[Cite as *Murray v. David Moore Builders, Inc.*, 2006-Ohio-6751.]

STATE OF OHIO))ss: COUNTY OF SUMMIT)	IN THE COURT OF APPEALS NINTH JUDICIAL DISTRICT
TIMOTHY C. MURRAY, et al. Appellees v. DAVID MOORE BUILDERS, INC., et al. Appellants	C. A. No. 23257 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CV 05 02 0946

DECISION AND JOURNAL ENTRY

Dated: December 20, 2006

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

WHITMORE, Presiding Judge.

{¶1} Defendant-Appellant David Moore Builders, Inc. has appealed from the judgment of the Summit County Court of Common Pleas which denied its motion to stay the proceedings below pending arbitration. This Court reverses.

I

{¶2} Plaintiffs-Appellees Timothy and Vicki Murray and the Victoria Murray Revocable Trust entered into a contract with Appellant for the construction of new home. On February 14, 2005, Appellees filed suit against Appellant, David Moore individually, and the architectural firm and individual

architect who designed their home. In their complaint, Appellees alleged numerous problems with the construction and design of their home and alleged that those problems were the result of the negligence of the defendants. Furthermore, Appellees alleged violations of the Consumer Sales Practices Act ("CSPA") and violations of written warranties.

{¶3} On May 17, 2005, Appellant moved to stay the proceedings pending arbitration, relying upon the parties' written agreement to arbitrate. Appellees responded in opposition to the motion, urging that arbitration provision was unenforceable. Appellees also moved to amend their complaint, adding a claim for rescission of the contract. On May 8, 2006, the trial court denied the motion to stay the proceedings without comment. Appellant has timely appealed from the trial court's judgment, raising one assignment of error for review.

II

Assignment of Error

"THE TRIAL COURT ERRED IN DENYING THE APPELLANT'S MOTION TO STAY THE PROCEEDINGS PENDING ARBITRATION, IN LIGHT OF THE PARTIES' CONTRACTUAL AGREEMENT TO SUBMIT CLAIMS TO ARBITRATION, TO APPELLANT'S PREJUDICE."

{¶4} In its sole assignment of error, Appellant has argued that the trial court erred in denying its motion to stay the proceedings. Specifically, Appellant has asserted that there exist no grounds for finding the arbitration provision unenforceable. This Court agrees.

{¶5} Initially, this Court notes that Ohio public policy favors arbitration. *Schaefer v. Allstate Ins. Co.* (1992), 63 Ohio St.3d 708, 711. This policy is reflected in R.C. 2711.02(B) which provides:

> "If any action is brought upon any issue referable to arbitration under an agreement in writing for arbitration, the court in which the action is pending, upon being satisfied that the issue involved in the action is referable to arbitration under an agreement in writing for arbitration, shall on application of one of the parties stay the trial of the action until the arbitration of the issue has been had in accordance with the agreement, provided the applicant for the stay is not in default in proceeding with arbitration."

Accordingly, "unless it may be said with positive assurance that the subject arbitration clause is not susceptible to an interpretation that covers the asserted dispute[,]" the trial court should stay the proceedings. *Neubrander v. Dean Witter Reynolds, Inc.* (1992), 81 Ohio App.3d 308, 311. As such, if a dispute even arguably falls within the arbitration provision, the trial court must stay the proceedings until arbitration has been completed. *Featherstone v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 159 Ohio App.3d 27, 2004-Ohio-5953, at ¶5.

{¶6} Generally, when an appellate court determines whether a trial court properly denied a motion to stay proceedings pending arbitration, the standard of review is whether the trial court abused its discretion. *Reynolds v. Lapos Const., Inc.* (May 30, 2001), 9th Dist. No. 01CA007780, at *1. Abuse of discretion connotes more than simply an error in judgment; the court must act in an unreasonable, arbitrary, or unconscionable manner. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. However, when an appellate court is presented

with purely legal questions, this Court will review its judgment de novo. *Akron-Canton Waste Oil, Inc. v. Safety-Kleen Oil Serv., Inc.* (1992), 81 Ohio App.3d 591, 602.

{¶7} In its journal entry, the trial court stated as follows: "The request for Arbitration is denied." The trial court gave no rationale for its denial, nor did it find that the arbitration clause was unenforceable as a matter of law. While we recognize that R.C. 2711.02 does not require the trial court to make a finding on the record, the absence of any rationale precludes this Court from determining our proper standard of review.

{¶8} In the instant appeal, Appellees have asserted numerous bases for denying the motion for stay. Under some of those theories, such as waiver, this Court would employ an abuse of discretion standard. *Buyer v. Long*, 6th Dist. No. F-05-012, 2006-Ohio-472, at ¶7. Under others, such as Appellees' argument that the provision violates public policy, we would review the matter de novo. See, e.g., *Terry v. Bishop Homes of Copley, Inc.*, 9th Dist. No. 21244, 2003-Ohio-1468 (finding that a determination of whether a claim of fraud is arbitrable is a legal question to be reviewed de novo). On appeal, Appellees have effectively argued that this Court should review every conceivable basis for affirming the trial court's judgment. We decline to do so.

{¶9} This Court is mindful of the heavy docket faced by trial courts in this district. With the record before this Court, however, it is impossible to determine

why the trial court denied the stay. Accordingly, to rule on this appeal, this Court would be forced to speculate as to the rationale employed by the court. Such a complete absence of rationale precludes any meaningful review by this Court. Given the parties' arguments herein, it is conceivable that the trial court could have relied upon any number of theories to reach its result. This Court will not undertake an analysis, however, of what the parties perceived the trial court's rationale to be. Rather, we are restricted to reviewing the action actually taken by the trial court. As the record does not reveal why the trial court denied the stay, we cannot effectively review such a decision. See *Cloyd v. Danbury Tp. Bd. of Zoning Appeals* (Mar. 18, 1994), 6th Dist. No. 93OT045, at *1-2 (reversing because the trial court's failure to offer any rationale in denying a variance and the existence of multiple standards of review precluded meaningful appellate review).

{¶10} In *Cloyd*, the court noted that "the trial court's judgment itself provides no indication of the standard applied." Id. at *2. We are confronted with an analogous trial court entry. R.C. 2711.01, et seq., only permits the trial court to refuse to stay the matter pending arbitration if specific tests are met. As noted above, our standard of review is dependent upon the theory relied upon by the trial court. As that theory is not discernible, meaningful review is precluded.

{¶11} While not reaching the merits of its claim, we sustain Appellant's sole assignment of error due to the trial court's failure to articulate any rationale

for denying the motion to stay and thereby precluding meaningful appellate review.

III

{¶12} Appellant's assignment of error is sustained and the cause is remanded for further proceedings consistent with this opinion.

Judgment reversed,
and cause remanded.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellees.

BETH WHITMORE
FOR THE COURT

CARR, J.
REECE, J.
CONCUR

(Reece, J., retired, of the Ninth District Court of Appeals, sitting by assignment pursuant to, §6(C), Article IV, Constitution.)

APPEARANCES:

JACK R. BAKER and JAMES F. MATHEWS, Attorneys at Law, for Appellant.

SCOTT H. KAHN and SCOTT J. ORILLE, Attorneys at Law, for Appellees.