, 685 S.W.3d 718, 724 (Tenn. 2024). Thus, the "plain and ordinary meaning of the written words" controls. *Dick Broad. Co. of Tennessee v. Oak Ridge FM, Inc.*, 395 S.W.3d 653, 659 (Tenn. 2013). That meaning is divined within the context of the law existing at the time the document was executed. *Butler v. KBK Outdoor Advert.*, No. M2019-00321-COA-R3-CV, 2020 WL 8026513, at *3 (Tenn. Ct. App. Dec. 22, 2020) (citing *Dick Broad. Co.*, 395 S.W.3d at 668).

The Uniform Durable Power of Attorney Act establishes the framework governing the power of attorney signed by Ms. Leach. *See* Tenn. Code Ann. §§ 34-6-101 to -112 (2015). This Act authorizes an attorney-in-fact to exercise 22 enumerated powers unless

otherwise limited “by law or elsewhere in the instrument.” *Id.* § 34-6-109 (2015).¹ But the Act should not be construed to vest an attorney-in-fact with the power to “[m]ake any decisions regarding medical treatments or health care, except as incidental to decisions regarding property and finances,” unless the principal specifically grants power to do so. *Id.* § 34-6-108(b)(1), (c)(9) (2021). And it provides that a principal may “delete” powers otherwise authorized by the Act. *Id.* § 34-6-108(b)(2).

Here, a general durable power of attorney, not a power of attorney for health care, granted Ms. Buchanan her powers.² Thus, unless otherwise authorized within that instrument, Ms. Buchanan would not have had the power to make “any decisions regarding medical treatments or health care” for Ms. Leach. *See* Tenn. Code Ann. § 34-6-108(c)(9). And the instrument further limited her powers: it explicitly stated that “**THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR [MS. LEACH].**” This limitation controls even though Ms. Buchanan otherwise had generally broad powers “[t]o enter into binding contracts on [Ms. Leach’s] behalf.” It is a well-known rule of construction that where general and specific clauses conflict, the specific clause governs the meaning of the contract. *See Magevney v. Karsch*, 65 S.W.2d 562, 571 (Tenn. 1933) (recognizing that “the exception of particular things from general words shows that the things excepted would have been within the general language, had the exceptions not been made”); *see also* ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 183–88 (2012) (describing the “general/specific canon”).

In addition to the Durable Power of Attorney Act, the legal context existing at the time Ms. Leach signed the power of attorney included *Owens v. National Health Corp.*, which was decided almost eight years earlier. In *Owens*, the Tennessee Supreme Court considered the meaning of “health care decision” as defined by the Tennessee Durable Power of Attorney for Health Care Act. 263 S.W.3d at 884. It held that, where a power of attorney authorized the making of health care decisions on behalf of the principal, the attorney-in-fact had the power to agree to arbitration in the context of admitting the principal to a nursing home. *Id.* The supreme court reasoned that agreeing to arbitration in that context involved both legal decisions and health care decisions. *Id.* at 884-85. But “[h]olding that an attorney-in-fact [under a durable power of attorney for health care] can make some ‘legal decisions’ but not others would introduce an element of uncertainty into

¹ This section of the act has since been updated to include a 23rd enumerated power. *See* 2016 Tenn. Pub. Acts 117 (ch. 570, § 21).

² As the majority points out, this factual scenario is similar to *Williams v. Smyrna Residential, LLC*, 685 S.W.3d 718 (Tenn. 2024). But it concludes that *Williams* does not dictate the outcome because of the language of the arbitration agreement signed by Ms. Buchanan. In my view, *Williams* does not control because the issue in that case—interpretation of the Durable Power of Attorney for Health Care Act—is not at issue here.

health care contracts signed by attorneys-in-fact that likely would have negative effects on their principals.” *Id.* at 885.

After *Owens*,³ the drafters of Ms. Leach’s durable power of attorney would have understood “health-care decisions” to include signing a nursing-home contract containing an arbitration provision. And I would interpret the limitation as excluding the power to sign the arbitration agreement here. Even though the arbitration agreement was a separate document, it was presented as part of admitting Ms. Leach to the nursing home, which is a health care decision. *See Owens*, 263 S.W.3d at 884.

Although the limitation in the power of attorney granting Ms. Buchanan her powers is reason enough to conclude she lacked the authority to agree to arbitration as part of a nursing-home admission, I agree with the majority that the power of attorney and arbitration agreement can be read together to reach the same result. Consistent with *Owens*, the arbitration agreement states that “signing of this Agreement . . . is a health care decision.”

Finally, I also agree with the majority’s conclusion that Ms. Buchanan did not have authority to sign the arbitration agreement under the Tennessee Health Care Decisions Act. *See* Tenn. Code Ann. §§ 68-11-1801 to -1816 (2023 & Supp. 2024).

For these reasons, I concur in the reversal of the order compelling arbitration.

s/ W. Neal McBrayer
W. NEAL MCBRAYER, JUDGE

³ Of course, *Owens* would be understood in a new light after Ms. Leach signed the power of attorney. *See Williams v. Smyrna Residential, LLC*, 685 S.W.3d 718, 738-39 (Tenn. 2024) (Holly, C.J., dissenting).