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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No. 2018-CP-23-01934
Appellate Case No. 2025-002304

James Boyd, Jr.,

Appellant,

v.

THI of South Carolina at Magnolia Place at Greenville, LLC, Fundamental Administrative Services, LLC, and Fundamental Clinical and Operational Services, LLC

Respondents.

INITIAL BRIEF OF RESPONDENTS

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COUNTER-STATEMENT OF ISSUES ON APPEAL

I. **Did the circuit court err in compelling Mr. Boyd's[1] claims against the Facility[2] to arbitration (and, in turn, staying his claims against the Other Defendants[3] pending the conclusion of arbitration between Mr. Boyd and the Facility) based on its finding that Wilda[4] had apparent authority to execute the Arbitration Agreement on Mr. Boyd's behalf?**

II. **Even assuming, *arguendo*, the circuit court erred in compelling Mr. Boyd's claims against the Facility to arbitration (and, in turn, staying his claims against the Other Defendants pending the conclusion of arbitration between Mr. Boyd and the Facility) based on its finding that Wilda had apparent authority to execute the Arbitration Agreement on Mr. Boyd's behalf, should this Court nonetheless affirm the circuit court on the additional sustaining ground that Mr. Boyd ratified Wilda's execution of the Arbitration Agreement on his behalf?**

COUNTER-STATEMENT OF THE CASE

In early June of 2016, Mr. Boyd was hospitalized due to an auto accident. (2d Am. Compl. ¶ 2; J. Boyd Dep. Tr. pp. 8:15–10:20.) On June 30, 2016, Mr. Boyd was discharged from the hospital and admitted to the Facility. (2d Am. Compl. ¶¶ 3, 18.) Wilda handled the paperwork in conjunction with Mr. Boyd's admission to the Facility, and in doing so, she signed, among other things, an Arbitration Agreement on Mr. Boyd's behalf. (W. Boyd Dep. Tr. p. 19:7–11, pp. 22:13–23:17; Arbitration Agreement.)[5]

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[1] "Mr. Boyd" refers to Plaintiff/Appellant, James Boyd, Jr.

[2] The "Facility" refers to Defendant/Respondent THI of South Carolina at Magnolia Place at Greenville, LLC. It is a skilled nursing facility.

[3] The "Other Defendants" refers to Defendants/Respondents Fundamental Administrative Services, LLC, and Fundamental Clinical and Operational Services, LLC, collectively. "Respondents" refers to the Facility and the Other Defendants, collectively.

[4] "Wilda" refers to Mr. Boyd's mother, Wilda Boyd.

[5] Without question, the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq. (the "FAA") applies to the Arbitration Agreement. The FAA applies "to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction." *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001); *see also Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 268 (1995) (holding that the reach of the FAA extends to the broadest permissible exercise of Congress's power under the Commerce Clause); *id.* at 273–77 (1995) (explaining that unless the parties specifically contract otherwise, the FAA applies whenever an arbitration agreement

In preparation for Mr. Boyd's transfer to the Facility, the Facility's admissions director, Leola Burt ("Ms. Burt"), had asked Mr. Boyd's hospital case manager, Peggy Fields ("Ms. Fields"), who would be responsible for handling the admissions paperwork for Mr. Boyd. (Decl. of P. Fields ¶ 6.)[6] Ms. Fields relayed Ms. Burt's inquiry to Mr. Boyd, Mr. Boyd expressly advised Ms. Fields that Wilda would handle the paperwork,[7] and Ms. Fields relayed this information to Ms. Burt. (Decl. of P. Fields ¶¶ 7–8; P. Fields Dep. Tr. pp. 16:20–17:8; pp. 19:19–20:1, pp. 21:1–22:2, pp. 24:20–25:16.)

Mr. Boyd commenced this action against Respondents (as well as other defendants no longer parties to this case) in the Greenville County Court of Common Pleas on March 27, 2018, based on allegedly deficient care/treatment he received during his residency at the Facility. (Summons & Compl.; *see also* 2d Am. Compl.)

Based on the Arbitration Agreement Wilda signed for Mr. Boyd, the Facility moved to compel Mr. Boyd's claims against it to arbitration (the "Motion to Compel Arbitration"),[8] and the Other Defendants moved to stay Mr. Boyd's claims against them pending the conclusion of

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involves interstate commerce). Our Supreme Court has expressly held that skilled nursing facility admission agreements implicate interstate commerce and, thus, the FAA. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 381–82, 759 S.E.2d 727, 732–33 (2014).

[6] As a case manager, Ms. Fields is involved in discharge planning. (P. Fields Dep. Tr. pp. 8:9–9:1, pp. 12:25–14:19.) Ms. Burt's inquiry about who would be responsible for handling the admissions paperwork for Mr. Boyd's admission to the Facility is standard in Ms. Fields's line of work. (Decl. of P. Fields ¶ 6; P. Fields Dep. Tr. p. 15:8–13 ("that is a standard question of any acute care or skilled nursing facility as to who the responsible party will be in terms of paperwork").)

[7] Mr. Boyd's competency is not in dispute. In other words, it is undisputed that Mr. Boyd was duly possessed of his mental faculties and legally competent at all relevant times. (Br. of App. p. 1 (stating that Mr. Boyd was "mentally competent throughout his hospitalization . . . and his subsequent admission to the Facility"); *see also id.* at pp. 6–9 (referring to Mr. Boyd's competence).)

[8] (Motion to Compel Arbitration, filed May 2, 2018, with Ex. A; Memo in Support of Motion to Compel Arbitration, filed June 11, 2018, with Exs. 1, 2, and 3; *see also* Motion to Compel Arbitration, filed October 4, 2018, with Ex. A.)

the arbitration that the Facility sought to compel (the "Motions to Stay") (together with the Motion to Compel Arbitration, the "Underlying Motions"). (FAS Motion to Stay, filed May 2, 2018; FCOS Motion to Stay, filed May 2, 2018; FAS Memo in Support of Motion to Stay, filed June 12, 2018, with Ex. A; FCOS Memo in Support of Motion to Stay, filed June 12, 2018, with Ex. A; *see also* FAS Motion to Stay, filed October 4, 2018; FCOS Motion to Stay, filed October 4, 2018.)[9]

Following a hearing on June 13, 2018, by order filed July 9, 2018, the circuit court, the Honorable Perry H. Gravely presiding, declined to grant the Underlying Motions but allowed discovery regarding the issue of agency and Wilda's authority to sign the Arbitration Agreement for Mr. Boyd. (Order filed July 9, 2018.)

After depositions of Mr. Boyd,[10] Wilda,[11] Ms. Fields,[12] and Ms. Burt,[13] and the submission of additional briefing addressing the same,[14] the Underlying Motions again came before Judge Gravely for hearing on May 20, 2019. (Tr. of Hearing on May 20, 2019.) By

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

[10] (Tr. of Dep. of Mr. Boyd.)

[11] (Tr. of Dep. of Wilda.)

[12] (Tr. of Dep. of Ms. Fields.) Ms. Fields also submitted a sworn declaration. (Decl. of P. Fields.)

[13] (Tr. of Dep. of Ms. Burt.)

[14] (Supplemental Memo in Support of Motion to Compel Arbitration, filed February 19, 2019, with Exs. A and B.)

orders filed July 3, 2019,[15] and August 20, 2019, Judge Gravely granted the Underlying Motions, finding Wilda possessed apparent authority to bind Mr. Boyd to the Arbitration Agreement and therefore compelling Mr. Boyd's claims against the Facility to arbitration and, in turn, staying the claims against the Other Defendants pending the conclusion of arbitration between Mr. Boyd and the Facility. (Order filed August 20, 2019.)[16]

Following the denial of Mr. Boyd's motion to reconsider,[17] Mr. Boyd and the Facility proceeded to arbitration before the Honorable D.A. Early, III, retired circuit judge, who ruled that the Facility was entitled to judgment in its favor. (Final Order of Arbitration, filed December 29, 2021.) On February 14, 2022, Respondents moved the circuit court to confirm the arbitration award and enter judgment thereon in favor of all of them,[18] and by order filed October 16, 2025, the court, the Honorable Martha M. Rivers presiding, confirmed the findings and judgment of the arbitration award in favor of Respondents. (Order filed October 16, 2025.)

By notice served November 13, 2025, this appeal by Mr. Boyd follows.

STANDARD OF REVIEW

A circuit court's determination of whether a claim is subject to arbitration is reviewed de novo on appeal. *Gissel v. Hart*, 382 S.C. 235, 240, 676 S.E.2d 320, 323 (2009). This includes de novo review of the determination of whether an arbitration agreement is enforceable against a nonsignatory. *Wilson v. Willis*, 426 S.C. 326, 334, 827 S.E.2d 167, 172 (2019). "Under de novo

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[15] (Order filed July 3, 2019.)

[16] Having found the Arbitration Agreement valid and enforceable on the basis of Wilda's apparent authority, Judge Gravely declined to address the Facility's additional argument that Mr. Boyd had ratified the Arbitration Agreement. (Order filed July 3, 2019, p. 11; Order filed August 20, 2019, p. 12.)

[17] (Plaintiff's Motion to Reconsider, filed August 30, 2019, with Exs. B, C, D, and E; Order filed October 19, 2019.)

[18] (Motion to Confirm Arbitration Award and Grant Judgment for Defendants, filed February 14, 2022, with Ex. A.)

review, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports those findings." *Id.* Issues of law, however, are reviewed without any particular deference to the circuit court. *See, e.g., Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 782 S.E.2d 590 (2016). Even where a ruling is on a matter within circuit court's discretion, if the ruling is based on a misunderstanding of the law, rather than upon the exercise of discretion, the question presented on appeal is one of law. *See Bain v. Self Mem'l Hosp.*, 281 S.C. 138, 152, 314 S.E.2d 603, 611 (Ct. App. 1984).

ARGUMENT

I. The circuit court did not err in compelling Mr. Boyd's claims against the Facility to arbitration (and, in turn, staying his claims against the Other Defendants pending the conclusion of arbitration between Mr. Boyd and the Facility) based on its finding that Wilda had apparent authority to execute the Arbitration Agreement on Mr. Boyd's behalf.

Mr. Boyd's arguments in challenge to the circuit court's grant of the Motion to Compel Arbitration (and, in turn, to the grant of the Motions to Stay) are unavailing.

The fact that Mr. Boyd did not speak directly to Ms. Burt is immaterial because "[a]pparent authority to do an act is created as to a third person by written or spoken words *or any other conduct of the principal* which, reasonably interpreted, causes the third person to believe the principal consents to have the act done on his behalf by the person purporting to act for him." *Frasier v. Palmetto Homes of Florence, Inc.*, 323 S.C. 240, 244–45, 473 S.E.2d 865, 868 (Ct. App. 1996) (emphasis in original).

In resolving the discrepancy between the testimony of Ms. Fields and Ms. Burt, on the one hand, and Mr. Boyd's denial of any conversations about admissions paperwork, on the other, the circuit court sided with the testimony of Ms. Fields and Ms. Burt. (Order filed July 3, 2019, pp. 10–11 ("In light of the near identical accounts offered by Ms. Fields and Ms. Burt, the Court

is persuaded by their recollection of events as opposed to Plaintiff's more general denial about any and all conversations about admissions paperwork."); Order filed August 20, 2019, p. 11 (same).) In addition to being supported by the record (and therefore easily affirmable under the "any evidence" standard), having not been challenged in Mr. Boyd's brief,[19] the circuit court's finding of facts in accordance with the testimony of Ms. Fields and Ms. Burt is the law of the case. *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) ("An unappealed ruling is the law of the case and requires affirmance."); *Bryson v. Bryson*, 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008) ("An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority.").

The testimony of Ms. Fields and Ms. Burt establishes that Ms. Burt expressly asked Ms. Fields who would be responsible for handling the admissions paperwork for Mr. Boyd,[20] that Ms. Fields relayed this inquiry to Mr. Boyd, and that Mr. Boyd—*knowing that the information he provided to Ms. Fields would be conveyed to Ms. Burt*—expressly advised Ms. Fields that Wilda would handle all such paperwork (without any limitation or qualification), which information Ms. Fields duly relayed to Ms. Burt. (Decl. of P. Fields ¶¶ 7–8; P. Fields Dep. Tr. pp. 16:20–17:8; pp. 19:19–20:1, pp. 21:1–22:2, pp. 24:20–25:16.)[21]

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[19] (Br. of App.)

[20] (Decl. of P. Fields ¶ 6.) Again, Ms. Burt's inquiry to Ms. Fields about who would be responsible for handling the admissions paperwork for Mr. Boyd's admission to the Facility is standard in Ms. Fields's line of work. (Decl. of P. Fields ¶ 6; P. Fields Dep. Tr. p. 15:8–13 ("that is a standard question of any acute care or skilled nursing facility as to who the responsible party will be in terms of paperwork").)

[21] Although not clearly identified as an argument against the circuit court's finding of apparent authority, Mr. Boyd's brief refers to communication Ms. Burt received from Mr. Boyd via Ms. Fields as "rank hearsay." (Br. of App. p. 5.) To be clear, any hearsay objection is not preserved for review, because it not addressed in the circuit court's orders (Orders filed July 3 and August 20, 2019), and Mr. Boyd did not raise any such issue via a Rule 59(e), SCRCP, motion. (Pl.'s Mot. to Reconsider, filed August 30, 2019.) *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) ("A party *must* file such a [Rule 59(e)] motion when an

While it is true that "an agency may not be established solely by the declarations and conduct of an alleged agent,"[22] this rule was not violated here. The evidence relied on by the circuit court shows that Mr. Boyd himself purposefully directed the communication of information to the Facility, via Ms. Burt, that Ms. Burt reasonably understood as authorizing Wilda to act on Mr. Boyd's behalf with respect to all documents in conjunction with the admissions process, and this naturally includes the Arbitration Agreement.

Without question, the Arbitration Agreement, while optional, is among the materials presented as a standard part of the Facility's admissions process. That the Arbitration Agreement is part of the admissions materials is consistent with the plain and ordinary meaning of admissions materials. *See Stott v. White Oak Manor, Inc.*, 426 S.C. 568, 571–72, 828 S.E.2d 82, 84 (Ct. App. 2019) ("The same day as Decedent's admission to White Oak, Stott, acting as Decedent's authorized representative, signed White Oak's *admission documentation—including the Arbitration Agreement*.") (emphasis added) (internal footnote omitted); *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 550, 813 S.E.2d 292, 295 (Ct. App. 2018) ("Her husband . . . executed various documents *related to her admission*, including an *Arbitration Agreement* and an *Admission Agreement*.") (emphasis added)).[23]

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issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.") (emphasis in original). And in any event, under Rule 801(d)(2), SCRE, Mr. Boyd's own statement is a statement by a party opponent and therefore not hearsay.

[22] *Frasier*, 323 S.C. at 245, 473 S.E.2d at 868.

[23] To be clear, the point here is not that the holding of either *Stott* or *Hodge* established a legal standard for what counts as admission paperwork, but rather that the very fact that the language that the *Stott* and *Hodge* Courts used in discussing the facts of the cases so readily made the natural and logical connection between arbitration agreements signed in conjunction with admission and "admission documentation" / "documents related to . . . admission" that it illustrates that, in its plain, ordinary, and popular sense, admissions materials plainly includes the Arbitration Agreement.

Moreover, "[a]s far as third parties are concerned, the authority of an agent depends on the character bestowed on the agent and not the instructions that the principal gives the agent." 23 S.C. Jur. Agency § 55 (citing *Williams v. Texas Co.*, 202 S.C. 333, 24 S.E.2d 873 (1943)). "Once an agent is in a position of apparent authority, undisclosed directions[[24]] or any secret limitations on the agent's authority unknown to a third party are not binding on that third party." *Id.* (citing *Standard Accident Ins. Co. v. Simpson*, 64 F.2d 583 (4th Cir. 1933)). Mr. Boyd's contention that Wilda's authority did not extend to the Arbitration Agreement improperly relies on a (supposed) undisclosed limitation of Wilda's authority.

Lastly, Mr. Boyd's argument about the circuit court's supposedly misplaced reliance on *Horton v. Pyramid Masonry Contractors, Inc.*, Op. No. 2008-UP-208, 2008 WL 9841237 (S.C. Ct. App. 2008), and *Bookman v. Britthaven, Inc.*, 233 N.C. App. 454, 756 S.E.2d 890 (2014), is inconsequential, because the court's reliance on these decisions is not necessary to its holding in any event, and the above-analysis (supporting the court's finding of Wilda's apparent authority to execute the Arbitration Agreement on Mr. Boyd's behalf) is enough by itself to compel affirmance.

II. Even assuming, *arguendo*, the circuit court erred in compelling Mr. Boyd's claims against the Facility to arbitration (and, in turn, staying his claims against the Other Defendants pending the conclusion of arbitration between Mr. Boyd and the Facility) based on its finding that Wilda had apparent authority to execute the Arbitration Agreement on Mr. Boyd's behalf, this Court should nonetheless affirm the circuit court on the additional sustaining ground that Mr. Boyd ratified Wilda's execution of the Arbitration Agreement on his behalf.

"Ratification, as it relates to the law of agency, means the express or implied adoption and confirmation by one person of an act or contract performed or entered into in his behalf by another who at the time assumed to act as his agent." *Lincoln v. Aetna Cas. & Sur. Co.*, 300 S.C.

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[24] *Id.* (*Merchants' & Planters' Nat'l Bank v. Clifton Mfg. Co.*, 56 S.C. 320, 33 S.E.

188, 191, 386 S.E.2d 801, 803 (Ct. App. 1989). Ratification may occur by acquiescence, and "[a]s a general rule, a principal will be held to have ratified the unauthorized act of the agent unless he disavows it within a reasonable time." 23 S.C. Jur. Agency § 89 (citing *Foxworth v. Murchison Nat'l Bank*, 136 S.C. 458, 134 S.E. 428 (1926)). "Upon being informed that its agent has gone beyond his authority, it is a principal's duty within a reasonable time either to ratify or to disclaim the action of its agent." *Id.* (citing *Miller v. Premier Corp.*, 608 F.2d 973 (4th Cir. 1979) (citing *Foxworth*, 136 S.C. at 469, 134 S.E. at 431)).

Ms. Burt testified that, after Mr. Boyd arrived at the Facility, she informed him that Wilda had already signed documents on his behalf, including the Arbitration Agreement, and Mr. Boyd raised no objection to Wilda having done so. (L. Burt Dep. Tr. pp. 33:23–34:13; *id.* at p. 35:6–15.) Not only did Mr. Boyd not object, Ms. Burt testified that Mr. Boyd told her that Wilda should sign the remaining paperwork that needed to be signed on his behalf and that, since Mr. Boyd had told her that Wilda would complete all remaining paperwork, she even had a phone conversation with Wilda, in Mr. Boyd's presence and without objection from him, to schedule a time for Wilda to do the same. (L. Burt Dep. Tr. pp. 34:13–35:5.) Ms. Burt further testified that she personally provided Mr. Boyd with a copy of all documents Wilda signed on his behalf, including the Arbitration Agreement, and she had no doubt Mr. Boyd authorized Wilda to sign the Arbitration Agreement on his behalf. (L. Burt Dep. Tr. pp. 36:7–38:25.)

As explained above, the circuit court found Ms. Burt's testimony credible, and Ms. Burt's testimony shows that Mr. Boyd, who was fully competent at all times, was informed of the acts that Wilda had taken on his behalf, including her execution of the Arbitration Agreement, and was, in fact, provided with a copy of the same, and Mr. Boyd never disclaimed or otherwise

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750 (1899)).

objected to her doing so, but rather continued to identify Wilda as the person responsible for completing the rest of his admissions paperwork. Indeed, even assuming, *arguendo*, that the Facility was required, as Mr. Boyd claims, "to verify — at minimum by speaking directly with the competent, available, and present Mr. Boyd — that his mother was indeed authorized to waive his specific constitutional rights,"[25] it did, in fact, do so.

So, even assuming, *arguendo*, the circuit court erred in compelling Mr. Boyd's claims against the Facility to arbitration (and, in turn, staying his claims against the Other Defendants pending the conclusion of arbitration between Mr. Boyd and the Facility) based on its finding that Wilda had apparent authority to execute the Arbitration Agreement on Mr. Boyd's behalf, this Court should nonetheless affirm the circuit court on the additional sustaining ground that Mr. Boyd ratified Wilda's execution of the Arbitration Agreement on his behalf.

CONCLUSION

For the foregoing reasons, as well as, pursuant Rules 208(b)(2) and 220(c), SCACR, for any reason appearing in the record, to include, without limitation, in the appealed orders themselves (which are incorporated herein by reference in further support of affirmance), Respondents ask that this Honorable Court affirm the circuit court's grant of the Underlying Motions and, in turn, allow this matter to be concluded, with the arbitrator's ruling in favor of the Facility and the circuit court's judgment in favor of Respondents in accordance therewith being its final disposition.

<SIGNED ON THE FOLLOWING PAGE>

[25] (Br. of App. p. 9.)

Respectfully submitted,

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