NOT DESIGNATED FOR PUBLICATION

No. 126,275

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

JAMES R. LUCAS,
*Appellant*,

v.

MARK D. MURPHY and The Murphy Law Firm,
*Appellees*.

MEMORANDUM OPINION

Appeal from Johnson District Court; RHONDA K. MASON, judge. Submitted without oral argument. Opinion filed February 2, 2024. Appeal dismissed.

*James R. Lucas*, appellant pro se.

*Mark D. Murphy*, of The Murphy Law Firm, of Overland Park, for appellees.

Before BRUNS, P.J., COBLE and PICKERING, JJ.

PER CURIAM: This appeal arises out of a legal malpractice lawsuit filed by James R. Lucas against Mark D. Murphy and The Murphy Law Firm (collectively Murphy). Although the district court denied a motion to dismiss filed by Murphy and the law firm, it granted their motion to compel arbitration. On appeal, Lucas concedes that arbitration is appropriate on his claims relating to a domestic matter but contends—among other things—that the district court erred in compelling the parties to participate in arbitration in a related lawsuit. Based on precedent established by the Kansas Supreme Court, we conclude that there is no right to an immediate appeal from an order to submit to arbitration. Thus, we dismiss this appeal for lack of appellate jurisdiction.

## PROCEDURAL HISTORY

Because this opinion addresses a narrow question of law regarding whether we have appellate jurisdiction over this appeal, we will briefly summarize the procedural history relating to this case.

On January 18, 2017, Lucas signed a letter of engagement when he initially retained Murphy to represent him in a domestic action filed by his former wife. The engagement letter contained the following arbitration clause, which stated:

> "In the event of *any dispute, claim, question, or disagreement arising from or relating to this agreement or the breach thereof, including but not limited to any alleged professional malpractice or negligence*, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. If they do not reach such solution within a period of thirty (30) days, then, upon notice by either party to the other, all disputes, claims, questions, or differences *shall be finally settled by arbitration* . . . ." (Emphases added.)

Twelve days after signing the letter, Lucas communicated with Murphy by email regarding the filing of a lawsuit against his former wife; her mother, Nancy F. Peterson; the Nancy F. Peterson trust, and Dadson Manufacturing Corporation, which is evidently owned by Peterson or her trust. Lucas is the former Chairman and Chief Executive Officer of Dadson Manufacturing Corporation. After he was terminated by his employer, he sought to bring a lawsuit to secure payment of deferred salary as well as repayment of loans.

Although they are not included in the record on appeal, it appears that Lucas and Murphy may have had several email communications about the filing of the Dadson lawsuit. Regardless, on February 10, 2017, Murphy filed a lawsuit against Dadson Manufacturing Corporation and the other defendants (the Dadson lawsuit) as requested

by Lucas in Johnson County District Court. Ultimately, the Dadson lawsuit proceeded to a jury trial where the jury awarded Lucas $278,066 in deferred compensation. But Dadson Manufacturing Corporation prevailed on its counterclaims for conversion and breach of fiduciary duty and was awarded more than $500,000 in damages.

Afterward, the parties reached a settlement agreement in both the domestic action and in the Dadson lawsuit. Subsequently, the district court denied Lucas' motion to set aside the settlement and seeking a new trial based on newly discovered evidence, but that motion was denied. We pause to note that Lucas has also instituted related litigation in federal court against Dadson Manufacturing Corporation and several other defendants. See *Lucas v. Dadson Manufacturing Corp.*, No. 22-2107, 2023 WL 2016976 (D. Kan. 2023) (slip opinion), appeal filed July 6, 2023.

On July 30, 2019, Lucas filed this legal malpractice action against Murphy. In his pro se petition, Lucas asserts multiple claims of malpractice against Murphy in both the divorce case and in the Dadson case. In response, Murphy filed a motion to compel arbitration and to dismiss the lawsuit. For various reasons—including the COVID-19 pandemic and Murphy's temporary suspension from the practice of law—the legal malpractice case was delayed in the district court.

On February 15, 2022, the district court granted Murphy's motion to compel arbitration but denied the motion to dismiss. In its journal entry, the district court found that "[t]he plain language of the Engagement letter and arbitration clause cover [Murphy's] representation of [Lucas] on both the domestic action and the Dadson action." Although the district court required the parties to participate in arbitration, it explained that it was not dismissing legal malpractice action in case "any issues are returned to this Court by the arbitrator." In light of its decision, the district court determined that all other pending motions filed by the parties were moot.

## ANALYSIS

On appeal, we must determine at the outset whether we have appellate jurisdiction over this appeal. Whether jurisdiction exists is a question of law, subject to unlimited review. *City of Wichita v. Trotter*, 316 Kan. 310, 312, 514 P.3d 1050 (2022). This is because the right to appeal is entirely statutory and is not contained in either the United States Constitution or in the Kansas Constitution. *Kansas Medical Mut. Ins. Co. v. Svaty*, 291 Kan. 597, 609-10, 244 P.3d 642 (2010). Similarly, questions of statutory interpretation are also subject to unlimited review. *In re A.D.T.*, 306 Kan. 545, 551, 394 P.3d 1170 (2017).

Consequently, we only have jurisdiction to entertain an appeal if it is authorized by statute. *Wiechman v. Huddleston*, 304 Kan. 80, 86, 370 P.3d 1194 (2016). Although there are limited exceptions to this rule, Lucas has not asserted any exceptions, and we are not aware of any that would be applicable to this appeal. Moreover, it is important to recognize that we do not have the discretionary authority to entertain appeals from all orders issued by a district court. *In re T.S.*, 308 Kan. 306, 309, 419 P.3d 1159 (2018).

We find the present case to be similar to *NEA-Topeka v. U.S.D. No. 501*, 260 Kan. 838, 925 P.2d 835 (1996). In that case, a union which represented employees of the school district under a collective bargaining agreement filed a grievance on behalf of several individuals. The agreement contained an arbitration clause. Because the school district believed the individuals involved in the case were not members of the bargaining unit covered by the agreement, it refused to arbitrate the issue on the same basis. Nevertheless, the district court ordered the parties to submit to arbitration. In response, the school district appealed the district court's order compelling arbitration, and the case was transferred to the Kansas Supreme Court.

In *NEA-Topeka*, the Kansas Supreme Court found that the district court's order requiring the parties to submit to arbitration was not a final order. 260 Kan. at 841-42. Furthermore, our Supreme Court expressly held that "there is no right to an immediate appeal from an order to submit to arbitration." Consequently, the appeal was dismissed for lack of appellate jurisdiction. 260 Kan. at 844; see also *Max Rieke & Brothers, Inc. v. Van Deurzen & Assocs.*, 34 Kan. App. 2d 340, 345, 118 P.3d 704 (2005) (appeal dismissed for lack of appellate jurisdiction where district court vacated a prior arbitration award and ordered a new arbitration hearing).

We also look to K.S.A. 5-450 for further guidance in this case. This statute outlines the types of orders or judgments related to arbitration that are immediately appealable. We note that K.S.A. 5-450(a)(1) specifically authorizes the right to file an immediate appeal from "an order *denying* a motion to compel arbitration." (Emphasis added.) However, consistent with the holdings in *NEA-Topeka* and *Max Rieke & Brothers, Inc.*, the statute does not include the right to an immediate appeal from an order *granting* a motion to compel arbitration.

Here, we find that the district court court's decision to order the parties to proceed with arbitration on the legal malpractice claims is not a final appealable order. Likewise, as noted above, Lucas has not cited any authority to show that he has a statutory right to bring an immediate appeal. As a practical matter, Lucas may be able to adequately resolve his claims against Murphy through the arbitration process or by settlement. In the event that he is not satisfied by the resolution of his claims in arbitration, he can challenge the arbitrator's decision in the district court. See K.S.A. 5-450(a)(6). Then, if he is still dissatisfied with the result, he can file a timely appeal from the final order issued by the district court if there are legitimate grounds to do so. See K.S.A. 5-450(a)(3), (4), and (5).

In summary, we find that the district court's order compelling arbitration is not a final decision that is subject to an immediate appeal under K.S.A. 2022 Supp. 60-2102(a)(4). Further, we find that Lucas has not established a statutory right to file an interlocutory appeal. Finally, because we lack appellate jurisdiction over the order compelling the parties to participate in arbitration, we conclude that the appropriate remedy is to dismiss this appeal so that the parties may proceed with arbitration as ordered by the district court. See *Baker v. Hayden*, 313 Kan. 667, 673, 490 P.3d 1164 (2021).

Appeal dismissed.