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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2021-2022

1200274

G&I VIII The Edge, LLC; Asset Plus Corporation; Asset Plus Companies LP; Asset Campus Housing, Inc.; Asset Campus USA, LLC; Peak Campus Management, LLC; Alyson Aldeen; Everest Campus East, LLC; DRA Advisors, LLC; and Alden Street Capital Management, LLC

v.

E.W.

1200303

Signal 88, LLC, and Gulf South Security Solutions, LLC

v.

E.W.

1200329

SOS/AAA Iron Works, Inc.

v.

E.W.

1200391

VSC Fire & Security, Inc.

v.

E.W.

**Appeals from Mobile Circuit Court
(CV-20-900537)**

WISE, Justice.

1200274 -- AFFIRMED. NO OPINION.

1200303 -- AFFIRMED. NO OPINION.

1200329 -- AFFIRMED. NO OPINION.

1200391 -- AFFIRMED. NO OPINION.

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Bolin, Shaw, Bryan, Mendheim, and Stewart, JJ., concur.

Parker, C.J., concurs specially

Sellers and Mitchell, JJ., dissent.

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PARKER, Chief Justice (concurring specially).

Justice Mitchell's argument in his dissent, that a plaintiff should not be permitted to disavow a contract's arbitration clause and simultaneously pursue contract-based tort claims, is compelling and follows the precedent of this Court. However, that specific argument has not been raised by the appellants, and an argument not raised by an appellant cannot generally be a basis for reversal, Smith v. Mark Dodge, Inc., 934 So. 2d 375, 380 (Ala. 2006). Although the appellants rely on the cases cited by Justice Mitchell -- Value Auto Credit, Inc. v. Talley, 727 So. 2d 61 (Ala. 1999), and Southern Energy Homes, Inc. v. Ard, 772 So. 2d 1131 (Ala. 2000) -- the substance of their argument is different from Justice Mitchell's. The appellants argue that E.W. cannot disavow her lease contract because, according to them, she accepted all the benefits of the lease and terminated it according to its terms. It is not possible for her to avoid the whole contract, they say, so she should not be permitted to avoid any of it. By contrast, Justice Mitchell argues that E.W. cannot disavow the contract because her tort claims are grounded on it. Thus, the appellants'

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argument and Justice Mitchell's argument share a single premise -- that selective disavowal is impermissible -- but are otherwise logically distinct.

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MITCHELL, Justice (dissenting).

The Mobile Circuit Court denied the motion to compel arbitration filed by the defendants¹ because the plaintiff, E.W., was a minor at the time she executed the lease agreement containing an arbitration provision. I respectfully dissent from the majority's decision to affirm that judgment.

Although E.W. did not assert a breach-of-contract claim, she did assert negligence and wantonness claims in which she says the defendants breached various duties. As her complaint makes clear, those duties -- i.e., the duty "to provide [E.W.] with a safe place to live" and the duty "to provide and/or maintain appropriate safety and/or security measures needed to protect [E.W.] and other residents" -- arose only because of the existence of the lease agreement. See Gustin v. Vulcan Termite & Pest Control, Inc., [Ms. 1190255, Oct. 30, 2020] ___ So. 3d ___, ___ (Ala. 2020)

¹The defendants below include G&I VIII The Edge, LLC; Asset Plus Corporation; Asset Plus Companies LP; Asset Campus Housing, Inc.; Asset Campus USA, LLC; Peak Campus Management, LLC; Alyson Aldeen; Everest Campus East, LLC; DRA Advisors, LLC; Alden Street Capital Management, LLC; SOS/AAA Iron Works, Inc.; Gulf South Security Solutions, LLC; Signal 88, LLC; and VSC Fire & Security, Inc.

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(affirming a summary judgment entered on the plaintiffs' negligence and wantonness claims because those claims were predicated on the breach of contractual duties and the "'mere failure to perform a contractual obligation is not a tort'" (quoting Barber v. Business Prods. Ctr., Inc., 677 So. 2d 223, 228 (Ala. 1996))). E.W. is entitled to disavow the lease agreement because she signed it while she was a minor; but she can't disavow it while, at the same time, using it as the basis of the duties that gave rise to her claims. See Southern Energy Homes, Inc. v. Ard, 772 So. 2d 1131, 1134 (Ala. 2000) ("A plaintiff cannot simultaneously claim the benefits of a contract and repudiate its burdens and conditions.").

In Value Auto Credit, Inc. v. Talley, 727 So. 2d 61, 62 (Ala. 1999), this Court explained that this principle applies even when the plaintiff was a minor at the time he or she signed the contract at issue. The Talley Court noted that "although a minor may disavow a contract after reaching majority, '[t]he entire contract must be avoided.'" 727 So. 2d at 62 (quoting J. Calamari & J. Perillo, The Law of Contracts § 8-4, at 310 (3d ed.1987)) (emphasis omitted). Thus, "[t]he infant is not entitled to enforce portions that are favorable to him and at the same time disaffirm

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other portions that he finds burdensome.'" Id. (quoting Calamari & Perillo, supra, at 310). The Court further quoted American Jurisprudence for the principle that "[a]n infant cannot disaffirm a portion of a single contract or transaction and affirm the rest. If he avoids any part of a contract, he avoids the entire contract, and if he ratifies a part of the agreement, he ratifies it all.'" 727 So. 2d at 62 (quoting 42 Am. Jur. 2d Infants § 93 (1969)).²

E.W. seeks to hold the defendants liable for breaching duties that arose only because of the existence of the lease agreement. For that reason, I would require her to comply with the contractual duty to arbitrate her claims. I would therefore reverse the trial court's judgment.

²In his special writing, Chief Justice Parker seems to agree with this analysis but declines to apply it because, he says, the defendants have not made this argument. I obviously have a different view. The defendants spend several pages of their briefs arguing that parties seeking to avoid a contract's arbitration provision "cannot claim all the benefits of the contract on the one hand, and then disavow the only remaining obligation -- the arbitration provision -- with the other." See, e.g., part II.B. of the brief filed by G&I VIII The Edge, LLC, and other entities associated with the ownership and management of The Edge apartment complex (captioned "The Arbitration Agreement Cannot Be Selectively Disavowed by E.W.") at 21-23.