[Cite as *Cremeans v. Heartland of Chillicothe OH, L.L.C.*, 2017-Ohio-9399.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

WILLIAM CREMEANS, AS THE ADMINISTRATOR OF THE ESTATE OF KAREN A. CREMEANS (DECEASED),	:	Case No. 17CA3589
Plaintiff-Appellee,	:	
v.	:	DECISION AND JUDGMENT ENTRY
HEARTLAND OF CHILLICOTHE OH, L.L.C., ET AL.,	:	
		RELEASED: 12/29/2017
Defendants-Appellants.	:	

APPEARANCES:

David H. Krause and Michael M. Mahon, Reminger Co., L.P.A., Columbus, Ohio, for appellants.

Michael L. Benson and Mark D. Tolles, Benson & Sesser, L.L.C., Chillicothe, Ohio, for appellees.

Harsha, J.

{¶1} William Cremeans, the administrator of the estate of a deceased, filed claims against Heartland of Chillicothe OH, L.L.C., and other related defendants, which the administrator alleged owned and operated a nursing home where the decedent had been a resident before she died. The defendants claim the common pleas court erred by denying their motion to stay proceedings in the case pending arbitration.

{¶2} We reject their assertion because the defendants were not parties to the arbitration agreement and were not entitled to enforce the agreement as third-party beneficiaries. Therefore, we overrule the defendants' assignment of error and affirm the judgment denying their motion to stay proceedings pending arbitration.

I. FACTS

{¶3} In June 2013, the decedent, Karen A. Cremeans, was admitted as a resident of Heartland of Chillicothe, a nursing home operated by Heartland of Chillicothe OH, L.L.C. She signed an admission agreement and a separate arbitration agreement. Both agreements referred to the parties being the "Patient," i.e., Karen Cremeans, and the "Center." The "Center" was defined in the admission agreement as "Healthcare & Retirement Corp of America DBA Heartland of Chillicothe," but at that time Health Care and Retirement Corporation of America did not exist, having merged into Manor Care, Inc. in 2007. The "Center" was not defined in the arbitration agreement. And Heartland of Chillicothe OH, L.L.C. was the new owner of the registered trade name of Heartland of Chillicothe for the nursing home.

{¶4} One of the headings near the top of the arbitration agreement included the following blanks, which the parties did not fill out: "Made on _____ __ ___ (date) by and between the Patient _____ or the Patient's Legal Representative ____ ____ _____ (collectively referred to as 'Patient') and the Center __ ____ _____ __." The arbitration agreement states that "[a]ll claims arising out of or relating to this Agreement, the Admission Agreement or any and all past and future admissions of the Patient at this Center, or any sister Center operated by any subsidiary of HCR ManorCare, Inc. ('Sister Center'), including claims for malpractice, shall be submitted to arbitration." Karen Cremeans signed the arbitration agreement as the patient at the end of the agreement, and Brenda Long signed as the "Center Representative," but no identification of the Center is contained in the agreement.

{¶5} After being discharged from the Heartland of Chillicothe nursing home in October 2015, Karen Cremeans died on November 30, 2015. The probate court

appointed William Cremeans as the administrator of her estate for the purpose of investigating a potential medical negligence claim.

{¶6} Approximately a year later the administrator filed a complaint in the Ross County Court of Common Pleas raising claims of medical negligence, ordinary negligence, statutory violations of the Nursing Home Residents' Bill of Rights, wrongful death, and spoliation, i.e., tortious interference or destruction of evidence. The administrator named Heartland of Chillicothe OH, L.L.C., Manor Care, Inc., HCR Manorcare, Inc., HCR Manor Care Services, L.L.C., HCR Manor Care, L.L.C., as well as several John Doe individuals and entities as defendants that owned, operated, and/or controlled the Heartland of Chillicothe nursing home when Karen Cremeans was a resident there.

{¶7} The defendants responded to the complaint by filing a motion to stay the proceedings pending arbitration and an answer, which included the defense that "[s]ome or all of Plaintiff's claims are barred by a pre-existing mandatory arbitration agreement." The defendants concluded their answer by requesting a jury trial.

{¶8} The administrator's memorandum in opposition to the defendants' motion to stay claimed that "the alleged arbitration clause is void, invalid, and unenforceable" for multiple reasons: (1) the defendants waived any right to arbitration by actively participating in the case, including by filing an answer and demanding a jury trial; (2) the decedent's admission agreement states that it, as well as any arbitration provision contained therein, automatically terminated on her discharge; (3) none of the defendants is identified as a party to the arbitration agreement; (4) the arbitration agreement did not comply with various provisions of R.C. 2711.23; (5) the wrongful

death claims cannot be stayed because they are not arbitrable; and (6) the spoliation claim cannot be stayed because it is not arbitrable.

{¶9} The defendants filed a reply contesting each of the grounds raised by the administrator. The reply also requested the trial court to reform the arbitration agreement in the event that the trial court agreed with the administrator that none of them were named as parties to the arbitration agreement.

{¶10} The trial court entered a judgment denying the defendants' motion to stay the proceedings pending arbitration.[1] The court stated that "[b]ased upon the evidence and arguments presented by the parties, and the Court's independent review thereof, the Court finds that the arbitration clause at issue is invalid, void, and/or unenforceable for the reasons stated in Plaintiff's Memorandum in Opposition." The court did not mention whether it had considered the defendants' alternate claim for reformation of the arbitration agreement.

II. ASSIGNMENT OF ERROR

{¶11} The defendants assign the following error for our review:

> THE TRIAL COURT ERRED BY NOT STAYING PLAINTIFF'S CLAIMS AGAINST HEARTLAND PENDING ARBITRATION.

III. STANDARD OF REVIEW

{¶12} In general " '[a]n appellate court reviews a trial court's decision to grant or deny a motion to compel arbitration or stay the proceedings under the abuse of discretion standard.' " *Primmer v. Healthcare Indus. Corp.,* 2015-Ohio-4104, 43 N.E.3d 788, ¶ 8 (4th Dist.2015), quoting *Fields v. Herrnstein Chrysler, Inc.,* 4th Dist. Pike No

[1] "An order granting or denying a motion for stay pending arbitration is a final, appealable order." *Felix v. Ganley Chevrolet, Inc.*, 145 Ohio St.3d 329, 2015-Ohio-3430, 49 N.E.3d 1224, fn. 3, citing R.C. 2711.02(C).

12CA827, 2013-Ohio-693, ¶ 12; *K.M.P., Inc. v. Ohio Historical Society,* 4th Dist. Jackson No. 03CA2, 2003-Ohio-4443, ¶ 14.

{¶13} Nevertheless, " '[a] trial court's decision granting or denying a stay of proceedings pending arbitration is * * * subject to de novo review * * * on issues of law, which will commonly predominate because such cases generally turn on issues of contractual interpretation * * *.' " *McFarren v. Emeritus at Canton,* 2013-Ohio-3900, 997 N.E.2d 1254, ¶ 13 (5th Dist.), quoting *Hudson v. John Hancock Fin. Servs.,* 10th Dist. Franklin No. 06AP–1284, 2007-Ohio-6997, ¶ 8; *see also Duncan v. Wheeler,* 4th Dist. Scioto No. 09CA3296, 2010-Ohio-4836, ¶ 5 (in appeal from denial of motion to stay proceedings and to compel arbitration, we observed that "appellate courts employ a de novo standard when reviewing a trial court's interpretation of contract provisions, including arbitration provisions"); *Taylor Bldg. Corp. of Am. v. Benfield,* 117 Ohio St.3d 352, 2008-Ohio-938, 884 N.E.2d 12, ¶ 37 (rejecting an abuse-of-discretion standard of review and applying a de novo standard of review in reviewing decision granting motion to stay litigation and compel arbitration when the underlying issue was whether the arbitration provision was unenforceable because of alleged unconscionability).

{¶14} For the most part, the issues raised here are legal ones: (1) whether the arbitration agreement is valid and enforceable, *see Fravel v. Columbus Rehab. & Subacute Inst.*, 2015-Ohio-5125, 53 N.E.3d 953, ¶ 9 (10th Dist.) ("The question whether the arbitration agreement is valid or enforceable is a matter of law for de novo review"); (2) whether claims are arbitrable, *see Bright Future Partners, Inc. v. Proctor & Gamble Distributing, L.L.C.*, 1st Dist. Hamilton No. A-1601857, 2017-Ohio-4145, ¶ 17 ("Whether a controversy is arbitrable under a contract requires the court to invoke principles of

contract interpretation, and presents a question of law that we review de novo"); and (3) whether a case that includes arbitrable and non-arbitrable claims, upon request of one of the parties, requires staying the entire case until the arbitration of the arbitrable claims has concluded, *see Raber v. Emeritus at Marietta*, 2016-Ohio-1531, 49 N.E.3d 345, ¶ 13 (4th Dist.).

{¶15} Therefore, except where otherwise noted, we will review the trial court's decision under a de novo standard of review.

IV. LAW AND ANALYSIS

A. General Principles

{¶16} Because the trial court summarily cited "the reasons stated" in the administrator's memorandum in opposition, we must determine whether the appellants are correct in contending none of the grounds asserted below by the administrator are a proper basis for denying their motion to stay. Before doing so, we consider the general principles concerning arbitration.

{¶17} "Both the Ohio General Assembly and Ohio courts have expressed a strong public policy favoring arbitration." *Hayes v. Oakridge Home*, 122 Ohio St.3d 63, 2009-Ohio-2054, 908 N.E.2d 408, ¶ 15, citing R.C. Chapter 2711 and *Taylor Bldg. Corp. of Am.*, 117 Ohio St.3d 352, 2008-Ohio-938, 884 N.E.2d 12,at ¶ 27. Arbitration is favored because it provides a relatively expeditious and economical means of resolving a dispute, and it alleviates crowded court dockets. *Id.* Because of the strong presumption favoring arbitration, all doubts are resolved in its favor. *Id.*

{¶18} "The General Assembly has endorsed the strong policy in favor of arbitration of disputes in R.C. 2711.01(A), which provides that an arbitration agreement

'shall be valid, irrevocable, and enforceable, except upon grounds that exist at law or in equity for the revocation of any contract.' " *Hayes* at ¶ 16. R.C. 2711.02 provides for the enforcement of an arbitration agreement; a party to the agreement may obtain a stay of litigation pending arbitration. R.C. 2711.01(B).

B. The Defendants are not Parties

to the Arbitration Agreement

{¶19} The administrator claimed in his memorandum in opposition that the defendants could not enforce the arbitration agreement because they were not parties to it. "[O]nly signatories to an arbitration agreement are bound by its terms." *Peters v. Columbus Steel Castings Co.*, 115 Ohio St.3d 134, 2007-Ohio-4787, 873 N.E.2d 1258, ¶ 7. Consistent with that holding, "[i]n Ohio, a party to an action generally cannot be required to arbitrate a dispute between itself and a second party unless the parties have previously agreed in writing to arbitration of those disputes." *Benjamin v. Pipoly*, 155 Ohio App.3d 171, 2003-Ohio-5666, 800 N.E.2d 50, ¶ 32 (10th Dist.); *Global Pacific, L.L.C. v. Kirkpatrick*, 2017-Ohio-1332, __ N.E.3d __, ¶ 14 (12th Dist.).

{¶20} The arbitration agreement includes Karen Cremeans as one signatory and an unspecified entity referred to as the "Center" as the other signatory. The term "Center" is not defined in the arbitration agreement. But there is a reference to one of the defendants—HCR ManorCare, Inc.—in the arbitration agreement. Karen Cremeans agreed that "[a]ll claims arising out of or relating to this Agreement, the Admission Agreement or any and all past and future admissions of the Patient at this Center, or any sister Center operated by any subsidiary of HCR ManorCare, Inc. ('Sister Center'), including claims for malpractice, shall be submitted to arbitration."

{¶21} The defendants argue that because the term "Center" is ambiguous, extrinsic evidence is admissible to give effect to the parties' intention, which was to refer to the owners and operators of the nursing home where Karen Cremeans received services. This extrinsic evidence includes the attached admission agreement, which refers to the Center being defined as Healthcare & Retirement Corp. of America, dba Heartland of Chillicothe.

{¶22} However the registered trademark for the corporate name belonged to the operator of the nursing home, Heartland of Chillicothe OH, L.L.C., at the time of the admission agreement, and the named corporation—Health Care and Retirement Corporation of America—had been merged out of existence when the agreement was executed. Therefore, the administrator counters that none of the defendants are counterparties to that agreement based on the face of the arbitration agreement.

{¶23} Although none of the parties cite it in their briefs, in a case involving one of the defendants here—HCR ManorCare, Inc., one appellate court recently addressed similar issues involving the same form arbitration agreement with an undefined "Center" and a signature by a "Center representative." In *Kallas v. Manor Care of Barberton OH, L.L.C.*, 9th Dist. Summit No. 28068, 2017-Ohio-76, the court of appeals affirmed a trial court's denial of the motion of Manor Care of Barberton OH, L.L.C. and HCR ManorCare, Inc. to stay proceedings in a lawsuit brought by a patient of ManorCare Barberton. The trial court found that although the arbitration agreement identified the patient as a party, it lacked an identified counterparty because, like here, the line following the word "Center" was left blank and the name of the "Center" was never set forth in the agreement.

{¶24} ManorCare Barberton argued that the court should examine extrinsic evidence to determine that it was the "Center" mentioned in the arbitration agreement, citing the same case that the defendants do here—*Babyak v. DSLangale One, Inc.*, 10th Dist. Franklin No. 08AP-996, 2009-Ohio-4212. And like the defendants here, the ManorCare entities in that case argued in the alternative that they were entitled to enforce the arbitration agreement as third-party beneficiaries.

{¶25} *Kallas* rejected both contentions at ¶ 12-15:

> When there is a disparity between the party identified in the granting clause and the party who signed an agreement, a court may "peruse the contract as a whole to ascertain whether the entirety of the contract resolves the apparent ambiguity." *Alternatives Unlimited–Special, Inc. v. Ohio Dept. of Edn.*, 168 Ohio App.3d 592, 861 N.E.2d 163, 2006–Ohio–4779, ¶ 22 (10th Dist.). But, "when the name of the corporation does not appear upon the face of the agreement, parol evidence is not admissible to add a party who does not appear therein." *Wallington v. Red–E–Bilt Products, Inc.*, 5th Dist. Richland No. 2423, 1987 WL 4727, *2 (Jan. 13, 1987).
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> In the present matter, ManorCare Barberton is not identified in either the granting clause or the signature block. In fact, ManorCare Barberton does not appear in the Agreement at all. Thus, this case is unlike *Babyak*, where the ambiguity and identity of the entity to be bound appeared on the face of the agreement. Because ManorCare Barberton does not appear upon the face of the Arbitration Agreement, the court properly determined that it was not a counterparty. *See Wallington* at *2.
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> ManorCare argues that HCR ManorCare was entitled to enforce the Agreement as a third-party beneficiary. It further argued that ManorCare Barberton was also "at the very least a third-party beneficiary of the Arbitration Agreement." "Before there can be a third party beneficiary to a contract, there must be a valid contract between a promisor and a promisee." *Guyuron v. Bergdorf*, 9th Dist. Summit No. 16075, 1994 WL 286272, *4 (June 29, 1994). Because the Arbitration Agreement fails to identify the counterparty, there is not a valid contract. *See Summit Tree*, 2009–Ohio–5794, at ¶ 8. Consequently, neither ManorCare Barberton nor HCR ManorCare could be a third-party beneficiary.

{¶26} We find the Ninth District's reasoning persuasive here. Like the nursing home defendants in *Kallas*, the defendants here were not identified in either the granting clause or the signature block of the arbitration agreement and were thus not parties to the agreement. And although HCR ManorCare was likewise referenced once in the form agreement, it was referenced only for purposes of identifying "any sister Center," as in *Kallas. Id.* at ¶ 14. Finally, because the arbitration agreement failed to identify a counterparty to the patient, there was no valid contract to support a third-party beneficiary.

{¶27} Consistent with the recent holding in *Kallas*, we conclude the trial court did not err by denying the defendant's motion to stay because they were not entitled to enforce the arbitration agreement.

{¶28} The defendants alternately requested reformation of the agreement to reflect what they claim was the clear intent of the parties that Heartland be considered the "Center" referred to in the arbitration agreement. The administrator does not specifically contest this request in his brief and did not contest it by written argument below; and we find nothing in the record indicating that the trial court considered or addressed this request—or that there was sufficient evidence before it to do so. We will not litigate this evidentiary issue in the context of an appeal. The parties may introduce evidence and argument concerning this request in further proceeding in the trial court.

{¶29} We overrule the defendants' assignment of error and affirm the judgment of the trial court. By finding that one of the many grounds asserted by the administrator in his memorandum in opposition to the defendants' motion to stay had merit, we need

not address the other grounds raised in that memorandum. *Compare* App.R. 12(A)(1)(c).

V. CONCLUSION

{¶30} Therefore, because the defendants were neither parties to the arbitration agreement nor third-party beneficiaries of the agreement, we overrule their assignment of error and affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Ross County Court of Common Pleas to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Hoover, J.: Concurs in Judgment and Opinion.
McFarland, J.: Concurs in Judgment Only.

For the Court

BY: _____
William H. Harsha, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.