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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-7

No. COA20-900

Filed 4 January 2022

Rowan County, No. 20 CVS 858

LINDA THOMPSON ALBRIGHT, as Administrator of the Estate of SIDNEY REID ALBRIGHT, Plaintiff,

v.

EQUITY LIFESTYLE PROPERTIES, INC., MHC TT, INC. (formerly known as Thousand Trails, Inc.), MHC GREEN MOUNTAIN PARK, LLC, and GREEN MOUNTAIN PARK, Jointly and Severally, Defendants.

Appeal by Defendants from order entered 5 October 2020 by Anna Mills Wagoner in Rowan County Superior Court. Heard in the Court of Appeals 20 October 2021.

*Rossabi Law Partners, by Gavin J. Reardon, for Plaintiff-Appellant.*

*Shelby, Pethel & Hudson, P.A., by Kathryn C. Setzer, for Defendant-Appellee.*

CARPENTER, Judge.

**I. Factual and Procedural Background**

¶ 1 Defendants Equity Lifestyle Properties, Inc., MHC TT, Inc., and MHC Green Mountain Park, LLC, (collectively, with Green Mountain Park, “Defendants”) are the owners and/or operators of a recreational vehicle (“RV”) campground known as

“Green Mountain Park” in Caldwell County, North Carolina. The park is a private commercial property venture with access limited to those customers and their approved guests who agree to Defendants’ required terms of use and pay the required fees. MHC Property Management, L.P., an affiliate of MHC TT and MHC Green Mountain Park, LLC, manages the onsite business operations of the park (MHC TT, Inc., MHC Green Mountain Park, LLC, and MHC Property Management, L.P., collectively, “MHC”).

¶ 2 Linda Thompson Albright (“Plaintiff”) and Sidney Reid Albright (“Decedent”) were recreational members of Green Mountain Park for several decades and obtained a permanent lot from Defendants around 2015. Plaintiff and Decedent’s use of the permanent lot was pursuant to, and subject to, an agreement entitled the “Green Mountain Park RV Resort Agreement for Use of RV Site” (the “User Agreement”). Both Plaintiff and Decedent signed this agreement on 2 April 2018, along with a representative of MHC, to cover the period from 1 May 2018 through 30 April 2019.

¶ 3 On 6 July 2018, Decedent was driving through Green Mountain Park with Plaintiff as his passenger. Decedent sustained fatal injuries after a tree broke and landed on his vehicle. Decedent may have survived for a “very brief period of time,” but was pronounced dead at the scene.

¶ 4 Plaintiff commenced this wrongful death action on 8 June 2020, as Administrator of the Estate of Sidney Reid Albright. Plaintiff sought damages for

Decedent’s pain and suffering, the expenses to Decedent’s estate for his injury and burial, as well as damages to Decedent’s heirs resulting from his death.

¶ 5 On 3 August 2020, Defendants filed a verified motion to dismiss; or, in the alternative, to stay action pending arbitration and to compel arbitration (“motion to compel”). Plaintiff then filed a motion to strike Defendants’ motion and a motion to compel discovery responses. After a hearing on the parties’ motions on 5 October 2020, the trial court entered an order denying Defendants’ motion to dismiss and motion to compel. Defendants appeal the denial of the motion to compel.

## II. Issues

¶ 6 The sole issue on appeal is whether the trial court erred in denying Defendants’ motion to compel arbitration.

## III. Jurisdiction

¶ 7 “An order denying [a] motion to compel arbitration is not a final judgment and is interlocutory.” *Raper v. Oliver House, LLC*, 180 N.C. App. 414, 418, 637 S.E.2d 551, 554 (2006) (citation omitted). “However, an order denying arbitration is immediately appealable because it involves a substantial right, the right to arbitrate claims, which [is] lost if appeal is delayed.” *Id.* at 418–19, 637 S.E.2d at 554. Thus, this Court possesses jurisdiction over this interlocutory appeal. N.C. Gen. Stat. § 7A-27(b)(3)(a) (2019).

## IV. Standard of Review

¶ 8 “Whether a dispute is subject to arbitration is an issue for judicial determination,” which is subject to de novo review on appeal. *Harbour Point Homeowners’ Ass’n, Inc. ex rel. its Bd. of Directors v. DJF Enterprises, Inc.*, 201 N.C. App. 720, 723, 688 S.E.2d 47, 50 (2010).

## V. Analysis

¶ 9 Defendants argue the trial court erred in finding (1) that there was no agreement to arbitrate, and (2) that no “parties to the Agreement signed the Agreement on behalf of their heirs or beneficiaries.” Based on the plain language of the User Agreement, we agree with Defendants’ contentions (1) a valid agreement to arbitrate existed, and (2) the User Agreement is binding as to Decedent’s heirs.

[T]he trial court’s findings regarding the existence of an arbitration agreement are conclusive on appeal where supported by competent evidence, even where the evidence might have supported findings to the contrary. Accordingly, upon appellate review, we must determine whether there is evidence in the record supporting the trial court’s findings of fact and if so, whether these findings of fact in turn support the conclusion that there was no agreement to arbitrate.

*Id.* at 723–24, 688 S.E.2d at 50. A two-part analysis must be employed by the court when determining whether a dispute is subject to arbitration: “(1) whether the parties had a valid agreement to arbitrate, and also (2) whether the specific dispute falls within the substantive scope of that agreement.” *Id.* at 724, 688 S.E.2d at 50 (internal quotations and citations omitted).

**A. Agreement to Arbitrate**

¶ 10 We first address whether the parties had a valid agreement to arbitrate. *See id.* at 724, 688 S.E.2d at 50. “When the language of the contract is clear and unambiguous, construction of the agreement is a matter of law for the court . . . and the court cannot look beyond the terms of the contract to determine the intentions of the parties.” *Lynn v. Lynn*, 202 N.C. App. 423, 431, 689 S.E.2d 198, 205 (2010) (citation omitted). In this case, the User Agreement expressly contains an “Arbitration and Dispute Resolution” clause which reads in relevant part:

**ARBITRATION AND DIPUTE RESOLUTION. User and Company (and Company on behalf of its past, present or future affiliates, subsidiaries, shareholders, partners, members, directors, officers, employees, and agents [The “Company Parties”]) hereby agree that any and all claims, controversies and disputes or any kind arising out of or in any way relating to this agreement, the interpretation or enforcement thereof, the site, services, facilities, or maintenance in or about the resort, and any dispute respecting these matters between user and company (collectively “disputes”) shall be resolved solely by binding arbitration before a single, neutral arbitrator.**

¶ 11 Plaintiff argues there is no valid agreement to arbitrate because Decedent could not have contemplated death when signing the agreement. Specifically, Plaintiff argues “[t]he terms ‘Wrongful Death’ and/or ‘death’ do not appear at any point in the User Agreement. As such, ‘Wrongful Death’ and/or ‘death’ could not have

been contemplated by the parties when executed. “Defendants have not offered any evidence to the contrary.

¶ 12 This argument is misdirected. The terms “wrongful death” and/or “death” need not appear explicitly in the agreement to arbitrate for the agreement to cover that cause of action. *See, e.g., Raper*, 180 N.C. App. at 416, 637 S.E.2d at 552–53 (an arbitration clause applying to “any dispute or controversy arising out of, or relating to th[e] Agreement” was applicable in a wrongful death suit brought by the executrix of the estate of the deceased). In the case *sub judice*, Plaintiff, Decedent, and Defendants agreed,

any and all claims, controversies and disputes of any kind arising out of or in any way relating to this agreement, the interpretation or enforcement thereof, the site, services, facilities, or maintenance in or about the resort, and any dispute respecting these matters . . . shall be resolved solely by binding arbitration before a single, neutral arbitrator.

¶ 13 The only disputes the Arbitration Clause of the User Agreement explicitly did not cover were (1) “unlawful detainer and forcible detainer actions;” (2) “actions for unpaid rent and other charges;” and (3) actions for injunctive relief.” Therefore, “wrongful death” and/or “death” would be included under the User Agreement because it was not specifically excluded. If this Court were to adopt Plaintiff’s interpretation that any claim not explicitly listed in the User Agreement would not be subject to the arbitration clause, virtually all causes of action would be excluded

because none appear explicitly listed in the User Agreement other than the three causes of action the User Agreement explicitly excluded. This is not a proper interpretation, and this Court rejects Plaintiff's argument, holding instead that the parties had a valid agreement to arbitrate. *See Homeowners Ass'n*, 201 N.C. App. at 724, 688 S.E.2d at 50.

### **B. Scope of User Agreement**

¶ 14 Next, we address whether the specific dispute falls within the substantive scope of the User Agreement. If the specific dispute falls within the substantive scope of the valid User Agreement, the User Agreement is binding as to the parties' specific dispute. *See Harbour Point Homeowners Ass'n*, 201 N.C. App. at 724, 688 S.E.2d at 50.

¶ 15 Plaintiff argues Decedent did not sign on behalf of his heirs, beneficiaries and/or assigns. Specifically, Plaintiff argues, "The User Agreement was not executed by Decedent for his 'heirs, beneficiaries and/or assigns.' As such, the Decedent did not contemplate waiving the right to a jury trial for his heirs, beneficiaries and/or assigns." This argument is misdirected.

¶ 16 The User Agreement contains the following provision: "[t]he covenants and conditions herein contained, subject to provisions as to assignment, shall apply to and bind the heirs, successors, executors, administrators and assignees of the parties hereto." This language is clear and unambiguous, and we need not look beyond this

statement to determine the intent of the parties. *See Lynn*, 202 N.C. App. at 431, 689 S.E.2d at 205. Based on the plain language of the User Agreement, both Plaintiff and Decedent appear to have contemplated the Arbitration and Dispute Resolution clause applying to and binding their “heirs, successors, executors, administrators and assignees.” The agreement is therefore applicable to Decedent’s “heirs, beneficiaries and/or assigns,” and Decedent need not have signed the agreement on their direct behalf in order for the terms of the User Agreement to apply to them. Although not binding on this Court, a decision by the Federal District Court for the Middle District of North Carolina is instructive. In *Wilkerson ex rel. Est. of Wilkerson v. Nelson*, Judge Osteen found,

Plaintiff’s sole cause of action appears to be one for wrongful death, Plaintiff is bound by the arbitration agreement as a matter of law. Wrongful death actions brought under N.C. Gen. Stat. § 28A–18–2 are distinct from third-party actions, such as those for lack of consortium, because wrongful death actions exist if and only if the decedent could have maintained an action for negligence or some other misconduct if [they] had survived. Thus, the estate’s potential for recovery is legally derivative of [Decedent’s] own ability to recover. Because [Decedent’s] ability was limited in form to arbitration by [their] execution of the agreement . . . [their] estate is equally bound by the arbitration agreement.

395 F. Supp. 2d 281, 288–89 (M.D.N.C. 2005) (citations omitted). In this case, Decedent’s estate is similarly bound to the arbitration agreement. Therefore, the trial court erred in finding that no “parties to the Agreement signed the Agreement



on behalf of their heirs or beneficiaries,” as such a finding is not supported by the record evidence. *See Harbour Point Homeowners Ass’n*, 201 N.C. App. at 723–724, 688 S.E.2d at 50.

¶ 17 Defendants further argue the objections of Decedent’s heirs are not legally relevant, and Decedent’s heirs cannot prevent arbitration in this matter. We agree. “The right of action for wrongful death is purely statutory” and “may be brought only by the executor, administrator or collector of the decedent.” *Graves v. Welborn*, 260 N.C. 688, 690, 133 S.E.2d 761, 762 (1963); *see also Hodges v. Wellons*, 9 N.C. App. 152, 156, 175 S.E.2d 690, 693 (1970) (decedent and his personal representative “stand in the same shoes”). An intestate heir, “as such, has no right of action” for the death of the decedent. *Graves*, 260 N.C. at 690, 133 S.E.2d at 762.

¶ 18 In this case, Decedent’s heirs are not actually parties to this action. Decedent’s widow is the person bringing this cause of action, and Plaintiff, as administrator of the estate of Decedent, is the one bound by the terms of the User Agreement. Decedent’s heirs cannot unilaterally veto arbitration because they are not parties to this suit and because they would be bound to the terms of the User Agreement as signed by Decedent. *See Hodges*, 9 N.C. App. at 156, 175 S.E.2d at 693. No evidence exists in the record on which to base a finding of fact that the parties failed to sign the User Agreement on behalf of their heirs or beneficiaries. *See Homeowners Ass’n*, 201 N.C. App. at 724, 688 S.E.2d at 50. Because no evidence exists to support the

trial court's findings of fact, the trial court's conclusions of law as to the User Agreement's validity and scope are likewise unsupported.

¶ 19 Finally, Defendants' argument for equitable estoppel, as well as Plaintiff's argument Defendants waived their right to arbitration, should not be considered before this Court because these arguments were not made in the trial court and, therefore, cannot be made for the first time on appeal. *See* N.C. R. App. P. 10(a); *State v. Hargett*, 157 N.C. App. 90, 93, 577 S.E.2d 703, 705 (2003). Thus, we decline to address these arguments.

## **VI. Conclusion**

¶ 20 Because the User Agreement contained an arbitration clause for "any and all claims, controversies and disputes of any kind," and the User Agreement explicitly applied to and bound Decedent's "heirs, successors, executors, administrators and assignees," we reverse the trial court's order denying Defendants' motion to compel.

REVERSED AND REMANDED TO THE TRIAL COURT FOR ENTRY OF AN ORDER GRANTING DEFENDANTS' MOTION TO COMPEL ARBITRATION.

Judges GRIFFIN and JACKSON concur.

Report per Rule 30(e).