

DISTRICT COURT OF APPEAL OF FLORIDA, FIFTH DISTRICT

SHP IV Harbour Island, LLC v. Boylan

273 So. 3d 249 (Fla. 5th DCA 2019) · Decided May 24, 2019

SUMMARY

The Florida Fifth District Court of Appeal affirmed an order denying a motion to compel arbitration in an assisted living facility negligence case. The court held that the defendants waived arbitration by conducting discovery into the merits of the underlying claims, contrary to the limited discovery authorized by the trial court.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fifth District
WRITING FOR THE COURT	Evander, C.J.; Edwards, J.; Harris, J.
JURISDICTION	Florida
DECIDED	May 24, 2019
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed a nonfinal order denying their motion to abate and compel arbitration.
STANDARD OF REVIEW	The opinion does not expressly state a standard of review; the appellate court reviewed the evidentiary support for the trial court's finding of waiver.
PRECEDENTIAL VALUE	Published Florida Fifth District Court of Appeal opinion
PARTIES	SHP IV Harbour Island, LLC, the facility's management company, the facility's administrator v. Gail Boylan

TOPICS

- arbitration
- waiver
- negligence
- civil procedure
- health law

PRACTICE AREAS

- arbitration
- civil procedure
- negligence
- health law

QUESTIONS PRESENTED

1. Whether Appellants waived their contractual right to arbitrate by engaging in discovery concerning the merits of the underlying claims after moving to compel arbitration.
2. Whether the trial court properly denied Appellants' motion to abate and compel arbitration.

HOLDINGS

1. A party waives its right to arbitration when, under the totality of the circumstances, it acts inconsistently with that right; participating in discovery directed to the merits of the underlying claims is conduct inconsistent with the right to arbitrate.

KEY QUOTATIONS

“The right to arbitration, like any contract right, can be waived.” (273 So. 3d at 251)

“The essential question is whether, under the totality of the circumstances, the defaulting party has acted inconsistently with the arbitration right.” (273 So. 3d at 251)

“The law in Florida is clear that a party's participation in merits discovery constitutes a waiver of arbitration.” (273 So. 3d at 251)

FACTUAL BACKGROUND

Gail Boylan lived at the Allegro at Harbour Island assisted living facility for slightly more than one month and was injured in a fall. She sued the facility's owner, management company, and administrator for negligence and breach of fiduciary duty. Although the parties stipulated to limited discovery regarding arbitration, Appellants' counsel questioned Boylan's daughter and attorney-in-fact about matters going to the merits of the underlying case.

PROCEDURAL HISTORY

Boylan sued the assisted living facility's owner, management company, and administrator for negligence and breach of fiduciary duty after suffering injuries in a fall. Appellants moved to abate the action and compel arbitration under the resident agreement. After permitting limited discovery concerning arbitration, the trial court found that Appellants' deposition questioning improperly addressed the merits of the underlying claims and denied the motion to compel arbitration.

DISPOSITION

affirmed

CASES CITED

- Raymond James Fin. Servs., Inc. v. Saldukas, 896 So. 2d 707, 711 (Fla. 2005)
- Nat'l Found. for Cancer Research v. A.G. Edwards & Sons, Inc., 821 F.2d 772, 774 (D.C. Cir. 1987)
- Major League Baseball v. Morsani, 790 So. 2d 1071, 1077 n.12 (Fla. 2001)
- Lion Gables Realty Ltd. v. Randall Mech., Inc., 65 So. 3d 1098, 1101 (Fla. 5th DCA 2011)

- Olson Elec. Co. v. Winter Park Redev. Agency, 987 So. 2d 178, 179 (Fla. 5th DCA 2008)
- Green Tree Servicing, LLC v. McLeod, 15 So. 3d 682, 687 (Fla. 2d DCA 2009)

OPINION

SHP IV Harbour Island, LLC. v. Boylan

273 So. 3d 249

EVANDER, J.

EVANDER, C.J.,

In this assisted living facility negligence case, the defendants below appeal a nonfinal order denying their motion to compel arbitration. We have jurisdiction.¹ Because the evidence supports the trial court's finding that Appellants waived their right to arbitration, we affirm. Appellee, Gail Boylan, lived at the Allegro at Harbour Island assisted living facility for slightly more than one month. She sued the facility's owner, management company, and administrator (collectively "Appellants") for negligence and breach of fiduciary duty after suffering injuries from a fall during her stay at the facility. Appellants timely filed a motion to abate and compel arbitration based on an arbitration provision in Boylan's resident agreement with the facility. Pursuant to the parties' stipulation, the trial court entered an order authorizing the parties to conduct limited discovery regarding arbitration. However, in a subsequent deposition of Appellee's daughter and attorney-in-fact, Appellants' counsel asked numerous questions that went to the merits of the underlying case. As a result, the trial court properly found that the deposition "cover[ed] matters extrinsic to the limited scope permitted by this Court's Order ... and consequently was inconsistent with the right to arbitrate." "The right to arbitration, like any contract right, can be waived." *Raymond James Fin. Servs., Inc. v. Saldukas* , 896 So.2d 707, 711 (Fla. 2005) (quoting *Nat'l Found. for Cancer Research v. A.G. Edwards & Sons, Inc.* , 821 F.2d 772, 774 (D.C. Cir. 1987)). Waiver is the "voluntary and intentional relinquishment of a known right or conduct which implies the voluntary and intentional relinquishment of a known right." *Id.* (citing *Major League Baseball v. Morsani* , 790 So.2d 1071, 1077 n.12 (Fla. 2001)). The right to arbitrate "must be safeguarded by a party who seeks to rely upon that right, and the party must not act inconsistently with the *251right." *Id.* In determining whether the right to arbitration has been waived, "[t]he essential question is whether, under the totality of the circumstances, the defaulting party has acted inconsistently with the arbitration right." *Saldukas* , 896 So.2d at 711. This Court has expressly held that engaging in merits discovery is inconsistent with an arbitration request and constitutes a waiver of the right to arbitration. See *Lion Gables Realty Ltd. v. Randall Mech., Inc.* , 65 So. 3d 1098, 1101 (Fla. 5th DCA 2011) ("The law in Florida is clear that a party's participation in merits discovery constitutes a waiver of arbitration."); *Olson Elec. Co. v. Winter Park Redev. Agency* , 987 So.2d 178, 179 (Fla. 5th DCA 2008) (holding that party waived its contractual right to seek arbitration when it propounded discovery directed to merits of opposing party's claims). Other courts have held the same. See, e.g. , *Green Tree Servicing, LLC v. McLeod* , 15 So.3d 682, 687 (Fla. 2d DCA 2009)

(holding that party waived its claimed right to arbitration by participating in discovery related to merits of pending litigation, even where that discovery occurred after filing motion to compel arbitration; further observing that there is no requirement for proof of prejudice for effective waiver of arbitration right). Here, the record supports the conclusion that, under the totality of the circumstances, Appellants waived their right to arbitration. Accordingly, the trial court properly denied Appellants' motion to abate and compel arbitration. **AFFIRMED. EDWARDS and HARRIS, JJ., concur.** See Fla. R. App. P. 9.130(a)(3)(C)(iv).