

SUPERIOR COURT OF PENNSYLVANIA

Duffy, D. v. Tatum, R.

2026 Pa. Super. 41 · No. 483 EDA 2025 · Decided March 3, 2026

SUMMARY

The Pennsylvania Superior Court affirmed an order overruling Dolly, Inc.'s preliminary objections seeking to compel arbitration in a negligence and loss-of-consortium action. The court held that the website's hyperlinked terms of service did not provide sufficiently explicit and prominent notice that agreeing to the terms waived the user's constitutional right to a jury trial. Because the plaintiff never viewed the terms and did not unambiguously assent to arbitration, the court found no enforceable arbitration agreement.

CASE DETAILS

COURT	Superior Court of Pennsylvania
WRITING FOR THE COURT	President Judge Emeritus Panella; President Judge Lazarus; Judge Sullivan
JURISDICTION	Pennsylvania Superior Court
DECIDED	March 3, 2026
DOCKET	483 EDA 2025
DISPOSITION	affirmed
PROCEDURAL POSTURE	Interlocutory appeal as of right from an order overruling Dolly's preliminary objections seeking to compel alternative dispute resolution.
STANDARD OF REVIEW	The existence of an agreement to arbitrate is a question of law reviewed for error of law. Whether arbitration should be compelled requires determining whether a valid agreement to arbitrate exists and whether the dispute falls within its scope.
PRECEDENTIAL VALUE	Published precedential opinion of the Pennsylvania Superior Court
PARTIES	Dolly, Inc. v. Daniel Duffy, Laverne Duffy

TOPICS

- arbitration
- contract formation
- mutual assent
- appellate jurisdiction
- appellate procedure

PRACTICE AREAS

arbitration

contracts

constitutional law

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the Superior Court had appellate jurisdiction over the order denying Dolly's preliminary objections when the agreement required negotiation and mediation before arbitration.
2. Whether the online terms of service created a valid agreement to arbitrate and waive the constitutional right to a jury trial when the user clicked an acceptance box but never clicked, viewed, or scrolled through the hyperlinked terms.
3. Whether the dispute fell within the scope of the purported alternative-dispute-resolution agreement.

HOLDINGS

1. The order was appealable as of right because the agreement ultimately required arbitration, even though it included pre-arbitration negotiation and mediation procedures.
2. No valid agreement to arbitrate was formed because Dolly's online contracting process did not provide reasonably obvious notice that acceptance of the terms waived the constitutional right to a jury trial, and Duffy did not unambiguously manifest assent to that waiver.
3. To enforce such an online arbitration provision, the proponent must prove an unambiguous manifestation of assent by showing that the registration screens explicitly state that accepting the terms waives the right to a jury trial and that, when the terms are accessed through a hyperlink, the waiver is prominently displayed in bold, capitalized text rather than hidden in the document.

KEY QUOTATIONS

"We therefore find a strict burden of proof is necessary to demonstrate a person's unambiguous manifestation of assent to arbitration." (at 14-15)

"This requires: (1) explicitly stating on the registration website and application screens that a consumer is waiving their right to a jury trial when the person agrees to the seller's terms of service and the registration cannot be completed until the person is fully informed of that waiver; and (2) when the agreements are available for viewing after a user has clicked on a hyperlink, the waiver should not be hidden in the middle of the document but should appear prominently in bold, capitalized text." (at 15)

"Duffy never saw the terms of service and did not unambiguously assent to arbitration." (at 16)

FACTUAL BACKGROUND

On November 30, 2022, Daniel Duffy used Dolly's website to select moving services and purchase a move. The website required him to check a box stating, "By checking this box I accept the Dolly Terms of Service," but did not require him to click, view, or scroll through the hyperlinked terms. The terms contained an arbitration provision on page three, but neither the registration screens nor the terms explicitly and prominently stated that acceptance waived the user's constitutional right to a jury trial. Duffy was injured during the move and later sued Dolly for negligence; Dolly sought enforcement of the online arbitration provision.

PROCEDURAL HISTORY

The Duffys filed a negligence and loss-of-consortium complaint in the Philadelphia County Court of Common Pleas after Daniel Duffy was injured during moving services purchased through Dolly's website. Dolly filed preliminary objections asserting that the parties had agreed to negotiation, mediation, and arbitration through online terms of service. After permitting discovery and supplemental briefing on contract formation and assent, the trial court overruled the preliminary objections. The Superior Court affirmed.

DISPOSITION

affirmed

CASES CITED

- *McCrossin v. Comcast Spectacor, Inc.*, 311 A.3d 1115, 1121 (Pa. Super. 2024)
- *Chilutti v. Uber Technologies, Inc.*, 300 A.3d 430 (Pa. Super. 2023) (en banc)
- *Neuhard v. Travelers Ins. Co.*, 831 A.2d 602, 604 (Pa. Super. 2003)
- *Smay v. E.R. Stuebner, Inc.*, 864 A.2d 1266, 1270 (Pa. Super. 2004)
- *Pisano v. Extendicare Homes, Inc.*, 77 A.3d 651, 660-61 (Pa. Super. 2013)
- *Taylor v. Extendicare Health Facilities, Inc.*, 147 A.3d 490, 508 (Pa. 2016)
- *Brown v. Hummel*, 6 Pa. 86, 90 (1847)
- *Neducsin v. Caplan*, 121 A.3d 498, 505 (Pa. Super. 2015)
- *Wilmington Savings Fund Society, FSB v. Patel*, 336 A.3d 984, 2903 EDA 2023, *6 (Pa. Super. filed March 18, 2025)
- *Ferrick v. Bianchini*, 69 A.3d 642, 651 (Pa. Super. 2013)
- *Graystone Bank v. Grove Estates, LP*, 58 A.3d 1277, 1283 (Pa. Super. 2012)
- *Commonwealth v. Smith*, 181 A.3d 1168, 1175 (Pa. Super. 2018)
- *Sarchi v. Uber Technologies, Inc.*, 268 A.3d 258, 266 (Me. 2022)
- *Gasbarre Products, Inc. v. Smith*, 270 A.3d 1209, 1218 (Pa. Super. 2022)
- *Accu-Weather, Inc. v. Thomas Broadcasting Co.*, 625 A.2d 75, 78 (Pa. Super. 1993)
- *Temple University Hosp., Inc. v. Healthcare Management Alternatives, Inc.*, 764 A.2d 587, 593 (Pa. Super. 2000)
- *Bruckshaw v. Frankford Hosp. of City of Philadelphia*, 58 A.3d 102, 109 (Pa. 2012)
- *Commonwealth v. Noel*, 104 A.3d 1156, 1168 (Pa. 2014)
- *Chilutti v. Uber Technologies, Inc.*, --- A.3d ---, 58 EAP 2025 (Pa. filed Jan. 21, 2026)