

Defendants Wunderlich Securities, Inc. ("Wunderlich") and Albert M. Alexander, Jr. ("Alexander") filed a motion to compel arbitration and stay the proceedings alleging, in part, that in connection with opening an account at Wunderlich in the name of the Trust, the trustee, the Minor, and Wunderlich had entered into a binding compulsory agreement to arbitrate all controversies.²

After a hearing on the motion to compel arbitration, the Trial Court entered its order on February 12, 2013 granting the motion to compel arbitration and stay the proceedings. Plaintiff then filed a motion seeking an interlocutory appeal pursuant to Tenn. R. App. P. 9 from the February 12, 2013 order compelling arbitration. The Minor died in July of 2013 and an Agreed Order was entered on September 18, 2013 substituting Plaintiff for the Minor in this suit.

After a hearing on the motion for interlocutory appeal, the Trial Court entered its order on May 12, 2015 finding that an interlocutory appeal was justified because if Plaintiff were correct any arbitration decision could be invalid as the arbitrator would not have authority to hear the matter. An interlocutory appeal, therefore, would assist in potentially reducing needless litigation. The Trial Court granted Plaintiff leave to seek permission for an interlocutory appeal with this Court. This Court granted permission for an interlocutory appeal by order entered June 23, 2015 on the sole issue of whether the trustee's signature on an investment/brokerage account agreement agreeing to arbitration binds the Minor beneficiary to conduct arbitration of unknown future disputes or claims.

Discussion

Wunderlich and Alexander raise an issue regarding whether this Court has subject matter jurisdiction to hear this interlocutory appeal. Jurisdiction is a threshold issue as our Supreme Court explained in *Johnson v. Hopkins*, stating:

1 Plaintiff sued Cumberland Trust and Investment Company, Joi S. Chatman, Albert M. Alexander, Jr., Wells Fargo & Company, Wells Fargo Advisors, LLC as successor in interest to A.G. Edwards, Inc., d/b/a A.G. Edwards & Sons, Inc., A.G. Edwards, Inc., A.G. Edwards & Sons, Inc., and Wunderlich Securities, Inc.

2 Defendants Wells Fargo & Company, Wells Fargo Advisors, LLC as successors in interest to A.G. Edwards, Inc. d/b/a A.G. Edwards & Sons, Inc., A.G. Edwards, Inc. and A.G. Edwards & Sons, Inc. (collectively "Wells Fargo") joined in the motion to compel arbitration. Plaintiff later took a voluntary non-suit without prejudice as to Wells Fargo.

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Subject matter jurisdiction involves the court's lawful authority to adjudicate a controversy brought before it. *Chapman v. DaVita, Inc.*, 380 S.W.3d 710, 712 (Tenn. 2012); *Meighan v. U.S. Sprint Commc'ns Co.*, 924 S.W.2d 632, 639 (Tenn. 1996). Subject matter jurisdiction is conferred by statute or the Tennessee Constitution; the parties cannot confer it by appearance, plea, consent, silence, or waiver. *In re Estate of Trigg*, 368 S.W.3d 483, 489 (Tenn. 2012). Any order entered by a court lacking jurisdiction over the subject matter is void. *Id.* Therefore, subject matter jurisdiction is a threshold inquiry, which may be raised at any time in any court. *Id.*

Johnson v. Hopkins, 432 S.W.3d 840, 843-44 (Tenn. 2013). Given all this, we will address this issue.

Wunderlich and Alexander argue in their brief on appeal that subject matter jurisdiction in this case is governed by Tenn. Code Ann.] 29-5-319, and because an order to compel arbitration does not fall within one of the enumerated categories in this statute, subject matter jurisdiction is lacking. Although Plaintiff did not have the right to an appeal pursuant to Tenn. Code Ann.] 29-5-319 in this case at this juncture, this fact did not preclude Plaintiff from filing an application seeking an interlocutory appeal by permission pursuant to Tenn. R. App. P. 9, which is exactly what Plaintiff did.

In pertinent part, Rule 9 provides:

Except as provided in Rule 10, an appeal by permission may be taken from an interlocutory order of a trial court from which an appeal lies to the Supreme Court, Court of Appeals or Court of Criminal Appeals only upon application and in the discretion of the trial and appellate court.

Tenn. R. App. P. 9. Plaintiff filed a motion with the Trial Court seeking leave for an interlocutory appeal pursuant to Tenn. R. App. P. 9. The Trial Court considered Plaintiff's motion, exercised its discretion, and granted permission to file for an interlocutory appeal to this Court. This Court then considered Plaintiff's motion and in the exercise of our discretion granted the motion for interlocutory appeal. Wunderlich and Alexander are simply incorrect in their assertion that this Court lacks subject matter jurisdiction to hear this interlocutory appeal by permission pursuant to Tenn. R. App. P. 9.

Wunderlich and Alexander attempt to raise other issues in this appeal including whether Plaintiff lacks standing and whether Plaintiff's claims fall within the scope of the

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arbitration agreement. These issues were not certified in our order granting this interlocutory appeal. In addition, the issue of standing was not presented to the Trial Court. As the Trial Court did not have an opportunity to consider this issue, and as the record on appeal has not been developed with regard to this issue, we are unable to consider the issue of standing at this time. For all of these reasons we will not address the other issues that Wunderlich and Alexander attempt to raise.

In *Trigg v. Little Six Corp.*, a case involving a Rule 9 interlocutory appeal of a trial court's decision on a motion to compel arbitration, we explained the standard of review to be applied stating:

Our review of a trial court's grant or denial of a motion to compel arbitration is governed by the same standards that apply to a bench