

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-000780-MR

PINE TREE VILLA, LLC
d/b/a REGIS WOODS CARE AND
REHABILITATION CENTER;
SUN HEALTHCARE GROUP, INC.;
HARBORSIDE HOLDINGS I, LLC;
HARBORSIDE HEALTHCARE ADVISORS
LIMITED PARTNERSHIP;
HARBORSIDE HEALTHCARE, LLC;
SUNBRIDGE HEALTHCARE, LLC;
HBR KENTUCKY, LLC; GENESIS
HEALTHCARE, LLC; GENESIS
HEALTHCARE, INC.; AND GENESIS
ELDERCARE REHABILITATION SERVICES, INC. APPELLANTS

APPEAL FROM JEFFERSON CIRCUIT COURT
v. HONORABLE CHARLES L. CUNNINGHAM JR, JUDGE
ACTION NO. 15-CI-005778

RAYETTA SMITH, as guardian of
JANIE FREE, incapacitated APPELLEES

OPINION
REVERSING

** ** * * * * *

BEFORE: ACREE, JOHNSON AND TAYLOR, JUDGES.

ACREE, JUDGE: Appellants, Pine Tree Villa, LLC d/b/a Regis Woods Care and Rehabilitation Center; Sun Healthcare Group, Inc.; Harborside Holdings I, LLC; Harborside Healthcare Advisors Limited Partnership; Harborside Healthcare, LLC; Sunbridge Healthcare, LLC; HBR Kentucky, LLC; Genesis Healthcare, LLC; Genesis Healthcare, Inc.; and Genesis Eldercare Rehabilitation Services, Inc. (collectively, Regis Woods), appeal the Jefferson Circuit Court's March 23, 2016 denial of their motion to compel arbitration of the personal injury and statutory claims initiated by Rayetta Smith, in her capacity as guardian of Janie Free, incapacitated. Based on the opinion of the Supreme Court of the United States in *Kindred Nursing Centers Ltd. Partnership v. Clark*, 137 S. Ct. 1421, 1429 (2017), we reverse.

On May 14, 2010, Janie Free executed a power of attorney appointing her daughter, Rayetta Smith, to be her attorney-in-fact. Janie subsequently entered the Regis Woods Care and Rehabilitation Center, a long-term care facility. Rayetta signed an arbitration agreement with Regis Woods specifying that, in the event of a lawsuit, the parties would forego litigation in favor of arbitration. The document is clear that Rayetta signed both in her individual capacity and in her representative capacity as Janie's attorney-in-fact.

Rayetta later became Janie's legal guardian. Displeased with the quality of care Janie was receiving at Regis Woods, Rayetta, in her capacity as Janie's

guardian, filed suit against Regis Woods for personal injury and violations of Kentucky's long-term care resident's rights statute.¹

Relying on its arbitration agreement, Regis Woods moved the circuit court to compel arbitration on all of the claims and to stay the action pending the conclusion of arbitration proceedings. The circuit court denied Regis Woods' motion concluding Rayetta lacked sufficient authority to sign the arbitration agreement on Janie's behalf. The court said it "must follow binding Supreme Court of Kentucky precedent, which holds that a power of attorney such as the one at issue in this case does not contain sufficient language to waive a person's constitutional right to a jury trial." Although the circuit court did not cite any case, that binding precedent was undoubtedly *Extendicare Homes, Inc. v. Whisman*, 478 S.W.3d 306 (Ky. 2015).

When the circuit court ruled, it was absolutely correct; *Whisman* was binding precedent. However, the Supreme Court of the United States has since then reversed *Whisman*² on the very point that formed the basis of the circuit court's ruling in the case before us.

We perceive no substantive difference between the case before us now and the case addressed by the Supreme Court of the United States, specifically the

¹ Kentucky Revised Statutes (KRS) 216.515.

² In *Extendicare Homes, Inc. v. Whisman*, the Supreme Court of Kentucky addressed the appeals of three separate but similar cases. The companion cases were *Kindred Nursing Centers v. Clark*, 2013-SC-000430-I and *Kindred Nursing Centers v. Wellner*, 2013-SC-000431-I. Extendicare did not challenge decision against it by pursuing a writ of certiorari with the Supreme Court of the United States; Kindred Nursing Homes did, and the petition was granted in both its cases.

case captioned in the Supreme Court of Kentucky as *Kindred Nursing Centers v. Clark*, 2013-SC-000430-I, *i.e.*, the lead case before the Supreme Court of the United States. In *Clark*, the Supreme Court of the United States said:

Our decision requires reversing the Kentucky Supreme Court’s judgment in favor of the Clark estate. . . . The court invalidated the agreement with Kindred only because the power of attorney did not specifically authorize Janis [the attorney-in-fact] to enter into it on Olive’s [the principal’s] behalf. In other words, the decision below was based exclusively on the clear-statement rule that we have held violates the FAA. So the court must now enforce the Clark–Kindred arbitration agreement.

Kindred Nursing Centers Ltd. Partnership v. Clark, 137 S. Ct. 1421, 1429 (2017).

For the reasons elucidated in *Clark*, we reverse the Jefferson Circuit Court’s March 23, 2016 order denying Regis Woods’ motion to compel arbitration.

ALL CONCUR.

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