

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Brian Delesline, individually and as Personal Representative of the Estate of Hazel L. Manasse,

Plaintiff,

v.

Medical University of South Carolina (MUSC), Denise Sese, MD, Johns Island Post Acute, LLC d/b/a Johns Island Post Acute, Craig Bullick, and Providence Group, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Civil Action No.: 2024-CP-10-00930

**ORDER DENYING DEFENDANTS’  
MOTION TO DISMISS, STAY  
LITIGATION AND DISCOVERY, AND  
COMPEL ARBITRATION AS TO  
PLAINTIFF’S WRONGFUL DEATH  
CLAIM**

**RECEIVED**  
**Feb 26 2025**  
**SC Court of Appeals**

This matter came before this Court on September 26, 2024, when oral arguments were heard from both Kevin Anderson, counsel for Plaintiff, and Kevin Horton, counsel for the Providence Group Defendants via Webex. After considering the facts, governing law, filings from the parties, and oral arguments, this Court hereby denies the Providence Group Defendants’ Motion in part and hereby Orders Plaintiff’s wrongful death claim to proceed in litigation in the Court of Common Pleas.

**PROCEDURAL BACKGROUND**

On December 18, 2023, Plaintiff Brian Delesline (hereinafter referred to as “Plaintiff”) filed his Notice of Intent to File Suit. On February 8, 2024, a pre-suit mediation was held, resulting in an impasse. As a result, on February 20, 2024, Plaintiff filed his Summons and Complaint alleging four causes of action including Negligence, Negligence Per Se, Wrongful Death, and

Survival. Then, on March 19, 2024, Johns Island Post Acute, LLC, Craig Bullick, and Providence Group, Inc. (hereinafter collectively referred to as the “Providence Group Defendants”) filed their Motion to Dismiss, Stay Litigation and Discovery, and Compel Arbitration. On March 26, 2024, the Medical University of South Carolina (hereinafter referred to as “MUSC”) and Denise Sese, MD (hereinafter referred to as “Dr. Sese”) filed an Answer and Dr. Sese also filed a Motion to Dismiss. On September 26, 2024, this Court heard oral arguments from counsel of record regarding the Providence Group Defendants’ Motion.

### **FACTUAL BACKGROUND**

This lawsuit arises out of multiple causes of action, including a survival action and a wrongful death action relating to the alleged negligent care and treatment and eventual death of Hazel L. Manasse (hereinafter referred to as “Decedent”), which occurred on May 6, 2022. (Compl. ¶ 1). On or about January 26, 2022, Decedent began her prolonged hospitalization at MUSC due to pneumonia. MUSC hospital nursing notes dated January 28, 2022, state, “Patient’s skin is free from any pressure injury.” (Compl. ¶ 35). However, on February 8, 2022, Decedent had an initial evaluation with a wound care nurse. The nurse noted several pressure injuries and recommended skin paste and dressings be applied, as well as repositioning Decedent every two hours. (Compl. ¶ 38). Dr. Sese was the Medical ICU Physician responsible for Decedent on February 8 and February 10, 2022. Plaintiff alleges Decedent’s pressure wounds developed at MUSC continued to deteriorate under the watch of MUSC staff and Dr. Sese. (Compl. ¶ 42).

On February 26, 2022, Decedent was admitted to Johns Island Post Acute, LLC (hereinafter “JIPA”) after being discharged from MUSC. Decedent was admitted to JIPA for

skilled nursing care, medication management, and therapy services. (Compl. ¶ 43). Due to having pressure injuries, there were orders for treatments and turning and repositioning. (Compl. ¶ 43). On admission to JIPA, it is noted that Decedent's bedrails were to always be up to enhance mobility. (Compl. ¶ 45).

On March 9, 2022, when Decedent tried to reposition herself to relieve her pain, she fell from her bed due to the bedrails not being in place. (Compl. ¶ 46-47). Decedent was admitted to Roper Hospital emergency room, where the consulting Physician noted, "An infected decubitus ulcer . . . She was discharged from MUSC on 2/26 to the rehab facility. She tells me she is never gotten out of bed. She was wheelchair-bound prior to her hospitalization but tells me they have not even attempted to move her from the bed since surgery. She tells me she has asked to do bed exercises, but no one will help her." (Compl. ¶ 49). Further, the physician documented, "Severe sepsis. It is very clear that this wound needs aggressive debridement. It is concerning that she has been treated at a hospital and rehab facility without this being addressed. Will need placement when she is discharged and do not recommend returning to John's Island rehab." (Compl. ¶ 50). On May 6, 2022, Decedent succumbed to the aforementioned injuries. The cause of death listed on her death certificate is "septic shock infected decubitus ulcer stage four." (Compl. ¶ 52-53).

On or about March 2, 2022, Decedent herself electronically signed a nine-page form provided to her by JIPA titled Arbitration Agreement (hereinafter referred to as "The Agreement"). However, neither Plaintiff nor any of Decedent's beneficiaries ever signed or entered into any such agreement with any Providence Group Defendant.

## LAW & ANALYSIS

The present issue before this Court is whether Plaintiff's wrongful death claim brought on behalf of Decedent's beneficiaries can be bound to The Agreement. It is the opinion of this Court it cannot, as South Carolina law is clear that a wrongful death claim is separate and distinct from a survival claim and exists as a right of a decedent's statutory beneficiaries.

Public policy does not favor arbitration. When considered in the proper context, "statements that the law 'favors' arbitration mean simply that courts must respect and enforce a contractual provision to arbitrate as it respects and enforces all contractual provisions. There is, however, no public policy—federal or state— 'favoring' arbitration." *Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 432 S.C. 633, 639 (2021). "[T]he presumption in favor of arbitration applies to the scope of an arbitration agreement; it does not apply to the existence of such an agreement or to the identity of the parties who may be bound to such an agreement." *Wilson v. Willis*, 426 S.C. 326, 337 (2019). The policy "favoring" arbitration does not "kick in until the court determines a valid agreement to arbitrate exists." *Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 229 (Ct. App. 2020). Because arbitration exists "solely by agreement of the parties, a presumption against arbitration arises where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate." *Wilson*, 426 S.C. at 337-38.

Before the court can compel arbitration, it must first determine whether a valid and enforceable contract exists under state contract law. "Arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit." *Gissel v. Hart*, 382 S.C. 235, 241 (2009). "A party seeking to compel arbitration under the FAA must

establish that (1) there is a valid agreement, and (2) the claims fall within the scope of the agreement. The consideration of contract validity is normally addressed applying general principles of state law governing the formation of contracts.” *Wilson*, 426 S.C. at 336. “Under South Carolina law, a contract cannot be formed without a meeting of the minds between the parties as to all essential and material terms. The parties must also ‘manifest a mutual intent to be bound.’” *Simmons v. Benson Hyundai, LLC*, 438 S.C. 1, 7 (Ct. App. 2022), *reh'g denied* (Mar. 25, 2022), *cert. denied* (Mar. 30, 2023).

State law controls when an arbitration agreement may be enforced against someone who has not signed it. *Weaver*, 431 S.C. at 230. The party seeking to enforce an agreement to arbitrate has the burden of establishing the existence of a valid arbitration agreement. See *Aiken v. World Finance Corp. of S.C.*, 373 S.C. 144, 149 (2007). Under South Carolina law, an arbitration agreement can only be enforced against a nonsignatory under certain circumstances. Legal theories that could possibly support enforcement against a nonsignatory include: 1) incorporation by reference, 2) agency, 3) veil piercing/alter ego, 4) assumption, and 5) estoppel. *Malloy v. Thompson*, 409 S.C. 557, 561-62 (2014).

South Carolina law is clear that a wrongful death claim exists for the statutory beneficiaries and that such claims are distinct and separate from those brought under survival claims. *Bennett v. Spartanburg Ry., Gas & Elec. Co.*, 97 S.C. 27, 27 (1914). Even if an arbitration agreement is found to be valid against a nonsignatory beneficiary, the wrongful death claim brought for the benefit of the statutory beneficiaries should proceed in litigation, not arbitration. *Est. of Solesbee by Bayne v. Fundamental Clinical & Operational Servs., LLC*, 438 S.C. 638, 645 (Ct. App. 2023), *reh'g*

*denied* (Apr. 14, 2023), *cert. denied* (Apr. 16, 2024). While dealing with a separate arbitration issue in a nursing home case and finding the arbitration agreement to be unenforceable, the South Carolina Court of Appeals in *Hodge* recognized the separateness of the statutory beneficiaries/estate's claims from those of the patient/resident. *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 567 (Ct. App. 2018). Other states have reached the same conclusion. *See Daniels v. Sunrise Senior Living, Inc.*, 212 Cal. App. 4th 674, 151 Cal. Rptr.3d 273 (Cal.App.4 Dist, 2 Div., 2013) (Finding Wrongful Death claims are not bound to arbitration); *Lawrence v. Beverly Manor*, 273 S.W.3d 525 (Mo. 2009) (Holding Wrongful Death claimants are not bound by arbitration agreements).

In *Est. of Solesbee by Bayne v. Fundamental Clinical & Operational Servs., LLC*, the South Carolina Court of Appeals upheld the trial court's ruling denying the defendant's motion to compel arbitration and found the wrongful death claim to be separate and distinct from the survival claim. *Est. of Solesbee by Bayne*, 438 S.C. at 642. When the decedent was admitted into a skilled nursing facility, her son signed an admission agreement that contained an arbitration clause. *Id.* at 644. The decedent's wounds deteriorated and became infected, which resulted in her death. *Id.* The decedent's daughter, who was a nonsignatory beneficiary and personal representative of the estate, filed suit for wrongful death and survival action, and the defendants moved to compel arbitration. *Id.* At the hearing to compel arbitration, the defendants argued by including the clause, "successors, assigns, heirs, personal representatives, guardians or any other persons deriving their claims through or on behalf of Resident," within the arbitration agreement, the wrongful death claim was bound to the agreement. *Est. of Solesbee by Bayne v. Fundamental Clinical &*

*Operational Servs., LLC*, No. 2018CP4204405, 5 (Sept. 11, 2019). However, the trial court disagreed and held:

As interesting as life might be if we could bind one another to contracts merely by referring to each other in them, we are not persuaded that a non-signatory who receives no substantive benefit under a contract may be bound to the contract's procedural provisions, including arbitration clauses, merely by being referred to in the contract. It is one thing to say that a third party for whose substantive benefit a contract is made may not enforce his or her rights under the contract without also abiding by the contract's other terms. ... It is something else entirely, however, to say that incidental beneficiaries of a contract—individuals or entities with no substantive rights under the contract and no direct benefits—may have their tort claims against the parties swept up into the contract's arbitration provisions merely by being mentioned in the contract as potential claimants. ... Arbitration is a matter of contract, however; it is something the contracting parties, or their proxies, must agree to. It is not something that one party may simply impose upon another.

*Id.* Because statutory beneficiaries “have separate and independent claims and were not covered by the scope of this agreement or parties to this agreement, the Arbitration Agreement drafted by Defendant cannot reach the claims of the wrongful death statutory beneficiaries.” *Id.* at 7.

Here, Plaintiff has brought a wrongful death claim on behalf of Decedent’s statutory beneficiaries under S.C. Code Ann. § 15-51-10. A wrongful death cause of action is a separate and independent claim that lies independent of a survival cause of action. Like in *Est. of Solesbee by Bayne*, the Providence Group Defendants attempted to bind Decedent’s beneficiaries to The Agreement. Paragraph 2.2 of The Agreement states:

“Resident” shall refer to the person identified as the Resident in Section 1.0 of this Agreement and includes all persons authorized to bring a claim on behalf of the Resident, including the legal representative, responsible party, power of attorney, guardian, surrogate, executor, administrator, or agent of the Resident, including any person or heir who has signed this Agreement on behalf of the Resident.

Arbitration Agr. ¶ 2.2, Ex. A to Defendants’ Motion. Further, Paragraph 12.1 of The Agreement states:

The Parties intend that this Agreement shall benefit and bind the Facility and its owners, directors, administrators, employees, and agents and shall benefit and bind the Resident (as defined in 2.2) and the Resident's spouse, children, next of kin, heirs, administrator, executor, power of attorney, guardian, legal representative, responsible party, trustee, successors, assigns, and agents, all to the fullest extent allowable by law.

Arbitration Agr. ¶ 12.1, Ex. A to Defendants' Motion. The language of paragraph 12.1 of The Agreement is substantially similar to the language the court in *Est. of Solesbee by Bayne* held could not reach statutory beneficiaries' claims. Decedent's statutory beneficiaries are merely incidental beneficiaries of The Agreement. No beneficiary of Decedent signed the agreement or has attempted to exploit or receive a direct benefit from The Agreement. Additionally, Decedent's beneficiaries do not have any rights under The Agreement, as the contracting parties were Decedent and the Providence Group Defendants. Arbitration is a matter of contract and is something the contracting parties must agree to. Neither Decedent's beneficiaries nor any other person can be bound to a contract merely by being mentioned in the contract. Plaintiff has filed this lawsuit in this Court, and Decedent's beneficiaries have not agreed to the terms and conditions outlined in The Agreement. Thus, it is the opinion of this Court that Decedent's beneficiaries should not have their tort claim against the Providence Group Defendants swept up into The Agreement's arbitration provisions merely by being vaguely mentioned as potential claimants.

Therefore, similar to other courts across the country and the courts of this state, this Court finds Plaintiff's wrongful death claim to be for the benefit of Decedent's statutory beneficiaries, and such claim is separate and independent of the survival claim and cannot be reached by The Agreement.

**CONCLUSION**

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, based on the facts and evidence presented, that the wrongful death claim is separate and distinct and belonging to the Decedent's beneficiaries and thus, such claims are not subject to the Arbitration Agreement and shall proceed in the Court of Common Pleas.<sup>1</sup>

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The Honorable Dale E. Van Slambrook  
Circuit Court Judge  
Ninth Judicial Circuit

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<sup>1</sup> All findings of fact indicated in this Order are made for the purposes of ruling on these motions only.

FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NO. 2024-CP-10-00930

BRIAN DELESLINE, individually and as Personal  
Representative of the Estate of Hazel L. Manasse,

MEDICAL UNIVERSITY OF SOUTH  
CAROLINA, DENISE SESE, M.D., JOHNS  
ISLAND POST ACUTE, LLC, d/b/a Johns Island  
Post Acute, CRAIG BULLICK, and  
PROVIDENCE GROUP, INC.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Court.

Attorney for :  Plaintiff  Defendant  
or  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

See attached formal Order.

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

**Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.**

<b>Judgment in Favor of (List name(s) below)</b>	<b>Judgment Against (List name(s) below)</b>	<b>Judgment Amount To be Enrolled (List amount(s) below)</b>
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.  
**Note: Title abstractors and researchers should refer to the official court order for judgment details.**  
**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

	<b>2781</b>	
<b>Circuit Court Judge</b>	<b>Judge Code</b>	<b>Date</b>

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney’s box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

<b>ATTORNEY(S) FOR THE PLAINTIFF(S)</b>	<b>ATTORNEY(S) FOR THE DEFENDANT(S)</b>
	<b>CLERK OF COURT</b>

**Court Reporter:**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.**





Charleston Common Pleas

**Case Caption:** Brian Delesline , plaintiff, et al VS Medical University Of South Carolina , defendant, et al

**Case Number:** 2024CP1000930

**Type:** Order/Other

And It Is So Ordered!

s/Dale E. Van Slambrook S.C. Circuit Court Judge  
#2781

Electronically signed on 2024-12-16 13:27:51 page 13 of 13