COUNTERPOINT

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APPLYING BINDING ARBITRATION TO MINORS IN PENNSYLVANIA: A CASE TO WATCH

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OVERVIEW

Currently pending before the Supreme Court of Pennsylvania is a question of first impression: can a parent, acting on behalf of their minor child, sign an agreement to submit disputes to binding arbitration? This issue was directly addressed for the first time in Pennsylvania in *Santiago v. Philly Trampoline Park, LLC*, 291 A.3d 1213 (Pa. Super. 2023).

In *Santiago*, the court considered two factually similar cases in which minors were injured at Sky Zone trampoline parks in Philadelphia. In both instances, a parent of each injured child signed a waiver before entering the park, which included a provision requiring the parties to submit any claims arising from their visit to binding arbitration. Following the injuries, the parents filed suit both in their own names and on behalf of their children.

The Court of Common Pleas denied Sky Zone's requests to enforce the arbitration clauses. On appeal, the Superior Court upheld this ruling, concluding that the parents lacked the legal authority to act as agents for their children in waiving their constitutional right to a jury trial.

In rendering its opinion, the *Santiago* court conducted in a lengthy analysis of whether the parent who signed the binding arbitration agreement was acting as an agent of their spouse.

While Sky Zone contended that the signing parents were acting with apparent and implied authority on behalf of their spouses, the court disagreed. In each case, Sky Zone relied on the words and conduct of the alleged agent rather than the principal in attempting to establish the existence of an agency relationship. Although Sky Zone asserted it was not feasible for them to verify the authority of each person signing the waiver on behalf of their spouse, the court rejected this contention. It emphasized that third parties must exercise reasonable diligence to determine the authority of an apparent agent.

The court noted that minor children do not have the capacity to contract, meaning they neither consent to binding arbitration themselves nor grant their parents authority to sign such an agreement on their behalf.

Absent the agency relationship, the court considered whether a parent has the independent right to sign an arbitration agreement on behalf of their child. The court clarified that while minors act through their guardians in matters of property, parents do not inherently have guardianship over the estate of their children. As a result, parents do not possess the authority to manage their children's property, including their tort claims.

The court acknowledged the public policy interest in safeguarding the rights of minors, noting that Pennsylvania has codified certain protections, such as exempting children from statutes of limitations during their minority. While parents have the right to initiate a lawsuit on behalf of their child, they do not have the authority to settle or otherwise dispose of their child's claim without a petition from the child's guardian and approval of the court. This serves a protective function which the *Santiago* court believed would be undermined by allowing these claims to be litigated in binding arbitration.

The court equated entering into a binding arbitration agreement with waiving the constitutional right to a jury trial. It reasoned that if a parent is not permitted to settle their child's claim without court approval, they certainly cannot waive the child's constitutional rights. This creates a challenging situation in which a parent is limited in their ability to act on behalf of their child in legal matters.

Notably, courts have ordered the submission of minors' claims to binding arbitration. One such example is *Power v. Tomarchio*, 701 A.2d 1371, 1375 (Pa. Super. 1997), where the court declined to enforce a high-low agreement of

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the parties in favor of honoring the arbitration award exceeding the high end of the agreement because it was more favorable to the child. This case illustrates how the court could retain its protective function while enforcing binding arbitration agreements.

ALTERNATIVE APPROACHES

Neighboring states have decided this issue differently. In *Hojnowski v. Vans Skate Park*, 901 A.2d 381 (N.J. 2006), the New Jersey Supreme Court ruled that a parent can sign a binding arbitration agreement on behalf of their minor child. The court reasoned that binding arbitration does not waive any substantive rights, merely dictates the forum in which the minor's rights are vindicated. As such, parents may bind their children to arbitration absent a contractual defense such as fraud, duress, or unconscionability.

Similarly, in *Cross v. Carnes*, 724 N.E.2d 828 (Ohio Ct. App. 1998), Ohio's Court of Appeals held that parents could bind their children to arbitration. The court explained that consenting to arbitration only specifies the forum for resolving the child's claim and does not extinguish the claim itself. It further reasoned that it is only logical if a parent has the authority to bring and conduct a lawsuit on behalf of their child, they have the same authority to choose arbitration as the forum for litigation.

Santiago specifically disavowed the *Hojnowski* and *Cross* decisions, stating that a parent's right to pursue litigation on behalf of a minor child is subject to the trial court's control and supervision. The court reasoned that without the authority to settle or discontinue the claims of a minor, a parent cannot reasonably consent to submitting those claims to arbitration. Moreover, unlike Ohio, Pennsylvania lacks legal precedent permitting a parent to enter a pre-injury release of a child's right to bring substantive claims. Therefore, the court found the reasoning in *Cross*, which relied upon such precedent, unpersuasive.

IMPACT

The *Santiago* decision has the potential for wide reaching impact as it imposes an unexpected burden on businesses that rely on binding arbitration agreements to shield themselves from costly litigation. As it stands, the ruling effectively invalidates any existing binding arbitration agreements signed on behalf of a minor child. The vast array of recreational facilities that cater to minor children such as trampoline parks, skate parks, indoor jungle gyms, laser tag, etc., will have to re-evaluate their litigation exposure. This may result in increased legal costs, which businesses may also pass on to consumers.

Noticeably absent in the court's contractual analysis is any discussion of the ability of parents to voluntarily submit their child's claims to arbitration in the absence of a binding arbitration agreement. The holding, that "the parent-child relationship did not empower the signatory parents to wa ive their minor children's rights to have their claims resolved in a court of law," seems to leave open the possibility that a parent can never permit the litigation of their child's claims anywhere other than a courtroom. *Santiago*, 291 A.3d at 1229.

The *Santiago* court's extensive discussion of agency in relation to one parent's ability to bind the other to arbitration raises another significant concern regarding the enforceability of these agreements. It is not uncommon for one parent to take a child to an activity while the other parent is not present, and in cases where the parents are not even in a relationship, this further complicates the establishment of agency.

The result here seems to suggest that for the arbitration agreement to be enforceable as to all potential parties, either both parents would need to sign the agreement themselves or the absent parent would need to make clear their intention to consent to the arbitration agreement.

POSSIBLE SOLUTIONS

Notably, the *Santiago* decision does not discuss whether the same holding would apply to agreements for non-binding arbitration. A key concern of the *Santiago* court was the waiver of a child's constitutional right to a jury trial. This right is not implicated by the submission of a claim to non-binding arbitration where an unsatisfactory outcome can still be pursued in a court of law. It is therefore possible that non-binding arbitration agreements could withstand the *Santiago* decision and remain enforceable based on the argument that no rights are waived, the agreement simply dictates the forum for resolving the claim.

The *Santiago* court specifically noted that it was not considering whether this same outcome would apply if a minor were a third-party beneficiary to the agreement. It commented that in the absence of a suggestion or argument that the children were third-party beneficiaries of the agreements, the parents' status as natural guardians of the children did not grant them the authority to bind their minor children to an arbitration agreement. This commentary

suggests an argument that may change the outcome of these cases.

A child could be considered third-party beneficiary if the enforcement of the performance of the contract is appropriate to effectuate the intention of the parties and the circumstances indicate that the promisee intends to benefit the child through the performance of the agreement. *See* Restatement (Second) Contracts §302.

In a case like *Santiago*, for instance, the intent of the parties would be to allow a child to participate in an activity where they are at risk of harm, while limiting both the child's and the business's exposure to costly and lengthy litigation. If the child is then allowed to participate in the activity in exchange for their parent's promise to resolve any claims through arbitration, this could demonstrate the mutual intent of the parties to confer a benefit upon the child, potentially making the child a third-party beneficiary to the agreement.

One possible solution to address the agency concerns related to the need for both parents' consent for binding arbitration would be to require both parents to sign the agreement themselves. Given that many waivers are now completed electronically, this could be implemented by requiring both parents to submit an electronic waiver through a facility's website or via email before a child is allowed entry. While this approach imposes additional burdens, it would eliminate the argument against enforceability of the arbitration clause when one parent is absent. Furthermore, this would address a situation in which a child attends such an activity with someone other than their parent or legal guardian.

There is still an opportunity for the Pennsylvania Supreme Court to rule that binding arbitration clauses are enforceable as to minors, as the court agreed to take the appeal of the issue.

This will undoubtedly be a case to watch as it develops, and could have a lasting impact on recreational facilities whose primary clientele is largely comprised of children.