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ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-22-397

NURSING AND REHABILITATION CENTER AT GOOD SHEPHERD, LLC; CENTRAL ARKANSAS NURSING CENTERS, INC.; AND MICHAEL MORTON APPELLANTS	Opinion Delivered October 4, 2023 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, SIXTEENTH DIVISION [NO. 60CV-21-1878]
V.	HONORABLE MORGAN E. WELCH, JUDGE
MARY RICHARDSON, AS SPECIAL ADMINISTRATRIX OF THE ESTATE OF JEFFREY JAMES JOY, DECEASED, AND ON BEHALF OF THE WRONGFUL DEATH BENEFICIARIES OF JEFFREY JOY APPELLEE	AFFIRMED

RAYMOND R. ABRAMSON, Judge

This is an interlocutory appeal concerning the denial of a motion to compel arbitration. Jeffrey Joy (Joy) was admitted to the Nursing and Rehabilitation Center at Good Shepherd, LLC (Good Shepherd),[1] on October 28, 2016, and in connection with his admission, Mary Richardson (Richardson), Joy's sister, signed numerous documents. An

[1]For purposes of this opinion, we refer to appellants Nursing and Rehabilitation Center at Good Shepherd, LLC; Central Arkansas Nursing Centers, Inc., and Michael Morton collectively as "Good Shepherd."

arbitration agreement ("Agreement"), which was included among those documents, is at issue in this appeal. For the following reasons, we affirm.

On March 17, 2021, Richardson, as the special administratrix of the estate of Jeffrey Joy, filed suit on behalf of her brother's estate and beneficiaries, asserting claims for negligence for the injuries and death of Joy. Richardson alleges that while Joy was a resident of Good Shepherd, he suffered numerous injuries, which culminated in his untimely death on December 1, 2020.

On April 16, 2021, Good Shepherd filed an answer asserting the defense of arbitration. On May 12, Good Shepherd filed a motion to compel arbitration, contending that the Agreement signed by Richardson on October 28, 2016, was binding on Joy's estate. Following the motion to compel arbitration, the parties exchanged pleadings, including a supplemental reply from Good Shepherd following its deposition of Richardson.

The Agreement stated that it was "an addendum to and part of the Admission Agreement" and, further, "a condition of admission." The Agreement listed the parties as "Nursing and Rehabilitation Center at Good Shepherd, LLC" or "the Facility" and "Resident and/or Resident's Responsible Party." The "Resident" line was left blank, and Richardson was listed as the Resident's "Responsible Party,"[2] which was further defined as "your legal guardian, if one has been appointed, your attorney-in-fact, if you have executed a

[2]Here, the word "or" was circled after the blank Resident line and before "Resident's Responsible Party." There is no evidence within the record to address when "or" was circled or by whom.

power of attorney, or some other individual or family member who agrees to assist the Facility in providing for your health, care and maintenance."

At the conclusion of the Agreement, Richardson signed on the "Responsible Party" line. Below her signature, it is noted that "Responsible Party's Relationship to Resident" was that of "Sister." The Agreement included a place to "[c]heck if applicable" in order to indicate whether "[a] copy of my guardianship papers, durable power of attorney or other documentation has been provided to the Facility and is attached." That designated space is left blank. Joy's name was not listed anywhere within the Agreement, though it was listed on the admission agreement.

At the time of his admission, Richardson was Joy's attorney-in-fact pursuant to a power of attorney (POA) executed on September 15, 2016, which granted Richardson broad powers, including those related to "[c]laims and litigation." Richardson stated that she did not provide Good Shepherd with the POA upon Joy's admission. Further, Good Shepherd stated in a letter to Richardson in June 2017 that it "did not have sufficient information to confirm that [she was Mr. Joy's] healthcare power of attorney" at that time. Richardson also stated that she had not written "Sister/POA" underneath the heading "Relationship to Resident" on the admission agreement and said she could not recall whether it was written when she signed.

In moving to enforce the Agreement, Good Shepherd argued that Richardson had authority to enter into the Agreement on behalf of Joy, that the circuit court's denial was based on distinguishable case law, and that the evidence demonstrates that Richardson was

acting pursuant to her authority when she executed the Agreement. Richardson responded that her signature on the Agreement was insufficient to bind Joy's estate to arbitration and that the circuit court properly denied the motion to compel arbitration on the basis of relevant legal authority.

The circuit court held a hearing on the motion to compel arbitration on February 15, 2022. On March 2, the circuit court entered an order with the following findings:

> 1. All ambiguities in the language and construction of the Arbitration Agreement are construed against the defendants, who drafted the Arbitration Agreement.
>
> 2. That the Arbitration Agreement at issue in th[e] case was signed by Mary Richardson solely in her capacity as the sister of Jeffrey Joy.
>
> 3. That the nursing home did not indicate or check the box located on the third page of the Arbitration Agreement and that there is no evidence that the Defendants relied on any power of attorney related to Jeffrey Joy at the time the Arbitration Agreement was signed.
>
> 4. That for these reasons, the case law set forth in *Innisfree Health & Rehab, LLC v. Jordan*, 2020 Ark. App. 518 (2020) and *Sherwood Nursing and Rehabilitation Center v. Susan Cazort, Special Administratrix of the Estate of Lena Mozelle McGaughey*, 2022 Ark. App. 65 (2022), the Arbitration Agreement in this case is not enforceable against the Estate of Jeffrey Joy.
>
> 5. Defendants' Motion to Compel Arbitration is denied.

Good Shepherd timely filed its notice of appeal on March 31. The sole issue before our court is whether the circuit court erred in denying the motion to compel.

Whether the motion to compel arbitration was properly denied hinges on whether the Agreement was a valid and enforceable agreement and whether the dispute falls within

its scope. *GGNSC Holdings, LLC v. Lamb ex rel. Williams*, 2016 Ark. 101, 487 S.W.3d 348. Here, only the validity of the Agreement is challenged.

We review a circuit court's order denying a motion to compel arbitration de novo on the record. *Courtyard Gardens Health & Rehab., LLC v. Quarles*, 2013 Ark. 228, 428 S.W.3d 437. Though this court is not bound by the circuit court's decision, we will accept it as correct on appeal absent a showing that the circuit court erred in its interpretation of the law. *Id.* Arbitration is simply a matter of contract between parties. *Id.* Therefore, whether a dispute should be submitted to arbitration is a matter of contract construction; we look to the language of the contract that contains the agreement to arbitrate and apply state-law principles. *Id.* 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.*

Though there is a presumption in favor of arbitration, such presumption is only triggered where an underlying valid and enforceable arbitration agreement exists. *Bank of the Ozarks, Inc. v. Walker*, 2014 Ark. 223, at 4–5, 434 S.W.3d 357, 360. The burden is generally on the party asserting the existence of an agreement to prove that a valid agreement exists. *Ozan Lumber Co. v. Price*, 219 Ark. 709, 244 S.W.2d 486 (1951). We are also guided by the legal principle that contractual agreements are construed against the drafter. *Carter v. Four Seasons Funding Corp.*, 351 Ark. 637, 97 S.W.3d 387 (2003).

Generally, the terms of an arbitration contract do not apply to those who are not parties to the contract. *Bigge Crane & Rigging Co. v. Entergy Ark., Inc.*, 2015 Ark. 58, 457 S.W.3d 265. In Arkansas, the presumption is that the parties contract only for themselves; thus, a contract will not be construed as having been made for the benefit of a third party unless it clearly appears that such was the intention of the parties. *Bigge Crane*, *supra*; *Elsner v. Farmers Ins. Grp., Inc.*, 364 Ark. 393, 220 S.W.3d 633 (2005).

In the present appeal, the parties to the Agreement are listed as "Nursing and Rehabilitation Center at Good Shepherd, LLC," or "the Facility" and "Mary Richardson" as the Resident's "Responsible Party." Joy is not identified anywhere within the four corners of the Agreement. We have held under similar facts that absent any clear evidence that the resident's responsible party was signing in a representative capacity, we construe the ambiguity most strongly against the drafters of the agreement to conclude that the responsible party is signing in an individual capacity. *See, e.g.*, *Innisfree Health & Rehab, LLC v. Titus*, 2021 Ark. App. 403, at 6, 8, 636 S.W.3d 781, 785, 786.

For its first argument on appeal, Good Shepherd argues that Richardson had authority to enter into the Agreement on behalf of Joy. Good Shepherd correctly cites the law that "[*w*]*hen a third party signs an arbitration agreement on behalf of another*, we must determine whether the third party was clothed with the authority to bind the other person to arbitration." *See Robinson Nursing & Rehab. Ctr., LLC v. Phillips*, 2019 Ark. 305, at 7, 586 S.W.3d 624, 630 (emphasis added). Good Shepherd's first argument is premature, however, in that it failed to *first show* that a valid arbitration agreement existed as to Joy's estate by

virtue of a "third party sign[ature] on behalf of another." *See, e.g.*, *Bettis v. Ameriprise Fin. Servs., Inc.*, 2023 Ark. App. 350, at 5 ("The circuit court must affirmatively find the existence of a valid agreement to arbitrate between the parties before conducting any further analysis."). To the contrary, the circuit court found that the intent of the parties at the time of executing the Agreement was not to bind Joy's estate. *See also Taylor v. Hinkle*, 360 Ark. 121, 134, 200 S.W.3d 387, 395–96 (2004) (In ascertaining intent, "the court should place itself in the same situation as the parties who made the contract in order to view the circumstances as the parties viewed them at the time the contract was made."). Once the circuit court found that Richardson did not sign the Agreement on behalf of her brother, then the question of what authority she was "clothed with" to bind Joy essentially became moot. Even where Richardson may have had such authority, the circuit court did not err in interpreting the law to conclude that she was not *exercising* such authority at the time she signed the Agreement.

For its second point on appeal, Good Shepherd argues that the court's denial was based on distinguishable case law. Again, we disagree. In its decision, the circuit court cited *Innisfree Health & Rehab, LLC v. Jordan*, 2020 Ark. App. 518, and *Sherwood Nursing and Rehabilitation Center v. Cazort*, 2022 Ark. App. 65, 642 S.W.3d 214, as supporting the unenforceability of the Agreement against Joy's estate.

In *Jordan*, this court held that under identical language, where the arbitration agreement did not identify the resident anywhere within the four corners of the document, the document was signed by the resident's spouse, and the designated blank space to check

if a POA or other legal document provided was left blank, a motion to compel arbitration was properly denied. This court further held that "the manner in which the document was drafted, aligning the Responsible Party with the Resident in the body of the agreement and requiring that the Responsible Party note his/her relationship to the Resident and any legal authority possessed" proved that the signor was not intended to be an independent party to the agreement." 2020 Ark. App. 518, at 3; *see also Phillips*, 2019 Ark. 305, 586 S.W.3d 624; *Hickory Heights Health & Rehab., LLC v. Cook*, 2018 Ark. App. 409, 557 S.W.3d 286; *Pine Hills Health & Rehab., LLC v. Talley*, 2018 Ark. App. 131, at 2–8, 546 S.W.3d 492, 494–97.

In *Cazort*, this court likewise held under identical language that the arbitration agreement, which claimed to be an "addendum to and part of the admission agreement," did not identify the resident anywhere within the agreement. The court construed the ambiguity[3] against the drafter (facility) to affirm the circuit court's conclusion that the resident's family member did not sign in a representative capacity. 2022 Ark. App. 65, at 7, 642 S.W.3d at 219.

[3]Good Shepherd seems to argue that the "ambiguity" with regard to the Agreement entitles it to look to evidence outside of the contract to support that Richardson was signing in her representative capacity under the authority provided her by the POA. One problem with its argument, however, is that it fails to show that the circuit court did not do so or that it erred in first looking to the actual Agreement to ascertain the parties' intent. In *Cazort* (including identical contractual language), this court held that an ambiguity was properly construed against the drafter of the agreement rather than conducting a detailed parol-evidence analysis. *See also Quarles*, 2013 Ark. 228, at 6, 428 S.W.3d at 442 ("[W]e will seek to give effect to the intent of the parties as evidenced by the arbitration agreement itself.").

It was not improper for the circuit court to conclude that Richardson signed the Agreement in her individual, versus representative, capacity where even though it is undisputed that a valid POA *authorizing* her to contract for Joy existed at the time, the circuit court could have reasonably concluded that there was no evidence that she *actually intended to or did, in fact, exercise it* at the time of contract execution. Here, the record supports that the POA may not even have been provided to Good Shepherd until much later. Even if it had been provided, Good Shepherd stated in a letter to Richardson after the Agreement was signed that it had not been provided with a copy of the POA.

Though Good Shepherd distinguishes both cases relied on by the circuit court (*Jordan* and *Cazort*) by noting that the signors in each case did not have the requisite authority under a valid POA, as stated above, the distinction is not dispositive. Aside from whether the signors *possessed* authority, the critical question—there and here—was whether they were exercising it at the time they signed the arbitration agreement. The circuit court in this instance reasonably concluded that Richardson signed the Agreement in her individual capacity as a sister of Joy, rather than under the authority provided to her by virtue of the POA. Language from *Titus* is also especially instructive on this point:

> Given our holding in *Innisfree v. Jordan*, we conclude that it is unnecessary to decide whether [Signor]'s power of attorney authorized him to bind [Resident] to arbitration because [Signor] did not sign the arbitration agreement in a representative capacity with the legal authority to bind [Resident].

2021 Ark. App. 403, at 7. 636 S.W.3d at 786. As Richardson notes, Good Shepherd's "discovery of the power of attorney in June 2017 does not constitute reliance on the

undisclosed power of attorney when they accepted Richardson's signature on the arbitration agreement as Jeffrey Joy's sister." What is relevant for our review is the parties' intent at the time of execution in support of a mutual agreement. The circuit court concluded that Richardson did not intend to bind any claims of Joy's estate to arbitration by her signature as his sister in 2016. We hold there was no error by the circuit court on this point.

For its final point on appeal, Good Shepherd argues that Richardson was acting pursuant to her authority under the POA when she signed the Agreement. We do not find merit in this argument where Good Shepherd failed in its burden to prove that Richardson "signed in a representative capacity with the legal authority to bind" Joy. Accordingly, we affirm the circuit court's order denying Good Shepherd's motion to compel arbitration.

Affirmed.

VIRDEN and HIXSON, JJ., agree.

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

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