IN THE COURT OF APPEALS OF IOWA

No. 9-152 / 08-0743
Filed May 6, 2009

STEVE BASSMAN, d/b/a
BASSMAN REAL ESTATE,
Plaintiff-Appellant,

vs.

BOB J. KNAPP, II,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Don C. Nickerson, Judge.

Plaintiff appeals from a district court order compelling arbitration in a real estate sale dispute. **APPEAL DISMISSED.**

Bruce H. Stoltze and Andrew J. Stoltze of Stoltze & Updegraff, P.C., Des Moines, for appellant.

William B. Serangeli and Joseph M. Borg of Smith, Schneider, Stiles & Serangeli, P.C., Des Moines, for appellee.

Considered by Mahan, P.J., and Miller and Potterfield, JJ.

MILLER, J.

Steve Bassman d/b/a Bassman Real Estate appeals from a district court order compelling arbitration in a real estate sale dispute with Bob J. Knapp, II. We find the order compelling arbitration was not a final judgment for the purposes of appeal, and we decline to permit an interlocutory appeal. We therefore dismiss this appeal.

I. BACKGROUND FACTS AND PROCEEDINGS.

Bassman filed a petition against Knapp in July 2007, asserting claims for fraud, breach of contract, unjust enrichment, and promissory estoppel. In support of those claims, Bassman alleged he learned about a commercial property in Des Moines "that was or would soon become [available] for sale." His son-in-law, Scott Remsburg, was a real estate agent for Iowa Realty. Remsburg informed Bassman that Knapp, a fellow real estate agent at Iowa Realty, had a client that might be interested in the property discovered by Bassman.

Bassman's petition alleges that he met with Remsburg and Knapp on November 28, 2005, to present the property to them. He asserted that he disclosed details about the property to Remsburg and Knapp only after they signed "Confidentiality/Non Circumvention Agreement[s]" "wherein they agreed not to exclude Mr. Bassman from the transaction by circumventing him and dealing directly with the seller." Bassman additionally asserted the parties orally agreed "the three of them would share any real estate commissions on the sale of the building and any commissions on the sale of planned renovated condominium units on an equal 1/3, 1/3, 1/3 basis." Bassman alleged that

despite the parties' agreements Knapp excluded him from the sale of the property and resulting commissions realized by Knapp.

Knapp filed a motion to stay the proceedings and compel arbitration. He asserted that both he and Bassman were members of the Des Moines Area Association of Realtors (DMAAR) and the National Association of Realtors (NAR). As members of those associations, Knapp contended they had agreed to abide by the "Code of Ethics and Standards of Practice" promulgated by NAR. A provision of that ethical code provides in relevant part as follows:

> In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®, the REALTORS® shall submit the dispute to arbitration in accordance with the regulations of their Board or Boards rather than litigate the matter.

Knapp asserted that he and Bassman were consequently required to arbitrate their dispute. Bassman resisted Knapp's motion, challenging the existence of a valid and enforceable agreement to arbitrate between him and Knapp.

Following a hearing, the district court entered an order granting Knapp's motion to stay the proceedings and compel arbitration. The court determined that by virtue of the parties' membership in DMAAR, "they are subject to 'the duty to arbitrate business disputes in accordance with the Code of Ethics and Arbitration Manual.'" The court further determined, although the issue was not raised by the parties, that the Federal Arbitration Act applied and preempted Iowa's arbitration statute, Iowa Code chapter 679A (2007). It therefore rejected Bassman's assertion that under section 679A.1(2)(a) any agreement to arbitrate was unenforceable because it was contained in a contract of adhesion. Finally,

the court concluded the parties were required to arbitrate all of the claims contained in the petition, not just the breach of contract claim as Bassman contended.

Bassman appeals. He claims the district court erred in several respects in ordering the parties to proceed with arbitration. Knapp in turn challenges Bassman's right to file an appeal, arguing that an order compelling arbitration is not appealable as a matter of right and that we should not permit an interlocutory appeal in this case. We agree with Knapp on both counts and do not address the claims raised in Bassman's appeal.

II. APPEALABILITY OF ORDER.

In *Wesley Retirement Services, Inc. v. Hansen Lind Meyer, Inc.*, 594 N.W.2d 22, 28 (Iowa 1999), our supreme court held an order compelling arbitration is not a final judgment appealable as a matter of right because it "is not one that finally adjudicates the rights of the parties." It reasoned

> [t]he district court here merely decided that a decision on the merits of the contract claims must be made by an arbitrator. Under chapter 679A, such an order does not dispose of the court action, but merely imposes a stay pending the outcome of the arbitration. *See* Iowa Code § 679A.2(4). In addition, upon application of a party, the arbitrator's decision may be vacated, modified, corrected, or confirmed by the district court. *See id.* §§ 679A.11, .12, .13. A judgment modifying, correcting, or confirming the arbitration award is enforceable like any other judgment, *see id.* § 679A.14, and may be appealed in the same manner as any other judgment, *see id.* § 679A.17(1)(f), (2). Furthermore, a party's participation in the arbitration does not prevent it from contesting the arbitrability of the dispute in an appeal of the arbitrator's decision. Clearly, the parties' rights are not finally adjudicated when arbitration is first ordered; such a ruling is simply the initial step in obtaining a final adjudication.

Wesley, 594 N.W.2d at 28 (citation omitted). The court further observed that section 679A.17(1), which specifies the types of orders under chapter 679A from which a party may take an appeal, does not include an order *compelling* arbitration although an order *denying* arbitration is included. *Id.* at 27.

It is clear from the court's decision in *Wesley* that the district court's order compelling arbitration in this case was not a final judgment appealable as a matter of right. We do not believe, as Bassman argues, that the fact the court's order involved a "determination as to the existence of an agreement to arbitrate between the parties," rather than a decision as to the arbitrability of the dispute as in *Wesley*, dictates a different conclusion here. However, this does not end our inquiry. *See* Iowa R. App. P. 6.1(4) ("If an appeal to the supreme court is improvidently taken because the order from which appeal is taken is interlocutory, this alone shall not be ground for dismissal.").

Our courts have "routinely held that appeals improvidently filed as a matter of right may be treated as applications for interlocutory appeal." *Buechel v. Five Star Quality Care, Inc.*, 745 N.W.2d 732, 735 (Iowa 2008); *see also* Iowa R. App. P. 6.1(4). But as a general rule, "we sparingly grant interlocutory appeals on this basis." *Buechel*, 745 N.W.2d at 735. "The main factor in determining whether such an interlocutory appeal should be granted is whether consideration of the issues would serve the 'interest of sound and efficient judicial administration . . .'" *Id.* at 735-36 (citation omitted). We do not believe that factor, nor the others we must consider under Iowa Rule of Appellate Procedure 6.2(1), are met here. *See Wesley*, 594 N.W.2d at 28 ("An application for interlocutory appeal may be

granted if the appealed ruling 'involves substantial rights and will materially affect the final decision and . . . a determination of its correctness before trial on the merits will better serve the interests of justice.'" (quoting Iowa R. App. P. 6.2(1)).

The court in *Wesley* granted the plaintiff permission to bring an interlocutory appeal of the district court's order compelling arbitration. *Id.* at 29. In so doing, the court emphasized its decision was based on the procedural posture of the case in that the defendant had appealed the district court's order denying arbitration on the tort claims against it and the plaintiff then cross-appealed the court's order compelling arbitration on his breach-of-contract claim. *Id.* It explained that although an interlocutory appeal "does not [typically] better serve the interests of justice, we think this hurdle is met here because that part of the district court's order denying arbitration is already before us on appeal as permitted by section 679A.17(1)(a)." *Id.* The court cautioned that its

> action in allowing this interlocutory appeal should not be taken as an indication that an interlocutory appeal of a decision ordering arbitration will be granted where there is no pending appeal in the same case of an order denying arbitration.

Id.

There is no pending appeal in this case of an order denying arbitration. Thus, allowance of Bassman's interlocutory appeal in this case would likely "increase the cost of litigation and delay the entry of final judgment. It may even be followed by a second appeal once final judgment has been entered." *River Excursions, Inc. v. City of Davenport*, 359 N.W.2d 475, 478 (Iowa 1984); *see also Wesley*, 594 N.W.2d at 28 (recognizing a party's participation in arbitration does not prevent it from contesting the arbitrability of the dispute in an appeal of the

arbitrator's decision). "The possibility of fragmented appeals—one interlocutory, a second taken from the final judgment—should be avoided whenever possible." *River Excursions*, 359 N.W.2d at 478.

In view of the foregoing, we deny Bassman permission to bring an interlocutory appeal of the district court's order compelling arbitration. We do not believe the interests of justice would be better served by our consideration of his claims at this stage of the proceedings. This is especially true in light of our policy favoring arbitration "as a means of settling civil disputes without the expense and delay of litigation." *Clinton Nat'l Bank v. Kirk Gross Co.*, 559 N.W.2d 282, 283-84 (Iowa 1997). "To allow an immediate appeal from every order enforcing an arbitration clause would clearly defeat" that policy. *Wesley*, 594 N.W.2d at 27.

III. CONCLUSION.

We find the order compelling arbitration was not a final judgment for the purposes of appeal, and we decline to permit an interlocutory appeal. We therefore dismiss this appeal.

APPEAL DISMISSED.