

RENDERED: MARCH 19, 2010; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2009-CA-001055-MR

LAUREL CREEK HEALTH CARE  
CENTER

APPELLANT

v.

APPEAL FROM CLAY CIRCUIT COURT  
HONORABLE OSCAR G. HOUSE, JUDGE  
ACTION NO. 06-CI-00037

COLSON BISHOP, AS PERSONAL  
REPRESENTATIVE FOR THE ESTATE  
OF GILBERT BISHOP

APPELLEE

OPINION  
REVERSING AND REMANDING

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BEFORE: DIXON, LAMBERT, AND WINE, JUDGES.

LAMBERT, JUDGE: Laurel Creek Health Care Center appeals from the Clay Circuit Court's denial of its motion to compel arbitration. After careful review, we reverse and remand.

Gilbert Bishop was admitted to Laurel Creek Health Care Center on July 23, 2002, after arriving via ambulance without family present. Gilbert was transferred from home and upon admission was suffering from various physical ailments which rendered him unable to perform daily tasks such as bathing and dressing. Upon his arrival, Laurel Creek placed Gilbert in a room and conducted a Mini-Mental State Examination. During that examination, Gilbert communicated to Laurel Creek staff that he could not use his hands well enough to write or hold a pencil. Gilbert was otherwise found to be mentally competent.

Gilbert's sister, Rachel Combs, arrived after Gilbert had been placed in a room. In her deposition, Rachel testified that when she arrived at the facility she offered to sign the admissions forms, but Laurel Creek employees told her that it was their policy to have the patient's spouse sign the admissions papers if the patient was unable to sign them. Rachel also testified that Gilbert asked her to get his wife, Anna Bishop, so that she could sign his admissions papers. Rachel left and picked up Anna, who had been working earlier in the day. Upon arriving, Rachel and Anna watched an admissions video, and Anna signed the admissions paperwork, which contained a provision for mandatory arbitration. Anna also signed other admissions documents, including advance directive information, a consent to release medical information, a receipt for resident rights information, and other documents required for Medicare and Medicaid compliance.

On May 2, 2004, Gilbert experienced an acute allergic reaction and was transferred to Manchester Memorial Hospital, where he was treated and

discharged back to Laurel Creek. Later that evening, Gilbert experienced difficulty while eating, went into cardiopulmonary arrest, and was transported back to the hospital where he died. Following Gilbert's death, his brother, Colson Bishop, qualified as a personal representative of his estate and brought this action for negligence against Laurel Creek.

On April 6, 2006, Laurel Creek requested that the trial court hold the matter in abeyance and order the parties to proceed to arbitration in accordance with the mandatory arbitration provision contained in the admissions paperwork signed by Gilbert's wife. That motion was denied pending discovery. Laurel Creek renewed its motion under KRS 17.050, *et seq.*, to hold the matter in abeyance and compel arbitration. The trial court denied the motion by order entered May 27, 2009, making the following specific findings of fact:

1. Gilbert Bishop had the mental capacity to contract.
2. Gilbert Bishop did not sign the purported arbitration agreement.
3. Gilbert Bishop's wife, Anna Bishop, signed the purported arbitration agreement.
4. No written document such as power of attorney or other writing exists that gives Anna Bishop legal authority to make decisions for Gilbert Bishop.
5. Gilbert Bishop's words or actions did not give Anna Bishop actual, apparent, or implied authority to sign the purported arbitration agreement.

Laurel Creek now appeals, arguing that the trial court's last finding of fact is not supported by substantial evidence and is incorrect as a matter of law.

Review of a trial court's denial of an application for arbitration in a KRS 417.060 proceeding is *de novo* as to questions of law, with findings of fact reviewed on a clearly erroneous standard if not supported by substantial evidence. *Conseco Finance Servicing Corp. v. Wilder*, 47 S.W.3d 335, 340 (Ky. App. 2001).

Laurel Creek first argues that this is a case of actual agency and that Anna Bishop had actual authority as Gilbert's agent to sign the admissions paperwork and is therefore bound by the arbitration agreement therein. In the alternative, Laurel Creek argues that this is a case of apparent agency. Finally, Laurel Creek argues that Gilbert's estate is estopped from denying the existence of an agency relationship.

A trial court may find actual agency if "there has been a manifestation by the principal to the agent that the agent may act on his account, and consent by the agent so to act." *Terbovitz v. Fiscal Court of Adair County, Ky.*, 825 F.2d 111, 116 (6<sup>th</sup> Cir. 1987) (overruled on other grounds) (internal citation omitted). *See also* Restatement (Third) of Agency § 2.01 (2006). When an agent acts with actual authority, the agent has the power to bind the principal or to "affect the principal's legal relations with third parties." *Id.* at § 2.01.

We agree with Laurel Creek that Gilbert created an actual agency relationship between him and his wife. According to his sister, Rachel, Gilbert specifically asked that his wife be brought to the nursing home so that she could sign the admissions documents for him, and Anna acted upon that delegation of authority and signed the admissions papers. This is consistent with the creation of

actual authority as described in the Restatement (Third) of Agency § 2.01, comment c (2006). The Restatement explains the rationale for the creation of actual agency in three steps. First, “the principal manifests assent to be affected by the agent’s action.” In the instant case, Gilbert asked that Anna come to the hospital to sign the papers for him. Second, “the agent’s actions establish the agent’s consent to act on the principal’s behalf.” Here, Anna signed all the admissions papers per her husband’s request and therefore consented to act on Gilbert’s behalf. Third, by acting within such authority, the agent affects the principal’s legal relations with third parties. Clearly here, Anna’s actions affected Gilbert’s relations with Laurel Creek, a third party.

The trial court acknowledged that Gilbert had the mental capacity to contract, and by implication, the ability to appoint his wife to act as his agent. The fact that there was no written document, such as a power of attorney, does not prevent Gilbert from making Anna his agent. *See Moore v. Scott*, 759 S.W.2d 827, 828 (Ky. App. 1988) (“[A] power of attorney is a form of agency.”) (internal citation omitted). The record is unequivocal that Anna was brought to the facility, by Gilbert’s request to his sister, for the expressed purpose of signing the admissions documents on his behalf, without further definition, restriction, or exception. It was a general delegation which Anna believed in good faith extended to the admissions agreement.

In the alternative, if this is not a case of actual agency, it is a case of apparent or implied agency. “Apparent authority is the power held by an agent or

other actor to affect a principal's legal relations with third parties when a third party reasonably believes the actor has authority to act on behalf of the principal and that belief is traceable to the principal's manifestations.” Restatement (Third) of Agency § 2.03 (2006). *See also Mt. Holly Nursing Center v. Crowdus*, 281 S.W.3d 809, 813 (Ky. App. 2008). Gilbert told his sister, Rachel, to get Anna so that she could sign the admissions papers. Rachel testified in her deposition that she tried to sign the papers for Gilbert, but that the staff told her that it was their policy to have the patient’s spouse sign the paperwork and requested that Anna sign the documents. Gilbert’s actions in directing Rachel to bring Anna was communicated to Laurel Creek staff and they acted in reliance upon his expression of authority, whether actual or implied. The record indicates, therefore, that there was at the very least, an implied agency in this case.

A careful review of the record indicates that the trial court’s finding of fact stating “Gilbert Bishop’s words or actions did not give Anna Bishop actual, apparent, or implied authority to sign the purported arbitration agreement” is not supported by substantial evidence. Instead, the evidence indicates that Gilbert indicated to Laurel Creek that he was physically incapable of signing the documents but was of sound mental capacity and wanted his wife to sign the documents on his behalf. When Gilbert communicated this to his sister, and the sister brought Anna in to sign the documents, Gilbert created an agency relationship upon which Laurel Creek relied. The existence of an agency relationship is supported by substantial evidence, specifically the direct testimony

of Rachel Combs, and therefore the trial court's ruling that no agency relationship existed is incorrect as a matter of law. Having found that an agency relationship existed, Laurel Creek's third argument, that Gilbert's estate is estopped from denying the existence of an agency relationship, is moot.

Accordingly, we reverse the May 27, 2009, order of the Clay Circuit Court and remand this matter for further proceedings consistent with this opinion.

ALL CONCUR.

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