

Arbitration: Agreement Thrown Out, Family Member No Authority To Sign.

A deceased nursing home resident's daughter, as personal representative of her mother's estate, filed a civil negligence lawsuit against the nursing home.

The issue for the Court of Appeals of Arkansas, before getting to the allegations of negligence, was the more basic issue whether the case would be decided by arbitration or in court by a jury.

The nursing home resident never agreed to arbitration and her daughter had no authority to sign an arbitration agreement for her.

COURT OF APPEALS OF ARKANSAS
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The resident's daughter had her own daughter put a pen in her elderly grandmother's hand and trace her signature on the bottom line of legal-form power of attorney which her brother then took to be notarized by a notary who was not there when the document was "signed." The power of attorney was not valid.

The arbitration agreement was mailed to the resident's daughter five years after the resident was admitted. At that time, according to the court, the resident and her family were in a vulnerable bargaining position and had no meaningful choice in the matter of whether or not to sign.

The elderly resident herself was partially paralyzed, unable to speak and had a number of disabling medical conditions. The court believed had she been asked to sign away her right to a jury trial in court she herself would have declined. Waverly-Arkansas, Inc. v. Keener, 2008 WL 316149 (Ark. App., February 6, 2008).