Calif. Justices Rule Living Wills Not A Path To Arbitration

By **Hannah Albarazi** · Listen to article

Law360 (March 29, 2024, 11:46 PM EDT) -- The California Supreme Court has unanimously ruled that an advance healthcare directive, or living will, does not permit a designated power of attorney to opt into arbitration on a patient's behalf, a decision that, while blessed by consumer groups, left some in the medical community "pretty disappointed."

The justices on Thursday affirmed a lower court's decision that held**,** under California's Health Care Decisions Law and in the context of a patient appointing a power of attorney, a "health care decision" excludes a power of attorney entering into an optional, separate agreement that does not accomplish health care objectives — including an arbitration agreement with a care facility.

"The court protected the constitutional rights of millions of unsuspecting consumers," the plaintiff's attorney, Matthew Borden of BraunHagey & Borden, told Law360.

But Harry W.R. Chamberlain of Buchalter PC, counsel for the defendants, told Law360 that while it remains to be seen whether his clients ask the U.S. Supreme Court to weigh in, he believes the decision flies in the face of Supreme Court precedent.

The case before the California justices involves the care of Charles Logan, who, just as he approached his 77th birthday, fell, broke a femur and became unable to walk.

Years earlier, Logan had designated his nephew, Mark Harrod, to make healthcare decisions for him should he ever become unable to do so on his own.

After Logan's fall, he was admitted into Country Oaks Care Center, a skilled nursing and rehabilitation facility in Southern California. Among the paperwork signed by his nephew on his behalf was an optional arbitration agreement.

Logan, with Harrod acting as his guardian, filed a lawsuit against the facility's owners and operators, Country Oaks Partners LLC and Sun-Mar Management Services Inc., claiming that he suffered elder abuse and received inadequate care during his roughly monthlong stay at the facility.

Logan said he suffered a second fall and fracture while at Country Oaks due to the facility's allegedly negligent withholding of appropriate care. He said the staff unnecessarily diapered him and that he developed bed sores.

After being hit with the suit, the facility sought to compel arbitration, saying Logan's nephew had signed away his uncle's right to litigate the claims in court.

However, a Los Angeles Superior Court judge denied the arbitration bid, holding that Logan could not be bound by the arbitration agreement signed by his nephew. The Court of Appeals affirmed that decision, and in 2022, the California Supreme Court agreed to take the case up on appeal.

Among the groups that filed amicus briefs on behalf of the facility owners and operators are the California Medical Association, California Dental Association, California Hospital Association and California Association of Health Facilities. Consumer Attorneys of California, American Association for Justice, Public Justice and AARP were among the groups that filed amicus briefs on behalf of the uncle and nephew.

The justices, in their decision Thursday, said they took up the case to address conflicting Court of Appeal authority on power of attorney for healthcare.

The justices held that Harrod could not bind Logan to arbitration because opting into optional arbitration is not a healthcare decision.

California Supreme Court Associate Justice Martin J. Jenkins, who penned the unanimous opinion, wrote that "intention is the pole star" when interpreting written agreements such as Logan's power of attorney agreement, which Justice Jenkins notes, "at its very top," indicates that it is created under the authority of the state's Health Care Decisions Law.

"Logan's intention to invoke and be governed by the Health Care Decisions Law, in this case, seems plain," Justice Jenkins wrote.

But Harry W.R. Chamberlain of Buchalter, counsel for the defendants, said that the California justices' interpretation flouts the Federal Arbitration Act.

In particular, Chamberlain said, the California justices' decision goes against the U.S. Supreme Court's 2017 decision in Kindred Nursing Centers LP v. Clark, which held that the FAA preempts a Kentucky Supreme Court decision finding that a power of attorney cannot enter into an arbitration agreement for a family member unless the power of attorney received express permission to do so.

But Justice Jenkins rejected that argument, writing, "This outcome does not emerge from or reflect hostility towards arbitration. Nor does it depend on a clear-statement rule. Rather, it derives from the scope of the health care decisionmaking power Logan granted to Harrod — as determined from generally applicable legal principles — and the conclusion that agreeing to an optional, separate arbitration agreement with a skilled nursing facility is not a health care decision."

Chamberlain told Law360 in an interview Friday that he doesn't know whether his clients will ask the U.S. Supreme Court to weigh in on their case but said he does know the "healthcare community is pretty disappointed" with this ruling, as California law now bars powers of attorney from entering into arbitration agreements without express permission to do so.

"This will have far-reaching ramifications," Chamberlain told Law360.

Borden agrees the decision will have a large impact, telling Law360 the decision "will provide important benefits to people across the state."

"At the end of the day, nobody should be forced to arbitrate claims that they never agreed to arbitrate," Borden told Law360. "The constitutional rights of these consumers are now protected."

While Logan didn't live to see the decision in his favor, as he died while the case was pending before the California Supreme Court, Borden said that Harrod, as Logan's successor in interest, intends to move forward with the elder abuse litigation against Country Oaks and Sun Mar on the behalf of his uncle.

Harrod is represented by Matthew Borden and Kory James DeClark of BraunHagey & Borden LLP and Ayman R. Mourad, Suzanne M. Voas, Alexander S. Rynerson and Elizabeth M. Kim of Lanzone Morgan LLP.

Sun Mar Healthcare and Country Oaks Partners LLC are represented in-house by Julieta Y. Echeverria and Brittany A. Ortiz and by Robert M. Dato and Harry W.R. Chamberlain II of Buchalter PC.

The case is Mark Harrod v. Country Oaks Partners LLC et al., case number S276545, in the Supreme Court of the State of California.

--Editing by Jay Jackson Jr.