IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HEALTH SYSTEM, LLC, D/B/A CENTENNIAL HILLS HOSPITAL MEDICAL CENTER, A FOREIGN LIMITED LIABILITY CORPORATION,
Appellant,
vs.
JULIA ALEXANDER, AN INDIVIDUAL,
Respondent.

No. 84541

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying a motion to compel arbitration. Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.[1]

The district court denied appellant Valley Health System, LLC's (Valley Health) motion to compel arbitration, finding that the parties' "ALTERNATIVE RESOLUTION FOR CONFLICTS ('ARC') AGREEMENT" (hereafter, the ARC Agreement) was both procedurally and substantively unconscionable. *Cf. U.S. Home Corp. v. Michael Ballesteros Tr.*, 134 Nev. 180, 190, 415 P.3d 32, 40 (2018) ("Nevada law requires both procedural and substantive unconscionability to invalidate a[n arbitration agreement] as unconscionable."). As evidence of procedural unconscionability, the district court found that respondent Julia Alexander was given a limited amount of time and was essentially pressured into signing the ARC Agreement, as well as accompanying documents. As

[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.

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evidence of substantive unconscionability, the district court appears to have found that the ARC Agreement was a result of unequal bargaining power.[2]

Valley Health contends that the district court's substantive-unconscionability analysis was legally incorrect because it "improperly applied a procedural unconscionability analysis when determining whether the ARC Agreement was substantively unconscionable." *Cf. Gonski v. Second Judicial Dist. Court*, 126 Nev. 551, 557, 245 P.3d 1164, 1168 (2010) (recognizing that when this court reviews an order granting or denying a motion to compel arbitration, this court defers to the district court's factual findings but reviews de novo questions of law), *overruled on other grounds by U.S. Home Corp.*, 134 Nev. at 190-91, 415 P.3d at 41. We agree, given that this court has held that unequal bargaining power between parties is part of the *procedural*-unconscionability analysis. *See, e.g., Gonski*, 126 Nev. at 558, 245 P.3d at 1169 ("An arbitration clause is procedurally unconscionable when a party has no 'meaningful opportunity to agree to the clause terms either because of unequal bargaining power, as in an adhesion contract, or because the clause and its effects are not readily ascertainable upon a review of the contract.'" (quoting *D.R. Horton, Inc. v. Green*, 120 Nev. 549, 554, 96 P.3d 1159, 1162 (2004))). Absent any other evidence of *substantive* unconscionability, we conclude that the district court erred in determining that the ARC Agreement was unconscionable and unenforceable. *See U.S. Home Corp.*, 134 Nev. at 190, 415 P.3d at 40.

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[2]This appears to reflect the district court's findings at the February 23, 2022, hearing, which it subsequently incorporated into its March 10, 2022, written order that summarily denied Valley Health's motion.

While reversal on this basis alone is warranted, we note that the district court's statements at the February 23, 2022, hearing suggest that it also found the ARC Agreement to be substantively unconscionable because it required Alexander to relinquish her right to a jury trial. However, neither Alexander nor the district court cited any authority supporting a finding of substantive unconscionability on this basis. And problematically, this asserted basis would render *every* binding arbitration agreement substantively unconscionable. *Cf. Hobby Lobby Stores, Inc. v. Cole*, 287 So. 3d 1272, 1276 (Fla. Dist. Ct. App. 2020) ("All arbitration agreements waive the parties' right to a jury trial as a means of dispute resolution."); *cf. also U.S. Home Corp.*, 134 Nev. at 191, 415 P.3d at 42 ("Nearly all arbitration agreements forgo some procedural protections, such as the right to a jury trial . . . ."). Relatedly, neither the district court nor Alexander has identified any term within the ARC Agreement that is "one-sided[ ]" or "oppressive," *see Gonski*, 126 Nev. at 558, 245 P.3d at 1169 (internal quotation marks omitted) (identifying situations in which an arbitration agreement may be substantively unconscionable), which makes this case distinguishable from *Ingle v. Circuit City Stores, Inc.*, 328 F.3d 1165, 1173-75 (9th Cir. 2003), where a court found substantive unconscionability by virtue of an arbitration agreement that required only an *employee*'s claims to be arbitrated but not an *employer*'s potential claims.[3]

[3]Alexander contends that "the ARC Agreement, similar to *Ingle*, only lists claims that the employees may bring against [Valley Health] that are subject to arbitration." Alexander neither identifies any such language in the ARC Agreement, nor is any self-evident.

In light of our conclusion that there is *no* substantive unconscionability within the ARC Agreement, we need not evaluate whether the ARC Agreement was procedurally unconscionable. *See Gonski*, 126 Nev. at 558, 245 P.3d at 1169 (observing that "a strong showing" of one unconscionability element means a lesser showing of the other unconscionability element is required). Nonetheless, and while the parties dispute how much time Valley Health gave Alexander to review the ARC Agreement and accompanying documents, we note that the ARC Agreement's terms are clear. The 4-page stand-alone document provides in relatively layperson's terms that certain employment disputes are subject to arbitration (Paragraphs 1-8), provides **in bold** that an employee has 30 days to opt out of the ARC Agreement and has the right to consult with counsel (Paragraph 9), and assures the employee that they will not be retaliated against for opting out (Paragraph 10).[4] In other words, even if the ARC Agreement had *some* element of substantive unconscionability (which it does not), the district court's timing-related findings are counterbalanced by the ARC Agreement's clear terms and even clearer opt-out provision, which the district court did not address in its procedural-unconscionability analysis. *Cf. Kindred v. Second Judicial Dist. Court*, 116 Nev. 405, 411, 996 P.2d 903, 907 (2000) ("We have never applied the adhesion contract doctrine to employment cases. Moreover, we have held that parties to a written arbitration agreement are bound by its conditions regardless of their subjective beliefs at the time the agreement was executed." (internal quotation marks omitted)); *Gonski*, 126 Nev. at 558, 245

[4]We further note that Alexander does not dispute on appeal that Valley Health provided her with a copy of the opt-out form.

P.3d at 1169 ("[T]he use of fine print and/or misleading or complicated language that fails to inform a reasonable person of the contractual language's consequences indicates procedural unconscionability." (internal quotation marks omitted)). In light of the foregoing, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.[5]

Stiglich, C.J.

Gibbons, Sr.J.

Silver, Sr.J.

cc: Hon. Gloria Sturman, District Judge
William C. Turner, Settlement Judge
Littler Mendelson, P.C./Las Vegas
Kang & Associates PLLC
Eighth District Court Clerk

[5]The Honorable Mark Gibbons and Abbi Silver, Senior Justices, participated in the decision of this matter under general orders of assignment.