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Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-001887-MR

LP LOUISVILLE EAST, LLC d/b/a SIGNATURE
HEALTHCARE OF EAST LOUISVILLE AND
BRIAN MUELLER APPELLANTS

APPEAL FROM JEFFERSON CIRCUIT COURT
v. HONORABLE MARY M. SHAW, JUDGE
ACTION NO. 17-CI-003358

KENNETH R. PATTON, AS ADMINISTRATOR
OF THE ESTATE OF TOMMY ROBERT PATTON APPELLEE

OPINION
AFFIRMING IN PART,
REVERSING IN PART AND REMANDING

** ** ** ** **

BEFORE: ACREE, NICKELL, AND SMALLWOOD, JUDGES.

NICKELL, JUDGE: LP Louisville East, LLC d/b/a Signature Healthcare of East Louisville and Brian Mueller[1] (collectively "Signature Healthcare") appeal from the Jefferson Circuit Court order denying their motion to compel arbitration and stay, or alternatively dismiss, the action entered November 17, 2017. After careful review, we affirm the trial court's denial of the motion to compel arbitration of the negligence claims as well as the wrongful death claims on behalf of all wrongful death beneficiaries except Kenneth R. Patton, which we remand with instruction to compel to arbitration and enter a stay of further proceedings.

Tommy Robert Patton was admitted as a resident to Signature Healthcare's long-term care facility. Contemporaneous with his admission, Tommy's son, Kenneth R. Patton, signed an Agreement to Informally Resolve and Arbitrate All Disputes (Arbitration Agreement) on Tommy's behalf and also in Kenneth's individual capacity. While a resident at Signature Healthcare's facility, Tommy fell and lacerated his head. Tommy was transferred to a local hospital for treatment of his head wound, but subsequently passed away.

Kenneth, as administrator of Tommy's estate, filed the instant suit without initiating mediation or arbitration. In lieu of answering the complaint,

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[1] Mueller was named a defendant as Signature Healthcare's facility administrator during times relevant to the underlying causes of action. Signature Healthcare disputes the factual accuracy of Mueller's official capacity at the relevant times but asserts the subject arbitration agreement applies to facility's "agents," which include the administrator(s) or individuals acting in such capacity.

Signature Healthcare filed a motion to compel arbitration and stay, or alternatively dismiss, the action on grounds the arbitration agreement was valid and enforceable and required arbitration of these claims. After briefing and oral argument, the trial court summarily denied the motion, making no factual findings. This appeal followed.

KRS[2] 417.220 permits appeal from an order denying an application to compel arbitration made under KRS 417.060 "in the manner and to the same extent as from orders or judgments in a civil action." On review,

> 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. Apparently the trial court made no factual findings in this case, but based its ruling solely on the application of certain principles of contract law to the arbitration clause quoted above. Our review, accordingly, is *de novo*.

Conseco Fin. Servicing Corp. v. Wilder, 47 S.W.3d 335, 340 (Ky. App. 2001).

Signature Healthcare presents three arguments on appeal: (1) the arbitration agreement is valid and enforceable, (2) Kenneth had authority to execute the arbitration agreement on behalf of Tommy, and (3) the wrongful death claim is arbitrable. Upon review, we discern the arbitration agreement is not valid or enforceable against Tommy, Tommy's Estate, or the wrongful death

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[2] Kentucky Revised Statutes.

beneficiaries not party thereto; however, Kenneth's wrongful death claim is arbitrable by his entry into the agreement in his individual capacity, which subsequently binds him as a wrongful death beneficiary.

Kenneth counters with four arguments: (1) Signature Healthcare is limited to arguments made in circuit court and designated in its civil prehearing statement, (2) the language of the durable power of attorney for finance of Tommy R. Patton ("DPOA") does not expressly authorize execution of a pre-dispute arbitration agreement, (3) the wrongful death claim is not subject to pre-dispute arbitration, and (4) the DPOA was not in effect when the pre-dispute arbitration agreement was executed. Kenneth's counterarguments do not warrant separate discussion as the key issues of enforceability of the arbitration agreement and stay of the remaining litigation, which are the central issues on appeal, are sufficiently addressed in our analysis and discussion of Signature Healthcare's arguments.

At the outset, we note *Kindred Nursing Centers Ltd. Partnership v. Wellner*, 533 S.W.3d 189, 190 (Ky. 2017), was rendered November 2, 2017.[3] On November 15, 2017, at the hearing on Signature Healthcare's motion, Kenneth's counsel tendered a copy of *Wellner* to the trial court. The trial court's denial of the motion is consistent with the Supreme Court of Kentucky's holdings in *Wellner*. *Wellner* specifically addresses most of the arguments raised in the instant appeal.

[3] This opinion was corrected on November 22, 2017.

By way of background, *Wellner* was initially before the Supreme Court of Kentucky with two other cases—*Extendicare Homes, Inc. v. Whisman* and *Kindred Nursing Centers Ltd. Partnership v. Clark*—which were consolidated into a single opinion styled *Extendicare Homes, Inc. v. Whisman*, 478 S.W.3d 306 (Ky. 2015). Extendicare Homes, Inc., did not seek review by the United States Supreme Court and its case became final; however, Kindred Nursing Centers Limited Partnership sought review of the Supreme Court of Kentucky's decisions in *Clark* and *Wellner* in the Supreme Court of the United States which issued a consolidated opinion styled *Kindred Nursing Centers Ltd. Partnership v. Clark*, 581 U.S. ___ , 137 S.Ct. 1421, 197 L.Ed.2d 806 (2017). The Supreme Court of the United States reversed the Supreme Court of Kentucky in *Clark* but remanded *Wellner*. To avoid confusion, we refer to the final decisions of the Supreme Court of Kentucky as *Whisman* and *Wellner*, respectively, and the decision of the Supreme Court of the United States as *Clark*.

Clark held *Whisman's* "clear statement rule," that an attorney-in-fact lacks authority to bind his principal to a pre-dispute arbitration agreement unless such authority is clearly stated in the power-of-attorney ("POA") document, impinged on supremacy of the Federal Arbitration Act ("FAA"). Because *Clark* turned exclusively on the clear statement rule it was reversed. However, *Wellner* also rested on alternative grounds and was remanded to the Supreme Court of

Kentucky to determine if the *Wellner* POA was wholly independent of and untainted by the clear statement rule. Specifically, in *Clark* the Supreme Court of the United States held:

> Our decision requires reversing the Kentucky Supreme Court's judgment in favor of the Clark estate. As noted earlier, the state court held that the Clark power of attorney was sufficiently broad to cover executing an arbitration agreement. See *supra*, at 1425-1426. The court invalidated the agreement with Kindred only because the power of attorney did not specifically authorize Janis to enter into it on Olive'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.
>
> **By contrast, our decision might not require such a result in the Wellner case. The Kentucky Supreme Court began its opinion by stating that the Wellner power of attorney was insufficiently broad to give Beverly the authority to execute an arbitration agreement for Joe.** See *supra*, at 1425-1426. **If that interpretation of the document is wholly independent of the court's clear-statement rule, then nothing we have said disturbs it.** But if that rule at all influenced the construction of the Wellner power of attorney, then the court must evaluate the document's meaning anew. The court's opinion leaves us uncertain as to whether such an impermissible taint occurred. We therefore vacate the judgment below and return the case to the state court for further consideration.

Clark, 137 S.Ct. 1421, 1429, 197 L.Ed.2d 806. (emphasis added).

The Supreme Court of Kentucky ultimately held its decision, "that neither of the two POA provisions relied upon by Kindred gave the agent, Beverly

Wellner, the authority to execute on behalf of her principal, Joe Wellner, a pre-dispute arbitration agreement" was independent of and untainted by the clear statement rule. *Wellner*, 533 S.W.3d at 192. The Court explained its decision was based on its "profound respect for the right of access to the Court of Justice explicitly guaranteed by the Kentucky Constitution and the right to trial by jury designated as 'sacred' by Section 7 of the Kentucky Constitution" rather than "a hostility to federal policies implicit in the Federal Arbitration Act and a resulting aversion to any implication of authority to make an arbitration agreement." *Id.* The Supreme Court of Kentucky further noted, "[t]he distinction we made with respect to the pre-dispute arbitration agreement was not based at all on any aversion to an implied, rather than an express, power to waive constitutional rights." *Id*. at 193.

The *Wellner* POA language is similar to the Patton DPOA language under review. The *Wellner* POA provided:

> 1) the power "to demand, sue for, collect, recover and receive all debts, monies, interest and demands whatsoever now due or that may hereafter be or become due to me (including the right to institute legal proceedings therefor)"; and, 2) the power "to make, execute and deliver deeds, releases, conveyances and contracts of every nature in relation to both real and personal property, including stocks, bonds, and insurance."

Id. at 193. In analyzing the provisions of the POA, the *Wellner* Court held:

> Our construction of the two cited provisions of the Wellner POA issues was clear and logical and, in opposition to the clear statement rule, expressed a willingness to infer in proper cases the power to commit to arbitration even where that express authority was lacking. With respect to the powers to "demand, sue for, collect, recover and receive all . . . demands whatsoever" and "to institute legal proceedings," it should be noted that our Wellner analysis incorporated by direct reference our analysis of the similar language of the Whisman POA. We said without reservation that "the power to 'institute or defend suits concerning my property rights' would necessarily encompass the power to make litigation-related decisions within the context of a suit so instituted, *including the decision to submit the pending dispute to mediation or arbitration*." Despite the lack of a clear statement authorizing the waiver of the principal's fundamental rights of access to the courts and to a jury trial, we expressly held that the power to bind existing claims to arbitration would be inferred from the "institute suits" provision of the Wellner POA. Far from being tainted by an association with the clear statement rule, that holding is antithetical to the clear statement rule.

Id. (internal citations omitted).

Here, the Patton DPOA provided powers pertaining to Tommy's "assets and liabilities," including powers relating to: real property transactions; banking and other financial institution transactions; insurance transactions; estate, trust, and other beneficiary transactions; claims and litigation; and benefits from Social Security, Medicare, Medicaid, or other governmental programs or military service. The Patton DPOA specifically permitted the attorney-in-fact to "submit to

arbitration, settle, and propose to accept a compromise with respect to a claim or litigation."

The *Wellner* Court continued its analysis of the POA, stating:

> Beverly Wellner did not execute Kindred's optional free standing pre-dispute arbitration agreement within the context of a lawsuit or claim for the recovery of anything belonging to Joe Wellner. The act that required supporting authorization was her execution of the pre-dispute arbitration agreement in the context of admitting him to a nursing home. That act was in no way connected to the pursuit of any claim of Joe's. . . .
>
> The only "thing" of Joe Wellner's affected by the pre-dispute arbitration agreement was his constitutional rights, which no one contends to be his real or personal property. . . .
>
> Not a scintilla of our original analysis of the Wellner POA rested upon the premise that the authority to waive constitutional rights (or the corresponding authority to arbitrate a claim) must be clearly stated. Moreover, our analysis clearly expressed the opposite—that whenever reasonably consistent with the principal's expressed grant of authority, we would infer without a clear statement the power to bind him to an arbitration agreement. Kindred's agreement failed, not because the Wellner POA lacked a clear statement referencing the authority to waive Joe's fundamental constitutional rights; it failed because, by its own specific terms it was not executed in relation to any of Joe Wellner's property, and it was not a document pertaining to the enforcement of any of Joe's existing claims.
>
> As established by the rationale plainly stated in [*Whisman*], our conclusion that the Wellner POA was insufficient to vest Beverly Wellner with the power to execute a pre-dispute arbitration agreement as part of Joe

> Wellner's admission to a nursing home was wholly independent of the clear statement rule decried by the United States Supreme Court.

Id. at 193-94 (internal footnotes omitted). Applying *Wellner's* analysis to the case at bar, it is evident the pre-dispute arbitration agreement did not affect any personal property rights of Tommy Patton. The only authority Tommy granted Kenneth to arbitrate in the DPOA was for existing claims. Stated another way, Kenneth could agree for Tommy to submit to arbitration for an existing claim, but Kenneth was not authorized to agree for Tommy to arbitrate a claim before one arose. As such, Patton's DPOA was insufficient to vest Kenneth with the power to execute a pre-dispute arbitration agreement as part of Tommy's admission to Signature Healthcare's facility.

Our interpretation of the Patton DPOA, like the Supreme Court of Kentucky's interpretation of the *Wellner* POA, reflects a long line of cases rooted in nationally significant history—which is neither outcome-oriented nor anti-arbitration—concerning interpretation of POA's. Kentucky courts have historically construed the grant of powers in POA's strictly and narrowly. Our courts recognize it is the duty of a party entering into an agreement with an individual acting under a POA to carefully read the POA to determine what authority is granted by the instrument and, if necessary, request the legal advice of an attorney or seek construction of the POA from the court.

One such case, *Clinton v. Hibbs' Ex'x*, 202 Ky. 304, 259 S.W. 356 (Ky. 1924), is still nationally persuasive authority and illustrates Kentucky courts' traditional interpretation of POA's. At issue in *Hibbs' Ex'x* was the scope of authority of L.C. Hibbs' general POA to his wife, Lula Hibbs. The POA stated:

> I, L. C. Hibbs, being now infirm in health, and for that reason not being able to attend to my business affairs, do hereby appoint my wife, Lula Hibbs, as my agent and attorney in fact, and give her full authority to attend to all of my affairs, to sign checks and also execute any notes that she may deem necessary in the conducting of my affairs, and to transact all of my business during my illness, also to collect all moneys that may be due me, and to represent me in the partnership business in which I may be interested. This June 6, 1920. L. C. Hibbs.

The POA was filed with the local county clerk. Ms. Hibbs subsequently signed on behalf of her husband as surety a note between two unrelated parties, Nelson and Clinton. The signature read: "L.C. Hibbs by Lula Hibbs, attorney in fact." *Id*. at 357. When Nelson defaulted on the note, Clinton sued and included Ms. Hibbs, as executrix of her husband's estate. Ms. Hibbs answered, denying her husband's liability on the grounds

> he was not a principal therein, and that his name was signed thereto by her as his attorney in fact only for the purpose of binding him as surety thereon; that he received no part of the consideration therefor, and that she, as his attorney in fact, by whom his name was signed thereto, had no authority from him in writing to do so, and it was also averred that the above general power of attorney conferred no such authority upon her as the appointed agent of her husband therein.

Id. Upon motion, the trial court entered a directed verdict in the estate's favor. Clinton appealed, and the former Court of Appeals held it was "the exclusive province of the court in this case to construe the power of attorney and to determine therefrom the extent of the authority of the attorney in fact." *Id.*

The *Hibbs' Ex'x* Court analyzed the POA, determining

> [t]he first thing to be observed in the discussion . . . is that the power of attorney by its express terms gave to the wife "authority to attend to all of my [the principal's] affairs, to sign checks, and also execute any notes that she may deem necessary in the conducting of my [his] affairs, and to transact all of my business during my illness," with some additional powers relating to the collection of money and representing her husband in any partnership business in which he may be interested. Her authority was thereby limited to the doing of such things and the performance of such acts as were necessary to the conducting of the business affairs of her husband, and manifestly did not include the signing of his name as surety for another. Her authority was general, but limited to the matters mentioned in the power of attorney; and which conclusion is so self-evident to our minds as to leave no room for discussion, or any support for any other interpretation. Such an authority cannot be extended beyond the fair meaning of the words conferring it[.]
>
> . . . .
>
> **Even when there is express authority for the agent to bind his principal as surety, it is the policy of the law to construe it strictly, and to hold the principal not bound unless the authority is exercised within the undoubted limits prescribed by the principal.**

Id. at 357-58. (emphasis added, internal citation omitted).

Hibbs' Ex'x also noted the significance of how the surety was signed. By her signature, Ms. Hibbs articulated in writing she was signing in the context of her husband's agency. Concerning the principles of agency, the *Hibbs' Ex'x* Court observed:

> the Negotiable Instruments Act, says that:
>
> > A signature by 'procuration' operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.
>
> The word "procuration," as therein used, and as defined by law lexicographers, means "the act by which a principal gives power to another to act in his place as he could himself"; and Mr. Anderson, in his Law Dictionary, defines it as "acting as agent for another; agency; proxy."
>
> The note in the instant case showed on its face that the signature of Mr. Hibbs as surety thereon was by "procuration," and gave notice to the plaintiff of the limitations of the authority of Mrs. Hibbs, by whom it was made. He therefore not only possessed from such fact presumptive notice of such limitations on her authority, but he also had constructive notice arising from the recording of the power of attorney in the office of the county court clerk of Livingston county. He therefore accepted the note with attributed knowledge that Mrs. Hibbs exceeded her authority in signing her husband's name to it as surety, and he is in no attitude to complain of any of the alleged estopping facts in avoidance thereof. Indeed, if such estopping facts could be given the effect contended for in this case, then in every case the surety would be rendered liable where he had knowledge that his agent in executing the note had

> exceeded his authority; and the cases would be rare indeed where the mandatory provisions of the statute requiring the agent's authority to be in writing could be enforced.
>
> It is our conclusion, therefore, that the court correctly directed a verdict in favor of defendant, since from whatever viewpoint we consider the facts in the case we come out at the same door, over which is inscribed "No liability here."

Id. at 359. In the case at bar, Signature Healthcare had actual notice Kenneth was signing on his father's behalf as his agent pursuant to a DPOA and obtained a copy of the instrument. Thus, Signature Healthcare had actual and/or attributed notice Kenneth exceeded the scope of the DPOA by signing the pre-dispute arbitration agreement on his father's behalf.

Signature Healthcare further argues the wrongful death claim is arbitrable because Kenneth Patton signed the arbitration agreement on behalf of Tommy and himself, in his individual capacity. Signature Healthcare argues Kenneth's interest in the wrongful death claim against the facility on behalf of himself as a wrongful death beneficiary should be arbitrated as a result of his signature on the arbitration agreement in his individual capacity. We agree, to a point. "[W]rongful death beneficiaries are free, as they always have been, to enter into arbitration agreements regarding their wrongful death claims." *Whisman*, 478 S.W.3d at 314. "Under *Ping* [*v. Beverly Enterprises, Inc.*, 376 S.W.3d 581 (Ky. 2012)], nothing precludes those beneficiaries from entering into arbitration

agreements." *Richmond Health Facilities v. Nichols*, 811 F.3d 192, 198 (6th Cir. 2016). Kenneth must accept the legal consequences of his individual agreement, unless he can establish some other legal and valid reason why he should not be held to the arbitration agreement he signed in his individual capacity. He has not done so.

However, we cannot go so far as to say Kenneth had authority to bind other wrongful death beneficiaries to the arbitration agreement. We continue to follow *Ping*, in that despite

> as interesting as life might be if we could bind one another to contracts merely by referring to each other in them, we are not persuaded that a non-signatory who receives no substantive benefit under a contract may be bound to the contract's procedural provisions, including arbitration clauses, merely by being referred to in the contract.

Ping, 376 S.W.3d at 599.

Signature Healthcare urges us to treat *Ping* and its progeny as preempted by the FAA. We decline. Another panel of our Court recently held:

> [t]his Court has thoroughly reviewed the *Kindred* decisions and we do not believe it overrules *Ping* as concerns the derivative claims asserted by wrongful death beneficiaries under Kentucky Revised Statutes (KRS) 411.130. The *Kindred* decisions reference authorities relied upon by appellants to support their argument that wrongful death beneficiaries are subject to nursing home arbitration agreements: namely, *Marmet Health Care Center, Inc. v. Brown*, 565 U.S. 530, 132 S.Ct. 1201, 182 L.Ed. 2d 42 (2012) and *AT & T Mobility*

> *LLC v. Concepcion*, 563 U.S. 333, 131 S.Ct. 1740, 179 L.Ed.2d 742 (2011). Appellants argue the Federal Arbitration Act (FAA) and these cases have preempted *Ping* and other Kentucky authority on this issue. . . .
>
> Contrary to appellants' argument, we do not believe *Ping* has been preempted by the FAA as interpreted in the *Concepcion* decision. We find nothing in the *Kindred* decisions that would lead us to believe otherwise, especially since the decision in *Extendicare v. Whisman* was not addressed by the United States Supreme Court. And, prior to the *Kindred* decisions, federal courts in Kentucky likewise had concluded that *Ping* and its progeny were not preempted by the FAA. The Sixth Circuit Court of Appeals recently addressed this very issue in *Richmond Health Facilities v. Nichols*, 811 F.3d 192 (6th Cir. 2016), holding that beneficiaries who were not parties to a nursing home arbitration agreement were not subject to its provisions.

Preferred Care Partners Mgmt. Grp., L.P. v. Alexander, 530 S.W.3d 919, 922-23 (Ky. App. 2017).

Additionally, "policies favoring arbitration do not displace well-settled principles of contracts, property, and due process that bar individuals from making contracts that dispose of rights and property interests belonging to other people." *Whisman*, 478 S.W.3d at 314. In Kentucky, a decedent or his representative has no authority to bind wrongful death beneficiaries to an arbitration agreement. *Ping*, 376 S.W.3d at 597-99. Although KRS 411.130(1) authorizes a decedent's representative to file a wrongful death claim, "the wrongful death claim is not derived through or on behalf of the [nursing home resident] but

accrues separately to the wrongful death beneficiaries and is meant to compensate them for their own pecuniary loss." *Ping*, 376 S.W.3d at 599. The only parties to the arbitration agreement in this case were Signature Healthcare, Tommy and Kenneth. Kenneth did not sign the arbitration agreement on behalf of Tommy's future estate. Wrongful death beneficiaries, other than Kenneth, were neither party to the arbitration agreement nor are their claims subject to an order compelling arbitration. *Id*. at 598-99.

Finally, we address whether the trial court must now grant Signature Healthcare's motion to stay further proceedings on the remaining claims pending resolution of any arbitrable claims. The Supreme Court of the United States observed dual-track proceedings are required "when necessary to give effect to an arbitration agreement," even if inefficient. *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp*., 460 U.S. 1, 20, 103 S.Ct. 927, 939, 74 L.Ed.2d 765 (1983). The Supreme Court further noted courts "are obliged to grant stays of litigation under § 3 of the [FAA]." *Id.*, 460 U.S. at 26, 103 S.Ct. at 942, 74 L.Ed.2d 765. The FAA unequivocally provides:

> [i]f any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, **shall** on application of one of the parties stay the trial of the action until such arbitration has been had

> in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

9 U.S.C.[4] § 3 (emphasis added). Therefore, the trial court must enter a stay of the remaining causes of action pending completion of arbitration of Kenneth's wrongful death claims against Signature Healthcare.

For the foregoing reasons, the order of the Jefferson Circuit Court is affirmed, in part, and reversed as to the wrongful death claim of beneficiary Kenneth Patton, which we remand with instruction to order the parties to arbitration. We further direct the court to enter a stay of proceedings on all remaining claims consistent with this Opinion.

ACREE, JUDGE, CONCURS.

SMALLWOOD, JUDGE, CONCURS AND FILES SEPARATE OPINION.

SMALLWOOD, JUDGE: I concur only because I am "bound by and … [required to] follow applicable precedents established in the opinions of the Supreme Court …." SCR 1-030(8)(a). Kentucky law has long required Powers of Attorneys be strictly construed "and to hold the principal not bound unless the authority is exercised within the undoubted limits prescribed the by principal."

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[4] United States Code.

Clinton v. Hibbs Ex'x, 2002 Ky. 304, 259 S.W. 356, 358 (Ky. 1924). However, *Hibbs* cannot be stretched to provide authorization for the legal gymnastics the court has used to justify its holding. The court's disfavor with arbitration cannot justify ignoring the purpose of a Power of Attorney by adding limiting conditions or words which are not contained within the power of attorney itself. Justice Hughes' dissent in *Wellner*[5] is well reasoned.

I would urge our Supreme Court to reexamine this issue and provide greater clarity for the practicing bar.

BRIEFS FOR APPELLANT:	BRIEF FOR APPELLEE:
John David Dyche Leigh V. Graves Louisville, Kentucky	Vanessa Cantley Patrick E. Markey Louisville, Kentucky

[5] *Kindred Nursing Centers Limited Partnership v. Wellner.* 533 S.W.3d 189, 190 (Ky. 2017).