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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY  
In the Court of Common Pleas

Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2025-000930  
Circuit Court Case No. 2023-CP-20-00374

Stephanie Pressley, as Personal Representative of the Estate of Gail  
Wright, ..... Plaintiff,

v.

Ridgeway Manor Healthcare Center, LLC, Deborah Sparks, and  
James McCollum, ..... Defendants,

of which

Ridgeway Manor Healthcare Center, LLC, Deborah Sparks, and  
James McCollum are the..... Appellants,

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**RECORD ON APPEAL**

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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,	)	<b>ORDER</b>
	)	
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.<sup>1</sup> This Court disagrees and finds the arbitration agreement unenforceable against the Plaintiff as a matter of law.

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<sup>1</sup> 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 1 (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.<sup>2</sup>

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.<sup>3</sup> *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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<sup>2</sup> 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.

<sup>3</sup> 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.

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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

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

---

This matter comes before the Court on Defendants Ridgeway Manor Healthcare Center, LLC, Deborah Sparks, and James McCollum (collectively, “Defendants”) Rule 59(e) Motion for Reconsideration of Denial of Motion to Compel Arbitration of Plaintiff’s claims. The Court has considered Defendants’ Motion, Plaintiff’s Response, and heard oral arguments from both parties. Having fully reviewed the briefing and hearing the parties’ positions, the Defendants’ motion is hereby DENIED.

**I. Procedural History**

Defendants moved to compel arbitration in this matter on January 12, 2024. Plaintiff opposed the motion. The Court heard arguments on July 5, 2024 via Webex and denied the Motion in an Order dated August 19, 2024. Defendants timely filed a Rule 59(e), SCRCF motion requesting the Court reconsider its prior order. Plaintiff responded, and the Court heard oral argument on March 25, 2025.

**II. Legal Standard**

The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to “reconsider matters properly encompassed in a decision on the merits.” *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. *See Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004). A party may wish to file such a motion when he or she believes the court misunderstood, failed to fully consider, or failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. *Elam*, 361 S.C. at 24, 602 S.E.2d at 779.

### III. Discussion

The Court prior Order denying Defendants’ Motion to Compel Arbitration is incorporated herein because neither Plaintiff nor her decedent executed the arbitration agreement, and the South Carolina Department of Social Services cannot waive their constitutional right to trial by jury.

Defendants now argue that SCDSS workers Ms. Keri Singleton and Ms. Fantasia Hartwell would not have signed the arbitration agreement if they did not have the authority to sign on Mrs. Wright or Ms. Pressley’s behalf because above their signatures includes the phrase: “I warrant and represent that the Resident has expressly vested in me the authority to sign this Agreement on the Resident’s behalf.” This is a new argument outside the scope of a Rule 59(e), SCRCP motion. Nonetheless, the Adult Protective Services Act , S.C. Code Ann. § 43-35-10 et seq., still does not confer authority to SCDSS workers to provide legal services or waive the constitutional right to a trial by jury. There is no evidence that Mrs. Wright’s court appointed attorney was brought in to advise Mrs. Wright. There is no evidence that Mrs. Wright was involved in the execution of the paperwork or that it was even discussed

with her despite her being mentally competent. Thus, Defendants' argument is rejected as DSS workers could not waive Mrs. Wright's right to a trial by jury.

Next, Defendants argue that it was error for the Court to make a finding that Mrs. Wright was mentally competent when Mrs. Wright was actually mentally incompetent. The Court's order denying the motion to compel arbitration recognized only that "Defendants do not contest that Mrs. Wright was mentally competent at the time of her admission." (Order Denying Motion to Compel Arbitration at p.2). Defendants earlier briefing on their motion to compel arbitration embraced Plaintiffs argument that Mrs. Wright was mentally competent. The law is clear that a party cannot use a motion to alter or amend a judgment to raise a new issue that the party could have raised prior to judgment but did not. *See Johnson v. Sonoco Prods. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009); *see also Repko v. Cnty. of Georgetown*, 424 S.C. 494, 502, 818 S.E.2d 743, 748 (2018) (same); *Patterson v. Reid*, 318 S.C. 183, 456 S.E.2d 436 (Ct.App.1995). This new argument is rejected.

Regarding estoppel, Defendants argue that the Court incorrectly applied *Hodge v. Unihealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018) and *Estate of Solesbee by Bayne v. Fundamental Clinical and Operational Services, LLC*, 438 S.C. 638 (2023). Defendants argue that proper analysis of these authorities would demand the alternative result: a finding that Ms. Pressley is estopped from denying that the arbitration agreement applied to her. The Court's analysis stands. The admission agreement and the arbitration agreement are independent, did not merge, and shall not be construed together. Defendants' estoppel argument is once again, rejected.

Finally, Defendant argues that the Order improperly analyzes the validity of the contract as a whole and improperly analyzes the arbitration provision. Defendant relies

primarily on *Sanders v. Savannah Highway Auto. Co.*, 440 S.C. 377, 392, 892 S.E.2d 112, 120 (2023), reh'g denied (Sept. 27, 2023), *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967), and the FAA (9 U.S.C. § 2). The Court rejects this argument. *Savannah Highway* and *Prima Paint* do not apply in this case because Mrs. Wright was a non-signatory to the arbitration agreement. State law controls, not the FAA, when attempting to enforce an arbitration agreement against a nonsignatory. See *Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 847 S.E.2d 268 (Ct. App. 2020) (“State law controls when attempting to enforce an arbitration agreement against someone who has not signed it.”).

After reviewing the applicable law and considering the arguments raised in Defendants’ Motion, the Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded. The Court further finds no error of law nor fact not appropriately considered. Accordingly, the Court concludes that altering, amending, or reconsidering its prior Order is unwarranted, and that the issues raised in Defendants’ Motion do not change the Court’s reasoning or conclusions. As such, Defendants’ Rule 59(e) Motion is DENIED.

IT IS SO ORDERED.

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The Honorable Donald B. Hocker



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

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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF FAIRFIELD

C/A no. 2023-NI-\_\_\_\_ - \_\_\_\_\_

Stephanie Pressley, as personal  
representative of the Estate of Gail Wright,

Plaintiff,

**PLAINTIFF'S NOTICE OF INTENT**

v.

Ridgeway Manor Healthcare Center, LLC;  
Deborah Sparks; and James McCollum,

Defendants.

This is plaintiff's notice of intent to file suit pursuant to S.C. Code § 15-79-125. Plaintiff alleges the following:

1. Venue is proper in this court because the defendants are located in this county and a substantial part of the acts or omissions giving rise to this claim occurred in this county.
2. The expert affidavit of Carol Vutano, RN is attached as *Exhibit A*.
3. A short and plain statement of the facts showing Plaintiff is entitled to relief:

Plaintiff's decedent was a resident at Ridgeway Manor from June 4, 2021 to July 20, 2021. While in the care of Ridgeway Manor, she developed a pressure injury that was not properly managed and treated due to the negligent acts of Ridgeway Manor and its employees and agents. The injury ultimately led to her death.

4. Plaintiff's responses to the standard interrogatories are attached as *Exhibit B*.

5. Under S.C. Code § 15-79-125(C) and South Carolina Court-Annexed ADR Rule 4, you are advised that this dispute is subject to pre-suit mediation within one hundred twenty days from the service of this notice. The Fairfield County Clerk of Court appoints the following as primary and secondary mediators for this matter:

\_\_\_\_\_, primary mediator.

\_\_\_\_\_, secondary mediator.

As appointed by the Fairfield County Clerk of Court on this date: \_\_\_\_\_.

The parties may of course agree to choose a different mediator at any time.

Respectfully,

**RICHARDSON THOMAS, LLC**

s/Chris Moore  
Chris Moore (SCB 77934)  
383 W. Cheves Street  
Florence, South Carolina 29501  
803.281.8147  
chris@richardsonthomas.com

August 24, 2023  
Florence, South Carolina



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FAIRFIELD	)	C/A NO. 2023-CP-21-_____
	)	
Stephanie Pressley, as personal representative	)	
of the Estate of Gail Wright,	)	
	)	
Plaintiff,	)	<b>SUMMONS</b>
	)	
vs.	)	
	)	
Ridgeway Manor Healthcare Center, LLC;	)	
Deborah Sparks; and James McCollum,	)	
	)	
Defendants.	)	

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TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

**RICHARDSON THOMAS, LLC**

s/Chris Moore  
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*Attorneys for Plaintiff*

November 9, 2023  
Florence, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FAIRFIELD	)	C/A NO. 2023-CP-__-__
	)	
Stephanie Pressley, as personal representative	)	
of the Estate of Gail Wright,	)	
	)	
Plaintiff,	)	
	)	<b>COMPLAINT</b>
vs.	)	<b>[<i>Jury Trial Demanded</i>]</b>
	)	
Ridgeway Manor Healthcare Center, LLC;	)	
Deborah Sparks; and James McCollum,	)	
	)	
Defendants.	)	

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Plaintiff alleges:

**PARTIES AND JURISDICTION**

1. Plaintiff Stephanie Pressley is a citizen and resident of Richland County, South Carolina.
2. Plaintiff is the duly appointed personal representative of the Estate of Gail Wright. Stephanie Pressley is Gail Wright’s daughter.
3. Defendant Ridgeway Manor Healthcare Center, LLC is a Florida limited liability company.
4. Defendant Ridgeway Manor Healthcare Center, LLC is authorized to conduct business in South Carolina, and conducts business in Fairfield County, South Carolina at 117 Bellefield Road, Ridgeway, South Carolina 29130.
5. Defendant Deborah Sparks is a citizen and resident of Fairfield County, South Carolina.
6. Deborah Sparks is the administrator of Ridgeway Manor Health Care Center.

7. Defendant James McCollum is a citizen and resident of Fairfield County, South Carolina.

8. At all times relevant, Defendants Ridgeway Manor Healthcare Center, LLC, Deborah Sparks, and James McCollum had the right and/or power to direct and control its employees, agents, or staff in the business of delivering care for a fee through skilled nursing facilities and they are personally, jointly and severally liable for the acts and omissions committed.

9. At all times relevant, Defendants Ridgeway Manor Healthcare Center, LLC, delivered care for a fee and had authority, express or implied, to control the means and agents employed to execute care at the facility at all times during Gail Wright's residency at Ridgeway Manor Healthcare Center, LLC.

10. This Court has jurisdiction over this matter, and all pre-suit requirements have been satisfied.

11. Venue is proper in this Court because Defendants are located in Ridgeway, South Carolina, and the acts and omissions giving rise to Plaintiff's claims occurred in Fairfield County, South Carolina.

### **FACTS**

12. At all times relevant to this Complaint, Defendants Ridgeway Manor Healthcare Center, LLC, Deborah Sparks, and James McCollum, and all employees, agents, and / or staff were acting on behalf of or, in place of the Defendants in making decisions regarding the care of Gail Wright.

13. At all times relevant, Defendants Ridgeway Manor Healthcare Center, LLC, Deborah Sparks, and James McCollum were acting within the course and scope of their employment in regard to their care and treatment of Gail Wright.

14. Ridgeway Manor Healthcare Center, LLC, as a skilled nursing home, and by virtue of its license to operate, is required to comply with the standards set forth in South Carolina Regulation 61-17, and all applicable state, federal, and local laws, codes, and regulations applicable to the facility.

15. Ridgeway Manor Healthcare Center, LLC is required to have policies and procedures that accurately reflect actual practices regarding care, treatment, procedures, and services – including nursing services, the operation of the facility, and how Ridgeway Manor Healthcare Center, LLC is to meet the specialized needs of the residents such as Gail Wright.

16. Ridgeway Manor Healthcare Center, LLC is required to make its policies and procedures available to be accessible to staff.

17. Ridgeway Manor Healthcare Center, LLC is required by law to have a documented regimen of appropriate care, treatment, services or written action plan prepared by the facility for Gail Wright, based on assessment data, e.g., social services, which was to be implemented for the benefit of Gail Wright as well as other residents.

18. Ridgeway Manor Healthcare Center, LLC is required to keep a record of each incident involving residents or staff members or volunteers, occurring in the facility or on the facility grounds, and directed that it was required to be reviewed, investigated if necessary, and evaluated in accordance with facility policies and procedures.

19. Ridgeway Manor Healthcare Center, LLC is required to keep legible and complete medical records, to include any and all incidents involving Gail Wright as well as other residents.

20. Ridgeway Manor Healthcare Center, LLC is required to describe in its care plan for Gail Wright as well as other residents:

- a. the services that Ridgeway Manor Healthcare Center, LLC was going to furnish to her;

- b. what assistance Ridgeway Manor Healthcare Center, LLC was going to provide to her;
- c. how much assistance Ridgeway Manor Healthcare Center, LLC was going to provide to her; and
- d. who at Ridgeway Manor Healthcare Center, LLC was going to provide the assistance, how often, and when.

21. Ridgeway Manor Healthcare Center, LLC is required to administer treatment and services to Gail Wright as well as other residents in a caring and humane manner.

22. Ridgeway Manor Healthcare Center, LLC is required to maintain adequate staffing in numbers and training to perform those duties that result in compliance with South Carolina Regulation 61-17, to suit the needs and condition of the residents, and to meet the demands of effective emergency on-site action that might arise, and to provide training and qualifications for the tasks performed in compliance with all State, Federal, and local laws, and current professional organizational standards.

23. Ridgeway Manor Healthcare Center, LLC is required to have direct care staff adequate in number and skill in the facility at all times to provide nursing and related care and services to attain or maintain the highest practicable physical, mental, and psychosocial health and safety of each resident, as determined by resident assessments and ICPs and that direct care staff be assigned only duties for which they are trained.

24. Ridgeway Manor Healthcare Center, LLC is required to have licensed nurse staff members currently and continuously licensed to practice nursing in South Carolina during the period they are staff members, and that only individuals appropriately licensed may perform duties requiring a registered or licensed practical nurse.

25. Ridgeway Manor Healthcare Center, LLC is required to have an adequate number

of licensed nurses to be on duty to meet the total nursing needs of residents. Licensed nursing staff were required to be assigned to duties consistent with their scope of practice as determined through their licensure and educational preparation.

26. Ridgeway Manor Healthcare Center, LLC is required to ensure staff members were provided the necessary training to perform the duties for which they were responsible and that, before performing any duties, all newly-hired staff members were to be oriented to the facility organization and physical plant, specific duties and responsibilities of staff members, and residents' needs.

27. All staff members were to be instructed in the provisions of S.C. Code Ann. Section 44-81-10 *et seq.* (1976, as amended), "Omnibus Adult Protection Act" and S.C. Code Ann. Section 44-81-10 *et seq.* (1976, as amended), "Bill of Rights for Residents of Long-Term Care Facilities" as well as other rights and assurances as required in 61-17.

28. Ridgeway Manor Healthcare Center, LLC is required to ensure all staff were provided in-service training programs that identify training needs related to problems, needs, care of residents and infection control and were sufficient to assure staff's continuing competency.

29. Ridgeway Manor Healthcare Center, LLC is required to ensure all entries in the resident records were legible and complete, and separately authenticated and dated promptly by the individual, identified by name and discipline, responsible for providing or evaluating the service or care furnished.

30. Ridgeway Manor Healthcare Center, LLC is required to admit only individuals identified as appropriate for the level of care, services, or assistance offered. The facility was required to establish admission criteria that are consistently applied and comply with State, Federal, and local laws and regulations, and permitted to admit and retain only those individuals

whose needs could be met by the accommodations and services for which the facility is licensed.

31. Ridgeway Manor Healthcare Center, LLC is required to have a written, implemented quality improvement program that provided effective self-assessment and implementation of changes designed to improve the care, treatment and services provided by the facility.

32. The State of South Carolina required Ridgeway Manor Healthcare Center, LLC to acknowledge its awareness of the above requirements as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

33. Ridgeway Manor Healthcare Center, LLC owed a duty to Gail Wright to comply with all standards including but not limited to those standards set forth above and to comply with the standards of reasonably prudent facilities in the same or similar sets of circumstances.

34. Ridgeway Manor Healthcare Center, LLC breached those duties owed to Gail Wright; and Ridgeway Manor Healthcare Center, LLC's breach proximately caused the injuries and death of Gail Wright.

35. On June 1, 2021, Gail Wright was admitted to the Defendants' facility, Ridgeway Manor Healthcare Center, LLC.

36. At all relevant times, Gail Wright required assistance with activities of daily living and care for incontinence.

37. On June 30, 2021, Gail Wright was admitted to the hospital from Ridgeway Manor Healthcare. There, Gail Wright was noted to have a Stage II decubitus sacral pressure injury.

38. Gail Wright was discharged to Ridgeway Manor Healthcare Center, LLC on July 9, 2021.

39. On July 22, 2021, Gail Wright had surgical debridement of the wound.
40. Gail Wright was admitted to the hospital from Ridgeway Manor Healthcare again on July 30, 2021. There, Gail Wright was noted to have a Stage III pressure injury to her sacral region with osteomyelitis with a finding of necrotizing infection and bone exposure.
41. During this hospital admission, Gail Wright became septic as a result of the infection to her pressure wound.
42. At this time, Gail Wright reported to hospital staff that she had the pressure injury for about 4 weeks and that it has progressed during her time at Ridgeway Manor.
43. Gail Wright also reported to hospital staff that she was in pain.
44. Gail Wright also reported she smelled a foul odor coming from her wound.
45. On August 5, 2021, Gail Wright was discharged from the hospital and continued to decline as a result of complications with the sacral wound.
46. On September 14, 2021, Gail Wright passed away due to acute encephalopathy, acute kidney injury, and septic shock secondary to the infected sacral decubitus wound.
47. The Defendants had an obligation to employ nursing assistants, nurses and orderlies who were qualified to render reasonable care to a patient in the condition of Gail Wright and in accordance with federal and state regulations as well as the representations made by the Defendants.
48. Defendants failed to assign sufficient and qualified staff to ensure that all necessary care was delivered to Gail Wright.
49. Defendants failed to ensure that proper treatment was provided to Gail Wright.
50. Defendants failed to properly train, monitor and supervise the staff necessary to provide proper care to Gail Wright.

**SURVIVAL ACTION**  
**S.C. Code Ann. § 15-5-90**

51. Plaintiff realleges and reiterates all previous paragraphs as fully as if set forth herein.

52. Gail Wright, due to Defendants' tortious conduct, suffered injury and damages proximately caused by the conduct of Defendants, which includes, but is not limited to:

- a. conscious pain and suffering;
- b. mental and emotional distress; and
- c. actual and consequential damages.

53. Gail Wright's causes of action for her injuries and damages survive her death and pass to her estate.

**WRONGFUL DEATH**  
**S.C. Code Ann. § 15-51-10 to § 15-51-60**

54. Plaintiff realleges and reiterates all previous paragraphs as fully as if set forth herein.

55. As a direct result of the actionable conduct of Defendants, Mrs. Wright's statutory beneficiaries and surviving family has experienced great mental anguish, suffering, grief, sorrow, bereavement, loss of society, advice, companionship, consortium, comfort, protection, and pecuniary benefit from the loss of decedent.

56. Under the South Carolina Wrongful Death Act, Plaintiff is entitled to judgment against Defendants for an award of actual damages in an amount to be determined by the trier of fact and for any additional relief the Court deems just and proper for all damages recoverable under the Wrongful Death Act including but not limited to funeral expenses.

**FOR A FIRST CAUSE OF ACTION**  
**Medical Malpractice/Negligence as to All Defendants**

57. Plaintiff realleges and reiterates all previous paragraphs as fully as if set forth herein.

58. Defendant undertook the duty to render competent medical care to Gail Wright in accordance with state and federal laws and regulations, and the prevailing and acceptable professional standards of care.

59. In so doing, Defendants undertook the duty to provide medical care to Gail Wright in accordance with the standard of care required by the particular medical service being rendered.

60. Defendants breached the duties owed to Gail Wright and committed the following negligent acts and / or omissions which constituted a failure to comply with the appropriate medical standard of care:

- a. Failing to adequately care for Gail Wright;
- b. Failing to adequately treat Gail Wright;
- c. Failing to adhere to South Carolina law and regulations governing Ridgeway Manor Healthcare Center, LLC; and
- d. by such other particulars as will be found in discovery and proven at trial.

61. Defendants are long-term health care providers who have a duty to abide by certain federal and state regulations in the care and treatment of their residents.

62. The federal and state regulations combine to form minimum standards of care which the Defendants must meet and exceed in order to ensure proper treatment of patients, including, specifically, Gail Wright. These standards, rules, and regulations were enacted specifically for the benefit of the class of persons for which Gail Wright is a member.

63. Defendants failed to abide by the standards, rules and regulations promulgated by the United States Government and the State of South Carolina in their treatment and care of Gail Wright constituting negligence per se.

64. Defendants' acts and/or omissions, as set forth above, were reckless, willful, or grossly negligent.

65. As a direct and proximate result of Defendants' breaches of duty owed to Gail Wright, Gail did not receive the appropriate medical care and she came to her untimely death as a consequence of Defendants' actions and/or omissions.

66. As described above, Defendants, their agents, ostensible agents, servants, and/or employees deviated from the applicable standards of care, and were negligent, grossly negligent, careless and/or reckless in their treatment of Gail Wright.

67. The above-described deviations from the acceptable standards of care, negligence, and/or grossly negligent actions and omissions combined and concurred as proximate causes of Gail Wright's untimely death.

68. As a direct and proximate result of the negligent, grossly negligent, careless, reckless, willful and wanton conduct of the Defendants, their agents, ostensible agents, servants, and/or employees, Plaintiff suffered including:

- a. pecuniary loss;
- b. mental shock and suffering;
- c. wounded feelings;
- d. grief and sorrow;
- e. loss of companionship;
- f. deprivation of the use and comfort of the deceased's society; and

g. reasonable funeral expenses.

69. Because the Defendants were grossly negligent, willful, wanton, and/or reckless, proximately causing the Plaintiff's noneconomic damages, Plaintiff's recovery should not be capped, nor should there be any limitations on the noneconomic damages that she may recover.

70. Due to Defendants' grossly negligent, careless, reckless, and/or wanton conduct, as described above, the Plaintiff is entitled to receive an award of punitive damages.

**WHEREFORE**, Plaintiff respectfully prays for judgment against Defendants as follows:

- a. actual damages including incurred medical costs, and any other actual or consequential pecuniary loss to Plaintiffs related to this claim that may be proven at trial;
- b. for other compensatory damages permitted by law including damages for physical and mental pain and suffering suffered as a result of her injury;
- c. for all costs of court;
- d. for punitive damages as determined by the trier of fact should discovery reveal willful and wanton conduct by defendants; and
- e. for such other relief as the trier of fact deems just and proper.

**Jury trial demand:** Plaintiff demands trial by jury on all triable issues.

Respectfully submitted,

**RICHARDSON THOMAS, LLC**

s/Chris Moore

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*Attorneys for Plaintiff*

Dated: November 9, 2023

Florence, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FAIRFIELD	)	CASE NO.: 2023-CP-20-00374
	)	
STEPHANIE PRESSLEY, as PERSONAL REPRESENTATIVE of the ESTATE OF GAIL WRIGHT,	)	
	)	<b>NOTICE OF APPEAL</b>
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
RIDGEWAY MANOR HEALTHCARE CENTER, LLC, DEBORAH SPARKS, and JAMES MCCOLLUM,	)	
	)	
	)	
Defendants.	)	
	)	

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Notice is hereby given that Ridgeway Manor Healthcare Center, LLC, Deborah Sparks and James McCollum, Defendants in the above-named case, hereby appeal to the Court of Appeals for the State of South Carolina from the Court’s Order denying Defendants’ Motion to Compel Arbitration of Plaintiff Stephanie Pressley, as Personal Representative of the Estate of Gail Wright’s Claims, entered in this action on August 19, 2024. Motion for Reconsideration was denied on April 14, 2025.

Dated: May 13, 2025

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STATE OF SOUTH CAROLINA ) IN THE CIRCUIT COURT  
COUNTY OF FAIRFIELD ) C.A. NO. 2023-CP-20-00374

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STEPHANIE PRESSLEY )  
Plaintiff(s), )  
versus )  
RIDGWAY MANOR HEALTHCARE CENTER, LLC )  
Defendant(s). )

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H E A R I N G

Before The Honorable Donald B. Hocker

DATE: July 5, 2024  
LOCATION: South Carolina Circuit Court 11  
TRANSCRIBED BY: Jane Daniel

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EXHIBITS

(None Marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

## PROCEEDINGS

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THE COURT: Okay. All right. Let me call it and we'll -- we'll get started. We're on the record this morning in the case of Stephanie Pressley v. Ridgeway Manor Healthcare and others. The case number's 2023-CP-20-00374.

Present for this hearing for the plaintiff is Grace Babcock and Chris Moore. And for the defense is Laura Paton. And Ms. Paton, this is your motion, if you'll just give me some of the facts, the allegations in the case, and then I'll hear your summary argument concerning arbitration.

MS. PATON: Very good. Thank you, sir. Again, my name is Laura Paton. I represent the defendants in this case. And as you said, sir, this is our motion to compel. The plaintiffs in this case are the estate of Gail Wright and Ms. Stephanie Pressley. This is a wrongful death and survivorship action.

The decedent, Mrs. Wright was a morbidly obese type 2 diabetic. She was paraplegic and bound to a wheelchair. And prior to her admission to my client's facility, Ridgeway Manor, she lived at home.

According to the notes from DSS, she was under the care of her family members, but on May 16th, 2021, she called emergency services because her caretakers, her family, had abandoned her for three days by herself, stuck in a chair.

EMS responded, she was hospitalized, and Richland

1 Family Court intervened. DSS worker, Carrie Singleton  
2 investigated the matter. And on May 18th, Judge Monet Pincus  
3 issued her order. The order, I believe, was included at  
4 Exhibit 1 of the plaintiff's brief.

5 In that order, Judge Pincus had certain findings of  
6 fact and conclusions of law, including that due to her  
7 abandonment by her caretakers, Miss -- Ms. Wright was a  
8 vulnerable adult that protective services were needed to keep  
9 Ms. Wright from substantial risk of abuse, neglect, and in  
10 exploitation, and that a guardian ad litem and an attorney  
11 should be assigned.

12 She ordered DSS to retain custody, and in her order,  
13 Judge Pincus said that Ms. Wright shall -- shall be placed in  
14 a facility that meets her level of care.

15 Now, Ms. Wright, having spent three days in the chair  
16 and being taken by EMS, first went to the hospital, and after  
17 two weeks of recovery, I believe on June 1st, she was  
18 admitted to my client's facility at Ridgeway.

19 While in the custody and control of DSS and as required  
20 by Judge Pincus' order, the DSS workers who investigated the  
21 abuse and neglect, which was the basis for Judge Pincus'  
22 order, executed the Ridgeway Manor admission and facility  
23 agreement.

24 Now that agreement in its entirety is included at  
25 Exhibit 3 of the plaintiff's materials. And if you look at

1 page 10 of 26, there is an arbitration provision and it's  
2 signed by Ms. Singleton as the care manager and Fantasia  
3 Hartwell on behalf of DSS.

4 Now, the signature on page 12 expressly states, "I  
5 warrant and represent that the resident has expressly vested  
6 in me the authority to sign this agreement on the resident's  
7 behalf." I don't believe that there's any -- there's been any  
8 allegations specific to -- or challenges to the veracity of  
9 the signatures made by these two DSS workers.

10 But certainly there's no reason to believe that these  
11 ladies signed an untrue statement that they were not vested  
12 with the authority by the resident. Now, having signed the  
13 admission agreement, including the express authorization and  
14 the arbitration provision, Ms. Wright was admitted to  
15 Ridgeway.

16 On the 14th and the 15th, the guardian ad litem for Ms.  
17 Wright spoke to all the family members, including Ms.  
18 Pressley, who agreed Ms. Wright needed 24-hour care. And if  
19 that care couldn't happen at home, she was better off at  
20 Ridgeway.

21 The Guardian ad litem report is also an exhibit to the  
22 plaintiff's brief, I believe it's on page 5. On the 18th,  
23 the guardian ad litem spoke with Ms. Wright, who acknowledged  
24 that her caregivers at home were not providing her the care  
25 she needed, and she reported that she was in a good placement

1 at Ridgeway Manor and that all of her necessary needs were  
2 being provided.

3 The guardian ad litem also spoke with Ridgeway Manor,  
4 who were honoring all the terms of the agreement, although  
5 they notably at the time they had yet to be paid, but they  
6 were still providing the room, the board, the linens, and the  
7 care that are included under the entire agreement here.

8 So having spoken with the entire family, Miss --  
9 including Ms. Pressley, the plaintiff, the guardian ad litem  
10 reported that Mrs. Wright's home was unsafe and unhealthy.  
11 That Mrs. Wright's caregivers were her family, but they had  
12 abandoned her for three days when they had other obligations.

13 The guardian ad litem recommended that DSS retain the  
14 custody that had already been granted by the Court, that she  
15 be kept in the placement at a secured assisted living  
16 facility, and the guardian ad litem recommended that she  
17 remain at Ridgeway Manor.

18 So we already have in place the facility and admission  
19 agreement, which I believe is 26 pages. In that agreement,  
20 we have at page 10, the arbitration provision, which has been  
21 signed by DSS, and we have the guardian ad litem here  
22 recommending that pursuant to the terms of that agreement,  
23 she continued to be given care and placement and assistance  
24 under the terms therein.

25 In sum, Ms. Wright's family, Ms. Wright's guardian ad

1 litem, Ms. Wright's DSS caseworker, and Ms. Wright herself,  
2 all agreed Ms. Wright should remain at Ridgeway Manor.

3 Now, unfortunately, Ms. Wright was clearly in bad  
4 health as evidenced by the fact that she was morbidly obese,  
5 she had diabetes, she required 24-hour care before she went  
6 to Ridgeway Manor.

7 And unfortunately, over the following months, there  
8 were several admissions to the hospital, and ultimately she  
9 passed away in September. Now, in 2023, Ms. Pressley filed  
10 the wrongful death and survivorship action alleging myriad  
11 issues, including the failure to provide sufficient care.

12 Defendants moved to stay the case and compel  
13 arbitration based on the provision on page 10 out of 26 of  
14 the admission and financial agreement. And that agreement  
15 requires that any legal dispute relating to the agreement or  
16 connected to the stay at the facility shall be resolved by  
17 binding arbitration.

18 The agreement is binding on the representatives, the  
19 agents, the heirs, and the assigns. The arbitration  
20 agreement has a confidentiality provision. It's to be  
21 overseen by a neutral. Bridgeway is responsible for the  
22 first \$500 and for 60 percent of the fees. And there's also  
23 a rescission provision.

24 And most -- most importantly, you know, your Honor,  
25 this is a valid and binding provision and it is part of a

1 larger agreement.

2 Now, the matter of Sanders, which I believe is quoted  
3 by the plaintiffs in their brief, Justice Toll has stated  
4 that nursing home agreements are subject to the FAA, which is  
5 found at Title IX of the US Code, and it's pursuant to Title  
6 IX and the FAA, the Federal Arbitration Act, that upon a  
7 finding of a valid arbitration provision, this must be stayed  
8 and sent to arbitration.

9 And it's pursuant to that and to the provision on page  
10 10 out of 26 of the admission and financial agreement that  
11 we've moved. Now, I understand that the plaintiffs -- excuse  
12 me. The plaintiffs opposed the -- our motion, arguing  
13 generically -- or arguing particular actually that DSS not  
14 Ms. Wright signed, and that Ms. Pressley is not a signatory  
15 to the agreement. And we absolutely disagree that that does  
16 not render these agreements moot or invalid.

17 At the time she was removed from her home and placed  
18 into custody and control of DSS. DSS was working under a  
19 court order. And under that order and the recommendation of  
20 -- of or the requirements of the Court, DSS was given the  
21 actual authority and ordered to secure a living situation  
22 where she would be cared for.

23 And part and parcel of securing that living situation  
24 is -- is signing an admission agreement. You don't get to go  
25 into a secure nursing facility without signing the facility

1 agreement. And in that agreement on page 10, there's an  
2 arbitration provision, no signature, no placement.

3 I would argue that DSS was invested by the Court with  
4 the authority and the order from Judge Pincus to execute the  
5 documents that had to be signed in order to get her a bed at  
6 that facility.

7 And I mean, logically, your Honor, what's the  
8 alternative? If you assume DSS does not have the authority  
9 to assign -- to sign admissions paperwork, what then? Are --  
10 are -- is DSS supposed to violate the Court's order and leave  
11 a woman who's been abandoned by her family to -- to care for  
12 herself? I mean, that's why we have the family court. The  
13 -- the result will be absurd.

14 In addition to having the actual authority under the  
15 order of Judge Pincus, there is also the authority granted to  
16 DSS under the law, under the APA.

17 Section 43-35-10 authorizes DSS to take a number of  
18 actions to protect vulnerable adults. And that includes --  
19 that includes providing services and -- and the -- the  
20 statute specifically says, "These services include, but are  
21 not limited to evaluating the need for protective services,  
22 securing, and coordinating existing services, arranging for  
23 living quarters, obtaining -- obtaining financial benefits,  
24 securing medical services, supplies, and legal services."  
25 That's South Carolina Code.

1           There is nothing that the legislature included in that  
2 code that's -- that limits the ability of DSS as part of  
3 arranging for those living quarters. There's nothing in  
4 there that says, "Well, DSS can arrange for living quarters,  
5 but only if there's not an arbitration agreement. You can  
6 sign X, but you can't sign Y."

7           That that is not what the legislature did. They left  
8 it to DSS to complete what they needed to do, to do the means  
9 and methods necessary to accomplish the task, which is the  
10 protection of a woman who'd been abandoned for three days.

11           So under basic statutory interpretation, your Honor,  
12 this has been left -- left broad intentionally by the South  
13 Carolina legislature to make sure DSS had the authority to do  
14 what needed to be done to protect our most vulnerable.

15           In addition to the actual authority granted under Judge  
16 Pincus' order and under the APA act by the legislature, South  
17 Carolina law also recognizes that even without actual  
18 authority, Ms. Hartwell and Ms. Singleton here had -- had the  
19 authority to proceed and that Ms. Wright and Ms. Pressley are  
20 still bound -- excuse me.

21           The estate of Ms. Wright and Ms. Pressley are still  
22 bound. They are equitably stopped from disclaiming the  
23 portion of the agreement that they don't like when they  
24 actively embraced and utilized the agreement to their  
25 benefit.

1           And I believe that the Pearson case is illustrative of  
2 -- of this point, Pearson is a 400 S.C. 281. I believe that  
3 one also might be cited by the plaintiffs.

4           It is a South Carolina Court of Appeals case, and it  
5 recognizes that once you have to allow a plaintiff to claim a  
6 benefit of a contract and simultaneously avoid its burdens,  
7 would both disregard equity and contravene the purposes  
8 underlying enactment of the arbitration act.

9           In the arbitration context, the doctrine of equitable  
10 estoppel recognizes a party may be stopped from asserting the  
11 lack of the signature on a written contract, precluding  
12 enforcement of the contract's arbitration clause, when he has  
13 consistently maintained that the other provisions in the same  
14 contract should be enforced to benefit him.

15           And that's what's occurred here. Your Honor, in this  
16 particular matter, we have the defendant who went -- excuse  
17 me. The plaintiff, when asked by the guardian ad litem, when  
18 interviewed by the guardian ad litem, and given the  
19 opportunity to provide a report if she would like to take  
20 custody and control and handle the care of her mother, did  
21 not do so. She agreed with the guardian ad litem that the  
22 best placement for her mother was in a assisted living  
23 facility.

24           So she's claiming the benefit here. She's actively  
25 divesting herself of the responsibility and taking that

1 benefit so that Ridgeway, rather than she herself, would have  
2 to care for this woman who required 24-hour assisted living.

3 Similarly, Miss -- Ms. Wright herself was asked about  
4 staying there and she, after being there for several weeks,  
5 wanted to maintain, wanted to stay there, wanted to continue  
6 utilizing the services.

7 So both the -- Ms. Wright and Ms. Pressley embraced the  
8 services provided by the contract. You cannot now in  
9 retrospect say, "Oh, we would like to pick and choose and we  
10 want to divest ourselves of this arbitration agreement."

11 Similarly, in the Pearson case, we have a third party  
12 -- we have enforcement on a third party who likewise was not  
13 a signatory to the contract, but also embraced the benefits  
14 of that contract.

15 And finally, we have basic common law agency where a  
16 party manifests is sent to another to act on their behalf as  
17 -- as with relative to estoppel where Ms. Wright reached out  
18 for help. DSS does not go knocking on her door. Where she  
19 has manifested her as her ascent to have someone else act --  
20 act on her behalf, there is agency conveyed. And that's what  
21 occurred here.

22 Miss -- Ms. Wright actively reached out for emergency  
23 services. She gave over to emergency services and ultimately  
24 the Court and DSS, her care and keeping. And we have my  
25 client, Ridgeway, relying on that agency, giving her the care

1 she needed in order to -- and -- and to its detriment based  
2 on that agency.

3 So there are a number of grounds here wherein clearly  
4 Ms. Wright's estate, Ms. Wright, and Ms. Pressley, are bound  
5 by the terms of the arbitration agreement, and this case must  
6 be stayed and sent to arbitration.

7 Plaintiffs make several different arguments based on  
8 cases including Stot Dean v. Heritage. And with respect to  
9 those, your Honor, they are all distinguishable. None of  
10 them have to do with DSS. They are not working under the APA  
11 or under the -- under a court order.

12 That create -- that is very distinguishable. These are  
13 generally cases where you have a family member who may or may  
14 not have had a power of attorney to act. And the question  
15 is, whether after the fact that whether or not the person had  
16 an active power of attorney, you know, was arbitration  
17 waived?

18 That's not what we have here, your Honor. This is not  
19 a family member who decided to check someone in. This woman  
20 sought help herself. The Court ordered her to be given help.  
21 They ordered DSS to get her into a facility. DSS had that  
22 order and had actual statutory law requiring them to put her  
23 into a facility that could help her. They executed the  
24 documents and they signed a statement on those documents  
25 saying that the resident had give -- vested them with

1 authority to sign those statements.

2           So these are all distinguishable. And there are --  
3 within the cases provided by the plaintiff, you know, there  
4 -- there are actually -- there are several that included as  
5 exhibits actually that were unpublished opinions. I believe  
6 they're at seven and eight, with respect to plaintiff's  
7 counsel, the South Carolina bars guide to the Courts which  
8 was published on the website. At chapter 4 states that,  
9 "Appellate court rules are strictly prohibiting any attempt  
10 to cite unpublished decisions as precedent." I believe it's  
11 Appellate Court Rule 268.

12           And that includes, you know, I believe it's seven and  
13 eight. Were the exhibits with the unpublished opinions. I  
14 would respectfully request that any reference to those or  
15 arguments based on Exhibits 7 to 8, which are unpublished  
16 opinions be stricken from the record as impermissible.

17           There is also, I believe a circuit court order that's  
18 included in there. That circuit court order has no  
19 presidential value on this case, and notably is a matter  
20 that's currently on appeal.

21           And again, I -- I say this with all due respect to  
22 plaintiff's counsel, but it -- it's inappropriate to -- to  
23 include those matters. So in some, your Honor, we're seeking  
24 here to move forward. I have not seen a case that has any  
25 weight on this port where DSS has been found not to have

1 authority to execute these agreements.

2 I think saying that DSS wouldn't have authority to  
3 execute these agreements is dangerous precedent. It would  
4 divest DSS of the ability to do what they needed to do to get  
5 vulnerable people checked into facilities to help them.  
6 It would also render new the order of the family courts who  
7 routinely have to order vulnerable adults into services and  
8 doing that requires signing these agreements. And there's a  
9 valid contract here that should be enforced.

10 Alternatively, should the Court not feel compelled to  
11 stay the entire case and send it to arbitration in its  
12 entirety, I would note that under the Sanders case and prime  
13 of paint, whether there is a valid arbitration agreement is  
14 up to the Court. But whether there is a question as to the  
15 validity of the contract with an arbitration provision, is  
16 actually up to an arbiter.

17 So to the extent that plaintiff questions the ability  
18 of DSS to sign the facilities agreement, which is a  
19 multi-page document, including the arbitration agreement,  
20 then should this court not feel compelled to send the entire  
21 case to arbitration, to the extent the plaintiffs question  
22 the right of DSS to sign these documents, that is a question  
23 as to the validity of the contract as a whole.

24 And under prime of paint and the Sanders case, that  
25 question is to the validity of the contract and the ability

1 of DSS to sign it, should go to an arbiter.

2 So the case should be stayed pending an arbiter's  
3 decision as to the validity of the contract as a whole. I  
4 appreciate -- I appreciate you hearing me out, your Honor.

5 THE COURT: Yeah, Thank -- thank you Ms. Paton. I -- I  
6 know Mr. Moore wants to to chime in, so I'm going to turn it  
7 over to you. I guess you'll be doing the argument and not  
8 Ms. Babcock. Mr. Moore?

9 MR. MOORE: That's right, Judge.

10 THE COURT: Okay. Be glad to hear from you.

11 MR. MOORE: Thank you, your Honor. May it please the  
12 Court? You know, I think it -- after hearing that the -- the  
13 biggest takeaway that I have is that they are conflating the  
14 department's ability to secure medical services or medical  
15 placement for a vulnerable adult versus the department's  
16 ability to waive a constitutional right of a resident.

17 And I think that that's an important distinction in  
18 these cases. Really in all the cases that we've cited in our  
19 brief that they claim are distinguishable, yet they fail to  
20 distinguish. And -- and really, I mean, it is a legal issue.

21 I heard a lot of facts which was a little surprising to  
22 me, Judge, because, you know, we have attempted to engage,  
23 and admittedly this is prior to Ms. Paton's involvement in  
24 this case, but we wanted to get some discovery on this issue,  
25 and the facility essentially said, "No, we're not going to do

1 that."

2           They gave us some very limited discovery under the  
3 guise that they did not want to waive their arbitration  
4 position. And we said, well, let's just litigate that on the  
5 merits and, you know, conduct some discovery, find out what  
6 exactly was going on.

7           And what they've done in their brief, and even some in  
8 their argument this morning, is remarkable to me because  
9 they're lumping in Ms. Pressley who's on this hearing with us  
10 as one of the people that was an architect of her mother's  
11 having to go into protective custody, and that's not true.

12           If they had reviewed the DSS file, which we have and  
13 have gotten in -- in this case they would know that that is  
14 not true. Now, there's no doubt that the circumstances were  
15 unfortunate that Ms. Wright went into protective custody, and  
16 we're not here to litigate the validity of that.

17           But that what they would know is that Ms. Pressley,  
18 from the moment she was put on notice, did everything in her  
19 power to get her mother into her own home care and custody  
20 and out of DSS.

21           But once that, you know, emergent protect -- emergency  
22 protective custody happens, Judge, as I'm sure you know,  
23 that's kind of a hard bell to unring without going through a  
24 bunch of red tape.

25           And they were almost there, unfortunately, Ms. Wright

1 passed away, which is why we're -- why we're here today. So,  
2 you know, I -- I don't think the facts are -- are as  
3 important and frankly, the facts that they're citing in  
4 support of their position that Ms. Wright embraced Ridgeway  
5 Manor or that Ms. Pressley assented to her being placed  
6 there, number 1 that's taken out of context, all it is out of  
7 our guardian's report that we, you know, attached to our  
8 brief.

9           And the reality is that Ms. Pressley offered to take  
10 Mrs. Wright back. But that wasn't something that couldn't be  
11 done without care plan and the family court procedures that  
12 have to be followed once somebody's, you know, deemed a  
13 vulnerable adult.

14           The one thing that my friend did not mention to you  
15 that was part and parcel of the family court proceeding is  
16 that Mrs. Wright was appointed an attorney and a guardian ad  
17 litem and nowhere -- and that was on May 20th. She was not  
18 placed at Ridgeway Manor until some weeks later in June.

19           And I think that's pretty notable because neither her  
20 -- her attorney or apparently Ms. Wright were consulted or  
21 asked to ascent to, or even given a copy of the arbitration  
22 agreement contained within the admission agreement that  
23 impacts her constitutional rights.

24           So I guess there are three contextual points I want to  
25 make. Number 1, there is no favor, no federal policy in

1 favor of arbitration in a case where the arbitration  
2 agreement is being sought or is attempting to be enforced  
3 against a non-signatory that is black letter law in South  
4 Carolina. And they can't distinguish that that's the Weaver  
5 case, or I'm sorry, that's the Wilson v. Willis and some  
6 other cases.

7 I think the Pearson case says that as well. There's  
8 also state law controls in any of these cases where they're  
9 seeking to enforce it against a non-signatory. So the -- the  
10 whole notion that under the Federal Arbitration Act, an  
11 arbiter has to hear this as a matter of first right, is -- is  
12 -- is incorrect.

13 There's also the issue that this is both a wrongful  
14 death and a survival claim. And there are there at least  
15 trial court holdings, which -- this is a trial court. I  
16 don't know of any -- maybe you can't, you know, point out  
17 what other judges have done in the appeals court. I'll  
18 accept that, that's fine. But I think you can pretty much  
19 look at whatever, you know, you want to look at and determine  
20 whether or not the analysis was helpful or not, and make your  
21 own decision, Judge.

22 But that's why we've attached some of these other trial  
23 court decisions grappling with -- with this specific issue.  
24 But in any event, there is some pretty good reasoning in why,  
25 because of wrongful death beneficiaries claim as individual

1 that because the statutory beneficiaries are clearly did not  
2 sign this and clearly sought no benefit from it, are not  
3 bound by it.

4 And -- and so I -- I firmly believe that if we're  
5 talking about what is to be, you know, arbitrable in this  
6 case, it's really only the survival claims. And those are  
7 not arbitral either. And the reason for that is because this  
8 arbitration agreement is neither valid nor enforceable in the  
9 little bit of discovery, or I guess the discovery we did and  
10 tried to attach to our brief, every indication is that Mrs.  
11 Wright, while paralyzed was competent, she had her mental  
12 faculties and there was no attempt to have her sign this  
13 agreement whatsoever or explain it to her.

14 And that's problematic for their position. If you --  
15 you look at the Scott -- the two Scott cases we cited, some  
16 comments that Justice Toll makes in the Dean case.

17 And as I was looking through this again, you know,  
18 before our hearing this morning, I -- I think that they just  
19 have a factual problem with the fact they didn't sign it in  
20 the right place. If the judge will allow -- if you're, you  
21 know, if you'll allow me, Judge, I'll see if I can't share  
22 this thing with you. I've got a -- I'll try it here.

23 This is part of our brief. Judge, can you see that?

24 THE COURT: Yes.

25 MR. MOORE: All right. So this is the -- I'm going to

1 just scroll up two pages real quick. This is the start of  
2 the arbitration agreement that's embedded in this admission  
3 agreement. And if you look right here, resident/responsible  
4 party. Resident/responsible party.

5 Print and sign representative legal designation, this  
6 is actually where you sign the arbitration agreement. All  
7 they've signed is that they warrant and represent that the  
8 resident has expressly vested in them the authority to sign  
9 this agreement on her behalf.

10 And that's not even true. At least on the record that  
11 we have because they're -- they're relying on the vulnerable  
12 adult statute in order to say that they have the authority to  
13 do it. I think this matters. They didn't sign it in the  
14 correct spot.

15 All they're -- all they're attesting to on this  
16 document is that they have some express authority to sign the  
17 agreement that they didn't actually sign. Now, maybe you say  
18 that's, you know, ticky tack and I'll accept that, but I --  
19 as a matter of strict contract principles, I think that  
20 matters.

21 The reality is that the vulnerable adult statute does  
22 not authorize DSS to waive a resident's constitutional  
23 rights. It says explicitly what it does is it gives the  
24 department the power to secure medical services to secure  
25 legal services.

1           In other words, they have the authority to get Mrs.  
2 Wright an attorney, or they have the authority to find Mrs.  
3 Wright medical care. What they don't have the authority to  
4 do is to provide her medical care or to provide her legal  
5 services or to waive her constitutional right.

6           There's just simply no basis, they cannot point to a  
7 single case or decision out of our state courts that say that  
8 that statute confers upon the department, the statutory right  
9 to waive Mrs. Wright's constitutional right to a -- to a jury  
10 trial. And -- and I think that's important, and that goes  
11 back to this distinction between the ability to get her  
12 medical help versus the ability to waive her constitutional  
13 right.

14           You can't lump those in together because the  
15 constitutional right is significantly more, -- more  
16 important. Further down in the admission paperwork, they --  
17 there is a consent form and it's the consent to basically  
18 give like a flu vaccine, and they write in the margins that  
19 the department can't consent to that, right?

20           They can't consent or waive Mrs. Wright's ability to  
21 take a flu vaccine. And I think that's because they  
22 understood that they don't have the right to make that kind  
23 of a healthcare decision for her. Just like they would not  
24 have the right -- I mean, if they can't consent to her  
25 getting the flu vaccine, how can they -- how can they waive

1 her constitutional right to a jury?

2 So I -- there's just to us, the statute doesn't help  
3 them. If it, you know, it -- it would have to say much, much  
4 more than it did. I also think it's problematic that Mrs.  
5 Wright had an attorney that was court appointed, who was not  
6 consulted prior to, you know, the entry of this agreement.

7 If what they are suggesting is that they're using it as  
8 a basis to have Ms. Wright, or I guess implied to Ms. Wright  
9 some consent to or express adopting -- expressly adopting  
10 that she was waiving her -- her right to a trial by jury.

11 I, you know, I think at a minimum they should have  
12 contacted her guardian ad litem and her attorney and  
13 presented that part of the resident agreement to her.

14 We're not disputing the fact that, you know, they had  
15 their ability to place her there and we're not faulting the  
16 -- the facility for wanting to place her there. I'm sure  
17 they wanted the money. So, you know, I -- I think it's --  
18 it's not fair to really kind of lump those two things  
19 together because what we're talking about is a legal  
20 constitutional right versus, you know, the right to secure  
21 medical services for somebody.

22 So if we're right about that, that they didn't have the  
23 actual authority to waive her constitutional rights, then the  
24 third party beneficiary analysis falls out because there's  
25 not a valid and enforceable arbitration agreement. We don't

1 believe the agency analysis is correct because Miss --  
2 despite the thing that they did sign, there's no evidence  
3 that Mrs. Wright expressly adopted that. And -- and  
4 frankly, I don't think she even knew about it because they  
5 never presented it to her.

6 And they could have because by all accounts, she was --  
7 she was competent. The guardian ad litem didn't say, you  
8 know, we need to get somebody to take care of this woman  
9 because she's incompetent or -- or mentally not there. That  
10 -- that just wasn't her situation.

11 On the estoppel argument, and I -- I argued a case  
12 similar to this in the Court of appeals recently, and it, you  
13 know, I take issue number 1 with equitable estoppel even  
14 applying in -- in the direct benefits estoppel framework. I  
15 think that's a federal construct.

16 And I think in South Carolina state court -- or state  
17 traditional equitable principles still apply, which would  
18 require that we had misled Ridgeway to their injury or that  
19 they had, you know, been prejudiced in some way by something  
20 that we did that was underhanded, which is just not supported  
21 by the factual record.

22 But even if you -- even if you employ the direct  
23 benefits test, it doesn't apply here. And I would point the  
24 Court to the -- the Weaver and the Hodge cases, which involve  
25 nursing home arbitration agreements signed by I think family

1 members. And the -- there's a pretty good analysis is pretty  
2 good analysis in both of those.

3 And those are recorded cases, so you are allowed to  
4 look at those, I suppose. But I think that really is kind of  
5 -- I would just say, look at that for my -- my position on  
6 the direct benefits estoppel.

7 And in terms of the benefit, the Pearson case is very  
8 distinguishable. That was an employment agreement where the  
9 locums doctor was aware of the contracts, he was being paid  
10 by the hospital under the locum tenants agreement for some  
11 period of time. And then, you know, once they fired him, you  
12 know, he sought to avoid the arbitration agreement in the  
13 same agreement that provided for his employment benefits.

14 And so in that situation, the Court said, well, yeah, I  
15 mean, you can't -- you can't embrace this agreement during  
16 the life of its existence and then try to avoid it once  
17 you're not happy anymore. And that's not really applicable  
18 to this, this scenario.

19 So I, you know, I just don't think that equitable  
20 estoppel is an issue here. We are not seeking to enforce the  
21 terms of the agreement and seeking to avoid it at the same  
22 time.

23 So, Judge, I think that's, you know, we -- we would  
24 just rely on our briefs. I think that the Pace case that  
25 Judge Kelly decided which is attached at the very end of our

1 brief, is instructive on this matter. He goes through that  
2 same analysis about how the vulnerable adult statute doesn't  
3 say what they want it to say. And I think that if that's  
4 true, which I think it is because it's clearly says secure  
5 legal services not provide legal services or gain the power  
6 to make legal decisions on behalf of a -- a vulnerable adult.

7 If that's right, then I think a lot of their other  
8 positions have to kind of fall by the wayside because the  
9 arbitration act at that point is not valid or enforceable  
10 without resort to some equitable doctrine. So that's -- I'm  
11 happy to answer any questions that you've got, Judge. Glad  
12 to be with you this morning.

13 THE COURT: Okay. Thank you, Mr. Moore. Ms. Paton,  
14 anything in brief response to plaintiff's argument?

15 MS. PATON: Yes, your Honor, if I may, there are a  
16 couple points that I would like to hit. First of all, under  
17 the APA Protective Services, Section 9 are not limited to  
18 securing financial benefits or hiring attorneys.

19 It states, "Securing and coordinating existing  
20 services, arranging for living quarters." Part and parcel of  
21 arranging for living quarters would be signing an agreement  
22 so that she could be admitted to those living quarters.

23 Second of all, the matter of Judge Kelly, that one is  
24 currently on appeal right now. I think the appellate brief  
25 is actually quite instructive as to why the APA does provide

1 those services.

2           Additionally, if I'm not mistaken, there's some  
3 distinguishing issues in the Kelly Case. I'm going to aim to  
4 be very, very brief, your Honor, I promise I'm just going to  
5 hit the highlights real quick.

6           My associate who drafted the brief in this case has his  
7 wife in surgery today. We did not include as much as I would  
8 have liked in our brief with respect to the points in -- in  
9 opposition to, or distinguishing characteristics of some of  
10 the cases the plaintiff has point out. So I would like to  
11 just put those on the record real quick.

12           THE COURT: Okay.

13           MS. PATON: With -- with respect to the Wilson v.  
14 Willis case, that is relative to individual, that was an  
15 insurance agreement. Those were individuals who had no idea  
16 that there was an agreement that even existed between an  
17 insurance company and an insurance agency.

18           It has nothing to do with a nursing home. It is, and  
19 quite literally had nothing to do with the benefits that  
20 those individuals under that agreement sought to sue. So  
21 that is wholly unrelated to this matter.

22           The direct benefits test, I believe is discussed in the  
23 Pearson case, which is a South Carolina case, and while it is  
24 an employment case, it is directly on point here as far as  
25 the benefits received. You have, I -- I find it difficult to

1 believe, although I can't read anyone else's mind that Mrs.  
2 Pressley was unaware that admissions documents would have to  
3 be signed in order for her mother to receive food, care,  
4 board, linens 24-hours, you know, around the clock services  
5 without having signed an agreement.

6           So presumably she knew that -- that there was some  
7 agreement in place and her mother was being given a benefit  
8 under that agreement. So I -- I do believe that one is on  
9 point. The Sanders case quoted by the plaintiff I believe  
10 stands for the position that, or the premise that an arbiter  
11 decides whether there's a valid arbitration agreement whether  
12 -- excuse me. Whether arbitration and agreement in a  
13 contract has been extinguished.

14           It goes back to what I mentioned earlier, honor whether  
15 or not there is a valid contract is a matter for an arbiter  
16 to decide whether or not the arbitration provision in the  
17 contract, if you're not contesting the contract is valid.  
18 That's for the Court to decide.

19           Which leads me back to if Your Honor, you know, if  
20 there is an issue that the plaintiffs are raising, whether or  
21 not DSS had authority to assign certain rights in here, that  
22 would be a matter for -- for an arbiter to make the decision.

23           As far as the stock case, which is quoted by the  
24 plaintiffs, that was with respect to a principal who was  
25 unable to make or participate in healthcare treatment

1 decisions. It specifically stands for the argument that a  
2 power of attorney, this is another one where it's not DSS, it  
3 is a family member checking someone in.

4 The power of attorney only goes into effect during a  
5 period of mental incompetence. And whether or not that  
6 family member had an authorized power of attorney, that's not  
7 what we have here. Your Honor, we have a court order and a  
8 statute, so it is irrelevant to the decision here.

9 The Dean v. Heritage Healthcare case, that was another  
10 power of attorney signed by a daughter. The issue there  
11 brought up by Justice Toll was that the Court should  
12 certainly inquire as to whether or not this daughter had the  
13 authority to sign -- to sign her mother in at all.

14 That Pace case cited by the plaintiff, the Court  
15 declined to enforce agency authority because agency requires  
16 embracing or showing that you've given some other party  
17 authority to act on your behalf. In the Pace case, they de--  
18 they decided that because the man was had dementia, he could  
19 never show that he'd given the authority to anyone else.

20 In the Scott v. Heritage Health case, there was a  
21 sister who signed in a family member, there was no power of  
22 attorney, and in that case, the woman was competent. She was  
23 not in the custody of DSS or subject to a court order.

24 In the Hodge case, we have, again, there's no court  
25 order. We have a power of -- there's no power of attorney.

1 We have a husband who signs in a wife, and that case stands  
2 for the position that there -- between a husband and a wife.  
3 There is not assumed agency that there has to be a  
4 manifestation of assent.

5 We have the Thompson v. Pruitt case. It's a question  
6 of whether there's a merger of two documents. Clearly in  
7 this case, we have one document. It is the financial  
8 services admission agreement. This is simply a provision  
9 therein.

10 The Weaver case, which is a matter where a  
11 granddaughter sought to -- sought survivorship benefits. In  
12 that particular case, the issue was whether or not the  
13 plaintiff's allegation stemmed directly from the contract.

14 So did the allegations flow from there? In this case,  
15 we -- again, we have a woman with dementia. We do not have  
16 DSS, we do not have a court order, and we similar --  
17 similarly, have no evidence that this granddaughter any --  
18 had ever had any responsibility over her mother or her  
19 grandmother.

20 Unlike in this case where we have the guardian ad  
21 litem, knowing that this woman has been checked in,  
22 confirming she needs to be checked in, checking with the  
23 family and no member of the family ever having completed the  
24 steps to take care of her.

25 There are a number of cases cited by plaintiff's

1 counsel, which I -- I appreciate the brief and them providing  
2 it in such a timely manner.

3 None of the cases cited, however, or on point with a  
4 DSS worker working under a court order and under a statute,  
5 Your Honor. Respectfully, if the Court would prefer that I  
6 provide a responsive brief or some kind of a reply brief  
7 outlining briefly these many arguments we've made relative to  
8 the cases that have been cited, I'm -- I'm glad to do so.

9 But in any case none of the cases that have been  
10 provided, none of the published cases that have been provided  
11 are on point in this matter. And I appreciate the Court's  
12 indulgence, giving me this much time to have our --

13 THE COURT: Sure. Sure. Glad to -- well, y'all have  
14 worked really hard on this. I appreciate that. And I know  
15 y'all's plate -- plates are full mindful, so I -- I will get  
16 to this just as soon as I possibly can. Again, thank you for  
17 your hard work on both sides.

18 MS. PATON: Thank you, sir.

19 THE COURT: Okay.

20 MR. MOORE: Thank you, Judge.

21 THE COURT: Thank you. Y'all have a good rest of your  
22 day.

23 MR. MOORE: You too.

24 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING IS CONCLUDED)

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**CERTIFICATE OF TRANSCRIBER**

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I, JANE DANIEL, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had, and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 11 of Fairfield County, South Carolina, on July 5, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

*Jane Daniel*

October 24, 2025

JANE DANIEL

TRANSCRIBER



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EXHIBITS

(None Marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

## PROCEEDINGS

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THE COURT: In the case of Stephanie Pressley as personal representative of the estate of Gail Wright v. Ridgeway Manor Healthcare Center, LLC, Deborah Sparks and James McCollum. The case number for this case is 2023-CP-20-00374, and representing the purposes of this hearing, Grace Babcock for the plaintiff and Laura Paton for the defendants.

This originated as far as appearing before me on defendant's motion to dismiss which, if I remember, and I know you've submitted me the order, and I appreciate that, Ms. Paton.

I think I -- I denied the motion to dismiss, maybe in part. I can't remember for sure, maybe incompletely. And then the defense timely filed a motion for reconsideration. So Ms. Paton, I'll allow you to be first up and be glad to hear from you.

MS. PATON: Thank you, sir. I represent the defendants in this matter. This is our Motion for Reconsideration on the motion to compel arbitration. You might recall, this is a nursing home matter. Ms. Wright was an elderly woman. She was left by her family caretaker.

She was trapped at home. Called EMS to rescue her after a few days, she was hospitalized, taken into custody by DSS. Judge Pincus ordered her to a skilled nursing facility

1 and DSS -- two workers from DSS Ms. Fantasia Hartwell, and  
2 Carrie Singleton, her caseworker, admitted her to my client's  
3 facility to Ridgeway Manor.

4 The admissions paperwork was signed by the caseworkers  
5 in this matter, and in the admissions paperwork, there was an  
6 arbitration provision.

7 Now, the -- an arbitration -- my -- my arguments, and  
8 I'll -- I'll try and be brief. I -- I'm going to rely on my  
9 brief largely on this, but I do want to hit the highlights.

10 THE COURT: Sure.

11 MS. PATON: Primarily, an arbitration agreement is, for  
12 all intents and purposes, it's a contract. There has to be  
13 offer acceptance and consideration. And one of the issues  
14 that has come up is Ms. Wright's ability or her capacity to  
15 enter into a contract.

16 And this matter, there's been substantial back and  
17 forth as to whether or not Ms. Wright had the ability to  
18 consent to contract. And if she did, the argument from the  
19 plaintiffs is that DSS did not have the authority to sign the  
20 arbitration provision on her behalf.

21 And in fact, that's included in the plaintiff's  
22 response brief that she had the capacity to manifest assent  
23 to agency. So the plaintiff's argument, which is the basis  
24 for the order as I read it, is that because Ms. Wright  
25 ostensibly had capacity to consent, her right to consent to

1 arbitrate could not be essentially usurped by DSS, she would  
2 have to consent herself.

3 But if I may if you actually look at the terms in that  
4 arbitration provision, what's signed by the DSS workers, Ms.  
5 Fantasia Hartwell, and Ms. Carrie Singleton, is that line  
6 stating that, "I warrant and represent that the resident has  
7 expressly vested in me the authority to sign this agreement  
8 on the resident's behalf."

9 So, in some, as I read the order, the courts denied the  
10 motion to compel arbitration based on an argument that DSS  
11 could not, under the APA in Judge Pincus' order, execute an  
12 arbitration agreement binding someone with capacity because  
13 she had the capacity to consent herself.

14 However, according to a sworn attestation by the DSS  
15 workers in that document, they were acting at Mrs. Wright's  
16 behest. If she has capacity, she also has the capacity to  
17 ask the DSS workers to sign that document for her.

18 She had that authority, and I would argue that if she  
19 had that authority and did so, then the DSS workers signing  
20 it, who've attested to signing it, had the authority to do  
21 so, and that Ms. Wright is actually bound by that document.

22 So we believe there might be misunderstanding of the  
23 underlying argument and -- and that the might be a  
24 misapplication of the -- of the law there. Ms. Wright  
25 himself did have -- herself give the express authority, she

1 gave it to the DSS workers to sign for her.

2           The second point I'd like to make is with respect to  
3 merger., The order cites to the Hodge case for the argument  
4 that the admission agreement and an arbitration agreement do  
5 not merge. But the order doesn't have any discussion of the  
6 facts in the body.

7           There's -- in footnote three of the order, it's  
8 somewhat inaccurately, indicates that there are separate  
9 choice of law provisions in the admission agreement versus  
10 the arbitration provision. And that might just be a  
11 misunderstanding.

12           But this ignores various factors that are present here  
13 and that are not included in the case law on which the -- the  
14 order rests. Specifically, the case law, there's an  
15 arbitration and an admission agreement. They're deemed to be  
16 separate documents, and the Court relies on the facts that  
17 the pages are separately paginated and there are  
18 distinguishable choice of law provisions.

19           However, in this matter, what is might be missed in the  
20 order is that actually the pages are consecutive here. The  
21 -- the document, the arbitration document is in fact embedded  
22 in the middle of the admission agreement. They are all  
23 stamped.

24           Specifically, the -- the arbitration provision, again,  
25 which is in the middle of the admissions documents, is

1 stamped. Ridgeway Manor Healthcare Center, LLC, admission  
2 and financial agreement.

3 Moreover, all of the pages in the admission and  
4 financial agreement document are stamped. Any liability  
5 assumed is subject to limitations of the rules, regulations,  
6 policies, and procedures of the South Carolina Department of  
7 Social Services and federal law governing the participant --  
8 participation of the agency and services program.

9 So, I would argue, Your Honor, that it is a  
10 misunderstanding to say that there are separate choice of law  
11 provisions between the arbitration agreement and the  
12 admissions package as a whole. I would reiterate that these  
13 documents are merged and that the order which cites to Hodge  
14 might be misapplied here.

15 I would further note that under Prime of Paint and  
16 Sanders v. Savannah Highway, there -- and I don't want to get  
17 cute with this, but if the Court finds that the documents are  
18 not merged, that the arbitration agreement is a wholly  
19 separate contract and not merely a provision of the admission  
20 contract, then the admission contract as a whole to determine  
21 the validity must be determined by an arbiter, not by the  
22 Court. It's under -- the Supreme Court has held that  
23 challenges to the container contract in which the arbitration  
24 is vetted.

25 Those are for the arbiter, while challenges to the

1 arbitration provision itself, that's for the Court to decide.  
2 Here, if the decision is that the arbitration provision is  
3 its own contract, separate and apart from the admissions  
4 agreement. Well, that separate and apart contract to  
5 determine the validity of it, that would be up to an arbiter,  
6 not to the Court.

7 And then finally, in reviewing my files for today,  
8 there seemed to be a little bit of confusion between the  
9 order and I believe an email from your clerk, August 2nd,  
10 2024, at 2:03 p.m., Carson Anderson emailed stating, "Judge  
11 Hawker's denying defense's motion to compel arbitration.

12 He finds that the plaintiff's strongest argument is  
13 that DSS did not have the authority to bind the statutory  
14 beneficiary to arbitration.

15 It's also not persuaded by the argument of estoppel, as  
16 this case deals with general care more than specific benefits  
17 of the contract. He does believe, however, that DSS did have  
18 the necessary authority to bind Mrs. Wright under the statute  
19 and the family court order end."

20 Now, this is significant because the South Carolina  
21 District Court has cited to the US Supreme Court for the  
22 opposite contention.

23 I believe it was Judge Hendricks in the matter of THI  
24 South Carolina which is 2015 Westlaw 1268185 stated, and I  
25 quote, "Additionally, the South Carolina Supreme Court made

1 clear indeed, that under South Carolina law, an arbitral  
2 agreement is still indeed binding on a decedent's estate for  
3 a claim and wrongful death."

4 So, if in fact, it was the underlying binding of Your  
5 Honor that DSS did have the authority to bind Ms. Wright  
6 under the statute and under the family court order, then  
7 based on what the Supreme Court -- South Carolina Supreme  
8 Court said in Dean and is reiterated by Judge Hendricks, the  
9 statutory beneficiaries of the estate are likewise bound.

10 But even setting that aside, sir, as I mentioned  
11 earlier, we don't even have to get to that argument because  
12 from the outset, if we look at the document itself, we seem  
13 to have missed the point that Ms. Hartwell and Ms. Singleton  
14 in signing that document are signing an attestation that Ms.  
15 Wright herself gave them authority.

16 So we don't even have to get to the argument of whether  
17 the APA or the order gave the DSS workers the authority, Ms.  
18 Wright herself gave them the authority, at least according to  
19 their sworn signatures.

20 And finally, it came up in the plaintiff's brief, and I  
21 do want to address it. I cannot find any documentation in my  
22 file that I or anyone in my office emailed a copy of our  
23 motion to Your Honor within the 10-day period. While we did  
24 file it timely, there is no email in my file shown. We sent  
25 it to Your Honor, to the other attorneys. I'm truly sorry

1 for that oversight.

2 As I recall, there were a number of post-hearing emails  
3 that were sent to you. And my files indicate that we sent a  
4 supplemental brief to you on July 9th, but that predates the  
5 motion that we filed.

6 As I understand from the case law, it's the judge's  
7 discretion how to address a lack of sending a motion directly  
8 to the judge within that 10-day time period. But given that  
9 our motion was timely filed, I believe we've -- we've  
10 complied with the -- with the rules. I would note that the  
11 requirement to give a copy to the judge directly is from a  
12 1998 amendment to the rules, which I wasn't practicing quite  
13 that far back, but when I did start practicing, nothing was  
14 filed via email.

15 We used to walk things down to the courthouse. My  
16 hunch is that the 1998 amendment was likely meant to assist  
17 in that process and ensure that a judge got a copy in a time  
18 before we filed anything via email or by ECF.

19 So, again, my apologies for not having emailed that to  
20 you in the 10-days of filing, and I sincerely hope we can  
21 move past that and actually look at the merits of this  
22 argument of our motion for reconsideration, which was itself  
23 timely filed. And I appreciate your time, sir. Thank you.

24 THE COURT: Okay. Thank you, Ms. Paton. If you could  
25 provide to me that email from then law Clerk Carson Anderson,

1 if you can get that to me as well as that case, that Westlaw  
2 site that you gave, if you could send that to me as well, I  
3 would appreciate it. No -- no big --

4 MS. PATON: Yes, sir. I'll do that now.

5 THE COURT: Okay. And Ms. Babcock, before I get to  
6 you, have you filed a -- some sort of memorandum concerning  
7 this motion for reconsideration?

8 MS. BABCOCK: Yes, Your Honor.

9 THE COURT: Okay. If you could email that -- that just  
10 makes it easier for me and I don't have to go on, you know,  
11 on the public records and -- and get that. So just at your  
12 convenience, send me your -- your memorandum. And I think  
13 what you sent me, Ms. Paton today, yesterday was your  
14 memorandum on the motion for reconsideration, correct?

15 MS. PATON: Yes, sir. I also sent the plaintiff's  
16 memo, and I sent a copy of your order as well. You should  
17 have all three.

18 THE COURT: I -- I -- I got all three. So, Ms.  
19 Babcock, you -- you're -- you're taken care of by Ms. Paton,  
20 okay?

21 MS. BABCOCK: Off the hook. Thank you.

22 THE COURT: Okay. All right. Ms. Babcock, I'll be  
23 glad to hear from you.

24 MS. BABCOCK: All right. Thank you, Judge Hawker. May  
25 it please the Court? So I don't want to take up too much of

1 your time. I think primarily the defendant's motion for  
2 reconsideration of the Court's order is with the exception of  
3 one piece, which I'll get to it -- it is a rehash of the  
4 arguments and the briefing made the first go around and the  
5 hour long oral argument that the parties had, I think back in  
6 July.

7 First, procedurally, Ms. Paton, there's -- there's no  
8 dispute that the defendants did not comply with Rule 59 (g).  
9 So it must be denied because it -- it -- it -- the movement  
10 is required to send a copy to the judge within 10-days of  
11 filing the motion, that did not happen.

12 Your Honor wasn't aware of the motion until plaintiff's  
13 counsel actually brought it to Your Honor's attention in  
14 January of this year.

15 Failing to comply with Rule 59 (g) is grounds alone for  
16 denying the motion.

17 And frankly, it's the easiest and -- and cleanest way  
18 to deny the defendant's motion and -- and get this up on  
19 appeal, which I think is the likely case here.

20 So ultimately 59 (g) disposes of this motion. And even  
21 in the age of e-filing, there's still a requirement, my firm  
22 has seen judges. I know Mr. Moore, he was telling me earlier  
23 about a judge up in Spartanburg dressing down a lawyer for  
24 not providing a judge a copy and denying the motion as a  
25 result.

1           So doing -- doing so, denying the motion based on 59  
2 (g) does not -- it doesn't prejudice Ridgeway Manor in any  
3 way. There's nothing new raised in the motion to reconsider  
4 that wasn't raised the first go around.

5           Substantively, I want to touch on a couple things that  
6 Ms. Paton stated. So the DSS workers that she's talking  
7 about, regardless of whether Mrs. Wright had capacity or  
8 didn't have capacity, they didn't have the authority to bind  
9 her to the -- the arbitration agreement.

10           So the -- the statute, the adult protection act, it  
11 just -- it doesn't confer that kind of authority to waive a  
12 person's constitutional right.

13           I mean, in any event, what -- what those DSS workers  
14 should have done was get the lawyer who was appointed to be  
15 her lawyer by the Family Court. They should have gotten that  
16 lawyer involved with this decision to explain to Mrs. Wright,  
17 you know, this is what you're doing. There's no evidence of  
18 that happening.

19           Likewise, she also had a GAL appointed to her as well,  
20 pursuant to, you know -- well, not pursuant to, but it --  
21 regardless, none of that happened here.

22           So whether this representation on the admission or the  
23 -- the -- the arbitration agreement, I -- It doesn't matter  
24 because DSS simply did not have the authority to bind Mrs.  
25 Wright and waive her constitutional right to a jury trial.

1           With respect to the mental competence, there's a little  
2 bit of a flip flop here because the plaintiffs in their  
3 initial briefing put forth evidence that Mrs. Wright was  
4 competent. The Ridgeway Manor embraced that and said, sure,  
5 she's competent.

6           Now, in their motion for reconsideration, it seems a  
7 little bit inconsistent with what is being argued. They're  
8 saying she wasn't competent. So it is a little bit  
9 confusing, but regardless on a -- on a 59(e) motion, it's a  
10 new argument.

11           The Court ultimately said in the order that they didn't  
12 make a -- there was no finding of whether Mrs. Wright was  
13 competent or not competent. It only stated that they -- the  
14 defendants didn't contest that Mrs. Wright was competent at  
15 the time of her omission. Regardless, doesn't matter because  
16 DSS doesn't have the authority to bind a resident to an  
17 arbitration agreement and waive a constitutional right.

18           With respect to the merger argument. Now, this, again,  
19 was already raised, briefed, argued at oral argument ruled  
20 upon by Your Honor. There's -- there's no misunderstanding  
21 there. With respect to the factors, I believe that Ms. Paton  
22 was talking about, or -- or the -- the items that Ms. Paton  
23 was talking about in the Hodge case, Ms. Paton pointed only  
24 to the pagination ignoring, you know, that there are -- there  
25 were two lines.

1           There was a line in the admission agreement, there was  
2 a line in the arbitration addendum for signatures just like  
3 in Hodge. There, you know, the South Carolina law governing  
4 the arbitration or the -- a admission agreement, excuse me,  
5 as opposed to state and federal law applying to the  
6 arbitration addendum, that's also similar to -- to Hodge.

7           In addition, there's also the -- these are all laid out  
8 in the Hodge case, but in the arbitration addendum, in this  
9 case, it could be revoked within three days. The admission  
10 agreement does not have a provision to that effect.

11           I believe there's one other that I -- I may have  
12 missed, but ultimately the Court was correct in finding that  
13 there was no merger, the Prime of Paint and the Sanders v.  
14 Savannah Highway case doesn't apply. And that's because when  
15 a non-signatory like Mrs. Wright, the non-signatory to an  
16 arbitration agreement is trying to be compelled to  
17 arbitration state law governance, that is the law in South  
18 Carolina.

19           So the -- any discussion of the FAA Supreme Court,  
20 United States Supreme Court cases, and the Savannah Highway  
21 case, it -- it just simply does not apply.

22           Last, with respect to your clerk's email that Ms. Paton  
23 is -- has raised, that was the last point that she raised. I  
24 understood the email to be saying that the DSS workers could  
25 get Ms. Wright into Ridgeway Manor, because that's what the

1 -- that's the authority that the statute, the APA confers  
2 onto DSS workers to arrange for, you know, living  
3 arrangements, secure medical services, things of that nature.

4 I mean, it's listed in the statute, but it was my  
5 understanding that the clerk's email said, you know, DSS can  
6 get Mrs. Wright into the facility, but does not have the  
7 right to waive her constitutional right to a trial by jury.  
8 So I'd be happy to answer any questions that Your Honor may  
9 have. Thank you for your time.

10 THE COURT: Okay. Thank you, Ms. Babcock. Ms. Paton,  
11 anything in brief response to anything Ms. Babcock raised?

12 MS. PATON: Yes, sir. Just briefly. With respect to  
13 Rule 59 (g) and sending a copy to the judge, as I noted  
14 before, I'm terribly sorry we didn't do that. We did file  
15 the motion timely.

16 It is not fatal on its face that is up to the judge  
17 himself. And I'm sincerely helpful that Your Honor will  
18 actually look at the merits of this matter rather than ruling  
19 -- excuse me. On a minor procedural issue.

20 With respect to the argument that we're rehashing  
21 arguments from the initial briefing, I would disagree with  
22 that. I think that we're directly responding to some issues  
23 that -- that were included in the order.

24 And finally, with respect to Ms. Wright's competency,  
25 I'm arguing in the alternative. If in fact, a lien into the

1 plaintiff's argument that Ms. Wright is competent, if we  
2 accept that on its face, then there's no reason to believe  
3 that she absolutely could not have given agency verbally to  
4 the DSS workers as they've attested to on the document that  
5 they had expressed permission from her in order to do it.

6 If in fact she wasn't competent, then the APA and the  
7 judge's order gave them the authority. Either which way you  
8 cut it, whichever way in the alternative I argue, the -- the  
9 person's putting pen to paper on behalf of Mrs. Wright did,  
10 in fact, I would argue, have authority to do so for her.

11 Thank you, sir.

12 THE COURT: Okay. Thank you. Ms. Paton. Ms. Babcock,  
13 thank you very much. Appreciate your hard work. I'll need  
14 to -- for y'all to exercise a little patience with me and  
15 getting a ruling out. As you may or may not know, I'm now  
16 active retired. Consequently, we no longer have AAs or law  
17 clerks. So I'm flying solo here. So just -- please be  
18 patient with me, okay? And I'll try to get something out  
19 just as soon as I possibly can, okay?

20 MS. BABCOCK: Thank you, Judge.

21 MS. PATON: Yes, sir. We appreciate it. Thank you.

22 THE COURT: Thank you. Y'all have a good rest of your  
23 day. See you, Chris.

24 MS. PATON: Enjoy your trial, sir.

25 THE COURT: Okay. Thank you.

1           MR. MOORE: See you, Judge.

2           (THERE BEING NO FURTHER QUESTIONS, THIS HEARING IS CONCLUDED)

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**CERTIFICATE OF TRANSCRIBER**

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I, JANE DANIEL, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had, and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 11 of Fairfield County, South Carolina, on March 25, 2025.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

*Jane Daniel*

October 24, 2025

JANE DANIEL

TRANSCRIBER

STATE OF SOUTH CAROLINA COUNTY OF FAIRFIELD	IN THE COURT OF COMMON PLEAS C.A. No.: 2023-CP-20-00374
Stephanie Pressley, as personal representative of the Estate of Gail Wright,  Plaintiff,  v.  Ridgeway Manor Healthcare Center, LLC, Deborah Sparks, and James McCollum,  Defendants.	<b>DEFENDANTS RIDGEWAY MANOR HEALTHCARE CENTER, LLC, DEBORAH SPARKS, AND JAMES MCCOLLUM'S MOTION TO COMPEL ARBITRATION AND PROTECTIVE ORDER FROM DISCOVERY</b>

**TO: PLAINTIFF AND HER ATTORNEYS, CHRIS MOORE, ESQ., GRACE BABCOCK, ESQ., TONY DESSAUSURE, ESQ. AND RICHARDSON THOMAS, LLC**

YOU WILL PLEASE TAKE NOTICE that Defendants Ridgeway Manor Healthcare Center, LLC, Deborah Sparks, and James McCollum (collectively "Defendants") through their undersigned attorneys, will move on the tenth (10<sup>th</sup>) day after service of this Motion, or as soon thereafter as this matter can be heard, for an Order compelling arbitration and for a protective order from discovery pursuant to Rule 12(b)(1), (2), (3), and (6), SCRCF, Rule 26(c), SCRCF, the Federal Arbitration Act (9 U.S.C. § 1, et seq.), and all applicable case and statutory law. As part of Defendants' Motion to Compel Arbitration and Protective Order from Discovery, Defendants seek an Order from this Court, requiring that pursuant to the executed Ridgeway Manor Healthcare Center, LLC Admission and Financial Agreement on May 28, 2021 that any dispute between Ridgeway Manor Healthcare Center, LLC and Gail Wright, including her heirs, shall be settled by binding arbitration and not by a lawsuit or other court process.

Since this matter is required to be settled by arbitration, Defendants respectfully request that this Court stay and protect Defendants from any additional discovery, including from any requirement to file further responsive pleadings, respond to any motions filed by Plaintiff, or respond

to any discovery requests served by the Plaintiff until arbitration is completed by the parties. In the alternative, Defendants request that this matter be stayed pending the outcome of arbitration pursuant to Section 3 of the Federal Arbitration Act.

In support of Defendants' Motion to Compel Arbitration and Protective Order from Discovery, Defendants will rely on this Motion and any memorandum of law, affidavits, exhibits, or attachments that Defendants may file in this matter before the hearing of this Motion.

Respectfully submitted,

s/J. Ben Alexander  
J. Ben Alexander SC Bar No. 15323  
Ayla G. Luers Connor SC Bar No. 103057  
Haynsworth Sinkler Boyd, PA  
PO Box 2048  
Greenville, SC 29602  
864.240.3323  
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*Attorneys for Defendants*

Dated: January 12, 2024  
Greenville, SC



Wright. *See* Exhibit 1 (72-hour hearing). Attorney Lynn Hensel was appointed to represent Ms. Wright. *See id.* Peter Reinhart was appointed Ms. Wright's Guardian *ad Litem*. *See* Exhibit 2 (Order Appointing GAL). On June 1, 2021, Ms. Wright was placed at Ridgeway Manor from Prisma Health Richland. Her skin was intact. Thirty days later, Ms. Wright was transferred to Prisma Health where it was noted that Ms. Wright had a worsening Stage II decubitus ulcer.

At the time of her admission to Ridgeway Manor, Mrs. Wright had a court appointed guardian *ad litem* and attorney. More importantly, Mrs. Wright was mentally competent at the time. An SCDSS worker executed the paperwork for Mrs. Wright's admission. This included signing an Admission Agreement and Financial Agreement on SCDSS and Mrs. Wright's behalf. *See* Exhibit 3 (Admission Agreement and Financial Agreement). The paperwork included an addendum with an arbitration agreement. *See id.* at p.11. There is no evidence that Mrs. Wright was involved in the execution of the paperwork or that it was even discussed with her despite her being mentally competent.

Mrs. Wright's mental competence is evidenced throughout her medical records that at or around her admission to Ridgeway Manor, Ms. Wright was overall oriented to person place time and situation:

Type of assistive device? none

**Mental/Neuro**

Responsiveness: Responds to commands  
 Uses communication devices: No  
 Level of consciousness: Alert  
 Oriented to: Person, Place, Time and Situation  
 Speech: Clear  
 Left eye - Pupil size: 3mm  
 Left eye - Pupil shape: Round  
 Left eye - Pupil Response: Brisk  
 Left eye - Accommodation normal? Yes  
 Right eye - Pupil size: 3mm  
 Right eye - Pupil shape: Round  
 Right eye - Pupil Response: Brisk  
 Right eye - Accommodation normal? Yes  
 Hand grasp strength: Weak bilaterally  
 Foot press strength: Weak bilaterally

<b>Resident Progress Notes: Wright, Gail (Full Code)</b>			
<b>Unit:</b>	HALL 1	<b>Attending:</b>	Dr. Peter Maung
<b>Room/Bed:</b>	104/A	<b>MR #:</b>	160325-01
		<b>Status:</b>	In House
<b>Date</b>	<b>Progress Note</b>	<b>Discipline</b>	<b>e-Signed By</b>
06/01/2021 5:39PM	Resident is a 66 yo morbidly obese female transferred from RMH to the unit via ambulance. She arrived in no distress. Her stay there was centered around her home social situation. <u>Resident is alert and oriented x4, she voices her needs well</u> and voices no distress at this time. V/S: 98.3 60 16 165/83 99% room air. Resp even and unlabored with clear lung sounds. Reg heart sounds and bowel sounds present in all 4 quads. Skin is warm, dry, and intact throughout her body except for a slight abrasion to the outer aspect of her left calf. Mediplex dressing present at site-dry and intact. Able to freely move arms as well as slight movement in lower legs and feet. States presence of sensation to both legs. Per report, she is unable to stand/ambulate and is incontinent of bowel and bladder. Hygiene care provided and new brief applied. She is a Type 2 diabetic with Checks before meals and bedtime (per hospital report). Resident was oriented to the unit and educated on use of call light. Kitchen notified of diet. Orders placed into computer and sent to pharmacy.	Nursing	Christopher Cooper RN

E.g., Exhibit 4 (Ridgeway Manor Record Excerpts). Mrs. Wright's guardian Peter Reinhart's report to the family court also found Mrs. Wright to be mentally competent:

**Guardian ad Litem Observations:**

The Guardian ad Litem talked to Ms. Wright on June 18, 2021, by telephone from Ridgeway Manor Healthcare. Ms. Wright appeared to be in a good state of mind alert to her present condition and placement. Ms. Wright indicated to the GAL that she wanted to go home but realized that she needed 24-hour care and that her caregivers were not providing that care. Ms. Wright indicated to the GAL that she was in a good placement with all the necessary care provided for her needs.

See Exhibit 5 at p.3 (GAL Report to family court).

Despite this, the defendants now seek to bind Mrs. Wright and Ms. Pressley to an arbitration agreement to which they are not signatories and to which they did not consent.

**LEGAL STANDARD**

Whether there exists an enforceable agreement to arbitrate is a question for the courts. See *Sanders v. Savannah Highway Automotive Company*, 440 S.C. 377, 388, 892 S.E.2d 112, 118 (2023); e.g., *Sanford v. Memberworks, Inc.*, 483 F.3d 956 (9th Cir. 2007); *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967); *Zabinski*, 346 S.C. at 593. Arbitration is strictly a matter of consent, and a party cannot be compelled to arbitrate when they never agreed to

in the first place. *See Sanders*, 440 S.C. at p.391; *AT & T Tech., Inc. v. Commc'n Workers of Am.*, 475 U.S. 643, 648, 106 S.Ct. 1415, 89 L.Ed.2d 648 (1986). If a party has not entered into an agreement to arbitrate, a court cannot force him or her to do so. *E.g., Malloy v. Thompson*, 409 S.C. 557, 762 S.E.2d 690 (2014).

Where a party seeks to compel arbitration of claims of a nonsignatory to the arbitration provision “a presumption *against* arbitration arises where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate.” *Wilson v. Willis*, 426 S.C. 326, 337, 827 S.E.2d 167, 173 (2019) (emphasis in original). And where, as here, there is no contractual provision to arbitrate binding on the plaintiff or decedent “[t]here is . . . no public policy—federal or state—‘favoring’ arbitration.” *Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 432 S.C. 633, 639, 856 S.E.2d 150, 153 (2021). “State law controls when an arbitration agreement may be enforced against someone who has not signed it.” *Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 228, 847 S.E.2d 268, 271 (Ct. App. 2020).

### ARGUMENT

The Arbitration Agreement presented by Defendant Ridgeway Manor is not enforceable for the following reasons: (1) the Arbitration Agreement was executed by DSS and **not** by Mrs. Wright, her beneficiaries, Defendants, or anyone with legal authority to act for Mrs. Wright; (2) the Arbitration Agreement cannot be enforced against Plaintiffs as non-signers because the doctrine of equitable estoppel does not apply to the facts of this case; and (3) DSS cannot waive Ms. Wright’s statutory beneficiaries’ rights to a wrongful death claim.

#### **I. Ms. Wright cannot be compelled to arbitration because she is not a signatory to the Arbitration Agreement.**

“State law controls when an arbitration agreement may be enforced against someone who has not signed it.” *Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 230, 847 S.E.2d

268, 272 (Ct. App., 2020) (citing *Wilson v. Willis*, 426 S.C. 326, 338, 827 S.E.2d 167, 173–74 (2019)); *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 630–31, 129 S.Ct. 1896, 173 L.Ed.2d 832 (2009). South Carolina law recognizes several theories whereby a nonsignatory can be bound by an arbitration agreement. *Malloy v. Thompson*, 409 S.C. 557, 561–62, 762 S.E.2d 690, 692 (2014) (listing theories as incorporation by reference, assumption, agency, veil piercing/alter ego, and estoppel). Defendants are likely to argue estoppel as that is the only theory that would apply here since Mrs. Wright and Ms. Pressley are nonsignatories.

The only individuals who signed the intake paperwork, including the arbitration agreement, were SC DSS workers:

understand and hereby agree to all requirements set forth in this Admission & Financial Agreement, including the grievance procedure.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have signed this agreement on

\_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_

Day Month Year

Resident (signature) RCDSS Resident (print) Fantasia Hartwell

Address of Resident \_\_\_\_\_

Ridgeway Manor Healthcare Center, LLC  
Admission & Financial Agreement

Resident Initials \_\_\_\_\_ Responsible Party Initials RH

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IF SIGNED BY THE RESPONSIBLE PARTY/RESIDENT REPRESENTATIVE ONLY:

I warrant and represent that the Resident has expressly vested in me the authority to sign this Agreement on the Resident's behalf.

X Fantasia Hartwell  
Responsible Party/Resident Representative (print)

X Keri Singleton Case Manager  
Responsible Party/Resident Representative Relationship to Resident

X [Signature] ECSS  
Responsible Party/Resident Representative signature

X 2638 Two Notch Rd Suite 200  
Address for Responsible Party/Resident Representative

\_\_\_\_\_  
Facility Representative (print)

\_\_\_\_\_  
Facility Representative (signature)

See Exhibit 3 at pp.8-9 (Admission Agreement).

Resident/Responsible Party (print) \_\_\_\_\_ Resident/Responsible Party (signature) \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Representative Legal Designation

IF SIGNED BY THE RESPONSIBLE PARTY/RESIDENT REPRESENTATIVE ONLY:

I warrant and represent that the Resident has expressly vested in me the authority to sign this Agreement on the Resident's behalf.

X Fantasia Hartwell  
Responsible Party/Resident Representative (print)

X Keri Singleton Case Manager  
Responsible Party/Resident Representative Relationship to Resident

X [Signature]  
Responsible Party/Resident Representative signature

X 2638 Two Notch Rd Suite 200  
Address for Responsible Party/Resident Representative

\_\_\_\_\_  
Resident Initials

\_\_\_\_\_  
Responsible Party Initials

Ridgeway Manor Healthcare Center, LLC  
Admission & Enrollment

See id. at p. 12.

Arbitration is strictly a matter of consent, and a party cannot be compelled to arbitrate when they never agreed to in the first place. See Sanders, 440 S.C. at 390, 892 S.E.2d at 119.

If a party has not entered into an agreement to arbitrate, a court cannot force him or her to do so. *See e.g., Malloy v. Thompson*, 409 S.C. 557, 762 S.E.2d 690 (2014). It is undisputed that neither Ms. Wright, her daughter Ms. Pressley, nor Ridgeway Manor executed the arbitration agreement in this case. For that reason alone, Defendants' motion must be denied.

**A. DSS lacked the authority to waive Ms. Wright's constitutional right to a jury trial.**

In order to compel arbitration against a non-signatory, the signer—DSS workers—must have possessed the requisite authority to bind Mrs. Wright to arbitration. At the outset, DSS caseworkers lacked the authority to bind Mrs. Wright to an arbitration agreement because she was mentally competent at the time the documents were executed by DSS. *See e.g., Stott v. White Oak Manor, Inc.*, 426 S.C. 568, 575, 828 S.E.2d 82, 86 (Ct. App. 2019) (“Because we find Decedent was mentally competent to sign the Arbitration Agreement, we affirm the circuit court’s decision that [the DPOA holder] did not have to sign the arbitration agreement.”); *Dean v. Heritage Healthcare of Ridgeway*, 408 S.C. 371, n.13, 759 S.E.2d 727 (2014) (Chief Justice Toal) (“We are concerned that, according to the Record, the patient did not sign either the residency agreement or the Agreement on her own behalf, despite being competent at the time, nor did Respondent possess a health care power of attorney to sign either contract on the patient's behalf. The parties did not address this issue on appeal....”).

As a mentally competent adult, only Mrs. Wright had the authority to sign the arbitration agreement waiving her constitutional right to trial by jury.<sup>1</sup> Indeed, Mrs. Wright was able to make her own decisions as evidenced by GAL Reinhart’s report to the family court, and the medical records from Ridgeway Manor. *See* Exhibit 4; Exhibit 5.

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<sup>1</sup> *See* Rule 38(a), SCRCF: “The right of trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties inviolate.”

Ms. Wright was bedbound due to paraplegia that affected her legs. This did not affect her mental competence or ability to sign an agreement. As a result, DSS lacked the authority to bind Ms. Wright to the arbitration agreement.

**B. The South Carolina Adult Protection Act and Order granting DSS custody of Ms. Wright do not give DSS the power to waive her Constitutional right to a jury trial.**

Next, Defendants are expected to argue that as a “vulnerable adult” under the South Carolina Adult Protection Act, S.C. Code Ann. § 43-35-5 *et seq.* (the “Act”), and by virtue of the Order granting DSS protective custody of Ms. Wright, DSS was authorized to waive Ms. Wright’s constitutional right to a trial by jury. *See* Exhibit 6 (Defs’ Amended RTA Responses). But all nursing home residents are defined as vulnerable adults under that statute without any consideration of the resident’s mental or physical capabilities. *See* S.C. Code Ann. § 43-35-10(11) (“...A resident of a facility is a vulnerable adult.”). Notably, this argument was rejected by Judge Kelly in Spartanburg County. *See* Exhibit 10 (*Pace v. Lake Emory Post Acute Care, et al.*, C/A No. 2019-cp-42-03709, finding that DSS lacks authority to execute an arbitration agreement on behalf of a resident, currently on appeal with the South Carolina Court of Appeals).

The Act sets forth the authority and procedure for the State of South Carolina to take a vulnerable adult into protective custody. The other provisions of the Adult Protective Services Program relate entirely to the duties and responsibilities of the GAL. Specifically, DSS is authorized to petition the courts for protective services. “Protective services” are defined 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).

Under the plain language of the statute, DSS can arrange for living quarters, secure medical care, and hire an attorney for the vulnerable adult if one is needed. DSS cannot itself perform medical treatment or legal services. It strains credulity to suggest that this Act grants authority for any person employed by DSS to waive a constitutional right especially when the court is required to also appoint a guardian *ad litem* and an attorney for the vulnerable adult following the petition for emergency protective services such as the situation here. *See id.* § 43-35-45. Protective services are not so sweeping.

**C. Ms. Wright has not been certified “Unable to Consent” pursuant to the South Carolina Health Care Consent Act.**

The South Carolina Health Care Consent Act, (hereafter “SCHCA”), codified at South Carolina Code Ann. § 44-66-10 *et seq.*, defines “unable to consent” to mean, in relevant part:

[U]nable to appreciate the nature and implications of the patient's condition and proposed health care, to make a reasoned decision concerning the proposed health care, or to communicate that decision in an unambiguous manner....**A patient's inability to consent must be certified by two licensed physicians**, each of whom has examined the patient. However, in an emergency the patient's inability to consent may be certified by a health care professional responsible for the care of the patient if the health care professional states in writing in the patient's record that the delay occasioned by obtaining certification from two licensed physicians would be detrimental to the patient's health.....

S.C Code Ann. § 44-66-20(8) (emphasis supplied).

No such certification exists for Mrs. Wright, and even if one did, a DSS worker cannot have authority under the SCHCA to execute an arbitration agreement when the resident was competent at the time of admission, and the signer had no health care power of attorney. *See*

Exhibit 7, *Scott v. Heritage Healthcare of Estill, LLC*, Op. No. 2014-UP-317, 2014 WL 3845113 (S.C. Ct. App. filed Aug. 6, 2014) (unpublished) (cited by *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018)); *Thompson v. Pruitt Corp.*, 416 S.C. 43, 55, 784 S.E.2d 679, 686 (Ct. App. 2016).

Only when a vulnerable adult is unable to provide consent consistent with the SCHCA regarding proposed healthcare, does the SCHCA create a priority list of those able to consent on his behalf. *See* S.C. Code Ann. § 44-66-30. Even if Ms. Wright had been “unable to consent,” DSS workers are not included in the priority list. There is no support for any suggestion that any employee of DSS has authority to bind a mentally competent vulnerable adult to arbitration by virtue of the Adult Protection Act, Order granting DSS custody, or the SCHCA.

**D. DSS lacked Common Law Agency to bind Ms. Wright to an arbitration agreement.**

Should Defendants suggest that the DSS workers acted as Ms. Wright’s agent to bind her to the arbitration agreement there is no evidence of any representations to Ridgeway Manor regarding DSS’s authority to act on her behalf. However, Defendants could not rely on those representations anyway if made. “[A]n agency may not be established solely by the declarations and conduct of an alleged agent.” *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 566, 813 S.E.2d 292, 304 (Ct. App. 2018) (citing *Cowburn v. Leventis*, 366 S.C. 20, 39-40, 619 S.E.2d 437, 448 (Ct. App. 2005) (quoting *Frasier v. Palmetto Homes of Florence, Inc.*, 323 S.C. 240, 245, 473 S.E.2d 865, 868 (Ct. App. 1996)).

Second, even if authority was given to the DSS workers, which is expressly denied, South Carolina law recognizes the principle that the authority conveyed to an agent does not

encompass executing an agreement to resolve legal claims through arbitration. *See Thompson, supra.*

**II. Ridgeway Manor cannot use equitable estoppel to bind Ms. Wright to an agreement signed by DSS.**

Equitable estoppel is a theory by which a party attempts to enforce an arbitration agreement against a non-signer when (1) the non-signer’s claim arises from the contractual relationship; (2) the non-signer has “exploited” other parts of the contract by taking advantage of its benefits; and (3) the claim relies solely on the contract terms to impose liability. *See Weaver, 431 S.C. at 230.*

In *Weaver*, the Court of Appeals considered whether “direct benefits estoppel” or “equitable estoppel” applied to the enforcement of an arbitration agreement with respect to a granddaughter’s claims against a nursing facility wherein the grandmother had eloped undetected from the facility and wandered into an alligator pond, resulting in her death. *See id.* The court concluded that Weaver was not bound by the arbitration provision. *See id.* Brookdale argued that Weaver’s claims were funneled to arbitration because her ability to sue stemmed from the residency agreement containing the arbitration agreement.<sup>2</sup> *See id.* The court determined that this argument was “easily scotched.” *Id.*

Equitable estoppel is not implicated simply because a claim relates to or would not have arisen but for the contract’s existence. *See id.* The court reasoned that Weaver’s claims rely on general tort duties owed by NHC to its patients – and did not flow from any provision of the residency agreement. *See id.* The duty to provide care consistent with the applicable nursing standards of care does not flow directly from the residency agreement. *See id.* A benefit

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<sup>2</sup> The arbitration agreement in this case is a separate addendum to the Admission and Financial Agreement.

is “direct” if it flows “directly from the [contract]” but is indirect if the claim relates generally to the contractual relationship of the parties but does not “exploit” the agreement itself. *See id.* The court went on to opine that Weaver had not exploited or sought to enforce or benefit from the residency agreement “any more than a pedestrian run over by a truck has benefited from the contract for the purchase of the truck.” *Id.* Weaver had not attempted to procure a direct benefit from the residency agreement while trying to avoid the arbitration agreement. *See id.*

In a similar analysis, the *Hodge* court considered whether the plaintiff had received a direct benefit and expressly held that “[t]he only agreement from which [plaintiffs] even arguably received a benefit was the admission agreement because [patient] was admitted to the facility as a result of it. However, because the facility allegedly caused [the patient]’s injuries that later led to her death, we find it difficult to find she benefited even from being admitted.” *Hodge*, 422 S.C. at 564. Equitable estoppel is a theory to prevent *injustice* and it should be used sparingly. *See Weaver*, 431 S.C. at 233.

In a recent unpublished opinion, the Court of Appeals determined that the doctrine of equitable estoppel did not apply wherein the spouse of a nursing home resident brought claims against the facility. *See Exhibit 8, Alston v. Conway Manor, LLC*, 2021 WL 1227786, at \*2 (Ct. App. Mar. 31, 2021) (unpublished). The daughter of the decedent had executed the arbitration agreement without authority. *See id.* The court determined that the spouse did not rely on duties set forth in the admission agreement as a basis for her claims nor asserted a breach of the admission agreement as a cause of action. *See id.* (citing *Hodge*, 422 S.C. at 563 (“[E]ven if the Admission Agreement and Arbitration Agreement merged, because Respondents are not suing for a breach of the Admission Agreement, they are not attempting to enforce that

agreement. Therefore, the circuit court did not err in finding equitable estoppel did not bar Respondents' claims.'')).

Equitable estoppel does not apply to bind Ms. Pressley and decedent to arbitration whether the Admission Agreement and Arbitration Agreement merge or not. The plaintiff is not attempting to enforce any provision of the Admission Agreement and at the same time deny an arbitration agreement therein. There has been no exploitation of the contracts' provisions by Ms. Pressley or Mrs. Wright, no benefit was derived under the Agreements by Mrs. Wright,<sup>3</sup> and the claims asserted in the complaint flow from alleged breaches in general tort law, regulatory and statutory duties and not from the Admission Agreement or Arbitration Agreement. *See Weaver*, 431 S.C. at 231. Because Ms. Pressley is not attempting to enforce any agreement and no claim flows therefrom she is not equitably estopped from denying the arbitration agreement. *See e.g. Hodge*, 422 S.C. at 563.

### **III. DSS cannot waive Mrs. Wright's beneficiaries' rights to a wrongful death claim.**

DSS, as the only signatory to this arbitration agreement, cannot bind Ms. Wright's statutory beneficiaries of the wrongful death claim. South Carolina law is clear that wrongful death claims exist for the statutory beneficiaries. *See Bennett v. Spartanburg Railway Gas and Electric Company*, 97 S.C. 27, 81 S.E. 189 (1914). An arbitration agreement cannot be enforced against a decedent's wrongful death beneficiaries as the wrongful death claims are independent of the survival claims and are not derivative. *See Exhibit 9, Wilson et al. v. NHC Healthcare/Mauldin, LLC et al.*, 2018-CP-23-00120 (Greenville Circuit Court); *see e.g., Diane*

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<sup>3</sup> *See Weaver*, 431 S.C. at 233 (expressing difficulty in finding that the admission agreement resulted in benefit to the decedent as her death was the result of negligence on the part of the facility).

*Boyle et al. v. United States of America*, 944 F.Supp.2d 577 (D.S.C. 2012) (concluding that wrongful death beneficiaries' claims were separate and distinct claims for purposes of stacking damages caps). And that is assuming that Ms. Wright or her legal agent signed the arbitration agreement, which did not occur. Certainly when Ms. Wright is not even a party to the arbitration agreement, her statutory beneficiaries cannot be bound to arbitrate their wrongful death claims.

As discussed in *Wilson et al.* (Exhibit 9), other states have come to this same conclusion often when the decedent or her authorized agent is a signatory to the arbitration agreement. See e.g., *Daniels v. Sunrise Senior Living, Inc.*, 212 Cal.App 4th 674, 151 Cal.Rptr.3d 273 (Cal.App.4 Dist, 2013) (Wrongful Death claims not bound to arbitration); *Lawrence v. Beverly Manor*, 273 S.W.3d 525 (Mo. 2009) (Wrongful Death claimants not bound by arbitration agreement.); *Ping v. Beverly Enterprises, Inc.*, 376 S.W.3d 581, 599-600 (KY 2012); *Bybee v. Abdulla, M.D.*, 189 P.3d 40, 2008 UT 35 (Utah, 2008); *Pisano v. Extended Homes, Inc., operating under the fictitious name Belaire Health 84 Rehabilitation Center*, 2013 PA Super 232, 77 A.3d 651, 662 (PA 2013); *Woodall v. Avalon Care Center-Federal Way, LLC*, 155 Wn. App. 919, 231 P. 3d 1252 (Wash. App. Div. 1 2010); *Horwich v. Superior Court*, 21 Cal. 4th 272, 87 Cal. Rptr. 2d 222, 980 P. 2d 927, 935 (1999).

### CONCLUSION

DSS had no authority to bind Ms. Wright or her statutory beneficiaries to arbitration of the wrongful death and survival claims brought in this action. Especially when Ms. Wright was mentally competent upon admission at Ridgeway Manor. For the foregoing reasons and any additional arguments made at the hearing of Defendants' motion, Plaintiff respectfully requests this Court deny Defendants' Motion to Compel Arbitration and Stay Discovery.

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF**

May 28, 2024

Florence, SC

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )  
 )  
South Carolina Department of Social )  
Services, )  
 )  
Plaintiff, )  
vs. )  
 )  
Defendant(s), )  
 )  
In Re: )  
Gail Wright DOB: 10/02/1954 )  
A Vulnerable Adult in Need of Services. )

IN THE FAMILY COURT OF THE  
FIFTH JUDICIAL CIRCUIT

Case No.: 2021-DR-40-1299

**72 HOUR HEARING ORDER  
[Adult Protective Services]**

2021 MAY 21 AM 8:35

PRESIDING JUDGE: The Honorable Judge Money Pincus  
DATE OF HEARING: May 18, 2021  
ATTORNEY FOR PLAINTIFF: Ebony Austin  
DSS CASEWORKER: Keri Singleton  
COURT REPORTER: Trinita Brown

This matter came before the Court for a hearing pursuant to a Complaint submitted under S.C. Code § 43-35-5, et seq., by which law enforcement placed the adult in emergency protective custody.

This hearing was held by WebEx due to the Covid-19 pandemic.

Testimony was heard from Keri Singleton with the Richland County Department of Social Services and Investigator Cynnamon Clinton with the Richland County Sheriff's Department.

This Court has jurisdiction over the parties and the subject matter.

Based on the testimony and evidence presented the Court makes the following findings of fact and conclusions of law:

1. There is a *prima facie* showing that Gail Wright, a 66-year-old female, is a vulnerable adult as defined in S.C. Code § 43-35-10(11), due to the following: Reporter stated Ms. Gail Wright (66) is unable to care for herself. Reporter stated her caretakers abandoned her about 3 days ago. Reporter stated she has been sitting in the same chair for about 3 days. Reporter stated Law Enforcement is placing Ms. Wright

into DSS's custody.

2. This action is proper, and this Court has jurisdiction over the parties and over the subject matter herein.

3. Plaintiff is further informed, alleges, and believes that Gail Wright is a "vulnerable adult" as defined by S.C. Code § 43-35-10(11), in substantial need of protective services and is at substantial risk of abuse, neglect, or exploitation if allowed to return to the former home.

4. There was probable cause for law enforcement to believe that by reason of abuse, neglect, or exploitation, there is a substantial risk and existed imminent danger to Gail Wright's life or physical safety.

5. Protective services are necessary to protect Gail Wright from substantial risk of abuse, neglect, or exploitation.

6. Law enforcement acted properly in taking protective custody of Gail Wright.

7. Plaintiff requests the right to provide for and to authorize such routine and/or emergency medical care as may be required, should protective services be ordered and/or custody be granted to Plaintiff.

8. Plaintiff asks to be granted access to any and all records concerning the vulnerable adult as may be necessary, supplemental to those already authorized by S.C. Code § 43-35-20. Law enforcement acted properly in taking protective custody of Gail Wright.

9. A Guardian *ad Litem* and attorney for the Guardian *ad Litem* should be appointed for Gail Wright from the South Carolina Vulnerable Adult Guardian *ad Litem* Program. An attorney should be appointed to represent Gail Wright pursuant to Rule 608, SCACR, from the list of eligible attorneys maintained by the Richland County Clerk of Court's office.

**THEREFORE, IT IS ORDERED** that:

1. Law enforcement acted appropriately in taking emergency protective custody of Gail Wright.



2. Law enforcement acted appropriately in arranging transportation for Gail Wright to a safe environment.

3. There was probable cause to believe that by reason of abuse, neglect, or exploitation there existed an imminent danger to the life or physical safety of Gail Wright and protective services and/or custody was/were necessary.

4. The Defendant Gail Wright is a Vulnerable Adult.

5. The Defendant Gail Wright shall be placed in a facility that meets her level of care.

6. The Department of Social Services shall retain of custody of Gail Wright.

7. A Guardian ad Litem from the South Carolina Vulnerable Adult Guardian ad Litem Program shall be appointed for the Vulnerable Adult Gail Wright.

8. Attorney Lyn Hensel shall be appointed to represent the Vulnerable Adult, Gail Wright.

9. A Merits Hearing shall be held on June 24, 2021, at 10:30 a.m.

10. In accordance with 42 U.S.C. 290dd-3(b)(2)(c) and 42 CFR Ch. 1 Section 2.64 and 45CFR HIPAA and applicable state law, there is good cause to authorize the disclosure of the information sought, there are no other means for Plaintiff to obtain the information, and the public interest and the need for disclosure outweigh the potential injury to Gail Wright, the patient-physician relationship, and the treatment service. In authorizing the disclosure, no party to this action shall disclose any of the records or information released in any manner whatsoever other than in the course of these proceedings.

11. If the least restrictive environment is a facility, then any funds received by Gail Wright shall be redirected to the facility in which she is placed for reasonable and necessary care. Otherwise, any funds received by Gail Wright shall be used for any reasonable and necessary care.

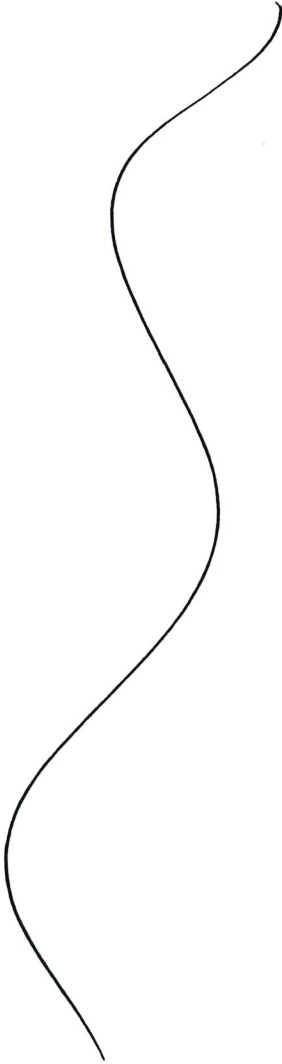
**AND IT IS SO ORDERED.**

72-hour Order - APS  
Case Number:



THE HONORABLE JUDGE MONET PINCUS  
Presiding Family Court Judge  
FIFTH Judicial Circuit

5/20, 2021  
COLUMBIA, South Carolina



21 DR 40 1299

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )  
 )  
 South Carolina Department of )  
 Social Services, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 In the interests of: )  
 )  
 Gail Wright DOB: 10/02/1954 )  
 )  
 A vulnerable adult. )  
 \_\_\_\_\_ )

IN THE FAMILY COURT  
 FIFTH JUDICIAL CIRCUIT  
**Docket Number: 2021-DR-40-1299**

ORDER OF APPOINTMENT  
 OF A GUARDIAN AD LITEM  
 FOR A VULNERABLE ADULT

MAY 19 AM 11:01  
 COUNTY

This matter comes before the Court pursuant to the filing of a Petition for Appointment of a Guardian ad Litem for a Vulnerable Adult by the South Carolina Department of Social Services. Based upon the information before the court, I find that the best interests of the above-referenced vulnerable adult require the appointment of a guardian ad litem.

I find that **Peter Reinhart – Preinhart18@gmail.com** has volunteered to serve as an guardian ad litem with the South Carolina Vulnerable Adult Guardian ad Litem Program and is a proper person to serve as Guardian ad Litem in this case. Therefore, pursuant to S.C. Code Ann. § 43-35-45(C), the said individual is appointed as Guardian ad Litem for the vulnerable adult. I further find the said Guardian ad Litem’s responsibilities and duties shall include but are not limited to:

- (1) representing the best interest of the vulnerable adult:
- (2) conducting an independent, balanced, and impartial assessment to determine the facts relevant to the situation of the vulnerable adult. An assessment must include, but is not limited to:

- (a) obtaining and reviewing relevant documents. The Guardian ad Litem shall have access to all records, including medical records of the vulnerable adult in order to evaluate the adult’s condition and make a recommendation to the court concerning future care. Further, pursuant to 45 CFR 164.512(e)(1), this order permits a covered entity to disclose to the Guardian ad Litem the vulnerable adult’s protected health information in response to a discovery request for the purpose of a judicial proceeding;

*MA 1/3*

- (b) meeting with and observing the vulnerable adult on at least one occasion;
  - (c) visiting the home settings or the facility of residence;
  - (d) interviewing family members, caregivers, law enforcement and others with knowledge relevant to the case;
  - (e) considering the wishes of the vulnerable adult;
- (3) advocating for the vulnerable adult's best interest by making specific and clear suggestions when necessary for evaluation, services, and treatment for the vulnerable adult;
- (4) attending all Family Court hearings related to the vulnerable adult, except when attendance is excused by the Court or the absence is stipulated by both parties. The Guardian must provide accurate, current information directly to the court, and that information must be relevant to matters pending before the court;
- (5) maintaining a complete file, including notes. A Guardian's notes are his work product and are not subject to subpoena; and
- (6) presenting to the court and all parties clear and comprehensive written reports including, but not limited to, a final written report regarding the vulnerable adult's best interest. The final written report may contain conclusions based upon the facts contained in the report. The final written report must include the names, addresses, and telephone numbers of those interviewed during the assessment.

Additionally, a Guardian ad Litem may submit briefs, memoranda, affidavits, or other documents on behalf of the vulnerable adult through counsel. A Guardian ad Litem may also submit affidavits at any temporary hearing. Any report or recommendation of a Guardian ad Litem must be submitted in a manner consistent with the South Carolina Rules of Evidence and other state law.

I find that pursuant to S.C. Code Anno. §43-35-75, any Guardian ad Litem appointed for a vulnerable adult pursuant to Section 43-35-45(C), acting in good faith and who participates in a judicial proceeding resulting from a report under the Omnibus Adult Protection Act is immune from civil and criminal liability.

I further find that the appointed Guardian ad Litem is a lay person and it is necessary to appoint counsel for the said Guardian ad Litem. Accordingly, this Court appoints

Angela Kohel – KohelA@rcgov.us, Esquire, as attorney for the guardian ad litem.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that

Peter Reinhart, is appointed as guardian ad litem for the above-referenced vulnerable adult having the duties and responsibilities as outlined above.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that

Angela Kohel, Esquire, is appointed to serve as counsel for the guardian ad litem.

MOREOVER, IT IS ORDER, ADJUDGED AND DECREED that this/these appointment(s) shall continue to be in effect until formal discharge by the court.

IT IS SO ORDERED.

  
\_\_\_\_\_  
Judge  
Family Court  
Fifth Judicial Circuit

Columbia, South Carolina  
May 19, 2021.

*MM 3/3*

Gail Wright



## Admission and Financial Agreement

*Commitment to Care. Commitment to Community. Commitment to You.*

Effective 4/24/2019

Equal Housing Opportunity

### ADMISSION AGREEMENT

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO S.C. CODE SECTION 15-48, ET SEQ. AS MODIFIED THEREIN.

Ridgeway Manor Healthcare Center, LLC, herein referred to as "Facility" and \_\_\_\_\_ herein referred to as "Resident" and Gail Wright herein referred to as "Responsible Party/Resident Representative", here by enter into this Admission Agreement dated \_\_\_\_\_ (this "Agreement," which sets forth the rights and obligations of each party to this agreement in accordance with the terms and conditions stated below:

**Définitions :**

"Resident Representative" means an individual that has been granted the authority to act for another person in specified or all legal or financial matters.

"Responsible Party" means a family member or other interested person who does not have power of attorney.

**Article 1. Facility agrees To:**

- 1.1 Admit the Resident to the Facility only with a physician's order as well as any state, federal or carrier required documentation.
- 1.2 Furnish room, board, routine meals, linens and bedding, nursing care and such other personal services.
- 1.3 Assist the Resident in obtaining the services of a licensed physician of the Resident's choice, as well as such medications as prescribed by the physician.
- 1.4 Arrange for the transfer of the Resident to the hospital when ordered by the attending physician or as required in an emergency situation and notify the Responsible Party of such transfer.
- 1.5 Provide an activities program for the Resident, components of which shall be at the discretion of the Facility and may be revised periodically without notice.
- 1.6 Make refunds in accordance with the established policy of the Facility.
- 1.7 Provide each Resident and Resident's representative, information in writing, before or at the time of admission, of the Facility's refund policy which has been adopted by the Facility and which is based upon the actual number of days a resident was in the facility and any reasonable number of bed-hold days.

**Article 2. Resident/Resident Representative Agrees To:**

- 2.1 Provide such personal clothing and effects as needed or desired by the Resident.
- 2.2 Provide such spending money as desired by the Resident.
- 2.3 Be financially responsible for hospital and transportation charges if hospitalization of the Resident, or transportation of the Resident for any other reason, becomes necessary.
- 2.4 Be responsible for payment of physician's and other specialist's fees, medications and other treatments or aids not covered by either Medicaid or Medicare programs or private insurance, as ordered by the physician and outlined in the information provided on admission.

ANY LIABILITY ASSUMED IS SUBJECT TO LIMITATIONS OF THE RULES, REGULATIONS, POLICIES, AND PROCEDURES OF THE SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES AND FEDERAL LAW GOVERNING THE PARTICIPATION OF THE AGENCY IN SOCIAL SERVICE PROGRAMS.

[Signature] RWBSS  
Resident Initials      Responsible Party Initials

- 2.5 Pay the Facility, in accordance with the terms of this Agreement, the basic rates agreed upon as specified in the Facility's rate schedule accompanying this agreement and as updated from time to time.
- 2.6 Ensure that accurate and complete information regarding the Resident and/or Responsible party is provided to the Facility and is updated as appropriate (i.e. contact information)
- 2.7 Abide by Facility rules and regulations at all times.

**Article 3. Assignment of Benefits**

- 3.1 The Resident or Responsible Party hereby request(s) that payments of any authorized benefits (including Medicare, Medicaid and/or private medical insurance benefits) be made on the Resident's behalf for any services provided to the Resident by the Facility, for physician services for which the Facility is authorized to bill and for any other physician or nurse practitioner services furnished in the Facility, as applicable.
- 3.2 The Resident assigns and transfers to the Facility the right to any and all third-party payments to which the Resident may be or become entitled to for services rendered by the Facility. The Resident or Responsible Party hereby authorizes the Facility to apply and file for all such benefit payments on behalf of the Resident and directs that such payments be made directly to the Facility. Any Insurance benefit payments received by the Resident or Responsible Party for services rendered by the Facility shall be paid to the facility. The Resident and/or Responsible Party authorizes and directs the Facility to release to the Centers for Medicare and Medicaid Services and its agents, insurance companies, third-party payers, and federal and state agencies any medical or other information needed to determine benefits and consistent with HIPAA.
- 3.3 The Resident acknowledges that the Facility may bill private insurance companies only as a courtesy to the Resident. However, payment is expected from the insurer in advance unless the balance is related to Medicare co-insurance. In this case, the Resident will be billed on the tenth (10<sup>th</sup>) of the month following the month of service unless otherwise expressly prohibited under the terms of the insurance contract. If the Resident can provide proof of applying for Medicaid, the Facility will only require payment of the amount determined to be the responsibility of the Resident. If the Facility receives subsequent payment from the insurance company, the Resident will be refunded in accordance with Facility policy.
- 3.4 The Resident or Resident Representative shall at all times remain ultimately financially responsible in the event alternate financing is denied.

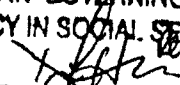
**Article 4. Financial Agreement**

- 4.1 For Residents admitted to the Facility as private pay, upon admission and on the tenth (10<sup>th</sup>) day of each month following, charges for at least one month of services are due in advance, at the rate effective at that time.

The basic daily fee for the Resident is (check one)

Room designation	Private	Semi-private
Rates per day	N/A	\$230.00

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 Resident Initials      Responsible Party Initials

- 4.2 Additional services and items may be provided at a separate charge as set forth on the Charge Schedule which can be made available in the Facility's business office. Rates are subject to change.
- 4.3 Additional Room fees may be charged when applicable related to insurance and room type (i.e. private rooms) unless deemed medically necessary. Private rooms are not guaranteed.
- 4.4 The Resident Representative agrees that to the extent he or she has legal access to the Resident's income or resources, the Resident Representative shall pay the Facility any amounts owed by the Resident to the facility for services furnished by the Facility. Liability for payment of charges owed the Facility shall be binding upon the Resident, and the Resident Representative, respective executor, administrator and/or heirs of the Resident's estate. If collection proceedings for unpaid balances become necessary, the Resident is liable for all collection costs, including the attorney's fees and court costs. The Resident Representative agrees to provide to the facility, at all times, a current address and day evening phone numbers.
- 4.5 Notwithstanding the foregoing, the Resident Representative may be required to pay charges for items or services that are requested by Resident Representative and that are not covered by the basic daily rate or by the Medicaid or Medicare programs. The Resident and Resident Representative shall not be required to request or accept such items and services as a condition of admission, expedited admission or continued stay in the Facility.
- 4.6 The Resident and Resident Representative shall also be obligated to pay, as liquidated damages, an amount equivalent to any payments or funds of the Resident that are available to pay for the Resident's care and that the Resident Representative withholds, misappropriates for personal use, or otherwise does not turn over to the Facility for payment of the Resident's financial obligations under this Agreement unless prohibited by statute or regulation.

Article 5. Other Terms, Conditions and Understandings

- 5.1 If admitted to the Facility on Medicare Part A Guidelines, which include a qualifying hospital stay of at least 3 days with in the last 30 days, the Resident has a maximum of twenty (20) full covered days and eighty (80) co-insurance days (if no days have been used elsewhere as determined by the Facility review team or the Medicare program). On the twenty-first (21<sup>st</sup>) day of Medicare, co-insurance will be paid either by Medicaid, private pay or by insurance, as applicable. The daily Medicare co-insurance rate is \$ 185.00.
- 5.2 On the date of discharge from Medicare coverage, and if the Resident remains in the Facility, the Residents source of funding for services will become Medicaid, private pay or insurance, as applicable. Assistance is available with the Medicaid application process if needed and requested.
- 5.3 If requested, an estimate of private pay calculation will be prepared by the business office during the admission process and may change after Medicaid approval. Any variance in actual payments from a Resident compared to the private pay calculation

**LIABILITY ASSUMED IS SUBJECT TO**  
**LIMITATIONS OF THE RULES, REGULATIONS,**  
**POLICIES, AND PROCEDURES OF THE SOUTH**  
**CAROLINA DEPARTMENT OF SOCIAL SERVICES AND**  
**FEDERAL LAW GOVERNING THE PARTICIPATION OF**  
**INDIVIDUALS IN SOCIAL SERVICE PROGRAMS.**

Resident Initials: \_\_\_\_\_  
 Responsible Party Initials:     AA

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will be applied to the next month's charges, if applicable. If the Resident is discharged from the Facility and a refund is due, it will be processed in accordance with Facility policy. If additional amounts are due, such amounts will be billed to the Resident immediately upon determination.

- 5.4 If the Resident has Private Insurance that will pay for Medicare co-insurance amounts, and the Resident or the Responsible Party has provided information to the facility, the facility will bill the Resident's Insurance company as a courtesy. However, Resident/Responsible Party will be responsible for any co-insurance amounts if denied for any reason or if payment is received by Resident or Responsible Party directly.
- 5.5 Upon discharge, if a refund is due, the Resident will receive a refund check by mail after all balances due are paid. If additional amounts are due to the Facility, they will be billed to the Resident immediately. As referenced above, if outstanding amounts are due to the Facility from third-party payers for services provided to the Resident, any refunds to the Resident will be made only after receipt of any amounts due to the Facility from other payers and will be paid within 60 days of receipt.

## Article 6. Duration of Agreement

- 6.1 The Resident or Responsible Party/Resident Representative may terminate this Agreement upon five (5) days written notice to the facility. Upon termination, the Resident/Responsible Party/Resident Representative agrees to pay accrued charges up to the day of discharge. Upon the effective date of termination of this Agreement, the Resident must leave the facility. Otherwise, this Agreement will remain in effect until a different written agreement is executed. At no time does this mean that the Resident will be forced to remain in the facility against his/her will.
- 6.2 The Facility may terminate the Agreement and transfer the Resident in accordance with applicable state and federal laws and regulations. The Facility shall give the Resident and/or Responsible Party/Resident Representative advance notice of any reasons for transfer or discharge as required by law. The Responsible Party/Resident Representative upon discharge shall assume custody of the Resident if the Medical Director of the facility certifies that this is medically appropriate.
  - (a) Nursing Home Reform Act: The facility must not transfer or discharge the resident unless (i) the transfer or discharge is necessary to meet the resident's welfare and her resident's welfare cannot be met in the facility; (ii) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility; (iii) the safety of individuals in the facility is endangered; (iv) the health of individuals in the facility is endangered; (iv) the resident has failed, after reasonable and appropriate notice, to pay (or to have paid under Medicare or Medicaid on the resident's behalf) for a stay at the facility; or (vi) the facility ceases to operate.
  - (b) South Carolina Code of Laws, Section 44-81-20 et. seq. of the South Carolina Bill of Rights for Residents of Long-Term Care Facilities: A resident may be transferred or discharged only for medical reasons, for the welfare of the resident or for the welfare of other residents of the facility, or for nonpayment and must be given written notice of not less than thirty days, except that when the health, safety, or welfare of other

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residents of the facility would be endangered by the thirty-day notice requirement, the time for given notice must be that which is practicable under the circumstances.

**Article 7. Loss of Personal Property**

7.1 The Facility will not be responsible for theft, destruction or loss of money, papers, clothing, jewelry, dentures, eyeglasses, hearing aids, or other personal property. Any personal items/valuables of any kind brought from home must be inventoried by nursing. The facility is not responsible for any repair of any of the above items.

**Article 8. Room Assignments**

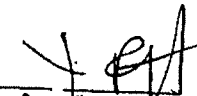
8.1 In accordance with Section 44-81-20 et. seq. of the South Carolina Bill of Rights for Residents of Long-Term Care Facilities, each resident must be given written notice before the resident's room or roommate in the facility is changed. The Facility has the right to transfer the Resident to another room or bed within the Facility consistent with the safety, care and welfare of the Resident and with any applicable laws and regulations. The Facility may also transfer or change the Resident's roommate, if any, at any time consistent with the provisions contained herein.

**Article 9. Pharmacy Services**

9.1 The Resident can select a pharmacy to provide medications within a uniform medication distribution system. This system complies with Facility established policies and procedures for drug therapy, distribution and control. The pharmacy will supply generic drugs unless specifically requested by the physician or Resident to provide brand name drugs at the Resident's expense. For medications and supplies not covered or partially covered by Medicare, Medicaid or an Insurance plan, the cost is the sole responsibility of the Resident or Responsible Party/Resident Representative.

**Article 10. Enteral, Urological, Tracheotomy, Wound Care, Rehabilitation and Durable Medical Equipment (DME) Supplies and Services**

10.1 At some point during the Resident's stay, the Resident may be in need of enteral, urological, ostomy, tracheotomy, wound care, rehabilitation and/or durable medical equipment (DME). These supplies must be ordered for Resident's use by the Resident's physician. The Facility has selected a designated vendor to provide these supplies and to bill third party payers on the Resident's behalf. The Resident has the right to select an alternative vendor for these supplies at any time. The Resident must notify the Director of Nursing (DON), in writing, of the name, address, and telephone number of the selected vendor.

  
Resident Initials      Responsible Party Initials

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**Article 11. Capacity of Resident and Guardianship**

11.1 If the Resident, who has not had a guardian appointed by a court of law, is or becomes unable to make or communicate his/her medical decisions, as determined by the Resident's attending physician, the Facility shall notify the Healthcare Agent under Health Care Power of Attorney or the attorney appointed under a Durable Power of Attorney, if any. If neither is available, the Responsible Party/Resident Representative agrees to initiate and maintain a proceeding in a court of competent jurisdiction to appoint a legal guardian. If the Responsible Party/Resident Representative fails to do so, the Facility shall have the right, but not the obligation, to commence a legal proceeding to adjudicate the Resident Incapacitated and to have the court appoint a guardian for the Resident. All related costs of the legal proceedings, including attorney's fees and costs and shall be paid by the Resident or the Responsible Party/Resident Representative.

**Article 12. Grievance Procedure**

12.1 The parties to this Agreement agree to follow the Facility's grievance procedure, which may be amended from time to time, for any claim or disputes arising out of or in connection with the care rendered to the Resident by the Facility or its employees.

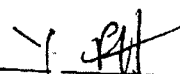
12.2 The State of South Carolina has established a Long-Term Care Ombudsman's Office, which has procedures for receiving complaints. Other agencies, such as the Department of Health and Environment Control (DHEC), the Centers for Medicare and Medicaid Services, Medicaid Fraud Control Unit, Adult Abuse Registry, Advocacy for Persons with Disabilities and local advisory councils have consumer hotlines, as well. Access to a telephone shall be provided to the Resident for use, including calling any of these agencies.

**Article 13. Compliance with Rules, Regulations, Policies & Procedures**

13.1 The Resident and Resident Representative, as applicable, agree to comply fully with the provisions of this Agreement and the Facility's rules, regulations, policies and procedures, as provided in the Resident Information & Reference Guide or other documents or publications made available by the Facility. The Facility reserves the right to amend or change its rules, regulations, policies or procedures without prior notice. The Facility's rules, regulations, policies or procedures do not impose contractual obligations on the Facility or grant any contractual rights to the Resident and may be changed from time to time.

**Article 14. Certification of Information**

14.1 The Resident and the Responsible Party certify that all information provided to the Facility by the Resident or the Responsible Party is true and correct in all respects. The Resident and Responsible Party acknowledge that the submission of any false information may constitute grounds to terminate this Agreement.

Resident Initials  Responsible Party Initials

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**Article 15. Indemnification**

- 15.1 The Facility is not responsible for the health, safety and welfare of any Resident who is away from the Facility with any person not directly employed by the Facility or when the Resident knowingly leaves the Facility against the medical advice of the Resident's attending physician or without the approval of the Facility, with or without the knowledge of the Facility.
- 15.2 The Resident or the Resident's estate or the Responsible Party from the Resident's funds, is responsible for any damages caused to Facility property beyond normal wear and tear and shall pay for the repair and replacement of damaged property, based on the actual charge or cost to the Facility for such repair or replacement and related expenses in collecting and enforcing same.

**Article 16. Severability**

- 16.1 If any terms or conditions of this agreement are invalid or unenforceable by reason of any rule of law federal or state statute or regulation, or relevant local law, statute or regulations, then the remaining provisions of this Agreement shall be construed as if the invalid or unenforceable terms or conditions did not exist and shall remain in full force and effect.

**Article 17. Governing Law**

- 17.1 This agreement shall be governed by and construed in accordance with the laws of the State of South Carolina and shall be binding and inure to the benefit of each of the undersigned parties and their respective heirs, personal representatives, successors and assigns.

**Article 18. Captions**


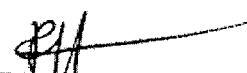
- 18.1 The captions used in connection with the sections of this Agreement are inserted only for the purpose of reference and shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this agreement, nor shall such captions be given and legal effect or emphasis beyond mere convenience.

**Article 19. Modifications**

- 19.1. The Facility reserves the right to modify unilaterally the terms of this Agreement to conform to subsequent changes in law or regulation. To the extent commercially practicable the Facility may give the Resident and Responsible Party thirty (30) days advance written notice of any such modification.

**Article 20. Waiver of Provisions**

- 20.1 The Facility reserves the right to waive any obligations of the Resident under the Provisions of this Agreement in its sole and absolute discretion. No term, provisions or obligation of this Agreement shall be deemed to have been waived by the facility unless the waiver is in


  
 Resident Initials      Responsible Party Initials

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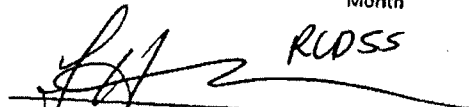
writing by the Facility. Any waiver by the Facility shall not be deemed a waiver of any other term, provision or obligation of this Agreement, and the other obligations of Resident and this Agreement shall remain in full force and effect.

Article 21. Acknowledgements

- 21.1 This Agreement, together with the information and documents in the Resident Information & Reference Guide executed by both parties, represents the entire understanding between the parties and supersedes all previous representations, understanding or agreements, both oral and/or written, between the parties and their Representatives.
- 21.2 The Resident and Responsible Party/Resident Representative acknowledges being informed orally and in writing of the Resident's Rights under Federal and State law as included within this packet and having the opportunity to ask questions about those rights. Such rights are subject to change from time to time and shall not be construed as imposing any contractual obligations on the Facility or granting any contractual rights to the Resident.
- 21.3 The Resident and Responsible Party/Resident Representative acknowledge being informed, orally and in writing of the Facility's policy on advance directives and medical treatment decisions.
- 21.4 The Resident and Responsible Party/Resident Representative acknowledge being informed, orally and in writing of the Facility's Notice of Privacy Practices.
- 21.5 The Resident and Responsible Party understand, agree to, and have received a copy of this Agreement, and acknowledge that the terms have been explained to them by a representative of the Facility, and that they have had an opportunity to ask questions about this Agreement
- 21.6 This is a legally binding contract. By signing below, I acknowledge that I have read, understand and hereby agree to all requirements set forth in this Admission & Financial Agreement, including the grievance procedure.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have signed this agreement on

\_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_  
Day Month Year

  
Resident (signature)

  
Resident (print)

\_\_\_\_\_  
Address of Resident

IF SIGNED BY THE RESPONSIBLE PARTY/RESIDENT REPRESENTATIVE ONLY:

I warrant and represent that the Resident has expressly vested in me the authority to sign this Agreement on the Resident's behalf.

X Fantasia Hartwell  
Responsible Party/Resident Representative (print)  
X Keri Singleton Case Manager  
Responsible Party/Resident Representative Relationship to Resident

X [Signature] RUDS  
Responsible Party/Resident Representative signature  
X 21038 Two Notch Red Suite  
Address for Responsible Party/Resident Representative 200

\_\_\_\_\_  
Facility Representative (print)

\_\_\_\_\_  
Facility Representative (signature)

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X [Signature]  
Resident Initials      Responsible Party Initials

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Addendum One

Arbitration Agreement

This Arbitration Agreement is made between Ridgeway Manor Healthcare Center, LLC ("Facility") and Carl Wright (Resident or Authorized Representative") and is an addendum to and part of the Admission Agreement.

The Facility and the Resident and/or Resident's Authorized Representative (hereinafter referred to collectively as the "Parties") understand and agree that any legal dispute, controversy, demand, or claim that arises out of or relates to the Resident Admission Agreement or is in any way connected to the Resident's stay at the Facility shall be resolved exclusively by binding Arbitration; and not by a lawsuit or resort to other court process. The parties understand that arbitration is a process in which a neutral third person or persons ("arbitrator(s)") considers the facts and arguments presented by the parties and renders a binding decision.

This agreement to arbitrate shall include, but is not limited to, any claim based on payment, non-payment, refund for services rendered to the Resident by the Facility, breach of contract, breach of fiduciary duty, fraud or misrepresentation, common law or statutory negligence, gross negligence, malpractice or a claim based on any departure from accepted standards of medical or nursing care (collectively "Disputes").

This agreement shall be binding upon and shall include any claims brought by or against the Parties' representatives, agents, heirs, assigns, employees, managers, directors, shareholders, management companies, parent companies, subsidiary companies or related or affiliated business entities.

Nothing in this agreement shall be held to limit the Resident's right to file a formal or informal grievance or complaint with the Facility or any appropriate State or Federal Agency. Additionally, nothing in this Agreement shall be held to prohibit informal or formal settlement negotiation, including mediation, in an effort to settle any dispute(s) prior to proceeding to arbitration. Engaging in settlement negotiation or mediation shall not be deemed an actual or constructive waiver of this Agreement. Any claim that cannot be resolved via negotiation and/or mediation will proceed to arbitration in accordance with this agreement.

All claims based in whole or in part on the same incident, transaction, or related course of care or services provided by the Facility to the Resident which cannot be settled amicably by the parties, shall be arbitrated in one proceeding. A claim shall be waived and forever barred if it arose prior to the date upon which the notice of arbitration is given to the Facility or Received by the Resident and is not presented in the arbitration proceeding.

To the extent the Parties can agree upon a single, neutral arbitrator, that single arbitrator shall hear and decide the controversy, and the decision shall be binding on all parties, and may be enforced by a court of competent jurisdiction. To the extent the parties cannot agree upon a single arbitrator, each side shall choose a single non-neutral arbitrator (a total of two), who will in turn choose a third arbitrator to serve as a neutral/umpire. In the latter case, all three arbitrators shall participate in the hearing but the single arbitrator will decide the controversy, and the decision shall be binding on all parties, and may be enforced by a court of competent jurisdiction. If the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration

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proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

The parties shall be entitled to conduct discovery in arbitration. The manner and scope of the limited discovery shall be governed by the arbitrator(s). In entering any order on the scope of discovery, the arbitrator(s) shall be mindful of both the Parties' right to obtain information and the intent that this arbitration process minimize the time and expense incurred by both parties in resolving any dispute. An arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of the party or upon the arbitrator's own motion.

The parties may offer such non-duplicative evidence as is relevant to the dispute and deemed admissible by the arbitrator(s). The arbitrator shall be the judge of the duplicative nature, relevance, and materiality of the evidence offered. Hearsay evidence shall be admissible where deemed material and non-duplicative; however, no decision of the arbitrator(s) may be based solely on hearsay evidence. However, the arbitrator should refuse to allow the introduction of any evidence that the arbitrator believes would result in the disclosure of confidential information which is privileged under any statute or other applicable law, including but not limited to, information subject to (a) a quality assurance and/or peer review privilege; (b) a patient-physician privilege; or (c) an attorney client or work product privilege. All evidence shall be taken in the presence of all of the arbitrators and all of the Parties and the Parties' counsel and other authorized representatives, except where a party is absent after due notice has been given or has waived the right to be present.

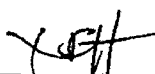
Except as required for submission to a court having jurisdiction for purposes of enforcement, no party or arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of the Parties

The Parties agree that Arbitration pursuant to this agreement shall be held at a neutral location in the county where the facility is located; and shall be conducted in accordance with the provisions of the Arbitration Code for the state in which the Facility is located. To the extent a matter or issue is not addressed in this agreement or such code does not exist for the state in which the Facility is located, that matter shall be left to the discretion of the neutral Arbitrator.

The Parties agree that the Facility will be responsible for the first five hundred dollars (\$500.00) of any initial administrative fees related to the commencement of arbitration; and that the remainder of any initial administrative fees or any additional administrative fees and costs, including the fees of the arbitrator, shall be split between the Parties with the Facility being responsible for sixty percent (60%) and the Resident being responsible for forty percent (40%). The Parties further agree that each party shall be responsible for their own attorneys' fees.

The Parties agree that damages, if any, awarded in an arbitration conducted pursuant to this Arbitration Agreement shall be determined in accordance with the provisions of the State or Federal law applicable to a comparable civil action, including any prerequisites to, credit against, or limitations on such damages.

The Parties also agree that the neutral arbitrator may be removed and replaced upon a showing that he or she has a conflict of interest or is biased in favor of one of the Parties. To the extent an issue regarding conflict or bias arises, it will be heard by the two non-neutral arbitrators. The non-neutral arbitrators together shall have the power to discharge the neutral arbitrator if they both agree that evidence of a

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Resident Initials        
Responsible Party Initials

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conflict of interest or bias exists. The non-neutral arbitrators together shall have the power to deny the motion to disqualify if they both agree evidence of a conflict of interest or bias does not exist. If the non-neutral arbitrators do not agree, the arbitrator who believes evidence of a conflict of interest or bias exists may refer the motion to disqualify to the circuit court with jurisdiction over the county in which the arbitration is pending, for resolution.

The foregoing notwithstanding, the Parties agree that all of the provisions contained in this Agreement are severable. In the event any provision of this Agreement, or portion thereof, is held to be invalid by a court of competent jurisdiction, this agreement shall be interpreted as if the invalid provision or portion was not contained herein, and the remaining provisions of this Agreement will remain in full force and effect. This agreement to arbitrate will not fail because any part, clause or provision hereof is held to be indefinite or invalid.

THE PARTIES UNDERSTAND AND AGREE THAT BY ENTERING THIS ARBITRATION AGREEMENT THEY ARE GIVING UP AND WAIVING THEIR CONSTITUTIONAL RIGHT TO HAVE ANY CLAIM OR DISPUTE THAT FALLS WITHIN THE SCOPE OF THIS AGREEMENT DECIDED IN A COURT OF LAW BEFORE A JUDGE AND JURY. IN THE EVENT A COURT OF COMPETENT JURISDICTION SHALL RULE THAT A DISPUTE BETWEEN THE PARTIES IS NOT SUBJECT TO ARBITRATION THEN RESIDENT AND FACILITY ACKNOWLEDGE AND AGREE TO WAIVE ALL RIGHTS TO A TRIAL BY JURY AND TO HAVE THEIR DISPUTE DECIDED ONLY BY A JUDGE OF A COURT OF COMPETENT JURISDICTION IN THE COUNTY AND STATE IN WHICH THE FACILITY IS LOCATED

Finally, the Resident or his/her Authorized Representative understands that: (1) he/she has the right to seek legal counsel concerning this agreement; (2) this Arbitration Agreement may be rescinded by written notice to the Facility from the Resident or Authorized Representative within three (3) business days of signing the Agreement. If not rescinded within three (3) business days of signing, this Arbitration shall remain in effect for all care and services rendered at Facility subsequent to the date this Agreement was signed, even if such care and services are rendered during a subsequent admission (i.e. following the Resident's discharge from and readmission to the Facility).

\_\_\_\_\_  
Resident/Responsible Party (print)

\_\_\_\_\_  
Resident/Responsible Party (signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Representative Legal Designation

IF SIGNED BY THE RESPONSIBLE PARTY/RESIDENT REPRESENTATIVE ONLY:

I warrant and represent that the Resident has expressly vested in me the authority to sign this Agreement on the Resident's behalf.

X Fantasia Hartwell  
Responsible Party/Resident Representative (print)

X [Signature]  
Responsible Party/Resident Representative signature

X Keri Singleton Case Manager  
Responsible Party/Resident Representative Relationship to Resident

X 2038 Two North Rd Suite 200  
Address for Responsible Party/Resident Representative

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Addendum Three

Photo and Testimonial Release Form

I, Gail Wright, give Ridgeway Manor Healthcare Center, permission to use my name, likeness, image, voice and/or appearance as such may be embodied in any pictures, photos, video recordings, digital images and the like, taken or made on behalf of [insert nursing home name] activities. Such activities include but are not limited to use of images as a means for identification of the Resident, use in bulletins, videotapes, reprints, reproductions, publications, advertisements and any promotional or educational materials in any medium now known or later developed, including the Internet. I acknowledge that I will not receive any compensation, etc. for the use of such pictures, etc., and hereby release [insert nursing home name] and its agents and assigns from any and all claims which arise out of or are in any way connected with such use.

I have read and understood this consent and release.

Option A: I give my consent for Ridgeway Manor Healthcare Center to use my name and likeness, as described above, to promote the mission of [insert name of the nursing home], its fiscal agent, and/or their activities.

The Resident agrees to allow the Facility to photograph the Resident as a means of identification or in case of emergency. Photographs may also be taken and displayed as part of ongoing activity programs and, special events. I authorize Ridgeway Manor Healthcare Center and their affiliates to use my photograph and name for identification and to further their mission of informing others about their healthcare and treatment facility options.

I understand that my photograph and testimonial, including written and verbal statements, may be used in a wide variety of promotional materials including newsletters, flyers, posters, brochures, advertisements, fundraising letters, annual reports, press kits and submissions to journalists, websites, social networking sites and other print and digital communications.

Name (Please Print)	FANTASIA HARTWELL		
Signature	<i>F. Hartwell</i>	Date	5/28/2021
Telephone	803-977-3472		
Address	2638 Two Notch Rd Suite 200 Columbia SC 29204		
E-mail (if available)	Keri.Singleton@dss.sc.gov		

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Addendum Five

Assignment of Benefits

ASSIGNMENT OF BENEFITS, ASSIGNMENT OF RIGHTS TO PURSUE ERISA AND OTHER LEGAL AND ADMINISTRATIVE CLAIMS ASSOCIATED WITH MY HEALTH INSURANCE AND/OR HEALTH BENEFIT PLAN (INCLUDING BREACH OF FIDUCIARY DUTY) AND DESIGNATION OF AUTHORIZED REPRESENTATIVE

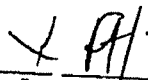
I hereby assign and convey directly to the above-named health care provider, as my designated authorized representative, all medical benefits and/or insurance reimbursement, if any, otherwise payable to me for services, treatments, therapies, and/or medications rendered or provided by the above-named health care provider, regardless of its managed care network participation status. I understand that I am financially responsible for all charges regardless of any applicable insurance or benefit payments. I hereby authorize the above-named health care provider to release all medical information necessary to process my claims. Further, I hereby authorize my plan administrator fiduciary, insurer, and/or attorney to release to the above-named health care provider any and all Plan documents, summary benefit description, insurance policy, and/or settlement information upon written request from the above-named health care provider or its attorneys in order to claim such medical benefits.

I intend by this assignment and designation of authorized representative to convey to the above-named provider all of my rights to claim (or place a lien on) the medical benefits related to the services, treatments, therapies, and/or mediations provided by the above-named health care provider, including rights to any settlement, insurance or applicable legal or administrative remedies (including damages arising from ERISA breach of fiduciary duty claims). The assignee and/or designated representative (above-named provider) is given the right by me to (1) obtain information regarding the claim to the same extent as me; (2) submit evidence; (3) make statements about facts or law; (4) make any request including providing or receiving notice of appeal proceedings; (5) participate in any administrative and judicial actions and pursue claims or chose in action or right against any liable party, insurance company, employee benefit plan, health care benefit plan, or plan administrator. The above-named provider as my assignee and my designated authorized representative may bring suit against any such health care benefit plan, employee benefit plan, plan administrator or insurance company in my name with derivative standing at provider's expense. Unless revoked, this assignment is valid for all administrative and judicial reviews under PPACA (health care reform legislation), ERISA, Medicare and applicable federal and state laws. A photocopy of this assignment is to be considered valid, the same as if it was the original.

Financial Policy/ Patient Statement

Thank you for choosing us for your healthcare needs. Pursuant to the provisions of the Patient Protection and Affordable Care Act, we are committed to ensuring that you receive the highest quality care at an affordable price. Further, we want to protect our patients from unexpected bills. To make our services available to as many patients as possible on an affordable basis, we have adopted the financial policy outlined below. We ask you to read the policy carefully and sign prior to any treatment.

Ridgeway Manor Healthcare Center, LLC  
Admission & Financial Agreement

  
Resident Initials      Responsible Party Initials

- WE MAY ACCEPT ANY ASSIGNABLE INSURANCE WITH APPLICABLE COVERAGE.
- WE MAY OFFER ASSISTANCE IN ATTAINING STATE AND FEDERAL BENEFITS.

**Insurance**

We accept assignment of insurance benefits at our discretion if acceptable insurance identification is provided. Acceptable insurance identification is defined as a valid insurance card, policy/plan with applicable coverage, and telephone/online verification. As a courtesy to our patients, verifiable and assignable insurance will be billed by our office. However, you are personally responsible for your account balance in the event your insurance company does not pay the full amount of your claims, unless you are eligible for a reduction in the amount owed under our Financial Policy.

**Discounts or Reductions in Bill**

We may offer assistance in attaining state and federal benefits under our Financial Policy in accordance with applicable federal and state laws.

**Your Responsibility and Cooperation**

If we accept your insurance assignment as a payment from your insurance company, you agree to timely cooperate with your insurance company or health plan in the course of insurance claim processing, such as insurance inquiries, requests for additional information, claims status verification or any inquiries for the purpose of your claim processing. You also agree to notify us immediately of any insurance inquiry or request for additional information and provide us with a copy of any documentation received from the insurance company or submitted to the insurance company from you.

We are committed to providing you with the highest quality care possible at an affordable cost. Every staff member at our office is ready to help you at any time. If you have any questions regarding our financial policies, please do not hesitate to ask us at any time.

I have read the Financial Policy. I understand and agree to this Financial Policy.

I HAVE READ AND FULLY UNDERSTAND THIS AGREEMENT

[Signature]      X Fantasia Hartnett      5/28/2021  
 Signature of Patient or Responsible Party      Patient Name (print)      Date  
 Kert Singel      \_\_\_\_\_      \_\_\_\_\_  
 Signature of Co-Responsible Party      Co-responsible Party Name (print)      Date

ANY LIABILITY ASSUMED IS SUBJECT TO LIMITATIONS OF THE RULES, REGULATIONS, POLICIES, AND PROCEDURES OF THE SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES AND FEDERAL LAW GOVERNING THE PARTICIPATION OF THE AGENCY IN SOCIAL SERVICE PROGRAMS.

ANY LIABILITY ASSUMED IS SUBJECT TO LIMITATIONS OF THE RULES, REGULATIONS, POLICIES, AND PROCEDURES OF THE SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES AND FEDERAL LAW GOVERNING THE PARTICIPATION OF THE AGENCY IN SOCIAL SERVICE PROGRAMS.

Addendum Six

RESIDENT FUNDS MANAGEMENT SERVICE

AUTHORIZATION AND AGREEMENT TO HANDLE RESIDENT FUNDS

Facility Name: Ridgeway Manor Healthcare Center

Resident Name (Last, First): Gail Wright S.S. # \_\_\_\_\_

Statement Address (if different from facility address): \_\_\_\_\_

A. CHECK ACCOUNT TYPE

1. RESIDENT TRUST ACCOUNT

Non-transferring account (No automatic transfer of deposits to pay for care cost.)

Transferring account with \$ 0 monthly allowance amount (Automatic transfer of care cost payments due the facility.)

2. BURIAL ACCOUNT

Revocable (May be closed prior to death)

Irrevocable (To be closed after death or if resident transfers from facility or if transferred to another burial account.)

Non-interest-bearing burial account (Interest will be paid if this item is NOT checked.)

B. DIRECT DEPOSIT - Please enroll my indicated recurring benefit payments for direct deposit.

Social Security  Supplemental Security Income  Other: \_\_\_\_\_

Veterans Administration  Civil Service  Other: \_\_\_\_\_

Railroad Retirement  Miners' Benefit/Black Lung

NOTE: The appropriate direct deposit form (Direct Deposit Enrollment Form or another pension form) must also be completed to establish the direct deposit.

\*CONTINUED ON NEXT PAGE

X FH  
Resident Initials      Responsible Party Initials

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By my signature below, I hereby authorize the facility named above to establish and manage an FDIC insured interest bearing resident fund or burial account with the options as specified above. I understand that I may have my recurring checks direct deposited to my resident fund account, that I may make deposits to and withdrawals from my resident fund account at the facility, and I will receive a statement of any account I have, at least quarterly.

In the event that I elect to have a resident fund transferring account, I direct that the amount stipulated by me or required or permitted under federal, state or local law from time to time in effect, be withheld monthly for my personal use and that the remainder be transferred to the facility for the payment of care costs. I hereby authorized the facility administrator and/or his/her designated staff, to from time to time adjust my personal allowance amount to comply with governing laws as they apply to me.

In the event of my death, I direct that any funds owed or advanced to me by the facility prior to my death are to be paid to the facility with any remaining balance in my resident fund account to become part of my estate.

By signing this form, under penalty of perjury, certify that (a) the number shown on this form is my correct taxpayer identification number, and (2) I am not subject to backup withholding because (a) I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (b) the Internal Revenue Service (IRS) has notified me that I am no longer subject to backup withholding. [If the signer has been notified by the IRS that he/she is subject to backup withholding, cross out the language in (2) above and signer to initial in the margin.]

\* Resident's illegible signature or mark (x) requires two witness signatures

Resident Signature or Mark: \_\_\_\_\_ Date: \_\_\_\_\_

Witness #1: [Signature] Date: 5/28/21

Witness #2: \_\_\_\_\_ Date: \_\_\_\_\_

Ridgeway Manor Healthcare Center, LLC  
Admission & Financial Agreement

Resident Initials: [Signature]  
Responsible Party Initials: \_\_\_\_\_

ANYONE SIGNING FOR THE RESIDENT MUST SIGN THE CERTIFICATION BELOW

I, the undersigned, certify that I am the legal representative as stated below for the above-named resident and agree to all the terms stated above and will provide valid legal supporting documentation of my legal capacity and authority upon the facility's request.

X Fantasia Hertwell  
Printed name of representative

X [Signature]  
Signature of legal representative

X 5/28/21  
Date

X \_\_\_\_\_  
Legal Title

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X [Signature]  
Resident Initials      Responsible Party Initials

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**Addendum Seven**  
Acknowledgements and Consents

Resident Information & Reference Guide (includes rules and rights)

The Resident and or/Resident Representative or Responsible Party hereby acknowledge receipt of a written copy of the Resident Information & Reference Guide. The information contained therein has been reviewed with the Resident and/or Resident Representative or Responsible Party. The information in the Guide includes:

Initials: CH

- A list of Department Heads
- A list of attending Physicians who treat residents/patients at the facility
- Policies and Rule Governing Resident Responsibilities
- Resident's Rights under State and Federal Law
- Non-Discrimination Policy
- A description of the Facility's policies regarding the:
  - ✓ Formation of Advance Directives
  - ✓ Discharge Policy
  - ✓ Therapeutic Leave
  - ✓ Protection of Resident Funds
  - ✓ Filing of grievances and complaints
  - ✓ Information on applying for and using Medicare and Medicaid benefits
  - ✓ Facilities Notice of Privacy Practices and Privacy Act regarding health records
  - ✓ List of Covered and non-covered Services under Medicare and Medicaid
  - ✓ Policies and Rules including allowed items to be brought in
  - ✓ Current Charges
  - ✓ Self-administration of medications
  - ✓ Bed hold Policy
  - ✓ Tobacco Use Policy
  - ✓ Consumption of Alcohol

T CH  
Resident Initials      Responsible Party Initials

ANY LIABILITY ASSUMED IS SUBJECT TO LIMITATIONS OF THE RULES, REGULATIONS, POLICIES, AND PROCEDURES OF THE SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES AND FEDERAL LAW GOVERNING THE PARTICIPATION OF THE AGENCY IN SOCIAL SERVICE PROGRAMS.

- ✓ Mail Policy
- ✓ Voting Policy
- ✓ Use of Sitters
- ✓ Laundry Services
- ✓ Beauty and Barber Services
- ✓ Care Planning Conferences

Advance Directives Acknowledgment

The Resident and or/Resident Representative or Responsible Party hereby acknowledge and confirms the following:

- The Resident has been informed in writing of his or her right to accept or refuse medical treatments;
- The Resident has been informed in writing of his or her right to formulate Advance Directives;
- The Resident is no required to have an Advance Directive in order to receive health care at this facility; and
- The terms of any Advance Directive that I have executed will be followed by the Facility to the extent permitted by law.

Initials:

X RH

Advance Directives

Please check one of the following:

Initials:

X RH

\_\_\_\_\_ The Resident HAS executed an Advance Directive.

\_\_\_\_\_ The Resident HAS NOT executed an Advance Directive.

Consent for Treatment

The Resident and/or Resident Representative consent to the administration of such care, treatment services, and medical or nursing procedures to the Resident, as the Facility and the Resident's attending physician or physician extender deem appropriate and medically necessary. The Resident and/or Resident Representative have the right to revoke this consent or to refuse treatment at any time.

Initials:

X RH

RH

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THE AGENCY IN SOCIAL SERVICE PROGRAMS.

Consent for Laundry Services

It is my wish that the facility provides laundry services as described in the Resident Information & Reference Guide.

Initials:

X PH

Food from Outside Sources

The Resident/Resident's Representative acknowledges and agrees that, when the Resident chooses to consume food that is prepared outside of the nutritional resources of the Facility, there is an increased risk of a variety of negative health outcomes, including but not limited to sickness and death. The Resident/Resident's Representative accept responsibility for any negative health outcomes associated with the consumption of food prepared outside of the Facility and agree to hold the Facility harmless from and against any and all damages arising from such consumption.

Initials:

X PH

Community Outings

The Resident \_\_\_\_\_ DOES or \_\_\_\_\_ DOES NOT have permission to leave the Facility with the activity director and/or other reliable activities personnel for the purpose of entertainment, rides, shopping, visiting local places of interest, and other similar excursions or events. The Resident/Resident Representative understand that the Resident may not be allowed to leave the Facility on a community outing if, at the time of such a trip, the Resident's physician, the Director of Nursing, or the charge nurse makes a determination that the participation is not in the Resident's best interest.

Initials:

X PH

Authorization to Open Resident's Mail

Residents have the right to send and receive mail unopened. Initialing the space to the right indicates that the Facility is authorized to open all mail for the Resident. This authorization may be revoked at any time upon written notice to the facility.

Initials:

X PH

Restriction on use of personal recording devices

In order to assure that the privacy of all residents is maintained and to assist in the compliance with state and federal privacy requirements, the recording of images, either with cellular phones, cameras, video cameras, computers, or any other equipment, is not permitted anywhere on Facility premises without the prior approval of the Administrator.

Initials:

X PH

Voter Information

Please check the following applicable statements:

- The Resident IS a registered voter.
- The Resident IS NOT a registered voter.
- The Resident has been incompetent to vote.

Initials:

X PH

If Resident Is registered:

- Resident DOES wish to participate in elections by:  submitting an absentee ballot or  going to the polls

PH

Resident Initials      Responsible Party Initials

<input type="checkbox"/> Resident DOES NOT wish to vote	Initials: <i>EH</i>
<i>If Resident is not registered:</i>	
<input type="checkbox"/> Resident DOES wish to register to vote	
<input type="checkbox"/> Resident DOES NOT wish to register to vote	Initials: <i>EH</i>

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# PSYCHIATRIC / FINANCIAL REFERRAL INFORMATION SHEET

Patient Name: Gail Wright      Contact or Referral Source \_\_\_\_\_ Phone # \_\_\_\_\_  
 Patient Address \_\_\_\_\_      Current Location of Patient \_\_\_\_\_ Patient Phone # \_\_\_\_\_  
 Hospital Admission Date \_\_\_\_\_      Hospital Admission Date \_\_\_\_\_ Location Prior/SNF days used \_\_\_\_\_  
 3-day Qualifying Stay (Medicare) \_\_\_\_\_      3-day Qualifying Stay (Medicare) \_\_\_\_\_ Prior stay info verified by \_\_\_\_\_  
 Verified QHS as in-patient \_\_\_\_\_      Verified QHS as in-patient \_\_\_\_\_ (full name, date and time)  
 Anticipated Transfer date to SNF \_\_\_\_\_      Anticipated Transfer date to SNF \_\_\_\_\_  
 Scheduled Dr. Appointment or procedures \_\_\_\_\_      Scheduled Dr. Appointment or procedures \_\_\_\_\_  
 Hospital Discharge Diagnosis \_\_\_\_\_      Hospital Discharge Diagnosis \_\_\_\_\_  
 Attending SNF Physician \_\_\_\_\_      Attending SNF Physician \_\_\_\_\_ Review of high cost Meds \_\_\_\_\_  
 Sex: Female      Gender ID: \_\_\_\_\_      Attending Phone # \_\_\_\_\_  
 Marital Status: Married      Primary Physician \_\_\_\_\_  
 Military: None      External Physician Phone # \_\_\_\_\_  
 Preferred Language: \_\_\_\_\_      Religious Preference: NA  
 Address: \_\_\_\_\_ Phone 1: \_\_\_\_\_ Phone 2: \_\_\_\_\_ Phone 3: \_\_\_\_\_  
 Address: \_\_\_\_\_ Phone 1: \_\_\_\_\_ Phone 2: \_\_\_\_\_ Phone 3: \_\_\_\_\_  
 Address: \_\_\_\_\_ Phone 1: \_\_\_\_\_ Phone 2: \_\_\_\_\_ Phone 3: \_\_\_\_\_

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### Bed Hold Policy

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#### Policy:

Ridgeway Manor will provide written information to the resident and or resident representative about the bed hold policy upon admission and when a resident is transferred to the hospital or goes on therapeutic leave.

#### Procedure:

- You will be provided in writing the Bed Hold Policy upon admission as your first notification.
- Should you temporarily leave for hospitalization or therapeutic leave, you will be provided with a transfer notification and another copy of the Bed Hold Policy.
- Medicare Residents- Medicare does not pay to hold your bed. If you choose to do so, you will be charged the private pay rate of \$190/day.
- Medicaid Residents- Medicaid will pay for a bed hold for ten (10) consecutive days per episode if a resident transferred to the hospital. If the hospitalization should exceed the ten day bed hold period, the resident may opt to pay the private pay rate to hold the bed.
- Case Manager, Social Service, and/or Clinical Staff will monitor progress of the hospitalized resident.

#### Notice of Bed Hold Policy

All facilities must have policies that address holding a resident's bed during periods of absence, such as during hospitalization or therapeutic leave. Additionally, facilities must provide written information about these policies to residents prior to and upon transfer for such absences. This information must be provided to all facility residents, regardless of their payment source.

These provisions require facilities to issue two notices related to bed-hold policies. The first notice could be given well in advance of any transfer, i.e., information provided in the admission packet. Reissuance of the first notice would be required if the bed-hold policy under the State plan or the facility's policy were to change.

The second notice must be provided to the resident, and if applicable the resident's representative, at the time of transfer, or in cases of emergency transfer, within 24 hours. It is expected that facilities will document multiple attempts to reach the resident's representative in cases where the facility was unable to notify the representative. The notice must provide information to the resident that explains the duration of bed-hold, if any, and the reserve bed payment policy. It should also address permitting the return of residents to the next available bed.

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Medicare Secondary Payer Questionnaire

Date: 5/28/21 Patient Name: Gail Wright

PATIENT DATE OF BIRTH: 10/3/54 Patient Medicare #: \_\_\_\_\_

Dear Medicare Patient:

Medicare requires that all entities that bill Medicare for services or items rendered to Medicare beneficiaries determine whether Medicare is the primary payer for those services or items provided. Therefore, \_\_\_\_\_ is requesting that the information below be provided so that a determination can be made regarding your primary insurance, please answer all questions.

- 1. Is the illness/injury due to an automobile accident, liability accident, or Workman's Compensation? If "yes", please provide information on page 2.  Yes  No
- 2. Is illness covered by the Black Lung Program or Veteran Affairs Program? If "yes", Please provide information on page 2.  Yes  No
- 3. Are the services to be paid by a government research or grant program? If "yes", please provide information on page 2.  Yes  No
- 4. Is the patient covered by an Employer Group Health Plan, including Federal Employees, If "yes", please provide the information on page 2.  Yes  No
- 5. Is this patient or his/her spouse actively employed by an employer of 20 or more employees? If "yes", provide information on page 2.  Yes  No
- 6a. If patient is under age 65, is your Medicare coverage due to disability? If "yes" go to #6b, if "no", go to #7.  Yes  No
- 6b. Is the patient or his/her spouse or parent actively employed by, or is the patient considered an employee of an employer having 100 or more employees? If "yes", provide information on page 2. Please provide information on page 2.  Yes  No
- 7a. Is the patient entitled to Medicare solely on the basis of End Stage Renal Disease (ESRD)? If "yes", go to #7b.  Yes  No
- b. Has the patient completed the ESRD coordination period? If "no", please provide information on page 2.  Yes  No

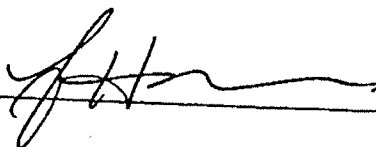
### Medicare Secondary Payer Questionnaire

8. Is the patient enrolled in an HMO that has Medicare benefits assigned?  
If "yes", please provide the information below.  Yes  No

9. Has the patient elected Hospice benefits? If "yes", provide information  
Below:  Yes  No

Please complete each question, if applicable.

- Name of Primary Insurance Policy Holder: \_\_\_\_\_  
Name of Primary Insurance Company: \_\_\_\_\_  
Address of Primary Insurance Company: \_\_\_\_\_  
Primary Insurance Policy Number: \_\_\_\_\_
- Name of Policy Holder's Employer: \_\_\_\_\_  
Address of Policy Holder's Employer: \_\_\_\_\_  
Date Benefits Began \_\_\_\_ / \_\_\_\_ / \_\_\_\_
- Date of Accident/Injury (If answered "yes" see question #1): \_\_\_\_ / \_\_\_\_ / \_\_\_\_
- Name of attorney(s) (If answered "yes" to question #1): \_\_\_\_\_
- Name of Research/Grant Study (If answered yes to question #3): \_\_\_\_\_  
Contact Person for Research/Grant: \_\_\_\_\_ Contact # \_\_\_\_\_
- Hospice Benefit: Are care and service for the management of the hospice-related diagnosis?  
 Yes  No If "yes" provide Hospice Qualifying Diagnosis: \_\_\_\_\_

Patient's Signature:  Date: 5/28/21

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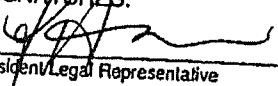
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**RESIDENT PERSONAL POSSESSIONS INVENTORY**  
May be completed by the Family/Resident

Resident \_\_\_\_\_ Social Security # \_\_\_\_\_

Admission Date \_\_\_\_\_ Date List Completed \_\_\_\_\_

Quantity	CLOTHING & SHOES Description	Quantity	VALUABLE ITEMS Description (Incl. Est. Value)

EQUIPMENT/FURNITURE (Walker, Cane, Wheelchair)	OTHER PERSONAL ITEMS (Glasses, Dentures, Etc.)

SIGNATURES:  
  
Resident/Legal Representative \_\_\_\_\_ Date 5/28/21

Operator \_\_\_\_\_ Date \_\_\_\_\_





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Dear Resident and Family Members:

The following is our Emergency Communications Policy. This policy/procedures will be activated upon an emergency/disaster. Our number one priority is to keep our residents safe at all times.

Emergency Communications

Policy Statement

This facility shall establish reliable methods of communicating both internally and externally during a crisis or disaster situation.

Policy Interpretation and Implementation

1. It is recognized that traditional communication systems may not be available (failure) or may be overwhelmed (overload) during such a critical event.
2. Examples of alternate communication methods include cellular phones (possibly cellular phones with outside area codes), satellite phones (both of which may not always be reliable), internet (if computer systems are operable), two-way radios and CB or HAM radios. Mass notification systems are another option.
3. Our facility has identified and secured cell phones/radios as the primary communication method for internal usage in the event of a disaster.
4. [www.ridgewaymanorhealthcare.com](http://www.ridgewaymanorhealthcare.com) has been designated as the alternate and supplemental method of internal communication in the event the primary system is inoperable.
5. Cell phones have been identified as the primary means of external communication in the event of a disaster.
6. [www.ridgewaymanorhealthcare.com](http://www.ridgewaymanorhealthcare.com) has been designated as the alternate and supplemental method of external communication in the event of a disaster.
7. Facility Maintenance Director and Administrator are responsible for the testing and maintenance of the above devices to ensure proper functioning when needed.

Sincerely,

Ridgeway Manor Healthcare Center

117 Bellfield Rd. Ridgeway, SC 29130  
Phone: 803-337-2257  
Fax: 803-337-2255

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**Resident Fund Management Service**  
 AUTHORIZATION AND AGREEMENT TO HANDLE RESIDENT FUNDS  
 \* \* PLEASE TYPE OR PRINT \* \*

ACCOUNT NO

Resident Name Paul Wright Taxpayer ID NO. \_\_\_\_\_  
First Last

Facility Name \_\_\_\_\_ Facility Resident ID \_\_\_\_\_  
Resident's own Social Security No

Statement Address \_\_\_\_\_  
Optional Data - Area 12 Clients  
Only if different than Facility address

**CHECK ACCOUNT TYPE**

- RESIDENT FUND ACCOUNT
  - NON-TRANSFERRING ACCOUNT (No automatic transfer of deposits to pay for care cost.)
  - TRANSFERRING ACCOUNT (Automatic transfer of care cost payments due the facility.) with \$ \_\_\_\_\_ MONTHLY ALLOWANCE AMOUNT.
- BURIAL ACCOUNT (Deposit only account - monies to be used for burial expenses only.)
  - Revocable (May be closed prior to death.)
  - Irrevocable (To be closed after death or if resident transfers from facility or if transferred to another burial account.)
  - Non-interest bearing burial account (Interest will be paid if this item is NOT checked.)

**DIRECT DEPOSIT** - Please enroll my indicated recurring benefit payments for direct deposit.

Social Security                       Supplemental Security Income

Veterans Administration             Civil Service

Railroad Retirement                  Miners Benefit/Black Lung

\*\*\* Note - Enter the direct deposit information in the RFMS software, or complete the appropriate pension direct deposit form. If you are enrolling for any of the federal government agencies listed above and the resident has a representative payee, the representative payee MUST sign this form.

By my signature below, I hereby authorize the facility named above to establish and manage an FDIC insured interest bearing resident fund account with the options as specified above. I understand, I may have my recurring checks direct deposited to my resident fund account, I may make deposits to and withdrawals from my resident fund account at the facility, and I will receive a statement of any account I have at least quarterly.

In the event that I elect to have a resident fund transferring account, I direct that the amount stipulated by me or required or permitted under state, state or local law from time to time in effect, be withheld monthly for my personal use and that the remainder be transferred to the facility for the payment of my care costs. I hereby authorize the facility administrator and/or his/her designated staff, to from time to time to use my personal allowance amount to comply with governing laws as they apply to me.

In the event of my death, I direct that any funds owed or advanced to me by the facility prior to my death are to be paid to the facility with the remaining balance in my resident fund account to become part of my estate.

By signing this form, I under penalties of perjury, certify that (1) the number shown on this form is my correct taxpayer identification number, and (2) I am not subject to backup withholding because (a) I have not been notified that I am subject to backup withholding as a result of my failure to report all interest or dividends, or (b) the Internal Revenue Service (IRS) has notified me that I am no longer subject to backup withholding. [If the signer has been notified by the IRS that he/she is subject to backup withholding, cross out the language in (2) above.]

\* \* RESIDENT'S ILLEGIBLE SIGNATURE OR MARK (X) REQUIRES TWO WITNESS SIGNATURES \* \*

SS \_\_\_\_\_ RESIDENT \* \_\_\_\_\_  
Signature or Mark (X)

\$ \_\_\_\_\_ Date \_\_\_\_\_

**ONE SIGNING FOR THE RESIDENT MUST SIGN THE CERTIFICATION BELOW**

I, undersigned, certify that I am the legal representative as stated below for the above named resident and agree to all the terms stated and will provide valid legal supporting documentation of my legal capacity and authority upon the facility's request.

NAME OF REPRESENTATIVE \_\_\_\_\_  
 SIGNATURE OF LEGAL REPRESENTATIVE \_\_\_\_\_

LEGAL TITLE

ELECTRONICALLY FILED - 2024 May 28 6:35 PM - FAIRFIELD - COMMON PLEAS - CASE#2023CP2000374

ANY LIABILITY ASSUMED IS SUBJECT TO LIMITATIONS OF THE RULES, REGULATIONS, POLICIES, AND PROCEDURES OF THE SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES AND FEDERAL LAW GOVERNING THE PARTICIPATION OF THE AGENCY IN SOCIAL SERVICE PROGRAMS.

SOUTH CAROLINA COMMUNITY LONG TERM CARE  
CONSENT FORM

Client Name: Gail Wright

Social Security Number: \_\_\_\_\_

I understand as part of my application for long term care services in the community or a Title XIX nursing home, my condition must be evaluated by the South Carolina Community Long Term Care Program.

This evaluation includes information provided by:

- a. my physician and medical records;
- b. professionals and organizations involved with my care; and,
- c. an interview with me and, if necessary, with my family.

I hereby authorize any social service professionals, organizations, doctors, nurses, or other medical personnel or medical facilities involved in my care to release to Community Long Term Care any medical information regarding my diagnoses and recommended treatment.

I hereby authorize Community Long Term Care to release information on my behalf to physicians, hospitals, health and human service organizations, health and human service agencies, family members and/or other persons directly involved with my care.

I understand if my current or future diagnosis includes Alzheimer's Disease, senile dementia or a similar disorder, my records may be reviewed by the statewide Alzheimer's Disease and Related Disorders Registry, and I, or my responsible party, may be contacted for additional information.

Use the space below to indicate the name of any organization, agency or person to whom you do not choose to release information.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This consent shall remain in effect until \_\_\_\_\_, revoked by me in writing, or until such time as my case is closed by Community Long Term Care.

Date: 5/28/24

X Keri Singletta - Case manager  
Signature of Client or Responsible Party

X \_\_\_\_\_  
If Signed by Responsible Party, State Relationship and Authority to Sign.

Date: \_\_\_\_\_

Signature of Witness

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Social Security Administration

Consent for Release of Information

Form Approved OMB No. 0960-0566

Instructions for Using this Form

Complete this form only if you want us to give information or records about you, a minor, or a legally incompetent adult, to an individual or group (for example, a doctor or an insurance company). If you are the natural or adoptive parent or legal guardian, acting on behalf of a minor child, you may complete this form to release only the minor's non-medical records. We may charge a fee for providing information unrelated to the administration of a program under the Social Security Act.

NOTE: Do not use this form to:

- Request the release of medical records on behalf of a minor child. Instead, visit your local Social Security office or call our toll-free number, 1-800-772-1213 (TTY-1-800-325-0778), or
- Request detailed information about your earnings or employment history. Instead, complete and mail form SSA-7050-F4. You can obtain form SSA-7050-F4 from your local Social Security office or online at [www.ssa.gov/online/ssa-7050.pdf](http://www.ssa.gov/online/ssa-7050.pdf).

How to Complete this Form

We will not honor this form unless all required fields are completed. An asterisk (\*) indicates a required field. Also, we will not honor blanket requests for "any and all records" or the "entire file." You must specify the information you are requesting and you must sign and date this form. We may charge a fee to release information for non-program purposes.

- Fill in your name, date of birth, and social security number or the name, date of birth, and social security number of the person to whom the requested information pertains.
- Fill in the name and address of the person or organization where you want us to send the requested information.
- Specify the reason you want us to release the information.
- Check the box next to the type(s) of information you want us to release including the date ranges, where applicable.
- For non-medical information, you, the parent or the legal guardian acting on behalf of a minor child or legally incompetent adult, must sign and date this form and provide a daytime phone number.
- If you are not the individual to whom the requested information pertains, state your relationship to that person. We may require proof of relationship.

PRIVACY ACT STATEMENT

Section 205(a) of the Social Security Act, as amended, authorizes us to collect the information requested on this form. We will use the information you provide to respond to your request for access to the records we maintain about you or to process your request to release your records to a third party. You do not have to provide the requested information. Your response is voluntary; however, we cannot honor your request to release information or records about you to another person or organization without your consent. We rarely use the information provided on this form for any purpose other than to respond to requests for SSA records information. However, the Privacy Act (5 U.S.C. § 552a(b)) permits us to disclose the information you provide on this form in accordance with approved routine uses, which include but are not limited to the following:

1. To enable an agency or third party to assist Social Security in establishing rights to Social Security benefits and or coverage;
2. To make determinations for eligibility in similar health and income maintenance programs at the Federal, State, and local level;
3. To comply with Federal laws requiring the disclosure of the information from our records; and,
4. To facilitate statistical research, audit, or investigative activities necessary to assure the integrity of SSA programs.

We may also use the information you provide when we match records by computer. Computer matching programs compare our records with those of other Federal, State, or local government agencies. We use information from these matching programs to establish or verify a person's eligibility for Federally-funded or administered benefit programs and for repayment of incorrect payments or overpayments under these programs. Additional information regarding this form, routine uses of information, and other Social Security programs is available on our Internet website, [www.socialsecurity.gov](http://www.socialsecurity.gov), or at your local Social Security office.

PAPERWORK REDUCTION ACT STATEMENT

This information collection meets the requirements of 44 U.S.C. § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take about 3 minutes to read the instructions, gather the facts, and answer the questions. SEND BRING THE COMPLETED FORM TO YOUR LOCAL SOCIAL SECURITY OFFICE. You can find your local Social Security office through SSA's website at [www.socialsecurity.gov](http://www.socialsecurity.gov). Offices are also listed under U.S. Government agencies in our telephone directory or you may call 1-800-772-1213 (TTY 1-800-325-0778). You may send comments on our time estimate above to: SSA, 6401 Security Blvd., Baltimore, MD 21235-6401. Send only comments relating to our time estimate and address, not the completed form.

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Social Security Administration

Consent for Release of Information

Form Approved OMB No. 0960-0566

You must complete all required fields. We will not honor your request unless all required fields are completed. (\*Signifies a required field. \*\*Please complete these fields in case we need to contact you about the consent form).

TO: Social Security Administration

\*My Full Name

\*My Date of Birth (MM/DD/YYYY)

\*My Social Security Number

I authorize the Social Security Administration to release information or records about me to:

\*NAME OF PERSON OR ORGANIZATION:

Ridgeway Manor Healthcare Center, LLC

\*ADDRESS OF PERSON OR ORGANIZATION:

117 Bellfield Rd. Ridgeway, SC 29130

\*I want this information released because: Admission to a long-term care facility. Need to verify info. We may charge a fee to release information for non-program purposes.

\*Please release the following information selected from the list below: Check at least one box. We will not disclose records unless you include date ranges where applicable.

- 1. [X] Verification of Social Security Number
2. [X] Current monthly Social Security benefit amount
3. [X] Current monthly Supplemental Security Income payment amount
4. [X] My benefit or payment amounts from date to date
5. [ ] My Medicare entitlement from date to date
6. [ ] Medical records from my claims folder(s) from date to date
7. [ ] Complete medical records from my claims folder(s)
8. [ ] Other record(s) from my file

I am the individual, to whom the requested information or record applies, or the parent or legal guardian of a minor, or the legal guardian of a legally incompetent adult. I declare under penalty of perjury (28 CFR § 16.41(d)(2004) that I have examined all the information on this form and it is true and correct to the best of my knowledge.

Signature: Date:
Address: Daytime Phone:
Relationship (if not the subject of the record): Daytime Phone:

Witnesses must sign this form ONLY if the above signature is by mark (X). If signed by mark (X), two witnesses to the signing must know the signee must sign below and provide their full addresses. Please print the signee's name next to the mark (X) on the signature line above.

Table with 2 columns: 1. Signature of witness, 2. Signature of witness. Rows for Name and Address (Number and street, City, State, and Zip Code).

~~Unable to give~~  
Consent

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Consent for Pneumococcal and Influenza Vaccination Administration

I have been provided the Center for Disease Control Facts sheets regarding the Pneumococcal and Influenza Vaccinations. I have been provided an opportunity to ask questions regarding the vaccinations and have understood the information provided. I understand that I have the right to refuse the vaccinations.

\_\_\_\_\_  
Print Name of Resident/Representative      Signature of Resident/Representative      Date

Medical Practice or Primary Care Physician Name: \_\_\_\_\_  
Date of last known pneumococcal vaccination: \_\_\_\_\_

Pneumococcal Vaccination

I consent to the administration of the pneumococcal vaccine as per physician orders.

\_\_\_\_\_  
Print Name of Resident/Representative      Signature of Resident/Representative      Date

I do not consent to the administration of the pneumococcal vaccine.

\_\_\_\_\_  
Print Name of Resident/Representative      Signature of Resident/Representative      Date

Influenza Vaccination

I consent to the administration of the influenza vaccine as per physician orders.

\_\_\_\_\_  
Print Name of Resident/Representative      Signature of Resident/Representative      Date

I do not consent to the administration of the influenza vaccine.

\_\_\_\_\_  
Print Name of Resident/Representative      Signature of Resident/Representative      Date



### Authorization for Release of Information and Appointment of Authorized Representative for Medicaid Applications/Reviews and Appeals

Name of Medicaid applicant/member

Social Security Number

#### Appointing an Authorized Representative

Would you like to allow someone to represent you on all matters related to your case? You can give a trusted person or an organization permission to talk about your application with us, see your information, and act for you on matters related to your application, including getting information about your application and signing your application on your behalf. This person can also act for you on other matters, including reviews, appeals and managed care processes. This person is called an "authorized representative." The Medicaid eligibility worker can release any information regarding your application/review and status to your authorized representative or any member of the organization indicated on this form. More than one person or organization can serve as your authorized representative. You can appoint, withdraw or change an authorized representative at any time. If you ever need to change your authorized representative, contact Healthy Connections. If you are a legally appointed representative for someone on this application, you do not need to complete this section.

Name of Authorized Representative (First name, Middle name, Last name)

- New  Change  Addition
- Remove this person or organization as my authorized representative

Authorized Representative's address (Leave blank if you don't have one.)

Apartment or suite number

City

State

ZIP code

Authorized Representative's phone number

Other phone number

Authorized Representative's email address

Organization name (if applicable)

Unit\* (if applicable)

ID number (if applicable)

\*It is best to identify a specific unit for large organizations.

OR

#### Permission to Release Information

Is there anyone that you would like us to share information with about your application? By completing this section, you can give permission for the following person to receive information about your application/case, but they won't have the ability to act on your behalf like an authorized representative. You also give SCDHHS permission to release information about this application to this additional person or organization.

Name of person/organization

Phone

Address

City

State

ZIP

Unit (if applicable)

ID Number (if applicable)

Medicaid applicant/member's signature

Date (mm/dd/yyyy)

If signing with an "X" please have two people sign below as witnesses.

Witness: *[Signature]*

Witness: \_\_\_\_\_

Member is incapacitated and unable to sign. SCDHHS reserves the right to verify member's inability to sign. Provide reason: \_\_\_\_\_

**Mail your signed form to: SCDHHS - Central Mail, PO Box 100101, Columbia, SC 29202-3101 Fax: (888) 820-1204**

NEED HELP WITH YOUR APPLICATION? Visit [SCDHHS.gov](http://SCDHHS.gov) or call us at 1-888-549-0820. Para obtener una copia de este formulario en Español, llame 1-888-549-0820. If you need help in a language other than English, call 1-888-549-0820 and tell the customer service representative the language you need. We'll get you help at no cost to you. TTY users should call 1-888-842-3620.

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Financial Information

Date: \_\_\_\_\_

Resident Name: Gail Wright Resident DOB: 10/3/21

Resident Social Security Number: \_\_\_\_\_ Driver's License No.: \_\_\_\_\_

If currently receiving OR applying to receive Medicaid Assistance, complete the following information.

Resident is:  Single  Married  Widowed  Separated  Divorced

Spouse's Name: \_\_\_\_\_

Spouse's Address: \_\_\_\_\_  
\_\_\_\_\_

Resident's Income

Source	Frequency	Amount
Social Security	<u>monthly</u>	<u>\$ 864.00</u>
SS Supplemental		
Veteran's Payments		
Railroad Retirement		
Civil Service Authority		
Other Retirement		
Rents, Dividends, Interest		
Royalties		
Other		
Total		

Please answer

A. Real Estate  
Does resident own a home?  No  Yes N/A If yes, state value: \$ \_\_\_\_\_

How is home used? \_\_\_\_\_

Address: \_\_\_\_\_

Does resident own other real estate?  No  Yes If yes, state value: \$ \_\_\_\_\_

How is it used? \_\_\_\_\_

Address: \_\_\_\_\_

Does property earn rental income?  No  Yes (Rent documented in Resident's Income Statement)

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FINANCIAL INFORMATION continued

• Patient Liability

Account	No	Yes	Balance	Signatures
Checking Accts	✓			
Savings Accts	✓			
Certificate of Deposit	✓			
Savings Bonds, Annuities	✓			
Sign on other Accounts	✓			
Safe Deposit Box	✓			
Patient Trust Fund	✓			
Cash on Hand	✓			
Life Insurance	✓			
Burial Plots	✓			
Promissory/Mort. Notes	✓			
Trusts	✓			
Life Estate	✓			
Oil, gas, Mineral Rights	✓			
Livestock	✓			
Work Equipment	✓			

Please answer

• Does resident own or share ownership of anything not noted above?  No  Yes if yes, please describe

• I certify the information on this form is true and correct to the best of my knowledge and belief

Signature of Resident \_\_\_\_\_ Date \_\_\_\_\_

Signature of Resident Representative \_\_\_\_\_ Date \_\_\_\_\_

• Special agreement for residents receiving OR applying to receive government assistance in accordance with the rules and regulations of the Social Security Administration and the state's Department of Human Services:

The resident and resident representative hereby agree that all income received by or for said resident in excess of \$30.00 per month shall be paid to facility and applied to said resident's monthly bill. The estimated Patient Liability is \$\_\_\_\_\_ based on the financial information provided. Upon final eligibility approval, any changes to the Patient Liability will be communicated and adjusted accordingly.

The resident and resident representative understand that completing this form does not constitute a Medicaid approval or denial.

An application must be filed with the state's Department of Human Services. Failure to file timely will result in loss of assistance.

Signature of Resident \_\_\_\_\_

Date \_\_\_\_\_

Signature of Resident Representative \_\_\_\_\_

Date 5/28/21

**Observation Detail List Report: Wright, Gail (Full Code) MR#: 160325-01**

ELECTRONICALLY FILED - 2024 May 28 6:35 PM - FAIRFIELD - COMMON PLEAS - CASE#2023CP2000374

Total Braden Scale Score: Score: 13.00 Level: MODERATE RISK  
 Interpretation of Score: 19 or Higher - NOT AT RISK - No interventions necessary at this time. 15-18 - AT RISK - If other major risk factors are present e.g. advanced age, fever, poor dietary intake of protein, Diastolic BP <60, hemodynamic instability advance to next level of risk. 13-14 - MODERATE RISK - If other major risk factors are present advance to next level of risk. 10-12 - HIGH RISK. 9 or Less - VERY HIGH RISK.  
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**Johns Hopkins Fall Risk Assessment Tool**

OBSERVATION INFORMATION

<b>Creator:</b>	Ms. Amanda Creel	<b>Date Recorded:</b>	06/02/2021 03:20PM
<b>Observation Date:</b>	06/02/2021 03:19PM	<b>Completed Date:</b>	06/02/2021 03:21PM
<b>Schedule Details:</b>	Unscheduled	<b>Completed By:</b>	Ms. Amanda Creel
<b>Contributors:</b>	Amanda Creel		

OBSERVATION STATUS: COMPLETE

DESCRIPTION

Admission - admission

OBSERVATION DETAILS

**Fall Risk**

**Johns Hopkins Fall Risk Assessment Tool**

Fall Risk: No falls within the previous 6 months

Low Fall Risk: Complete paralysis or completely immobilized: No

Age: 60-69 (1 point)

Fall History: None (0 points)

Elimination, Bowel and Urine: Incontinence (2 points)

Medications: includes PCA/opiates, anti-convulsants, anti-hypertensives, diuretics, hypnotics, laxatives, sedatives, and psychotropics: On 2 or more high fall risk drugs (5 points)

Patient Care Equipment: Any equipment that tethers patient (e.g., IV infusion, chest tube, indwelling catheter, SCDs, etc.): No tethering patient care equipment present (0 points)

Mobility: Requires assistance or supervision for mobility, transfer, or ambulation (2 points)

Cognition: No cognition issues (0 points)

Total Fall Risk Score: Score: 10.00 Level: Moderate Fall Risk  
 (Scoring: 0-5 Total Points = Low Fall Risk, 6-13 Total Points = Moderate Fall Risk, >13 Total Points = High Fall Risk)

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**Admission Observation**

OBSERVATION INFORMATION

<b>Creator:</b>	Christopher Cooper RN	<b>Date Recorded:</b>	06/01/2021 04:40PM
<b>Observation Date:</b>	06/01/2021 04:40PM	<b>Completed Date:</b>	06/01/2021 04:51PM
<b>Schedule Details:</b>	Unscheduled	<b>Completed By:</b>	Christopher Cooper RN
<b>Contributors:</b>	Christopher Cooper RN		

OBSERVATION STATUS: COMPLETE

DESCRIPTION

Admission

OBSERVATION DETAILS

**General Admission Information**

Method of admission transportation: Ambulance  
 Mode of transfer: Stretcher  
 Transfer activity: Manual lift from stretcher

**0146**

Observation Detail List Report: Wright, Gail (Full Code) MR#: 160325-01

ELECTRONICALLY FILED - 2024 May 28 6:35 PM - FAIRFIELD - COMMON PLEAS - CASE#2023CP2000374

Staff assist with transfer: 2 person facility staff assist

Resident History

History information obtained from: Medical record
Do you live alone? No
Lives with: Spouse
Do you have assistance with personal care? Yes
Personal care assistance provided by: Spouse, Home health agency
Household needs handled by: Spouse, Home health agency
Primary language spoken is English? Yes
Do you use any communication devices? No
General Health: In general would you say your health is? Poor
How much bodily pain have you had in the last 4 weeks? Very mild
Is this pain new or chronic? (Chronic is the presence of pain for greater than 12 weeks) Chronic
Do you have difficulty driving, watching TV, or reading because of poor eyesight? Yes
Do you use any assistive devices to help your eyesight? Glasses
Can you hear normal conversational voice? Yes
Do you use hearing aides? No
Do you have dentures or partials? None
Do you have problems with your memory? No
Do you often feel sad, lonely, or depressed? No
Have you unintentionally lost weight in the last 6 months? No
Do you have trouble with control of your bladder? Yes
Do you have trouble with control of your bowels? Yes
Have you fallen in the last month? No
Current health problems: Balance problems, Heart problems, High blood pressure, Kidney problems
Do you have trouble sleeping at night? No
How much do you sleep at night? Less than 8 hours
Do you take naps during the day? Morning and afternoon nap
Symptoms experienced with activity: Unsteady gait, Weakness
Respiratory equipment used: None
Do you have any of these devices to help your heart? None
Do you use any assistive devices? None
Type of assistive device? None

Mental/Neuro

Responsiveness: Responds to commands
Uses communication devices: No
Level of consciousness: Alert
Oriented to: Person, Place, Time and Situation
Speech: Clear
Left eye - Pupil size: 3mm
Left eye - Pupil shape: Round
Left eye - Pupil Response: Brisk
Left eye - Accommodation normal? Yes
Right eye - Pupil size: 3mm
Right eye - Pupil shape: Round
Right eye - Pupil Response: Brisk
Right eye - Accommodation normal? Yes
Hand grasp strength: Weak bilaterally
Foot press strength: Weak bilaterally

Eyes, Ears, Nose and Throat

Decrease in peripheral vision? No
Visual disturbances: None
Eyes bilaterally clear, sclera white, conjunctiva normal? Yes
Nares patency: Both nares patent
Oral cavity: No ulcers, lesions, halitosis, dry membranes or bleeding gums
Neck Supple: Yes
Swollen glands: No

Respiratory

**Observation Detail List Report: Wright, Gail (Full Code) MR#: 160325-01**

ELECTRONICALLY FILED - 2024 May 28 6:35 PM - FAIRFIELD - COMMON PLEAS - CASE#2023CP2000374

Uses oxygen: No  
Shortness of breath present? No  
Restlessness present: No  
Anxiety present: No  
Fatigue present: Yes  
Respirations rhythm/pattern: Regular/unlabored  
Cough? No  
Left lung - Breath sounds clear and present in all lobes? Yes  
Right lung - Breath sounds clear and present in all lobes? Yes

**Cardiovascular**

Heart Rate: Regular  
Heart sounds: No abnormal sounds  
Capillary refill: less than 3 seconds  
Pedal pulses present and strong bilaterally? No  
Left pedal pulse strength: Faint  
Right pedal pulse strength: Faint  
Edema present: No

**Gastrointestinal (GI)**

Do you have any bowel issues? Constipation, Incontinence  
Abdomen: Soft  
Abdominal distention? Non-distended  
Abdomen obese? Yes  
Guarding or tenderness? No  
Bowel sounds normal active in all 4 quadrants? Yes  
Nausea present? No  
Emesis present? No  
Appliances: None

**Genitourinary (GU)**

Urinary symptoms: Incontinence  
Types of incontinence: Mixed  
Catheters: None  
Urine assessed: No  
Urinary diversion: None

**Musculoskeletal**

Numbness or tingling present? No  
Range of motion functional limitations: Left upper extremity, Right upper extremity, Left lower extremity, Right lower extremity  
Left upper extremity range of motion limitations in: shoulder  
Right upper extremity range of motion limitations in: shoulder  
Left lower extremity range of motion limitations in: hip  
Right lower extremity range of motion limitations in: hip  
Extremity weakness: All extremities  
Contractures: None  
Joint swelling or inflammation? None  
Lower extremities equal in length? Yes

**Skin**

Skin temperature: Warm  
Skin moisture: Dry  
Skin color: Normal color  
Petechiae present? No  
Skin turgor: Normal  
Alterations in skin? No  
Comments: abrasion left exterior shin- mediplex

**Pain**

Resident expresses experiencing pain or hurting: No  
Complete PAINAD? No





**21DR401299**

**Docket Number**

**South Carolina Vulnerable Adult Guardian ad Litem Volunteer Program**

**Report**

**Guardian ad Litem Report to the Family Court**

**Docket Number 21DR401299**

This report was prepared for the benefit of the Court and is of confidential nature. It may be distributed to parties to the proceedings only. This report is subject to change based on testimony.

**Hearing Date:** June 24, 2021

**GUARDIAN AD LITEM:** Peter Reinhart

**IN THE INTEREST OF:** Ms. Gail Wright      **DATE OF BIRTH:** October 2, 1954

**ATTORNEY FOR GUARDIAN AD LITEM:** Angela Kohel, Esq.

**DSS CASE MANAGER:** Keri Singleton

**DSS ATTORNEY:** Ebony Austin, Esq.

**Persons Interviews**

- Keri Singleton – DSS Caseworker
- Ms. Jennifer Adams, Social Worker – Ridgeway Manor Healthcare
- Ms. Gail Wright – Vulnerable Adult
- Ms. Evette Daniels, Sister, Power of Attorney
- Stephany Pressley – Daughter
- William Wright – Husband
- William Wright Junior - Son

**Interviews Attempted not completed:**

None

**Documents Reviewed:**

- Family Court Coversheet – May 17, 2021
- Summons, Notice of Hearing – May 17, 2021
- Notice of Virtual Courtroom (WEBEX Hearing) Probable Cause Complaint – May 17, 2021
- Vulnerable Adult Comprehensive – May 17, 2021



Docket Number

**21DR401299**

Affidavit of Reasonable Efforts – May 17, 2021

Order of Appointment of a Guardian Ad Litem for Vulnerable Adult – May 19, 2021

**Medical Records** to include:

Summary of DSS Hospital Call – May 24, 2021

Prisma Health Richland Hospital Admission History & Physical Note– May 14, 2021

Prisma Health Richland Hospital Daily Progress Note – May 16, 2021

Communication with DSS case worker, Keri Singleton – June 3, 2021

Communication with Ms. Jennifer Adam, Social Worker, Ridgeway Manor – June 14, 2021

**Documents requested not received:**

Monthly income and sources of income from DSS

**Allegations**

Ms. Gail Wright was placed into Emergency Protective Custody on May 16, 2021. Ms. Gail right resided at 136 Arrowood Road, Columbia SC and is a paraplegic needing constant care for herself. It was reported that Ms. Wright was removed from her home due to her caregivers abandoning her for a period of three days. It was reported that Ms. Wright was not able to care for herself and that she had been sitting in a chair for three days unattended by care givers. Ms. Wright called police and was transported to Prisma Health Richland Hospital where she remained until June 1, 2021. Ms. Wright was then transported to Ridgeway Manor Healthcare on June 1, 2021 and has since resided there in assisted living.

**History:**

Ms. Gail Wright is a senior adult who was born on October 2, 1954. She is a 67 year old female who is a paraplegic who had been bed bound for several years and in need of constant care. She was living in her home at 136 Arrowood Road, Columbia, SC 29201 and was abandoned by care givers for a period of three days. Ms. Wright called the police and was then transported to Prism Health, 5 Richland Medical Perk Drive. According to the admission history from Prisma Health Richland Hospital, Ms. Wright is a female who presented as an emergency protective custody care on May 16, 2021 after being found abandoned in her home for a period of three days. It was reported that Ms. Wright spent that entire time sitting in her chair. The medical report further states that Ms. Wright is a paraplegic with diagnosis of diabetes mellitus (HCC), H/O ovarian cancer, hypertension, and peripheral neuropathy. She is not able to return to her home situation without constant care.



21DR401299

Docket Number

### **Procedural History**

Emergency Protective Custody – May 16, 2021

Probable Cause Hearing – May 18, 2021, 2:00 PM

Guardian Ad Litem appointed – May 19, 2021

Merits Hearing – June 24, 2021, 2:00 PM

### **Guardian ad Litem Observations:**

The Guardian ad Litem talked to Ms. Wright on June 18, 2021, by telephone from Ridgeway Manor Healthcare. Ms. Wright appeared to be in a good state of mind alert to her present condition and placement. Ms. Wright indicated to the GAL that she wanted to go home but realized that she needed 24-hour care and that her caregivers were not providing that care. Ms. Wright indicated to the GAL that she was in a good placement with all the necessary care provided for her needs.

The Guardian ad Litem received and reviewed a copy of the hospital call information dated May 24, 2021, provided by the Department of Aging. According to that summary, Ms. Wright was placed into Emergency Protective Custody on May 14, 2021 after law enforcement was notified that she had been sitting in the same spot for three days after her caregivers abandoned her for three days. The report further stated that the Probable Cause Hearing was held on May 18, 2021, and ordered that Ms. Wright remained in DSS custody. The report stated that her level of care was pending, and a Medicaid application was submitted on May 19, 2021.

The Guardian ad Litem contacted Ms. Keri Singleton, DSS case worker on June 2, 2021, concerning the status of Ms. Wright. Ms. Keri Singleton provided a short summary of the status of Ms. Wright. When asked by the GAL for medical records pertaining to Ms. Wright, Ms. Singleton asked for a consent order before releasing those documents. Ms. Singleton subsequently provided those documents after the GAL provided her with his court appointment.

The Guardian ad Litem contacted Ridgeway Manor Healthcare on June 14, 2021. The GAL spoke with a Ms. Jennifer Adams, Social Services, concerning Ms. Wright. Ms. Adams reported to the GAL that Ms. Wright was uncooperative, very difficult, alert making her needs known, moderately impaired, moderately depressed and in need of total care. The GAL also talked to Ms. Adams about the financial situation for Ms. Wright. Ms. Adams indicated to the GAL that initial approval was given for Medicare but Medicaid and Social Security Benefits but had not been finalized yet.



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Ms. Adams also indicated that Ms. Wright needed a hospital lift equipment, Geri chair, and a large wheelchair for her care.

The Guardian ad Litem contacted Ms. Evette Daniels, who is the sister of Ms. Wright and has power of attorney for Ms. Wright's personal affairs. Ms. Daniels reported to the GAL that Ms. Wright needed hospital lift equipment, a Geri chair, and a large wheelchair for her care. Ms. Daniels reported that she looked in on Ms. Wright one to two times a day. Ms. Daniels indicated to the GAL that Ms. Wright needed 24-hour care and if she could not receive that care in her home that she would be better served in assisted living.

The Guardian ad Litem contacted Mr. William Wright on June 14, 2021, who is the husband of Ms. Wright. Mr. Wright indicated to the GAL that Ms. Wright needed 24-hour care and if she could not receive that care in her home that she would be better served in assisted living. Mr. Wright further stated to the GAL that he was a long-haul truck driver and that he needed to be gone for period of 2 to 3 days to earn money to pay the bills.

The Guardian ad Litem contacted Ms. Stephanie Presley on June 14, 2021, who is the daughter of Ms. Wright. Ms. Pressley indicated to the GAL that Ms. Wright needed 24-hour care and that care could be provided by several family members. The GAL indicated to Ms. Pressley that the family would need to provide a written plan for the care of Ms. Wright before she could return home. Ms. Pressley also indicated to the GAL that if Ms. Wright could not receive that care in her home that she would be better served in assisted living.

The Guardian ad Litem contacted Mr. William Wright Jr. on June 15, 2021, who is the son of Ms. Wright. Mr. Wright, Jr. indicated to the GAL that Ms. Wright needed 24-hour care and that care could be provided by several family members. The GAL indicated to Mr. Wright Jr. that the family would need to provide a written plan for the care of Ms. Wright before she could return home. Mr. Wright Jr. also indicated to the GAL that if Ms. Wright could not receive that care in her home that she would be better served in assisted living.

**Determination of Facts:**

Ms. Wright is a senior adult who was born on October 4, 1954. She was living in her home at 136 Arrowood Road, Columbia, SC 29201 and was abandoned by her care givers for a period of three days. According to the medical summary from Prisma Health Richland Hospital, Ms. Wright is a 67-year-old paraplegic female with diagnosis of diabetes mellitus (HCC), H/O ovarian cancer, hypertension and peripheral neuropathy. She is not able to return to her current home situation without constant 24-hour care.



Docket Number

21DR401299

1. Ms. Wright meets the criteria of a vulnerable adult as defined by S.C. Code 43-35-10 (11).
2. Ms. Wright was living in in an unsafe and unhealthy environment in her home. It was reported that Ms. Wright was not able to provide basic ADL care for herself.
3. Ms. Wright family members provided care for her as they were available. They abandoned in her chair for a period of three days when her family members had other obligations.

**Recommendations**

1. Ms. Gail Wright be declared a vulnerable adult as define by S.C. Code 43-35-10 (11).
2. Ms. Gail Wright should remain in DSS custody in a placement that is a secure assisted living facility.
3. Ms. Gail Wright should remain at Ridgway Manor Healthcare in assisted living.
4. Ms. Wright should be provided hospital lift equipment, a Geri chair, and a large wheelchair for her care.
5. Funding should be provided for her care.
6. That the Guardian ad Litem be granted full and complete access to records of the vulnerable adult and be give notice of all hearings and proceedings of this case.
7. That the GAL reserves the right to change recommendation if new information is provided to GAL and/or the GAL'S office.

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Date

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Peter J. Reinhart

Guardian ad Litem

STATE OF SOUTH CAROLINA COUNTY OF FAIRFIELD	IN THE COURT OF COMMON PLEAS C.A. No.: 2023CP2000374
Stephanie Pressley, as Personal Representative for the Estate of Gail Wright,  Plaintiff,  v.  Ridgeway Manor Healthcare Center, LLC Deborah Sparks and James McCollum  Defendants.	<b>DEFENDANTS' AMENDED RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS TO RIDGEWAY MANOR HEALTHCARE CENTER, LLC</b>

**TO: PLAINTIFF AND HER ATTORNEYS CHRIS MOORE, ESQ., GRACE BABCOCK, ESQ. AND THE LAW OFFICE OF RICHARDSON THOMAS, LLC:**

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, Defendants Ridgeway Manor Healthcare Center, LLC, Deborah Sparks and James McCollum (collectively "these Defendants") hereby respond to Plaintiff's Request for Admissions as follows:

**GENERAL OBJECTIONS**

1. Defendants object to Plaintiff's Requests to the extent they seek to impose a burden on Defendants to provide responses in excess of those requirements imposed by the South Carolina Rules of Civil Procedure.
2. Defendants object to Plaintiff's Requests to the extent they seek documents or information containing legal or factual opinions or conclusions.
3. Defendants object to Plaintiff's Requests to the extent they seek or may be deemed to seek or require the production or disclosure of information or documents subject to the attorney/client privilege, work product doctrine or the protection afforded mental impressions, conclusions, opinions or legal theories of Defendant's attorneys or its representatives as defined in

South Carolina Rule of Civil Procedure 26(b)(3), and/or information protected by S.C. Code § 44-7-392 and/or S.C. Code § 40-71-10, et. seq., 42 USCS s. 299b-22, KD Ex Rel. Dieffenbach v. United States, 715 F. Supp. 2d 587.

4. Defendants object to Plaintiff's Requests to the extent they seek or may be deemed to seek or require the production or disclosure of information or documents created or generated after and/or as a result of this lawsuit being filed. No such documents or information will be produced or identified in a Privilege Log.

5. Defendants object to Plaintiff's Requests to the extent they seek or might be argued to have Defendant admit that events occurred or that the law is as described by Plaintiffs in their pleadings or discovery requests. By responding to a Request, Defendant is not admitting that events occurred or that the law is as described in Plaintiffs' pleadings, their discovery requests, or in any discovery responses from Plaintiffs.

6. Defendants object to Plaintiff's Requests to the extent they seek to impose upon Defendant a duty to ascertain, create, or secure information which is not in Defendant's possession, custody or control.

7. Defendants reserve and do not waive their right to object to the relevancy, authenticity, competency or admissibility of any of the information contained in these Responses to Plaintiffs' Requests for Admission.

8. By responding to Plaintiff's Requests, Defendants are not waiving any immunity or defense it, or any of its employees, or agents might have to any claims asserted against Defendants in the above-captioned lawsuit.

9. Defendants object to Plaintiff's Requests to the extent they seek or may be deemed to seek production of materials or information not within the time period relevant to the above-captioned lawsuit.

10. Defendants reserve the right to supplement or amend its Responses to Plaintiffs' Requests for Admission.

11. Defendants object to Plaintiff's Requests to the extent they are vague, overly broad or seek or may be deemed to seek production of materials or discovery of information, the location, retrieval or production of which would be unduly burdensome to Defendants.

12. Defendants object to Plaintiff's Requests to the extent they seek or may be deemed to seek production of materials or discovery of information that is irrelevant and immaterial to the claims asserted against Defendant in the above-captioned lawsuit.

13. By responding to Plaintiff's Requests, Defendants are not waiving any other objections to discovery, any other defense to any claim asserted against Defendant in the above-captioned lawsuit, or any objection to admissibility of evidence.

**SPECIFIC RESPONSES TO REQUEST FOR ADMISSIONS**

1. Admit Gail Wright did not sign the Ridgeway Manor Healthcare Center, LLC Admission and Financial Agreement.

**RESPONSE: Admitted.**

2. Admit Gail Wright did not sign Addendum One Arbitration Agreement to the Ridgeway Manor Healthcare Center, LLC Admission and Financial Agreement.

**RESPONSE: Admitted.**

3. Admit Fantasia Hartwell of Richland County Department of Social Services did not sign Addendum One Arbitration Agreement to the Ridgeway Manor Healthcare Center, LLC Admission and Financial Agreement as a Responsible Party of Gail Wright.

**RESPONSE: Denied. Fantasia Hartwell initialed and signed Addendum One Arbitration Agreement as the Responsible Party/Resident Representative under the section entitled "IF SIGNED BY THE RESPONSIBLE PARTY/RESIDENT REPRESENTATIVE ONLY."**

4. Admit Fantasia Hartwell only signed the representation section of the Addendum One Arbitration Agreement to the Ridgeway Manor Healthcare Center, LLC Admission and Financial Agreement.

**RESPONSE: Denied as written. Fantasia Hartwell initialed and signed Addendum One Arbitration Agreement as the Responsible Party/Resident Representative under the section entitled "IF SIGNED BY THE RESPONSIBLE PARTY/RESIDENT REPRESENTATIVE ONLY."**

5. Admit Keri Singleton of Richland County Department of Social Services did not sign Addendum One Arbitration Agreement to the Ridgeway Manor Healthcare Center, LLC Admission and Financial Agreement as a Responsible Party of Gail Wright.

**RESPONSE: Denied as written. "Keri Singleton Case Manager" is printed above the line designating "Responsible Party/Resident Representative Relationship to Resident" under the section entitled "IF SIGNED BY THE RESPONSIBLE PARTY/RESIDENT REPRESENTATIVE ONLY."**

6. Admit Keri Singleton only signed the representation section of the Addendum One Arbitration Agreement to the Ridgeway Manor Healthcare Center, LLC Admission and Financial Agreement.

**RESPONSE: Denied as written. "Keri Singleton Case Manager" is printed above the line designating "Responsible Party/Resident Representative Relationship to Resident" under the section entitled "IF SIGNED BY THE RESPONSIBLE PARTY/RESIDENT REPRESENTATIVE ONLY."**

7. Admit Fantasia Hartwell did sign the Admission Agreement as the Resident or Responsible Party of Gail Wright.

**RESPONSE: Admitted.** Fantasia Hartwell initialed each page of the Admission Agreement above the line “Responsible Party Initials”, signed and printed her name above the “Resident (signature)” and “Resident (print)” lines, and signed as the Responsible Party/Resident Representative under the section entitled “IF SIGNED BY THE RESPONSIBLE PARTY/RESIDENT REPRESENTATIVE ONLY.”

8. Admit that neither Fantasia Hartwell nor Keri Singleton had the authority to sign Addendum One Arbitration Agreement to the Ridgeway Manor Healthcare Center, LLC Admission and Financial Agreement on behalf of Gail Wright.

**RESPONSE: Denied.**

9. Admit that neither Fantasia Hartwell nor Keri Singleton had the authority to sign Addendum One Arbitration Agreement to the Ridgeway Manor Healthcare Center, LLC Admission and Financial Agreement on behalf of Stephanie Pressley.

**RESPONSE: Denied.**

10. Admit that neither Fantasia Hartwell nor Keri Singleton had the authority to sign Addendum One Arbitration Agreement to the Ridgeway Manor Healthcare Center, LLC Admission and Financial Agreement on behalf of any of Gail Wright’s statutory beneficiaries.

**RESPONSE: Denied.**

11. Admit that Fantasia Hartwell did not have the authority to consent to the administration of the flu vaccine for Gail Wright.

**RESPONSE: Denied.**

12. Admit that at the time of her admission to your facility, Gail Wright was mentally competent.

**RESPONSE: Defendants can neither admit nor deny this request. Defendants have made a reasonable inquiry into the information requested and at this time do not have information sufficient to enable it to admit or deny this request. Based on DSS documentation, Defendants believed that Gail Wright was a vulnerable adult as defined by S.C. Code Ann. § 43-35-10(11) at the time of her admission.**

13. Admit that at the time of her admission to your facility, Gail Wright was capable of understanding and executing the Ridgeway Manor Healthcare Center, LLC Admission and Financial Agreement and its addenda.

**RESPONSE: Defendants can neither admit nor deny this request. Defendants have made a reasonable inquiry into the information requested and at this time do not have information sufficient to enable it to admit or deny this request. Based on DSS documentation, Defendants believed that Gail Wright was a vulnerable adult as defined by S.C. Code Ann. § 43-35-10(11) at the time of her admission.**

14. Admit you never provided a copy of the Ridgeway Manor Healthcare Center, LLC Admission and Financial Agreement or its addenda to Gail Wright.

**RESPONSE: Defendants can neither admit nor deny this request. Defendants have made a reasonable inquiry into the information requested and at this time do not have information sufficient to enable it to admit or deny this request. Based on DSS documentation, Defendants believed that Gail Wright was a vulnerable adult as defined by S.C. Code Ann. § 43-35-10(11) at the time of her admission.**

15. Admit neither Fantasia Hartwell nor Keri Singleton represented to you that they had the authority to waive Gail Wright's constitutional right to a trial by jury.

**RESPONSE: Defendants can neither admit nor deny this request. Defendants have made a reasonable inquiry into the information requested and at this time do not have information sufficient to enable it to admit or deny this request. Based on DSS documentation, Defendants believed that Gail Wright was a vulnerable adult as defined by S.C. Code Ann. § 43-35-10(11) at the time of her admission.**

16. Admit that there is no court order authorizing the S.C. Department of Social Services to waive Gail Wright's constitutional right to a trial by jury.

**RESPONSE: Defendants can neither admit nor deny this request. Defendants have made a reasonable inquiry into the information requested and at this time do not have information sufficient to enable it to admit or deny this request. Based on DSS**

**documentation, Defendants believed that Gail Wright was a vulnerable adult as defined by S.C. Code Ann. § 43-35-10(11) at the time of her admission.**

17. Admit that there is no court order authorizing the S.C. Department of Social Services to waive Gail Wright's statutory beneficiaries' right to a trial by jury.

**RESPONSE: Defendants can neither admit nor deny this request. Defendants have made a reasonable inquiry into the information requested and at this time do not have information sufficient to enable it to admit or deny this request. Based on DSS documentation, Defendants believed that Gail Wright was a vulnerable adult as defined by S.C. Code Ann. § 43-35-10(11) at the time of her admission.**

18. Admit that you did not discuss with Gail Wright her rights under Federal and State law in conjunction with execution of the Ridgeway Manor Healthcare Center, LLC Admission and Financial Agreement or its addenda.

**RESPONSE: Defendants can neither admit nor deny this request. Defendants have made a reasonable inquiry into the information requested and at this time do not have information sufficient to enable it to admit or deny this request. Based on DSS documentation, Defendants believed that Gail Wright was a vulnerable adult as defined by S.C. Code Ann. § 43-35-10(11) at the time of her admission.**

HAYNSWORTH SINKLER BOYD, PA

*s/Ayla G. Luers Connor*

J. Ben Alexander, SC Bar 15323

Ayla G. Luers Connor, SC Bar 103057

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*Attorneys for Defendants Ridgeway Manor Healthcare Center, LLC, Deborah Sparks, and James McCollum*

Dated: April 24, 2024  
Greenville, SC

2014 WL 3845113

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK  
COURT RULES BEFORE CITING.

Court of Appeals of South Carolina.

Cherry SCOTT, as Personal Representative  
of the Estate of Elizabeth Jones, Respondent,

v.

HERITAGE HEALTHCARE OF ESTILL, LLC,  
d/b/a Heritage of the Lowcountry and/or Uni-  
Health Post Acute Network of the Lowcountry,  
[United Clinical Services, Inc.](#), United Rehab,  
Inc., and UHS–Pruitt Corporation, Appellants.

Appellate Case No.2012–207308.

No. 2014–UP–317.

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Heard May 5, 2014.

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Decided Aug. 6, 2014.

Appeal From Hampton County; [Carmen T. Mullen](#), Circuit  
Court Judge.**Attorneys and Law Firms**[Monteith Powell Todd](#), [John Michael Montgomery](#), and  
[Robert E. Horner](#), all of Sowell Gray Stepp & Laffitte, LLC,  
of Columbia; and [Jason Edward Bring](#), [W. Jerad Rissler](#), and  
[Tyler Lawrence Arnold](#), all of Arnall Golden Gregory, LLP,  
of Atlanta, GA, for appellants.[Lee Deer Cope](#), of Peters Murdaugh Parker Eltzroth &  
Detrick, PA, of Hampton; [Charles McCutchen](#), of Lanier &  
Burroughs, LLC, of Orangeburg; [Matthew Vernon Creech](#),  
of Peters Murdaugh Parker Eltzroth & Detrick, PA, of  
Ridgeland; and [Margie Bright Matthews](#), of Bright Matthews  
Law Firm, LLC, of Walterboro, for respondent.**Opinion**

PER CURIAM.

\*1 In this wrongful death and survival action alleging  
nursing home negligence, Heritage Healthcare of Estill, LLC,  
d/b/a Heritage of the Lowcountry and/or Uni–Health Post  
Acute Network of the Lowcountry, United Clinical Services,

Inc., United Rehab, Inc., and UHS–Pruitt Corporation  
(collectively, “Heritage”) appeal from the trial court's denial  
of its motion to compel arbitration. Heritage argues the trial  
court erred in (1) concluding the arbitration agreement was  
not governed by the Federal Arbitration Act (FAA) when the  
transaction between the parties involved interstate commerce  
and (2) refusing to enforce the parties' Arbitration Agreement  
in accordance with its plain terms. We affirm.

1. We affirm as to whether Ellen Jenkins had authority to sign  
the Arbitration Agreement on Elizabeth Jones' behalf when  
Jones was competent at the time she was admitted to Heritage,  
and Jenkins did not possess a health care power of attorney to  
sign either contract on Jones' behalf.<sup>1</sup> We find the evidence  
reasonably supports the trial court's findings that Jenkins  
lacked authority to enter into the Arbitration Agreement on  
Jones' behalf because Jones was competent at the time of  
her admission, and Sally Dobson, the admissions director for  
Heritage, agreed it would have been more appropriate for  
Jones to sign the contract herself because she was competent,  
and Dobson did not know if Jenkins had a power of  
attorney. Therefore, we find the Arbitration Agreement is not  
enforceable against Respondent. *See New Hope Missionary  
Baptist Church v. Paragon Builders*, 379 S.C. 620, 625, 667  
S.E.2d 1, 3 (Ct.App.2008) (stating an “[a]ppeal from the  
denial of a motion to compel arbitration is subject to de novo  
review”); *id.* (“Nevertheless, a circuit court's factual findings  
will not be reversed on appeal if any evidence reasonably  
supports the findings.”); *Peoples Fed. Sav. & Loan Ass'n  
v. Myrtle Beach Golf & Yacht Club*, 310 S.C. 132, 145,  
425 S.E.2d 764, 773 (Ct.App.1992) (“Agency is a fiduciary  
relationship which results from the manifestation of consent  
by one person to another to be subject to the control of  
the other and to act on his behalf.”); *R & G Constr., Inc.  
v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 434, 540  
S.E.2d 113, 118 (Ct.App.2000) (“Agency may be implied or  
inferred and may be proved circumstantially by the conduct  
of the purported agent exhibiting a pretense of authority with  
the knowledge of the alleged principal.”); *id.* at 433, 540  
S.E.2d at 118 (“An agency may not be established solely by  
the declarations and conduct of an alleged agent.”); *McCall  
v. Finley*, 294 S.C. 1, 6, 362 S.E.2d 26, 29 (Ct.App.1987)  
 (“A party asserting agency as a basis of liability must prove  
the existence of the agency, and the agency must be clearly  
established by the facts.”); *Justus v. Universal Credit Co.*,  
189 S.C. 487, 495, 1 S.E.2d 508, 511 (1939) (“[I]t is the  
duty of one dealing with an agent to use due care to ascertain  
the scope of the agent's authority ....”) (internal quotation  
marks and citation omitted); *cf. Coleman v. Mariner Health*

*Care, Inc.*, 407 S.C. 346, 353–54, 755 S.E.2d 450, 454 (2014) (finding that under the Adult Health Care Consent Act, a sister who lacked a power of attorney did not have the capacity to bind the decedent to the voluntary arbitration agreement because the scope of the sister's authority to consent to decisions concerning the decedent's health care extended only to the admission agreement, which was the basis upon which the facility agreed to provide health care and the sister agreed to pay for it, and because the separate arbitration agreement concerned neither health care nor payment, but instead provided an optional method for dispute resolution between the facility and the decedent or the sister should issues arise in the future); *Life Care Ctrs. of Am. v. Smith*, 681 S.E.2d 182, 185 (Ga.Ct.App.2009) (finding “the plain language of the health care power of attorney did not give [the daughter] the power to sign away her mother's or her mother's legal representative's right to a jury trial”).

\*2 2. We decline to address Heritage's remaining arguments because we find this issue is dispositive. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (concluding an appellate court need not review remaining issues when its determination of another issue is dispositive of the appeal).

Accordingly, the decision of the trial court is

**AFFIRMED.**

FEW, C.J., and **SHORT** and **GEATHERS**, JJ., concur.

**All Citations**

Not Reported in S.E.2d, 2014 WL 3845113

### Footnotes

1 Jones was admitted to Heritage by Jenkins, her sister, who executed the paperwork for her admission.

2021 WL 1227786

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

Court of Appeals of South Carolina.

Orveletta ALSTON as Personal Representative of the Estate of Willie Earl Alston, Sr., Respondent,

v.

CONWAY MANOR, LLC, Raymond Tiller, and John and Jane Does 1-10, Appellants.

Appellate Case No. 2018-000188

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Unpublished Opinion No. 2021-UP-105

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Heard October 13, 2020

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Filed March 31, 2021

Appeal From Horry County, Larry B. Hyman, Jr., Circuit Court Judge

**Attorneys and Law Firms**

W. McElhaney White, of Holcombe Bomar, PA, of Spartanburg, for Appellants.

Ernest Latony Dessausure, of Dessausure Law Firm of Columbia; and Daniel Nathan Hughey, Bradley Hunter Banyas, and Arthur Stuart Hudson all of Hughey Law Firm, LLC, of Mount Pleasant; all for Respondent.

**Opinion**

PER CURIAM:

\*1 On December 17, 2015, Willie Earl Alston was admitted to Conway Manor, a long-term care facility. Mr. Alston suffered from a history of stroke and Alzheimer's disease, could not get out of bed, and used a wheelchair for mobility. At the time of his admission, two physicians completed a form certifying Mr. Alston was “not able to comprehend the Resident's Rights and Responsibilities of this facility.”

The two physicians further certified Mr. Alston was “not able to make Health Care Decisions (including Advance Directives).” While at Conway Manor, Mr. Alston developed pressure ulcers, which became infected. His health declined, and he died on April 22, 2016.

The personal representative of Mr. Alston's estate, Orveletta Alston (Wife), filed wrongful death and survival actions alleging Appellants were “negligent, careless, grossly negligent, [and] reckless” in providing care to Mr. Alston. Appellants timely answered, denying liability. On June 21, 2017, Appellants moved to stay the matter and compel arbitration, relying on arbitration clauses found in Mr. Alston's Admission Agreement and a separate “Resident and Facility Binding Arbitration Agreement” completed by Mr. Alston's daughter, Kimberly Alston-Wood (Daughter). Although the Arbitration Agreement is undated, the affidavit of Conway Manor's administrator, Raymond Tiller, indicates Daughter executed both documents on the day of Mr. Alston's admission to the facility. Following a hearing, the circuit court denied the motion to compel arbitration.

Appellants contend the circuit court erred in denying the motion to compel arbitration because (1) Daughter had the capacity to enter the Admission Agreement for Mr. Alston under both the Adult Health Care Consent Act and the South Carolina Bill of Rights for Residents of Long Term Care Facilities; (2) Wife is equitably estopped from asserting claims founded in duties arising from the Admission Agreement while simultaneously attempting to disclaim its arbitration provision; (3) Mr. Alston was the intended and direct beneficiary of the Admission Agreement; and (4) the Federal Arbitration Act mandates arbitration.<sup>1</sup> We affirm. The Admission Agreement contained an optional arbitration clause, stating:

**Optional Arbitration Clause:** Any action, dispute, claim or controversy of any kind (tort, contract, equitable or statutory, including but not limited to claims or violations of Resident's Rights) now existing or hereafter arising between the parties, in anyway arising from or relating to this Agreement governing the Resident's stay a[t] the Facility, shall be resolved by binding arbitration. Such binding arbitration shall be governed by the provisions of the South Carolina Arbitration Code. As appropriate and in the event that the South Carolina Arbitration Code is deemed to not apply, binding arbitration shall be governed by the Federal Arbitration Act. **OPTIONAL: If the parties do not agree to this Arbitration Clause,**

**please mark with an X to void this clause only. I have X this clause \_\_\_ initial.**

\*2 Resident and or Responsible Party has read or been read and understands and agrees to all terms and conditions of this agreement unless specifically noted on the agreement.

Conway Manor's admissions coordinator met with Daughter to execute Mr. Alston's admission paperwork. Although Wife Responsible Party is acting as:

was Mr. Alston's legal representative, Daughter signed both the Admission Agreement and the Arbitration Agreement as the "Responsible Party." However, Daughter left blank the following section of the Admission Agreement seeking confirmation of the signatory's capacity to serve as the Responsible Party:

\_\_\_ Conservator

\_\_\_ Power of Attorney

\_\_\_ Relative (state relationship)

\_\_\_ Other: \_\_\_\_\_

The final sentence of the Admission Agreement requires, "The legal designee shall supply the Facility with a copy of the Power of Attorney, Durable Power of Attorney, Guardianship, or other legal document, which permits him/her to act as legal designee for the Resident."

### I. Adult Health Care Consent Act

Appellants argue the circuit court erred in failing to order arbitration because Daughter had authority under South Carolina law to sign the Admission Agreement containing the arbitration provision. We disagree.

We find Daughter lacked legal authority under the Adult Health Care Consent Act (AHCCA) to contractually bind her father (or his beneficiaries) to the arbitration provision of the Admission Agreement. The AHCCA specifically allows a representative to make decisions for a patient regarding medical procedures and the treatment of human disease and ailments; it does not address the capacity of such a representative to bind the patient to an arbitration agreement. *See S.C. Code Ann. § 44-66-30(A) (2018 & Supp. 2020)* (providing the order of priority for persons authorized make "decisions concerning [the] health care" of a patient who is unable to consent); *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 354, 755 S.E.2d 450, 454 (2014) ("The separate arbitration agreement concerned neither health care nor payment, but instead provided an optional method for dispute resolution between Facility and Decedent or Sister should issues arise in the future. Under the Act, Sister did not have the capacity to bind Decedent to this voluntary arbitration agreement."). Further, the AHCCA designates that

a spouse has priority over an adult child, and Mr. Alston had a living spouse. § 44-66-30(A) ("Where a patient is unable to consent, decisions concerning his health care may be made by the following persons in the following order of priority: ... (3) a spouse of the patient ... (4) an adult child of the patient ...."). The AHCCA's "order of priority" authorizes a lower priority individual to make health care decisions for a patient only when no higher priority individual exists. *See Coleman*, 407 S.C. at 351, 755 S.E.2d at 453 ("Sister was authorized to make health care decisions for Decedent *only because* Decedent had no guardian or attorney-in-fact, no other individual had statutory priority, and she had neither a spouse, a parent, nor an adult child. As the individual *with priority* under 44-66-30(A), Sister was authorized to 'make decisions concerning Decedent's health care ....' " (emphases added) (quoting § 44-66-30(A))).<sup>2</sup> Thus, pursuant to the plain language of the AHCCA, Daughter lacked authority to enter the contracts addressing Mr. Alston's health care.

\*3 Even if the AHCCA authorized Daughter to make health care decisions on Mr. Alston's behalf, the arbitration clause in the Admission Agreement is an optional method for dispute resolution, not a traditional health care decision contemplated by the AHCCA. In *Coleman*, the supreme court recognized "the [AHCCA] contemplates that the surrogate's authority extends primarily to traditional health care decisions, and only secondarily to the financial decisions necessitated by those decisions." 407 S.C. at 353, 755 S.E.2d at 454; *see also Thompson v. Pruitt Corp.*, 416 S.C. 43, 50, 784 S.E.2d 679, 683 (Ct. App. 2016) ("The [AHCCA] confers authority on a health care surrogate to consent on the patient's behalf 'to the provision or withholding of health care' and to make financial

decisions obligating the patient to pay for the medical care provided.” (quoting *Coleman*, 407 S.C. at 351–52, 755 S.E.2d at 453)). The arbitration provision in this case was optional and assent to it was not required for Mr. Alston's admission to the facility or his access to healthcare there. Moreover, under both the statutory priority scheme and our supreme court's analysis in *Coleman*, Daughter lacked authority to bind Mr. Alston to arbitration. See *Coleman*, 407 S.C. at 354, 755 S.E.2d at 454; see also *Stott v. White Oak Manor, Inc.*, 426 S.C. 568, 575, 828 S.E.2d 82, 86 (Ct. App. 2019) (holding White Oak Manor was unable to compel arbitration of resident's claims under an arbitration agreement because the surrogate decision maker lacked authority to sign the arbitration agreement); *Wilson v. Willis*, 426 S.C. 326, 337, 827 S.E.2d 167, 173 (2019) (“Even the exceptionally strong policy favoring arbitration cannot justify requiring litigants to forego a judicial remedy when they have not agreed to do so.” (quoting *Carr v. Main Carr Dev., LLC*, 337 S.W.3d 489, 496 (Tex. App. 2011))).

Nor did the South Carolina Bill of Rights for Residents of Long Term Care Facilities (the Bill of Rights) confer statutory authority on Daughter to bind Mr. Alston to arbitration. The purpose of the Bill of Rights is “to preserve the dignity and personal integrity of residents of long-term care facilities through the recognition and declaration of rights safeguarding against encroachments upon each resident's needs for self-determination.” S.C. Code Ann. § 44-81-20 (2018); see also W. Andrew Arnold & Brian E. Arnold, *Helping Society's Most Vulnerable: Nursing Home Litigation*, 14 S.C. Law. 28, 30 (March 2003) (“Essentially, this statute provides that ‘each resident must be treated with respect and dignity ...’ and specifically protects, among other things, a resident's right to choose a personal physician, to be free from physical and chemical restraints and to privacy.” (quoting § 44-81-40 (2001))).

## II. Equitable Estoppel

Appellants argue the circuit court erred in failing to order arbitration because Wife was estopped from denying the validity of the arbitration provision while simultaneously asserting claims founded in the duties arising out of other sections of the Admission Agreement. We disagree.

Wife neither relies on duties stated in the Admission Agreement as a basis for her claims nor asserts a breach of the Admission Agreement as a cause of action. See *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 563, 813 S.E.2d 292, 302 (Ct. App. 2018) (“[E]ven if the

Admission Agreement and Arbitration Agreement merged, because Respondents are not suing for a breach of the Admission Agreement, they are not attempting to enforce that agreement. Therefore, the circuit court did not err in finding equitable estoppel did not bar Respondents' claims.”). Rather, the causes of action set forth in the complaint in this case rely on alleged breaches of common law, regulatory, and statutory duties. See *Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 230, 847 S.E.2d 268, 272 (Ct. App. 2020) (explaining equitable estoppel “estops a nonsigner from refusing to comply with an arbitration provision of a contract if (1) the nonsigner's claim arises from the contractual relationship, (2) the nonsigner has ‘exploited’ other parts of the contract by reaping its benefits, and (3) the claim relies solely on the contract terms to impose liability”).

## III. Third-Party Beneficiary

Our review of the record reveals the circuit court correctly held Mr. Alston was not a third-party beneficiary to an arbitration agreement because the Agreement “was never valid.” Daughter lacked the authority to execute the agreements on Mr. Alston's behalf; thus, no valid contract was formed, and any third-party beneficiary assertion fails. See *Thompson*, 416 S.C. at 57, 784 S.E.2d at 687 (“[T]here can be no third-party beneficiary unless a valid contract exists. Here, Son was not authorized to execute the [Arbitration Agreement] on Mother's behalf. Therefore, she could not be the third-party beneficiary of the alleged [Arbitration Agreement] between herself and Appellants.” (citation omitted)).

## IV. Federal Arbitration Act

\*4 Appellants argue the circuit court erred in failing to order arbitration pursuant to the FAA because Daughter had both statutory and regulatory authority to enter the Admission Agreement and Wife's claims fall within the scope of the arbitration provision. Because Daughter lacked the authority necessary to execute the Agreement, there is no valid arbitration provision to enforce under the FAA. See *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24, 644 S.E.2d 663, 668 (2007) (“[A]rbitration is a matter of contract law and is available only when the parties involved contractually agreed to arbitrate.”).

## Conclusion

The circuit court's denial of Appellants' “Motion to Stay Action and Compel Arbitration and for Protective Order” is

**AFFIRMED.**

**All Citations**

Not Reported in S.E. Rptr., 2021 WL 1227786

LOCKEMY, C.J., and KONDUROS and MCDONALD, JJ.,  
concur.

**Footnotes**

- 1 Appellants further contend the circuit court erred in failing to order arbitration because the Admission Agreement and Arbitration Agreement merged. We find this argument unpreserved because Appellants specifically disclaimed any merger argument before the circuit court, explaining, this is “a case where there is no argument about a merger; it is one agreement.” See *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (“[A]n issue ... must have been raised to and ruled upon by the [circuit] judge to be preserved for appellate review.”); *TNS Mills, Inc. v. S.C. Dept of Revenue*, 331 S.C. 611, 617, 503 S.E.2d 471, 474 (1998) (“An issue conceded in a lower court may not be argued on appeal.”).
- 2 The AHCCA has been amended since the time of Mr. Alston's admission to Conway Manor; however, these amendments did not change the order of priority for persons authorized to make health care decisions for a person unable to give consent.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No.: 2018-CP-23-00119 &
	)	2018-CP-23-00120
	)	
Marlene Wilson, Individually and as	)	
Personal Representative of the Estate	)	
of Kenneth Wilson,	)	
	)	
Plaintiff,	)	<b>ORDER</b>
	)	
v.	)	
	)	
NHC Healthcare/Mauldin, LLC,	)	
National Healthcare Corporation,	)	
NHC/OP, LP, Bon Secours St. Francis	)	
Health System, Inc., Bon Secours	)	
Health System, Inc.,	)	
	)	
Defendant(s).	)	
	)	

This matter came before the Court on Defendants National Healthcare Corporation’ and NHC/OP, LP’s (hereinafter “Nursing Home Defendants”) Motion to Dismiss and to Compel Arbitration. Having listened to oral arguments from counsel and having reviewed the parties’ legal memoranda for the reasons more fully set forth below, the Court hereby denies the Defendants’ Motion to Dismiss and to Compel Arbitration.

**BACKGROUND**

This matter arises out of two civil actions – a survival action and a wrongful death action. Both actions involve allegations of nursing home negligence and corporate negligence resulting in the death of Kenneth Wilson (hereinafter “Decedent”). Marlene Wilson (hereinafter “Daughter”) was Decedent’s daughter and serves as Personal Representative of Decedent’s estate. On April 6, 2015, Decedent was admitted to NHC Mauldin for short-term rehabilitation after undergoing a hip arthroplasty at St. Francis

Hospital. Plaintiff alleges that as a result of Nursing Home Defendants' negligence, Decedent developed necrotic and infected bedsores, became dehydrated, suffered from nutritional compromise, and developed multiple infections which went untreated, all of which Plaintiff alleges caused Decedent's injuries and death.

At the time of admission, Daughter signed an Agreement to Arbitrate and Waive Jury Trial ("Arbitration Agreement"). The Arbitration Agreement was signed by Jennifer Balon for "The Center" and by Daughter for "The Patient". The Arbitration Agreement provides that the parties agree to follow the dispute resolution procedures set forth in the Arbitration Agreement which include the waiver of a jury trial and the requirement that the parties submit to binding arbitration all disputes against each other which exceed an amount in controversy over \$7,500.00.

Plaintiff filed the Notice of Intent to File Suit on September 14, 2017. The parties engaged in the mandatory pre-suit mediation on December 28, 2017. Plaintiff then filed the Summons and Complaint on January 5, 2018 and served same. Nursing Home Defendants filed this Motion to Dismiss and to Compel Arbitration on February 28, 2018. Nursing Home Defendants contend that this Arbitration Agreement requires that this Court order that this case be dismissed and that the claims be submitted to binding arbitration in accordance with the Arbitration Agreement. Plaintiff contends that the Arbitration Agreement is unenforceable under state contract law and this Court agrees for the various reasons set forth hereinbelow.

### **LEGAL ANALYSIS AND CONCLUSIONS**

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, 644 S.E.2d 705, 708 (2007); MBNA America Bank, N.A. v. Christianson, 377 S.C. 210, 659 S.E.2d 209 (S.C. Ct. App. 2008). It is well established that “where one party denies the existence of an arbitration agreement raised by an opposing party, a court must immediately determine whether the agreement exists in the first place. If no agreement is found to exist, the court must deny any application to arbitrate. Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663, 667 (S.C. 2007) (internal citation omitted). Whether a valid arbitration agreement exists is a matter for judicial determination. York v. Dodgeland of Columbia, Inc., 406 S.C. 67,78,749 S.E.2d 139, 144 (Ct. App. 2013). Whether the parties agreed to arbitration is a question of substantive state law. Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663, 668 (S.C. 2007) (“General contract principles of state law apply in a court’s evaluation of the enforceability of an arbitration clause.”).

**I. Daughter had No Authority to Sign the Arbitration Agreement for Decedent**

Because Decedent did not sign the Arbitration Agreement, Daughter was required to have authority to execute the Arbitration Agreement for the Arbitration Agreement to be enforceable. Daughter had no such authority. The legal consequences of an agent’s actions can only be attributed to the principal when the agent has actual or apparent authority. Charleston Registry v. Young Clement, 598 S.E.2d 717, 359 S.C. 635, 642 (Ct. App. 2004). In the present case, neither actual or apparent authority exists for Daughter.

**A. No Actual Agency/Authority**

While it is true that Daughter held a “Power of Attorney” on behalf of Decedent, this Power of Attorney did not confer the necessary authority to execute an arbitration agreement on Decedent’s behalf. This document is titled “Power of Attorney” and is not

identified a “General Durable Power of Attorney.” More importantly, the document does not confer sufficient authority to enter into contracts generally, to enter into releases on behalf of Decedent, to waive the constitutional right to a jury trial, nor does it include the “catch all provision giving the attorney-in-fact the authority ‘to sign any and all releases or consent required.’” Sovereign Healthcare of Tampa v. Schmitt, 195 So. 3d, 1175 (Fla. Dist. Ct. App. 2016).

The powers and authorities which Daughter held were specifically delineated in the Power of Attorney. These powers granted to Daughter the authority to make decisions regarding financial matters and decisions regarding healthcare.

This analysis is akin to that in Hodge v. UniHealth Post-Acute Care of Bamberg, 2018 S.C. App. LEXIS 13. As noted in Hodge, ““This limited range of acts performed on the [decedent]’s behalf suggest, at most, [he] may have conferred on [the personal representative] the authority to make health care and financial decisions on his behalf, but no more than that.”” Id at 29 quoting Dickerson v. Longoria, 95 A.2d 721, 743, 414 Md. 419 (2010). The Hodge court further noted that the authority to sign healthcare documents does not include the authority to sign an arbitration agreement. Hodge at 40. Our courts have held a healthcare power of attorney does not provide authority to sign an arbitration agreement. Hodge v. UniHealth Post-Acute Care of Bamberg, 2018 S.C. App. LEXIS 13; Thompson v. Pruitt Corp., 784 S.E.2d, 679, 416 S.C. 43, 55 (Ct. App. 2016), *cert. denied*, S.C. Sup. Ct. Order dated Dec. 2, 2016.

Furthermore, the South Carolina Supreme Court has held that “The authority conveyed by a principal to an agent to handle finances or make health care decisions does not encompass executing an agreement to resolve legal claims by arbitration, thereby

waiving the principal's right of access to the courts and to a jury trial." Hodge at 37 quoting Thompson at 55, 784 S.E.2d at 686. As previously indicated, this Power of Attorney did not have the "catch all" language of many general powers of attorney and does not encompass the executing of an agreement to resolve legal claims by arbitration and waiving a jury trial, but rather, deals with the limited circumstances enumerated therein of making financial or healthcare decisions for Decedent. Therefore, no actual authority existed for Daughter to sign the Arbitration Agreement.

**B. No Apparent Agency/Authority NAAA**

Daughter did not have apparent authority/agency to execute the Arbitration Agreement on behalf of the Decedent. Apparent authority is based on "representations made by the principal to the third party and reliance by the third party on those representations". Young v. S.C. Department of Disabilities and Special Needs, 374 S.C. 360, 367, 649, S.E.2d 488, 491 (2007). Apparent authority exists when the principal is bound by the acts of its agent after the principal has placed the agent in such a position that a person of ordinary prudence, reasonably familiar with business usages and custom is led to believe the agent has certain authority and in turn, deals with the agent based on the assumption. Muller v. Myrtle Beach Golf and Yacht Club, 303 S.C. 137, 399 S.E.2d 430 (Ct. App. 1990), *rev'd on other grounds*.

South Carolina law requires that to prove apparent authority, the Defendants must show "... (1) that the purported principal consciously or impliedly represented another to be his agent; (2) that there was reliance upon the representation; and (3) that there was a change of position to the relying party's detriment." Cowburn v. Leventis, 366 S.C. 39, 619 S.E.2d 448 (Ct. App. 2005). The basis of apparent authority is representations made

by the principal to the third party and reliance by the third party on those representations. Young v. S.C. Department of Disabilities and Special Needs, 374 S.C. 360, 367, 649 S.E.2d 488, 491 (2007). The proper focus in determining a claim of apparent authority is not on the relationship between the principal and the agent but that between the principal and the third party. Vereen v. Liberty Life Insurance, Company, 306 S.C. 423, 412 S.E.2d 425 (Ct. App. 1991). The burden of establishing agency is on the party asserting that a principal agency relationship exists.

Nursing Home Defendants have presented no evidence that Decedent represented, implicitly or explicitly, to the Nursing Home Defendants that Daughter had the authority to enter into the Arbitration Agreement on his behalf. The Affidavit presented by Plaintiff reflects that Decedent was not present when Daughter signed the Arbitration Agreement as he was still in the hospital. The Affidavit further reflects that Decedent was never aware that Daughter had signed the Arbitration Agreement and never authorized Daughter to sign such contracts or agreements. Further, based upon the Affidavit of Daughter and the records submitted as exhibits at the hearing, Decedent was confused from the effects of the anesthesia and had “moderate” mental impairment.

It should further be noted that despite the fact that Decedent’s mental impairment improved to “cognitively intact”, according to Nursing Home Defendants’ own records during his admission, Defendants never requested that Decedent sign the Arbitration Agreement personally. Further, the Arbitration Agreement does not reflect any authority which Daughter had to execute such agreement despite the Arbitration Agreement’s own requirement that any such authority be delineated.

Nursing Home Defendants must also show a detrimental change of position. It should also be noted that the Arbitration Agreement is separate from the Admissions Agreement. The facility cannot show that it changed its position for the worse as required to prove any apparent authority/agency as reflected in Hodge.

Because Decedent did not consciously or impliedly represent that Daughter was his agent and because there was no change of position by the Nursing Home Defendants, Nursing Home Defendants cannot show that Daughter had apparent authority/agency to execute the Arbitration Agreement on behalf of Decedent.

## **II. The Arbitration Agreement is Unenforceable Against the Decedent's Wrongful Death Statutory Beneficiaries**

It is the conclusion and order of this Court that the Arbitration Agreement is unenforceable for the above-stated reasons. However, even if Daughter had actual or apparent authority/agency to sign the Arbitration Agreement on behalf of Decedent, the Arbitration Agreement is unenforceable against the Decedent's wrongful death statutory beneficiaries under South Carolina contract law defenses. The Arbitration Agreement neither covers the wrongful death statutory beneficiaries' claims within the scope of the agreement nor was the Arbitration Agreement signed by an individual who had authority to bind the statutory beneficiaries.

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 Railway Gas and Electric Co., 97 S.C. 27, 81 S.E. 189 (1914). The alleged Arbitration Agreement by its own terms is an agreement between "Kenneth Wilson ('patient')" and "NHC Healthcare/Mauldin, LLC ('center')". While at some point during Decedent's admission to the facility, he might have had the authority to

bind himself and his claims to arbitration but was never given the chance. However, even if Decedent had agreed to arbitration, he did not have the legal authority to bind his statutory beneficiaries who are not parties to the Arbitration Agreement. The signatories to the agreement are Daughter on behalf of Decedent and NHC Healthcare/Mauldin, LLC. No other persons are parties to this agreement. The scope of the agreement does not include the statutory beneficiaries' claims.

However, even if the Arbitration Agreement did contemplate the wrongful death statutory beneficiaries' claims, Decedent and/or Daughter had no authority to waive the statutory beneficiaries' claims. Daughter signed the Arbitration Agreement in her *individual capacity*. However, as the Hodge court noted, actions taken by Daughter in her *individual capacity* will not be held against the estate as the estate has other beneficiaries and may have other creditors. Daughter's Affidavit reflects that other statutory beneficiaries exist in this case.

Further confirming the separateness of each statutory beneficiary's claim from that of the survival action, a Federal District Court in South Carolina has analyzed this issue under the South Carolina Non-Economic Awards Act of 2005. Diane Boyle as Personal Representative of the Estate of John Francis Boyle v. United States of America, 944 F.Supp.2d 577 (D.S.C. 2012). In Boyle, the Court concluded that the wrongful death beneficiaries' claims were separate and distinct claims for purposes of stacking damage caps and for purposes of being individual claimants. This analysis supports the contention that the wrongful death claimants have separate and distinct claims apart from that of the survival action.

Many other states have come to this same conclusion, Daniels v. Sunrise Senior Living, Inc., 212 Cal.App 4th 674, 151 Cal.Rptr.3d 273 (Cal.App.4 Dist, 2013) (Wrongful Death claims not bound to arbitration), Lawrence v. Beverly Manor, 273 S.W.3d 525 (Mo. 2009) (Wrongful Death claimants not bound by arbitration agreement.) As previously discussed, the only parties executing this Agreement were Daughter purportedly on behalf of Decedent and employee as an Agent for NHC Mauldin. NHC Mauldin would contend that this agreement is binding on the non-signatory statutory beneficiaries simply because it contends the Arbitration Agreement says so.

However, as the Supreme Court of Kentucky said regarding binding non-signatory wrongful death beneficiaries in Ping v. Beverly Enterprises, Inc.:

[A]s 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. That is the general third-party beneficiary rule discussed above. It may even be that tort claims by such a directly benefitting third-party are appropriately subjected the contract's arbitration provisions, at least where the tort and contract are significantly intertwined. See, In re Weekley Homes, L.P., 180 S.W. 3d 127 (Tex. 2005) (negligent repair claim by homeowner's daughter against contractor was subject to repair contract's arbitration clause because daughter, although a non-party, was direct and principal beneficiary under the contract). 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. This is

what Beverly purports to do. 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. Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79,83, 123 S. Ct. 588, 154 L. Ed.2d 491 (2002) (“[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit”, Citation and internal quotation marks omitted.) Since Beverly’s theory would allow just that, i.e., would allow one party merely by referring to someone else in an arbitration clause to thereby bind that other person to arbitration as a “third party beneficiary” of the arbitration agreement, we reject it out of hand.

Ping v. Beverly Enterprises, Inc., 376 S.W.3d 581, 599-600 (KY 2012).

Likewise, NHC-Mauldin’s mentioning of “employees, agents, representatives, affiliates, fiduciaries, medical directors, officers, directors, governing bodies, management companies, insurers, attorneys, predecessors, successors, assigns, third party beneficiaries, heirs, executors, administrators, or any of them, and all persons, entities or corporations with whom any of the former have been, are now, or may be affiliated, arising out of or in any way related or connected to the patient’s stay and the care provided at the Center”, as being bound by the Arbitration Agreement does not make it so. It is no more than an *ipse elixir* which Defendants expect this Court to embrace. The law simply does not permit a party to cut off the rights of a non-signatory to an agreement who receives no benefit thereunder.

The wrongful death claims are separate claims apart from the Decedent’s claims.

According to South Carolina’s Wrongful Death Act:

“Whenever the death of a person shall be caused by the wrongful act, negligent or the fault of another and the act, negligent or the fault is such as would, if death had not ensued, had entitled 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.”

South Carolina Code Annotated §15-51-10 (1977)

The wrongful death beneficiaries are as follows:

“Every such action shall be for the benefit of the wife, or husband and child or children of the person whose death shall have been so caused, and, if there be no such wife, husband, child or children, then for the benefit of the parent or parents, and if there be none, for the benefit of the heirs or the person whose death shall have been so caused.”

South Carolina Code Annotated §15-51-20 (Supp. 2001)

The general element of damages recoverable are pecuniary loss, mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship, and deprivation of the use and comfort of the Decedent, society, including the loss of his experience, knowledge, and judgment in managing the affairs of himself and his beneficiaries. Self v. Goodrich, 300 S.C. 349, 351, 387 S.E.2d. 713, 714 S.C. (Ct. App. 1989).

The wrongful death claim is a separate claim from the claims a decedent might bring on his own behalf under the survival statute. In Bennett v. Spartanburg Railway Gas and Electric Company, 97 S.C. 27, 81 S.E. 189 (1914), the Supreme Court held that wrongful death and survival actions are different claims for different injuries. The Court stated “necessarily, therefore, there must be separate verdicts and separate judgments, there should be separate actions.” Id. at 31. See also Strickland v. Southern Ry Co., 111 S.C. 248, 97 S.E. 695 (1918) (Supreme Court Affirmed Appeal from Circuit Court’s ruling noting that survival claims are independent of wrongful death claims), Claussen v. Brothers, 148 S.C. 1, 145 S.E. 539 (1928) (discussing the difference between survival and wrongful death claims as being independent of each other).

The Pennsylvania Superior Court in Pisano v. Extended Homes, Inc., operating under the fictitious name Belaire Health 84 Rehabilitation Center, 2013 PA Super 232, 77 A.3d 651, 662 (PA 2013) affirmed the trial court decision that the nursing home arbitration agreement did not apply to the statutory beneficiaries' wrongful death claim. The Court noted the wrongful death and survival actions are not derivative of each other but are flowing from the same underlining tortious conduct. Like the South Carolina statute, Pennsylvania's wrongful death statute provides that the right of action exists only for the benefit of the spouse, children, parents, or parents of the deceased. Id. at 656. The Pennsylvania Court further held that since the wrongful death claim is independent of the survival action and because the wrongful death statute does not characterize the wrongful death claim as that of a third-party beneficiary, that the trial court properly refused to compel arbitration to the non-signatory wrongful death beneficiaries who were not parties to the arbitration agreement.

Likewise, in Bybee v. Abdulla, M.D., 189 P.3d 40, 2008 UT 35 (Utah, 2008), the Supreme Court of Utah held that an agreement to arbitrate that was signed by the decedent cannot extend to the statutory beneficiaries of a wrongful death claim. The Utah Supreme Court noted that certain defenses from the decedent's personal injury action may be raised against the heirs of a wrongful death action such as comparative negligence and statutes of limitations as key common characteristics. However, as the Supreme Court of Utah noted, both of these defenses go to the viability of the underlying personal injury action. The Court further stated that "by contract, an agreement to bind heirs to arbitrate disputes does not implicate the viability of underlying claims." Id. at 47, citing Horwich v. Superior Court, 21 Cal. 4th 272, 87 Cal. Rptr. 2d 222, 980 P. 2d 927, 935 (1999). The Utah Supreme Court

went on to note that “we have never intended to suggest, however, that because Decedent is the master of his claim he may by contract expose his unwilling heirs to any imaginable defense.” Bybee v. Abdulla, M.D. at 46. The Utah Supreme Court further held that the defenses against the decedent’s claim which are less likely to be found enforceable against the heirs’ claims in a wrongful death action “are contract provisions that purport to affect the rights of heirs that do not affect the existence of the decedent’s personal injury claim during his lifetime. The arbitration agreement...falls squarely within this category and is, therefore, unenforceable against the heir.” Id. at 47.

The Court of Appeals in Washington in Woodall v. Avalon Care Center-Federal Way, LLC, 155 Wn. App. 919, 231 P. 3d 1252 (Wash. App. Div. 1 2010) held that “arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he [or she] has not agreed so to submit.” Id. quoting Satomi Owners Association v. Satomi, LLC, 167 Wash. 2d 781, 225 P.3d 213 (2009). The Washington Court of Appeals further noted that the wrongful death claims asserted in that case were not on behalf of the estate just as South Carolina’s wrongful death claims are not on behalf of the estate. The Washington Court of Appeals further discussed the Supreme Court of Ohio’s ruling in Peters v. Columbus Steel Casting Co., 115 Ohio St.3d 134, 873 N.E.2d 1258 (2007), wherein the Supreme Court of Ohio held that the wrongful death claim of a spouse who was Administrator of her husband’s estate was not subject to the Decedent’s arbitration agreement. The Washington Court of Appeals in discussing Peters, stated “In sum, the decedent’s agreement was an agreement ‘to arbitrate his claims against the company,’ and thus the provision in the agreement binding the decedent’s heirs applied to a survival action. But the decedent could not ‘restrict his beneficiaries to arbitration of their

wrongful death claims because he held no right to those claims.” Woodall v. Avalon Care Center - Federal Way, LLC at 929. In the Washington Court of Appeals’ analysis, the Court concluded that the wrongful death beneficiaries could not be bound to the arbitration agreement which they did not sign.

Therefore, even if Daughter had actual or apparent authority/agency to execute the Arbitration Agreement, the Arbitration Agreement did not include the wrongful death statutory beneficiaries’ claims within the scope of the Arbitration Agreement, nor did Decedent and/or Daughter have authority to bind the wrongful death statutory beneficiaries’ claims to the Arbitration Agreement. As a result, the Arbitration Agreement cannot reach the claims of the wrongful death statutory beneficiaries.

WHEREFORE, for the reasons stated herein, the Court denies Defendants’ Motion to Dismiss and Motion to Compel Arbitration.

**IT IS SO ORDERED.**

\_\_\_\_\_  
The Honorable Michael G. Nettles  
Presiding Judge

Greenville, South Carolina  
Date: \_\_\_\_\_



Greenville Common Pleas

**Case Caption:** Marlene Wilson , plaintiff, et al vs. NHC Healthcare/Mauldin LLC ,  
defendant, et al  
**Case Number:** 2018CP2300120  
**Type:** Order/Other

So Ordered

s/ Michael Nettles

Electronically signed on 2018-06-21 09:47:02 page 15 of 15

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Kenneth Pace, Individually and as Personal  
Representative of the Estate of Earl E. Pace,

Plaintiff,

v.

Lake Emory Post Acute Care; THI of South  
Carolina at Camp Care, LLC; THI of South  
Carolina, LLC; THI of Baltimore, Inc.;  
Fundamental Administrative Services, LLC;  
Fundamental Clinical and Operational Services,  
LLC; Fundamental Clinical Consulting, LLC;  
Fundamental Long Term Care Holdings, LLC,  
and Kerry L. Wheeler, DO,

Defendants.

IN THE COURT OF COMMON PLEAS

2019-CP-42-03709

2019-CP-42-03708

**ORDER DENYING  
DEFENDANTS' MOTIONS TO  
DISMISS, COMPEL  
ARBITRATION, AND TO STAY  
THE STATE COURT  
PROCEEDING**

This matter is before the Court upon motions filed by the Defendants to stay the underlying state court litigation and compel the above-captioned matters to arbitration. The parties submitted written memoranda in support and opposition to the motions and the Court heard oral argument of counsel for both parties on January 20, 2021. For the reasons set forth below, the Defendants' motion are hereby DENIED.

**I. FACTUAL & PROCEDURAL HISTORY**

This Court finds that on or about July 10, 2014, Mr. Pace was taken into the protective custody of the South Carolina Department of Social Services, (hereafter "DSS"). A Guardian *ad Litem*, (hereafter "GAL"), and an attorney were appointed for Mr. Pace by the family court. Thereafter, Mr. Pace was admitted to Lake Emory Post Acute Care, (hereafter "Lake Emory"), for care and supervision. At the time Mr. Pace was admitted to Lake Emory, he was under the custody of DSS. A DSS employee executed Mr. Pace's

admission paperwork. The paperwork executed by the DSS employee, Calvin Hill, (hereafter “Mr. Hill”), included an admission agreement and a separate arbitration agreement. It is undisputed that Mr. Hill was the only signer of the admission paperwork and the arbitration agreement. DSS subsequently petitioned the court to be relieved of custody and recommended that Lake Emory designate the Plaintiff as Mr. Pace’s representative. DSS, with the consent of the Guardian *ad litem*, the attorney for the Guardian *ad litem*, and the court appointed attorney for Mr. Pace, submitted a consent order seeking to relieve DSS of custody of Mr. Pace, as well as relieving from their appointments the attorneys and Guardian *ad litem*. The Laurens County Family Court entered an Order April 24, 2015 relieving DSS of custody of Mr. Pace and also relieving the court appointed Guardian *ad litem*, the attorney appointed for the Guardian *ad litem*, as well as the attorney appointed for Mr. Pace.

The Plaintiff in this action is Kenneth Pace, the son of the Decedent. Plaintiff filed his Summonses and Complaints alleging a Survival Action and a Wrongful Death Action on or about October 21, 2019. Defendants filed motions to dismiss and compel arbitration on April 13, 2020. Defendants alleged that they were entitled to compel this matter to arbitration pursuant to the aforementioned arbitration agreement and sought a stay of these proceedings. Defendants assert Mr. Hill was acting pursuant to “court ordered powers” and alleges that South Carolina Code Ann. § 43-35-10 provides authority for DSS to execute an arbitration agreement on behalf of an individual in their custody.<sup>1</sup> This Court disagrees and finds the arbitration agreement unenforceable as a matter of law.

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<sup>1</sup> Defendants assert that the doctrines of equitable estoppel and third-party beneficiary similarly require this Court to compel arbitration. These arguments are similarly without merit.

## II. LAW/ANALYSIS

Unless the parties otherwise provide, the question of the arbitrability of a claim is an issue for judicial determination. *See New Hope Missionary Baptist Church v. Paragon Builders*, 379 S.C. 620, 667 S.E.2d 1 (S.C. Ct. App. 2008). The arbitration agreement presented by the Defendants is not enforceable because the arbitration agreement was executed by someone that did not possess the authority to execute such an agreement on behalf of Mr. Pace.

In order for a court to compel arbitration pursuant to the Federal Arbitration Act, 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 immediately determine whether the agreement exists in the first place. *See Simpson v. MSA of Myrtle Beach, Inc.*, 373 SC 14, 644 SE2d 663, 667 (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).

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 Mr. Pace did not execute the arbitration agreement himself, Mr. Hill must have had the appropriate legal authority to execute the arbitration agreement for it to be enforceable.

Defendants argue that Mr. Hill was granted agency authority to act on Mr. Pace’s behalf. This argument is without merit. This Court finds that Calvin Hill lacked common law agency authority to execute an arbitration agreement for Mr. Pace.<sup>2</sup> Agency is a fiduciary relationship that results when one person consents to be subject to the control of the other and to act on his behalf. *See R & G Constr., Inc. v. Lowcountry Reg’l Transp. Auth.*, 343 S.C. 424, 540 S.E.2d 113 (S.C. Ct. App. 2000). It is undisputed that Mr. Pace was diagnosed with dementia, was incompetent, and unable to provide consent or acquiesce to Mr. Hill’s actions. Furthermore, the authority conveyed to an agent does not encompass executing an agreement to resolve legal claims through arbitration. *See Thompson v. Pruitt Corp.*, 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016), citing *Dickerson v. Longoria*, 995 A.2d 721, 736-37 (Md. 2010).

Defendants assert that Mr. Hill was acting pursuant to “court ordered powers” and the “actual authority” provided by the Adult Protection Act. These arguments are similarly without merit.

The Adult Protection Statute codified at § 43-35-5 *et seq.* sets forth the authority

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<sup>2</sup> Similarly, the South Carolina Health Care Consent Act, (hereafter “SCHCA”), codified at South Carolina Code Ann. § 44-66-10 *et seq.* does not give authority for DSS to waive the constitutionally protected right to a trial by jury of a vulnerable adult in its custody.

and procedure for the State of South Carolina to take a vulnerable adult into protective custody. The duties and responsibilities to the vulnerable adult under the Adult Protective Services program are set forth in § 43-35-45. The other provisions of the Adult Protective Services Program relate entirely to the duties and responsibilities of the GAL. This Court finds that while the statutes authorizing the Adult Protective Services Program would permit DSS to hire a doctor or medical facility for Mr. Pace, and would authorize DSS to hire an attorney to provide legal services for Mr. Pace, the statutes do not authorize DSS to perform legal services and do not provide any authority for DSS to execute an arbitration agreement that waives Mr. Pace's constitutional right to a jury trial.

Defendants argue that the "definitions" section of the Adult Protective Services statute grants authority in defining protective service. "Protective services" means those 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." *See* S.C. Code Ann. § 43-35-10(9). Defendants place particular emphasis on the words "legal services." This Court interprets the statute as permitting DSS to arrange for living quarters, secure medical care, and hire an attorney for the vulnerable adult if one is needed. The statute does not authorize DSS to provide legal services to Mr. Pace or waive his constitutional right to a jury trial. Similarly, the family court order provides no such authority.

Defendants argue that Kenneth Pace should be estopped from denying the arbitration agreement under the doctrine of equitable estoppel. In this case, the

admission agreement and the arbitration agreement were wholly independent and shall not be construed together. *See Hodge v. Unihealth Post-Acute Care of Bamberg, LLC.*, 422 SC 544, 813 S.E.2d 292 (Ct. App. 2018). Because the admission agreement is not merged with the arbitration agreement, this argument is without merit.

Defendants argue that Mr. Pace 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. Without a valid arbitration agreement, there can be no third-party beneficiary. *See Thompson, supra.* This argument is without merit.

Therefore, this Court finds that DSS did not have the authority to execute an arbitration on behalf of Mr. Pace. Because the arbitration agreement was executed by a person without authority, it cannot be enforced.

IT IS HEREBY ORDERED that the Adult Protective Services Statute does not permit DSS to execute an arbitration agreement on behalf of a vulnerable adult. However, this Court does find that the Adult Protective Services Statute does provide for DSS to arrange for legal services to be provided for a vulnerable adult.

IT IS FURTHER ORDERED that the arbitration agreement presented by the Defendants is not enforceable.

IT IS SO ORDERED.

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Hon. R. Keith Kelly  
Circuit Court Judge

February \_\_\_\_\_, 2021  
Gaffney, South Carolina



Spartanburg Common Pleas

**Case Caption:** Kenneth Pace VS Lake Emory Post Acute Care , defendant, et al  
**Case Number:** 2019CP4203709  
**Type:** Order/Other

It is so Ordered.

s/ R. Keith Kelly - 2165

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<p><b>STATE OF SOUTH CAROLINA</b></p> <p><b>COUNTY OF FAIRFIELD</b></p> <p>STEPHANIE PRESSLEY, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF GAIL WRIGHT,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>RIDGEWAY MANOR HEALTHCARE CENTER, LLC; DEBORAH SPARKS; AND JAMES McCOLLUM,</p> <p style="text-align: center;">Defendants.</p> <hr style="width: 40%; margin-left: 0;"/>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>IN THE COURT OF COMMON PLEAS</b></p> <p><b>CASE NO.: 2023-CP-20-00374</b></p> <p><b>DEFENDANTS’ MEMORANDUM IN SUPPORT OF THEIR MOTION TO COMPEL ARBITRATION</b></p>
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Defendants Ridgeway Manor Healthcare Center, LLC; Deborah Sparks; and James McCollum (together, “Defendants”, “the Facility”, or “Ridgeway Manor”), by and through their undersigned counsel, hereby submit the following Memorandum in Support of their Motion to Dismiss, Compel Arbitration, and Stay Court Proceedings pursuant to the Federal Arbitration Act (“FAA”) 9 U.S.C. § 1, et seq., and Rules 12(b)(1) and 12(b)(6) of the *South Carolina Rules of Civil Procedure*. Upon admission to the Facility, Plaintiff’s decedent, Ms. Gail Wright, entered into an Arbitration Agreement. The Arbitration Agreement, by its terms, covers all allegations raised in the Complaint. Accordingly, and for the reasons set forth herein, this Defendant respectfully requests that Plaintiff’s Complaint be dismissed and that this matter be compelled to arbitration, or in the alternative, stayed pursuant to 9 U.S.C. §1, et seq.

**INTRODUCTION**

Plaintiff filed this action against the Facility based upon allegations arising solely out of and concern the residency, care, and treatment of Plaintiff’s decedent, Ms. Gail Wright (“Wright”) at Defendant’s skilled nursing facility. However, Plaintiff’s claims are subject to a valid and

binding Arbitration Agreement, as discussed more fully herein, and this matter should be compelled to arbitration.

On May 16, 2021, the Family Court in Richland County placed Wright under the emergency protective custody of DSS. Acting in furtherance and in compliance with that court order, and pursuant to the actual authority provided to DSS by the Adult Protection Act. *See* S.C. Code Ann § 43-35-10 et seq., DSS representatives Ms. Fantasia Hartwell and Ms. Keri Singleton, checked Ms. Wright into the facility. At that time, and pursuant to court order, the South Carolina Department of Social Services (“DSS”) executed all mandatory documents for admission, residency, care and treatment including, but not limited to, the Admissions Agreement and Facility-Resident/Representative Arbitration Agreement (“Arbitration Agreement”). *See* Exhibits 2 and 3 to Plaintiff’s memorandum in opposition In addition, as a representative of DSS with protective custody of Wright, Fantasia Hartwell and Keri Singleton appropriately represented to the Facility that they were authorized to enter into these agreements, including the Arbitration Agreement; and therefore, the Facility relied upon their apparent authority in this regard.

. The Arbitration Agreement entered into by Wright and the Facility covers all allegations raised by Plaintiff in the Complaint and, according to its express terms, requires that the Plaintiff and the Facility submit this matter to arbitration. *See* Exhibit 2 to Plaintiff’s memorandum in opposition. Further, the Arbitration Agreement explicitly binds not only the parties to the Agreement, but also binds the “Parties representatives, agents, heirs, assigns, employees, managers, directors, shareholders, management companies, parent companies, subsidiary companies or related or affiliated business entities.” *See Id.*

There is absolutely no evidence that the Arbitration Agreement was entered into under duress. Further, the Arbitration Agreement is not substantively or procedurally unconscionable by

its terms. Therefore, as discussed further herein, Defendants respectfully request that that the Court compel arbitration of Plaintiff's claims pursuant to the valid and binding contract between the parties and, accordingly, dismiss or stay Plaintiff's Complaint pending completion of arbitration.

### FACTS

On or about May 16, 2021 Wright contacted law enforcement stating that her caregivers abandoned her in her home for three consecutive days.<sup>1</sup> At that time, Wright was a 66 year old, paraplegic female that required constant care. *See* Exhibit 5 to Plaintiff's Memorandum in Opposition. DSS deemed Wright a "vulnerable adult" as defined by S.C. Code § 43-35-10(11), as law enforcement found probable cause to believe that by reason of abuse, neglect, or exploitation, there was a substantial risk and existed imminent danger to Wright's life or physical safety. *See id.* **As such, the Family Court placed Wright under the protective custody of DSS and granted DSS the right to provide for and authorize such routine and/or emergency medical care for Wright. *Id.***

The Court appointed Wright a Guardian ad Litem, who submitted a report to the Family Court in late June of 2021. In the report, the Guardian ad Litem states "Mrs. Wright's family members [, which includes the Plaintiff in this action,] provided care for her as they were available. They abandoned her in her chair for a period of three days when her family members had other obligations." *See* Exhibit 5 to Plaintiff's Memorandum in Opposition, Pg. 5. **Essentially, the Guardian ad Litem found that Plaintiff – who is Mrs. Wright's daughter – and other family members completely abandoned Mrs. Wright in her wheelchair for three days, which lead to DSS taking Wright into protective custody.** There is no evidence in the record indicating that Plaintiff or any other members of Wright's family were willing or able to take completely custody

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<sup>1</sup> Records from the Family Court for Richland County (Exhibit --)

of her and provide the required 24 hour care – otherwise DSS would not have needed to obtain and maintain custody of her under Section 43-35-45 of the Adult Protection Act. As such, DSS sought to place Mrs. Wright with Ridgeway Manor.

On or about May 28, 2021, Ridgeway Manor notified DSS representatives Fantasia Hartwell and Keri Singleton, who was Wright’s case manager, that it could accept Wright as a resident of the Facility when the hospital discharged her from its care. In preparation for Wright’s admission to Ridgeway Manor, DSS representatives Fantasia Hartwell and Keri Singleton signed various required agreements and documents in connection with Mrs. Wright’s admission and residency, care, and treatment at Ridgeway Manor on behalf of Mrs. Wright. *See* Exhibit 3 to Plaintiff’s Memorandum in Opposition.

Following Mrs. Wright’s death, Plaintiff – who is Mrs. Wright’s daughter - commenced this lawsuit by filing a Summons and Complaint on November 9, 2023. Plaintiff has asserted medical negligence causes of action against these Defendants in this wrongful death and survival action. These allegations arise from and pertain to the care and treatment provided to Wright while she was a resident of Ridgeway Manor. As described more fully below, all of these claims are subject to the valid and binding Arbitration Agreement and, therefore, Plaintiff’s claims should be submitted to arbitration.

The Arbitration Agreement at issue defines Ridgeway Manor Healthcare Center, LLC as the “Facility,” Gail Wright as the “Resident.” The relevant provisions of the Arbitration Agreement state the following:

*“The Facility and the Resident and/or Resident’s Authorized Representative (hereinafter referred to collectively as the “Parties”) understand and agree that any legal dispute, controversy, demand, or claim that arises out of or relates to the Resident Admission Agreement or is in any*

*way connected to the Resident's stay at the Facility shall be resolved exclusively by binding Arbitration; and not by a lawsuit or resort to other court process."*

The Arbitration Agreement further provides that

*"This agreement shall be binding upon and shall include any claims brought by or against Parties' representatives, agents, heirs, assigns, employees, managers, directors, shareholders, management companies, parent companies, subsidiary companies or related or affiliated business entities."*

The Arbitration Agreement was executed by Fantasia Hartwell as the "Responsible Party/Resident Representative" of Wright and counter-signed by Keri Singleton, the DSS Case Manager. Mrs. Singleton was indeed Wright's representative as her case manager for DSS, which had legal custody pursuant to the Family Court Order dated May 20, 2021 and authority under the Adult Protection Act to enter into the Admission Agreement, the Arbitration Agreement, and the other admissions-related documents on May 28, 2021. Because the acts complained of by the Plaintiff fall within the scope of the valid and binding Arbitration Agreement, the Court should stay these proceedings, and compel this matter to arbitration. *See* 9 U.S.C. § 3.

### **ARGUMENT AND CITATION TO AUTHORITY**

#### **I. POLICY IN FAVOR OF ARBITRATION**

As a general matter, there is a strong presumption in favor of the validity of arbitration agreements because of strong policy considerations favoring arbitration. *O'Neil v. Hilton Head Hosp.*, 115 F.3d 272, 273 (4th Cir. 1997). Indeed, both federal and state policy favors arbitrating disputes. *Heffner v. Destiny, Inc.*, 321 S.C. 536, 537, 471 S.E.2d 135, 136 (1995) ("The policy of the United States and this State is to favor arbitration of disputes."). "The federal policy favoring arbitration, as expressed in the [Federal Arbitration Act], is now binding even in state courts and

supersedes inconsistent state law and statutes which invalidate arbitration agreements.” *Zabinski v. Bright Acres*, 346 S.C. 580, 590, 553 S.E.2d 110 (S. Ct. 2001). Further, arbitration agreements are presumed valid, and “[t]he party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration.” *Green Tree Fin. Corp.- Ala. v. Randolph*, 531 U.S. 79, 91 (2000).

## **II. THE FEDERAL ARBITRATION ACT GOVERNS THE ARBITRATION AGREEMENT AND MANDATES THAT THE CLAIMS ASSERTED BY THE PLAINTIFF IN THE COMPLAINT BE COMPELLED TO ARBITRATION**

As an initial matter, the Arbitration Agreement, by its terms and by law, is governed by the Federal Arbitration Act (“FAA”), 9 U.S.C. §§ 1-16. *See Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 381, 759 S.E.2d 727, 732 (2014) (*holding* that skilled nursing facility admission agreements and residencies implicate interstate commerce, and thus are governed by the FAA). Under the FAA, any written provision in “a contract evidencing a transaction involving commerce” providing that disputes be settled by arbitration is “valid, irrevocable, and enforceable.” 9 U.S.C. § 2. The language of the Act is mandatory and requires the enforcement of all arbitration agreements. Section 4 of the FAA provides, in pertinent part, as follows: The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. 9 U.S.C. § 4. “By its terms, the (FAA) leaves no place for the exercise of discretion by a... court, but instead mandates that... courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.” *See Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985). While a court may invalidate an arbitration agreement based on “generally applicable contract defenses,” it may not invalidate an arbitration agreement on legal rules that “apply only to

arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue.” *See Kindred Nursing Centers Ltd. P’ship v. Clark*, 137 S. Ct. 1421, 1423, 197 L. Ed. 2d 806 (2017)(citing *AT & T Mobility LLC v. Concepcion*, 563 U.S. 333, 339, 131 S.Ct. 1740, 179 L.Ed.2d 742). Under the FAA, a party seeking arbitration must only show two things in order to compel arbitration: (1) that a written agreement to arbitrate exists, and (2) that the written agreement is contained within a contract involving interstate commerce. 9 U.S.C. § 2. As discussed and further described herein, such a binding and enforceable written agreement to arbitrate disputes exists in this case and Plaintiff’s claims should be compelled to arbitration.

### **III. THE ARBITRATION AGREEMENT IS VALID AND ENFORCEABLE**

#### **A. Ms. Singleton Possessed Actual Authority to Bind Mrs. Wright to the Arbitration Agreement.**

As a DSS employee and Mrs. Wright’s case manager, Keri Singleton had actual authority to bind Mrs. Wright to the Arbitration Agreement, as Mrs. Wright was under the legal custody of DSS in June 2021 when she was admitted to the Facility. *See* Exhibit 1 to Plaintiff’s Memorandum in Opposition. Wright had been judicially declared a vulnerable adult in need of South Carolina’s “adult protective services” due to the substantial risk of abuse, neglect, or exploitation if allowed to return to the former home where her family members, including Plaintiff, “took care” of her when convenient for them. *See id.* The Facility therefore acted appropriately in presenting the various required agreements and documents related to arbitration as it relates to Mrs. Wright’s residency, care, and treatment at the Facility to Mrs. Singleton. Likewise, Mrs. Singleton executed her duties as the DSS case manager for Mrs. Wright by making decisions on her behalf that were necessary for Mrs. Wright to be admitted to the Facility.

Pursuant to S.C. Code Ann. § 43-35-10(9), DSS had comprehensive and express authority to utilize “protective services” and act on Mrs. Wright’s behalf at the time she entered into the

Arbitration Agreement and the Admissions Agreement on May 28, 2021, as Mrs. Wright was in DSS's "protective custody" at that time. By statute, the "adult protective services" that DSS was directed to provide to or secure for Mrs. Wright's services to **"include, but [were] 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."** *See* S.C. Code Ann. § 43-35-10(9)(emphasis added).

Pursuant to terms of the Adult Protection Act and the type of protective and custodial services the Family Court imbued in DSS, no other agency or individual possessed the power to admit Mrs. Wright into a skilled nursing facility, obtain other medical services, make financial decisions and make legal decisions on behalf of her. *See Id.* Indeed, DSS had a Court-imposed duty to ensure such health and legal decisions were made in the best interest of Mrs. Wright, which were required prior to her discharge from the hospital. DSS was the only party with these decision-making powers with regard to Mrs. Wright. In light of this role as sole custodian, and pursuant to the Adult Protection Act, DSS had broad express powers to act on behalf of Mrs. Wright pursuant to the Adult Protection Act to include the power to enter into the Admission Agreement and to enter into the Arbitration Agreement.

Although S.C. Code Ann. § 43-35-45(C) requires the appointment of a Guardian Ad Litem and an attorney for a vulnerable adult, nothing in the entire Adult Protection Act implies or suggests that a vulnerable adult's guardian ad litem or attorney has any authority whatsoever to dictate the facility where a vulnerable adult will be admitted or that no services can be procured without their consent. Further, according to the terms of the May 20, 2021 Family Court Order, Mrs. Wright's lawyer and her GAL were in agreement that DSS should have protective custody

of Mrs. Wright and that she should be subject to their protective services. Quite clearly, DSS, and DSS only, possessed authority to take any action necessary for the care and treatment of Mrs. Wright.

DSS, by and through its authorized representatives Keri Singleton and Fantasia Hartwell, elected (1) to admit Mrs. Wright to the Facility and (2) determined that entering into an agreement for alternative dispute resolution in regards to matters concerning the residency, care and treatment of Mrs. Wright at the Facility (i.e. the Arbitration Agreement) was in her best interests. While short in duration, Plaintiff, Mrs. Wright, or any other individual, never once contested the validity of DSS's authority to act on behalf of Mrs. Wright in these ways during her residency at the Facility. Indeed, to date, Plaintiff does not dispute that DSS had authority to admit Mrs. Wright to the Facility and to sign the Admission Agreement and Arbitration Agreement on her behalf. *See gen. Plf.'s Memorandum in Opposition.* Only now, when Plaintiff potentially stands to receive money from her mother's demise, she has the audacity to try and retroactively argue DSS did not have authority to enter into the arbitration agreement, despite her being partly to blame for Mrs. Wright's admission to the Facility.

**B. DSS Possessed Apparent and Inherent Authority to Bind Mrs. Wright to the Arbitration Agreement.**

**i. Agency Relationship - Apparent Agency Authority**

In the alternative, assuming arguendo that Mrs. Singleton<sup>2</sup>, on behalf of DSS, lacked actual authority to enter into the terms of the Arbitration Agreement, she still possessed sufficient apparent and/or inherent agency powers to render the agreement enforceable. Such powers are

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<sup>2</sup> Defendants also recognize Fantasia Hartwell's authority on behalf of DSS to bind Mrs. Wright to the Admission Agreement and Arbitration Agreement.

recognized by South Carolina courts and are used to enforce agreements where supposed unauthorized actions “accompany or are incidental to transactions which the agent is authorized to conduct....” See §§ 8A, 161 Restatement (Second) of Agency (1958); *Smith v. Fitton & Pittman, Inc.*, 264 S.C. 129, 212 S.E.2d 925 (1975)(abrogated on unrelated grounds)(*examining* whether party had properly demonstrated the existence of inherent agency powers); *Chicago Title Ins. Co. v. Washington State Office of Ins. Com'r*, 309 P.3d 372 (Wash. 2013); *Daly v. Aspen Ctr. for Women's Health, Inc.*, 134 P.3d 450, 452 (Colo. App. 2005); *Menard, Inc. v. Dage-MTI, Inc.*, 726 N.E.2d 1206, 1210-11 (Ind. 2000); *Cange v. Stotler & Co.*, 826 F.2d 581, 591 (7th Cir. 1987)(“[t]he powers of an agent are, prima facia, coextensive with the business entrusted to his care, and will not be narrowed by limitations not communicated to the person with whom he deals.”)(*citing Lumbermen's Mut. Ins. Co. v. Slide Rule & Scale Eng'g Co.*, 177 F.2d 305, 309 (7th Cir. 1949)).

The Facility knew of this ability (and notwithstanding the Facility’s position that DSS also had actual authority to enter into the Arbitration Agreement), it is clearly reasonable for the Facility to have believed that Keri Singleton, as an employee of DSS which was the sole custodian with exclusive authority for Mrs. Wright, possessed the apparent and inherent authority to bind her under the Arbitration Agreement. To the extent Plaintiff takes issue with DSS’s authority to bind Mrs. Wright to the Arbitration Agreement and the specific terms therein, such actions merely accompanied and were incidental to DSS’s (and Mrs. Singleton’s) undisputed authority to admit Mrs. Wright to the Facility. The Defendants should not be disadvantaged for acting in accordance with the express representations of Mrs. Singleton and/or Mrs. Hartwell regarding his authority.

**C. Plaintiff was an Intended Third-Party Beneficiary of the Valid Arbitration Agreement.**

In recent arbitration enforcement cases, the courts have applied the third party beneficiary doctrine and compelled estate representatives, like Plaintiff, to arbitrate wrongful death and related tort claims because their decedents were third-party beneficiaries of nursing home contracts with arbitration clauses. *See McCutcheon v. THI of S.C. at Charleston, LLC*, No. 2:11-CV-02861, 2011 WL 6318575, at \*3 (D.S.C. Dec. 15, 2011) (Norton, C.J.); *See also THI of S.C. at Columbia, LLC v. Wiggins*, C/A No. 3:11-888-CMC, 2011 WL 4089435, at \*6 (D.S.C. Sept. 13, 2011) (Currie, J.). The rationale of these decisions compels the same outcome here, and Plaintiff should be compelled to arbitrate her claims against the Facility.

**D. Plaintiff is Equitably Estopped from Repudiating the Arbitration Agreement.**

“Equitable estoppel precludes a party from asserting rights he otherwise would have had against another when his own conduct renders assertion of those rights contrary to equity.” *Int'l Paper Co. v. Schwabedissen Maschinen & Anlaeën GMBH*, 206 F.3d 411, 417-18 (4th Cir. 2000) (citation and internal quotation marks omitted). “A nonsignatory is estopped from refusing to comply with an arbitration clause ‘when it receives a direct benefit from a contract containing an arbitration clause.’” *Id.* (Internal citations omitted).

The doctrine of equitable estoppel “exists to prevent a litigant from unfairly receiving the benefit of a contract while at the same time repudiating what it believes to be a disadvantage in the contract, namely the contractual arbitration provision.” *S. Ill. Bev., Inc. v. Hansen Bev. Co.*, 2007 U.S. Dist. LEXIS 76229 (S.D. Ill. 2007). Moreover, the Fourth Circuit has held that “no party suing on a contract should be able to enforce certain contract provisions while simultaneously attempting to avoid the terms of an arbitration provision therein.” *United States v. Bankers Ins. Co.*, 245 F.3d 315, 323 (4th Cir. 2001).

“Generally, these cases involve non-signatories who, during the life of the contract, have embraced the contract despite their non-signatory status but then, during litigation, attempt to repudiate the arbitration clause in the contract.” *E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates S.A.S.*, 269 F.3d 187, 200 (3d Cir. 2001)(internal citations omitted) (*finding* nonsignatory derived benefit from contract and could not avoid the arbitration clause contained therein)). As noted by the Federal District Court in *Jackson v. Iris.com*:

It is an axiomatic rule of contract law that a party may not rely on the contract when it works to its advantage, and repudiate it when it works to its disadvantage. . . . [W]here . . . a signatory seeks to enforce an arbitration agreement against a non-signatory, the doctrine estops the non-signatory from claiming that he is not bound to the arbitration agreement when he receives a direct benefit from a contract containing an arbitration clause.

524 F. Supp. 2d 742, 749-50 (E.D. Va. 2007) (internal citations and quotations omitted).

Plaintiff, as Mrs. Wright’s daughter, embraced all aspects of DSS’s decision to admit Mrs. Wright to the Facility and to enter into the Admission Agreement with the Facility. Plaintiff does not dispute the validity of the Admission Agreement or her mother’s admission to the Facility. She never removed Mrs. Wright from the Facility and, by all accounts, approved of presence at the Facility/did not seek her discharge. Indeed, it is unfortunately also fair to state that Plaintiff had an opportunity to seek custody of her mother, but accepted all benefits of DSS being her mother’s legal custodian as of May 20, 2021.

Therefore, it would be manifestly inequitable to permit a party (Plaintiff) to claim the other party (the Facility) is liable in tort based upon a contractual relationship, while at the same time allowing that party to avoid the arbitration provisions of the contract upon which the party bases its claims, when such claims are in the scope of the arbitration provisions. In other words, Plaintiff cannot “have it both ways” by relying upon certain terms of the Admission Agreement when it

works to his advantage and repudiating the Arbitration Agreement when it works to her disadvantage.

In *THI of S.C. at Magnolia Manor-Inman, LLC v. Gilbert*, No. 7:13-CV-2929-BHH, 2014 WL 6863550 (D.S.C. Oct. 31, 2014), Judge McDonald applied, and Judge Hendricks adopted, estoppel principles to compel arbitration in the same exact setting where a DSS Representative signed on behalf of a “vulnerable adult,” ruling:

“[H]ere, having obtained for Ms. Gilbert the benefits of admission and treatment at Magnolia Manor–Inman pursuant to the Admission Contract, the defendant is estopped from denying the enforceability of the Arbitration Provision.”

2014 WL 6863550, at \*4; report and recommendation adopted, 2015 WL 1268185.

By repudiating the Arbitration Agreement, Plaintiff attempts to take inconsistent positions regarding the same, single contract. DSS as the sole legal custodian for Mrs. Wright, by and through its representatives represented to the Facility that it was authorized to sign the Admission Contract on behalf of Mrs. Wright because DSS possessed legal custody over her. Having obtained for Mrs. Wright the benefits of admission and treatment at the Facility pursuant to the Admission Contract, the Plaintiff is estopped from repudiating that very same authority to dispute the validity of its contents. *Cf. International Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 418 (4th Cir. 2000) (“To allow [a plaintiff] to claim the benefit of the contract and simultaneously avoid its burdens would both disregard equity and contravene the purposes underlying enactment of the [FAA].” (internal quotation marks omitted)).

As described, the Plaintiff’s allegations fall within the scope of the Arbitration Agreement. In accordance with the foregoing law, Plaintiff cannot assert claims against these Defendants based upon certain terms of the Admission Agreement while repudiating the Arbitration Agreement, and should be prevented from doing so pursuant to the doctrine of equitable estoppel.

## CONCLUSION

Defendants submit that Keri Singleton had actual statutory authority to enter into the Arbitration Agreement under the terms of the South Carolina Adult Protection Act. *See* S.C. Code Ann. 43-35-5 et seq. In addition to her actual authority, because there is no dispute that Ms. Singleton and/or Ms. Hartwell had actual authority to enter into the Admission Agreement on behalf of Mrs. Wright, Ms. Singleton also had inherent authority to enter into the accompanying Arbitration Agreement. Further, since Mrs. Wright was identified as the “resident” on the agreements, she and her estate’s beneficiaries, was clearly the third-party beneficiary of the Contract with the Facility, and therefore arbitration is binding on Plaintiff.

Finally, the Plaintiff is equitably estopped from denying that the Arbitration Agreement is valid and binding as to Mrs. Wright’s residency, care, and treatment at Ridgeway Manor. These documents were executed on the same date, by the same parties and with respect to the same transaction – the provision of nursing and other health care to Mrs. Wright at the Facility after she was abandoned by her caregivers.

Therefore, Plaintiff should be estopped from denying the validity of the Arbitration Agreement and her claims must be compelled to arbitration in accordance with the Federal Arbitration Act. Therefore, Defendants respectfully request that this Court enter an Order compelling arbitration and dismissing (or staying) the pending action until completion of arbitration proceedings.

Dated: July 1, 2024

**GORDON REES SCULLY MANSUKHANI**

*s/ Laura P. Paton*

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STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

)

COUNTY OF FAIRFIELD

) CASE NO.: 2023-CP-20-00374

STEPHANIE PRESSLEY, AS PERSONAL  
REPRESENTATIVE OF THE ESTATE OF  
GAIL WRIGHT,

)

)

)

Plaintiff,

)

)

)

v.

)

)

RIDGEWAY MANOR HEALTHCARE CENTER,  
LLC; DEBORAH SPARKS; AND JAMES  
McCOLLUM,

)

)

)

)

Defendants.

)

)

)

Comes now Defendants Ridgeway Manor Healthcare Center, LLC, Deborah Sparks, and Jame McColllum and submit this Reply to Plaintiff’s Response in Opposition to Defendants’ Motion to Compel Arbitration and Stay Discovery. Specifically, Defendants address the cases and law cited in Plaintiff’s Response in Opposition to Defendants’ Motion to Compel Arbitration and Stay Discovery (“Plaintiff’s Brief”) and replies to same. Plaintiff cites to a number of cases and statutes to support her position regarding the authority of the Department of Social Services (DSS) to execute the Ridgeway Admission and Financial Agreement (the “Agreement”) on Gail Wright’s behalf and the enforceability of that same Agreement. The cases cited are distinguishable and certain provisions of law cited are inapplicable. Defendants’ Reply Brief is submitted in addition to and supplemental to its original memorandum of law and oral arguments.

In the case at hand, DSS was directed by statute and by Judge Pincus’s May 20, 2021 Order to complete all necessary tasks to have Mrs. Wright admitted in a facility with the ability to provide care and retained in DSS custody. See Judge Pincus’s Exhibit 1 Plaintiff’s Brief. At all times relevant, DSS acted with actual authority and were given agency to act on Mrs. Wrights behalf to

execute all relevant admissions documents to facilitate placing Mrs. Wright was in a facility with access to reasonable and necessary care. In order to secure Mrs. Wright's place at the facility, Ridgeway Manor, DSS executed the Ridgeway Admission and Financial Agreement which included an arbitration provision. Plaintiff Mrs. Stephanie Pressley, as Personal Representative of the Estate of Gail Wright, now seeks to pursue litigation but opposing enforcement of the arbitration provision in the Agreement. However, Ms. Pressley is equitably estopped from divesting herself or Mrs. Wright's Estate of the terms of the Agreement she does not like. Plaintiff cites to myriad cases arguing that she has precedential weight contrary to Defendants' position. However, in all precedential case law cited by Plaintiff, the facts and circumstances are distinguishable such that they have no bearing on this action and the terms of the Agreement, including the arbitration provision, must be enforced.

In her Brief, Plaintiff cites to *Wilson v. Willis*, 426 S.C. 326, 827 S.E.2d 167 (2019) for the proposition that non-signatories cannot be bound to an arbitration agreement. However, the *Wilson* cases refer to an agreement between multiple insurance companies and the insurance agent. In *Wilson*, the insureds, who were not part of the relevant agreement, and who sued for issues outside of the agreement between the insurance company and the agency, including fraud, were not bound by the terms and were not parties to the insurance companies' contract with the agent. Here, the Plaintiff's argument that *Wilson* applies to our case is erroneous. Unlike the insureds in *Wilson*, Mrs. Wright was a party to the properly executed Agreement and is bound by its terms. Further, Ms. Pressley is a direct beneficiary of the Agreement, unlike the insureds in *Wilson*, and Ms. Pressley is suing because she alleges that the facility failed to provide the care to her mother that is outlined in the Agreement. The execution of the Agreement is a prerequisite for the facility to admit a resident and make care available. The Agreement, to which Mrs. Wright was a party,

specifically includes a provision wherein the heirs and beneficiaries (the Estate) are bound by the terms therein, including the arbitration provision. Further, per the Guardian Ad Litem report attached at Exhibit 5 to Plaintiff's Brief, Ms. Pressley agreed that her mother was better off in Ridgeway where she continued to receive care rather than at home where care was unavailable and Mrs. Wright had previously been abandoned for three (3) days trapped in her chair. Therefore, Ms. Pressley did directly benefit from the terms of the Agreement.

Plaintiff further cites to the *Stott v. White Oak Manor, Inc.*, 426 S.C. 568, 828 S.E.2d 82, (Ct. App. 2019) case. In that matter, Hilda Stott checked her uncle, Jolly Davis, into a nursing home utilizing a durable power of attorney for finance as authority to execute the admissions documents. *Id.* However, under S.C. Code Ann. § 62-5-504 ("POA statute") and the terms of the power of attorney under which the niece was acting, the power of attorney did not spring into effect unless and until the principle, her uncle, became incompetent. *Id.* At 576-577. Because Mr. Davis was not incompetent, the power of attorney never became active. Thus, Ms. Stott never had any authority to take any action on her uncle's behalf under the power of attorney. In our case, DSS was acting under Adult Protection Act, S.C. Code Ann. § 43-35-5 *et seq.* (the "APA") and pursuant to Judge Pincus's court order - not pursuant to a power of attorney or the POA statute. Thus, the circumstances from *Stott* are wholly inapplicable. Similarly, Plaintiff cites to dicta from *Dean v. Heritage Healthcare of Ridgeway*, 408 S.C. 371, n.13, 759 S.E.2d 727 (2014). In that matter, the judge noted that a daughter who executed documents to have her mother admitted to a nursing home acted without authority of any kind to have her mother admitted. The judge indicated that the circuit court should (obviously) inquire as to the ability of that daughter to have her mother admitted to the facility since she was not acting pursuant to a power of attorney granting the daughter authority. Likewise, in *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C.

544, 813 S.E.2d 292 (Ct. App.) 2018, the court dealt with the relationship and authority granted between a husband and wife. In *Hodge*, the question was whether or not the husband had common law agency; the court held that being married did not in and of itself give the husband agency over his wife to execute documents for her. Notably, the husband did not sign the portion of the admission agreement indicated that he had actual authority to represent his wife. Here, there was clearly agency and the signature on the Agreement, which included an express affirmation from the DSS workers, “I warrant and represent that the Resident has expressly vested in me the authority to sign this Agreement on the Residents behalf.” (Emphasis added). Agreement p. 12 attached as Exhibit 3 to Plaintiff’s Brief.

In addition to cases with precedential weight bearing on this court, Plaintiff cites to a number of cases that have no bearing on this court and which should not be considered. Plaintiff includes *Alston v. Conway Manor, LLC*, 2021 WL 1227786 (Ct. App. Mar. 31, 2021) (unpublished), and *Scott v. Heritage Healthcare of Estill, LLC*, Op. No. 2014-UP-317, 2014 WL 3845113 (S.C. Ct. App. filed Aug. 6, 2014) (unpublished) as Exhibits seven (7) and eight (8) to her Brief. Plaintiff cites to both *Alston* and *Scott* and compares them to the case at hand. Both *Alston* and *Scott* are unpublished opinions. Pursuant to South Carolina Appeal Rule, 268(d)(2) “... Unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved.” (Emphasis added). Therefore, any argument that these opinions have any weight or bearing on this action is inaccurate and Defendants request that they be stricken and not otherwise considered.

With respect to arguments related to ‘agency’, Plaintiffs Brief cites to a series of cases, none of which are applicable here because in each case, the resident of the nursing home had dementia. First, Plaintiff cites *Pace v. Lake Emory Post Acute Care, et al.*, C/A No. 2019-cp-42-

03709. This is a circuit court case with no precedential weight on this matter and, notably, is currently on appeal. In *Pace*, the Court declined to recognize an ‘agency’ relationship because the party being admitted for care had dementia and could not convey agency. This is also the case in the matter of *Thompson v. Pruitt Corp.*, 416 S.C. 43, 55, 784 S.E.2d 679, 686 (Ct. App. 2016). There again, the resident had dementia and could not manifest consent to agency. In both *Pace* and *Thompson*, the court held that a party with dementia cannot have an agent because they cannot manifest assent. As noted by Plaintiff in her brief on page 9, Mrs. Wright was never adjudicated incompetent; thus, Mrs. Wright was capable of manifesting assent to agency. More importantly, in *Pace* and *Thompson* there are no court orders in place mandating DSS place the individual in care of the facility. Further, in *Thompson* the document at issue was a separate arbitration agreement – not, as here, a single Agreement which included an arbitration provision embedded in the Agreement at page 10 of 26.

In addition to *Pace* and *Thompson*, Plaintiff cites to *Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 228, 847 S.E.2d 268, 271 (Ct. App. 2020) where, again, the decedent had dementia. The *Weaver* case was brought by the decedent’s granddaughter after her grandmother wandered out of the facility and into a pond where she was attacked by an alligator. The *Weaver* case did not stem from the contract for care or nursing services but from general negligence i.e. letting a person with dementia wander into a fatal situation. Here, Ms. Pressley’s case is largely premised on the argument that Defendants failed to provide “care” outlined by the Agreement and claims are not exclusively rooted in general negligence. See e.g. *Compl.* “At all times relevant, Defendants Ridgeway Manor Healthcare Center, LLC, delivered care for a fee...” *Id.* ¶ 9. “At all relevant times, Gail Wright required assistance with activities of daily living and care for incontinence.” *Id.* ¶ 36, “Defendants failed to assign sufficient and qualified staff to ensure that all

necessary care was delivered to Gail Wright.” *Id.* ¶ 48. These allegations stem from the terms of the Agreement “Facility agrees to: ... 1.2. Furnish room, board, routine meals, linens and bedding, nursing care...” As such, Plaintiff’s claims stem from the Agreement itself and the allegations that the care and assistance promised by the Agreement were not provided. Plaintiff’s allegations do not stem from generic tort claims wildly outside the scope of the Agreement.

Plaintiff cites to the South Carolina Health Care Consent Act, (hereafter “SCHCA”), codified at South Carolina Code Ann. § 44-66-10 *et seq.* arguing that because Mrs. Wright had not been adjudicated incompetent, she was the only party who could have consented to the agreement; in furtherance of this argument, Plaintiff then cites to *Scott* for support. As noted above, Defendants request that the *Scott* case be stricken from the record pursuant to S. C. Appellate Rule 268(d)(2). Further, the SCHCA relates to whether or not a party can consent to healthcare decisions. First, nothing in the Agreement limited or superseded Mrs. Wright’s ability to choose to accept or decline health care services; the Agreement provides placement of Mrs. Wright in a facility where health care services were available as she needed. More importantly, the arbitration clause alone (which is part of a larger Agreement) is not a ‘healthcare’ decision and therefore, the issue of capacity to sign the arbitration provision in the Agreement is irrelevant. Any argument that the Agreement as a whole is invalid on the grounds that Mrs. Wright was competent, is subject to review by an arbiter, not the court. Per *Sanders v. Savannah Highway Automotive Company*, 440 S.C. 377, 892 S.E.2d 112 (2023), which is cited by Plaintiffs as an applicable legal standard,<sup>1</sup> the validity of an arbitration provision is subject to court review. However, the validity of an agreement as a whole which contains an arbitration provision, is subject to an arbiter’s interpretation, not the court. As such, to the extent Plaintiffs’ suggest that the Agreement as a

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<sup>1</sup> Plaintiff’s Brief at P. 3.

whole is invalid pursuant to the SCHCA, this matter must be stayed and the validity of the Agreement as a whole must be sent to an arbiter pursuant to the *Sanders* case. Finally, defense counsel notes that there is no limiting language in the APA statute or Judge Pincus's Order that mandate that in arranging for residency in a facility where Mrs. Wright may secure care, DSS must have all relevant documents signed by the individual they are seeking to protect; such would be erecting innumerable roadblocks to DSS accomplishing the mission of protecting vulnerable adults who, by definition, are unable to care for themselves.<sup>2</sup>

DSS is implicitly authorized under the APA to perform all necessary steps to provide living quarters and secure legal and financial services for a party under its care, including execution of documents. Here, DSS employees executed the Agreement admitting Mrs. Wright to the Defendants' facility, accepting all terms therein, and expressly warranting that they were vested with the authority by Mrs. Wright to do so.<sup>3</sup> Agreement p. 12. In this matter, not only did the DSS employees executing the entire Agreement have the authority under the APA, they also had authority pursuant to Judge Pincus's Order. Moreover, the Guardian Ad Litem appointed by the court spoke with Mrs. Wright, Mrs. Wright's family, and DSS and recommended that Mrs. Wright stay in Defendant Ridgeway Manor's care and DSS Custody – embracing the terms of the Agreement that authorized Mrs. Wright to do so. **In sum, there is no case law cited by Plaintiff with any precedential value wherein the courts of South Carolina have invalidated an**

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<sup>2</sup> Vulnerable adult means a person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection. *See S.C. Code Ann.* § 43-35-10.

<sup>3</sup> Notably, there are several location in the contract where one of the parties has failed to sign or initial on the line where indicated; this is immaterial given the conduct manifesting assent constitutes acceptance of the offered terms. *See Ex parte Stevens, Stevens & Thomas*, 277 S.C. 150, 283 S.E.2d 444, 445 (1981) (per curiam). *Peddler, Inc. v. Rikard*, 266 S.C. 28, 221 S.E.2d 115 (1975); *Bishop Realty & Rentals, Inc. v. Perk, Inc.*, 292 S.C. 182, 185, 355 S.E.2d 298, 300 (Ct. App. 1987). Here, there are dozens of initials and signatures throughout the Agreement documenting the assent of both parties to the Agreement. Exhibit 3.

**agreement (including an arbitration agreement) entered into by DSS providing for care of a vulnerable adult.**

Therefore, having replied to the legal authority cited in Plaintiff's Brief, Defendants reiterate their request to stay the case in its entirety and compel this case to arbitration pursuant to the Federal Arbitration Act and the terms of the Agreement. Alternatively, to the extent that Plaintiff has objected or questioned the authority of DSS to sign this entire Agreement under the SCHCA, Defendants request that pursuant to the *Sanders* case, questions of the validity of the Agreement as a whole, which contains the arbitration provision, be submitted to an arbiter.

Dated: July 9, 2024

**GORDON REES SCULLY MANSUKHANI**

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*Attorneys for Defendants*

<b>STATE OF SOUTH CAROLINA</b>	)	<b>IN THE COURT OF COMMON PLEAS</b>
	)	
<b>COUNTY OF FAIRFIELD</b>	)	<b>CASE NO.: 2023-CP-20-00374</b>
	)	
STEPHANIE PRESSLEY, AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE OF	)	
GAIL WRIGHT,	)	
	)	
Plaintiff,	)	<b>DEFENDANTS' MOTION FOR</b>
	)	<b>RECONSIDERATION</b>
	)	
v.	)	
	)	
RIDGEWAY MANOR HEALTHCARE CENTER,	)	
LLC; DEBORAH SPARKS; AND JAMES	)	
MCCOLLUM,	)	
	)	
Defendants.	)	
	)	

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Defendants Ridgeway Manor Healthcare Center, LLC, Deborah Sparks, and James McCollum (“Defendants”), by and through their undersigned counsel and pursuant to SCRCP, Rule 59(e), hereby move this Court to reconsider its Order filed on August 19, 2024 (“the “Order”) denying Defendants’ Motion to Stay the Case and Compel Arbitration. In the interest of brevity, Defendants incorporate by reference their oral arguments, briefs, and post-hearing submissions already included in the record. This Motion is based upon the following mistakes of fact and law as outlined below.

The Order improperly interprets the Omnibus Adult Protection Act (“APA”) by limiting the ability of the South Carolina Department of Social Services (“DSS”) to fulfill its legal obligations and denies Defendants substantive rights under the Admission and Financial Agreement (the “admissions contract”). In the instant matter, Defendants have argued that pursuant to multiple powers granted by the APA, DSS had the authority to execute all necessary paperwork for Mrs. Wright’s admission to Defendants’ facility including, but not limited to, the admissions contract that included an arbitration provision. The Order addresses DSS’s authority

under the APA but only in as much as it references the provision of “legal services.” While the Defendants disagree, the Order fails to address, and otherwise ignores, the authority granted DSS under other provisions in the APA which have been raised. In addition to “legal services,” the APA invests authority in DSS to provide “protective services.” The APA defines these as, “those 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.”

DSS’s mandate to arrange for living quarters is then echoed in the Family Court’s Order issued by Judge Monet Pincus on May 18, 2021 (the “Family Court Order”). In the Family Court Order, Judge Pincus found Ms. Wright to be a “vulnerable adult” and ordered DSS to have Mrs. Wright admitted to a “facility that meets her level of care.” The Order here does not address DSS’s authority, separate and apart from “legal services,” to provide other such services “including but not limited to... arranging for living quarters.” Likewise, the Order sidesteps the authority given by the Family Court Order with the broad brush statement that, “the family court order provides no such authority, nor does the statute,” and frames the question in terms of the ability to waive a jury trial. The Order ignores all such actions that must be taken to ensure that living quarters and skilled nursing is arranged including, but not limited to, the execution of admissions paperwork. This is contrary to the law.

In Luis v. United States, 578 U.S. 5 (2016), the United States Supreme Court held, “The law has long recognized that the ‘[a]uthorization of an act also authorizes a necessary predicate act.’” Luis v. United States, 578 U.S. 5, 26 (2016) (*quoting* A. Scalia & B. Garner, Reading Law:

The Interpretation of Legal Texts 192 (2012) (discussing the “predicate-act canon”). “As Thomas Cooley put it with respect to Government powers, ‘where a general power is conferred or duty enjoined, every particular power necessary for the exercise of the one, or the performance of the other, is also conferred.’” Luis, 578 U.S. at 26 (citing Thomas M. Cooley, A Treatise on The Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union 63 (1868)); see 1 J. Kent, Commentaries on American Law 464 (13th ed. 1884) (“[W]henver a power is given by a statute, everything necessary to the making of it effectual or requisite to attain the end is implied.”).

To procure living quarters in the Defendants’ skilled nursing facility, the admissions contract must be executed *en toto*. Within the admissions contract is an arbitration provision, which governs all aspects of the relationship between the applicant and the facility. In order to arrange for living quarters commensurate with the level of care Mrs. Wright needed, it was incumbent upon DSS to complete the admissions contract; they did so and Mrs. Wright was admitted to Ridgeway Manor. In this matter, the Court’s interpretation of the APA strips DSS of its authority to act to protect Mrs. Wright with such actions as execution of all required admissions paperwork. Concurrently, it strips Defendants of a substantive and material right included in the admissions contract – the right to have grievances heard in arbitration. Such is an error of law, which must be corrected.

To support its ruling, the Order mistakenly waivers between determinations based on the validity of the admissions contract as a whole and the authority of DSS to execute only the arbitration provision within the admissions contract. In oral arguments, briefing, and subsequent filings, Defendants maintained that as a third-party beneficiary of the contract, Plaintiff is equitably estopped from denying the arbitration provision in the admissions contract. The Court’s Order

denies Defendants' argument, relying on Thompson v. Pruitt Corp., 416 S.C. 43, 57 (Ct. App. 2016) for the proposition that "there can be no third-party beneficiary unless a valid contract exists." This is an error of law. Both Defendants and Plaintiff agree that DSS had authority to execute the contract. Plaintiff's argument is that DSS did not have authority to execute only the arbitration provision embedded in the admissions contract. Challenges to the validity of a contract are a matter for an arbiter to decide, not the court. Sanders v. Savannah Highway Auto. Co., 440 S.C. 377, 392, 892 S.E.2d 112, 120 (2023), reh'g denied (Sept. 27, 2023) (*citing* Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395 (1967)).

In the same breath, the Court improperly distinguishes between the admissions contract as a whole (which it refers to as "the admission paperwork") and carves out the arbitration provision as separate and apart, stating that, "only DSS workers Fantasia Hartwell and Keri Singleton executed the paperwork for Mrs. Wright's admission. This paperwork included *an addendum* with an arbitration agreement." (emphasis added). In fact, as argued in the hearing on this matter, the arbitration provision is part and parcel of a single admissions contract. The arbitration is included on pages 10-12 of 26 of the admission contract. There is no question that Plaintiff concedes that DSS had authority to execute the admission contract. Likewise, there is no question that DSS was proceeding pursuant to Judge Pincus's Family Court Order to secure a space within a skilled nursing facility, which required execution of admissions contract. Instead, the Order points to Estate of Solesbee by Bayne v. Fundamental Clinical and Operational Services, LLC, 438 S.C. 638, 885 S.E.2d 144 (2023) and improperly extracts the arbitration provision embedded within the contract, treating it as if it were its own separate and independent contract. This is in error.

First, Solesbee is ostensibly dealing with separate documents; here we have one contract. Further, the signatory in Solesbee was not a duly authorized DSS worker acting pursuant to both

the APA statute and a family court order. To the extent one might argued Solesbee applies, there are several significant factors in favor of arbitration which were included in the Solesbee analysis but omitted from the analysis in the Order. Among these is the issue of pagination, which the Solesbee court indicated weighed in favor of a single agreement. Here, the arbitration provision in the admission contract spans page 10-12 of 26 in sequential pagination; the Order does not give this factor consideration. Further, the Order here likens the admission contract, including an arbitration, with the agreement in Solesbee. This is misapplied. In Solesbee, the court's decision was based, in part, on differing choice of law provisions in the underlying contract and the arbitration provision. However, in the instant matter, every page of the admissions contract, including pages with the arbitration provision, is uniformly stamped with the language regarding to choice of law: "any liability assumed is subject to limitations of the rules, regulations, policies, and procedures of the South Carolina Department of Social Services and Federal Law governing the participation of the agency in social service programs." Indeed to argue that only the federal law controls the arbitration provision in the contract while both South Carolina law and federal law govern the rest of the contract is to ignore the Supremacy Clause at Sec. 2 of the US Constitution and significant case law regarding the Federal Arbitration Act 9 U.S.C. §§ 1-16. ("FAA"). "When parties agree to arbitrate all questions arising under a contract, the FAA supersedes state laws lodging primary jurisdiction in another forum, whether judicial or administrative." Preston v. Ferrer, 552 U.S. 346, 359 (2008) (*referencing* the FAA). Finally, every page in the admission contract, including pages 10-12 with the arbitration provision, is stamped "Admission and Financial Agreement;" this includes the arbitration provision. To the extent there could be a question as to whether the arbitration provision is separate from the admission contract, physically identifying every page as "Admission and Financial Agreement" should put that to rest.

In addition to the misapplication of Solesbee, the Order incorrectly analyzes the arbitration provision, considering factors outside of what has been deemed permissible for invalidating arbitration provisions. Section 2 of the FAA provides that any arbitration provision contained within a written contract involving interstate commerce must be enforced except for “upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2; Damico v. Lennar Carolinas, LLC, 437 S.C. 596, 610–11, 879 S.E.2d 746, 754 (2022), reh'g denied (Nov. 17, 2022), cert. denied, 143 S. Ct. 2581, 216 L. Ed. 2d 1192 (2023). The United States Supreme Court has held that, under the saving clause in the provision of the Federal Arbitration Act (FAA) stating that arbitration agreements in maritime transactions or contracts evidencing transactions involving commerce are valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract, arbitration agreements may be invalidated by “generally applicable contract defenses, such as fraud, duress, or unconscionability, **but not by defenses that apply only to arbitration or that 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) (*referencing* 9 U.S.C.A. § 2) (emphasis added). A Court may sever an arbitration provision upon a finding of fraud, duress, or unconscionability, however, Plaintiff has not argued, and the Court has not held, that Fantasia Hartwell and Keri Singleton were subject to fraud or duress or that the arbitration terms were unconscionable. In sum, while the Court may consider the validity of the *terms* of an arbitration agreement separate and apart from contract, that analysis is limited to a determination as to an inquiry into fraud, unconscionability, and duress.

The Supreme Court of the United States has found that the state courts may not pull an arbitration provision outside of a contract and subject it to a wholly separate inquiry. The Court cannot carve up the contract and make a page by page determination whether the statutory

authority of DSS under the APA or the Family Court Order extended to each and every term on any given page. Such investigation “would require [the court] to blue-pencil the agreement regarding a material term of the contract, a result strongly disfavored in contract disputes.” Damico, 437 S.C. at 604, 879 S.E.2d at 751 (2022). Arbitration is a material term to a contract. Id. “South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to *all* essential and material terms of the agreement.” Player v. Chandler, 299 S.C. 101, 105, 382 S.E.2d 891, 893 (1989); Mart v. Great S. Homes, Inc., 441 S.C. 304, 316, 893 S.E.2d 360, 366 (Ct. App. 2023). It is outside of discretionary bounds to erase the material term of arbitration for reasons other than fraud, duress, or unconscionability. Having determined that DSS had authority to execute the admissions contract for Mrs. Wright, the only remaining inquiry for the court with respect to the arbitration provision therein was whether the persons executing the admissions contract were subject to fraud or duress or whether the terms of the arbitration agreement were unconscionable.

The Order cites to Aiken v. World Finance Corp. of S.C., 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007) for the proposition “... a litigant must demonstrate a valid arbitration agreement that purports to cover the dispute.” However, reliance on World Finance Corp. for the position that there needs to be a determination of the validity of only the arbitration provision in a contract is misplaced. The inquiry in that matter was whether the court of appeals erred in concluding that the underlying *intentional tort claims* for fraud were ever contemplated by loan agreements, which had an arbitration provision. Aiken v. World Fin. Corp. of S.C., 373 S.C. 144, 147, 644 S.E.2d 705, 707-08 (2007). Not surprisingly, the Aiken court found that a loan agreement did not ever contemplate covering the intentional tort of identity theft. Thus, it is a misapplication to use the

Aiken case to support the argument that the court must contemplate an arbitration agreement outside the context of a contract for anything other than fraud, duress, or unconscionability.

Holding that the APA and the Family Court’s Order grant DSS the authority to execute the admissions contract but in the same breath forbidding DSS to execute portions of that same contract which contain arbitration provisions is contrary to the rules of statutory interpretation and a contradiction in and of itself. All laws are to be interpreted consistent with the legislative intent for which they were originally enacted, as revealed in the Congressional Record prior to the passage, and the passage of no amount of time can change the original legislative intent of a law. *See Foster v. United States*, 303 U.S. 118 (1938). Further, “Courts should construe laws in harmony with the legislative intent and seek to carry our legislative purpose.” *Id.* at 120. A thing may be within a statute but not within its letter, or within the letter and yet not within the statute – the intent of the law-maker is the law. *United States v. Babbitt*, 66 U.S. 55, 61 (1861). The preamble to the 1993 APA clearly iterates the findings of the General Assembly and the intent of the Act as follows: (1) “...to provide a system of adult protection in South Carolina;” (2) “to clarify the roles and responsibilities of agencies involved in the system;” (3) “to provide a mechanism for problem resolution and interagency coordination;” (4) “to address continuing needs of vulnerable adults;” (5) “to uniformly define abuse, neglect, and exploitation for vulnerable adults in all settings;” (6) “to clarify reporting procedures for allegations of abuse, neglect, and exploitation;” (7) “to provide procedures for emergency protective custody;” and (8) “to define the role of the court in the adult protection system;...” S.C. Code Ann. § 43-35-5 (1993). To protect vulnerable adults like Mrs. Wright, the legislature broadly defined the power of the Department of Social Services to include providing “protective services.” Protective services is defined as “those 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 (1993) (emphasis added).

“We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.” Connecticut Nat'l Bank v. Germain, 503 U.S. 249, 253 (1992); *see also* U.S. Dep't of Def. v. Fed. Lab. Rels. Auth., 510 U.S. 487, 502-03 (1994). Here, the mandate is quite simple, DSS must arrange for living quarters; this is reiterated and clarified by the Family Court Order indicating Mrs. Wright needed living quarters in a skilled nursing facility. There is no language in either the APA or the Family Court Order that states that when arranging for living quarters, DSS may sign certain portions of the admissions contract but not others. There is no language in either APA or the Family Court Order wherein DSS is limited to securing living facilities only in those facilities which do not require arbitration as the sole method of redress. As noted by the United States Supreme Court in Fogerty v. Fantasy, Inc., 510 U.S. 517, 538 (1994) (Thomas, J. concurring) (*quoting* Pavelic & LeFlore v. Marvel Entertainment Group, 493 U.S. 120, 126 (1989)), "Our task is to apply the text, not to improve upon it." Had the legislature intended to limit DSS authority in the execution of admissions paperwork that are part and parcel of arranging for living quarters, they would have done so. But they did not. And if it is a mistake in the intent of the legislature, it is not within the purview of the court to rewrite those laws. As such, it is an error of law in the Order to take away authority granted by the legislature under the APA.

Multiple case citations in the Order to cases purporting to support the opinion reference matters where the actions taken were not taken by DSS. For example, the Order includes a citation

to Wilson v. Willis, 426 S.C. 326, 332, 827 S.E.2d 167, 170 (2019) for arguments regarding the enforcement of arbitration provisions against non-signatories to a contract. However, the Wilson case involves a contract that was not signed by the petitioners because those persons were never contemplated by the contract. Id. Here, Mrs. Wright is a party to the contract, with DSS signing on her behalf. In Wilson the individuals against whom the contract was being enforced were not parties and no one signed (or failed to sign) on their behalf. Id. Mrs. Wright may not have put pen to paper, but the contract was signed for her binding her as a party with benefits and responsibilities.

The Order inaccurately infers that there is an absolute finding that Mrs. Wright was in capacity of her full faculties. This is based on the contention that no evidence has been found *thus far* that Mrs. Wright was incapable of executing her own paperwork. Indeed, the opposite could also be said to be true; neither the Court, the Plaintiff nor the Defendants have sufficient evidence to definitively determine Mrs. Wright's mental capacity at the time of admission to Ridgeway Manor. What has been definitively determined by Judge Pincus is that there was a "prima facie showing that Gail Wright, a 66-year old female, is a vulnerable adult as defined in S.C. Code § 43-35-10(11)." Likewise, it has been determined by Judge Pincus that Mrs. Wright had "a physical or mental condition which substantially impaire[d] [her] from adequately providing for [her] own care of protection." Judge Pincus determined that "There was probable cause to believe that by reason of abuse, neglect or exploitation there existed an imminent danger to the life or physical safety of Gail Wright and protective services and / or custody was / were necessary." As a result of her condition as a vulnerable adult, "protective services are necessary to protect Gail Wright from substantial risk of abuse, neglect or exploitation. Given the panoply of findings of fact made

by Judge Pincus, it is a mistake of fact to rule that Mrs. Wright was mentally and physically fit to execute the admissions contract when there has been no discovery to make such finding of fact.

Finally, South Carolina Appellate Court Rule 268 prohibits citing unpublished opinions in actions in which they are not directly involved. SCACR 268. However, Plaintiff has made multiple references to unpublished decisions including Pace v. Lake Emory Post Acute Care, No. 2022-001059, 2024 WL 3441428 (S.C. Ct. App. July 17, 2024) and Scott v. Heritage Healthcare of Estill, LLC, No. 2014-UP-317, 2014 WL 3845113 (S.C. Ct. App. Aug. 6, 2014). To the extent that these have been relied upon and language in the Order tracks language in these unpublished opinions, **such is a mistake of law**. “Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved.” SCACR 268. As noted by the South Carolina Bar, “[A] decision that stands as precedent serves as guidance to judges, lawyers, and others in understanding and interpreting the law of South Carolina. By contrast, decisions denominated ‘Unpublished’ do no more than declare the rights of the parties in the particular case being decided. They have no precedential value, and the Appellate Court Rules strictly prohibit any attempt to cite these unpublished decisions as precedent.”

For the foregoing reasons and other such arguments which may be made in oral arguments, the defendants respectfully request that the court reconsider the ruling in the August 19, 2024 Order, stay this case, and compel the Parties to arbitration.

Dated: Thursday, August 29, 2024

**GORDON REES SCULLY MANSUKHANI**

*s/ Laura P. Paton*

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## I. Argument

### a. Rule 59(g), SCRCP

Defendants did not provide a copy of their motion for reconsideration to Judge Hocker within ten (10) days of filing as required by Rule 59(g), SCRCP. *See S.C. Coastal Conservation League, Inc. v. Charleston County*, 442 S.C. 409, 419 (2024) (within circuit court’s discretion to deny Rule 59(e) motion for failing to comply with Rule 59(g)); *see also Smith v. Fedor*, 422 S.C. 118, 126 (Ct. App. 2017) (“[A] trial court may deny the motion solely on the basis of [Rule 59(g)].”). Rule 59(g) requires that a party filing a Rule 59(e) motion “shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion. This time requirement is not subject to enlargement. *See* Rule 6(b), SCRCP (“The time for taking any action under rule[] 59 [] may not be extended except to the extent and the under the conditions stated in them.

Defendants did not mail, email, or otherwise serve a copy of their motion on Judge Hocker as explicitly required by Rule 59(g), SCRCP. This failure mandates denial of the motion under that rule. No further analysis is required or warranted.

### b. Rule 59(e), SCRCP

Denial of the motion on the basis of Rule 59(g) would not prejudice the defendants as their motion simply rehashes the various arguments previously addressed by Judge Hocker. Because the Court previously rejected each of the arguments raised by the present motion, further analysis is unnecessary. *See Great Games, Inc. v. S.C. Dep't of Revenue*, 339 S.C. 79, 85, (2000) (only where party has

raised an issue, and the circuit court has not ruled upon it, is a motion to alter or amend required to preserve the issue for appellate review).

To the extent the defendants raise new arguments those are not preserved for review. It is settled that “[a]n issue may not be raised for the first time in a motion to reconsider.” *Johnson v. Sonoco Prods. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009); *see also Repko v. Cnty. of Georgetown*, 424 S.C. 494, 502, 818 S.E.2d 743, 748 (2018) (same); *Patterson v. Reid*, 318 S.C. 183, 456 S.E.2d 436 (Ct.App.1995) (a party may not raise an issue in a motion to reconsider, alter or amend a judgment that could have been presented prior to the judgment

Out of caution, plaintiff incorporates by reference her prior briefing and arguments made at the hearing on the initial motion. The parties have already briefed – and the Court has already heard – the three points reargued by the present motion. To the extent further response is helpful, plaintiff replies briefly below.

**i. The Adult Protection Act does not give authority to DSS to bind Mrs. Wright to arbitration.**

Defendants contend again that the Adult Protective Services Act, S.C. Code Ann. § 43-35-10(9), gives SCDSS the authority to waive Mrs. Wright’s constitutional right to trial by jury. Not so.

The defendants again fixate on the language in the Act relating to arranging for living quarters. But, as the Court previously recognized, while the Act may give DSS the right to secure living quarters for vulnerable adults, it specifically does not authorize them to provide legal services or waive her constitutional rights. *See*

Order at pp.4-5. To the contrary, the Act limits the extent to which DSS can act legally on behalf of a vulnerable adult by only giving DSS the limited authority to hire attorneys for vulnerable adults. Equating the authority to secure living quarters with the unfettered power to bind the vulnerable adult to a waiver of a fundamental right ignores the plain language of the Act. Worse, it assumes that DSS has the authority to exercise power of attorney over vulnerable adults whenever it is incidental to the arranging of living quarters. Neither the Act nor any precedent supports such an argument. In fact, South Carolina law expressly rejects it: “[T]he authority conveyed by a principal to an agent to handle finances or make health care decisions does not encompass executing an agreement to resolve legal claims by arbitration, thereby waiving the principal's right of access to the courts and to a jury trial.” *Thompson v. Pruitt Corp.*, 416 S.C. 43, 55 (Ct. App. 2016).

The Court correctly denied the motion on this point. DSS caseworkers did not have the authority to waive Ms. Wright’s right to trial by jury.

**ii. The court correctly analyzed the enforceability of the arbitration addendum under South Carolina law**

“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). And where, as here, the arbitration agreement was signed by SCDSS workers Keri Singleton and Fantasia

Hartwell, they must have had actual authority to bind Mrs. Wright to arbitration. The Court correctly found that they did not possess such authority.

Because the Court also correctly found that arbitration addendum was not enforceable and did not merge with the admission agreement, plaintiff – who is neither a signatory nor beneficiary – cannot be estopped from denying enforcement of the arbitration agreement. Defendants argue the Court incorrectly analyzed this issue; however, the Court correctly applied the holdings in *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544 (Ct. App. 2018) and *Estate of Solesbee by Bayne v. Fundamental Clinical and Operational Services, LLC*, 438 S.C. 638, 648, (Ct. App. 2023), *reh'g denied* (Apr. 14, 2023), *cert. denied* (Apr. 16, 2024).

Defendants' disagreement with the application of the law to the facts of this case is as unpersuasive now as it was initially. The admissions packet's sequential pagination is of no moment given the clear intent that the arbitration agreement was a separate "addendum," it was not a precondition to admission, and it contained differing and conflicting terms including the right to rescission.

The Court correctly found that because the admission agreement and the arbitration addendum do not merge, estoppel does not apply.

**iii. Defendants waived the argument that there is no evidence to contradict Mrs. Wright's mental competence.**

Defendants appear to argue for the first time that there is insufficient record evidence to support the Court's discussion of Mrs. Wright's competency to consent to DSS's agency. This new argument must be rejected. *See Stevens & Wilkinson of*

*S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014) (“[A] party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the court prior to judgment, but did not.”).

Moreover, defendants waived this argument by conceding Mrs. Wright’s competency in its briefing: “As noted by Plaintiff in her brief on page 9, Mrs. Wright was never adjudicated incompetent; thus, ***Mrs. Wright was capable of manifesting assent to agency.***” Def’s Reply at 5 (e-filed 9 July 2024) (emphasis added).

Plaintiff put forth record evidence that Mrs. Wright was competent at the time she was ruled a vulnerable adult because of her medical and living condition. Defendants did not dispute this and, in fact, embraced it in their briefing. Even so, the Court did not accept it as “absolute fact.” Rather the Court recognized plaintiff’s evidence on this fact and noted the “defendants do not contest that Mrs. Wright was mentally competent at the time of her admission.” Order at 2.

Defendant cannot now argue that Mrs. Wright did not lack the capacity to understand and execute the arbitration agreement had it been presented to her or her court appointed attorney prior to its execution by DSS.

### CONCLUSION

Defendants motion should be denied for lack of compliance with Rule 59(g), SCRCP. This will not prejudice defendants from a preservation standpoint because the motion only raises the same arguments previously made and any new arguments are not preserved as a matter of law. The defendant’s motion for reconsideration must be denied.

Respectfully,

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January 13, 2025 January 13, 2025 January 13, 2025

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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM FAIRFIELD COUNTY  
In the Court of Common Pleas

Donald B. Hocker, Circuit Court Judge

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Appellate Case No. 2025-000930  
Circuit Court Case No. 2023-CP-20-00374

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Stephanie Pressley, as Personal Representative of the Estate of Gail  
Wright, ..... Plaintiff,

v.

Ridgeway Manor Healthcare Center, LLC, Deborah Sparks, and  
James McCollum, ..... Defendants,

of which

Ridgeway Manor Healthcare Center, LLC, Deborah Sparks, and  
James McCollum are the..... Appellants,

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**CERTIFICATE OF COUNSEL**

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The undersigned certifies that this Record on Appeal contains all material proposed to be included by any of the parties and no other material.

Dated: April 21, 2026

GORDON REES SCULLY MANSUKHANI

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