



Waiver: Can You Compel Minors to Resolve Disputes in Arbitration?

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The popularity of recreational facilities whose primary clientele is children presents a timely question of law: can a parent, acting on behalf of their minor child, sign an agreement requiring submission of disputes to arbitration? The answer largely depends on where you are.

There is no national consensus on the enforceability of arbitration agreements signed by a parent on behalf of their minor child. In fact, most states have not directly addressed this question. This developing

area of law creates an opportunity to shape the future of the litigation landscape but leaves practitioners uncertain about best practices in the meantime.

Several states, including New Jersey, Ohio, and Florida, have held that a parent may bind their child to arbitration of tort claims. Primarily, these courts reason that binding arbitration does not waive any substantive rights of a child and merely dictates the forum where those rights are vindicated. In their view, the child's claims are not extin-

guished merely by litigating them in arbitration versus in front of a judge and jury.

Where these agreements are enforced, courts note that since parents have the authority to initiate a lawsuit on behalf of their child and choose the venue for that suit, it is only logical that they could choose to pursue the claims in arbitration. The arbitration agreements are enforced without limitation since they remain subject to contractual defenses such as fraud, duress, or unconscionability.

Other states that are opposed to the enforcement of arbitration agreements for the tort claims of minors, such as Pennsylvania and Connecticut, rely on constitutional concerns and contract principles. These Courts equate agreements to participate in binding arbitration to waiving a constitutional right to a trial by jury, noting that parents are not allowed to settle a claim on behalf of their child without court oversight and approval. If a parent cannot independently settle a claim on behalf of their child, how then could they be permitted to force those claims to be determined by an arbitrator without court oversight?

Courts further limit the validity of arbitration agreements using contract principles. Minors do not have the capacity to contract independently, and any contract they sign is voidable. Thus, a minor child could not consent to arbitrate their claims on their own. Similarly, without the capacity to contract, a minor does not have the capacity to designate an agent to act on their behalf.

While parents are considered natural guardians of the person of their child, they are not automatically considered guardians of their child's estate. As a tort claim is considered property of the minor, parents do not inherently have the right to manage the claim. It is the public policy of many states to protect the interests of minors, which is why many have enacted statutes that toll the statute of limitations of tort claims of minors until after they reach the age of majority and why court oversight is required when those claims are brought during the child's minority.

Creating additional agency concerns, many tort claims in this context are brought by the parents both in their individual capacity and in their capacity as natural guardians on behalf of their minor child. Courts have relied on agency principles to invalidate arbitration agreements where only one parent signed the agreement on behalf of their child. For example, if parent A signs an arbitration agreement on behalf of their child, this does not bind parent B to the agreement absent some form of agency between parents A and B. Agency would typically have to be established through the words or conduct of parent B, which in most cases does not exist. Invalidating the agreement as to one parent typically leads to full litigation of the claims.

ARGUMENTS IN FAVOR OF ENFORCING ARBITRATION

Some courts enforcing arbitration of the tort claims of minors offer alternative reasoning that could be persuasive where

this is an issue of first impression.

Third-Party Beneficiaries

One commonly raised point is that arbitration agreements are enforceable even against non-parties when they are third-party beneficiaries to the agreement. Some Courts have interpreted this to include minor children. Where a parent signs an arbitration agreement to secure their child's admission to a recreational facility and their child then enters and utilizes the recreational facility, that child is a third-party beneficiary to the arbitration agreement. As a third-party beneficiary, the child is a person against whom the arbitration agreement may be enforced. This is a more widely used concept in the enforcement of arbitration agreements generally and may be more palatable to courts who are on the fence about enforcing arbitration for minors.

Notably, the Pennsylvania case finding the arbitration agreement unenforceable as to minors included a footnote that they were specifically not considering whether the same outcome would apply if it were argued the child was a third-party beneficiary to the agreement. This seems to imply it would make a meaningful difference in the court's analysis. See *Santiago v. Philly Trampoline Park, LLC*, 291 A.3d 1213 (Pa. Super. 2023).

Statutory Authority

Some states have statutes that directly impact the enforceability of arbitration agreements for the claims of minors that may not be what you would traditionally consider applicable. For example, when the Texas courts were asked to consider this issue, they looked to their Family Code. The code expressly gives parents the right to make decisions of "substantial legal significance" on behalf of their child and to represent their child in legal actions. This was sufficient to give a parent express authority to sign a binding arbitration agreement on behalf of their child. See *Taylor Morrison of Tex., Inc. v. Ha*, 660 S.W.3d 529 (Tex. 2023).

Some states may have statutory authority relevant to arbitration agreements generally that have not yet been interpreted by courts as they apply to the claims of minors. Arizona, for example, states that arbitration agreements are valid, enforceable and irrevocable unless there are grounds for the revocation of a contract. See A.R.S. § 12-1501. Although it does not address minors specifically, this statute could be interpreted to include them.

As discussed, the primary concerns of courts that do not enforce these agreements are constitutionality and legal capac-

ity to contract. Because constitutional rights are waivable, focusing on the authority of a parent to waive their child's rights is one way to refute this argument. If a court or legislature has granted a parent authority to contract on behalf of their child or to manage their legal claims in other contexts, then a parent could also have the right to waive their child's right to a jury trial by submitting their claims to arbitration.

BLIND SPOTS IN EXISTING ANALYSIS

Many courts declining to enforce these types of arbitration agreements based on public policy interests to protect minors' claims do so without acknowledging public policy in favor of arbitration. One issue raised is the lack of court oversight in the arbitration process. While perhaps a valid concern, courts relying on this argument omit discussion of potential court oversight by requiring court approval of an arbitration award to determine whether the outcome is in the best interests of the child whose claims are at issue.

Some courts claim that a parent waives their child's right to a jury trial by submitting their claims to binding arbitration. This raises two potential counterpoints. First, these courts do not appear to hold that a parent cannot consent to their child's tort claims being addressed in arbitration proceedings absent a pre-injury arbitration agreement. This would imply that a parent has the right to waive their child's right to a jury trial by submitting their claims to binding arbitration after an injury has occurred. Logically, they should have the same rights pre-injury. Second, these courts do not address whether this same restriction would apply to non-binding arbitration agreements. This weighs heavily against the constitutional argument as no rights are waived by participating in a non-binding arbitration proceeding prior to filing a suit.

Given the split in the treatment of this issue in the few states that have addressed it directly, the future of pre-injury arbitration agreements for minors is uncertain in most of the country. This is an issue to monitor as it develops.



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