COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00382-CV

DOSKOCIL MANUFACTURING COMPANY, INC. — APPELLANT

V.

SANG NGUYEN — APPELLEE

FROM THE 153RD DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 153-285325-16

MEMORANDUM OPINION[1]

Appellee Sang Nguyen sued her former employer, Appellant Doskocil Manufacturing Company, Inc., alleging that workplace exposure to hazardous chemicals caused her throat cancer. Doskocil filed an application to compel arbitration based on the "Waiver and Arbitration Agreement" Nguyen signed in 2001. On Nguyen's motion, the trial court set aside the agreement, and it denied

[1]*See* Tex. R. App. P. 47.4.

Doskocil's arbitration application. For the reasons explained below, we reverse the trial court's orders and remand with instructions to grant Doskocil's arbitration application.[2]

I. Background

Doskocil, a pet-products manufacturer, is a nonsubscriber to the Texas Workers' Compensation Act. In 2001, Doskocil established an employee-injury benefit plan—an employee-welfare benefit plan under the Employee Retirement Income Security Act of 1974—to provide nonsubscriber compensation benefits to its employees for accidental, work-related, on-the-job injuries. Under the plan's terms, Doskocil was to pay all operating and benefit costs; participating employees would "make no payments or payroll deductions to be eligible for Plan benefits and pay no deductibles or co-pay amounts."

To participate in the plan, an employee had to make a written election by signing and agreeing to the terms of a "Waiver and Arbitration Agreement," which (1) waived the employee's right to sue for personal injuries or death sustained in the course and scope of employment and (2) required the employee and Doskocil to arbitrate all present and future claims and disputes between them, including "any and all claims challenging the validity or enforceability of this Agreement (in whole or in part) or challenging the applicability of this Agreement

[2]We have jurisdiction over this interlocutory appeal under section 51.016 of the civil practice and remedies code and section 16 of the Federal Arbitration Act. *See* Tex. Civ. Prac. & Rem. Code Ann. § 51.016 (West 2015); *see also* 9 U.S.C.A. § 16 (West 2009).

to a particular dispute or claim."[3] The agreement incorporated the arbitration procedures laid out in the "Doskocil Manufacturing Company, Inc. Employee Injury Benefit Plan Summary Plan Description."[4] That plan summary also had waiver and arbitration provisions similar to those in the agreement and stated that any arbitration hearing would be conducted under the "American Arbitration Association's National Rules for the Resolution of Employment Disputes."

In 1999, Doskocil hired Nguyen, a Vietnamese immigrant, to work as a pet-toy assembler in its factory. In 2001, she signed the form agreement and checked a box indicating that she agreed to its terms.[5] Both the agreement and the plan summary were in English. But Nguyen could not read, write, or speak English; she could read, write, and speak only Vietnamese. And while Doskocil sometimes provided Vietnamese translators and translations to its Vietnamese-speaking employees, Nguyen claims that she received neither a translator nor a translation with respect to the agreement.

In fall 2014, Nguyen was diagnosed with throat cancer and had surgery to remove her teeth and part of her tongue. Because of her illness, she stopped

[3]The agreement expressly excluded from arbitration any criminal complaints or proceedings and unemployment-benefit claims before the Texas Workforce Commission.

[4]The agreement also incorporated the arbitration procedures set out in the employee-injury benefit plan, but the plan itself is not in our record.

[5]Nguyen could have checked a box to indicate she was rejecting the agreement's terms, but she did not.

working at Doskocil in October 2014. In May 2016, Nguyen sued Doskocil for negligence, gross negligence, fraud, and civil conspiracy, claiming that exposure to the chemicals Doskocil had used in the manufacturing process had caused her cancer.

Doskocil answered and filed an application for arbitration. Nguyen then moved to set aside the agreement, arguing that because she did not read or speak English, she did not knowingly or voluntarily enter into that agreement and that it was thus invalid, unconscionable, and unenforceable. She also alleged that the agreement was invalid, unconscionable, and unenforceable because it violated labor code section 406.033. *See* Tex. Lab. Code Ann. § 406.033(e)–(g) (West 2015) (restricting an employee's ability to waive actions against her nonsubscriber employer to recover damages for personal injury and death sustained in the course and scope of employment).[6] Nguyen further argued that the agreement was illusory and not supported by valid consideration or, alternatively, that the consideration had failed.

Doskocil responded that under the Federal Arbitration Act, the agreement's terms, and the plan summary's incorporation of the AAA employment-arbitration rules, it fell to the arbitrator, not the trial court, to decide arbitrability. But, Doskocil

[6]Section 406.033(e)–(g) was not in effect at the time Nguyen signed the agreement. *See* Act of May 25, 2001, 77th Leg., R.S., ch. 1456, § 16.01, sec. 406.033, 2001 Tex. Gen. Laws 5167, 5196 (codified at Tex. Lab. Code Ann. § 406.033(e)); Act of May 29, 2005, 79th Leg., R.S., ch. 265, § 3.031, sec. 406.033, 2005 Tex. Gen. Laws 469, 499 (amended 2011) (current version at Tex. Lab. Code Ann. § 406.033(f)–(g)).

argued, if the court were to reach the arbitrability issues, the agreement was valid and enforceable.

After an evidentiary hearing at which Nguyen testified through a translator, the trial court issued a letter ruling stating that based on the supreme court's holding in *In re Morgan Stanley*, 293 S.W.3d 182 (Tex. 2009), the trial court—as opposed to the arbitrator—should decide the arbitrability issues. The trial court then determined that because Nguyen did not read or speak English, she did not understand the agreement. Thus, the trial court saw no "clear and unmistakable" evidence that Nguyen intended to arbitrate arbitrability issues. On those bases, the trial court granted Nguyen's motion to set aside the agreement and denied Doskocil's arbitration application.

Doskocil has appealed and raises four issues: (1) the trial court's order granting Nguyen's motion to set aside the agreement is void because the motion was filed and the order was signed during the pendency of a statutorily imposed stay;[7] (2) the trial court erred by ruling on arbitrability issues, which both the agreement and the plan summary delegated to the arbitrator; (3) the trial court erred by reaching the delegation clauses' enforceability; and (4) the trial court erred by not compelling arbitration because the agreement is enforceable and Nguyen's claims are within the arbitration provision's scope.

[7]*See* Tex. Civ. Prac. & Rem. Code Ann. § 171.025(a) (West 2011) ("The court shall stay a proceeding that involves an issue subject to arbitration if an order for arbitration or an application for that order is made under this subchapter.").

II. Standard of Review

We review a trial court's order denying arbitration for an abuse of discretion. *See In re Labatt Food Serv., L.P.*, 279 S.W.3d 640, 643 (Tex. 2009) (orig. proceeding); *Cleveland Constr., Inc. v. Levco Constr., Inc.*, 359 S.W.3d 843, 851–52 (Tex. App.—Houston [1st Dist.] 2012, pet. dism'd) (explaining standards of review for arbitration appeals). Under this standard, we review the trial court's legal determinations de novo and defer to the trial court's factual determinations if they are supported by the evidence. *Labatt Food Serv.*, 279 S.W.3d at 643; *Cleveland Constr. Inc.*, 359 S.W.3d at 851–52. Because no findings of fact or conclusions of law were filed,[8] we must uphold the trial court's decision if there is sufficient evidence to support it on any legal theory asserted. *Shamrock Foods Co. v. Munn & Assocs., Ltd.*, 392 S.W.3d 839, 844 (Tex. App.—Texarkana 2013, no pet.).

III. Applicable Law

The plan summary's arbitration procedures—which the agreement incorporated—provide that the FAA governs "the interpretation, enforcement, and all judicial proceedings under and/or with respect to" the agreement, the plan

[8]We do not consider the trial court's letter ruling to constitute findings of fact and conclusions of law. *See Cherokee Water Co. v. Gregg Cty. Appraisal Dist.*, 801 S.W.2d 872, 878 (Tex. 1990) (stating that a prejudgment letter to the parties "was not competent evidence of the trial court's basis for judgment"); *Burgess v. Denton Cty.*, 359 S.W.3d 351, 359 n.37 (Tex. App.—Fort Worth 2012, no pet.) (citing *Cherokee Water* and concluding that trial court's prejudgment letter to the parties stating the basis for judgment did not constitute findings of fact or conclusions of law).

summary, and the plan. *In re Choice Homes, Inc.*, 174 S.W.3d 408, 412 (Tex. App.—Houston [14th Dist.] 2005, orig. proceeding) (concluding FAA governs arbitration agreement if parties so agree). The FAA provides, in relevant part:

> A written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C.A. § 2 (West 2015).

This provision has been described as reflecting both a "liberal federal policy favoring arbitration" and the "fundamental principle that arbitration is a matter of contract." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339, 131 S. Ct. 1740, 1745 (2011) (quoting *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 67, 130 S. Ct. 2772, 2776 (2010); *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24, 103 S. Ct. 927, 941 (1983)). "The FAA thereby places arbitration agreements on an equal footing with other contracts . . . and requires courts to enforce them according to their terms." *Rent-A-Center*, 561 U.S. at 67, 130 S. Ct. at 2776 (citing *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443, 126 S. Ct. 1204, 1206 (2006); *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 478, 109 S. Ct. 1248, 1255 (1989)).

A party seeking to compel arbitration under the FAA must establish only that a valid arbitration agreement exists and that the claims at issue fall within the agreement's scope. *In re Dillard Dep't Stores, Inc.*, 186 S.W.3d 514, 515 (Tex. 2006) (orig. proceeding); *In re Kellogg Brown & Root, Inc.*, 166 S.W.3d 732, 737 (Tex. 2005) (orig. proceeding). In determining an arbitration agreement's validity, we apply state contract-law principles. *In re Palm Harbor Homes, Inc.*, 195 S.W.3d 672, 676 (Tex. 2006) (citing *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944, 115 S. Ct. 1920, 1924 (1995)); *Kellogg Brown & Root*, 166 S.W.3d at 738. The elements needed to form a valid and binding contract in Texas are well-established: (1) offer, (2) acceptance in strict compliance with the offer's terms, (3) a meeting of the minds, (4) consent by both parties, (5) execution and delivery, and (6) consideration. *Advantage Physical Therapy Inc. v. Cruse*, 165 S.W.3d 21, 24 (Tex. App.—Houston [14th Dist.] 2005, no pet.).

Once the party seeking arbitration establishes that an arbitration clause governing the dispute exists, the burden shifts to the opposing party to present evidence of an affirmative defense. *In re AdvancePCS Health L.P.*, 172 S.W.3d 603, 607 (Tex. 2005) (orig. proceeding). If an arbitration agreement is present, if that agreement encompasses the claims at issue, and if the party opposing arbitration fails to prove any defense to enforcement, the trial court has no discretion—it must compel arbitration. *See In re FirstMerit Bank, N.A.*, 52 S.W.3d 749, 753–54 (Tex. 2001) (orig. proceeding). In other words, a trial court that refuses to compel arbitration under a valid and enforceable arbitration agreement

has abused its discretion. *In re Odyssey Healthcare, Inc.*, 310 S.W.3d 419, 422 (Tex.) (orig. proceeding), *cert. denied*, 562 U.S. 895 (2010).

An arbitration provision is severable from the remainder of the contract and is enforceable apart from the contract's other provisions. *Buckeye Check Cashing*, 546 U.S. at 445–46, 126 S. Ct. at 1209 (citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 403–04, 87 S. Ct. 1801, 1805–06 (1967); *Southland Corp. v. Keating*, 465 U.S. 1, 12, 104 S. Ct. 852, 859 (1984)). A party has three ways to challenge an arbitration provision: (1) by specifically challenging the validity of the arbitration agreement or clause; (2) by broadly challenging the entire contract, either on a ground that directly affects the entire agreement, or on the ground that one of the contract's provisions is illegal and invalidates the entire contract; and (3) by challenging the contract's formation (such as by a claim that the signor lacked authority to commit the alleged principal, or that the signor lacked mental capacity). *See Buckeye Check Cashing*, 546 U.S. at 444 & n.1, 126 S. Ct. at 1208 & n.1; *Morgan Stanley*, 293 S.W.3d at 186–89 (discussing *Buckeye Check Cashing* and recognizing three types of arbitration challenges).

A court may decide the first and third types of challenges. *See Buckeye Check Cashing*, 546 U.S. at 448–49, 126 S. Ct. at 1210; *Morgan Stanley*, 293 S.W.3d at 187–90; *Labatt Food Serv.*, 279 S.W.3d at 648. But the second type—a challenge relating to the contract's validity as a whole and not specific to the arbitration clause within the contract—must go to the arbitrator. *See Buckeye*

Check Cashing, 546 U.S. at 448–49, 126 S. Ct. at 1210; *Labatt Food Serv.*, 279 S.W.3d at 648; *see, e.g.*, *Prima Paint*, 388 U.S. at 403–04, 87 S. Ct. at 1805–06 (holding that under the FAA, a claim of fraud in the inducement of arbitration clause itself may be adjudicated by court, but court may not consider claim of fraud in the inducement of the contract generally). As we explain below, in its essence this case involves only the second type of challenge, and so it will be for the arbitrator to consider and resolve Nguyen's various attacks on the agreement's validity.

IV. Analysis

In its fourth issue, Doskocil argues that the trial court erred by setting aside the agreement and by denying Doskocil's application for arbitration because Doskocil established the existence of an arbitration clause governing Nguyen's claims. Because this issue is dispositive of Doskocil's appeal, we begin and end with it.

Although she initially did not recall signing the agreement, Nguyen no longer disputes signing it. It is also undisputed that Nguyen's claims against Doskocil are within the arbitration provision's scope. In the trial court, Nguyen raised several defenses to the agreement as a whole, and the parties disagreed about who—the arbitrator or the trial court—should resolve them. We address each of Nguyen's challenges below.

A. Meeting of the minds

Nguyen asserts that because she could neither speak nor read English, there was no "meeting of the minds," and therefore the agreement was never formed. Nguyen equates her inability to understand English with a lack of mental capacity and contends that under *Morgan Stanley*, it was proper for the trial court—as opposed to the arbitrator—to decide arbitrability issues in this case. But an inability to understand English does not preclude a meeting of the minds, and Nguyen's argument is thus not the type of foundational contract-formation issue that a court should decide.

In *Morgan Stanley*, the supreme court held that a challenge based on a signor's lack of mental capacity to contract at the time of executing an account agreement containing an arbitration clause was an issue for the court to decide because the challenge attacked the account agreement's very existence, as opposed to its continued validity or enforceability. 293 S.W.3d at 184, 190. But a contract signatory's inability to understand English is not a defense to contract formation. *See Tamez v. Sw. Motor Transp., Inc.*, 155 S.W.3d 564, 570 (Tex. App.—San Antonio 2004, no pet.); *Vera v. N. Star Dodge Sales, Inc.*, 989 S.W.2d 13, 17–18 (Tex. App.—San Antonio 1998, no pet.) (op. on reh'g); *see also In re Ledet*, No. 04-04-00411-CV, 2004 WL 2945699, at *5 (Tex. App.—San Antonio Dec. 22, 2004, orig. proceeding) (mem. op.) ("Whether a party is illiterate or incapable of understanding English is not a defense to a contract.").

And simply because a person does not speak English does not mean she lacks the mental capacity to enter into a contract.

Indeed, it is well-settled that an otherwise mentally competent person who signs a contract must be held to have known what words were used in the contract and to have known their meaning, and she must be held to have known and fully comprehended the contract's legal effect. *Delfingen US-Tex., L.P. v. Valenzuela*, 407 S.W.3d 791, 801 (Tex. App.—El Paso 2013, no pet.); *In re Big 8 Food Stores, Ltd.*, 166 S.W.3d 869, 878 (Tex. App.—El Paso 2005, orig. proceeding); *Tamez*, 155 S.W.3d at 570; *Nguyen Ngoc Giao v. Smith & Lamm, P.C.*, 714 S.W.2d 144, 146 (Tex. App.—Houston [1st Dist.] 1986, no writ). Absent proof of mental incapacity, a person who signs a contract is presumed to have read and understood the contract, unless she was prevented from doing so by trick or artifice. *Delfingen*, 407 S.W.3d at 801; *see Associated Emp'rs Lloyds v. Howard*, 294 S.W.2d 706, 708 (Tex. 1956); *Indem. Ins. Co. of N. Am. v. W.L. Macatee & Sons*, 101 S.W.2d 553, 556–57 (Tex. 1937); *Big 8 Food Stores*, 166 S.W.3d at 878; *Tamez*, 155 S.W.3d at 570 n.3; *Vera*, 989 S.W.2d at 17. This is true even in cases, as here, in which one party to the contract does not speak English. *See Ledet*, 2004 WL 2945699, at *5; *Tamez*, 155 S.W.3d at 570; *Vera*, 989 S.W.2d at 17.

Because Nguyen's inability to speak or read English is not a contract-formation defense, and because there is no evidence that she lacked the mental capacity to contract at the time she signed the agreement, we conclude that

Morgan Stanley's holding does not apply to this meeting-of-the-minds defense. Nguyen's defense broadly challenges the entire agreement on a ground that affects the agreement as a whole, and thus the arbitrator, not the trial court, should decide it. The trial court thus abused its discretion by setting aside the agreement and by denying Doskocil's application for arbitration on this ground.

B. Lack of consideration and failure of consideration

Although not addressed by Nguyen on appeal, she alleged in the trial court that the agreement was not supported by valid consideration and was illusory or, alternatively, that the consideration had failed.

Consideration is a present exchange bargained for in return for a promise and consists of benefits and detriments to the contracting parties. *Roark v. Stallworth Oil & Gas, Inc.*, 813 S.W.2d 492, 496 (Tex. 1991). The detriments must induce the parties to make the promises, and the promises must induce the parties to incur the detriments. *Id.* Consideration is a fundamental element of every valid contract. *Fed. Sign v. Tex. S. Univ.*, 951 S.W.2d 401, 408 (Tex. 1997).

Lack of consideration occurs when the contract, at its inception, does not impose obligations on both parties. *See City of the Colony v. N. Tex. Mun. Water Dist.*, 272 S.W.3d 699, 733 (Tex. App.—Fort Worth 2008, pet. dism'd). A contract that lacks mutuality of obligation is illusory and void and thus unenforceable. *Tex. S. Univ. v. State St. Bank & Tr. Co.*, 212 S.W.3d 893, 914 (Tex. App.—Houston [1st Dist.] 2007, pet. denied) (op. on reh'g). What constitutes consideration for a

contract is a question of law. *Plains Builders, Inc. v. Steel Source, Inc.*, 408 S.W.3d 596, 602 (Tex. App.—Amarillo 2013, no pet.). A written contract's existence presumes consideration for its execution, and so a party alleging lack of consideration bears the burden to rebut that presumption. *Doncaster v. Hernaiz*, 161 S.W.3d 594, 603 (Tex. App.—San Antonio 2005, no pet.).

Because the alleged lack of consideration is a defense to enforcing the agreement and because that allegation, if true, undermines the very existence of that contract, it would be a matter for the court to resolve. *See Morgan Stanley*, 293 S.W.3d at 187 ("[W]here the very existence of a contract containing the relevant arbitration agreement is called into question, the . . . courts have authority and responsibility to decide the matter."); *Nazereth Hall Nursing Ctr. v. Melendez*, 372 S.W.3d 301, 306 (Tex. App.—El Paso 2012, no pet.) (holding lack of consideration to support contract containing arbitration agreement was a matter for the court, not the arbitrator). Here, though, consideration for Nguyen's and Doskocil's agreement existed.

Doskocil contractually agreed to provide benefits to Nguyen for accidental, work-related, on-the-job injuries at no cost to her. The agreement also required Nguyen and Doskocil to arbitrate all present and future claims and disputes that might arise between them. The agreement expressly states that Nguyen "acknowledge[s] and understand[s] that by signing th[e] Agreement," she is "giving up the right to a jury trial on all of the claims covered by" the agreement "in exchange for eligibility for the Plan's medical, disability, dismemberment, and

death benefits and in anticipation of gaining the benefits of a speedy, impartial, mutually-binding procedure for resolving disputes." Further, the agreement states that it may "only be revoked or modified by mutual consent evidenced by a writing signed by both [Nguyen] and [Doskocil]'s authorized representative and which specifically states an intent to revoke or modify th[e] Agreement."

At the hearing, Nguyen testified that she had submitted a claim to the employee-injury benefit plan for her cancer, but she did not tell anyone at Doskocil that she thought her cancer was caused by her work there. She also testified that she had not received payment for medical bills and expenses under a medical plan but had instead received $5,000 from an insurance policy on which she paid the premiums. This testimony fails to overcome the presumption that consideration supported the agreement. As a result, we conclude that to the extent the trial court found the agreement illusory and not supported by valid consideration, the trial court abused its discretion.

In contrast to a complete lack of consideration, a failure of consideration (which Nguyen had also argued below) occurs when, because of some supervening cause arising after the contract is formed, the promised performance fails. *U.S. Bank, N.A. v. Prestige Ford Garland Ltd. P'ship*, 170 S.W.3d 272, 279 (Tex. App.—Dallas 2005, no pet.). Unlike a putative lack of consideration altogether, this defense does not undermine a contract's existence. *See id.*; *see also Nat'l Bank of Commerce v. Williams*, 84 S.W.2d 691, 692 (Tex. 1935) ("[T]he defense of failure of consideration presupposes that there was a

consideration for the [contract] in the first instance, but that it later failed."). And because this defense challenges the agreement as a whole, it is for the arbitrator to decide. The trial court thus abused its discretion to the extent it found that a failure of consideration defeated the arbitration provision.

C. Nguyen's remaining defenses

Nguyen also contends that the agreement was invalid, unenforceable, and procedurally unconscionable because, in addition to her inability to speak or read English, (1) Doskocil did not translate or explain the agreement and the plan summary to her in Vietnamese; (2) she did not receive any free benefits under the plan but had to pay for her own medical insurance; and (3) the plan "did not grant firm rights to anything, much less compensation for loss of the capacity to work and for her physical appearance." She also argues that the agreement is invalid and unenforceable because "[t]he record reflects fraud in the agreement" inasmuch as Nguyen was not provided with any promised plan benefits. Finally, in the trial court, she asserted that the agreement was invalid, unconscionable, and unenforceable because it violated labor code section 406.033. *See* Tex. Lab. Code Ann. § 406.033(e)–(g).

We conclude that all these arguments are broad challenges to the entire agreement on grounds that affect the entire agreement; they are not specific challenges to the arbitration provision. As with Nguyen's other arguments, they are for the arbitrator to decide, and the trial court abused its discretion to the

extent it determined that any of these defenses defeated Doskocil's right to invoke arbitration under the agreement.

V. Conclusion

Doskocil established that a valid arbitration agreement exists and that Nguyen's claims fall within that agreement's scope. Accordingly, the trial court abused its discretion by setting aside the agreement and by denying Doskocil's arbitration application. We therefore sustain Doskocil's fourth issue, and because it is dispositive, we need not address Doskocil's remaining issues.[9] *See* Tex. R. App. P. 47.1. We reverse the trial court's order granting Nguyen's motion to set aside the agreement, reverse the trial court's order denying Doskocil's application for arbitration, and remand to the trial court with instructions to grant the application for arbitration.

[9]We recognize that the agreement delegated to the arbitrator "any and all claims challenging the validity or enforceability of this Agreement (in whole or in part) or challenging the applicability of this Agreement to a particular dispute or claim." We also recognize that the plan summary stated that the arbitration hearing would be conducted under the AAA employment arbitration rules, which provide that the arbitrator has "the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement" and "the power to determine the existence or validity of a contract of which an arbitration clause forms a part." American Arbitration Association, Employment Arbitration Rules and Mediation Procedures, Rule 6 (amended and effective Nov. 1, 2009), *available at* http://adr.org/Rules. In its second and third issues, Doskocil argues that under these delegation provisions, the arbitrator can decide all arbitrability disputes—validity, enforceability, *and* contract formation—and the trial court therefore erred by ruling on them. But we do not address Doskocil's delegation-provision arguments because we can resolve this appeal by applying basic principles of federal arbitration law.

/s/ Elizabeth Kerr
ELIZABETH KERR
JUSTICE

PANEL: GABRIEL, SUDDERTH, and KERR, JJ.

DELIVERED: June 29, 2017