

RENDERED: APRIL 4, 2014; 10:00 A.M.
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Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-000959-MR

LP PIKEVILLE, LLC, D/B/A SIGNATURE
HEALTHCARE OF PIKEVILLE, N/K/A
SIGNATURE HEALTHCARE AT PIKEVILLE,
LPMN, INC; LP MANAGER, LLC;
LP O HOLDINGS, LLC; LP RE II HOLDINGS,
LLC; SIGATURE HEALTHCARE, LLC;
SIGNATURE CONSULTING SERVICES, LLC;
SIGNITURE CLINICAL CONSULTING
SERVICES, LLC; ELAINE JONES, IN HER
CAPACITY AS ADMINISTRATOR
OF SIGNATURE HEALTHCARE OF
PIKEVILLE, N/K/A SIGNATURE HEALTHCARE
AT PIKEVILLE; AND COWAN GILMER,
IN HIS CAPACITY AS ADMINISTRATOR
OF SIGNATURE HEALTHCARE OF PIKEVILLE,
N/K/A SIGNATURE HEALTHCARE AT PIKEVILLE

APPELLANTS

v. APPEAL FROM PIKE CIRCUIT COURT
HONORABLE EDDY COLEMAN, JUDGE
ACTION NO. 12-CI-01529

GINGER WRIGHT, AS GUARDIAN
FOR MABLE DAMRON

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * * * *

BEFORE: JONES, MAZE, AND MOORE, JUDGES.

MAZE, JUDGE: LP Pikeville, LLC d/b/a Signature HealthCare of Pikeville, and associated entities and persons (collectively “Signature”) appeal from an order of the Pike Circuit Court which denied its motion to compel arbitration of negligence and personal injury claims brought by Ginger Wright, as Guardian for Mable Damron. Signature argues that Wright, as court-appointed guardian for Damron, had the authority to enter into an arbitration agreement on Damron’s behalf, and that the court erred in finding otherwise. We agree, concluding that a guardian has the authority to execute an arbitration agreement on behalf of her ward. Hence, we reverse and remand for additional proceedings.

The underlying facts of this action are not in dispute: On March 6, 2006, following a jury trial, the Pike District Court entered an order appointing Ginger Wright as full guardian for Mable Damron. Approximately three years later, on July 20, 2009, Damron entered the Signature long-term care facility in Pikeville. As guardian, Wright executed all of the admission documents for Damron. One of those documents, styled “Facility and Resident Agreement to Resolve Disputes,” required both parties to mediate or arbitrate any disputes, including “all claims based on breach of contract, negligence, medical malpractice, tort, breach of statutory duty, resident’s rights, [or] any departures from accepted

standards of care” The agreement also contained the following emphasized language:

THE PARTIES UNDERSTAND AND AGREE THAT BY ENTERING INTO THIS ARBITRATION AGREEMENT, THEY ARE GIVING UP AND WAIVING THEIR CONSTITUTIONAL RIGHT TO HAVE ANY CLAIM DECIDED IN A COURT OF LAW BEFORE A JUDGE AND JURY.

(Emphasis in original.)

Subsequently, on December 7, 2012, Wright, still acting as Damron’s guardian, filed a complaint against Signature, its various affiliated companies, and individuals acting in their capacities as agents or employees of Signature. The complaint alleged that Damron suffered injuries while a resident of the Pikeville Signature facility. The complaint asserted claims against the Signature defendants based upon negligence, medical negligence, corporate negligence, and violations of statutory duties.

Thereafter, Signature filed a motion to dismiss, or, in the alternative, to stay the action and compel arbitration as provided by the agreement. Wright responded that the agreement was unenforceable on several grounds, including that she lacked the authority to execute any agreement which waived Damron’s right to a jury trial. Following additional briefing and argument by the parties, the motion to compel arbitration was submitted to the trial court. On May 2, 2013, the trial court entered an order denying Signature’s motion, concluding that Kentucky

Revised Statutes (KRS) 387.660 limited Wright's authority to waive Damron's right to a jury trial.

Signature now appeals from this order. Ordinarily, such orders are interlocutory and not immediately appealable. However, an order denying a motion to compel arbitration is immediately appealable. KRS 417.220(1). *See also Conseco Finance Servicing Corp. v. Wilder*, 47 S.W.3d 335, 340 (Ky. App. 2001). The enforcement and effect of an arbitration agreement is governed by the Kentucky Uniform Arbitration Act (KUAA), KRS 417.045 *et seq.*, and the Federal Arbitration Act (FAA), 9 U.S.C. §§ 1 *et seq.* "Both Acts evince a legislative policy favoring arbitration agreements, or at least shielding them from disfavor." *Ping v. Beverly Enterprises Inc.*, 376 S.W.3d 581, 588 (Ky. 2012).

But under both Acts, a party seeking to compel arbitration has the initial burden of establishing the existence of a valid agreement to arbitrate. *Id.* at 589. That question is controlled by state law rules of contract formation. *Id.* at 590. The FAA does not preempt state law contract principles, including matters concerning the authority of an agent to enter into a contract and which parties may be bound by that contract. *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 630–31, 129 S. Ct. 1896, 1902, 173 L. Ed. 2d 832 (2009). However, the FAA requires that such principles must be applied to arbitration agreements in the same manner as other contracts. *Ping*, 376 S.W.3d at 589. Since this matter is entirely an issue of law, our standard of review is *de novo*. *Conseco*, 47 S.W.3d at 340.

Kentucky courts have recently addressed whether a power of attorney has the authority to enter into an arbitration agreement with a nursing home on behalf of his or her principal. *See Ping, supra*. The current case involves a similar, but distinct question: whether a court-appointed guardian has the authority to execute an arbitration agreement with a nursing home on behalf of her ward. There are several recent cases which have suggested that a court-appointed guardian has the authority to execute an arbitration agreement on behalf of a ward. *See GGNSC Stanford, LLC. v. Rowe*, 388 S.W.3d 117 (Ky. App. 2012), and *Kindred Nursing Centers, Ltd. Partnership v. Brown*, 411 S.W.3d 242 (Ky. App. 2011). Signature also cites to a number of older Kentucky cases which have held that a guardian has the authority to arbitrate contested claims of his ward, where doing so will avoid litigation or otherwise advance or protect the interest of the ward. *See McGoodwin v. Shelby*, 181 Ky. 230, 204 S.W. 171, 175-76 (1918), *as modified by* 182 Ky. 377, 206 S.W. 625 (1918), and *Galloway's Heirs v. Webb*, 3 Ky. (Hard.) 318 (1808).

The trial court found that none of these cases was binding authority. The recent cases, *Rowe* and *Brown*, both involved situations where the person signing the arbitration agreement was not a guardian. Hence, any speculation concerning the scope of a guardian's authority was merely *dicta*. Similarly, the trial court stated that any precedential value of the older cases has been superseded by the adoption of the current guardianship statutes.

We agree with the trial court that any inquiry into the powers of a guardian must begin with the currently applicable statutory authority. KRS 387.500 *et seq.*, sets out the procedure for appointment of a guardian of a disabled person. If the jury finds the person to be disabled from managing both her personal affairs and financial resources, the district court shall appoint a guardian based upon the extent of the disability found. KRS 387.590.

KRS 387.660 sets out the powers and duties for a guardian of a disabled person. In pertinent part, those powers include the following:

- (2) To make provision for the ward's care, comfort, and maintenance and arrange for such educational, social, vocational, and rehabilitation services as are appropriate and as will assist the ward in the development of maximum self-reliance and independence.
- (3) To give any necessary consent or approval to enable the ward to receive medical or other professional care, counsel, treatment or service. . . .
- (4) To act with respect to the ward in a manner which limits the deprivation of civil rights and restricts his personal freedom only to the extent necessary to provide needed care and services to him.

The trial court first noted that the right to a jury trial is protected under the Kentucky Constitution. Consequently, the court determined that KRS 387.660 subsection (4) limits a guardian's authority to waive a ward's right to a jury trial unless such waiver is necessary to provide care and services allowed by subsections (2) and (3). Since there was no evidence that the arbitration agreement was required for admission to the Pikeville Signature facility,¹ the court concluded

¹ Although the agreement does not specifically state that it is optional, neither party contends that execution of the arbitration agreement was a prerequisite to Damron's admission to the Pikeville Signature facility.

that Wright had no authority to enter into the arbitration agreement on Damron's behalf.

The Kentucky Supreme Court in *Ping* held that the authority to enter into an optional arbitration agreement will not be lightly inferred from broad language in a power of attorney. *Ping*, 376 S.W.3d at 593. However, the scope of the authority granted to a court-appointed guardian is much broader than that of a traditional power of attorney, even one intended to survive disability. *Rice v. Floyd*, 768 S.W.2d 57, 59 (Ky. 1989). KRS 387.590(10) generally authorizes the guardian to enter into contractual relationships on behalf of her ward. The specific powers granted under KRS 387.660 are construed broadly to allow the guardian to make any decision which the ward might make for herself if competent. *See Degrella By and Through Parrent v. Elston*, 858 S.W.2d 698, 704-05 (Ky. 1992).

Clearly, the guardian's authority is not unlimited. KRS 387.660 generally requires that the guardian act in the best interests of the ward and in the least restrictive manner possible. Certain actions, such as consent to nonessential or nonemergency medical treatment, require prior approval by a court. KRS 387.660(3). Likewise, a statutorily-appointed guardian has a broad scope of authority to institute and defend a lawsuit on her ward's behalf, but must obtain court approval to settle or compromise a ward's claim. *Branham v. Stewart*, 307 S.W.3d 94, 98 (Ky. 2010), citing KRS 387.125(6). In short, the guardian's statutory authority to prosecute, defend, or settle claims is expressly intended to provide for the best interests of the ward. *Id.*

When viewed in this context, a guardian's decision to execute an optional arbitration agreement also must be in the ward's best interest. However, the best interests of the ward must also be informed by the legislative policies expressed in the KUAA and the FAA which favor the enforcement of arbitration agreements. This interest must be balanced against the scope of the rights being waived. We must also point out that the right to seek arbitration, like the right to a jury trial, is protected under the Kentucky Constitution (Ky. Const. § 250).

In this case, Wright did not waive Damron's rights to bring claims against Signature for negligence or personal injury. The agreement merely specifies a forum for such claims – arbitration - and waives the right to a jury trial. Moreover, we cannot presume that arbitration would be unduly burdensome or prejudicial to Damron's interests. *Conseco*, 47 S.W.3d at 343-44, citing *Green Tree Financial Corp.–Alabama v. Randolph*, 531 U.S. 79, 89-90, 121 S. Ct. 513, 521, 148 L. Ed. 2d 373 (2000). *See also Schnuerle v. Insight Communications Co., L.P.*, 376 S.W.3d 561, 573 (Ky. 2012).

There is no question that such an agreement would be enforceable against a competent person. As noted, Kentucky courts have not lightly inferred that authority to other forms of agency. However, a statutorily-appointed guardian has the broadest possible agency relationship to her ward. If a guardian lacks the authority to execute an arbitration agreement on behalf of her ward, then we question whether any person, other than a competent person acting on her own behalf, could do so. This result, applied only to arbitration agreements, would

likely be preempted by the FAA. *Conseco*, 47 S.W.3d at 341. *See also A.T.&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740, 1747, 179 L. Ed. 2d 742 (2011).

Therefore, we conclude that the guardian has the authority to enter into collateral agreements which may affect the jural rights of her ward. Since Wright had the authority to enter into the arbitration agreement on Damron's behalf, we need not reach the issue of whether she would be estopped from denying that she had the authority. We also note that Wright raised other grounds challenging the enforceability of the agreement. Those matters are not before this Court on appeal and must be addressed by the trial court upon remand. If the arbitration agreement is otherwise enforceable, then the trial court must grant Signature's motion to compel arbitration.

Accordingly, the order of the Pike Circuit Court is reversed, and this matter is remanded for additional proceedings as set forth in this opinion.

ALL CONCUR.

BRIEF FOR APPELLANTS:

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