Case No. S276545

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

CHARLES LOGAN,

Plaintiff and Respondent,

v.

COUNTRY OAKS PARTNERS, LLC et al.,

Defendants and Appellants.

ON REVIEW OF A JUDGMENT BY THE COURT OF APPEAL,
SECOND APPELLATE DISTRICT, DIVISION FOUR, CASE NO. B312967

LOS ANGELES SUPERIOR COURT, CASE NO. 20STCV26536

SUPPLEMENTAL BRIEF

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Plaintiff/Respondent Charles Logan respectfully submits this Supplemental Brief.

ARGUMENT

The question in this case is whether an Advance Health Care Directive that empowers an agent to make "health care decisions" for a principal empowers the agent to bind that principal to a pre-dispute arbitration agreement with a skilled nursing facility when receiving health care from the facility cannot be conditioned upon an agreement to arbitrate. Charles Logan filed his Answering Brief on March 16, 2023. As he explained there (at 31-34), for many reasons, most states to consider this question have held that a health care power of attorney lacks authority to execute arbitration agreements that are not required to obtain health care for the principal.

After Mr. Logan filed his brief, Illinois reached the same conclusion, for similar reasons to those given by the Court of Appeal here. In *Parker v. Symphony of Evanston Healthcare, LLC*, Mae Jefferson executed an Illinois statutory short-form power of attorney for health care, naming her daughter, Kathy Jefferson, as her health care power of attorney. ((Ill. App. Ct. 2023) 220 N.E.3d 455, 457.) Under the power of attorney, Kathy was authorized "to make any and all decisions for [Ms. Jefferson] concerning [her] personal care, medical treatment, hospitalization and health care and to require, withhold or withdraw any type of medical treatment or procedure, even though [her] death may ensue." (*Ibid.*)

In September 2017, Ms. Jefferson was admitted to Symphony, a long-term care facility. A month later, Kathy signed an admission agreement. At the same time, she signed a separately paginated arbitration agreement that was not required for admission to the facility. (220 N.E.3d at pp. 457-58.) After Ms. Jefferson died in 2020, the administrator of her estate (the plaintiff), brought an action against Symphony for failing to

provide adequate care. The trial court granted Symphony's motion to compel arbitration, and the plaintiff appealed. (*Id.* at pp. 458-460.)

Like Mr. Logan, the plaintiff argued that, because the arbitration agreement "was not a condition precedent to [Ms. Jefferson's] admission"—that is, because it was optional—Kathy lacked authority to execute it on Ms. Jefferson's behalf. (220 N.E.3d at p. 462.) And like Country Oaks (the defendant and appellant here), Symphony argued that because the arbitration agreement was signed at the same time as the admission agreement, it was "integral to and part and parcel of the residency contract," bringing it within the scope of Kathy's authority to make health care decisions. (*Ibid.*)

The Appellate Court of Illinois rejected Symphony's argument for the same reasons the Court of Appeal rejected Country Oaks' argument here. While the arbitration agreement and the admission agreement were "presented at the same time," the arbitration agreement was "separately paginated and separately signed," and, "[m]ost significantly, signing [it was] not required to receive treatment." (220 N.E.3d at p. 463.) "Since Kathy was not required to sign the arbitration agreement for [Ms. Jefferson] to be admitted to Symphony or to continue receiving care," the court held, "it was not 'reasonably necessary' for Kathy to sign the arbitration agreement to make a health care decision on [her] behalf." (*Ibid.*) For that reason, signing the agreement fell outside the scope of her authority.[1] (*Id.* at pp. 463-64.)

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[1] In reaching this conclusion, the Court held that the Tennessee Supreme Court's holding in *Owens v. National Health Corp*. (Tenn. 2007) 263 S.W.3d 876, 884, relied on by amicus the California Association of Health Facilities (CAHF Br. at 19) was inapplicable. It explained that in *Owens*, the arbitration provision was "not optional" and thus it was "necessary" for agent to sign it for the principal to receive health care. (220 N.E.3d at p.

The concurrence, too, observed that optional arbitration agreements are unrelated to the purpose of the agency created by the statutory power of attorney form. "Arbitration does not do anything associated with health care. It does not check the patient's vital signs, monitor heart rate, prevent or treat pressure sores, draw blood, set or maintain an IV, diagnose illness, or prescribe or dispense medication." (220 N.E.3d at p. 464 [Pucinski, J., concurring].) The reasoning of the majority and the concurrence applies with equal force to the statutory form Mr. Logan executed here.

CONCLUSION

For the foregoing reasons, the decision below should be affirmed and all inconsistent decisions, including *Garrison*, should be overruled.

Dated: December 26, 2023

Respectfully submitted,

/s/ Matthew Borden

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463 [quoting *Owens*, 263 S.W.3d at p. 884].) *Owens* is inapposite here for the same reason: Mr. Harrod, unlike the agent in *Owens*, was not required to sign the arbitration agreement to admit Mr. Logan to Country Oaks.

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CERTIFICATE OF WORD COUNT

[Cal. Rules of Court, Rule 8.520(d)(2)]

The text of this brief consists of 756 words as counted by the Microsoft Word processing program used to generate this brief.

Dated this 26 day of December 2023, at San Francisco, California.

/s/ *Matthew Borden*
Matthew Borden

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Dated: December 26, 2023

Talissa Carrasco

STATE OF CALIFORNIA
Supreme Court of California

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12/26/2023

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/s/Talissa Carrasco

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