

**99PR32 (5/1/00)**

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PROBATE COURT CITY AND COUNTY OF DENVER STATE OF COLORADO

Case No. 99PR32

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IN THE MATTER OF

The Estate of WILLIAM A. HALL  
Deceased.

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ORDER REGARDING CROSS MOTIONS FOR SUMMARY JUDGMENT

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THIS MATTER comes before the Court upon cross motions for Summary Judgment filed by Sharon K. McNeil, Personal Representative of the Estate, and Patricia C. Woody, surviving spouse of the above named decedent. Counsel for both parties filed motions incorporating legal authority. Oral arguments were heard by the Court on April 24, 2000. Sharon McNeil appeared with her attorney, Randall Arp, and David Fine, Patricia Woody's attorney also appeared.

The Court has heard the arguments of counsel, reviewed the file, studied the applicable legal authority, and has been fully advised. The issue to be decided by this Court is whether a power of attorney appointing Sharon McNeil as the decedent's agent was a durable or general power thereby affecting the validity of a certain quit claim deed executed by Sharon McNeil under such power. The Court FINDS that the power of attorney was durable and GRANTS Sharon McNeil's Motion for Summary Judgment. The Court DENIES the Motion for Summary Judgment filed by Patricia C. Woody.

It is undisputed that the decedent died a resident of the City and County of Denver, State of Colorado, on December 12, 1998. It is also undisputed that the decedent signed and executed a power of attorney in Deerfield, Illinois on February 17, 1993. The power of attorney appointed Sharon K. McNeil, the decedent's daughter, as attorney in fact and agent of the decedent. Based upon the testimony offered at the hearing, the pleadings, and language contained in the decedent's power of attorney, the Court FINDS that there is no genuine issue of material fact that the decedent was a resident of Illinois at the time this power of attorney was executed.

On December 11, 1998, Sharon K. McNeil executed a Quit Claim Deed dated December 11, 1998 on property located at 1450 South Humboldt Street, Denver, Colorado 80210. This effectively severed a joint tenancy existing between William A. Hall and Patricia E. Woody on the property and made them owners of the property as tenants in common. The parties agree that the decedent lacked capacity at the time Ms. McNeil executed the Quit Claim

Deed, and it is undisputed that no court ever declared the decedent to be incompetent, incapacitated, or unable to manage his financial affairs.

The applicable portion of the decedent's power of attorney, paragraph 19, reads as follows:

It is my intent that this power of attorney shall remain in full force and effect, and that the powers granted herein shall continue without interruption until my death (and thereafter as to entry into any safe deposit box of mine regardless of the method of ownership), unless previously revoked by me or in the event that I become disabled, incapacitated, or incompetent until such time as I am adjudged by any court as an incompetent or as a disabled person who is unable to manage my estate or financial affairs.

The first question to be determined is whether the Court should apply Illinois law or Colorado law when interpreting the decedent's power of attorney. It is undisputed that the power of attorney in question does not indicate which law should be applied.

Generally, in order to determine a power of attorney's validity, scope and interpretation, courts apply the law of the jurisdiction where the power of attorney was executed or where the agreement was made. C.J.S. Agency §3 at 550 (Supp. 1999). See also *Monarch Refrigerating Co. v. Farmers' Peanut Co.*, 74 F.2d 790, 793 (4th Cir.1935) (applying Illinois law); *In re Everett's Estate*, 23 A.2d 202, 203 (Vt. 1941). It is well settled, however, that the validity of a power of attorney that affects real estate or immovable property is to be determined by the law of the place where the property is located. Restatement (Second) Conflict of Laws § 232 (Main Vol. 1969). See also *Callwood v. Virgin Islands Nat. Bank*, 221 F.2d 770, 776 (3d Cir. 1955); *Gilmer v. Veatch*, 121 S.W. 545, 546 (Tex. Civ. App. 1909); *Linton v. Moorehead*, 59 A. 264, 265 (Pa. 1904).

Here, Ms. Woody disputes the validity of a quit claim deed executed under a power of attorney which transferred property located at 1450 S. Humbolt Street, Denver, CO. Since the property that was transferred under this power of attorney is located in Denver, Colorado, the Court FINDS, based upon the preceding discussion, that Colorado law shall apply.

At the time the power of attorney was executed (February 17, 1993), Colorado had adopted a version of the Uniform Statutory Form Power of Attorney Act, which became effective July 1, 1992. See C.R.S §15-1-1319 (Supp. 1993). The applicable portion of the Act read as follows:

#### §15-1-1303. Durable Power of Attorney

A power of attorney legally sufficient under this part 13 is durable to the extent that durable powers are permitted by any other law of this state and the power of attorney contains language, such as "This power of attorney will continue to be effective even though I become disabled, incapacitated, or incompetent", showing the intent of the principal that the power granted may be exercised notwithstanding later disability, incapacity, or incompetency.

In Colorado, a power of attorney that gives the agent "sweeping powers to dispose of the principal's property" should be narrowly construed in light of the circumstances surrounding the execution of the agency instrument. In the Matter of the Trust of Franzen, 955 P.2d 1018, 1023 (Colo. 1988). The Court must also be guided by its obligation to ascertain the drafter's intent and give it effect. See *In Re the Estate of Dewson*, 509 P.2d 311, 312 (Colo. 1973). See also *Matter of Trust Created by Belgard*, 829 P.2d 457, 459 (Colo. App. 1991);

Brunton v. International Trust, 164 P.2d 472, 475 (Colo. 1945). The Court assumes that the decedent's intent is expressed in the language of the instrument pursuant to its plain and generally accepted meaning. Colorado Interstate Gas Co. v. Chemco, Inc., 833 P.2d 786, 788-89 (Colo. App. 1991), aff'd 854 P.2d 1232 (Colo. 1993); In re Estate of Daigle, 642 P.2d 527, 528 (Colo. App. 1982); Denver Nat'l Bank v. Von Brecht, 322 P.2d 667, 670 (Colo. 1958).

Here, the plain and ordinary meaning of the power of attorney reads that the power is durable until a court finds the decedent to be incompetent, disabled or incapacitated and unable to manage his financial affairs. It is undisputed that no court ever made such a determination. Therefore, the Court FINDS that the quit claim deed executed by the personal representative on December 11, 1998 was valid and enforceable; making Ms. Woody and the estate, owners of the property as tenants in common.

May 1, 2000

C. Jean Stewart  
Judge, Probate Court