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IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

MAR 30 2026

SELDEN JONES
CLERK

EL RENO PUBLIC SCHOOLS, an Oklahoma public school district,

Plaintiff/Appellee,

vs.

OKLAHOMA SCHOOLS INSURANCE GROUP, an interlocal cooperative,

Defendant/Appellant.

Case No. 123,024

APPEAL FROM THE DISTRICT COURT OF CANADIAN COUNTY, OKLAHOMA

HONORABLE PAUL HESSE, DISTRICT JUDGE

AFFIRMED

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OPINION BY GREGORY C. BLACKWELL, JUDGE:

¶1 The Oklahoma Schools Insurance Group (OSIG) appeals the court's denial of its motion to compel arbitration. We hold that the contract at issue "references insurance" within the meaning 12 O.S. § 1855(D) and that the Federal Arbitration Act does not, therefore, preempt this law. Thus, the trial court did not err in denying OSIG's motion to compel.

I.

¶2 OSIG is an interlocal cooperative that provides insurance coverage for Oklahoma school districts. El Reno's public school district (El Reno) was insured with OSIG in May 2022, when the campus and buildings of El Reno were severely damaged in a hailstorm. El Reno submitted a claim for the property damage to the school buildings pursuant to the plan document, which is the agreement at issue in this case. OSIG acknowledged coverage for the loss and paid El Reno almost $2.6 million in claims. However, El Reno contended that the amount paid was woefully insufficient and requested an additional $19 million. OSIG refused to pay, citing a provision in the plan document which excludes cosmetic damage. El Reno filed this action against OSIG for breach of contract. OSIG, in turn, filed a motion to compel arbitration which the trial court denied. OSIG timely appealed.

II.

¶3 A trial court's grant or denial of a motion to compel arbitration is reviewed *de novo*. *Sparks v. Old Republic Home Protection Co. Inc.*, 2020 OK 42, ¶ 14, 467 P.3d 680.

III.

A.

¶4 When a motion to compel arbitration has been filed "showing an agreement to arbitrate and alleging another person's refusal to arbitrate ... the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate." 12 O.S. § 1858(A)(2). In determining whether a motion to compel arbitration should be granted, a court must determine if there is an enforceable arbitration agreement, whether the parties are bound by the arbitration agreement, and whether the parties agreed to submit a particular dispute to arbitration. *Thompson, Next Friend of Hughes v. Heartway Corp.*, 2025 OK 65, ¶ 10, 579 P.3d 622, 628.

¶5 In this case, OSIG filed a motion to compel arbitration "[i]n accordance with" the Federal Arbitration Act (FAA) and the express terms of the parties' plan document. The plan document provides as follows:

> Notwithstanding any provision herein to the contrary, the parties hereby agree that any controversy or claim arising out of or relating to this Plan, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

ROA 53. The Oklahoma Supreme Court has recently held that as a threshold determination, the Court must consider whether the parties executed a binding agreement. *See Thompson,* 2025 OK 65, ¶ 13. Here, there is no dispute regarding whether the parties executed this binding agreement. Thus, we next address the issue of preemption and whether the plan document is governed by the FAA.

¶6 An arbitration clause is subject to the FAA, enacted in 1925, if it is a part of a valid written contract "evidencing a transaction involving commerce." 9 U.S.C. §§ 1, 2.[1] The FAA affirmatively declares arbitration clauses valid, irrevocable, and enforceable. *Id.* Pursuant to the Supremacy Clause of the United States Constitution, the FAA preempts contrary state law. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 341, 131 S.Ct. 1740, 1747,179 L.Ed.2d 742 (2011). In 1945, however, the McCarran-Ferguson Act, 15 U.S.C. § 1011 *et seq.*, was enacted "to restore the supremacy of the states in the realm of insurance regulation." *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25, 40, 116 S.Ct. 1103, 1112, 134 L.Ed.2d 237 (1996). The McCarran-Ferguson Act grants states plenary authority over the regulation of insurance and, in certain instances, exempts state laws from FAA preemption. The McCarran-Ferguson Act provides, in part, that "[n]o Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any state for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance." 15 U.S.C. § 1012(b). In effect, the McCarran-Ferguson Act operates as a form of reverse preemption in favor of state law when the law regulates or taxes the business of

[1] OSIG argues extensively in its brief about how the transaction at issue involves interstate commerce. A review of El Reno's appellate brief and its responses to OSIG's motion to compel arbitration do not appear to dispute the fact that the transaction at issue involves interstate commerce. Thus, we presume for purposes of this appeal that the transaction at issue involves interstate commerce.

insurance. *Sparks v. Old Republic Home Prot. Co., Inc.*, 2020 OK 42, ¶ 17, 467 P.3d 680, 686.[2]

¶7 The state statute at issue in this case, 12 O.S. § 1855(D), explicitly provides that "[t]he Uniform Arbitration Act shall not apply to collective bargaining agreements and contracts which reference insurance, except for those contracts between insurance companies." The Oklahoma Supreme Court previously held in *Sparks* that § 1855(D) was enacted for the purpose of regulating the business of insurance within the meaning of the McCarran-Ferguson Act. *Id.* ¶ 35. Therefore, we find that § 1855(D) is not preempted by the FAA, and mandatory arbitration provisions in contracts that reference insurance are unenforceable in Oklahoma.

¶8 The remaining question is, of course, whether the plan document in this case "references insurance" for the purposes of § 1855(D). In determining whether a home warranty plan was a contract that references insurance, the *Sparks* Court looked at the "nature" of the home warranty plan, *i.e.*, its terms and effect, to determine whether the particular practice was a part of the business of insurance pursuant to § 1855(D) as defined by the Court's extensive jurisprudence and guidelines from the U.S. Supreme Court, Oklahoma statutes,

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[2] In determining whether reverse preemption applies pursuant to the McCarran-Ferguson Act, the U.S. Supreme Court has asked: (1) whether the federal statute (here the FAA) at issue "specifically relates to the business of insurance;" (2) whether the state statute was enacted "for the purpose of regulating the business of insurance;" and (3) whether application of the federal statute would "invalidate, impair, or supersede" the state statute. *U.S. Dep't of Treasury v. Fabe*, 508 U.S. 491, 501, 113 S. Ct. 2202, 2208, 124 L. Ed. 2d 449 (1993). We agree that the FAA does not "specifically relate to the business of insurance." *See Davister Corp. v. United Republic Life Ins. Co.*, 152 F.3d 1277, 1279 n.1 (10th Cir. 1998). Thus, it is the second and third elements that are primarily at issue here.

and the wisdom of other courts. *Sparks*, 2020 OK 42, ¶¶ 26-34. The Court noted "the primary elements of an insurance contract are the spreading and underwriting of a policy holder's risk." *Id.* ¶ 32 (quoting *McMullan v. Enterprise Fin. Group, Inc.*, 2011 OK 7, ¶ 12, 247 P.3d 1173) ("Whether the contract is one of insurance or of indemnity there must be a risk of loss to which one party may be subjected by contingent or future events and an assumption of it by legally binding arrangement by another.").

¶9 After reviewing the home warranty plan, the Court held it met "all the hallmarks of an insurance policy" because the "plaintiffs paid a premium to be insured that they would not have to pay the full repair costs in the event a covered system ... needed repair or replacing." *Id.* ¶ 33. In short, the Court found the central and important element of the plan was the transfer of risk, and, thus, the plan was a contract referencing insurance for purposes of § 1855(D). *Id.* ¶ 31. As a result, the McCarran-Ferguson Act and § 1855(D) applied, and the arbitration clause contained in the home warranty plan was unenforceable.

¶10 Here, the forward to OSIG and El Reno's plan document reads as follows:

> The following Plan Document has been prepared so that OSIG Members will have a summary reference into the major components of its insurance coverage provided by OSIG to its Members. OSIG administers insurance claims in accordance with the terms and conditions of the various coverages described in the Plan Document.

ROA 91. Additionally, the record reflects that El Reno pays roughly $500,000 per year in premiums for property coverage. ROA 69. OSIG also acknowledges that these payments are premiums and the purpose of the premiums is to insure against loss or damage.

> In consideration of the premium paid by the Member to Oklahoma Schools Insurance Group ("OSIG" or "the Company"), the Company agrees to cover the Member in accordance with the terms and conditions contained herein. Subject to all of its terms, conditions, limitations, and Exclusions, the Plan insures direct physical loss or damage from a risk of loss to Covered Property occurring within the Policy Territory during the Policy Period, unless subject to one or more Exclusions or otherwise Not Covered.

ROA 96. Regarding the spreading and underwriting of a policy holder's risk, OSIG accepted the risks of insuring El Reno's property if it experienced loss or damage to property. Like the plaintiffs in *Sparks*, El Reno paid a premium to be insured that it would not have to pay the full repair costs from an event causing damage to property, such as a hailstorm. This is not just a contract referencing insurance, it is an insurance contract.

¶11 As discussed above, 12 O.S. § 1855(D) explicitly provides that "[t]he Uniform Arbitration Act shall not apply to collective bargaining agreements and contracts which reference insurance, except for those contracts between insurance companies." Our Supreme Court held in *Sparks* that the contract at issue there was, in effect, an insurance contract, and therefore referenced insurance within the meaning of § 1855(D). *See Sparks,* 2020 OK 42, ¶ 35. Further, § 1855 "is a state law enacted for the purpose of regulating insurance, and thus, the McCarran-Ferguson Act applies precluding the Federal Arbitration Act from preempting conflicting state law." *Id.* As such, the trial court correctly denied OSIG's motion to compel arbitration pursuant to its FAA preemption argument.

B.

¶12 OSIG makes an additional argument in favor of arbitration, citing particular language in *Bd. of Cnty. Comm'rs of Delaware Cnty. v. Ass'n of Cnty. Comm'rs of Oklahoma Self-Ins. Grp.*, 2014 OK 87, 339 P.3d 866 (*Delaware County*). In that case, faced with the argument that an interlocal cooperative was liable in tort for bad faith, the Court stated that the cooperative was "not transacting insurance, nor is it otherwise subject to the provisions of the laws of this state regulating insurance or insurance companies." *Id.* ¶ 8 (citing 51 O.S.2011 § 167(C) and 51 O.S.2011 § 169(C).

¶13 However, as persuasively outlined in El Reno's answer brief, the relevant statute—36 O.S. § 607.1(A)—has changed since *Delaware County*, making that case unhelpful in deciding this one. Under the current relevant statute, it is clear that the legislature intended that an interlocal cooperative such as OSIG must be considered an insurer for all the types of insurance it sells, even if it may not, pursuant to *Delaware County*, be liable in tort.[3]

¶14 The 2011 version of § 607.1(A) provided that an "entity organized pursuant to the Interlocal Cooperation Act ... for the purpose of transacting insurance shall be considered an insurer at such time that the entity has within a twelve-month period received aggregate premiums of One Million Dollars ($1,000,000.00) for all kinds of insurance that the entity transacts." 36 O.S.2011

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[3] We make no effort to decide this unpresented question. *Delaware County* concerned the question of whether the applicable interlocal cooperative could be held liable in tort for an insurer's breach of the duty of good faith and fair dealing with its insured in the face of the Governmental Tort Claims Act. *Delaware County*, 2014 OK 87, ¶ 1. Here, El Reno presents only contractual claims.

§ 607.1(A). This is the version of the statute relied on by the Court in *Delaware County* and *City of Choctaw v. Oklahoma Mun. Assur. Grp.*, 2013 OK 6, 302 P.3d 1164, another case on which OSIG relies.

¶15 However, after those decisions the legislature amended § 607.1(A) to read: "an entity organized pursuant to the Interlocal Cooperation Act ... for the purpose of transacting insurance, *except those Interlocal Entities created pursuant to the terms of The Governmental Tort Claims Act*, shall be considered an insurer for all kinds of insurance that the entity transacts." 36 O.S.Supp.2014 § 607.1(A) (emphasis supplied). Thus, after the *Delaware County* and *City of Choctaw* decisions, the legislature clearly carved out an exception for interlocal cooperatives created pursuant to the GTCA. Under this version of this statute OSIG would not have been considered an insurer in any circumstance because they were created pursuant to the GTCA. *See* ROA 18 ("OSIG is an Interlocal Cooperative, created in accordance with 74 *Okla. Stat.* §§ 1001 – 1008 and 51 *Okla. Stat.* § 167(C).").

¶16 However, as pertinent here, the legislature amended § 607.1(A) once again in 2021. The 2021 version, which remains current, reads as follows: "An entity organized pursuant to the Interlocal Cooperation Act ... for the purpose of transacting insurance *that insures an Oklahoma educational institution shall be considered an insurer for all kinds of insurance that the entity transacts*." 36 O.S. § 607.1(A) (emphasis supplied). Here, the legislature removed the GTCA exception and specifically included entities such as OSIG, which insures Oklahoma educational institutions. Thus, it is clear that with this amendment the legislature intended for interlocal cooperatives such as OSIG to be considered insurers for the kinds of insurance that the entity transacts. Here, we are only talking about insurance intended to mitigate loss to property, which is exactly the type of insurance OSIG sells. As such, we reject OSIG's argument based on the Supreme Court's prior holding in *Delaware County*.

* * *

¶17 While the FAA affirmatively declares arbitration clauses valid and enforceable and preempts conflicting state law, the McCarran-Ferguson Act, 15 U.S.C. § 1011 *et seq.*, was enacted to restore the supremacy of the states in the realm of insurance regulation. As explained above, the McCarran-Ferguson Act operates as a form of reverse preemption in favor of state law when the law regulates or taxes the business of insurance. *Sparks*, 2020 OK 42, ¶ 17. Title 12 O.S. § 1855(D) provides that the Uniform Arbitration Act shall not apply to agreements and contracts which reference insurance. Because reverse preemption applies and the plan document at issue "references insurance" within the meaning of that phrase as explained in *Sparks*, we hold that the trial court correctly denied OSIG's motion to compel arbitration.

¶18 **AFFIRMED.**

BARNES, J., and HUBER, J., concur.

March 30, 2026