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MN Medinvest Co., L.P. v. Estate of Nichols Blankfield v. Richmond Health Care, Inc.

Two recent Florida decisions reached important holdings regarding Florida law on arbitration. The two cases were released the same day by different courts.

In *MN Medinvest Co., L.P. v. Estate of Nichols*, Case No. 2D04-3237 (Fla. 2d DCA May 25, 2005), the Second District addressed whether a parent can bind a child to an arbitration agreement with a nursing home. The Second District held that while a parent generally cannot bind a child to arbitration, exceptions exist for commonplace community and school-oriented activities and for medical services. The agreement with the nursing home fit within the medical services exception.

In *Blankfield v. Richmond Health Care, Inc.*, Case No. 4D03-4929 (Fla. 4th DCA May 25, 2005), the Fourth District considered whether a health care proxy can bind a nursing home resident to an arbitration agreement with the home. The court held that a health care proxy lacks authority to sign an arbitration agreement for the ward because doing so is not a "health care decision" within the meaning of section 765.101(5). The court held that permissible health care decisions by a proxy do not include waiving the ward's right to trial by jury, waiving common law remedies, or agreeing to modify statutory duties applicable to health care services – all of which were part of the arbitration agreement in the case.

The Fourth District's decision also addressed the difference between voidness based on public policy and voidness based on unconscionability. The former typically involves a statutory scheme that protects the public but which would be defeated if individual parties could agree to ignore it. The latter concerns agreements that are so grossly unfair that no reasonable person would ever agree to their terms.

Addressing a public policy argument, the Fourth District held that the nursing home arbitration agreement in that case was unenforceable because the agreement required arbitration under the rules of the National Health Lawyers Association, which do not permit an award of consequential, punitive, or special damages unless the plaintiff proved reckless or intentional misconduct by clear and convincing evidence. The court found such provisions to compromise a nursing home resident's right to recover for negligence and undermine the statutory scheme created for the protection of nursing home residents. The court did not address whether a damages limitation that barred only punitive damages would be void as against public policy.

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