

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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DEC 28 2016

SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2016-001732

Hilda Stott, individually and as Personal Representative of the Estate of Jolly P. Davis, deceased,  
and as Personal Representative of the Statutory Beneficiaries, ..... Respondents,

v.

White Oak Manor, Inc.; White Oak Management, Inc.; and White Oak Manor-Spartanburg, Inc.  
d/b/a White Oak of Spartanburg, ..... Appellants.

**INITIAL REPLY BRIEF OF APPELLANTS**

THE WARD LAW FIRM, P.A.

John E. Rogers, II  
Ginger D. Goforth  
P.O. Box 5663  
Spartanburg, SC 29304  
(864) 591-2366  
(864) 585-3090 (fax)  
Attorneys for Appellants

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## REPLY ARGUMENTS

### I. Hilda Stott had the legal authority to execute the White Oak Manor-Spartanburg admission documentation on behalf of Jolly Davis.

The South Carolina Supreme Court has acknowledged that arbitration agreements enjoy a strong presumption of validity in both federal and state courts. Dean v. Heritage Healthcare of Ridgeway, LLC, 408 S.C. 371, 759 S.E.2d 727 (2014). The FAA governs this Arbitration Agreement. In the mid-1980s, the United States Supreme Court “federalized” the law of arbitration by expanding the FAA to the full breadth of the Commerce Clause. The federal policy favoring arbitration is now binding even in state courts **and supersedes inconsistent state law and statutes that invalidate arbitration agreements.** Zabinski v. Bright Acres Associates, 346 S.C. 580, 590, 553 S.E.2d 110, 115 (2001) (emphasis added). The South Carolina Supreme Court has held that the FAA requires courts to enforce private agreements to arbitrate in accordance with their terms. Id. at 592, 553 S.E.2d at 116.

Here, Jolly Davis met the requirements for the effectiveness of the powers of attorney he executed in favor of his niece Hilda Stott. Specifically, the Durable Power of Attorney for Finance (“DPOAF”) provided it was effective upon disability, and it went on to define disability within the document to include “my inability to manage my property and affairs or car[e] for myself effectively” and “may be evidenced by a written statement of my regularly attending physician or two other qualified physicians or by court order.” (Durable Power of Attorney for Finance). The DPOAF was drafted by the decedent, who was free to include whatever language and provisions he wished. The DPOAF does not reference any other law or guideline, but self-defines “disability” and provides an example of one manner in which the disability might be established.

Appellant relies upon an improperly executed Progress Note concerning Mr. Davis's condition. This meager evidence does not supplant the clear record that Mr. Davis was under a disability as set forth in his own DPOAF. Mr. Davis admittedly met the requirements of a statutory vulnerable adult, as pled in the Complaint. The DPOAF provided for effectiveness upon Mr. Jolly's inability to manage his property and affairs or care for himself effectively. As emphasized before, nothing in the statute relied on by Respondent or the DPOAF itself required incompetence on the part of Mr. Davis as the measure of Ms. Stott's right to exercise her authority as attorney-in-fact, which included the express authority to "submit to arbitration claims or litigation" on behalf of Mr. Davis. (Hearing Transcript p. 8) (Durable Power of Attorney for Finance ¶ G).

Neither is the timing of the filing of the DPOAF an impediment to its effectiveness. S.C. Code Ann. § 62-5-501(c) requires recording, and provides that "whether recorded before or after the onset of the principal's physical disability or mental incompetence, it is effective notwithstanding the same." The Arbitration Agreement expressly provided in its opt out provision that it was only binding if written notice is not given within the opt out period. Hilda Stott signed the Arbitration Agreement on January 2, 2013, setting the opt out date as January 19, 2013. Ms. Stott's signature could not bind Mr. Davis until January 19, 2016. The DPOAF was recorded on January 8, 2013. Because the DPOAF was filed at the time the Arbitration Agreement became effective, it is both valid and binding.

**II. The wrongful death beneficiaries are bound by the admission documents, including the Admission Agreement and Arbitration Agreement.**

Under South Carolina law, "whenever the death of a person shall be caused by the wrongful act, neglect or default of another and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action to recover damages in respect thereof,

the person who would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured.” S.C. Code Ann. § 15-51-10. “Every such action shall be brought for the benefit of the . . . heirs of the person whose death shall have been so caused.” S.C. Code Ann. § 15-51-20. The cause of action inheres to the personal representative of the deceased’s estate; the statutory beneficiaries cannot proceed in their own names. See, e.g., Wyatt v. Spartan Mill Co., 287 S.C. 334, 338 S.E.2d 341 (1985).

A wrongful death action in South Carolina is derivative in nature. For example, if the statute of limitations has expired against the decedent for an injury that led to his death, then any wrongful death action is likewise barred, even though it may be commenced within the limitations period of the Wrongful Death Act. 26 South Carolina Jurisprudence §32 Wrongful Death Actions, (December 2016 update); see also Quattlebaum v. Carey Canada, Inc., 685 F. Supp. 939 (D.S.C. 1988).

Respondent’s reliance on Ping v. Beverly Enterprises, Inc., 376 S.W.3d 581 (Ky. 2012) is wholly misplaced. In Ping, the court found that the patient’s daughter, who signed the arbitration agreement, lacked actual or apparent authority to do so under the circumstances. Because of this, the document could not bind the statutory beneficiaries. Appellants’ position is that the Arbitration Agreement is valid, and there is no impediment to its enforcement, including enforcement against the statutory beneficiaries. Further, Kentucky law regarding wrongful death actions differs from South Carolina law. As noted above, wrongful death actions in South Carolina are **derivative**, even though the damages are awarded separately. Under Kentucky law, a wrongful death action accrues independently, and is not derivative. Accordingly, the reasoning in Ping has no bearing on the facts of this case.

Where wrongful death actions are derivative and place beneficiaries in the legal shoes of the decedent – even though the damages are for the exclusive benefit of the wrongful death beneficiaries – arbitration provisions in an agreement that bind the decedent also bind the beneficiaries. In re Labatt Food Service, L.P., 279 S.W.3d 640, 645-646 (2009). Any other finding would violate the FAA’s express requirement that states place arbitration contracts on equal footing with other contracts. Id. at 646, citing Volt Info. Scs., Inc. v. Board of Trs. Of Leland Stanford Junior Univ., 489 U.S. 468, 474 (1989).

**III. The corporate defendants are bound by the Arbitration Agreement.**

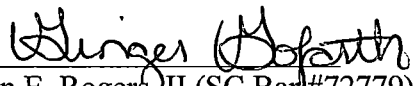
The corporate/parent defendants below are equally bound to the Arbitration Agreement. In Pearson v. Hilton Head Hosp., 400 S.C. 281, 295, 733 S.E.2d 597, 604 (Ct. App. 2012), a physician argued that he was not bound by the arbitration agreement between a hospital and the medical professional placement company that placed him. The court held that the doctrine of equitable estoppel prevented the physician from claiming that he was not bound to the arbitration simply because he was a nonsignatory. The physician received a benefit due to the relationship created by the contract because he was able to work at the hospital and receive payment for his work. Otherwise, he would have had to make separate arrangements with the hospital in order to practice there.

Here, both the corporate defendants and the wrongful death beneficiaries received a benefit from the admission documents, including the arbitration provision and the Arbitration Agreement. Neither Mr. Davis nor the beneficiaries were required to negotiate separately with the corporate defendants to obtain services. All were third-party beneficiaries who received and accepted a direct benefit from the agreements, and are thereby bound to the same.

**CONCLUSION**

For the reasons set forth herein, and in Appellants' Initial Brief, Appellants submit that the trial court erred in denying their Motion to Dismiss and/or Compel Arbitration.

THE WARD LAW FIRM, P.A.  
Attorneys for Appellants

  
John E. Rogers, II (SC Bar #72779)  
Ginger D. Goforth (SC Bar # 6904)  
P.O. Box 5663  
Spartanburg, SC 29304  
(864) 591-2366  
(864) 585-3090 (fax)  
Email: [jrogers@wardfirm.com](mailto:jrogers@wardfirm.com)  
Email: [ggoforth@wardfirm.com](mailto:ggoforth@wardfirm.com)

December 22, 2016

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APPEAL FROM SPARTANBURG COUNTY  
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J. Derham Cole, Circuit Court Judge

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Case No. 2015-CP-42-5123

White Oak Manor, Inc.; White Oak Management, Inc.; and White Oak Manor-  
Spartanburg, Inc. d/b/a White Oak of Spartanburg, .....  
..... Appellants,

v.

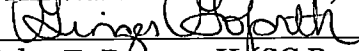
Hilda Stott, individually and as Personal Representative of the Estate of Jolly P. Davis,  
deceased, and as Personal Representative of the Statutory Beneficiaries, .....  
..... Respondents.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the Appellants' Initial Reply Brief was served upon the following on December 22, 2016 via electronic transmission and via United States Postal Service, with proper postage affixed thereto to the following address(es):

POLIAKOFF & ASSOCIATES, P.A.  
Gary W. Poliakoff  
Raymond P. Mullman, Jr.  
P.O. Box 1571  
Spartanburg, SC 29304

THE WARD LAW FIRM, P.A.

  
\_\_\_\_\_  
John E. Rogers, II (SC Bar #72779)

Ginger D. Goforth (SC Bar # 6904)

P.O. Box 5663

Spartanburg, SC 29304

(864) 591-2366

(864) 585-3090 (fax)

Email: [jrogers@wardfirm.com](mailto:jrogers@wardfirm.com)

Email: [ggoforth@wardfirm.com](mailto:ggoforth@wardfirm.com)

December 22, 2016

**THE WARD LAW FIRM, P.A.**

ATTORNEYS AT LAW  
POST OFFICE BOX 5663  
SPARTANBURG, SOUTH CAROLINA 29304

JAMES W. HUDGENS ■  
GENE ADAMS ◆  
H. SPENCER KING ◆  
ROBERT E. DAVIS\*  
JASON M. IMHOFF  
JOHN E. ROGERS, II\*  
GINGER D. GOFORTH  
C. REED TEAGUE  
CHAD M. GRAHAM

■ Retired  
◆ Certified Mediator  
\* ALSO MEMBER NORTH CAROLINA BAR

RUFUS M. WARD (1908-1988)  
L. PAUL BARNES (1931-1986)  
  
233 SOUTH PINE STREET  
SPARTANBURG, S.C. 29302

FAX No. (864) 585-3090

E-mail: GGoforth@wardfirm.com

Direct No. 864-591-2344

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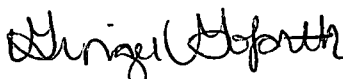
The Honorable Jenny Abbott Kitchings  
Court of Appeals Clerk of Court  
PO Box 11629  
Columbia, SC 29211

**Re: White Oak Manor, Inc., White Oak Management, Inc., and White Oak Manor-Spartanburg, Inc., d/b/a White Oak of Spartanburg, Appellants, v. Hilda Stott, individually and as personal representative of the Estate of Jolly P. Davis, Respondents.**

Dear Ms. Kitchings:

Enclosed please find one (1) original and one (1) copy of Initial Reply Brief of Appellants, White Oak Manor, Inc., White Oak Management, Inc., and White Oak Manor-Spartanburg, Inc., d/b/a White Oak of Spartanburg. Also, please find a Certificate of Service enclosed herewith. Please file the originals and return the clocked copies to me in the postage-paid, self-addressed envelope provided.

Sincerely,



John E. Rogers, II  
Ginger D. Goforth

GDG/prm  
Enclosure

cc: Raymond P. Mullman, Jr., Esquire  
Gary W. Poliakoff, Esquire

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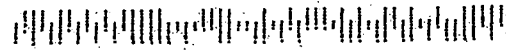
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The Ward Law Firm, P.A.  
PO Box 5663  
Spartanburg, SC 29304

The Honorable Jenny Abbott Kitchings  
Court of Appeals Clerk of Court  
PO Box 11629  
Columbia, SC 29211

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