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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

Case No. 2023-CP-18-00758
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.

FINAL BRIEF OF APPELLANTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 1

STANDARD OF REVIEW 3

ARGUMENT 4

I. The circuit court erred in denying the Motion to Compel Arbitration as to Plaintiff's wrongful death claim and, in turn, denying the Motions to Stay as to Plaintiff's wrongful death claim. 4

A. The circuit court erred in denying the Motion to Compel Arbitration as to Plaintiff's wrongful death claim. 4

B. The circuit court erred in denying the Motions to Stay as to Plaintiff's wrongful death claim. 8

CONCLUSION 9

TABLE OF AUTHORITIES

Cases

Allied-Bruce Terminix Cos., Inc. v. Dobson,
513 U.S. 265 (1995) 4

AT&T Mobility LLC v. Concepcion,
563 U.S. 333 (2011) 4

Bain v. Self Mem'l Hosp.,
281 S.C. 138, 314 S.E.2d 603 (Ct. App. 1984) 3

Dean v. Heritage Healthcare of Ridgeway, LLC,
408 S.C. 371, 759 S.E.2d 727 (2014) 4, 5

Duke Energy Corp. v. S.C. Dep't of Revenue,
415 S.C. 351, 782 S.E.2d 590 (2016) 3

Estate of Stokes ex rel. Spell v. Pee Dee Family Physicians, L.L.P.,
389 S.C. 343, 699 S.E.2d 143 (2010) 6, 7, 8

Fisher on behalf of estate of Shaw-Baker v. Huckabee,
422 S.C. 234, 811 S.E.2d 739 (2018) 7

Gissel v. Hart,
382 S.C. 235, 676 S.E.2d 320 (2009) 3

Glenn v. E. I. DuPont Nemours & Co.,
254 S.C. 128, 174 S.E.2d 155 (1970) 5, 7

Kindred Nursing Centers Ltd. P'ship v. Clark,
137 S. Ct. 1421 (2017) 5

Maxey v. Sauls,
242 S.C. 247, 130 S.E.2d 570 (1963) 5

Munoz v. Green Tree Fin. Corp.,
343 S.C. 531, 542 S.E.2d 360 (2001) 4

Quattlebaum v. Carey Canada, Inc.,
685 F. Supp. 939 (D.S.C. 1988) 6, 7, 8

Scott v. Greenville Pharmacy,
212 S.C. 485, 48 S.E. 324 (1948) 5

Stokes v. Metro. Life Ins. Co.,
351 S.C. 606, 571 S.E.2d 711 (Ct. App. 2002) 9

Towles v. United HealthCare Corp.,
338 S.C. 29, 524 S.E.2d 839 (Ct. App. 1999) 2

Wilson v. Willis,
426 S.C. 326, 827 S.E.2d 167 (2019) 3

Zabinski v. Bright Acres Assocs.,
346 S.C. 580, 553 S.E.2d 110 (2001) 2

Statutes

S.C. Code Ann. § 15-51-10 ..... 5, 8
S.C. Code Ann. § 15-51-20 6
S.C. Code Ann. § 62-1-201(33) 7
9 U.S.C. §§ 1 et seq 4
9 U.S.C. § 3 8

Other Authorities

26 S.C. Jur. Limitation of Actions § 32 6

Rules

Rule 59(e), SCRCP 3

STATEMENT OF ISSUES ON APPEAL

I. In this wrongful death and survival action, where the circuit court granted, without objection from Plaintiff,[1] the Facility's[2] motion to compel arbitration (the "Motion to Compel Arbitration") as to Plaintiff's survival claim but denied it as to Plaintiff's wrongful death claim, did the circuit court err in denying the Motion to Compel Arbitration as to Plaintiff's wrongful death claim and, in turn, denying the Other Appellants'[3] corresponding motions to stay this lawsuit pending the outcome of arbitration between Plaintiff and the Facility as to Plaintiff's wrongful death claim (collectively, the "Motions to Stay")?[4]

A. Did the circuit court err in denying the Motion to Compel Arbitration as to Plaintiff's wrongful death claim?

B. Did the circuit court err in denying the Motions to Stay as to Plaintiff's wrongful death claim?

STATEMENT OF THE CASE

When Ms. Chestnut was admitted to the Facility on April 12, 2019, she signed an Admission Agreement[5] and an Arbitration Agreement. (R. p. 91.) When Ms. Chestnut was briefly discharged and then readmitted to the Facility in March 2020, she signed a Readmission Agreement, the express terms of which "reaffirm the terms of the original Admission Agreement" and "acknowledge that [it] does not replace or supercede the original Admission Agreement." (R. pp. 154–155.)

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[1] "Plaintiff" refers to Plaintiff/Respondent, James Graham, as Personal Representative of the Estate of Phyllis Chestnut ("Ms. Chestnut").

[2] The "Facility" refers to Defendant/Appellant Hallmark Long Term Care, LLC d/b/a Hallmark Healthcare Center, which operates the skilled nursing facility known as Hallmark Healthcare Center.

[3] The "Other Appellants" refers to Defendants/Appellants 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. Together, the Facility and the Other Appellants are referred to collectively as "Appellants."

[4] To be clear, out of an abundance of caution, this issue and the corresponding argument includes not only Appellants' challenge to the circuit court's denial of their respective principal motions but also their challenge to the circuit court's denial of reconsideration with respect to their respective principal motions.

[5] (R. pp. 142–153.)

Plaintiff filed this wrongful death and survival action in the Dorchester County Court of Common Pleas on May 15, 2023, asserting claims arising out of Ms. Chestnut's residency at the Facility. (R. pp. 18–27.)[6] On April 16, 2024, the Facility filed the Motion to Compel Arbitration based on the Arbitration Agreement Ms. Chestnut signed in conjunction with her admission. (R. pp. 89–91; R. pp. 131–155.)[7] At the same time, the Other Appellants filed the Motions to Stay. (R. pp. 92–103; R. pp. 131–155.) Collectively, the Motion to Compel Arbitration and the Motions to Stay are referred to as the "Underlying Motions."

Following a hearing on September 4, 2024,[8] the circuit court, the Honorable Maite Murphy presiding, granted, without objection from Plaintiff,[9] the Motion to Compel Arbitration as to Plaintiff's survival claim but denied it as to Plaintiff's wrongful death claim by order filed November 21, 2024. (R. pp. 1–14.) The order also denied the Motions to Stay. (R. pp. 1–14.)

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[6] The Facility timely answered Plaintiff's complaint on June 16, 2023, denying the alleged liability, raising numerous affirmative defenses, and expressly reserving its right to compel arbitration, which it also raised as an affirmative defense. (R. pp. 28–33.) The Other Appellants also timely responded to the suit on June 16, 2023, denying the alleged liability and raising numerous affirmative defenses, or moving for dismissal. (R. pp. 34–65.)

[7] Without question, Plaintiff's claims against the Facility are within the scope of the Arbitration Agreement, the plain language of which calls for arbitration of "any controversy or dispute between the parties arising out of or relating to [the] Facility's Admission Agreement, or breach thereof, or relating in any way to [Ms. Chestnut's] stay at [the] Facility, or to the provisions of care or services to [Ms. Chestnut] . . . ." (R. p. 91.) But even if there were "any doubts concerning the scope of arbitrable issues[,] [they] should be resolved in favor of arbitration . . . ." *Towles v. United HealthCare Corp.*, 338 S.C. 29, 41, 524 S.E.2d 839, 846 (Ct. App. 1999); *see also Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001) ("[U]nless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered.").

[8] (R. pp. 66–88.)

[9] (R. p. 74:9–21 ("[Plaintiff's Counsel:] We do agree that there is an Arbitration Agreement that was signed by the decedent Ms. Chestnut, on her admission to the facility. So that's there and that's why we're not contesting their survival claims. Obviously, their survival claims have their own categories of damages and all of those are damages that were suffered personally by Ms. Chestnut after the acts of negligence that we allege in the complaint prior to her death. So we think that those are arbitrable, we think there is a valid Arbitration Agreement that's going to compel the survival claims to arbitration and Ms. Chestnut herself signed the Arbitration Agreement.")

Pursuant to Rule 59(e), SCRCP, on December 2, 2024, Appellants timely moved the circuit court to alter, amend, and/or reconsider its decision. (R. pp. 156–164.) The circuit court decided the motion by order filed January 14, 2025, denying the motion as to the Motion to Compel Arbitration, i.e., adhering to its decision to compel arbitration only as to Plaintiff's survival claim, but reversing course with respect to the Motions to Stay, finding that the litigation must be stayed pending arbitration between Plaintiff and the Facility as to the survival claim. (R. pp. 15–17.)

By notice served and filed February 13, 2025, this appeal timely follows. (R. pp. 180–186.)

STANDARD OF REVIEW

A circuit court's determination of whether a claim is subject to arbitration is reviewed de novo on appeal. *Gissel v. Hart*, 382 S.C. 235, 240, 676 S.E.2d 320, 323 (2009). This includes de novo review of the determination of whether an arbitration agreement is enforceable against a nonsignatory. *Wilson v. Willis*, 426 S.C. 326, 334, 827 S.E.2d 167, 172 (2019). "Under de novo review, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports those findings." *Id.* Issues of law, however, are reviewed without any particular deference to the circuit court. *See, e.g., Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 782 S.E.2d 590 (2016). Even where a ruling is on a matter within circuit court's discretion, if the ruling is based on a misunderstanding of the law, rather than upon the exercise of discretion, the question presented on appeal is one of law. *See Bain v. Self Mem'l Hosp.*, 281 S.C. 138, 152, 314 S.E.2d 603, 611 (Ct. App. 1984).

ARGUMENT

I. The circuit court erred in denying the Motion to Compel Arbitration as to Plaintiff's wrongful death claim and, in turn, denying the Motions to Stay as to Plaintiff's wrongful death claim.

A. The circuit court erred in denying the Motion to Compel Arbitration as to Plaintiff's wrongful death claim.

Plaintiff admits,[10] and the circuit court likewise found,[11] that the Arbitration Agreement is valid and enforceable as to Plaintiff's survival claim. The circuit court erred in not compelling arbitration between Plaintiff and the Facility as to the wrongful death claim, too.

The Arbitration Agreement applies with equal force to Plaintiff's wrongful death claim. A wrongful death claim does not belong to the wrongful death beneficiaries. It belongs to the decedent's personal representative, and a specific rule prohibiting enforcement of otherwise valid agreements to arbitrate wrongful death claims would violate the FAA's[12] requirement that

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[10] (R. p. 74:9–21.)

[11] (R. p. 13.)

[12] The "FAA" is the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and without question, it applies in this case. The FAA applies "to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction." *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001); *see also Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 268 (1995) (holding that the reach of the FAA extends to the broadest permissible exercise of Congress's power under the Commerce Clause); *Allied-Bruce*, 513 U.S. at 273–77 (explaining that, unless the parties specifically contract otherwise, the FAA applies whenever an arbitration agreement involves interstate commerce). And our Supreme Court has expressly held that skilled nursing facility admission agreements implicate interstate commerce and, thus, the FAA. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 381–82, 759 S.E.2d 727, 732–33 (2014) ("Since the Supreme Court decided *Allied-Bruce*, many—if not all—federal and state courts have held that nursing home residency contracts similar to the one at issue here implicate interstate commerce and the FAA. Generally, these holdings center on a common theme: nursing home residency contracts usually entail providing residents with meals and medical supplies that are inevitably shipped across state lines from out-of-state vendors. We likewise find the terms of the residency agreement implicate interstate commerce and, thus, the FAA.").

arbitration agreements be placed on equal footing with other contracts,[13] as indeed our Supreme Court has already recognized in *Dean*, 408 S.C. at 389, 759 S.E.2d at 737 n.3 ("[C]ourts may not refuse to compel arbitration simply because a wrongful death claim is involved.").

"The right of action for wrongful death is purely statutory and did not exist at common law . . . ." *Glenn v. E. I. DuPont Nemours & Co.*, 254 S.C. 128, 133, 174 S.E.2d 155, 157 (1970). Per the plain language of the wrongful death statute, a wrongful death claim must be a claim that, had the decedent lived, they could have maintained themselves. S.C. Code Ann. § 15-51-10 ("Whenever the death of a person shall be caused by the wrongful act, neglect or default of another *and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof*, the person who would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured.") (emphasis added); *see also Maxey v. Sauls*, 242 S.C. 247, 250, 130 S.E.2d 570, 572 (1963) ("[T]he right to maintain the [wrongful death] action is based upon the condition that 'the act, neglect or default' must be 'such as would, if death had not ensued, have entitled the person injured to maintain an action and recover damage in respect thereof.' In other words, '*if the deceased never had a cause of action, none accrues under the wrongful death statute*.'") (discussing prior statutory language that is identical to that in present § 15-51-10) (quoting *Scott v. Greenville Pharmacy*, 212 S.C. 485, 489, 48 S.E. 324, 326 (1948) (emphasis added).

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[13] *Kindred Nursing Centers Ltd. P'ship v. Clark*, 137 S. Ct. 1421, 1423 (2017) (While a court may invalidate an arbitration agreement based on "generally applicable contract defenses," it may not do so based on legal rules that "apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue.") (citing *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011)); *Concepcion* at 339 (Under the FAA, "courts must place arbitration agreements on equal footing with other contracts . . . .").

Accordingly, a claim of wrongful death is derivative in nature, in that it derives from (and does not arise without) a cause of action arising in favor of the *decedent*. *See Id.*; *see also* 26 S.C. Jur. Limitation of Actions § 32 ("A wrongful death action is derivative in nature . . . ."); *Quattlebaum v. Carey Canada, Inc.*, 685 F. Supp. 939, 942 (D.S.C. 1988) ("If the decedent never had a cause of action, none accrues under the wrongful death statute. Furthermore, anything that would have defeated the decedent's recovery had he survived the accident, such as contributory negligence, a valid release, or similar acts on his part, would defeat the right of recovery in behalf of his family in case of his death. It follows logically that the decedent's failure to file a timely claim . . . is an act, or omission, on his part which should defeat the right of recovery of his personal representative.") (internal citations and quotation marks omitted); *Estate of Stokes ex rel. Spell v. Pee Dee Family Physicians, L.L.P.*, 389 S.C. 343, 349, 699 S.E.2d 143, 146 (2010) ("*Quattlebaum* was correctly decided and adheres to the principle that a decedent's estate may maintain an action only when the decedent would have been entitled to maintain an action had he survived.'").

"[T]he substantive right to bring . . . a wrongful death action . . . is determined by the Probate Code." *Fisher on behalf of estate of Shaw-Baker v. Huckabee*, 422 S.C. 234, 240, 811 S.E.2d 739, 742 (2018); *see also id.* at 242, 811 S.E.2d at 743 ("The Probate Code defines who may act on behalf of the estate of a deceased person. The Probate Code, therefore, is the substantive law by which the identity of the *'real party in interest'* is determined for all civil actions *brought on behalf of the estate of a deceased person*.") (emphasis added). "Under the Probate Code . . . *wrongful death actions must be brought by the personal representative* . . . ." *Id.* (emphasis added); *see also* S.C. Code Ann. § 15-51-20 ("Every [wrongful death] action shall be brought by or in the name of the executor or administrator of [the] person [whose death was

wrongfully caused].");[14] *Glenn*, 254 S.C. at 134, 174 S.E.2d at 158 ("If an action for wrongful death is instituted by one other than the personal representative of a decedent, duly appointed by the Probate Court, it should be dismissed.").

Even though it is for their "benefit," a wrongful death claim does not belong to the wrongful death beneficiaries themselves. It is a claim that is brought on behalf of the estate of the deceased person. The substantive right to bring the claim belongs to decedent's personal representative, who must bring the claim and is the real party in interest under South Carolina law. And consistent with Judge Anderson's correct analysis in *Quattlebaum* (which explains that anything that would have defeated the decedent's recovery had he survived, such as, for instance, a valid release, will apply to the wrongful death claim), it follows logically that a valid arbitration agreement must also apply to the wrongful death claim, and the circuit court erred in concluding otherwise.

Most respectfully, the circuit court's analysis of *Quattlebaum* and *Stokes* is erroneous. The fact that these cases did not expressly address arbitration is beside the point and overlooks the import of the principal, which the *Stokes* Court expressly confirmed to be good South Carolina law, that "a decedent's estate *may maintain an action only when* the decedent *would have been entitled to maintain an action* had he survived." *Stokes*, 389 S.C. at 349, 699 S.E.2d at 146 (emphasis added).

By conceding that the Arbitration Agreement is valid and enforceable to require arbitration of the survival claim, Plaintiff concedes that the decedent, Ms. Chestnut, would not have been

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[14] As explained by the *Fisher* Court, "Under the Probate Code . . . the terms 'executor' and 'administrator' do not have separate meaning, but are included within the defined term 'personal representative.'" 422 S.C. at 240, 811 S.E.2d at 742 (citing S.C. Code Ann. § 62-1-201(33) (defining "Personal representative" to "include[] executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.")). "Therefore, wrongful death actions must be brought by the personal representative, despite the language 'shall be brought by . . . the executor or administrator' that still appears in section 15-51-20." *Id.*

entitled to "maintain a [civil court] action" against the Facility had she survived, but instead would have had to arbitrate. Indeed, the circuit court itself acknowledges that, "[h]ad Ms. Chestnut settled any claims against the Defendants before her death, . . . the Estate's Personal Representative could not now bring a wrongful death claim on behalf of the statutory beneficiaries because under section 15-51-10, there would not be an action the decedent could have maintained if death had not ensued." (R. p. 10.) To acknowledge this is to acknowledge that the relationship between survival and wrongful death claims is not such that one has no bearing on the other and that a decedent may, during their lifetime, enter into a contract that affects their estate's ability to maintain an action for wrongful death after the decedent's death. As recognized in *Quattlebaum* and *Stokes*, and, again, indeed, by the circuit court, a decedent may validly waive their estate's right to maintain an action for wrongful death—which necessarily effects a waiver of their estate's right to a jury trial on a claim for wrongful death—via settlement, i.e., via contract, that outright releases any and all claims for wrongful death. Properly applying this principal to the present context, Ms. Chestnut, via the Arbitration Agreement, validly waived her estate's right to maintain an action for wrongful death against the Facility in court and instead required that the instant claim for wrongful death be pursued against the Facility in arbitration.

Accordingly, the circuit court erred in denying the Motion to Compel Arbitration as to Plaintiff's wrongful death claim.

B. The circuit court erred in denying the Motions to Stay as to Plaintiff's wrongful death claim.

The relationship between the Motion to Compel Arbitration and the Motions to Stay is such that to show that the circuit court should have granted the Motion to Compel Arbitration as to Plaintiff's wrongful death claim is, in turn, to show that it should have granted the Motions to Stay as to Plaintiff's wrongful death claim. *See* 9 U.S.C. § 3 ("If any suit or proceeding be brought in

any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, *shall* on application of one of the parties *stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement*, providing the applicant for the stay is not in default in proceeding with such arbitration.") (emphasis added); *Stokes v. Metro. Life Ins. Co.*, 351 S.C. 606, 612, 571 S.E.2d 711, 715 (Ct. App. 2002) ("[The] FAA clearly requires a court stay 'any suit or proceeding' pending the arbitration of 'any issue referable to arbitration under an agreement in writing for such arbitration' upon the application of one of the parties.").

Accordingly, because, as explained above, it erred in denying the Motion to Compel Arbitration as to Plaintiff's wrongful death claim, the circuit court also erred in denying the Motions to Stay as to Plaintiff's wrongful death claim.

CONCLUSION

For the foregoing reasons, Appellants ask the Court to reverse the circuit court to the extent that it denied the Underlying Motions, i.e., with respect to its denial of the Motion to Compel Arbitration and Motions to Stay as to Plaintiff's wrongful death claim, and compel Plaintiff's wrongful death claim against the Facility to arbitration and stay this lawsuit as to the Other Appellants pending the outcome of arbitration between Plaintiff and the Facility (or to remand this matter to the circuit court with instructions that it do so).

<SIGNED ON THE FOLLOWING PAGE>

Respectfully submitted,

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Appellants.

APPELLANTS' CERTIFICATION FOR FINAL BRIEF

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I, Russell G. Hines, do hereby certify that the **Final Brief of Appellants** complies with Rule 211(b), SCACR. Additionally, the undersigned hereby certifies that this filing complies with the Supreme Court order of April 15, 2014.

Respectfully submitted,

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