IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-465

Filed 5 December 2023

Mecklenburg County, No. 22 CVS 8794

JEAN DETROI, Plaintiff,

v.

SABER HEALTHCARE HOLDINGS, LLC, SABER HEALTHCARE GROUP, LLC, d/b/a AUTUMN CARE OF CORNELIUS, and AUTUMN CORPORATION, Defendants.

Appeal by defendants from order entered 11 January 2023 by Judge Daniel A. Kuehnert in Mecklenburg County Superior Court. Heard in the Court of Appeals 1 November 2023.[1]

Benoit Law Firm, PLLC, by Dexter Benoit, for plaintiff-appellee.

Young Moore and Henderson, P.A., by Dana H. Hoffman, Angela Farag Craddock, and Brittany D. Levine, for defendant-appellants.

ARROWOOD, Judge.

Saber Healthcare Holdings, LLC, Saber Healthcare Group, LLC, d/b/a Autumn

[1] Oral argument by defendant-appellants' counsel was heard 1 November 2023. Plaintiff-appellee's counsel was not present.

Care of Cornelius, and Autumn Corporation ("defendants") appeal from an order denying their motion to compel arbitration between defendants and Jean Detroi ("plaintiff"). On appeal, defendants argue the trial court's findings of fact were insufficient to support its determination that the electronic signature on the arbitration agreement was not attributable to plaintiff. For the following reasons, we affirm.

I. Background

On 28 December 2021, plaintiff was admitted to Autumn Care of Cornelius ("Autumn Care"), a nursing facility operated by defendants, following a health incident. Plaintiff remained a resident of defendants' facility until 18 March 2022. During her time at Autumn Care, plaintiff alleged she sustained injuries because of defendants' practices at Autumn Care, and on 2 June 2022, plaintiff filed an action against defendants for negligence, negligence per se, and punitive damages.

In response, defendants filed a motion to stay and compel arbitration or dismiss on 31 August 2022. Defendants contended that plaintiff signed an arbitration agreement upon her admission to the facility, and as such, the issues in the case were subject to arbitration. In support of their motion to compel arbitration, defendants tendered an arbitration agreement which they alleged was executed with plaintiff's initials "JD." The agreement stated, in relevant part,

> Any and all disputes, legal controversies, disagreements or claims of any kind now existing or occurring in the future between the Resident . . . and the Facility, arising out of or

> in any way relating to Resident's current or past or future residency at the Facility or this Agreement, shall be settled by binding arbitration, including, but not limited to claims for negligence, medical malpractice, . . . and any departures from standard of care.
>
> . . . .
>
> Arbitration shall be the exclusive remedy for the resolution of disputes arising under this agreement.

To further support their motion, defendants presented an affidavit from Chelsea Benson, an employee of Autumn Care, stating that in her experience working with plaintiff, she "had no concerns regarding [plaintiff's] mental abilities and her ability to understand the information" provided to her.

Additionally, defendants provided an affidavit from Linda Collins ("Collins"), an admissions director for Autumn Care in charge of training admission coordinators who conduct resident intake at the facility. Collins explained that the standard practice at the facility was when a new resident was admitted, Collins or an admission coordinator would prepare admission paperwork, referred to by staff as the New Admit Packet, which included the arbitration agreement. She or the admission coordinator would then take the New Admit Packet to the resident's room to discuss the documents with the resident. The employees presented the documents on an iPad and offered to print them for residents or send them via email. Residents then electronically signed the documents on the iPad screen using their finger.

Collins further stated in her affidavit that as part of her usual practice, she maintained "monthly audit sheets" that contained the names of recently admitted residents and a checklist of tasks to be completed with their admission. One of the items on this list was the completion of the New Admit Packet. Collins and the admissions coordinator both checked the audit sheets to confirm the admissions items were completed for a new resident, but these sheets were discarded after "a few months." Collins stated she employed these routine practices at the time of plaintiff's admission.

According to the facility's records, Kristina Smith ("Smith"), a former admission coordinator for Autumn Care, created the New Admit Packet for plaintiff upon her admission to the facility 28 December 2021. Collins stated in her affidavit that she trained Smith on the practices described above. Autumn Care records showed Smith created the New Admit Packet for plaintiff on 28 December 2021, and the documents contained Smith's electronic signature on behalf of the facility on the same day. Records also showed a revision to the documents through the system on 30 December 2021, which corresponds to the date accompanying plaintiff's alleged electronic signature on the admissions documents. A note on the electronic record indicated that the method the signature was received was "in person." No evidence was offered from Smith.

Plaintiff asserted that she did not remember signing any paperwork upon her admission to Autumn Care in 2021 and that the initials on the documents were not

her signature. In order to support this contention, plaintiff provided a power of attorney from 2020 containing her initials as well as an affidavit from her daughter attesting that the initials on the admissions documents were not her mother's. Additionally, plaintiff was previously admitted to Autumn Care in 2019, and the record shows she signed the admission paperwork with her full name rather than with initials like those present on the 2021 admission packet. Finally, defendants stated that of the people they spoke with, no personnel at the facility at the time of plaintiff's admission had "personal recall of reviewing the paperwork" with plaintiff.

A hearing on the motion to compel arbitration occurred on 21 November 2022 in Superior Court, Mecklenburg County. The above evidence was presented, and defendant-appellants did not object to any of the evidence entered as inadmissible or incompetent. On 11 January 2023, the trial court issued an order denying defendants' motion. The order contained the following findings of fact and conclusions of law:

> 8. This Court finds the 2021 electronic documents submitted by the Defendants, including the arbitration agreement in question, were signed by the Defendants' facility representative and admission coordinator on December 28, 2021, but failed to procure the Plaintiff's signature.
>
> . . . .
>
> 10. The Court finds there are no witnesses to the signature of the initials that purport to be those of the Plaintiff although there are two (2) blank signature lines for witnesses. While the Court is not implying that witnesses

> must sign the document, the Court does take note that there are no witnesses or other extrinsic evidence supporting the contention that the initials contained in the arbitration agreement were those of the Plaintiff.
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> 11. The Court finds that the Plaintiff's initials on a previously executed 2020 Healthcare Power of Attorney did not look like the initials on the AA [arbitration agreement].
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> 12. This Court finds that any presumption in favor of the Defendants' contention that the initials are those of the Plaintiff, are rebutted by the evidence presented by the Plaintiff.
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> 13. That this Court, having reviewed the submitted materials and considered the respective arguments, concludes the arbitration agreement in question does not contain an electronic signature which can be attributable to an act of the Plaintiff based on the facts presented in this case nor is there other extrinsic evidence that she acted in such a manner to evidence an intent to be bound by the arbitration agreement even in the absence of a signature.

Defendants gave timely notice of appeal on 7 February 2023.

II. Jurisdiction

We first note that the appeal of an order denying defendants' motion to compel arbitration is interlocutory. *See Gay v. Saber Healthcare Group, L.L.C.*, 271 N.C. App. 1, 5 (2020). "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." *Id.* (citing *Raper v. Oliver House, LLC*, 180 N.C. App. 414, 418–19 (2006)). Therefore, this Court has jurisdiction over this interlocutory appeal.

III. Standard of Review

Parties can settle a dispute by arbitration only if a valid arbitration agreement exists. *Gay*, 271 N.C. App. at 5 (citing *Slaughter v. Swicegood*, 162 N.C. App. 457, 461 (2004)). "If a party claims that a dispute is covered by an agreement to arbitrate but the adverse party denies the existence of an arbitration agreement, the trial court shall determine whether an agreement exists." *Id.* (citation omitted). Contract law governs whether there exists an agreement to arbitrate. *Routh v. Snap-On Tools Corp.*, 108 N.C. App. 268, 272 (1992) (citation omitted). "The party seeking arbitration must show that the parties mutually agreed to arbitrate their disputes." *Gay*, 271 N.C. App. at 5 (citation omitted). Thus, defendants bear the burden of proving there is a valid arbitration agreement.

Further, a trial court's findings of fact must support its conclusions of law. *See Appalachian Poster Advert. Co., Inc. v. Harrington*, 89 N.C. App. 476, 479–80 (1988). "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." *Gay*, 271 N.C. App. at 5 (emphasis added) (citation omitted).

IV. Discussion

Defendants argue on appeal that the trial court committed reversible error because its findings were insufficient to support its conclusions of law. We disagree.

The North Carolina Uniform Electronic Transactions Act provides that "[a] record or signature may not be denied legal effect or enforceability solely because it

is in electronic form." N.C.G.S. § 66-317(a). The electronic signature must be "attributable to a person," meaning the signature must be "the act of the person." § 66-319(a). An act of the person "may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable." *Id.* "The effect of an electronic record or electronic signature attributed to a person under subsection (a) . . . is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption[.]" § 66-319(b).

Here, the trial court concluded that the arbitration agreement did not contain an electronic signature attributable to an act of plaintiff. The court found that there were "no witnesses" to plaintiff's alleged initials, there was no other extrinsic evidence supporting the initials on the agreement belonged to plaintiff, plaintiff's initials on a previously executed power of attorney did not look like the initials on the arbitration agreement, and plaintiff rebutted "any presumption in favor" of the initials being attributed to plaintiff. Each of the findings of fact made by the trial court is supported by competent evidence and is thus binding and conclusive on appeal.

Defendants contend that these findings do not support the conclusion because the signed agreement is prima facie evidence of a valid agreement, and the note on plaintiff's record indicating she signed in person and the evidence of their routine business practices both support that plaintiff signed the arbitration agreement.

These arguments which defendants attempt to pose as "questions of first impression" are nothing more than an attempt to ask this Court to reweigh the evidence and make different findings of fact than the trial court; this we will not and in fact cannot do under our binding precedent.

This argument is not effective on appeal because under our case law, a trial court's findings are binding when supported by competent evidence even if there is evidence which could support contrary findings. *See Gay*, 271 N.C. App. at 5. Accordingly, these findings are conclusive and support the trial court's conclusion that the electronic signature is not attributable to an act of plaintiff.

Additionally, defendants argue that plaintiff's evidence to overcome the presumption that the signature on the arbitration agreement was attributable to her was not competent. It is a well-established rule in our courts that "[e]vidence admitted without objection is properly considered by the court and, on appeal, the question of its competency cannot be presented for the first time." *Joyner v. Garrett*, 279 N.C. 226, 234 (1971) (citation omitted). Because defendants did not object to the competence of the evidence plaintiff presented in any of its instances in the hearing below, this argument was not properly preserved for our review.

V. Conclusion

For all the foregoing reasons, we find that there was not a valid arbitration agreement.

AFFIRMED.

Judges CARPENTER and FLOOD concur.

Report per Rule 30(e).