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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Edgar W. Dickson, Circuit Court Judge

Opinion No. 2023-UP-096
Appellate Case No. 2023-001037

Viola M. Hackworth, as Personal Representative of the Estate of Eugene Boles a/k/a Eugene N. Boles, deceased, ... Petitioner,

v.

Bayview Manor, LLC d/b/a Bayview Manor, Epic Mgt, LLC, Epic Group, Limited Partnership, Teddie Simmons, John Does, and Richard Roe Corporations, ... Respondents.

RESPONDENTS' RETURN TO PETITION FOR WRIT OF CERTIORARI

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COUNTER-STATEMENT OF THE CASE

Petitioner, as personal representative of the estate of Eugene Boles (her brother), filed a wrongful death action against Respondents regarding the treatment her brother received while a resident at Bayview Manor, a nursing home located in Beaufort. Boles had made Petitioner his attorney-in-fact pursuant to a general durable power of attorney in October 2012. Respondents moved to compel arbitration on the grounds that, at the time of Boles' admission to Bayview Manor, Petitioner signed an Admission Agreement containing an arbitration provision, as well as a separate Arbitration Agreement. The circuit court denied the motion to compel arbitration via a Form 4 Order. The Court of Appeals reversed the circuit court, finding that (1) the October 2012 general durable power of attorney gave Petitioner the authority to enter into an arbitration agreement on Boles' behalf; (2) that Petitioner and Bayview Manor formed an arbitration agreement when they signed the Admission Agreement; (3) that the arbitration provision from the Admission Agreement is valid; and (4) to the extent the circuit court denied Bayview Manor's motion to compel as a sanction under Rule 11, SCRCP, it was error. (App. pp. 1-8).

Importantly, Petitioner has never denied signing the Admission Agreement – she simply argues that she did not sign it on the date indicated on the document. Petitioner also argues that she did not have the authority to execute the arbitration agreement and waive a jury trial based on the provisions of the general durable power of attorney. However, all of the arguments set forth by the Petitioner were raised and considered by the Court of Appeals, which issued its Per Curiam Opinion on March 15, 2023 reversing the circuit court's order denying the Respondent's motion to compel arbitration.

ARGUMENT

Respectfully, the Petition for *Certiorari* is without merit. Rule 242 SCACR outlines five general areas where *certiorari* might be appropriate. There is no novel issue of law involved in this appeal nor was there any dissent to the Court of Appeal's Opinion. The Opinion of the Court of Appeals does not conflict with any prior decision of the Supreme Court and there is no federal question involved. It appears the Petitioner is suggesting that compelling arbitration gives rise to a substantial constitutional issue. However, the arguments set forth in the Petition for *Certiorari* are nothing more than a recitation of the arguments made by Petitioner to the Court of Appeals, and they do not warrant any further expenditure of judicial resources to bring this matter to final closure. The Court of Appeals considered those arguments and issued its decision on March 15, 2023. Thereafter, the Court of Appeals carefully considered the March 28, 2023 Petition for Rehearing, and found that there was no principle of law or material fact that had been overlooked or disregarded and denied the Petition for Rehearing on June 5, 2023.

I. THE ADMISSION AGREEMENT IS A VALID AGREEMENT CONTAINING AN ENFORCEABLE ARBITRATION PROVISION

Petitioner continues to make incorrect and unsubstantiated allegations in her Petition, arguing that the sworn affidavit testimony of Bayview Manor's former Admissions Director, Ms. Lucy Caruso, was categorically false." (Petition p. 8). Respondents do not agree that Ms. Caruso's affidavit is false, maintaining that even if Petitioner is correct that she did not sign the Admission Agreement on November 2, but rather on November 6, a valid contract was still formed between Mr. Boles (through Petitioner) and Respondent, which mandates arbitration. Petitioner has presented no legal argument as to why any alleged inaccuracy in the dates appearing on the Admission Agreement would change the binding nature thereof, especially given the fact that Petitioner has never denied signing the agreements. Petitioner also continues to argue that during

the hearing on the motion to compel arbitration, counsel for Bayview Manor acknowledged inaccuracies in the sworn testimony of Ms. Caruso. Id. at p. 10. However, counsel for Bayview Manor made no such concession.

Petitioner has never disputed that she was her brother's attorney-in-fact, that she was involved in the process to admit her brother to Bayview Manor, or that she signed the Admission Agreement and the Arbitration Agreement. Furthermore, as the Court of Appeals pointed out, the Admission Agreement was a contract that contained the terms of care to be given to Mr. Boles while he was a resident of Bayview Manor, the arrangement for payment for that care, a waiver of jury trial provision, and an "Optional Arbitration Clause." (App. p. 2). Furthermore, the last sentence of the Optional Arbitration Clause states: **OPTIONAL: If the parties do not agree to this Arbitration Clause, please mark with an X to void this clause only. I have X this clause _____ initial.** (Emphasis in original). The Respondent did not mark the opt-out blank. Therefore, given the conclusory nature of Petitioners' insinuation that she may not have signed the agreement or that she may not have met with Ms. Caruso to discuss and complete the agreement, it should be deemed abandoned on appeal and not considered. See, e.g., Judy v. Judy, 384 S.C. 634, 682 S.E.2d 836 (Ct. App. 2009) (an issue presented through conclusory argument without citation to legal authority is deemed abandoned on appeal).

Nonetheless, Respondent's insinuations are wrong on the merits because arbitration is a matter of contract, and any evaluation of the enforceability of an arbitration agreement is guided by general principles of contract law. Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 538, 542 S.E.2d 360, 364 (2001). Petitioner and Respondents formed an agreement to arbitrate any disputes between them when they signed the Admission Agreement. When a party signs a contract she owes a duty to the other party to read the document and learn its contents. *Towles v. United*

HealthCare Corp., 338 S.C. 29, 39, 524 S.E.2d 839, 845 (Ct. App. 1999). Therefore, the accuracy of the date next to Petitioner's signature on the Admission Agreement is immaterial to whether she formed an agreement with Respondents.

II. PETITIONER HAD FULL AUTHORITY TO EXECUTE THE ARBITRATION AGREEMENT AND WAIVE A JURY TRIAL

It is clear that the October 2012 general durable power of attorney gave Petitioner the authority to enter into the arbitration agreement on her brother's behalf. *Arredondo v. SNH SE Ashley River Tenant, LLC*, 433 S.C. 69, 856 S.E.2d 550 (Dec. 6, 2021). Article I A. of the General Durable Power of Attorney entitled POWERS IN GENERAL gave Petitioner the power to:

> To do and perform all and every act, deed, matter, and thing whatsoever in and about my estate, property and affairs as fully and effectually to all intents and purposes as I might or could do in my own proper person, if personally present, the specifically enumerated powers described below being an aid and exemplification of the full, complete, and general power herein granted and not in limitation or definition thereof. (App. p. 218).

Article I D. of the General Durable Power of Attorney entitled POWERS RELATED TO CUSTODY OF PERSON gave the Petitioner the power to "establish where I shall reside... and, if necessary, to make all arrangements for me at any...nursing home or similar establishment, to have and exercise all rights on my behalf which I may have and possess at such residence or institution..." (App. p. 223). The broad language of these provisions is clear and unambiguous, and it allowed Petitioner to bind Mr. Boles to arbitration. *See Kindred Nursing Centers Ltd. P'ship v. Clark*, 581 U.S. 246 (2017).

In *Arredondo*, this Court emphasized that its analysis did not turn upon the presence or absence of an explicit reference to arbitration or arbitration agreements in the power of attorney because such an analysis was improper given the decision of the United States Supreme Court in *Kindred*. When reviewing actions to set aside or interpret a power of attorney, South Carolina courts have looked to contract law, the cardinal rule of which is to ascertain and give effect to the

intention of the parties. *Arredondo*, at 75, 553. The general durable power of attorney at issue in this appeal is not in name only. When looking at the actual language contained therein, it is abundantly clear that it granted the Petitioner the broad powers to sign all documents Eugene Boles could have signed himself, or otherwise do anything Eugene Boles could have done himself.

CONCLUSION

Respectfully, for the reasons set forth above, as well as the sound reasoning contained in the Per Curiam Opinion of the South Carolina Court of Appeals, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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August 8, 2023

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 9th day of August 2023, he served counsel for Petitioner and the Clerk of the South Carolina Court of Appeals with a copy of **RESPONDENTS' RETURN TO PETITION FOR WRIT OF CERTIORARI** in this matter electronically, and by mailing copies of the same by United States mail, postage prepaid, to the following addresses:

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