



## **Recent *Bond Estate* Decision**

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By Stephanie E. Murphy, Esq.

Elder law practitioners should be aware of the *Bond Estate* decision, a recent Court of Common Pleas decision out of York County. The case involves a spousal estate planning situation that is somewhat common; however, practitioners should be cautioned to read the decision narrowly, considering the importance of the facts of the case, not as a broad conclusion regarding the responsibilities of all agents under power of attorney.

The *Bond Estate* case arose as a result of objections filed to an executor's account. The objections were filed by counsel for the Department of Human Services ("DHS"), and the facts of the case are quite interesting.

Mr. and Mrs. Bond were a husband and wife, with differing health care needs. She was living in a nursing home and receiving Medicaid benefits, while he continued to reside at home. Mr. Bond was well-counseled by his attorney regarding his estate planning options and structured his Will in a way that would have the least possible impact on his wife's Medicaid benefits. He provided that a set amount, equal to approximately one-third of the value of his probate estate, would be distributed to a trust for the benefit of his wife, with his sons to receive any funds remaining in the trust after Mrs. Bond's death. The remainder of his estate was to be distributed to his children.

At the time of Mr. Bond's death, Mrs. Bond's agent under power of attorney, one of her sons, was also appointed as the executor of Mr. Bond's estate. Unfortunately, Mrs. Bond died approximately one year after her husband and, at the time of her death, Mr. Bond's estate was still open and awaiting the Department of Revenue's Inheritance Tax Return approval so that an accounting could be filed thereafter.

When the final accounting for Mr. Bond's estate was filed, counsel for the DHS filed objections, claiming, *inter alia*, that Mrs. Bond's agent under power of attorney should have claimed her spousal elective share under 20 Pa. C.S.A. §2206. Section 2206 provides that an agent may exercise a principal's right of election during the principal's lifetime. Counsel for DHS also cited 55 Pa. Code §178.1(g) which requires that a Medicaid recipient "take reasonable steps to obtain and make available resources to which he is, or may be, entitled unless he can show good cause for not doing so."

Ultimately, the Court found in favor of the executor, specifically noting the following facts and conclusions:

- At the time of the adjudication on the accounting, it was too late for the agent to make a claim for the spousal elective share, as the agent's authority to act on Mrs. Bond's behalf ceased upon her death.
- The agent had "good cause" under 55 Pa. Code §178.1(g) for not making the election, as Mrs. Bond was already receiving assets valued equal to the elective share amount via Mr. Bond's Will.
- On Mrs. Bond's Medicaid reapplication, filed approximately one month after Mr. Bond's death, the agent had disclosed to DHS the fact that Mrs. Bond expected to receive an inheritance from her husband's estate and that distributions would be reported when received. DHS failed to further inquire regarding her expected interest and instead approved her reapplication. DHS should have acted to secure more information at that time, and the agent met his obligation to notify DHS of the expected inheritance.

While this case was, indeed, a planning victory for the family, the case could have easily ended differently but for the timing of Mrs. Bond's death, the timing and disclosure on Mrs. Bond's Medicaid application, or the careful provisions in Mr. Bond's Will. A change in any one of these facts would likely have resulted in a different outcome in this case.

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