INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

ICA EFiled: Dec 21 2022
03:10PM EST
Transaction ID 68707727

C.S.,
Plaintiff Below, Petitioner

vs.) No. 22-ICA-141

The Church of Jesus Christ of Latter-Day Saints,
Chris and Sandra Lee Jensen, Matthew Whitcomb,
Don wrye, Anthony Naegle & Christopher Michael Jensen,
Defendants Below, Respondents

\

PETITIONER'S BRIEF IN SUPPORT OF APPEAL

/s/ Christian J. Riddell
Christian J. Riddell, Esq.
Riddell Law Group
329 South Queen Street
Martinsburg, WV 25401
(304) 267-3949
WV Bar No: 12202
Counsel for the Petitioner

I. TABLE OF CONTENTS

II. TABLE OF AUTHORITIES

III. ASSIGNMENTS OF ERROR

1. THE COURT ERRED IN FINDING THAT THE ARBITRATION AGREEMENT WAS UNAMBIGUOUS AND SHOULD BE ENFORCED ALONG ITS CLEAR TERMS WHILE ALSO FINDING THAT IT SHOULD BE STRETCHED TO INCLUDE PROTECTIONS FOR NON-SIGNATORIES WHERE NO LANGUAGE FROM THE AGREEMENT INDICATES ANY INTENT TO BENEFIT ANY THIRD PARTY.

IV. STATEMENT OF THE CASE

The case at bar revolves around claims made by Petitioner C.S. and his brother, M.S., relating to sexual abuse they suffered as children when Respondent Michael Jensen, whom the other named Respondent's had conspired to place in Petitioner's home in order to hide him from authorities investigating his many other instances of child sexual abuse, repeatedly molested them.

Michael Jensen is the son of Respondents Chris and Sandra Jensen, who are distinguished leaders within the Mormon Church, and the Church appears to have acted in all respects so as to aid the Jensens in covering up their sons repeated heinous sex crimes against many different children, and thereby avoid embarrassment for both the Jensens and the Church itself.

All named Respondents were fully aware of Michael Jenson's lengthy and grotesque history of sexually abusing children in a variety of different settings, and, despite this knowledge, all of them not only failed to report Michael Jensen to the authorities (*See Complaint* (Appendix Record ("AR pg. 13")) ¶¶ 14, 16, 18, 20, 22, 23, 24, 25, 28-30, 58, 62-64, 68, 71-75), but, further, made efforts to coerce Plaintiffs' parents, through both affirmative misrepresentations and material omissions, into allowing Michael Jensen to live with them in their home. *Id.* at ¶¶ 83, 88, 89. This was done expressly to hide Michael Jensen from a police investigation into his sexual abuse of children. *Id.* at ¶ 103. In addition, many of the named

Respondents, including Respondents Grow, Fishel, the Jensens, and Neagel, actively attempted to dissuade the victims of Michael's sexual abuse and/or their families from reporting said abuse to the police. *Id.* at ¶ 32, 93, 94, 95.

Plaintiff C.S., who has until age 36 to raise any claims related to sexual abuse of a minor per W.Va. Code § 55-2-15, brought claims as a juvenile through his father - along with 4 other families representing 11 different children who had been sexually abused by Michael Jensen and 19 total Plaintiffs (including claims of the parents themselves) - against some of the Defendants, to wit, the Church Defendants as well as Defendants Grow, Fishel, Michael Jensen, Christopher Jensen, and Sandra Jensen, alleging various negligence causes of action, fraud, intentional infliction of emotional distress, and civil conspiracy in September of 2013 in the Berkeley County Circuit Court under case number 13-C-656. *See Plaintiff's Response on Motion to Dismiss* (AR pg. 411). Thereafter, Petitioner – in an effort to simplify the litigation and due to the extraordinary pressure brought to bear through Defendants harassing and vexatious litigation strategy (as was duplicated in the case at bar through Respondents subsequently denied Motion for Sanctions) - moved for voluntary dismissal of his claims along with multiple other juvenile Plaintiffs, which were voluntarily dismissed without prejudice from the litigation by Order of the Berkeley County Circuit Court on April 16, 2015. *See Ibid.*

Thereafter, C.S. made an agreement with a single Defendant from the prior litigation, to wit, the Corporation of the President of the Church of Jesus Christ of Latter Day Saints ("COP")[1], to arbitrate his claims against them. *See Id.* at Exhibit B. There were no other parties to the Arbitration Agreement, no named third-party beneficiaries to the Arbitration Agreement, and no waiver or release for any Defendant named in the instant suit contained within the

[1] COP was later merged with certain other church organizations into The Church of Jesus Christ of Later Day Saints, a Utah Corporation-Sole ("CHC")

Arbitration Agreement or existing in any other capacity. The arbitration resulted in a summary opinion by Arbitrator Nancy Lessor, drafted without any attendant findings of fact or conclusions of law, finding that COP was not liable to C.S. for negligence, but without providing explanation as to why. *See Id.* at Exhibit C.

Plaintiff C.S. then brought claims against all named Respondents, excepting COP[2], based on a variety of causes of action for their various roles in either abusing him (in the case of Michael Jensen) or (for the remaining Defendants) in facilitating said abuse through their various acts and omissions as detailed in Petitioner's Complaint. Both COP and the individually named Defendants filed Motions to Dismiss in response. Each motion argued that further suit against anyone by C.S. related to his claims of sexual assault are precluded by language of the Arbitration Agreement and by the doctrine of *Res Judicata.*

After the matter was fully briefed, the Court heard oral argument on May 16, 2022 as to the outstanding motions.[3] Thereafter, the Court issued an Order Granting the Respondent's Motions to Dismiss on the basis that Petitioner's claims were precluded by the arbitration agreement. Said the Court:

> *The first issue for the Court's determination is whether the arbitration agreement entered into by C.S. is ambiguous. The arbitration agreement states that "the Parties mutually consent to the resolution of all [C.S.'s] claims or controversies that were or could have been asserted in Jane Doe-1, et al., v. Corporation of the President of The Church of Jesus Christ of Latter-Day Saints, et al. ...." The Court concludes that this language is not ambiguous, as it is not reasonably susceptible to different meanings.*

---

[2] Petitioner originally also brought claims against another church entity, the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints ("COPB") and its successor organization (referred to at footnote 1 as "CHC") but thereafter agreed to their dismissal after early discovery was exchanged between the parties showing COPB's privity with COP. As a result, there are no church entities which are named as Respondents in the instant appeal, and the appeal is exclusively related to Petitioner's claims against the named Respondents in their personal and individual capacities.

[3] In addition to the motions to dismiss, Respondents Grow and Fishel, along with COPB, brought a motion for sanctions which was also disposed of (via a denial) at the May 16, 2022 hearing. The denial of this motion has not been appealed by any party and will therefore not be discussed further.

The Court finds it compelling, persuasive and dispositive that all the allegations raised by C.S. in the current complaint could have been raised in prior litigation; i.e., Jane Doe-1, filed in 2013. Although there are some new factual allegations and individual defendants in the newly filed complaint, the allegations and the identification of other defendants could have been made in the original litigation. Indeed, Plaintiff's counsel admitted and acknowledged on the record that the facts alleged in the current complaint could have been raised in the initial complaint filed by C.S., and the Court recognizes that acknowledgement as an undisputable finding of fact. The Court therefore finds that the arbitration agreement, read in its totality, and with plain meaning given the language, is not ambiguous. The Court notes that C.S. was represented by counsel at all stages of the litigation, including arbitration, and that C.S. entered into mediation voluntarily. The Court further finds that a final disposition of C.S.'s claims through arbitration was the intent of the parties at the time as set forth in the arbitration agreement which clearly states, "[W]hereby the parties recognize and desire the benefits of a speedy, impartial, final and binding dispute resolution procedure."

Given the Court's findings with respect to the arbitration agreement and its lack of ambiguity, it is not necessary for this court to rule on the issue of privity which is part of Defendants' res judicata arguments.

See Order from May 16, 2022 Hearing Granting Defendants' Motions to Dismiss and Denying Motion for Sanctions ("AR pg. 1209").

Thereafter, Petitioner filed a Motion to Alter under Rule 59(e) wherein Petitioner argued that the Court had failed to address arguments made in his previous response on motion to dismiss related to the lack of a valid contractual agreement between Petitioner and the individually named Defendants. Petitioner further requested, in the event the Court did not grant its motion, for certification under Rule 54(b) of Petitioner's claims for immediate appeal. The Respondent's objected to Petitioner's motion under Rule 59(e) but consented to immediate appeal under Rule 54(b) of Petitioner's claims separate and apart from the claims raised by brother, M.S., which remained pending with the Court.[4] See Plaintiff C.S.'s Rule 59(e) Motion to Alter the Court's Order of June 6, 2022 or, in the Alternative, Request for Certification under Rule 54(b) (AR pg. 1213).

[4] Plaintiff M.S.'s claims were thereafter voluntarily dismissed by him in order to allow him time to obtain new counsel.

On July 20, 2022, the Court denied Petitioner's Motion to Alter, but granted Petitioner's Motion for Certification under Rule 54(b). See Order Denying in Part and Granting in Part Plaintiff's Rule 59(e) Motion to Alter the Court's Order of June 7, 2022 or, in the Alternative, Request for Certification Under Rule 54(b) (AR pg. 1304). This appeal follows:

V. SUMMARY OF ARGUMENT

The Court erred by finding that the Arbitration Agreement unambiguously precluded Petitioner from ever again filing suit against anyone for any actions related to the sexual abuse he suffered as a child while simultaneously also holding that the Arbitration Agreement can be applied without construction or interpretation to include binding protections for individuals who were neither signatories to the agreement, parties to the original suit, or stated third party beneficiaries in the Arbitration Agreement. Under the law, the Agreement was not enforceable vis-à-vis the non church defendants because it did not constitute a valid contract by and between those parties for a variety of reasons.

VI. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Petitioner avers that oral argument under Rule 19 would be useful in articulating the issues for the Court' s consideration because the matter involves assignments of error in the application of settled law and further involves a narrow issue of law.

VII. ARGUMENT

1. THE COURT ERRED IN FINDING THAT THE ARBITRATION AGREEMENT WAS UNAMBIGUOUS AND SHOULD BE ENFORCED ALONG ITS CLEAR TERMS WHILE ALSO FINDING THAT IT SHOULD BE STRETCHED TO INCLUDE PROTECTIONS FOR NON-SIGNATORIES WHERE NO LANGUAGE FROM THE AGREEMENT INDICATES ANY INTENT TO BENEFIT ANY THIRD PARTY.

While the Court's finding that the Arbitration Agreement precludes Petitioner's lawsuit was reasonable (and, ultimately, agreed to) as to Church entity COPB, it is erroneous as to the

remaining individual Respondents because these Respondents were neither signatories to the Agreement nor were they in privity of contract with COP.

The Court disposed of Petitioner's claims by finding that the Arbitration Agreement was clear and unambiguous as to its preclusion of any future suits by Petitioner against anyone for injuries suffered from his sexual assault at the hands of Michael Jensen. The Court made this finding based on a single sentence in the arbitration agreement, which reads as follows:

> *The Parties mutually consent to the resolution of all [C.S.'s] claims or controversies that were or could have been asserted in Jane Doe-1, et al., v. Corporation of the President of The Church of Jesus Christ of Latter-Day Saints, et al. ....*

However, the Circuit Court never explained under what legal theory of contract it could apply the protections of the arbitration agreement to the entire universe of non-signatories to the agreement, especially to those who were never even named as Defendants in the prior litigation.

Respondents' claims to protection under through the Arbitration Agreement is belied by the clear language of the agreement, which was made *only* between C.S. and the Corporation of the President ("COP"). It begins by noting that it is "by and between, [C.S.], on the one hand, and Corporation of the President of the Church of Jesus Christ of Latter-day Saints ("COP") on the other hand." *The Agreement*, p. 1. On the signature page, only the signatures of C.S., COP, and their respective counsel appear. *Id.* at p. 4. There are no other parties to the agreement whatsoever, including no other corporate entities associated with the Church (i.e. the Corporation of the Presiding Bishop ("COPB"), and none of the other named Defendants. Instead, the language of the arbitration agreement speaks specifically, repeatedly, and exclusively to the COP entity only. The preamble of the agreement states the following:

> *WHEREAS, [C.S.] has indicated that he plans to re-assert various previously dismissed without prejudice tort claims* ***against COP****; WHEREAS the* ***Parties*** *and desire the benefits of a speedy, impartial, final and binding dispute resolution procedure; NOW, THEREFORE*

> *for these reasons and in consideration of the mutual promises in this Agreement, the Parties mutually consent to the resolution by arbitration of all [C.S.'] claims or controversies that were or could have been asserted in Jane Doe-1, et al,. v. Corporation of the President of the Church of Jesus Christ of Latter-Day Saints, et al., Civil Action No. 13-C-656, Circuit Court of Berkeley Count, West Virginia ("Claims").*

See Plaintiff's Response on Motion to Dismiss (AR pg. 439), Exhibit B.

This clause is clear and unambiguous. C.S. planned to re-assert his tort claims against COP. The Parties' [i.e. C.S. and COP] minds met and they agreed to resolution by arbitration of all claims that would or could have been asserted, rather than by litigation. There is not a word in here which suggests that the agreement is meant to include any additional parties other than the named signatories.

West Virginia law makes clear that Arbitration Agreements are binding only insomuch as any other contract would be binding, and they are susceptible to all defenses ordinarily available against enforcement of a contract. See *Dan Ryan Builders, Inc. v. Nelson*, 737 S.E.2d 550, 555 (W.Va. 2012) ("general state contract principles still apply [to arbitration agreements] to assess whether those agreements to arbitrate are valid and enforceable, just as they would to any other contract dispute arising under state law.... The purpose of section 2 [of the Federal Arbitration Act[5]] 'is for courts to treat arbitration agreements like any other contract. The act does not favor or elevate arbitration agreements to a level of importance above all other contracts.'")

"The Fundamentals of a legal contract are competent parties, legal subject matter, valuable consideration and mutual assent. There can be no contract if there is one of these essential elements upon which the minds of the parties are not in agreement." "*Id.* at Syllabus

[5] The Arbitration Agreement between C.S. and COP does not specify whether it is being made pursuant to the Federal Arbitration Act ,9 USC § 1 et seq., or the West Virginia Revised Uniform Arbitration Act, W.Va. Code § 55-10-1 et seq. However, given that COP and Plaintiff C.S. were diverse parties from different states, federal jurisdiction per the Constitution's commerce clause would apply to any dispute occurring between them, making the federal statute appear most applicable.

Point 3. See also Syllabus Point 1, *First Nat. Bank of Gallipolis v. Marietta Mfg. Co.*, 151 W.Va. 636, 153 S.E.2d 172 (1967); Syllabus Point 5, *Virginian Export Coal Co. v. Rowland Land Co.*, 100 W.Va. 559, 131 S.E. 253 (1926)..." Additionally, "A promise or contract where there is no valuable consideration, and where there is no benefit moving to the promisor or damage or injury to the promise, is void." *Dan Ryan*, *supra*, at Syllabus Point 4; See also Syllabus Point 2, *Sturm v. Parish*, 1 W.Va. 125 (1865).

Moreover, even where otherwise valid, contracts can be invalidated for being unconscionable. The doctrine of unconscionability "consists primarily of equitable principles that have meaning only in the context of specific factual circumstances." *McMellon v. Adkins*, 171 W.Va. 475, 477, 300 S.E.2d 116, 118 (1983). "The concept of unconscionability must be applied in a flexible manner, taking into consideration all of the facts and circumstances of a particular case." Syllabus Point 3, in part, *Board of Ed. of Berkeley County v. W. Harley Miller, Inc.*, 160 W.Va. 473, 236 S.E.2d 439 (1977).

Here, any supposed contractual obligation requiring Petitioner to forever release all non-COP/CHC Defendants from liability based on the Arbitration Agreement would appear to violate almost all of the above-described elements (excepting legal subject matter). It would not be between competent parties because none of these Defendants are parties to the Agreement. It would not be by mutual assent because neither Plaintiff C.S. nor any non-COP defendant made any express agreement to arbitrate C.S.'s claims against them. It would further not be based on any consideration, as there is nothing in the Arbitration agreement which offers consideration for releasing unnamed parties from liability and there is nothing in the agreement which suggests that the defendants named in the instant Complaint would have been held jointly liable had C.S. prevailed at arbitration. Moreover, to the extent the parties might argue that the consideration for

such a promise was COP's agreement to engage in binding arbitration, then the agreement is unconscionable because it creates a right of recovery for C.S. only upon success at arbitration and only against COP, while creating total immunity in the event of a finding for COP not only on behalf of COP, but also on behalf the entire universe of people who may be personally liable for their own acts of misconduct in facilitating C.S.'s sexual abuse, including protecting the abuser himself, Michael Jensen.

Additionally, the Arbitration Agreement itself drafted by Defendants and their counsel, and it is a well-known axiom of contract interpretation that ambiguities are construed against the drafter. See *Payne v. Weston*, 466 S.E.2d 161, 195 W.Va. 502 (W.Va. 1995); Syllabus Point 3, *Auber v. Jellen*, 196 W.Va. 168, 469 S.E.2d 104 (1996); *State ex. Rel. Richmond American Homes of West Virginia v. Honorable David Sanders, Docket No. 11-0770 (W.Va. 2011) at Slip Op. p. 30.* The suggestion that the arbitration agreement was meant not only to bind the party signatories, but also the entire universe of possible additional parties who are not signatories to the agreement, is wholly without merit based on the language of the Agreement itself and, to the extent that this discrepancy amounts to an ambiguity not clearly resolved by the direct language of the Agreement, said ambiguity must be construed against Defendant COP's position as the drafter of the Agreement. The Court's finding that the language of the agreement relating to Petitioner's agreement to resolve all claims it could have brought is clear and unambiguous is blatantly belied by this discrepancy, as the clause begs the question of how it could possibly be applied to protect unnamed individuals who were never parties to the prior lawsuit and were not parties to the Arbitration Agreement itself.

The Court, in its *Order from May 16, 2022 Hearing Granting Defendants Motions to Dismiss and Denying Motion for Sanctions* (AR pg. 1209), in making its finding as to a lack of

ambiguity, did not address the issue of whether a valid contract existed, prompting Petitioner's motion under Rule 59(e), wherein Petitioner argued:

> *Here, the Court has erroneously found that all of the Defendants should be dismissed from the case brought by Plaintiff C.S., not just the "Church," including the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints and the Church of Jesus Christ of Latter-Day Saints. In doing so, the Court addressed only the parties' arguments about the ambiguity, or lack thereof, of the arbitration agreement's language regarding Plaintiff C.S. bringing all claims he could have brought in the prior case by arbitration.* ***It did not, however, analyze or make findings as to Plaintiff's arguments that a valid contract did not exist vis-a-vis any of the non-Church Defendants****. As such, while the Court makes a reasonable argument as to why the Church should be dismissed as a Defendant as to Plaintiff C.S.' case, it fails to adequately explain why Christopher Michael Jensen, Donald Fishel, Steven Grow, Christopher Jensen, Sandra Lee Jensen, Matthew Whitcomb, Donald Wrye and Anthony Naegel, are dismissed from the lawsuit with prejudice. The Arbitration did not name or otherwise reference these individuals, they were not parties to the arbitration agreement, and there was therefore no contractual meeting of the minds as to any party but Plaintiff and COP (and their privies). The Arbitration Agreement is absolutely clear and unambiguous in this regard.*

(emphasis added).

Despite this language, the Court still largely refused to address the legal issues regarding contractual validity of the Arbitration agreement as applied to the individually named Defendants. In its *Order Denying in Part and Granting in Part Plaintiff's Rule 59(e) Motion to Alter the Court's Order of June 7, 2022,* or, in the Alternative, Request for Certification under Rule 54(b), the Court stated:

> *With regard to Plaintiff C.S.' motion to alter the Court's Order of June 7, 2022, C.S. points to no new evidence or case law and does not raise new arguments. Essentially, he is asking the Court to reconsider its prior ruling.[1] In making its ruling to the Motion to Dismiss, the Court considered all the briefs of all parties and the robust oral argument held on May 16, 2022. See Mey v. Pep Boys-Manny, Moe & Jack, 228 W.Va. 48, 56, 717 S.E.2d 235,243 (2011) ("A Motion under Rule 59(e) is not appropriate for presenting new legal arguments, factual contentions, or claims that could have previously been argued."); see also Pac. Ins. Co. v. Am. Nat. Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998) ("The Rule 59(e) motion may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to entry of judgment."). This Court orally ruled on the motion at the hearing and explained thebasis*

for its ruling.

> *The Court subsequently entered a written Order on June 7, 2022, and again set forth the basis for its ruling. C.S. now attempts to reargue the arbitration provision previously addressed by the Court. But, as the Court previously found, the arbitration agreement, read in its totality and with plain meaning given the language is not ambiguous. C.S. consented to resolve by arbitration all his claims or controversies that were or could have been asserted in the 2013 case and no other parties were necessary for C.S. to waive those rights. C.S. entered into the arbitration agreement, had the opportunity to present his claims and was unsuccessful in his arguments. As the Court noted at the hearing and in its prior Order, Plaintiff's counsel acknowledged on the record that the facts alleged in the current complaint could have been raised in the initial complaint filed by C.S. and the Court recognized that acknowledgment as an undisputed finding of fact. The parties agreed that arbitration would be a final and binding resolution of all claims or controversies that were or could have been asserted by C.S. in Jane Doe -1 [the 2013 litigation]. C.S.' argument that the language does not include individuals is unsupported given the plain, unambiguous language of the agreement amongst the parties. Finally, with respect to the arbitration agreement itself, it was undisputed that C.S. was represented by counsel at all stages of the litigation, including arbitration, that C.S. participated in arbitration voluntarily, and that it fulfilled the intent of the parties to the arbitration agreement.*

A motion to Alter or Amend under Rule 59(e) should be granted where: (1) there is an intervening change in the controlling law; (2) new evidence not previously available comes to light; (3) it becomes necessary to remedy a clear error of law or (4) to prevent obvious injustice. *Adams v. Bluestone Coal Corp.* (W. Va. 2014) (quoting *Mey v. Pep Boys-Manny, Moe & Jack*, 228 W.Va. 48, 56-57, 717 S.E.2d 235, 243-44 (2011)). Petitioner filed its motion under options (3) and (4), *See Plaintiffs Rule 59€ Motion to Alter*, (AR pg. 1213), p. 2, and was not attempting to raise new arguments, as the contractual validity issue had been submitted previously in response to Defendant's Motions to Dismiss and Motions for Sanctions. Nor can it be said that the motion was an attempt to re-argue points already decided. Quite the contrary, it was an attempt to elicit a ruling on a legal issue raised previously by the Petitioner but not ruled on by the Court.

To the best of Petitioner's understanding, the Court, in its Rule 59(e) Order, appears to essentially be saying that because "*The parties [to the arbitration agreement] agreed that arbitration would be a final and binding resolution of all claims or controversies that were or could have been asserted by C.S. in Jane Doe -1 [the 2013 litigation]*," it is immaterial whether or not any of the parties now claiming protection from the agreement were parties or third-party beneficiaries. Petitioner submits that this rationale is manifestly in error based on the fundamental elements of contract law and of whether and how a person can be bound under the same.

In moving to dismiss on the basis of the equitable estoppels via the Arbitration Agrement, Appellees cited the following cases: *Bayles v. Evans*, 842 S.E.2d 235, 243 W. Va. 31 (2020) and *Bluestem Brands, Inc. v. Shade*, 805 S.E.2d 805, 239 W. Va. 694 (2017). Both cases are about when a party must arbitrate a case rather than litigate. **Neither supports the idea that parties can be bound to an arbitration to which they were not parties.** *Bluestem* is about a credit card owner who was bound to litigate rather than arbitrate because she signed a contract with an arbitration agreement. Bayles is about a wife attempting to recover he deceased husband's money from a financial institution, who agreed to arbitrate rather than litigate any claims. The issue of whether or not a party must arbitrate has no bearing on whether or not a party to an arbitration may be bound by it.

During Oral argument, one of the Defendants also claimed an agency exception to the rule that only parties to a contract may have that contract enforced against them, but this argument also fails because Plaintiff's are not merely asserting claims against the individual Defendant's as agents of the Church, but are making claims against these Defendant's in their individual capacity for their own violations of the law.

While it is admirable that the Church wants to protect its flock, it has no legal right to prevent its parishioners from being sued in their individual capacities for facilitating and conspiring to facilitate C.S.'s sexual abuse on the basis of a contract which it unilaterally made exclusively with C.S. and which contains no language wherein C.S. explicitly gives up his right to raise any claim against any additional party.

As such, the Circuit Court made a clear error of law that has caused an obvious injustice. This Court has found that a Plaintiff should be denied his day in court against a group of people who were, in many cases, not even parties to any prior litigation because he signed an agreement to arbitrate with their church. The duty of this Court is to construe a contract as made by the parties thereto, and to give full force and effect to the language used when it is clear, plain simple and unambiguous. *W.D. Nelson & Co. v. Taylor Heights Dev. Corp.*, 207 Va. 386, 150 S.E.2d 142 (1966), citing M.J.; *Coverstone Land Ltd. Partnership v. McKeon Constr. Co.*, 216 Va. 6, 216 S.E.2d 11 (1975); *Columbia Gas Transmission Corp. v. E.I. du Pont de Nemours & Co.*, 159 W. Va. 1, 217 S.E.2d 919 (1975); *Rollyson v. Jordan*, 205 W. Va. 368, 518 S.E.2d 372 (1999). However, if the contract is not clear on this point (as argued by Appellant during oral argument) and it seems that the Arbitration Agreement could have been somehow intended to apply not only to C.S. and the Church, and also Michael Jensen, Donald Fishel, Steven Grow, Christopher Jensen, Sandra Lee Jensen, Matthew Whitcomb, Donald Wrye and Anthony Naegel, then it is up to the Court to construe the contract against the drafter or the contract. Any ambiguity in a contract must be resolved against the party who prepared it. *Nisbet v. Watson*, 162 W. Va. 522, 251 S.E.2d 774 (1979). When construed against the drafter (the Church), it is clear that the Arbitration Agreement must only be held to be by and between the parties to the contract, COP (along with their privies) and C.S.

VIII. CONCLUSION

For all the reasons stated above, Petitioner requests that this Honorable Court reverse the decision of the Berkeley County Circuit Court and remand this matter for trial.

Petitioner C.S.
By Counsel

/s/Christian J. Riddell
Christian J. Riddell WVSB#12202
The Riddell Law Group
329 S. Queen Street
Martinsburg, WV 25401
304-267-2949
Counsel for Petitioner C.S.

INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

C.S.,
Plaintiff Below, Petitioner

vs.) No. 22-ICA-141

The Church of Jesus Christ of Latter-Day Saints,
Chris and Sandra Lee Jensen, Matthew Whitcomb,
Don wrye, Anthony Naegle & Christopher Michael Jensen,
Defendants Below, Respondents

CERTIFICATE OF SERVICE

I, Christian J. Riddell, Esq., attorney for the Petitioner, C.S., do swear that a copy of the foregoing Brief for Appeal in this matter was served upon all counsel via the WV Intermediate Court of Appeals File and ServXpress e-filing system this 21st day of December, 2022.

/s/ Christian J. Riddell
Christian J. Riddell (WV Bar #12202)
Riddell Law Group
329 S. Queen Street
Martinsburg, WV 25401
(P): (304) 267-3949 (F) (304) 267-5411
Email: mail@theriddelllawgroup.com