

IN THE SUPREME COURT OF MISSISSIPPI
CASE NO.: 2008-TS-00027

**RUTH LAWRENCE, as Administratrix of the
Estate of JAMES E. LAWRENCE, Deceased and
on Behalf of the Wrongful Death Beneficiaries
of JAMES E. LAWRENCE, Deceased**

APPELLEES

v.

**TRINITY MISSION HEALTH & REHAB OF
HOLLY SPRINGS, LLC, and JOHN DOES 1-20,**

APPELLANT

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Court may evaluate possible disqualification or recusal.

1. Defendant/Appellant Trinity Mission Health & Rehab of Holly Spings, LLC;
2. Plaintiffs/Appellees Ruth Lawrence, as Administratrix of the Estate of James E. Lawrence, Deceased and on Behalf of the Wrongful Death Beneficiaries of James E. Lawrence, Deceased;
3. John L. Maxey, Esquire; Heather M. Aby, Esquire - Attorneys for Appellant;
4. John G. (Trae) Sims, III, Esquire - Attorney for Appellee; and
5. The Honorable Henry L. Lackey, Marshall County Circuit Court Judge

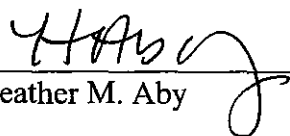

Heather M. Aby

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STATEMENT REGARDING ORAL ARGUMENT

Appellant believes oral argument would not aid resolution of the issue before the Court. The jurisprudence concerning arbitration in the nursing home context has been examined and ruled upon by the Court; as such, oral argument is unnecessary.

STATEMENT OF THE ISSUE

Whether the lower court erred in refusing to enforce a valid agreement to arbitrate executed between a resident and a long-term care facility.

STATEMENT OF THE CASE

On December 27, 2006, Ruth Lawrence, as Administratrix of the Estate of James Lawrence, filed suit in Marshall County Circuit Court, alleging James Lawrence suffered personal injuries while a resident of Trinity Mission Health & Rehab of Holly Springs, LLC.¹ (R. 1-26). In response and in lieu of filing an answer to the specific allegations of the Complaint, Trinity Mission filed a motion to compel arbitration with the lower court. (R. 27-77, to include exhibits filed thereto). Trinity Mission sought arbitration based upon James Lawrences' execution of both an Admission Agreement and an Alternative Dispute Resolution Agreement ("ADR Agreement") executed at the time of his admission to the Facility. (R. 62-77).

Following full briefing and oral argument on the issue of arbitration, on December 21, 2007, the lower court overruled the motion, finding as follows:

The Motion of Defendant is based upon an alleged agreement styled, "Alternative Dispute Resolution Agreement," purported to have been executed by Plaintiff, Ruth Lawrence, on behalf of James E. Lawrence, dated the 3rd day of January, 2005. James E. Lawrence is now deceased, and Ruth Lawrence is his widow.

Mr. Lawrence is purported to have signed the instrument with an "X" however there was no testimony that this was his "signature"; that he understood what he was signing; whether he could read or write; or competent, and the circumstances under which the document was "executed."

Apparently Ruth Lawrence executed the document, however there was no testimony of the circumstances under which it was executed, whether she understood the results of executing the document; whether she could read and/or write, or was competent.

THEREFORE, the Motion of Defendant should be and is hereby

¹Appellant's citation form is as follows: Citation to the Record is (R. __) and citation to the Transcript is (Tr. __).

overruled.²

(R. 150-51). In so ruling, the lower court did not follow the precedent of *Vicksburg Partners, L.P. v. Stephens*, 911 So. 2d 507 (Miss. 2005), and its progeny, as well as long-standing Mississippi case law regarding enforcement of an executed contract.

²In so ruling, the lower Court actually found there was *no* evidence of incompetence or lack of understandings of the Alternative Dispute Resolution Agreement at issue.

STATEMENT OF THE FACTS

James Lawrence (hereinafter "Mr. Lawrence") was admitted to Trinity Mission on January 3, 2005. At that time, both Mr. Lawrence and his Responsible Party, Ruth Lawrence, executed an Admission Agreement and an Alternative Dispute Resolution Agreement. (R. 62-77). The ADR Agreement, executed at the time of admission, contained the following language regarding what disputes would be subject to alternative dispute resolution:

Disputes subject to ADR. That Parties agree that any legal controversy, dispute, disagreement or claim of any kind (collectively "Dispute") now existing or occurring in the future between the parties arising out of or in any way relating to this Agreement, the Admission Agreement or the Resident's stay at the Facility shall be resolved through an ADR process (as defined herein), including, but not limited to, all Disputes based on breach of contract, negligence, medical malpractice, tort, breach of statutory duty, resident's rights, any departures from accepted standards of care, and all disputes regarding the interpretation of this Agreement, any allegations of fraud in the inducement or requests for rescission of this Agreement. This includes any Dispute involving a claim against the Facility, its employees, agents, officers, directors, any parent, subsidiary or affiliate of the Facility or any Dispute involving a claim against the Resident, the Resident's Legal Representative or Responsible Party or family member.

(R. 73). (Emphasis in original).

The Agreement further provided that, should the Parties be unable to resolve a dispute through a Grievance Resolution meeting, mediation and arbitration should ensue:

Mediation and Arbitration. In the event that any Dispute is not resolved through the Grievance

Resolution meeting, the Parties agree to participate in formal Mediation and Arbitration to be conducted by ADR Associates, LLC, through its Dispute Resolution Process for Consumer Healthcare Disputes ("ADR Associates' Rules"), which are incorporated herein by reference, as more fully set forth below. If ADR Associates, LLC is unable or unwilling to conduct the ADR process at the time of the dispute the parties shall mutually agree upon an alternative organization that is regularly engaged in providing ADR services to conduct the Mediation and Arbitration. If the Parties cannot agree on a mediator/arbitrator, each Party shall select one mediator/arbitrator and they together shall choose a third mediator/arbitrator who shall conduct the ADR process.

(R. 74). (Emphasis in original).

The Agreement additionally contained the following acknowledgment section:

1. This Alternative Dispute Resolution Agreement shall not limit in any way the Resident's right to file formal or informal grievances with the Facility or the State or Federal government;
2. The decision whether to sign this Agreement is solely a matter for the Resident's determination without any influence from any third-party;
3. Unless otherwise indicated, the Resident finds the terms and conditions of this Agreement acceptable and understands that he or she has the opportunity to suggest modifications to this Agreement and negotiate [the] terms or provisions with management of the Facility prior to signing;
4. **THIS AGREEMENT WAIVES THE RESIDENT'S RIGHT TO A TRIAL IN COURT AND A TRIAL BY JURY FOR ANY FUTURE CLAIMS RESIDENT MAY HAVE AGAINST THE FACILITY;** and
5. The Resident has the right to seek legal counsel regarding this Agreement.

(R. 75-76). (Emphasis in original).

Finally, above Mr. Lawrence's and Ruth Lawrence's signatures, is a section explaining an individual's right to cancel the ADR Agreement:

RESIDENT'S RIGHT TO CANCEL AGREEMENT

The Resident, or the Resident's spouse or the personal representative of the Resident's estate in the event of the Resident's death or incapacity, has the right to cancel this Agreement by notifying the Facility in writing. Such notice must be sent via certified mail to the attention of the Administrator of the Facility, and the notice must be post marked within 10 days of the date upon which this Agreement was signed. The notice may also be hand delivered to the Administrator within the same thirty day period. The filing of a claim in a court of law within the thirty days provided for above will cancel the Agreement without any further action by the Resident.

THE UNDERSTOOD ACKNOWLEDGE THAT EACH OF
THEM HAS READ AND UNDERSTOOD THIS AGREEMENT
AND THAT EACH OF THEM VOLUNTARILY CONSENTS TO
AND ACCEPT[S] ALL OF ITS TERMS AND PROVISIONS

(R. 77). (Emphasis in original).

Neither Mr. Lawrence, nor Ruth Lawrence as his Responsible Party, took any action to rescind the agreement to arbitrate. Instead and in complete disregard for the executed contract, Ruth Lawrence filed suit against Trinity Mission, alleging, *inter alia*, negligence, malice and/or gross negligence and sought punitive damages. (R.1-25). The ADR Agreement, however, forecloses her ability to seek recovery against Trinity Mission in the Circuit Court of Marshall County. This Agreement is central to her allegations - - allegations stemming from Mr. Lawrence's residency at Trinity Mission. Accordingly, the lower Court erred in denying arbitration.

ARGUMENT

I. Standard of Review.

“The decision to grant or deny a motion to compel arbitration is reviewed by this Court *de novo*.” *Equifirst Corp. v. Jackson*, 920 So. 2d 458, 461 (Miss. 2006) (citing *Doleac v. Real Estate Professionals, LLC*, 911 So. 2d 496, 501 (Miss. 2005)); *see also East Ford, Inc. v. Taylor*, 826 So. 2d 709, 713 (Miss. 2002). “This Court has consistently recognized the existence of a ‘liberal federal policy favoring arbitration agreements.’” *Terminix International, Inc. v. Rice*, 904 So. 2d 1051, 1054-55 (Miss. 2004) (quoting *Russell v. Performance Toyota, Inc.*, 826 So. 2d 719, 722 (Miss. 2002)). Arbitration is firmly embedded in both our federal and state laws. *Pass Termite & Pest Control, Inc. v. Walker*, 904 So. 2d 1030, 1032-33 (Miss. 2004) (citing *Russell*, 826 So. 2d 719; *East Ford*, 826 So. 2d 709; and *IP Timberlands Operating Co. v. Denmiss Corp.*, 726 So. 2d 96 (Miss. 1998)).

II. Arbitration is mandated pursuant to established jurisprudence.

In *Vicksburg Partners, L.P. v. Stephens*, the Mississippi Supreme Court, for the first time, ruled on the issue of arbitration in the nursing home/long-term care facility setting. 911 So. 2d 507 (Miss. 2005). In *Stephens*, the Court held an arbitration clause contained within an admission agreement to be both procedurally and substantively conscionable. *Id.* That case involved a lower court’s refusal to enforce a dispute resolution/arbitration clause contained within a nursing home’s standard admissions form.” *Id.* at 513. Like the case-at-bar, the agreement to arbitrate was executed by the resident, the resident’s responsible party and a representative of the nursing home. *Id.* at 510.

The *Stephens* Court began its analysis with a reminder of its view of arbitration:

This Court has recognized that arbitration is favored and firmly embedded in both our federal and state laws. *Pass Termite & Pest Control, Inc. v. Walker*, 904 So. 2d 1030, 1032-33 (Miss. 2004) (citing *Russell v. Performance Toyota, Inc.*, 826 So. 2d 719 (Miss. 2002); *East For, Inc. v. Taylor*, 826 So. 2d 709 (Miss. 2002); *IP Timberlands Operating Co. v. Denmiss Corp.*, 726 So. 2d 96 (Miss. 1998)). Since our decision in *IP Timberlands*, we have explicitly recognized the applicability of arbitration for resolving disputes and have stated that we will respect the right of an individual or an entity to agree in advance of a dispute to arbitration or other alternative dispute resolution. 726 So. 2d at 104. We have thus endorsed the undisputed province of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (FAA), and recognized its clear authority to govern agreements formed in interstate commerce wherein a contractual provision provides for alternative dispute resolution. *Id.* at 107. Consistent with federal law, our case law now clearly emphasizes the favored status of arbitration. . . .

Id.

In Mississippi, a court must consider three elements when ruling on a motion to compel arbitration: (1) whether a valid written agreement to arbitrate exists; (2) whether an arbitrable issue exists; and (3) whether any defenses available under Mississippi contract law “may be asserted to invalidate the arbitration agreement without offending the Federal Arbitration Act.” *East Ford v. Taylor*, 826 So. 2d 709, 713 (Miss. 2002). In the case-at-bar, **a valid written agreement to arbitrate** was entered into by Mr. Lawrence, his Responsible Party, Ruth Lawrence and Trinity Mission. This binding contract is now enforceable. As the Mississippi Supreme Court stated in *Stephens*, “[w]e have hopefully today driven home a point for the benefit of the bench and the bar, as well as those individuals or entities who find

themselves involved with contracts contracting arbitration clauses. *Arbitration is about a choice of forum - period.*” *Stephens*, 911 So. 2d at 525.

An arbitrable issue exists because the agreement encompasses the claims set forth in the Complaint. “Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.” *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 25 (1983).

Ruth Lawrence’s only possibility for avoiding enforcement of arbitration is to prove the Agreement is not valid under Mississippi law. Both Mr. Lawrence and Ruth Lawrence executed both an Admission Agreement and an ADR Agreement on January 3, 2005. Their signatures were witnessed by a Trinity Mission employee. It is undisputed following admission, and based upon the relationship created therein, Mr. Lawrence received services from Trinity Mission. No steps were taken to invalidate the agreement to arbitrate; as such, the lower court erred in not enforcing the contractual agreement to arbitrate.

Finally, the ADR Agreement is neither procedurally nor substantively unconscionable. “[T]he doctrine of ‘unconscionability has been defined as an absence of meaningful choice on the part of one of the parties, together with contract terms which are unreasonably favorable to the other party.” *Stephens*, 911 So. 2d at 516-17. “In *Vicksburg Partners*, [the] Mississippi Supreme court considered an assertion of procedural unconscionability. . . .” *Covenant Health Rehab of Picayune v. Brown*, 949 So. 2d 732, 737 (Miss. 2007) (citing *Stephens*, 911 So. 2d at 516-20). A court must take into account two considerations when determining whether a contract is procedurally unconscionable: “lack of voluntariness and (2) lack of knowledge.” *Id.* (citing *Stephens*, 911 So. 2d at 517-18 (citing *Entergy Miss., Inc. v. Burdette Gin*, 726 So. 2d 1202, 1207 (Miss. 1998))).

In *Brown*, the Court found contracts of adhesion not automatically void, but “the party seeking to avoid the contract generally must show that it is unconscionable.” *Id.* In both *Stephens* and *Brown*, the arbitration provision at issue was found to be procedurally conscionable:

[T]here were no circumstances of exigency; the arbitration agreement appeared on the last page of a six-page agreement and was easily identifiable as it followed a clearly marked heading printed in all caps and bold-faced type clearly indicated that section “F” was about “Arbitration,” the provision itself was printed in bold-faced type of equal size or greater than the print contained in the rest of the document; and, appearing between the arbitration clause and the signature lines was an all caps bold-faced consent paragraph drawing special attention to the parties’ voluntary consent to the arbitration provision contained in the admission agreement. Under these facts, it can not be said that there was either a lack of knowledge that the arbitration provision was an important part of the contract or a lack of voluntariness in that [the resident and her responsible party] somehow had no choice but to sign.

The Court can further look to Judge Michael Mills’ opinion – in reviewing an alternative dispute resolution agreement identical to the instant contract – as further evidence of its conscionability. In *Gulledge v. Trinity Mission Health and Rehab of Holly Springs*, the United States District Court for the Northern District of Mississippi found:

The agreement in question deals solely with arbitration. The agreement is only seven pages long and is clearly titled “ALTERNATIVE DISPUTE RESOLUTION.” The agreement is written in plain terms and defines all terms of art that are used. Additionally, the agreement warns the parties to read and carefully consider its contents as well as warning them of the consequences of entering the agreement. The Plaintiff offers no evidence to show any exigency forced the agreement. In fact, the agreement itself has an escape clause if a party later desired to rescind the agreement and move to a different facility.

2007 WL 3102141 (N.D. Miss. Oct. 22, 2007).(Slip copy). The same logic can be found when reviewing the instant contract. All sections of the Agreement are clearly marked with headings in bold, all-caps font; the language is non-legalistic and contained the following acknowledgment above James and Ruth Lawrence's signatures: "THE UNDERSIGNED ACKNOWLEDGE THAT EACH OF THEM HAS READ AND UNDERSTOOD THIS AGREEMENT AND THAT EACH OF THEM VOLUNTARILY CONSENTS TO AND ACCEPT ALL OF ITS TERMS AND PROVISIONS." (R.77).

In determining whether a contract is substantively conscionable, the Court is to look to "... the four corners of an agreement." *Brown*, 949 So. 2d at 733. "Substantive unconscionability is present when there is a one-sided agreement whereby one party is deprived of all the benefits of the agreement or left without a remedy for another party's nonperformance or breach." *Stephens*, 911 So. 2d at 521 (citing *Bank of Indiana v. Holyfield*, 476 F. Supp. 104-10 (S.D. Miss. 1979)). In *Stephens*, the Court found "arbitration agreements merely submit the question of liability to another forum – generally speaking, they do not waive liability." *Id.* at 522. The ADR Agreement is such an agreement. The Agreement set forth *both* a right to legal advice and a right to rescind.

In *Brown*, in considering defenses to arbitration, the Court addressed the argument of an individual waiving the right to a jury trial:

The provision has the same effect as signing an arbitration agreement. It is well-established that this Court respects the ability of parties to agree to the means of a dispute resolution prior to a dispute and enforces the plain meaning of a contract as it represent the intent of the parties.

Brown, 949 So. 2d at 740 (citing *Russell v. Performance Toyota, Inc.*, 826 So. 2d 719. 722

(Miss. 2002). The rationale is the same in the instant matter. The contract at issue clearly put James and Ruth Lawrence on notice of the waiver of a jury trial. In fact, page two of the Agreement, Section A, **“STATEMENT OF PURPOSE”** provided:

The purpose of this Alternative Dispute Resolution Agreement is to provide an efficient way for the Parties to resolve any dispute that may arise out of the Resident's stay at the Facility. Avoiding the substantial expense of litigating disputes in a courtroom setting allows the Facility to spend its money on other areas that may be of greater benefit to the Resident. . . . As the Resident and/or Responsible Party may be unfamiliar with Grievance Resolution, Mediation and Arbitration, it is important that the Parties fully understand their rights and obligations created by this Agreement. **While there are certain advantages to Grievance Resolution, Mediation and Arbitration, by signing this Agreement, the Resident and/or Responsible Party are giving up certain rights that they may consider important, for example, the right to have your dispute heard by a judge or jury.**

(R.72).

The **“ACKNOWLEDGMENT OF RESIDENT”** section of the Agreement further set forth language regarding waiver: **“THIS AGREEMENT WAIVES THE RESIDENT'S RIGHT TO A TRIAL IN COURT AND A TRIAL BY JURY FOR ANY FUTURE CLAIMS RESIDENT MAY HAVE AGAINST THE FACILITY.”** (R.76)(Emphasis in original). In Mississippi, a person is charged with knowing the contents of any document he or she executes. *Russell*, 826 So. 2d 719. A court should, therefore, give great weight to the writing in the instrument when determining intent. *St. Regis Paper Corp. v. Floyd*, 238 So. 2d 740, 744 (Miss. 1970). Applying this reasoning, the Court should enforce James Lawrence's decision to waive his right to have any claims against Trinity Mission heard by a jury and order the matter to binding arbitration.

In *Brown* the Court further held the “[arbitration] provision contained another characteristic of a conscionable provision in that it was found to bear some reasonable relationship to the risks and needs of this business.” *Brown*, 949 So.2d 741. (quoting *Entergy, Miss., Inc.*, 726 So. 2d at 1207). The agreement at issue clearly bears a “reasonable relationship to the risks and needs” of Trinity Mission.³ *Id.* It is no secret that, prior to enactment of Mississippi’s Medical Malpractice Tort Reform Act, many nursing home owners were left without insurance to cover claims of negligence. This was the result of the high cost of litigation and runaway jury verdicts. The addition of arbitration provisions became a way to balance these risks to business stability. Mississippi Appellate Court have found beginning with *Stephens*, arbitration provisions, with language similar to that in dispute, to not be oppressive, but simply a fair process to pursue claims. See *Vicksburg Partners, L.P. v. Stephens*, 911 So. 2d 507 (Miss. 2005); see also *Covenant Health and Rehab of Picayune, L.P. v. Brown*, 949 So. 2d 732 (Miss. 2007); *Magnolia Healthcare, Inc. v. Barnes*, ___ So. 2d ___, 2008 WL 95814 (Miss. 2008); *Trinity Mission of Clinton, LLC v. Barber*, ___ So. 2d ___, 2007 WL 2421720 (Miss. Ct. App. 2007); *Trinity Mission Health and Rehab of Clinton v. Scott*, ___ So. 2d ___, 2008 WL 73682 (Miss. Ct. App. 2008); *Covenant Health and Rehabilitation of Picayune v. Lumpkin*, ___ So. 2d ___, 2008 WL 306008 (Miss. Ct. App. 2008); and *Forest Hill Nursing Center, Inc., v. McFarlan*, ___ So. 2d ___, 2008 WL 852581 (Miss. Ct. App. 2008). The claims asserted by Ruth Lawrence relate

³Trinity Mission is not seeking enforcement of any language in the Alternative Dispute Resolution Agreement deemed unenforceable by the Mississippi Supreme Court in either *Stephens* or *Brown*. Such language can be stricken and the contract remain enforceable due to the “Severability” provision contained herein. The provision provides: “In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Agreement, which shall remain in full force and effect and enforceable in accordance with its terms.” (R.76).

directly to the services rendered to Mr. Lawrence, falling within the purview of the valid and fully enforceable agreement to arbitrate. As such, Trinity Mission respectfully requests the Court enforce the ADR Agreement and reverse the lower court's denial of arbitration.

III. The January 3, 2005 agreement to arbitrate is valid and should be enforced.

Whether the Parties agreed to arbitrate is an issue of contract constitution. Thus, basic contract principles apply. Mississippi has long followed the four-corners rule when interpreting a contract. The goal of a court is to give effect to the intent of the parties. *Heartsouth, PLLC v. Boyd*, 865 So. 2d 1095, 1105 (Miss. 2003). “The general rule is the intention of the parties must be drawn from the words of the whole contract, and if, viewing the language used, it is clear and explicit, then the court must give effect to this contract unless it contravenes public policy.” *Id.* (quoting *Jones v. Miss. Farms Co.*, 116 Miss. 295, 76 So. 880, 884 (1917)).

In looking to the four-corners, “the court’s concern is not nearly so much with what the parties may have intended but with what they said, since the words employed are by far the best resource for ascertaining the intent and assigning the meaning with fairness and accuracy.” *Id.* (quoting *Warwick v. Gautier Utility District*, 738 So. 2d 212, 214 (Miss. 1999)). “Contracts must be interpreted by objective, not subjective standards, therefore ‘[c]ourts must ascertain the meaning of the language actually used, and not some possible but unexpressed intent of the parties.’” *Id.* (quoting *IP Timberlands Operating Co.*, 726 So. 2d at 105).

Upon admission to Trinity Mission, James Lawrence and his wife, Ruth Lawrence executed both the Admission Agreement, as well as the ADR Agreement. The claims asserted by Plaintiff in the instant matter, including wrongful death claims, are derivative, originate out of the services rendered to Mr. Lawrence and fall within the purview of the ADR Agreement.

In *MS Credit Center, Inc. v. Horton*, the Mississippi Supreme Court held, *[u]nder Mississippi law . . . parties to a contract have an inherent duty to read the terms of a contract prior to signing; that is, a party may neither neglect to become familiar with the terms and conditions and then later complain of lack of knowledge, nor avoid a written contract merely because he or she failed to read it or have someone else read and explain it.*" 926 So. 2d 167 (Miss. 2006). (Emphasis supplied). A party to a contract plaintiff "may not escape the agreement by simply stating he or she did not read the agreement or understand its terms."⁴ *Id.* See also *Community Care Center of Vicksburg, LLC v. Mason*, 966 So. 2d 220, 227 (Miss. Ct. App. 2007)(quoting *Terminex Int'l, Inc. v. Rice*, 904 So. 2d 1051, 1056 (Miss. 2004)("It is well settled under Mississippi Law that a contracting party is under a legal obligation to read a contract before signing it.")).

"Contracts are solemn obligations, and the court must give them effect as written." *Brown*, 949 So. 2d at 741 (citing *B.C. Rogers Poultry, Inc. v. Wedgeworth*, 911 So. 2d 483, 487 (Miss. 2005)). "Parties may agree to the means of dispute resolution, in any way they desire." *Id.*

[A]n arbitration agreement does not violate any right that a party may have. The agreement simply puts in writing the parties agreement to adjudicate their claims in a different forum. Certainly both parties have a right to a fair and impartial arbitration. However, an agreement to move to a different forum is not a violation of a party's right to recover damages or obtain other relief as may be warranted.

Gulledge, 2007 WL 3102141 at *5. On January 3, 2005, Mr. Lawrence and Appellee Ruth Lawrence entered into an agreement to arbitrate". . . any legal controversy, dispute, disagreement

⁴Ruth Lawrence alleged the circumstances of Mr. Lawrence's execution of the contract to be dubious - - that statement, however, was nothing more than pure conjecture and not based in fact.

or claim of any kind . . . including, but not limited to, all disputes based on breach of contract, negligence, medical malpractice, tort, breach of statutory duty, resident's rights, any departures from accepted standards of care, and all disputes regarding the interpretation of [the ADR] Agreement, any allegations of fraud in the inducement or requests for rescission of [the ADR] Agreement." (R.73). In accord with the terms of the contract, Ruth Lawrence's claims against Trinity Mission Health and Rehab of Holly Springs, LLC should be resolved through binding arbitration.

CONCLUSION

James Lawrence and Appellee Ruth Lawrence entered into a binding agreement to arbitrate on January 3, 2005. "Arbitration merely means both parties have a mutually agreed upon forum through which to pursue their claims." *Mason*, 966 So. 2d at 231. Trinity Mission Health and Rehab of Holly Springs, LLC respectfully requests the Court reverse the Marshall County Circuit Court's denial of its request Ruth Lawrence's claims be resolved in this forum.

Dated, this the 25th day of April, 2008.

Respectfully submitted,

TRINITY MISSION HEALTH &
REHABILITATION OF HOLLY SPRINGS, LLC



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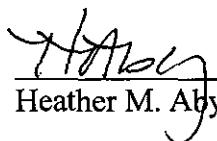
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date set forth herein, a true and correct copy of the above and foregoing *Brief of Appellant* was mailed via First Class mail, postage prepaid on the following:

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Honorable Henry L. Lackey
Circuit Court Judge
208 North Main Street
Suite 102 Lackey Building
Calhoun City, Mississippi 38916

This the 25th day of April, 2008.



Heather M. Aby