

Cite as 2023 Ark. App. 208

# ARKANSAS COURT OF APPEALS

DIVISION IV

No. CV-22-37

BELVEDERE NURSING AND  
REHABILITATION CENTER, LLC;  
CENTRAL ARKANSAS NURSING  
CENTERS, INC.; AND NURSING  
CONSULTANTS, INC.

APPELLANTS

V.

KATHY WARD, THOMAS POE AND  
GILFORD POE, AS CO-EXECUTORS  
OF THE ESTATE OF MARTHA POE,  
AND ON BEHALF OF THE  
WRONGFUL DEATH BENEFICIARIES  
OF MARTHA POE

APPELLEES

OPINION DELIVERED APRIL 12, 2023

APPEAL FROM THE GARLAND  
COUNTY CIRCUIT COURT  
[NO. 26CV-20-989]

HONORABLE MARCIA R.  
HEARNSBERGER, JUDGE

REVERSED AND REMANDED

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**ROBERT J. GLADWIN, Judge**

This is an appeal from an order of the Garland County Circuit Court denying a motion to compel arbitration. Appellants are Belvedere Nursing and Rehabilitation Center, LLC; Central Arkansas Nursing Centers, Inc.; and Nursing Consultants, Inc. (collectively referred to as “Belvedere”). Appellees Kathy Ward, Thomas Poe, and Gilford Poe (collectively referred to as “Ward”), are the co-executors of the estate of Martha Poe. Appellants contend that the circuit court erred in denying their motion to compel despite

the existence of a valid and enforceable arbitration agreement and Ward’s failure to establish any valid defense to enforcement of the contract. We reverse and remand.

I. *Background Facts*

On or around June 13, 2019, Martha Poe (“Poe”) admitted herself to Belvedere as a resident in Garland County, Arkansas. At this time, Poe executed documents in connection with her admission to the nursing home, namely, an admission agreement that included an arbitration agreement (collectively referred to as the “Agreement”), which is at issue here. The Agreement expressly stated the following in capital letters and bold font:

**THE PARTIES FURTHER ACKNOWLEDGE THAT THEY ARE GIVING UP AND WAIVING THEIR CONSTITUTIONAL RIGHT TO HAVE THEIR DISPUTES DECIDED IN A COURT OF LAW BEFORE A JUDGE AND JURY, AND ARE INSTEAD ACCEPTING THE USE OF ARBITRATION.**

Additionally, the Agreement stated that signing the contract was a condition of admission into Belvedere.

Poe died at the facility on August 30, 2019, and appellees—the co-executors of her estate—brought this lawsuit against Belvedere on September 1, 2020, for negligence, medical malpractice, breach of the Agreement, and violation of the Deceptive Trade Practices Act. Ward alleged that Poe was injured as a result of the care and treatment she received at Belvedere. Subsequently, the appellants moved to compel arbitration on October 12, 2020, arguing that all the claims brought by Ward were governed by, and subject to, a valid and enforceable agreement to arbitrate signed by Poe. Ward’s response alleged that the circuit court should deny the motion because the Agreement violated federal law since it required

arbitration as a condition of admission and, further, that the condition of admission made the Agreement unconscionable.

The circuit court held a hearing on the motion on April 12, 2021. On September 22, 2021, the court entered an order denying the motion to compel arbitration, stating only, “The Arbitration Agreement signed by Plaintiff and Defendant is a condition of admission. For this reason, the Defendant’s Motion to Compel Arbitration is DENIED.” Appellants filed a timely notice of appeal on October 20, 2021. This appeal followed.

## II. *Standard of Review*

An order denying a motion to compel arbitration is immediately appealable pursuant to Arkansas Rule of Appellate Procedure–Civil 2(a)(12) (2022). We review a circuit court’s denial of a motion to compel arbitration de novo on the record. *Courtyard Gardens Health & Rehab., LLC v. Arnold*, 2016 Ark. 62, 485 S.W.3d 669. Arbitration is simply a matter of contract between parties. *Hickory Heights Health & Rehab., LLC v. Cook*, 2018 Ark. App. 409, 557 S.W.3d 286. 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.* at 5, 557 S.W.3d at 290. 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. *Id.*, 557 S.W.3d at 290. The construction and legal effect of an agreement to arbitrate are to be determined by this court as a matter of law. *Id.*, 557 S.W.3d at 290.

### III. Discussion

As its sole point on appeal, Belvedere argues that the circuit court erred in denying its motion to compel arbitration despite the existence of a valid and enforceable arbitration agreement and despite appellees' failure to establish any defense to enforcement of the contract.

When a court is asked to compel arbitration, it is limited to deciding two threshold questions: (1) whether there is a valid agreement to arbitrate between the parties, and (2) if such an agreement exists, whether the dispute falls within its scope. *Asset Acceptance, LLC v. Newby*, 2014 Ark. 280, 437 S.W.3d 119. On appeal, the question of whether the circuit court ruled on the threshold questions is not raised by the parties; however, the Arkansas Supreme Court has made clear that a circuit court cannot skip this step of the analysis, nor will it presume a ruling on those issues simply because a circuit court rules on an asserted defense. See *Bank of the Ozarks, Inc. v. Walker*, 2014 Ark. 223, 434 S.W.3d 357.

In *Bank of the Ozarks*, the supreme court reversed and remanded to the circuit court to first resolve whether there was a valid agreement to arbitrate between the parties. *Id.* Additionally, the supreme court instructed the circuit court that if it found there was a valid agreement to arbitrate, then it must determine whether the dispute falls within the scope of the agreement. *Id.* Only then could the circuit court consider whether there was a defense that may be applied to invalidate the agreement. *Id.* In *Asset Acceptance, LLC v. Newby*, the court clarified, however, that remand is not required when a circuit court enters a blanket

denial of a motion to compel because the court's order constitutes a ruling on all of the issues raised by the parties. 2014 Ark. 280, 437 S.W.3d 119.

In *JS Arkansas Five Healthcare, LLC v. Gilbreath*, 2020 Ark. App. 405, 609 S.W.3d 445, we held that it was incumbent on the circuit court to do one of two things: (1) determine, in the first instance, whether there was a valid agreement to arbitrate; then, if the circuit court found that there was an agreement, determine whether the dispute fell within the scope of such agreement and, if so, consider whether the appellee had a valid defense; or (2) enter a blanket denial of the motion to compel, which would have constituted a ruling on all of the issues raised by the parties. Here, the circuit court did neither. Rather, the court denied the motion to compel because the arbitration agreement was a condition of admission. This finding of the circuit court demonstrates the importance of the threshold questions because it is impossible to determine here—without resorting to speculation—if the court's decision was based on validity or enforceability. Accordingly, pursuant to precedent, we reverse and remand this matter to the circuit court.

Reversed and remanded.

ABRAMSON and THYER, JJ., agree.

*Hardin, Jesson & Terry, PLC*, by: Jeffrey W. Hatfield, Kynda Almefty, Carol Ricketts, and Kirkman T. Dougherty, for appellants.

*Reddick Moss, PLLC*, by: Matthew D. Swindle and Heather G. Zachary, for appellees.