

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

ANDREA JO CORNWELL,
Appellant,

v.

Case No. 2D11-105

SANDRA SUE KENNEDY, as Personal
Representative of the Estate of Joseph
G. Bush; SA-PG SUN CITY CENTER,
LLC; SA-PG OPERATOR HOLDINGS,
LLC f/k/a NEW ROCHELLE
ADMINISTRATORS, LLC; NEW
SURFSIDE ADMINISTRATORS, LLC
d/b/a CYPRESS HEALTHCARE
MANAGEMENT; SA-MASTER
OPERATOR HOLDINGS, LLC;
HARRIS SCHWARTZBERG;
SCHWARTZBERG DESCENDENT
TRUST; STEVEN SCHWARTZBERG
TRUST; HARRIS SCHWARTZBERG
TRUST; JUDITH SCHWARTZBERG
TRUST; MAXWELL STOLZBERG;
SHERILL CUMMINGS as to PALM
GARDEN OF SUN CITY,
Appellees.

Opinion filed February 17, 2012.

Appeal pursuant to Fla. R. App. P. 9.130
from the Circuit Court for Hillsborough
County; Robert A. Foster, Jr., Judge.

Amy L. Miles, E. Patrick Buntz and Kyleen A. Hudson of McCumber, Daniels, Buntz, Hartig & Puig, P.A., Tampa, for Appellant.

Isaac R. Ruiz-Carus of Wilkes & McHugh, P.A., Tampa, for Appellee Sandra Sue Kennedy, as Personal Representative for the Estate of Joseph G. Bush.

No appearance for remaining Appellees.

CRENSHAW, Judge.

Andrea Jo Cornwell appeals the trial court's nonfinal order denying a motion to compel arbitration of the claims brought against her by Sandra Kennedy, as personal representative of the Estate of Joseph G. Bush. Because the trial court's factual findings are not supported by competent, substantial evidence and because it erred as a matter of law in concluding that the arbitration agreement was procedurally unconscionable, we reverse and remand for further proceedings.

Ms. Kennedy brought an action for negligence and wrongful death against several defendants including Ms. Cornwell, as the director of nursing at the nursing home where Ms. Kennedy's father, Mr. Bush, resided. The defendants filed a motion to abate and compel arbitration, which the trial court denied because it concluded that the arbitration agreement was unconscionable. The trial court found that Fern Bush, who signed the arbitration agreement on behalf of Mr. Bush, "did not have the ability to know and understand the terms of the arbitration agreement."

As we explain in greater detail in SA-PG Sun City Center, LLC v. Kennedy, No. 2D11-93 (Fla. 2d DCA Feb. 17, 2012), which arises from the same action, the trial court's factual findings are not supported by the evidence that was presented to

the trial court. We conclude based on the totality of the circumstances that Ms. Bush was afforded "a meaningful opportunity to review the arbitration agreement, to obtain guidance, and to accept or reject the terms of the arbitration agreement." See Tampa HCP, LLC v. Bachor, 72 So. 3d 323, 328 (Fla. 2d DCA 2011). Accordingly, the trial court erred as a matter of law in determining that the arbitration agreement was procedurally unconscionable. See Kennedy, No. 2D11-93 (Fla. 2d DCA Feb. 17, 2012). And because we determine that the arbitration agreement was not procedurally unconscionable, we need not reach the issue of substantive unconscionability. See id.; see also Bachor, 72 So. 3d at 328.

Reversed and remanded.

WALLACE and KHOUZAM, JJ., Concur.