IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

AMY FOX, as Court-Appointed Next of Friend for Minor Child WF,

Plaintiff/Appellee,

vs.

UATP MANAGEMENT, LLC; UATP IP, LLC; ONE MORE SHOT, LLC; URBAN AIR-MOORE, LLC; and ROBERT MARIO RIVERA,

Defendants/Appellants,

and

UA ATTRACTIONS, LLC,

Defendant.

Case No. 121,183

APPEAL FROM THE DISTRICT COURT OF
CLEVELAND COUNTY, OKLAHOMA

HONORABLE JEFF VIRGIN, DISTRICT JUDGE

REVERSED AND REMANDED

Jamie Rodriguez
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and

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OPINION BY GREGORY C. BLACKWELL, JUDGE:

The defendants, UATP Management LLC, UATP IP, LLC, One Moore Shot, LLC, Urban Air-Moore LLC, and Robert Mario Rivera, appeal a decision of the district court refusing to enforce an arbitration agreement after the court found that the underlying contract was void as against public policy. On review, we hold that although the challenged release and indemnity provisions may constitute a form of moral hazard that renders the underlying contract void pursuant to public policy, this does not render the severable arbitration provision void. We further find that the question of whether the arbitration agreement was in effect at the time the plaintiff's injuries allegedly occurred was, under this contract, reserved for the arbitrator. Accordingly, we reverse the decision of the district court and remand for the entry of an order compelling arbitration.

BACKGROUND

In May 2022, the minor plaintiff visited a facility described as the "Urban Air Trampoline Park" in Moore, Oklahoma. His father accompanied him, and it

is undisputed on this record that the father signed an agreement that included both a release and indemnification of one or more of the defendants and an arbitration provision. The minor child was not injured on this visit.

In July 2022, the minor child returned to the facility, this time as part of group celebrating another child's birthday. The minor child's father again accompanied the minor child, but was apparently not asked to sign, and did not sign, any document on that date. While inside the facility, the minor fell or jumped into a "foam pit" and allegedly sustained serious injuries. Amy Fox, as court-appointed next friend of the minor child, filed this lawsuit.

The appellants filed a motion to compel arbitration pursuant to the May 2022 agreement. In a March 2023 order, the court denied the appellants' motion, finding that "the contract at issue does not apply to Plaintiff's alleged injuries in this matter," and, even if it did, the contract was "void pursuant to Oklahoma law and public policy." Appellants appeal the order denying arbitration.[1]

STANDARD OF REVIEW

"A determination of the existence of a valid enforceable agreement to arbitrate is a question of law to be reviewed by a *de novo* standard." *Signature Leasing, LLC v. Buyer's Grp., LLC*, 2020 OK 50, ¶ 2, 466 P.3d 544, 545 (citations omitted). Where the only dispute regards the proper conclusion to be drawn from undisputed evidence pertinent to the issue, "*de novo* review [is] proper." *Id.*

[1] Defendant UA Attractions LLC did not join the motion to compel arbitration but filed a separate motion to dismiss on other grounds. UA's motion was denied in the same order in which the court denied the motion to compel arbitration. Only the order denying arbitration was immediately appealable. *See* 12 O.S. § 1879. Thus, nothing in this opinion concerns the plaintiff's suit against UA Attractions LLC.

However, "[a]n application to compel arbitration may present mixed questions of law and fact regarding the existence of an arbitration agreement." *Id.* We will accept the district court's findings of fact unless they are clearly erroneous. *Wells Fargo Bank, Nat. Ass'n v. Apache Tribe of Oklahoma*, 2015 OK CIV APP 10, ¶ 10, 360 P.3d 1243, 1249 (citing *First Options of Chicago Inc. v. Kaplan*, 514 U.S. 938, 947-49 (1995)). *See also Moore v. Bob Howard German Imports, LLC*, 2023 OK CIV APP 14, ¶ 9, 531 P.3d 657, 661.

ANALYSIS

The two relevant clauses in the release and indemnification agreement signed by the minor plaintiff's parent in May 2022 can be summarized as follows. The heart of the agreement is the release and indemnity provision provided for in paragraph five. In summary, it states as follows: "to the fullest extent permitted by law," the signing adult, on his behalf and the child's behalf, "agrees not to sue, and shall indemnify" the defendants and various other nonparties, "from and against all liabilities ... relating to, resulting from, or arising out of ... any ... bodily injury (including death)" to the minor "resulting in any way from" the minor's "use of the premises" and participation in any activities on the premises, which are defined to include "foam pit jumping." R. 48 (capitalization modified). Further, according to the agreement, the foregoing is to apply "even if [] the claim is caused in whole or in part by the negligence, gross negligence, strict liability, or willful misconduct" of a party. *Id.*

The defendants' motion to compel arbitration was based on language in paragraph 6, entitled "Dispute Resolution." Therein, the parties agreed to

arbitrate "any dispute or claim arising out of or relating to this Agreement, breach thereof, the Premises Activities, property damage (real or personal), personal injury (including death), *or the scope, arbitrability, or validity of this arbitration agreement ....*" *Id.* (emphasis supplied).

The plaintiff successfully argued below that the release and indemnity provisions cited above were void as against public policy, and that the entirety of the agreement, including the arbitration agreement, was therefore unenforceable. Although the challenged indemnity clause may, in whole or in part, constitute a form of moral hazard that renders it void pursuant to public policy,[2] the inclusion of that provision does not automatically render the arbitration agreement void.

"In considering whether an arbitration provision is binding on the parties, it is severed from the rest of the contract." *Rogers v. Dell Computer Corp.*, 2005 OK 51, ¶ 13, 138 P.3d 826, 830.[3] It appears clear that public policy may invalidate an arbitration clause only if the arbitration clause *itself* breaches

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[2] 15 O.S. § 212 ("All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or willful injury to the person or property of another or violation of law, whether willful or negligent, are against the policy of the law.").

[3] *See also Lefoldt for Natchez Reg'l Med. Ctr. Liquidation Tr. v. Horne, L.L.P.*, 853 F.3d 804, 814–15 (5th Cir. 2017). As *Lefoldt* notes, the Supreme Court has explained that there are two types of validity challenges to an arbitration agreement. "One type challenges specifically the validity of the agreement to arbitrate." "The other challenges the contract as a whole, either on a ground that directly affects the entire agreement (e.g., the agreement was fraudulently induced), or on the ground that the illegality of one of the contract's provisions renders the whole contract invalid." The Supreme Court has held that even if "another provision of the contract, or ... the contract as a whole," is invalid, unenforceable, voidable, or void, that "does not prevent a court from enforcing a specific agreement to arbitrate" because, "[a]s a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract." *Id.* at 814-815 (footnotes omitted).

public policy, and the application of that public policy does not "frustrate[] the Congressional purposes and objectives embodied in the FAA [Federal Arbitration Act]." *Id.* ¶ 12. However, under the FAA, only issues relating to the validity and effectiveness of the arbitration provision are generally subject to a judicial determination. *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 403–404, 87 S.Ct. 1801 (1967). Therefore, the question of whether the release and indemnification agreement is unenforceable as against Oklahoma public policy under the facts of this case is a question for the arbitrator, not the court. The trial court erred in denying arbitration on that basis.

Another fundamental question remains, however. Did the contract in question—signed by the child's father in May 2022—create an ongoing obligation to arbitrate that binds the parties each time the minor child subsequently enters the facility, or a single obligation that bound the parties only regarding the May 2022 entry?

In many cases, this would be a question for the district court. However, paragraph 6 of the contract also reserves questions of "scope" and "arbitrability" to an arbitrator. The United States Supreme Court has "recognized that parties can agree to arbitrate 'gateway' questions of 'arbitrability,' such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy." *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 68–69, 130 S. Ct. 2772, 2777. *See also McKinzie v. Am. Gen. Fin. Servs., Inc.*, 2012 OK CIV APP 37, ¶ 11, 276 P.3d 1082, 1086. The court's role is limited "to determin[ing] whether there is a valid binding arbitration clause, and if so, whether 'the arbitration

clause is broad enough to include the alleged dispute.'" *Id.* (quoting *B.A.P., L.L.P. v. Pearman*, 2011 OK CIV APP 30, ¶ 7, 250 P.3d 332, 336). We have reviewed the May 2022 arbitration provision at issue here, and hold that the agreement is sufficiently broad to include the alleged claims.

Even if we held some lingering doubt, we must "permit arbitration 'unless [we] can say with 'positive assurance' the dispute is not covered by the arbitration clause." *Harris v. David Stanley Chevrolet, Inc.*, 2012 OK 9, ¶ 6, 273 P.3d 877, 879 (*quoting City of Muskogee v. Martin*, 1990 OK 70, ¶ 8, 796 P.2d 337, 340). We have no such assurance here. There is no dispute that the plaintiff's father agreed to the arbitration provision of the May 2022 agreement. That provision covers virtually "[a]ny dispute or claim" between the parties related to "personal injury," as we well as the question of "scope, arbitrability, and validity" of the arbitration agreement itself. The parties delegated the question of whether the May 2022 agreement remained in effect at the time of the July 2022 visit to an arbitrator. As such, we reverse the decision of the district court and remand for the issuance of an order compelling arbitration.[4]

REVERSED AND REMANDED.

HUBER, P.J., and HIXON, J., concur.

July 30, 2024

[4] We agree with the plaintiff that dismissal of the suit as to the relevant defendants is improper. The proper procedure is for the district court to stay the proceedings pending the outcome of any arbitration. *See* 12 O.S. 1858(G).