Rel: March 22, 2024

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2023-2024

SC-2023-0433

Birmingham Nursing and Rehabilitation Center, LLC; Vickie Reynolds; and Delilah Lee Griffith

v.

Johnnie Woods Davis, as personal representative of the Estate of Mattie L. Granger, deceased

Appeal from Jefferson Circuit Court
(CV-22-901955)

MITCHELL, Justice.

One important function of probate courts is appointing guardians to look after incapacitated adults. Once appointed, guardians are tasked

with making decisions on behalf of their wards, in much the same way that parents make decisions on behalf of their minor children. Probate courts usually appoint one guardian per ward, but sometimes -- as in this case -- a court will appoint multiple guardians for a single ward. The question presented in this appeal is whether, when a court appoints two people to serve as co-guardians, the guardians must act jointly whenever they sign agreements on their ward's behalf. Under Alabama law, the answer to that question is no. Like the co-parents of minor children, each co-guardian has independent authority to sign agreements on behalf of their ward. Because the trial court in this case reached the opposite conclusion, we reverse.

Facts and Procedural History

In 2015, Alicia Davis and Eugenia Ramey asked the Jefferson Probate Court to appoint them as legal guardians for their elderly mother, Mattie L. Granger. The daughters told the probate court that Granger had cognitively deteriorated to the point where she could no longer care for herself or make her own decisions. After a hearing, the probate court agreed. It issued an order stating

> "that the Petition for Letters of Guardianship and Additional Powers Related to Medical decisions is hereby granted and

> that Alicia A. Davis and Eugenia Ramey are appointed to serve as Permanent Guardian and that said Guardian shall have all the powers and duties conferred under Alabama Code section 26-2A-78."

The next year, Granger was admitted to a nursing home run by Birmingham Nursing and Rehabilitation Center, LLC ("Birmingham Nursing"). Davis, the daughter who resided in Alabama, signed the relevant admission paperwork on her mother's behalf, but Ramey, the daughter who lived in Maryland, did not. The admission contract contained an arbitration clause providing that "any disputes or claims arising under, or in connection with [the admission paperwork] or [Granger's] stay at [the nursing home] shall be subject to [an] arbitration agreement," which in turn provided that "all claims, disputes and controversies of any kind between the parties … shall be resolved exclusively by binding arbitration." The arbitration agreement, like the rest of the paperwork, was signed by Davis alone.

Granger remained at the nursing home until June 2022, at which point she was hospitalized with several serious health conditions. She eventually passed away in the hospital three months later.

While their mother was hospitalized, Davis and Ramey brought this lawsuit in the Jefferson Circuit Court ("the trial court"), alleging that

Granger's health conditions had been caused by abuse or neglect at the hands of the nursing home's staff. The operative complaint named Birmingham Nursing and two of its employees or agents, Vickie Reynolds and Delilah Lee Griffith, as defendants. Once Granger had passed away, Johnnie Woods Davis, as personal representative of Granger's estate, was substituted as the plaintiff, and the complaint was amended to state a wrongful-death claim.

The defendants moved to compel arbitration. The estate opposed that motion, arguing that the arbitration agreement was ineffective because it had been signed by only one of Granger's two guardians. The trial court initially ruled in favor of the defendants and granted the motion to compel arbitration. But after the estate filed a motion under Rule 59(e), Ala. R. Civ. P., asking the trial court to reconsider its judgment, the trial court reversed course. In its order granting the estate's Rule 59(e) motion, the trial court explained that it was "now convinced that both guardians' signatures … were required" and that, since the arbitration agreement had been signed by only one of them, it was "invalid and unenforceable." The defendants timely appealed.

Standard of Review

We review de novo the denial of a motion to compel arbitration. Bridgestone Americas Tire Operations, LLC v. Adams, 264 So. 3d 833, 836 (Ala. 2018). As we have explained, a motion to compel arbitration is analogous to a motion for summary judgment: the parties seeking to compel arbitration (here, the defendants) carry the burden of proving the existence of a contract requiring arbitration and evidencing a transaction affecting interstate commerce; but once that initial burden has been satisfied (as it has in this case), the burden shifts to the nonmovant (here, the estate) to show that the arbitration agreement is invalid. See id.

Analysis

In most circumstances, an agent with either "actual or apparent authority may enter into a contract and bind his or her principal" to the contract's terms. Cook's Pest Control, Inc. v. Rebar, 852 So. 2d 730, 738 (Ala. 2002). But "this 'Court has created a distinct body of caselaw considering specifically the issue how and when arbitration agreements executed by the owners and operators of nursing homes and their residents'" may be enforced. Diversicare Leasing Corp. v. Hubbard, 189 So. 3d 24, 28 (Ala. 2015) (citation omitted). In particular, this Court has

explained that a mentally competent resident can be bound by a representative acting with apparent authority, but that the representative of a resident who was not competent at the time of admission must have actual authority to act on the resident's behalf. See Stephan v. Millennium Nursing & Rehab Ctr., Inc., 279 So. 3d 532, 542-45 (Ala. 2018).

Here, everyone agrees that Granger was mentally incompetent at the time she was admitted to the nursing home. What the parties disagree about is whether Alicia Davis had actual authority to act on Granger's behalf. The estate says she did not, on the theory that Davis and Ramey were required to act jointly in order to bind Granger. The estate raises several arguments in support of its theory, but -- for reasons explained below -- all of them fail.

A. The Probate Court Appointed Two Guardians, Davis and Ramey

The estate's primary theory is that the probate court's order did not actually name two guardians at all. Instead, the estate contends, the order named only one guardian, composed of Davis and Ramey jointly, and those "two individuals together constitute Granger's Guardian." Estate's brief at 17. The estate grounds its theory in the probate court's

order "provid[ing] that '[Davis] and [Ramey] are hereby appointed to serve as Permanent Guardian,' with 'Guardian' being singular, and the two names separated by the conjunctive 'and.'" Id.

The estate's characterization of the probate court's order may have some intuitive appeal, but it does not withstand scrutiny. Under the Alabama Uniform Guardianship and Protective Proceedings Act ("the Guardianship Act"), § 26-2A-1 et seq., Ala. Code 1975, only a "person" can be appointed as guardian of an incapacitated ward. § 26-2A-104, Ala. Code 1975; see also Comment to § 26-2A-104 (explaining that "the needs, duties and responsibilities [of a guardian for an incapacitated person] are so personal that they should only be delegated to a natural person and not to an institution"). Davis and Ramey are each persons, but the abstract set consisting of both women together is not. We presume that lower courts "'know and follow the law,'" so we will not interpret the probate court's order as appointing a nonperson entity when another reading is plausible. SAI Montgomery BCH, LLC v. Williams, 295 So. 3d 1048, 1054 (Ala. 2019) (citation omitted).

We acknowledge that use of the singular "Guardian" to refer to multiple people is somewhat awkward, but the most natural explanation

for that phrasing is that the probate court was relying on standard language drafted for the usual circumstance in which only one individual is appointed as a guardian. And the probate court likely saw no need to alter that standard language because a well-known rule of thumb in legal writing is that singular nouns include plural ones, and vice versa. See Cooper v. Maclin, 25 Ala. 298, 299 (1854); cf. § 1-1-2, Ala. Code 1975 (codifying that rule of thumb in the context of statutory interpretation). The best reading of the probate court's order, then, is that it appointed two guardians -- Davis and Ramey[1] -- not that it created a singular abstract entity and sought to imbue only that new entity with the powers of guardianship.

B. Neither the Probate Court's Order nor the Guardianship Act Limit the Powers of Co-Guardians

The estate next argues that even if the probate court appointed Davis and Ramey as separate guardians, it limited their powers of guardianship such that each individual could act only with the express written consent of the other. The estate supports this argument in much

[1]Tellingly, that is also how Davis and Ramey themselves interpreted the probate court's order -- their initial complaint in this case described the probate court as having appointed both of them to serve as their mother's "guardians" (plural).

the same way as its first, positing that the probate court's use of the conjunctive "and" (as opposed to the disjunctive "or") to describe Davis and Ramey suggests that the two women were required to act jointly.

This argument, like the first, runs headlong into statutory text. The Guardianship Act gives broad powers to the guardian of an incapacitated ward -- including the powers to contract and to consent to care on the ward's behalf, see §§ 26-2A-108(a); 26-2A-78(a), (b), (c)(4) -- and specifies that "[a]ny limitation" on those powers "must be endorsed on the guardian's letters" of appointment, § 26-2A-78(e). The inability to act without the approval of another is an obvious "limitation" on the powers of guardianship -- yet no such limitation appears in the probate court's order.

The estate tries to get around this problem by arguing that the bare act of appointing two people to serve as co-guardians itself constitutes such a limitation. The assumption behind the estate's position seems to be that any time power is jointly granted, it must also be jointly exercised.

That assumption is wrong. There are many instances in which Alabama law authorizes co-agents to exercise their powers independently. The most familiar example comes in the context of

parental authority: every child begins life with two parents, and each co-parent usually has the power to sign contracts and consent to treatment on the child's behalf, even without the signature of the other co-parent. See, e.g., Ex parte Peck, 572 So. 2d 427, 428 (Ala. 1990) (reaffirming the "'general rule'" that a parent can contract on behalf his or her child, even if the other parent "did not sign th[e] contract"); § 22-8-3, Ala. Code 1975 (recognizing that "the consent of a parent" is ordinarily sufficient to authorize medical or other health-care treatment for a child (emphasis added)). A similar principle applies in the power-of-attorney context: the Alabama Uniform Power of Attorney Act, § 26-1A-101 et seq., Ala. Code 1975, allows a person to "designate two or more persons to act as co-agents" and specifies that, unless the designation provides otherwise, "each co-agent may exercise its authority independently." § 26-1A-111(a), Ala. Code 1975.

When the Legislature enacted the Guardianship Act, it was not only aware of those examples,[2] it expressly incorporated the parental-

[2]The Comments to the Guardianship Act's first section, § 26-2A-1, explain that the guardianship role was designed to be "analogous to the role of a parent" and that the powers of a guardian were designed to "complement[]" the powers of an agent with power of attorney.

rights analogue into the Guardianship Act by granting each guardian all "the powers and responsibilities of a parent regarding the ward's health, support, education, or maintenance."[3] § 26-2A-78(a). Since a co-parent has the power to act unilaterally, it follows that a co-guardian who has been granted "the powers … of a parent" also has the power to act unilaterally. The probate court may limit that power, but only if it spells out the limitation in the guardian's letters of appointment. § 26-2A-78(e). Here, the probate court's order did not mention any such limitation, so Davis and Ramey each had unilateral authority to act on Granger's behalf.

C. The Estate Has Not Identified Any Other Reason to Limit the Powers of Co-Guardians

In a final attempt to head off arbitration, the estate argues that -- even if the probate court's order and the text of the Guardianship Act do not require Davis and Ramey to act jointly -- other sources of law do. But all the sources on which the estate relies are inapposite. For example, Alabama's "Dictionary Act," § 1-1-1 et seq., Ala. Code 1975, which the

[3]That rule is qualified by narrow exceptions concerning the guardian's personal financial liability, see § 26-2A-78(a), but those exceptions are not relevant to this appeal.

estate cites extensively, provides that "[a]ll words giving a joint authority to three or more persons or officers give such authority to a majority of such persons or officers, unless it is otherwise declared." § 1-1-2. The estate interprets that provision to require a majority vote whenever multiple people share authority -- and, in the case of two such persons, the only way they can act by "majority" is by acting unanimously. But the estate fails to acknowledge that § 1-1-2 applies only to situations where power is divided among "three or more persons"; by its own terms, that provision has no application to situations like this, where statutory powers are shared by two people.

The same is true for the estate's reliance on In re Guardianship of Estabrook, 512 N.W.2d 744 (S.D. 1994), a case involving a South Dakota statute that, similar to Alabama's Dictionary Act, provided that "'[w]ords giving a joint authority to three or more … persons are construed as giving such authority to a majority of them unless it is otherwise expressed in the act giving the authority.'" Id. at 745 (quoting S.D. Codified Laws § 2-14-15 (emphasis added)). The Supreme Court of South Dakota sensibly interpreted that language to mean that when four siblings had been granted guardianship over their mother, three out of

four siblings could act to bind the mother, even if the fourth sibling did not agree. Id. But that decision has no bearing on situations, like this one, where power is divided among two co-guardians.

The estate goes on to argue that we should construe the Guardianship Act to require unanimity between two co-guardians because, it says, doing so would harmonize our laws with the laws of other jurisdictions. As the estate points out, the most recent version of the Uniform Guardianship and Protective Proceedings Act requires co-guardians to "make decisions jointly," Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act § 110(d), Unif. L. Comm'n (Unif. L. Comm'n 2017), and a handful of other states have enacted that model legislation (or something similar to it) via statute. We do not see the relevance of the estate's argument. The Alabama Legislature has not adopted the 2017 version of the Uniform Guardianship and Protective Proceedings Act, nor has it enacted any other unanimity requirement for co-guardians. If anything, the fact that new model legislation and statutes in other jurisdictions expressly impose a unanimity requirement for co-guardians makes it even more conspicuous that the Alabama Legislature has chosen not to do so.

Conclusion

When a probate court appoints two guardians and places no limits on the authority of either, those guardians are not required to act jointly in order to bind their ward. The trial court's contrary conclusion was error, and its judgment is reversed.

REVERSED AND REMANDED.

Parker, C.J., and Shaw, Bryan, and Mendheim, JJ., concur.