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Circuit Court Judge

Judge Code

Date

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This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

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CLERK OF COURT

Court Reporter:

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOR THE 14TH JUDICIAL CIRCUIT
CASE NO: 2017-CP-07-02636

JOSEPH HOLMES, as Personal
Representative of the ESTATE OF DAVID
HOLMES,

Plaintiff(s),

v.

BAYVIEW MANOR, LLC, d/b/a
BAYVIEW MANOR; EPIC GROUP, LP;
and EPIC GENERAL, LLC,

Defendant(s).

**ORDER DENYING DEFENDANTS'
MOTION TO ALTER OR AMEND**

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JUN 13 2018
SC Court of Appeals

THIS MATTER is before the Court on Defendants' Motion to Alter or Amend this Court's May 15, 2018 Order denying Defendants' Motion for Non-Jury Trial. Defendants' timely moved under Rule 59(e) for this Court to alter or amend the May 15, 2018 Order Denying Defendants' Motion for Nonjury Trial. Pursuant to Rule 59(f) SCRPC, this Motion is decided on briefs of the parties without oral argument. After reconsidering the arguments of counsel, the materials presented, and the applicable law this Court respectfully **DENIES** Defendants' Motion.

BACKGROUND

The Decedent, David Holmes, was a resident of Defendants' long term care facility. Decedent was first admitted on December 2, 2014, and re-admitted on February 17, 2015. Decedent was incompetent during both admissions. At each admission, Decedent's family signed an Admission Agreement. The Admission Agreements contained the following provision:

Waiver of Jury Trial: (Please read carefully)

Resident hereby knowingly, voluntarily, and intentionally waives the right to trial by jury with respect to any litigation, including any counterclaim which Resident may assert, arising from or relating to this Agreement or any other document connected with this Agreement, or arising out of or relating to any of the said documents or any relationship between the Facility and Resident, including the

Resident's admission itself, or any other course of conduct, course of dealing statements (whether verbal or written) or actions of the facility or Resident.

Resident represents and warrants that the waiver contained in this Paragraph has been freely and voluntarily made after reviewing the same, or having had an opportunity to review the same, with counsel of Resident's choice.

The Admission Agreements also contained an Arbitration Clause which states that arbitration is "Optional" and allows the person signing to decline by marking an "X." At each admission, the family declined arbitration by marking an "X." Upon Decedent's death, his Estate brought this medical negligence action against the Defendants and requested a jury trial.

Based on the above quoted provision, Defendants' filed a motion for non-jury trial. The Court heard arguments on the motion April 25, 2018. On May 15, 2018, this Court issued an order denying Defendants' motion, holding that 1) if the jury waiver was a precondition to admission, it was void for illegality as violative of 42 U.S.C. § 1396r(c)(5)(A)(iii); and 2) if the jury waiver was not a precondition to admission, it was void for lack of consideration.

On May 23, 2018, Defendants timely filed a motion to alter or amend said order pursuant to Rule 59(e) SCRPC.

LAW

Rule 59 of the South Carolina Rules of Civil Procedure is "substantially the federal rule." S.C.R.Civ.P. 59, Note 1. "A party's mere disagreement with the court's ruling does not warrant a 59(e) motion, and such a motion should not be used to rehash arguments previously presented or to submit evidence which should have been previously submitted." Singletary v. Beazley Ins. Co., No. 2:13-cv-1142-DCN, 2013 WL 6850147, at *2 (D.S.C. Dec. 30, 2013) (Norton, J.), aff'd 585 F. App'x 177 (4th Cir. 2014). Further, Rule 59(e) provides an "extraordinary remedy that should be used sparingly. Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir.

1998). The Rule does not provide a party “another bite at the apple” or create a “mechanism to just keep filing motions with new theories until it gets it right.” Hanover Ins. Co. v. Corpro Cos., 221 F.R.D. 458, 460 (E.D. Va. 2014).

ANALYSIS

Defendants argue that the Court’s reliance on Medicare and Medicaid statutes is misplaced and that consideration for the non-jury provision was provided as part of the care, payment, and other provisions of the Admission Agreement. These arguments have been made and ruled upon, and Defendants have made no showing that the Court’s ruling on these issues was a clear error of law or created a manifest injustice.

Secondly, Defendants seek a determination that the provision is not unconscionable and that the provision was conspicuous and unambiguous. Although Plaintiff did raise these arguments, this Court’s Order did not invalidate the provision due to unconscionability or ambiguity. Instead, the Court invalidated the provision for illegality and lack of consideration. Therefore, whether the provision was conscionable or unambiguous (as suggested by Plaintiff) is not relevant, and this Court made no findings of fact or conclusions of law as to those issues. See e.g., Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 518 S.E.2d 591 (1999) (holding appellate court need not address remaining issues when the disposition of an independent issue is dispositive). Although these were additional theories presented by the Plaintiff, they did not factor into the Court’s ruling.

Finally, Defendants ask for specific rulings on the alternative arguments that they presented: namely 1) that Decedent’s sisters had authority to sign the Agreement on his behalf due to Margaret Holmes’ status as court appointed guardian and/or pursuant to the Adult Health

Care Consent Act; and 2) that Plaintiff is bound by the non-jury provision under the doctrine of equitable estoppel.

As to the issue of authority, this was not material to the Court's Order. This Court did not invalidate the provision on the grounds that Decedents' sisters lacked authority to sign the Agreement.¹

Therefore, the only remaining issue is Defendants' equitable estoppel argument. Defendants argue that, even if the provision is invalid, Plaintiff is equitable estopped from deviating from its terms. The elements of the equitable estoppel defense, in this context, are set forth in Thompson v. Pruitt Corp., 416 S.C. 43, 59, 784 S.E.2d. 679, 688 (Ct. App. 2016) ("In the arbitration context, the doctrine recognizes that a party may be estopped from asserting that the lack of his signature on a written contract precludes enforcement of the contract's arbitration clause when he has consistently maintained that other provisions of the same contract should be enforced to benefit him."). Stated differently, consideration is a key element of the estoppel defense. One cannot benefit from a contract, and then seek to later invalidate the same contract where it detracts from him.

In the instant case, this Court invalidated the non-jury clause as lacking consideration, meaning that it conferred no benefit upon Decedent. Because Decedent enjoyed no benefit from the provision, there is no reason that his heirs should be estopped from challenging it at this stage. See, Hodge v. UniHealth Post-Acute Care of Bamburg, LLC, 2018 WL 1177630 at *8 (S.C. Ct. App. March, 2018) ("Because Mable, Husband, and the Estate received no benefit from the Arbitration Agreement, equitable estoppel [would not apply absent a benefit]").

¹ The Court's prior ruling would have been the same even had Decedent signed the Agreement himself.

CONCLUSION

For these reasons, Defendants' Motion to Alter or Amend is respectfully **DENIED**.

IT IS SO ORDERED!

Dated this ____ day of June, 2018

The Honorable Perry M. Buckner, III
Presiding Judge, 14th Judicial Circuit



Beaufort Common Pleas

Case Caption: David Holmes Estate Of , plaintiff, et al VS Bayview Manor Llc ,
defendant, et al
Case Number: 2017CP0702636
Type: Order/Other

It is so Ordered

s/ Perry M Buckner III 2122

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