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El Jen Med. Hosp. v. Tyler, 139 Nev. Adv. Op. 36 (Sept. 21, 2023)¹

A NON-SIGNATORY HEIR'S WRONGFUL DEATH CLAIM IS NOT BOUND TO AN
ARBITRATION AGREEMENT.

Summary

The Supreme Court affirmed the judgment of the district court compelling an estate's claims to arbitration pursuant to an arbitration agreement signed during the decedent's admission to El Jen Convalescent Hospital and Retirement Center (El Jen). The Court held that the statutory heirs wrongful death claim is not bound to the arbitration agreement, which they did not sign, and declined to compel arbitration of their claims.

Background

After suffering a series of strokes, Gary Tyler was admitted to El Jen for long-term care. During his admission, Gary's wife, Stacy Tyler, supplied El Jen with a durable power of attorney and a durable power of attorney for healthcare decisions (together, power of attorney documents), both of which designated her as Gary's agent in the event of his disability or incapacity. In addition, as part of El Jen's admission paperwork, Stacy signed an arbitration agreement on Gary's behalf as "the Resident," which subjected any claim related to El Jen's services or care of Gary to arbitration and seemed to bind all claims procured through or on behalf of the Resident, including claims by Gary's heirs, to arbitration as well.

Throughout his time at El Jen, Gary was wheelchair-bound. At his family's request, El Jen arranged for the Regional Transportation Commission of Southern Nevada (RTC) to transport Gary to and from church. One Sunday, when the transport driver returned Gary to El Jen and found no El Jen staff member at the front desk, the driver left Gary alone in his wheelchair in El Jen's lobby. Gary stood up and fell, hitting his head on the floor. He later died, allegedly from complications relating to the fall.

Stacy and Gary's children (collectively, the Tylers) and Gary's estate sued El Jen, RTC, and others, asserting negligence, wrongful death, and survivorship claims. El Jen moved to compel arbitration of the claims against it pursuant to the arbitration agreement Stacy had signed on Gary's behalf. After requesting and receiving the power of attorney documents and supplemental briefing, the district court concluded that the estate's claims against El Jen were subject to the arbitration agreement. But the district court denied the motion as to Stacy's and the statutory heirs' individual wrongful death claims, finding that arbitration is a matter of contract and that neither Stacy nor the other heirs agreed to arbitrate their claims.

Discussion

The arbitration agreement was enforceable because the heirs failed to demonstrate that El Jen did not rely in good faith on the powers of attorney Stacy provided.

El Jen argues that non-signatory statutory heirs asserting wrongful death claims under NRS 41.085 are bound by a decedent's pre-death arbitration agreement. But the Tylers argue that the arbitration agreement is unenforceable because Stacy lacked legal authority to bind anyone since her powers of attorney were invalid. NRS 162A.660 requires that a certificate of the

¹ By Estera Kis.

principal's competency be attached to a power of attorney if, at the time of its execution, the principal resides in a hospital, residential facility for groups, facility for skilled nursing or home for individual residential care.²

Here, the court found that the powers of attorney were signed two years before El Jen accepted Gary for long-term care and that they were notarized and appeared regular on their face. Under the Uniform Act, a person that in good faith accepts an acknowledged power of attorney without actual knowledge that the power of attorney is invalid can rely on the power of attorney as valid.³ Thus, the arbitration agreement was enforceable because the heirs failed to prove that El Jen did not rely in good faith on the powers of attorney Stacy provided.

NRS 41.085 does not allow a decedent to bind a statutory heir's wrongful death claim to arbitration without the heir's consent.

El Jen asserts that the district court should have enforced the arbitration agreement against the statutory heirs as well as the estate because the arbitration agreement subjects *all* claims arising from the care El Jen gave Gary to arbitration. Contracts that involve interstate commerce, like the arbitration agreement in this case, are subject to the Federal Arbitration Act (FAA).⁴

The court found that the statutory heirs did not sign the arbitration agreement, nor is there any evidence they assented to its terms. However, non-signatories to an agreement subject to the FAA may be bound to an arbitration clause when rules of law or equity would bind them to the contract generally.⁵ Nevada's wrongful death statute, NRS 41.085, provides that when the death of any person is caused by the wrongful act or neglect of another, the heirs of the decedent and the personal representatives of the decedent may each maintain an action for damages against the person who caused the death.⁶

Therefore, the Court holds that NRS 41.085 does not allow a decedent to bind a statutory heir's wrongful death claim to arbitration without the heir's consent. First, NRS 41.085(4) creates an independent cause of action in the heirs that is different from both the decedent's claim and the estates.⁷ Second, the heir's award is not similarly liable for the decedent's debts and includes no statutory limitation based on the decedent's right to pursue a claim for the underlying injury.

Issue preclusion and equitable estoppel does not apply.

El Jen asserts two additional arguments in favor of compelling the heirs to arbitration. First, since both the statutory heirs' claims and the estate's claim must prove the same question of fact--whether the defendant was liable for the decedent's injuries—El Jen argues that as a prudential matter, both claims must proceed in the same venue. Second, El Jen argues that the heirs are equitably estopped from objecting to arbitration. The Court found that neither argument prevails.

First, issue preclusion as to the common issue of liability does not apply here because El Jen's liability has not yet been litigated. Second, under the doctrine of direct benefits estoppel, a non-signatory is not bound to an arbitration agreement just because its claim relates to a contract containing the arbitration provision.

² NEV. REV. STAT. § 162A.220(2) (2022).

³ NEV. REV. STAT. § 162A.360(2) (2022).

⁴ 9 U.S.C. §§ 1-16 (2012).

⁵ *In re Labatt Food Seru., L.P.*, 279 S.W.3d 640, 643 (Tex. 2009).

⁶ NEV. REV. STAT. § 41.085(2) (2022).

⁷ NEV. REV. STAT. § 41.085(4) (2022).

Conclusion

Nevada's statute governing wrongful death establishes a distinct cause of action in favor of a decedent's statutory heirs. The heirs' claims are linked to the decedent's personal injury but maintain their autonomy in most aspects. As a result, a non-signatory heir's wrongful death claim is not bound to an arbitration agreement, provided that the agreement does not influence the core validity of the initial personal injury claim. Thus, the judgment of the district court is affirmed.