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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-753

Filed: 2 February 2016

Robeson County, No. 14 CVS 2029

PORSHIA FAYE DIAL (as Personal Representative of the Estate of Sallie Mae Dial, deceased), Plaintiff,

v.

BRITTHAVEN, INC. (dba “Highland Acres Nursing and Rehabilitation Center” and “Linkhaw Place” and as a separate entity); MAPLE LTC GROUP, LLC (aka/dba “Maple LTC Group” and “Highland Acres Nursing and Rehabilitation Center”); PRINCIPLE LONG TERM CARE, INC. (a/k/a Principle LTC, Inc.); and PRINCIPLE IT SERVICES, INC., Defendants.

Appeal by defendants from order entered 2 February 2015 by Judge Mary Ann Tally in Robeson County Superior Court. Heard in the Court of Appeals 2 December 2015.

Law Office of David Pishko, P.A., by David Pishko and Anna Kalarites, and Pleasant Law, PLLC, by Thomas W. Pleasant, for plaintiff-appellee.

Walker, Allen, Grice, Ammons & Foy, L.L.P., by O. Drew Grice, Jr., and Alexandra L. Couch, for defendants-appellants.

ZACHARY, Judge.

Where there was evidence in the record supporting the trial court’s findings, and the findings supported the trial court’s conclusion that plaintiff lacked the authority to execute the arbitration agreement on mother’s behalf, the trial court did

not err in denying defendants' motions to stay the proceedings and to compel arbitration.

I. Factual and Procedural Background

On 17 October 2011, Porshia Faye Dial (plaintiff) took her mother, Sallie Mae Dial (mother), to the emergency room at Southeastern Regional Medical Center after mother suffered a fall at home. Plaintiff was informed that mother would have to attend rehabilitation in a nursing home, and it was decided that mother would be placed at Highland Acres Nursing and Rehabilitation Center (Highland Acres). On 21 October 2011, plaintiff went to the nursing home to complete the admission paperwork, executing some twelve documents on mother's behalf. These documents included a Medicare Secondary Payer form, an Authorization for Disclosure of Medical Information form, a Facility Resident Directory Opt-Out form, a Short Term Rehab Private Room Agreement, an Admission Agreement, a document indicating that plaintiff was signing for mother in plaintiff's capacity as an immediate family member (but *not* as an attorney-in-fact), an Acknowledgment of Receipt of Notice, a Consent/Release form, a Privacy Act Notification Statement, a Financial Responsibility Agreement, a Receipt of Information Acknowledgment form, and an arbitration agreement, which plaintiff signed on the line designated for the "Resident/Representative." At the time of the execution of these documents, mother

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had no attorney-in-fact, and plaintiff made no representation that she was mother's attorney-in-fact. The next day, mother was admitted to Highland Acres.

On 14 July 2012, roughly ten months after being admitted to Highland Acres, mother executed a durable power of attorney appointing plaintiff as her attorney-in-fact. On the same day, mother executed a health care power of attorney appointing plaintiff as her attorney-in-fact for health care matters. The execution of these documents by mother resulted from defendants' refusal to permit plaintiff to obtain a copy of mother's blood test results. Even after mother made plaintiff her attorney-in-fact, however, defendants refused to permit plaintiff to access mother's medical records, asserting that the power of attorney was "not legal."

Mother remained at Highland Acres until 5 August 2012, when she was transferred to hospice care. She was discharged from hospice on 6 August 2012, and died on 11 August 2012.

On 11 August 2014, plaintiff filed this action as personal representative of mother's estate against defendants, alleging ordinary negligence, medical malpractice, and wrongful death, and seeking punitive damages. On 29 October 2014, defendants filed an answer, motion to stay proceedings, and motion to compel arbitration. On 2 February 2015, the trial court entered a written order denying defendants' motion to stay proceedings and motion to compel arbitration.

From the order denying their motions, defendants appeal.

II. Interlocutory Appeal

“We first note that ‘[a]n order denying defendants' motion to compel arbitration is not a final judgment and is interlocutory. However, an order denying arbitration is immediately appealable because it involves a substantial right, the right to arbitrate claims, which might be lost if appeal is delayed.’” *Munn v. Haymount Rehab. & Nursing Ctr., Inc.*, 208 N.C. App. 632, 636, 704 S.E.2d 290, 294 (2010) (quoting *Raper v. Oliver House, LLC*, 180 N.C. App. 414, 418-19, 637 S.E.2d 551, 554 (2006)).

III. Standard of Review

This Court has held that:

[w]hether a dispute is subject to arbitration is an issue for judicial determination. Our review of the trial court's determination is de novo. Pursuant to this standard of review, the trial court's findings regarding the existence of an arbitration agreement are conclusive on appeal where supported by competent evidence, even where the evidence might have supported findings to the contrary. Accordingly, upon appellate review, we must determine whether there is evidence in the record supporting the trial court's findings of fact and if so, whether these findings of fact in turn support the conclusion that there was no agreement to arbitrate.

Munn, 208 N.C. App. at 636, 704 S.E.2d at 294 (citing *Harbour Point Homeowners' Ass'n, Inc. v. DJF Enters.*, 201 N.C. App. 720, 723-24, 688 S.E.2d 47, 50 (2010)).

IV. Enforceability of Arbitration Agreement

In their sole argument on appeal, defendants contend that the trial court erred in concluding that plaintiff lacked the authority to execute the arbitration agreement

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on mother's behalf, and that therefore the trial court erred in denying defendants' motions to stay proceedings and to enforce arbitration. We disagree.

The facts of this case are strikingly similar to those of *Munn v. Haymount Rehab. & Nursing Ctr., Inc.* In *Munn*, decedent, who was in an unresponsive condition, was admitted to defendant nursing home. Plaintiff, as decedent's mother, participated in the admission process for the nursing home, and as part of that process signed an arbitration agreement on decedent's behalf. Decedent subsequently died, and plaintiff brought an action against defendant nursing home. The trial court denied defendant's motion to compel arbitration on the basis that plaintiff was not authorized to sign the arbitration agreement on decedent's behalf. *Munn*, 208 N.C. App. at 633-36, 704 S.E.2d at 292-94.

On appeal, defendant in *Munn* raised several bases upon which the arbitration agreement could have been enforced. First, defendant contended that plaintiff was decedent's agent. However, this Court held that the evidence at trial did not suggest that decedent ever consented to have plaintiff act on her behalf, and that plaintiff had neither the actual nor apparent authority to sign the arbitration agreement. *Id.* at 638-41, 704 S.E.2d at 295-97. We further held that defendant did not reasonably rely upon plaintiff's authority, because the only "representation" that plaintiff made was the signing of documents. *Id.* at 641, 704 S.E.2d at 297. We also examined other issues, less relevant to the case at hand, and concluded that "the trial court's findings

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of fact are fully supported by the evidence and its conclusions of law based upon these findings are correct.” We therefore affirmed the order of the trial court denying defendant’s motion to compel arbitration. *Id.* at 644, 704 S.E.2d at 298.

The facts of the instant case parallel those of *Munn*.¹ As in *Munn*, plaintiff, a family member without authority to sign an arbitration agreement, signed defendants’ numerous admission documents in order for mother to obtain admission into the defendant nursing facility. After mother’s death, plaintiff brought an action against, *inter alia*, defendant nursing facility, and the trial court denied defendants’ motion to compel arbitration. Defendants asserted that plaintiff had the authority to sign on mother’s behalf, that plaintiff was mother’s agent, and that defendants reasonably relied upon plaintiff’s representations of authority.

As in *Munn*, we find defendants’ arguments unconvincing. Plaintiff had no authority, either actual or apparent, to execute the arbitration agreement presented to her by defendants’ employee. Moreover, plaintiff made no representation upon execution of the arbitration agreement that she had authority to act on mother’s behalf, and defendants had no basis on which to “rely” upon plaintiff’s authority. We

¹ We acknowledge that, ironically, unlike the defendant in *Munn*, which continuously asserted that it reasonably relied upon the plaintiff’s authority, defendants in the instant case actually expressed disbelief in plaintiff’s authority some ten months *after* the execution of mother’s admission documents. According to plaintiff’s affidavit, defendants refused to accept mother’s legitimate, signed and notarized power of attorney as valid.

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affirm the order of the trial court denying defendants' motions to stay proceedings and to compel arbitration.

AFFIRMED.

Judges CALABRIA and ELMORE concur.

Report per Rule 30(e).