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Maide, LLC v.DiLeo, 138 Nev. Adv. Op. 9 (Feb. 24, 2022)

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The FAA Preempts NRS 597.995 in Cases Involving Interstate Commerce

SUMMARY:

NRS 597.995 requires any agreement that contains an arbitration provision to include specific authorization for that provision—or else the provision will be void. The Federal Arbitration Act (FAA), however, preempts NRS 597.995 in contracts involving interstate commerce.

FACTS AND PROCEDURAL HISTORY:

Maide, LLC (“Maide”) owns and operates residential group homes. Thomas DiLeo (“DiLeo”) moved to one of Maide’s group homes after developing dementia. DiLeo’s ex-wife and personal representative signed DiLeo’s admission paperwork, which contained a separate one-page addendum that addressed grievances and arbitration. Both the grievances paragraph and arbitration paragraph of the addendum were in large font and the addendum had one signature block at the bottom of the page.

After admission to the group home, DiLeo injured his leg, which eventually developed gangrene. Later, because of the gangrene, DiLeo’s leg had to be amputated. Shortly after amputation, he passed away.

DiLeo’s family, along with the special administrator for the estate, alleged the gangrene developed because of improper bandaging by Maide staff. Collectively, they brought causes of action for abuse or neglect of an old person, negligence, wrongful death, and a survival action in district court. Maide moved to compel arbitration based on the arbitration provision included in the addendum in the admission paperwork. DiLeo’s family, in response, asserted the arbitration provision was void and unenforceable per NRS 597.995 because it did not have a separate signature block or initial line next to it in the addendum.

The district court, after initially siding with Maide, eventually sided with DiLeo’s family, upon a rehearing, ruling that the arbitration provision failed for having no specific authorization as required by NRS. 597.995. Maide appealed to this court.

DISCUSSION:

NRS 597.995(1) requires that agreements including an arbitration provision “include specific authorization for the provision which indicates that the person has affirmatively agreed to the provision.” Failure to include a form of specific authorization for an arbitration provision voids the provision per NRS 597.995(2).

In the district court and on appeal, the parties focused their arguments on whether the addendum’s arbitration provision complied with NRS 597.995. While the case was proceeding in the district court, however, this court, in a recent case,² determined that the FAA (9 U.S.C. § 1 et

¹ By Kaleb Bailey.

² MMAWC, LLC v. Zion Wood Obi Wan Tr., 135 Nev. 275, 277, 448 P.3d 568, 570 (2019).

seq. (2012)) preempts NRS 597.995 where it applies. There, this Court specifically determined that if a state law “single[s] out and disfavor[s] arbitration,” by imposing stricter requirements on arbitration provisions than other contract provisions, the FAA will preempt the state law.³

Under this new controlling law, FAA preempts here because nursing home residency contracts virtually always implicate interstate commerce, which is under the FAA’s purview. Specifically, here, the services and things provided to DiLeo, such as meals, snacks, laundry service, beds, basic furnishings, care for temporary illnesses, and additional services such as cable TV and long-distance phone calls are all things found by courts to implicate interstate commerce. Additionally, DiLeo’s care was being paid for in part by Medicaid (federal funding), which further implicates interstate commerce and the FAA. Thus, the district court, in denying the motion to compel arbitration, erroneously applied NRS 597.995.

CONCLUSION:

The FAA preempts NRS 597.995 in contracts that implicate interstate commerce because the FAA provides that state law cannot impose rules that single out and disfavor arbitration. DiLeo’s nursing home contract involved interstate commerce and thus the FAA governs here and preempts NRS 597.995, allowing Maide to enforce the arbitration provision contained in its admission paperwork.

³ *Id* (internal quotation marks omitted).