DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

OSPREY HEALTH CARE CENTER, LLC;
a Florida limited liability company;
ENRIQUE DE LA PIEDRA;
and RANDY LEE SLOAN,

Appellants,

v.

DORIS H. PASCAZI,
by and through SHARON ANN OUTWATER, Attorney-in-Fact,

Appellee.

No. 2D19-4787

October 13, 2021

Appeal pursuant to Fla. R. App. P. 9.130 from the Circuit Court for Pinellas County; Thomas H. Minkoff, Judge.

Thomas A. Valdez and Vilma Martinez of Quintairos, Prieto, Wood & Boyer, P.A., Tampa; and Robin N. Khanal and Vanessa A. Braga of Quintairos, Prieto, Wood & Boyer, P.A., Orlando, for Appellants.

Megan M. Hunter, Megan Gisclar Colter, Lisa M. Tanaka, and Donna K. Hanes of Wilkes & Associates, P.A., Tampa, for Appellee.

LABRIT, Judge.

Appellants Osprey Health Care Center, LLC, Enrique de la Piedra, and Randy Lee Sloan (collectively, Osprey) appeal an order denying their motion to compel arbitration of claims that Appellee Doris H. Pascazi, by and through Sharon Outwater as attorney-in-fact, asserted against Osprey.[1] We reverse because the trial court erroneously concluded that the arbitration agreement is unconscionable.

Background

On March 20, 2015, Mrs. Pascazi was admitted to Osprey Health Care Center, a licensed assisted living facility. Sharon Outwater was authorized to act as Mrs. Pascazi's attorney-in-fact and signed several documents for Mrs. Pascazi's admission to Osprey Health Care Center, including a document entitled "Mediation and Arbitration Agreement," which this opinion refers to as the "arbitration agreement" or the "agreement."

[1] Enrique de la Piedra is the owner and managing member of Osprey Health Care Center, LLC; Randy Lee Sloan was an administrator at the assisted living facility during Mrs. Pascazi's residency.

Mrs. Pascazi left Osprey Health Care Center in January 2017; a year later, she sued Osprey and alleged claims for negligence, breach of fiduciary duty, and violations of section 415.1111, Florida Statutes (2016). Osprey moved to compel arbitration. Mrs. Pascazi opposed Osprey's motion, maintaining that the arbitration agreement was (1) invalid because it lacked specific terms regarding arbitration rules and procedures; (2) void as against public policy principally because it contained a provision impermissibly shortening the applicable statute of limitations; and (3) procedurally and substantively unconscionable for myriad reasons, including those underlying Mrs. Pascazi's "missing terms" and voidness arguments. In the vernacular, Mrs. Pascazi took a "spaghetti bowl" approach to argue that numerous issues rendered the agreement invalid, unconscionable, and void.

After holding two hearings on Osprey's motion, the trial court orally ruled that the agreement was unconscionable and denied Osprey's motion to compel arbitration in an unelaborated order. Rather than make any specific findings, the court announced that it simply would "adopt" Mrs. Pascazi's "argument on all the points that were argued" as to substantive unconscionability. The court

stated that—as part of its substantive unconscionability determination—it "adopted" Mrs. Pascazi's position that the shortened statute of limitations provision rendered the agreement void as against public policy. In response to Osprey's argument that findings of both procedural and substantive unconscionability were required, the court stated:

> I don't know to what degree I'm going to find there was procedural unconscionability, but I think that there is enough here for me to do the sliding scale[2] and to tack on substantive unconscionability of this contract. So in the totality of the circumstances, I'm going to also rule that there was procedural unconscionability in this case.

This appeal ensued.

Analysis

Courts consider three elements in determining whether to compel arbitration of a dispute: "(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 v. U.S. Home Corp.*, 750 So. 2d 633, 636 (Fla. 1999). This case concerns

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[2] *See Basulto v. Hialeah Auto.*, 141 So. 3d 1145, 1159 (Fla. 2014) (discussing "sliding scale" approach to procedural and substantive unconscionability).

only the first question because the parties agreed that an arbitrable issue exists and the right to arbitration had not been waived.

I. Standard of Review and Applicable Principles of Construction

A trial court's decision on the validity of an arbitration agreement is a matter of contract interpretation that is reviewed de novo. *Premier Real Est. Holdings, LLC v. Butch*, 24 So. 3d 708, 709–10 (Fla. 4th DCA 2009).

A party seeking to avoid enforcement of an arbitration agreement is burdened to demonstrate its invalidity. *Spring Lake NC, LLC v. Figueroa*, 104 So. 3d 1211, 1214 (Fla. 2d DCA 2012). Because arbitration is "a favored means of dispute resolution," courts are "required to indulge every reasonable presumption in favor of arbitration." *K.P. Meiring Constr., Inc. v. Northbay I & E, Inc.*, 761 So. 2d 1221, 1223 (Fla. 2d DCA 2000).

"The intent of the parties . . . as manifested in the plain language of the arbitration provision and contract itself, determines whether a dispute is subject to arbitration." *Jackson v. Shakespeare Found., Inc.*, 108 So. 3d 587, 593 (Fla. 2013). Like any other contract, an arbitration provision should be read "in the

context of the entire agreement . . . in a way that gives effect to all of the contract's provisions." *Retreat at Port of the Islands, LLC v. Port of the Islands Resort Hotel Condo. Ass'n,* 181 So. 3d 531, 533 (Fla. 2d DCA 2015) (citation omitted). Ambiguities in arbitration agreements generally should be resolved in favor of arbitration. *Jackson*, 108 So. 3d at 593.

II. Unconscionability

Osprey argues that the trial court erred reversibly by denying its motion to compel arbitration on the ground that the agreement is unconscionable. We agree.

Unconscionability is a defense to enforcement of an arbitration agreement and is based on the common law concept that a court may refuse to enforce a contract where it would be inequitable to do so. *See Basulto v. Hialeah Auto.*, 141 So. 3d 1145, 1157 (Fla. 2014). Because Mrs. Pascazi sought to avoid arbitration on unconscionability grounds, she was burdened to "establish that the arbitration agreement is both procedurally and substantively unconscionable." *Id.* at 1158; *see Zephyr Haven Health & Rehab Ctr., Inc. v. Hardin ex rel. Hardin*, 122 So. 3d 916, 920 (Fla. 2d DCA

2013) ("Where the party alleging unconscionability establishes only one of the two prongs, the claim fails.").

Procedural unconscionability "relates to the manner in which the contract was entered" and is described as "[t]he absence of meaningful choice when entering into the contract." *Basulto*, 141 So. 3d at 1157; *accord Fla. Holdings III, LLC v. Duerst*, 198 So. 3d 834, 838 (Fla. 2d DCA 2016) ("Procedural unconscionability . . . asks 'whether the complaining party had a meaningful choice at the time the contract was signed.' " (quoting *Brea Sarasota, LLC v. Bickel*, 95 So. 3d 1015, 1017 (Fla. 2d DCA 2012))). Substantive unconscionability "requires assessment of the contract's terms to 'determine whether they are so outrageously unfair as to shock the judicial conscience.' " *Zephyr Haven*, 122 So. 3d at 920 (quoting *Gainesville Health Care Ctr., Inc. v. Weston*, 857 So. 2d 278, 284–85 (Fla. 1st DCA 2003)).

The trial court made no specific findings on procedural unconscionability. Although it initially questioned Mrs. Pascazi's

procedural unconscionability theories,[3] the court ultimately found procedural unconscionability based on the "totality of the circumstances"—which circumstances the court wholly failed to identify.[4] The court apparently accepted Mrs. Pascazi's suggestion that her substantive unconscionability challenges were within the "totality of the circumstances" and could buttress a finding of procedural unconscionability.

This approach was plainly erroneous. A party seeking to avoid arbitration on unconscionability grounds must demonstrate **both**

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[3] To the extent she specifically addressed procedural unconscionability in the trial court, Mrs. Pascazi argued that (1) all nursing home admissions involve procedural unconscionability and (2) Ms. Outwater felt "rushed" during the admissions process and didn't fully appreciate the import of the agreement she signed. As the trial court correctly recognized, the first contention is legally unsupported. And as we explain in the body of this opinion, the second contention—which the trial court never specifically addressed in its unconscionability ruling—is legally insufficient to establish procedural unconscionability.

[4] Mrs. Pascazi's scattershot presentation of multiple arguments that conflated various legal concepts yielded a record that is, putting it generously, difficult to review within the applicable legal framework. The trial court's wholesale "adoption" of Mrs. Pascazi's arguments (in lieu of making specific findings) exacerbates this difficulty and could alone support reversal. *See, e.g.*, *Tropical Ford, Inc. v. Major*, 882 So. 2d 476, 479 (Fla. 5th DCA 2004) (stating that an order denying a motion to compel arbitration

procedural and substantive unconscionability, and the two types of unconscionability are distinct.[5] The "totality of the circumstances" on which the trial court properly could rely to find procedural unconscionability encompassed only matters pertinent to execution of the arbitration agreement, not challenges to its substance. *See Duerst*, 198 So. 3d at 839–42 (collecting cases and discussing examples of procedural unconscionability); *see also Brea Sarasota, LLC*, 95 So. 3d at 1017–18; *Hobby Lobby Stores, Inc. v. Cole*, 287 So. 3d 1272, 1275–76 (Fla. 5th DCA 2020).

As Osprey correctly argues, this record doesn't support a finding of procedural unconscionability. Confined to its proper

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"must be reversed" because trial court failed to "set forth any findings of substantive unconscionability"). We include this footnote to emphasize the utility of making **specific** findings (as opposed to a generalized, wholesale adoption of a party's several arguments) in disposing of motions to compel arbitration.

[5] We are mindful that procedural and substantive unconscionability are "evaluated interdependently rather than as independent elements." *Basulto*, 141 So. 3d at 1161. But that "interdependent" evaluation is a function of the "sliding scale" analysis mandated by *Basulto,* which recognizes that both forms of unconscionability "must be present, although not necessarily to the same degree." *Id.* Nothing in *Basulto* suggests that substantive unconscionability can suffice to establish procedural unconscionability, and the analytic framework for each form of unconscionability remains distinct.

boundaries, Mrs. Pascazi's procedural unconscionability claim is based on the facts that Ms. Outwater felt rushed during the admission meeting with Osprey because she had a "plane to catch," she didn't ask any questions of Osprey Health Care Center's admissions personnel, and she merely skimmed the documents before signing them, so she didn't fully understand the import of the agreement. Ms. Outwater received full copies of all documents, there was no evidence that she was either prevented or discouraged from reading them before she signed them, and there is no evidence that she was coerced or otherwise pressured to sign the documents.

These facts are legally insufficient to establish procedural unconscionability. *See Duerst*, 198 So. 3d at 839–40 (reversing finding of procedural unconscionability where party opposing arbitration admitted she had not read agreement and contended that (1) she had no legal background, (2) the documents had not been explained to her, (3) she was asked to sign them in a "hurried" process that lasted only ten minutes, and (4) she believed she had to sign the documents in order for her mother to receive treatment); *Bickel*, 95 So. 3d at 1017 ("A party to a contract is not 'permitted to avoid the consequences of a contract freely entered into simply

because he or she elected not to read and understand its terms before executing it, or because, in retrospect, the bargain turns out to be disadvantageous.' " (quoting *Gainesville Health Care Ctr.*, 857 So. 2d at 288)); *Cole*, 287 So. 3d at 1276 (finding procedural unconscionability lacking where there was no evidence that proponent of arbitration coerced execution of arbitration agreement or made false representations to induce its execution and opponent didn't claim he couldn't read agreement or ask questions or express confusion about its terms). Because we hold that Mrs. Pascazi failed to establish procedural unconscionability, we "need not address substantive unconscionability." *See Bickel*, 95 So. 3d at 1018; *see also Zephyr Haven*, 122 So. 3d at 920 ("Where the party alleging unconscionability establishes only one of the two prongs, the claim fails.").

III. Missing Terms

In the trial court, Mrs. Pascazi maintained that the agreement is impermissibly vague and lacks "essential terms." Osprey countered by arguing that any vagueness or missing terms could be

resolved by reference to the Revised Florida Arbitration Code (FAC).[6] Although the trial court never expressly ruled on the "missing terms" issue, at oral argument and in her brief Mrs. Pascazi maintained that Osprey's motion to compel arbitration was properly denied because Osprey "failed to establish the essential terms of the arbitration agreement." We address this issue because we must consider any record basis that would support affirmance. *See Dade Cnty. Sch. Bd. v. Radio Station WQBA*, 731 So. 2d 638, 644 (Fla. 1999).

In the trial court and on appeal, Mrs. Pascazi not only argued that the agreement was missing "essential terms," she also conflated her "missing terms" argument with her public policy and unconscionability arguments. Public policy violations and unconscionability are distinct concepts, *see Hochbaum ex rel. Hochbaum v. Palm Garden of Winter Haven, LLC*, 201 So. 3d 218, 220 (Fla. 2d DCA 2016), but both constitute **defenses** to enforcement of an arbitration agreement. *See Shotts v. OP Winter Haven, Inc.*, 86 So. 3d 456, 464-65 (Fla. 2011).

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[6] Ch. 682, Fla. Stat. (2016).

At bottom, Mrs. Pascazi's "missing terms" argument is not a **defense** to enforcement of the arbitration agreement; it questions whether the parties reached an agreement to arbitrate in the first instance. Accordingly, and consistent with section 682.02(2), Florida Statutes (2016), we evaluate this argument as part of the first prong of the *Seifert* analysis: whether an agreement to arbitrate exists. *Seifert*, 750 So. 2d at 636.

As she did in the trial court, Mrs. Pascazi argues that the order denying Osprey's motion to compel arbitration should be affirmed because the agreement is impermissibly vague regarding governing law and doesn't sufficiently specify procedures and rules for initiating and conducting arbitration. Mrs. Pascazi is incorrect for the reasons discussed below.

A. Applicability of the FAC and the Governing Law Provision

Osprey argued below and in this court that the FAC governs the instant agreement. Osprey is right. Section 682.013(1) establishes that the FAC "governs an agreement to arbitrate made on or after July 1, 2013." The arbitration agreement was executed on March 20, 2015. Parties to an arbitration agreement "may not

waive[] or . . . vary the effect of" the applicability of the FAC. § 682.014(3)(a).

In Florida, an arbitration agreement that doesn't involve interstate commerce is subject to the FAC; if an agreement involves interstate commerce, it is subject to the FAC to the extent the FAC doesn't conflict with the Federal Arbitration Act (FAA). *See Visiting Nurse Ass'n of Fla. v. Jupiter Med. Ctr., Inc.*, 154 So. 3d 1115, 1124 (Fla. 2014). Neither party has argued that this agreement implicates interstate commerce or that the FAC conflicts with the FAA as relevant to this dispute.

At oral argument, Mrs. Pascazi's counsel steadfastly refused to acknowledge that the FAC applies, essentially maintaining that it doesn't apply because the agreement is invalid and unenforceable. We reject this circuitous argument. Mrs. Pascazi's "missing terms" argument rests exclusively on Florida law. Mrs. Pascazi can't have her cake and eat it too. Just as Florida law applies to determine whether the agreement is invalid, it applies to determine whether the agreement is valid. *See S. Crane Rentals, Inc. v. City of Gainesville*, 429 So. 2d 771, 773 (Fla. 1st DCA 1983) ("The laws which exist at the time and place of the making of a contract enter

into and become a part of the contract made, as if they were expressly referred to and incorporated in its terms, including those laws which affect its construction, validity, enforcement or discharge." (citing *Humphreys v. State*, 145 So. 858, 861 (Fla. 1933))). In short, Florida law—specifically including the FAC—governs this agreement.

This conclusion disposes of Mrs. Pascazi's argument that the "governing law" provision (section IV of the arbitration agreement) is impermissibly vague or otherwise renders the agreement invalid. Section IV states that "[a]ll arbitrations covered by this agreement shall be adjudicated in accordance with the state or federal law which would be applied by a United States District Court sitting at [the place of the hearing]." While this provision doesn't specify what jurisdiction's law will apply to adjudication of arbitrable claims, it is undisputed that all relevant acts and events occurred in Florida, the nursing home is located in Florida, and the agreement was signed in Florida. And Mrs. Pascazi's complaint seeks relief pursuant to Florida's Adult Protective Services Act. There simply is no jurisdiction other than Florida whose law could apply to adjudication of the instant claims. *See, e.g., Tune v. Philip Morris*

Inc., 766 So. 2d 350, 353 (Fla. 2d DCA 2000) (discussing choice of law principles applicable to tort cases).

Mrs. Pascazi's contention that the bracketed language "[the place of the hearing]" in Section IV created ambiguity about whether arbitration "was supposed to be in Florida" is likewise meritless. And having filed the underlying lawsuit in Florida, Mrs. Pascazi can't "capriciously refus[e] to agree on Florida as a forum for arbitration, for the sole purpose of invalidating the arbitration [agreement]." *See K.P. Meiring Constr., Inc.*, 761 So. 2d at 1223.

B. Rules for Arbitration

We turn next to Mrs. Pascazi's argument that the trial court properly declined to enforce the agreement because it lacks "essential terms" concerning procedures and rules for arbitration. More specifically, Mrs. Pascazi contends that no agreement to arbitrate was reached because two successive provisions of the agreement are unclear about procedures and rules for arbitration. The subject provisions are as follows:

> VIII. Initiation of the Arbitration Process – To initiate the arbitration process, the aggrieved party must file a written claim. Claims can be filed with the office of Osprey Health Care Center, Inc. Service of the claim upon responding party shall be made in accordance with

> [the rules]. Copies of [the rules] are available upon request from the human resources department in each of the company's major facilities and from each of the regional offices, as well as from the office.
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> IX. Arbitration Procedures – Arbitrations pursuant to this agreement shall be conducted in accordance with the procedures set forth in [the rules], except where the rules conflict with this agreement, in which case the terms of this agreement shall govern.

According to Mrs. Pascazi, the bracketed text "[the rules]" lacks "essential terms" and renders the agreement invalid because the "parties and the trial court had no idea as to how an arbitration was to proceed." Mrs. Pascazi is incorrect. We start by recognizing that the

> essential terms of an arbitration agreement include "the form and procedure for arbitration, the number of arbitrators, how the arbitrators were to be selected, or . . . the issues to be decided by arbitration." . . . The terms must be definite enough so that the parties have some idea as to what matters are to be arbitrated and provide some procedure by which arbitration is to be effected.

Greenbrook NH, LLC v. Est. of Sayre, ex rel. Raymond, 150 So. 3d 878, 881 (Fla. 2d DCA 2014) (first alteration in original) (quoting *Malone & Hyde, Inc. v. RTC Transp., Inc.*, 515 So. 2d 365, 366 (Fla. 4th DCA 1987)).

It is beyond debate that these parties agreed to what matters are to be arbitrated. The agreement sets forth a comprehensive list of claims that are subject to arbitration, and the claims alleged in Mrs. Pascazi's complaint are undisputedly included within that list. The agreement also provides extensive guidance as to arbitration procedures: it specifies that there will be one arbitrator, it addresses the parties' right to counsel, it authorizes the arbitrator to award prevailing party attorneys' fees, and it contains detailed provisions concerning the arbitrator's authority with respect to discovery, disposition of motions, and issuance of a final award. And as Section IX plainly states, in the event of a conflict between "the rules" and the agreement, the agreement "shall govern." Osprey never provided (and Mrs. Pascazi never requested) a copy of "the rules" (and "the rules" are not in our record) so it is appropriate to default to the agreement, the provisions of which adequately set forth the rules and procedures for arbitration.

Even if there were a gap or lack of clarity concerning arbitration procedures, the FAC would supply those terms. *See Premier Real Est.*, 24 So. 3d at 710–12; *see also Greenbrook*, 150 So. 3d at 882. Mrs. Pascazi resists this conclusion by noting that

Premier, *Greenbrook*, and similar authorities featured arbitration agreements that specifically invoked Florida law or the FAC. It is true that the subject agreement doesn't specifically invoke Florida law or the FAC, but this is of no moment for the reasons discussed in section III(A) above.

Lastly, although this issue isn't well-developed in her brief, Mrs. Pascazi maintained in the trial court and at oral argument that section VIII of the agreement is invalid because no entity called "Osprey Health Care Center, Inc." exists and the real party in interest is Osprey Health Care Center, LLC. This argument is unavailing for two reasons. First, section VIII says that claims "can be filed" with the incorrectly described Osprey entity; it doesn't **mandate** that claims are to be filed with that entity, and the FAC prescribes a procedure for initiation of arbitration if the parties' agreement fails in that regard. *See* § 682.032(1). Second, Mrs. Pascazi obviously understood that her claim should be brought against Osprey Health Care Center, LLC, because that is the entity she named in her complaint.

In the end, Mrs. Pascazi did not and cannot establish in what manner the procedures for arbitration are insufficiently delineated

in the agreement, which is unsurprising given the comprehensive procedures that **are** spelled out in the agreement. To the extent any question remains as to arbitration procedures, the FAC addresses matters such as arbitrator appointment, conduct of the arbitration hearing, the award and modification of it, remedies, and so on. *See* §§ 682.04, .06, .08–.11. Stated bluntly, Mrs. Pascazi's "missing terms" argument is all hat, no cattle, and does not provide an alternate basis for affirmance of the order on review.

IV. Public Policy Violations and Severability Issues

In the trial court, Mrs. Pascazi argued that the arbitration agreement violates public policy because it contains a provision purporting to impose a one-year statute of limitations for claims by Osprey residents. This provision is inconsistent with section 429.296, Florida Statutes (2016) (prescribing a two-year statute of limitations for claims against assisted living facilities), so it is void. *See* § 95.03, Fla. Stat. (2016). In the trial court, Osprey conceded

that the provision is void and argued—as it does here—that the provision can and should be severed.[7] We agree.

Generally speaking, an unenforceable provision is severable if it "does not go to the heart of the [arbitration agreement]." *Hochbaum*, 201 So. 3d at 223. Stated differently, if an arbitration agreement is otherwise enforceable, a "court should sever the offending provisions . . . so long as such severance does not undermine the parties' intent." *Lemos v. Sessa*, 319 So. 3d 135, 142 (Fla. 3d DCA 2021) (citing *Healthcomp Evaluation Servs. Corp.*

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[7] The trial court engaged in extensive colloquy with counsel for both parties on whether the provision was void and whether it was severable, but it never directly ruled on either question. It appears that the trial court mistakenly viewed the statute of limitations issue as one of substantive unconscionability. "But the question of whether an agreement is unconscionable is distinct from the question of whether it is void as against public policy." *See Hochbaum*, 201 So. 3d at 220. Notwithstanding the trial court's failure to directly rule on the public policy issue, we must address it and do so independently of the parties' unconscionability arguments. *See Bland ex. rel. Coker v. Health Care & Ret. Corp. of Am.*, 927 So. 2d 252, 257–58 (Fla. 2d DCA 2006) (noting distinction between public policy violations and unconscionability and stating that despite the trial court's failure to make a specific ruling as to public policy, "we are, nonetheless, compelled to address an issue that is becoming a recurrent theme in cases brought before the district courts of appeal"), *abrogated in part on other grounds by Basulto*, 141 So. 3d at 1145, 1159-60, and *Shotts*, 86 So. 3d at 474.

v. O'Donnell, 817 So. 2d 1095, 1098 (Fla. 2d DCA 2002)). We begin by observing that the parties' intent regarding severance of void provisions is unambiguously expressed in Section XVIII of the agreement:

> XVIII. **Severability** - **A court construing this agreement may modify or interpret it in order to render it enforceable**. If this agreement is declared unenforceable, the parties agree to waive any right to a jury trial with respect to any dispute to which this agreement applies. **If any provision of this agreement or the code is adjudged to be void or otherwise unenforceable, in whole or in part, such adjudication shall not affect the validity of the remainder of the agreement** or code.

(Emphasis added.)

While this provision supports Osprey's severance argument, it is not dispositive. *See Hochbaum*, 201 So. 3d at 221–22. The "controlling issue is whether an offending clause or clauses go to 'the very essence of the agreement.' " *Id.* at 222 (quoting *Est. of Yetta Novosett v. Arc Vills. II, LLC*, 189 So. 3d 895, 896 (Fla. 5th DCA 2016)); *accord 4927 Voorhees Rd., LLC v. Tesoriero*, 291 So. 3d 668, 671 (Fla. 2d DCA 2020). Severance of a void provision from an arbitration agreement is impermissible if it requires a court "to

rewrite the agreement and to add an entirely new set of procedural rules and burdens and standards." *Shotts*, 86 So. 3d at 478.

We have no trouble concluding that the void statute of limitations provision doesn't go to the essence of, and is severable from, the instant arbitration agreement. This court's decisions in *Hochbaum* and *Tesoriero* guide our analysis and inform our conclusion. In *Hochbaum*, we examined a nursing home arbitration agreement that required the parties to equally bear arbitration attorneys' fees, in violation of section 415.1111, Florida Statutes (2013) (providing for prevailing party attorneys' fees in actions arising under the Adult Protective Services Act). *Hochbaum*, 201 So. 3d at 221. Although the *Hochbaum* agreement didn't include a severability provision, we held that the offending attorneys' fee clause was nonetheless severable "because it [did] not go to the essence of the agreement." *Id.* at 223. As we explained,

> [i]t is clear from the agreements in this case that **the parties agreed to bind themselves to arbitration for any disputes arising out of Donald Hochbaum's residency at the nursing home.** The attorneys' fees provision does not go to the heart of the contracts, and **severance of the attorneys' fees provision would not require a drastic rewriting of the agreements and would preserve the intent of the parties to adjudicate their disputes in arbitration**.

Id. (emphasis added).

More recently, in *Tesoriero*, the trial court denied a motion to compel arbitration because two provisions in the agreement violated public policy.[8] 291 So. 3d at 668. Similar to the instant agreement, the *Tesoriero* agreement provided that "[i]f any term of this Agreement is determined to be invalid or unenforceable for any reason, then the parties' intent is that only such term be severed, and this Agreement's remaining terms shall be enforced." *Id.* at 670. We reversed, holding that the offending provisions were severable. *Id.* at 673. As we explained, "[t]he essence of an arbitration agreement is the selection of a forum in which to resolve disputes as an alternative to litigation in court." *Id.* at 671.

Like in *Tesoriero*, here the parties' selection of arbitration as an alternative to litigation is "embodied" throughout the instant agreement. *See id.* The preamble recites that the agreement's "purpose" is to "avoid the time, expense and emotions of dragging

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[8] The *Tesoriero* agreement prescribed limitations on damages that violated chapter 400, and—similar to the *Hochbaum* agreement—it contained an attorneys' fee provision that contravened Florida law. *See Tesoriero*, 291 So. 3d at 670.

our problems through the litigation system." To effectuate this purpose, the parties "consent[ed] to the resolution by binding arbitration of all claims or controversies for which federal or state court[s] would be authorized to grant relief"; that same provision confirms that the "purpose and effect of this agreement is to substitute arbitration as the forum for resolution of" all claims covered by the agreement, which undisputedly include the claims Mrs. Pascazi here asserts. The agreement also provides for a single arbitrator and reflects that the parties (1) "waive[d] any right to have related disputes litigated in a court or by jury trial"; (2) acknowledged that "[f]or claims covered by this agreement, arbitration is the parties' exclusive legal remedy"; and (3) defined the arbitrator's authority with respect to discovery, disposition of motions, and issuance of a written award.

As in *Hochbaum* and *Tesoriero*, these provisions establish that the "essence" of the agreement is the parties' mutual intent to resolve their disputes by arbitration, not litigation. In other words, "the true essence" of the instant "Mediation & Arbitration Agreement" is, "as its name suggests, arbitration, and its financial heart was the reduced costs and time-saving benefits accompanying

arbitration." *See Obolensky v. Chatsworth at Wellington Green, LLC*, 240 So. 3d 6, 11 (Fla. 4th DCA 2018); *see also Estate of Deresh v. FS Tenant Pool III Tr.*, 95 So. 3d 296, 301 (Fla. 4th DCA 2012) (holding that "invalid punitive damages limitation . . . did not go to the heart of the arbitration agreement," the "primary thrust" of which was "to avoid costly and time-consuming litigation").

Against this precedential backdrop, the shortened statute of limitations provision—which is a free-standing clause in the arbitration agreement[9]—doesn't "go to the heart of the contract[]," and severing it would "not require a drastic rewriting of the agreement[] and would preserve the intent of the parties to adjudicate their disputes in arbitration." *See Hochbaum*, 201 So. 3d at 223. This conclusion is reinforced by the severability provision, which unambiguously manifests "the parties' commitment to arbitrate disputes even without the offending provisions." *See Tesoriero*, 291 So. 3d at 672; *see also Deresh*, 95

[9] In its entirety, the provision states that "[a]ny claim governed by this agreement shall be filed no later than one year from the date of discovery, or one year from the last date of residency, whichever comes first."

So. 3d at 301 ("The severance clause declares the intent of the [arbitration] agreement to preserve the agreement in the event 'any provision' of the agreement is declared unlawful.").

In opposition to Osprey's severance argument, Mrs. Pascazi contends that the severability provision is eviscerated because another provision of the agreement states that it "can be modified or revoked only by writing signed by [both parties] that references this agreement and specifically states an intent to modify or revoke this agreement." Under Mrs. Pascazi's lights, this means judicial severance can only occur if both parties agree to such severance in writing. We reject this interpretation because it wholly fails to give effect to the plain text of the severability provision (which explicitly authorizes "a court construing this agreement" to "**modify** or interpret it to render it enforceable," including by severing void terms), and it leads to an obviously absurd result. This, of course, is inconsistent with basic principles of contract interpretation. *See, e.g.*, *Famiglio v. Famiglio*, 279 So. 3d 736, 740 (Fla. 2d DCA 2019) (holding that courts must endeavor to give effect to **all** provisions in an agreement and avoid an interpretation "that would lead to an absurd result").

In the trial court, Mrs. Pascazi also argued that the agreement violates public policy because it (1) doesn't provide for "limited appeal rights" and (2) authorizes the arbitrator rather than a court to determine "enforceability of the arbitration agreement." The trial court never ruled on these points, and Mrs. Pascazi's brief gives them scant attention. Nonetheless, we address these issues because we must consider any record basis that would support affirmance. *See Dade Cnty. Sch. Bd.*, 731 So. 2d at 644.

We reject Mrs. Pascazi's first contention out of hand because the arbitration agreement nowhere mentions appellate rights. Furthermore—as Mrs. Pascazi acknowledges—the FAC provides for certain limited appeal rights, *see* § 682.20, and nothing in the agreement can be fairly read to foreclose or circumscribe those rights. Mrs. Pascazi's second contention doesn't support affirmance either. The FAC provides that a court "shall decide whether an agreement to arbitrate exists" and that an arbitrator "shall decide . . . whether a contract containing a valid agreement to arbitrate **is**

enforceable." *See* § 682.02(2)–(3) (emphasis added).[10] The challenged provision is facially consistent with this statutory provision, so it doesn't violate public policy.

In short, the only true public policy violation made out in this case is the shortened statute of limitations provision. We hold that it is severable. To the extent the trial court concluded otherwise in its misguided substantive unconscionability analysis, it did so erroneously. In this case, "[*r*]*efusing* to sever" the provision "would cut out the heart of the agreement for a peripheral illegality." *See Deresh*, 95 So. 3d at 301.

The parties spent much time in the trial court debating *Shotts* and *Gessa v. Manor Care of Florida, Inc.*, 86 So. 3d 484 (Fla. 2011). In simple terms, those cases held that severance was inappropriate where severing the "offending" provisions (which differed

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[10] In the 2013 amendments to the FAC, the legislature added text mandating that **courts "shall decide whether an agreement to arbitrate exists**" and that **arbitrators "shall decide . . . whether a contract containing a valid agreement to arbitrate is enforceable**." Ch. 2013-232, § 7, Laws of Fla. (emphasis added) (corresponding to subsections 682.02(2) and (3)). Neither party has raised the propriety of submitting the enforceability question to a court rather than an arbitrator, and we express no opinion on this issue.

significantly from the provisions Mrs. Pascazi here challenges) would require a judicial rewrite of the arbitration agreements. Although Osprey exhaustively briefed argument as to why *Shotts* and *Gessa* do not preclude severance of the statute of limitations provision, Mrs. Pascazi didn't respond directly to Osprey's argument, instead relying on her conclusory assertion that the challenged provisions "hinder a claimant's ability to vindicate their rights" and therefore render the entire arbitration agreement unenforceable "as void against Florida's public policy."

To reiterate, the only provision of the agreement that violates public policy is the statute of limitations provision. And in *Tesoriero*, we rejected an argument functionally identical to Mrs. Pascazi's argument against severance; in so doing, we highlighted several distinctions between *Gessa* and *Shotts* and the facts of *Tesoriero*. *See Tesoriero*, 291 So. 3d at 671–72. Those distinctions apply with equal force here. For the same reasons we explained in *Tesoriero*, we agree with Osprey that neither *Shotts* nor *Gessa* preclude severance of the statute of limitations provision.

Conclusion

These parties made a valid agreement in which they agreed to arbitrate claims of the type alleged in Mrs. Pascazi's complaint. Mrs. Pascazi failed to carry her burden of establishing that the agreement is procedurally and substantively unconscionable. The trial court erred reversibly by denying Osprey's motion to compel arbitration on this ground.

The agreement provides comprehensive guidance concerning arbitration procedures, and any remaining "gaps" as to such procedures can be resolved by reference to the FAC. The shortened statute of limitations provision violates public policy, but it can and should be severed from the agreement.

Reversed and remanded with instructions to enter an order compelling arbitration.

KELLY and BLACK, JJ., Concur.

Opinion subject to revision prior to official publication.