

**IN THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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**COMPLETE TITLE OF CASE**

L. DOTSON,

Respondent,

v.

DILLARD'S, INC., et al.,

Appellants.

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**DOCKET NUMBER WD78229**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** August 4, 2015

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**APPEAL FROM**

The Circuit Court of Jackson County, Missouri  
The Honorable Sandra C. Midkiff, Judge

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**JUDGES**

Division Three: Mitchell, P.J., and Hardwick and Gabbert, JJ.

CONCURRING.

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**ATTORNEYS**

Paul A. Bullman, Kansas City, MO

Attorney for Respondent,

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Karen K. Cain and Christopher C. Grenz, Kansas City, MO

Attorneys for Appellants.

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**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

L. DOTSON,	)	
	)	
	)	<b>Respondent,</b>
v.	)	<b>OPINION FILED:</b>
	)	<b>August 4, 2015</b>
DILLARD’S, INC., et al.,	)	
	)	
	)	<b>Appellants.</b>

**WD78229**

**Jackson County**

**Before Division Three Judges:** Karen King Mitchell, Presiding Judge, and Lisa White Hardwick and Anthony Rex Gabbert, Judges

Dillard’s, Inc., et al. (Dillard’s) appeal the trial court’s denial of their motion to dismiss and compel arbitration in a case filed by Laris Dotson, under the Missouri Human Rights Act. Dillard’s argues that the arbitration agreement contained a delegation provision, directing that any disputes as to arbitrability of issues were to be determined by an arbitrator and not a court. Alternatively, Dillard’s argues that the arbitration agreement was a valid, enforceable agreement, mandating the court to send the matter to arbitration. Dotson argues that the delegation provision did not provide that arbitrability was exclusively for the arbitrator; thus, the issue of arbitrability was properly before the circuit court. He further argues that the arbitration agreement is unenforceable for a variety of reasons related to formation. Because the delegation provision clearly and unmistakably provided that arbitrability of issues was to be decided by an arbitrator, we reverse and remand with directions that the court grant Dillard’s motion to compel arbitration and stay the pending case.

**REVERSED AND REMANDED WITH DIRECTIONS.**

**Division Three holds:**

1. The question of arbitrability, i.e., whether an agreement creates a duty for the parties to arbitrate the particular grievance, is generally an issue for judicial determination, unless the parties clearly and unmistakably provide otherwise.

2. An agreement to arbitrate a gateway issue (such as arbitrability) is simply an additional, antecedent agreement the party seeking arbitration asks the court to enforce, and it is treated like any other arbitration agreement.
3. If the agreement, itself, clearly and unmistakably provides authority for an arbitrator to determine arbitrability of the issues, then the matter should be sent to arbitration.
4. An arbitration agreement need not recite verbatim that the “parties agree to arbitrate arbitrability” in order to manifest “clear and unmistakable” agreement; it is enough for a delegation provision to simply give an arbitrator the authority to resolve disputes relating to the “enforceability,” “validity,” “formation,” or “applicability” of an arbitration agreement.
5. A party seeking to challenge a delegation provision must do so specifically, as a challenge to the arbitration agreement, as a whole, is insufficient. Unless a party challenges the delegation provision specifically, the FAA requires that courts treat it as valid and enforce it, leaving challenges to the agreement as a whole for the arbitrator to determine.
6. The delegation provision here clearly and unmistakably gave the arbitrator authority to determine arbitrability of the issues in stating that “Any dispute over a Legal Claim concerning this Agreement — the way it was formed, its applicability, meaning, enforcement, or any claim that all or part of this Agreement is void or voidable — is subject to arbitration under this Agreement.”
7. A delegation provision that clearly and unmistakably grants an arbitrator authority to determine arbitrability need not expressly exclude courts from deciding arbitrability in order to be effective.
8. Because the delegation provision clearly and unmistakably provided for the arbitrator to determine arbitrability, it must be enforced.

**Opinion by: Karen King Mitchell, Presiding Judge**

August 4, 2015

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THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.