

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-001703-MR

STANFORD HEALTH & REHABILITATION
CENTER; BEVERLY HEALTH AND
REHABILITATION SERVICES, INC.;
BEVERLY ENTERPRISES, INC.;
BEVERLY CALIFORNIA CORPORATION
A/K/A BEVERLY ENTERPRISES, INC.
D/B/A BEVERLY HEALTH AND
REHABILITATION SERVICES, INC.;
GOLDEN LIVING CENTER - STANFORD;
AND GGNSC STANFORD LLC

APPELLANTS

v. APPEAL FROM LINCOLN CIRCUIT COURT
HONORABLE DAVID A. TAPP, JUDGE
ACTION NO. 07-CI-00206

LUCILLE BROCK, INDIVIDUALLY
AND AS THE ADMINISTRATRIX OF
THE ESTATE OF GLEN WILLIAMS,
DECEASED, AND ON BEHALF OF
ALL WRONGFUL DEATH BENEFICIARIES
OF THE ESTATE OF GLEN WILLIAMS,
DECEASED

APPELLEES

OPINION
VACATING AND REMANDING

** ** * * * * *

BEFORE: □ FORMTEXT □ □ACREE, DIXON, AND TAYLOR □, JUDGES.

TAYLOR, JUDGE: Stanford Health & Rehabilitation Center, Beverly Health and Rehabilitation Services, Inc., Beverly Enterprises, Inc., Beverly California Corporation a/k/a Beverly Enterprises, Inc. d/b/a Beverly Health and Rehabilitation Services, Inc., Golden Living Center – Stanford, and GGNSC Stanford LLC (Stanford Health) brings this appeal from a July 25, 2007, Order of the Lincoln Circuit Court which denied Stanford Health’s motion to compel arbitration. We vacate and remand.

Glen Williams was a resident of Stanford Health & Rehabilitation Center in Stanford, Kentucky. Williams died on April 1, 2006. Lucille Brock, his sister, was appointed administratrix of his estate.

Brock, in her capacity as administratrix, individually, and on behalf of other beneficiaries, filed an action against Stanford Health alleging negligence, breach of contract, violation of statutory duties, and breach of fiduciary duty in the death of Williams.

Stanford Health filed a motion to hold the action in abeyance and to compel arbitration. Kentucky Revised Statutes (KRS) 417.060. Therein, Stanford Health alleged that Williams signed an arbitration agreement upon admission to the rehabilitation center. By order entered July 25, 2007, the circuit court denied Stanford Health’s motion to compel arbitration. This interlocutory appeal follows. KRS 417.220.

Stanford Health argues that the circuit court erred by denying its motion to compel arbitration. Specifically, Stanford Health maintains that the arbitration agreement constituted a binding and enforceable contract and that the evidence established that Williams signed the agreement.

Under KRS 417.060, a person may seek a judicial order to compel arbitration upon a showing that a valid arbitration agreement exists and that the opposing party refuses to arbitrate. If the opposing party challenges the existence of a valid arbitration agreement, the circuit court “shall proceed summarily to the determination of the issue so raised.” KRS 417.060(1).

Appellate review of an otherwise unappealable interlocutory order arises under KRS 417.220(1)(a). The standard of review by our Court from appeals arising under this statute was recently discussed in *Conseco Finance Servicing Corp. v. Wilder*, 47 S.W.3d 335, 340 (Ky.App. 2001) as follows:

It may also be well to note that our review of a trial court's ruling in a KRS 417.060 proceeding is according to usual appellate standards. That is, we defer to the trial court's factual findings, upsetting them only if clearly erroneous or if unsupported by substantial evidence, but we review without deference the trial court's identification and application of legal principles. . . .

In this case, the circuit court made no factual findings nor can we determine whether the circuit court's ruling was based upon the application of contract law or other legal principles which might justify a *de novo* review by this Court.¹ The circuit court's order does indicate that the court considered

¹ We cannot determine from review of the circuit court's order whether the court found the existence of a valid arbitration agreement which must be resolved first under Kentucky Revised

documentary evidence, affidavits, and arguments by counsel. Under the circumstances presented in this case, and in reliance upon *Conseco*, we believe the circuit court is bound by the provisions of Kentucky Rules of Civil Procedure (CR) 52.01, which mandates that a court set forth specific findings of fact and separate conclusions of law in its order or judgment.

In the case *sub judice*, the circuit court's July 25, 2007, order denying arbitration did not contain any findings of fact or conclusions of law. Rather, the court merely stated that Stanford Health's motion to compel arbitration was denied. We believe the circuit court erred by failing to make any findings of fact and conclusions of law in its July 25, 2007, order denying arbitration.² *See Brown v. Shelton*, 156 S.W.3d 319 (Ky.App. 2004). And, we remind the circuit court that it speaks only through written orders entered upon the official record. *See Midland Guardian Acceptance Corp. of Cincinnati, Ohio v. Britt*, 439 S.W.2d 313 (Ky. 1968); *Com. v. Wilson*, 132 S.W.2d 522, 280 Ky. 61 (1939). As such, any findings of fact and conclusions of law made orally by the circuit court at an evidentiary hearing cannot be considered by this Court on appeal unless specifically incorporated into a written and properly entered order.

Upon remand, the circuit court shall reconsider Stanford Health's motion to compel arbitration in accordance with KRS 417.050 and KRS 417.060

Statutes 416.050.

² This is distinguished from a case where the circuit court makes inadequate findings of fact. In such a case, a party is bound to make a request for more definite findings under Kentucky Rules of Civil Procedure 52.04 before reversal may be predicated upon such error.

and shall render an order that sets forth specific findings of fact and separate conclusions of law as required by CR 52.01.

We view Stanford Health's remaining contentions of error to be moot.

For the foregoing reasons, the Order of the Lincoln Circuit Court is vacated and this cause remanded for proceedings consistent with this opinion.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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