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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Appellate Case No. 2025-000275

James Graham, as Personal Representative of the Estate of
Phyllis Chestnut, ... Respondent,

v.

Hallmark Long Term Care, LLC d/b/a Hallmark Healthcare Center, Fundamental Long Term Care, Inc., THI of South Carolina, LLC, THI of Baltimore, Inc., Hunt Valley Holdings, LLC, Fundamental Administrative Services, LLC, Fundamental Clinical and Operational Services, LLC, Fundamental Clinical Consulting, LLC, and Curana Health of South Carolina, P.C. f/k/a Elite Patient Care of South Carolina, PC, ... Defendants,

of which Hallmark Long Term Care, LLC d/b/a Hallmark Healthcare Center, THI of South Carolina, LLC, THI of Baltimore, Inc., Hunt Valley Holdings, LLC, Fundamental Administrative Services, LLC, Fundamental Clinical and Operational Services, LLC, and Fundamental Clinical Consulting, LLC, are the .... Appellants.

BRIEF OF RESPONDENT

PARKER LAW GROUP, LLP
Lee D. Cope
John E. Parker, Jr.
Virginia Caitlin Ball
101 Mulberry Street East
Post Office Box 487
Hampton, South Carolina 29924
(803) 903-1738

AND

THE STEINBERG LAW FIRM, LLP
Steven E. Goldberg
Post Office Box 2670
Summerville, SC 29484

ATTORNEYS FOR RESPONDENT

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COUNTERSTATEMENT OF ISSUES ON APPEAL

I. Whether the Circuit Court erred in finding that a wrongful death claim asserts a right to recovery vested in the wrongful death beneficiaries that is not derivative of the estate's survival claim, and that these rights cannot be waived by an individual without authority to act on the wrongful death beneficiaries' behalf.

INTRODUCTION

The premise of the Circuit Court's reasoning for partially denying the Appellants' Motion to Compel Arbitration is simple: an individual acting without authority cannot unilaterally waive rights belonging to a principal. This black letter rule should apply with equal force to the rights of a wrongful death beneficiary as it does to rights belonging to an estate or decedent. In this case, the wrongful death beneficiaries' right to a jury trial on their claim for personal damages is inviolate and belongs solely to the wrongful death beneficiaries themselves, and not the decedent or her estate.

This is because, as countless other state jurisdictions have found, wrongful death claims are independent and not derivative of survival claims, regardless of who brings the claims on behalf of the estate and beneficiaries, and therefore the decedent or her future estate's representative cannot waive the beneficiaries' right to a jury trial without some preexisting authority to act on their behalf, even if the decedent decides to bind herself to arbitration. Here, the decedent had no authority to act on the behalf of the wrongful death beneficiaries, and therefore, the Appellants' arbitration agreement cannot be enforced against the beneficiaries, even if it arises from or is related to the Appellants' admission agreement.

COUNTERSTATEMENT OF THE CASE

This action was commenced on May 15, 2023, by filing a Summons and Complaint in the Dorchester County Court of Common Pleas. (*See generally* Compl.). Respondent James Graham, as Personal Representative of the Estate of Phyllis

Chestnut, alleged wrongful death and survival claims against Appellants Hallmark Long Term Care, LLC, d/b/a Hallmark Healthcare Center, Fundamental Long Term Care, Inc., THI of South Carolina, LLC, THI of Baltimore, Inc., Hunt Valley Holdings, LLC, Fundamental Administrative Services, LLC, Fundamental Clinical and Operational Services, LLC, and Fundamental Clinical Consulting, LLC ("the Facility") as a result of the care and treatment provided to the decedent, Ms. Phyllis Chestnut, while she was a resident at the Facility, and the damages sustained by her beneficiaries after her death. (*Id.*). The Estate properly complied with the Notice of Intent and affidavit requirements of S.C. Code Ann. §§ 15-79-125 and 15-36-100 prior to filing suit.[1] The Facility Defendants individually answered the Complaint on June 16, 2023, and generally denied all allegations pertaining to any liability for the decedent's treatment while she was in the Facility's care.[2] (Answers). The Facility Defendants raised as an affirmative defense the potential arbitrability of this action and reserved the right to file a motion to dismiss and compel arbitration. (Answers ¶ 9).

On April 16, 2024, Appellant Hallmark Long Term Care, LLC, d/b/a Hallmark Healthcare Center filed a Motion to Compel Arbitration, arguing that a valid and binding arbitration agreement had been entered between the parties. (Def.'s Mot. to Compel Arbitration). The Facility contended that the Federal Arbitration Act ("FAA"), as opposed to the South Carolina Uniform Arbitration Act, applied to the

[1] *Graham v. Palmetto Hallmark Operating LLC et al*, Case No. 2023-NI-18-00002.

[2] Two of the Facility Defendants, Fundamental Clinical Consulting, LLC and Fundamental Long Term Care Inc. filed motions to dismiss pursuant to Rule 12, SCRCP in lieu of answering.

arbitration agreement.[3] (*Id.*). The Facility also requested that the Circuit Court stay all discovery, pretrial motions practice, and any requirements to file any responsive pleadings until its Motion could be resolved. (*Id.*). The remaining Facility Defendants who had not filed a Motion to Dismiss filed Motions to Stay the proceedings while the Motion to Compel Arbitration was pending. (Defs.' Mots. to Stay).

The Facility's Motions were set for hearing by the Circuit Court on September 4, 2024. The Facility Defendants filed a supporting memorandum, with the arbitration agreement attached as an exhibit to the Motion to Compel Arbitration, further arguing that the FAA governed the arbitration agreement, that arbitration agreements are favored and under state law are required to be placed on equal footing with all other contracts, that the arbitration agreement was not facially invalid or unconscionable, that the Estate's claims were within the scope of the arbitration agreement, that the arbitration agreement applied to the wrongful death claim, and that the proceedings were subject to a stay pending the outcome of the Motion to Compel. (Def.'s Mem. in Support of Mot. to Compel 3-11).

The Estate submitted a memorandum in opposition to the Facility's Motion, arguing in particular that in her individual capacity Ms. Chestnut did not have authority under any agency theory or other source of authority, including the Wrongful Death Act, to enter the arbitration agreement on behalf of the wrongful

[3] The Circuit Court did not specifically find in its November 21, 2024 Order that the agreements involve or affect interstate commerce and are thus governed by the FAA. (Order, Nov. 21, 2024). Regardless, even if the FAA did govern the agreement, it does not give "the party seeking arbitration a leg up" in determining whether arbitration should be compelled. *Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 229, 847 S.E.2d 268, 271 (Ct. App. 2020).

death beneficiaries at the time it was signed, and that the arbitration agreement therefore did not reach the wrongful death claim. (Pl.'s Mem. in Opp. to Mot. to Compel 4-13).

The Circuit Court denied the Facility's Motions in part and granted them in part by way of a formal Order filed November 21, 2024. (Order, Nov. 21, 2024). The Order finds that arbitration agreements are unenforceable against a wrongful death claim when an individual without authority to do so signs an arbitration agreement purporting to bind nonsignatory wrongful death beneficiaries or anyone acting on their behalf, that there was no evidence Ms. Chestnut had actual, implied, or apparent authority to enter the arbitration agreement on behalf of the wrongful death beneficiaries or anyone acting in a representative capacity for them at the time the arbitration agreement was entered, and that invalidating the arbitration agreement under these circumstances would not violate South Carolina law or the FAA's equal footing principle. (*Id.* at 1-11). The Order also finds that the Facility had failed to demonstrate why it was entitled to a stay of the wrongful death claim. (*Id.* at 11-12). The Facility's Motion was granted in part as to the Estate's survival claim. (*Id.*).

The Facility filed a Motion for Reconsideration on December 2, 2024. (Defs.' Mot. for Reconsideration). In its Motion, the Facility argued that the arbitration agreement would be enforceable against the wrongful death claim and that even if the wrongful death claim was not arbitrable, it should have been stayed during the pendency of the arbitration of the survival claim. (*Id.* at 1-9). On December 20, 2024, the Estate filed a memorandum in opposition to the Facility's Motion for

Reconsideration, arguing that a copy of the motion was not provided to the Circuit Court within 10 days as required by Rule 59(g), SCRCP, and that the Facility's argument that the Circuit Court did not have discretion to abstain from staying the wrongful death action was not preserved for review. (*See generally* Pl.'s Mem. in Opp. to Mot. for Reconsideration). On January 14, 2025, the Circuit Court denied the Facility's Motion for Reconsideration as to the enforceability of the arbitration agreement against the wrongful death beneficiaries' claim but granted it as to the Facility's request for a stay of that action. (Order, Jan. 14, 2025). This Appeal followed. (Not. of Appeal).

STANDARD OF REVIEW

"Whether an arbitration agreement may be enforced against a nonsignatory to the agreement is a matter subject to de novo review by an appellate court" with no presumption in favor of arbitration. *Wilson v. Willis*, 426 S.C. 326, 335, 337, 827 S.E.2d 167, 172-73 (2019).

ARGUMENT

The Circuit Court's November 21, 2024 and January 14, 2025 Orders should be affirmed by the Court because they do not contain any clear legal errors. Under this Court's numerous prior rulings concerning the subject arbitration agreement, the signatory of an arbitration agreement in the health care facility context cannot bind nonsignatories without some form of authority. For example, Mr. Graham is an agent with express authority to act on Ms. Chestnut's Estate's behalf, and he is also an agent with statutory authority to act on the wrongful death beneficiaries' behalf.

Therefore, Mr. Graham in his representative capacity could waive both the Estate's and the wrongful death beneficiaries' rights to a jury trial or settle their claims. However, it does not follow that Ms. Chestnut had authority at the time of her admission to waive rights belonging to future beneficiaries who did not yet exist. This proposition is bolstered by the fact that under South Carolina law the wrongful death claim is not derivative of the decedent's survival action or any rights belonging to the decedent prior to her death.

The Facility argues that the wrongful death claims are derivative in nature and belong to the Estate. The case law is clear that wrongful death claims do not belong to a decedent's estate, and since there is no evidence in the form of an affidavit or recorded power of attorney substantiating that Ms. Chestnut was the wrongful death beneficiaries' agent at the time the arbitration agreement was signed, her actions cannot unilaterally bind her personal representative to arbitration in his role as agent for the wrongful death beneficiaries. For these and the following reasons, the Circuit Court's Orders denying the Facility's motions should be affirmed.

I. **Statement of Facts**.

On April 12, 2019, Phyllis Chestnut was admitted to the Facility. (Compl. ¶ 11). Upon admission, Ms. Chestnut signed the Facility's admission agreement and a separate arbitration agreement. (Defs.' Mem. in Support of Mot. to Compel Arbitration, Exs. A, B). At the time of her admission, Ms. Chestnut was assessed as being at high risk for skin breakdowns, and she required oxygen on a continuous basis. (*Id.* at ¶ 12). Throughout her residency, Ms. Chestnut had ongoing problems

with skin breakdowns, infections, and oxygen intake. (*Id.* at ¶ 13). While in the Facility's care, Ms. Chestnut was exposed to the SARS-CoV-2 virus and was transferred to a COVID unit on July 31, 2020. (*Id.* at ¶ 14).

On August 4, 2020, while in the COVID unit, Ms. Chestnut became lethargic and disoriented with slurred speech, shortness of breath, and rhonchi, EMS responders discovered that she had two deep wounds in her chest and her bed was not elevated above 45 degrees. (*Id.* at ¶¶ 17-18). However, Trident Medical Center noted that Ms. Chestnut's respiratory distress had been ongoing for weeks and increased starting August 3, 2020, the day before. (*Id.* at ¶ 19). After she was transported to Trident Medical Center, the Facility failed to inform it for at least two hours that Ms. Chestnut was positive for COVID. (*Id.* at ¶ 20). Ms. Chestnut passed away that same day. (*Id.* at ¶ 21). From the time of admission until her passing, none of Ms. Chestnut's wrongful death beneficiaries were aware that she had entered an arbitration agreement with the Facility. (Graham Aff. ¶ 3). It is undisputed that Ms. Chestnut did not have did not have express, implied, or apparent authority to act on her children's behalf at the time of admission. (*Id.* at ¶¶ 4-6).

II. The wrongful death beneficiaries' claims are not subject to the arbitration agreement because Ms. Chestnut lacked authority to waive their right to a jury trial.

South Carolina law has long recognized that wrongful death claims belong to the statutory beneficiaries and are distinct and separate from survival claims belonging to the estate. *Bennett v. Spartanburg Ry. Gas and Elec. Co.*, 97 S.C. 27, 81 S.E. 189, 190 (1914) ("While the party plaintiff is nominally the same as to each cause

of action, in reality his relation to and interest in each is entirely separate and distinct. In the one, he is the representative of the estate of the deceased, and the recovery, if any, is for damages resulting from the injury to deceased . . . . In the other, *he is the representative of the beneficiaries named in the statute, and the recovery, if any, is for damages resulting to them* . . . ."). Wrongful death actions are brought by the personal representative of the decedent directly for the benefit of the statutory beneficiaries and include pecuniary loss, mental shock and suffering, grief and sorrow, and loss of companionship: all losses suffered by the beneficiaries themselves. S.C. Code Ann. §§ 15-51-10, -20; *Self v. Goodrich*, 300 S.C. 349, 351, 387 S.E.2d 713, 714 (Ct. App. 1989). Survival actions, on the other hand, are separate claims for separate injuries, and belong to the estate, not the statutory beneficiaries. *See Bennett*, 97 S.C. at 27, 81 S.E. at 189-90.

The Facility argues that the wrongful death claim actually belongs to the personal representative of an estate and not the statutory beneficiaries, and that the wrongful death claim is derivative of claims belonging to the decedent; ergo, a decedent could bind the personal representative by waiving any rights to a jury trial to a wrongful death claim just as she could for a survival claim belonging to the estate. This argument mistakenly conflates the wrongful death claim and survival claims.[4] The history and development of South Carolina's wrongful death and survival statutes show that wrongful death is something entirely different from the survival of tort claims after an individual's death. South Carolina courts have long recognized

[4] Ms. Chestnut was obviously not personal representative of her own Estate at the time she executed the arbitration agreement.

that these are two disparate theories of liability with distinct origins, purposes, and results. *See Grainger v. Greenville, S. & A. Ry. Co.*, 101 S.C. 399, 85 S.E. 968, 969 (1915) ("These two causes of action cannot be joined in one action, and judgment in one is not a bar to the other"). The statutory scheme shows wrongful death and survival are distinct claims accruing at different times and are governed by different statutes of limitation. *See* S.C. Code Ann. § 15-3-560(6).

Wrongful death claims are often erroneously perceived as derivative of survival claims. This is likely because in both types of claims, the decedent's personal representative is the named plaintiff. *Complete Auto Transit, Inc. v. Bass*, 229 S.C. 607, 612, 93 S.E.2d 912, 914 (1956). However, this fact alone is not determinative of any derivative nature the wrongful death claim may have. When asserting wrongful death and survival claims, a personal representative "function[s] under two *separate* and distinct trusteeships." *Id.* In other words, while it is the personal representative's name in the caption for a wrongful death claim, "it is clear . . . the real parties to the action were the beneficiaries." *Claussen v. Brothers*, 148 S.C. 1, 145 S.E. 539, 541 (1928). For the purpose of the wrongful death claim, the personal representative is therefore a statutorily designated agent of the beneficiaries, and not the decedent or estate. There is no source granting authority to a decedent to act on her future wrongful beneficiaries' behalf under the wrongful death statutory scheme.

In light of the history and structure of wrongful death and survival claims, a number of other reported opinions have rejected the notion that the former is derivative of the latter. As early as 1907, the South Carolina Supreme Court has

recognized that a wrongful death action is not the survival of an action which the deceased had in his lifetime but is a "new cause of action." *Osteen v. Southern Ry., Carolina Division*, 76 S.C. 368, 57 S.E. 196, 200 (1907). *Claussen* held a wrongful death claim is "not a continuation" of any claim the decedent had before her death. *Claussen*, 145 S.E. at 540. And contrary to the Facility's assertion that wrongful death claims belong to the personal representative, *Claussen* states that "as has been pointed out, the party in whose favor the right of action in reality exists under Lord Campbell's Act *is not the personal representative of the deceased person*." *Id.* at 541 (emphasis added).

A wrongful death claim is "independent" of claims the decedent had during his life and "wholly different" than any other claim available at his death. *Wellman v. Bethea*, 243 F. 222 (E.D.S.C. 1917); *In re Mayo's Estate*, 60 S.C. 401, 38 S.E. 634, 638 (1901). Wrongful death and survival claims are "separable and distinct." *Keel v. Seaboard Air Line Ry.*, 122 S.C. 17, 114 S.E. 761, 762 (1922). In sum, the Facility would mislead the Court into finding that a wrongful death claim is derivative of survival claims and belongs to the personal representative, despite the fact that "[t]he object, scope, and measure of damages" is different for the two claims. *In re Mayo's Estate*, 38 S.E. at 638.

South Carolina's appellate courts have held wrongful death claims are "distinct," "independent," "separate," "wholly different," and "not a continuation" of claims a decedent could have filed during his lifetime. The Facility does not address any of the extensive South Carolina law showing wrongful death as a distinct,

independent claim that solely belongs to the statutory beneficiaries. Instead, the Facility cites to federal case law to suggest South Carolina courts have already held that wrongful death is a derivative claim. None of the authorities the Facility cites support that conclusion and none of them squarely address the question now before the Court.

The Facility claims the Supreme Court of South Carolina addressed the arbitrability of wrongful death claims in *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 759 S.E.2d 727 (2014). However, *Dean* addressed a very different issue related to forum selection clauses. *See id.* at 382, 759 S.E.2d at 733 (finding the "outcome of this appeal turns" on effect of arbitral forum provision). Plus, *Dean* did not even compel arbitration in the case before it. The Facility relies on a sentence in one of *Dean*'s footnotes but reads far too much into that sentence. *See id.* at 378 n.3, 759 S.E.2d at 731 n.3 ("We note that courts may not refuse to compel arbitration *simply* because a wrongful death claim is involved").

This footnote addressed an overly broad pronouncement in the appealed order suggesting wrongful death claims are categorically excluded from arbitration. *Id.* (citing circuit court order's statement that "wrongful death actions are not something that's arbitrated"). That type of blanket rule would violate the FAA's equal footing principle. *Id.* (citing *Marmet Health Care Ctr., Inc. v. Brown*, 565 U.S. 530, 532-33, 132 S. Ct. 1201, 1203-04, 182 L. Ed. 2d 42 (2012)); *see also Kindred Nursing Ctrs., Ltd. P'ship v. Clark*, 581 U.S. 246, 251, 137 S. Ct. 1421, 1426, 197 L. Ed. 2d 806 (2017). However, that is not the argument the Estate makes here. A wrongful death claim

may be arbitrable in instances where a statutory beneficiary or someone with authority to act as his agent agrees to do so. Here, the Estate simply argues *a decedent's* consent to arbitrate a survival claim may not be grafted into a wrongful death claim that pays different people (the statutory beneficiaries v. the estate) for their own personal losses, particularly when the decedent did not have authority to act on their behalf. *Dean* does not reject that argument or even consider it.

Moreover, the Facility incorrectly argues that the Circuit Court's Order violates the "equal footing" principle. Several other courts have held that rejecting arbitration for wrongful death claims in similar cases does not violate *Marmet* or any other Supreme Court precedent on the equal footing principle.[5] Refusing to compel arbitration here does not mean wrongful death claims can categorically never be arbitrated. Instead, as other courts have recognized, it simply means the Facility violated a generally applicable contract law rule by failing to prove it had consent for arbitration from all of the proper parties. Finally, reading *Dean*'s footnote to have any bearing on the parties' dispute in this case does not adequately account for either side's arguments on the key issue. *Dean* had no reason to undertake this analysis and has nothing to offer the Court in resolving this Appeal.

[5] *See Carter v. SSC Odin Operating Co., LLC*, 976 N.E.2d 344, 360 (Ill. 2012) (unlike *Marmet*, Illinois was not applying a categorical anti-arbitration rule but was rather applying "common law principles governing all contracts"); *Vickers v. Canal Pointe Nursing Home & Rehab Ctr.*, 2016-Ohio-3244, 2016 WL 3080329 (Ohio App. June 1, 2016) (finding that Ohio Supreme Court precedent preventing arbitration of wrongful death claims did not create a categorical ban that would run afoul of *Marmet* because it applied generally applicable contract law rule against enforcing contract against person who had not assented).

The Facility also asks the Court to declare wrongful death a "derivative" claim based essentially on one sentence in *South Carolina Jurisprudence* that has been cited in various authorities. *See* 26 S.C. Jur. *Limitation of Actions* § 32 ("A wrongful death action is derivative in nature . . . ."). However, the Facility fails to direct the Court to a more specific entry in the treatise. In a chapter specifically devoted to wrongful death claims, a section entitled "[s]eparate, independent cause of action" notes the existence of two claims at the tortious death of a person and, crucially, "*the wrongful death action and the survival action involve different, independent claims*." 28 S.C. Jur. *Wrongful Death* § 5 (emphasis added).

Finally, the Facility contends that, since S.C. Code Ann. § 15-51-10 permits wrongful death claims only when the decedent would have had a claim if he survived, then the decedent, or the estate's personal representative, has the authority to waive the statutory beneficiaries' right to a jury trial, citing *Quattlebaum v. Carey Canada, Inc.*, 685 F. Supp. 939 (D.S.C. 1988) and *Estate of Stokes ex rel. Spell v. Pee Dee Family Physicians, L.L.P.*, 389 S.C. 343, 699 S.E.2d 143 (2010). However, *Quattlebaum* (and *Stokes*) did not address arbitration at all. Instead, they simply held that if an individual allows the statute of limitations on a personal injury claim to lapse during his life, then a wrongful death claim may not be used after his death to "revive" the stale claim. *Stokes*, 389 S.C. at 349, 699 S.E.2d at 146. This is consistent with section 15-51-10's language providing that a wrongful death claim may only be brought if the decedent would have been entitled to maintain an action for damages had she not died.

The statute of limitations is not at issue here and neither *Quattlebaum* nor *Stokes* have ever been cited as justification for binding nonsignatories to an arbitration contract. Just because there is a specific statute providing that a decedent may extinguish a wrongful death claim by ignoring or settling a personal injury suit during his life does not mean the decedent, or someone purportedly acting on his behalf, has authority to control the manner in which valid future wrongful death claims will be resolved, especially when the wrongful death scheme includes no statute providing such authority. Several courts have made this distinction explicitly.

> Defendant overstates the significance of the derivative nature of a wrongful death action. Although a wrongful-death action is dependent upon the decedent's entitlement to maintain an action for his or her injury had death not ensued, neither the Wrongful Death Act nor this court's case law suggests that this limitation on the cause of action provides a basis for dispensing with basic principles of contract law in deciding who is bound by an arbitration agreement.

Carter, 976 N.E.2d at 359.

Oklahoma, like South Carolina, bars a wrongful death suit if the decedent ended a personal injury claim during his lifetime based on the same tortious conduct. *Boler v. Sec. Health Care, L.L.C*, 2014 OK 80, 336 P.3d 468, 477 (Okla. 2014) (citing *Haws v. Luethje*, 1972 OK 146, 503 P.2d 871 (Okla. 1972)). Even so, the court in *Boler* refused to apply a nursing home resident's arbitration contract to a wrongful death claim because doing so would violate contract principles requiring mutual assent. *Id.* at 471.

> Consent to arbitrate is an essential component of an enforceable arbitration agreement. The personal representative and the heirs are not bound to an agreement that they did not sign. Judy Little did not sign in her individual capacity and did not, by signing on her mother's

> behalf, express an intent to relinquish any rights she might possess in her individual capacity.
>
> We agree with the courts that have held that *a decedent* cannot bind the beneficiaries to arbitrate their wrongful death claim. Oklahoma's Wrongful Death Act created a new cause of action for pecuniary losses suffered by the deceased's spouse and next of kin by reason of his or her death. Recovery under the wrongful death act does not go to the estate of the deceased, but inures to the exclusive benefit of the surviving spouse and children or next of kin. If the decedent *extinguishes* the claim while alive, however, there is no claim surviving the decedent's death.

Id. at 477 (emphasis added) (citations omitted).

Likewise, section 15-51-10 provides that a decedent may extinguish her right to recovery by settling or allowing her claim to lapse. However, here Ms. Chestnut still had a right of recovery at the time of her death under section 15-51-10, and she had not extinguished her claim by allowing the statute of limitations to lapse or by settling it, so the wrongful death claim survived her death. The statute is silent as to any authority a decedent has in this scenario. That does not mean that she somehow had authority under common law agency principles to bind the wrongful death beneficiaries' claim to arbitration.

Pennsylvania also bars wrongful death claims if the decedent allowed his personal injury claim to lapse. *Pisano v. Extendicare Homes, Inc.*, 77 A.3d 651, 657 (Pa. Super. Ct. 2013) (citing *Moyer v. Rubright*, 651 A.2d 1139 (Pa. Super. Ct. 1994)). Yet, just like Oklahoma, Pennsylvania does not extrapolate from that rule the notion that a decedent has authority to bind wrongful death beneficiaries to arbitration. *Pisano*, 77 A.3d at 657, 662 (refusing to find wrongful death beneficiaries lost jury trial right "where they did not waive it of their own accord"). Thus, *Quattlebaum*'s,

and by extension, *Stoke*'s, interpretation of section 15-51-10 does not require arbitration in this case. Had Ms. Chestnut settled any claims against the Facility before her death, or if the statute of limitations had lapsed on her claim, Mr. Graham as personal representative could not now bring a wrongful death claim on behalf of the statutory beneficiaries. But it does not follow that Ms. Chestnut prior to death had the authority to direct the wrongful death claim to arbitration on behalf of the wrongful death beneficiaries.

Since Ms. Chestnut had a viable dispute with the Facility when she died, any proposed arbitration of the wrongful death claim must consider whether all beneficiaries or an agent with express, implied, or apparent authority agreed to waive their right to a jury trial. In short, none of the authorities cited by the Facility support that a wrongful death claim is derivative, and the majority position in jurisdictions with the same statutory scheme as South Carolina is that a wrongful death claim is not derivative in nature and cannot be bound by a decedent's arbitration agreement. *See In re Labatt Food Serv., L.P.*, 279 S.W.3d 640, 647 (Tex. 2009) ("A review of the cases decided based on statutory language indicates that courts in states where wrongful death actions are recognized as an independent and separate cause of action are more likely to hold that the beneficiaries are not bound by a decedent's agreement to arbitrate").

In light of the historical and structural differences between South Carolina's wrongful death and survival statutes, and the remedies afforded by them, as well as substantial case law defining and treating wrongful death and survival claims

distinctly, the Court should reject the Facility's attempt to use Ms. Chestnut's assent to the arbitration agreement to force arbitration on the wrongful death beneficiaries. Numerous other jurisdictions have rejected the Facility's argument and would support such a decision. *See, e.g., 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 (Cal. Ct. App. 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); *Finney v. Nat'l Healthcare Corp.*, 193 S.W.3d 393, 397 (Mo. Ct. App. 2006); *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, the arbitration agreement only reaches the Estate's survival claim. There is no language in section 15-31-10 purporting to grant authority to a decedent to waive rights belonging to her beneficiaries when those rights accrue after her death. The Circuit Court was thus

precluded from compelling the arbitration of the wrongful death claims in this action, and its Order should be affirmed.

CONCLUSION

For the foregoing reasons, the Court should affirm the Circuit Court's Orders denying in part the Appellants' Motion to Compel Arbitration.

By: *_/s/John E. Parker, Jr.*_____________________
Lee D. Cope
John E. Parker, Jr
Virginia Caitlin Ball
PARKER LAW GROUP, LLP
101 Mulberry Street East
Post Office Box 487
Hampton, South Carolina, 29924
(803) 903-1781

AND

THE STEINBERG LAW FIRM, LLP
Steven E. Goldberg
Post Office Box 2670
Summerville, SC 29484

ATTORNEYS FOR RESPONDENT

September 10, 2025
Hampton, South Carolina

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Appellate Case No. 2025-000275

James Graham,
as Personal Representative of the Estate of Phyllis Chestnut, ... Respondent,

v.

Hallmark Long Term Care, LLC d/b/a Hallmark Healthcare Center,
Fundamental Long-Term Care, Inc., THI of South Carolina, LLC, THI of Baltimore, Inc., Hunt Valley Holdings, LLC, Fundamental Administrative Services, LLC, Fundamental Clinical and Operational Services, LLC, Fundamental Clinical Consulting, LLC, and Curana Health of South Carolina, P.C. f/k/a Elite Patient Care of South Carolina, PC, ... Defendants,

Of which Hallmark Long Term Care, LLC d/b/a Hallmark Healthcare Center,
THI of South Carolina, LLC, THI of Baltimore, Inc., Hunt Valley Holdings, LLC,
Fundamental Administrative Services, LLC, Fundamental Clinical and Operational Services, LLC, and Fundamental Clinical Consulting, LLC, are the .... Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Brief of Respondent complies with Rule 211(b), SCACR.

[SIGNATURE PAGE FOLLOWS]

By: /s/John E. Parker Jr.
Lee Deer Cope
John E. Parker, Jr.
Post Office Box 487
Hampton, South Carolina 29924
Phone: (803) 903-1781
Fax: (803) 903-1793
lcope@parkerlawgroupsc.com
jayparker@parkerlawgroupsc.com

ATTORNEYS FOR RESPONDENT

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PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing Brief of Respondent and Certificate of Counsel has been served upon the following counsel of record by emailing a copy of the same, this 10th day of September 2025.

Lee C. Weatherly, Esquire
lweatherly@csvl.law
Kristen K. Thompson, Esquire
kthompson@csvl.law

COPELAND, STAIR, VALZ &
LOVELL, LLP
Attorneys for Defendant
Curana Health of South Carolina, PC
f/k/a Elite Patient Care of South
Carolina, PC

Stephen L. Brown, Esquire
sbrown@ycrlaw.com
D. Jay Davis Jr., Esquire
jdavis@ycrlaw.com
James D. Gandy III., Esquire
tgandy@ycrlaw.com
Russell G. Hines., Esquire
RHines@ycrlaw.com

CLEMENT RIVERS, LLP
Attorneys for Appellants

PARKER LAW GROUP, LLP

By: /s/ John E. Parker, Jr.
Lee Deer Cope
John E. Parker, Jr.
Post Office Box 487
Hampton, South Carolina 29924
Phone: (803) 903-1781
Fax: (803) 903-1793
lcope@parkerlawgroupsc.com
jayparker@parkerlawgroupsc.com

ATTORNEYS FOR RESPONDENT

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Hampton, South Carolina