

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gary Foreman, :
Appellant :
v. : No. 1326 C.D. 2011
City of Philadelphia : Submitted: October 14, 2011
:

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: December 8, 2011

In this appeal, Gary Foreman seeks review of an order of the Court of Common Pleas of Philadelphia (trial court) that denied his motion to reinstate his action against the City of Philadelphia (City) to the major jury trial pool from the compulsory arbitration program. Upon review, we quash this appeal as interlocutory.

I. Background

Foreman filed suit against City alleging it negligently demolished the structures on two of his properties. Originally, this matter was placed on the trial court's major jury trial list.

In April 2010, the parties attended a court ordered settlement conference before a judge pro tempore. However, at that time, the parties were unable to reach a settlement. Specifically, Foreman demanded no less than \$90,000, but City offered to settle for only \$20,000. Despite their disagreement,

the parties decided to submit their dispute to the compulsory arbitration program. The parties reduced this agreement to writing (the Stipulation), which was signed by both parties and by the judge pro tempore.

In pertinent part, the Stipulation stated:

AND NOW, it is hereby AGREED and STIPULATED, by the undersigned counsel, on behalf of their respective clients, that:

1. The parties hereby agree to submit the claims raised by [Foreman] in the above case to the Court's Compulsory Arbitration Program and the parties shall accept the judgment of the arbitration panel as final and non-appealable; and
2. The parties hereby agree that neither party shall contest the admissibility of the other party's expert appraisal reports. Such agreement, however, is without waiver of the parties' respective rights to examine the expert reports as to weight and credibility.

Reproduced Record (R.R.) at 41a.

At the arbitration, Foreman's attorney informed the panel he believed the \$50,000 jurisdictional limitation on damages did not apply. City's counsel disagreed. The panel decided it would restrain itself to its jurisdictional limit. At that time, Foreman's attorney objected, and requested a continuance, which the panel granted. Thereafter, Foreman filed his motion with the trial court to remove the case from arbitration and reinstate it in the major jury trial pool. The trial court held oral argument on the motion.

Before the trial court, Foreman argued the parties agreed to waive the compulsory arbitration program's jurisdictional limit on damages despite not including that language in the Stipulation. City argued to the contrary that the Stipulation was the full and complete agreement of the parties. Thereafter, upon consideration of the case management conference report and the parties' submissions, including the Stipulation, the trial court determined the case would properly be resolved by submitting it to compulsory arbitration. Therefore, the trial court issued an order remanding the dispute accordingly:

AND NOW, this 17 [sic] day of November, 2010, after a hearing, upon consideration of Plaintiff's Motion to Reinstate Matter to the Major Jury Pool and the [City's] response thereto, it is hereby ORDERED and DECREED that said motion is DENIED.

By the Court:
/s/ Paul V. Panepinto, J.

R. R. at 74a (the Order).

Foreman then filed an appeal to the Superior Court, which later transferred it to this Court. Additionally, at the trial court's direction, Foreman filed a concise statement of matters complained of on appeal. Specifically, he claimed: 1) the trial court did not give him an opportunity to present argument in support of his motion; and, 2) the Stipulation is based on mutual mistake, and therefore, void.

In its Rule 1925(a) opinion, the trial court explained that both parties had ample opportunity to present argument, and that neither party objected when

the trial court closed the proceeding. Additionally, the trial court held that any misunderstanding of the Stipulation terms was a unilateral mistake by Foreman, not a mutual mistake. Therefore, the trial court discerned no merit in Foreman's contentions. This matter is now before this Court for disposition.

II. Issues

Upon receiving this appeal, this Court issued a per curiam order requiring the parties address whether the Order is appealable as a threshold issue in their merits briefs.¹

In his brief, Foreman does not address whether his appeal is subject to our review as directed.² Rather, he limits his argument to the merits. Essentially, Foreman's argument is that the trial court improperly enforced the Stipulation by compelling arbitration. Foreman raises this argument not only to avoid the compulsory arbitration jurisdictional limit on damages, but also, to avoid the

¹ The issue of whether an appeal is an appeal of a final order, an interlocutory appeal by permission or as of right, or falls under the collateral order doctrine is a question of whether the appellate court has jurisdiction to consider the appeal. Rae v. Pennsylvania Funeral Dirs. Ass'n, 602 Pa. 65, 977 A.2d 1121 (2009). "As such, our standard of review is de novo and our scope of review is plenary." Id. at 74, 977 A.2d at 1126 n.8 (citing Commonwealth v. Kennedy, 583 Pa. 208, 214, 876 A.2d 939, 943 n.3 (2005)).

² After submitting his brief, Foreman filed an application asking to submit a statement of jurisdiction nunc pro tunc. In his statement of jurisdiction, appended to his application, Foreman claims his appeal is subject to this Court's review under the collateral order doctrine. However, Foreman still does not provide legal argument on the issue.

Moreover, while Foreman captioned his application as nunc pro tunc, Foreman does not seek nunc pro tunc relief. Rather, Forman asks to amend his brief because he unintentionally omitted a statement of jurisdiction. In the absence of opposition, we grant the application.

Stipulation waiver clause, which if enforced after arbitration may contractually preclude him from seeking a trial de novo.

Specifically, Foreman claims the Stipulation is not enforceable because: the trial court did not approve it as required by Philadelphia County Local Rule 201(A)(5); his attorney lacked authority to sign the Stipulation; and, the Stipulation is based on mutual mistake. Additionally, Foreman claims the trial court erred in rendering its decision on his motion without sufficient record evidence or argument.

For its part, City contends the Order is not appealable. In the alternative, City argues Foreman did not preserve any issues for appeal, as he did not preserve any during argument before the trial court or in his statement of matters complained of on appeal. Further, addressing the merits, City claims the parties did not enter the Stipulation by mutual mistake.

III. Discussion

As it is necessary to determine whether this appeal is subject to our review, we first address whether the Order is appealable as final, interlocutory by permission or as of right, or under the collateral order doctrine.

A. Final Order Doctrine and Interlocutory Appeals

It is well settled that a party may only appeal from a final order unless otherwise permitted by statute or rule to file an interlocutory or collateral appeal. Pa. R.A.P. 311-341; Pennsylvania Ass'n of Rural & Small Sch. v. Casey, 531 Pa.

439, 613 A.2d 1198 (1992); Northumberland Cnty. Children & Youth Servs. v. Dep't of Pub. Welfare, 2 A.3d 794 (Pa. Cmwlth. 2010). Whether an order is final and appealable is determined after considering the ramifications of the order. Dep't of Transp. v. Morris, 615 A.2d 807 (Pa. Cmwlth. 1992).

Here, Foreman appeals a trial court order denying his motion to reinstate his suit to the major jury trial pool from compulsory arbitration. The Order in effect compels the parties to attend compulsory arbitration. Therefore, the Order shall be construed as an order directing the parties to submit to arbitration. See id.

Upon review, the Order is not a final order. Myerowitz v. Pathology Lab. Diagnostics, 678 A.2d 404 (Pa. Super. 1996) (holding an order to arbitrate forces parties into court not out of it); Bartus v. Bartus, 540 A.2d 576 (Pa. Super. 1988) (holding an order directing a matter to compulsory arbitration is not final). Furthermore, the Order does not fall within any category of interlocutory appeals as of right, and Foreman did not seek to appeal by permission. See Bartus; Pa. R.A.P. 311, 312. Accordingly, the Order is not appealable as a final order or as an interlocutory appeal by permission or as of right.

B. Collateral Order Doctrine

Next, we consider whether this Court may hear Foreman's appeal under the collateral order doctrine. Following Bell v. Beneficial Consumer Discount Company, 465 Pa. 225, 348 A.2d 734 (1975), the collateral order doctrine was codified as follows:

- (a) General Rule. An appeal may be taken as of right from a collateral order of an administrative agency or lower court.
- (b) Definition. A collateral order is an [1] order separable from and collateral to the main cause of action [2] where the right involved is too important to be denied review and [3] the question presented is such that if review is postponed until final judgment in the case, the claim will be irreparably lost.

Pa. R.A.P. 313. Our Supreme Court requires the rule to be interpreted narrowly, so it does not swallow the general rule that only final orders are appealable. Geniviva v. Frisk, 555 Pa. 589, 725 A.2d 1209 (1999). Each prong of the test must be clearly present for an order to be appealable. Melvin v. Doe, 575 Pa. 264, 836 A.2d 42 (2003); Brophy v. Phila. Gas Works & Phila. Facilities Mgmt., 921 A.2d 80 (Pa. Cmwlth. 2007). Additionally, the test must be applied independently to each distinct legal issue raised on appeal. Rae v. Pennsylvania Funeral Dirs. Ass'n, 602 Pa. 65, 977 A.2d 1121 (2009). Therefore, if one claim satisfies the collateral order doctrine, it will be reviewed; however, those claims, which do not satisfy the test, will not be bootstrapped into the appeal. Id.

Here, Foreman raises two distinct legal issues: 1) whether the Stipulation is void; and, 2) whether the trial court had a sufficient record to support its Order. Accordingly, we address each argument independently. See id.

1. Validity of the Stipulation

Foreman's claims regarding the validity of the Stipulation are separable from his suit for damages against City. See Ben v. Schwartz, 556 Pa. 475, 729 A.2d 547 (1999) (holding an issue is separable if it can be addressed without an analysis of the underlying action).

However, here the claim does not involve any right so important as to invoke concerns deeply rooted in public policy, and the parties have not asserted any exists. See Geniviva. Foreman's interest in not arbitrating his claim prior to challenging the validity of the Stipulation is not equivalent to those rights that are rooted in fundamental public policy. See Rae (privilege); Mitchell v. Forsyth, 472 U.S. 511 (1985) (qualified immunity); Melvin (free speech); J.S. v. Whetzel, 860 A.2d 1112 (Pa. Super. 2004) (privacy). To the contrary, the Order compels Foreman to participate in arbitration, a process the Commonwealth favors as a means of achieving the expeditious resolution of claims. See Office of Admin. v. Pa. Labor Rels. Bd., 528 Pa. 472, 598 A.2d 1274 (1991); Hazleton Area Sch. Dist. v. Bosak, 671 A.2d 277 (Pa Cmwlt. 1996).

Additionally, Foreman's claims concerning the validity of the Stipulation will not be irreparably lost if not addressed at this time. See Rae. Notably, despite their contractual agreement, the parties maintain the statutory

right to file an appeal from the arbitration panel's determination for a de novo trial. See Pa. R.C.P. No. 1311. Of course, if a party files an appeal, the opposing party may object arguing the Stipulation contractually waived the right to appeal. However, it is at that time the trial court may determine whether the parties waived their right to a statutory appeal. Thereafter, the trial court's resolution will either grant a trial de novo, or produce a final order. Accordingly, Foreman's claim is not irreparably lost if not addressed in this appeal. See Rae.

In sum, despite being separable, Foreman's claim is not sufficiently important, and will not be irreparably lost; therefore, this issue does not satisfy the parameters of the collateral order doctrine. See id.; Bartus.³

³ But see Gilyard v. Redevelopment Auth. of Phila., 780 A.2d 793 (Pa. Cmwlth. 2001) (order to arbitrate was appealable where a collateral question involving whether a provision of the Eminent Domain Code, Act of June 22, 1964, Special Sess., P.L. 950, as amended, formerly 26 P.S. §§1-01 – 1-903, repealed by Section 5 of the Act of May 2, 2006, P.L. 112., barring arbitration would otherwise be moot); United Servs. Auto. Ass'n v. Shears, 692 A.2d 161 (Pa. Super. 1997) (en banc) (holding an order to arbitrate was appealable where the trial court recognized a new cause of action and compelled common law arbitration under the American Arbitration Association rules, and where the issues raised had wide-reaching impact and would otherwise evade review).

2. Sufficiency of the Record before the Trial Court

Next we address Foreman's contention that the trial court did not have a sufficient record to render its Order.⁴ Again, we must consider whether this issue is separable, important, and would otherwise be irreparably lost if not reviewed at this time. See Geniviva.

Here, Foreman's procedural claim is separable from the underlying cause of action. See Ben. However, Foreman's claims do not affect deeply rooted rights. See Geniviva. Furthermore, as discussed above, if review is denied, Foreman does not lose the opportunity to raise his claims regarding the validity of the Stipulation or the trial court's respective determination. See Rae. Foreman maintains the statutory right to file an appeal of the arbitration, and, if desired, to appeal the eventual final order. See id. Therefore, because Foreman's claims are not sufficiently important and would not be irreparably lost if not considered now, his appeal is not permitted under the collateral order doctrine.

IV. Conclusion

In short, at this time, we lack jurisdiction. Accordingly, Foreman's appeal is quashed.

ROBERT SIMPSON, Judge

⁴ A trial court may remand a suit to compulsory arbitration, which is originally filed outside of the jurisdictional limitations of compulsory arbitration, if the trial court determines through discovery, pre-trial conference, or hearing that the entire case belongs in arbitration. See Pa.R.C.P. No. 1021(d).

