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TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2013-CA-000917-MR

PIKEVILLE MEDICAL CENTER, INC.

APPELLANT

v. APPEAL FROM PIKE CIRCUIT COURT
HONORABLE EDDY COLEMAN, JUDGE
ACTION NO. 11-CI-01231

DORIS S. BEVINS, AS ADMINISTRATRIX
OF THE ESTATE OF GROVER C.
BEVINS; AND DORIS BEVINS,
INDIVIDUALLY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CAPERTON, COMBS, AND DIXON, JUDGES.

CAPERTON, JUDGE: The Appellant, Pikeville Medical Center, Inc. (hereinafter “PMC”), appeals the April 22, 2013, findings of fact, conclusions of law, and order of the Pike Circuit Court, denying its motion to compel arbitration in the medical malpractice action filed against it by Appellee, Doris S. Bevins, as Administratrix

of the Estate of Grover C. Bevins, and Doris S. Bevins, individually (hereinafter “Bevins”). Upon review of the record, the arguments of the parties, and the applicable law, we affirm.

Grover Bevins was admitted to PMC on July 20, 2010, at 8:04 p.m. He had been referred from South Williamson Appalachian Regional Hospital, where he had been an inpatient since the previous day. He was transferred to PMC by ambulance and was accompanied in the ambulance by a nurse attendant. Grover Bevins was 85 years old at the time of his admission to Pikeville Medical Center. He was described as alert, awake, and oriented, but was in poor health and was being transferred to Pikeville Medical Center for placement of a dialysis catheter because he was in end stage renal failure.

The court found that based upon Grover Bevins’s condition upon admission to the hospital that he would not have had the capacity to enter into a complex arbitration agreement such as the one that was presented to him upon admission to the hospital. That agreement stated that:

By signing this document, the patient (“you”) and Pikeville Medical Center, Inc. (“PMC”) both agree that binding arbitration, administered by JAMS, shall be the sole and exclusive method to resolve any disputes of any kind arising from or related to this inpatient admission, office visit, outpatient visit, emergency room visit, surgery, testing, or other encounter (hereinafter referred to as the “Encounter”), between you and PMC or any of its directors, officers, agents, servants, or employees. However, this Arbitration Agreement shall not preclude either party from pursuing any claim in small claims court.

[....]

This Arbitration Agreement specifically applies to claims of medical malpractice, lack of informed consent, negligent credentialing, negligent hiring, negligent supervision, and negligent retention and any other claim of personal injury, emotional injury, economic injury, physical injury, property damage, or other damages and all forms of liability whether direct or vicarious.

At the time of his admission to PMC, Bevins was seen by Dr. Victor Lossev. A copy of the Admission History Report from that date, July 20, 2010, was submitted into evidence, and is discussed herein, *infra*.

Subsequent to his admission, in the early morning hours of July 23, 2010, Bevins suffered a fall from his bed. He sustained a fracture to his neck, which required surgery on August 3, 2010. As the court below noted, the affidavit of Doris Bevins indicated that she made all decisions about Grover Bevins's medical care after the fall on July 23, 2010, including which surgeries and treatment would be provided, and eventually, end of life decisions. Bevins remained a patient at PMC until he was discharged on August 20, 2010, to Select Specialty Hospital in Charleston, West Virginia, for long-term care. Bevins passed away on September 19, 2010. His fall on July 23, 2010, forms the basis of the medical malpractice claims in this action.

Doris Bevins was appointed Administratrix of the Estate of Grover Bevins on September 29, 2010. On October 15, 2010, Bevins's counsel notified PMC that the arbitration agreement was being rescinded by the Administratrix on behalf of the estate. The court below, in its April 22, 2013, findings of fact,

conclusions of law, and order, found that beginning sometime on July 23, 2010, and from that date until his death in September of 2010, Grover Bevins did not have the ability, capacity, or opportunity to rescind under the terms of the arbitration agreement, which allowed thirty days for rescission. The Court noted that within sixteen days after Bevins's estate was opened for administration, the estate, through its attorney, gave notice to the defendant of its intent to rescind.

Doris Bevins, both as Administratrix of the Estate of Grover C. Bevins, and individually, filed this action against PMC on September 14, 2011, alleging negligence, medical negligence, the loss of consortium of Doris Bevins, and wrongful death. On November 22, 2011, PMC filed a motion to compel arbitration along with a memorandum in support thereof. That motion and Bevins's response were reviewed by the court below during a June 15, 2012, hearing. As noted, on April 22, 2013, the Pike Circuit Court entered its findings of fact, conclusions of law, and order denying PMC's motion to compel arbitration. In so doing, the court held that the wrongful death beneficiaries were not bound or limited by the arbitration agreement. It is from that order that PMC now appeals to this Court.

On appeal, PMC argues that the court below erred in denying its motion to compel arbitration, and asserts that both Kentucky law and the Federal Arbitration Act (FAA) compel arbitration of Bevins's claims.¹ Further, PMC

¹ The arbitration agreement in this appeal states that its provisions, "shall be governed by and interpreted under the Federal Arbitration Act, 9 U.S.C. §§ 1-16, and, to the extent not preempted by the Federal Arbitration Act, the Kentucky Uniform Arbitration Act, KRS [Kentucky Revised Statutes] 417.045 et. seq."

asserts that it provided prima facie evidence establishing the existence of a valid arbitration agreement, that the court erred in finding that Grover Bevins did not have the capacity to enter into the arbitration agreement, and that the court's finding that the arbitration agreement was timely rescinded is clearly erroneous, is not supported by substantial evidence, and is not supported by law.

In response, Bevins argues that the court correctly denied the motion to compel arbitration because Grover Bevins did not have the capacity to enter into the arbitration agreement at issue, and because the agreement was in any event timely rescinded. Further, Bevins asserts that it is now settled that the wrongful death claim and loss of consortium claim are not subject to arbitration.

In reviewing the arguments of the parties, we note that the standard of review applicable to an appeal from an order denying a motion to compel arbitration is usually twofold. First, the reviewing court must examine any findings of fact made by the trial court, upsetting them only if they are clearly erroneous or unsupported by substantial evidence. *Conseco Fin. Servicing Corp. v. Wilder*, 47 S.W.3d 335, 340 (Ky. App. 2001). Secondly, the reviewing court examines the trial court's legal conclusions *de novo* to determine if it has properly applied the law to the facts. *Id.* If the trial court makes no explicit findings of fact, but bases its ruling solely upon the application of certain principles of contract law to the arbitration clause, the review is *de novo*. *Id.* We review this matter with these standards in mind.

As noted, PMC asserts that the court erred in finding that Grover Bevins did not have the capacity to enter into the arbitration agreement, and that this finding was clearly erroneous and not supported by substantial evidence. PMC asserts that the court's finding was only a recitation of the facts set forth in Appellee's proposed "Findings of Fact, Conclusion of Law, and Order," and was directly contrary to the medical evidence submitted into the record, namely the hospital admission report issued by Dr. Lossev. PMC asserts that the arbitration agreement was signed by Bevins, and that he did so willingly. Accordingly, it asserts that the estate should now be bound by the terms thereof.

Secondly, PMC asserts that the trial court's finding that the arbitration agreement was timely rescinded was clearly erroneous, and not supported by substantial evidence. PMC argues that Bevins had the capacity to sign the agreement at the time that he did, and that the terms of that agreement clearly provide a thirty-day window of opportunity to revoke the agreement. It disagrees with the court's conclusion that Doris Bevins timely rescinded the agreement following Grover Bevins's death. To that end, PMC asserts that Kentucky law clearly sets forth a procedure, in KRS Chapter 387, for a guardian to be appointed to individuals with mental or physical disabilities that could have easily been followed in this instance but was not. PMC notes that family members made other decisions on behalf of Mr. Bevins during the thirty-day window, but made no attempt to revoke the agreement after he signed it. Accordingly, it asserts that the court's finding that the rescission was timely was in error, and urges this Court to

reverse, and to recognize that both the FAA and the Kentucky Uniform Arbitration Act compel arbitration under the agreement signed by Grover Bevins.

In response, Bevins argues that Grover Bevins did not have the requisite capacity to enter into a contract. Bevins asserts that the medical records of PMC indicate that Bevins was admitted very late on the evening of his arrival, and that the medical records from that evening detail a frail old man suffering from significant medical issues and end stage kidney disease. Accordingly, Bevins argues that the court was well within its discretion to determine that Grover Bevins did not have the mental capacity to sign the agreement at issue, and that it should not be enforced against him or his estate. To that end, Bevins further argues that the court below correctly found that the agreement was timely rescinded, as Bevins was incapable of doing so after he signed it, and because Doris Bevins took steps to do so shortly after she became Administratrix of his estate. Accordingly, she urges this Court to affirm.

Upon review of the record, the arguments of the parties, and the applicable law, we are in agreement with the court below that based upon Grover Bevins's condition upon admission to the hospital, he would not have had the capacity to enter into a complex arbitration agreement such as the one that was presented to him.

Relevant to the issue of Bevins's capacity at the time of admission and, thus, a matter of contention between the parties, is the Admission History

Report completed by Dr. Victor Lossev and submitted into evidence below. That report states, in pertinent part, as follows:

This 85-year-old Caucasian male patient is accepted as a transfer from Appalachian Regional Healthcare William Hospital by Dr. Zafar from hospitalist practice. He presents from ARH Williamson with a transfer diagnosis of hypertension, acute renal failure, generalized weakness, anemia of chronic disease, pulmonary congestion, and acute exacerbation of congestive heart failure. Patient apparently has been progressively short of breath for approximately a week with orthopnea, leg swelling, also swelling in the abdominal region and feeling of fullness. Patient reports no fever. He feels cold all the time. Patient has no significant or productive cough. He is short of breath. Does not have home oxygen. Patient also has chronic obstructive pulmonary disease. He does not carry a diagnosis of CHF; however, he reports that he sees Dr. Patnaik for Cardiology. Patient received hemodialysis catheter to left subclavian by apparently Dr. _____. Patient's nephrologist is Dr. Yusuf from Nephrology Service. At this point, patient is transferred here for further workup. . . .

PHYSICAL EXAMINATION: General: Caucasian male patient. *He is alert, awake, oriented. He is not in acute distress; actually pleasant and cooperative with examination.*

. . . .

The Appellant argues that this report is in direct contradiction to the court's finding on the record that Bevins was "in very poor health," "in end stage renal failure, frail, and weak," and was "being admitted for placement of a dialysis catheter." Upon review, we disagree.

While Dr. Lossev may certainly have found that Mr. Bevins was alert, awake, oriented, and cooperative at the time of examination, what constitutes being

alert, oriented and communicative for medical purposes is not necessarily coextensive with what constitutes being alert, oriented, and communicative for matters of legal concern. It is elementary law that capacity, both legal and mental, is a necessary and constituent element of a simple contract. *Stege v. Stege's Trust*, 35 S.W.2d 324 (Ky. App. 1930).

While Bevins may have been focused enough to respond to the doctor's questions and participate as necessary in the course of his medical treatment, the records clearly indicate that he was admitted on transfer for treatment of late stage kidney disease and that he was a very elderly, sick man at the time of admission. Accordingly, Bevins was not necessarily alert and oriented for purposes of reviewing and signing a complex contract of the kind presented to him in light of the various maladies from which he was suffering at the time.

For these reasons, we find that the determination of the court below to be supported by substantial evidence. Substantial evidence is that which a reasonable mind would accept as adequate to support a conclusion and which taken alone or in the light of all the evidence would induce conviction in the minds of reasonable men. *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003). It was the court below which was in the best position, as fact-finder, to draw reasonable inferences from the evidence. *See Commonwealth v. Parker*, 409 S.W.3d 350, 354 (Ky. 2013). Finding that the court did so, and was within its discretion in finding as it did, we affirm.

Having determined that Bevins lacked the legal capacity to voluntarily enter into the agreement, and thereby finding that the agreement was invalid, we need not reach the issue of whether the agreement was properly and timely rescinded. Finding that a valid arbitration agreement does not exist *sub judice*, we likewise find that same does not apply to the remaining claims brought by Bevins, including her claims for wrongful death and loss of consortium.

Wherefore, we hereby affirm the April 22, 2013, findings of fact, conclusions of law, and order of the Pike Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

P. Kevin Hackworth
Pikeville, Kentucky

BRIEF FOR APPELLEE:

Miller Kent Carter
Pikeville, Kentucky