

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2017-CP-26-01351
Appellate Case No. 2018-000188
Unpublished Opinion No. 2021-UP-105 (S.C. Ct. App. filed March 31, 2021)

Orveletta Alston as Personal Representative of the
Estate of Willie Earl Alston, Sr.,.....Respondent,

v.

Conway Manor, LLC, Raymond Tiller, and
John and Jane Does 1-10,..... Appellants.

**REPLY TO RETURN TO PETITION
FOR WRIT OF CERTIORARI**

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Petitioners Conway Manor, LLC, Raymond Tiller, and John and Jane Does 1-10, by and through their undersigned counsel, hereby submit this Reply to Return to Petition for Writ of Certiorari.

ARGUMENTS

I. **Petitioners dispute the Court of Appeals' finding that Ms. Alston-Wood lacked authority to enter into the Admission Agreement.**

Respondent contends Petitioners do not dispute the Court of Appeals' finding that Ms. Alston-Wood lacked authority to enter into contracts addressing health care (in this case, the Admission Agreement). (Return p. 8).

Respondent misconstrues Petitioners' argument. Petitioners do not concede Ms. Alston-Wood lacked authority to enter into a contract addressing Mr. Alston's health care. Instead, as argued in Petitioners' Petition for Writ of Certiorari, Petitioners argued there were no requirements that Conway Manor, LLC make efforts to locate a person of higher priority, and Ms. Alston-Wood represented in the Admission Agreement that she was authorized to bind her father to the terms of the Admission Agreement. (Pet. for Cert. pp. 6-7).

II. **The Admission Agreement described several benefits to be received by Mr. Alston.**

Respondent, in her discussion of the third-party beneficiary issue, noted the court in THI of S.C. at Columbia, LLC v. Wiggins, 2011 WL 4089435 (D.S.C. Sept. 13, 2011) "refer[red] to benefits and responsibilities of the resident, the facility, and the fiduciary party." 2011 WL 4089435, *18. Respondent asserts the Admission Agreement in the case at bar does not refer to any benefits of Mr. Alston. (Return p. 14).

To name only a few benefits provided to Mr. Alston under the Admission Agreement, it addresses his treatment by nursing home staff and physicians, room and board, laundry services, social services, dietary services, therapy services, pastoral care, and other routine personal care

items. (R. pp. 114 - 116). Thus, Respondent's reliance on an alleged lack of benefits under the Admission Agreement is misplaced.

III. **The Federal Arbitration Act applies in this case.**

In discussing the Court of Appeals' ruling that there is no valid arbitration provision to enforce under the Federal Arbitration Act, 9 U.S.C. § 1, et seq. ("FAA"), Respondent asserts the claims asserted do not fall within the scope of the arbitration provision. (Return p. 15). This is not true.

The arbitration provision addresses both tort and statutory claims which in any way arise from or relate to the Admission Agreement. (R. p. 53). In her Complaint, Respondent has asserted causes of action for negligence, negligence per se, fraud and misrepresentation, violation of the South Carolina Unfair Trade Practices Act, wrongful death, and survivorship. All of those claims are either tort or statutory claims, and all arise from Mr. Alston's admission to Conway Manor, LLC. (R. pp. 11 – 27).

Respondent also argued Petitioners failed to preserve their argument that the interstate commerce requirement was satisfied for application of the FAA. (Return p. 16). Respondent is wrong, and Petitioner's argument that the FAA mandates arbitration was preserved for appellate review.

"Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide [the appellate court] with a platform for meaningful appellate review." Herron v. Century BMW, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (internal citation omitted). Requiring that an issue be raised to the trial court "is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." Id. (internal citation omitted).

Petitioners presented the trial court with a thorough argument on the issue of whether the FAA mandates arbitration of Respondent's claims. The argument covered all factors necessary to establish that the FAA mandated arbitration, including the factors that a valid arbitration agreement exists, a dispute exists within the scope of that agreement, and that interstate commerce was implicated. [R. p. 107 – 110.] In fact, Appellants dedicated a page of argument to the interstate commerce factor and supported the argument through citation to law and affidavit testimony. [R. p. 109 – 110.]

Respondent, in reply, presented her arguments to the trial court as to why the FAA did not mandate enforcement of the Agreement. [R. p. 177 – 178.] Finally, Appellants argued at the hearing before the trial court that the FAA mandated arbitration. [R. p. 209:lines 8 – 13.] Based on the parties' memoranda and oral arguments, the trial court considered and ruled upon the issue of whether the FAA mandates arbitration, finding "the FAA does not apply." [R. p. 10.]

Respondent appears to argue that issue preservation rules require an appellant to secure a ruling on every factor or element contained within an issue presented to the trial court but cites no authority for this proposition. Such an argument runs contrary to the theory behind issue preservation. The trial court had before it everything necessary to consider whether the FAA mandates arbitration in this matter, including arguments on all factors necessary for the FAA to apply and require arbitration. This gave the trial court a full and fair opportunity to rule on the issue.

Based on everything it heard, the trial court did rule on the issue, finding that the FAA did not apply. To mandate that an appellant secure a ruling on each and every factor or element subsumed within an issue would run contrary to the purpose underpinning issue preservation principles, would run contrary to the principles of judicial economy, and would require an

appellant to engage in futile actions in order to preserve issues for appellate review. See, e.g., Fettler v. Gentner, 396 S.C. 461, 469, 722 S.E.2d 26, 31 (Ct. App. 2012) (“This [c]ourt does not require parties to engage in futile actions in order to preserve issues for appellate review.”) (internal citation omitted).

The relevant issue before this Court is whether the trial court improperly denied Petitioners’ Motion because the FAA mandates arbitration. Having heard and considered the parties’ arguments on all factors underpinning that issue, the trial court ruled on the same. This issue, therefore, is preserved for appellate review.

CONCLUSION

For the reasons set forth in the Petition for Writ of Certiorari and this Reply, Petitioners respectfully ask this Court to grant the Petition for Writ of Certiorari.

Respectfully submitted this 4 day of August, 2021.

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