STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF COLLETON	)	CIVIL ACTION NO.: 2021-CP-15-00657
	)	
Jennifer Rahn, as Personal Representative of the Estate of Robert Ramsey,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**ORDER**
	)	
Priority Home Care, LLC and St. George Health Care, LLC, d/b/a St. George Healthcare Center,	)	
	)	
Defendants.	)	

This matter came before the Court on May 19, 2022, on a Motion to Compel Arbitration filed by Defendant St. George Health Care, LLC d/b/a St. George Health Care Center pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* and Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure. Present at the hearing and arguing on behalf of Defendant was Russell G. Hines. Appearing and arguing on behalf of Plaintiff was Lee D. Cope. After reviewing the submissions of the parties, the pleadings, and hearing the arguments of counsel, the Court denies Defendant's Motion to Compel Arbitration for the reasons set forth herein.

Plaintiff Jennifer Rahn as Personal Representative for the Estate of Robert Ramsey filed this action on November 4, 2021, in the Colleton County Court of Common Pleas after the decedent allegedly developed unstageable and necrotic pressure ulcers while in Defendant's care at its facility. Plaintiff has alleged

wrongful death and survival claims as a result of the care and treatment provided to Mr. Ramsey.

The basis of Defendant's Motion is that a valid and enforceable arbitration agreement exists between the parties. Defendant has argued that state and federal policy favors arbitration. The Supreme Court of the United States has provided commentary in a recent decision at odds with Defendant's position. "[A] court may not devise novel rules to favor arbitration over litigation . . . . The federal policy is about treating arbitration contracts like all others, not about fostering arbitration." *Morgan v. Sundance, Inc.*, No. 90-345, slip op. at 6 (U.S. May 23, 2022). Therefore, this Court is only required to place Defendant's Arbitration Agreement on equal footing with any other contract governed by state law.

The Arbitration Agreement relied upon by Defendant was signed by the decedent's daughter, Jennifer Rahn, at the time of his admission to Defendant's facility, and it appears that no valid power of attorney had been filed at that time with a register of deeds in South Carolina for Ms. Rahn to make healthcare or financial decisions on the decedent's behalf.[1] Plaintiff concedes that the decedent was suffering from dementia and did not have the capacity to sign the facility's Admission Agreement or Arbitration Agreement at the time he was admitted. Plaintiff does not contest that Plainitff likely had authority to enter the Admission

[1] Plaintiff did submit some evidence that power of attorney documents had been executed by Mr. Ramsey naming Ms. Rahn as his attorney in fact, but these documents were never recorded. Plaintiff has argued that the documents were not effective in that they were never recorded as required by law, and Defendant has not opposed Plaintiff's position. The Court accepts Plaintiff's position as uncontested.

Agreement on Mr. Ramsey's behalf under the South Carolina Adult Health Care Consent Act, S.C. Code Ann. § 44-66-10 *et seq.*

Even if Ms. Rahn had authority under the Act to enter the Admission Agreement as an act in furtherance of the decedent's health care needs, it does not necessarily follow that she had authority to enter a separate Arbitration Agreement under the Act. Therefore, the Court must determine (1) if the Arbitration Agreement merged with and was a part of the Admission Agreement such that Plaintiff in her capacity as personal representative would be equitably estopped from denying the Arbitration Agreement's validity, and (2) if Ms. Rahn had actual or apparent authority to enter the Arbitration Agreement on behalf of the decedent. The answer to both inquiries is "no".

While a signed Arbitration Agreement exists in this case, it is not a valid, enforceable agreement for the simple reason that the decedent's daughter, Jennifer Rahn, did not have any authority to execute the Arbitration Agreement at the time it was entered by the parties. A family member may be authorized to make decisions concerning **health care** under the Adult Health Care Consent Act. S.C. Code Ann. § 44-66-30(A). In contrast, arbitration is a means of resolving a legal dispute outside of the typical civil litigation process – a definition unrelated to physical or mental condition. *See* Black's Law Dictionary, 125 (10th ed. 2014).

Therefore, the Act, even if it applied, only would have given Ms. Rahn authority to consent on behalf of the decedent to the provision of medical care, including placement in Defendant's facility, as well as authority to make certain

financial decisions on behalf of the decedent which he would be obligated to pay. This authority "extends primarily to traditional health care decisions, and only secondarily to the financial decisions necessitated by those decisions." *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 353, 755 S.E.2d 450, 454 (2014). Most jurisdictions, including South Carolina, have ruled execution of an arbitration agreement is not a health care decision. *See Johnson v. Kindred Healthcare, Inc.*, 466 Mass. 779, 789-90, 2 N.E.3d 849, 857-58 (Mass. 2014) (collecting cases).

Defendant's Arbitration Agreement is admittedly optional, and separate from its Admission Agreement, and contains no provision for medical, nursing, or health care services to be provided to residents, nor does it require any financial commitment to pay for such services. The agreement is separately titled "Facility – Resident/Representative Arbitration Agreement", is paginated as "Page 1 of 1", and contains its own signature lines. The agreement is signed by Ms. Rahn as "Resident/Representative." Further, the Arbitration Agreement by its very language distinguishes between itself and the Admission Agreement, stating that the Arbitration Agreement will survive any "breach of this Agreement or the Admission Agreement." While the Admission Agreement purports to incorporate admissions materials into itself "by reference herein", when viewed alongside the other details of the agreements, it creates at best an ambiguity as to merger when taken in context of the totality of the circumstances, and "the law is clear that any ambiguity in such a clause is construed against the drafter", i.e., Defendant. *See Coleman*, 407 S.C. at 355, 755 S.E.2d at 455.

In sum, the Act provides statutory authority for family members to make an incapacitated loved one's health care decisions but leaves the conferral of authority to arbitrate for powers of attorney or other legal instruments outlined in the probate code. As previously stated, no power of attorney was ever recorded as required by law. Regardless, Ms. Rahn in her individual capacity had no legal authority to sign the Arbitration Agreement in a representative capacity for the estate, and Defendant knew or should have known this fact, as she apparently did not present them with documentation demonstrating power of attorney or guardianship. Since Ms. Rahn lacked legal authority, the Arbitration Agreement is void and unenforceable.

Further, Plaintiff cannot be equitably estopped from denying enforcement of the Arbitration Agreement. "Equitable estoppel is a contract defense and the party asserting this defense bears the burden of proving all of its elements." *Kelly v. Logan, Jollev & Smith*, 383 S.C. 626, 638, 682 S.E.2d 1, 7 (Ct. App. 2009). Defendant has not and cannot meet its burden to establish these elements, primarily because Defendant cannot demonstrate that Mr. Ramsey's estate made any false representations as far as the subject power of attorney is concerned, because Plaintiff was acting in her individual capacity at the time she signed the Arbitration Agreement.

Since Plaintiff did not have authority to sign the Arbitration Agreement under the executed power of attorney or the Adult Health Care Consent Act, the fact that Plaintiff signed the Arbitration Agreement in her individual capacity and

is now a party to this action as a nonsignatory in her capacity as personal representative of the estate does not bind the estate to the Arbitration Agreement, at least as far as equitable estoppel is concerned. The Court of Appeals addressed this concept in *Thompson v. Pruitt Corp.*:

> Respondent is attempting to use equitable estoppel against [the patient's] estate based on actions that [patient's daughter] took *in her individual capacity*. The fact that [the patient's daughter] is *now the personal representative for [the patient's] estate* is of no moment; we will not hold this circumstance against [the patient's] estate. Simply put, [the patient's] estate is the plaintiff in this case, and Respondent has alleged no conduct on the part of [the patient's] estate, that has affected Respondent's position. This, too, is a necessary element of an equitable estoppel defense.

Thompson, 416 S.C. 43, 61, 784 S.E.2d 679, 689 (Ct. App. 2016).

Equitable doctrines such as estoppel favor diligent parties who actively endeavor to protect their rights. A person cannot claim to have been misled and cannot rely on equitable estoppel if the party, by the exercise of reasonable diligence, could have acquired knowledge to determine the truth of facts in question. *Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn*, 348 S.C. 58, 70-71, 558 S.E.2d 902, 908-09 (Ct. App. 2001). In this case, Defendant had the ability to determine whether Plaintiff had authority to sign an arbitration agreement on Mr. Ramsey's behalf. It should be clear to health care entities such as Defendant that a daughter without a recorded general durable power of attorney at best only has authority to make healthcare decisions and does not have authority to waive other rights when a potential resident lacks capacity.

Defendant is a sophisticated business entity frequently interacting with residents and their families during the rehabilitation center admission process. Defendant is or should be familiar with the legal concepts of guardianship and powers-of-attorney. Defendant had the ability to ask Plaintiff whether she possessed an executed **and recorded** power-of-attorney. Since Defendant has not cited or provided any evidence on this element of equitable estoppel, Plaintiff is not equitably estopped from denying the Arbitration Agreement. Further, the Admission Agreement and Arbitration Agreement are separate contracts that do not merge. *See Hodge v. UniHealth Post-Acute Care of Bamberg LLC*, 422 S.C. 544, 561-63, 813 S.E.2d 292, 308 (Ct. App. 2018); *Thompson v. Pruitt Corp*, 416 S.C. 43, 50, 784 S.E.2d 679, 683 (Ct. App. 2016); *Coleman*, 407 S.C. at 352, 755 S.E.2d at 450.

Defendant's assertion that Plaintiff is equitably estopped from denying the validity of the Arbitration Agreement seems to hinge on a direct benefits theory of estoppel, i.e., that since Mr. Ramsey benefited from the terms of the Admission Agreement, the personal representative of his estate should be estopped from denying the validity of the Arbitration Agreement. *See Wilson v. Willis*, 426 S.C. 326, 340, 827 S.E.2d 167, 175 (2019). Virtually all of the Circuit Court orders filed by Defendant in support of its Motion rely in some form or another on this theory. However, as the Supreme Court explained in *Wilson*, to successfully assert direct benefits estoppel, the arbitration agreement must be a clause within the larger admissions agreement, and the plaintiff must be seeking to assert causes of action

that arise from and are created by the contract. Here, as explained above and below, the Admission Agreement and optional Arbitration Agreement are separate documents that did not merge. Second, Plaintiff does not assert breach of contract, or a violation of contractual duties, and instead has brought her lawsuit under a negligence theory arising from common law duties. *See Wilson*, 426 S.C. at 342, 827 S.E.2d at 176. If anything, Plaintiff's claims are indirectly related to the Arbitration Agreement, as it was optional, ancillary to, and separate from the Admission Agreement. *See id.* (stating that under direct benefits estoppel a nonsignatory's claim must be directly, not just indirectly, based on the contract containing the arbitration agreement).

Additionally, Plaintiff did not have any authority independent of the Adult Health Care Consent Act or a power-of-attorney to enter the Arbitration Agreement. The legal consequences of an agent's actions can only be attributed to the principal when the agent has actual or apparent authority. *Charleston Registry v. Young Clement*, 359 S.C. 635, 642, 598 S.E.2d 717, 721 (Ct. App. 2004). South Carolina law requires that to prove apparent authority, the defendant must show that the purported principal consciously or impliedly represented another to be his agent. *Cowburn v. Leventis*, 366 S.C. 20, 39, 619 S.E.2d 437, 448 (Ct. App. 2005). For the reasons mentioned above, the Adult Health Care Consent Act did not bestow Plaintiff with the authority to enter the Arbitration Agreement. The simple fact that Plaintiff signed the agreements so that her father could be admitted to Defendant's facility and receive health care in no way indicates a manifestation of

authority by Mr. Ramsey to waive his right to a jury trial or agree to arbitration. Defendant has not provided any evidence that Mr. Ramsey ever manifested any form of assent to Defendant establishing Ms. Rahn as his agent, nor could he have in his condition at the time of admission due to his incapacity from dementia.

Defendant's assertion that Plaintiff held "inherent agency powers" to act on behalf of the decedent is unsupported by South Carolina law. South Carolina law is clear that an individual does not have inherent agency powers concerning health care, financial, and other affairs of their spouse, much less a father or other family member. *Hinson v. Roof*, 128 S.C. 470, 475, 122 S.E. 488, 490 (1924) ("The marriage relation of the parties . . . is not necessarily enough to establish the fact that the one is the agent of the other. There must be other proof."); S.C. Jur. *Agency* § 6 (1994) ("No presumption arises from the fact of the marital relationship, without more, that [a spouse] is the agent of [the other spouse].") (footnote omitted).

Lastly, it is doubtful that the scope of the Arbitration Agreement, even if it was valid, would cover wrongful death claims asserted on behalf of a decedent's statutory beneficiaries. That is because the wrongful death claim belongs solely to the wrongful death beneficiaries, and is brought only on their behalf by the personal representative of the estate. S.C. Code Ann. §§ 15-51-10 and -20; *Self v. Goodrich*, 300 S.C. 349, 351, 387 S.E.2d 713, 714 (Ct. App. 1989). The statutory beneficiaries are nonsignatories to the Arbitration and Admission Agreements, regardless of whether the Arbitration Agreement purports to include "any alleged tort, personal injury, negligence, or other claim" "arising out of or relating to Facility's Admission

Agreement." Therefore, if the Arbitration Agreement were valid, the wrongful death beneficiaries would only be bound to its terms as third-party beneficiaries.

A third-party beneficiary may only be bound by an arbitration agreement if it is attempting to enforce the contract containing the arbitration agreement. *Thompson*, 426 S.C. at 57, 784 S.E.2d at 687. Here, the Arbitration Agreement is a standalone document not contained within the Admission Agreement, and the wrongful death beneficiaries are not attempting to enforce the Admission Agreement or Arbitration Agreement. Instead, they are seeking to recover under the wrongful death scheme for Defendant's breach of common law duties arising from its care for Mr. Ramsey. Thus, even if the Arbitration Agreement is valid and enforceable, it would only reach the survival claim of the estate, and not any wrongful death claims brought on behalf of the statutory beneficiaries. This conclusion comports with the law of other state jurisdictions. *See FutureCare NorthPoint, LLC v. Peeler*, 143 A.3d 191, 209-10, 213 (Md. App. 2016); *Taylor v. Extendicare Health Facilities, Inc.*, 147 A.3d 490, 494 n. 1 (Pa. 2016) (citing *Pisano v. Extendicare Homes, Inc.*, 77 A.3d 651, 660 (Pa. Super. 2013)); *Boler v. Sec. Health Care, LLC*, 336 P.3d 468, 477 (Okla. 2014); *Estate of Decamacho ex rel. Guthrie v. La Solana Care & Rehab, Inc.*, 316 P.3d 607, 614 (Ariz. Ct. App. 2014); *Daniels v. Sunrise Sr. Living, Inc.*, 212 Cal. App. 4th 674, 151 Cal. Rptr. 3d 273 (2013); *Carter v. SSC Odin Operating Co, LLC*, 976 N.E.2d 344, 355-58 (Ill. 2012); *Ping v. Beverly Enters., Inc.*, 376 S.W.3d 581 (Ky. 2012); *Woodall v. Avalon Care Center-Federal Way, LLC*, 231 P.3d 1252 (Wash. App. 2010); *Lawrence v. Beverly*

Manor, 273 S.W.3d 525 (Mo. 2009); *Bybee v. Abdulla*, 189 P.3d 40 (Utah 2008); *Peters v. Columbus Steel Castings Co.*, 873 N.E.2d 1258, 1262 (Ohio 2007); *Chapman v. Cardiac Pacemakers, Inc.*, 673 P.2d 385 (Idaho 1983); *see also Strickholm v. Evangelical Lutheran Good Samaritan Soc'y*, Case No. 4:11-CV-00059-BLW, 2011 WL 2532395 (D. Idaho June 24, 2011). At best, even if the Arbitration Agreement was valid, it would only reach the estate's survival claims. However, since it is not valid, it cannot compel arbitration of the wrongful death or survival claims in this action, and Defendant's motion will be denied by the Court.

In the alternative, Defendant has requested that the Court grant additional discovery on the nature of Ms. Rahn's agency relationship with her father. Here, the only relevant and necessary evidence for the Court to make its determination is already available for the Court's review. Any further discovery with the goal of revisiting the arbitrability of this case would only serve to protract this litigation, waste judicial resources, and increase costs for both parties unnecessarily.

Based on the foregoing authorities and findings, the Court denies Defendant's Motion to Compel Arbitration.

THEREFORE, it is ORDERED that the Defendant's Motion to Compel Arbitration is DENIED.

IT IS SO ORDERED.

The Honorable Bentley Price
Chief Administrative Judge

Fourteenth Judicial Circuit

_____, 2022.
Charleston, South Carolina

Colleton Common Pleas

Case Caption:	Jennifer Rahn , plaintiff, et al VS Priority Home Care Llc , defendant, et al
Case Number:	2021CP1500657
Type:	Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766