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# AJZ'S HAULING, L.L.C., APPELLEE, *v.* TRUNORTH WARRANTY PROGRAMS OF NORTH AMERICA, APPELLANT.

**[Cite as *AJZ's Hauling, L.L.C. v. TruNorth Warranty Programs of N. Am.*, 2023-Ohio-3097.]**

*Civil law—Res judicata—Issue preclusion (i.e., collateral estoppel)—Parties are precluded from relitigating in a second lawsuit the validity, enforceability, and applicability of warranty's arbitration provision when trial court issued final, appealable order on same issue in initial lawsuit in which parties were afforded full and fair opportunity to litigate issue and did not appeal from that order or challenge it in a Civ.R. 60(B) motion—Court of appeals' judgment reversed and cause remanded to trial court.*

(No. 2022-0750—Submitted May 2, 2023—Decided September 6, 2023.)

APPEAL from the Court of Appeals for Cuyahoga County,
No. 109632, 2021-Ohio-1190.

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**FISCHER, J.**

**{¶ 1}** We accepted this discretionary appeal filed by appellant, TruNorth Warranty Programs of North America ("TruNorth"), to determine whether res judicata requires appellee, AJZ's Hauling, L.L.C. ("AJZ's Hauling"), to arbitrate its claims against TruNorth pursuant to an arbitration provision in a TruNorth warranty and whether TruNorth is entitled to an evidentiary hearing under R.C. 2711.03 on its motion to compel arbitration. We hold that res judicata—specifically, issue preclusion—barred the trial court from considering the enforceability and validity of the arbitration provision in this case because that issue was previously adjudicated and no exception to res judicata applies here. Therefore, the claims filed by AJZ's Hauling against TruNorth are subject to

arbitration, and we need not resolve whether TruNorth is entitled to an evidentiary hearing under R.C. 2711.03. We reverse the judgment of the Eighth District Court of Appeals, and we remand the cause to the trial court to enter an order granting TruNorth's motion to stay the proceedings and to compel arbitration.

## I. Background

### *A. AJZ's Hauling purchases a truck that came with a TruNorth warranty*

**{¶ 2}** AJZ's Hauling purchased a 2011 Kenworth truck from Premier Truck Sales & Rental, Inc. ("Premier") in Cuyahoga County, Ohio. The purchase included a TruNorth warranty, which stated that arbitration was "the sole method of dispute resolution between [the] parties" and that if the parties filed an action arising from or relating to the warranty, such action "shall be instituted only in the state or federal courts located in Mecklenburg County, North Carolina, USA."

**{¶ 3}** AJZ's Hauling experienced several issues with the truck and submitted five claims and repair estimates to Premier and TruNorth for coverage under the warranty. However, the claims were denied, and AJZ's Hauling paid out of pocket to repair the truck.

### *B. AJZ's Hauling sues Premier and TruNorth in the Cuyahoga County Common Pleas Court, and the trial court grants TruNorth's motion to stay the proceedings and to compel arbitration*

**{¶ 4}** In May 2019, AJZ's Hauling sued TruNorth and Premier in the Cuyahoga County Common Pleas Court, case No. CV-19-915772 ("the first lawsuit"). AJZ's Hauling alleged that TruNorth had breached the terms of the warranty and its covenant of good faith and fair dealing by failing to investigate the claims submitted by AJZ's Hauling and failing to pay for the truck repairs or reimburse AJZ's Hauling for its out-of-pocket expenses incurred in repairing the truck.

**{¶ 5}** TruNorth moved to stay the proceedings under R.C. 2711.02 and to compel arbitration under R.C. 2711.03. The trial court granted TruNorth's motion

in an August 5, 2019 journal entry, finding that the claims filed by AJZ's Hauling against TruNorth were "subject to a valid and enforceable arbitration agreement." AJZ's Hauling did not appeal that order. AJZ's Hauling eventually settled its claims with Premier, and in November 2019, it dismissed its claims against TruNorth without prejudice. *See AJZ's Hauling, L.L.C. v. Premier Truck Sales & Rental, Inc.*, Cuyahoga C.P. No. CV-19-915772 (Nov. 8, 2019).

*C. AJZ's Hauling sues TruNorth again in the Cuyahoga County Common Pleas Court*

**{¶ 6}** In December 2019, AJZ's Hauling filed a second lawsuit against TruNorth in the Cuyahoga County Common Pleas Court, case No. CV-19-926630 ("the second lawsuit"), raising the same claims that it had alleged against TruNorth in the first lawsuit. Once again, TruNorth filed a motion to stay and to compel arbitration, arguing that the claims raised by AJZ's Hauling were subject to a valid arbitration agreement as found by the trial court in the first lawsuit. In response, AJZ's Hauling admitted that the trial court had granted TruNorth's motion to stay and to compel arbitration in the first lawsuit, but it maintained that that ruling was of no consequence because it was not a final, appealable order. AJZ's Hauling argued that the arbitration provision in the TruNorth warranty was unenforceable because it was unconscionable, unreasonable, and unjust. TruNorth countered that the trial court's order compelling arbitration in the first lawsuit was a final, appealable order under R.C. 2711.02(C) and was therefore enforceable.

**{¶ 7}** The trial court, without conducting a hearing, denied TruNorth's motion to stay and to compel arbitration in the second lawsuit. The court did not address whether the order granting a stay and compelling arbitration in the first lawsuit was enforceable or appealable, but it found that the arbitration provision in the TruNorth warranty was "procedurally and substantively unconscionable."

*D. The Eighth District affirms the trial court's order in the second lawsuit, holding that res judicata did not apply, because application of the doctrine would be unreasonable or unjust*

**{¶ 8}** TruNorth appealed to the Eighth District, arguing that the claims were subject to arbitration and that AJZ's Hauling was barred from challenging the validity of the arbitration provision in the TruNorth warranty. TruNorth argued that the trial court should have enforced the order that it had issued in the first lawsuit granting TruNorth's motion to stay and to compel arbitration. TruNorth also argued that the trial court erred in failing to hold a hearing in the second lawsuit on its motion to stay and to compel arbitration.

**{¶ 9}** AJZ's Hauling admitted in its appellate brief that the trial court's order granting TruNorth's motion to stay and to compel arbitration in the first lawsuit was a final, appealable order. Nevertheless, AJZ's Hauling argued that res judicata should not apply to force it to arbitrate its claims in the second lawsuit, because the arbitration clause in the TruNorth warranty was substantively and procedurally unconscionable and the forum-selection clause requiring the parties to litigate in Mecklenburg County, North Carolina, was unreasonable and unjust. AJZ's Hauling also argued that a hearing on TruNorth's motion to stay and to compel arbitration in the second lawsuit was not required under R.C. 2711.03.

**{¶ 10}** The Eighth District affirmed the trial court's decision. 2021-Ohio-1190, ¶ 75. The appellate court recognized that the trial court's order granting TruNorth's motion to stay and to compel arbitration in the first lawsuit was a final, appealable order and thus was enforceable. *Id.* at ¶ 29. However, the appellate court determined that applying the doctrine of res judicata—the result of which would require AJZ's Hauling to arbitrate or litigate its claims against TruNorth in Mecklenburg County, North Carolina—would be unreasonable or unjust. *Id.* at ¶ 31.

**{¶ 11}** The Eighth District reasoned that in the first lawsuit, the trial court had summarily concluded, without making any factual findings or conclusions of law, that the arbitration provision in the TruNorth warranty was valid and enforceable. *Id.* at ¶ 34. But the appellate court reasoned that in the second lawsuit, the trial court, after conducting a more thorough review, determined that its prior order enforcing the arbitration provision in the TruNorth warranty was wrong because the arbitration provision was procedurally and substantively unconscionable. *Id.* at ¶ 35. The appellate court concluded that in the second lawsuit the trial court "could, and had jurisdiction to, reconsider its prior ruling" in the first lawsuit regarding the enforceability of the warranty's arbitration provision because that ruling had never been appealed. *Id.* at ¶ 36.

**{¶ 12}** Additionally, the court of appeals held that the trial court did not err in the second lawsuit by failing to hold a hearing under R.C. 2711.03(A). *Id.* at ¶ 49. That statute provides that the trial court "shall hear the parties" when considering a petition for an order directing that arbitration proceed pursuant to the parties' written agreement. R.C. 2711.03(A). The appellate court concluded that because the parties had an opportunity to brief the arbitration and unconscionability issues and submit evidence in support of their positions, 2021-Ohio-1190 at ¶ 49, "the trial court 'heard' the parties for purposes of R.C. 2711.03, and had an adequate record upon which to determine whether the arbitration provision was valid and enforceable," *id.* at ¶ 51.

*E. TruNorth appeals to this court*

**{¶ 13}** TruNorth appealed to this court, raising three propositions of law. We accepted TruNorth's first and second propositions of law only:

> Proposition of Law No. I: Res judicata mandates that once the appellate period lapses on a final order, the issue is decided. Thus, a trial court lacks jurisdiction to reconsider a final order in a

> subsequent proceeding. However, the Eighth District allowed the "unjust" exception to swallow the rule.
>
> Proposition of Law No. II: R.C. 2711.03 mandates that a trial court hold an evidentiary hearing on a motion to compel arbitration. Yet, this notwithstanding, there is an existing conflict between the appellate districts on whether an oral or evidentiary hearing is mandatory, necessitating this Court to settle the dispute.

*See* 167 Ohio St.3d 1517, 2022-Ohio-3214, 195 N.E.3d 139.

## II. Law and Analysis

**{¶ 14}** Two issues are before this court. The first is whether res judicata requires the parties to arbitrate the claims in the second lawsuit. And the second is whether R.C. 2711.03 mandates that the trial court hold an oral or evidentiary hearing on a petition to compel arbitration. We turn first to the res judicata issue since it is dispositive.

### *A. Claims filed by AJZ's Hauling against TruNorth in the second lawsuit are subject to arbitration*

**{¶ 15}** "Res judicata ensures the finality of decisions." *Brown v. Felsen*, 442 U.S. 127, 131, 99 S.Ct. 2205, 60 L.Ed.2d 767 (1979). It bars a party from relitigating the same issue or claim that has already been decided in a final, appealable order or a valid, final judgment in a prior proceeding and could have been raised on appeal in that prior proceeding. *See Natl. Amusements, Inc. v. Springdale*, 53 Ohio St.3d 60, 62, 558 N.E.2d 1178 (1990); *see also State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), paragraph nine of the syllabus; *McAdams v. Mercedes-Benz USA, L.L.C.*, 161 Ohio St.3d 260, 2020-Ohio-3702, 162 N.E.3d 755, ¶ 21. The res judicata doctrine ensures stability of judicial decisions, deters vexatious litigation, and allows courts to resolve other disputes. *Natl. Amusements, Inc.* at 62; *Brown* at 131.

**{¶ 16}** We have adopted the modern application of the doctrine of res judicata, which includes claim preclusion and issue preclusion. *See Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 382, 653 N.E.2d 226 (1995), citing 1 Restatement of the Law 2d, Judgments, Sections 24 and 25 (1982); *McAdams* at ¶ 21. "Claim preclusion makes ' "an existing final judgment or decree between the parties to litigation * * * conclusive as to all claims which were or might have been litigated in a first lawsuit." ' " *Lycan v. Cleveland*, 171 Ohio St.3d 550, 2022-Ohio-4676, 218 N.E.3d 913, ¶ 22, quoting *Natl. Amusements, Inc.* at 62, quoting *Rogers v. Whitehall*, 25 Ohio St.3d 67, 69, 494 N.E.2d 1387 (1986). For claim preclusion to apply, the following four elements must be satisfied:

> "(1) [A] prior final, valid decision on the merits by a court of competent jurisdiction; (2) a second action involving the same parties, or their privies, as the first; (3) a second action raising claims that were or could have been litigated in the first action; and (4) a second action arising out of the transaction or occurrence that was the subject matter of the previous action."

*Lycan* at ¶ 23, quoting *Hapgood v. Warren*, 127 F.3d. 490, 493 (6th Cir.1997). Issue preclusion, also known as collateral estoppel, prevents parties from relitigating facts and issues in a subsequent suit that were fully litigated in a prior suit. *Thompson v. Wing*, 70 Ohio St.3d 176, 183, 637 N.E.2d 917 (1994); *Goodson v. McDonough Power Equip., Inc.*, 2 Ohio St.3d 193, 195, 443 N.E.2d 978 (1983) (collateral estoppel within the context of res judicata precludes the relitigation in a second action of an issue that has been actually and necessarily litigated and determined in a prior action). Issue preclusion applies "when the fact or issue (1) was actually and directly litigated in the prior action[ and] (2) was passed upon and determined by a court of competent jurisdiction[ ] and (3) when the party against

whom collateral estoppel is asserted was a party in privity with the party to the prior action." *Thompson* at 183. We review de novo the question whether res judicata applies to a claim or issue. *Lycan* at ¶ 21; *see also State ex rel. Davis v. Pub. Emps. Retirement Bd.*, 174 Ohio App.3d 135, 2007-Ohio-6594, 881 N.E.2d 294, ¶ 41 (10th Dist.), *aff'd*, 120 Ohio St.3d 386, 2008-Ohio-6254, 899 N.E.2d 975.

**{¶ 17}** In this case, issue preclusion applies to the question whether the arbitration provision in the TruNorth warranty is valid, enforceable, and applicable to the parties' dispute. AJZ's Hauling and TruNorth litigated the validity, enforceability, and applicability of the arbitration provision in the first lawsuit when TruNorth moved to stay the proceedings and to compel arbitration. And the trial court, in the first lawsuit, granted TruNorth's motion to stay and to compel arbitration, rejecting the arguments raised by AJZ's Hauling and finding that the claims raised by AJZ's Hauling were subject to "a valid and enforceable arbitration agreement." AJZ's Hauling admits that the trial court's order granting TruNorth's motion to stay and to compel arbitration was a final, appealable order and that it chose not to appeal or file a Civ.R. 60(B) motion to challenge that order. And the claims that were deemed subject to the arbitration provision in the first lawsuit are the same claims that are being challenged in the second lawsuit. Therefore, res judicata—specifically, issue preclusion—applies to bar AJZ's Hauling from contesting the validity, enforceability, and applicability of the arbitration provision against its claims brought in the second lawsuit. The question we must answer is whether an exception to the res judicata doctrine applies in this case to prevent an "unreasonable and unjust" result.

**{¶ 18}** We have recognized that res judicata is not to be so rigidly applied "when fairness and justice would not support it." *State ex rel. Estate of Miles v. Piketon*, 121 Ohio St.3d 231, 2009-Ohio-786, 903 N.E.2d 311, ¶ 30, citing *Davis v. Wal-Mart Stores, Inc.*, 93 Ohio St.3d 488, 491, 756 N.E.2d 657 (2001) (res judicata is not to be so rigidly applied as to defeat the ends of justice or to create an

injustice) and *Lucas v. Porter*, 2008 ND 160, 755 N.W.2d 88, ¶ 22 ("Fundamental fairness underlies the determination of privity"); *see also Grava* at 386 (Douglas, J., dissenting), quoting 46 American Jurisprudence 2d, Judgments, Section 522, at 786-787 (1994) (res judicata " '*is not to be applied so rigidly as to defeat the ends of justice or so as to work an injustice*' " [emphasis added in *Grava*]). "The doctrine should be qualified or rejected when its application would contravene an overriding public policy or result in a manifest injustice." *Jacobs v. Teledyne, Inc.*, 39 Ohio St.3d 168, 171, 529 N.E.2d 1255 (1988), citing *Tipler v. E.I. duPont deNemours & Co.*, 443 F.2d 125, 128 (6th Cir.1971). We have recognized that an exception to res judicata may apply in some extraordinary situations, but we have yet to apply such an exception. *See Wal-Mart Stores, Inc.* at 490-491 (res judicata did not bar the plaintiff from bringing her spoliation claim even though it was relevant to the wrongful-death claim that was decided on summary judgment, because the two claims did not arise from a common nucleus of operative facts); *Estate of Miles* at ¶ 30 (res judicata barred mandamus claim against village by party seeking enforcement of a judgment against the village's former police chief, because village was not a party to the prior lawsuit in which judgment against the former police chief was rendered and was not protected by the former police chief's defense in the prior lawsuit); *Jacobs* at 171 (res judicata did not bar the plaintiff's claim of permanent disability caused by silicosis, because the change in the severity of the disease after it was deemed an accepted occupational disease in a prior workers' compensation claim constituted a new material issue).

**{¶ 19}** An exception to the res judicata doctrine will not apply when the parties had a full and fair opportunity to be heard on an issue, the trial court issued a final, appealable order determining that issue, the parties failed to pursue a direct appeal or other available remedies to challenge that court's order, and the parties did not commit bad-faith acts during the course of that litigation. *See Goodson*, 2 Ohio St.3d at 200-201, 143 N.E.2d 978 ("The main legal thread which runs

throughout the determination of the applicability of *res judicata* * * * is the necessity of a fair opportunity to fully litigate and to be 'heard' in the due process sense"); *Wal-Mart Stores, Inc.* at 490-491 (res judicata should not be applied when it would reward a party for misrepresenting or destroying evidence); *Jacobs* at 171 (res judicata should not be applied when it would contravene an overriding public policy or result in a manifest injustice). As the United States Supreme Court has recognized, simply having a final, unappealed judgment that rests on a wrong or incorrect legal principle is not enough to overcome res judicata—such an exception would swallow the rule. *Federated Dept. Stores, Inc. v. Moitie*, 452 U.S. 394, 398-399, 101 S.Ct. 2424, 69 L.Ed.2d 103 (1981) (to indulge in exceptions to res judicata would result in uncertainty and confusion and in undermining the finality of judgments); *Reed v. Allen*, 286 U.S. 191, 201, 52 S.Ct. 532, 76 L.Ed. 1054 (1932). Therefore, we hold that res judicata bars parties from raising claims based on unreasonable or unjust results when the parties had a full and fair opportunity to litigate the issue in the first instance. *See State v. Brasher*, 171 Ohio St.3d 534, 2022-Ohio-4703, 218 N.E.3d 899, ¶ 15 (res judicata applies to all claims that could have been raised on direct appeal in a criminal case); *see also In re K.K.*, 170 Ohio St.3d 149, 2022-Ohio-3888, 209 N.E.3d 660, ¶ 60.

**{¶ 20}** Here, there are no facts to support any exception to the application of the res judicata doctrine. AJZ's Hauling had a full and fair opportunity to litigate the validity, enforceability, and applicability of the arbitration provision in the TruNorth warranty. AJZ's Hauling challenged the validity, enforceability, and applicability of the arbitration provision in response to TruNorth's motion to stay the proceedings and to compel arbitration in the first lawsuit. The trial court issued a final, appealable order in the first lawsuit, granting TruNorth's motion to stay and to compel arbitration of the claims filed by AJZ's Hauling because it found that the arbitration provision was valid, enforceable, and applicable. AJZ's Hauling chose not to pursue a Civ.R. 60(B) motion or an appeal from that order. And AJZ's

Hauling has not presented this court with any facts showing that TruNorth acted in a manner in the first lawsuit that would merit avoiding the consequences of res judicata in the second lawsuit concerning the same arbitration provision, the same claims, and the same parties. Furthermore, AJZ's Hauling has not demonstrated how the application of res judicata here would contravene an overriding public policy or result in a manifest injustice. Holding that res judicata—specifically, issue preclusion—applies to require AJZ's Hauling to arbitrate the same claims against TruNorth in the second lawsuit is the only conclusion that gives meaning to the parties' ability to challenge a judgment through a Civ.R. 60(B) motion or through an appeal under App.R. 3. These rules provided AJZ's Hauling with a "full and fair opportunity to present" its case on the arbitration issue. *See State ex rel. Arcadia Acres v. Ohio Dept. of Job & Family Servs.*, 123 Ohio St.3d 54, 2009-Ohio-4176, 914 N.E.2d 170, ¶ 15-16; *Grava*, 73 Ohio St.3d at 383, 653 N.E.2d 226. Therefore, the doctrine of res judicata—specifically, issue preclusion—applies here and no exception is warranted.

**{¶ 21}** We reverse the judgment of the Eighth District, and we hold that res judicata applies to bar AJZ's Hauling from relitigating the validity, enforceability, and applicability of the arbitration provision in the TruNorth warranty relating to its claims in the second lawsuit and that no exception to res judicata applies.

*B. We do not address whether a hearing is required under R.C. 2711.03*

**{¶ 22}** Because we hold that the claims against TruNorth in the second lawsuit are subject to a valid, enforceable, and applicable arbitration provision as determined by the trial court in its August 5, 2019 order in the first lawsuit and that res judicata bars AJZ's Hauling from challenging the findings in that order, we need not address whether TruNorth was entitled to a hearing on its motion to stay the proceedings under R.C. 2711.02 and to compel arbitration under R.C. 2711.03. Though we understand that this area of law may need clarification, we must exercise judicial restraint. Thus, we decline to address TruNorth's second

proposition of law. *See State ex rel. LetOhioVote.org v. Brunner*, 123 Ohio St.3d 322, 2009-Ohio-4900, 916 N.E.2d 462, ¶ 51; *PDK Laboratories, Inc. v. United States Drug Enforcement Administration*, 362 F.3d 786, 799 (D.C.2004), (Roberts, J., concurring in part and concurring in the judgment) ("if it is not necessary to decide more, it is necessary not to decide more").

## III. Conclusion

**{¶ 23}** We hold that the claims filed by AJZ's Hauling against TruNorth in the second lawsuit are subject to the arbitration provision in the TruNorth warranty as found by the trial court in the first lawsuit and that any arguments challenging the validity, enforceability, and applicability of the arbitration provision are barred by res judicata. Furthermore, we conclude that an exception to the application of the doctrine of res judicata to avoid unreasonable and unjust results does not apply when the parties had a full and fair opportunity to litigate the issue and chose not to challenge the trial court's final order on that issue by way of appeal or a Civ.R. 60(B) motion. We do not address whether an oral hearing is required when a party moves to stay proceedings under R.C. 2711.02 and to compel arbitration under R.C. 2711.03. Therefore, we reverse the Eighth District Court of Appeals' judgment, and we remand the cause to the trial court to enter an order granting TruNorth's motion to stay the proceedings and to compel arbitration.

Judgment reversed
and cause remanded.

KENNEDY, C.J., and DEWINE, DONNELLY, STEWART, BRUNNER, and DETERS, JJ., concur.

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Meyers, Roman, Friedberg & Lewis, Ronald P. Friedberg, R. Scott Heasley, and Amily A. Imbrogno, for appellee.

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