

Circuit Court for Frederick County  
Case No. C-10-CV-21-000338

UNREPORTED\*  
IN THE APPELLATE COURT  
OF MARYLAND\*\*

No. 456

September Term, 2022

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GWENDOLYN HARDY

v.

NATIONAL SPINE AND PAIN CENTERS  
LLC, ET AL.

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Nazarian,  
Friedman,  
Eyler, Deborah S.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Friedman, J.

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Filed: July 21, 2023

\* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to MD. R. 1-104(a)(2)(B).

\*\* At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Gwendolyn Hardy appeals from an order by the Circuit Court for Frederick County compelling arbitration. For the reasons that follow, we affirm the circuit court.

### **BACKGROUND**

Gwendolyn Hardy was a passenger in a car when it was struck from behind by a tractor trailer on Interstate 81. Hardy sought treatment for her injuries at National Spine and Pain Centers (NSPC) in Frederick, Maryland. NSPC gave Hardy an insurance release form, by which she authorized her insurance benefits to be paid directly to the physician and confirming that she would be responsible for any remaining balance. Hardy also authorized NSPC and her insurance company to release any information required to process her claims through this insurance release. Hardy had health insurance through her employer with BlueCross BlueShield. Separately, NSPC also asked Hardy to sign a health insurance waiver, by which she agreed to waive the use of her health insurance benefits and, instead, to have NSPC's services billed against her pending personal injury claim arising from the tractor trailer incident.

As they had agreed, NSPC did not bill Hardy's health insurance for her treatment. Neither, however, did NSPC wait until after the resolution of the personal injury claim to bill Hardy. Instead, NSPC billed Hardy personally over \$10,000.00 for nine dates of service. Shortly thereafter, Hardy stopped going to NSPC for treatment.<sup>1</sup>

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<sup>1</sup> We recite these facts as we understand them for purposes of the resolution of this appeal and without prejudice to the resolution of the underlying claims.

Hardy sued NSPC in the Circuit Court for Frederick County for requiring her to complete both the insurance release and the insurance waiver. Hardy alleged that by doing so, NSPC violated the Maryland Consumer Protection Act by using “unfair, abusive, or deceptive trade practice[s]” in the sale of consumer services and the extension of consumer credit. MD. CODE, COM. LAW (“CL”) § 13-303(1), (4). Hardy also asked for a declaratory judgment declaring that the insurance waiver was invalid.

NSPC petitioned to compel arbitration based on the arbitration agreement contained in the insurance waiver. The arbitration agreement reads as follows:

**Arbitration Agreement.** READ THIS PROVISION CAREFULLY AS IT AFFECTS YOUR RIGHT TO A JURY TRIAL. If there is a controversy or claim (each a “Dispute”) arising from or otherwise relating to the terms of this agreement, I hereby consent and agree that such Dispute will be resolved through binding arbitration in the county and state where provider is located, with the American Arbitration Association (“AAA”) before a single arbitrator. I understand that by agreeing to arbitration, I hereby WAIVE MY RIGHT TO A JURY TRIAL. Such arbitrator shall award attorneys’ fees and costs to the prevailing party.

This arbitration shall be solely between the parties to this agreement, and no class arbitration or other representative action may be undertaken by the arbitrator, and the arbitrator shall have no power to consolidate or join claims of other parties or persons who may be similarly situated.

The circuit court found that the arbitration agreement was valid and issued an order compelling arbitration. Hardy then noted a timely appeal from that order.

## DISCUSSION

Hardy argues on appeal that the arbitration agreement was invalid for lack of consideration because it bound Hardy, but not NSPC, to arbitration in the event of a dispute. She argues that the arbitration agreement, quoted above, spoke only of Hardy giving up her

rights actively, by including the words “I” and “my,” whereas the clause only passively mentioned NSPC. Hardy also points out that, assuming any mutual consideration was established elsewhere in the insurance waiver, that would be irrelevant because the validity of arbitration agreements are determined solely by their own terms.

Determining whether an arbitration agreement is valid depends on contract principles because arbitration is a matter of contract. *Cheek v. United Healthcare of Mid-Atlantic, Inc.*, 378 Md. 139, 147 (2003). To be binding and enforceable, contracts require mutual consideration. *Id.* Consideration may consist of a promise to do something one was not already obligated to do, or a promise to refrain from exercising a right or pursuing a claim. *Id.* at 148. If a promise is not binding on one of the parties, however, then consideration is not present and the contract is invalid. *Id.* Consistent with these principles, an arbitration agreement is only valid if it is enforceable independent of the rest of the contract, meaning each party has promised to arbitrate disputes arising from the underlying contract. *Id.* at 153. Here, Hardy argues that the agreement to arbitrate is invalid because it binds her but not NSPC.

Although the arbitration agreement is poorly drafted, we hold that the arbitration agreement binds both Hardy and NSPC. To be sure, NSPC should have included language in the arbitration agreement explaining that both NSPC and Hardy were actively agreeing to resolve disputes by arbitration. Nonetheless, the plain language of the second paragraph of the arbitration agreement provides that any arbitration “shall be solely between the parties to this agreement,” where “parties” refers to both Hardy and NSPC. If the circumstances were reversed, we would order NSPC to arbitrate. Therefore, the arbitration

agreement applies to both parties and the agreement has the requisite mutuality of consideration.<sup>2</sup>

We hold that the arbitration agreement bound both Hardy and NSPC. We, therefore, affirm the judgment of the circuit court.

**JUDGMENT OF THE CIRCUIT COURT  
FOR FREDERICK COUNTY IS  
AFFIRMED. COSTS TO BE PAID BY  
APPELLANT.**

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<sup>2</sup> We also note that, if the circuit court had found the arbitration agreement ambiguous, the Supreme Court of Maryland has held that “[w]hen addressing an ambiguous provision in a contract, the court will search to find mutuality and not a self-serving, unilateral construction of the contract.” *Impac Mortg. Holdings, Inc. v. Timm*, 474 Md. 495, 507-08 (2021) (cleaned up). Through a mutual construction, therefore, the circuit court could find that both Hardy and NSPC agreed to forego their rights to litigate their disputes in court.