



**In the
Missouri Court of Appeals
Western District**

BELINDA RAMIREZ-LEON,)
)
 Respondent,) **WD80990**
)
 v.) **OPINION FILED: March 27, 2018**
)
 GGNSC, LLC, ET AL.,)
)
 Appellants.)

Appeal from the Circuit Court of Jackson County, Missouri
The Honorable James F. Kanatzar, Judge

Before Division Three: Gary D. Witt, Presiding Judge, Lisa White Hardwick, Judge and Edward R. Ardini, Jr., Judge

Golden Gate National Senior Care, LLC, GGNSC Equity Holding, LLC, and GGNSC Independence II, LLC d/b/a Golden Living Center - Independence (collectively "Appellants") bring this interlocutory appeal from the Circuit Court of Jackson County's denial of Appellants' Motion to Dismiss and Enforce Alternative Dispute Resolution Agreement. Appellants argue that the trial court erred in denying their motion because the Alternative Dispute Resolution Agreement ("Arbitration Agreement") is valid and enforceable under Missouri's Uniform Arbitration Act and the Federal Arbitration Act. We reverse and remand.

Background¹

As a result of events which are unrelated to this action, Kevin Bratton ("Bratton") suffered anoxic brain damage, which rendered him totally incapacitated and disabled, mentally and physically. On October 17, 2008, Belinda Ramirez-Leon ("Ramirez-Leon"), Bratton's mother, was appointed by the Jackson County Probate Court as Bratton's guardian and conservator, and Bratton was placed in a nursing home in Smithville, Missouri.

In October 2015, Ramirez-Leon decided to move Bratton to Golden Living Center ("GLC") in Independence, Missouri. During the admission process, Ramirez-Leon was provided with admission forms by Carla Hopper ("Hopper"), the Director of Admission at GLC. Ramirez-Leon was instructed to sign the forms in order for Bratton to be admitted. Among the forms presented to her was a separate document containing the Arbitration Agreement.

The Arbitration Agreement is titled Alternative Dispute Resolution Agreement. Directly below the title, in all capital letters, the Arbitration Agreement states: "THIS AGREEMENT IS NOT A CONDITION OF ADMISSION TO OR CONTINUED RESIDENCE IN THE FACILITY." The Arbitration Agreement further provides that it is between the facility, GLC, and the resident of the facility, Bratton. According to the Arbitration Agreement, the facility includes "the living center, its employees, agents, officers, directors, affiliates and any parent or subsidiary of the facility and its medical director acting in his or her capacity as medical director," and resident includes "the

¹ We defer to the trial court's express factual determinations, and we view all other facts in the light most favorable to the result the trial court reached. *Baier v. Darden Restaurants*, 420 S.W.3d 733, 736-37 (Mo. App. W.D. 2014).

Resident, all persons whose claim is or may be derived through or on behalf of the Resident, including any next of kin, guardian, executor, administrator, legal representative, or heir of the Resident, and any person who has executed this Agreement on the Resident's behalf."

The next part of the Arbitration Agreement is titled "Voluntary Agreement to Participate in ADR." In the middle of that section, in bold typeface and capital letters, the Arbitration Agreement states:

THE PARTIES UNDERSTAND, ACKNOWLEDGE, AND AGREE THAT THEY ARE SELECTING A METHOD OF RESOLVING DISPUTES WITHOUT RESORTING TO LAWSUITS OR THE COURTS, AND THAT BY ENTERING INTO THIS AGREEMENT, THEY ARE GIVING UP THEIR CONSTITUTIONAL RIGHT TO HAVE THEIR DISPUTES DECIDED IN A COURT OF LAW BY A JUDGE OR JURY, THE OPPORTUNITY TO PRESENT THEIR CLAIMS AS A CLASS ACTION AND/OR TO APPEAL ANY DECISION OR AWARD OF DAMAGES RESULTING FROM THE ADR PROCESS EXCEPT AS PROVIDED HEREIN.

The Arbitration Agreement also has a choice of law provision, which states the Arbitration Agreement should be governed by and interpreted under the Federal Arbitration Act ("FAA"). The Arbitration Agreement states that it "applies to any and all disputes arising out of or in any way relating to this Agreement or to the Resident's stay at the Facility or the Admissions Agreement between the Parties that would constitute a legally cognizable cause of action in a court of law sitting in the state where Facility is located." Above the signature block, the Arbitration Agreement includes another statement in bold typeface and capital letters which states: **"THIS AGREEMENT GOVERNS IMPORTANT LEGAL RIGHTS. PLEASE READ IT CAREFULLY AND IN ITS ENTIRETY BEFORE SIGNING."** Ramirez-Leon signed the Arbitration Agreement on the line labeled

"Signature of Resident" and did not sign on the line labeled "Signature of Resident's Legal Representative".² The bottom of the Arbitration Agreement also includes a line to sign if one wishes to decline the Arbitration Agreement. This line was left blank.

On December 20, 2016, Bratton, through Ramirez-Leon, filed a negligence claim in the Circuit Court of Jackson County against Richard T. Chung, M.D. and Appellants, alleging that he sustained certain physical injuries due to his treatment by Appellants. Appellants filed the Motion to Dismiss and Enforce Alternative Dispute Resolution Agreement on April 6, 2017. On May 8, 2017, Ramirez-Leon filed Suggestions in Opposition to Appellants' Motion, which argued that the Arbitration Agreement was unconscionable and violated public policy. Ramirez-Leon further argued that GGNSC Independence II, LLC, Golden Gate National Senior Care, LLC, and GGNSC Equity Holdings, LLC were not parties to the Arbitration Agreement and therefore could not claim any rights pursuant to that agreement.

On July 31, 2017, the trial court denied Appellants' Motion to Dismiss and Enforce Alternative Dispute Resolution Agreement. This timely interlocutory appeal followed.

Standard of Review

"The Judgment of the trial court is affirmed on appeal unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law." *Stubblefield v. Best Cars KC, Inc.*, 506 S.W.3d 377, 379 (Mo. App. W.D. 2016). "Appellate review of the denial of a motion to compel arbitration is *de novo*." *Id.*

² Ramirez-Leon signed the rest of the admissions paper work on the line labeled "Signature of Respondent" and did not sign on the line labeled "Signature of Resident's Legal Representative" on any of the agreements.

"When faced with a motion to compel arbitration, the motion court must determine whether a valid arbitration agreement exists and, if so, whether the specific dispute falls within the scope of the arbitration agreement." *Arrowhead Contracting, Inc. v. M.H. Washington, LLC*, 243 S.W.3d 532, 535 (Mo. App. W.D. 2008) (quoting *Nitro Distrib., Inc. v. Dunn*, 194 S.W.3d 339, 345 (Mo. banc 2006)). "In determining whether or not a valid arbitration agreement exists, we apply the usual rules of state contract law and canons of contract interpretation." *Id.* (internal quotations omitted).

Analysis

Appellants raise two points on appeal, which we address in reverse order for ease of analysis. In Appellants' second point on appeal, they argue that the trial court erred in denying their motion to enforce the Arbitration Agreement because the Arbitration Agreement is valid and enforceable under the Federal Arbitration Act ("FAA"). In Appellants' first point on appeal, they argue that the trial court erred in denying their motion to enforce the Arbitration Agreement because the Arbitration Agreement is valid and enforceable under the Missouri Uniform Arbitration Act.

Point Two

In Point Two, Appellants argue that the trial court erred in denying their Motion to Dismiss and Enforce Alternative Dispute Resolution Agreement because the Arbitration Agreement is valid and enforceable under the FAA. Appellants argue that the Arbitration Agreement complied with the requirements of the FAA and any failure by Ramirez-Leon to read the Arbitration Agreement before signing it does not relieve Bratton from being bound.

"The Federal Arbitration Act (FAA), 9 U.S.C. § 1 et seq. (2006), governs the applicability and enforceability of arbitration agreements in all contracts involving interstate commerce." *State ex rel. Hewitt v. Kerr*, 461 S.W.3d 798, 805 (Mo. banc 2015). "Section 2 extends the scope of the FAA to any contract evidencing a transaction involving commerce." *Id.* (internal quotations omitted). The Arbitration Agreement states that it is governed by the FAA and Ramirez-Leon has never challenged this.

"The Supreme Court stated in *Concepcion* that the FAA reflects a 'liberal policy favoring arbitration and the fundamental principle that arbitration is a matter of contract....[C]ourts must place arbitration agreements on an equal footing with other contracts and enforce them according to their terms.'" *Id.* (quoting *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740, 1745 (2011)). Written agreements to arbitrate are "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. section 2. "The FAA expresses the United States Congress's policy favoring resolution of disputes by enforcement of arbitration agreements, instead of resorting to the judicial system." *Kan. City Urology, P.A. v. United Healthcare Servs.*, 261 S.W.3d 7, 11 (Mo. App. W.D. 2008) (citation omitted).

But "[t]his policy is not enough, standing alone, to extend an arbitration agreement beyond its intended scope because arbitration is a matter of contract." *Id.* Further, "[a] party cannot be compelled to arbitration unless the party has agreed to do so." *Id.* "As such, enforceability under the FAA never comes into play if a contract itself was never formed." *Bellemere v. Cable-Dahmer Chevrolet, Inc.*, 423 S.W.3d 267, 273 (Mo. App. W.D. 2013). "[T]he essential elements of a contract are: '(1) competency of the parties to

contract; (2) subject matter; (3) legal consideration; (4) mutuality of agreement; and (5) mutuality of obligation." *Id.* (quoting *Bldg. Erection Servs. Co. v. Plastic Sales & Mfg. Co., Inc.*, 163 S.W.3d 472, 477 (Mo. App. W.D. 2005)). *See also Johnson v. Vatterott Educ. Ctrs., Inc.*, 410 S.W.3d 735, 738 (Mo. App. W.D. 2013) ("Under ... the Federal Arbitration Act, ... whether the parties entered into an enforceable arbitration agreement is a preliminary issue for the court to decide, applying Missouri law.").

Ramirez-Leon argued in her Suggestions in Opposition to Appellants' motion and her response to this Court that the Arbitration Agreement was unconscionable and against public policy. Ramirez-Leon claims that she was told by Hopper that she was required to sign all documents in order for Bratton to be admitted, and at no time was the Arbitration Agreement explained or was she given an opportunity to ask questions. Due to this lack of information, Ramirez-Leon argues, the Arbitration Agreement is unconscionable. Further, Ramirez-Leon argues that arbitration agreements involving nursing homes often involve no meaningful choice, and therefore are against public policy.

Unconscionability is defined as "an inequality so strong, gross, and manifest that it must be impossible to state it to one with common sense without producing an exclamation at the inequality of it." *State v. Brookside Nursing Ctr.*, 50 S.W.3d 273, 277 (Mo. banc 2001). Unconscionability doctrine guards against one-sided contracts, oppression, and unfair surprise. *Brewer v. Mo. Title Loans*, 364 S.W.3d 486, 492-93 (Mo. banc 2012).

Oppression and unfair surprise can occur during the bargaining process or may become evident later, when a dispute or other circumstances invoke the objectively unreasonable terms. In either case, the unconscionability is linked inextricably with the process of contract formation because it is a

formation that a party is required to agree to the objectively unreasonable term.

Id. at 493. "Unconscionability has two aspects: procedural unconscionability and substantive unconscionability." *State ex rel. Vincent v. Schneider*, 194 S.W.3d 853, 859 (Mo. banc 2006). "Procedural unconscionability deals with the formalities of making the contract, while substantive unconscionability deals with the terms of the contract itself."

Id. "Procedural unconscionability focuses on such things as high pressure sales tactics, unreadable fine print, or misrepresentation among other unfair issues in the contract formation process. *Id.* "Substantive unconscionability means an undue harshness in the contract terms." *Id.*

Ramirez-Leon's only claim of procedural unconscionability is that she was told she was required to sign the documents provided for Bratton's admission to GLC and that she was not given an opportunity to ask questions. However, right below the heading, in capital letters, the Arbitration Agreement states that it is not a condition of admission to GLC. The Arbitration Agreement form specifically provided a separate place for her to sign if she desired to decline the Arbitration Agreement. It also states further down in the Arbitration Agreement, in bold typeface and capital letters that by entering into the Arbitration Agreement the resident is giving up their legal right to a trial and all claims will be handled through arbitration. While this Court acknowledges that admitting a loved one into a nursing home is a difficult and stressful time, and one may be distracted by the gravity of the situation, this does not absolve the individual from reading the contract presented to them. "The law is clear that a signer's failure to read or understand a contract is not,

standing alone, a defense to the contract." *Robinson*, 364 S.W.3d at 509 n.4. See *Sanger v. Yellow Cab Co., Inc.*, 486 S.W.2d 477, 481 (Mo. banc 1972) ("The rule is that the one who signs a paper, without reading it, if he is able to read and understand, is guilty of such negligence in failing to inform himself of its nature that he cannot be relieved from the obligation contained in the paper thus signed, unless there was something more than mere reliance upon the statements of another as to its contents[.]"); *Repair Masters Constr., Inc. v. Gary*, 277 S.W.3d 854, 858 (Mo. App. 2009) ("The failure to read a document prior to signing it is not a defense, and does not make a contract voidable, absent fraud."); *Cowbell, LLC v. BORC Bldg. & Leasing Corp.*, 328 S.W.3d 399, 407 (Mo. App. W.D. 2010) ("The signatories' alleged failure to read the contracts is not a defense."). Regardless of what Hopper may have said to Ramirez-Leon prior to signing, the Arbitration Agreement stated that it was not a condition of Bratton's admission and that by signing the document she was restricting Bratton's right to bring an action in court. The fact that she did not read the document to see that it was not a condition of Bratton's admission does not, in and of itself, make the Arbitration Agreement unconscionable.

Further, Ramirez-Leon argues that the Arbitration Agreement was substantively unconscionable due to the lack of real choice in an arbitration agreement involving nursing home residents. Ramirez-Leon cites to Judge Norton's concurring opinion in *Lawrence v. Beverly Manor*, 273 S.W.3d 525, 533 (Mo. banc 2009), which states that "the provisions of the arbitration agreement that require the Nursing Home and Resident to arbitrate any personal injury claims, and require the parties to waive their right to have any such claims decided in a court of law, are both procedurally and substantively unconscionable."

However, the majority opinion of the Supreme Court is what binds this court. Concurring opinions are merely persuasive and we are unpersuaded because the issue in *Lawrence* was whether an arbitration agreement signed upon admission to a nursing home could bind the parties from a future wrongful death action. *Id.* Further, in *Lawrence* the arbitration agreement was arguably a contract of adhesion where the Arbitration Agreement herein was not a condition required for Bratton's admission to the facility. Ramirez-Leon was made aware that the Arbitration Agreement was not required by its very terms, therefore she was provided with the meaningful choice of declining the Arbitration Agreement by signing on the prescribed line which specifically provided her that option. The arguments raised in the concurring opinion in *Lawrence* are not binding on this court and are inapplicable to this matter.

Ramirez-Leon further argues that the Arbitration Agreement is unenforceable because she signed on the resident line instead of the legal guardian line. In support of this argument, Ramirez-Leon cites to the *Baier v. Darden Rests*, relying on the court's statement that it was "hard pressed to discern any purpose for placing a signature line for Darden on the First Acknowledgement unless it was to require an authorized signature as a condition of mutual assent." 420 S.W.3d 733, 739 (Mo. App. W.D. 2014). However, in *Baier*, instead of simply signing on the wrong line, one of the parties did not sign the agreement at all in spite of a signature line being provided for that purpose. *Id.* at 735. Ramirez-Leon cites to no other case to support her proposition that signing on the wrong line does not create a valid contract. Further, as Bratton's court appointed legal guardian she had

authority to enter into contracts on Bratton's behalf. *See* Section 475.120.3(4)³ ("The general powers and duties of a guardian of an incapacitated person shall be to take charge of the person of the ward and to provide for the ward's care, treatment, habilitation, education, support and maintenance; and the powers and duties shall include, but not be limited to, the following: ... Provide required consents on behalf of the ward."). Since she was entering into the Arbitration Agreement on behalf of Bratton as his legal guardian, there was no issue in her signing on the resident line.

Ramirez-Leon then argues that because the suit is Bratton's, and she is merely suing as his representative and not in her individual capacity, Bratton cannot be compelled to undergo arbitration because he did not sign the agreement. However, Bratton was appointed a legal guardian because he was unable to make decisions and enter into contracts on his own behalf. As his legal guardian, Ramirez-Leon was required to make decisions on his behalf, including entering into contracts such as the Arbitration Agreement at issue. *See* Section 475.120.3(4).

Ramirez-Leon further cites to the majority in *Lawrence v. Beverly Manor*, 273 S.W.3d 525 (Mo. banc 2009) and *Ward v. Nat'l Healthcare Corp.*, 275 S.W.3d 236 (Mo. banc 2009) to support her argument. Both *Lawrence* and *Ward* involve wrongful death actions brought by the decedents' children. 273 S.W.3d at 526-27; 275 S.W.3d at 236-37. However, wrongful death actions are "distinct from any underlying tort claim" and "[do] not belong to the deceased [resident]." 273 S.W.3d at 528. As Ramirez-Leon points out,

³ All statutory citations are to RSMo 2000 (supplemented through January 1, 2017), unless otherwise noted.

this lawsuit is a negligence claim brought by Bratton, alleging negligent acts that resulted in harm to Bratton, and Ramirez-Leon signed the Arbitration Agreement on behalf of Bratton. There is no reason Ramirez-Leon signing on Bratton's behalf would not make Bratton bound to the terms of the Arbitration Agreement for the claims in this action. If we were to accept Ramirez-Leon's circular argument Bratton could never enter into an arbitration agreement because he is unable to consent to a contract due to his lack of capacity but if his legal guardian were to sign on his behalf it would be unenforceable in a negligence claim involving Bratton because he did not personally sign the agreement.

Lastly, Ramirez-Leon argues that GGNSC Equity Holdings, LLC and Golden Gate National Senior Care, LLC are not parties to the arbitration agreement because they did not prove that they are affiliated with GLC under the terms of the Arbitration Agreement. However, Ramirez-Leon is the one who filed suit against GGNSC Equity Holdings, LLC and Golden Gate National Senior Care, LLC d/b/a GLC. She named all of the Appellants in the petition and she alleges that they are affiliated with GLC when the care for her son was provided. The language in the Arbitration Agreement states that the facility includes affiliates and parent companies. Further, "the plaintiff [can]not avoid enforcement [of an arbitration agreement] when the plaintiff treated signatory and non-signatory defendants as a 'single unit.'" *State ex rel. Hewitt*, 461 S.W.3d at 814. Ramirez-Leon cannot treat all Appellants as a single unit in her petition and then insist that they bear the burden of establishing that they are affiliated.

We find nothing procedurally or substantively unconscionable about the Arbitration Agreement under the facts of this case. We find no other reason why the Arbitration

Agreement is not valid and enforceable under the FAA. Further, we find the claims brought by Ramirez-Leon fall under the scope of the Arbitration Agreement, as they relate to Bratton and his treatment at GLC. Finding insufficient evidence to support the trial court's denial of Appellant's Motion to Dismiss and Enforce Alternative Dispute Resolution Agreement, Point Two is granted.

Point One


In Point One, Appellants argue that the trial court erred in denying their Motion to Dismiss and Enforce Alternative Dispute Resolution Agreement because the Arbitration Agreement is valid and enforceable under Missouri's Uniform Arbitration Act Section 435.350 *et. seq.* ("Missouri Act").

As is fully discussed in our analysis of Point Two, the Arbitration Agreement expressly states that it is governed by the FAA. The Missouri Act covers matters that are not preempted by the FAA. *Bertocci v. Thoroughbred Ford, Inc.*, 530 S.W.3d 543 n. 1 (Mo. App. W.D. 2017). Neither party raised any argument that the Arbitration Agreement should not have been subject to the provisions of the FAA. Ramirez-Leon does argue that the particular agreement in this case violates section 435.460 of the Missouri Act regarding the form of the Arbitration Agreement. This statute requires that an arbitration agreement must contain language in ten point type and capital letters substantially similar to: "THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES." Section 435.460. The Arbitration Agreement at issue contains a similar statement that was in capital letters, larger than ten point type and

provides more detail than what is required by the Missouri Act. The Arbitration Agreement does not violate this provision of the Missouri Act. Point One is granted.

Conclusion

The judgment of the trial court is reversed and remanded for the circuit court to enter an order staying the civil action and compelling arbitration between Ramirez-Leon and Appellants.



Gary D. Witt, Judge

All concur