IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Dawn Sundquist, as independent administrator to collect of the estate of Marilyn Sundquist, deceased, Plaintiff, v. Manor Care of Elk Grove Village IL, LLC, a foreign limited liability company d/b/a ManorCare of Elk Grove Village; HCR Manor Care Services LLC, a foreign limited liability company; and Heartland Employment Services, LLC, a foreign limited liability company, Defendants.	)	No. 20 L 13730

MEMORANDUM OPINION AND ORDER

An agreement to arbitrate terminates when a clear and unequivocal termination clause in the overarching contract is triggered. Here, the parties entered into an arbitration agreement that merged into an admissions agreement that, in turn, terminated when the nursing facility discharged the plaintiff's decedent. For that reason, defendant's motion to compel arbitration must be denied.

Facts

On November 8, 2018, Dawn Sundquist, entered into a voluntary arbitration agreement with Manor Care Health Services Elk Grove Village on behalf of her mother, Marilyn. Marilyn had been admitted to Manor Care on October 30, 2018. Marilyn was unresponsive but alive at the time of her admission. It is undisputed that the arbitration agreement, by its terms, bound both Sundquist and Manor Care to arbitrate disputes arising from their contractual relationship. Section 1 of the agreement provided:

> **Voluntary Agreement to Arbitrate Disputes.** The parties agree that they will mutually benefit from the speedy and efficient resolution of any dispute or controversy which may arise between them. This is a voluntary Agreement to have all disputes resolved through binding arbitration by an independent neutral Arbitrator who will be selected by the parties as specified in this agreement. **THE PARTIES AGREE THAT THEY ARE WAIVING THE RIGHT TO TRIAL BY JURY.**

> **ANY DISPUTES BETWEEN THE PARTIES WILL BE RESOLVED EXCLUSIVELY THROUGH BINDING ARBITRATION.**

(Emphasis in original.) Immediately above the signature block, where Sundquist signed her name, the agreement similarly provided:

> **THIS ARBITRATION AGREEMENT GOVERNS IMPORTANT LEGAL RIGHTS. PLEASE READ THE AGREEMENT IN ITS ENTIRETY BEFORE SIGNING. EACH PARTY IS WAIVING THE RIGHT TO TRIAL BY JURY. DISPUTES MUST BE RESOLVED EXCLUSIVELY THROUGH BINDING ARBITRATION.**

(Emphasis in original).

Paragraph 16 of the agreement additionally provided that Sundquist could cancel the agreement by either filing "a medical claim in a court" or mailing a copy of the agreement with "cancelled" written on the front of it within 30 days of signing. Otherwise, the agreement did not specify how or when it would terminate. Instead, the agreement contained a merger clause that provided:

> **Merger.** Upon execution, this Agreement shall merge into and become part of the written Admission Agreement pursuant to which the Patient is admitted to the Center unless it is cancelled as described in paragraph 16 of this Agreement.

The admission agreement referenced in this merger clause contained a paragraph stating: "This Agreement begins on the day you are admitted to the Center and ends on the day you are discharged from the Center unless you are readmitted within 15 days of your discharge date."

On December 25, 2018, Marilyn was found unresponsive and transferred to Alexian Brothers Hospital where she was later pronounced dead. On December 24, 2020, Sundquist filed a complaint alleging that Manor Care negligently failed to provide "the necessary respiratory and tracheostomy tube care and treatment to prevent [Marilyn] from developing respiratory distress." Sundquist also alleges that Manor Care negligently failed "to timely initiate any code blue procedure, including CPR." Sundquist claims damages under the Illinois Nursing Home Care Act, the Survival Act, and the Wrongful Death Act.

On November 4, 2021, Manor Care, along with the other defendants, filed a motion to dismiss Sundquist's complaint and compel arbitration. The parties have fully briefed the motion.

Analysis

If claims arise out of the contractual relationship of parties who have agreed to arbitrate such claims, Illinois courts are split as to whether the requirement to arbitrate survives termination of the contract. *See Clanton v. Oakbrook Healthcare Ctr., Ltd.*, 2022 IL App (1st) 210984, ¶ 63 (citing *Mason v. St. Vincent's Home, Inc.*, 2022 IL App (4th) 210458, ¶ 44). The Fourth District enforces arbitration clauses for claims that arise prior to the contract's termination. *Mason*, 2022 IL App (4th) 210458, ¶ 44. The Fourth District's position extends application of the Illinois Supreme Court's decision in *Carter v. SSC Odin Operating Co., LLC*, in which the court held that a nursing home could compel a plaintiff to arbitrate the Survival Act claim brought on behalf of the plaintiff's decedent, who had agreed to the nursing home's arbitration provision. 2012 IL 113204, ¶ 27.

On the other hand, the First District holds that a clear and unequivocal termination provision applies equally to an arbitration provision, such that when a contract terminates, so does its concomitant requirement to arbitrate. *Clanton*, 2022 IL App (1st) 210984, ¶ 62. This conclusion is based on the presumption that courts should not add contractual provisions that could have easily been included but were not. *Id.*, ¶ 61 (citing *St. Paul Mercury Ins. v. Aargus Sec. Sys., Inc.*, 2013 IL App (1st) 120784, ¶ 59). As the *Clanton* court reasoned:

> Rather than broadly stating that "this Contract" (*i.e.*, the whole contract) would terminate upon the resident's death, the drafters could have specified which provisions would remain in effect. For instance, the contract could have stated that the death of a resident extinguished obligations for future performance of services, but did not extinguish the parties' agreement to arbitrate claims that accrued during a resident's lifetime. Or the termination provision could have simply included a carve-out to preserve the arbitration provision, for example, by stating that "this Contract, *other than the arbitration agreement in Section E*, shall terminate" upon the resident's death.

Id. (emphasis in original).

Stare decisis requires that this court follow *Clanton*. "[T]he opinion of one district, division, or panel of the appellate court is not binding on other districts, divisions, or panels." *O'Casek v. Children's Home & Aid Soc'y of Ill.*, 229 Ill. 2d 421, 440 (2008) (citing cases). However, *stare decisis* requires courts to follow decisions of higher courts. *Gillen v. State Farm Mut. Auto Ins. Co.*, 215 Ill. 2d 381, 392 n.2 (2005) (quoting *Schiffner v. Motorola, Inc.*, 297 Ill. App. 3d 1099, 1102 (1998)). If a conflict arises between two appellate court districts, a circuit court is bound by *stare decisis* to follow the rulings of the district in which the circuit court sits. *Aleckson v. Village of Round Lake Park*, 176 Ill. 2d 82, 92 (1997); *State Farm Fire & Cas. Co. v.*

Yapejian, 152 Ill. 2d 533, 539-40 (1992). Thus, in this case, the law obligates this court to follow *Clanton* and give full effect to Manor Care's clear and unequivocal termination clause.

Just as in *Clanton*, Manor Care could have excepted the admission agreement's termination provision from the arbitration agreement's merger clause, or carved out the arbitration agreement from the termination provision. *See* 2022 IL App (1st) 210984, ¶ 61. Manor Care failed to supply the necessary language offered in the *Clanton* opinion. Absent such language, the agreement to arbitrate Sundquist's claims terminated when Manor Care discharged Marilyn.

Conclusion

For the foregoing reasons, it is ordered that:

1. The defendants' motion to dismiss and compel arbitration is denied; and
2. The defendants have until February 3, 2023, to answer the complaint.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

JAN 06 2023

Circuit Court 2075