RECEIVED
Mar 02 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Case No. 2023-CP-40-02608
Appeal No. 2025-001017

Sallie Wilson
as Guardian for Gladys Graham,

Respondent,

v.

Medical University Hospital Authority
d/b/a MUSC Health Columbia Medical Center Northeast,
Columbia AL Operations, LLC
d/b/a Harmony Collection at Columbia (AL/MC),
and Karen Bowman,

Defendants.

Of whom Columbia AL Operations, LLC
d/b/a Harmony Collection at Columbia (AL/MC)
and Karen Bowman are

Appellants.

FINAL REPLY BRIEF OF APPELLANTS

CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
D. Jay Davis Jr. (SC Bar No. 12084)
Matthew O. Riddle (SC Bar No. 76650)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
P.O. Box 993 (29402)
Charleston, South Carolina 29401
(843) 720-5488

Attorneys for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

Appellants make the following points in reply to Plaintiff's brief.[1]

ARGUMENT IN REPLY

1. Ms. Graham's competency at the time of her admission to the Facility is not only uncontroverted but indeed admitted.

First off, the circuit court's order denying the Motion to Compel Arbitration, which, of course, Plaintiff asks this Court to affirm, expressly states, "At the hearing of this matter, there was *no evidence* presented to the Court that [Ms.] Graham lacked the requisite capacity to sign [the Facility's] admission and arbitration agreement . . . ." (R. p. 5 (emphasis added).) Moreover, Plaintiff's memo in opposition to the Motion to Compel Arbitration expressly argues that the motion should be denied because "[Ms.] Graham did not sign the [Residency] Agreement,"[2] necessarily implying Plaintiff's admission that Ms. Graham had capacity to sign it. Further still, and in any event, at the hearing on the Motion to Compel Arbitration, Plaintiff's counsel expressly admitted Ms. Graham had capacity to sign the Residency Agreement, stating, "All of this could have been absolved had [the Facility] simply had Ms. Graham sign the [residency] agreement that they're purporting would be valid. *Clearly, Ms. Graham had the capacity to do so.*" (R. p. 64:21–24 (emphasis added).)[3] And having admitted Ms. Graham's capacity below, Plaintiff cannot controvert it now on appeal. *Hall v. Benefit Ass'n of Ry Emps.*, 164 S.C. 80, 83, 161 S.E. 867, 868 (1932) ("The parties to a suit are bound by admissions, made

---

[1] Shorthand references defined in Appellants' principal brief are continued in this reply brief (e.g., "Appellants" refers to Defendants/Appellants, Columbia AL Operations, LLC d/b/a Harmony Collections at Columbia (AL/MC) (the "Facility") and Karen Bowman, collectively, and "Plaintiff" refers to Plaintiff/Respondent, Sallie Wilson ("Ms. Wilson") as guardian for Gladys Graham ("Ms. Graham")).

[2] (R. p. 188 (original bold print omitted).) The quoted text has been modified to read *Residency* Agreement, rather than *Arbitration* Agreement, because the Arbitration Provision is included in the Residency Agreement.

[3] Here again, the quoted language has been modified to read *residency* agreement, rather than *arbitration* agreement, because the Arbitration Provision is included in the Residency Agreement.

by their attorneys of record, in open court, or elsewhere, touching matters looking to the progress of trial.").

It being established that Ms. Graham was competent at the time of her admission to the Facility, and the only evidence in the record that speaks to the circumstances of the admissions process for Ms. Graham being Ms. Cunningham's uncontroverted affidavit to the effect that, after a full explanation of the Residency Agreement, including the Arbitration Provision, Ms. Graham allowed Ms. Wilson to sign for her and gave Ms. Cunningham assurance that Ms. Wilson had her authority to do so, the circuit court erred in not finding that Ms. Wilson had actual or apparent authority to act on behalf of Ms. Graham, or that Plaintiff was estopped to deny Ms. Wilson's authority to act on behalf of Ms. Graham.

2. The direct benefits test endorsed by *Wilson*[4] does not require Plaintiff's claims to rely on the Residency Agreement's terms.

According to Plaintiff, "the Facility cannot meet the 'direct benefits' test considered in Wilson because [Plaintiff's] claims in no sense rely on the [Residency] Agreement's terms." (Br. of Respondent p. 12.)[5] This is not so.

As further explained in Appellants' principal brief, as set forth in our Supreme Court's controlling decision in *Wilson*,[6] and consistent with this Court's decision in *Pearson v. Hilton Head Hospital*, 400 S.C. 281, 733 S.E.2d 597 (Ct. App. 2012), which the *Wilson* Court favorably cites, the essence of the test for direct benefits estoppel is simply whether the nonsignatory has

---

[4] *Wilson v. Willis*, 426 S.C. 326, 827 S.E.2d 167 (2019).

[5] Once again, the quoted text has been modified to read *Residency* Agreement, rather than *Arbitration* Agreement, because the Arbitration Provision is included in the Residency Agreement.

[6] Plaintiff criticizes Appellants for not discussing *Weaver v. Brookdale Sr. Living, Inc.*, 431 S.C. 223, 847 S.E.2d 223 (Ct. App. 2020), but it is in fact the Supreme Court's decision in *Wilson* that controls here. Moreover, obviously unlike Plaintiff in the instant case, the plaintiff in *Weaver* was a complete stranger to any agreement with the defendant facility.

exploited other parts of the contract by reaping its benefits. Undoubtedly, Ms. Graham was a direct beneficiary of the Residency Agreement, reaping the various benefits provided to her thereunder, and accordingly, the circuit court should have found Ms. Graham, and therefore Plaintiff, standing in Ms. Graham's shoes, estopped to deny the Residency Agreement/Arbitration Provision's enforceability.

3. The "presumption *against*" arbitration[7] that Plaintiff cites violates the FAA's "equal footing" rule.

Plaintiff cites *Wilson* for the proposition that, under South Carolina law, there is a presumption *against* arbitration when enforcement is sought against a nonsignatory. (Br. of Respondent p. 12.) The FAA, however, requires arbitration agreements to be placed on equal footing with all other contracts under state law and prohibits courts from setting aside arbitration agreements based on state-law defenses "that apply only to arbitration or derive their meaning from the fact that an agreement to arbitrate is at issue." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011). Thus, under the FAA, there cannot be a presumption against enforcement of arbitration agreements against nonsignatories unless the same presumption also applies to enforcement of all other contracts against nonsignatories. Appellants are aware of no such general presumption under South Carolina law. Indeed, in recognizing "a presumption *against* arbitration . . . where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate," the *Wilson* Court cited authority, none of which was in fact South Carolina authority, that addressed arbitration in particular, not contracts generally. 426 S.C. at 337–38, 827 S.E.2d at 173 ("*Global Pac., LLC v. Kirkpatrick*, 88 N.E.3d 431, 435 (Ohio Ct. App. 2017) ('Because no party can be required to submit to arbitration when it has not first agreed to do so, in a case where the party resisting arbitration is not a signatory to any written agreement to arbitrate, a

[7] (Br. of Respondent p. 12 (emphasis in original).)

presumption against arbitration arises.'); *cf. Comer v. Micor, Inc.*, 436 F.3d 1098, 1103–04 (9th Cir. 2006) (noting 'the general rule that a nonsignatory is not bound by an arbitration clause').").

The presumption against arbitration that Plaintiff cites violates the FAA's equal footing rule and cannot be applied in this case.

Moreover, even assuming, *arguendo*, such a presumption properly applies, (a) it has no bearing whatsoever on Appellants' argument for enforcement of the Residency Agreement/Arbitration Provision under principles of agency law, as Ms. Graham cannot be said to be a nonsignatory to the Residency Agreement where it was signed on her behalf by her agent,[8] and (b), even as to Appellants' equitable estoppel argument, any presumption against enforcement of the Arbitration Provision is overcome by the undeniable applicability of direct benefits estoppel under the circumstances.

CONCLUSION

For the foregoing additional reasons, Appellants ask that the Court reverse the circuit court's denial of the Motion to Compel Arbitration, stay this action, and compel Plaintiff's claims against Appellants to arbitration (or to remand this matter to the circuit court with instructions that it stay the action and compel Plaintiff's claims against Appellants to arbitration).

<SIGNED ON THE FOLLOWING PAGE>

[8] *See Froneberger v. Smith*, 406 S.C. 37, 49, 748 S.E.2d 625, 631 (Ct. App. 2013) ("Agency is the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control.") (quoting Restatement (Third) of Agency § 1.01 (2006)).

Respectfully submitted,

CLEMENT RIVERS, LLP

By: s/Russell G. Hines

Stephen L. Brown (SC Bar No. 66468)
D. Jay Davis, Jr. (SC Bar No. 12084)
Matthew O. Riddle (SC Bar No. 76650)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
P.O. Box 993 (29402)
Charleston, South Carolina 29401
(843) 720-5488

Attorneys for Appellants

Charleston, South Carolina

March 2, 2026

RECEIVED
Mar 02 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Case No. 2023-CP-40-02608
Appeal No. 2025-001017

Sallie Wilson
as Guardian for Gladys Graham,

Respondent,

v.

Medical University Hospital Authority
d/b/a MUSC Health Columbia Medical Center Northeast,
Columbia AL Operations, LLC
d/b/a Harmony Collection at Columbia (AL/MC),
and Karen Bowman,

Defendants.

Of whom Columbia AL Operations, LLC
d/b/a Harmony Collection at Columbia (AL/MC)
and Karen Bowman are

Appellants.

CERTIFICATION FOR FINAL REPLY BRIEF OF APPELLANTS

CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
D. Jay Davis Jr. (SC Bar No. 12084)
Matthew O. Riddle (SC Bar No. 76650)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
P.O. Box 993 (29402)
Charleston, South Carolina 29401
(843) 720-5488

Attorneys for Appellants

I, Russell G. Hines, do hereby certify that the **Final Reply 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,

CLEMENT RIVERS, LLP

By: s/Russell G. Hines

Stephen L. Brown (SC Bar No. 66468)
D. Jay Davis, Jr. (SC Bar No. 12084)
Matthew O. Riddle (SC Bar No. 76650)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
P.O. Box 993 (29402)
Charleston, South Carolina 29401
(843) 720-5488

Attorneys for Appellants

Charleston, South Carolina

March 2, 2026