

ARBITRATION AGREEMENT BY PROXY
By Ted Babbitt

It has become common for doctors and hospitals to ask patients to sign an arbitration agreement which waives the right to trial by jury. The law favors arbitration and many cases have enforced such arbitration agreements. A recent opinion of the Second District in Stalley v. Transitional Hospitals Corporation of Tampa, Inc., 35 Fla. L. Weekly D1804 (Fla. 2nd DCA, Aug. 11, 2010), takes a contrary view under specific facts.

Plaintiff's decedent entered the defendant hospital by ambulance even though it was not an emergency admission. He gave his wife authority to sign "admission papers." Among those papers was an arbitration agreement which she testified that she signed without reading. After the death of plaintiff's decedent, allegedly due to malpractice which occurred as a result of the hospital employee's negligence, a suit was instituted. The trial court held a lengthy evidentiary hearing and granted a motion to stay the litigation compelling the parties to arbitration pursuant to the arbitration agreement signed by the wife.

The Second District reversed, holding that the wife's signing of the arbitration agreement did not bind the husband's estate. The Second District was faced with three questions. First whether the wife, by virtue of being a wife, could be considered the husband's agent. Second, whether if the wife was not the actual agent of the husband, she could bind him as his apparent agent and lastly whether the husband had consented to arbitration by virtue of estoppel

since he reaped the benefit of his agreement with the hospital to receive treatment at the hospital. The Second District answered all three questions in the negative.

The trial court apparently took the position that evidence of agency was not required because one spouse is always the agent of the other as a matter of law. The Court cited numerous cases indicating that that was not the case and that, in fact, absent actual agency there is no imputed agency by virtue of being a spouse. In ancient England the law may have been different because the concept of coverture existed. This concept led Mr. Bumble, a character in *Oliver Twist*, when informed that “the law supposes that your wife acts under your direction” to reply “if the law supposes that. . . the law is a ass – a idiot. If that’s the eye of the law, the law is a bachelor;. . .” The Court pointed out that there was no evidence that plaintiff’s decedent either signed the arbitration agreement or that his wife had a power of attorney or other written consent authorizing her to sign the arbitration agreement. There was, therefore, no evidence of actual agency.

On the second point, the Court concluded that there was insufficient evidence to support a finding of apparent agency. One of the elements of apparent agency is a representation by the principal that the purported apparent agent is, in fact, the principal’s agent. See Mobile Oil Corp. v. Bransford, 648 So. 2d 119, 121 (Fla. 1995), Smith v. Am. Auto. Ins. Co., 498 So. 2d 448, 449 (Fla. 3rd DCA 1986), Owen Indus., Inc. v. Taylor, 354 So. 2d 1259, 1262 (Fla. 2d DCA 1978); Taco Bell of Cal. V. Zappone, 324 So. 2d 121, 124 (Fla. 2d DCA 1975),

and Poe & Assocs., Inc. v. Estate of Vogler, 559 So. 2d 1235, 1236 (Fla. 3d DCA 1990).

Conceding that there was no express representation by plaintiff's decedent that his wife was his agent, the hospital claimed that the decedent's failure to question his wife about the documents or ask to see them indicated an implied representation by him that she had authority to sign anything including the arbitration agreement. At 1805, the Court made short work of that:

In the absence of some evidence that Roderic knew that JoAnne would be asked to waive his constitutional rights, Roderic's failure to ask to review the documents cannot constitute a representation that JoAnne was authorized to act as his agent in waiving his right to a jury trial. Thus, since Kindred failed to present any evidence of such a representation by Roderic concerning JoAnne's authority, it did not establish a necessary element of the formation of an apparent agency, and it cannot bind Roderic to the arbitration agreement he did not sign.

On the last point that the plaintiff's decedent ratified his wife's action in signing the agreement by accepting treatment at the hospital, the Court concluded at 1806:

Here, the evidence presented by Kindred did not establish that Roderic was ever informed – much less *fully* informed – of the arbitration agreement signed by JoAnne. Further, Kindred failed to establish any “intelligent act or conduct” by Roderic that would show his intention to be bound by the arbitration agreement. In the absence of such evidence, Kindred cannot show that Roderic ratified the arbitration agreement signed by JoAnne so as to bind the Estate to it.

The right to trial by jury is a constitutional right that should not be easily waived. This case of first impression holds that an arbitration agreement signed by a spouse does not bind that spouse's wife or husband absent a showing that the nonsigning spouse intended to be bound by such a signature and fully understood the waiver of the constitutional right in question.

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