

No. 1-16-1551

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).

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

| | | |
|--|---|------------------------|
| JOSEPHINE SHEPKE, deceased, by her son, |) | Appeal from the |
| WILLIAM SHEPKE, as representative, |) | Circuit Court of |
| |) | Cook County. |
| Plaintiff-Appellee, |) | |
| |) | |
| 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-Appellants). |) | Judge Presiding. |

JUSTICE HARRIS delivered the judgment of the court
Justices Simons and Mikva concurred in the judgment.

ORDER

¶ 1 *Held:* We vacate the trial court's order denying defendants' motion to stay proceedings and remand with directions for the court to enter into the record findings on the factors used to make its determination.

¶ 2 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 Centre of Elk Grove, LLC, appeal the order of the circuit court denying their motion for a stay pending arbitration of the survival and breach of contract counts of plaintiff's complaint. On appeal, defendants contend that the trial court should have granted their motion where (1) the survival and wrongful death claims involve the same liability issues and are based on the same operative facts so that separate, simultaneous proceedings pose a risk of irreconcilable decisions; (2) the arbitration ruling will have a preclusive effect on the wrongful death claim; (3) allowing litigation of the wrongful death claim while arbitrating the survival claim will cause the parties to incur unnecessary costs and deplete judicial resources; and (4) the Federal Arbitration Act (FAA) (9 U.S.C. §1 *et seq.*), and the Illinois Uniform Arbitration Act (Uniform Arbitration Act) (710 ILCS 5/2 (West 2014) require a stay on the wrongful death count because the arbitrable and non-arbitrable claims are interrelated in terms of a complete resolution of the cause between the parties. For the following reasons, we vacate the trial court's order denying defendants' motion to stay proceedings and remand for further findings.

¶ 3 **JURISDICTION**

¶ 4 The trial court entered an order denying defendants' motion to stay proceedings on May 23, 2016. Defendants filed their notice of appeal on June 10, 2016, and an amended notice of appeal on June 16, 2016. Accordingly, this court has jurisdiction pursuant to Illinois Supreme

Court Rule 307(a)(1) (eff. Nov. 1, 2016) governing appeals from an interlocutory order denying a request for injunctive relief.

¶ 5

BACKGROUND

¶ 6 The following facts are relevant for the resolution of this appeal. 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.

¶ 7 While she resided at Alexian Village, Josephine suffered falls on two occasions and, plaintiff alleges, the resulting injuries ultimately led to her death. Plaintiff William Shepke filed a multiple count complaint alleging that defendants were negligent in their duties and breached

their agreement to provide assistance to Josephine. The complaint also alleged counts against Otis Elevator Company for negligence regarding the operation of the elevator door sensors.¹

¶ 8 Defendants filed a motion to dismiss 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 as required by the lease agreement and addendum executed by Josephine. Defendants also requested that the trial court stay proceedings on plaintiff's wrongful death claim, which defendants acknowledged was not an arbitrable issue, until resolution of the negligence and breach of contract claims under the arbitration agreement. Without oral argument, the trial court issued an order upholding the arbitration agreement and compelled the parties to arbitrate plaintiff's negligence and breach of contract claims. The trial court accordingly granted defendants' motion to dismiss those claims. With no further analysis, the trial court denied defendants' motion to stay proceedings on plaintiff's wrongful death claims. Defendants filed this timely appeal.

¶ 9 ANALYSIS

¶ 10 The only issue on appeal is whether the trial court erred in denying defendants' motion to stay proceedings. Under section 2(d) of the Uniform Arbitration Act (710 ILCS 5/2(d) (West 2014)), "[a]ny action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration *** has been made under this Section or, if the issue is severable, the stay may be with respect thereto only." 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); *Certain Underwriters at Lloyd's, London v. Boeing Co.*, 385 Ill. App. 3d 23, 36 (2008).

¹ Otis Elevator Company is not a party to this appeal.

Under this standard, this court does not decide whether it agrees with the trial court's decision but instead determines whether the court acted arbitrarily or exceeded the bounds of reason and ignored recognized principles of law so that substantial prejudice resulted. *Id.* In reviewing the trial court's judgment for abuse of discretion, we will reverse only if no reasonable person would agree with the trial court's decision. *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 16.

¶ 11 Section 2(d) of the Uniform Arbitration Act provides the trial court with two options when a case involves claims subject to arbitration and a claim not subject to arbitration, as we have in the case before us. *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). 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). "Moreover, where the issues and relationships are sufficiently interrelated and the result of arbitration may be to eliminate the need for court proceedings, then the goals of judicial economy and of resolving disputes outside of the judicial forum are met." *Id.*

¶ 12 On appeal, defendants argue that the trial court should have granted their motion where (1) the survival and wrongful death claims involve the same liability issues and are based on the same operative facts so that separate, simultaneous proceedings pose a risk of irreconcilable decisions; (2) the arbitration ruling will have a preclusive effect on the wrongful death claim; (3) allowing litigation of the wrongful death claim while arbitrating the survival claim will cause the parties to incur unnecessary costs and deplete judicial resources. As defendants acknowledge in

their brief, however, no hearing was held on the motion and the trial court's order contained no explanation for its decision on the issue. The record contains no finding by the trial court regarding the factors it considered, or its reasoning, in denying the motion to stay.

¶ 13 It is within the province of the trial court to make findings on the factors used to grant or deny a motion to stay, and to use its discretion in making a determination. With no findings by the trial court on the factors it considered in denying defendants' motion to stay, we cannot determine whether the court acted arbitrarily or its decision exceeded the bounds of reason and ignored recognized principles of law. If this court were to make these findings and weigh the evidence on appeal, we would effectively be exercising our own discretion instead of reviewing whether the trial court abused its discretion. Since we cannot determine whether the trial court abused its discretion on the record before us, we vacate the court's order denying the motion and remand with directions that the trial court enter into the record findings on the stay factors it considered in making its determination. See *Lake Environmental*, 2015 IL 118110, ¶ 19 (when reviewing the trial court's decision to deny sanctions for abuse of discretion, if the record on appeal is insufficient to determine whether the trial court had an adequate basis for its decisions, remanding the case may be appropriate); see also *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 394 (2006) (remanding to allow the district court to address the equitable elements of a preliminary injunction).

¶ 14 Defendants also argue that the FAA, as well as the Uniform Arbitration Act, mandates a stay of the wrongful death count (with no discretion on the part of the trial court) because the issue involved is "referable to arbitration" or the "arbitrable and non-arbitrable claims are sufficiently related." Defendants, however, did not make this argument below, but rather present the issue for the first time on appeal. As such, defendants have forfeited review of this issue. See

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Coglan v. Beck, 2013 IL App (1st) 120891, ¶ 31 (failure to raise an issue before the trial court forfeits that issue for review on appeal).

¶ 15 Vacated and remanded with directions.