SUPREME COURT OF ALABAMA

Auvil v. Johnson

806 So. 2d 343 (Ala. 2001) · No. 1980145 · Decided June 8, 2001

SUMMARY

The Supreme Court of Alabama affirmed the denial of Jimmy D. Auvil's motion to compel arbitration of Amy M. Johnson's claims arising from the sale of a variable universal life insurance policy. The court held that Johnson was not bound by the arbitration agreement because she did not sign it and the insurance application did not incorporate it by reference. The court also held that Auvil, a nonsignatory agent, lacked standing to enforce the agreement under the circumstances.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Johnstone, Justice; Moore, C.J.; Houston, J.; Brown, J.; Harwood, J.; Woodall, J.; Stuart, J.
JURISDICTION	Alabama
DECIDED	June 8, 2001
DOCKET	1980145
DISPOSITION	affirmed
PROCEDURAL POSTURE	Interlocutory appeal from an order denying a motion to compel arbitration and to dismiss or stay the plaintiff's claims.
STANDARD OF REVIEW	Whether the trial court properly denied a motion to compel arbitration; the judgment was affirmable if correct for any reason.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Jimmy D. Auvil v. Amy M. Johnson

TOPICS

arbitration · insurance coverage · appellate procedure · contracts · appellate jurisdiction

PRACTICE AREAS

arbitration · insurance · civil procedure · appellate procedure · contracts

QUESTIONS PRESENTED

1. Whether Amy Johnson was bound by an arbitration agreement that she did not sign and that was contained in a separate document not incorporated into the insurance application.
2. Whether Jimmy Auvil, a nonsignatory agent, had standing to enforce the arbitration agreement against Johnson when the agreement did not include him as a party or beneficiary and the signatory principal, ANIC, was not proceeding to arbitration.

HOLDINGS

1. Amy Johnson was not bound by the arbitration agreement because she did not sign the document containing it, and the insurance application did not incorporate that document by reference.
2. Auvil lacked standing to enforce the arbitration agreement because he was neither a party nor a beneficiary of the agreement, and the agreement did not include him as an agent or other beneficiary.

KEY QUOTATIONS

> *“"[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit."”* (346)

> *“"The concept of `intertwining' necessarily presupposes that the signatory to the arbitration agreement is or will be engaged in an arbitration proceeding with the plaintiff."”* (350)

FACTUAL BACKGROUND

Amy and Duane Johnson applied for a variable universal life insurance policy from American National Insurance Company through its agent, Jimmy Auvil. Before they completed the insurance application, Duane alone signed a separate purchaser-suitability form containing a NASD arbitration agreement; Auvil did not sign that agreement. Neither the insurance application signed by Amy nor the insurance policy contained an arbitration provision, and the record did not establish that the separate form was attached to or incorporated into the application. Amy later sued ANIC and Auvil, and Auvil sought to compel arbitration.

PROCEDURAL HISTORY

Amy Johnson sued American National Insurance Company and its agent Jimmy Auvil for fraud, negligent hiring and supervision, and wanton hiring and supervision arising from the sale of a variable universal life insurance policy. Auvil moved to compel arbitration, and ANIC joined the motion. The Montgomery County Circuit Court denied the motion on several grounds, including that Johnson had not signed the arbitration agreement and that Auvil lacked a basis to enforce it. Only Auvil appealed; ANIC did not.

DISPOSITION

affirmed

CASES CITED

- AT&T Technologies, Inc. v. Communications Workers of America, 475 U.S. 643 (1986)
- United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960)

- Ex parte Gray, 686 So. 2d 250 (Ala. 1996)
- Ex parte Gates, 675 So. 2d 371 (Ala. 1996)
- Ex parte Stripling, 694 So. 2d 1281 (Ala. 1997)
- Ex parte Isbell, 708 So. 2d 571 (Ala. 1997)
- Ex parte Napier, 723 So. 2d 49 (Ala. 1998)
- Georgia Power Co. v. Partin, 727 So. 2d 2 (Ala. 1998)
- Ex parte Rush, 730 So. 2d 1175 (Ala. 1999)
- McDougle v. Silvernell, 738 So. 2d 806 (Ala. 1999)
- Ex parte Foster, 758 So. 2d 516 (Ala. 1999)
- First Family Financial Services, Inc. v. Rogers, 736 So. 2d 553 (Ala. 1999)
- Southern Energy Homes, Inc. v. Kennedy, 774 So. 2d 540 (Ala. 2000)
- Premiere Chevrolet, Inc. v. Headrick, 748 So. 2d 891 (Ala. 1999)
- McKenzie Methane Corp. v. M-W Drilling, Inc., 653 So. 2d 982 (Ala. 1995)
- Smith v. Equifax Services, Inc., 537 So. 2d 463 (Ala. 1988)
- Homes of Legend, Inc. v. McCollough, 776 So. 2d 741 (Ala. 2000)
- Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1 (1983)
- Ex parte Stallings & Sons, Inc., 670 So. 2d 861 (Ala. 1995)
- Adair v. Adair, 258 Ala. 293, 62 So. 2d 437 (1952)
- Roquemore v. Sovereign Camp, W.O.W., 226 Ala. 279, 146 So. 619 (1933)
- Paine, Webber, Jackson & Curtis, Inc. v. McNeal, 143 Ga. App. 579, 239 S.E.2d 401 (1977)
- Isbell v. Paine, Webber, Jackson & Curtis, Inc., No. C75-2140A (N.D. Ga. Apr. 14, 1976)
- Hilti, Inc. v. Oldach, 392 F.2d 368, 369 n.2 (1st Cir. 1968)
- Starr v. O'Rourke, 5 Misc. 2d 646, 159 N.Y.S.2d 60 (N.Y. Sup. Ct. 1957)