IN THE SUPREME COURT OF MISSISSIPPI
CASE NO. 2005-CA-01239

MISSISSIPPI CARE CENTER OF GREENVILLE, LLC;
OXFORD MANAGEMENT COMPANY, INC;
MICHAEL OVERSTREET and TESSA COOPER — APPELLANTS

VERSUS

NANCY HINYUB, Individually and as Personal Representative of the ESTATE OF DON WYSE, and for the use and benefit of the Estate and the wrongful death beneficiaries of Don Wyse — APPELLEE

BRIEF OF APPELLEE
Oral Argument Requested

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Representative of the ESTATE OF DON WYSE,
and for the use and benefit of the Estate and
the wrongful death beneficiaries of Don Wyse — APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Court may evaluate possible disqualification or recusal:

Mississippi Care Center of Greenville, LLC;
Oxford Management Company, Inc;
Michael Overstreet and Tessa Cooper, Appellants

Nancy Hinyub, Individually and as Personal
Representative of the Estate of Don Wyse,
and for the use and benefit of the Estate and
the wrongful death beneficiaries of Don Wyse, Appellee

S. Mark Wann, Esq.; Marjorie S. Busching, Esq.;
Heather M. Aby, Esq.; Maxey Wann, PLLC, Attorneys for Appellants

F. M. Turner, III, Attorney for Appellee

Hon. Richard A. Smith, Washington County Circuit Court Judge

F. M. Turner, III (MB# 8147)

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STATEMENT REGARDING ORAL ARGUMENT

Appellee respectfully suggests that oral argument would be helpful to the Court in exploring the issues presented in this appeal, which raise important questions concerning the proper scope of health care powers of attorney and the authority of health-care surrogates in this important and evolving area of the law.

SUMMARY OF THE ARGUMENT

Defendants/Appellants argue that the Court should enforce the arbitration provision contained in the Admission Agreement of February 13, 2004, based either on Nancy Hinyub's authority under a durable power of attorney for health care or her status as a health care surrogate under the Uniform Health-Care Decisions Act, Miss. Code Ann. §41-41-201 *et seq.*

Don Wyse was a resident of Mississippi Care Center of Greenville from January 28, 1997 until January 31, 2004. The Admission Agreement executed in connection with this residency contained no arbitration agreement. Don Wyse was readmitted to Mississippi Care Center of Greenville on February 13, 2004, and died less than eighteen hours later on February 14, 2004. On his readmission, his daughter, Nancy Hinyub signed a new Admission Agreement which contained an arbitration provision. Defendants seek to enforce this arbitration provision as to all claims in this action, even those that occurred or accrued prior to February 13, 2004.

The February 13, 2004 Admission Agreement provides that it applies to the February 13, 2004 admission of Don Wyse to Mississippi Care Center of Greenville. (R.133) All of the terms of the Agreement address covenants of performance beginning with the admission date. Nowhere in the Admission Agreement is there any provision that the Agreement shall cover any prior services rendered by the Facility.

Defendants argue that Nancy Hinyub had the authority to bind her father in health care matters, either pursuant to a durable power of attorney for health care or as a health care surrogate under the Uniform Health-Care Decisions Act, Miss. Code Ann. §41-41-201 *et seq.*, and that this authority extended to the execution of the arbitration provision of the Admission Agreement. Neither of these powers would grant her the authority to bind her father to arbitrate claims that had already accrued.

It is undisputed that Don Wyse did not sign the February 13, 2004 Admission Agreement; it was signed solely by Nancy Hinyub. (R.140) Unless Don Wyse lacked capacity to make or communicate a health-care decision on February 13, 2004, when the Admission Agreement was executed, Nancy Hinyub had no power to act on his behalf either as his attorney-in-fact or health-care surrogate. Under both Miss. Code Ann. §41-41-205 and §41-41-211, the question of capacity is an issue of fact to be determined by the patient's treating physician. Defendants presented *no evidence* to the Circuit Court to establish that Mr. Wyse lacked capacity at the time Nancy Hinyub executed the Admission Agreement.

In Mississippi, the burden is on the one relying on an agent's authority to prove the authority of that alleged agent. See *Ciba-Geigy Corp. v. Murphree*, 653 So. 2d 857, 872 (Miss. 1995); *Woods v. Nichols*, 416 So. 2d 659, 664 (Miss. 1982); *Highlands Ins. Co. v. McLaughlin*, 387 So. 2d 118 (Miss. 1980); and *Cue Oil Co. v. Fornea Oil Co., Inc.*, 45 So. 2d 597 (Miss. 1950). The Defendants failed to offer evidence of the issue critical to Nancy Hinyub's authority – the capacity of Don Wyse – and that failure is fatal to their position.

In addition to the arbitration provision, the Admission Agreement in this action also contains provisions found to be substantively unconscionable in *Covenant Health and Rehab, L.P. v. Brown*, 924 So. 2d 732, 739 (Miss. 2007), and *Covenant Health and Rehabilitation of Picayune, L.P. v. Lambert*, 2005-CA-02223-COA (¶(Miss. App. 2006).

Defendants argue that Mrs. Hinyub should be equitably estopped from arguing that "the contract" is invalid. However, it is clear that this equitable doctrine is inapplicable to the facts here presented.

The decision of the Circuit Court of Washington County should be affirmed.

ARGUMENT

I. NO ARBITRATION AGREEMENT COVERS THE CLAIMS IN THIS ACTION

Defendants/Appellants spend expend a great deal of effort and ink arguing that the Court should enforce the arbitration provision contained in the Admission Agreement of February 13, 2004, based either on Nancy Hinyub's authority under a durable power of attorney for health care or her status as a health care surrogate under the Uniform Health-Care Decisions Act, Miss. Code Ann. §41-41-201 *et seq.* **Defendants are silent, however, about the fact that the claims *asserted in this civil action all arose before the execution of the Admission Agreement in* question.**

As the Circuit Court found, Plaintiff's decedent, Don Wyse, entered Mississippi Care Center of Greenville f/k/a MS Extended Care of Greenville (Mississippi Care Center of Greenville) on January 28, 1997. The Admission Agreement executed at the time of his initial admission contained no provision concerning arbitration of claims or disputes between the parties. Mr. Wyse was discharged from Mississippi Care Center of Greenville on January 31, 2004 while he was hospitalized at Delta Regional Medical Center. He was readmitted to the nursing home on February 13, 2004 at approximately 6:30 p.m. Mr. Wyse died the next day at 12:00 p.m. Plaintiff/Appellee Nancy Hinyub, Don Wyse's daughter, signed a new Admission Agreement (R.133-140) at the time of his re-admission on February 13, 2004. This Admission Agreement contained an arbitration provision, which is the subject of the instant appeal. (R. 254-55)

In their Motion to Stay Proceedings and Compel Arbitration Agreement, Defendants sought to enforce the terms of the arbitration clause found in the February 13, 2004 Admission Agreement as covering Don Wyse's entire seven-year residency at Mississippi Care Center of

Greenville, even though the Admission Agreement was signed less than eighteen hours prior to Mr. Wyse's death. The Admission Agreement provides on page 5 that:

> [A]ny legal dispute, controversy, demand or claim... *that arises out of or relates to the Admission Agreement* or any service or health care provided by the Facility to the Resident, shall be resolved exclusively by binding arbitration... to be conducted... in accordance with the American Health Lawyers Association ("AHLA") Alternative Dispute Resolution Service Rules of Procedure for Arbitration which are hereby incorporated into this agreement. (R. 137, ¶ E)(emphasis added)

The February 13, 2004 Admission Agreement provides that it applies to the February 13, 2004 admission of Don Wyse to Mississippi Care Center of Greenville. (R.133) All of the terms of the Agreement address covenants of performance beginning with the admission date. Nowhere in the Admission Agreement is there any provision that the Agreement shall cover any prior services rendered by the Facility. In paragraph F.4, the Agreement provides that:

> This Agreement constitutes the entire Agreement among the Parties pertaining to the subject matter contained in it and supersedes all prior agreements, representations and all understandings of the parties." (R.139)

Even that provision does not seek to bring any prior nursing home admissions under the terms of this Agreement.

As the Circuit Court found, "Plaintiff's claims against Defendants do not encompass any period covered by this Admissions Agreement. Instead, Plaintiff's claims cover injuries occurring to Mr. Wyse prior to his discharge on January 31, 2004. Accordingly, Plaintiff's claims are not related to the Admission Agreement." (R. 258, ¶ 10)

It is clear beyond dispute that "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *A.T.&T. Technologies, Inc. v. Communications Workers of America*, 475 U.S. 643, 648; 106 S. Ct. 1415, 1418 (1986). "[B]ecause arbitration is a matter of contract, where a party contends that it has not signed any agreement to arbitrate, the court must determine if there is an agreement to arbitrate

before any additional dispute can be sent to arbitration." *Will-Drill Resources, Inc. v. Samson Resources Co.*, 352 F.3d 211, 218 (5th Cir. 2003); *see, also, Fleetwood Enterprises, Inc. v. Gaskamp*, 230 F.3d 1069 (5th Cir. 2002); *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 115 S. Ct. 1920 (1995). "Where the very existence of any agreement is disputed, it is for the courts to decide at the outset whether an agreement was reached, applying state-law principles of contract.... We reject the argument that where there is a signed document containing an arbitration clause which the parties do not dispute they signed, we must presume that there is a valid contract and send any general attacks on the agreement to the arbitrator." 352 F.3d at 218.

In deciding whether to grant a motion to compel arbitration, the threshold issue for the court is whether the parties have entered into a written agreement to arbitrate. Indeed, a party moving to compel arbitration must prove (1) the existence of a valid agreement to arbitrate and (2) a dispute that falls within the scope of the agreement. *East Ford, Inc. v. Taylor*, 826 So. 2d 709, 713 (¶9) (Miss. 2002); *Will-Drill Res., Inc. v. Samson Res. Co.*, 352 F.3d at 214 (5th Cir. 2003). The Defendants' motion fails on this second point.

In *Volt Info. Sciences, Inc. v. Bd. of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 474-75, 109 S.Ct. 1248, 103 L.Ed.2d 488 (1989), the U.S. Supreme Court stated that "the FAA does not confer a right to compel arbitration of any dispute at any time"; it confers only the right to obtain an order directing that "arbitration proceed in the manner provided for in [the parties'] agreement." *See, also,* 9 U.S.C. § 4 (directing that the trial court is to order arbitration "upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue").

The Circuit Court correctly held that:

> Because the Admission Agreement does not apply retroactively to prior admissions, the Court cannot enforce the arbitration provision against Plaintiff's claims without materially altering the terms of the Agreement. Accordingly, the

contract, by its terms, does not apply to the instant proceedings and Defendants' Motion to Compel should be denied. (R.259, ¶ 12)

II. NANCY HINYUB LACKED AUTHORITY TO BIND HER FATHER OR HIS ESTATE TO ARBITRATION

Defendants argue that Nancy Hinyub had the authority to bind her father in health care matters, either pursuant to a durable power of attorney for health care or as a health care surrogate under the Uniform Health-Care Decisions Act, Miss. Code Ann. §41-41-201 *et seq.*, and that this authority extended to the execution of the arbitration provision of the Admission Agreement. Neither of these powers would grant her the authority to bind her father to arbitrate claims that had already accrued.

Defendants cite to a durable power of attorney for health care (which is not included in the record on appeal but is filed as a supplement hereto) executed in favor of Nancy Wyse (now Nancy Hinyub) by Don Wyse on or about June 1, 1996. The power of attorney conforms to the provisions of Miss. Code Ann. §41-41-205 and appears to be on the form then published by the Mississippi State Department of Health. It states:

> I, DON G. WYSE hereby appoint: NANCY WISE ... my Attorney-in-Fact to make health care decisions for me *if I become unable to make my own health care decisions.* (emphasis added)

According to the Uniform Health-Care Decisions Act:

> "Health care" means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect an individual's physical or mental condition.
>
> "Health-care decision" means a decision made by an individual or the individual's agent, guardian, or surrogate, regarding the individual's health care, including:
> (i) *Selection and discharge of health-care providers and institutions*;
> (ii) Approval or disapproval of diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate; and
> (iii) Directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care

Miss. Code Ann. §41-41-203(g)-(h) (emphasis added).

Pursuant to Miss. Code Ann. §41-41-205(2),

> An adult or emancipated minor may execute a power of attorney for health care, which may authorize the agent to make any health-care decision the principal could have made while having capacity. The power remains in effect notwithstanding the principal's later incapacity and may include individual instructions.

Miss. Code Ann. §41-41-205 goes on to provide that:

> (5) Unless otherwise specified in a power of attorney for health care, *the authority of an agent becomes effective only upon a determination that the principal lacks capacity*, and ceases to be effective upon a determination that the principal has recovered capacity. (emphasis added)

The power of attorney for health care executed by Don Wyse did not contain any exception to the general rule and thus was only effective if and while Mr. Wyse lacked capacity to make his own health care decisions. Pursuant to Miss. Code Ann. §41-41-205(6):

> Unless otherwise specified in a written advance health-care directive, a determination that an individual lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent, must be made by the primary physician.

Alternatively, Defendants argue that Nancy Hinyub had authority to execute the Admission Agreement as her fathers "health-care surrogate." The health-care surrogate statute, Miss. Code Ann. §41-41-211(1) provides:

> A surrogate may make a health-care decision for a patient who is an adult or emancipated minor *if the patient has been determined by the primary physician to lack capacity and no agent or guardian has been appointed* or the agent or guardian is not reasonably available. (emphasis added)

Here Defendants claim that Don Wyse had appointed Nancy Hinyub as his agent to make health care decisions. Therefore, the surrogacy statute would never come into play as to her.

"Capacity" is a defined term in the Uniform Health-Care Decisions Act meaning "an individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health-care decision." Miss. Code Ann. §41-41-203(d).

It is undisputed that Don Wyse did not sign the February 13, 2004 Admission Agreement; it was signed solely by Nancy Hinyub. (R.140) Unless Don Wyse lacked capacity to make or communicate a health-care decision on February 13, 2004, when the Admission Agreement was executed, Nancy Hinyub had no power to act on his behalf either as his attorney-in-fact or health-care surrogate. Under both sections 41-41-205(6) and 41-41-211(1), the question of capacity is an issue of fact to be determined by the patient's treating physician. Defendants presented *no evidence* to the Circuit Court to establish that Mr. Wyse lacked capacity at the time Nancy Hinyub executed the Admission Agreement.

Contrary to the Defendants' arguments that *Vicksburg Partners, L.P. v. Stephens,* 911 So. 2d 507 (Miss. 2005), and *Covenant Health and Rehab, L.P. v. Brown,* 949 So. 2d 732 (Miss. 2007), compel the enforcement of the arbitration provision in this case, factual distinctions between those cases and the instant case contradict that position.

The first distinction is that in *Vicksburg Partners, L.P. v. Stephens*, the resident was found to have the capacity to execute, and to have executed, the admission agreement on his own behalf. *Stephens,* 911 So. 2d at 510-511. Accordingly, the question of Angela Stephens' power to execute the agreement as his health-care surrogate was not actually before the Court, since her father's capacity to make his own decision caused a failure of a threshold test required before her action could be binding. Although the Court failed to address this specific threshold question in *Stephens*, an appeal where only the Defendants were represented by counsel and filed a brief, the Court has recently addressed this issue squarely – and consistently with the Plaintiff's argument here – in the case of *Grenada Living Center, LLC, v. Coleman*, No. 2006-CA-00169-SCT (Miss. 2007). In *Coleman*, the parties stipulated that Mr. Coleman was competent and that no physician had declared him incompetent. *Id.* at ¶ 13. Accordingly, the first threshold test of Miss Code Ann. 41-41-211(1) was not satisfied and his daughter's signature on an Admission Agreement

containing an arbitration provision was not effective as to the resident or anyone claiming through him. *Id.* at ¶ 17. While *Coleman* dealt only with actions of a health-care surrogate under Miss Code Ann. 41-41-211, the issue of the patient or resident's capacity is an equally important threshold test under the health care power of attorney provision, Miss Code Ann. 41-41-205, and the specific language of Mr. Wyse's power of attorney to Nancy Hinyub, which was effective only "if I [Don Wyse] become unable to make my own health care decisions."

The second distinction is that in *Covenant Health and Rehab, L.P. v. Brown*, the plaintiffs admitted that Mrs. Brown, the nursing home resident, was *incapacitated* at the time of her admission to the defendants' nursing home. Accordingly, the first threshold test of Miss Code Ann. 41-41-211(1) was satisfied.*

In the present case, there was no evidence presented by the Defendants to address the issue of Don Wyse's capacity to decide for himself. In Mississippi, the burden is on the one relying on an agent's authority to prove the authority of that alleged agent. See *Ciba-Geigy Corp. v. Murphree*, 653 So. 2d 857, 872 (Miss. 1995); *Woods v. Nichols*, 416 So. 2d 659, 664 (Miss. 1982); *Highlands Ins. Co. v. McLaughlin*, 387 So. 2d 118 (Miss. 1980); and *Cue Oil Co. v. Fornea Oil Co., Inc.*, 45 So. 2d 597 (Miss. 1950). The Defendants failed to offer evidence of the issue critical to Nancy Hinyub's authority – the capacity of Don Wyse – and that failure is fatal to their position.

The third distinction is that, in the present case, the execution of the arbitration provision was *not* a part of the consideration for Don Wyse's admission to the facility or the provision of health care while a resident. The Admission Agreement itself states:

> The Resident and/or Responsible Party understand that ... (2) the execution of this Arbitration [*sic.*] is *not* a precondition to the furnishing of services to the Resident by the Facility .... (R.137)(emphasis added)

* The second threshold test of Miss Code Ann. 41-41-211(1), whether an agent had been appointed and was reasonably available, was not addressed by the Court in *Brown*.

According to the Uniform Health-Care Decisions Act:

> "Health care" means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect an individual's physical or mental condition.
>
> "Health-care decision" means a decision made by an individual or the individual's agent, guardian, or surrogate, regarding the individual's health care, including:
> (i) *Selection and discharge of health-care providers and institutions*;
> (ii) Approval or disapproval of diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate; and
> (iii) Directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care

Miss. Code Ann. §41-41-203(g)-(h) (emphasis added). Under the Act, the authority of a health-care agent or surrogate is limited to making only "health-care decisions." In both *Stephens* and *Brown*, the Court apparently found that the execution of the arbitration provision as a part of the admission agreement was part of the "health-care decision," even though arbitration of a personal injury claim has nothing whatever to do with "any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect an individual's physical or mental condition." Including execution of an arbitration provision within the term "health-care decision" in those decisions can only rest on the arbitration provisions' being an essential part of the consideration for receipt of "health care" in those cases. However, in the instant case, the Defendant themselves have established that the execution of the arbitration provision was ***not*** a part of the health-care decision, since it was not a part of the consideration necessary for Mr. Wyse's admission to the facility or the provision of health care to her.

The Uniform Health-Care Decisions Act cannot be extended beyond its express terms to imply a general grant of authority for a health-care surrogate to conduct business affairs of the patient unrelated to "health-care decisions," and certainly cannot be stretched to include authority to waive a patient's legal or constitutional rights, such as the right to a jury trial or the right to collect full legal redress for damages. Such an interpretation would allow an

unsupervised surrogate to do that which a duly appointed guardian or conservator could not do, and to do so without court authority or accountability. *Compare, e.g.*, Miss. Code Ann. §93-13-38 *and* §93-13-59 *with* Miss. Code Ann. §41-41-205 *and* §41-41-211; *see, also, Fort v. Battle,* 21 Miss. 133 (1849). Such an interpretation of the Uniform Health-Care Decisions Act would be patently absurd.

III. THE ADMISSION AGREEMENT IS SUBSTANTIVELY UNCONSCIONABLE

In addition to the arbitration provision, the Admission Agreement in this action also contains provisions found to be substantively unconscionable in *Covenant Health and Rehab, L.P. v. Brown*, 924 So. 2d 732, 739 (Miss. 2007), and *Covenant Health and Rehabilitation of Picayune, L.P. v. Lambert*, 2005-CA-02223-COA (¶(Miss. App. 2006). Paragraph C.5 of the Admission Agreement alters the standard of care by requiring the Resident and Responsible Party to "arrange for and provide supplemental private duty nursing to help reduce the risk of injury or to improve overall care" and to "hold harmless the Facility for injury or harm to the Resident when said injury or harm could have been avoided had supplemental one-on-one private duty nursing been provided by the Resident or Responsible Party." These provisions were stricken by the Court in *Brown,* 924 So. 2d at 739(¶16), on grounds of substantive unconscionability. They should suffer the same fate here.

IV. PLAINTIFF IS NOT EQUITABLY ESTOPPED

In a footnote in their brief, Defendants argue that Mrs. Hinyub should be equitably estopped from arguing that "the contract" is invalid. However, it is clear that this equitable doctrine is inapplicable to the facts here presented. Equitable estoppel is an exceptional remedy and should be used only in exceptional circumstances. *Eagle Management, LLC v. Parks*, 938 So.2d 899, 904 (¶12) (Miss. App. 2006); *Powell v. Campbell*, 912 So. 2d 978, 982 (¶12) (Miss. 2005); *PMZ Oil Co. v. Lucroy*, 449 So. 2d 201, 206 (Miss. 1984). A party asserting a claim for

equitable estoppel must establish three essential elements: (1) belief and reliance upon some representation by the opposing party, (2) change of position as a result thereof, and (3) detriment or prejudice caused by the change of position. *Eagle Management, LLC v. Parks*, 938 So.2d at 904 (¶13), *citing, Cothren v. Vickers*, 759 So. 2d 1241, 1249 (¶19) (Miss. 2000).

To satisfy these three elements, the Defendants must establish (1) that they relied upon the arbitration provision of the admission agreement as a necessary condition for the provision of services to Don Wyse, (2) that they admitted Don Wyse and provided services to him on the basis of the validity of the arbitration agreement, and (3) that they suffered detriment or prejudice from the provision of such services. However, this position contradicts the express terms of the arbitration provision of the admission agreement stating that "the execution of this Arbitration [*sic.*] is *not* a precondition to the furnishing of services to the Resident by the Facility ...." (R.137)(emphasis added)

Nancy Hinyub, under either theory espoused by the Defendants, was acting in a representative capacity and not for her own account. Whether as the agent of a disclosed principal or as her father's surrogate, Nancy Hinyub would have been acting solely on his account. As the Court noted in *Grenada Living Centers v. Coleman, supra,*

> Any wrongful death beneficiaries of [the resident, here Don Wyse] can be bound only to the extent that he would have been bound. Because there was no contract between [the resident] and the nursing home in the first place, no arbitration clause exists to be enforced against the wrongful death beneficiaries of [the resident].

Id. at ¶17.

Equitable estoppel is an equitable remedy. "Fundamental notions of justice and fair dealings provide its undergirding." PMZ Oil Co. v. Lucroy, supra, at 206. In light of the facts presented, equity does not support its application to this case.

CONCLUSION

No contract came into existence between Don Wyse and the Defendants and so there is no arbitration agreement to be enforced. The claims asserted in this action predate the Admission Agreement of February 13, 2004, and therefore could never have been the subject of arbitration as a result of the Admission Agreement. There is no equitable basis on which to enforce arbitration, which is purely a matter of contract between the parties. The decision of the Circuit Court of Washington County should be affirmed.

Respectfully submitted,

NANCY HINYUB, Individually and as Personal Representative of the Estate of Don Wyse, and for the use and benefit of the Estate and the wrongful death beneficiaries of Don Wyse

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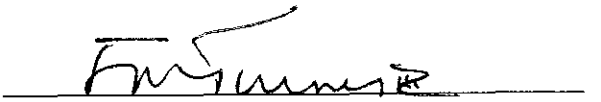
Attorney for Appellee

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on the following via First Class Mail this 1st day of August, 2007:

The Honorable Richard A. Smith
Circuit Court Judge
P.O. Box 1953
Greenwood, MS 38935-1953

S. Mark Wann, Esq.
Marjorie S. Busching, Esq.
Heather M. Aby, Esq.
Maxey Wann, PLLC
P. O. Box 3977
Jackson, MS 39207-3977



F. M. Turner, III

This document is only a form. Before any action is taken based upon this document, it is essential that competent, individual professional advice be obtained.

NOTICE TO PERSON EXECUTING THIS DOCUMENT

This is an important legal document. Before executing this document, you should know these important facts:

This document gives the person you designate as the Attorney-In-Fact (your agent) the power to make health care decisions for you. This power exists only as to those health care decisions to which you are unable to give informed consent. The Attorney-In-Fact must act consistently with your desires as stated in this document or otherwise made known.

Except as you otherwise specify in this document, this document gives your agent the power to consent to your doctor not giving treatment or stopping treatment necessary to keep you alive.

Notwithstanding this document, you have the right to make medical or other health care decisions for yourself so long as you can give informed consent with respect to the particular decision. In addition, no treatment may be given to you over your objection, and health care necessary to keep you alive may not be stopped or withheld if you object at the time.

The document gives your agent authority to consent, to refuse to consent or to withdraw consent to any care, treatment, service or procedure to maintain, diagnose or treat a physical or mental condition. This power is subject to any statement of your desires and any limitations that you include in this document. You may state in this document any types of treatment that you do not desire. In addition, a court can take away the power of your agent to make health care decisions for you if your agent (a) authorizes anything that is illegal, (b) acts contrary to your known desires, or (c) where your desires are not known, does anything that is clearly contrary to your best interest.

You have the right to revoke the authority of your agent by notifying your agent or your treating doctor, hospital or other health care provider in writing of the revocation.

Your agent has the right to examine your medical records and to consent to this disclosure unless you limit this right in this document.

Unless you otherwise specify in this document, this document gives your agent the power after you die to (a) authorize an autopsy, (b) donate your body or parts thereof for transplant or

for educational, therapeutic or scientific purposes, and (c) direct the disposition of your remains.

If there is anything in this document that you do not understand, you should ask your lawyer to explain it to you.

This power of attorney will not be valid for making health care decisions unless it is either (a) signed by two (2) qualified adult witnesses who are personally known to you and who are present when you sign or acknowledge your signature or (b) acknowledged before a notary public in the state.

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

I, DON G. WYSE hereby appoint:

NANCY WYSE
NAME

1427 Genie Fairway, Greenville, MS 38701
HOME ADDRESS

378-3656 — WORK TELEPHONE NUMBER
332-3888 — HOME TELEPHONE NUMBER

my Attorney-In-Fact to make health care decisions for me if I become unable to make my own health care decisions.

Subject to my special instructions below, this gives my Attorney-In-Fact the full power to make health care decisions for me, before or after my death, to the same extent I could make decisions for myself and to the full extent permitted by law, including making a disposition under the state's anatomical gift act, authorizing an autopsy, and directing the disposition of remains. My Attorney-In-Fact also has the authority to talk to health care personnel, get information and sign forms necessary to carry out these decisions.

Special instructions:
It is my wish that I be allowed to die naturally. I do not want life-sustaining mechanisms used for the purpose of prolonging life that would not be meaningful to me or my family. I charge my personal physician, Dr. I. A. Newton, Jr., and my daughter, Nancy Wyse, with the responsibility to see that this directive is executed. All three of my children are aware of my wishes and of these instructions.

If the person named as my Attorney-In-Fact is not available or is unable to act as my Attorney-In-Fact, I appoint the following person to serve in his or her place:

PEGGY WYSE KUNTZ
NAME

1462 S. Colorado St. 2-H, Greenville, MS 38703-7263
HOME ADDRESS

-0- 335-1882
WORK TELEPHONE NUMBER HOME TELEPHONE NUMBER

By my signature I do hereby indicate that I understand the purpose and effect of this document.

Don G Wright
SIGNATURE

6-1-96
DATE

The law requires that this document be either (1) signed by two persons who witnessed your signature, or (2) acknowledged by a Notary Public in Mississippi. Therefore, one of the sections below must be completed.

SECTION 1. WITNESSES

I declare under penalty of perjury under the laws of Mississippi that the principal is personally known to me, that the principal signed or acknowledged this Durable Power of Attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud or undue influence, that I am not the person appointed as Attorney-In-Fact by this document, and that I am not a health care provider, nor an employee of a health care provider or facility.

FIRST WITNESS

Odis B. Rodney
SIGNATURE

Odis B. Rodney
PRINT NAME

6-1-96
DATE

SECOND WITNESS

Mildred T Rodney
SIGNATURE

Mildred T. Rodney
PRINT NAME

6-1-96
DATE

At least one of the witnesses listed above shall also sign the following declaration:

I am not related to the principal by blood, marriage or adoption, and to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

Odie B. Rodney
SIGNATURE

SECTION 2. NOTARY PUBLIC

State of Mississippi

County of _____

On this the _____ day of _____, in the year _____, before me _____ personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it. I declare under the penalty of perjury that the person whose name is subscribed to this instrument appears to be of sound mind and under no duress, fraud, or undue influence.

_____
NOTARY PUBLIC

My Commission Expires:

_____