

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)
)
Edith Peoples, as personal representative)
of the estate of Floyd Young,)
)
Plaintiff,)
)
v.)
)
Pruitt Health – Ridgeway,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

Civil Action No.: 2022-CP-20-00017

**ORDER DENYING DEFENDANT’S
MOTION TO DISMISS AND/OR STAY
AND COMPEL ARBITRATION**

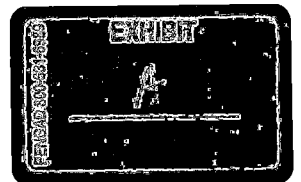
This matter comes before the Court on Defendant’s Motion to Dismiss and/or Stay and Compel Arbitration pursuant to Rules 12(b)(1)(3) and (6) of the South Carolina Rules of Civil Procedure and the Federal Arbitration Act. A hearing was held before the Court on March 31, 2022. Joshua Whitley was present on behalf of the Defendant and Creighton Coleman and Brad Jordan were present on behalf of the Plaintiff. For the following reasons this Court respectfully **DENIES** the Defendant’s Motion to Dismiss and/or Stay and Compel Arbitration.

FACTUAL AND PROCEDURAL BACKGROUND¹

In 2012, Mr. Young was found to be a vulnerable adult and placed in the custody of the South Carolina Department of Social Services (DSS) pursuant to a Family Court Order by the Honorable W. Thomas Sprott, Jr. dated January 11, 2012. This Order found that “Mr. Young physically neglected himself,” and that “[he] is unable to adequately provide for his own care and protection.” Judge Sprott ordered that “[DSS] shall retain legal and physical custody of the vulnerable adult, Floyd Young in order to secure a safe and protective placement.” The Order did not make any findings regarding Mr. Young’s mental capacity.

¹ Unless otherwise cited, all facts in this section were taken from Plaintiff’s Complaint, and the Memoranda submitted for this motion along with any exhibits.

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In March of 2012, DSS admitted Mr. Young to PruittHealth, a skilled nursing facility in Ridgeway, South Carolina. Upon his admission, DSS employee Jeanette Sanders signed an Arbitration Agreement on March 2, 2012, which stated

[a]ny and all claims or controversies arising out of or in any way relating to this Agreement ... including ... any acts or omissions in connection with such care or services ... any claim based on negligence, any claim resulting from death or injury ... shall be submitted for arbitration.

The arbitration agreement waived Mr. Young's Constitutional right to a trial by jury and required any disputes over PruittHealth's care of Mr. Young to be resolved through binding arbitration. The agreement, was never shown or explained to Mr. Young, his family, or his Power of Attorney, Edith Peoples.

Mr. Young resided in PruittHealth for over eight years. During his stint, Mr. Young required several trips to the Emergency room for pneumonia, sepsis, a urinary tract infection, pressure ulcers, feeding tube issues, ulcerations in the GI tract, and severe peritonitis from swallowing a latex glove, all of which the Plaintiff claim were a result of actions or inactions by the Defendant. On March 30, 2020 Mr. Young passed away. Edith Peoples, as Personal Representative of the Estate of Mr. Young, filed a survivorship action against PruittHealth. The Defendant filed this motion to dismiss and/or stay and compel arbitration pursuant to the Arbitration Agreement.

STANDARD OF REVIEW

“Whether a claim is arbitrable ‘is an issue for judicial determination, unless the parties provide otherwise.’” *Scott v. White Oak Manor, Inc.*, 426 S.C. 568, 573, 828 S.E.2d 82, 85 (2019) (quoting *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001)). “[A] circuit court’s factual findings will not be reversed on appeal if any evidence reasonably supports

those findings.” *Id.* (quoting *Timmons v. Starkey*, 380 S.C. 590, 595, 671 S.E.2d 101, 104 (Ct. App. 2008).

DISCUSSION

The Supreme Court of South Carolina has held that arbitration agreements in conjunction with nursing home residency contracts are governed by the Federal Arbitration Act. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 759 S.E.2d 727 (2014). “Because arbitration under the FAA rests entirely upon consent, it is always up to the court to determine if the parties have an agreement to arbitrate.” *Simmons v. Benson Hyundai, LLC*, No. 2019-000344, 2022 WL 791174, at *2 (S.C. Ct. App. Mar. 16, 2022), *reh'g denied* (Mar. 25, 2022) (internal citations omitted). “Arbitration may not be compelled unless the court is satisfied ‘the making of the agreement for arbitration ... is not in issue.’” *Id.* (citing 9 U.S.C § 4). Whether an agreement to arbitrate was formed is a question for the court. *Id.* While the Defendant argues that the FAA governs the arbitration agreement and, therefore, arbitration is mandatory, the Court believes that the FAA is not an issue in this case². Instead, the issue here is whether or not the agreement to arbitrate was sufficiently entered into. Because Mr. Young was placed into DSS custody by the Family Court, and DSS signed the arbitration agreement on behalf of Mr. Young, this decision boils down to whether or not DSS had authority to bind Mr. Young to the arbitration agreement.

Clearly, the Family Court Order does not specifically grant DSS the authority to bind Mr. Young to arbitration agreements or any other contracts. It simply places Mr. Young into the “legal and physical custody” of DSS with no explanation or guidance into what that means. Thus, the

² The Plaintiff never disputed that this case is governed by the FAA.

analysis takes the court to the enabling statutes and regulations governing DSS to determine DSS's authority. The relevant portions of the statutes are as follows.

'Protective services' means those services whose objective is to protect a vulnerable adult from harm caused by the vulnerable adult or another. These services include, but are not limited to, evaluating the need for protective services, securing and coordinating existing services, arranging for living quarters, obtaining financial benefits to which a vulnerable adult is entitled, and securing medical services, supplies, and legal services.

S.C. Code Ann. § 43-35-10 (9) (1976).

In addition to all other powers and duties that an investigative entity is given in this article, the investigative entity may:

- (1) have access to facilities for the purpose of conducting investigations, as otherwise permitted by law;
- (2) request and receive written statements, documents, exhibits, and other items pertinent to an investigation including, but not limited to, hospital records of a vulnerable adult which the hospital is authorized to release upon written request of the investigative entity without obtaining patient authorization;
- (3) issue, through its director, administrative subpoenas for the purpose of gathering information and documents;
- (4) institute proceedings in a court of competent jurisdiction to seek relief necessary to carry out the provisions of this chapter;
- (5) require all persons, including family members of a vulnerable adult and facility staff members, to cooperate with the investigative entity in carrying out its duties under this chapter including, but not limited to, conducting investigations and providing protective services;
- (6) require all officials, agencies, departments, and political subdivisions of the State to assist and cooperate within their jurisdictional power with the court and the investigative entity in furthering the purposes of this chapter;
- (7) conduct studies and compile data regarding abuse, neglect, and exploitation;
- (8) issue reports and recommendations.

S.C. Code Ann. § 43-35-20 (1976).

The relevant portions of the regulations are as follows: "The agency shall provide protective services for adults who have been determined to be in need of such services in order to remedy or prevent situations of abuse, neglect or exploitation." S.C. Code Ann. Regs. 114-3310

(A) (2011). Further, it states

[s]ervices provided may include, but not limited to, the following:

- (1) Counseling with the client or other involved persons in order to remedy or prevent abusive, neglectful, or exploitive circumstances.
- (2) Protective placement of the adult client upon a voluntary agreement or by order of the Family Court.
- (3) Health related services to treat physical or mental illness. The caseworker shall not sign any consents for surgery unless the surgery is specifically authorized by the appropriate court.
- (4) Homemaker services to assist the client with daily living activities in the home.
- (5) Emergency caretaker services to provide responsible adult supervision on a temporary basis for an adult in need of protection.
- (6) Referral to Probate Court, or the appropriate agency, such a Social Security Administration or Veteran's Administration, in order to assist in the establishment of a representative or protective payee for protective services client.
- (7) Facilitation in the provision of any other Title XX service as determined by the needs of the client.

S.C. Code Ann. Regs. 114-3340 (2011).

The cardinal rule in statutory interpretation is that the Court must look at the plain and ordinary meaning in determining the intent of the legislature. Using this cardinal rule, it is clear that the legislation did not intend to give DSS the authority to sign binding arbitration agreements on behalf of vulnerable adults. Nothing in these statutes or regulations gives DSS the authority to sign any contracts on behalf of vulnerable adults in its custody, including arbitration agreements. The statutes generally direct investigations by DSS and focus on preventing harm to the vulnerable adult. An arbitration agreement does nothing to prevent harm to a vulnerable adult, but controls the method in which an issue between two parties is litigated. Additionally, the regulations do not give authority for DSS to provide services beyond dealing with healthcare issues. In fact, under these regulations, DSS does not even have authority to consent to a surgery on behalf of a vulnerable adult without court approval. The court is aware that both the relevant statutes and regulations include a "not limited to" provision, however, in interpreting legislative intent, the Court does not believe that allowing DSS to enter into arbitration agreement on behalf of a vulnerable adult was intended to be included in DSS authority. Further, allowing DSS to bind a

vulnerable adult to an arbitration agreement would be a significant overstep given the limited services that are specifically authorized by the legislation. Further, the arbitration agreement is expressly not a precondition of admission to PruittHealth. Thus, statutes giving authority to DSS for securing living quarters does not include to the authority to sign arbitration agreements.

The Defendant points this Court to *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 759 S.E.2d 727 (2014), stating that the Court should compel arbitration because circumstances in that case are similar to the circumstances in this case. However, this Court finds that *Dean* deals with a significantly different issue. In *Dean*, the issue addressed by the court was whether or not the FAA controlled the agreement to arbitrate. In this case, the Plaintiffs are arguing that the agreement to arbitrate was not entered into by the parties to be bound and the DSS employee did not have legal authority to bind the client. In *Dean*, the arbitration agreement was not signed by the patient, but signed by the patient's daughter³, even though the patient was competent. *Id.* at 376, 730. Most importantly, the Court in *Dean* noted that it was concerned that the patient did not sign the arbitration agreement despite being competent to do so, but that issue did not come up on appeal. *Id.* at 388, 736, footnote 13.

Unlike *Dean*, the issue that the arbitration agreement was not signed by the party to be bound is properly before this Court. Based on the arguments, Mr. Young was never found to be incompetent by the Family Court or medical providers. Thus, he had the capacity to understand and sign the arbitration agreement himself if he wanted to. Further, the DSS employee did not discuss the arbitration agreement with Mr. Young or with Mr. Young's family and power of attorney.

³ The patient's daughter was not the patient's health care power of attorney. *Dean*, 376, 730, footnote 1.

The Defendant argues that the DSS employee had authority to sign the arbitration agreement on behalf of Mr. Young, based on Judge Sprott's Order. The Order put Mr. Young in the "legal and physical" custody of DSS. However, that Order only gave DSS the authority to "secure a safe and protective placement." Admitting Mr. Young to the care of PruittHealth was in DSS's authority, but waiving his Constitutional Rights to a jury trial was not.⁴ Signing the arbitration agreement on behalf of Mr. Young was an overstep in DSS's authority as granted by Judge Sprott's Order.

CONCLUSION

For the foregoing reasons, the Defendant's motion to dismiss and/or stay and compel arbitration is **DENIED**⁵.

So Ordered.

Judge Brian M. Gibbons
Chief Administrative Judge
Sixth Judicial Circuit

Fairfield County, South Carolina

April _____, 2022

⁴ The arbitration agreement specifically stated that it was not a precondition to admission. The DSS employee could have admitted Mr. Young without signing the arbitration agreement.

⁵ The Defendant's Motion was partly based on 12(b) (1)(3) and (6), however, no argument was made in its memorandum or during oral arguments based on these rules. Thus, they are not addressed in this Order.



Fairfield Common Pleas

Case Caption: Edith Peoples , plaintiff, et al VS Pruitt Health-Ridgeway
Case Number: 2022CP2000017
Type: Order/Other

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

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