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Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000961-MR

TIFFANY COX; SIGNATURE HEALTHCARE OF PIKEVILLE, LLC; LP PIKEVILLE, LLC; AND COWAN GILMER — APPELLANTS

v. APPEAL FROM PIKE CIRCUIT COURT
HONORABLE STEVEN D. COMBS, JUDGE
ACTION NO. 14-CI-00236

ROGER FORD — APPELLEES

AND NO. 2014-CA-1436-MR

SIGNATURE HEALTHCARE OF PIKEVILLE, LLC; LP PIKEVILLE, LLC; AND COWAN GILMER — APPELLANTS

v. APPEAL FROM PIKE CIRCUIT COURT
HONORABLE STEVEN D. COMBS, JUDGE
ACTION NO. 14-CI-00792

HAVEL MEADE — APPELLEES

OPINION
REVERSING
** ** ** ** **

BEFORE: COMBS, D. LAMBERT, AND TAYLOR, JUDGES.

D. LAMBERT, JUDGE: This consolidated appeal challenges two separate orders of the Pike Circuit Court, one from April 29, 2014, and the other from August 14, 2014. The orders denied arbitration of two employees' claims against their former employer for violations of Kentucky Revised Statutes (KRS) Chapter 344. After review, we reverse and direct the circuit court to compel arbitration.

I. BACKGROUND

Signature Healthcare of Pikeville ("Signature") is a nursing home in Pikeville, Kentucky. In 2012, Signature hired appellees Havel Meade and Roger Ford to work as a nurse and as a chaplain, respectively. Prior to beginning their employment, both employees signed similar form documents.[1] The documents were titled "Arbitration Agreement" and provided the following:

> In consideration of the company employing you and the mutual promises set forth herein, you and the company and your and its representatives, successors, and assigns agree to the following:
>
> (1) All claims relating to your recruitment, employment with, or termination of employment from the Company shall be deemed waived unless submitted to final and binding arbitration in accordance with the Federal Arbitration Act . . . .

[1] The portion of the form document reproduced in this opinion was the one signed by Roger Ford on November 7, 2012. The form document signed by Havel Meade on January 16, 2012, while different, essentially provided for a similar agreement between the appellees and what both documents referred to as the "Company[.]"

> (2) In the event either the employee or the company seeks relief in a court of competent jurisdiction for a dispute covered by this Agreement, the other party may . . . require the dispute to be arbitrated . . . .
>
> (3) This dispute resolution agreement covers all matters . . . related to your recruitment, employment, or termination of employment by the Company[.]
>
> ****
>
> YOU MAY WISH TO CONSULT AN ATTORNEY PRIOR TO SIGNING THIS AGREEMENT . . . YOU WILL NOT BE OFFERED EMPLOYMENT UNTIL THIS FORM IS SIGNED AND RETURNED BY YOU.

Along the foot of the documents, a signature line was also designated for the "Company" to sign. Anthony Othrando, an employee in Signature's human resources department, signed both documents on this line without identifying his position.

Signature terminated Meade's employment on February 19, 2013. Nearly one year later, on January 6, 2014, Signature also terminated Ford's employment. Both Meade and Ford sued Signature along with its parent company, L.P. Pikeville, LLC. The two former employees similarly alleged that their terminations were retaliatory and the result of age discrimination. Meade further named Cowan Gilmer, Signature's Administrator, as an individual defendant in her suit. Ford also sued Gilmer and added Tiffany Cox, another individual who served as Signature's Director of Operations.

Citing the pre-employment documents signed by Meade and Ford, Signature moved the circuit court to compel arbitration. However, after examining the "boilerplate" language of the arbitration agreements, the circuit court found the only agreement that could have existed was between Othrando, as an individual and not as the "Company," and the employees. According to the circuit court, no other parties to the contract were identified and because identification of parties is one of the elements of a binding contract, the arbitration agreements were unenforceable. This appeal followed.

II. STANDARD OF REVIEW

In reviewing a trial court's decision as to the enforceability of an arbitration agreement, we review legal questions *de novo*. *Scott v. Louisville Bedding Co.*, 404 S.W.3d 870, 875 (Ky. App. 2013).

III. ANALYSIS

The sole issue before this Court is whether the arbitration agreements were enforceable under the Federal Arbitration Act (FAA) even though Signature was not specifically identified as a party within the four corners of the instrument.[2]

Under the FAA, codified at 9 U.S.C.[3] § 1 *et seq.,* written "arbitration agreements are on an equal footing with other contracts." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011). They are enforceable unless invalid "upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2; *Conseco Fin. Servicing Corp. v. Wilder*, 47 S.W.3d 335, 341 (Ky. App. 2001). Moreover, "court[s] . . . must decide whether the parties have agreed to arbitrate based on rudimentary principles governing contract law." *Gen. Steel Corp. v. Collins*, 196 S.W.3d 18, 20 (Ky. App. 2006).

In Kentucky, "[o]ne of the essential elements of a contract, if not the most essential element, is the requirement that there be an agreement between the parties." *King v. Ohio Valley Fire & Marine Ins. Co.*, 212 Ky. 770, 280 S.W. 127, 129 (1926); *see also Olshan Found. Repair and Waterproofing v. Otto*, 276 S.W.3d 827, 831 (Ky. App. 2009) (holding that "parties must enter into a meeting of the minds in order to form an enforceable contract"). The remaining elements of a contract are offer, acceptance, full and complete terms, and consideration. *Collins v. Ky. Lottery Corp.*, 399 S.W.3d 449, 455 (Ky. App. 2012).

[2] The Kentucky Arbitration Act excludes from its scope arbitration agreements between employees and employers. KRS 417.050(1).

[3] United States Code.

In situations where an authorized agent signs a written agreement in the name of a company, but the company's name does not appear in the body of the contract, it is improper for the trial court to determine, as a matter of law, that the company was not a party to the contract. *Miller v. Johns*, 163 S.W.2d 9, 11 (Ky. 1942). Instead,

> [t]he contract of the agent is the contract of the principal, and he may sue or be sued thereon, though not named therein; and notwithstanding the rule of law that an agreement reduced to writing may not be contradicted or varied by parol, it is well settled that the principal may show that the agent who made the contract in his own name was acting for him.

Ford v. Williams, 62 U.S. 287, 289 (1858).[4] Furthermore, it is also well-settled that "absent fraud in the inducement, a written agreement duly executed by the party to be held, who had an opportunity to read it, will be enforced according to its terms." *Wilder*, 47 S.W.3d at 341; *see also Ky. Rd. Oiling Co. v. Sharp*, 78 S.W.2d 38, 42 (1934).

Here, Signature demonstrated that Othrando was both its employee and its director of human resources. As the director of human resources, Othrando had the requisite authority to act on Signature's behalf with respect to employment procedures. Thus, by signing Meade's and Ford's pre-employment documents, including the arbitration agreements, Othrando bound Signature, as its agent, to arbitrate any claims arising from Meade's and Ford's employment. Meade and Ford also agreed to arbitrate any employment disputes, as they both signed the

[4] *See also Winston & Co. v. Clark County Const. Co.*, 217 S.W. 1027, 1030 (1920); *Geary v. Taylor*, 166 Ky. 501, 179 S.W. 426, 429 (1915).

arbitration agreements as a condition of their employment. Because such continued employment is sufficient consideration under Kentucky law,[5] there was an enforceable arbitration agreement between Signature and both of its former employees. Accordingly, the orders of the Pike Circuit Court are reversed, and we instruct the circuit court to compel arbitration.

ALL CONCUR.

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[5] *See Spears v. Carhartt, Inc.*, 215 S.W.3d 1, 9 (Ky. 2006) (holding an employee's continued employment was sufficient to indicate assent to a new alternate dispute resolution provision bargained for, on her behalf, by her labor union,); *see also Higdon Food Serv., Inc. v. Walker,* 641 S.W.2d 750, 751–52 (Ky. 1982) (holding that continued at-will employment was sufficient consideration to enforce a non-compete agreement).