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# SUPREME COURT OF ALABAMA

OCTOBER TERM, 2018-2019

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William R. Carroll, M.D., et al.

v.

Paul F. Castellanos, M.D.

Appeal from Jefferson Circuit Court  
(CV-17-904011)

MENDHEIM, Justice.

William R. Carroll, M.D., Loring Rue, M.D., and Gustavo R. Heudebert, M.D. (hereinafter referred to collectively as "the individual defendants"), appeal from the Jefferson Circuit Court's order denying their motion to compel

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arbitration of claims asserted against them by Paul F. Castellanos, M.D. We reverse and remand.

### I. Facts

On September 22, 2017, Dr. Castellanos filed this action against six named defendants and other fictitiously named defendants. The named defendants included the University of Alabama Health Services Foundation, P.C. ("UAHSF"), the Board of Trustees of the University of Alabama ("the Board"),<sup>1</sup> the University of Alabama Birmingham Health System Board of Directors, and the individual defendants. Dr. Castellanos alleged that he was an "internationally recognized" physician with a specialty practice as a "laryngologist and bronchoesophagologist (airway surgeon)" who was "recruited to come to the University of Alabama at Birmingham in 2005 to establish a center of excellence for the treatment of voice and aero digestive disorders at University of Alabama, Birmingham Academic and Medical Center" ("UAB Medical Center"). UAHSF and Dr. Castellanos executed a "Physician Employment Contract" describing the details of his employment

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<sup>1</sup>In his complaint, Dr. Castellanos misnamed the Board of Trustees of the University of Alabama as the "Board of Trustees for the University of Alabama School of Medicine (UAB)."

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at UAB Medical Center ("the employment contract"). The employment contract contained the following arbitration provision:

"(14) Any controversy or claim, arising out of, or relating to, this Agreement, or the breach thereof, shall be settled by arbitration in the City of Birmingham, Alabama in accordance with the rules then obtaining of the American Arbitration Association, and judgment upon award rendered may be entered in any court having jurisdiction thereof."

With respect to the individual defendants, Dr. Castellanos alleged that Dr. Carroll was "clearly envious or concerned that his own care for patients with similar complexity to the patient population for Dr. Castellanos was not as successful as that of Dr. Castellanos." Dr. Castellanos alleged that, after Dr. Carroll became interim chairman of the ENT Department at UAB Medical Center, Dr. Carroll engaged in a series of actions designed toward "mak[ing] Dr. Castellanos' life at UAB [Medical Center] so miserable that he ha[d] to leave." Dr. Castellanos alleged that Dr. Rue and Dr. Heudebert assisted in this plan. Dr. Castellanos also asserted that all the defendants, including UAHSF "through its agents and employees," conspired to make Dr. Castellanos want to leave his employment at UAB

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Medical Center. Specifically, against Dr. Carroll, Dr. Castellanos asserted claims of "intentional infliction of severe mental anguish -- outrageous conduct," "defamation," and "invasion of privacy -- false light." Against all the individual defendants, Dr. Castellanos asserted a claim of "intentional interference with contractual and business relations," and he alleged that all the defendants, including UAHSF "through its agents and employees," conspired in the commission of the tort-of-outrage, defamation, and invasion-of-privacy claims.

On November 1, 2017, the Board filed a motion to dismiss in which it asserted that it was entitled to immunity under Art. 1, § 14, Ala. Const. 1901. No other defendant joined the Board's motion.

On the same date, all the defendants other than the Board filed a motion to compel arbitration as to all claims asserted against them by Dr. Castellanos. The motion was based on the arbitration provision contained in the employment contract. The individual defendants contended that they could enforce the arbitration provision even though they were not signatories to the employment contract because, they reasoned,

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the individual defendants were also employees of UAHSF and Dr. Castellanos had alleged that all the defendants had conspired in committing the alleged torts.

Dr. Castellanos did not oppose the motion to compel arbitration. In his brief to this Court, Dr. Castellanos asserts that he failed to file a response because "[t]he trial court issued its order compelling arbitration between the contracting parties ... before [Dr. Castellanos] had an opportunity to oppose the motion." Dr. Castellanos's brief, pp. 7-8.

On November 15, 2017, the circuit court entered an order compelling arbitration of Dr. Castellanos's claims against UAHSF and the Board (even though the Board had not joined the motion to compel) but denying arbitration of his claims against the individual defendants.<sup>2</sup> The circuit court refused to compel arbitration of the claims against the individual

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<sup>2</sup>The circuit court's ordering arbitration of Dr. Castellanos's claims against the Board was the subject of a petition for a writ of mandamus filed by the Board with this Court. In Ex parte Board of Trustees of University of Alabama, [Ms. 1170183, May 18, 2018] \_\_\_ So. 3d \_\_\_ (Ala. 2018), this Court granted the Board's petition, concluding that the circuit court had erred in failing to dismiss the Board as a defendant for lack of subject-matter jurisdiction based on immunity under Art. 1, § 14, Ala. Const. 1901.

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defendants because "the aforementioned Physician Employment Contract does not include an arbitration clause applicable to ... William R. Carroll, M.D., Loring Rue, M.D., and Gustavo R. Heudebert, M.D."

The following day, November 16, 2017, the individual defendants appealed the circuit court's judgment. On the same date, the individual defendants filed a motion to stay the underlying action pending the appeal, a motion the circuit court granted on November 20, 2017.

## II. Standard of Review

"This Court reviews de novo the denial of a motion to compel arbitration. Parkway Dodge, Inc. v. Yarbrough, 779 So. 2d 1205 (Ala. 2000). A motion to compel arbitration is analogous to a motion for a summary judgment. TranSouth Fin. Corp. v. Bell, 739 So. 2d 1110, 1114 (Ala. 1999). The party seeking to compel arbitration has the burden of proving the existence of a contract calling for arbitration and proving that the contract evidences a transaction affecting interstate commerce. Id. "[A]fter a motion to compel arbitration has been made and supported, the burden is on the non-movant to present evidence that the supposed arbitration agreement is not valid or does not apply to the dispute in question." Jim Burke Automotive, Inc. v. Beavers, 674 So. 2d 1260, 1265 n.1 (Ala. 1995) (opinion on application for rehearing).'"

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Elizabeth Homes, L.L.C. v. Gantt, 882 So. 2d 313, 315 (Ala. 2003) (quoting Fleetwood Enters., Inc. v. Bruno, 784 So. 2d 277, 280 (Ala. 2000)).

### III. Analysis

We begin by noting that Dr. Castellanos's failure to file a response to the individual defendants' motion to compel arbitration does not require an automatic reversal of the circuit court's judgment. As we have previously noted in another case in which the plaintiffs failed to file a response to the defendants' motion to compel arbitration:

"[T]he Lollars' lack of response does not end our inquiry. It is true that, 'once a moving party has satisfied its burden of production by making a prima facie showing that an agreement to arbitrate exists in a contract relating to a transaction substantially affecting interstate commerce,' the burden shifts to the nonmoving party to show otherwise. Ex parte Greenstreet, Inc., 806 So. 2d at 1209 (emphasis added). It is likewise true that this Court has said that, '[i]f th[e nonmoving] party presents no evidence in opposition to a properly supported motion to compel arbitration, then the trial court should grant the motion to compel arbitration.' Ex parte Greenstreet, Inc., 806 So. 2d at 1209 (emphasis added). Implicit in this standard is that we must evaluate whether the motion to compel arbitration does make a 'prima facie showing' that the parties entered into an agreement to arbitrate the dispute in question and that this showing was 'properly supported' by evidence of such an agreement. As we have otherwise recently expressed in another case in which the

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party opposing arbitration failed to present evidence in the trial court: '[U]nless on its face the arbitration provision is not valid or does not apply to the dispute in question, the trial court's decision to deny the motions to compel arbitration was erroneous.' Family Sec. Credit Union v. Etheredge, 238 So. 3d 35, 39 (Ala. 2017) (emphasis added)."

Locklear Auto. Grp., Inc. v. Hubbard, 252 So. 3d 67, 91-92 (Ala. 2017) (some emphasis added).

In this instance, it is undisputed that Dr. Castellanos and the individual defendants did not specifically enter into an agreement to arbitrate the disputes between them. The arbitration provision in question is contained in the employment contract that is expressly between UAHSF and Dr. Castellanos. The individual defendants, admittedly, were not signatories to the employment contract. This appears to be where the circuit court's analysis ended, i.e., it noted that on its face the arbitration provision did not appear to be applicable to the claims Dr. Castellanos asserted against the individual defendants because the individual defendants were nonsignatories to the employment contract.

However, as the individual defendants note, we cannot ignore the fact that the employment contract contains an arbitrability clause that reserves disputes about substantive



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arbitrability for the arbitrator. This is so because the arbitration provision states that, when arbitration is applicable, it must occur "in accordance with the rules then obtaining of the American Arbitration Association."<sup>3</sup>

"We have stated that '[t]he question whether an arbitration provision may be used to compel arbitration of a dispute between a nonsignatory and a signatory is a question of substantive arbitrability (or, under the Supreme Court's terminology, simply "arbitrability").' Anderton v. Practice-Monroeville, P.C., 164 So. 3d 1094, 1101 (Ala. 2014). 'A court decides issues of substantive arbitrability "[u]nless the parties clearly and unmistakably provide otherwise.'" Id. (quoting AT & T Techs., Inc. v. Communications Workers of America, 475 U.S. 643, 649, 106 S.Ct. 1415, 89 L.Ed.2d 648 (1986))."

Locklear Auto. Grp., 252 So. 3d at 81. However,

"we have held 'that an arbitration provision that incorporates rules that provide for the arbitrator to decide issues of arbitrability clearly and unmistakably evidences the parties' intent to arbitrate the scope of the arbitration provision.' CitiFinancial Corp. v. Peoples, 973 So. 2d 332, 340 (Ala. 2007). See also Joe Hudson Collision Ctr. v. Dymond, 40 So. 3d 704, 710 (Ala. 2009) (concluding that an arbitrator decides issues of substantive arbitrability when the arbitration provision incorporated the same [American Arbitration Association] rule as in the present case); and Wells

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<sup>3</sup>The relevant American Arbitration Association rule incorporated by the arbitration provision provides: "The arbitrator shall have 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."

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Fargo Bank, N.A. v. Chapman, 90 So.3d 774, 783 (Ala. Civ. App. 2012) (same)."

Anderton v. Practice-Monroeville, P.C., 164 So. 3d 1094, 1102 (Ala. 2014).

Dr. Castellanos objects to the invocation of the arbitrability clause on the ground that "[t]his arbitration clause has no legal or logical nexus to the claims against these individual Defendants." Dr. Castellanos's brief, p. 23. This is so because, says Dr. Castellanos, the arbitration provision concerns the employment contract between Dr. Castellanos and UAHSF, but Dr. Castellanos's claims against the individual defendants do not concern the employment contract itself. Specifically, Dr. Castellanos explains, his claim of intentional interference with contractual or business relations alleges that the individual defendants are "strangers" to the contract. See id. at p. 18. Additionally, Dr. Castellanos argues, his claims of the tort of outrage, defamation, and invasion of privacy against the individual defendants are "totally separate from the contract underlying this suit. There is no logical or legal nexus whatsoever and such claims would clearly exist even if there

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were no contractual relationship between Dr. Castellanos and UAHSF." Id. at p. 21.

The problem for Dr. Castellanos is that, even if he is correct that his claims against the individual defendants ultimately do not fall within the scope of the arbitration provision, the circuit court is not at liberty to make that determination. Substantive arbitrability concerns "(1) whether a valid agreement to arbitrate exists and, if so, (2) whether the specific dispute falls within the scope of that agreement." Brasfield & Gorrie, L.L.C. v. Soho Partners, L.L.C., 35 So. 3d 601, 604 (Ala. 2009) (citing Dean Witter Reynolds, Inc. v. McDonald, 758 So. 2d 539, 542 (Ala. 1999)). In other words, substantive arbitrability addresses both whether the nonsignatories -- the individual defendants -- can enforce the agreement to arbitrate and whether the claims at issue are encompassed by the arbitration provision.

"Under the [Federal Arbitration] Act, arbitration is a matter of contract, and courts must enforce arbitration contracts according to their terms." Henry Schein, Inc. v. Archer & White Sales, Inc., 586 U.S. \_\_\_, \_\_\_, 139 S.Ct. 524, 529 (2019). This is true as to "not only the merits of a

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particular dispute but also "gateway" questions of "arbitrability," such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy.'" Id. (quoting Rent-A-Center, West, Inc. v. Jackson, 561 U.S. 63, 68-69 (2010)). Thus,

"[w]hen the parties' contract delegates the arbitrability question to an arbitrator, a court may not override the contract. In those circumstances, a court possesses no power to decide the arbitrability issue. That is true even if the court thinks that the argument that the arbitration agreement applies to a particular dispute is wholly groundless."

Henry Schein, 586 U.S. at \_\_\_, 139 S.Ct. at 529.

In sum, although questions remain about whether the claims at issue fall within the scope of the arbitration provision and whether the arbitration provision may be used to compel arbitration between a signatory -- Dr. Castellanos -- and the nonsignatory individual defendants, and although such threshold questions are usually decided by the court, here those questions have been delegated to the arbitrator by virtue of the arbitrability clause. See, e.g., Anderton, 164 So. 3d at 1102. The circuit court erred in failing to allow the arbitrator, rather than the court, to determine those threshold issues.

IV. Conclusion

The questions whether the individual defendants, as nonsignatories to the employment contract, can enforce the arbitration provision in that contract and whether the arbitration provision encompasses Dr. Castellanos's claims against the individual defendants are questions for the arbitrator, not the court, pursuant to the arbitration provision in the employment contract. The circuit court erred in denying the individual defendants' motion to compel arbitration. We therefore reverse the order and remand the case for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

Parker, C.J., and Bolin, Shaw, and Bryan, JJ., concur.