THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JUN 29 2018

S.C. SUPREME COURT

---

APPEAL FROM BAMBERG COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

---

Appellate Case No. 2015-001183

---

Opinion No. 5541 (S.C. Ct. App. Filed Mar. 7, 2018)

---

Camille Hodge, Jr., as Personal Representative of the Estate of Mable Hodge, Deceased.....Respondent,

v.

UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS-Pruitt Holdings, Inc. a/k/a UHS–Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow,

of Whom UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS-Pruitt Holdings, Inc. a/k/a UHS–Pruitt Corp. are.....Appellants.

Camille Hodge, Sr., .....Respondent,

v.

UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS-Pruitt Holdings, Inc. a/k/a UHS–Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow,

of Whom UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS-Pruitt Holdings, Inc. a/k/a UHS–Pruitt Corp. are.....Appellants.

---

**RESPONDENTS' RETURN TO PETITION FOR WRIT OF CERTIORARI**

---

Wallace K. Lightsey (S.C. Bar No. 6476)
John C. Moylan III (S.C. Bar No. 11227)
Meliah Bowers Jefferson (S.C. Bar No. 74064)
WYCHE, P.A.
P.O. Box 12247
Columbia, SC 29211
Phone: 803-254-6542
wlightsey@wyche.com
jmoylan@wyche.com
mjefferson@wyche.com

J. Preston Strom, Jr. (S.C. Bar No. 05400)
Bakari T. Sellers (S.C. Bar No. 79714)
STROM LAW FIRM, L.L.C.
2110 N. Beltline Blvd.
Columbia, SC 29204-3999
Phone: 803-252-4800
pstrom@stromlaw.com
bsellers@stromlaw.com

*Counsel for Respondents*

# INDEX

## COUNTER-STATEMENT OF THE QUESTIONS PRESENTED

1. Did the Court of Appeals apply the correct standard of review when it applied the precise language repeatedly used by this Court that "[d]eterminations of arbitrability are subject to *de novo* review, but if any evidence reasonably supports the circuit court's factual findings, this court will not reverse those findings"?

2. Did the Court of Appeals correctly hold that the trial court did not abuse its discretion when the trial court considered all evidence presented by Pruitt and determined that a deposition would not be helpful to its decision?

3. Did the Court of Appeals correctly affirm the circuit court's ruling that Pruitt could not enforce an arbitration agreement against a patient who never signed the agreement even though she was competent at the time she was admitted to the facility, was asked by Pruitt to sign other documents and did sign other documents but not the arbitration agreement, and the person signing the agreement did not have power of attorney to sign for her?

## COUNTER-STATEMENT OF THE CASE

Mr. Camille Hodge, Jr., acting as Personal Representative of his mother, Mrs. Mable Hodge, filed this action against UniHealth Post-Acute Care of Bamberg, LLC et al. ("Pruitt") and Doctors Padgett and Moskow, after his mother became a paraplegic following a three week stay for "rehabilitation" at Pruitt's Bamberg facility. Mr. Camille Hodge, Sr. filed a separate action for loss of consortium. Pruitt moved to compel arbitration of both cases. Doctors Padgett and Moskow did not move to compel arbitration and acknowledge that the case against them will proceed to a jury trial. (App'x p. 389, lines 2-4).

Pruitt argued to the circuit court and to the Court of Appeals that South Carolina courts lack jurisdiction over this case and that respondents should be ordered to comply with an arbitration agreement that Mrs. Hodge never signed, that Mr. Hodge, Jr. never signed, and that neither Doctor Moscow nor Doctor Padgett ever signed. After full briefing and oral arguments, Circuit Judge Clifton Newman disagreed with Pruitt and denied its motions to compel arbitration and to compel the deposition of Mr. Hodge. Pruitt appealed those Orders to the South Carolina Court of Appeals and it unanimously affirmed Judge Newman. Now Pruitt petitions this Court for a writ of certiorari.

Almost eight years ago, on August 31, 2010, Mrs. Mable Hodge, a resident of Bamberg County, and a patient of Defendant Dr. Moskow, entered Pruitt's Bamberg facility for rehabilitation following a hospital stay. Dr. Moskow's records indicate that Mrs. Hodge was functioning very well when she was admitted to Pruitt. Dr. Moskow's September 1, 2010, initial history and physical of Mrs. Hodge states: "Physical examination reveals a well developed and well nourished female in no real distress . . . Extremities: full range of motion." (App'x p. 234).

Three weeks after her admission to Pruitt, Mrs. Hodge was discharged, by ambulance, from Pruitt to Palmetto Health Richland as a paraplegic who would never walk again. For days prior to her discharge, Mrs. Hodge cried out in pain and then lost the use of her legs. The Palmetto Health Richland doctor's notes on September 24 say "it is doubtful that surgery this far after onset of her leg symptoms would be of any benefit. . . . She is paraplegic . . . Unfortunately, there is no role for open surgery in a patient paraplegic for one week." On September 27, another Palmetto Health Richland doctor reviewed the facts leading up to Mrs. Hodge's paralysis and drew the conclusion, "this is a disaster." (App'x p. 225).

The day prior to Mrs. Hodge's admission to Pruitt, her husband, Camille Hodge, Sr. was asked by Pruitt to sign various documents in order to facilitate her admission and to secure her a room at the facility. Mr. Hodge, Sr. had no power of attorney from his wife or any other type of legal appointment (e.g., as guardian or personal representative) to act on her behalf. Among the documents presented to Mr. Hodge was a twelve-page Admission Agreement and a separate five-page Arbitration Agreement. (App'x pp. 236-253). Both agreements, drafted solely by Pruitt, have separate signature lines for (1) "Patient/Resident's Signature" and (2) "Patient/Resident Representative's Signature." Pruitt concedes that Mrs. Hodge was perfectly competent at the time of her admission to their facility. (App'x p. 391, lines 1-3). It is also undisputed that Pruitt obtained Ms. Hodge's signature on other documents – but not on the arbitration agreement – upon her admission to Pruitt. ([App'x p. 260). Despite her competency and her unquestioned ability to sign documents, Pruitt never obtained Mrs. Hodge's signature on its Arbitration Agreement. Now it asks this Court to reverse the unanimous Court of Appeals, overturn Judge Newman's decision, and hold that Mr. Hodge Sr. waived his wife's right to a jury trial even though he had no authority

to act on his wife's behalf and even though Pruitt's own guidelines mandate that it must obtain the signature of a competent resident on its Arbitration Agreements.

At the hearing on this matter, the trial court was presented with and considered Pruitt's internal "Arbitration Checklist." (App'x p. 255). The very first line of that document mandates that Pruitt must first "Determine competency of patient/resident." Pruitt employees are then directed to "Secure appropriate signatures" (emphasis in original). Pruitt unequivocally instructs its employees that if the patient/resident is "***Competent, capable of signature*** – Patient/resident **must** initial each page in lower right hand corner and sign and date the final page in the presence of Admissions Coordinator and one witness."[1] In the instant case, there is no dispute that Mrs. Hodge was competent at the time of her admission (App'x p. 369, lines 19-20 ("no disagreement from any of the parties that she was competent"); App'x p. 391, lines 1-3 (same)) and that Pruitt failed to follow its own directives to have her sign the document that Pruitt drafted.

On February 20, 2015, Judge Clifton Newman heard oral arguments and later denied Pruitt's motion to compel arbitration after finding the following facts to be uncontested:

[1] Pruitt has apparently instituted this rule in order to comply with federal regulations that govern nursing homes like Pruitt that accept federal funds. Those federal regulations mandate that Pruitt must obtain the signature of a competent patient and may not rely on the signature of a surrogate or representative. These regulations state that "the facility may seek a health care decision (or any other decision or authorization) from a surrogate or representative only when the resident is unable to make the decision." Guidance to Surveyors for Long Term Care Facilities, Centers for Medicare & Medicaid Services, Publ. 100-7, State Operations Manual, (Interpretive Guidelines to 42 C.F.R. §483.10(a)(3) and (4)) found at https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/ som107ap_pp_ guidelines_ltcf.pdf (visited August 20, 2015). (emphasis added). Pruitt asks this Court to allow it to continue to receive federal funds through Medicare and otherwise but to exempt it from federal guidelines that require it to obtain the signature of a competent patient. If Pruitt had simply complied with its own rules and regulations, it would not be before this Court today.

1) "The Arbitration Agreement was signed only by UPAC [Pruitt] and Camille Hodge, Sr.
2) The Arbitration Agreement was not signed by Mable Hodge, by her personal representative Camille Hodge, Jr., by Dr. Moskow, or by Dr. Padgett.
3) Mable Hodge was competent at the time she was admitted to UPAC [Pruitt] on August 31, 2010, and at the time the Arbitration Agreement was signed by Mr. Hodge, Sr. on August 30, 2010.
4) Mable Hodge had not executed a general power of attorney or health care power of attorney (or any other document giving authority to her husband or any other family member to make contractual commitments or waivers on her behalf) at the time she was admitted to UPAC [Pruitt] or at the time the Arbitration Agreement was signed by Mr. Hodge, Sr.
5) Mable Hodge was a patient at Providence Hospital in Columbia on August 30, 2010, when Mr. Hodge, Sr. signed the Arbitration Agreement with UPAC [Pruitt] in Bamberg.
6) UPAC [Pruitt] presented Mable Hodge with other documents to sign at the time of her admission, and Mable Hodge signed those documents, but not the Arbitration Agreement." (*Hodge*, Op. No. 5541, App'x p. 525; App'x pp. 3-4).

In its appeal to the Court of Appeals and in its Petition for Certiorari to this Court, Pruitt does not contest any of these factual findings. Instead, Pruitt challenges the Court of Appeals' affirmance of Judge Newman's decision that, based on these specific factual findings, Pruitt cannot enforce an Arbitration Agreement that its patient never signed.

## ARGUMENT

This is at least the fifth time in just the past four years that this same appellant (Pruitt) has come before this Court asking it to correct a Pruitt error and to enforce an arbitration agreement against one of its patients. *See Thompson v. Pruitt Corporation*, 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 1016), *cert. denied* (S.C. Dec. 2, 2016) (Shearouse Adv. Sh. No. 46 at 7); *Scott v. Heritage Healthcare of Estill, LLC,* Opinion No. 2014–UP–317, 2014 WL 3845113 (Ct. App. Aug. 6, 2014), *cert. denied* (S.C. Feb. 20, 2015) (Shearouse Adv. Sh. No. 8, at 14); *Dean v. Heritage*

*Healthcare of Ridgeway, LLC,* 408 S.C. 371, 759 S.E.2d 727 (2014); *Johnson v. Heritage Healthcare of Estill, LLC,* 416 S.C. 508 788 S.E.2d 216 (2016).

In *Johnson*, this Court held that Pruitt had waived its right to demand arbitration by participating in discovery and other proceedings before the Circuit Court. On each of the other four occasions, Pruitt has asked this Court to enforce an arbitration agreement against a patient who never signed the agreement. In *Dean,* the parties did not address the issue and this Court *sua sponte* noted that "[w]e are concerned that, according to the Record, the patient did not sign either the residency agreement or the [arbitration] Agreement on her own behalf, despite being competent at the time, nor did Respondent possess a health care power of attorney to sign either contract on the patient's behalf." *Dean, supra,* 408 S.C. at 388n. 13. On the other two occasions (*Scott* and *Thompson*), the Court of Appeals refused Pruitt's request to enforce its arbitration agreement against a patient who had not signed the agreement. On each of those occasions, Pruitt then petitioned this Court for a writ of certiorari and, on each occasion, this Court denied certiorari. Respondents respectfully request that this Court once again deny certiorari.

## I. The Court of Appeals Applied the Precise Standard of Review that This Court Has Repeatedly Articulated as Appropriate.

In *Bradley v. Brentwood Homes, Inc.,* 389 S.C. 447, 453, 730 S.E.2d 312, 315 (2012), this Court articulated the standard of review for questions of arbitrability as follows:

> "Arbitrability determinations are subject to *de novo* review. 'Nevertheless, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports the findings."

*Id.* (*quoting Simpson v. MSA of Myrtle Beach, Inc.,* 373 S.C. 14, 22, 644 S.E.2d 663, 667 (2007)). Likewise, this Court in *Partain v. Upstate Automotive Group,* 386 S.C. 488, 491, 689 S.E.2d 602, 603 (2010) held as follows:

## STANDARD OF REVIEW

> The question of arbitrability of a claim is an issue for judicial determination unless the parties provide otherwise. *See Zabinski v. Bright Acres Associates,* 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001). The determination whether a claim is subject to arbitration is subject to de novo review. *See Gissel v. Hart,* 382 S.C. 235, 240, 676 S.E.2d 320, 323 (2009). Nevertheless, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports the findings. *See Aiken v. World Fin. Corp. of South Carolina,* 373 S.C. 144, 148, 644 S.E.2d 705, 707 (2007).

In the case at hand, the Court of Appeals restated the Supreme Court's previously articulated standard of review almost verbatim:

> Unless the parties otherwise provide, the question of the arbitrability of a claim is an issue for judicial determination. *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001). Determinations of arbitrability are subject to *de novo* review, but if any evidence reasonably supports the circuit court's factual findings, this court will not reverse those findings. *Aiken v. World Finance Corp. of S.C.,* 373 S.C. 144, 148, 644 S.E.2d 705, 707 (2007).

*Hodge*, Op. No. 5541, App'x p. 526.

As the cases above make clear, Pruitt's claim that "[t]he court of appeals failed to identify and apply the proper standard of review" is demonstrably untrue. Rather, their argument, at its core, is "the court of appeals failed to cite every case we wanted them to cite." Appellate courts, however, are not required to cite every possible case. The Court of Appeals recited and applied the appropriate standard of review.

Even the principal case relied on by Pruitt cites the same standard of review that it now argues is inappropriate. In *Landers v. Fed. Deposit Ins. Co,* 402 S.C. 100, 108, 739 S.E.2d 209, 213 (2013) (*quoting Partain v. Upstate Automotive Group,* 386 S.C. 488, 491, 689 S.E.2d 602, 603 (2010), this Court again says "'[t]he determination of whether a claim is subject to arbitration is subject to *de novo* review.'" (emphasis added). The Court then cites the familiar law that "any

doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Id.* at 109 (citations omitted). Of course, in the instant case, the Circuit Court and the Court of Appeals were not determining "the scope" of what issues were subject to arbitration, they were determining "whether" arbitration would be compelled. The Court of Appeals, following this Court's precedents, applied the appropriate standard of review for that decision.

## II. The Court of Appeals Correctly Held that the Trial Court Did Not Abuse its Discretion in Finding that a Deposition Would Not Alter its Decision Regarding Agency.

Pruitt next argues that "the court of appeals erred in affirming as to the agency issue because the circuit court abused its discretion by refusing to allow the petitioners to present evidence on this fact-intensive question and its ruling was based upon an error of law." (Petition p. 6). In fact, the circuit court did no such thing.

Pruitt presented substantial "evidence" to the circuit court, including numerous documents indicating that Mr. Hodge had previously signed medical forms for his wife. Pruitt also presented the circuit court with the affidavit of its own administrator from the Bamberg facility that housed Ms. Hodge. After considering all of that evidence, the circuit court then held that "[b]ecause the facts material to the Court's decision are not contested and because the parties submitted, without objection, all documents that they wished the Court to consider, the Court concludes that the deposition of Mr. Hodge would not provide any additional material facts that would be helpful to the Court in reaching its decision." (App'x p. 525, n. 1).

Judge Newman found, and the Court of Appeals agreed, that the deposition of 86-year-old Camille Hodge, Sr. would not aid the court because it had considered Pruitt's own affidavit and "the facts material to the court's decision are not contested." (App'x p. 3, n. 1). That ruling was demonstrably correct, for several independent reasons.

First, this Court has repeatedly held that a "trial court's rulings in matters related to discovery generally will not be disturbed on appeal in the absence of a clear abuse of discretion." *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 536, 787 S.E.2d 485, 495 (2016) *citing Dunn v. Dunn,* 298 S.C. 499, 381 S.E.2d 734 (1989). "An abuse of discretion occurs when the trial court's order is controlled by an error of law or when there is no evidentiary support for the trial court's factual conclusions." *Id. citing Sundown Operating Co. v. Intedge Indus., Inc.,* 383 S.C. 601, 681 S.E.2d 885 (2009).

As noted by the Court of Appeals, it has long been the law in South Carolina that "it is the duty of one dealing with an agent to use due care to ascertain the scope of the agent's authority." (App'x p. 538) *citing* McCall v. Finley, 294 S.C. 1, 6, 362 S.E.2d 26, 29 (Ct. App. 1987) *quoting* Justus v. Universal Credit Co., 189 S.C. 487, 495, 1 S.E.2d 508, 511 (1939). Despite this clear law, Pruitt offered neither argument nor evidence that it had made any efforts to ascertain the scope of Mr. Hodge's authority. The affidavit of Ms. Rutland, Pruitt's administrator, is completely silent on any steps that Pruitt took to ascertain the scope of Mr. Hodge's authority. Worse, the Arbitration Agreement attached to the administrator's affidavit contains a space directly under Mr. Hodge's name with these instructions: "Print: Name of Patient/ Resident Representative and indicate capacity of representative." (emphasis added) (App'x p. 183). On that line, Pruitt typed only the words: "Camille Hodge." In the face of South Carolina law and its own instructions to ascertain Mr. Hodge's authority, Pruitt elected to do nothing and now asks this Court to fix their error.

Moreover, in its arguments to the Court of Appeals, even Pruitt acknowledged that the doctrine of apparent authority turns not on any actions of Mr. Hodge but rather on the actions of the principal, Mrs. Hodge, and the beliefs of the third party, Pruitt. (App'x, p. 463). ("[T]he

concept of apparent authority depends upon manifestations by the principal to a third party and the reasonable belief by the third party that the agent is authorized to bind the principal.") That statement of the law – by Pruitt – was correct. Both this Court and our Court of Appeals have repeatedly held that

> [t]he concept of apparent authority depends upon manifestations by the principal to a third party and the reasonable belief by the third party that the agent is authorized to bind the principal. *Beasley v. Kerr-McGee Chem. Corp.*, 273 S.C. 523, 257 S.E.2d 726 (1979); *Visual Graphics Leasing Corp. v. Lucia*, 311 S.C. 484, 429 S.E.2d 839 (Ct. App. 1993). S*ee also Moore v. North American Van Lines,* 310 S.C. 236, 423 S.E.2d 116 (1992) (basis of apparent authority is representations made by principal to third party and reliance by third party on those representations).

*R & G Const., Inc. v. Lowcountry Regional Transp. Authority,* 343 S.C. 424, 432, 540 S.E.2d 113, 118 (Ct. App. 2000) (emphasis added). This Court has plainly held that "[i]n order for a third party to recover against the principal based upon this theory [apparent authority], it must be shown that he [the third party] reasonably relied upon the indicia of authority originated by the principal and such reliance must have affected a change of position by the third party." *Beasley v. Kerr-McGee Chemical Corp., Inc.,* 273 S.C. 523, 528, 257 S.E.2d 726, 728 (1979). *See also Cowburn v. Leventis*, 366 S.C. 20, 39-40, 619 S.E.2d 437, 448 (Ct. App. 2005) ("agency may not be established solely by the declarations and conduct of an alleged agent.") (quoting *Frasier v. Palmetto Homes of Florence, Inc.,* 323 S.C. 240, 245, 473 S.E.2d 865, 868 (Ct. App. 1996)). Rather, "[t]he proper focus in determining a claim of apparent authority is not on the relationship between the principal and the agent, but on that between the principal and third party." *R & G Construction,* 343 S.C. at 432-33, 540 S.E.2d at 118 (*citing Vereen v. Liberty Life Ins. Co.,* 306 S.C. 423, 412 S.E.2d 425 (Ct. App. 1991)).

The circuit court found that Appellant had presented no evidence that Mrs. Hodge had ever made any representations to Pruitt or had ever "held out" her husband to Pruitt as having authority to bind her to agreements such as the purported arbitration agreement. (App'x. p. 9). Pruitt argued to the Court of Appeals and now argues to this Court that because it was not allowed to depose Mr. Hodge, it could not produce any evidence of Mrs. Hodge having bestowed apparent authority on Mr. Hodge. This argument ignores both the facts of this case and the law.

Contrary to its current assertion, Pruitt had every opportunity to present the circuit court with any evidence that Mrs. Hodge had taken any actions to manifest to Pruitt that Mr. Hodge had authority to execute documents on her behalf, and had every opportunity to present evidence that Pruitt had relied on those manifestations. If any Pruitt employee could have asserted that Mrs. Hodge made such representations to them they certainly would have done so. Likewise, if any Pruitt employee could have asserted that Pruitt relied on representations made by Mrs. Hodge, they certainly would have done so.

In fact, Pruitt presented the circuit court with an affidavit from Deborah Rutland, its Administrator, who attested simply to the uncontested fact that Mr. Hodge "signed various documents." (App'x p. 164, ¶ 5). Tellingly, however, Ms. Rutland never even suggests that Mrs. Hodge took any action – in any way – to represent to Pruitt that her husband had been authorized to execute documents on her behalf. That is logical, of course, since the uncontested fact found by the circuit court and affirmed by the Court of Appeals is that Mrs. Hodge was not even present when the arbitration agreement was presented to her husband: "Mable was not present at the time her husband signed these documents on the day of her admission as she was still in the hospital." (App'x p. 522). Nor did Ms. Rutland ever attest that Pruitt had relied, in any way, on any representation made by Mrs. Hodge that a family member had been authorized to execute

documents on her behalf. If Pruitt had relied – in any way -- on a representation made by Mrs. Hodge, they had every opportunity to present that fact to the circuit court and undoubtedly would have done so.

Moreover, since Mrs. Hodge is no longer alive, Pruitt was in the unique position to know whether Mrs. Hodge (the principal) made any representations to Pruitt (the third party) and was in the unique position to know whether Pruitt relied in any way on representations made by Mrs. Hodge that someone else was authorized to bind her to contracts. Pruitt presented no evidence either that Mrs. Hodge had made representations to them or that they had relied on any representations. Given that complete lack of evidence and given the uncontested facts of this case – that Ms. Hodge was competent, that Mr. Hodge, Sr. did not have power of attorney, and that Pruitt elected to have Ms. Hodge sign certain documents on her admission but not the arbitration agreement -- the circuit court was certainly well within its discretion to determine that a deposition – not of the principal and not of the third party – was not necessary or helpful to its decision. This conclusion fits perfectly within the law of apparent agency, as summarized above. There was no error of law in the circuit court's decision, and the Court of Appeals properly affirmed it.

## III. The Court of Appeals Properly Affirmed the Circuit Court's Ruling that Pruitt Could Not Enforce its Arbitration Agreement Against Ms. Hodge.

Pruitt's final argument to this Court is that "the court of appeals erred in treating nursing home arbitration agreements differently from any other contract in direct contravention of U.S. Supreme Court precedent." (Petition P. 13). This argument is premised on Pruitt's representation to this Court that "the court of appeals found the other admissions documents signed by Camille Hodge, Sr., except for the Arbitration Agreement, were enforceable." (Petition p. 15). The problem with this argument is that it never happened. The Court of Appeals never ruled that any agreements in this case are enforceable. The only agreement whose enforceability the Court of

Appeals considered was the arbitration agreement that Ms. Hodge never signed. The Court of Appeals agreed with the circuit court that that agreement could not be enforced by Pruitt. The Court of Appeals was not asked to rule, and did not rule, on the enforceability of the admission agreement or any other contract and thus did not treat the arbitration agreement differently from any other contract.

In support of its argument, Appellants point this Court to a single sentence in the Court of Appeals' Order – "the authority conveyed by a principal to an agent to handle finances or make health care decisions does not encompass executing an agreement to resolve legal claims by arbitration, thereby waiving the principal's right of access to the courts and to a jury trial." (Petition p. 15). In addition to being accurate, that sentence does not originate with this case but rather is a verbatim quotation from a different case in which this Court has already denied certiorari. *Thompson,* 416 S.C. at 55, 784 S.E.2d at 686. Moreover, that sentence is entirely consistent with this Court's holding in *Coleman v. Mariner's Health Care, Inc.* 407 S.C. 346, 755 S.E.2d 450 (2014). There, the Court ruled that the Adult Health Care Consent Act (S.C. Code § 44-66-10 *et seq.*) gave a patient's sister "two types of authority" -- medical and financial – and authorized her to execute an admission agreement, but not an arbitration agreement on behalf of her sister:

> The scope of Sister's authority to consent to "decisions concerning Decedent's health care" extended to the admission agreement, which was the basis upon which Facility agreed to provide health care and Sister agreed to pay for it. The separate arbitration agreement concerned neither health care nor payment, but instead provided an optional method for dispute resolution between Facility and Decedent or Sister should issues arise in the future. Under the Act, Sister did not have capacity to bind Decedent to this voluntary arbitration agreement. We therefore affirm the circuit court's holding that the Act did not confer authority on Sister to execute a

document which involved neither health care nor financial terms for payment of such care.

*Coleman,* 407 S.C. at 352, 353-54, 755 S.E.2d at 453, 454.

For each of these reasons, the Court of Appeals properly affirmed the Circuit Court's decision that Pruitt could not enforce its arbitration agreement against Ms. Hodge.

## CONCLUSION

Based on the well-reasoned opinion of the Court of Appeals and the arguments stated above, the Hodges respectfully request that this Court deny the Petition for Writ of Certiorari so that Mr. Hodge may have his day in Court. The Court of Appeals' unanimous opinion accurately applies state and federal law, and this case does not present a novel issue or other matter requiring review.

Wallace K. Lightsey (S.C. Bar No. 6476)
John C. Moylan III (S.C. Bar No. 11227)
Meliah Bowers Jefferson (S.C. Bar No. 74064)
Wyche, P.A.
P.O. Box 12247
Columbia, SC 29211
Phone: 803-254-6542
Fax: 803-254-6544
wlightsey@wyche.com
jmoylan@wyche.com
mjefferson@wyche.com

J. Preston Strom, Jr. (S.C. Bar No. 05400)
Bakari T. Sellers (S.C. Bar No. 79714)
Strom Law Firm, L.L.C.
2110 N. Beltline Blvd.
Columbia, SC 29204-3999
Phone: 803-252-4800
Fax: 803-252-4801
pstrom@stromlaw.com
bsellers@stromlaw.com

June 29, 2018

*Counsel for Respondents*

THE STATE OF SOUTH CAROLINA

In The Court of Appeals



---

APPEAL FROM BAMBERG COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

---

Case Nos.: 2014-CP-05-17 and 19
Appellate Case No. 2015-001183

---

Camille Hodge, Jr., as Personal Representative of the Estate of Mable Hodge, Deceased.....Respondent,

v.

UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS-Pruitt Holdings, Inc. a/k/a UHS–Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow,

of Whom UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS-Pruitt Holdings, Inc. a/k/a UHS–Pruitt Corp. are.....Appellants.

Camille Hodge, Sr., .....Respondent,

v.

UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS-Pruitt Holdings, Inc. a/k/a UHS–Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow,

of Whom UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS-Pruitt Holdings, Inc. a/k/a UHS–Pruitt Corp. are.....Appellants.

---

PROOF OF SERVICE

---

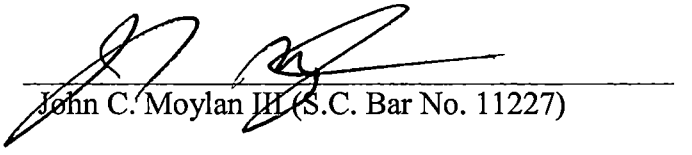
I certify that I have served a copy of the Respondents' Return to Petition for Writ of Certiorari on all counsel of record by depositing copies of same in United States Mail, postage prepaid, on June 29, 2018, at the following addresses:

Monteith P. Todd, Esquire
J. Michael Montgomery, Esquire
Robert E. Horner, Esquire
Robinson Gray Stepp & Laffitte, LLC
Post Office Box 11449
Columbia, SC 29211

*Counsel for Appellants*

James D. Nance, Esquire
Nance, McCants & Massey
Post Office Box 2881
Aiken, SC 29802

*Counsel for R. Dale Padgett, M.D., P.A. and Dr. Herbert A. Moskow*



John C. Moylan III (S.C. Bar No. 11227)

June 29, 2018

*Counsel for Respondents*