

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4589-16T1

LORIANNE WEED and SCOTT
TREFERO as parents and
natural guardians of
A.M., a minor,

Plaintiffs-Respondents,

v.

SKY NJ, LLC a/k/a and/or d/b/a
SKYZONE MOORESTOWN and/or a/k/a
and/or d/b/a SKYZONE and DAVID R.
AGGER,

Defendants-Appellants.

Argued January 18, 2018 – Decided February 22, 2018

Before Judges Currier and Geiger.

On appeal from Superior Court of New Jersey,
Law Division, Atlantic County, Docket No.
L-2790-16.

Marco P. DiFlorio argued the cause for
appellants (Salmon, Ricchezza, Singer & Turchi
LLP, attorneys; Joseph A. Ricchezza and Marco
P. DiFlorio, on the briefs).

Iddo Harel argued the cause for respondents
(Ross Feller Casey, LLP, attorneys; Joel J.
Feller and Iddo Harel, on the brief).

PER CURIAM

Defendants Sky NJ, LLC a/k/a/ Sky Zone Moorestown and David Agger (defendants) appeal from the May 19, 2017 order denying their motion to compel arbitration in this personal injury suit brought by plaintiffs after A.M.¹ suffered severe injuries while jumping on a trampoline at defendants' facility. After a review of the presented arguments in light of the record before us and applicable principles of law, we affirm.

Plaintiff visited the trampoline facility in July 2016. Entrance to the park is conditioned on all participants signing a "Conditional Access Agreement, Pre-Injury Waiver of Liability, and Agreement to Indemnity, Waiver of Trial, and Agreement to Arbitrate" (the Agreement). Weed executed the agreement on behalf of her son in July 2016.

Plaintiff returned to the facility with a friend in November 2016, and was injured while using the trampolines during a "Glow" event, which plaintiff submits used different and less lighting than was present at his earlier visit. Plaintiff entered the facility in November with an agreement signed by his friend's

¹ Lorianne Weed is A.M.'s mother. Because A.M. is a minor, we use initials in respect of his privacy and we refer to him hereafter as plaintiff.

mother on behalf of both her daughter and A.M.² In an affidavit submitted by Weed in opposition to the motion, she stated that she was unaware that her son was going to the facility at the time of the November visit.

Both agreements required the submission of all claims to binding arbitration and contained the following pertinent language:

I understand that this Agreement waives certain rights that I have in exchange for permission to gain access to the [l]ocation. I agree and acknowledge that the rights I am waiving in exchange for permission to gain access to the [l]ocation include but may not be limited to the following:

- a. the right to sue [defendants] in a court of law;
- b. the right to a trial by judge or jury;
- c. the right to claim money from [defendants] for accidents causing injury within the scope of the risk assumed by myself;
- d. the right to claim money from [defendants] for accidents causing injury unless [defendants] committed acts of gross negligence or willful and wanton misconduct; and

² The agreement required the adult to "certify that [she was] the parent or legal guardian of the child(ren) listed [on the agreement] or that [she had] been granted power of attorney to sign [the] Agreement on behalf of the parent or legal guardian of the child(ren) listed." There were no proofs presented that the adult met any of these requirements.

e. the right to file a claim against [defendants] if I wait more than one year from . . . the date of this Agreement.

. . . .

Waiver of Trial, and Agreement to Arbitrate

IF I AM INJURED AND WANT TO MAKE A CLAIM AND/OR IF THERE ARE ANY DISPUTES REGARDING THIS AGREEMENT, I HEREBY WAIVE ANY RIGHT I HAVE TO A TRIAL IN A COURT OF LAW BEFORE A JUDGE AND JURY. I AGREE THAT SUCH DISPUTE SHALL BE BROUGHT WITHIN ONE YEAR OF THE DATE OF THIS AGREEMENT AND WILL BE DETERMINED BY BINDING ARBITRATION BEFORE ONE ARBITRATOR TO BE ADMINISTERED BY JAMS^[3] PURSUANT TO ITS COMPREHENSIVE ARBITRATION RULES AND PROCEDURES. I further agree that the arbitration will take place solely in the state of New Jersey and that the substantive law of New Jersey shall apply. I acknowledge that if I want to make a claim against [defendants], I must file a demand before JAMS. . . . To the extent that any claim I have against [defendants] has not been released or waived by this Agreement, I acknowledge that I have agreed that my sole remedy is to arbitrat[e] such claim, and that such claim may only be brought against [defendants] in accordance with the above Waiver of Trial and Agreement to Arbitrate.

After Weed filed suit on behalf of her son, defendants moved to compel arbitration pursuant to the agreement. Defendants argued that the agreements contained "straightforward, clear, and unequivocal" language that a participant was waiving their right

³ JAMS is an organization that provides alternative dispute resolution services, including mediation and arbitration.

to present claims before a jury in exchange for conditional access to the facility. They asserted that the first agreement signed by Weed remained in effect at the time of plaintiff's subsequent visit in November as there was no indication that it was only valid for the one day of entry in July. Finally, defendants contended that any dispute as to a term of the agreement should be resolved in arbitration.

Plaintiff opposed the motion, asserting that nothing in the first agreement alerted Weed that it would remain in effect for either a certain or an indefinite period of time. To the contrary, defendants' policy of requiring a new agreement to be signed each time a participant entered the park belied its argument that a prior agreement remained valid for a period of time.

On May 19, 2017, Judge Joseph L. Marczyk conducted oral argument and denied the motion in an oral decision issued the same day. The judge determined that the first agreement did not apply to the November visit because it did not contain any language that it would remain valid and applicable to all future visits. Therefore, there was no notice to the signor of the agreement that it would be in effect beyond that specific day of entry, and no "meeting of the minds" that the waiver and agreement to arbitrate pertained to all claims for any future injury.

As for the second agreement, the judge found that there was no precedent to support defendants' contention that an unrelated person could bind plaintiff to an arbitration clause. This appeal followed.

"[O]rders compelling or denying arbitration are deemed final and appealable as of right as of the date entered." GMAC v. Pittella, 205 N.J. 572, 587 (2011). We review the judge's decision to compel arbitration de novo. Frumer v. Nat'l Home Ins. Co., 420 N.J. Super. 7, 13 (App. Div. 2011). The question of whether an arbitration clause is enforceable is an issue of law, which we also review de novo. Atalese v. U.S. Legal Servs. Group, L.P., 219 N.J. 430, 445-46 (2014). We owe no deference to the trial court's "interpretation of the law and the legal consequences that flow from established facts." Manalapan Realty v. Twp. Comm., 140 N.J. 366, 378 (1995).

Defendants argue that the trial court erred when it determined that the first arbitration agreement signed by Weed four months before plaintiff's injury was no longer binding on the parties at the time of plaintiff's injury. We disagree.

While we are mindful that arbitration is a favored means of dispute resolution in New Jersey, the threshold issue before us is whether Weed's signature on the July agreement would be binding on plaintiff for all subsequent visits. We apply well-established

contract principles, and ascertain the parties' intent from a consideration of all of the surrounding circumstances. James Talcott, Inc. v. H. Corenzwit & Co., 76 N.J. 305, 312 (1978). "An agreement must be construed in the context of the circumstances under which it was entered into and it must be accorded a rational meaning in keeping with the express general purpose." Tessmar v. Grosner, 23 N.J. 193, 201 (1957).

It is undisputed that neither agreement contains any reference to a term of validity. The parties submitted conflicting affidavits in support of their respective positions. Weed stated there was nothing in the agreement she signed to apprise a participant that the agreement was in effect for longer than the day of entry. Defendants contend that plaintiff did not need a second agreement signed for the November visit as the initial agreement remained in effect.

There is no evidence in the record before us to support defendants' argument as the agreements are silent as to any period of validity. Defendants drafted these agreements and required a signature from all participants waiving certain claims and requiring submission to arbitration prior to permitting access to the facility. Any ambiguity in the contract must be construed against defendants. See Moscowitz v. Middlesex Borough Bldg. & Luan Ass'n, 14 N.J. Super. 515, 522 (App. Div. 1951) (holding that

where a contract is ambiguous, it will be construed against the drafting party). We are satisfied that Judge Marczyk's ruling declining enforcement of the July agreement was supported by the credible evidence in the record.

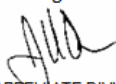
We further find that defendants' argument regarding the November agreement lacks merit. The signor of that agreement was neither a parent, a legal guardian, nor the holder of a power of attorney needed to bind the minor plaintiff to the arbitration agreement. Defendants' reliance on Hojnowski v. Vans Skate Park, 187 N.J. 323, 346 (2006) is misplaced. While the Court found that a parent had the authority to waive their own child's rights under an arbitration agreement in Hojnowski, there is no suggestion that such authority would extend to a non-legal guardian. Not only would such a holding bind the minor to an arbitration agreement, it would also serve to bind the minor's parents, waiving their rights to bring a claim on behalf of their child. We decline to so hold. See Moore v. Woman to Woman Obstetrics & Gynecology, LLC, 416 N.J. Super. 30, 45 (App. Div. 2010) (holding there is no legal theory that would permit one spouse to bind another to an agreement waiving the right to trial without securing consent to the agreement).

As we have concluded the threshold issue that neither the July nor the November agreement is enforceable as to the minor

plaintiff, we do not reach the issue of whether the arbitration provision contained within the agreement accords with our legal standards and case law. Judge Marczyk's denial of defendants' motion to compel arbitration was supported by the evidence in the record.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION