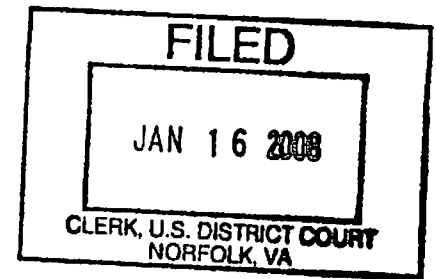


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division



MARVA L. AUSTIN,

Plaintiff,

v.

ACTION NO. 2:07cv376

RICHERYL COOKE,

Defendant.

DISMISSAL ORDER

This case comes before the court on defendant Richeryl Cooke's ("Cooke") motion to dismiss. For the reasons set forth below, Cooke's motion to dismiss is **GRANTED**.

Plaintiff Marva L. Austin ("Austin"), proceeding pro se, attempts to invoke the jurisdiction of this court under the Federal Arbitration Act, 9 U.S.C. §§ 1-16 ("the FAA"). The FAA is wholly inapplicable to this case, which arises from a civil action filed by Cooke against Austin in the Norfolk General District Court ("the state civil action").¹ In the state civil action, the parties agreed to submit to binding arbitration. (See Mem. in Supp. of Def.'s Mot. to Dismiss Ex. C.) At the conclusion of the arbitration, the arbitrator awarded Cooke \$1,512.90. (See id. Ex.

¹ The underlying basis for the state civil action is a criminal complaint filed in the Criminal Division of the Norfolk General District Court, by Austin against Cooke for assault and battery. After the criminal charges were dismissed in favor of Cooke, Cooke brought the state civil action against Austin for attorney's fees, lost wages, and malicious prosecution.

D.)

Austin asks this court to set aside the arbitrator's award under the FAA, due to purported arbitrator misconduct during the arbitration. (Pl.'s Mot. to Vacate Arbitration Award 1-2.) However, the FAA does not apply to this arbitration. The FAA applies to "[a] written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction." 9 U.S.C. § 2; see also Southland Corp. v. Keating, 465 U.S. 1, 10-11 (1984).² This matter involves neither a maritime transaction nor a commercial agreement to arbitrate.

Even if it were applicable, the FAA creates no independent federal question jurisdiction under 28 U.S.C. § 1331. Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 26 n.32 (1983); see also Cole v. Long John Silver's Rests., Inc., 388 F. Supp. 2d 644, 649-50 (D.S.C. 2005) (allegations of arbitrator misconduct do not implicate a substantial federal question under

² As noted by the Supreme Court in Southland, the authority for the FAA comes from the power of Congress "to enact substantive rules under the Commerce Clause." Southland, 465 U.S. at 11. The House of Representatives made this point explicit in the House Report accompanying the bill: "The purpose of this bill is to make valid and enforcible [sic] agreements for arbitration contained in contracts involving interstate commerce or within the jurisdiction o[f] admiralty . . ." H.R. Rep. No. 96, 68th Cong., 1st Sess. 1 (1924) (emphasis added).

the FAA).³

This matter involves an arbitration related to a state common law tort claim, not a maritime transaction or a contract implicating interstate commerce. No federal question exists,⁴ and the requirements for diversity jurisdiction are not met. Therefore, subject matter jurisdiction in this federal court is entirely absent, and Austin's complaint must be dismissed.⁵

Austin's complaint is hereby **DISMISSED** pursuant to Federal Rule of Civil Procedure 12(b)(1). The Clerk is **DIRECTED** to send a copy of this Dismissal Order to Marva L. Austin and to counsel for Richeryl Cooke.

Austin is hereby advised that she may appeal this Dismissal Order within thirty (30) days by filing a written notice of appeal with the Clerk, United States District Court for the Eastern District of Virginia, 600 Granby Street, Norfolk, Virginia 23510.

³ Austin has not alleged jurisdiction under diversity of citizenship. However, diversity jurisdiction is clearly lacking, because the amount in controversy (\$1,512.90) fails to meet the statutory requirement of \$75,000. 28 U.S.C. § 1332; see also Choice Hotels Int'l, Inc. v. Shiv Hospitality, L.L.C., 491 F.3d 171, 175 (4th Cir. 2007).

⁴ Austin also attempts to invoke jurisdiction under the Uniform Arbitration Act. This attempt likewise fails, as the Uniform Arbitration Act is a model act, not a federal statute.

⁵ Cooke asks the court to award sanctions pursuant to Federal Rule of Civil Procedure 11. The court finds that sanctions are not appropriate. Accordingly, Cooke's motion for sanctions is **DENIED**.

