

West Virginia Supreme Court- Medical Power of Attorney Does Not Have Power to Make Binding Legal Decisions for Incapacitated Person

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In May, the Supreme Court of Appeals of West Virginia issued a decision in the **Wanda Williams v. CMO Management, LLC** case. Robert Thompson suffered from Alzheimer's disease and resided at a nursing facility preceding his death in July 2011. The parties stipulated that he was mentally incompetent at all relevant times.

Following Mr. Thompson's death, Wanda Williams brought suit on behalf of herself and his Estate and wrongful death beneficiaries against CMO. The suit alleged abuse and neglect at the nursing facility, leading to Mr. Thompson's injuries and eventual death. She sought to recover for various injuries from 2009 until the time of his death.

CMO argued to the trial court that the two-year limitations period should apply and bar any claims that accrued prior to April 19, 2011 (taking into account a 60-day notice provision). The Circuit Court of Nicholas County agreed with CMO, and Petitioner appealed.

Petitioner argued that the trial court refused to apply the tolling provision in the savings statute. She also alleged that it failed to apply the discovery rule to toll the statute of limitations until the date of Mr. Thompson's death due to his incapacity and the absence of a legal representative to act on his behalf. Prior to his incapacity, Mr. Thompson had only executed a medical power of attorney instrument, and not a general power of attorney instrument.

The Supreme Court of Appeals found that this lack of a legal representative for Mr. Thompson while he was still alive creates an issue as to when Mr. Thompson's alleged injuries were subject to discovery.

CMO contended that the medical power of attorney that Ms. Williams had over Mr. Thompson was sufficient to charge her with knowledge of his injuries for purposes of a statute of limitations analysis. The Court disagreed, finding that a person holding a medical power of attorney's sole function is the authority to make health care decisions on behalf of an incapacitated person. That medical power of attorney does not have the power to make binding legal decisions for the incapacitated person. The Court specifically found that though Ms. Williams may have had concerns about Mr. Thompson's care prior to his death, that did not impose a duty upon her to institute suit on his behalf. She had only a medical power of attorney, and not a general power of attorney, Ms. Williams had no power to stand in his "legal shoes."

The full text of the opinion can be read here: [Opinion](#)

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