

Cite as 2022 Ark. App. 327

ARKANSAS COURT OF APPEALS

DIVISION II

No. CV-21-374

COURTYARD REHABILITATION
AND HEALTH CENTER, LLC; SA
ELDERCARE; JEJ INVESTMENTS,
LLC; ROSS PONTIE; AND MARK
THOMPSON

APPELLANTS

V.

ESTATE OF GUSTA TICE,
DECEASED; AND ANDREW
MCQUERRY, SPECIAL
ADMINISTRATOR

APPELLEES

Opinion Delivered September 14, 2022

APPEAL FROM THE UNION
COUNTY CIRCUIT COURT
[NO. 70CV-20-103]

HONORABLE SPENCER G.
SINGLETON, JUDGE

AFFIRMED

PHILLIP T. WHITEAKER, Judge

Courtyard Rehabilitation and Health Center, LLC; SA Eldercare, LLC; JEJ Investments, LLC; Ross M. Pontie; and Mark Thompson bring this interlocutory appeal from an order of the Union County Circuit Court denying their motion to compel arbitration of a lawsuit filed by appellee Andrew McQuerry, as special administrator of the estate of Gusta Tice, deceased. Appellants claim on appeal that the circuit court erred in refusing to enforce a valid arbitration agreement. For the following reasons, we find no error and affirm.

On August 12, 2016, ninety-one-year-old Gusta Tice was admitted into the Courtyard Rehabilitation and Health Center (“Courtyard”) in El Dorado, Arkansas. At the

time of her admission to Courtyard, Tice did not personally sign any admission documents; instead, her son Andrew McQuerry signed all documents on her behalf. Among the documents signed by McQuerry was an admission agreement, which stated:

The undersigned resident or resident's representative (collectively, the "Resident") hereby request admission of /s/ Gusta Tice [Name of Resident] to **Courtyard Rehabilitation and Health Center** (the "Nursing Facility" or "Facility") for medical, nursing, and personal care. The Nursing Facility and the Resident agree to the following terms for the Resident's care.

As a condition of admission, Courtyard also required a signature on an accompanying arbitration agreement.¹ McQuerry signed both the admission agreement and the arbitration agreement, being identified as Tice's "Representative" and "Legal Representative," respectively. Both agreements requested documentation of any existing guardianship papers or powers of attorney. However, there is no evidence that any such documentation was provided, and the provisions addressing such representation in the agreements signed by McQuerry remained blank.

In March 2018, while a resident of Courtyard, Tice died from injuries she allegedly sustained during a fall at the facility, and her remains were cremated. McQuerry, as the special administrator of Tice's estate, subsequently brought suit against the appellants, alleging causes of action for negligence, fraud, deceit, medical neglect, spoliation, and the tort of outrage arising from Tice's death and subsequent cremation.²

¹The arbitration agreement stated that it "covers all disputes arising from this or any future stays in this Facility, including disputes arising from services prior to the date of this Agreement or arising after the Resident is discharged from the Facility" and that the decision of the arbitrator "binds both parties and is final."

²The complaint also alleged claims of medical negligence against MCSA, L.L.C., d/b/a Medical Center of South Arkansas and certain John Doe defendants. An amended

Courtyard subsequently moved to compel arbitration.³ It contended that McQuerry had signed the agreements in his individual capacity, thereby creating a valid contract to arbitrate between him and Courtyard, and that Tice was a third-party beneficiary to this contract. In the alternative, citing the supreme court's decision in *Jorja Trading, Inc. v. Willis*, 2020 Ark. 133, 598 S.W.3d 1, Courtyard argued that the Federal Arbitration Act ("FAA")⁴ preempts our third-party-beneficiary line of arbitration cases because it employs arbitration-specific rules with respect to third-party beneficiaries rather than general contract law.

McQuerry filed a response denying the validity and enforceability of the arbitration agreement and asserting that he lacked the power or authority to execute the arbitration agreement on Tice's behalf. He further argued that he signed the admission and arbitration agreements in his representative, not individual, capacity, and under our case law, Tice could not be a third-party beneficiary to the contract. He further argued that the agreement was void, that it was an invalid adhesion contract, that further discovery was necessary, and that some of the defendants were not parties to the agreement and lacked standing to enforce it.

The court conducted a hearing on the motion to compel. After hearing the arguments of counsel, the court denied the motion to compel arbitration. In doing so, it

complaint subsequently named two new defendants, Ezinne Charity Nwude, M.D., and Emery Leah Green, P.A., and alleged claims of medical negligence against them as well. They are not parties to this interlocutory appeal.

³Subsequently, SA Eldercare, LLC; JEJ Investments, LLC; Ross M. Ponthie; and Mark Thompson moved to join in Courtyard's motion to compel arbitration, which the court ultimately granted.

⁴9 U.S.C. §§ 1–16.

referenced decisions of our court, *Progressive Eldercare Services-Chicot, Inc. v. Long*, 2014 Ark. App. 661, 449 S.W.3d 324 (rejecting third-party-benefit argument), and our supreme court, *Courtyard Gardens Health & Rehabilitation, LLC v. Quarles*, 2013 Ark. 228, 428 S.W.3d 437 (holding that son who signed nursing-home-admission paperwork for his mother lacked authority as “Responsible Party” to be considered her agent and thus could not bind mother to arbitration). In addressing Courtyard’s argument pertaining to our supreme court’s recent decision in *Jorja*, the court described the argument as “novel” but found that the argument had yet to be adopted by any appellate court in the state despite having had the opportunity to do so.⁵ This appeal followed.

On appeal, appellants challenge the circuit court’s order denying the motion to compel arbitration, arguing (1) that there was a valid agreement encompassing the parties’ dispute that obligated them to arbitration and (2) that the Federal Arbitration Act preempts the court’s application of an arbitration-specific rule to the third-party-beneficiary doctrine.

An order denying a motion to compel arbitration is immediately appealable pursuant to Arkansas Rule of Appellate Procedure—Civil 2(a)(12) (2021). We review a circuit court’s denial of a motion to compel arbitration de novo on the record. *Robinson Nursing & Rehab. Ctr., LLC v. Phillips*, 2019 Ark. 305, 586 S.W.3d 624. While we are not bound by the circuit court’s decision, in the absence of a showing that the circuit court erred in its interpretation of the law, we will accept its decision as correct on appeal. *Progressive Eldercare Servs.-Morrilton, Inc. v. Taylor*, 2021 Ark. App. 379.

⁵*Innisfree Health & Rehab, LLC v. Jordan*, 2020 Ark. App. 518.

The parties do not dispute that the FAA governs the agreements at issue. The FAA establishes a national policy favoring arbitration when the parties contract for that mode of dispute resolution. *Reg'l Care of Jacksonville, LLC v. Henry*, 2014 Ark. 361, 444 S.W.3d 356. Likewise, in Arkansas, arbitration is strongly favored as a matter of public policy and is looked upon with approval as a less expensive and more expeditious means of settling litigation and relieving docket congestion. *Id.* Despite an arbitration provision being subject to the FAA, we look to state contract law to decide whether the parties' agreement to arbitrate is valid. *Phillips, supra*. The same rules of construction and interpretation apply to arbitration agreements as apply to agreements in general. *Id.*

In deciding whether to grant a motion to compel arbitration, two threshold questions must be answered: (1) Is there a valid agreement to arbitrate between the parties? and (2) If such an agreement exists, does the dispute fall within its scope? *Id.* In answering these questions, doubts about arbitrability must be resolved in favor of arbitration. *Colonel Glenn Health & Rehab, LLC v. Aldrich*, 2020 Ark. App. 222, 599 S.W.3d 344. We are also guided by the legal principle that contractual agreements are construed against the drafter. *Id.*

We must first determine the threshold inquiry of whether a valid agreement to arbitrate exists. *Phillips, supra*. We have held that, as with other types of contracts, the essential elements for an enforceable arbitration agreement are (1) competent parties, (2) subject matter, (3) legal consideration, (4) mutual agreement, and (5) mutual obligations. *Id.* As the proponent of the arbitration agreement, appellants have the burden of proving these essential elements. *Id.*

When a third party signs an arbitration agreement on behalf of another, we must determine whether the third party was clothed with the authority to bind the other person to arbitration. *Id.* The burden of proving an agency relationship lies with the party asserting its existence. *Id.* Not only must the agent agree to act on the principal's behalf and subject to his control, but the principal must also indicate that the agent is to act for him. *Id.*

Appellants first contend that McQuerry signed the arbitration agreement in his individual capacity, and as such, Tice became a third-party beneficiary to that contract. Two elements are necessary in order for the third-party-beneficiary doctrine to apply under Arkansas law: (1) there must be an underlying valid agreement between two parties, and (2) there must be evidence of a clear intention to benefit a third party. *Id.* Thus, the critical question is whether McQuerry signed the arbitration agreement while acting in his individual capacity such that it created an enforceable contract between McQuerry and the appellants with a clear intention to benefit Tice. Appellants assert that such is the case. However, McQuerry argues that he signed the agreement only as a representative of Tice; not in his individual capacity.

Under the facts before us, appellants have failed to demonstrate that McQuerry signed the arbitration agreement in his individual capacity rather than in a representative capacity. In both instances when McQuerry signed the admission and the arbitration agreements, he is identified as the "Representative," not as a party to the contract itself. The appellants did not present any evidence that Tice authorized McQuerry to bind her or act on her behalf. Both agreements contained specific provisions asking whether McQuerry had a power of attorney to act on Tice's behalf or if he was appointed her guardian. In both

documents, these provisions were left blank, and it does not appear that any such documentation was ever provided. In fact, there is no evidence that McQuerry had such authority. Because there was no valid agreement between appellants and McQuerry or between appellants and Tice, the circuit court correctly denied the motion to compel arbitration.

Appellants next argue that our supreme court's ruling in *Jorja*, 2020 Ark. 133, 598 S.W.3d 1, preempts our third-party-beneficiary line of arbitration cases and disposes of our need to resort to state law when determining whether a party is bound by the third-party-beneficiary doctrine. These exact arguments were extensively briefed and rejected by this court in *Ashley Operations, LLC v. Morphis*, 2021 Ark. App. 505, 639 S.W.3d. 410, and we find no reason to depart from its conclusion.

For the foregoing reasons, we affirm.

Affirmed.

HARRISON, C.J., and MURPHY, J., agree.

Kutak Rock LLP, by: *Samantha Blassingame*, for appellants.

M. Darren O'Quinn, for appellee Estate of Gusta Tice.