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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

CYNTHIA CARRILLO,

Plaintiff and Respondent,

v.

SELA HEALTHCARE, INC.,

Defendant and Appellant.

D083421

(Super. Ct. No. CIVSB2027172)

APPEAL from an order of the Superior Court of San Bernardino County, John M. Pacheco, Judge. Affirmed in part, and remanded for further proceedings.

Lewis Brisbois Bisgaard & Smith, Tracy D. Forbath, Kathleen M. Walker and Emily D. Hyatt for Defendant and Appellant.

Cotchett, Pitre & McCarthy, Anne Marie Murphy, Carlos Urzua and Hannah Brown for Plaintiff and Respondent.

## INTRODUCTION

Sela Healthcare, Inc., doing business as Villa Mesa Care Center (Villa Mesa), appeals the trial court's order denying its petition to compel arbitration in Cynthia Carrillo's action against Villa Mesa. Villa Mesa asserted Cynthia was acting as both the authorized agent of her brother, David Carrillo, and in her individual capacity when she signed a form agreement to arbitrate upon David's admission to Villa Mesa. We agree with the trial court that Villa Mesa failed to demonstrate that Cynthia had actual or ostensible authority to agree to binding arbitration on her brother's behalf with respect to the claims she brought as his successor in interest. But the terms of agreement are clear that Cynthia signed the agreement in her individual capacity.

We cannot tell whether the trial court reached the parties' other arguments about the agreement's enforceability: (1) Is the arbitration agreement procedurally and substantively unconscionable? (2) If the arbitration agreement is enforceable, should Cynthia's wrongful death claim nevertheless be adjudicated in state court to prevent conflicting rulings? The first argument requires the resolution of conflicting inferences that is best resolved in the first instance by the trial court. The second requires a discretionary decision by the trial court. We therefore remand for further proceedings.

## BACKGROUND

David was a non-verbal, dependent adult with Down Syndrome and dementia. He was 65 years old in December 2019 when he moved into Villa Mesa, a skilled nursing facility. Cynthia was his sister. Before his move to Villa Mesa, David lived with Cynthia and she took care of him, including grooming and helping him eat.

Cynthia signed David's admission documents on the day he was admitted to Villa Mesa. One of the documents she signed was entitled, "ARBITRATION AGREEMENT." (Boldface omitted.)

In December 2020, Cynthia filed a complaint against Villa Mesa asserting claims for elder abuse and neglect (Welf. & Inst. Code, § 15600 et seq.), negligence, wrongful death, and violation of resident rights (Health & Saf. Code, § 1430(b)). She asserted her claims for elder abuse, negligence, and violation of patient's rights as David's heir and successor in interest, and for wrongful death in her individual capacity. Cynthia alleged Villa Mesa failed to provide David with adequate care, understaffed its facility, and "skirted safety and infection controls" during the COVID-19 pandemic, all of which led to David's untimely death.

In March 2022, Villa Mesa filed a petition to compel arbitration. It asserted Cynthia had signed the arbitration agreement both in her individual capacity and on behalf of David as his agent. Villa Mesa argued all of the claims asserted in the operative complaint were subject to arbitration, based on agency principles and the plain language of the agreement. Cynthia opposed the petition on several grounds.

The form arbitration agreement specifically addressed potential future claims brought in a representative capacity by David's successors in interest. It also specifically addressed claims brought by family members or others in an individual capacity.

With respect to Cynthia's individual claim, her signatures on the arbitration agreement were both located above signature lines that prominently stated she was signing on behalf of the resident "*and as an Individual.*" (Italics added.) Article 4 of the agreement also prominently

stated disputes brought by David’s representatives in their individual capacities against Villa Mesa were subject to binding arbitration:

This agreement is binding on all parties, including the Resident’s representatives, executors, family members, and heirs who bring any claims individually or in a representative capacity. The Resident’s representatives, agents, executors, family members, successors in interest and heirs who execute this Agreement below on the signature line are doing so not only in their representative capacity for the Resident, *but also in their individual capacity* and thus agree that any claims brought individually by any such representatives, agents, executors, family members, representatives, successors in interest, and heirs are subject to binding arbitration. (Italics added.)

Finally, the following notice appeared directly above one of the signature blocks where Cynthia signed and dated the agreement “on behalf of Resident *and as an Individual*” (italics added):

**NOTICE: BY SIGNING THIS CONTRACT YOU ARE AGREEING TO HAVE ALL CLAIMS, INCLUDING CLAIMS OTHER THAN A CLAIM FOR MEDICAL MALPRACTICE, DECIDED BY ARBITRATION AND YOU ARE GIVING UP YOUR RIGHT TO A JURY OR COURT TRIAL.**

As for the claims brought in Cynthia’s representative capacity, the final paragraph of the agreement contained a representation that the person signing the agreement — Cynthia in this case — was authorized to sign on the resident’s behalf. David, however, did not sign the arbitration agreement. Villa Mesa presented no evidence that David was aware of the agreement, that he authorized Cynthia to agree to binding arbitration of his claims, or that Cynthia had power of attorney over his legal affairs.

The trial court denied Villa Mesa’s petition in a minute order on the ground that Villa Mesa failed to demonstrate Cynthia was authorized to bind David to arbitration of his claims:

Here [David] did not sign the Arbitration agreement or the admission agreement. Therefore, in order for Villa Mesa to prevail, there must be another way to have Cynthia Carrillo's signature bind [David]. Unfortunately for Villa Mesa, no evidence has been submitted that [David] had a [power of attorney] or that [Cynthia] was [David's] power of attorney.

The trial court did not provide a written explanation of how it ruled on the parties' other arguments. Villa Mesa did not seek a statement of decision.

## DISCUSSION

California has a strong public policy in favor of resolving claims through arbitration. (*Marsch v. Williams* (1994) 23 Cal.App.4th 250, 254 (*Marsch*)). “[D]oubts concerning the scope of arbitrable issues are to be resolved in favor of arbitration.” (*Ericksen, Arbuthnot, McCarthy, Kearney & Walsh, Inc. v. 100 Oak Street* (1983) 35 Cal.3d 312, 323.)

The right to compel another party to arbitrate, however, requires a contract. (*Young v. Horizon West, Inc.* (2013) 220 Cal.App.4th 1122, 1128.) This is because California also recognizes that “the right to pursue claims in a judicial forum is a substantial right and one not lightly to be deemed waived.” (*Marsch, supra*, 23 Cal.App.4th at p. 254.) As a result, “the strong public policy in favor of arbitration does not extend to those who are not parties to an arbitration agreement or who have not authorized anyone to act for them in executing such an agreement.” (*County of Contra Costa v. Kaiser Foundation Health Plan, Inc.* (1996) 47 Cal.App.4th 237, 245.)

With these principles in mind, we turn to Villa Mesa's first two contentions on appeal. As noted, Villa Mesa contends the trial court erred when it ruled Villa Mesa failed to establish Cynthia had authority as David's actual or ostensible agent to commit him to binding arbitration. Villa Mesa further contends that Cynthia signed the arbitration agreement in her

individual capacity. Our review of these two issues is de novo. (*Kinder v. Capistrano Beach Care Center, LLC* (2023) 91 Cal.App.5th 804, 811 (*Kinder*); *Rogers v. Roseville SH, LLC* (2022) 75 Cal.App.5th 1065, 1072 (*Rogers*) [“Although agency is generally a factual question, where the facts are undisputed, . . . we independently review the case to determine whether agency and a valid arbitration agreement exists.”].)

## I.

### *Villa Mesa Failed To Prove Cynthia Had Actual or Ostensible Authority To Bind David to an Arbitration Agreement with Respect to the Three Claims Brought in Her Representative Capacity*

A party seeking to compel arbitration bears the burden of proving the existence of a valid arbitration agreement. (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972.) “The question of whether a valid agreement to arbitrate exists is determined by reference to the law applicable to contracts generally.” (*Kinder, supra*, 91 Cal.App.5th at p. 811 [cleaned up].)

Here, Cynthia brought the causes of action for elder abuse, negligence, and violation of patient’s rights as David’s heir and successor in interest. But it is Cynthia’s alleged signature, not David’s, that appears on the purported agreement.

Under most circumstances, a person who is not a party to an arbitration agreement is not bound by it. (*Flores v. Evergreen at San Diego, LLC* (2007) 148 Cal.App.4th 581, 587 (*Flores*).) However, a person who is authorized to act as another person’s agent can commit the principal to binding arbitration. (*Kinder, supra*, 91 Cal.App.5th at p. 812.) Thus, in order to compel arbitration of the elder abuse, negligence, and violation of patient’s

rights claims, Villa Mesa needed to prove Cynthia signed the alleged arbitration agreement on behalf of David as his agent.

“An agent is one who represents another, called the principal, in dealings with third persons. . . . In California, an agency is either actual or ostensible.” (*Kinder, supra*, 91 Cal.App.5th at p. 812 [cleaned up].) “When a defendant contends an agreement to arbitrate is binding because it was signed by an agent of the plaintiff, the defendant bears the burden of proving the signatory was the plaintiff’s actual or ostensible agent.” (*Ibid.*)

“Actual agency arises when the principal’s conduct causes the agent reasonably to believe that the principal consents to the agent’s act on behalf of the principal.” (*Kinder, supra*, 91 Cal.App.5th at p. 812 [cleaned up]; Civ. Code, § 2316.) “The principal must in some manner indicate that the agent is to act for him, and the agent must act or agree to act on his behalf and subject to [the principal’s] control.” (*van’t Rood v. County of Santa Clara* (2003) 113 Cal.App.4th 549, 571 [cleaned up].)

“Ostensible agency arises when the principal’s conduct causes the third party reasonably to believe that the agent has the authority to act on the principal’s behalf.” (*Rogers, supra*, 75 Cal.App.5th at p. 1074; Civ. Code, § 2317.) “‘Before recovery can be had against the principal for the acts of an ostensible agent, three requirements must be met: The person dealing with an agent must do so with a reasonable belief in the agent’s authority, such belief must be generated by some act or neglect by the principal sought to be charged and the person relying on the agent’s apparent authority must not be negligent in holding that belief.’” (*Valentine v. Plum Healthcare Group, LLC* (2019) 37 Cal.App.5th 1076, 1087.)

Significant here, it is a well-settled principle of agency law that “[a]n agency[, whether actual or ostensible,] cannot be created by the conduct of

the agent alone; rather conduct by the principal is essential to create the agency.’” (*Rogers, supra*, 75 Cal.App.5th at p. 1074.) “Agency is not provable by the mere declarations of the agent, not made under oath or in the presence of the principal, unless communicated to, and acquiesced in, by the principal.” (*Union Const. Co. v. Western Union Telegraph Co.* (1912) 163 Cal. 298, 305; accord *Howell v. Courtesy Chevrolet, Inc.* (1971) 16 Cal.App.3d 391, 400–401; *Dooley v. West American Commercial Ins. Co.* (1933) 133 Cal.App. 58, 62 (*Dooley*) [“the mere declaration of a person that he is the agent of another is not, in and of itself, competent evidence of the agency, unless made in the presence of, or communicated to and acquiesced in by, the principal”]; see also Evid. Code, § 1222.) Applying this rule to the interpretation of contracts, “a defendant cannot meet its burden to prove [a] signatory acted as the agent of a plaintiff by relying on representations of the purported agent alone.” (*Kinder, supra*, 91 Cal.App.5th at p. 812.)

A host of cases apply this and related agency principles in the context of petitions to compel arbitration filed by skilled nursing facilities under closely analogous circumstances. (*Kinder, supra*, 91 Cal.App.5th at pp. 813–814 [collecting cases]; *Goldman v. Sunbridge Healthcare, LLC* (2013) 220 Cal.App.4th 1160, 1173; cf. *Toal v. Tardif* (2009) 178 Cal.App.4th 1208, 1221–1222.) Villa Mesa accordingly cannot establish agency authority on Cynthia’s part based solely on the contract term that “the person executing this Agreement . . . affirmatively represents that he/she is duly authorized, by virtue of the Resident’s consent, instruction and/or durable power of attorney, to execute this Agreement and accept its terms on behalf of the Resident and acknowledges that the Facility is relying on the aforementioned certification.” Extrinsic evidence is required. (*Dooley, supra*, 133 Cal.App. at p. 62.)

Here, the extrinsic evidence assembled by Villa Mesa fails to demonstrate the required actual or ostensible agency. Villa Mesa does present strong, undisputed evidence that Cynthia had authority to make *general caretaking and healthcare decisions* for David. (See Prob. Code, §§ 4711–4712; Health & Saf. Code, § 1418.8, subd. (a)(2)(G); Civ. Code, §§ 2316–2317.) David lived with Cynthia for years and relied on her to support him. She frequently instructed nurses and other staff on how to care for David, including “when David should eat, be dressed, and what medicine he should or should not take.” She signed “the admission paperwork for [David], including consent forms for influenza and pneumococcal immunizations, bed hold informed consent, request for admission and authorization for treatment and medication, mortuary information, and an advance directive acknowledgement.” She agreed to be his “ ‘Surrogate Decision Maker,’ ” and make “ ‘preferred intensity of care decisions’ ” on his behalf, including whether to resuscitate him in the event of an emergency. But nowhere to be found is there evidence that Cynthia was in charge of David’s *legal affairs*.

Our high court recently addressed agency principles in the context of a dispute over the enforceability of an arbitration agreement between a skilled nursing facility and one of its patients. (*Harrod v. Country Oaks Partners, LLC* (2024) 15 Cal.5th 939, 946–947 (*Harrod*)). As is the case here, the optional arbitration agreement was not signed by the patient; it was signed by a relative. (*Id.* at p. 947.) But unlike our case, the relative who signed the arbitration agreement in *Harrod* had been granted a formal, written power of attorney to make health care decisions. (*Ibid.*) On these facts, the California Supreme Court held the agreement was not within the scope of the relative’s

authority, because “agreeing to an optional, separate arbitration agreement with a skilled nursing facility is not a health care decision.” (*Id.* at p. 966.)

The *Harrod* court based its reasoning not only on an analysis of the language of the relevant statutes, but also on the need for the rule to conform with common sense expectations about the distinction between decisions about healthcare matters and matters affecting a person’s legal rights. (*Harrod, supra*, 15 Cal.5th at pp. 950, 957–958.) As the Court explained, “ ‘Unlike admission decisions and medical care decisions, the decision whether to agree to an arbitration provision in a nursing home contract is not a necessary decision that must be made to preserve a person’s well-being. Rather, an arbitration agreement pertains to the patient’s legal rights, and results in a waiver of the right to a jury trial.’ ” (*Id.* at p. 959, quoting *Flores, supra*, 148 Cal.App.4th at p. 594.) The Court further explained, “Defining health care decisions as including decisions about dispute resolution that are not necessary for health care might create unnecessary tension between the two regimes for powers of attorney and between agents designated under them. Doing so, for example, could undermine the expectations of a principal who designates one agent to make health care decisions and another agent, under the form power of attorney, to make decisions about claims and litigation. A principal executing both form powers of attorney found in [Probate Code] sections 4401 [(power of attorney)] and 4701 [(advance healthcare directive)] could readily view health care decisions as separate from decisions involving claims and litigation, because the forms expressly make this distinction. In that case, the principal might expect and prefer the agent in charge of claims and litigation to accept or reject optional arbitration agreements. A broad construction of the term health care decision might,

therefore, and contrary to the principal’s expectations, ‘override’ a grant of power over claims and litigation decisions.” (*Harrod*, at p. 957.)

Although the relative in *Harrod* derived his authority from a formal, written healthcare power of attorney, our high court’s reasoning makes clear its holding nevertheless has broad application to cases like the instant one where a relative’s decision-making authority derives elsewhere. (*Harrod*, *supra*, 15 Cal.5th at p. 958.) The Court’s holding is based specifically on its interim conclusion that “next of kin, whether empowered to make medical decisions either [pursuant to Health and Safety Code section 1418.8] or through principles of ostensible agency, lack authority to enter separate, optional arbitration agreements with nursing facilities.” (*Ibid.*) The Court also specifically concluded the decision-making authority of surrogates, whether selected pursuant to Probate Code section 4711 or 4712, is similarly limited to health care decisions. (*Harrod*, at p. 958.)

Our high court’s decision in *Harrod* is squarely on point here. Villa Mesa’s evidence of agency is limited to evidence that Cynthia had authority as David’s surrogate or next of kin to make caretaking and healthcare decisions. There is no evidence she had power of attorney or other authority to make legal decisions, nor in particular to commit him to arbitrate his claims against Villa Mesa. *Harrod* thus definitively forecloses Villa Mesa’s contention that the evidence of Cynthia’s healthcare decision-making authority established she had authority over David’s legal affairs and could agree on his behalf to binding arbitration.<sup>1</sup>

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<sup>1</sup> At oral argument, counsel for Villa Mesa argued the evidence established Cynthia and David’s relationship was akin to the parent-child relationship discussed in *Harrod* in a footnote. In *Doyle v. Giuliucci* (1965) 62 Cal.2d 606, our high court “concluded that a parent’s power to enter into a

The trial court correctly ruled Villa Mesa failed to prove Cynthia had actual or ostensible authority to act as David’s agent and agree to binding arbitration.<sup>2</sup>

## II.

### *Villa Mesa Failed To Prove David Ratified the Arbitration Agreement*

Villa Mesa claims David ratified the arbitration agreement by failing to rescind it within 30 days of its execution, as allowed by its terms. This theory for compelling arbitration fails for lack of evidence as well. “The fundamental test of ratification by conduct is whether the releasor, *with full knowledge of the material facts entitling him to rescind*, has engaged in some unequivocal conduct giving rise to a reasonable inference that he intended the conduct to amount to a ratification.” (*Union Pacific R. R. Co. v. Zimmer* (1948) 87

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contract for medical services on behalf of a child allows the parent to bind the child to an arbitration provision included within that contract.” (*Harrod, supra*, 15 Cal.5th at p. 962, fn. 12, citing *Doyle*, at pp. 607, 610.) The *Harrod* court declined to address “whether any particular familial relationship would itself convey authority to agree to arbitration with a skilled nursing facility.” (*Harrod*, at p. 962, fn. 12.) Based on this authority, and the nature of Cynthia’s relationship with David, counsel for Villa Mesa asserted it could be “inferred” Cynthia had authority to enter into contracts on David’s behalf. But *Doyle* is not new authority. Villa Mesa failed to make this fact-intensive argument in the trial court where Cynthia could have addressed it. We decline to address it here on appeal in the first instance. (*Mendoza v. Trans Valley Transport* (2022) 75 Cal.App.5th 748, 768–770.)

<sup>2</sup> Had Villa Mesa established David’s claims were subject to binding arbitration, Cynthia’s wrongful death claim, brought in her individual capacity, potentially could have been required to follow the three related claims to arbitration. (*Ruiz v. Podolsky* (2010) 50 Cal.4th 838, 841.) Because we affirm the trial court’s ruling that the evidence was insufficient to establish Cynthia had authority to agree to arbitration on David’s behalf, we do not reach Villa Mesa’s contention on this point.

Cal.App.2d 524, 532, italics added.) Here, there is no evidence David knew the agreement existed, that Cynthia signed it, nor that it stated he had 30 days to rescind.

Villa Mesa claims in the alternative that David ratified the agreement “by accepting and retaining the benefit of residing at Villa Mesa Care Center . . . with the right to compel defendant to arbitrate issues relating to his care.” But the arbitration agreement, as required by statute, was a separate, optional agreement not linked to David’s admission to Villa Mesa’s facility for treatment. (See Health & Saf. Code, § 1599.81, subd. (a).) It expressly stated in bold print, “**Residents shall not be required to sign this arbitration agreement as a condition of admission to this facility.**” David’s continued acceptance of services accordingly did not constitute the acceptance of the benefits of an agreement to arbitrate. (*Kinder, supra*, 91 Cal.App.5th at p. 816; *Warfield v. Summerville Senior Living, Inc.* (2007) 158 Cal.App.4th 443, 450–451.) Villa Mesa failed to prove David ratified the agreement.

### III.

*Because Cynthia Signed the Agreement in Her Individual Capacity,  
Remand for Further Proceedings Is Required!*

Turning to the question whether Cynthia is required to arbitrate her individual claim, Villa Mesa contends she signed the arbitration in her individual capacity. We agree. As recounted above, the agreement clearly states in no less than three places—including directly above both signature lines—that Cynthia was signing in her individual capacity. Based on the plain language of the agreement, Cynthia unambiguously signed as an individual. At the trial court level, Cynthia disputed she signed as an individual, but she now appears to concede this point.

The parties continue to dispute whether Cynthia's status as a signatory to the arbitration agreement in her individual capacity renders her wrongful death claim arbitrable. The trial court did not provide a written ruling on this issue. We remand for further proceedings.

Cynthia claims the arbitration agreement does not bind her individual claim, because the agreement is both procedurally and substantively unconscionable. (See generally *Lopez v. Bartlett Care Center, LLC* (2019) 39 Cal.App.5th 311.) Villa Mesa contends the arbitration agreement is procedurally and substantively sound.

Cynthia further asserts that, if the agreement is enforceable, the individual and representative claims should nevertheless remain together in the trial court in order to avoid conflicting rulings. Code of Civil Procedure section 1281.2, subdivision (c), vests discretion in the trial court to refrain from ordering a claim to arbitration if "[a] party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact." (Code Civ. Proc., § 1281.2.) Here, Villa Mesa is a party to both the arbitration agreement and to the proceedings in superior court brought by Cynthia on behalf of David in her representative capacity, and there is substantial factual overlap between the individual and representative claims.

Villa Mesa claims Code of Civil Procedure section 1281.2 nevertheless does not apply for three reasons. Villa Mesa claims that "all parties" are bound to a term of the arbitration agreement that states Code of Civil Procedure section 1281.2, subdivision (c), does not apply to disputes between them: "The parties agree that California Code of Civil Procedure § 1281.2(c) is excluded from this Agreement as the parties mutually desire to have any

and all disputes submitted to binding arbitration. The parties do not want any claims not subject to arbitration to impede any and all other claims from being ordered to binding arbitration.” Villa Mesa claims Code of Civil Procedure section 1281.2 does not apply because it does not apply to an agreement to arbitrate disputes as to professional negligence of a healthcare provider, and because the arbitration agreement is governed by the Federal Arbitration Act. (See generally, *Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376; *Holland v. Silverscreen Healthcare, Inc.* (2024) 101 Cal.App.5th 1125; *Avila v. Southern California Specialty Care, Inc.* (2018) 20 Cal.App.5th 835.)

We are unable to determine from the trial court’s minute order why it did not order Cynthia’s individual claim to arbitration. We cannot tell whether the trial court retained jurisdiction over Cynthia’s individual claim, because it found the agreement to be procedurally and substantively unconscionable, whether it determined that Code of Civil Procedure section 1281.2, subdivision (c), did not apply to the controversy, or whether the court retained jurisdiction as a matter of discretion to avoid conflicting rulings. Because of the multiple disputed issues of fact that must be resolved to make any one of these determinations, as well as the possibility that the trial court may have failed to make a required discretionary decision, we remand for further proceedings. (Cf., *Brown v. Wells Fargo Bank, N.A.* (2008) 168 Cal.App.4th 938, 959; *Ashburn v. AIG Financial Advisors, Inc.* (2015) 234 Cal.App.4th 79, 96.)

#### DISPOSITION

The trial court’s order denying Villa Mesa’s petition to compel arbitration is affirmed in part, and remanded for further proceedings

consistent with this decision. Cynthia is awarded her costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).

DO, J.

WE CONCUR:

IRION, Acting P. J.

BUCHANAN, J.