

SUPREME COURT OF ARKANSAS

Courtyard Gardens Health & Rehabilitation, LLC v. Quarles

428 S.W.3d 437 (Ark. 2013) · Decided May 30, 2013

OPINION

HANNAH, J.

JIM HANNAH, Chief Justice. | TAppellants/Cross-Appellees Courtyard Gardens Health and Rehabilitation, LLC; Arkadelphia Holdings, LLC; SLC Operations Master Tenant, LLC; SLC Operations, LLC; |2SLC Professionals of Arkansas, LLC; SLC Administrative Services of Arkansas, LLC; Capital SeniorCare Ventures, LLC; SLC Properties, LLC; 2701 Twin Rivers Drive, LLC; Angela Marlar, in her capacity as Administrator/Executive Director of Golden Living Center — Arka-delphia, n/k/a Courtyard Gardens Health and Rehabilitation, LLC; and Deborah Thornton, in her capacity as Administrator of Courtyard Gardens Health and Rehabilitation, LLC, fik/a Golden Living Center— Arkadelphia (collectively, “Courtyard Gardens”) appeal from an order entered by the Clark County Circuit Court denying their motion to dismiss and to compel arbitration.

Appellee/Cross-Appellant Kenny Quarles, as Special Administrator of the Estate of Bennie Jean Quarles, deceased, and on behalf of the wrongful-death beneficiaries of Bennie Jean Quarles, deceased (“the Estate”), cross-appeals from the same order.

We hold that there was no valid arbitration agreement as a matter of law; accordingly, we affirm the denial of the motion to compel arbitration. This disposition renders all other issues, including the cross-appeal, moot.

The facts are these. On February 2, 2009, Bennie Jean Quarles, the decedent, became a resident of Golden Living Center, a nursing home in Arkadelphia. At that time, her son, Ronald Quarles, signed admission documents on her behalf. Those documents included an arbitration agreement; however, that arbitration agreement is not the one at issue in this case.

On July 1, 2009, Courtyard Gardens took over ownership and operation of the facility (and changed its name). Sometime shortly thereafter, Ronald Quarles signed a new admission agreement and a new optional arbitration agreement in his capacity as “responsible party” on behalf of his mother.

The arbitration agreement stated in pertinent part as follows: | aIt is understood and agreed by Facility and Resident that any and all claims, disputes, and controversies (hereafter collectively referred to as a “claim” or collectively as “claims”) arising out of, or in connection with, or relating in any way to the Admission Agreement or any service or health care provided by the

Facility to the Resident shall be resolved exclusively by binding arbitration to be conducted at a place agreed upon by the Parties, or in the absence of such an agreement, at the Facility, in accordance with the National Arbitration Forum Code of Procedure, (“NAF”) which is hereby incorporated into this Agreement, and not by a lawsuit or resort to court process.

(Footnote omitted.) The decedent was a resident of the facility until March 16, 2010. On May 3, 2011, Kenny Quarles, another of the decedent’s sons, filed in the circuit court an amended complaint against Courtyard Gardens and various other entities associated with it and with Golden Living Center.¹ Kenny Quarles filed the amended complaint as power of attorney for his mother, who was incapacitated at that time; after her death on May 17, 2011, he was substituted as party plaintiff in his role as special administrator of her estate.

The amended complaint sought damages for negligence, medical malpractice, and violations of the Arkansas Long-Term Care Residents’ Rights Act, Arkansas Code Annotated sections 20-10-1201 to -1209 (Repl.2005). Courtyard Gardens answered and then filed its motion to dismiss the complaint and compel arbitration, arguing that the arbitration agreement was valid and enforceable and that the claims raised in the amended complaint fell within its scope.

In response, Kenny Quarles (who was still acting as power of attorney at that time) contended that the arbitration agreement was invalid for two reasons: (1) there was no evidence that Courtyard Gardens assented to the agreement, as it was not signed by a corporate representative; and (2) there [4]was no evidence that the decedent assented to the agreement, as Ronald Quarles did not have authority to bind her by signing as her “responsible party.” Kenny Quarles further asserted that Courtyard Gardens had waived its right to demand arbitration by failing to timely assert it; that the arbitration agreement was unconscionable; and that enforcement of the arbitration agreement was impossible because it contained an integral term designating an arbitrator, the National Arbitration Forum, which had since become unavailable.² After a hearing, the circuit court entered an order denying Courtyard Gardens’s motion to compel arbitration.

The order included three findings: (1) Courtyard Gardens assented to the arbitration agreement; (2) questions of fact remained regarding Ronald Quarles’s authority to bind the decedent to the arbitration agreement, leaving the issue of authority as a question for the jury; and (3) enforcement of the arbitration agreement according to its terms was rendered impossible due to the unavailability of the National Arbitration Forum, the designation of which was an integral term of the agreement.

Courtyard Gardens filed a timely notice of appeal, and the Estate filed a timely notice of cross-appeal. On appeal, Courtyard Gardens argues that there was a valid arbitration agreement between the parties as a matter of law. It advances three alternative theories in support of this argument: that Ronald Quarles had actual authority to sign the arbitration agreement on the decedent’s

behalf, that he had statutory authority to sign the arbitration agreement on the | ^decedent's behalf, and that the decedent was bound as a third-party beneficiary to the arbitration agreement.

In addition, Courtyard Gardens maintains that the arbitration agreement was enforceable, as it did not expressly select the National Arbitration Forum as arbitrator and, even if it had, both the Federal Arbitration Act and the agreement itself provide for substitution in case of unavailability.

The Estate responds that the evidence is in dispute regarding Ronald Quarles's actual authority and that neither statutory authority nor the third-party-beneficiary doctrine applies. On the second point, the Estate contends that the arbitration agreement's provision referring to the National Arbitration Forum's Code of Procedure, and the incorporation of those procedures into the agreement, amounted to a designation in an integral term and that the substitution provisions are therefore inapplicable.

Alternatively, the Estate argues that Courtyard Gardens waived its right to arbitrate by failing to timely assert it. On cross-appeal, the Estate asserts that the arbitration agreement was invalid because Courtyard Gardens did not assent to it. Courtyard Gardens responds that its actions indicated its assent. Our jurisdiction is in accordance with Arkansas Rule of Appellate Procedure — Civil 2(a)(12) (2012) and Arkansas Code Annotated section 16 — 108—228(a)(1) (Supp.2011), which permit interlocutory appeals from orders denying motions to compel arbitration.

We granted the Estate's motion to reassign this case to this court on the basis that it presents a first-impression issue of statutory interpretation, pursuant to Arkansas Supreme Court Rule 1 — 2(b)(1) and (6) (2012).

We review a circuit court's order denying a motion to compel arbitration de novo on the record. *S. Pioneer Life Ins. Co. v. Thomas*, 2011 Ark. 490, 385 S.W.3d 770. As we have noted, the parties raise several issues in support of their positions.

However, the threshold issue— and the one that is dispositive in this case — is whether there was a valid arbitration agreement. See *Gruma Corp. v. Morrison*, 2010 Ark. 151, 362 S.W.3d 898. This court has held that arbitration is simply a matter of contract between parties. *S. Pioneer Life Ins. Co.*, *supra*.

The question of whether a dispute should be submitted to arbitration is a matter of contract construction, and we look to the language of the contract that contains the agreement to arbitrate and apply state-law principles. *Id.* We have further held that the same rules of construction and interpretation apply to arbitration agreements as apply to agreements generally; thus, we will seek to give effect to the intent of the parties as evidenced by the arbitration agreement itself.

Tyson Foods, Inc. v. Archer, 356 Ark. 136, 147 S.W.3d 681 (2004) (quoting E-Z Cash Advance, Inc. v. Harris, 347 Ark. 132, 60 S.W.3d 436 (2001)). Finally, the construction and legal effect of an agreement to arbitrate are to be determined by this court as a matter of law. *Id.* We must first determine whether Ronald Quarles had actual authority to bind the decedent to the arbitration agreement.

Courtyard Gardens posits that Ronald Quarles signed the arbitration agreement in his capacity as the decedent's agent. Our law on agency is well settled: We have adopted the definition of agency contained in the Second Restatement of the Law of Agency, § 1, comment a, which provides that the relation of agency is created as the result of conduct by two parties manifesting that one of them is willing for the other to act for him subject to his control, and that the other consents so to act.

The principal must in some manner indicate that the agent is to act for him, and the agent must act or agree to act on the principal's behalf and subject to his control. *Crouch v. Twin City Transit*, 245 Ark. 778, 434 S.W.2d 816 (1968).

The two essential elements of the definition are authorization and right to control. *Evans v. White*, 284 Ark. 376, 378, 682 S.W.2d 733, 734 (1985). The burden of proving an agency relationship lies with the party asserting its existence. *Pledger v. Troll Book Clubs, Inc.*, 316 Ark. 195, 871 S.W.2d 389 (1994).

In support of its contention that Ronald Quarles was acting as the decedent's agent at the relevant time, Courtyard Gardens points to his deposition testimony, wherein he stated that he understood that he was signing the arbitration agreement on his mother's behalf; that, while his mother was not present in the room when he signed it, he had discussed with her that he was going to sign the documents "to admit her into the nursing home"; and that he "thinkfs]" that he showed the arbitration agreement to his mother and discussed with her whether or not she wanted him to sign it.

However, this testimony clearly related to the February 2009 documents signed upon the decedent's admission to Golden Living Center. The undated arbitration agreement at issue here was signed sometime after July 1, 2009, when Courtyard Gardens took over ownership and operation of the facility. There was no testimony that Ronald Quarles showed this arbitration agreement to his mother or discussed with her whether or not she wanted him to sign it.

In fact, Ronald Quarles testified that he did not remember signing new documents as a result of the change in ownership. He did state that he understood that he was signing both the second admission agreement and the second arbitration agreement on his mother's behalf. Nonetheless, we have held that, while the statements and actions of an alleged agent may be admissible to

corroborate other evidence tending to establish agency, neither agency nor the scope of agency can be established by declarations or actions of the purported agent.

B.J. McAdams, Inc. v. Best Refrigerated Exp., Inc., 265 Ark. 519, 579 S.W.2d 608 (1979). Acknowledging that the decedent had been diagnosed with moderate to severe dementia around the time of her admission to the facility, Courtyard Gardens contends that the evidence showed that her dementia was intermittent. It also avers that she was presumed to have the capacity to act as a principal and to grant her son authority to act as her agent.

We need not determine these issues because, mental capacity aside, the evidence is still insufficient. While Ronald Quarles purported to act on the decedent's behalf and subject to her control, there is no evidence at all to support the contention that the decedent had authorized him to do so, even assuming that she had the capacity to provide authorization.

Stated differently, one of the two essential elements of an agency relationship — authorization — has not been established. The only evidence introduced by Courtyard Gardens was Ronald Quarles's deposition testimony, and, as we have stated, his statements are insufficient to establish agency. *Id.* Furthermore, even his deposition testimony failed to include an assertion that his mother indicated a desire for him to act on her behalf.

On the record before us, we hold that the evidence fails to demonstrate, as a matter of law, that Ronald Quarles had actual authority to bind the decedent to the arbitration agreement. This does not yet end our analysis because Courtyard Gardens makes two alternative arguments in support of its position that the parties entered into a valid arbitration agreement.

First, it contends that Ronald Quarles had statutory authority to sign the arbitration | ^agreement on the decedent's behalf. Specifically, Courtyard Gardens relies on Arkansas Code Annotated section 20-9-602(11) (Supp.2011), which provides that an adult child of a parent who is of unsound mind "may consent, either orally or otherwise, to any surgical or medical treatment or procedure not prohibited by law that is suggested, recommended, prescribed, or directed by a licensed physicianf]" Courtyard Gardens suggests that Ronald Quarles, as the decedent's adult child, had authority under this statute to not only consent to her medical treatment but to also consent to related contracts, including the arbitration agreement.

We reject this interpretation on the basis that it conflicts with the plain language of section 20-9-602(11). The basic rule of statutory interpretation is to give effect to the intent of the General Assembly. *Carmody v. Raymond James Fin. Servs., Inc.*, 373 Ark. 79, 281 S.W.3d 721 (2008).

The first rule in determining the meaning of a statute is to construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language. *Id.* This court will construe a statute so that no word is left void, superfluous, or insignificant, with meaning and effect given to every word in the statute if possible. *Id.* When the language of a statute is plain and

unambiguous, conveying a clear and definite meaning, we need not resort to the rules of statutory construction.

Id. A statute is ambiguous only where it is open to two or more constructions, or where it is of such obscure or doubtful meaning that reasonable minds might disagree or be uncertain as to its meaning. *Id.* Giving the words of section 20-9-602(11) their ordinary and usually accepted meaning, it simply cannot be said that the statute contemplates the signing of an arbitration agreement by an adult child on behalf of a parent of unsound mind.

The statute unambiguously refers only to “any surgical or medical [i]ntreatment or procedure” as actions to which an adult child may consent. Consequently, we conclude that Ronald Quarles did not have authority to bind the decedent to the arbitration agreement by virtue of section 20-9-602(11).

For its second alternative argument, Courtyard Gardens contends that the third-party-beneficiary doctrine applies to bind the decedent to the arbitration agreement as a matter of law. More specifically, Courtyard Gardens maintains that it and Ronald Quarles entered into the arbitration agreement with the intent to benefit the decedent, a third party.

The circuit court did not rule on this argument, and it is therefore not preserved for our review. See *Lucas v. Jones*, 2012 Ark. 365, 423 S.W.3d 580 (stating that, where an appellant fails to obtain a specific ruling below, we do not consider that point on appeal).

In its order addressing whether the parties had entered into a valid arbitration agreement, the circuit court limited its finding to issues of authority (in addition to the issue of Courtyard Gardens’s assent). Even assuming that this finding dealt with both actual authority and statutory authority, we cannot say that it also encompassed Courtyard Gardens’s argument on the unrelated issue of the third-party-beneficiary doctrine.

Because we determine that Ronald Quarles had neither actual authority nor statutory authority to enter into the arbitration agreement on the decedent’s behalf, we hold that there was no valid arbitration agreement as a matter of law.

We note that the circuit court’s order framed the issue as one of fact, finding that questions of fact remained for the jury on the issue of authority. Nonetheless, we can affirm because the circuit court reached the right result, albeit for the wrong reason. See, e.g., *Sluder v. Steak & Ale of Little Rock, Inc.*, 368 Ark. 293, 245 S.W.3d 115 (2006). Our holding that the parties did not have a valid contract to arbitrate is dispositive; therefore, we need not consider whether the arbitration agreement was enforceable, whether Courtyard Gardens waived its right to arbitrate, or whether the arbitration agreement was invalid on the basis of Courtyard Gardens’s failure to assent to it.

Affirmed on direct appeal; cross-appeal moot. GOODSON, J., dissents.. The Golden Living Center defendants ultimately settled and were dismissed from the case.. Following charges of anti-consumer bias, the National Arbitration Forum entered into a consent judgment with the State of Minnesota, the purpose of which was “to require the complete divestiture by the NAF Entities of any business related to the arbitration of consumer disputes.”

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