FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-2930

FORT WALTON REHABILITATION CENTER, LLC, SOVEREIGN HEALTHCARE HOLDINGS, LLC, SOUTHERN HEALTHCARE MANAGEMENT, LLC, SOVEREIGN HEALTHCARE DISBURSEMENTS, LLC, ROBERT CALLANDER, and ERIC BRUN,

Appellants,

v.

THE ESTATE OF ETHELEENE GALLOWAY GORDON, by and through SHERVON TANYIKA THOMAS, Personal Representative, R. MARK CRONQUIST; JOHN O'DONNELL MANGINE; MARUTI FLEET & MGMT, LLC; OKALOOSA COUNTY COORDINATED TRANSPORTATION, INC. d/b/a OKALOOSA COUNTY TRANSIT; MARUTI TRANSIT GROUP, LLC,

Appellees.

On appeal from the Circuit Court for Okaloosa County.
Michael A. Flowers, Judge.

May 4, 2022

PER CURIAM.

Appellants—defendants below—bring this appeal from the trial court's non-final Order on Defendant's Motion to Abate and Compel Arbitration. We have jurisdiction. Art. V, § 4(b)(1), Fla. Const.; Fla. R. App. P. 9.130(a)(3)(C)(iv).

Appellee Shervon Tanyika Thomas, as personal representative of the estate of her mother, Etheleene Galloway Gordon, asserted various tort claims against Appellants. The trial court summarily denied Appellants' motion to compel the arbitration of those claims. On the record before us, we reverse.

Because it is a matter of contract interpretation, we review de novo a trial court's decision on the validity of an arbitration agreement. *State Bd. of Admin. v. Burns*, 70 So. 3d 678, 680 (Fla. 1st DCA 2011). Under both federal and Florida law, courts generally are to favor the use of arbitration agreements. *See* 9 U.S.C. § 2; § 682.02, Fla. Stat.; *Seifert v. U.S. Home Corp.*, 750 So. 2d 633, 636 (Fla. 1999); *Glob. Travel Mktg., Inc. v. Shea*, 908 So. 2d 392, 397 (Fla. 2005); *see also Vaden v. Discover Bank*, 556 U.S. 49, 58 (2009) (explaining that purpose of Federal Arbitration Act ("FAA") was "to overcome judicial resistance to arbitration" and "to declare a national policy favoring arbitration of claims that parties contract to settle in that manner" (internal quotations, citations, and marks omitted)). The law has us put "arbitration agreements upon the same footing as other contracts." *Volt Info. Scis., Inc. v. Bd. of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 474 (1989) (internal quotations and citations omitted).

In ruling on a motion to compel arbitration, courts are constrained by both "federal statutory provisions and Florida's arbitration code" to consider three elements: "(1) whether a valid written agreement to arbitrate exists; (2) whether an arbitrable issue exists; and (3) whether the right to arbitration was waived." *Seifert*, 750 So. 2d 633, 636 (Fla. 1999). Additionally, when disputed by the parties, courts must determine whether the arbitration agreement is unconscionable—both procedurally (the

manner in which the agreement was entered into and the absence of meaningful choice) and substantively (the unreasonableness of the agreement's terms). *Basulto v. Hialeah Auto.*, 141 So. 3d 1145, 1157–58 (Fla. 2014). "[U]nder Florida law, both the procedural and substantive prongs of unconscionability must be established as an affirmative defense to prevent the enforcement of an arbitration agreement." *Id.* at 1151; *see also Gainesville Health Care Ctr., Inc. v. Weston*, 857 So. 2d 278, 284 (Fla. 1st DCA 2003) ("Before a court may hold a contract unconscionable, it must find that it is *both* procedurally and substantively unconscionable.").

In the present case, the trial court made no findings regarding any of the *Seifert* elements. Neither did it consider—in any meaningful way—the issue of whether the arbitration agreement was unconscionable. Instead, the court's order was silent regarding the requisite legal considerations. However, our independent review of the record convinces us that both a valid written agreement to arbitrate and an arbitrable issue existed, and Appellants' right to arbitrate was not waived. Nor did we find a scintilla of record support to conclude that Appellants' arbitration agreement was procedurally and substantively unconscionable. To the contrary, the arbitration agreement was exemplary in its clarity and fairness of terms.

For these reasons, we reverse the trial court's decision and remand with instructions that it enter an order compelling arbitration.

REVERSED and REMANDED.

MAKAR, JAY, and TANENBAUM, JJ., concur.

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

Thomas A. Valdez of Quintairos, Prieto, Wood & Boyer, P.A., Tampa, for Appellants.

Lisa M. Tanaka and Michael K. Beck of Wilkes & Associates, P.A., Tampa, for Appellee The Estate of Etheleene Galloway Gordon, by and through Shervon Tanyika Thomas, Personal Representative.