

63207-8

63207-8

No.63207-8

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

DOROTHY ("DOTTIE") L. BROWN, by and through her guardian
JOYCE M. RICHARDS,

Appellant,

v.

WELLS FARGO BANK, NATIONAL ASSOCIATION, a foreign
Corporation doing business in the State of Washington, and BEVERLY
ANN HOGG,

Respondents

BRIEF OF RESPONDENT – Barry E. Brown

Barry E. Brown
Respondent

1911 SW Campus DR
#376
Federal Way, WA 98023
Telephone: 253-906-0751

FILED
STATE OF WASHINGTON
2009 NOV 13 AM 11:00

I INTRODUCTION

On October 12, 2009, counsel for Appellant filed an appellant's brief. Before the Court of Appeals will consider the brief, council was directed to file service on all parties, namely myself, Barry Brown, pursuant to RAP 18.5 on or before November 9, 2009. Accordingly, the appellant's brief is placed in the court's file without action.

I wish to inform this Court of Appeals that on November 10, 2009 I received a copy of the appellant's brief. Although I have not heard back from the Court of Appeals, I wish to be in compliance of RAP 10.2, and respond within 30 days after the service of appellant's brief was received by this Court of Appeals. I continue to want the record to reflect that I completely object to the Judgment against me granted on January 7, 2009.

II STATEMENT OF OBJECTION TO APPELANT'S BRIEF

1. Page 14 (Middle of Page and footnote) "Nor does it matter whether an alternate power if attorney form was valid, when the bank was not aware of its existence when it approved the loan. (2) (2) Hogg's attorney filed a power of attorney allegedly signed by Dottie Brown on the same day, (February 15, 2006) which contained no restrictions, CP 433-35, but it was never presented to Wells Fargo." This is my Mother's, Dottie L. Brown's, General Power of Attorney, Ms. Clithorne is referencing in her brief. This General Power of Attorney has been in possession of Ms. Clithorne and her client, guardian Joyce Richards, since on or about November 7th, 2006 when Joyce Richards was appointed my Mother's guardian.

2. Bottom of page 16 and top of page 17. "Barry's authority as attorney- in- fact did not extend to making an extraordinary gift to himself -she continues- Paragraph 5 of the power to attorney form prohibited from making any such gifts during her lifetime."

This is just WRONG, and another example of the many that Ms. Clithorne and her client continue to produce to mislead the court.

Dottie L. Brown's, Durable Power of Attorney states: Paragraph 5. LIMITATION ON POWERS: Notwithstanding the foregoing, nothing contained herein shall authorize the Attorney-in-Fact to make, alter revoke, or change any testamentary disposition of the

Principal's property or to make any gifts of such property during the Principal's lifetime, except as provided in Paragraph 4.10 and 4.14 above. (below)

Paragraph 4.10: Make gifts of the Principal's estate when necessary to continue a pattern of charitable contributions or individual financial support which the Principal has established and maintained while competent and personally managing his estate.

Paragraph 4.14: Create a trust for the benefit of the Principal which provides for distribution of the remainder interest under the same terms as the Principal's last Will and Testament, transfer assets of all kinds to the trustee of any trust created for or by the Principal and/or the Principal's spouse, transfer assets to the Principal's spouse to hold as separate title to qualify the Principal for Medicaid assistance, in which instance the Attorney-in-Fact shall be expressly authorized to revoke on the Principal's behalf any community property agreement which the Principal and his or her spouse may have jointly executed, make, amend, alter wills, codicils, life insurance beneficiary designations, amend trust agreements, and change ownership of life insurance policies or surrender said policies. **The Attorney-in-Fact named herein has specific authority to make gifts of the principal's assets to himself without breach of fiduciary duty hereunder.**

III CONCLUSION

I respectfully request this Court of Appeals to review these errors, NOT as harmless errors. These are deliberate, plain errors made by the guardian Joyce Richards (appellant) and her attorney, Lucy R. Clithorne, to intentionally deceive the court. They have been made throughout the Superior Court of Washington in and for King County Case No. 06-2-39751-7 Kent, that have resulted in a gross miscarriage of justice, and have seriously affected the basic fairness and integrity of the judicial process.

Respectfully submitted this 12th day of November 2009,

By: 
Barry E. Brown

1911 SW Campus DR #376

Federal Way, WA 98023

CERTIFICATE OF SERVICE

I HEREBY CERTIFY UNDER PENALTY OF UNDER THE LAWS OF THE State of Washington, that on November 12, 2009 I caused to be delivered a true copy of the foregoing Respondent's Brief of Barry E. Brown to:



Richard D. Johnson, Court Administrator/Clerk
Division 1
Drive #376
One Union Square
98023
600 University Street
Seattle, WA 98101-4170

Beverly A. Hogg
1911 SW Campus
Federal Way, WA

Ronald Edward Beard
Lane Powell PC
1420 5th Ave Ste 4100
Seattle, WA 98101-2338

Lucy R. Clifthorne
Attorney at Law
1201 Pacific Ave Ste 1900
Tacoma, WA 98402-4315

Andrew Gordon Yates
Lane Powel PC
1420 5th Ave Ste 4100
Seattle, WA 98101-2375

GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that I, DOTTIE LUCILLE BROWN, residing at Federal Way, King County, Washington, State of Washington, has made, constituted and appointed, and by these presents does make, constitute and appoint BARRY E. BROWN, my true and lawful attorney for me and in my name, place and stead, and for my use and benefit to ask, demand, sue for, recover, collect and receive all such sums of money, debts, dues, accounts, legacies, bequests, interests, dividends, annuities and demands whatsoever, as are now or shall hereafter become due, owing, payable or belonging to me and have, use and take all lawful ways and means in my name or otherwise for the recovery thereof, by attachments, arrests, distress or otherwise, and to compromise and agree for the same, and acquittances or other sufficient discharges for the same for me and in my name, to make, seal and deliver, to bargain, contract, agree for, purchase, receive and take lands, tenements, hereditaments, and accept the seizing and possession of all lands, and all deeds and other assurances in the law therefor, and to lease, let, demise, bargain, sell, remise, release, convey, mortgage and hypothecate lands, tenements and hereditaments, upon such terms and conditions, and under such covenants as she shall think fit. Also, to bargain and agree for, buy, sell, mortgage, hypothecate, and in any and every way and manner deal in and with goods, wares and merchandise, choices in action, and other property in possession or in action, and to make, do and transact all and every kind of business, of whatsoever kind and nature, and also for me and in my name, and as my act and deed, to sign, seal, execute, deliver and acknowledge such deeds, leases and assignments of leases, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter parties, bills of lading, bills, bonds, notes receipts, evidences of debt, releases and satisfaction of mortgage, judgments and other debts, and such other instruments in writing of whatever kind or nature, as may be necessary or proper in the premises.

GIVING AND GRANTING unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to the execution of the powers herein granted, as fully to all intents and purposes as I might or could do if personally present, I am hereby ratifying and confirming that my said attorney BARRY E. BROWN shall lawfully do or cause to be done by virtue of these presents.

DURABLE POWER OF ATTORNEY

OF

DOTTIE LUCILLE BROWN

1. Designation. The undersigned Principal, residing and domiciled in the State of Washington, hereby designates BARRY E. BROWN if living, willing, and able to serve as his/her Attorney-in-Fact in the manner hereinafter defined pursuant to RCW 11.94.

2. Effectiveness. This power of attorney shall become effective upon the disability or incompetence of the principal. Disability shall include the inability to manage the principal's property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance. Disability may be evidenced by a written statement of a qualified physician regularly attending the principal and/or by other qualified persons with knowledge of any confinement, detention or disappearance. Incompetence may be established by a finding of a court having jurisdiction over the incompetent principal.

3. Revocation/Termination. Notwithstanding any uncertainty as to whether the Principal is alive or dead, this power of attorney shall continue in effect to the extent permitted by law until revoked or terminated. The Principal, while competent, may revoke this power of attorney by written notice to his or her Attorney-in-Fact and by recording the instrument of revocation at the office of the auditor or recorder of the county of his or her residence. The power of attorney shall be terminated as to the deceased Principal upon receipt of written notice or actual knowledge by the Attorney-in-Fact of the death of the Principal, and further may be terminated by the guardian of the estate of the Principal following court approval of such termination.

4. Powers. The Attorney-in-Fact, as fiduciary, shall have all powers of absolute ownership of all assets and liabilities of the Principal of every kind and character, whether located within or without the State of Washington, including but not limited to the power and authority to do the following:

4.1 Pay, settle, or otherwise discharge any and all

lawful claims of liability or indebtedness against the Principal and, in so doing, (a) use any of the Principal's funds or other assets or use funds or other assets of the Attorney-in-Fact and obtain reimbursement out of the Principal's funds or other assets; and (b) compromise any such claim and make, sign, seal, and deliver acquittances, releases, or other sufficient discharges in respect of the same;

4.2 Ask, demand, sue for, recover, collect, and receive all sums of money, debts, dues, accounts, legacies, bequests, devises, dividends, annuities, demands, interests in real and personal property, and rights to possession or use of such property, and in doing so, (a) have, use, and take all lawful ways and means in the Principal's name or otherwise for the recovery thereof by attachment, execution, eviction, foreclosure, or otherwise, and (b) compromise and agree for and make, sign, and deliver acquittances, releases, or other sufficient discharges in respect of the same;

4.3 Bargain, contract, agree for, purchase, receive, and take lands and any interest therein, and accept the possession of all lands and all deeds and other assurances in the law therefore;

4.4 Lease, sell, convey, exchange, mortgage, and release any mortgage on lands and any interest therein;

4.5 Bargain and agree for, buy, sell, pledge, assign, endorse, release, exchange, mortgage, release any mortgage on, and in any and every way and manner deal in and with goods, bonds, shares of stock, equity in stock positions, financial investments, causes of actions, judgments and other property in possession or in action, and take out loans against any insurance policy the Principal may have, or borrow the cash surrender value of those policies;

4.6 Purchase United States Treasury Bonds which may be redeemed at par in payment of federal estate tax;

4.7 Exercise any and every right and power which the Principal may now or hereafter have in respect of any and all savings, checking, or agency accounts and any and all safe-deposit boxes and envelopes or other safekeeping accounts to which the Principal has a right of access of any financial institution as defined by RCW 30.22.040, including without limitation, the power and authority to open any and all such accounts for the Principal in the Principal's name, to give instructions in respect of and make deposits in and withdrawals from any and all such accounts whether or not the same have been opened by the Attorney-in-Fact, including the power to endorse, cash, or deposit any social

security or pension benefits to which the Principal may be entitled, and to enter any safe-deposit box to which the Principal has a right of access;

4.8 Make, do, and transact all and every kind of business of every kind and description;

4.9 Sign, seal, execute, deliver, and acknowledge all written instruments, and do and perform each and every act and thing whatsoever which may be necessary or proper to be done in or about the exercise of the powers and authority hereinabove granted to the Attorney-in-Fact as fully to all intents and purposes as the Principal might or could do if personally present;

4.10 Make gifts of the Principal's estate when necessary to continue a pattern of charitable contributions or individual financial support which the Principal has established and maintained while competent and personally managing his estate;

4.11 Employ and compensate from the Principal's estate attorneys and other professionals whose advise the Attorney-in-Fact may deem necessary to properly carry out his or her responsibilities as Attorney-in-Fact;

4.12 Provide informed consent to health care on behalf of the Principal in the event the Principal is not competent to consent;

4.13 Make informed choices on behalf of the Principal for residential placement in the event the Principal is not competent to make such decisions;

4.14 Create a trust for the benefit of the Principal which provides for distribution of the remainder interest under the same terms as the Principal's Last Will and Testament, transfer assets of all kinds to the trustee of any trust created for or by the Principal and/or the Principal's spouse, transfer assets to the Principal's spouse to hold as separate title to qualify the Principal for Medicaid assistance, in which instance the Attorney-in-Fact shall be expressly authorized to revoke on the Principal's behalf any community property agreement which the Principal and his or her spouse may have jointly executed, make, amend, alter wills, codicils, life insurance beneficiary designations, amend trust agreements, and change ownership of life insurance policies or surrender said policies. The Attorney-in-Fact named herein has specific authority to make gifts of the principal's assets to himself without breach of fiduciary duty hereunder.

4.15 Disclaim any interest in any property passing

to the Principal by virtue of the death of any person, whether such property passes by bequest, succession, survivorship, arrangement, or otherwise and the power pursuant to RCW 11.95 to release in whole or part any power of appointment the Principal may possess.

5. Limitation on Powers. Notwithstanding the foregoing, nothing contained herein shall authorize the Attorney-in-Fact to make, alter, revoke, or change any testamentary disposition of the Principal's property or to make any gifts of such property during the Principal's lifetime, except as provided in Paragraph 4.10 and 4.14 above.

6. Nomination of Guardian. If court proceedings are initiated to appoint a Guardian of his/her person or estate or both, the Principal nominates his or her Attorney-in-Fact to be appointed as such Guardian.

7. Accounting. Upon request of the Principal or the Guardian of the estate of the Principal or the Personal Representative of the Principal's estate, the Attorney-in-Fact shall account for all actions taken by the Attorney-in-Fact for or on behalf of the Principal.

8. Reliance. So long as neither the Attorney-in-Fact nor any person with whom the Attorney-in-Fact was dealing at the time of any act taken pursuant to this power of attorney has received actual knowledge or written notice of revocation or termination of the power of attorney by death or otherwise, the Attorney-in-Fact shall be entitled to rely upon this power of attorney. Any action so taken shall be binding on the Principal, heirs, legatees, devisees, guardians, and personal representatives of the Principal.

9. Indemnity. The estate of the Principal shall hold harmless and indemnify the Attorney-in-Fact from any and all liability for acts done in good faith.

10. Compensation. The Attorney-in-Fact shall be reimbursed for all costs and expenses reasonably incurred and shall receive at least annually, without court approval, such reasonable compensation for services performed as Attorney-in-Fact as is customarily charged by the trust departments of banks in the community for like services performed as Attorney-in-Fact and/or guardian of the estate.

11. Revocation. The undersigned Principal hereby revokes any and all powers of attorney previously executed by him.

12. Applicable Law. The laws of the State of Washington shall govern this power of attorney.

STATE OF WASHINGTON)
County of King) ss.
County of Pierce)

Each of the undersigned, being duly sworn on oath, states on this 15th day of February, 2006, that:

Witnesses. I am over 18 years of age and competent to be a witness to the Durable Power of Attorney of the Principal, DOTTIE LUCILLE BROWN, who is personally known to me or who has provided satisfactory evidence of his/her identity.

Principal's Action. The Principal, in my presence, and in the presence of the other witness whose signature appears with mine below, signed the foregoing instrument and requested that I and the other witness act as witnesses to his/her Durable Power of attorney and make this affidavit.

Principal's Competency. I believe that at the time of the Principal's previously-mentioned signing and request, the Principal was of sound mind and was not acting under duress, menace, fraud, undue influence, or misrepresentation.

Witnesses' Action. The other witness and I, in the presence of the Principal and of each other, now affix our signatures as witnesses to this Durable Power of Attorney of the Principal and make this affidavit.

[Signature] residing at Fed. Way, Washington.

[Signature] residing at Fed. Way, Washington.

SUBSCRIBED AND SWORN to before me this 15th day of February, 2006.



[Signature]
NOTARY PUBLIC in and for the
State of Washington,
residing at: 1711 1st Ave NW Dr. Federal Way WA 98003
My Commission Expires: NOV. 14, 2008