IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

SHIRLEY Z. HEAPHY,
Plaintiff/Appellee,

v.

WILLOW CANYON HEALTHCARE, INC.,
DBA PUEBLO SPRINGS REHABILITATION CENTER,
Defendant/Appellant.

No. 2 CA-CV 2020-0113
Filed May 18, 2021

Appeal from the Superior Court in Pima County
No. C20191130
The Honorable D. Douglas Metcalf, Judge

AFFIRMED

COUNSEL

Goldberg & Osborne, Tucson
By Lisa Kimmel and Bonnie Dombrowski
Counsel for Plaintiff/Appellee

Ensign Services Inc., Higley
By Michael J. Ryan
Counsel for Defendant/Appellant

OPINION

Presiding Judge Espinosa authored the opinion of the Court, in which Vice Chief Judge Staring and Judge Eckerstrom concurred.

E S P I N O S A, Presiding Judge:

¶1 Willow Canyon Healthcare, Inc. appeals from the trial court's denial of its motion to compel arbitration, arguing the court erred by determining Shirley Heaphy lacked authority to enter into an arbitration agreement on behalf of her husband's estate and the statutory beneficiaries and that she should be equitably estopped from denying such authority. For the following reasons, we affirm.

Factual and Procedural Background

¶2 "We view the facts in the light most favorable to upholding the trial court's ruling." *Estate of Decamacho ex rel. Guthrie v. La Solana Care & Rehab, Inc.*, 234 Ariz. 18, n.1 (App. 2014). Charles and Shirley Heaphy had been married for more than sixty years when in 2012, Charles appointed Shirley his agent in a Healthcare Power of Attorney (HPOA) contract. The contract was "effective upon, and only during, any period of incapacity in which, in the opinion of [Shirley] and attending physician, [Charles is] unable to make or communicate a choice regarding a particular health care decision."[1] In December 2017, Charles was admitted to Pueblo Springs Rehabilitation Center for skilled nursing and rehabilitation.

¶3 Shirley signed Charles's admission paperwork at Pueblo Springs, which consisted of several separate but consecutively paginated acknowledgements and agreements totaling fifty-nine pages and included an "optional" Agreement to Arbitrate Disputes (the "Agreement"). The second page of the Agreement had a signature line for a "Legal Representative or Agent," and directed an agent signing in that capacity to also execute on the same page a separate "Acknowledgement of Legal Representative or Agent." Shirley did not sign either the legal representative line or the acknowledgement, instead entering Charles's

[1]Although the signature page for this document is missing from the record, the plaintiffs conceded its authenticity and agreed that the Heaphy family provided it to Pueblo Springs.

name on the resident line and signing her name on the adjacent signature line.

¶4 A few weeks after his admission to Pueblo Springs, Charles died. In 2019, Shirley, as personal representative of Charles's estate and on behalf of all statutory beneficiaries, sued Willow Canyon Healthcare, Inc., the owner of Pueblo Springs, and a doctor who treated Charles, alleging elder abuse, negligence, negligent hiring and supervision, and wrongful death. Willow Canyon filed a motion to compel arbitration, seeking to require all plaintiffs to arbitrate based on the Agreement. In response, the plaintiffs argued the Agreement was unenforceable because it was procedurally and substantively unconscionable and Shirley lacked authority to bind the estate or the beneficiaries to it. Reasoning the beneficiaries were not parties to the Agreement and their wrongful death claim did not derive from Charles, the trial court denied the motion to compel arbitration as to that claim but held an evidentiary hearing to determine whether Shirley had the authority to sign the Agreement as Charles's agent.

¶5 Following the hearing, the trial court concluded the estate's claims were not subject to arbitration because although the HPOA had been in effect, it did not authorize Shirley to sign the Agreement on Charles's behalf. The court determined Shirley did not otherwise have actual or apparent authority to sign the Agreement and further found the Agreement procedurally unconscionable under the circumstances. Willow Canyon then appealed; we have jurisdiction pursuant to A.R.S. § 12-2101.01(A)(1).

Discussion

¶6 Willow Canyon argues the trial court erred in denying its motion to compel arbitration because Shirley had actual authority, either express or implied, to sign the Agreement on behalf of Charles, and even if not, she should be equitably estopped from denying such authority, the Agreement was not unconscionable, and the Federal Arbitration Act (FAA) preempts Arizona case law holding that an arbitration agreement cannot bind non-signatories. When reviewing the trial court's denial of a motion to compel arbitration, "[w]e must defer, absent clear error, to the factual findings upon which the trial court's conclusions are based." *Estate of Decamacho*, 234 Ariz. 18, ¶ 8 (quoting *Harrington v. Pulte Home Corp.*, 211 Ariz. 241, ¶ 16 (App. 2005)). To the extent we must consider and interpret legal principles and statutes, however, our review is de novo. *Id.*

Agency

¶7 "Agency is the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents so to act." Restatement (Third) of Agency § 1.01 (2006); *see Maricopa P'ships, Inc. v. Petyak*, 163 Ariz. 624, 626 (App. 1989) (Arizona courts generally follow Restatement of Agency). Although an agency relationship can derive from either actual or apparent authority, *see* Restatement §§ 2.01, 2.03, Willow Canyon agrees with the trial court's determination that apparent authority is not applicable here, as there was no evidence Charles "communicated anything to anyone at Pueblo Springs indicating his wife could act on his behalf." *See Ruesga v. Kindred Nursing Ctrs., L.L.C.*, 215 Ariz. 589, ¶ 29 (App. 2007) (apparent authority exists when "the principal has intentionally or inadvertently induced third persons to believe that such a person was its agent although no actual or express authority was conferred" (quoting *Premium Cigars Int'l, Ltd. v. Farmer-Butler-Leavitt Ins. Agency*, 208 Ariz. 557, ¶ 30 (App. 2004))). Actual authority "may be proved by direct evidence of express contract of agency between the principal and agent"—express actual authority—or "by proof of facts implying such contract or the ratification thereof"—implied actual authority. *See Corral v. Fid. Bankers Life Ins. Co.*, 129 Ariz. 323, 326 (App. 1981); Restatement § 2.01 cmt. b.

Express Actual Authority

¶8 Willow Canyon first contends the HPOA gave Shirley the express actual authority to sign the Agreement on Charles's behalf, thus binding the estate.[2] Under A.R.S. § 36-3223(B), "[a]n agent's authority to make health care decisions on behalf of the principal is limited only by the express language of the health care power of attorney." When interpreting the language of a contract, our purpose is to determine and enforce the parties' intent. *See U S W. Commc'ns, Inc. v. Ariz. Corp. Comm'n*, 185 Ariz. 277, 288 (App. 1996). And when "the language is clear and unambiguous, we apply it as written." *Estate of Decamacho*, 234 Ariz. 18, ¶ 17.

[2]Contrary to the trial court's express finding, Shirley contends "the HPOA did not confer any authority on [her] . . . because the HPOA was not effective." Absent clear error, however, we defer to the trial court's factual finding that the HPOA was in effect at the time Shirley signed Charles's admission paperwork. *See Estate of Decamacho*, 234 Ariz. 18, ¶ 8.

¶9 As Willow Canyon argues is relevant here, the HPOA granted Shirley the "full authority to make decisions for [Charles] regarding [his] health care," including to

> take any other action necessary to do what [he] authorize[s] here, including (but not limited to) granting any waiver or release from liability required by any hospital, physician, or other health care provider; signing any documents relating to refusals of treatment or compliance with my wishes as determined by my agent, or to seek actual or punitive damages for failure to comply.

Willow Canyon contends this language permits Shirley to bring legal action for "actual or punitive damages" related to Charles's healthcare and therefore gave her "the express authority to decide in which forum such legal actions would be conducted, including arbitration." But that argument overlooks the plain meaning and the context of the quoted language. The provision does not grant Shirley wholesale authority to take any legal action in relation to Charles's healthcare, but rather authorizes her to take limited action to seek damages from a healthcare provider for its failure to comply with Charles's refusal of treatment or his wishes, and Willow Canyon provides no statute or case law supporting its contrary position. *See* § 36-3223(B) (agent's authority limited by express language of HPOA). Accordingly, this provision of the HPOA did not authorize Shirley to enter into the Agreement.

¶10 Nor was Shirley otherwise empowered by the HPOA to sign the Agreement on her husband's behalf. The HPOA granted Shirley only authority to "make decisions for [Charles] regarding [his] health care," including actions necessary to "authorize [his] admission to or discharge . . . from any hospital, nursing home, residential care, assisted living or similar facility or service" and "contract on [his] behalf for any health care related service or facility." Because the Agreement was optional and not required for Charles to be admitted into Pueblo Springs, it was not a healthcare decision as contemplated by the HPOA. *See* Restatement §§ 2.02(1) (scope of actual authority limited to actions "designated or implied in the principal's manifestations to the agent and acts necessary or incidental to achieving the principal's objectives"), 3.11 cmt. c (not reasonable to assume agent has "lingering authority" when agent's authority was limited to a specific undertaking).

¶11 We recognize that in *Ruesga*, we determined the wife had authority to sign an optional arbitration agreement on her husband's behalf based, in part, on her long history of making healthcare-related decisions for him. 215 Ariz. 589, ¶¶ 2-5, 35. However, the scope of the wife's authority was not at issue in that case, and instead the parties focused on whether she had *any* authority to make decisions on her husband's behalf. *Id.* ¶¶ 18, 23, 31 & n.6. Accordingly, *Ruesga* does not control the issue of the scope of Shirley's authority here. Furthermore, three subsequent unpublished decisions from this court, which addressed the scope of a purported agent's authority, provide persuasive support for our conclusion and suggest the need for a published decision on this subject.[3] *See Shook v. Renewcare of Scottsdale Inc.*, 1-CA-CV 19-0358, ¶ 22, 2020 WL 2769014 (Ariz. App. May 28, 2020) (mem. decision) ("Because the Agreements at issue in this case are optional and not a condition of obtaining treatment . . . , and because [the patient's] health care power of attorney tracks the statutory language, the superior court did not err in finding that [the patient's] health care power of attorney did not convey authority to enter into optional arbitration agreements on [her] behalf."); *Yazedijian v. ARC Santa Catalina Inc.*, 2 CA-CV 2017-0045, ¶ 20, 2018 WL 615106 (Ariz. App. Jan. 29, 2018) (mem. decision) ("Whether to sign a nursing home's optional arbitration agreement is not a healthcare decision."); *Hurst v. Silver Creek Inn, LLC*, 1 CA-CV 14-0338, ¶ 22, 2015 WL 3551874 (Ariz. App. June 4, 2015) (mem. decision) (same).

Implied Actual Authority

¶12 Willow Canyon also contends Shirley had implied actual authority to enter into the Agreement on behalf of Charles, pointing to several medical records from 2017 and the HPOA as evidence that Shirley generally had controlled Charles's healthcare decisions. While we agree Shirley was Charles's agent as to healthcare decisions, as discussed above, those documents did not expand the scope of her authority such as to encompass the optional Agreement. *See* Restatement §§ 2.02 (actual authority limited to actions "designated or implied in the principal's manifestations to the agent and acts necessary or incidental to achieving the principal's objectives"), 3.11 cmt. c (no assumption agent has more

[3] Pursuant to Rule 111(c)(1), Ariz. R. Sup. Ct., memorandum decisions may be cited "to assist the appellate court in deciding whether to issue a published opinion" and for persuasive value if they were issued after January 1, 2015, no opinion adequately addresses the issue, and the citation is not to a depublished opinion.

authority than that specified for particular undertaking). Thus, we agree with the trial court that Shirley lacked actual authority, either express or implied, to bind Charles, and in turn his estate, to the Agreement.

Equitable Estoppel

¶13 Willow Canyon alternatively argues that even if Shirley lacked authority to sign the Agreement on Charles's behalf, she should be equitably estopped from repudiating such authority because allowing her "to deny she had authority to sign the Arbitration Agreement she voluntarily signed as her husband's agent . . . is unfair and unjust." We reject this argument, however, for two reasons. First, Willow Canyon has failed to satisfy the requirements for equitable estoppel. That doctrine requires evidence that (1) the party to be estopped took actions inconsistent with a position it later adopted; (2) the other party relied on those actions; and (3) that party was injured by the first party's repudiation of its earlier conduct. *See Flying Diamond Airpark, LLC v. Meienberg*, 215 Ariz. 44, ¶ 28 (App. 2007); *see also LaBombard v. Samaritan Health Sys.*, 195 Ariz. 543, ¶ 12 (App. 1998) (party to be estopped must induce reliance by acts, representations, or admissions). Shirley's signing of the Agreement did not represent that she had authority to bind Charles and his estate, particularly when she did not sign the line provided for the "Legal Representative or Agent" and the related acknowledgement on that page, and Willow Canyon provides no other evidence of the first element of estoppel. Nor can Willow Canyon demonstrate it reasonably relied on Shirley's authority given the well-settled principle that "the declarations of an agent are insufficient to establish the fact or extent of [her] authority." *Jolly v. Kent Realty, Inc.*, 151 Ariz. 506, 512 (App. 1986).

¶14 Second, while a principal—in this case, Charles and his estate—"may be estopped to deny the agent's authority where [it] has allowed others to detrimentally rely on the apparent authority of the agent," *Gertz v. Selin*, 112 Ariz. 562, 564 (1976), that authority must come from the principal, not the agent, and Willow Canyon has conceded apparent authority is not applicable here, *see Brutinel v. Nygren*, 17 Ariz. 491, 497 (1916) ("[T]he nature and extent of an agent's authority . . . may be established only by tracing it to its source in some word or act of the alleged principal. The agent certainly cannot confer authority upon himself, or make himself agent, merely by acting as such, or saying that he is one."); *see also Escareno v. Kindred Nursing Ctrs. W., L.L.C.*, 239 Ariz. 126, ¶ 11 (App. 2016). Notably absent from Willow Canyon's briefing on this issue is any authority applying estoppel to a situation like the one presented in this case.

Accordingly, equitable estoppel cannot be applied here to bind Charles's estate[4] to the Agreement Shirley signed without authority.[5]

Violation of the FAA

¶15 Finally, we disagree with Willow Canyon's contention that not finding the Agreement enforceable here would violate the Federal Arbitration Act by "plac[ing] arbitration on unequal footing with other contracts." Willow Canyon relies on *Kindred Nursing Centers Ltd. Partnership v. Clark*, ___ U.S. ___, ___, 137 S. Ct. 1421, 1428-29 (2017), in which Kentucky's rule requiring an explicit statement in a power of attorney that the agent has authority to enter into arbitration agreements was found to disfavor arbitration. Unlike that case, however, we find the Agreement here unenforceable because Shirley lacked authority to enter into it on behalf of her husband—a generally applicable contract defense. Thus, our decision is consistent with Arizona law and the FAA. *See* 9 U.S.C. § 2 (arbitration provisions are "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract"); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011); *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996) ("[G]enerally applicable contract defenses . . . may be applied to invalidate arbitration agreements without contravening § 2. . . . Courts may not, however,

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[4] We are not tasked today with determining whether equitable estoppel might apply to bind Shirley to the Agreement were she suing solely on her own behalf. *See Flying Diamond Airpark, LLC*, 215 Ariz. 44, ¶ 28. Willow Canyon has not argued, below or on appeal, that the statutory beneficiaries, including Shirley, are bound on estoppel grounds, and we therefore do not address that issue. *See Ritchie v. Krasner*, 221 Ariz. 288, ¶ 62 (App. 2009) (appellant's failure to "present and address significant arguments, supported by authority that set forth the appellant's position on the issue in question" may "constitute abandonment and waiver of that claim").

[5] In light of our resolution of the above issues, we do not address Willow Canyon's argument—conditioned on a finding that Shirley had authority to bind the estate—that Shirley bound the statutory beneficiaries to arbitrate their claims as well. Nor do we address Shirley's argument, and the trial court's finding, that the Agreement was procedurally unconscionable. *See Forszt v. Rodriguez*, 212 Ariz. 263, ¶ 9 (App. 2006) (court of appeals may affirm trial court "if it is correct for any reason apparent in the record").

invalidate arbitration agreements under state laws applicable *only* to arbitration provisions."); *Rizzio v. Surpass Senior Living LLC*, 248 Ariz. 266, ¶ 15 (App. 2020).

Disposition

¶16 For all of the foregoing reasons, the trial court's denial of Willow Canyon's motion to compel arbitration is affirmed.