STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0242

Jacqueline E. Heintz individually
and as Personal Representative of the Estate of Ada L. Colvin,
Respondent,

vs.

Cambridge Investment Research, Inc., et al.,
Appellants.

Filed December 2, 2019
Affirmed
Florey, Judge

Hennepin County District Court
File No. 27-CV-18-17627

Kirsten J. Hansen, Patrick M. Biren, Alex A. Herman, Stich, Angell, Kreidler & Unke, P.A., Minneapolis, Minnesota (for respondent)

Ansis V. Viksnins, Mae B. van Lengerich, Monroe Moxness Berg, P.A., Minneapolis, Minnesota; and

Steven J. Alagna (pro hac vice) Bryan Cave Leighton Paisner, St. Louis, Missouri (for appellants)

Considered and decided by Florey, Presiding Judge; Reyes, Judge; and Smith, Tracy M., Judge.

U N P U B L I S H E D O P I N I O N

FLOREY, Judge

Appellants seek review of the district court's order staying their motion to compel arbitration. Appellants argue that several valid arbitration agreements exist between the parties, pursuant to which any questions of arbitrability should be submitted to an arbitrator. Respondent challenges the existence, validity, and/or applicability of any such agreements on several grounds. The district court found there to be a fact issue precluding appellant's motion to compel and stayed that motion pending further discovery. We affirm.

FACTS

Respondent Jacqueline Heintz is the daughter of Ada Colvin, who passed away in 2017. In 1990, Colvin appointed Heintz as her power of attorney (POA) and opened a transfer-on-death (TOD) investment account with Transamerica Financial Resources (Transamerica). In 2011, Heintz was made the sole primary beneficiary of the account's proceeds. In 2014, the investment adviser representative (IAR) who helped Heintz and Colvin with the TOD account retired, and appellant Lisa Nesser became the new IAR for the account.

In 2016, Transamerica notified Heintz and Colvin that it was selling certain assets and that their TOD account had to be moved to a different firm. At around the same time, Nesser sent Heintz and Colvin a letter, informing them that she was aligning her work with appellant Cambridge Investment Research, Inc. (Cambridge)—a firm that Nesser said was a better fit for her and her clients. Nesser included certain papers with the letter and instructions for Heintz, as Colvin's POA, to sign and return them in order to register

Cambridge as the new broker/dealer of record. Heintz signed and returned the papers as instructed. Appellants contend that, between the mailed documents and others, there were three separate agreements between themselves and Heintz.

Cambridge became the new broker/dealer for the account in April of 2016. According to her appellate brief, Heintz did not learn until after Colvin passed away in March 2017 that Nesser incorrectly registered the account with Cambridge as a nonqualified individual account, rather than an individual TOD account. Rather than admitting her mistake, Heintz alleges, Nesser misrepresented to Cambridge that the account had never been designated a TOD and altered documents in the Transamerica file to continue misleading Cambridge. This error, Heintz claims, caused the account to fail to vest in her as the sole beneficiary, becoming the estate's probate asset instead. This was the impetus for Heintz's original action—brought against Cambridge, Cambridge Investment Research Advisors, Inc. (CIRA), Lisa Nesser, and Lisa Nesser, LLC (collectively, appellants)—alleging, inter alia, negligence and fraud.

After Heintz filed and served the complaint, appellants filed a motion to compel arbitration based on the three purported agreements. Heintz challenged the motion on several grounds, and the district court stayed the motion. The district court cited "among other issues, a fact question" as the reason for staying the motion. Appellants took appeal, and Heintz challenged that appeal on jurisdictional grounds, arguing that the stay was not an order denying arbitration or otherwise a final decision and therefore not amenable to review. This court instructed the parties to brief the appealability issue, whereafter we held

that the district court's order was, in effect, an order denying appellants' motion and thus subject to appeal under Minn. Stat. §§ 572B.01-.31 (2018). This appeal follows.

D E C I S I O N

Appellants argue that the district court erred in effectively denying their motion to compel arbitration in part because there were three separate agreements to arbitrate, and the court's order mentions a fact issue as to only one of them. Appellants argue that any one of the agreements is sufficient to compel arbitration, and the district court's order should be reversed. In response, Heintz levies numerous attacks on the existence, validity, and/or scope of each of the purported agreements—one of which being her allegedly forged signature.[1] Heintz's allegation of forgery was the only fact issue specifically identified by the district court's order. On appeal, the parties allege numerous facts and have briefed issues on applicable law, statutory construction, agency, fraud, contract law, and the scope of the purported agreements. We cannot, however, reach any of it, because the procedural posture of this case substantially limits our review.

This case barely progressed past the pleading stage before being appealed. Save for the order staying appellants' motion, there are no final judgments or other determinations to review. Even if there were, there has been neither evidence nor findings of fact upon which we could base such a review. Because the district court made no mention of the other two agreements, this court cannot resolve appellants' primary argument without

[1] Some of Heintz's other allegations include certain parts of the agreements being left out when she received them; Nesser leaving misleading or otherwise improper instructions; and certain clauses, including an arbitration clause that was purportedly incorporated by reference, being withheld from her until appellants' motion to compel arbitration.

independently finding facts and deciding unanswered questions. *Hoyt Inv. Co. v. Bloomington Commerce & Trade Ctr. Assocs.*, 418 N.W.2d 173, 175 (Minn. 1988) ("[A]n undecided question is not usually amenable to appellate review."); *Fontaine v. Steen*, 759 N.W.2d 672, 679 (Minn. App. 2009) ("It is not within the province of appellate courts to determine issues of fact on appeal." (internal quotation omitted)). That is, we cannot decide whether the district court erred in staying the motion to compel on the basis of the other two agreements without independently ruling on the existence, validity, and scope of those agreements. Therefore, the only issue we review is whether the district court erred in staying appellants' motion to compel, *insofar as* that order was based on Heintz's forgery allegation.

Appellants argue that we may pass upon the applicability of the other agreements because our review is de novo. *Kilcher v. Dale*, 784 N.W.2d 866, 870 (Minn. App. 2010). It is true that our review is de novo. Under normal circumstances, on appeal from a district court's interpretation of an arbitration agreement, we are tasked with reviewing whether (1) a valid agreement to arbitrate exists and (2) the dispute at hand falls within the scope of the arbitration agreement. *Id.* Had the district court denied the motion to compel arbitration on either of these bases, appellants would be correct in their assertion that we could reach that question. However, the district court denied the motion to compel not because it found there to be no agreement that applies to this dispute, but because it did not have enough information to even reach those questions. Appellants would have us not *review* an interpretation of an agreement, but conduct the initial interpretation ourselves upon the parties' bare allegations alone. We cannot determine whether there existed other

agreements to arbitrate and that the district court thereby erred in staying the motion to compel arbitration.[2]

With respect to the issue of whether the district court erred in not compelling arbitration based on Heintz's forgery allegation, appellants argue that, to the extent that the arbitrability of Heintz's claims is at issue, the parties agreed to submit the issue of arbitrability to arbitration. Again, this is a generally correct assertion, but it does not resolve the issue here. When a plaintiff's argument against arbitration is that there is no legally effective agreement to arbitrate, the court must resolve that issue before compelling arbitration. *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 403 (1967) ("[The] court is instructed to order arbitration to proceed once it is satisfied that the making of the agreement for arbitration . . . is not an issue." (internal quotation omitted)). The Minnesota Supreme Court has extended this principle to allegations against the existence of the contract itself. *Onvoy, Inc. v. SHAL, LLC*, 669 N.W.2d 344, 353-54 (Minn. 2003) ("[P]arties may not be compelled to arbitrate claims if they have alleged that the contract at issue never legally existed.").

It is undisputed that a forged signature could amount to fraud and nullify a contract. *Strader v. Haley*, 12 N.W.2d 608, 611 (Minn. 1943) ("When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative . . . ." (internal quotation omitted)). Heintz's allegation that her signature was

[2] While the district court mentioned only the alleged forgery as a fact issue precluding arbitration, it stated that this was "among other issues," and we simply cannot pass upon the propriety of that decision at this early stage.

forged on one agreement is a claim of fraudulent inducement of that agreement. Moreover, Heintz alleges facts that put into question whether she was provided with the information and forms necessary to enter into valid and enforceable agreements. The district court, therefore, did not err in staying appellants' motion to compel arbitration. *Onvoy*, 669 N.W.2d at 354 ("[A]llegations that a contract is void may be heard by a court."). The district court must first establish that a valid contract and agreement to arbitrate exists; and it, like us, cannot do so on the dearth of this record.

We emphasize that we are not passing upon the arbitrability of Heintz's claims. We only affirm the district court's order staying arbitration pending further discovery so that it may decide the threshold question of whether a valid contract and agreement to arbitrate exists.

Affirmed.