



The Sports Bulletin

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Parents are Precluded from Waiving Child's Rights to Jury Trial in Pennsylvania

In order for children to be allowed to participate in youth sports and recreation activities, parents are often required to sign a waiver and release of liability agreement. Generally, when a parent signs a waiver in their own right, they contractually agree to waive all rights to sue. It has long been the law in Pennsylvania that when the parent signs a waiver for a minor, a parent cannot waive their child's personal injury claim. However, the parent can sign away the claim they personally have as a result of the child's injuries.

On March 23, 2023, the Pennsylvania Superior Court, in consolidated appeals, was tasked with deciding an issue of first impression in Pennsylvania: whether a parent's role as natural guardian entitles the parent to bind a minor child to an arbitration agreement and waive that child's right to seek redress for injuries in a court of law. *Santiago v. Philly Trampoline Park, LLC*, 2023 WL 2579193, 2023 Pa. Super. 47 (March 23, 2023).

Factually, for the child to participate in recreational facilities, the parent was required to sign a Release and Assumption of Risk Agreement. The agreement included a waiver of the child's jury right and compelled arbitration of any claims.

Typically, the court employs a two-part test to determine if it should compel arbitration. First, does a valid agreement exist. Second, is there a dispute within the scope of the agreement. When addressing if there is a valid agreement, the court applied principles that govern formation of contracts. As a general rule of contract law, only the parties to an arbitration agreement may be compelled to arbitrate. An individual cannot be required to arbitrate a dispute where such individual is not a party to the arbitration agreement. "Nevertheless, a party can be compelled to arbitrate under an agreement, even if he or she did not sign that agreement, if common law principles of agency and contract support such an obligation on his or her part." As a result, the court reviewed the law of agency when determining if the parent has the authority for the child to waive the right to a jury and compel arbitration.

The court stated that “agency cannot be inferred from mere relationships or family ties, and we do not assume agency merely because one person acts on behalf of another.” Further, the court observed that children can not themselves agree to arbitrate any potential claims because it has long been the law that minors lack the capacity to contract. “As such, minors lack the capacity to grant express authority to an agent to contract on their behalves, rendering any such resulting contracts voidable.”

In situations when a minor is injured, two distinct causes of action arise, “one the parents’ claim for medical expenses and loss of the minor’s services during minority, the other the minor’s claim for pain and suffering and for losses after minority.” *Hathi v. Krewstown Park Apartments*, 561 A.2d 1261, 1262 (Pa.Super. 1989). A parent may pursue his or her own cause of action with connection to the injury, but a child is prohibited from personally bringing a cause of action before reaching majority. Alternatively, a parent “has the natural and primary right to bring an action, as guardian, on behalf of his or her child,” *Dengler by Dengler v. Crisman*, 516 A.2d 1231, 1234 (Pa.Super. 1986). However, the court notes that “a minor’s representation is subject to the trial court’s control and supervision, and it has the right in each case to determine whether the litigation is in the minor’s best interests. As a result, the court stated that “an agreement executed by natural guardian purportedly on the minor’s behalf without any court involvement, however, has none of the legal safeguards attendant to the appointment of a guardian of the minor’s estate. Consequently, the parents in their pre-litigation state of natural guardianship lacked any authority to manage the estate of their minor children.”

Therefore, the Pennsylvania Superior Court concluded that parents lack authority to bind their minor children to arbitration agreement. The court held that the parent-child relationship did not empower the signatory parents to waive their minor children’s rights to have their claims resolved in a court of law.

Those who manage sports and recreational facilities should still require that adults execute waivers and releases to protect the facility from claims by the adults and as parents to minor children, although in Pennsylvania those waivers will not preclude the child’s rights to sue. If the managers prefer to use the arbitration system to reduce costs, streamline a lawsuit and to avoid jury trials, they should still include arbitration clauses in their agreements. Defense attorneys need to be aware that they can arguably make a strategic decision on how to move forward with the claim of a minor and a parent because the defendant could litigate the child’s claim in court and arguably move to litigate the parent’s claim in arbitration. There are risks of inconsistent verdicts on liability. However, defense counsel may believe arbitration is a better forum to enforce the waiver and release, enforce any sections of the agreement that may require the parent indemnify the facility, and to potentially reduce the value of parent’s claim if it is believed a jury may provide a more sympathetic verdict. Be mindful that the waiver and release can still be enforced against the parent, but the court will protect the child’s rights to bring a claim before a jury.



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