# OPINION SUMMARY
# MISSOURI COURT OF APPEALS EASTERN DISTRICT

## DIVISION ONE

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| WESTON T. LOVELAND III,<br><br>Respondent,<br><br>vs.<br><br>GABRIEL AUSTIN,<br><br>Respondent,<br><br>SHELTER MUTUAL INSURANCE COMPANY,<br><br>Appellant. | ) | No. ED108859<br><br>Appeal from the Circuit Court of Cape Girardeau County<br><br>Honorable Stephen R. Mitchell<br><br>Filed: April 13, 2021 |

Shelter Mutual Insurance Company ("Shelter") appeals the trial court's judgment confirming the arbitration award on Weston Loveland's ("Loveland") personal injury claim against Gabriel Austin ("Austin") in conjunction with the agreement entered into by Loveland and Austin limiting Austin's liability pursuant to § 537.065 Mo. Rev. Stat. Cum. Supp. 2019 (the "Confirmation Proceeding"). The trial court's judgment in the Confirmation Proceeding also denied Shelter's motion to intervene in the Confirmation Proceeding and its motion to dismiss and/or deny Loveland's petition to confirm the arbitration award. Shelter raises nine points on appeal, arguing that the trial court erred in various ways in denying its motion to intervene in the Confirmation Proceeding and its motion to dismiss and/or deny confirmation of the arbitration award.

In Point I, Shelter argues that the trial court misapplied Rule 52.12(a)(2) in denying its motion to intervene as a matter of right because Shelter claimed an interest relating to the transaction at issue (the arbitration award), the proceedings to confirm the arbitration award would have impaired or impeded Shelter's ability to protect its interest, and Shelter's interest was not represented by the existing parties. In Point II, Shelter contends that the trial court misapplied Rule 52.12(a)(1) in that § 537.065.2 allowed it to intervene as a matter of right. In Point III, Shelter argues that the trial court abused its discretion in denying its motion to permissively intervene. In Point IV, Shelter argues that the trial court misapplied the law in denying its motion to intervene because the court denied Shelter its constitutional rights to access the courts and to due process of law. In Point V, Shelter argues that the trial court misapplied the law in finding that it lacked standing to object to confirmation of the arbitration award. In Point VI, Shelter argues that the trial court erroneously applied the law in denying its motion to dismiss and/or deny confirmation of the arbitration award and in entering judgment confirming the award because Loveland's petition was barred by the doctrine of collateral estoppel. In Point VII, Shelter argues that the trial court misapplied the law in denying its motion to dismiss and/or deny confirmation of the arbitration award and in entering judgment confirming the award because it

was the result of an invalid and unenforceable agreement in that there was no existing controversy between Loveland and Austin when they executed the arbitration agreement. In Point VIII, Shelter argues that the trial court misapplied the law in denying its motion to dismiss and/or deny confirmation of the arbitration award and in entering judgment confirming the award because doing so deprived Shelter of its constitutional rights to access the courts and to due process of law. Finally, in Point IX, Shelter argues that the trial court misapplied the law in denying its motion to dismiss and/or deny confirmation of the arbitration award and in entering judgment confirming the award because the court lacked subject matter jurisdiction over the case because there was no "case or controversy."

AFFIRMED.

Division One Holds: With respect to Point I, the trial court did not misapply Rule 52.12(a) in denying Shelter's motion to intervene in the Confirmation Proceeding as a matter of right because Shelter did not have a direct interest in the Confirmation Proceeding under applicable law. With respect to Point II, the trial court did not misapply Rule 52.12(a) because § 537.065.2 did not provide Shelter an unconditional right to intervene in the Confirmation Proceeding because it was not pending within 30 days after Austin gave Shelter written notice of his agreement with Loveland pursuant to the statute. With respect to Point III, the trial court did not abuse its discretion in denying Shelter's motion to intervene because it did not present questions of law or fact in common with those in the Confirmation Proceeding such that Shelter could permissively intervene pursuant to Rule 52.12(b)(2). With respect to Points IV and V, Shelter's arguments asserted in these points are unpersuasive, as the trial court's finding that Shelter did not have standing to object to the confirmation of the arbitration award was not erroneous, nor did the trial court violate Shelter's constitutional rights in denying its motion to intervene. With respect to Point VI, the trial court did not erroneously apply the law as alleged by Shelter because the prior order denying Loveland's original application to confirm the arbitration award did not dispose of the merits of Loveland's original personal injury case; rather, it was an interlocutory order that very clearly left the merits of the case completely unresolved. With respect to Point VII, the trial court did not misapply the law as Shelter contends because there were two existing controversies that Loveland and Austin contracted to submit to the arbitrator. With respect to Point VIII, this point mirrors Point IV, and simply applies the same constitutional arguments to the trial court's denial of its motion to dismiss and/or deny confirmation of the arbitration award. With respect to Point IX that there was no "case or controversy," the trial court clearly had subject matter jurisdiction pursuant to § 435.430.

Opinion by: Kelly C. Broniec, J.
Colleen Dolan, P.J. and Robert M. Clayton III, J. concur.

Attorney for Appellant: William C. Crawford, Paul D. Link, and Lynsey R. Coffey

Attorney for Respondent: J. Michael Ponder, F. Patrick Davis, Matthew R. Davis, James M. Payne and Jeffrey M. Bauer

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