DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

CAROLYN ETHERIDGE, as personal representative of the Estate of Rosia Lee Taylor, deceased,

Appellant,

v.

PALM GARDEN OF WINTER HAVEN, LLC, a foreign limited liability company; PALM HEALTHCARE MANAGEMENT, LLC, a foreign limited liability company; PALM GARDEN HEALTHCARE HOLDINGS, LLC, a Florida limited liability company; and SAMANTHA LAURA CLEARWATER, an individual,

Appellees.

No. 2D22-1125

November 18, 2022

Appeal pursuant to Fla. R. App. P. 9.130 from the Circuit Court for Polk County; Dana Moore, Judge.

Herbert T. Sussman of Boyer, Tanzler & Sussman, P.A., Jacksonville; and Kate Hatfield of Hatfield & Hatfield, Jacksonville, for Appellant.

Janae E. Thomas, Brian M. Bursa, and Kirsten K. Ullman of Ullman Bursa Law, Tampa, for Appellees.

VILLANTI, Judge.

The narrow issue for our determination in this appeal is whether the "responsible party" who signs a nursing home admission agreement is thereby authorized to bind the nursing home resident to an arbitration clause within the admission agreement. Because the signor here did not sign in her capacity as the resident's power of attorney, we hold the subject arbitration clause, without more, is not enforceable. Therefore, we must reverse the order on appeal compelling arbitration. We have jurisdiction. *See* Fla. R. App. P. 9.130(a)(3)(C)(iv).

I.

Rosia Taylor, the decedent, was admitted to Palm Garden of Winter Haven, an assisted living and rehabilitation facility, in August 2018. She had been discharged from Lake Wales Medical Center and referred to Palm Garden; while at Palm Garden, Taylor developed infections that her estate claims caused her death in October 2018.

Carolyn Etheridge, Taylor's daughter and the personal representative of Taylor's estate, filed a lawsuit against Palm Garden, its affiliated entities, and nurse Samantha Clearwater,

alleging violations of chapter 400, Florida Statutes (2018) (and specifically section 400.022, Florida's Nursing Home Residents' Right Act) and for wrongful death. Appellees moved to compel arbitration based upon the "Voluntary Arbitration Agreement" signed by Bernice Smarte, another daughter of Taylor's, at the time of Taylor's admission to Palm Garden.[1] In 2005, Smarte and Taylor executed a durable power of attorney (POA) wherein Taylor conveyed the authority to Smarte to act on her behalf. Specifically, in paragraph 12, Taylor gave the authority for Smarte to "[p]rosecute, defend, and settle all actions or other legal proceedings touching my estate or any part of it or touching any matter in which I may be concerned in any way." And in paragraph 15, Taylor authorized Smarte to "[d]o anything regarding [Taylor's] estate, property, and affairs that [Taylor] could do [herself]." The POA also included a general "catch all" statement conveying from Taylor to Smarte "full power and authority to do and perform all and every act and thing whatsoever" on her behalf.

[1] Smarte's legal name was Bernice Fogle at the time she signed the power of attorney, and the document contains the signature of her former name.

Smarte signed the admission documents on Taylor's behalf at the time Taylor was admitted to Palm Garden in 2018.[2] The voluntary arbitration agreement contained within the admission agreement contained a signature line designated as "signature of power of attorney for resident;" however, Smarte did not sign there. The final page of the admission agreement designated a space for the resident's "legal representative" to sign, but Smarte did not sign there either. Instead, she signed the space designated for the resident's "responsible party." The admission agreement defined the term "legal representative" as "an individual who, under independent legal authority such as a court order, has authority to act on a guest's behalf . . . [such as] a guardian, conservator, or the holder of a Durable Power of Attorney." It defined a "responsible party" as "an individual who voluntarily agrees to honor certain specified obligations of the guest under this agreement without incurring any personal financial responsibility . . . [such as] a relative or friend of the guest."

[2] The admission agreement also contained a handwritten notation that Taylor was unable to sign the documents herself.

The trial court reviewed the POA at the hearing on Palm Garden's motion to compel arbitration. The parties stipulated to the validity of Taylor's POA, and the fact that Smarte held a valid POA over Taylor is not disputed in this appeal. Etheridge argued, however, that the POA did not provide Smarte the authority to enter into contracts on Taylor's behalf, that Smarte did not sign the arbitration agreement in her capacity as Taylor's attorney-in-fact but as the "responsible party," and that the arbitration agreement was not valid and enforceable. The trial court concluded instead that in signing the Palm Garden admission documents on Taylor's behalf, Smarte had the authority to and did consent to the arbitration provision therein. The March 28, 2022, nonfinal order compelling the parties to arbitration followed.

II.

On appeal, Etheridge argues that: (1) Smarte signed the admission agreement which contained an arbitration provision, but did so only as the "responsible party" for Taylor, and not as her attorney-in-fact; and (2) that even if Smarte's signature could be construed as that of an attorney-in-fact, the POA did not grant Smarte the authority to enter into contracts on Taylor's behalf.

Although we reject Smarte's second argument, we find reversible error in the trial court's finding that Smarte was authorized as Taylor's "responsible party" to bind Taylor to the arbitration agreement.

The interpretation of a POA is a question of law reviewed de novo on appeal. *Jaylene, Inc. v. Moots*, 95 So. 2d 566, 568 (Fla. 2d DCA 2008). POAs are strictly construed, and will be held to grant only those powers specified. *See Est. of Irons ex rel. Springer v. Arcadia Healthcare, L.C.*, 66 So. 3d 396, 398 (Fla. 2d DCA 2011). "A power of attorney need not expressly refer to arbitration to confer the authority to agree to this method of dispute resolution." *Candansk, LLC v. Est. of Hicks ex rel. Brownridge*, 25 So. 3d 580, 582 (Fla. 2d DCA 2009) (citing *Jaylene*, 995 So. 2d at 569). POAs should be closely examined to determine the intent of the principal. *Est. of Irons*, 66 So. 3d at 398 (quoting *Kotsch v. Kotsch*, 608 So. 2d 879, 880 (Fla. 2d DCA 1992)); *see Carrington Place of St. Pete, LLC v. Est. of Milo ex rel. Brito*, 19 So. 3d 340, 341 (Fla. 2d DCA 2009) (concluding that although the POA language expressly referred to the "rights, duties, and powers" granted to the attorney-in-fact, the language lacked a "broad, general grant of authority," and

"specifically granted authority. . . related solely to [the principal]'s property interests"); *but see Candansk*, 25 So. 3d at 584 (holding that broad language in POA conferred upon the attorney-in-fact the authority to act on principal's behalf in any way the principal could herself with regard to claims and litigation, which included arbitration); *Jaylene*, 995 So. 2d at 568-69 (holding that the "virtually all-inclusive" grant of authority in the POA was broad enough to authorize the attorney-in-fact to consent to the arbitration provision in agreement).

We have previously articulated that a durable POA may contain a "catch-all statement" that confers a broad grant of authority, language that confers specific powers, or both. *Est. of Irons*, 66 So. 3d at 399 (citing *Sovereign Healthcare of Fla., LLC v. Est. of Huerta*, 14 So. 3d 1033 (Fla. 2d DCA 2009)). The POA at issue here is similar to the POA reviewed by the First District in *Five Points Health Care, Ltd. v. Mallory*, 998 So. 2d 1180, 1181 (Fla. 1st DCA 2008), both of which lacked an express reference to the attorney-in-fact's authority to arbitrate claims, but which did authorize the attorney-in-fact to prosecute, defend, and settle all claims and legal actions touching the estate; as well as to "do

anything regarding [the] estate, property, and affairs that [the principal] could do for [him or herself]." The First District concluded that the broad grant of authority (the "catch-all") included the ability to consent to arbitrate and enter into an arbitration agreement on the principal's behalf. *Id.* at 1182. We reach the same conclusion based on the broad and unambiguous language of the POA here.

Nevertheless, in the context of the facts of this case, we cannot conclude that Smarte consented to the terms of the voluntary arbitration agreement because she signed Taylor's admission paperwork as a "responsible party" and not as Ms. Taylor's attorney-in-fact. The admission agreement defined the terms "legal representative" and "responsible party"; it was clear and unambiguous that in signing as a "responsible party," Smarte "agree[d] to honor certain specified obligations of the guest under this agreement without incurring any personal financial responsibility." A "responsible party" as defined in the Palm Garden admission agreement would not have the authority to consent to a voluntary arbitration agreement on the resident's behalf. And we cannot conclude that Smarte intended to sign in her capacity as

Taylor's attorney-in-fact simply based on the existence of the POA, whereby every other indication Smarte made the specific choice to sign in her capacity as a "responsible party" and not as Taylor's legal representative. *See Lepisto v. Senior Lifestyle Newport Ltd. P'ship*, 78 So. 3d 89, 94 (Fla. 4th DCA 2012) (reversing order compelling arbitration where nursing home resident's wife signed admission agreement containing arbitration provision as the "financially responsible party" and not as the resident's attorney-in-fact, where the agreement contained clear and unambiguous signature lines for both); *see also Perry v. Sovereign Healthcare of Metro W.*, 100 So. 3d 146, 148 (Fla. 5th DCA 2012) (holding that daughter of nursing home resident who signed admission documents containing arbitration provision in her capacity as "responsible party" lacked the authority to bind resident to arbitration provision). "The mere fact that the [c]ontract allows for the same person to serve both as representative and as the financially responsible party does not mean that the person was signing in both capacities, particularly when signing a signature below a specific title indicating one capacity and not both capacities." *Lepisto*, 78 So. 3d at 92.

III.

Because Smarte signed the admission agreement as the "responsible party" for Taylor, and not in her capacity as Taylor's attorney-in-fact, she did not have the authority to consent to the arbitration agreement, and we must therefore reverse the order compelling arbitration below and remand for further proceedings.

Reversed and remanded.

SILBERMAN and LaROSE, JJ., Concur.

Opinion subject to revision prior to official publication.