

**FILED**

05/19/2023

Clerk of the  
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
March 8, 2023 Session

**IN RE ESTATE OF ROBERT MCKEEL BONE**

**Appeal from the Probate Court of Humphreys County**  
**No. P-2469-19 Haylee Bradley-Maples, Judge**

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**No. M2022-00771-COA-R3-CV**

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At issue is the validity of an amendment to a revocable trust. The specific issue is whether the Settlor's attorney-in-fact was authorized to execute an amendment to the Robert McKeel Bone Living Trust. The trial court held that the amendment was valid. We agree. Accordingly, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Probate Court Affirmed**

FRANK G. CLEMENT, JR., P.J., M.S., delivered the opinion of the court, in which W. NEAL MCBRAYER and CARMA DENNIS MCGEE, JJ., joined.

Sydney A. Franklin and Jordan B. Osborn, Dickson, Tennessee, for the appellants, Chancie Mayberry and Craig Mayberry.

Donald Capparella and Jacob A. Vanzin, Nashville, Tennessee, and Thomas L. Reed, Jr., Murfreesboro, Tennessee, for the appellant, Phayung Phuksuk.

Daniel O. Barham, Nolensville, Tennessee, for the appellees, Samuel C. Bone and Andrew B. Dodson, Jr.

Russell Derrick Gill, Nolensville, Tennessee, for the appellee, the Estate of Robert McKeel Bone.

**OPINION**

**FACTS AND PROCEDURAL HISTORY**

On February 3, 2009, Robert McKeel Bone ("Mr. Bone") executed a durable power of attorney appointing his personal attorney, Robert I. Thomason, Jr., as his attorney-in-

fact.<sup>1</sup> Paragraph 31 of the power of attorney states that the attorney-in-fact has the power “[t]o exercise any powers of . . . amendment . . . which I may have over the income or principal of any trust.” The power of attorney also states Mr. Bone’s intention that “this be a General Power of Attorney and my Attorney-in-Fact [shall] have the power and authority to do all acts and things for me of any nature or kind that I could legally do for myself.”

Eight years later, on November 30, 2017, Mr. Bone executed the Robert McKeel Bone Living Trust (the “Trust”). The introductory paragraph of the Trust included the following language:

I reserve the power, by signed instruments (other than a will or codicil) delivered to the Trustee during my life, to revoke this Agreement and any trust hereunder, in whole or in part, and to amend this Agreement and any trust hereunder from time to time in any respect. The power to revoke or amend is personal to me and may not be exercised by any other person on my behalf during any time that I am incompetent, unless I have expressly granted the power to amend or revoke this Agreement in writing to any agent under a power of attorney.

In Item I (B) of the Trust, Mr. Bone identified Alicia B. Mayberry, Teresa B. Fussell, Barbara Ann Twyman, and Brandon M. Bone as his four children. Pursuant to the Trust, fifteen percent of the residuary trust was to be distributed “to each of my children, or to their descendants, per stirpes.”<sup>2</sup> Alicia Mayberry predeceased Mr. Bone on July 19, 2019, and was survived by her two children, Chancie Mayberry and Craig Mayberry.

On August 27, 2019, Mr. Thomason, acting in his capacity as attorney-in-fact for Mr. Bone, executed an amendment to the Trust (the “Amendment”). The relevant text of the Amendment reads as follows:

Because of the death of my daughter, Alicia Mayberry, on July 15, 2019, I amend my Living Trust to provide that all distributions to be made to my children either upon my death or upon the death of my spouse or the early termination of my spouse’s trust by settlement or otherwise shall be made in equal shares only to those of my children who are living on the date of my

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<sup>1</sup> The power of attorney was recorded on October 3, 2013, and is of record in the Register’s Office for Humphreys County, Tennessee, as instrument number 13002682 in book WD199, page 242.

<sup>2</sup> The Trust also provides that the remaining 40% of the residuary trust estate is to be held for the primary benefit of Mr. Bone’s widow, Phayung Phuksuk, until her death or remarriage, with a remainder to Mr. Bone’s children in equal shares, or to their descendants, per stirpes. Ms. Phuksuk’s beneficial interest in the Trust is not at issue in this appeal.

death. My Living Trust is further amended to delete all language and references therein that express a contrary intent.

The Amendment effectively terminated the interests of Alicia Mayberry's two children, they being Chancie Mayberry and Craig Mayberry. The Amendment also provides that the share of the residuary trust estate that would have been established for Alicia Mayberry if she had survived Mr. Bone will instead be divided equally among his three surviving children: Teresa B. Fussell, Barbara Ann Twyman, and Brandon Bone. The Amendment did not alter the share of the residuary trust estate to be held for the benefit of Mr. Bone's widow, Phayung Phuksuk.

Mr. Bone died on October 29, 2019. On December 5, 2019, Andrew B. Dodson, Jr. ("Mr. Dodson"), who was designated as the Executor under Mr. Bone's Will ("the Will"), filed a petition to probate the Will in the Probate and Juvenile Court for Humphreys County, Tennessee (the "Probate Court").<sup>3</sup> The Will was admitted to probate, and Letters Testamentary were issued to Mr. Dodson as the Executor of the estate.

Mr. Bone was the initial Trustee of the Trust. As a consequence of his death, Mr. Dodson succeeded Mr. Bone as the Successor Trustee. Mr. Dodson served as the Trustee until he resigned effective April 27, 2020. Mr. Dodson also resigned as the Executor of the estate in June of 2020. Mr. Dodson was succeeded as both the Executor of the estate and Trustee of the Trust by Mr. Bone's brother, Sam C. Bone ("Sam Bone"), who continues to serve in both capacities.

On May 7, 2021, Chancie Mayberry and Craig Mayberry (the "Mayberrys") commenced two civil actions to challenge the validity of the Amendment and to assert their rights as beneficiaries of the Trust. They filed a Complaint for Declaratory Relief seeking, *inter alia*, a declaratory judgment that the Amendment was invalid and that the parties' respective rights should be governed solely by the Trust instrument as originally drafted.<sup>4</sup>

The respondents named in the declaratory judgment action are the beneficiaries of the trust and the Successor Trustee, specifically Ms. Phuksuk, Mr. Bone's widow; Teresa B. Fussell, Brandon M. Bone, and Barbara Ann Twyman, Mr. Bone's surviving children; and Samuel C. Bone, the Successor Trustee of the Trust. Barbara Ann Twyman appeared pro se in the trial court but did not file a responsive pleading. All other respondents, who were represented by counsel, filed responsive pleadings.<sup>5</sup>

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<sup>3</sup> The case was assigned Docket Number P-2469-19.

<sup>4</sup> The case was assigned Docket Number 2021-CV-83.

<sup>5</sup> Shortly after filing her answer in the declaratory judgment action, Ms. Phuksuk filed her "First Amended Widow's Petition for Relief and the Removal of Samuel C. Bone as Executor and Trustee." The petition accused the Trustee, Samuel Bone, of improper management of the Trust, and sought, *inter alia*,

The Mayberrys contemporaneously filed an action for breach of trust and injunctive relief against the former Trustee, Andrew Dodson, and the successor Trustee, Sam Bone, in the Chancery Court for Humphreys County.<sup>6</sup> Responsive pleadings were filed on behalf of both respondents. On October 26, 2021, Chancellor Lockert-Mash entered an order transferring the chancery court civil actions to the Probate and Juvenile Court for Humphreys County, Tennessee, where they were consolidated with the probate case pending in that court. Because the dispositive issue in this appeal is whether the Amendment was valid, we will limit our discussion to the filings and arguments that pertain to that issue.

The Mayberrys contend, *inter alia*, that the attorney-in-fact, Mr. Thomason, lacked the express authority to execute the Amendment for two reasons:<sup>7</sup>

First, the language of the Trust explicitly states that the Decedent retained the power to amend or revoke the trust instrument during his lifetime. This reservation of the power to amend was added with the knowledge that the Decedent had previously granted Mr. Thomason the power to amend any trust when the Decedent appointed Mr. Thomason as his power of attorney. The later executed trust instrument superseded the earlier executed power of attorney. Second, the express language of the trust instrument does allow for a power of attorney to amend the trust instrument in the event that the Decedent was incompetent. However, in said event of incompetency, the power of attorney was required to be specific. In fact, the language of the trust provided that the trust could not be amended during any time the Decedent was incompetent “unless I have expressly granted the power to amend or revoke *this Agreement* in writing to any agent under a power of attorney.”

(Emphasis in original).

The respondents, Samuel Bone, in his capacity as the Trustee of the Trust and Executor of Mr. Bone’s estate, along with Teresa Fussell and Brandon Bone, contend that

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the removal of Samuel Bone as Trustee of the Trust. Ms. Phuksuk also named the Mayberrys as well as Mr. Bone’s surviving children—Teresa B. Fussell, Brandon M. Bone, and Barbara Twyman—as party defendants. The claims asserted in Ms. Phuksuk’s petition and in the answers and counterclaims filed by the defendants are not at issue in this appeal.

<sup>6</sup> The case was assigned Docket Number 2021-CV-84.

<sup>7</sup> Mr. Bone’s widow, Phayung Phuksuk, filed responsive pleadings supporting the Mayberrys’ contentions.

the attorney-in-fact had the authority to amend the Trust and that the Amendment is valid.<sup>8</sup> More specifically, they contend that the Trust provides that it may be amended “by signed instruments (other than a will or codicil) delivered to the Trustee during [Mr. Bone’s] life.” They rely on the undisputed facts that the Amendment is a signed instrument, it is not a will or a codicil, and that Mr. Thomason testified that he delivered the Amendment to Mr. Bone, who was the Trustee at the time of delivery. They also contended that the Trust did not prohibit an attorney-in-fact from executing an amendment and that the power of attorney authorized Mr. Thomason to amend a trust. Additionally, they contend that the Amendment is valid because the method of its execution complied, or at a minimum substantially complied, with the method provided in the terms of the Trust, satisfying the requirements of Tennessee Code Annotated § 35-15-602(c)(1).<sup>9</sup> Finally, they contend, “The Trust Agreement does not expressly state that it could only be amended by the method described above.” Accordingly, pursuant to Tennessee Code Annotated § 35-15-602(c)(2)(B), it could also be amended by “[a]ny other method manifesting clear and convincing evidence of the settlor’s intent.”

With regard to the “incompetency” issue, the respondents contend:

There is no prohibition in the Trust Agreement against an attorney-in-fact executing an amendment on behalf of the grantor when he is competent, and Mr. Bone’s [power of attorney] expressly authorized his attorney-in-fact to exercise his powers of amendment over “any trust,” satisfying the requirement of T.C.A. [§] 35-15-602(e) that such authority appear in the trust or the power. Because he was competent at the time, Mr. Bone could therefore effectively amend the Trust by instructing Mr. Thomason to draft and execute the Amendment on his behalf as attorney-in-fact.

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<sup>8</sup> Two of Mr. Bone’s children, Teri (Bone) Fussell and Brandon Bone, filed a notice with this court stating that “they will not be filing a separate brief in this matter but will rely on the arguments set forth by the Estate of Robert McKeel Bone.”

<sup>9</sup> Tennessee Code Annotated § 35-15-602(c) states:

The settlor may revoke or amend a revocable trust:

- (1) By substantial compliance with a method provided in the terms of the trust; or
- (2) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:
  - (A) A later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or
  - (B) Any other method manifesting clear and convincing evidence of the settlor’s intent.

Once the issues were joined, the Probate Court ordered the parties to file their respective briefs and then appear for argument on the issue of the validity of the Amendment. After reviewing the briefs and hearing the arguments of the parties, the Probate Court’s final order was entered on June 1, 2022, in which the court ruled that “pursuant to Tennessee law, the [power of attorney] granted Thomason the authority, among other things, to amend or revoke any trust created by Robert McKeel Bone,” that the Amendment was “valid, was not revoked or destroyed, is with full legal force and effect, and shall be upheld,” and “as a consequence of the Amendment, neither Alicia Mayberry, a child of Robert McKeel Bone having predeceased him, nor her issue [the Mayberrys] are beneficiaries of the Trust.”<sup>10</sup>

This appeal by the Mayberrys and Ms. Phuksuk (collectively “Appellants”) followed.<sup>11</sup>

### ISSUES

The Mayberrys raise one issue for our consideration:

1. Whether the Trial Court erred in finding that Mr. Robert Thomason had authority to amend the Robert McKeel Bone Living Trust (a trust which by its express terms provides that amendment requires a specific power of attorney) using the power vested in him in a durable power of attorney executed eight years prior to the enactment of the Trust when the language of the Trust amendment requires a specific power of attorney in order to amend the Trust.

The surviving spouse, Ms. Phuksuk, raises two issues:<sup>12</sup>

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<sup>10</sup> Because other issues remained to be addressed, the trial court designated its order as a final order pursuant to Rule 54.02 of the Tennessee Rules of Civil Procedure.

<sup>11</sup> Ms. Phuksuk also filed a Notice of Appeal and a separate appellant’s brief in which she supports the Mayberrys’ contention that the trial court erred in holding that the Amendment was valid.

<sup>12</sup> In her appellant brief, Ms. Phuksuk explains her role in the trial court proceedings, stating:

Ms. Phuksuk wishes to make clear that by appealing the Probate Court’s June 1, 2022 Order, and by filing this appellate brief arguing that the Amendment is invalid, Ms. Phuksuk does not intend to contest the Trust in any way that would trigger the Trust instrument’s “Forfeiture” clause. Indeed, the validity or invalidity of the Amendment does not affect Ms. Phuksuk’s substantive rights under the Trust, and therefore she has no reason to contest the Amendment’s validity. In fact, Ms. Phuksuk has filed no lawsuit whatsoever contesting the validity of the Amendment. The validity of the Amendment was raised by the Mayberrys who named Ms. Phuksuk as a respondent in their declaratory judgment action. Ms. Phuksuk responded to the Mayberrys’ declaratory judgment action as is required by Tenn. R. Civ. P. 8.02 and truthfully admitted the legal position that the

1. Did the Trial Court err in its judgment finding that the Amendment to the Robert McKeel Bone Living Trust was valid despite the fact that the Amendment was not executed by the Settlor but rather was executed by the Settlor's power of attorney without any express authorization appearing in the Trust instrument allowing the power of attorney to amend the Trust; and
2. Did the Trial Court err in its judgment finding that the power of attorney instrument relied upon by the Settlor's power of attorney to execute the Amendment was signed more than eight years prior to the Trust instrument and did not expressly grant the power to amend the Trust instrument?

Samuel Bone, in his fiduciary capacities as the Executor and Trustee, along with two of Mr. Bone's children, Teresa B. Fussell and Brandon M. Bone, who join in Mr. Bone's brief (hereinafter collectively "Appellees"), present two issues:<sup>13</sup>

1. Whether the competent grantor of a revocable trust can effectively amend the trust by instructing his agent under a power of attorney to prepare and execute the amendment on the grantor's behalf if (1) the power of attorney expressly authorizes the agent "to exercise any powers of revocation, amendment, or appointment" which the grantor has "over the income or principal of any trust" and (2) the trust instrument does not prohibit the agent from executing such an amendment unless (i) the grantor is incompetent and (ii) the power of attorney does not expressly authorize the agent to execute such an amendment.
2. Whether the Humphreys County Probate Court correctly ruled that the Amendment to the Robert McKeel Bone Living Trust executed by Robert I. Thomason, Jr. as attorney-in-fact for Robert McKeel Bone

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Amendment was invalid. She has now appealed the Probate Court's June 1, 2022 Order in furtherance of that position, and in defense of the counterclaims filed against her, which will be vitiated in whole or in part if the Amendment is declared to be invalid. This appeal should not be construed as a contest to the Trust, as Ms. Phuksuk has filed no lawsuit whatsoever contesting the validity of the Amendment; she has only responded to such lawsuits.

<sup>13</sup> The "Brief of Appellees" filed on behalf of "The Estate of Robert McKeel Bone, Samuel C. Bone, as Executor and Trustee" also identifies Andrew B. Dodson, Jr., the former Executor and former Trustee, as an appellee. Two of Mr. Bone's children who are beneficiaries of the Trust, Teri (Bone) Fussell and Brandon Bone, filed a Notice with this court stating that "they will not be filing a separate brief in this matter but will rely on the arguments set forth by the Estate of Robert McKeel Bone."

“is valid, was not revoked or destroyed, is with full legal force and effect, and shall be upheld.”

### STANDARD OF REVIEW

“The interpretation of a trust agreement is a question of law for the court.” *Glass v. SunTrust Bank*, 523 S.W.3d 61, 66 (Tenn. Ct. App. 2016) (citing *Holder v. First Tennessee Bank N.A. Memphis*, No. W1998-00890-COA-R3-CV, 2000 WL 349727, at \*3 (Tenn. Ct. App. Mar. 31, 2000)). “[W]e review the trial court’s resolution of legal questions de novo with no presumption of correctness.” *Id.* (citing *1963 Jackson, Inc. v. De Vos*, 436 S.W.3d 278, 286 (Tenn. Ct. App. 2013)).

“The legal effect of a written contract or other written instruments is a question of law.” *Tenn. Farmers Life Reassurance Co. v. Rose*, 239 S.W.3d 743, 750 (Tenn. 2007). This same standard applies to trust instruments. *See Harvey ex rel. Gladden v. Cumberland Tr. & Inv. Co.*, 532 S.W.3d 243, 252 (Tenn. 2017). The interpretation of trust language, and the interpretation of applicable statutes, are issues of law which Tennessee appellate courts review de novo with no presumption of correctness. *See id.*

“A power of attorney is a written instrument that evidences to third parties the purpose of the agency and the extent of the agent’s powers.” *Rose*, 239 S.W.3d at 749. “It should be construed using the same rules of construction generally applicable to contracts and other written instruments, except to the extent that the fiduciary relationship between the principal and the agent requires otherwise.” *Id.* (footnote omitted).

A trial court’s findings of fact from a bench trial are presumed to be correct, and we will not overturn those factual findings unless the evidence preponderates against them. Tenn. R. App. P. 13(d); *In re Est. of Ledford*, 419 S.W.3d 269, 277 (Tenn. Ct. App. 2013). “For the evidence to preponderate against a trial court’s finding of fact, it must support another finding of fact with greater convincing effect.” *Watson v. Watson*, 196 S.W.3d 695, 701 (Tenn. Ct. App. 2005) (citations omitted).

### ANALYSIS

We have determined that two questions must be answered to resolve this dispute. The first question is whether the Trust authorized, prohibited, or otherwise imposed limitations on Mr. Thomason, as Mr. Bone’s attorney-in-fact, from amending the Trust while Mr. Bone was competent. If not, the second question is whether the power of attorney authorized Mr. Thomason to amend the Trust.

We begin our analysis by noting that the Tennessee Uniform Trust Code is codified in title 35, chapter 15 of the Tennessee Code. The section most relevant to the issue at hand is subsection (e) of Tennessee Code Annotated § 35-15-602, which reads: “*A settlor’s powers with respect to . . . amendment . . . of trust property may be exercised by an agent*



*under a power of attorney only to the extent expressly authorized by the terms of the trust or the power.*<sup>14</sup> Tenn. Code Ann. § 35-15-602(e) (emphasis added).

## I. THE TRUST

In pertinent part, the Trust reads:

I reserve the power, by signed instruments (other than a will or codicil) delivered to the Trustee during my life, to revoke this Agreement and any trust hereunder, in whole or in part, and to amend this Agreement and any trust hereunder from time to time in any respect. The power to revoke or amend is personal to me and may not be exercised by any other person on my behalf *during any time that I am incompetent*, unless I have expressly granted the power to amend or revoke this Agreement in writing to any agent under a power of attorney.

(Emphasis added).

The Trust expressly authorizes the amendment of the Trust by an attorney-in-fact acting under a power of attorney while Mr. Bone is incompetent, provided that the power of attorney expressly authorizes the amendment of “this [Trust] in writing.” It is undisputed that Mr. Bone was not incompetent when the Amendment was executed; thus, this provision does not apply.

Although the Trust did not expressly authorize Mr. Thomason to amend the Trust while Mr. Bone was competent, the Trust did not prohibit or otherwise impose limitations on Mr. Bone’s attorney-in-fact from amending the Trust while Mr. Bone was competent.

Accordingly, we hold that the Trust does not prohibit or otherwise impose limitations on Mr. Thomason to amend the Trust while acting in his capacity as Mr. Bone’s attorney-in-fact pursuant to the 2009 power of attorney.

As noted earlier, “A settlor’s powers with respect to . . . amendment . . . of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust *or the power.*” Tenn. Code Ann. § 35-15-602(e) (emphasis added). Thus, the dispositive question is whether the power of attorney authorized Mr. Bone to amend the Trust.

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<sup>14</sup> “Settlor” is statutorily defined as “a person, including a testator, who creates, or contributes property to, a trust.” Tenn. Code Ann. § 35-15-103(29). Mr. Bone was the settlor of the Robert McKeel Bone Living Trust.

II. THE POWER OF ATTORNEY

In 2009, Mr. Bone appointed Mr. Thomason as his attorney-in-fact by executing a durable power of attorney, the introductory paragraph of which reads:

That I, ROBERT M. BONE, a resident of Humphreys County, Tennessee, do hereby make, constitute and appoint ROBERT I. THOMASON, JR., a resident of Humphreys County, Tennessee, my true and lawful Attorney-in-Fact, for me and in my name, place and stead, to generally do and execute any or all things for me that I can Lawfully and legally do myself including, but not limited to signing or performing in My name, place, and stead any act, deed, matter, or thing whatsoever, that ought to be done, signed, or performed, or that in the opinion of my Attorney-in-Fact ought to be done, signed or performed in and about the premises, of every nature and kind whatsoever, to all intents and purposes whatsoever, as fully and effectually as I could do if personally present and acting, including, but not necessarily limited to, the following: . . .

In furtherance of the broad powers stated above, the power of attorney specified other powers in detail, including the following:

(10) To act for me and as my proxy with respect to any policy of insurance on my life and exercise any right, privilege, option or incident of ownership which I may have thereunder or pertaining thereto, including the right to change the beneficiary thereof or to change the method of payment of the proceeds thereof, and the right to make a cash surrender of such policy and to make and surrender the same for a loan, conversion or for any other purposes whatsoever.

. . . .

(30) To make gifts, grants, or other transfers on my behalf without consideration.

(31) To exercise any powers of revocation, amendment, or appointment which I may have over the income or principal of any trust.

. . . .

(34) To change, add, or delete any right of survivorship designation on any property, real or personal, to which I hold title, alone or with others.

. . . .

And I specifically grant to my Attorney-in-Fact the full power and authority to do and perform any and all other acts necessary or incident to the performance of any of the powers as herein granted as fully and to all intents and purposes as I might or could do myself if personally present.

It is my intention that this be a General Power of Attorney and my Attorney-in-Fact to have the power and authority to do all acts and things for me of any nature or kind that I could legally do for myself.

In *Tennessee Farmers Life Reassurance Co. v. Rose*, 239 S.W.3d 743 (Tenn. 2007), our Supreme Court examined a similar power of attorney to determine whether the power of attorney authorized the attorney-in-fact, Mr. Rose, to change the life insurance beneficiary. In doing so, the Court reasoned:

In pertinent part, the power of attorney authorized Rose “to transact *all* insurance business on [Langley’s] behalf, to apply for or continue policies, collect profits, file claims, make demands, enter into compromise and settlement agreements, file suit or actions *or take any other action necessary or proper in this regard.*” (emphases added). As stated above, “[t]here is no room for construction of a power of attorney that is not ambiguous or uncertain, and whose meaning and portent are perfectly clear.” Langley’s power of attorney is neither ambiguous nor uncertain—it grants Rose the authority “to transact all insurance business” and to “take any other action in this regard.” There simply is no escaping the significance of the word “all” and the words “take any other action in this regard” in delineating the scope of the insurance business which Rose was authorized to conduct. By authorizing Rose “to transact all insurance business” and “to take any other action in this regard,” the power of attorney plainly and unambiguously authorized her to conduct any and all insurance-related business on Langley’s behalf, which includes the power to change the beneficiary of Langley’s life insurance policy. Just as Rose could have canceled this policy, purchased another one, and named a new beneficiary for the second policy, she had authority to make this change. If we were to construe the words of Langley’s power of attorney to exclude the power to change beneficiary designations, we would effectively be rewriting Langley’s power of attorney from authorizing Rose to transact “all” insurance business on Langley’s behalf to authorizing Rose to transact “nearly all” of Langley’s insurance business.

*Id.* at 750–51.<sup>15</sup>

As was the case in *Rose*, if we were to construe the words of Mr. Bone’s power of attorney to exclude the power to amend any trust Mr. Bone may have created, we would effectively be rewriting Mr. Rose’s power of attorney from authorizing Mr. Thomason “[t]o exercise *any* powers of . . . amendment . . . which I may have over the income or principal of *any* trust” to *some* powers of amendment over *some* trusts. Further, we would effectively be rewriting Mr. Rose’s power of attorney from authorizing Mr. Thomason “to have the power and authority to do *all* acts and things for me of *any* nature or kind that I could legally do for myself” to do *some* acts for me of *some* nature or kind.

As explained in *Rose*, “powers of attorney should be interpreted according to their plain terms.” *Id.* at 750. “There is no room for the construction of a power of attorney that is not ambiguous or uncertain, and whose meaning and portent are perfectly clear.” *Id.* Mr. Bone’s power of attorney is not ambiguous or uncertain, and its meaning is perfectly clear. Accordingly, there is no room for us to construe its meaning. *See id.*

A power of attorney is a written instrument that evidences to third parties the purpose of the agency and the extent of the agent’s powers. *Id.* Mr. Bone’s power of attorney unequivocally evidences the fact that one of the purposes of Mr. Thomason’s agency and powers was to amend any trust of Mr. Bone.

Accordingly, we affirm the decision of the Probate Court finding that the Amendment was valid.

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<sup>15</sup> The *Rose* decision addressed the language that would need to be included for the power of attorney to merely incorporate by reference the powers set forth in Tennessee Code Annotated § 34-6-109. *See Rose*, 239 S.W.3d at 752 (“If Langley’s power of attorney had incorporated by reference the powers listed in Tennessee Code Annotated section 34-6-109, it would have been necessary for the power of attorney to have used the words ‘change beneficiary designations’ or ‘change beneficiaries’ in order to authorize Rose to make such changes, and the words ‘to transact all insurance business’ would have been insufficient to confer that power on the attorney-in-fact.”). Mr. Bone’s power of attorney did not incorporate such powers by reference; instead, it set forth the powers in specific, general terms. Thus, like the *Rose* case, Mr. Bone’s power of attorney did not incorporate by reference the powers listed in § 34-6-109; therefore, his power of attorney did not trigger the application of § 34-6-108(c)(5). *See Rose*, 239 S.W.3d at 752 (“Langley’s power of attorney, however, did not incorporate by reference the powers listed in section 34-6-109, and her power of attorney therefore did not trigger the application of section 34-6-108(c)(5).”).

**IN CONCLUSION**

The judgment of the Probate Court is affirmed, and costs of appeal are assessed against the appellants, Chancie Mayberry, Craig Mayberry, and Phayung Phuksuk, jointly and severally.

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FRANK G. CLEMENT JR., P.J., M.S.