

No. 1-18-0454

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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**IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT**

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WILLIAM SHEPKE, as Independent Executor of )	Appeal from the
the Estate of JOSEPHINE SHEPKE, deceased, )	Circuit Court of
)	Cook County.
Plaintiff-Appellant, )	
)	
v. )	
)	
ALEXIAN VILLAGE OF ELK GROVE; ELK )	
GROVE VILLAGE SLF ASSOCIATES, INC.; )	
ELK GROVE VILLAGE SLF ASSOCIATES, LP; )	
PATHWAY SENIOR LIVING, LLC; PATHWAY )	
REAL ESTATE MANAGEMENT, LLC; )	No. 15 L 12282
VICTORY CENTRE OF ELK GROVE, LLC; and )	
OTIS ELEVATOR COMPANY, )	
)	
Defendants. )	
)	
(Alexian Village of Elk Grove; Elk Grove Village )	
SLF Associates, Inc.; Elk Grove Village SLF )	
Associates, LP; Pathway Senior Living, LLC; )	
Pathway Real Estate Management, LLC; and )	
Victory Center of Elk Grove, LLC, )	Honorable
)	John P. Callahan, Jr.,
Defendants-Appellees). )	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Presiding Justice Delort and Justice Connors concurred in the judgment.

**ORDER**

*Held:* The circuit court’s judgment granting defendants’ motion to stay proceedings on plaintiff’s wrongful death claim, pending arbitration, is affirmed where the definitive issue of negligent conduct in the arbitrable claims is sufficiently interrelated to whether defendants were negligent as alleged in plaintiff’s wrongful death claim.

¶ 1 Plaintiff, William Shepke, appeals the order of the circuit court granting defendants’ motion to reconsider and staying the proceedings on plaintiff’s wrongful death claim pending arbitration of his survival and breach of contract claims. On appeal, plaintiff contends that the court should not have granted a stay where (1) it failed to determine the issue pursuant to the Federal Arbitration Act (FAA) (9 U.S.C. § 3 (1994)), which is the relevant statute here; (2) arbitration will not completely resolve the matter between all of the parties and thus, granting the stay would result in a waste of judicial resources; and (3) enforcing arbitration denies plaintiff his day in court. For the following reasons, we affirm.

¶ 2 JURISDICTION

¶ 3 The trial court granted defendants' motion to reconsider and to stay the wrongful death counts on February 2, 2018. Plaintiff filed his notice of appeal on March 2, 2018. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2016) governing appeals from an interlocutory order granting a request for injunctive relief.

¶ 4 BACKGROUND

¶ 5 This appeal involves the same issue of whether plaintiff’s wrongful death action should be stayed pending the arbitration of other claims addressed in *Shepke v. Alexian Village of Elk Grove et al.*, 2017 IL App (1st) 161551-U. Therefore, we restate the following facts from that case: Josephine Shepke executed a lease agreement and service plan agreement with Alexian Village, a supportive living facility. She resided at Alexian Village from approximately December 4, 2013, to December 6, 2013, and from January 20, 2014, to February 4, 2014. The

service plan agreement provided basic services to residents, such as housekeeping and laundry services, medication assistance, personal assistance to support daily activities, scheduling appointments and transportation services, recreational activities, meal services, maintenance and daily checks. The lease agreement contained a provision which stated that the resident is "entitled to follow the grievance procedures as outlined in the Resident Handbook\*\*\*. If no satisfactory resolution is reached between You and Management, You agree to follow the arbitration process as shown on the Arbitration Addendum executed and attached hereto." The addendum required the contracting parties to resolve all claims and disputes relating to residency or services at Alexian Village through binding arbitration with a neutral arbitrator. The addendum further provided that the arbitration requirement extended to decedent's heirs, and would be governed by and interpreted under the FAA. Josephine executed the addendum on December 4, 2013.

¶ 6 While she resided at Alexian Village, Josephine suffered falls on two occasions and, plaintiff alleges, the resulting injuries ultimately led to her death. Plaintiff filed a multiple count complaint alleging that defendants were negligent in their duties and breached their agreement to provide assistance to Josephine. Count I alleged negligence under the Survival Act (755 ILCS 5/27-6 (West 2016)), count II alleged negligence and wrongful death pursuant to the Wrongful Death Act (740 ILCS 180/1 *et seq.* (West 2016)) and, count III alleged breach of contract based on the lease agreement and service plan agreement. The complaint also alleged counts against Otis Elevator Company for negligence regarding the operation of the elevator door sensors.<sup>1</sup>

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<sup>1</sup> Plaintiff has since reached an agreement with Otis Elevator Company, and on August 20, 2018, the trial court entered an order stating that "[a]ll counts against Otis Elevator are hereby dismissed pursuant to settlement \*\*\*." Otis Elevator is not a party to this appeal.

¶ 7 Defendants filed a motion to dismiss counts I and III of the complaint pursuant to sections 2-619(a)(1) and (9) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(1), (9) (West 2014)), and to compel arbitration on those counts as required by the lease agreement and addendum executed by Josephine. Defendants also requested that the trial court stay proceedings on count II, plaintiff's wrongful death claim, which defendants acknowledged was not an arbitrable issue, pending arbitration of the survival and breach of contract claims. Without oral argument, the trial court issued an order upholding the arbitration agreement and compelled the parties to arbitrate plaintiff's survival and breach of contract claims. The trial court accordingly granted defendants' motion to dismiss those claims but denied defendants' motion to stay proceedings on plaintiff's wrongful death claims. Defendants appealed and this court remanded the matter to the trial court to set forth its reasoning in denying the stay.

¶ 8 On remand, the trial court again denied defendants' motion to stay plaintiff's wrongful death action pending resolution of the arbitration proceedings, identifying equitable and legal reasons for the denial. On November 9, 2017, this court issued its opinion in *Hayes v. Victory Centre of Melrose Park SLF, Inc.*, 2017 IL App (1st) 162207, wherein it reversed the trial court's order denying a stay of the plaintiff's wrongful death claim pending conclusion of the arbitration proceedings. Relying on *Hayes*, defendants filed a motion to reconsider on November 17, 2017, alleging that the arbitration addendum in *Hayes* was identical to the one in this case, and asked the court to reconsider its denial of the stay. In his answer, plaintiff challenged the timing of defendants' motion. However, after briefing and a hearing on the motion, the trial court granted defendants' motion and ordered that all proceedings and discovery pertaining to plaintiff's wrongful death claim be stayed pending arbitration of plaintiff's survival and breach of contract claims. Plaintiff filed this appeal.

¶ 9

ANALYSIS

¶ 10 The sole issue here is whether the trial court erred in granting defendants' motion to stay proceedings on plaintiff's wrongful death claim, pending arbitration of his survival and breach of contract claims. Generally, "[a]rbitration is regarded as an effective, expeditious, and cost-efficient method of dispute resolution." *Royal Indemnity Co. v. Chicago Hospital Risk Pooling Program*, 372 Ill. App. 3d 104, 110 (2007). Where a case involves claims subject to arbitration and a claim not subject to arbitration, as we have in the case before us, section 2(d) of the Uniform Arbitration Act provides the trial court with two options. *Casablanca Trax, Inc. v. Trax Records, Inc.*, 383 Ill. App. 3d 183, 189 (2008). The trial court may, using its discretion, "stay the entire proceeding pending arbitration, or, if the [arbitrable] issue is severable, the stay may be granted with respect to that issue only." *Id.*, quoting *Board of Managers of the Courtyards at Woodlands Condominium Ass'n v. IKO Chicago, Inc.*, 183 Ill. 2d 66, 74-75 (1998).

¶ 11 Where the arbitrable and non-arbitrable issues, although severable, are interrelated in terms of a complete resolution of the dispute, the trial court may stay the entire proceeding pending arbitration. *Kostakos v. KSN Joint Venture No. 1*, 142 Ill. App 3d 533, 538 (1986). In such circumstances, arbitration may eliminate the need for court proceedings which furthers the goals of judicial economy and of resolving disputes outside of the judicial forum. *Id.* Whether one or more claims shall be stayed is within the trial court's discretion, and a reviewing court will not overturn the trial court's determination absent an abuse of discretion. *Kelso-Burnett Co., v. Zeus Development Corp.*, 107 Ill. App. 3d 34, 41 (1982). Under this standard, this court determines whether the trial court acted arbitrarily or exceeded the bounds of reason and ignored recognized principles of law so that substantial prejudice resulted. *Id.* We will reverse the trial

court's judgment only if no reasonable person would agree with the trial court's decision. *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 16.

¶ 12 We find *Hayes v. Victory Centre of Melrose Park SLF, Inc.*, 2017 IL App (1st) 162207, applicable here. In *Hayes*, the decedent entered into an agreement with the defendant supportive living facility, and pursuant to an addendum to the agreement the parties agreed that all claims arising from the agreement would be submitted to arbitration. *Id.* ¶ 4. While living at the facility, the decedent suffered a diabetic shock, lapsed into a coma, and subsequently died. *Id.* Plaintiff filed a negligence complaint and sought compensation pursuant to the Wrongful Death Act, the Rights of Married Persons Act (750 ILCS 65/15 (West 2014)), and the Survival Act. The defendant filed a motion to dismiss, alleging that the married persons and survival claims were subject to binding arbitration, and requested a stay of the wrongful death claim until conclusion of the arbitration proceedings. *Id.* ¶ 6. The trial court ruled that the married persons and survival claims were subject to arbitration, but denied the motion to stay the wrongful death proceedings. *Id.* ¶ 7.

¶ 13 On appeal, this court found that all of the plaintiff's claims "turn[ed] on allegations of the defendant's negligence," and a determination of whether the defendant was negligent in caring for decedent was "definitive" in both the arbitrable and wrongful death claims. *Id.* ¶ 15. The court expressed concern that simultaneous proceedings for both claims, addressing the same negligence issues, could come to different conclusions. It pointed out that "dual proceedings constitute an inefficient use of judicial resources," especially where resolution of the definitive issue of defendant's negligence through arbitration "may eliminate the need for court proceedings, thus meeting the goals of judicial economy and of resolving disputes outside of the

judicial forum.” *Id.* For these reasons, the court reversed the trial court’s order denying defendant’s motion to stay the wrongful death claim.

¶ 14 Here, Josephine signed a lease agreement and service plan agreement with Alexian Village which contained an addendum requiring the parties to resolve all claims and disputes relating to residency or services at Alexian Village through binding arbitration. The parties do not dispute that plaintiff’s survival and breach of contract claims are subject to arbitration. Although plaintiff’s wrongful death claim is not arbitrable, it is based on the same allegations contained in his arbitrable claims: that defendants were negligent in their duties to provide assistance to Josephine, and as a result she suffered injuries ultimately resulting in her death. Plaintiff “concedes that all Counts against the Defendants, including the Wrongful Death Counts, the Survival Counts, and the Breach of Contract Counts, derive generally from the same set of underlying facts; that is, that [Josephine] fell on two separate occasions as a result of Defendants’ agents/employees’ negligent assistance \*\*\*.” Like *Hayes*, the issue here that is subject to arbitration in the survival and breach of contract counts, whether defendants were negligent in providing assistance to Josephine, is the definitive issue involved in the wrongful death count. Therefore, we find the trial court did not abuse its discretion in granting defendants’ motion to stay proceedings on plaintiff’s wrongful death claim.

¶ 15 Plaintiff, however, contends that *Hayes* is distinguishable because in that case the court applied the Arbitration Act instead of the FAA, which is the relevant statute under the parties’ arbitration agreement. Without further clarification or citation to authority, plaintiff argues that the FAA only allows for a stay if “the issue involved” is referable to arbitration, but here, his case “is brought on multiple claims and issues” against multiple parties that cannot be narrowed to “the issue involved.” We disagree with this interpretation of the FAA.

¶ 16 Our primary goal in interpreting a statute is to give effect to legislative intent as expressed by the language of the statute, given its plain and ordinary meaning. *Illinois State Treasurer v. Illinois Workers' Compensation Comm'n*, 2015 IL 117418, ¶ 21. The FAA provides that a court may stay “any suit or proceeding \*\*\* upon any issue referable to arbitration under an agreement in writing for such arbitration,” if it is “satisfied that the issue involved in such suit or proceeding is referable to arbitration.” 9 U.S.C. § 3 (1994). Plaintiff focuses on the phrase “the issue involved,” presumably because it implies a singular issue. However, to understand the intent of the legislature we must read this phrase not in isolation, but as a consistent whole. *Wilson v. Molda*, 396 Ill. App. 3d 100, 110 (2009). Reading this provision as a whole, we find that the phrase simply alludes to the issue “referable to arbitration” on which the stay is based. As discussed, the definitive issue in counts I through III of plaintiff’s complaint is whether defendants were negligent in assisting Josephine, and two of those counts are subject to arbitration pursuant to the addendum. Therefore, the FAA supports the trial court’s decision to stay proceedings on count II, wrongful death, since “the issue involved” in that claim is “referable to arbitration.”

¶ 17 Plaintiff next argues that the litigation against the Otis Elevator defendants, the arbitration with Alexian Village, and a subsequent trial against Alexian Village on the wrongful death claim would “result in three waves of litigation at three different times.” Plaintiff contends that granting a stay in this case is “a waste of judicial and party resources” because resolution of the claims through arbitration will not completely resolve the cause between the parties, given these waves of litigation. Although plaintiff’s argument focuses primarily on the fact that his claims against Otis Elevator must be litigated, the parties recently entered into a settlement agreement and as a result, all counts against Otis Elevator have been dismissed. Thus, plaintiff’s

arguments involving Otis Elevator no longer apply. Furthermore, as this court found in *Hayes*, determination of the negligence issue in arbitration may eliminate the need for court proceedings against the Alexian Village defendants, “thus meeting the goals of judicial economy.” *Hayes*, 2017 IL App (1st) 162207, ¶ 15.

¶ 18 Plaintiff also asks this court to address whether collateral estoppel would apply to bar his wrongful death claim once arbitration has concluded. Plaintiff argues that if the doctrine does not apply, this finding supports his contention that granting the stay pending arbitration may be a waste of judicial resources because his claim must subsequently be litigated. “Collateral estoppel is an equitable doctrine \*\*\* [that] promotes fairness and judicial economy by preventing the relitigation of issues that have already been resolved in earlier actions.” *Du Page Forklift Service, Inc. v. Material Handling Services, Inc.*, 195 Ill. 2d 71, 77 (2001). Courts may apply the doctrine if (1) the issue decided in a prior adjudication is identical to the issue in the current action; (2) there was a final judgment on the merits in the prior adjudication; (3) the party against whom estoppel is being asserted was, or was in privity to, a party to the prior adjudication; and (4) the relevant factual issue was actually decided in the prior litigation. *Amalgamated Transit Union, Local 241 v. Chicago Transit Authority*, 2014 IL App (1st) 122526, ¶ 12. In order for this court to address the application of collateral estoppel, there must be a final judgment on the merits in a prior adjudication. No such judgment exists here, and plaintiff acknowledges that collateral estoppel “is not the issue presented in this Appeal.” For this court to make a determination on the applicability of collateral estoppel now would be akin to issuing an advisory opinion, which a reviewing court should not render even if to offer future guidance in similar situations. *Engle v. Foley and Lardner*, 393 Ill. App. 3d 838, 847 (2009).

¶ 19 Finally, plaintiff argues that by staying the proceedings on his wrongful death claim, and requiring resolution of the negligence issue through arbitration, the trial court has denied him his day in court. He argues that “the constitutional right of Ms. Shepke’s heirs to a jury trial is far more compelling than Defendants’ interest in securing a speedier resolution” through arbitration. We disagree. As our supreme court recognized, “arbitration is a favored alternative to litigation \*\*\*.” *Board of Managers of Courtyards*, 183 Ill. 2d at 71. Furthermore, arbitration is “a creature of contract” and as such, a valid agreement to arbitrate is enforceable and irrevocable except upon the grounds that exist for the revocation of any contract. *Id.* at 74. The court found that under an agreement to arbitrate, “the parties are irrevocably committed” to arbitrate all applicable disputes since they “are bound by their contract with its obligations, duties, and liabilities.” *Id.* Therefore, “once the trial court determines that a valid arbitration agreement exists, the court must compel arbitration, even when the principal litigation involves parties that are not signatories to the arbitration agreement.” *Id.* at 74. Here, plaintiff does not dispute that Josephine executed a valid agreement to arbitrate, and although her heirs did not sign the agreement, it explicitly provided that the arbitration requirement extended to Josephine's heirs.

¶ 20 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 21 Affirmed.