FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-4153

LP GRACEVILLE, LLC d/b/a SIGNATURE HEALTHCARE OF NORTH FLORIDA; and SIGNATURE HEALTHCARE CONSULTING SERVICES, LLC,

Appellants,

v.

MARK ODUM, Executor de son tort of the Estate of Joseph Norton,

Appellee.

On appeal from the Circuit Court for Jackson County.
James J. Goodman, Jr., Judge.

March 9, 2022

TANENBAUM, J.

Mark Odum, on behalf of his deceased father's estate, sued LP Graceville, LLC and Signature Healthcare Consulting Services, LLC (together, "Signature Healthcare") for alleged nursing home neglect. Pursuant to a contract between the father and the nursing home, the trial court granted Signature Healthcare's motion to stay proceedings and compel arbitration. Odum appealed and lost; this court affirmed the order. *See Odum v. LP Graceville, LLC*, 277

So. 3d 194 (Fla. 1st DCA 2019). A mandate issued from this court under case number 18-4823.

Apparently undeterred, Odum asked the court to refer the litigation to arbitration under Florida Rule of Civil Procedure 1.700(a) rather than proceed in the manner prescribed by the parties' arbitration agreement.[1] Notwithstanding the order that this court had just affirmed, the trial court granted Odum's request and ordered that arbitration occur under that rule within sixty days. Signature Healthcare now purports to appeal that order under this new case number.

Odum, meanwhile, moves to dismiss this appeal as seeking review of a non-appealable, non-final order. Out of context, he would be right; a referral to arbitration under the civil rules is not an appealable order.[2] The trial court, however, made that referral *after* the mandate from this court. In other words, *after* this court gave its imprimatur to the order that both stayed further civil litigation proceedings and compelled Odum to pursue his claim in arbitration under the parties' agreement, Odum continued his attempt to litigate his case under the aegis of the trial court, and the trial court obliged. In turn, we treat Signature Healthcare's appeal as a request that we enforce the mandate issued in the prior appeal. *See* § 35.08, Fla. Stat. (vesting the district court of appeal

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[1] The agreement requires that a party request that the alternative process of dispute resolution commence by providing in writing "a detailed account of the dispute, a proposed resolution, and what process is being requested (informal resolution, mediation, or arbitration)." For arbitration, the parties are supposed to "discuss and agree upon the person who will [] arbitrate the dispute, and when [] arbitration will occur." If the parties cannot agree on an arbitrator, each nominates an arbitrator candidate, and those candidates will select another qualified person to serve as arbitrator.

[2] Such a referral is different from an order that determines a party's entitlement to arbitration under a pre-dispute contract, pursuant to the Revised Florida Arbitration Code or the Federal Arbitration Act, which of course is an appealable non-final order under Florida Rule of Appellate Procedure 9.130(a)(3)(C)(iv).

"with all the power and authority necessary for carrying into complete execution all of its judgments, decrees, orders, and determinations in the matters before it agreeable to the usage and principles of law").

An appellate court's mandate is the final judgment of the court, and it is "directed not to the parties but to the court, and does not require any further act of the litigants to accomplish its performance." *Berger v. Leposky*, 103 So. 2d 628, 631 (Fla. 1958). Once the mandate issues, the trial court's "is a purely ministerial act." *Id.*; *see also Hunter v. Kearley*, 19 So. 2d 788, 788 (Fla. 1944) (explaining that the trial judge has a "ministerial duty to follow strictly the mandate" of the appellate court); *State v. Parks*, 128 So. 837, 838 (Fla. 1930) (explaining that a trial judge has ministerial duty to act in conformity with the appellate court's opinion and mandate); *cf. State v. Call*, 18 So. 771, 773 (Fla. 1895) (awarding peremptory mandamus against trial judge for failure to perform the ministerial act of entering a judgment in accordance with the court's mandate).

Upon issuance of this court's mandate affirming the trial court's order compelling arbitration, there was nothing further for the trial court to do. Its order at that point was self-executing—it had the effect of putting on ice any further proceedings in the trial court until Odum completed pursuit of his claim in arbitration. *See* § 682.03(7), Fla. Stat. (requiring the trial court to "stay any judicial proceeding that involves a claim subject to the arbitration" that it ordered); *see also* 9 U.S.C. § 3 (requiring stay "until such arbitration has been had in accordance with the terms of the [arbitration] agreement"). In the interim, the trial court's only authority to intervene in the process was to grant "provisional remedies to protect the effectiveness of the arbitration proceeding," on motion by one of the parties, until an arbitrator was appointed and "authorized and able to act." § 682.031, Fla. Stat.

There is no overlap between an order compelling arbitration of a claim pursuant to section 682.03, Florida Statutes; and a referral to mediation or arbitration under rules of civil procedure like 1.700. The statutory provisions of chapter 682 effectuate a policy that courts uphold and enforce contractual agreements to arbitrate. The mediation and arbitration rules are adjunct to the Legislature's separate policy in favor of voluntary dispute

resolution, as set out in chapter 44, Florida Statutes. *See, e.g.*, § 44.102(1), Fla. Stat. (providing for court-ordered mediation in accordance with "rules of practice and procedure adopted by the Supreme Court"); § 44.103(1) (providing for court-ordered, nonbinding arbitration in accordance with "rules of practice and procedure adopted by the Supreme Court"); *cf.* § 44.104, Fla. Stat. (providing for "voluntary binding arbitration" by written agreement, "in lieu of litigation," after a "civil dispute" has arisen). The two processes are mutually exclusive, so the trial court's referral to arbitration under rule 1.700 was in direct contravention of this court's mandate affirming its earlier order compelling arbitration and staying further judicial proceedings under section 682.03.

Having said we will treat this appeal as a motion to enforce the mandate this court issued in case number 18-4823, we GRANT such motion, and DENY as moot Odum's motion to dismiss this appeal. We trust that the trial court will promptly withdraw its referral to arbitration under the civil rules and abide by its earlier order compelling arbitration and staying proceedings affirmed by this court. If Odum wants to pursue his claim, he has to go through arbitration and comply with the terms of the parties' agreement. This should be the court's final word on the matter.

BILBREY and WINOKUR, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Donna J. Fudge, William Benjamin Broadwater, and Frederick Benjamin Bertron, Fudge Broadwater, P.A., St. Petersburg, for Appellants.

Charles M-P George, Coral Gables; and R. Waylon Thompson, Manuel & Thompson, P.A., Panama City, for Appellee.