

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEYS FOR APPELLANTS

Ryan R. Frasher
Greenwood, Indiana

Robert E. Duff
Indiana Consumer Law Group
Fishers, Indiana

ATTORNEYS FOR APPELLEE

Michael P. Shanahan
William N. Ivers
Indianapolis, Indiana

Patrick A. Ziepol
Bloomington, Indiana

IN THE COURT OF APPEALS OF INDIANA

Kaylin Maxwell, on Behalf of
Herself and Others Similarly
Situating,

Appellants-Plaintiffs,

v.

Fort-Rohr Motors, Inc.,

Appellee-Defendant.

Riley, Judge.

December 17, 2021

Court of Appeals Case No.
21A-PL-839

Appeal from the St. Joseph Circuit
Court

The Honorable John E. Broden,
Judge

Trial Court Cause No.
71C01-1705-PL-189

STATEMENT OF THE CASE

[1] Appellant-Plaintiff, Kaylin Maxwell (Maxwell), appeals the trial court's grant of Appellee-Defendant's, Fort-Rohr Motors, Inc. (Fort-Rohr), motion to compel arbitration.

[2] We dismiss.

ISSUE

[3] Maxwell presents this court with one issue on appeal, which we restate as follows: Whether this court has subject matter jurisdiction to hear an appeal of a trial court's order compelling arbitration.

FACTS AND PROCEDURAL HISTORY

[4] On April 6, 2017, Maxwell purchased a 2011 Kia Sorento from Fort Wayne Lexus Toyota Scion Kia, a car dealership operated by Fort-Rohr. As part of the purchase documents, both parties signed an arbitration agreement, agreeing to submit any claim or dispute arising out of the purchase of the vehicle to binding arbitration. Maxwell was charged and paid a document preparation fee of \$190. Two years later, on April 4, 2019, Maxwell filed a proposed class action lawsuit in Allen Superior Court against Fort-Rohr, alleging that Fort-Rohr violated Indiana's Deceptive Consumer Sales Act when it charged her and others the document preparation fee. Fort-Rohr sought two extensions of time to respond to the Complaint, both of which were granted. On June 26, 2019, the Allen Superior Court granted Fort-Rohr's unopposed motion to stay proceedings. On March 25, 2021, Maxwell filed a notice and order reflecting

that the lawsuit had been consolidated with other document preparation fee cases pending before the St. Joseph Circuit Court.

[5] On April 3, 2021, Fort-Rohr filed a motion to compel arbitration in the St. Joseph Circuit Court. On April 7, 2021, the St. Joseph Circuit Court granted the motion to compel arbitration, in part, directing the parties to arbitrate with the national arbitration agency J.A.M.S.

[6] Maxwell now appeals. Additional facts will be provided if necessary.

DISCUSSION AND DECISION

[7] Fort-Rohr, in its appellee’s brief, and Maxwell, in her reply brief, request us to dismiss this appeal as we lack subject matter jurisdiction in the wake of this court’s decision in *Baker v. Pickering*, --- N.E.3d ---2021 WL 5069171 (Nov. 2, 2021).

[8] In *Baker*, we held that a trial court’s order compelling arbitration in a case involving additional claims cannot be a final order under Indiana Appellate Rule 2(H) unless certified by the trial court pursuant to Trial Rule 54(B). As the St. Joseph Circuit Court did not certify its order to compel arbitration and additional claims seeking damages are still pending, we agree with the parties that we lack subject matter jurisdiction to hear this appeal and accordingly dismiss this Cause.

[9] However, Maxwell now requests this court to “clarify” that it will still be allowed to raise arbitrability issues when appealing the arbitration award as it

appears that older caselaw indicates that “a party may not contest arbitrability for the first time in its petition to vacate an arbitration award.” (Reply Br. p. 6). We decline Maxwell’s request for clarification as this court cannot render advisory opinions about a future speculative case or controversy. “The existence of an actual controversy is required.” *Richardson v. State*, 402 N.E.2d 1012, 1013 (Ind. Ct. App. 1980).

CONCLUSION

- [10] Based on the foregoing, we dismiss this appeal for lack of subject matter jurisdiction.
- [11] Dismissed.
- [12] Robb, J. and Bailey, J. concur