

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Donald B. Hocker, Circuit Court Judge

Case No. 2025-CP-07-01983
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,

Appellants.

REPLY BRIEF OF APPELLANTS

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SC Court of Appeals

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ARGUMENT

If the arguments in Respondents' brief are accepted, plaintiffs will be able to avoid arbitration despite executing a valid and enforceable arbitration agreement in virtually every scenario. All they will have to do is plead outrageous conduct by the defendants and claim that they did not foresee the exact circumstances that occurred at the outset of the relationship. No one can foresee the exact events that are ultimately alleged in a lawsuit. If they could, they would never enter the relationship to begin with. Further, Defendants will have no way to enforce valid and enforceable arbitration agreements by showing that the facts do not support claims of outrageous and unforeseeable conduct because, according to Respondents, courts can only consider plaintiffs' allegations. Respondents advised against interpreting contracts in a way that could lead to an absurd result, but this result would be the most absurd imaginable. Respondents also stated that there is no policy favoring arbitration while ignoring that the United States Supreme Court has expressly forbidden disfavoring them, which is exactly what an arbitration-specific outrageous tort exception does. In non-arbitration contracts, parties are held to their end of the deal. This Court should hold Respondents to theirs.

I. The "significant relationship" test does not save the "outrageous torts exception" from violating the FAA.

Respondents contended that the outrageous torts exception is simply a subset of the significant relationship test, and because the significant relationship test is a generally applicable contract principle, the outrageous torts exception does not violate the Federal Arbitration Act ("FAA"). (Resp't Br. pp. 6-11). They claim Appellants "misunderstand where the exception comes from and what the 'equal treatment principle' truly means. . . . [T]he equal-treatment principle . . . 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.” (Resp’t Br. p. 7 (quoting *Kindred Nursing Ctrs. Ltd. P’Ship v. Clark*, 581 U.S. 246, 254 n.2 (2017))). However, Respondents failed to quote the entire *Kindred* footnote, which states, “We do not suggest that a state court is precluded from announcing a new, generally applicable rule of law in an arbitration case. We simply reiterate here what we have said many times before—that the rule must in fact apply generally, *rather than single out arbitration*.” 581 U.S. at 254 n.2 (emphasis added).

As Appellants explained in their Initial Brief, the outrageous torts exception does just that—singles out arbitration. It has only been applied in arbitration cases.¹ See *Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 11-12, 791 S.E.2d 128, 133-34 (2016) (“[T]he application of the outrageous torts exception in South Carolina is ‘unique’ and ‘restricted’ to the field of arbitration. . . . [T]he language of every outrageous torts exception case published by this Court has focused explicitly on arbitration. . . . [T]his Court has never used the terminology associated with, or applied the principle of, the outrageous torts exception outside the context of arbitration enforcement. . . . [T]he outrageous torts exception is not a general contract principle, but instead one that has been applied only to arbitration clauses”). Respondents pointed out that Justice Hearn cited non-arbitration cases in her dissent in *Parsons*. (Resp’t Br. pp. 10-11 (citing *Parsons*, 418 S.C. at 14, 791 S.E.2d at 135 (citing *Koon v. Fares*, 379 S.C. 150, 155, 666 S.E.2d 230, 233 (2008); *Auto Owners Ins. Co. v. Rollison*, 378 S.C. 600, 609, 663 S.E.2d 484, 488 (2008))). However, Justice Hearn referenced *Koon* and *Auto Owners* for the principle that courts should not interpret contracts in a way that could lead to an absurd result; those cases did

¹ As Appellants mentioned in their Initial Brief, *Chassereau* and all other South Carolina appellate court cases applying the outrageous torts exception were decided prior to the United States Supreme Courts’ decision in *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011), which expressly prohibited courts from treating arbitration agreements different from other contracts.

not involve applying the outrageous torts exception to non-arbitration contracts. Accordingly, Appellants have not “misunderstood” the exception. Further, the circuit court’s Order Denying Appellants’ Motion to Compel Arbitration does not reference or attempt to invoke the significant relationship test.

II. The Court is permitted to consider the intentional infliction of emotional distress standard and evidence other than the Amended Complaint, and precedent supports Appellants’ argument that their conduct was insufficiently “outrageous” to deprive them of their right to arbitration.

Respondents first criticized Appellants for using the intentional infliction of emotional distress (“IIED”) standard to show that the circuit court incorrectly applied the outrageous torts exception to this case. (Resp’t Br. p. 11). IIED and the outrageous torts exception are unmistakably related, and Appellants were permitted to draw a parallel between them. Our Supreme Court has done as much. *See Chassereau v. Global Sun Pools, Inc.*, 373 S.C. 168, 172, 644 S.E.2d 718, 720 (2007) (applying the outrageous torts exception because “a reasonable person would not have foreseen and would not have expected (and ought not to expect) Global-Sun employees to commit *acts historically associated with the common law tort of outrage* in seeking to collect an overdue debt” (emphasis added)). The standard provides a helpful frame of reference for determining whether conduct is sufficiently extreme to nullify an arbitration agreement, particularly considering the outrageous torts exception is not well-developed, having only been examined in a small handful of cases.

Respondents next criticized Appellants for asking the circuit court to look beyond the Amended Complaint, specifically at a Call Detail Report from the Beaufort County Sheriff’s Office, to understand why their conduct did not fall outside the scope of the arbitration agreement. (Resp’t Br. pp. 12-14). Respondents’ insinuation that only the Amended Complaint can be considered at this stage ignores the fact that courts routinely examine affidavits and other

documentary evidence apart from the pleadings and apply a standard more akin to summary judgment when reviewing motions to compel arbitration. *See, e.g., Berkeley Cnty. Sch. Dist. v. Hub Int'l Ltd.*, 944 F.3d 225, 234 (4th Cir. 2019) (“To decide whether ‘sufficient facts’ support a party’s denial of an agreement to arbitrate, the district court is obliged to employ a standard such as the summary judgment test. In applying the standard, the court is entitled to consider materials other than the complaint and its supporting documents.”). Otherwise, defendants wishing to enforce valid and enforceable arbitration agreements would have no path to enforcement any time plaintiffs allege outrageous and unforeseeable conduct, even if unsupported. Respondents took issue with Appellants submitting the Call Detail Report with their Motion for Reconsideration, but undersigned counsel did not receive the Call Detail Report until February 4, 2026, after the Motion to Compel Arbitration and supporting memorandum were filed on October 2, 2025 and January 6, 2026, respectively, and after the hearing on the Motion to Compel Arbitration on January 8, 2026, so the Motion for Reconsideration was Appellants first available opportunity. *See Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) (“A party cannot use Rule 59(e) to present to the court an issue the party *could have raised prior to judgment* but did not.” (emphasis added)). Respondents further branded the Call Detail Report as hearsay; however, it is a self-authenticating document to which multiple hearsay exceptions apply. *See* Rule 902(4), SCRE (stating that certified copies of public records are self-authenticating); Rule 803, SCRE (setting out hearsay exceptions, including exceptions for present sense impressions, public records, and business records in civil cases).

Finally, Respondents contended that “Appellants overlook substantial precedent recognizing that barring a person from visiting their critically ill family member is outrageous in nature,” under the IIED standard. (Resp’t Br. pp. 15-16). They cite a Sixth Circuit case as their

main support to establish “substantial precedent.” (Id. p. 15). The language they quote from this case specifically acknowledges that such conduct can be extreme and outrageous “under some set of facts.” *Miller v. Currie*, 50 F.3d 373, 378 (6th Cir. 1995). Barring a person from visiting their ill family member does not in and of itself invoke the IIED standard. Further, to the extent that Respondents alleged that Appellants overlooked precedent, Respondents overlooked precedent to the contrary. *See, e.g., Belinky v. Drake Ctr., Inc.*, 690 N.E.2d 1302, 1309 (Ohio Ct. App. 1996) (“[W]e conclude that the denial of overnight visitation was done with the intent of protecting the [nursing] home from liability and was not outrageous considering today’s litigious society.”); *Jaloway v. Friendly Home, Inc.*, 818 A.2d 698, 708 (R.I. 2003) (“[D]efendants’ withdrawal of their consent for Jaloway to visit with his mother at the nursing home . . . were no doubt stress inducing. Perhaps, when viewed most favorably to Jaloway, they even could be characterized as a most unnecessary and heavy-handed overreaction on defendants’ part Yet, . . . defendants’ nonretaliatory actions were not so extreme and atrocious a response to Jaloway’s perceived intemperate behavior that a reasonable jury could find them to be ‘utterly intolerable in a civilized community.’” (citation omitted)); *id.* at 709-10 (“We have held that a party may not be liable for intentional infliction of emotional distress ‘when [a defendant] has done no more than insist on [its] legal rights in a permissible way, even though such insistence is likely or even certain to annoy, disturb, or inconvenience [plaintiff] or even cause [plaintiff] to suffer some emotional distress. . . . [A]s an owner of real estate, one of the fundamental rights that the home possessed was the right to exclude unwanted interlopers from its premises.” (alterations in original) (citations omitted)); *Shkodrov v. Carmichael*, NO. 2:24-CV-2-FL, 2025 WL 1196824, at *10 (E.D.N.C. 2025) (finding that allegations of defendants kicking the plaintiffs out to the lobby, prohibiting them from seeing their mother, leaving them in the dark regarding their mother’s welfare after

witnessing her sudden loss of consciousness, and failing to provide any information about their mother's welfare despite begging for updates over the phone and waiting for hours was insufficient conduct to establish IIED).

Based on the foregoing, the Court should consider the IIED standard, cases applying the IIED standard in the context of preventing access to an ill relative, and the Beaufort County Sheriff's Office Call Detail Report.

III. Managing resident visitors and phone calls bears a significant relationship to nursing home admission agreements.

Respondents incorrectly stated that "Appellants have not shown how denying the family information and access to Justine in the moments before her death bears a significant relationship to [the] admission agreement." (Resp't Br. p. 7). Appellants illustrated the significant relation in detail in their Initial Brief, specifically highlighting their obligation to protect residents' safety in accordance with industry standards, including South Carolina's Standards for Licensing Nursing Homes, under the Predmission Agreement. (Appellants' Br. pp. 16-17). Appellants cited specific provisions of these standards, which include the proper handling of visitors. (Id.). *See also Jalowy*, 818 A.2d at 709 ("Legislatures in Rhode Island and other states, as well as the United States Congress, have addressed the question of how best to balance the legitimate concerns of nursing-home owners and operators in protecting their residents' and staff members' health and safety with the interest of residents and their visitors in obtaining reasonable if not unrestricted access to each other on the premises of these facilities. Thus, both state and federal authorities have passed laws and regulations that define a resident's rights to obtain access to certain visitors on the premises of those facilities that are subject to federal and state legislation. . . . And even though these laws differ in the balances they strike . . . , none of them expressly confer enforceable rights on visitors to obtain unrestricted access to relatives or to other residents of such facilities. . . . [N]one of these

laws, rules, and regulations expressly confer rights of access upon visitors Much less do they expressly endow visitors with the right to maintain a civil lawsuit for damages or for equitable relief if they can establish one or more violations of these provisions.”).

Respondents suggested that this matter falls within the outrageous torts exception because no nursing home resident or family could foresee circumstances like these on admission unlike issues such as falls, wounds, or malnutrition when they sign arbitration agreements, (Resp’t Br. pp. 17-22). While falls, wounds, and malnutrition may be common lawsuits against nursing homes, the frequency of those disputes has no bearing on the foreseeability of other disputes. Residents and their families expect a safe environment and good communication with a nursing home just like they expect interventions to lower the risk of falls, wounds, and malnutrition will be provided. Respondents frame foreseeability too narrowly when they contend that “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.” (Resp’t Br. p. 22). All that matters is whether claims about resident safety, visits, and/or communication were foreseeable in a nursing home context, and they were.

Examining the cases in South Carolina that have applied the outrageous torts exception (pre-*Concepcion*) illuminates how inapplicable the exception is here. *Aiken v. World Finance Corporation of South Carolina* involved a consumer finance company’s employees stealing personal identifying information from a loan applicant for their personal benefit. 373 S.C. 144, 146, 644 S.E.2d 705, 707 (2007). *Chassereau* involved a pool installer harassing a buyer when she missed payments on the pool she purchased. 373 S.C. at 170, 644 S.E.2d at 719. *Partain v. Upstate Automotive Group* involved a car seller substituting an entirely different vehicle in place of the truck the buyer had agreed to purchase. 386 S.C. 488, 490, 698 S.E.2d 602, 603. *Hatcher v. Edward*

D. Jones & Co., L.P. involved a broker who transferred funds without the investor's authorization, which were then withdrawn by a third party. 379 S.C. 549, 550, 666 S.E.2d 294, 296 (Ct. App. 2008).² Each case involved criminal or pseudo-criminal conduct. In *Aiken*, the Supreme Court of South Carolina stated that the outrageous torts exception applies 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). Stealing a loan applicant's personal identifying information, harassing a client for missing payments on a pool, substituting the wrong vehicle in place of the one purchased, and transferring funds without authorization are clearly not part of the normal course of business of consumer finance companies, pool installers, car sellers, and brokers, respectively. They are actions that can in no way be interpreted as understandable judgment calls within their respective professions. However, not getting to the phone and not allowing a stranger to access the building at 3:30 a.m., are judgment calls and practices that reasonably relate to a nursing home's normal course of business. (See Am. Compl. ¶ 16). For example, there may be no one available to answer the phone if all staff members are busy caring for residents, and, like what happened here, staff members may deny an unknown visitor access to the building to protect residents and other staff members' safety.

IV. The Arbitration Agreement is enforceable against all Respondents.

Respondents asserted that the Arbitration Agreement does not apply to them in their individual capacities because they did not sign the Arbitration Agreement or, in Respondent Anthony Cambria's case, only signed it in his capacity as Power of Attorney, not his individual

² Appellants inadvertently overlooked *Hatcher* when they represented that the outrageous torts exception has only been applied twice since the release of *Aiken* in their Initial Brief. (Appellants' Br. p. 10).

capacity. (Resp't Br. pp. 23-25). Respondents are bound to the Arbitration Agreement. In addition to the plain language of the Arbitration Agreement which expressly includes beneficiaries and case law clearly stating that arbitration agreements can bind beneficiaries as explained in Appellants' Initial Brief, direct benefits estoppel binds Respondents to the arbitration agreement, which Appellants specifically argued to the circuit court. (Appellants' Br. p. 7; Appellants' Mem. in Supp. of Mot. to Compel Arbitration pp. 12-13; Appellants' Mot. to Recons. Pp. 10-11).³

Under direct benefits estoppel, non-signatories cannot refuse to comply with an arbitration agreement when they "sue and seek relief based on contracts containing arbitration clauses" because equity prevents them from avoiding arbitration "[w]hen [their] claim depends on the contract's existence and cannot stand independently." *Wilson v. Willis*, 426 S.C. 326, 343-44, 827 S.E.2d 167, 176-77 (2019). "When a claim depends on the contract's existence and cannot stand independently . . . equity prevents a person from avoiding the arbitration clause that was part of that agreement." *Id.* at 343, 827 S.E.2d at 176 (quoting *Jody James Farms, JV v. Altman Grp., Inc.*, 547 S.W.3d 624, 637 (Tex. 2018)). Direct benefits estoppel applies when non-signatories embrace the contract during its life despite their non-signatory status then attempt to repudiate it during litigation. *Id.* at 342, 827 S.E.2d at 176; *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 292, 733 S.E.2d 597, 602 (Ct. App. 2012).

In *Pearson*, this Court applied direct benefits estoppel in a lawsuit that a doctor who was placed at a hospital through a placement company brought against the hospital. 400 S.C. at 285-86, 733 S.E.2d at 599. Both the contract between the doctor and the placement company and the

³ Respondents did not raise to the circuit court their argument that the Arbitration Agreement did not reach them because they did not assert a wrongful death claim, so the argument is not preserved for appellate review. (Resp't Mem. in Opp'n to Recons. Order Den. Mot. to Compel Arbitration p. 20). *See Hubbard v. Rowe*, 192 S.C. 12, 5 S.E.2d 187, 189 (1939) (requiring questions to be first fairly and properly raised in the lower court).

contract between the placement company and the hospital had an arbitration agreement. *Id.* This Court held that the doctor was estopped from refusing to arbitrate because, “he received a benefit due to the contract, in that he was able to work at the Hospital,” and “[i]f not for that contract, [he] would have had to make separate arrangements with the Hospital in order to work there.” *Id.* at 296-97, 733 S.E.2d at 605. As to the doctor’s breach of contract claim, this Court further stated,

Dr. Pearson has to rely on his contract or the Hospital’s to have a breach of contract action against the Hospital. Because both of those contracts have arbitration clauses, he should not be allowed to hold the Hospital to one of the contracts to allege a breach but not be subject to the arbitration provisions.

Id. at 297, 733 S.E.2d at 605. This Court has estopped non-signatories from refusing to arbitrate on other occasions as well. *See, e.g. Bennett v. ACS Primary Care Physicians-SE P.C.*, 444 S.C. 458, 469-74, 908 S.E.2d 110, 115-18 (Ct. App. 2024); *Dixon v. Pattee*, 442 S.C. 233, 256-59, 898 S.E.2d 158, 170-72 (Ct. App. 2023). The Supreme Court of South Carolina did not apply direct benefit estoppel in *Wilson*, but the non-signatories there were not even aware of the existence of the contract with the arbitration agreement. 426 S.C. at 342, 827 S.E.2d at 176.

Here, Respondents were able to obtain care and treatment for their mother because of the Preadmission Agreement that contained the Arbitration Agreement and were absolutely aware of the same.⁴ If not for the Preadmission Agreement, they would have had to make separate

⁴ The Preadmission Agreement and Arbitration Agreement are consecutively paginated documents that are treated as one because they were executed at the same time, by the same parties, and for the same purpose. *See Klutts Resort Realty, Inc. v. Down’Round Dev. Corp.*, 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977) (“[I]n 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 construe the documents together. The theory is that the instruments are effectively one instrument of contract.”). Justine Cambria was the third-party beneficiary because she obtained the above-referenced care and treatment. *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611, S.E.2d 485, 488 (2005) (“A third-party beneficiary is a party that the contracting parties intend to directly benefit.”)

arrangements for her, either providing her with the care and treatment themselves or finding a different facility to do so. Moreover, they alleged breach of contract as a cause of action, thereby unfairly attempting to hold Appellants to the Preadmission Agreement to allege a breach while trying to avoid the Arbitration Agreement therein. Their other two causes of action were IIED and negligence, both of which depend on the existence of the Preadmission Agreement and could not stand independently. Their negligence cause of action stated that Appellants owed “a duty to properly care for Noreen, to communicate with her family, and to treat Noreen and her family with dignity and respect” while their breach of contract claim expressly acknowledged that said duty arose from the contract in stating, “Defendants contracted and agreed to provide medical care and attention to Noreen, to communicate with Noreen’s family, and to treat Noreen and her family with dignity and respect,” and Respondents based their IIED claim on Appellants allegedly breaching the duty to treat not only their mother, but also them as her children with dignity and respect in barring them from being together and calling the police. (Am. Compl. ¶¶ 33, 28, 42). Accordingly, Respondents cannot avoid arbitration simply by putting “individual capacity” by a plaintiff’s name in a caption.

CONCLUSION

For the reasons stated herein and in Appellants’ Initial Brief, this Court should reverse and remand for arbitration.

Signature on Following Page

October 26, 2026

Respectfully submitted,

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