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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2026-001313

Anthony Cambria as Personal
Representative of the Estate of
Justine Noreen Cambria,
Anthony Cambria in his
individual capacity, Michael,
Cambria, and Christina
Cambria

.....

Respondents,

v.

National Healthcare Corporation,
NHC Healthcare/Bluffton, LLC
and Jennifer Myers

.....

Appellant.

INITIAL BRIEF OF RESPONDENTS

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COUNTERSTATEMENT OF ISSUES ON APPEAL

1. Whether the long-standing “outrageous tort” exception, based on generally applicable contract interpretation principles, applies to claims by a nursing home resident’s family members whom the nursing home intentionally prevented from visiting their loved one as she lay dying.
2. Whether a nursing home can compel a nursing home resident’s family members to arbitrate even though they never entered an arbitration contract with the home.

STATEMENT OF THE CASE

Anthony (“Tony”) Cambria initiated this tort and contract action against Appellants National Health Care Corporation (“NHC”) and its employee Jennifer Myers by filing a Summons and Complaint in the Beaufort County Court of Common Pleas on August 19, 2025. (Compl.). The Complaint was filed by Tony personally and in his role as personal representative of the estate of his wife Justine Noreen Cambria. (Compl. ¶ 1). Justine’s children (Respondents Michael Cambria and Christian Cambria) also asserted individual claims. (Compl. ¶¶ 2-3). On October 2, 2025, Appellants individually answered the Complaint and collectively moved to compel arbitration, citing a provision in a contract Tony signed on Justine’s behalf on November 14, 2023. (NHC Answer; Myers Answer; Defs.’ Mot. to Compel Arb.).¹

On January 8, 2026, a hearing on Appellants’ motion to compel arbitration was held before the Honorable Donald B. Hocker. After considering the parties’ memoranda and oral arguments, Judge Hocker denied Appellants’ motion in an order entered on March 11, 2026. (Order Denying Defs.’ Mot.). Specifically, the circuit court ruled Tony, Michael, and Christina’s claims were not within the purported arbitration contract’s scope because “the claims against [Appellants] do not center around injury or death caused by improper or inadequate care but rather stem from

¹ Appellants consented to the filing of an Amended Complaint, which Tony filed on February 12, 2026. (Am. Compl.).

[Appellants'] allegedly outrageous decision to deny [Justine] access to her family, and her family access to her, in her final hours of life.” (Order at 4). Appellants moved to reconsider the ruling on March 20, 2026, and the circuit court denied that motion on May 11, 2026. (Order Denying Defs.’ Mot. to Reconsider). Appellants noticed an appeal on June 10, 2026. (Notice of Appeal).

STATEMENT OF THE FACTS

Justine Noreen Cambria was unable to speak and under hospice care when she was admitted to the skilled nursing facility NHC Bluffton on November 16, 2023. (Am. Compl. ¶¶ 9-10). Six days later (November 22, 2023), hospice workers informed Justine’s husband Tony and her children (Michael and Christina) that Justine’s condition had become dire, and she was not expected to live much longer. (Am. Compl. ¶ 11). The family, spread across the east coast for the Thanksgiving holiday, immediately began calling NHC seeking updates on Justine’s status. (Am. Compl. ¶ 12). Michael and Christina’s calls went unanswered much of the day. (Am. Compl. ¶ 13). When they finally received a response late that evening, a nurse told the family she had no information. (Am. Compl. ¶ 13). The family continued their inquiries the following day (November 23, 2023), but they remained unanswered until the afternoon when a NHC employee called to report only that she was not even at NHC Bluffton and that the family would have to continue to wait for a call from someone who could shed light on Justine’s condition. (Am. Compl. ¶¶ 14-15).

That call never came, and the family’s concern for Justine continued to grow. Michael, who was in North Carolina at the time, got in his car late that night and drove to Bluffton to see his mom. (Am. Compl. ¶ 16). Around 3:30 a.m. on November 24, 2023, Michael arrived at NHC Bluffton where the facility’s doors were locked for the night. (Am. Compl. ¶¶ 16-17). With time being of the essence, Michael called the phone number posted on the front door but received no

response. (Am. Compl. ¶ 17). There was also no answer for any of Michael's calls to NHC's corporate office. (Am. Compl. ¶ 18). Finally, Michael was able to reach a nurse inside the facility and explain the situation. (Am. Compl. ¶ 19). Despite being told Michael was the son of a hospice patient inside the facility whose condition was critical, this nurse refused to let Michael in. (Am. Compl. ¶ 20). From outside the front door, Michael could see other NHC employees inside the facility, but they ignored him altogether. (Am. Compl. ¶ 21).

One of those employees, Appellant Jennifer Myers, went a step further. She called 911 to complain about Michael's presence. (Am. Compl. ¶ 22). The Bluffton Police Department was dispatched and arrived at 4:15 a.m. at which point Michael explained the situation to the officers. Yet, there was nothing the officers could do to help so long as NHC insisted on denying him entry. (Am. Compl. ¶¶ 23-24). Michael was told he would have to wait until later in the morning to visit Justine. (Am. Compl. ¶ 24). At 5:15 that morning, an NHC progress note reports Myers entering Justine's room and discovering that she had passed away. (Am. Compl. ¶ 26). Justine died alone and her family was denied access to her during her final hours. (Am. Compl. ¶ 28).

Two days before Justine's admission (November 14, 2023), NHC presented Tony with a stack of papers entitled "Admission Documents." The stack included a "Preadmission Agreement," "Agreement to Arbitrate and Waive Jury Trial" ("Arbitration Agreement"), and "Admission and Financial Agreement" between NHC (designated as the "Center") and Justine (designated as the "Patient"). Tony signed as Justine's agent, acting pursuant to a durable power of attorney. Michael and Christina did not see or sign any of these documents.

Michael, Christina, and Tony (individually, and as personal representative for Justine's estate), filed this case on August 19, 2025, with several legal claims faulting NHC and Myers for denying them information on Justine's status and denying the entire Cambria family the basic

decency of a final goodbye between Justine and her loved ones. (Compl. ¶¶ 30-44). NHC and Myers cited the Arbitration Agreement to argue Michael, Christina, Tony, and Justine had all waived their right to pursue their claims in court. (Defs.’ Mot. to Compel Arb.). On March 11, 2026, the circuit court denied the motion to compel arbitration, ruling that, if proved, what NHC and Myers allegedly did here would constitute outrageous misconduct lacking a significant relationship to the contract Justine and NHC intended to form when she was admitted to the facility. (Order at 4-5).

STANDARD OF REVIEW

Appellate courts apply a *de novo* review to a circuit court’s finding on whether a nonsignatory is bound to an arbitration contract. *Wilson v. Willis*, 426 S.C. 326, 335, 827 S.E.2d 167, 172 (2019) (citing *Aiken v. World Fin. Corp. of S.C.*, 373 S.C. 144, 148, 644 S.E.2d 705, 707 (2007) and *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 286, 733 S.E.2d 597, 599 (Ct. App. 2012)). However, under a *de novo* review, the circuit court’s factual findings will not be reversed so long as “any evidence reasonably supports those findings.” *Wilson*, 426 S.C. at 335, 827 S.E.2d at 172. “There 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); *see also Lampo v. Amedisys Holding, Inc.*, 445 S.C. 305, 317, 914 S.E.2d 139, 146 (2025) (“remind[ing] our litigants and lower courts that we dispensed with this incorrect notion” of a pro-arbitration policy in *Palmetto Construction Group*) In fact, there is a presumption against arbitration when enforcement is sought against a non-signatory. *Wilson*, 426 S.C. at 335, 827 S.E.2d at 172.

ARGUMENT

Justine Noreen Cambria died alone because Appellants affirmatively prevented her family from saying their goodbyes. After Tony, Michael, and Christina learned Justine (a hospice patient at Appellants' facility) was declining rapidly, Appellants went silent. (Am. Compl. ¶ 11). From their homes several hours away, Michael and Christina frantically made at least eight unheeded phone calls to Appellants seeking more information on their mother's condition. (Am. Compl. ¶¶ 12-14). When Michael then rushed to Bluffton in hopes of learning more or of at least saying goodbye to his mom, Appellants denied him access to the facility. Justine passed away as her only son stood in the parking lot. (Am. Compl. ¶¶ 16-28).

One key question before the circuit court was whether these allegations against Appellants would constitute an "outrageous tort." The circuit court correctly concluded they would. In asking the Court to force Tony, Michael, and Christina into arbitration, Appellants attack the legitimacy of South Carolina's "outrageous tort" exception to arbitration. But, that exception is well grounded in core contract interpretation principles. Courts interpret every contract in a manner that carries out the parties' expectations for the relationship they intend to form. Drawing on South Carolina precedent applying the exception, as well as a wide body of persuasive authority, the circuit court correctly concluded that depriving a son of his final opportunity to say goodbye to his dying mother could not have fallen within any party's expectation for the ordinary business relationship Appellants formed with Justine. Accordingly, the circuit court properly applied state law and properly respected federal law when ruling even the most broadly worded arbitration provision could not have intended to capture Tony, Michael, and Christina's current claims.

1. The “Outrageous Tort” Exception and “Significant Relationship” Test are not Inconsistent with the Federal Arbitration Act.

Nursing home residents’ claims typically make allegations of negligence for errors such as preventable falls, malnutrition, or the development of painful bedsores. Respondents allege a different type of tortious misconduct. Appellants allegedly denying Justine’s family information and access to her in her dying moments was legally distinct from the contractual relationship Appellants formed with Justine. Moreover, no reasonable person in Justine’s position could conceive she would be denied the comfort of her family on her deathbed as a result of such bizarre and egregious misconduct.

Appellants first take issue with the manner in which the circuit court determined Tony, Michael, and Christina’s claims were not within the Arbitration Agreement’s scope. But, the circuit court correctly applied South Carolina contract law which is in no way at odds with the Federal Arbitration Act (9 U.S.C. § 1 to 16) (“FAA”). No matter how broadly worded an arbitration contract is written, generally applicable contract law holds that its scope cannot be unbounded. *Landers v. Fed. Deposit Ins. Corp.*, 402 S.C. 100, 115, 739 S.E.2d 209, 217 (2013) (“even the broadest of [arbitration] clauses have their limitations”). Not even the broadest arbitration provision applies when the claim and the contract lack a “significant relationship.” *Aiken v. World Fin. Corp. of S.C.*, 373 S.C. 144, 151, 644 S.E.2d 705, 709 (2004). In defining “significant relationship,” the South Carolina Supreme Court adopted, and later affirmed, a rule holding that, at the very least, the relationship does not exist for “outrageous torts that are unforeseeable to a reasonable consumer in the context of normal business dealings.” *Id.*; *Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 791 S.E.2d 128 (2016).

Appellants err in arguing this “outrageous tort exception” violates the FAA because in reality the exception is grounded in generally applicable contract interpretation principles applied

by many other courts just using different labels. In fact, as some courts have held, reading arbitration provisions as broadly as Appellants suggest would itself violate the FAA. The Court should also reject Appellants' contention that the circuit court's application of the exception is an unreasonable expansion of the doctrine beyond its roots in *Aiken* and progeny. Appellants have not shown how denying the family information and access to Justine in the moments before her death bears a significant relationship to Justine's admission agreement.

Appellants brand the outrageous tort exception as a facially anti-arbitration anomaly of South Carolina law that violates the FAA's "equal-treatment principle." Appellants Br. at 10-12 (citing *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011)). Appellants go on to argue *Aiken* should be overturned. Appellants Br. at 10 (claiming *Aiken* is "fundamentally incompatible with" federal law). These arguments against precedent are misguided because they misunderstand where the exception comes from and what the "equal-treatment principle" truly means. As Justices Hearn, Beatty, and Toal explained in *Parsons*, the outrageous tort exception is borne out of the intent and mutual assent considerations courts apply to every contract. 418 S.C. at 13-14, 17, 791 S.E.2d at 135-36. Additionally, calling these considerations an "exception" to arbitration does not violate the equal-treatment principle which permits courts to "announc[e] a new, generally applicable rule of law in an arbitration case" so long as the rule is in fact generally applicable. *Kindred Nursing Ctrs., Ltd. P'ship v. Clark*, 137 S. Ct. 1421, 1428 n. 2 (2017).

The core principle of contract interpretation is effectuating the parties' intent. But, before interpreting a contract, a court must first be satisfied a contract was formed by the parties—i.e. the formation of a "meeting of the minds" in which the parties mutually assented to all of the contract's material terms. *Anderson Mem'l Hosp., Inc. v. Hagen*, 313 S.C. 497, 498 n. 1, 443 S.E.2d 399, 400 n. 1 (Ct. App. 1994). The outrageous tort exception is a natural outgrowth of the intent rule and

the mutual assent requirement. In *Aiken*, employees of a consumer lender were accused of taking borrowers' personal identifying information (e.g. social security numbers and dates of birth) and misappropriating them to obtain sham loans in the borrowers' name. 373 S.C. at 146-47, 644 S.E.2d at 707. Borrowers alleged negligent and intentional tort claims against the lender, which defended by citing an arbitration provision in the lender's legitimate loan contract with each borrower. *Id.* The Court was tasked with determining whether the admittedly broad arbitration provision from the borrower-lender contract extended to cover the borrower's claims based on the brazen but unrelated misconduct of the lender's employees. *Id.* at 147, 644 S.E.2d at 708.

Accordingly, *Aiken* presented a garden-variety contract interpretation question and was resolved using standard contract interpretation rules. *Id.* at 151, 644 S.E.2d at 709 (couching its holding in "general principles of contract law"). The Court first evoked the mutual assent requirement to conclude a person "cannot be required to submit to arbitration any dispute which he has not agreed to submit." *Id.* at 149, 644 S.E.2d at 708 (citing *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001)). Thus, fully crediting any perceived pro-arbitration policy, *Aiken* held that "even the most broadly-worded arbitration agreements still have limits." *Aiken*, 373 S.C. at 151, 644 S.E.2d at 709; *see also Landers*, 402 S.C. at 115, 739 S.E.2d at 217. The "significant relationship" test² *Aiken* applied for determining a broadly worded arbitration contract's limits is simply an application of the mutual assent rule that applies to every contract regardless of its subject matter. Since the outrageous tort exception is just an elaboration of the significant relationship test, it too is directly connected to the mutual assent requirement of contract

² The "significant relationship" test is not a South Carolina-specific rule. Many other jurisdictions use this analysis to determine the boundaries of a broadly worded arbitration provision. *See e.g. Wachovia Bank, N.A. v. Schmidt*, 445 F.3d 762, 767 (4th Cir. 2006) (quoting *J.J. Ryan & Sons v. Rhone Poulenc Textile, S.A.*, 863 F.2d 315, 321 (4th Cir. 1988)); *Jackson v. Shakespeare Found., Inc.*, 108 So.3d 587, 593 (Fla. 2013); *Griggs v. Evans*, 43 A.3d 1081, 1088 (Md. App. 2012).

formation. *Aiken*, 373 S.C. at 151, 644 S.E.2d at 709 (describing exception as a “more definitive rule” for applying significant relationship test).

That test is no way inconsistent with the FAA as it has been consistently applied in cases interpreting FAA-governed arbitration cases. *Aiken* took its discussion of the “significant relationship” test from both South Carolina and Fourth Circuit precedent. 373 S.C. at 149, 644 S.E.2d at 708 (citing *Zabinski*, 346 S.C. at 598, 553 S.E.2d at 118-19 and *Long v. Silver*, 248 F.3d 309 (4th Cir. 2001)). *Long* based the “significant relationship” test on other Fourth Circuit precedent where the arbitration contract in question was governed by the FAA. 248 F.3d at 316 (citing *Am. Recovery Corp. v. Computerized Thermal Imaging*, 96 F.3d 88, 91, 93 (4th Cir. 2001) (applying “significant relationship” test in case that reached court on motion filed pursuant to FAA). There is simply nothing inconsistent with that test and the FAA’s text or the arbitration policy it embodies.

The connection between core contract rules and the outrageous tort exception is further evidenced by the three post-*Aiken* cases applying the exception. All three held the exception was nothing more than an application of the rule requiring courts to interpret a contract consistently with its parties’ intent. In *Chassereau v. Global Sun Pools, Inc.*, 373 S.C. 168, 644 S.E.2d 718 (2007), a woman who financed a swimming pool was not compelled to arbitrate her claim that the pool seller’s agents defamed and harassed her when she fell behind on her payments. *Chassereau* examined the broadly worded arbitration provision carefully but, given the lack of connection between the sales contract and the defamation claim, the court was left with “no doubt that [the woman] *did not intend to arbitrate*” the claim. 373 S.C. at 172, 644 S.E.2d at 721 (emphasis added); *see also Partain v. Upstate Automotive Group*, 386 S.C. 488, 689 S.E.2d 602 (2010)

(holding that a car buyer “did not intend to submit” to arbitration his claim that a dealer maliciously switched the agreed-upon car with an inferior model).

Similarly, this Court has held that an arbitration provision in a financial services contract between investor and advisor did not cover negligence or consumer fraud claims because the prospect of an advisor converting his client’s funds for personal use was “not within the parties’ contemplation” when the contract was formed. *Hatcher v. Edward D. Jones & Co., L.P.*, 379 S.C. 549, 554, 666 S.E.2d 294, 297 (Ct. App. 2008) (finding misconduct underlying negligence claim was “completely outside the expectations of the parties at the time the contract was entered”). *Hatcher* went one step further, holding that to interpret a broadly worded arbitration provision to apply to claims wholly unforeseeable at contract formation would be inconsistent with pro-arbitration policy by contravening the parties’ intentions. *Id.*

The exception’s proven pedigree as a general contract law principle is what led the majority of the Court in *Parsons* to reject the equal-treatment principle argument Appellants raise here.³ Both Justice Hearn (joined by Justice Beatty) and Acting Justice Toal believed the “exception” may be inartfully named but its underlying legal principles “are equally applicable to contracts and arbitration agreements.” 418 S.C. at 13 n. 9, 791 S.E.2d at 134 n. 9; *Id.* at 17, 791 S.E.2d at 136 (Toal, A.J., dissenting) (describing “exception” as “merely a label” for “effectuating the parties’ contractual expectations”). Along with the intent and assent principles discussed above, Justice Hearn made special reference to courts’ refusal to interpret contracts in a way that could lead to an

³ Appellants err in arguing Chief Justice Pleicones was “writing for the majority” when he raised *Concepcion*-based concerns about the outrageous tort exception. (App. Br. at 11). Both Justices Hearn and Beatty in the concurrence and Acting Justice Toal in the dissent reaffirmed the exception. 418 S.C. at 14, 791 S.E.2d at 134 (Hearn, J., concurring in judgment) (“I . . . agree with the dissent that the outrageous and unforeseeable torts exception remains a viable principle of law after *Concepcion*”).

absurd result and cited non-arbitration cases where the same principle was applied. 418 S.C. at 14 n. 9, 791 S.E.2d at 135 (citing *Koon v. Fares*, 379 S.C. 150, 155, 666 S.E.2d 230, 233 (2008) and *Auto Owners Ins. Co. v. Rollison*, 378 S.C. 600, 609, 663 S.E.2d 484, 488 (2008)).

In sum, the outrageous tort exception fully comports with the FAA's equal-treatment principle because it is derived from general contract law rules applying beyond arbitration contracts. If there has been any mistake in *Aiken* and its progeny, it has been in stating or implying that refusing to force arbitration for wholly unforeseeable torts was either new in *Aiken* or is an "exception" to arbitration. As the majority of justices recognized in *Parsons*, this principle is not new or arbitration-specific but merely a means to accomplish the core goals of contract law.

2. The Circuit Court Correctly Determined Respondents' Claims were Outside the Arbitration Agreement's Scope.

As the circuit court correctly determined, the Arbitration Agreement's broad scope provision is still limited to claims bearing a significant relationship to the contract and does not include "outrageous torts that are unforeseeable to a reasonable consumer in the context" where the contract was formed. *Aiken*, 373 S.C. at 151, 644 S.E.2d at 709. Appellants challenge the circuit court's application of these principles, but err in both how they frame the question and in how they analyze Respondents' claims. (App. Br. at 12-17).

a. Appellants' "Outrageousness" Argument is Legally Flawed, Procedurally Improper, and Substantively Unsupported.

Appellants begin by arguing nothing in their interactions with Tony, Michael, and Christina could be considered "outrageous." (App. Br. at 12-14). However, their argument conflates two legal standards. The issue here is whether ignoring the Cambria family's calls, barring Michael from visiting Justine before her death, and reporting him to police is an "outrageous tort" falling outside the Arbitration Agreement's broad scope. Appellants' "outrageousness" argument

addresses a different issue, asking the Court to find as a matter of law that Respondents cannot recover on their intentional infliction of emotional distress (“IIED”) claims. “Outrageousness” for purposes of arbitrability turns on the relationship between the alleged tort and the parties’ reasonable contractual expectations. *Aiken*, 373 S.C. at 150-52, 644 S.E.2d at 708-09. Whether the alleged misconduct evokes the level of societal disgust deemed “outrageous” for an IIED claim is a distinct question with separate considerations. Appellants list the IIED elements and expressly ask the Court to decide whether Respondents can meet them. (App. Br. at 14) (“The circuit court should have reviewed the conduct and decided that it could not reasonably be regarded as outrageous”). That request is improper in connection with a motion to compel arbitration. *Zabinski*, 346 S.C. at 596, 553 S.E.2d at 118 (quoting *AT&T Techs., Inc. v. Comm’ns Workers of Am.*, 475 U.S. 643, 649 (1986) (“in deciding whether the parties have agreed to submit a particular grievance to arbitration, a court is not to rule on the potential merits of the underlying claims”)).

Appellants’ improper detour to the IIED claim’s merits also suffers from two procedural flaws. They ask the Court to accept their characterization and defense of the events preceding Justine’s death, and they rely on evidence not properly before the Court. For cases governed by the FAA, determining whether a claim falls within the scope of an arbitration provision requires a court to “accept as true the allegations of the [o]perative [c]omplaint.” *Berkeley Cnty. Sch. Dist. v. Hub Int’l Ltd.*, 944 F.3d 225, 233-34 (4th Cir. 2019); *J.J. Ryan & Sons, Inc.*, 863 F.2d at 319; see also *Rice v. Downs*, 248 Cal. App. 4th 175, 185 (Cal. App. 2d Dist. 2016) (“In determining whether an arbitration agreement applies to a specific dispute, the court may examine only the agreement itself and the complaint filed by the party refusing arbitration”). Here, the operative complaint alleges the Cambria family called NHC at least nine times after learning Justine’s health had gone into steep decline without receiving any useful information on her condition. (Am. Compl. ¶¶ 11-

15). Appellants also ignored phone calls as Michael was standing outside the facility desperately trying to see his dying mother. (Am. Compl. ¶¶ 17-18). Appellants then refused to let Michael visit Justine and eventually called the police on him. (Am. Compl. ¶¶ 20-24). The Amended Complaint specifically alleges Appellants “acted intentionally, willfully, wantonly and/or recklessly” in denying Tony, Michael, and Christina the chance to say goodbye to Justine. (Am. Compl. ¶¶ 32).

Appellants “outrageousness” argument does not limit itself to the Amended Complaint allegations. Instead, Appellants ask the Court to “examine the facts” as Appellants assert them to be. (App. Br. at 14). Offering few specifics, Appellants contend Michael failed to properly identify himself, could not correctly state who he was trying to visit, and acted in a way that left Appellant Meyers fearful he may be armed. *Id.* Respondents contest all of these unsubstantiated assertions and, more importantly, they are a far cry from the Amended Complaint allegations to which a court’s arbitrability analysis is limited at this procedural stage. Thus, when Appellants summarily conclude Meyers “clearly” had a good faith belief that Michael should be excluded from the facility and “acted reasonably in not granting access to the building,” (App. Br. at 14), they are asking the Court to step out of its defined role to rule on the merits of the IIED claim based on a skewed version of disputed facts.

Even if going beyond the Amended Complaint allegations was permissible, Appellants err in the sole piece of evidence they cite in support of their version of the facts. Their brief references four pages of documents from the Beaufort County Sheriff’s Office that were attached to Appellants’ Rule 59(e), SCRCF motion. (App. Br. at 14) (citing Defs.’ Mot. to Reconsider Exh. B). These documents are not properly before the Court. South Carolina appellate courts have expressly held parties cannot add in additional documents at the Rule 59(e) stage of litigation. *Viviano v. Jeffers*, 447 S.C. 33, 41-42, 923 S.E.2d 649 (Ct. App. 2025) (citing *Spreeuw v. Barker*,

385 S.C. 45, 68-69, 682 S.E.2d 843, 855 (Ct. App. 2009) (“the circuit court properly declined to address the affidavit and other materials first provided in connection with [a party’s] Rule 59(e) motion”). The three pages labeled as “Call Detail Report” are also full of hearsay statements, and Respondents have not had an opportunity to challenged their validity through discovery or to offer their accounts of the disputed events preceding Justine’s death. Accordingly, these documents should have no bearing on the Court’s analysis of whether Respondents’ claims lie within the Arbitration Agreement’s scope.

Finally, Appellants are incorrect in their core conclusion as their misconduct alleged in the Amended Complaint is fairly characterized as “outrageous” even as that term is used in the IIED elements. The misconduct to be remedied in an IIED claim is extreme, indecent, and obnoxious behavior intolerable in a civilized society. *Bell v. Dixie Furniture Co, Inc.*, 285 S.C. 263, 265, 329 S.E.2d 431, 433 (1985) (citing *Ford v. Hutson*, 276 S.C. 157, 276 S.E.2d 776 (1981)). Once a court makes an initial ruling on whether an alleged act could be considered “outrageous,” the ultimate determination of whether a defendant acted outrageously lies with the factfinder. *Bell*, 285 S.C. at 265, 329 S.E.2d at 433.

Appellants seem to suggest errors by healthcare workers cannot be sufficiently egregious to bear the “outrageous” label. (App. Br. at 13) (citing *Hawkins v. Greene*, 311 S.C. 88, 427 S.E.2d 692 (Ct. App. 1993) and *Manley v. Manley*, 291 S.C. 325, 353 S.E.2d 312 (Ct. App. 1987)). Yet, the South Carolina Supreme Court has recognized a medical provider’s treatment-related errors can support an IIED claim. *Hensley v. Heavrin*, 277 S.C. 86, 88, 282 S.E.2d 854, 855 (1981) (holding that whether a physician’s inaccurate diagnosis of patient with syphilis was sufficiently extreme and outrageous to support tort claim was question of fact for a jury). Plus, *Hawkins* and *Manley* are distinguishable both procedurally and substantively. Both addressed summary

judgment motions based on a full evidentiary record where the only reasonable conclusion was that the defendant's conduct was either reasonable or a good faith mistake. *Manley*, 291 S.C. at 330, 353 S.E.2d at 314 (finding "evidence is undisputed that the [defendants] acted in good faith and in a reasonable manner"); *Hawkins*, 311 S.C. at 90, 427 S.E.2d at 693 (concluding summary judgment record provided "no evidence the [defendant] intentionally or recklessly caused" emotional distress). Here, at the pleading stage, the Court has only Petitioners' Amended Complaint to consider and its unambiguous allegations that Appellants intentionally kept Michael and Justine apart after ignoring the Cambria family's repeated requests for information on Justine's deteriorating condition.

Moreover, a number of courts across the country recognize the outrage in what is alleged here—i.e. a defendant purposefully keeping family members from deathbed visitation. In an analogous case, a federal appeals court reversed a trial court ruling and found an IIED claim was properly pled by a daughter claiming a nursing home refused to allow the daughter to visit her mother and even had the daughter arrested. *Miller v. Currie*, 50 F.3d 373, 378 (6th Cir. 1995). Appellants note South Carolina's use of Restatement (Second) of Torts § 46 to describe the state's IIED claim and argues a nursing home barring a child from visiting her dying mother could not reach that high standard. (App. Br. at 13). Citing the same Restatement section, *Miller* expressly ruled otherwise:

It is certainly within the realm of imagination that hiding a ninety-eight year old, physically infirm mother from her adult daughter, and causing the daughter to be arrested for attempting to visit her mother, could under some set of facts constitute 'extreme and outrageous' conduct, and present a case 'in which the recitation of the facts to an average member of the community would arouse his resentment with the actor, and lead him to exclaim, 'Outrageous.'

50 F.3d at 378 (quoting Restatement (Second) of Torts § 46 cmt. d). For similar reasons, many other courts recognize a final goodbye with one's family members is an irreplaceable life moment

and intentionally denying someone that moment is outrageous. *E.g. Zaleskas v. Brigham & Women's Hosp.*, 97 Mass. App. Ct. 55, 68 (Mass. App. 2020) (holding that reasonable jury could conclude hospital personnel intentionally inflicted emotional distress when they barred terminally-ill patient's family members from room during x-ray); *Reed v. ANM Health Care*, 225 P.3d 1012 (Wash. App. 2008) (affirming denial of summary judgment on IIED claim against hospital by woman who was excluded from her critically ill partner's intensive care unit room on the night before her death); *Sylvester v. City of N.Y.*, 385 F. Supp. 2d 431, 443 (S.D.N.Y. 2005) (denying summary judgment because reasonable jury could find it utterly intolerable in a civilized society for police to "ignore their requests to leave police custody, all while a family member is dying in a nearby hospital.").⁴

In sum, the Court should reject Appellants' argument that Respondents' claims must be arbitrated because the misconduct they allege is not "outrageous." Appellants (1) conflate the outrageousness requirement to prevail on an IIED claim with the significant relationship test for determining arbitrability; (2) rely on a version of the disputed facts based on inadmissible evidence that is at odds with the claims Respondents allege; and (3) overlook substantial precedent recognizing that barring a person from visiting their critically ill family member is outrageous behavior.

⁴ See also *Rich v. Sheppard*, Civil Action No. 3:16-CV-366-DPJ-LRA, 2018 WL 4344563, at *12 (S.D. Miss. Sept. 11, 2018) (denying motion for summary judgment where one family member alleged another was guilty of IIED because he "prevented [plaintiff] from seeing [loved one] on her deathbed"); *Treadway v. Free Pentecostal Pater Ave. Church of God, Inc.*, 2008-Ohio-1663, 2008 WL 921606, at * 6 (Ohio App. 12th Dist. Apr. 7, 2008) (reversing dismissal of IIED claim where defendant allegedly "intentionally interfered with [plaintiffs'] visitation with their dying grandmother" as a reasonable trier of fact could find this conduct "rises to the level of 'extreme and outrageous'").

b. Intentionally Denying a Mother a Final Visit with Her Children and Reporting Her Son to Police Lacks a Significant Relationship to a Nursing Home Admission Contract.

The circuit court concluded Appellants ignoring the Cambrias' calls, barring Michael entry to the facility, and reporting Michael to police as Justine lay dying was just not an outcome any reasonable nursing home resident or her family could have foreseen when the paperwork containing the Arbitration Agreement was presented for Tony's signature. (Order at 4-5). That foreseeability analysis is the key element of the "significant relationship" test underlying the "outrageous tort" exception, and Appellants challenge to the circuit court's ruling ignores it entirely. Instead, Appellants fall back on the notion that Respondents' claims would not exist "but for" the relationship memorialized in the documents containing the Arbitration Agreement. (App. Br. at 17). Precedent demands more than a "but for" connection between contract and claim to form the required "significant relationship." Accordingly, the circuit court's ruling should be affirmed.

Courts have long refused to read a form adhesion contract's broadly worded arbitration provision to have an unlimited scope. *Zabinski*, 346 S.C. at 596, 553 S.E.2d at 118. Any pro-arbitration policy courts apply is tempered by the long-standing principle that arbitration is nothing more than a contract, and a contracting party may only be required to arbitrate a claim if she has agreed to do so. *Aiken*, 373 S.C. at 149, 644 S.E.2d at 708 (citing *Zabinski*, 346 S.C. at 596, 553 S.E.2d at 118). Accordingly, South Carolina courts restrict application of a broadly worded arbitration provision to instances where there is a "significant relationship" between a plaintiff's claim and the underlying contract. *Aiken*, 373 S.C. at 149, 644 S.E.2d at 708 (quoting *Zabinski*, 346 S.C. at 598, 553 S.E.2d at 119); *see also Long*, 248 F.3d at 316.

Contrary to Appellants' arguments, a "significant" relationship between claim and contract is not met merely based on linear cause and effect. Finding a "significant relationship" every time a claim follows from the contractual relationship would "essentially include[] every dispute imaginable between the parties" even if neither party reasonably contemplated that outcome. *Aiken*, 373 S.C. at 150, 644 S.E.2d at 708. Extending arbitration that far would be "illogical and unconscionable" and at odds with basic contract law principles. *Id.* (citing *Seifert v. U.S. Home Corp.*, 750 So.2d 633, 638 (Fla. 1999) ("even in contracts containing broad arbitration provisions, the determination of whether a particular claim must be submitted to arbitration necessarily depends on some nexus between the dispute and the contract containing the arbitration clause")).

Appellants rely on a "but for" connection to oppose the circuit court's order. They argue the events leading to Respondents' injuries "would be completely nonexistent but for Justine Cambria's status as a resident" of Appellants' facility. (App. Br. at 17). It is true Justine's admission provided the setting for the outrageous misconduct Respondents allege but, that connection alone does not create a "significant relationship." The entire purpose of *Aiken* was to "distinguish those outrageous torts, which although factually related to the performance of the contract, are legally distinct from the contractual relationship between the parties." 373 S.C. at 152, 644 S.E.2d at 709. A tort claim is legally distinct from parties' contractual relationship if its occurrence could not have been reasonably anticipated when that relationship began.

As announced in *Aiken*, the "significant relationship" test is governed by an important principle: courts categorically "***refuse to interpret any arbitration agreement as applying to outrageous torts that are unforeseeable to a reasonable consumer in the context of normal business dealings.***" 373 S.C. at 151, 644 S.E.2d at 709 (emphasis added). There is no way to conduct the "significant relationship" test without evaluating whether the misconduct performed

and harm suffered were foreseeable as judged from the perspective of a reasonable person at the time the arbitration contract was formed. Appellants' failure to address foreseeability in any meaningful way should doom their challenge to the circuit court's order.

There is also substantial South Carolina and persuasive authority supporting the circuit court finding Respondents' tort claims unforeseeable. A series of post-*Aiken* South Carolina rulings held broadly-worded arbitration provisions did not extend to tort claims for unforeseeable misconduct. *E.g. Partain v. Upstate Automotive Group*, 386 S.C. 488, 689 S.E.2d 602 (2010) (holding that a car buyer "did not intend to submit" to arbitration his claim that a dealer maliciously switched the agreed-upon car with an inferior model); *Hatcher*, 379 S.C. at 554, 666 S.E.2d at 297 (finding allegations that financial advisor converted client's deposit to personal use was "completely outside the expectations of the parties at the time the contract was entered").

These cases are well represented by *Chassereau* where the plaintiff simply wanted to buy a functioning above-ground pool from the defendant retailer. After entering a financing agreement, the pool was delivered, and the customer began making payments. 373 S.C. at 170, 644 S.E.2d at 719. Later, the pool malfunctioned, the retailer refused to make the needed repairs, and the customer stopped making payments. *Id.* In response, one of the retailer's employees began harassing the customer by phone. *Id.* The same employee took other retaliatory action, including disclosure of the customer's private information to third parties and defamatory statements about the customer to her friends, family members, and coworkers. *Id.* The customer sued the retailer for defamation and intentional infliction of emotional distress. *Id.* In response, the retailer sought to compel arbitration, arguing a broadly worded arbitration provision in the financing agreement precluded the customer's lawsuit. *Id.* That argument was rejected by the trial court, Court of Appeals, and Supreme Court. *Id.* at 170-71, 644 S.E.2d at 719-20.

Like *Aiken*, *Chassereau* found no significant relationship between a consumer financing agreement and claims of egregious customer service errors by the retailer’s employees. *Id.* at 172, 644 S.E.2d at 720. A person who chooses to finance a retail purchase is charged with a couple of expectations from that transaction. *Id.* First, she must make the required installment payments on the agreed-upon schedule as laid out in the financing agreement. *Id.* Second, she should anticipate hearing from the retailer should she miss a payment. *Id.* But, she would not (and ought not have to) expect the retailer’s employees would “commit acts historically associated with the common law tort of outrage in seeking to collect an overdue debt.” *Id.* While this misconduct arose “in the course of performance” of the financing contract, “South Carolina courts will not interpret arbitration clauses to apply to such acts which are outrageous and unforeseen.” *Id.* Taken together, *Aiken* and *Chassereau* establish that even the broadest arbitration provision imaginable cannot reach “illegal or outrageous acts that no reasonable person would have foreseen” at the time the parties executed the agreement to arbitrate. *Chassereau*, 373 S.C. at 172, 644 S.E.2d at 720.⁵

In fact, *Aiken*’s reasoning has even been adopted in other jurisdictions. The New Mexico Court of Appeals cited *Aiken*’s application of the “significant relationship” test to hold an auto title loan company could not use the broad arbitration provision in its loan agreement with a borrower

⁵ Appellants argue *Landers* shows the “significant relationship” test requires arbitration here. (App. Br. at 15-16) (citing *Landers*, 402 S.C. at 109-12, 739 S.E.2d at 213-15). But *Landers* held only that a disgruntled employee must arbitrate claims alleging his employer’s conduct led to his firing—matters unambiguously related to an employment contract. As this Court has since recognized, broad arbitration provisions have their limits even in employment contracts. *Davis v. ISCO Indus., Inc.*, 434 S.C. 488, 864 S.E.2d 391 (Ct. App. 2021) (distinguishing *Landers* and finding an employment contract’s arbitration provision did not reach employee’s claim against employer for exposing employee’s personal data during data breach). In this case, the Amended Complaint faults Appellants not for Justine’s care but their absent communication with Justine’s family and intentional exclusion of Michael from the facility. Moreover, as discussed below, Michael, Christina, and Tony (in his individual capacity) were not parties to the Arbitration Agreement and had no contract with Appellants.

to force arbitration after the borrower was shot during an attempt to repossess the financed vehicle. *Clay v. N.M. Title Loans, Inc.*, 288 P.3d 888, 896 (N.M. App. 2012). The contract and context in which it formed plainly showed the borrower understood the arbitration provision would cover disputes over matters related to payments, finance charges, and similar issues, but, regardless of how broadly the arbitration provision was worded, “it is not reasonable to conclude that he intended to give up his right to a jury trial if he was shot during the repossession.” *Id.* at 897. Similarly, Maryland’s federal district court has held that a video rental chain could not use the arbitration provision in its membership agreement with a customer to avoid litigation when a store representative’s false accusation led the customer to be arrested for robbing the store. *Sutton v. Hollywood Entm’t Corp.*, 181 F. Supp. 2d 504 (D. Md. 2002). The contract a movie enthusiast used to rent videos could require arbitration of disputes over unreturned DVDs but malicious prosecution claims the customer alleges after being falsely accused of robbery have “nothing whatsoever to do with the video rental contracts.” *Id.* at 511.

New Mexico has even applied these same principles in the nursing home setting. *Pfeiffer-Anderson Estate of B.P. v. Evangelical Lutheran Good Samaritan Soc’y*, No. A-1-CA-40583, 2024 WL 2032844 (N.M. App. May 7, 2024). A broadly-worded arbitration provision in a nursing home admission contract may cover a variety of claims related to medical, nursing, and custodial care. It may be applied to claims that a resident suffered preventable falls, developed avoidable pressure ulcers, or received inadequate nutrition. However, no reasonable person in the resident’s position would believe that arbitration provision would extend so far to cover claims related to a sexual assault by her fellow resident. *Id.* at * 4 (“even if [resident] agreed to arbitrate certain claims concerning her residency and care, it is not reasonable . . . to conclude that she intended to give up

a right to a jury trial concerning her alleged sexual assault by another resident” because “[t]o do so would be contrary to the parties’ intentions”).

This line of binding and persuasive authority shows the “significant relationship” test has been used to refuse arbitration for (1) outrage/IIED claims (*Chassereau*); (2) ordinary business transactions unexpectedly leading to a customer being detained by police (*Sutton*); (2) unforeseeable outcomes of the nursing home-resident relationship (*Pfeiffer-Anderson*). The circuit court’s ruling here is consistent with this precedent. The circuit court noted the Arbitration Agreement’s broad scope but concluded the “significant relationship” test did not support its application to claims arising from Appellants’ refusal to communicate with the Cambrias, their exclusion of Michael from the facility, and their decision to report him to police rather than allowing him to visit Justine. (Order at 4).

The order then correctly applied the foreseeability analysis *Aiken* establishes for the “significant relationship” test. There could be no doubt arbitration would be required for claims alleging injuries to Justine for “improper or inadequate care.” *Id.* However, the question here is whether the Arbitration Agreement extended to Appellants’ “allegedly outrageous decision to deny [Justine] access to her family, and her family access to her, in her final hours of life.” *Id.* Ultimately, the motion to compel arbitration was denied because a reasonable nursing home resident “couldn’t have possibly contemplated” the type of allegedly outrageous conduct alleged in Respondents’ complaint. (Order at 4). A nursing home resident can imagine the home mixing up a dose of medication or missing a treatment session, but no reasonable nursing home resident would anticipate the home’s personnel might choose to deny her family reports on her condition, prevent her son from visiting, and report him to police.

In short, the circuit court's ruling should be affirmed because the court performed the proper analysis under South Carolina law and correctly concluded Respondents allege claims truly unforeseeable at the time the Arbitration Agreement was formed.

3. Michael, Christina, and Tony (in his Individual Capacity) Have No Arbitration Contract with Appellants.

As an additional sustaining ground⁶, Michael, Christina, and Tony (in his individual capacity) cannot be forced to arbitrate any of their tort claims because they never formed an arbitration contract with Appellants. Arbitration is strictly a matter of contract and may not be compelled without proof of a valid arbitration contract. *Zabinski*, 346 S.C. at 596, 553 S.E.2d at 118. South Carolina law presumes contracts may only be enforced by their parties. *Touchberry v. City of Florence*, 295 S.C. 47, 48-49, 367 S.E.2d 149, 150 (1988); *Wilson v. Willis*, 426 S.C. 326, 335, 827 S.E.2d 167, 172 (2019) (finding presumption against non-party enforcement of arbitration contract). This presumption may be overcome only if the contract's language unambiguously extends its benefits to third parties. *Thompson v. Pruitt Corp.*, 416 S.C. 43, 57, 784 S.E.2d 679, 687 (Ct. App. 2016).

Neither of the "Admission Documents" related to Justine's entry to NHC name Michael, Christina, and Tony (in his individual capacity) as parties. The "Preadmission Agreement" identifies its parties as NHC (as "Center") and Justine (as "Patient"). (Admission Documents at 1). The Arbitration Agreement names the same parties. (Admission Documents at 4). Both were signed by a NHC representative and by Tony as Justine's representative. (Admission Documents at 3, 8). Michael and Christina did not sign either document and are not referenced by name anywhere in either agreement. Accordingly, they never formed an arbitration contract with

⁶ Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.").

Appellants and may not be required to arbitrate any of their claims alleged in the Amended Complaint.

Appellants contend Michael, Christina, and Tony (in his individual capacity) are parties based on a sentence in the Arbitration Agreement through which NHC purported to expand the term “Patient” to Justine’s “heirs and wrongful death beneficiaries.” (App. Br. at 7) (citing Admission Documents at 4). That argument fails for multiple reasons. First, a person does not become party to a contract simply because an existing party says so. Contract formation requires acceptance from all parties, and acceptance requires an “objective manifestation of . . . assent at the time the contract was made.” *Laser Supply & Services, Inc. v. Orchard Park Assoc.*, 382 S.C. 326, 334, 676 S.E.2d 139, 143-44 (Ct. App. 2009). Michael and Christina did not sign or offer other manifestations of assent to the Arbitration Agreement. Appellants have not even shown either was aware of its existence.

Second, the Arbitration Agreement’s attempt to equate Justine as “Patient” with Justine’s “heirs and wrongful death beneficiaries” does not allow for the contract’s enforcement against Michael, Christina, and Tony (in his individual capacity). South Carolina law has long recognized a rule stating “a living person has neither heirs nor legatees.” *Alexander v. Walden*, 287 S.C. 126, 130, 337 S.E.2d 241, 243 (Ct. App. 1985). The group of people who qualify as “wrongful death beneficiaries” is likewise determinable only after a person’s death. *See Rushton v. Smith*, 233 S.C. 292, 294-96, 104 S.E.2d 376, 377-78 (1958). More importantly, Michael, Christina, and Tony (in his individual capacity) do not assert a wrongful death claim. Instead, they assert negligence and IIED claims for the harm Appellants caused them directly for the events surrounding Justine’s

death. Even if the “beneficiaries” had some power to require arbitration for a wrongful death claim⁷, it should not be understood to reach these family members’ individual capacity claims.

CONCLUSION

Based on the arguments stated above, Respondents respectfully request the Court affirm the circuit court’s order denying Appellants’ motion to compel arbitration. The Arbitration Agreement extends only to claims with a “significant relationship” to the contract. Respondents’ tort claims lack that relationship because no reasonable person signing a nursing home admission agreement would anticipate the possibility that the home’s representatives would ignore a resident’s family members in the days before her death, deny her son the opportunity to say goodbye to his mother, and report him to police. Moreover, Appellants have no arbitration contract with Michael, Christina, or Tony (in his individual capacity) and cannot require any of them to surrender their rights to a jury trial.

⁷ Contrary to Appellants’ suggestions, it is an unanswered question in South Carolina as to whether a nursing home resident’s agreement to arbitrate applies to the wrongful death claim filed by the personal representative of her estate for the benefit of her statutory beneficiaries. (App. Br. at 7) (citing *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 378 n. 3, 388, 759 S.E.2d 727, 731 n. 3 (2014)). The *Dean* footnote addressed an overly broad pronouncement in the appealed order suggesting wrongful death claims are categorically excluded from arbitration. *Id.* (citing circuit court order statement stating that “wrongful death actions are not something that’s arbitrated”). That type of rule would violate the FAA’s equal-treatment principle. *Id.* However, that is not what is at issue here. A wrongful death claim may be arbitrable in instances where the statutory beneficiaries agree to do so. Respondents simply argue an individual’s consent to arbitrate may not be grafted into a wrongful death claim that pays different people for different losses. *Dean* does not reject that argument or even consider it. Numerous states have held that a nursing home resident’s arbitration agreement does not apply to a wrongful death claim. *See e.g. FutureCare NorthPoint, LLC v. Peeler*, 143 A.3d 191, 209-10, 213 (Md. App. 2016); *Taylor v. Extendicare Health Facilities, Inc.*, 147 A.3d 490, 494 and n. 1 (Pa. 2016); *Boler v. Sec. Health Care, LLC*, 336 P.3d 468, 477 (Okla. 2014); *Estate of Decamacho ex rel. Guthrie v. La Solana Care & Rehab, Inc.*, 316 P.3d 607, 614 (Ariz. Ct. App. 2014).

Respectfully submitted,

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