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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Case No. 2022-000599
Lower Court Case No. 2022CP200017

Edith Peoples, as personal representative of the estate of Floyd Young,

Respondent,

v.

PruittHealth-Ridgeway, LLC,

Appellant.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE ISSUES ON APPEAL

I. Whether a court's order granting the South Carolina Department of Social Services ("DSS") legal and physical custody of a vulnerable adult is subject to any limitations precluding DSS from contracting in any way on behalf of that vulnerable adult?

II. Whether the circuit court's Order is contrary to the Federal Arbitration Act ("FAA") and other federal and state law favoring enforcement of arbitration agreements and requiring that arbitration agreements be treated uniformly with other contracts?

STATEMENT OF THE CASE

This is an appeal from the circuit court's denial of Defendant/Appellant PruittHealth-Ridgeway, LLC's ("Appellant") Motion to Dismiss and/or Stay and Compel Arbitration. On January 16, 2022, Plaintiff/Respondent Edith Peoples, as Personal Representative of the Estate of Floyd Young ("Respondent") initiated the underlying action by filing a Complaint in the Court of Common Pleas for Fairfield County alleging a single count of negligence based on survivorship against Appellant, a skilled nursing facility in Ridgeway, South Carolina. (Exhibit A – Complaint). On February 8, 2022, Respondent served Appellant with her Complaint.

Subsequently, on February 11, 2022, Appellant filed a timely Motion to Dismiss and/or Compel Arbitration ("Appellant's Motion"). (Exhibit B – Appellant's Motion). On March 17, 2022, Appellant submitted a Memorandum in Support of Appellant's Motion, and Respondent submitted a Memorandum in Opposition on the evening of March 30, 2022. (Exhibit C – Appellant's Memorandum in Support of Appellant's Motion; Exhibit D – Plaintiff's Memorandum in Opposition to Motion to Compel). The next morning, on March 31, 2022, Judge Brian M. Gibbons held a hearing on Appellant's Motion. (Exhibit E – Hearing Transcript).

On April 21, 2022, the circuit court denied Appellant's Motion. (Exhibit F – Order). On April 28, 2022, Appellant timely filed a Motion to Reconsider. (Exhibit G – Motion to Reconsider). However, on May 2, 2022, the circuit court issued a Form 4 denying Appellant's Motion to Reconsider. (Exhibit H – Form 4). Accordingly, on May 2, 2022, Appellant filed its Notice of Appeal. (Exhibit I – Notice of Appeal).

STANDARD OF REVIEW

"Arbitrability determinations are subject to de novo review." *Johnson v. Heritage Healthcare of Estill, LLC*, 416 S.C. 508, 512, 788 S.E.2d 216, 218 (2016) (quoting *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 379, 759 S.E.2d 727, 731 (2014)). "The policy of the United States and South Carolina is to favor arbitration of disputes." *Partain v. Upstate Auto. Grp.*, 386 S.C. 488, 491, 689 S.E.2d 602, 603 (2010); *see also Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001) (citing *Tritech Elec., Inc. v. Frank M. Hall & Co.*, 343 S.C. 396, 399, 540 S.E.2d 864, 865 (Ct. App. 2000)). Therefore, although the question of whether a claim is subject to arbitration is an issue for judicial determination, "questions of arbitrability must be addressed with a healthy regard for the federal [and state] policy favoring arbitration. . . . any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Moses H. Cone Mem'l Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 23-24 (1983); *see also Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 125, 747 S.E.2d 461, 466 (2013) (internal citations omitted) ("There is a strong presumption in favor of the validity of arbitration agreements [in South Carolina] because of the strong policy favoring arbitration.").

"The litigant opposing arbitration bears the burden of demonstrating that he has a valid defense to arbitration." *Johnson*, 416 S.C. at 512, 788 S.E.2d at 218 (citing *Dean*, 408 S.C. at 379, 759 S.E.2d at 731). The defense must be a generally applicable contract defense and not one that is exclusive to arbitration agreements. *See AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 333 (2011) ("[The] saving clause [of the FAA] permits agreements to arbitrate to be invalidated by generally applicable contract defenses, such as fraud, duress, or unconscionability, but not by defenses that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue."). For the reasons explained more fully below, Respondent did not

previously and cannot carry this burden because there are no defenses to the enforceability of Mr. Young's valid and voluntary arbitration agreement with Appellant.

STATEMENT OF FACTS

Plaintiff's Complaint arises from the residency of Mr. Floyd Young at Appellant's facility. Mr. Young was a vulnerable adult, diagnosed with multiple mental and other health conditions, including dementia, schizophrenia, bipolar disorder, anxiety, depression, and pica, a compulsive eating disorder that causes an individual to eat non-food items. (Compl. ¶¶ 2,4; Motion to Reconsider, p. 2). Respondent is Mr. Young's sister and the personal representative of his estate. (Compl., p. 1; Respondent's Memo. in Opp., p. 1).

On January 11, 2011, following a hearing with a representative of the South Carolina Department of Mental Health, Judge W. Thomas Sprott Jr. determined that Mr. Young "physically neglect[ed] himself" and was "unable to adequately provide for his own care and protection." (Exhibit J - Final Order). As a result, he placed Mr. Young in the legal and physical custody of the South Carolina Department of Social Services ("DSS").[1] (*Id.*). Judge Sprott's Order was without a limitation as to DSS's legal authority. (*Id.*). Subsequently, on or around March 2012, DSS admitted Mr. Young to Appellant's facility. (Compl. ¶ 4). Notably, this was more than three (3) years *before* Respondent was appointed Mr. Young's Guardian on April 8, 2015. (Final Order;

[1] In its Order denying Appellant's Motion, the circuit court states that Judge Sprott did not make any findings regarding Mr. Young's mental capacity, but nevertheless concludes that Mr. Young "had the capacity to understand and sign the arbitration agreement himself if he wanted to." (Order, pp. 1, 6). As detailed further herein, this finding is contrary to Judge Sprott's Order and Plaintiff's own Complaint, so this factual finding alone requires reversal as there is no evidence reasonably supporting it. *See State Auto. Mut. Ins. Co. v. Allstate Ins. Co.*, 298 S.C. 267, 270, 379 S.E. 2d 739, 740 (Ct. App. 1989) (reversing decision of lower court where no evidence reasonably supported the factual findings of the trial judge).

Exhibit K – Certificate of Appointment).[2] For those three (3) years, Mr. Young remained in the legal and physical custody of DSS. (*Id.*). Respondent provided care to Mr. Young until he passed away on May 30, 2020. (Compl. ¶ 2).

In admitting Mr. Young to Appellant's facility, a representative of DSS, Ms. Jeanette Sanders, acting pursuant to Judge Sprott's Order and on behalf of Mr. Young, signed admission documents, including an arbitration agreement (the "Arbitration Agreement") with Respondent.[3] (Exhibit L – Arbitration Agreement). The Arbitration Agreement was made pursuant to the Federal Arbitration Act ("FAA"), and it was properly witnessed. (*Id.* at pp. 4-5). The Arbitration Agreement provides that it binds Mr. Young's "guardian." (*Id.* at p. 2). It articulates the scope of the Arbitration Agreement, and states, in pertinent part, that: "[a]ny and all claims or controversies arising out of or in any relating to [the] Agreement . . . or the Patient/Resident's stay at, or the care or services provided by . . . including any claim based on negligence . . . shall be submitted for arbitration." (*Id.* at p. 1).

Additionally, among its other detailed provisions, warnings, and clauses, it advises that execution of the Arbitration Agreement is voluntary. (*Id.* p. 5). In fact, in conspicuous, bold, underlined, and all caps writing at the immediate beginning of the Arbitration Agreement, it states:

> **THE PATIENT/RESIDENT AND THE HEALTHCARE CENTER UNDERSTAND AND ACKNOWLEDGE THAT THIS AGREEMENT IS A VOLUNTARY AGREEMENT TO SUBMIT FOR RESOLUTION BY ARBITRATION ANY DISPUTES THAT MAY ARISE IN THE FUTURE BETWEEN THE PARTIES. THE PARTIES FURTHER UNDERSTAND AND ACKNOWLEDGE THAT, AS TO ALL DISPUTE THAT ARE GOVERNED BY THIS AGREEMENT, EACH OF THE**

[2] This particular fact, which is undisputed based on court records, is important on multiple levels. (Final Order). First, it demonstrates the clear error of the factual findings of the circuit court that were critical to its decision making. Specifically, in its Order, the circuit court writes, "the DSS employee did not discuss the arbitration agreement with . . . Mr. Young's family or power of attorney." (Order, pp. 2, 6). The circuit court's implication that this is problematic for the enforcement of the Arbitration Agreement gravely neglects the three-year gap between Mr. Young's admission to Appellant's facility and Respondent's appointment as his Guardian. Second, it shows that, for three years, only DSS had the ability to make any decisions for Mr. Young and its abilities were in no way constrained.

[3] UniHealth PAC-Tanglewood is the former name of PruittHealth-Ridgeway, LLC.

PARTIES IS WAIVING THE RIGHT TO TRIAL BY JURY, AND INSTEAD, ANY DISPUTES BETWEEN THE PARTIES SHALL BE RESOLVED THROUGH BINDING ARBITRATION.

(*Id.* at p. 1). Moreover, it provides that the Arbitration Agreement can be revoked by written notice to Appellant within thirty (30) days of execution. (*Id.* at 5).

By signing the Arbitration Agreement, Ms. Sanders expressly represented that she was authorized to do so and had no reason to believe that Mr. Young would not have signed the Arbitration Agreement if he were competent. (*Id.* at p. 2). Further, she produced Judge Sprott's Order giving her authority, and she represented that she read and understood the Arbitration Agreement and that she explained the Arbitration Agreement, its nature, and its essential terms to Mr. Young to the extent that he could understand the explanation. (*Id.* at pp. 4-5).[4]

Ultimately, neither Mr. Young nor his legal and physical custodian sought to revoke the Arbitration Agreement. Thus, it remains in effect today, and as demonstrated above, is a voluntary and valid contract under South Carolina law that should be enforced against Respondent whose survivorship claim falls squarely in its scope. *See Am. Gen. Life & Accident Ins. Co. v. Wood,* 429 F.3d 83, 87 (4th Cir. 2005) (mandating enforcement of an arbitration agreement where a party

[4] Also in its Order denying Appellant's Motion, the circuit court incorrectly states twice that the Arbitration Agreement was never shown or explained to Mr. Young. (Order, pp. 2, 6). While this fact is not dispositive on the issue of authority, there is nonetheless no evidence on the record to support it. Indeed, the only evidence on the record pertaining to Ms. Sanders' conduct proves the opposite; that she showed the Arbitration Agreement to Mr. Young and explained it to him to the extent that he could understand it. (Agreement, pp. 4-5). Accordingly, the circuit court's factual findings on this point should also be reversed because there is no evidence reasonably supporting it. *State Auto. Mut. Ins. Co.,* 298 S.C. at 270, 379 S.E.2d at 740.

Moreover, whether Ms. Sanders showed Mr. Young the Arbitration Agreement is of no moment because South Carolina law does not impose a duty upon DSS to show arbitration agreements to vulnerable adults in its legal custody. *See THI of S.C. at Magnolia Manor-Inman, LLC v. Gilbert*, Civil Action No. 7:13-cv-2929-BHH, 2014 U.S. Dist. LEXIS 171275, at *16-17 (D.S.C. Oct. 31, 2014) (recommendation and report adopted) (nonprecedential) (holding that there is no duty on DSS to explain an arbitration provision signed on behalf of a vulnerable adult in its legal custody to the vulnerable adult).

demonstrates that a valid written agreement with an arbitration provision which purports to cover the dispute exists).

ARGUMENT

I. THE CIRCUIT COURT ERRED IN DENYING APPELLANT'S MOTION TO DISMISS AND/OR STAY AND COMPEL ARBITRATION.

In spite of Judge Sprott's Order placing Mr. Young in the **legal and physical custody** of DSS, the circuit court denied Appellant's Motion and refused to enforce Mr. Young's valid and voluntary Arbitration Agreement based on DSS's purported lack of authority to execute contracts on behalf of vulnerable adults. (Order, p. 5). This was in error and the circuit court's Order should be reversed.

First, as an initial matter, the circuit court's factual finding that Mr. Young "had the capacity to understand and sign the [A]rbitration [A]greement himself if he wanted to" is incorrect and must be revisited because it is fatal to its legal analysis. (*Id.* at p. 6). Second, its holding that DSS did not have authority to bind Mr. Young to contracts, including arbitration agreements, contravenes both Judge Sprott's Order, that did not limit DSS's legal authority over Mr. Young, and South Carolina law, which does not place limitations on DSS or any other legal custodian's ability to contract on behalf of a vulnerable adult in its custody. (*Id.* at p. 5). Finally, its approach to interpreting DSS's authority in this context is contrary to the FAA and other federal and state law because it disregards the clear policy favoring enforcement of arbitration agreements and effectively creates a heightened standard for interpreting grants of legal custody in the arbitration context that does not apply uniformly to other contracts. (*Id.* at pp. 3-7).

A. MR. YOUNG DID NOT HAVE CAPACITY TO ENTER INTO THE ARBITRATION AGREEMENT HIMSELF AND THE CIRCUIT COURT'S FACTUAL FINDING THAT HE DID IS FATAL TO ITS LEGAL ANALYSIS.

In its Order denying Appellant's Motion, the circuit court made a factual finding that Mr. Young "had the capacity to understand and sign the arbitration agreement himself if he wanted to" merely because there was not an explicit legal or medical order declaring him "incompetent." (Order, p. 6).[5] This finding, however, ignores the overwhelming evidence on the record affirming that Mr. Young did not have capacity. Although this is a factual or secondary holding, it is ultimately fatal to the circuit court's legal analysis. Specifically, it leads the court to the wrong answer to the key question of *who* had authority to execute the Arbitration Agreement. Thus, this Court must revisit the issue of Mr. Young's capacity.

A lack of capacity is implicit, if not explicit, in Judge Sprott's Order. (Final Order). It states that "Mr. Young is unable to adequately provide for his own care and protection," and that the South Carolina Department of Mental Health was made a party to the matter, evincing that Mr. Young was unable to understand and contract for his own care and protection. (*Id.*). This is bolstered by the fact that Judge Sprott chose to not only place Mr. Young in DSS's physical custody, but its legal custody too. If Mr. Young truly had capacity, there would be no need for the family court to award DSS legal custody of him. DSS's service to Mr. Young would have stopped after securing him placement at Appellant's facility. However, that was not the case for at least

[5] Mr. Young's medical records from Sister of Charity Providence Hospital, which Respondent relied upon in her Memorandum in Opposition to Appellant's Motion, *see* Respondent's Memorandum in Opposition, p. 6, and at oral argument, do not provide a factual basis for the circuit court's finding either because they are dated ten months after Mr. Young's admission to Appellant's facility, or the operative time period. *See Verdery v. Daniels (In re Thames)*, 344 S.C. 564, 570, 544 S.E.2d 854, 856 (Ct. App. 2001) (holding "South Carolina has defined contractual capacity as a person's ability to understand, *at the time the contract is executed*, the nature of the contract and its effect.") (emphasis added).

three (3) years as evidenced by the delay in Respondent's appointment as Guardian. (Cert. of Appointment).

Respondent's own allegations also support that Mr. Young lacked capacity. Her Complaint concedes that Mr. Young suffered from multiple mental and other health conditions, including dementia, schizophrenia, bipolar disorder, anxiety, depression, and pica, and it sets forth the debilitating affect that these conditions had on Mr. Young's cognition. (Compl. ¶ 4). More precisely, she alleges that Mr. Young was "under constant skilled nursing care due to his conditions, ***decline in mental cognition*** and his total dependence for his needs for dally (sic) living and activity . . . [he] ***had difficulty speaking and could not make his needs known to the staff***[]" and that, "[d]ue to his pica, [Mr. Young was] known to chew on his bedgown, bedsheets, his diaper brief, his own feces and other non-food items." (Compl. ¶¶ 5-6). Respondent's Complaint establishes that Mr. Young, at all times relevant to the Complaint, lacked capacity to understand and execute the Arbitration Agreement. Consequently, the circuit court's factual findings on this point should be reversed. *See State Auto. Mut. Ins. Co.*, 298 S.C. at 270, 379 S.E.2d at 740.

More importantly though, the circuit court's Order should be reversed in its entirety because this incorrect factual finding subverts its legal analysis. Specifically, incorrectly determining that Mr. Young had capacity leads the court to the wrong answer to the pivotal question of who had authority to execute the Arbitration Agreement among the only three (3) options: (i) Mr. Young, (ii) an agent authorized by Mr. Young to sign on his behalf, or (iii) his legal custodian. Since the evidence supports that Mr. Young did not have capacity, he could neither sign the Arbitration Agreement, nor grant authority to another under traditional agency principles. *See Verdery*, 344 S.C. at 570, 544 S.E.2d at 856 (noting that a principal cannot create an agency relationship without the mental capacity to contract). Therefore, the only party that could execute

the Arbitration Agreement on his behalf was the party with legal custody over him, which, in this case, was DSS. The circuit court's Order neglects this, and a result, reaches an erroneous holding that should be reversed.

B. THE CIRCUIT COURT'S HOLDING IS ERRONEOUS BECAUSE IT CONTRAVENES JUDGE SPROTT'S ORDER GRANTING DSS LEGAL AND PHYSICAL CUSTODY OF MR. YOUNG AND OTHER SOUTH CAROLINA LAW.

The circuit court denied Appellant's Motion based on DSS's purported lack of statutory or regulatory authority to execute contracts, including arbitration agreements, on behalf of vulnerable adults like Mr. Young. (Order, p. 5). As an initial matter, this was erroneous because it contravenes Judge Sprott's Order. (Final Order). Judge Sprott's Order plainly placed Mr. Young in the "legal and physical custody" of DSS. (*Id.*). As a family court judge, it was Judge Sprott's providence to grant DSS custody. *See Tomlinson v. Melton*, 428 S.C. 607, 614, 837 S.E.2d 230, 234 (Ct. App. 2019) (holding that, in the context of custody decisions, "courts have the inherent power to do all things reasonably necessary to insure (sic) that just results are reached to the fullest extent possible."). Although he could, Judge Sprott did not limit DSS's legal authority over Mr. Young. *See e.g., Klein v. Barrett*, 427 S.C. 74, 85, 828 S.E.2d 773, 778 (Ct. App. 2019) (limiting the authority of one legal custodian to topics not granted to the other legal custodian, such as dental care). Importantly, Judge Sprott did not limit DSS's legal authority to medical or financial decision making for Mr. Young. (Final Order). Therefore, in making decisions on behalf of Mr. Young, pursuant to Judge Sprott's Order, DSS was permitted to exercise all of the authority granted to legal custodians under South Carolina law. As explained below, this includes the authority to execute contracts such as arbitration agreements.

In simple terms, South Carolina law defines "legal custody" as the authority of an individual or entity to make legal decisions on behalf of another. *See e.g.,* S.C. Code § 63-15-210

(2012) (defining a parent with "sole" legal custody as a parent with "the rights and responsibilities for major decisions concerning the child, including the child's education, medical and dental care, extracurricular activities, and religious training"). Contrary to the circuit court's suggestion, South Carolina law neither limits the authority of a legal custodian, including DSS, to just healthcare decisions, nor does it preclude it from executing contracts on behalf of individuals in its custody. *Id.*; S.C. Code § 43-35-10(9) (2010) (defining the authority of DSS to act on behalf of vulnerable adults in its custody); *see also Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 354 n.4, 755 S.E.2d 450, 454 (2014). In fact, in *Coleman*, the South Carolina Supreme Court suggested, without deciding, that legal custody of an incapacitated person is **not limited** to just decisions about healthcare and payment. 407 S.C. at 354 n.4, 755 S.E.2d at 454 ("While the power to make decisions other than those involving health care and payment therefore on behalf of the incapacitated person, including authority to enter other types of contracts, may be vested in an attorney-in-fact, a probate court guardian, or **another who possesses legal authority**, these issues are not before the Court.") (emphasis added).[6]

Moreover, at least one federal court in South Carolina has enforced an agreement to arbitrate under identical circumstances. Though the opinion is nonprecedential, it is instructive on the scope of a legal custodian's (particularly DSS's) authority to sign an arbitration agreement on behalf of an individual in its custody. In *THI of S.C. at Magnolia Manor-Inman, LLC v. Gilbert*, a

[6] In its Order, the circuit court acknowledged that DSS has authority to make healthcare decisions for vulnerable adults in its custody. (Order, p. 5). Therefore, under *Coleman* and *Gilbert* (cited *supra*), had the Arbitration Agreement been a part of Mr. Young's admission agreement, there would be no question that it was enforceable. *See Coleman*, 407 S.C. at 354, 755 S.E.2d at 454 (holding that a healthcare power of attorney could bind an incapacity person to an arbitration provision contained in admission agreement). Mr. Young's separate Arbitration Agreement should be similarly enforced though because its separateness is evidence of its voluntariness and lack of unconscionability. *Id.* at 358, (Toal, J. dissenting) ("While there is nothing inherently 'wrong' with including an arbitration agreement in a nursing home residency contract, I believe it is more desirable to make arbitration agreements that are healthcare-related, discretionary, and signed by a surrogate just as enforceable as adhesive arbitration agreements. In my opinion, presenting consumers with a separate arbitration agreement should be encouraged because discretionary agreements enable consumers to make a more voluntary, knowing, and informed choice to arbitrate.").

family court judge determined Ms. Gertrude Gilbert was "vulnerable adult" and placed her in the "legal custody" of DSS. Civil Action No. 7:13-cv-2929-BHH, 2014 U.S. Dist. LEXIS 171275 at *2. Acting pursuant to the court order, DSS subsequently placed Ms. Gilbert in a skilled nursing facility. *Id.* at *3. In admitting Ms. Gilbert to the facility, a representative of DSS executed an admissions agreement on behalf of Ms. Gilbert. *Id.* The admissions agreement contained an arbitration clause requiring the parties to resolve all disputes arising out of Ms. Gilbert's care in arbitration. *Id.* In signing the agreement, DSS represented that it possessed the authority to execute the agreement on behalf of Ms. Gilbert. *Id.* When the personal representative of Ms. Gilbert's estate filed a wrongful death and survival action based on Ms. Gilbert's care, the skilled nursing facility sought to enforce the arbitration clause contained in the admission agreement against Ms. Gilbert's estate. *Id.* at *5-6. Ultimately, the District of South Carolina enforced the arbitration clause agreed to by DSS on behalf of Ms. Gilbert. *Id.* at *10-12; *THI of S.C. at Magnolia Manor-Inman, LLC v. Gilbert*, Civil Action No. 7:13-2929-BHH, 2015 U.S. Dist. LEXIS 33998, *3-4, 8 (D.S.C. Mar. 19, 2015). In short, legal custodians have broad authority to act on behalf of individuals in its custody, including executing arbitration agreements on their behalf.

This is especially true where DSS is the legal custodian of a vulnerable adult. Under the South Carolina Omnibus Adult Protection Act, codified at S.C. Code § 43-35-10 *et al.* ("Adult Protection Act"), DSS is enabled to provide "protective services" for vulnerable adults that "include, but are not limited to, elevating the need for protective services, securing and coordinating existing services, arranging for living quarters, obtaining financial benefits to which a vulnerable adult is entitled, and securing medical services, supplies, and *legal services*." S.C.

Code § 43-35-10(9) (emphasis added).[7] If DSS has the authority to secure legal services on behalf of a vulnerable adult, under the Adult Protection Act, it certainly may choose to institute legal proceedings in the forum it deems appropriate, including arbitration.

The circuit court reaches the opposite conclusion because it conflates the *Coleman* case, which is interpreting the Adult Healthcare Consent Act, S.C. Code § 44-66-10 (1990) *et seq.*, with the Adult Protection Act, and in doing so ignores the straightforward ability of DSS to institute legal proceedings. 407 S.C. at 351-54, 755 S.E.2d at 453-455 (holding that the Adult Healthcare Consent Act did not authorize a decedent's sister, acting as a health care surrogate, to execute an arbitration agreements with a nursing facility because the arbitration agreements did not concern "health care" as defined by the Act). Moreover, and most detrimental to its opinion though, it ignores the inherent power of Judge Sprott to grant DSS broad legal authority to carry out tasks for Mr. Young. *See Tomlinson*, 428 S.C. at 614, 837 S.E.2d at 234 (demonstrating that courts have inherent power to award legal and physical custody and define a custodian's authority). In other words, Judge Sprott's Order was the ultimate grant of authority for DSS to execute the Arbitration Agreement on behalf of Mr. Young. Thus, an exercise in statutory interpretation was unnecessary.[8] Regardless, the Adult Protection Act bolsters DSS's authority and does not detract. The circuit court's Order does not comport with either Judge Sprott's Order or South Carolina law.

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[7] DSS's ability to "obtain[] financial benefits" on behalf of a vulnerable adult also suggests that DSS may institute and select the forum for legal proceedings (e.g., arbitration) because some financial benefits may only be obtained through legal proceedings, such as legal damages, retirement benefits, social services benefits, and disability and insurance benefits.

[8] Tellingly, had the court appointed an individual close to Mr. Young, such as a sibling or pastor, and not DSS, to be his legal custodian, the circuit court's reliance on the Adult Protection Act would be further misplaced. The Adult Protection Act would not be applicable to those individuals, so South Carolina's law on legal custody generally would govern their authority to execute the Arbitration Agreement. As a result, those individuals would be permitted to execute the Arbitration Agreement. DSS should not be treated differently, especially when it is enabled to secure legal services on behalf of vulnerable adults. S.C. Code § 43-35-10(9).

It also does not comport with an implementation of legal custody under any scenario in South Carolina. DSS is awarded legal custody across the state on a nearly daily basis. It is often tasked with legal custody of minors in addition to vulnerable adults, and as a result, is tasked with signing permission slips for field trips, enrolling children in school and extracurricular activities, and executing other contracts, which are no different than an arbitration agreement. It is empowered by our courts to do those things, as well as all such things that any person (i.e., a parent) can do that has legal custody. Accordingly, there is no limitation to such custody and the court's ruling endangers DSS's ability to function as a legal guardian under various difficult circumstances without limitation. Moreover, for all persons and entities that engage with DSS in situations similar to this case, a reasonable person or entity would not believe that DSS's authority is limited as the circuit court suggests. If there was to be any limit on the legal custody given DSS, it was Judge Sprott's prerogative to do so, which he did not do. Accordingly, the circuit court's Order should be reversed.

C. The Circuit Court's Order Is Erroneous Because Its Approach To Interpreting DSS's Legal Custody is Contrary To The FAA and Other Federal And State Law Favoring Arbitration And Requiring That Arbitration Agreements Be Enforced Uniformly With Other Contracts.

The FAA governs the Arbitration Agreement in this matter. (Arbitration Agreement p. 2). As a result, it establishes the lens through which Appellant's Motion must be viewed. It also prescribes Respondent's burden of proof. *See* 9 U.S.C. § 2 (2006) (providing requirements for enforcement of an arbitration agreement). Notwithstanding, the circuit court did not give due regard to the FAA or South Carolina law favoring arbitration. Instead, it preliminarily concluded that "the FAA is not an issue in this case." (Order p. 3). This was incorrect because the FAA is necessarily an issue in this dispute over the enforceability of an arbitration agreement and because Respondent took positions adverse to the FAA in both her written and oral arguments, including

that the Arbitration Agreement was unconscionable, involuntary, and violative of public policy based on its existence alone. (Respondent's Memo. in Opp., pp. 8-17; Hearing Transcript pp. 12-16). Because the circuit court did not properly consider the FAA and South Carolina law favoring the enforceability of arbitration agreements, it is no surprise then that the circuit court's decision violates them. Specifically, it erroneously created a heightened standard for interpreting grants of legal custody in the arbitration context.[9]

"[T]here is a strong presumption in favor of the validity of arbitration agreements because both state and federal policy favor arbitration of disputes." *Herron v. Century BMW*, 387 S.C. 525, 531, 693 S.E.2d 394, 397 (2010). In enacting the FAA, Congress established a strong federal policy in support of arbitration agreements, "requiring that [courts] 'rigorously enforce agreements to arbitrate.'" *Shearson/Amer. Exp., Inc. v. McMahon*, 482 U.S. 220, 226 (1987) (quoting *Moses H. Cone Memorial Hosp.*, 460 U.S. at 24).

This strong federal policy in favor of arbitration reflects Congress's and the Supreme Court's belief that arbitration is fair and beneficial. The United States Supreme Court decisions about arbitration reflect a determination that "there are real benefits to the enforcement of arbitration provisions." *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 122-123 (2001). "The

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[9] It also improperly suggested additional requirements for enforcement of an arbitration agreement, such as disclosure of an arbitration agreement to third parties like family members, which violate the FAA and potentially federal privacy laws and should be disregarded by this Court. Specifically, in its Order, the circuit court writes, "the DSS employee did not discuss the arbitration agreement with . . . Mr. Young's family or power of attorney." (Order, p. 2, 6). The circuit court did not cite, and Appellant has not found any authority under South Carolina law requiring anyone, let alone a skilled nursing facility, to present an arbitration agreement *or any other agreement to a third party prior to enforcement.* Thus, its nonoccurrence has no bearing on enforceability.

Moreover, Mr. Young was in DSS custody and not in the custody of his family, which is why the court appointed DSS in the first place. His sister did not become his legal guardian for three more years and it would have been inappropriate to consult her regarding the Arbitration Agreement. Further, she certainly would not have had any authority to sign or revoke the same. In fact, the only person appropriate, under Judge Sprott's Order, to sign the Arbitration Agreement is the very person who signed it – the legal custodian. The fact that the court was concerned that the Arbitration Agreement was not shown to his sister and power of attorney is fatal to the court's analysis and demonstrates factual deficiencies for which the court was in clear error.

advantages of arbitration are many: it is usually cheaper and faster than litigation; it can have simpler procedural and evidentiary rules; it normally minimizes hostility and is less disruptive of ongoing and future business dealings among the parties; it is often more flexible in regard to scheduling of times and places of hearings and discovery devices. . . ." *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 280(1995) (quoting H. R. Rep. No. 97-542, p. 13 (1982)). The United States Supreme Court has specifically held that this federal policy in favor of arbitration includes claims like the present; claims involving skilled nursing care. *See Marmet Health Care Ctr., Inc. v. Brown*, 565 U.S. 530, 533 (2012) (finding that a prohibition against predispute agreements to arbitrate personal-injury or wrongful-death claims against nursing homes is a categorical rule prohibiting arbitration of a particular type of claim, and that rule is contrary to the terms and coverage of the FAA).

Under the FAA, a party seeking arbitration must only show two things in order to compel arbitration: (1) that a written agreement to arbitrate exists, and (2) that the written agreement is contained within a contract involving commerce.[10] 9 U.S.C. § 2 (2006). Section 4 of the FAA specifically states that "[t]he court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, *the court shall make an order directing the parties to proceed to arbitration* in accordance with the terms of the agreement. *Id.* § 4 (emphasis added). "By its terms, the [] [FAA] leaves no place for the exercise of discretion by a [] court, but instead mandates that [] courts shall direct the parties to proceed to

[10] With respect to the second prong, it is well settled law in South Carolina that an arbitration agreement with a skilled nursing facility involves interstate commerce and is therefore governed by the FAA. *See Dean*, 408 S.C. at 382, 759 S.E.2d at 733 ("Although *Timms* might compel us to hold to the contrary, we find *Timms* is a relic of the past, decided before the broad definition of interstate commerce set forth in *Allied-Bruce*. Consequently, we explicitly overrule Timms in its entirety and find that the residency agreement here does, in fact, involve interstate commerce, and thus is governed by the FAA.").

arbitration on issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985).

The FAA places arbitration agreements "on equal footing with all other contracts" by making them "valid, irrevocable, and enforceable." *Concepcion*, 563 U.S. at 333. Under the FAA, a court may not refuse an arbitration agreement unless the party opposing arbitration establishes "a generally applicable contract defense," and not some defense that singles out arbitration agreements. *Id.* at 339; *see also DIRECTV, Inc. v. Imburgia*, 577 U.S. 47, 54-59 (2015) (overruling California law that interpreted arbitration agreements in ways that were "unique, restricted to that field . . . [and] focused only on arbitration."). Congress enacted the FAA to replace an "ancient judicial hostility to arbitration" with an "emphatic federal policy" in favor of arbitration that requires courts to "generously construe[]" the "intention of the parties" in accordance with the "strong presumption" in favor of arbitration. *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626 (1985).

A strong presumption in favor of arbitration is also a well-settled policy in South Carolina. Specifically, South Carolina appellate courts have consistently recognized that arbitration agreements "enjoy a strong presumption of validity" arising from "the strong policy favoring arbitration" under both federal and state law. *See e.g., Cape Romain Contractors, Inc.*, 405 S.C. at 125, 747 S.E.2d at 466. Furthermore, the South Carolina Supreme Court has directed South Carolina courts to fully apply *Conception* (cited *supra*) to "ensure arbitration agreements are on 'equal footing with all other contracts.'" *Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 10, 791 S.E.2d 128, 132 (2016) (quoting *Conception*, 136 S. Ct. at 365) (overruling South Carolina's outrageous torts exception to arbitration agreements). In fact, the South Carolina Supreme Court recently overruled a long-applied exception to the

enforceability of arbitration agreements because it never applied the exception to other contracts. *Id.* at 133-32 ("[T]his Court has never used the terminology associated with, or applied the principle of, the outrageous torts exception outside the context of arbitration enforcement. Because the outrageous torts exception is not a general contract principle, but instead one that has been applied only to arbitration clauses, I find the exception inconsistent with Concepcion and its supporting federal jurisprudence."). In short, both the FAA and South Carolina law require that courts resolve any doubt in favor of enforcing arbitration.

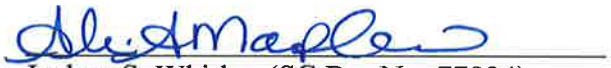
Despite this, the circuit court took a different approach. The circuit court did what the FAA and South Carolina law prohibit: it failed to acknowledge the FAA's guiding policy in favor of arbitration agreements and applied a heightened standard for interpreting grants of legal custody that South Carolina courts do not apply in other contexts. Stated another way, it analyzed DSS's legal custody of Mr. Young against DSS-related statutes and regulations to find explicit authority for DSS to execute an arbitration agreement, and when it determined that it did not exist, it carved out a unique exception to the enforcement of an arbitration agreement. (Order, pp. 3-7). This is counter to the FAA and in complete disregard of South Carolina law favoring arbitration agreements. *See Concepcion*, 563 U.S. at 339 (holding that, under the FAA, an arbitration agreement cannot be invalided "by defenses that *apply only to arbitration* or that derive their meaning from the fact that an agreement to arbitrate is at issue.") (emphasis added); *Shearson/Amer. Exp., Inc.*, 482 U.S. at 226 (internal citations omitted) (describing the federal policy in favor of enforcing arbitration agreements); *Parsons*, 418 S.C. at 10, 791 S.E.2d at 132 (applying *Conception,* cited *supra*); *Towles v. United Healthcare Corp.*, 338 S.C. 29, 35, 524 S.E.2d 839, 842 (1999) (adopting the federal policy in favor of arbitration agreements in South Carolina). Contrary to the circuit court's approach, determining the scope of legal custody

conferred to DSS by Judge Sprott requires deference to the "emphatic federal policy" establishing a "strong presumption" in favor of arbitration. *Mitsubishi Motors Corp.*, 473 U.S. at 626. Accordingly, the Order of the circuit court should be reversed.

CONCLUSION

Neither South Carolina law nor Judge Sprott's Order granting DSS legal custody of Mr. Young limited the authority of DSS such that it could not execute the voluntary Arbitration Agreement on behalf of Mr. Young, and the circuit court's approach to determining that DSS lacked authority violates the FAA and South Carolina law favoring arbitration. As demonstrated above, DSS, like other legal custodians, had the authority to bind Mr. Young to contracts and otherwise carry out legal tasks that Mr. Young could not perform himself. Respondent did not and cannot establish any other defenses to the enforceability of Mr. Young's Arbitration Agreement. Accordingly, Appellant respectfully requests that this Court reverse the decision of the circuit court and grant Appellant's Motion to Compel Arbitration.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Case No. 2022-000599
Lower Court Case No. 2022CP200017

Edith Peoples as Personal Representative of the Estate of Floyd Young, Respondent,

v.

PruittHealth-Ridgeway, LLC Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Initial Brief on Respondent Edith Peoples as Personal Representative of the Estate of Floyd Young electronically on August 5, 2022 to all counsel of record as listed below:

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Re: Edith Peoples as Personal Representative of the Estate of Floyd Young v. PruittHealth-Ridgeway
Fairfield County Civil Case No.: 2022-CP-20-00017
Appellate Case No.: 2022-000599

Dear Ms. Kitchings:

Enclosed for e-filing please find a copy of Appellant's Initial Brief, corresponding exhibits, and Proof of Service regarding this matter. By copy of this correspondence to all counsel of record, I am serving them with the same.

If you have any questions or concerns, please do not hesitate to contact me.

With warm personal regards, I remain,

Very truly yours,

for
Joshua S. Whitley

JSW:tmm
Enclosures

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