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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 ……Respondent,

v.

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

FINAL BRIEF OF RESPONDENT

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3. **Whether the circuit court's factual finding that Mrs. Wright was competent at the time she was admitted to Appellants' facility was correct as conceded by Appellee and supported by the record.**

4. **Whether the circuit court correctly concluded that the admission agreement and arbitration addendum were separate contracts that did not merge.**

5. **Whether the circuit court correctly rejected Appellants' claim that Respondent is equitably estopped from denying enforcement of the arbitration addendum because she neither exploited nor received any benefit from the agreement.**

STATEMENT OF THE CASE

On May 16, 2021, Mrs. Gail Wright was taken into emergency protective custody with South Carolina Department of Social Services ("DSS") after she was found at home unable to physically care for herself due to paraplegia. *See* (R. p. 86). After a hearing, the Family Court ordered that DSS retain protective custody of Mrs. Wright. *See* (R. pp. 86-87, 101-104). The Family Court simultaneously appointed Attorney Lynn Hensel to represent Mrs. Wright and appointed Peter Reinhart as Guardian *ad Litem* ("GAL"). *See id.*; (R. pp. 105-107). On June 1, 2021, Mrs. Wright was placed and transferred from Prisma Health Richland to Ridgeway Manor. *See* (R. pp. 146-149). Mrs. Wright was still in the custody of DSS.

The circumstances of Mrs. Wright's placement were not due to the actions of her daughter Ms. Pressley despite the Appellant's unsupported misrepresentations to the contrary. *See*

(Appellants' Initial Brief at pp.1–2); (R. p. 47, line 21-p. 49, line 13). The court appointed Guardian *ad litem*'s ("GAL") report does not attribute responsibility to Ms. Pressley for her mother's placement into emergency protective custody, nor does it suggest that Ms. Pressley assented to or embraced placement at Ridgeway Manor. *See* (R. pp. 105-107). Appellants' characterization of the GAL report and the Family Court proceedings assume facts and draw spurious inferences that find no support in the record.

At the July 5, 2024, hearing it was undisputed that Ms. Pressley learned of her mother's situation only after Mrs. Wright had already been taken into DSS custody and thereafter actively sought to have her returned to Ms. Pressley's care. *See* (R. p. 47, line 21-p. 49, line 13). Once emergency protective custody is initiated, reunification requires compliance with family court procedures and care-planning requirements that take time. *Id.* Mrs. Wright passed away before that process could be completed. *Id.*

Nevertheless, the circuit court found that at all relevant times surrounding her admission to Ridgeway Manor, Mrs. Wright was mentally competent. *See* (R. p. 2); *see also* (R. pp. 9-10). In fact, there is no dispute that Mrs. Wright was competent and capable of manifesting assent at the time she was transferred and admitted to Ridgeway Manor. *See* (R. pp. 87-88, 146-149, 150-154); (R. p. 210). Her medical records consistently document that she was alert and oriented to person, place, time, and situation. *See* (R. pp. 146-149). Nursing notes from Ridgeway Manor reflect that she was responsive, coherent, and able to communicate her needs. *See id.* The GAL, Mr. Reinhart, independently confirmed this assessment. *See* (R. pp. 150-154). In his report to the family court, Mr. Reinhart stated that Mrs. Wright was "alert to her present condition and placement," understood her circumstances, and was capable of expressing her preferences. *See (*R.

p. 152). Mr. Reinhart did not find Mrs. Wright to be incapacitated or unable to make decisions. *Id.* Appellants do not successfully dispute that, nor can they.

Although Mrs. Wright was mentally competent, two DSS employees, Fantasia Hartwell and Keri Singleton, completed and executed Mrs. Wright's admission paperwork. *See* (R. pp. 108-145). The paperwork executed by the DSS employees included an admission agreement and a separate arbitration addendum. *See* (R. pp. 108-145). The Arbitration addendum was included within the admission packet, but it was not signed by Mrs. Wright, her court-appointed attorney, her Guardian *ad Litem*, or any individual with legal authority to waive her constitutional right to a jury trial. *See* (R. pp. 118-120). In fact, the DSS employees who did sign it, signed in the wrong place. *See id*; (R. p. 52 line 1-20). Despite Appellants' claims to the contrary, there is no evidence in the record that the arbitration agreement was ever presented to Mrs. Wright, explained to her, or discussed with her in any way. There is likewise no evidence that Mrs. Wright was aware that an arbitration agreement existed, much less that she knowingly agreed to waive her right to access the courts. There is no evidence that her court appointed attorney or GAL were involved with, or consulted regarding, the admission paperwork.

Following Mrs. Wright's death, Ms. Pressley filed her Notice of Intent on August 24, 2023. *See* (R. p. 13). Plaintiff subsequently filed her Summons and Complaint asserting wrongful death and survival claims on November 9, 2023. *See generally* (R. p. 16). Appellants filed a motion to compel arbitration and sought a protective order from discovery on January 12, 2024. *See* (R. p. 84). The parties briefed and argued the issues before Judge Hocker, who denied the Defendants-Appellants' motion, finding that DSS lacked authority to execute the Arbitration Agreement, that the Admission Agreement and Arbitration Addendum did not merge, and that equitable estoppel did not apply to prevent Ms. Pressley from asserting these claims. *See* (R. p. 1); *see also* (R. p. 8).

Defendants-Appellants moved for reconsideration which was briefed, heard and denied. *See* (R. p. 8). Appellants now seek reversal of those orders.

STANDARD OF REVIEW

The question of the arbitrability of a claim is an issue for judicial determination. *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001). "Whether an arbitration agreement may be enforced against a nonsignatory to the agreement is a matter subject to *de novo* review by an appellate court." *Wilson v. Willis*, 426 S.C. 326, 335, 827 S.E.2d 167, 172 (2019). "[A] presumption against arbitration arises where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate." *Id.* Under *de novo* review, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports those findings. *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018).

ARGUMENT

I. The circuit court correctly held that the South Carolina Department of Social Services lacked authority to execute the arbitration agreement.

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, 553 S.E.2d at 118. 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 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,* 426 S.C. at 337, 827 S.E.2d at 173 (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).

Appellants primarily contend that the circuit court failed to analyze the Adult Protection Act, S.C. Code Ann. § 43-35-10 *et seq.* ("APA"), the Family Court Order, or the types of authority that South Carolina recognizes to bind nonsignatories to arbitration agreements. *See* (Appellants Initial Brief at p.10). However, the circuit court was correct to decline to compel Respondent to arbitration because DSS does not possess the authority to bind Mrs. Wright to arbitration.

The Arbitration Agreement Addendum was executed (improperly)[1] by DSS employee Keri Singleton. *See* (R. pp. 118-120). Mrs. Wright did not sign the arbitration agreement herself. *See* (R. p. 157, ¶¶ 1-2). Therefore, the DSS employees must have had the appropriate legal authority to execute the arbitration agreement on Mrs. Wright's behalf in order for it to be enforceable. At the time of admission to Appellants' facility, Mrs. Wright was competent. *See* (R. pp. 146-149). Mrs. Wright also had a court appointed attorney, Ms. Lynn Hensel, and a Guardian *ad Litem*, Mr. Peter Reinhart. *See* (R. p. 103 ¶¶ 7-8); (R. pp. 105-107). Yet none signed this arbitration agreement. DSS employes lacked the authority to execute the arbitration agreement for Mrs. Wright.

[1] (R. p. 52 line 1-20).

Appellants argue throughout their brief that the circuit court erred by failing to recognize that the APA and the Family Court Order both gave DSS the authority to bind Mrs. Wright to the arbitration agreement in this case. Of note, in a recent unpublished decision, this Court examined this exact issue and determined that a DSS employee did not have the authority to sign an arbitration agreement on behalf of a nursing home resident. *See Pace et al. v. Lake Emory Post Acute Care et al.*, No. 2024-UP-261, at *6 (S.C. Ct. App. July 17, 2024). The facility there made the same arguments Appellants make here, that the Family Court ordering the resident into DSS custody and the APA together authorized DSS to execute the arbitration agreement on the resident's behalf. *See id.* This Court rejected that argument holding that the plain reading of section 43-35-10(9) of the APA "provides that DSS is expected to arrange for living quarters, secure medical care, and hire an attorney for the vulnerable adult if one is needed." *Id.* The Court, however, held that section 43-35-10(9) does not grant DSS authority to waive a constitutional right of a vulnerable adult. *Id.*

Because it is undisputed that Mrs. Wright was mentally competent at the time of her admission and did not execute the arbitration agreement, DSS lacked authority to execute that agreement on her behalf. In order to compel Respondent to arbitration, Appellants must demonstrate that DSS had the requisite authority to bind Mrs. Wright. They cannot.

A. The APA and the Family Court Order do not expressly authorize DSS to waive Mrs. Wright's constitutional right to a trial by jury.

Appellants argue that DSS's authority to bind Mrs. Wright to arbitration flows from the Adult Protection Act's ("APA") definition of "protective services" and the Family Court Order placing Mrs. Wright in DSS's custody. *See* (Appellants' Initial Brief at pp.8-12.) 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).

According to Appellants, once the Family Court adjudicated Mrs. Wright a "vulnerable adult," directed that DSS retain custody, and ordered that she be placed in a suitable facility,[2] DSS necessarily possessed authority to execute all admission paperwork on her behalf—including an arbitration agreement waiving her constitutional right to a jury trial. *See* (Appellants' Initial Brief at pp.8-12). Appellants further characterize the Family Court's authority under the APA as "exceedingly broad," asserting that the statute "empowers the Family Court to place vulnerable adults into protective services" without limitation. *Id*. at p.12. From this premise, Appellants argue that the combined effect of the APA and the Family Court order authorized DSS to waive Mrs. Wright's constitutional rights as part of effectuating her placement at Ridgeway Manor. *Id.*

It strains credulity to suggest that this grants authority for any random person employed by DSS to waive a constitutional right of a competent non-signatory. The circuit court squarely rejected this precise argument. It held that while the APA authorizes DSS to arrange placement, secure medical care, and hire legal counsel for a vulnerable adult, it does not authorize DSS

[2] Appellants also argue for the first time on appeal that because the Family Court possesses the ability to initiate involuntary commitment proceedings, which restrict an individual's constitutional rights, it had the power to waive Mrs. Wright's constitutional rights here. *See* (Appellants' Initial Brief at pp.11, 13, 21). This argument should be rejected because it was not raised to the circuit court. It should also be rejected on its face as involuntary commitment procedures require a number of constitutional guardrails and is a vastly different procedural remedy than temporary custody of a vulnerable adult.

employees to provide legal services or waive a competent adult's constitutional right to a jury trial. *See* (R. pp. 4-5).

While not binding, a panel of this Court in an unpublished decision expressly rejected the argument advanced by the Appellant, finding that the "plain reading of this provision provides that DSS is expected to arrange for living quarters, secure medical care, and hire an attorney for the vulnerable adult if one is needed." *See Pace,* No. 2024-UP-261, at *6. This Court went on to find that neither a Family Court order nor the APA conferred such broad authority and expressly concluded that the APA does not permit any DSS employee to waive a vulnerable adult's right to a jury trial. *See id*. ("We do not believe that the statute grants authority for any person employed by DSS to waive a constitutional right of a vulnerable adult.") Appellants' arguments on appeal merely repackage the same statutory leap that a panel of this Court recently rejected.

B. Appellants' implied-authority arguments, if not waived, are without merit.

Next, Appellants contend that DSS possessed implied authority—again purportedly derived from the Family Court's order and the APA—to "take all steps reasonably necessary" to effectuate Mrs. Wright's placement in a suitable facility, which Appellants assert included executing the arbitration agreement at Ridgeway Manor.[3] *See* (Appellants' Initial Brief at pp.12-13). Appellants cite no legal authority for this proposition, only asserting that the Family Court's authority to protect a vulnerable adult is broad, and that as an "investigative entity" the APA

[3] Appellants appear to confuse "admitting Mrs. Wright" with "committing Mrs. Wright" throughout their brief. *See* (Appellants Initial Brief at pp.11, 13, 21). Appellants also conflate court-ordered constitutional deprivations of liberty in involuntary commitments with waiving constitutional right to a jury trial to attempt to show that the Family Court may empower DSS to deprive a vulnerable adult's constitutional rights without issue. This is not a case of involuntary commitments, and these constitutional rights are not the same thing. In any event, this issue was never raised or ruled upon, and it simply does not exist in the record. It is not preserved and must be rejected.

empowers DSS to require facility cooperation.[4] *See* (Appellants' Initial Brief at pp.11-12). Nothing in the Family Court's order supports such an expansive reading. *See* (R. pp. 101-104). The Family Court Order directed DSS to place Mrs. Wright in appropriate care; it did not authorize DSS to waive her constitutional rights, nor did it mandate placement at Ridgeway Manor specifically. Claiming for the first time that the facility conditioned admission on an arbitration agreement, even if properly preserved, cannot expand DSS's statutory authority or convert administrative placement power into unbounded agency authority.

Even setting preservation aside, Appellants implied-authority argument is simply a repackaged version of the same statutory theory rejected by the circuit court and by this Court in *Pace*. Appellants again assert—without support—that the APA's "text and design leave no other reasonable conclusion" than that DSS was authorized to execute all admission documents, including an arbitration agreement. *See* (Appellants' Initial Brief at 12, 14). Not only does this argument ignore the circuit court's finding that the admission agreement and the arbitration agreement addendum did not merge and were separate documents, but this argument rests on the same flawed premise rejected by the circuit court and this Court in *Pace*: that DSS's authority to arrange placement and secure medical care implicitly includes authority to waive constitutional rights. As this Court held in *Pace*, the plain language of the APA authorizes DSS to arrange living quarters, secure medical care, and hire legal counsel if needed—but it does not authorize DSS employees to waive a nursing home resident's right to a jury trial. *Pace,* No. 2024-UP-261, at *6.

Appellants devote substantial briefing to arguing that the circuit court misinterpreted the APA—without advancing any interpretation meaningfully different from the one the circuit court

[4] This issue was not raised in the lower court, and in any event, DSS's general statutory power to require cooperation in providing protective services has no bearing on the issues presented in this arbitration appeal.

adopted. Instead, Appellants rely on inapposite authority, including a United States Supreme Court decision addressing criminal asset forfeiture, *Luis v. United States*, 578 U.S. 5, 26, 136 S. Ct. 1083, 1097 (2016), and other cases, including a Fourth Circuit Court of Appeals decision, discussing statutory word choice in contexts unrelated to the APA or Arbitration agreements. *See* (Appellants' Initial Brief at p.15) (citing *United States v.* Helton, 944 F.3d 198, 206 (4th Cit. 2019); *Hamm v. Cent. States Health & Life Co. of Omaha*, 299 S.C. 500, 386 S.E.2d 250 (1989); *State v. Cain*, 78 S.C. 348, 58 S.E. 937 (1907)). None of these authorities support the conclusion that DSS possessed limitless implied authority through the APA and the Family Court Order.

Appellants attempt to manufacture ambiguity in the APA statute where none exists. This Court was clear in *Pace* that the APA does not grant authority to DSS to execute an arbitration agreement. *Pace*, No. 2024-UP-261, at *6. Appellants' argument assumes that DSS employees possessed limitless authority to take any action demanded by a particular facility in order to effectuate placement of a vulnerable adult. Neither the APA nor the Family Court's order supports such an expansive grant of authority. Mrs. Wright could have been placed at any number of facilities, and nothing in the record suggests that placement at Ridgeway Manor specifically—or execution of its arbitration addendum—was mandated by the Family Court or by the APA or by the facility. The circuit court correctly recognized these limits, and its ruling should be affirmed.

C. Appellants remaining authority arguments are repetitive and do not change the conclusion that DSS did not possess the authority to bind Mrs. Wright to arbitration.

Across several pages, Appellants reiterate the same contention—that because DSS was authorized by the APA and the Family Court Order to facilitate Mrs. Wright's placement in a suitable facility, it necessarily possessed unlimited authority to bind Mrs. Wright and Ms. Pressley (both non-signatories) to a waiver of a constitutional right. *See* (Appellants' Initial Brief at pp.17-

22). The circuit court correctly rejected that premise, and nothing in Appellants' arguments alters the analysis. Respondent will respond to each point briefly:

Contrary to Appellants' first and second contentions, the circuit court did not hold that DSS possessed implied authority to bind Mrs. Wright to contracts generally. *See* (Appellants Initial Brief at pp.17-19). Rather, the court recognized the limited authority conferred by the Adult Protection Act: arranging placement, securing medical care, and coordinating services. *See* (R. p. 4). That authority permits DSS to facilitate admission; it does not transform DSS employees into agents empowered to waive constitutional rights on behalf of a competent adult. The distinction the circuit court drew was not between "contracts" and "arbitration," but between administrative acts necessary to secure care and legal acts requiring knowing and voluntary consent. In any event, the circuit court correctly found that the arbitration addendum did not merge, as will be discussed *infra.*

Appellants then argue that the Federal Arbitration Act ("FAA") forbids treating an arbitration addendum as "uniquely forbidden" and somehow the circuit court did just that. *See* (Appellants' Initial Brief at p.19). Appellants cite to the dissent in *Coleman v. Mariner Health Care, Inc.,* to argue that the circuit court erred by declining to compel Respondent to arbitration when it has empowered DSS to sign every part of the admission agreement except the arbitration provision.[5] *See* (Appellants' Initial Brief at p.19) (citing *Coleman v. Mariner Health Care, Inc.,* 407 S.C. 346, 358-9, 755 S.E.2d 450, 457 (2014) (Toal, C.J., dissenting)). Notwithstanding that "[s]tate law controls when an arbitration agreement may be enforced against someone who has not

[5] Appellants conveniently characterize the document titled "Arbitration Addendum" as an "arbitration provision" embedded within the Admission Agreement. That characterization ignores the circuit court's express finding that the Arbitration Addendum is a separate agreement that does not merge with the Admission Agreement. *See* (R. p. 5).

signed it," while the FAA does require arbitration agreements to be placed on equal footing with other contracts, it does not create agency authority where none exists, nor does it preempt state-law principles governing who may waive constitutional rights. *Weaver,* 431 S.C. at 228, 847 S.E.2d at 271. The FAA does not apply, but in any event, the circuit court has not singled out the arbitration addendum; rather it found that because the admission agreement and arbitration addendum were separate, did not merge, and because the arbitration addendum was signed by someone without authority, it does not bind Mrs. Wright or Ms. Pressley.

Next, the argument that the circuit court erred by ignoring the "authority granted to DSS by the Family Court Order" has been discussed at length *supra* part I(A). Then, Appellants incorrectly suggest the circuit court's holding would prevent DSS from ever placing a vulnerable adult in any facility whose admission paperwork includes an arbitration provision. *See* (Appellants' Initial Brief at p.20). The circuit court did not adopt such a rule, nor did its reasoning support that conclusion. There is no evidence her admission was strictly conditioned upon signing the separate Arbitration Addendum. And if Appellants had given Mrs. Wright the opportunity to review the separate Arbitration Addendum and sign it herself, it would clearly bind her.

Appellants' reliance on the Family Court's order likewise fails. The order directed DSS to place Mrs. Wright in appropriate care; it did not authorize DSS to waive her constitutional rights, nor did it mandate placement at Ridgeway Manor specifically.

D. DSS cannot waive Mrs. Wright's beneficiaries' rights to a wrongful death claim.

Appellants appear to have abandoned their argument that Mrs. Wright's beneficiaries are bound by the arbitration agreement, but assuming *arguendo* that it is somehow preserved, Appellants' position fails because DSS did not have the authority to waive the statutory rights of Mrs. Wright's beneficiaries. South Carolina law is clear that wrongful death claims exist for

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, rather than derivative to, survival claims. *See, e.g., Diane Boyle et al. v. United States of America*, 944 F.Supp.2d 577 (D.S.C. 2012); *Wilson et al. v. NHC Healthcare/Mauldin, LLC et al.*, 2018-CP-23-00120 (Greenville Circuit Court June 21, 2018).

Because a wrongful death is an independent claim, DSS cannot waive Mrs. Wright's statutory beneficiaries' right to a wrongful death claim. Even if DSS has the authority to bind Mrs. Wright to arbitration, which is expressly denied, this authority does not extend to Mrs. Wright's beneficiaries. DSS had no authority to sign on their behalf, and none of Mrs. Wright's beneficiaries were parties to the arbitration agreement or otherwise able to, or did, consent to arbitration. As such, the arbitration agreement is unenforceable against Ms. Pressley and the other beneficiaries to Mrs. Wright's estate.

Further, Appellant's argument that Ms. Pressley is bound due to her role as personal representative under South Carolina code section 62-3-703(c) is unavailing. Here, Ms. Pressley is both a statutory beneficiary and the personal representative of her mother's estate. Her status as the personal representative does not waive her rights as a beneficiary to assert the wrongful death claim.

II. DSS lacked any common law agency authority to bind Mrs. Wright to Arbitration.

The circuit court correctly found that there is no evidence that DSS employees possessed common law agency authority to execute an arbitration agreement for a competent Mrs. Wright. *See* (R. pp. 5-6); (R. pp. 9-10). Agency is a fiduciary relationship that results when one person (the principal) consents to be subject to the control of the other (the agent) and for the agent to act

on the principal's 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). "An agency relationship may be established by evidence of actual or apparent authority. *Cowburn v. Leventis*, 366 S.C. 20, 39, 619 S.E.2d 437, 448 (Ct. App. 2005) (quoting *Charleston, S.C. Registry for Golf & Tourism, Inc. v. Young Clement Rivers & Tisdale, LLP*, 359 S.C. 635, 642, 598 S.E.2d 717, 721 (Ct. App. 2004)). Actual agency exists where the purported principal actually exercised control over the agent. *Hodge*, 422 S.C. at 564, 813 S.E.2d at 303. Apparent agency exists where (1) the purported principal represents another to be her agent; (2) a third party relied on the principal's representation; and (3) the third party changed his position in reliance on that representation. *Cowburn*, 366 S.C. at 39, 619 S.E.2d at 448.

The circuit court was correct that "there is no indication that Mrs. Wright, who was allegedly competent at the time of her admission, consented to SCDSS's workers signing away her constitutional rights." *See* (R. pp. 5-6). "There is no indication she was even consulted on the matter." *Id.* at p.6. Indeed, the record contains no evidence that Mrs. Wright, the purported principal, made any representation—express or implied—to Ridgeway Manor that DSS had authority to waive her rights or execute an arbitration agreement on her behalf. Nor is there evidence that Mrs. Wright knowingly permitted DSS to act as her agent for that purpose. As this Court has made clear, "[a]n agency may not be established solely by the declarations and conduct of an alleged agent." *Hodge,* 422 S.C. at566, 813 S.E.2d at 304 (citing *Cowburn,* 366 S.C. at 39-40, 619 S.E.2d at 448 (quoting *Frasier v. Palmetto Homes of Florence, Inc.,* 323 S.C. 240, 245, 473 S.E.2d 865, 868 (Ct. App. 1996)). Any reliance by Ridgeway Manor on DSS's own assertions of authority—if such assertions were even made—cannot create agency as a matter of law.

Even assuming arguendo that Mrs. Wright authorized DSS to assist with admission logistics—which is expressly denied and without any support in the record—South Carolina law is clear that such authority would not extend to executing an agreement to arbitrate. "[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, 784 S.E.2d 679, 686 (Ct. App. 2016).

Appellants' attempts to manufacture agency through a factual narrative that is totally unsupported by the record. There is no evidence that Mrs. Wright arrived at Ridgeway Manor alone, permitted DSS to speak on her behalf, allowed DSS to answer admission questions for her, "stood by"[6] while paperwork was executed without objection, or otherwise conveyed assent to DSS acting as her legal representative. *See* (Appellants' Initial Brief at pp.27-28). There is zero evidence in the record to support this conjecture. There is likewise no evidence that Mrs. Wright failed to assert personal authority, attempted to correct DSS, or declined an opportunity to sign for herself. *See* (Appellants' Initial Brief at pp.27-28). Appellants' assertion that "[f]rom the perspective of Ridgeway Manor staff, Mrs. Wright's conduct conveyed that DSS was her designated representative" is rank speculation, not record evidence. *See* (Appellants' Initial Brief at pp.27-28). Of note, as reflected in the hearing transcript, Respondent sought discovery on the circumstances of Mrs. Wright's admission and DSS's role without arguing that Appellants' waived arbitration. *See* (R. p. 47, line 21-p.48, line 6). Ridgeway Manor refused to engage in that discovery, demanding its motion to compel be heard prior to discovery. *See id.* Appellants cannot

[6] Mrs. Wright was paraplegic.

now rely on conjecture and mischaracterizations—suggesting that Mrs. Wright "embraced" Ridgeway Manor or that Ms. Pressley assented to Mrs. Wright's placement.

Also, Appellants' reliance on *Froneberger v. Smith*, 406 S.C. 37, 748 S.E.2d 625 (Ct. App. 2013), is misplaced. *See* (Appellants' Initial Brief at p.27). Just as in *Froneberger*, where this Court held the plaintiffs could not satisfy the first element of apparent agency, here, there is no evidence that Mrs. Wright, either consciously or passively, manifested assent for DSS to act as her agent for purposes of executing legal agreements, much less an arbitration agreement waiving her constitutional rights. *Id.* at 50-51, 748 S.E.2d at 632-33.

In short, Appellants identify no act, statement, or manifestation by Mrs. Wright that could establish common law agency of any theory. The Family Court did not authorize DSS to waive Mrs. Wright's rights; Mrs. Wright did not authorize DSS to waive her rights; and DSS could not create such authority on its own. The circuit court therefore correctly concluded that no theory of agency—actual or apparent—binds Mrs. Wright or Ms. Pressley to the arbitration agreement and the decision must be affirmed.

III. The circuit court's factual findings of Mrs. Wright's competence are supported by the record and may not be disturbed.

Appellants appear to argue that the statutory designation of "vulnerable adult" is synonymous with impairment or incompetence. *See* (Appellants' Initial Brief at p.24). It is not. At the circuit court level, Appellants conceded that Mrs. Wright was mentally competent, and the circuit court so found. *See* (R. p. 3); (R. p. 10). Appellants now unsuccessfully attempt to retreat from that concession.

The evidence in the record reasonably establishes that Mrs. Wright was paraplegic, not cognitively impaired. The Guardian *ad Litem* found Mrs. Wright competent. *See* (R. p. 153).

Ridgeway Manor's own records likewise reflect that she was alert, oriented, and competent. *See* (R. pp. 146-149). Appellants identify no evidence—medical or otherwise—suggesting that Mrs. Wright lacked capacity at any relevant time. The circuit court's factual finding of competency is therefore supported by the record and may not be disturbed on appeal. *See Hodge*, 422 S.C. 544, 813 S.E.2d 292.

IV. The circuit court correctly held that the Admission and Financial Agreement and the Arbitration Agreement Addendum did not merge.

Because the DSS employees did not have the authority to execute the arbitration agreement addendum on behalf of Mrs. Wright, Appellants argue that Ms. Pressley should be equitably estopped from denying the effect of the arbitration addendum. In order for equitable estoppel to apply here, there must have been a merger of the Admission Agreement and the arbitration addendum. The circuit court, however, correctly held that the arbitration addendum was a completely separate contract.

In South Carolina, the general rule is that, "in the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the courts will consider and construe the documents together. The theory is that the instruments are effectively one instrument or contract." *Klutts Resort Realty, Inc. v. Down'Round Dev. Corp.,* 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977). If the language of the admission agreement created an ambiguity as to merger, the law is clear that any ambiguity shall be construed against the facility. *See Coleman*, 407 S.C. at 355-56, 755 S.E.2d at 455.

In *Hodge,* this court held the admissions agreement and arbitration agreement did not merge because: (1) the admissions agreement indicated it was governed by South Carolina law,

whereas the arbitration agreement stated it was governed by federal law; (2) like in *Coleman,* the arbitration agreement recognized the two documents were separate, stating "[a]ny and all claims or controversies arising out of or in any way relating to this Agreement or the Patient/Resident's Admission Agreement"; (3) the arbitration agreement stated it could be revoked within thirty days, whereas the admission agreement contained no such indication and instead provided the admissions agreement could only be amended; (4) each document was separately paginated and had its own signature page; and (5) the arbitration agreement stated signing it was not a precondition to admission. 422 S.C. at 562- 63, 813 S.E.2d at 302.

In *Estate of Solesbee by Bayne v. Fundamental Clinical and Operational Services, LLC*, this Court evaluated merger and equitable estoppel claims compared to prior arbitration cases and found the Admission Agreement and Arbitration Agreement did not merge. 438 S.C. 638 (2023). The son in *Solesbee* did not have authority to sign and bind the nursing home resident to an arbitration agreement. *Id.* at 650, 885 S.E.2d at 150. This court cited to *Coleman,* where our supreme court held that in South Carolina, "[t]he general rule is that, in the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the courts will consider and construe the documents together. The theory is that the instruments are effectively one instrument or contract." 407 S.C. at 355, 755 S.E.2d at 455 (quoting *Klutts Resort Realty, Inc. v. Down'Round Dev. Corp.,* 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977)).

The *Coleman* court found the documents in that case were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction; thus, unless there was a contrary intention, there was a merger. *Id.* However, the court determined that "[b]y their own terms, the contracts between these parties indicated an intent that the common law

doctrine of merger not apply." *Id.* And, even if a clause in the contract created an ambiguity as to merger, the law is clear that any ambiguity in such a clause is construed against the drafter. *Id.* at 355-56, 755 S.E.2d at 455. Thus, there was no merger in that case and the appellants' equitable estoppel argument was properly denied. *Id.* at 356, 755 S.E.2d at 455

Here, as the circuit court correctly found, the Admission Agreement is a separate contract from the Arbitration Addendum, notwithstanding that both documents were included in the same admissions packet. Under South Carolina law, merger turns on the parties' intent as reflected in the language and structure of the agreements—not on their physical proximity. *See Solesbee*, 438 S.C. at 648, 885 S.E.2d at 146; *Hodge*, 422 S.C. at 562, 813 S.E.2d at 302.

First, the Admission Agreement contains an express "Entire Agreement" clause stating: "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." *See* (R. p. 116, Art. 21.1) (emphasis in original). This clause appears on the final page of the Admission Agreement, directly above the signature line, and it does not reference the arbitration agreement addendum. As this Court noted, in part, in *Solesbee*, where an admission agreement includes an "Entire Agreement" clause that does not incorporate an arbitration agreement, the arbitration agreement does not merge. 438 S.C. at 648, 885 S.E.2d at 146.

Second, the two agreements have materially different revocability provisions, further evidencing an intent that they operate independently. The Admission Agreement permits termination upon five days' notice to the facility. *See* (R. p. 112, Art. 6.1). By contrast, the arbitration addendum may be rescinded only within three days of execution and is irrevocable

thereafter according to the last paragraph. *See id.* As the Court of Appeals recognized in *Hodge*, differing revocation provisions are strong evidence that contemporaneously executed documents were not intended to be construed together. 422 S.C at 562-62, 813 S.E.2d at 302. If the agreements were intended to merge, they logically would share the same revocation framework. They do not.

Third, the agreements are governed by different law. The Admission Agreement expressly provides that it is governed by South Carolina law. *See* (R. p. 115, Art. 17.1.). The Arbitration Agreement, however, states that it is governed by "state or federal law." *See id.* The circuit court correctly noted the difference. *See* (R. p. 5, n.3.) To the extent this divergence creates any ambiguity regarding the parties' intent, that ambiguity must be construed against Appellants as the drafters. *See Davis v. KB Home of S.C., Inc.*, 394 S.C. 116, 122, 713 S.E.2d 799, 802 (Ct. App. 2011).

Fourth, the structure and language of the Arbitration Addendum itself treats the two documents as separate contracts. The Arbitration Addendum repeatedly refers to the "Resident Admission Agreement" and then separately references "this agreement to arbitrate" and "this agreement." *See* (R. p. 118). Nor does the Admission Agreement state that admission to the Facility is contingent on executing the arbitration addendum, despite Appellants assertions to the contrary. *See* (Appellants' Initial Brief at pp.15-16, 21-22, 24.) The deliberate differentiation and omission confirms that arbitration was not merely a term embedded within the Admission Agreement, but a standalone agreement requiring independent assent.

Fifth, the Admission Agreement contains a Grievance Procedure that does not reference arbitration. *See* (R. p. 114, Art.12.1-.2). Instead, it directs residents to administrative agencies, the Long-Term Care Ombudsman's Office, and other avenues for complaints that are not arbitration. *See id.* at Art. 12.2). Arbitration, by definition a dispute-resolution mechanism, is conspicuously

absent from this grievance framework, further reinforcing that arbitration was not intended to be part of the Admission Agreement's dispute-resolution scheme.

Sixth, each agreement contains its own separate signature page. Requiring separate signatures strongly indicates that execution of one was not intended to effectuate execution of the other. *See Hodge*, 422 S.C at 562-62, 813 S.E.2d at 302; *Solesbee*, 438 S.C. at 649, 855 S.E.2d at 149.

Finally, to the extent Appellant relies on isolated language suggesting arbitration is "subject to" or an "addendum" to the Admission Agreement, those statements conflict with the body of the Admission Agreement itself—including the Entire Agreement clause, separate signatures, distinct revocation provisions, and differing governing law clauses. These internal inconsistencies create ambiguity, which must be construed against Appellants as the drafter. *Hodge*, 422 S.C. at 562, 813 S.E.2d at 302. Ultimately, the circuit court correctly concluded that "the admission agreement and the arbitration agreement addendum are independent, did not merge, and shall not be construed together." (Order denying Defs' Motion to compel arbitration, at p.5.)

V. Equitable Estoppel does not apply.

Equitable estoppel is "a theory designed to prevent injustice, and it should be used sparingly." *Wilson*, 426 S.C. at 345, 827 S.E.2d at 177; *see also Hirsch v. Amper Fin. Servs., LLC*, 71 A.3d 849, 852 (N.J. 2013) (estoppel "is more properly viewed as a shield to prevent injustice rather than a sword to compel arbitration"). "The essence of equitable estoppel is that the party entitled to invoke the principle was misled to his injury." *S.C. Pub. Serv. Auth. v. Ocean Forest, Inc.,* 275 S.C. 552, 554 (1981). The traditional requirements of equitable estoppel apply with equal force in this context. *See Thompson v. Pruitt Corp*., 416 S.C. 43, 59-60, 784 S.E.2d 679, 688-89 (Ct. App. 2016) (applying both the traditional and "direct benefits" test in the arbitration context);

Weaver v. Brookdale Senior Living, Inc., 431 S.C. 223, 233, 847 S.E.2d 268, 274 (2020) ("the heart of the theory is that the party entitled to invoke the principle was misled to his injury.") (internal quotations and citations omitted).

Under South Carolina law the elements of equitable estoppel "as to the party estopped are: (1) conduct by the party estopped which amounts to a false representation or concealment of material facts; (2) the intention that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the true facts." *Zabinski*, 346 S.C. at 589. The "[e]ssential elements of estoppel as related to the party claiming the estoppel are: (1) lack of knowledge and of means of knowledge of truth as to facts in question; (2) reliance upon conduct of the party estopped; and (3) prejudicial change in position." *Id*. Because of these principles, our courts will only enforce arbitration as to nonsignatories where there is evidence that the nonsignatory both "knowingly exploits the benefits of an agreement containing an arbitration clause, and receives benefits flowing directly from the agreement." *Wilson*, 426 S.C. at 340-41, 827 S.E.2d at 175 (internal citations and quotations omitted) (emphasis supplied).

In *Weaver*, the Court of Appeals rejected equitable estoppel where wrongful death claims arose from general tort duties owed by a nursing facility—not from the residency agreement itself. The court explained that a benefit is "direct" only if it flows from the contract, not merely from the parties' relationship. 431 S.C. at 233, 847 S.E.2d at 274. The court famously analogized that a plaintiff no more "benefited" from the admission agreement than "a pedestrian run over by a truck has benefited from the contract for the purchase of the truck." *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.*

The same reasoning controlled in *Hodge*, where the court held that even if an admission agreement conferred some benefit by enabling placement, it was "difficult to find" any benefit where the facility allegedly caused the injuries leading to death. *Hodge*, 422 S.C. at 564, 813 S.E.2d at 302.

Likewise, in *Thompson*, the Court of Appeals declined to apply equitable estoppel because the patient's incapacity precluded any intent to mislead or assent to arbitration. 416 S.C. at 59–60, 784 S.E.2d at 688–89. The court found that equitable estoppel was inapplicable. *See id.*

In an unpublished opinion in *Alston*, this Court rejected equitable estoppel where claims arose from common law, regulatory, and statutory duties—not from the admission agreement—even though a family member had executed the arbitration agreement without authority. *Orveletta Alston v. Manor*, No. 2021-UP-105, 2021 S.C. App. Unpub. LEXIS 102, at *8–9 (Ct. App. Mar. 31, 2021).

Those principles control here. As set forth above, the Admission Agreement is a separate contract from the Arbitration Agreement. But even assuming *arguendo,* that the Court were to find the documents to be merged, equitable estoppel is inapplicable. *See Hodge*, 422 S.C. at 563, 813 S.E.2d at 302 ("[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."). Neither Mrs. Wright nor Ms. Pressley signed the Arbitration Agreement, and as nonsignatories, they cannot be held to arbitration absent a knowing exploitation of the benefits of the agreement. Ms. Pressley does not seek to enforce any provision of the Admission Agreement while avoiding arbitration. In fact, the record shows that Ms. Pressley was actively attempting to remove her mother from the DSS system and Ridgeway Manor. She has not

exploited the Admission Agreement, and Mrs. Wright derived no direct benefit from it where her Estate alleges her injuries and death were caused by Appellants' breaches in general tort law, regulatory and statutory duties and not from the Admission Agreement or Arbitration Agreements. *See generally* (R. p. 16-29); *see Weaver*, 431 S.C. at 232, 847 S.E.2d at 273; *Hodge*, 422 S.C. at 563, 813 S.E.2d at 302.

Finally, this Court need not decide whether the Admission Agreement and Arbitration Agreement merged, because equitable estoppel fails even under that assumption. As *Hodge* makes clear, "[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." 422 S.C. at 563. The same is true here. In short, Appellants identify no misleading conduct, no knowing exploitation, and no direct contractual benefit sufficient to invoke equitable estoppel. The doctrine does not apply, and the circuit court correctly refused to compel arbitration on that basis.

CONCLUSION

This appeal presents no new issue. DSS lacked authority to execute the arbitration agreement, the agreements did not merge, and equitable estoppel does not apply. The circuit court's order correctly applied settled South Carolina law. The Order denying Appellants' Motion to Compel Arbitration should be AFFIRMED.

Respectfully submitted,

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April 21, 2026
Florence, SC