[Cite as *Sinley v. Safety Controls Technology, Inc.*, 2020-Ohio-4068.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STEVEN SINLEY, :

Plaintiff-Appellee, :

No. 109065

v. :

SAFETY CONTROLS TECHNOLOGY, INC., ET AL., :

Defendants-Appellants. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: August 13, 2020

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-19-919593

Appearances:

Scanlon & Elliot, and Michael J. Elliot; Elvin, Klingshirn, Royer & Torch, and Christina M. Royer, *for appellee.*

Haneline Pryatel Law, and Keith L. Pryatel, *for appellant*.

KATHLEEN ANN KEOUGH, P.J.:

{¶ 1} Defendant-appellant, Superior Dairy, Inc. ("Superior"), appeals from the trial court's judgment denying its motion to stay proceedings and compel arbitration. For the reasons that follow, we affirm.

I. Background

{¶ 2} Plaintiff-appellee, Steven Sinley ("Sinley"), filed a six-count complaint against Safety Controls Technology, Inc., Rotogran International, Inc., the Ohio Bureau of Workers' Compensation, and Superior.[1] Sinley's complaint alleged that he was employed in the maintenance department at Superior on May 11, 2019, when a grinder machine malfunctioned, and that he responded to the maintenance call for the grinder. He alleged that by the time he arrived at the machine, Superior had removed or disabled certain safety guards and equipment on the grinder, including a mechanism that shut down the machine's power once it had been disassembled. According to Sinley, while he was working on the machine with his hands in the interior part of the grinder, a supervisor intentionally and without warning activated the machine by triggering its reset button, thereby causing four fingers of Sinley's right hand to be amputated. Sinley's complaint asserted an employer intentional tort claim in violation of R.C. 2745.01 against Superior.[2]

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[1] Defendants Safety Controls Technology, Inc., Rotogran International, Inc., and the Ohio Bureau of Workers' Compensation are not parties to this appeal.

[2] R.C. 2745.01(A) states:

> In an action brought against an employer by an employee * * * for damages resulting from an intentional tort committed by the employer during the course of employment, the employer shall not be liable unless the plaintiff proves that the employer committed the tortious act with the intent to injure another or with the belief that the injury was substantially certain to occur.

{¶ 3} In response to the complaint, Superior filed a motion to stay proceedings and compel arbitration pursuant to R.C. 2711.02(B) and 2711.03(B) of Ohio's Arbitration Act, and 9 U.S.C 1, et seq., the Federal Arbitration Act. Superior argued that during his employment with Superior, Sinley was a member of the International Brotherhood of Teamsters, Chauffeurs, Warehouseman and Helpers of America, Local 92 (the "Union") which, as Sinley's collective bargaining agent, had negotiated a collective bargaining agreement ("CBA" or "agreement") with Superior regarding the terms and conditions of Sinley's employment.[3]

{¶ 4} The CBA contained a grievance procedure for disputes "between an employee and the parties to this Agreement as to the interpretation or application of the terms and provisions of this Agreement, or as to the violation of any employment-related laws or statutes (except workers' compensation matters)." Article IX, Section 1. The CBA further provided for binding arbitration of any grievance or dispute that remained unsettled after the grievance procedure had been exhausted. Article X, Section 1. The CBA provided that the grievance and arbitration procedures set forth in Articles IX and X were "the sole and exclusive method of settling disputes, differences or controversies between the parties hereto and between an employee and the parties hereto," and that

> [t]he above procedures set forth in Articles IX and X shall apply equally to any alleged violation of laws or statutes by the Union or the Company, as alleged by an employee, including without limitation: Title VII of the 1964 Civil Rights Act; the federal Age Discrimination in Employment Act;

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[3] The effective dates of the CBA at issue are January 1, 2018, through December 31, 2021.

> the Consolidated Omnibus Budget Reconciliation Act; the Employee Retirement Income Security Act; the Equal Pay Act; the Fair Labor Standards Act; the Family and Medical Leave Act; the Americans with Disabilities Act Amendments Act; the Immigration Act of 1990; the Fair Credit Reporting Act; the Labor-Management Relations Act; the Lilly Ledbetter Fair Pay Act; the Occupational Safety and Health Act (but only as to the anti-relations aspects of OSHA); alleged breaches of a Union's duty to fairly represent its employees; alleged breaches of Ohio public policy; Ohio Revised Code Chapter 4112; Ohio Revised Code Section 4112.90 (workers' compensation retaliation); Ohio Revised Code Section 4101.17; Ohio Revised Code Section 4113.52; Ohio's overtime and/or minimum wage statute; and the Genetic Information Non-Discrimination Act of 2008.

Article X, Section 4.

{¶ 5} The CBA provided further that if the Union decided not to file a grievance on an employee's behalf or pursue a grievance to arbitration, "then the employee, or the employee along with his/her chosen representative, shall be entitled to utilize the above Article IX and X to resolve any and all employment-related disputes, including without limitation, those set forth in Section 4 above." Article X, Section 6.

{¶ 6} Superior argued that as a member of the Union, Sinley had agreed to use the grievance and arbitration procedure set forth in the CBA as the "sole and exclusive" means of settling any alleged violation by Superior of "any employment-related law or statute," and therefore, the trial court should stay the proceedings and compel arbitration of Sinley's statutory employer intentional tort claim against Superior.

{¶ 7} In his brief in opposition, Sinley asserted that a union-negotiated waiver of an employee's statutory right to a judicial forum must be "clear and

unmistakable" pursuant to the standard announced in *Wright v. Universal Maritime Serv. Corp.*, 525 U.S. 70, 119 S.Ct. 391, 142 L.Ed.2d 361 (1998). He contended that the CBA between Local 92 and Superior did not "clearly and unmistakenly" require him to arbitrate his R.C. 2745.01 claim because although the arbitration agreement referred to various statutes, it did not explicitly refer to R.C. 2745.01 or to bodily or personal injury claims, and the agreement's reference to "the violation of employment-related laws or statutes" was too ambiguous to satisfy the "clear and unmistakable" standard.

{¶ 8} Sinley also argued that employer intentional tort claims are not arbitrable because willful and intentional misconduct by an employer that leads to an employee's injury is outside the accepted workplace relationship. Sinley argued that his employer intentional tort claim was analogous to the claims raised in *Arnold v. Burger King*, 2015-Ohio-4485, 48 N.E.3d 69 (8th Dist.), in which this court held that the plaintiff's claims against her employer and supervisor for sexual harassment, negligent retention, emotional distress, assault, intentional tort, and discrimination, all of which arose out of a workplace rape of the employee by the supervisor, were not subject to the arbitration agreement between the employee and company because "a rape is an outrageous tort that is legally distinct from the contractual relationship between the parties." *Id.* at ¶ 35.

{¶ 9} Sinley argued that employer intentional torts are not a foreseeable result of employment and thus, as in *Arnold*, his claim arose independent of the employment relationship and could "be maintained without reference to the

contract or relationship at issue." *Id.* at ¶ 65. Sinley pointed to the Ohio's workers' compensation system as support for this conclusion, asserting that employer intentional torts would be governed by the remedies afforded under R.C. Chapter 4123, Ohio's Workers' Compensation Act, and not subject to the special remedies of R.C. 2745.01, if they were in fact considered to be injuries arising out of the employment relationship.

{¶ 10} Finally, Sinley argued that the arbitration agreement was unconscionable because (1) the timing requirements of the various steps in the grievance procedure gave Superior "discretion to prolong events and force arbitration"; (2) the arbitration provision impermissibly shortened the statute of limitations for claims by requiring employees to request arbitration within 30 days after the grievance procedure; and (3) the arbitration provision was "vague and lack[ed] critical details" because it did not give specific details concerning the arbitration process.

{¶ 11} After Superior filed a reply to Sinley's brief in opposition, the trial court denied Superior's motion to stay proceedings and compel arbitration without opinion. This appeal followed.

II. Law and Analysis

A. Standard of Review

{¶ 12} An order "that grants or denies a stay of a trial of any action pending arbitration * * * is a final order that may be reviewed * * * on appeal." R.C. 2711.02(C). When we review the scope of an arbitration agreement, and specifically

whether a party has agreed to submit an issue to arbitration, we employ a de novo standard of review. *Avery v. Academy Invest., L.L.C.*, 8th Dist. Cuyahoga No. 107550, 2019-Ohio-3509, ¶ 9, citing *Seyfried v. O'Brien*, 2017-Ohio-286, 81 N.E.3d 961, ¶ 18 (8th Dist.). Under a de novo standard, we afford no deference to the trial court's decision. *Brownlee v. Cleveland Clinic Found.*, 8th Dist. Cuyahoga No. 97707, 2012-Ohio-2212, ¶ 9.

B. Did the trial court err in not compelling arbitration?

{¶ 13} In its first assignment of error, Superior contends that the trial court erred in not compelling arbitration under R.C. Chapter 2711, Ohio's Arbitration Act. In its second assignment of error, Superior argues that the trial court erred in not compelling arbitration under the Federal Arbitration Act ("FAA"), 9 U.S.C. 1, et seq. We consider these assigned errors together because they are related.

{¶ 14} The FAA manifests "a liberal federal policy favoring arbitration agreements." *Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24, 103 S.Ct. 927, 74 L.Ed.2d 765 (1983). Likewise, Ohio's "public policy favors arbitration." *Wright State Univ. v. Fraternal Order of Police*, 2d Dist. Greene No. 2016-Ohio-35, ¶ 11. "Arbitration 'provides the parties with a relatively speedy and inexpensive method of conflict resolution and has the additional advantage of unburdening crowded court dockets.'" *Cleveland v. Cleveland Police Patrolmen's Assn.*, 2016-Ohio-702, 47 N.E.3d 904, ¶ 21 (8th Dist.), quoting *Mahoning Cty. Bd. of Mental Retardation & Dev. Disabilities v. Mahoning Cty. TMR Edn. Assn.*, 22 Ohio St.3d 80, 82, 488 N.E.2d 872 (1986).

{¶ 15} To that end, both the FAA and Ohio's Arbitration Act provide that a court shall stay proceedings and compel arbitration when "an issue is referable to arbitration under an agreement in writing for arbitration." R.C. 2711.02 and 2711.03; *Javitch v. First Union Sec., Inc.*, 315 F.3d 619, 624 (6th Cir.2001), citing 9 U.S.C. 3, 4. Nevertheless, arbitration is a matter of contract, and a party cannot be required to arbitrate a dispute it did not agree to submit to arbitration. *Council of Smaller Ents. v. Gates, McDonald & Co.*, 80 Ohio St.3d 661, 665, 687 N.E.2d 1352 (1998). Accordingly, when deciding motions to compel arbitration, the proper focus is on whether the parties actually agreed to arbitrate the issue and not the general policy goals of the arbitration statutes. *UH Rainbow Babies & Children's Hosp. v. Caresource*, 8th Dist. Cuyahoga No. 106151, 2018-Ohio-2839, ¶ 15. Although we generally apply a presumption of arbitrability when reviewing arbitration provisions and resolve any doubts regarding arbitration in its favor, *Ignazio v. Clear Channel Broadcasting, Inc.*, 113 Ohio St.3d 276, 2007-Ohio-1947, 865 N.E.2d 18, ¶ 18, such a presumption does not apply to waiver of a judicial forum for a statutory claim. *Darrington v. Milton Hershey School*, 958 F. 3d 188, 192 (3d Cir.2020), fn. 2, citing *Wright*, 525 U.S. at 78, 119 S.Ct. 391, 142 L.Ed.2d 361.

{¶ 16} Thus, we begin our analysis by determining whether Sinley agreed to arbitrate his statutory employer intentional tort claim. The CBA set forth a grievance and arbitration procedure for disputes regarding "any employment-related controversy or dispute," and "the violation of any employment-related laws or statutes," and stated that the grievance and arbitration procedures set forth in the

CBA "shall apply equally to any alleged violation of laws or statutes by the Union or the Company, as alleged by an employee, including without limitation [a long list of federal and Ohio statutes]." The list did not include R.C. 2745.01, Ohio's employer intentional tort statute, however.

{¶ 17} In *Wright*, the United States Supreme Court pronounced that a collective bargaining agreement can waive a judicial forum for union members' statutory claims only if the waiver is "clear and unmistakable." *Id.* at 79-82. This court has adopted *Wright's* clear-and-unmistakable standard with respect to the waiver of state-law statutory claims in a collective bargaining agreement. *See, e.g.*, *Minnick v. Middleburg Hts.*, 8th Dist. Cuyahoga No. 81728, 2003-Ohio-5068 (quoting *Wright* and adopting the *Wright* standard); *Haynes v. Ohio Turnpike Comm.*, 177 Ohio App.3d 1, 2008-Ohio-133, 893 N.E.2d 850 (8th Dist.) (citing *Minnick* and stating that "any agreement in a collective bargaining agreement to arbitrate a statutory claim must be clear and unmistakable"); *Campolieti v. Cleveland*, 184 Ohio App.3d 419, 2009-Ohio-5224, 921 N.E.2d 286, ¶ 21 (8th Dist.) (citing *Haynes* and *Wright* with approval).

{¶ 18} Superior contends that Sinley's waiver of his right to a judicial forum for his employer intentional tort claim was clear and unmistakable; Sinley and the Ohio Employment Lawyers Association (the "Association"), which filed an amicus curiae brief, contend that it was not. Both Sinley and the Association assert that a waiver of a right to a judicial forum for a statutory claim is only clear and unmistakable if the statute is explicitly mentioned in the CBA. Thus, they argue that

because R.C. 2745.01 was not specifically listed in the long list of employment-related laws and statutes the Union and Superior agreed were arbitrable, Sinley did not clearly and unmistakably waive his right to a judicial forum for his claim.

{¶ 19} As pronounced by the United States Supreme Court in *Wright*, "very general" arbitration clauses cannot waive a judicial forum for adjudication of statutory rights. 525 U.S. at 80, 119 S.Ct. 391, 142 L.Ed.2d 361. Rather, a "clear and unmistakable" waiver of a judicial forum for statutory claims must be "explicitly stated" in the collective bargaining agreement. *14 Penn Plaza L.L.C. v. Pyett*, 556 U.S. 247, 129 S.Ct. 1456, 173 L.Ed.2d 398 (2009).

{¶ 20} The Sixth Circuit addressed *Wright's* clear-and-unmistakable standard in *Bratten v. SSI Servs., Inc.*, 185 F.3d 625 (6th Cir.1999), and concluded that "a statute must specifically be mentioned in a [collective bargaining agreement] for it to even approach *Wright's* 'clear and unmistakable' standard." *Id.* at 631. Thus, "the CBA must specifically mention the relevant statute [in order to meet] the clear-and-unmistakable standard for submission of a statutory claim to arbitration." *Conti v. Mayfield Village*, N.D. Ohio No. 1:19-CV-00591, 2019 U.S. Dist. LEXIS 159071, 4 (Sept. 18, 2019), citing *Youngblood v. Bd. of Comm. of Mahoning Cty.*, N.D. Ohio No. 4:19-CV-231, 2019 U.S. Dist. LEXIS 153234, 3 (Sept. 9, 2019), citing *Bratten* at *id.* *See also Kovac v. Superior Dairy, Inc.*, 930 F. Supp.2d 857, 866 (N.D. Ohio 2013) ("[P]ost-*Wright* courts appear to be in agreement that a statute must

specifically be mentioned in a CBA for it to even approach *Wright's* clear and unmistakable standard.").[4]

{¶ 21} The CBA at issue in this case makes no mention of R.C. 2745.01 specifically, or even intentional torts generally. Although it provides a grievance procedure for disputes "as to the violation of any employment-related laws or statutes" and includes a long list of statutes subject to the grievance and arbitration procedure, the list does not include R.C. 2745.01 or mention intentional torts.

{¶ 22} Superior contends that because Sinley's claim involves an "employment-related law," and the arbitration agreement required him to arbitrate any dispute regarding the violation of "any employment-related laws or statutes," he was required to use the grievance and arbitration procedure to resolve his employer intentional tort claim, rather than proceed directly to court. We disagree. Under the bright-line rule announced in *Bratten*, this generalized language cannot be construed as a clear and unmistakable waiver of Sinley's right to pursue his claim through a judicial forum. Nowhere in the CBA does it reference, make mention of, or otherwise attempt to define an unresolved dispute to include an employer intentional tort claim. Likewise, the CBA does not refer to R.C. 2745.01, the statute that governs the action.

{¶ 23} We acknowledge that Article X, Section 4 of the CBA states that the listing of laws and statutes subject to arbitration is "without limitation," and that

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[4] Other circuit courts have different approaches for identifying clear and unmistakable waivers. *See Darrington v. Milton Hershey School*, 958 F.3d 188, 194-195, discussing the various approaches.

such language usually means that the list is not exhaustive, thereby suggesting that an employer intentional tort claim is included as a claim subject to arbitration. *State v. Anderson*, 138 Ohio St.3d 264, 2014-Ohio-542, 6 N.E.3d 23, ¶ 45 (phrase "including, but not limited to" means that the examples expressly given are "a nonexhaustive list of examples."). However, in light of the bright-line rule established in *Bratten*, which requires that a statute must be specifically mentioned in a CBA in order to find a clear and unmistakable waiver, we conclude that the "without limitation" language is insufficient to demonstrate a clear and unmistakable waiver of Sinley's right to a judicial forum for his employer intentional tort claim.

{¶ 24} "While a collective bargaining agreement may indeed require arbitration of statutory claims, thereby barring employees from suing in court, a collective bargaining agreement may only do so if the agreement's arbitration provision *expressly* covers statutory rights." *Waymire v. Miami Cty. Sheriff's Office*, S.D.Ohio No. 3:15-CV-159, 2017 U.S. Dist. LEXIS 46768, 15 (Mar. 29, 2017) (emphasis sic). Here, the CBA does not expressly cover employer intentional tort claims under R.C. 2745.01 and, thus, Sinley did not clearly and unmistakably waive his right to a judicial forum for his claim. Accordingly, he was not required to utilize the arbitration procedure to pursue his claim, and the trial court did not err in denying Superior's motion to stay proceedings and compel arbitration.

{¶ 25} In light of our holding, we need not address Sinley and the Association's argument that employer intentional torts can never be the subject of

an arbitration agreement in a collective bargaining agreement because such torts are outside the employment relationship. Likewise, we need not address any argument that the CBA is unconscionable, although we note that the party claiming unconscionability bears the burden of demonstrating both procedural and substantive unconscionability. *Devito v. Autos Direct Online, Inc.*, 2015-Ohio-3336, 37 N.E.3d 194, ¶ 16 (8th Dist.). Our review of Sinley's brief in opposition to Superior's motion to stay proceedings and compel arbitration reveals that Sinley argued only that the arbitration agreement in the CBA was substantively unconscionable, and made no argument regarding procedural unconscionability. Furthermore, Sinley's arguments regarding the alleged substantive unconscionability of the agreement appear to be based upon a misrepresentation of the facts. Thus, if the trial court denied Superior's motion upon a finding that the arbitration agreement in the CBA is unconscionable, such finding was in error. Nevertheless, because the CBA does not clearly and unmistakably waive a judicial forum for an employer intentional tort claim, the trial court properly denied Superior's motion to stay proceedings and compel arbitration.

{¶ 26} The first and second assignments of error are overruled.

{¶ 27} In its third assignment of error, Superior contends that the trial court denied it due process because it did not issue an opinion stating its reasons or rationale for its decision.

{¶ 28} We agree that the better practice is for a trial judge to issue an opinion setting forth the basis for his or her decision. However, unless required by statute

in certain instances, none of which are applicable here, "we are not aware of any authority requiring a trial judge to do more than issue a simple decision on motions coming before them." *Likover v. Cleveland*, 60 Ohio App.2d 154, 161, 396 N.E.2d 491 (8th Dist.1978). Accordingly, we find no denial of Superior's due process rights. The third assignment of error is overruled.

{¶ 29} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KATHLEEN ANN KEOUGH, PRESIDING JUDGE

EILEEN A. GALLAGHER, J., and
MARY EILEEN KILBANE, J., CONCUR