

**IN THE 21ST JUDICIAL CIRCUIT, ST. LOUIS COUNTY
STATE OF MISSOURI
FAMILY COURT DIVISION**

REDACTED,)	
)	
Petitioner,)	
)	Cause No. REDACTED
v.)	
)	Division 31
REDACTED,)	
)	
Respondent.)	
)	

FILED

AUG. 07 2019

JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

ORDER

Before the Court is Respondent’s Motion to Enforce Premarital Agreement and Compel Arbitration and Request for Hearing (filed on May 16, 2019) and Respondent’s Motion to Stay Proceedings (filed on May 21, 2019). The Motions were argued to the Court on two separate occasions, July 18, 2019 and July 26, 2019. Both parties have filed memoranda on the issues and provided to the Court their positions on the relevant case law. The matter was taken under submission on July 26, 2019.

Through these Motions, Respondent seeks to enforce the parties’ Premarital Agreement and stay the litigation while the parties arbitrate certain dissolution issues. Petitioner responds by arguing that the entire Premarital Agreement is not valid and, therefore, neither is the arbitration provision within it. Petitioner contends that this Court must take up the issue of the validity (or invalidity) of the Premarital Agreement before the Court may order the parties to arbitration under that agreement. Respondent disagrees, arguing that the validity or invalidity of the Premarital Agreement is for the arbitrator to determine—not this

Court. Respondent asks this Court to enforce the arbitration provision by looking at the four corners of the document on the sole issue of the validity of the *arbitration provision* (not the Premarital Agreement as a whole) and, if the Court finds it valid, to order the parties to arbitrate the validity of the Premarital Agreement as a whole.

As an initial matter, Petitioner suggests that an arbitration provision in a premarital or pre-nuptial agreement may not be enforceable in Missouri. Missouri Revised Statute § 435.350 states in relevant part: “A written agreement to submit any existing controversy to arbitration or a provision in a written contract, except contracts of insurance and contracts of adhesion, to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.” Notably, contracts involving family matters are not excluded from this statute, as other subjects are. Additionally, the Court has located no case law in Missouri that excludes family issues from arbitration. Moreover, in 2016, the National Conference of Commissioners on Uniform State Laws approved and recommended that all states enact a Uniform Family Law Arbitration Act. To date, several states have enacted the law. While Missouri is not one of those states, in the absence of Missouri law prohibiting the enforceability of arbitration agreements in contracts involving family matters, this Court will assume that agreements to arbitrate family disputes are enforceable.

The next issue presented by the Motions is whether the Court or the arbitrator resolves a challenge to the validity of the contract containing an arbitration provision. This issue actually turns on what law is applicable to the subject contract—the Missouri Uniform Arbitration Act or the Federal Arbitration Act (“FAA”), 9 U.S.C.A. § 4, *et seq.* The Missouri

Supreme Court, in a case involving a Missouri contract, but which was subject to the FAA, explained “it is a mainstay of the [Federal Arbitration] Act's substantive law that attacks on the validity *of the contract*, as distinct from attacks on the validity of the arbitration clause itself are to be resolved ‘by the arbitrator in the first instance, not by a federal or state court.’”

Ellis v. JF Enterprises, LLC, 482 S.W.3d 417, 423 (Mo. banc 2016) (emphasis added), citing Nitro-Lift Techs., FL.C. v. Howard, — U.S. —, 133 S.Ct. 500, 503, 184 L.Ed.2d 328 (2012). The Missouri Supreme Court went on to explain,

whether it [the entire contract] fails for lack of consideration, failure of consideration, fraud in the inducement, unconscionability or being declared “fraudulent and void” under section 301.210, the [United States] Supreme Court has held—clearly and repeatedly—that such an infirmity is irrelevant to the enforceability of an arbitration agreement contained within or executed contemporaneously.

Ellis, 482 S.W.3d at 423. To put it simply, Missouri Courts have recognized that, under the FAA, if a party challenges the entire agreement for fraud in the inducement (or another attack on its validity), that issue must be resolved by the *arbitrator*—not the Court. The Court only deals with challenges to the arbitration provision itself. Thus, if the FAA applies to the Premarital Agreement here, Respondent’s position would be correct.

However, the Missouri Supreme Court recognized that the result (of who determines the validity if the entire contract is challenged, rather than just the arbitration provision) in the Ellis case might turn out differently under the Missouri Arbitration Act: “Under Missouri law, Ms. Ellis [who argued that the Court should determine the validity of the entire agreement prior to compelling arbitration] may be right.” Id. at 419. Indeed, under Missouri law, a Court (as opposed to an arbitrator) will determine whether an underlying contract is valid prior to compelling arbitration. The Court’s analysis on this issue in Estate

of Burford ex. Rel. Bruse v. Edward D. Jones & Co., L.P., 83 S.W.3d 589, 592-593 (Mo. Ct.

App. WD 2002) is instructive:

Missouri courts have held that . . . “before a court may grant a party's motion to compel arbitration, it must decide whether the agreement containing the arbitration provision is valid and legally binding.” *Hitcom Corp. v. Flex Fin. Corp.*, 4 S.W.3d 618, 620 (Mo.App. E.D.1999); *See also Silver Dollar City, Inc. v. Kitsmiller Constr. Co., Inc.*, 874 S.W.2d 526, 536 (Mo. Ct. App. S.D.1994); *St. Luke's Hosp. v. Midwest Mech. Contractors, Inc.*, 681 S.W.2d 482, 487 (Mo. Ct. App. W.D.1984). If the court finds that the contract containing an arbitration agreement is binding on the parties, the moving party is entitled to an order compelling arbitration. *Silver Dollar City, Inc.*, 874 S.W.2d at 537. “If the trial court finds the Contract void or, for some other reason, unenforceable, there is obviously no valid arbitration provision.” *Id.* The court is charged with making this initial determination because requiring a plaintiff to arbitrate where they have denied entering into the contract containing the asserted arbitration provision would be “inconsistent with the first principle of arbitration, that parties cannot be required to submit to arbitration disputes that they have not agreed to submit.” *Hitcom*, 4 S.W.3d at 620 (citing *Three Valleys Mun. Water Dist. v. E.F. Hutton & Co., Inc.*, 925 F.2d 1136, 1142 (9th Cir.1991)).

The Court of Appeals in that case found that the trial court did not err by determining whether the agreement containing the arbitration provision was valid and enforceable. *Id.* Thus, if the Missouri Uniform Arbitration Act applies to the Premarital Agreement here, Petitioner's position would be correct.

The issue, then, is whether the FAA or the Missouri Uniform Arbitration Act applies to the Premarital Agreement here. The Premarital Agreement states in relevant part: “The laws of the State of Missouri shall for all purposes control the effect and construction of this Agreement, whether or not the parties hereafter continue to live as residents of the State of Missouri.” Paragraph 6.2 of the Premarital Agreement. However, just because the contract calls for the application of Missouri law and, hence, the Missouri Uniform Arbitration Act, that does not mean that the FAA does not also apply. If it does, the FAA

would supersede the Missouri Uniform Arbitration Act, as it did in the Ellis case cited above.

The Missouri Court of Appeals has explained:

The FAA applies when a contract evidences a transaction “involving commerce.” 9 U.S.C. § 2 (1970). The United States Supreme Court has determined Congress intended the FAA to reach the full expanse of its Commerce Clause power. *Allied-Bruce Terminix Companies, Inc. v. Dobson*, — U.S. —, —, 115 S.Ct. 834, 840, 130 L.Ed.2d 753, 764–65 (1995). The Supreme Court has also concluded the phrase “involving commerce” is the functional equivalent of “affecting commerce.” *Id.* at —, 115 S.Ct. at 839. The federal courts have interpreted the phrase broadly, applying the FAA in cases where the contract simply relates to interstate commerce even when the relationship was less than substantial. *Del E. Webb Construction v. Richardson Hospital Authority*, 823 F.2d 145, 147 (5th Cir.1987); *See Woermann Construction Co. v. Southwestern Bell Telephone Co.*, 846 S.W.2d 790, 792 (Mo.App.1993).

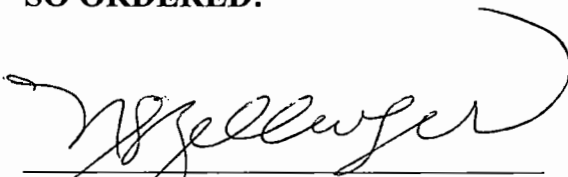
Duggan v. Zip Mail Services, Inc., 920 S.W.2d 200, 202 (Mo. Ct. App. 1996). Even with an expansive understanding of “involving commerce,” this Court struggles to find a contract involving personal, family matters could involve interstate commerce, with the possible exception that assets owned by the couple (and to be divided under a prematiral or prenuptial agreement) could involve interstate commerce.

Accordingly, the Court finds that the Missouri Uniform Arbitration Act applies to the Premarital Agreement and the FAA does not apply. If either party wishes to present the Court with additional case law on the FAA’s applicability to a premarital or prenuptial agreement, the parties may do so by filing a memorandum with case citations prior to the next Court date.

Because the Court finds that only the Missouri Uniform Arbitration Act (and Missouri law) applies to the Premarital Agreement and the present motions, the Court—not the arbitrator—is tasked with resolving Petitioner’s challenge to the validity of the

entire Premarital Agreement: “before a court may grant a party's motion to compel arbitration, it must decide whether the agreement containing the arbitration provision is valid and legally binding.” 83 S.W.3d at 592. Accordingly, because the determination of whether a premarital or prenuptial agreement is enforceable under Missouri law involves factual analysis, the Court must hold an evidentiary hearing before it can rule on the pending Motions. The Court sets the hearing on the validity of the Premarital Agreement for September 25, 2019 at 10:00am for one day. If the parties believe that the hearing requires more time than one day or that more time is needed to prepare for the hearing, counsel shall set the case for a status conference on a time available to both parties in August to discuss the evidentiary hearing.

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Nicole S. Zellweger', written over a horizontal line.

Judge Nicole S. Zellweger
Associate Circuit Judge, Division 31

August 7, 2019