

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-001840-MR

BARDSTOWN MEDICAL INVESTORS,
LTD., D/B/A LIFE CARE CENTER
OF AMERICA, INC.; SAK, JR, LLC;
SBK, LLC; CYNTHIA SIMPSON, IN
HER CAPACITY AS ADMINISTRATOR;
AND DEBORAH GIBSON, IN HER
CAPACITY AS ADMINISTRATOR

APPELLANTS

v.

APPEAL FROM NELSON CIRCUIT COURT,
HONORABLE JOHN DAVID SEAY, JUDGE
ACTION NO. 16-CI-00334

CELESTE BLACK, ADMINISTRATRIX OF
THE ESTATE OF JULIE HATCHER

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: ACREE, GOODWINE, AND KRAMER, JUDGES.

KRAMER, JUDGE: Bardstown Medical Investors, Limited; SAK, JR., LLC;

SBK, LLC; Cynthia Simpson, in her capacity as Administrator of Life Care Center

of Bardstown; and Deborah Gibson, in her capacity as Administrator of Life Care

Center of Bardstown (collectively referred to as “Appellants”) appeal from the Nelson Circuit Court’s denial of their motion to compel arbitration. The circuit court held that the decedent, Julie Hatcher, lacked the mental capacity to assent to the “Voluntary Agreement for Arbitration” (Arbitration Agreement). The circuit court also held that the Arbitration Agreement as drafted was unconscionable. After a careful review of the record and applicable law, we affirm.¹

Julie Hatcher was admitted to Life Care Center of Bardstown (LCC-B) in June 2015. At that time, Julie was fifty-three years old. Of particular note, when she was admitted to LCC-B she was not accompanied by any family or representatives. On the day she was admitted, she signed several documents. One of the documents Julie signed was the Arbitration Agreement, which is the crux of this appeal.

During Julie’s residence at LCC-B, she allegedly sustained numerous injuries and exacerbations of prior injuries. These alleged injuries resulted in her death in July 2015. Thereafter, Celeste Black as Administratrix of the estate of Julie Hatcher (“the Estate”) filed a complaint in Nelson Circuit Court and asserted several causes of action against Appellants.

¹ This appeal was previously assigned to a merits panel of this Court on August 23, 2018. However, the former presiding judge was elected to the Kentucky Supreme Court in November 2018. Accordingly, it was necessary to reassign this appeal to a new merits panel. The reassignment occurred on February 22, 2019.

In July 2016, Appellants moved to dismiss all of the Estate's claims and compel arbitration. In Appellants' view, the Arbitration Agreement precluded all of the Estate's asserted claims; therefore, those claims should be dismissed. The Estate responded, asserting that Julie lacked the requisite mental capacity to enter into the Arbitration Agreement and that the agreement was unconscionable. During discovery, several documents concerning Julie's medical history and mental capacity were produced. Several individuals submitted affidavits and Julie's husband, Glen Hatcher, was deposed. The circuit court ultimately agreed with the Estate. It concluded that Julie lacked capacity and that the agreement was unconscionable. This interlocutory appeal followed.² Further facts will be discussed as they become relevant.

On appeal, Appellants take issue with the circuit court's finding that Julie lacked the requisite mental capacity to assent to the Arbitration Agreement and the conclusion that the agreement as drafted was unconscionable.

We review the circuit court's factual finding regarding Julie's mental capacity under a clearly erroneous standard. *See* CR³ 52.01.⁴ A circuit court's

² Kentucky Revised Statute (KRS) 417.220(1)(a) gives this Court authority to review appeals taken from an order denying an application to compel arbitration.

³ Kentucky Rule of Civil Procedure.

⁴ CR 52.01 states in pertinent part: "Findings of fact, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses."

findings of fact are not clearly erroneous if they are supported by substantial evidence. *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003). “Substantial evidence has been defined as that which, when taken alone or in light of all the evidence, has sufficient probative value to induce conviction in the mind of a reasonable person.” *Kindred Nursing Ctrs. Ltd. P’ship v. Brown*, 411 S.W.3d 242, 246 (Ky. App. 2011) (citing *Sec’y, Labor Cabinet v. Boston Gear, Inc.*, 25 S.W.3d 130, 134 (Ky. 2000)). “Thus, mere doubt as to the correctness of a finding will not justify its reversal, and appellate courts should not disturb trial court findings that are supported by substantial evidence.” *Moore*, 110 S.W.3d at 354 (internal quotation marks, brackets and citations omitted).

When analyzing Julie’s capacity to contract, “the starting point is . . . ‘the presumption of sanity and capacity to contract[.]’” *Estate of Adams by and through Mitchell v. Trover*, 547 S.W.3d 545, 554 (Ky. App. 2018) (quoting *Holcomb v. Brashears*, 273 S.W.2d 810, 811 (Ky. 1954)). To overcome that presumption, the Estate must prove by clear and convincing evidence that, in fact, Julie did not have the capacity to contract. *Id.* (citing *Rath’s Comm. v. Smith*, 180 Ky. 326, 202 S.W. 501, 503 (1918)). “The test of legal capacity to contract is the ability to understand and appreciate the consequences of the particular transaction.” *Connors v. Eble*, 269 S.W.2d 716, 718 (Ky. 1954).

Upon review, the record contains substantial evidence to support the circuit court's decision. Specifically, the following evidence supports the circuit court's finding that Julie lacked capacity to assent to the Arbitration Agreement. Dr. Thomas Sullivan, M.D., via affidavit, gave his expert opinion that, after reviewing Julie's file and medical history, it was "apparent that [Julie] would not have understood the information contained in the [Arbitration Agreement]." Dr. Sullivan also opined that Julie's injuries at the time of her admission would have further diminished her mental capacity. The speech language pathologist (SLP) who assessed Julie the day after she was admitted to LCC-B reported that Julie had to be given instructions and cues to be oriented to person and place. During Julie's session with the SLP, Julie was unable to appropriately participate in a test to evaluate her mental defects.⁵ Because of this, the SLP diagnosed Julie with symbolic dysfunction with moderate levels of impairment noted in both memory and problem solving. Nichelle Taylor, Julie's sister, in her affidavit reported that Julie had to be given the written portion of the driver's license test orally because she was unable to understand the test as it was written. Further, Nichelle stated that she had to be given special access to Julie's medical file because Julie could not recall what was told to her by caregivers and could not recall conversations

⁵ The test was the SLUMS test, which stands for The Saint Louis University Mental Status Examination. It is a standardized test consisting of a brief oral/written exam given to people who are suspected to have dementia, Alzheimer's Disease, or other mild neurocognitive deficits.

with her family regarding her condition. Celeste Black, another sister of Julie, in her affidavit reported that Julie had to be accompanied when she purchased a vehicle because she could not understand the financial documentation. Lastly, Julie's son stated that his mother would not have been able to understand multiple pages of text.

Appellants assert some rebuttal evidence; however, none of the evidence indicates clear error. Appellants point to Julie's grades in her high school English class, which were in the "B" range for three of her four years. However, two of those years Julie was in special education English classes. In English I, which was demarked as "Reading," Julie received a "D" both semesters. Appellants also point to the fact that ten out of Julie's eleven impairments for SSD⁶ were physical.⁷ Nonetheless, the fact remains that one of her impairments was her mental state. Appellants also point to Glen Hatcher's deposition, wherein he stated that his wife frequently read the Bible. However, his testimony was directly refuted multiple times by his son's affidavit. Appellants are correct that Julie had been gainfully employed at some point in her life and that her SSD questionnaire denoted she could pay bills, count change, manage a check book, and read and

⁶ Social Security Disability.

⁷ Julie had physical and mental assessments done in 2013 when she applied for disability benefits.

understand English. Even in light of this evidence, the record contains substantial evidence that Julie would not have understood the consequences of a complicated legal document such as the Arbitration Agreement. Therefore, the circuit court's finding that Julie lacked mental capacity to assent to the agreement was not clearly erroneous.

That aside, Appellants also argue that the circuit court improperly considered certain evidence in making the capacity finding. Specifically, Appellants argue that it was improper to consider *any* evidence of Julie's mental capacity that did not relate to the immediate time the Arbitration Agreement was signed. They quote *Hall v. Crouch*, 341 S.W.2d 591, 594 (Ky. 1960), arguing that "unsoundness of mind to avoid a contract must relate to the immediate time when the contract was made." In Appellants' view, this means that all evidence of Julie's mental capacity at any time *besides* the immediate time she was signing the agreement is irrelevant. This argument lacks merit and is inconsistent with the evidence they presented of Julie's high school records.

While it is true that the unsoundness of the mind *itself* must relate to the time the contract was made, that does not mean that all evidence must be from this time period exclusively. In determining mental capacity to enter into a contract, it has long been held that evidence of a person's mental capacity both before and after the agreement was made are proper considerations. *See Jefferson*

Standard Life Ins. Co. v. Cheek's Adm'r, 258 Ky. 621, 80 S.W.2d 518, 520-21 (1935). This is especially true when the diminished mental capacity is a permanent condition as opposed to a temporary bout of insanity or intoxication. Relevant evidence is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” KRE⁸ 401. Evidence of Julie’s permanent and declining mental capacity is probative of whether she lacked capacity to enter into a binding arbitration agreement more probable. Therefore, the circuit court properly considered this evidence and this argument fails.

Because we are affirming the circuit court’s finding that Julie lacked capacity, we need not address the unconscionability issue. *See Emberton v. GMRI, Inc.*, 299 S.W.3d 565, 576 (Ky. 2009) (explaining that an appellate court may affirm a decision on any ground supported by the record).

In light of the foregoing, the order of the Nelson Circuit Court denying Appellants’ motion to compel arbitration is AFFIRMED.

ALL CONCUR.

⁸ Kentucky Rule of Evidence.

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