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SC Court of Appeals

EXHIBIT
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FAIRFIELD	)	SIXTH JUDICIAL CIRCUIT
	)	
Stephanie Pressley, as Personal Representative of the Estate of Gail Wright,	)	C/A NO. 2023-CP-20-00374
	)	
Plaintiff,	)	**ORDER**
	)	
v.	)	
	)	
Ridgeway Manor Healthcare Center, LLC; Deborah Sparks; and James McCollum,	)	
	)	
Defendants.	)	
	)	

This matter is before the Court on Defendants Ridgeway Manor Healthcare Center, LLC, Deborah Sparks, and James McCollum's (collectively "Defendants") Motion to Compel Arbitration and Stay Discovery. Plaintiff opposes the motion. The parties submitted written memoranda, and the Court heard oral argument of counsel for both parties on July 5, 2024. Having fully reviewed the briefing and hearing the parties' positions, the Defendants' motion is hereby DENIED.

I. Introduction

Plaintiff is the daughter of Gail Wright, deceased. Plaintiff asserts a wrongful death claim on behalf of herself and Mrs. Wright's statutory beneficiaries. She also asserts a survival claim on behalf of her mother's estate. Plaintiff alleges the defendants' care of Mrs. Wright was negligent, resulting in a pressure injury that became infected and caused Mrs. Wright's death. Defendants seek to compel arbitration of Plaintiff's claims. The arbitration agreement at issue was not signed by either Plaintiff or Mrs. Wright.

Gail Wright was taken into emergency protective custody on May 16, 2021, by the Department of Social Services ("SCDSS") when she was found home alone and unable to care for herself due to her paraplegia. Following a probable cause hearing, the family court gave temporary custody of Mrs. Wright to SCDSS. An attorney was appointed to represent Mrs. Wright. The family court also appointed a guardian *ad litem* for Mrs. Wright. SCDSS arranged for Mrs. Wright to be placed at Ridgeway Manor following her discharge from a local hospital.

At the time of her admission to Ridgeway Manor, in addition to having a court appointed guardian *ad litem* and attorney, Plaintiff argues Mrs. Wright was mentally competent. The defendants do not contest that Mrs. Wright was mentally competent at the time of her admission. Despite this, only SCDSS workers Fantasia Hartwell and Keri Singleton executed the paperwork for Mrs. Wright's admission. This paperwork included an addendum with an arbitration agreement. There is no evidence that Mrs. Wright was involved in the execution of the paperwork or that it was discussed with, or explained to, her despite her being mentally competent. There is no evidence that Mrs. Wright's court appointed attorney or guardian were involved in the execution of the arbitration agreement or consulted about its execution by SCDSS workers.

Defendants argue, among other things, that the SCDSS workers that executed the arbitration agreement could legally waive Mrs. Wright's constitutional right to a trial by jury under the "court ordered powers" given SCDSS by the family court under S.C. Code Ann. § 3-35-10.[1] This Court disagrees and finds the arbitration agreement unenforceable against the Plaintiff as a matter of law.

[1] Defendants argue, in the alternative, that Defendants possessed agency authority to bind Mrs. Wright. The Court finds this argument without merit. Therefore, the doctrines of

II. Law / Analysis

Unless the parties otherwise provide, the question of the arbitrability of a claim is an issue for the court to decide. *See New Hope Missionary Baptist Church v. Paragon Builders*, 379 S.C. 620, 66y S.E.2d l (S.C. Ct. App. 2008). "Whether an arbitration agreement may be enforced against nonsignatories, and under what circumstances, is an issue controlled by state law." *Wilson v. Willis*, 426 S.C. 326, 338 (2019). "[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 (emphasis in original).

Here, the Defendants' arbitration agreement is not enforceable because it was executed by someone that did not possess the authority to execute such an agreement on behalf of Mrs. Wright. SCDSS did not have the authority to bind Mrs. Wright or her statutory beneficiaries to arbitration.

In order for a court to compel arbitration, a litigant must demonstrate a valid arbitration agreement that purports to cover the dispute. *See Aiken v. World Finance Corp. of S.C.*, 373 SC 144,149, 644 SE2d 705, 708 (2007). Where one party denies the existence of a valid arbitration agreement, a court must determine whether the agreement exists in the first place. *See Simpson v. MSA of Myrtle Beach, Inc.*, 373 SC 14, 644 SE2d 663, 66 (2007). If no agreement is found to exist, the court must deny the request to arbitrate. *See id*. Whether a valid arbitration agreement exists is a matter for judicial determination. *See York v. Dodgeland of Columbia, Inc.*, 406 SC 67, 749 SE2d 139, 144 (Ct. App. 2013).

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equitable estoppel and third-party beneficiary do not require this Court to compel arbitration.

Although there is public policy favoring arbitration - it is applied only as an aid in interpreting the scope and enforcement of validly entered arbitration agreements. *See Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 847 S.E.2d 268 (Ct. App. 2020). The FAA does not give the party seeking arbitration a "leg up in the threshold determination of whether a valid arbitration agreement exists." *Id.*, 431 S.C.at 229, 847 S.E.2d at 271. The "first principle that underscores all [] arbitration decisions is that [a]rbitration is strictly a matter of consent." *Id.* (quoting *Lamps Plus, Inc., v. Varela*, 139 S.Ct. 1407,1415 (2019)).

Because Mrs. Wright did not execute the arbitration agreement herself, SCDSS workers Keri Singleton and Fantasia Hartwell must have had the appropriate legal authority to execute the arbitration agreement for it to be enforceable. The court finds they did not.

Defendants argue that DSS workers Keri Singleton and Fantasia Hartwell had actual authority to bind Mrs. Wright to arbitration under the Adult Protective Services Act, S.C. Code Ann. § 43-35-10(9). This argument is without merit. The Adult Protection Act defines "protective services" as:

> [t]hose services whose objective is to protect a vulnerable adult from harm caused by the vulnerable adult or another. These services include, but are not limited to, evaluating 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. Ann. § 43-35-10(9) (2015).

The plain reading of this provision provides that SCDSS is expected to arrange for living quarters, secure medical care, and hire an attorney for the vulnerable adult if one is needed. *Id.* This Court agrees that the statute permits SCDSS employees to arrange for living quarters, secure medical care, and hire an attorney for the vulnerable adult if one is needed. However, the statute does not authorize SCDSS employees to provide legal services to Mrs.

Wright or waive her constitutional right to a jury trial. The family court order provides no such authority, nor does the statute. The Court finds that the Adult Protective Act does not grant authority for any person employed by SCDSS, including Ms. Singleton and Ms. Hartwell, to waive Mrs. Wright's constitutional right to a jury trial.[2]

Next, Defendants argue that Ms. Pressley should be estopped from denying the arbitration agreement under the doctrine of equitable estoppel. The Court does not find this argument persuasive. In this case, the admission agreement and the arbitration agreement are independent, did not merge, and shall not be construed together.[3] *See Hodge v. Unihealth Post-Acute Care of Bamberg, LLC,* 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018). Because there is no merger of the admission agreement with the arbitration agreement, the Plaintiff is not estopped from denying enforcement of the arbitration agreement.

To the extent Defendants argue that Mrs. Wright had granted agency authority to SCDSS to act on her behalf, this argument is without merit. Agency results when one person consents to be subject to the control of the other and to act on his / her behalf. See R& G Constr., Inc. v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424 (Ct. App. 2000). There is no

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[2] South Carolina has not explicitly ruled on this issue; however, other jurisdictions have held that a DSS caseworker does not have the authority to bind an incapacitated adult to arbitration. See Williamson v. Windsor House One, LLC, 712 S.E.2d 745 (N.C. Ct. App. 2011). Here the record indicates Mrs. Wright was not incapacitated and was able to execute the arbitration agreement on her own behalf.

[3] Despite being included in the same admission paperwork packet, the arbitration agreement addendum is independent of the admission agreement. By its terms, the admission agreement is governed by S.C. law whereas the arbitration agreement is governed by "state or federal law"; the admission agreement and arbitration agreement are treated as separate agreements in the terms of the arbitration agreement (referring to the Resident Admission Agreement and then separately referencing "this agreement to arbitrate" and "this Arbitration Agreement"; the arbitration agreement provides for rescission within three days, while the resident agreement does not; and each has their own separate signature pages. For these reasons, there was no merger. *See Estate of Solesbee by Bayne v. Fundamental Clinical and Operational Services, LLC*, 438 S.C. 638 (2023); *see also Hodge*, 422 S.C. at 562.

indication that Mrs. Wright, who was allegedly competent at the time of her admission, consented to SCDSS's workers signing away her constitutional rights. There is no indication she was even consulted on the matter. In any event, the authority conveyed an agent does not include executing an agreement to arbitrate. *See Thompson v. Pruitt Corp.*, 416 S.C. 43 (Ct. App. 2016).

Last, Defendants argue that Mrs. Wright is a third-party beneficiary to the arbitration agreement. For all the reasons set forth above, this Court has found that the arbitration agreement in this matter is not valid. There can be no third-party beneficiary unless a valid contract exists. *Thompson v. Pruitt Corp.*, 416 S.C. 43, 57 (Ct. App. 2016). As such, this argument is also without merit.

This Court finds that while SCDSS could secure the services and residence that Defendants provided on Mrs. Wright's behalf, SCDSS did not have the authority to execute an arbitration agreement on behalf of Mrs. Wright and waive her constitutional right to a trial by jury. Because the arbitration agreement was executed by a person without authority, it cannot be enforced. Defendants' Motion to Compel Arbitration and Stay Discovery is DENIED.

IT IS SO ORDERED.

_____
Donald B. Hocker
Circuit Court Judge

August __, 2024

Fairfield Common Pleas

Case Caption: Stephanie Pressley VS Ridgeway Manor Healthcare Center, Llc , defendant, et al

Case Number: 2023CP2000374

Type: Order/Other

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167