Cite as 2024 Ark. App. 93

ARKANSAS COURT OF APPEALS

DIVISION I
No. CV-22-510

LNH ONE, LLC, D/B/A BARNES HEALTHCARE; GL NURSING, LLC; MARSH POINTE MANAGEMENT, LLC; LINDSEY CLYBURN, INDIVIDUALLY AND AS ADMINISTRATOR OF LNH ONE, LLC, D/B/A BARNES HEALTHCARE; CHRISTOPHER BROGDON; AND JOHN DOE DEFENDANTS 1 THROUGH 10 APPELLANTS V. TARA GASPAR, AS SPECIAL ADMINISTRATOR OF THE ESTATE OF PATTY JANE HOLDER, DECEASED, AND ON BEHALF OF THE WRONGFUL DEATH BENEFICIARIES OF PATTY JANE HOLDER APPELLEE	Opinion Delivered February 14, 2024 APPEAL FROM THE LONOKE COUNTY CIRCUIT COURT [NO. 43CV-21-864] HONORABLE SANDY HUCKABEE, JUDGE AFFIRMED

ROBERT J. GLADWIN, Judge

This is an interlocutory appeal from an order of the Lonoke County Circuit Court denying a motion to compel arbitration. Appellants are LNH One, LLC, d/b/a Barnes Healthcare; GL Nursing, LLC; Marsh Pointe Management, LLC; Lindsey Clyburn, individually and as administrator of LNH One, LLC, d/b/a Barnes Healthcare; Christopher Brogdon; and John Doe defendants 1 through 10. Appellee is Tara Gaspar, as special

administratrix of the estate of Patty Jane Holder, deceased, and on behalf of the wrongful death beneficiaries of Patty Jane Holder. Appellants contend that the circuit court erred in denying their motion to compel arbitration despite the existence of a valid and enforceable arbitration agreement. We affirm.

I. *Background Facts*

On December 18, 2020, Patty Jane Holder ("Holder") was admitted to LNH One, LLC, d/b/a Barnes Healthcare, a long-term-care facility (the "Facility"). At the time of her admission, Holder had in place a durable power of attorney ("POA") designating William Holder—her husband—as her primary agent. The durable POA designated Tara Gaspar ("Gaspar")—her granddaughter—as the alternate agent in the event William Holder was unable or unwilling to serve. Holder also had a healthcare POA that included the same agent designations. Mr. Holder passed away on September 21, 2020. Both the durable and healthcare POAs state that in the event William Holder and Gaspar are unable or unwilling to serve, then Keith Holder shall serve as the alternate agent.

In anticipation of Holder's admission to the Facility, Gaspar—who was working out of state at the time—communicated with the Facility's marketing director, Chris Dow, who sent Gaspar eight emails containing exemplar admission documents for her to review. In her affidavit, Gaspar attests that Mr. Dow represented that the exemplar documents would be the same documents presented for Holder's admission to the Facility. Gaspar further stated that the voluntary arbitration agreement was included as an attachment in the

voluminous packet and that the exemplar documents she received did not contain or incorporate a required arbitration provision.

On December 18, Gaspar stated she received a call from a social worker who explained that Holder would be discharged from the hospital that day once the Facility paperwork was completed. Gaspar maintains that because she was working out of state and was unavailable to sign the admissions paperwork, she agreed for her mother—Toni Holder ("Toni")—to sign the necessary paperwork in order to facilitate Holder's transfer to the Facility. Gaspar attests that the request to have her mother sign the paperwork came from Traci Wagner—a Facility representative—and that she agreed only on the basis of the understanding that the documents sent by Mr. Dow on December 14 were the same documents that would be used for Holder's admission to the Facility. Furthermore, Gaspar admits that she did not contact Keith Holder, the designated alternate agent, to first determine if he was available or willing to go to the Facility to sign the admissions paperwork.

The signed admission agreement identified Patty Holder as the "Resident" and Toni Holder as the Resident's "Legal Representative" or "Responsible Party." In the agreement, "Legal Representative" is defined as "any person with the legal authority to act on behalf of an incompetent or incapacitated patient (e.g., a legal guardian or agent with power of attorney)." "Responsible Party" is defined as "a family member or other person interested in the residents' welfare who undertakes certain responsibilities in connection with the residents stay at the facility. If the resident has a legal representative, the residents' legal representative generally should serve as the residents' responsible party." Within the

admissions agreement is a mandatory arbitration provision; however, there is no separate signature block for the provision.

The admissions agreement was signed by Toni on the Resident Representative's signature line with the capacity lines checked for "Legal Representative" as "Agent under Durable Power of Attorney for Healthcare" and "Agent under a General Power of Attorney"; and for "Responsible Party," with the notation of "granddaughter POA." Traci Wagner signed the agreement on behalf of the Facility.

Holder was a resident of the Facility until December 30 and later passed away on January 20, 2021. On December 16, 2021, Gaspar, as the special administratrix of Holder's estate, filed a complaint against the Facility asserting claims for injuries to and for the wrongful death of Holder. The complaint alleged that while a resident of the Facility, Holder sustained numerous injuries, including falls, a fractured clavicle, bruised shoulder and hip, a UTI, dehydration, and severe pain and suffering—all leading to her death on January 20. On January 19, the Facility filed its answer that asserted the defense of arbitration, and on February 4, it filed a motion to stay proceedings and to compel arbitration. Gaspar opposed the motion, denying that the arbitration agreement was binding against Holder's estate on several bases, including lack of authority, lack of mutual assent, and unconscionability.

In its reply, the Facility maintained that Gaspar properly delegated the task of signing the admissions paperwork to Toni; that Toni noted on the paperwork she was signing on behalf of Holder pursuant to the authority given to Gaspar; that the scope of the durable POA is broad enough to include the authority to enter into arbitration agreements; that both

Gaspar and Toni assented on behalf of Holder; that the arbitration agreement applies to the nonsignatory defendants because of Gaspar's allegations of a sufficiently close relationship; and that the agreement was not unconscionable.

On May 11, the circuit court held a hearing, and on May 12, it entered its order denying the Facility's motion to compel arbitration. The court found that no valid arbitration agreement exists because neither Gaspar nor Toni had authority to bind Holder to the agreement; furthermore, the signatory capacity of Toni as noted on the admission agreement was ambiguous, and such ambiguity is construed against the Facility. The Facility filed a timely notice of appeal, and 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) (2023). 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.* The construction and legal effect of an agreement to arbitrate are to be determined by this court as a matter of law. *Id.*

III. *Points on Appeal*

On appeal, the Facility makes the following arguments: (1) the circuit court erred in finding that Gaspar did not have the authority to enter into the arbitration agreement on behalf of Holder; (2) the circuit court erred in finding that Toni did not have authority to enter into an arbitration agreement on behalf of Holder; and (3) the circuit court erred in finding that the signatory page for the arbitration agreement is ambiguous.

IV. *Discussion*

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. The threshold issue—and the one that is dispositive in this case—is whether there was a valid arbitration agreement.

Despite an arbitration agreement being subject to the Federal Arbitration Act ("FAA"), this court looks to state contract law to determine if the parties' agreement is valid. GGNSC *Holdings, LLC v. Chappel*, 2014 Ark. 545, 453 S.W.3d 645. The essential elements for an enforceable arbitration agreement are (1) competent parties, (2) subject matter, (3) legal consideration, (4) mutual agreement, and (5) mutual obligation. *Bank of the Ozarks, Inc. v. Walker*, 2014 Ark. 223, 434 S.W.3d 357. Thus, in order to have a valid agreement to arbitrate, there must have been mutual agreement with notice as to the terms and subsequent

assent. *Id.* The Facility, as the proponent of the arbitration agreement, has the burden of proving these essential elements. *See Robinson Nursing & Rehab. Ctr., LLC v. Phillips*, 2019 Ark. 305, 586 S.W.3d 624.

First, the Facility argues that the circuit court erred in finding that Gaspar did not have the authority to enter into the arbitration agreement on behalf of Holder. Specifically, the Facility maintains that the durable POA granted Gaspar the authority to bind Holder to the arbitration agreement. While the admission agreement was not signed by Gaspar, it is necessary to determine the extent of Gaspar's authority to bind her grandmother to the arbitration agreement.

When a third party signs an arbitration agreement on behalf of another, as was done in this case, the court must determine whether the third party was clothed with the authority to bind the other person to arbitration. *Courtyard Gardens Health & Rehab., LLC v. Williamson*, 2016 Ark. App. 606, at 3, 509 S.W.3d 685, 688. The Arkansas Uniform Power of Attorney Act provides that a general grant of authority for an agent "to do all acts that a principal could do" is sufficient to authorize the agent to take any of the acts described in Sections 204 through 216. Ark. Code Ann. § 28-68-201(c) (Supp. 2021). Section 212 specifically includes the submission of claims to "alternative dispute resolution." Ark. Code Ann. § 28-68-212(5) (Repl. 2012).

In the present case, the determination of whether Gaspar had the authority to agree to arbitration on her grandmother's behalf requires the interpretation of the general POA document. The Facility maintains that the durable POA bestowed upon Gaspar a general

power of attorney, which is sufficient to bind Holder to an arbitration agreement. In support, the Facility cites paragraph 5 of the durable POA signed by Holder, which grants Gaspar the authority "to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as Principal might or could do if personally present." In contrast, Gaspar maintains that the durable POA gave her the authority to act as Holder's agent with regard to specific categories, none of which extend to entering into an arbitration agreement that waived Holder's right to a jury trial for personal injury or healthcare disputes.

The nature and extent of the agent's authority must be ascertained from the power-of-attorney instrument itself. *Williamson*, 2016 Ark. App. 606, at 4, 509 S.W.3d. at 688. "[T]he whole of [the power of attorney] is to be taken together so as to give effect to every part, and each clause should be used to interpret the others." 3 Am. Jur. 2d *Agency* § 26 (2002). Although the principal may or may not have subjectively intended to authorize certain powers, a principal's subjective intent must yield to the plain meaning of the words employed in the agreement. *Ashton Place Health and Rehab., LLC v. Russell*, 2023 Ark. App. 351, 675 S.W.3d 140.

In *Progressive Eldercare Services-Drew, Inc. v. Everett*, this court examined a provision in a POA to determine whether it was a general grant of authority within the meaning of Arkansas Code Annotated section 28-68-201(c). 2021 Ark. App. 353, 635 S.W.3d 502. The POA gave the agent the power to act "[i]n all matters that the Principal would normally represent himself in." *Id.* at 6, 635 S.W.3d at 505–06. Immediately following was a sentence

stating: "This includes all other personal possessions listed in principal name." *Id.* at 6, 635 S.W.3d at 506. Progressive argued that the general grant of authority was not qualified by the "personal possessions" language and, furthermore, that such language did not mean all other subject matters were excluded. *Id.* In rejecting Progressive's argument, we held that the language in the POA did not unambiguously grant Everett a general grant of authority—as described in section 28-68-201(c)—sufficient for Everett to bind the principal to arbitration. *Id.* at 8, 635 S.W.3d at 506. Taking the whole of the POA together and giving effect to every part of it, our court held that the POA could "more easily be interpreted to support Everett's position that she was merely granted authority on three matters that do not include arbitration." *Id.* at 8, 635 S.W.3d at 507.

Here, the durable POA lists specific categories of authority for which Gaspar could bind Holder. None of the enumerated categories include claims or litigation. Nevertheless, the Facility contends that paragraph 5 of the durable POA—cited above—shows that Holder gave Gaspar a general grant of authority to do anything she "could do if personally present." Gaspar contends, however, that the "all and every act" authority granted by paragraph 5 of the POA is limited to only those acts that are "requisite and necessary to be done in and about the premises" and that the latter must be construed with reference to the other types of authority specified in the document. We agree.

As in *Everett*, we find that the language of the durable POA did not unambiguously grant Gaspar the general authority to bind Holder to arbitration. Furthermore, had Holder intended to give her agent a general grant of authority pursuant to section 28-68-201(c), it

would have been unnecessary to also give specific authority regarding certain designated matters. Giving the words of the durable POA their generally recognized meaning and interpreting the POA by its express terms, we agree with the circuit court that Gaspar lacked the authority to bind Holder to arbitration. Accordingly, we hold that the Facility failed to meet its burden of proving that Gaspar was given a general grant of authority in Holder's POA; thus, there is no valid arbitration agreement to enforce.

The Facility also argues that the circuit court erred in finding that Toni did not have the authority to enter into the arbitration agreement on behalf of Holder. However, because Toni's authority to bind Holder to arbitration was dependent on Gasper's authority to properly delegate such task, we disagree. Simply put, an agent cannot delegate authority for which he or she does not have. Even if the durable POA had given Gaspar the authority to bind Holder to the arbitration agreement—which it did not—it is well established that an agent cannot delegate tasks that his principal has assigned to him that require the exercise of judgment or discretion. *See* 3 Am. Jur. 2d *Agency* § 147 (2002). While the Facility is correct that an agent may employ others to assist the agent in certain tasks, such tasks must be purely ministerial or mechanical in nature. *See De Camp v. Graupner*, 157 Ark. 578, 249 S.W. 6 (1923). Here, we cannot define the act of Toni agreeing to an arbitration provision as a delegated ministerial or mechanical task because the task required the exercise of judgment.

In her affidavit, Gaspar attests that the exemplar admissions paperwork did not contain an arbitration provision but, instead, that a separate, voluntary arbitration agreement was sent for her review prior to Holder's admission to the Facility. Gaspar further

contends that the arbitration agreement she reviewed was not the same as the arbitration provision incorporated into the signed admissions agreement, and we have found nothing in the record to dispute Gaspar's sworn statements. Accordingly, Toni was required to exercise discretion in agreeing to the arbitration provision—without Gaspar's full knowledge—which exceeded Gaspar's authority as Holder's agent.

Finally, the Facility argues that the circuit court erred in its finding that the signature page for the arbitration agreement is ambiguous and improperly construed it against the drafter. Because Gaspar and Toni lacked proper authority to bind Holder to the arbitration agreement, there is no valid contract to enforce; thus, we need not address the Facility's argument regarding ambiguity.

V. *Conclusion*

For the above-stated reasons, we affirm the circuit court's order denying the Facility's motion to compel arbitration.

Affirmed.

VIRDEN and WOOD, JJ., agree.

Fuqua Campbell, P.A., by: *Eric Gribble*, *Haley M. Heath*, *Lea Phelps*, and *Chris Stevens*, for appellants.

Appellate Solutions, PLLC, by: *Deborah Truby Riordan*; and *Rainwater, Holt & Sexton, P.A.*, by: *Jeff R. Priebe*, for appellee.