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NO. COA01-1259

NORTH CAROLINA COURT OF APPEALS

Filed: 6 August 2002

GREY HOLLAND MORRIS
McCORMICK and JAMES
COLEMAN McCORMICK,
Plaintiffs,

v.

Carteret County
No. 00 CVS 754

BERNETTE ODEN MORRIS,
Defendant.

Appeal by plaintiff from order entered 9 July 2001 by Judge James E. Ragan, III, in Carteret County Superior Court. Heard in the Court of Appeals 12 June 2002.

Younce & Vtipil, P.A., by David E. Vtipil, for plaintiff-appellant.

Marshall, Williams & Gorham, L.L.P., by William Robert Cherry, Jr., for unnamed defendant-appellee Government Employees Insurance Company.

Wallace, Morris & Barwick, P.A., by Edwin M. Braswell, Jr., for unnamed defendant-appellee Nationwide Mutual Insurance Company.

HUDSON, Judge.

Plaintiff Grey Holland Morris McCormick appeals from an order denying her motion to compel arbitration and stay action. For the reasons given below, we vacate the order and remand to the trial court for further proceedings.

According to the complaint, on 4 December 1997, Plaintiff Grey

Holland Morris McCormick was injured in an automobile accident when the car she was driving, which was owned by her husband, Plaintiff James Coleman McCormick, collided with a car driven by Defendant Bernette Oden Morris. On 30 June 2000, plaintiffs filed a complaint against defendant alleging negligence and seeking damages covering Grey Holland Morris McCormick's personal injuries, disability, medical expenses, and pain and suffering, and for loss of consortium sustained by James Coleman McCormick. Government Employees Insurance Company ("GEICO") and Nationwide Mutual Insurance Company ("Nationwide"), unnamed defendants, appeared in the action pursuant to N.C. Gen. Stat. § 20-279.21 (2001). On 19 December 2000, plaintiffs filed an amended complaint adding a claim by James Coleman McCormick for the costs of attendant care.

On 4 May 2001, plaintiffs filed a motion to compel arbitration and stay action. According to the motion, the liability insurance carrier had tendered the limits of its policy, and plaintiffs were seeking to recover against GEICO and Nationwide under their underinsured motorist coverages. The motion states that "[e]ach policy contains a provision wherein Plaintiffs may demand arbitration if they and the insurance companies cannot agree on the amount of damages. Plaintiffs have demanded arbitration in writing through their attorney and the insurance companies have refused to arbitrate." Both GEICO and Nationwide disputed the existence of an arbitration agreement applicable to the parties.

On 9 July 2001, after a hearing, the trial court denied plaintiffs' motion. Plaintiff James Coleman McCormick had

previously filed a voluntary dismissal, and only Plaintiff Grey Holland Morris McCormick ("appellant") appeals from the trial court's order.

Arbitration agreements are "valid, enforceable, and irrevocable" in this State. N.C. Gen. Stat. § 1-567.2(a) (2001).

On application of a party showing an agreement described in G.S. 1-567.2; and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied.

N.C. Gen. Stat. § 1-567.3(a) (2001). Further, an appeal may be taken from "[a]n order denying an application to compel arbitration made under G.S. 1-567.3." N.C. Gen. Stat. § 1-567.18(a)(1) (2001).

"This Court has held that when a party disputes the existence of a valid arbitration agreement, section 1-567.3 expressly requires the trial judge 'to summarily determine whether, as a matter of law, a valid arbitration agreement exists,' and failure to comply with this mandate is reversible error." *Burke v. Wilkins*, 131 N.C. App. 687, 689, 507 S.E.2d 913, 914 (1998) (quoting *Routh v. Snap-On Tools Corp.*, 101 N.C. App. 703, 706, 400 S.E.2d 755, 757 (1991)).

Here, neither the order nor the transcript of the hearing on the motion indicates that the trial court determined whether an enforceable arbitration agreement existed applicable to these parties. The contracts are not in the record on appeal, and it appears from the hearing transcript that the contracts were not

before the trial court. The hearing transcript indicates that GEICO and Nationwide both disputed whether an arbitration clause, if it existed in the policies at issue, was triggered. Thus, we hold that the trial court is required by N.C.G.S. § 1-567.3(a) to summarily determine whether a valid arbitration agreement exists. Accordingly, we vacate the trial court's order and remand for such a determination.

Vacated and remanded.

Judges WYNN and CAMPBELL concur.

Report per Rule 30(e).