SUPREME COURT OF NEBRASKA

Speece v. Allied Professionals Ins. Co.

289 Neb. 75 (2014) · No. No. S-13-700 · Decided September 19, 2014

SUMMARY

The Nebraska Supreme Court held that the Federal Arbitration Act does not preempt Nebraska's prohibition on mandatory arbitration clauses in insurance contracts. However, the court held that the Liability Risk Retention Act of 1986 preempts application of that Nebraska statute to foreign risk retention groups because it regulates the operation of such groups. The court reversed the order denying Allied Professionals Insurance Company's motion to compel arbitration and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Miller-Lerman, J.; Heavican, C.J.; Connolly, J.; Stephan, J.; McCormack, J.; Cassel, J.
JURISDICTION	Nebraska
DECIDED	September 19, 2014
DOCKET	No. S-13-700
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Allied Professionals Insurance Company appealed the district court's denial of its motion to compel arbitration in an insurance coverage dispute.
STANDARD OF REVIEW	Arbitrability is a question of law reviewed independently of the court below. The denial of a motion to compel arbitration is reviewed as a final, appealable order.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Allied Professionals Insurance Company v. Dr. Brett Speece, D.C.

TOPICS

insurance coverage · contracts · appellate procedure · federalism · statutory interpretation

PRACTICE AREAS

insurance | insurance coverage | arbitration | federal preemption

QUESTIONS PRESENTED

1. Whether the denial of APIC's motion to compel arbitration was a final, appealable order.
2. Whether the Federal Arbitration Act preempts Neb. Rev. Stat. § 25-2602.01(f)(4), which generally prohibits mandatory arbitration clauses in insurance contracts.
3. Whether the Liability Risk Retention Act of 1986 preempts application of Neb. Rev. Stat. § 25-2602.01(f)(4) to a foreign risk retention group.
4. Whether the court should decide the unconscionability of the arbitration clause when the district court had not addressed that issue.

HOLDINGS

1. The denial of a motion to compel arbitration is a final, appealable order because it affects a substantial right and is made in a special proceeding.
2. The Federal Arbitration Act does not preempt Neb. Rev. Stat. § 25-2602.01(f)(4).
3. The Liability Risk Retention Act of 1986 preempts application of Neb. Rev. Stat. § 25-2602.01(f)(4) to foreign risk retention groups.
4. The court did not decide whether the arbitration clause was unconscionable because the district court had not decided that issue and no cross-appeal presented it for review.

KEY QUOTATIONS

> *"Although the Nebraska law prohibits a contract term rather than mandating a term like the New York law at issue in Wadsworth, the Nebraska statute nevertheless "governs the content of insurance policies" and prohibits a term that might be allowed by a foreign risk retention group's domiciliary state."* (289 Neb. at 87-88)

> *"Because § 25-2602.01(f)(4) regulates the operation of a risk retention group, it is the type of statute from which a foreign risk retention group is "exempt" under § 3902 of the LRRA."* (289 Neb. at 88)

> *"A statute prohibiting an arbitration clause does not govern the interpretation of the contract. It does not mandate or guide how contract terms are to be interpreted; instead, it mandates that certain terms may not be included in the contract."* (289 Neb. at 90)

FACTUAL BACKGROUND

Dr. Brett Speece, a Nebraska chiropractor, purchased a professional liability insurance policy from APIC, an Arizona-incorporated risk retention group registered in Nebraska as a foreign risk retention group. The policy required binding arbitration in California for disputes concerning the policy and provided that arbitration procedures would be governed by the Federal Arbitration Act. After Nebraska initiated a civil action against Speece concerning allegedly false Medicaid claims, Speece sought coverage for his defense, and a dispute arose over APIC's coverage obligations.

PROCEDURAL HISTORY

Speece sued APIC seeking a declaration that APIC had to cover the costs of his defense in a Medicaid-related proceeding, along with damages for breach of contract and bad faith. APIC moved to compel arbitration under the insurance policy's arbitration clause. The Fillmore County District Court denied the motion, concluding that Neb. Rev. Stat. § 25-2602.01(f)(4) prohibited arbitration clauses in insurance contracts and was not preempted by federal law. The Nebraska Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the district court for further proceedings after treating the arbitration clause as not prohibited by Neb. Rev. Stat. § 25-2602.01(f)(4). The opinion does not decide the unconscionability issue.

CASES CITED

- Kremer v. Rural Community Ins. Co., 280 Neb. 591, 788 N.W.2d 538 (2010)
- Webb v. American Employers Group, 268 Neb. 473, 684 N.W.2d 33 (2004)
- Sturgeon v. Allied Professionals Ins. Co., 344 S.W.3d 205 (Mo. App. 2011)
- National Home Ins. Co. v. King, 291 F. Supp. 2d 518 (E.D. Ky. 2003)
- Wadsworth v. Allied Professionals Ins. Co., 748 F.3d 100 (2d Cir. 2014)
- Conley v. Brazer, 278 Neb. 508, 772 N.W.2d 545 (2009)