NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

DAVID FIGUEROA v. MAYFAIR OPERATOR, LLC D/B/A ROOSEVELT REHABILITATION AND HEALTHCARE CENTER, MARQUIS HEALTH CONSULTING SERVICES, LLC, AND MARQUIS HEALTH SERVICES, LLC Appellants	:	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2615 EDA 2025

Appeal from the Order Entered September 22, 2025
In the Court of Common Pleas of Philadelphia County Civil Division at No(s): 241000610

BEFORE: BOWES, J., OLSON, J., and McLAUGHLIN, J.

MEMORANDUM BY BOWES, J.: **FILED SEPTEMBER 25, 2026**

Appellants Mayfair Operator, LLC, Marquis Health Consulting Services, LLC, and Marquis Health Services, LLC, appeal from the trial court's order declining to transfer the matter to arbitration pursuant to an arbitration agreement. We affirm.

We glean the following from the record. Appellee David Figueroa suffered a traumatic spinal cord injury that rendered him paraplegic. On September 17, 2021, he entered Appellants' facility, Roosevelt Rehabilitation and Healthcare Center. While there, the facility inserted and managed a latex foley catheter in Appellee's penis, despite Appellee's latex allergy. The facility's selection and management of the catheter allegedly caused injury to him.

On January 6, 2022, nearly four months following Appellee's admission, a female agent of Appellants offered Appellee a computer tablet screen running electronic admissions software to sign a Facility Agreement. The first screen, titled "Let's Get Started," presented general admissions terms and included a box stating that by checking it, the user consents to having his signature applied electronically wherever he clicked "Accept" throughout the Facility Agreement. That box had a checkmark in it, and Appellee electronically signed below the provision. Notably, Appellants presented no evidence of whether Appellants, Appellee, or the electronic software was responsible for marking the box.

The Facility Agreement included as an attachment an Alternative Dispute Resolution ("ADR") Agreement. The ADR Agreement stated it was an optional agreement and that admission was not contingent on Appellee signing it. It contained language explaining that the parties were waiving their right to a jury trial and defining binding arbitration. An electronic signature identical to the one Appellee made on the "Let's Get Started" page appeared on the ADR Agreement's signature page, dated January 6, 2022, alongside the signature of Appellants' authorized agent, Shalom Schechter. The box stating "[f]acility representative has presented the ADR to the Resident and/or Legal Representative" was left unchecked.

Appellee testified that he did not scroll to a screen presenting the ADR Agreement, did not sign or click an accept button on the ADR Agreement, and never saw the ADR Agreement until his attorney showed it to him during the present litigation. He also testified that he never signed documents with anyone named Shalom Schechter.

Appellants did not depose the female agent who presented the tablet to Appellee. Instead, they deposed only Schechter, the facility's interim Administrator/Assistant Administrator. Schechter testified generally about his usual intake procedure but did not recall the specific procedure performed with Appellee, did not recall reviewing the agreement with Appellee, and did not recall Appellee clicking accept buttons or electronically signing the multiple signature lines throughout the Facility Agreement.

Critically, Appellants did not present any evidence of how the software functioned. There was no evidence that an electronic signature could appear on a page **only** if the user had clicked an "accept" button. To the contrary, Schechter testified that the software itself placed information such as dates and position titles onto pages and possibly reused signatures throughout the Facility Agreement. Several signature lines labeled for the resident were left blank with no electronic signature.

The record contained further indications that the software acted on its own accord. "X"s appeared in boxes throughout the Facility Agreement, including next to the ADR Agreement on the Acknowledgments page, even though the agreement asked the resident to place their initials or a check mark in the box. Appellee's initials were not present in that box. Schechter conceded that he had no evidence that Appellee ever saw the Acknowledgments page. The software also entered the erroneous title

"Executive Director" below Schechter's signature, a position he did not hold, and placed the September 17, 2021, date onto pages so that the agreement's effective date would relate back to Appellee's initial entry nearly three months before he signed anything.

Although Schechter testified that he "100% guarantees" that he presented the ADR Agreement to Appellee, he conceded that neither he nor the software check-marked the box confirming that the ADR had been presented, allowing that "it may have been…an oversight." Trial Court Opinion at 11. Further, Schechter could not recall whether Appellee read the ADR Agreement himself or if Schechter read it to him.

Appellee subsequently filed a complaint against Appellants. Appellants then filed Preliminary Objections, arguing a valid ADR Agreement existed between the parties and that the matter should proceed to arbitration. The trial court overruled Appellants' Preliminary Objections.[1] This timely appeal follows. Both Appellants and the Trial Court complied with Pa.R.A.P. 1925. Appellants raise the following issue for our consideration:

Whether the trial court erred by failing to enforce the valid, conscionable, properly executed arbitration agreement in this matter. Appellants' brief at 4.

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[1] An order overruling preliminary objections seeking to compel arbitration is immediately appealable as an interlocutory appeal as of right pursuant to 42 Pa.C.S. § 7320(a)(1) and Pa.R.A.P. 311(a)(8). ***Waters v. Express Container Services of Pittsburgh, LLC***, 284 A.3d 1217 (Pa.Super. 2022); ***Humphrey v. GlaxoSmithKline PLC***, 263 A.3d 8 (Pa.Super. 2021).

On appeal from an order refusing to compel arbitration, our standard of review is:

> [L]imited to determining whether the trial court's findings are supported by substantial evidence and whether the trial court abused its discretion in denying the petition. Where a party to a civil action seeks to compel arbitration, a two-part test is employed. First, the trial court must establish if a valid agreement to arbitrate exists between the parties. Second, if the trial court determines such an agreement exists, it must then ascertain if the dispute involved is within the scope of the arbitration provision. If a valid arbitration agreement exists between the parties, and the plaintiff's claim is within the scope of the agreement, the controversy must be submitted to arbitration.
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> In making these determinations, courts must bear in mind:
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> (1) arbitration agreements are to be strictly construed and not extended by implication; and (2) when parties have agreed to arbitrate in a clear and unmistakable manner, every reasonable effort should be made to favor the agreement unless it may be said with positive assurance that the arbitration clause involved is not susceptible to an interpretation that covers the asserted dispute.
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> To resolve this tension, courts should apply the rules of contractual constructions, adopting an interpretation that gives paramount importance to the intent of the parties and ascribes the most reasonable, probable, and natural conduct to the parties. In interpreting a contract, the ultimate goal is to ascertain and give effect to the intent of the parties as reasonably manifested by the language of their written agreement.

Provenzano v. Ohio Valley Gen. Hosp., 121 A.3d 1085, 1094–95 (Pa.Super. 2015) (internal citations omitted)(cleaned up).

This appeal concerns solely the validity of the Arbitration Agreement, *i.e.*, the first part of the two-part test. The party seeking to compel arbitration bears the burden of proving the parties manifested an assent to be bound by an arbitration agreement. ***Duffy v. Tatum***, 354 A.3d 14, 23–24 (Pa.Super. 2026). A party may consent to an arbitration agreement by taking "any action that manifested his assent to be bound" by its terms. ***Duffy***, 354 A.3d at 23; ***Rambo v. Greene***, 906 A.2d 1232, 1236 (Pa.Super. 2006) ("In ascertaining the intent of the parties to a contract, it is their outward and objective manifestations of assent, as opposed to their undisclosed and subjective intentions, that matter"). Whether the party's actions evinced consent "must be determined on the basis of what a reasonable person in the position of the part[y] would be led to understand by such conduct under all of the surrounding circumstances." ***Mountain Props., Inc. v. Tyler Hill Realty Corp.***, 767 A.2d 1096, 1101 (Pa.Super. 2001) (citation omitted).

Appellant asserts that there was in fact a binding arbitration agreement by virtue of Appellee's signature on the ADR agreement. However, the trial court found that there was not a valid arbitration agreement signed by Appellee because,

> Appellants failed to demonstrate (1) that [Appellee] had actual knowledge of [Appellants'] ADR Agreement, or (2) that [Appellants'] software provided reasonably obvious notice of the ADR Agreement's terms to [Appellee] and [Appellee] took some action such as clicking a button or check marking a box that clearly manifested [Appellee's] assent to those terms.

Trial Court Opinion, at 14.

The record furnishes ample support for the trial court's conclusion. Appellee testified that he never scrolled to the ADR Agreement, never signed or clicked "accept" on it, and never saw it until his attorney produced it during litigation. He further testified that he never signed any document with Shalom Schechter, whose signature appears alongside Appellee's on the ADR signature page.

Appellants' proof of acceptance depended entirely on the appearance of an electronic signature on the ADR signature page. However, an electronic signature is probative of acceptance only if it reflects some deliberate act by the signatory. Appellants presented no evidence of how the software functioned and no evidence that a signature could appear on a page only where the user affirmatively clicked "accept." Schechter testified that the software itself populated dates and position titles and may have reused signatures throughout the Facility Agreement. Several resident signature lines were left blank, and "X"s appeared in boxes the agreement directed the resident to initial or check, including the box next to the ADR Agreement on the Acknowledgments page, where Appellee's initials were absent. Schechter conceded he had no evidence Appellee ever saw the Acknowledgments page. On this record, the trial court was entitled to conclude that the electronic signature on the ADR Agreement may have been placed by the software rather than by any act of Appellee, and thus did not establish the deliberate, objective manifestation of agreement the law requires.

Further, Schechter recalled nothing of the specific intake: he did not recall reviewing the agreement with Appellee, did not recall Appellee clicking "accept" or signing the signature lines, and could not say whether Appellee read the ADR Agreement or whether it was read to him. Although Schechter claimed to "100% guarantee" that he presented the ADR Agreement, he acknowledged that the box confirming presentation was left unchecked, allowing that this may have been an oversight. A general account of customary practice, unsupported by any recollection of this transaction and contradicted by the document's own unchecked confirmations, does not compel a finding of acquiescence.

Since Appellants failed to establish either actual knowledge or a clear manifestation of assent, the trial court correctly held that no valid agreement to arbitrate was formed. Having found no valid agreement under the first prong of the two-part test, we need not reach the scope of the arbitration provision. ***Provenzano***, 121 A.3d at 1094–95. The trial court's findings rest on substantial evidence and reflect no abuse of discretion.

For the foregoing reasons, we affirm.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 9/25/2026