

COURT OF APPEALS OF VIRGINIA

Record No. 1269-25-4

FLIGHT FIT N FUN (SPRINGFIELD), LLC, d/b/a
FLIGHT ADVENTURE PARK

v.

M.D., AN INFANT WHO SUES BY ARDO MOHAMED,
HER MOTHER AND NEXT FRIEND

Present: Judges Raphael, Lorish and Frucci

Argued at Arlington, Virginia

Opinion Issued September 29, 2026

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY

Susan J. Stoney, Judge

James L. Hoyle (Brian A. Cafritz; Kalbaugh Pfund & Messersmith, P.C., on briefs), for
appellant.

Logan W. Stuart (Michael C. Robinett; Simeone & Miller, LLP, on brief), for appellee.

**PUBLISHED OPINION BY
JUDGE LISA M. LORISH**

M.D., a minor,¹ sued Flight Fit N Fun (Springfield), LLC, d/b/a Flight Adventure Park (“Flight”) after she was injured at Flight Adventure Park Springfield. Flight moved to compel arbitration, arguing that M.D. was bound to an arbitration agreement that was signed on her behalf by Mako Barre, an adult who accompanied M.D. to the adventure park. Flight argues that the trial court erred by denying the motion to compel. M.D. contends that this Court lacks jurisdiction to hear this appeal under the Virginia Uniform Arbitration Act (“VUAA”), that minors cannot be bound to arbitrate in Virginia, and that, in any event, Barre had no actual or apparent authority to enter into an agreement concerning M.D.

¹ We refer to the minor by her initials to protect her privacy.

After confirming that the VUAA gives us jurisdiction over the appeal of a circuit court's denial of a motion to compel arbitration, we conclude that the trial court erred by not applying the correct standard to determine whether there was a valid agreement to arbitrate. After a party seeking arbitration presents a purported agreement to arbitrate, a trial court must send the matter to arbitration unless the opposing party challenges the existence or validity of that agreement. If an agent lacked actual or apparent authority to enter into a contract, a valid contract was not formed. Thus, if a party challenges the validity of an arbitration agreement by arguing that an agent lacked the authority to enter into the agreement, the trial court must hold an evidentiary hearing to resolve the factual dispute about the agent's authority. Because whether Barre had actual or apparent authority to bind M.D. depends on the resolution of disputed facts, we reverse and remand for further proceedings.

BACKGROUND

M.D., suing by her mother and next friend, Ardo Mohamed, filed a complaint against Flight and 7200 Fullerton Road, LLC, alleging two counts of negligence related to M.D.'s injury while at the adventure park. Flight responded by filing, among other things, a third-party complaint and a motion to compel arbitration.²

In its motion to compel arbitration, Flight asserted that—before being admitted to its facility—M.D.'s “parents and legal guardians allowed Flight's Participant Waiver And Agreement To Assume Risk, Release And Arbitration Agreement . . . to be signed on [M.D.'s] behalf, binding her to such terms contained therein.” The Agreement included clauses acknowledging the risks of participation, waiving claims, and requiring “arbitrat[ion of] any and all disputes that arise relating to . . . participation . . . , use of equipment, or attendance at Flight Adventure Park, including any disputes regarding the enforceability of this Agreement or this

² 7200 Fullerton Road, LLC consented to Flight's motion to compel arbitration.

arbitration provision.” (Emphasis omitted). A summary of the Agreement’s terms also reiterated the agreement to arbitrate. (“I further acknowledge that I have agreed to arbitrate any dispute and waive the right to have a jury or a judge resolve any such dispute.”).

As relevant here, the Agreement stated that “[e]ach participant must complete this Agreement, and a parent or legal guardian must complete this Agreement for all participants under the age of 18,” that the signatory “and the child(ren) agree to be bound by the terms stated herein,” and that the signatory “represent[s] and warrant[s] that [they are] the parent, legal guardian, or power-of-attorney of the below-listed Child(ren) and have the authority to execute this Agreement on the Child(ren)’s behalf and to act on the Child(ren)’s behalf.” (Emphasis omitted). Barre electronically signed the Agreement on behalf of four minors, one being M.D.³

M.D. opposed the motion to compel arbitration, arguing that the Agreement was unenforceable under Virginia law and that Barre lacked authority to enter into the Agreement on M.D.’s behalf.

At a subsequent hearing, the trial court denied Flight’s motion and explained its reasoning for doing so:

I mean, we’re dealing with a minor. We’re dealing with someone who signed a form, and perhaps that person was -- I’ll just assume that what they said was false. That should not bind the minor to this arbitration clause. So as to the minor, I am going -- and I think that is what this is pertaining, this particular motion, I’m going to be denying the motion to compel arbitration as to this minor. Whatever other parties you have, you can take that up at another time.

The trial court then entered an order reflecting its ruling.

³ The nature of the relationship between Barre and M.D. is unclear. Flight’s third-party complaint identified Mohamed and Libaan Dubet as M.D.’s natural parents; and it claimed in support of its motion to compel arbitration that Barre “is associated with [M.D.’s] family.” For her part, M.D. stated in her opposition to Flight’s motion that “Mako Barre is not one of [her] parents, nor is she one of [M.D.]’s legal guardians. [M.D.’s] parents and legal guardians are Ardo Mohamed and Libaan Dubet.” Flight’s third-party complaint also alleges that Mohamed and Dubet were present at the facility.

Flight now appeals the denial of its motion to compel arbitration. In addition to responding to the merits of Flight’s appeal, M.D. moved to dismiss the appeal, arguing that this Court lacks jurisdiction over the trial court’s denial of the motion to compel arbitration.⁴

ANALYSIS

A. The Court of Appeals has jurisdiction over an appeal from an order denying an application to compel arbitration.

“We are a ‘court of limited jurisdiction,’ with the boundaries of our jurisdiction fixed in place by statute.” *Barnes v. Commonwealth*, 80 Va. App. 588, 594 (2024) (quoting *Tesla, Inc. v. Va. Auto. Dealers Ass’n*, 68 Va. App. 509, 512 (2018)). “While a court always has jurisdiction to determine whether it has subject matter jurisdiction, a judgment on the merits made without subject matter jurisdiction is null and void.” *Reaves v. Tucker*, 67 Va. App. 719, 727 (2017) (quoting *Porter v. Commonwealth*, 276 Va. 203, 228 (2008)). “Consequently, a notice of appeal cannot transfer to this Court jurisdiction over the subject matter of a case if that subject matter is not within this Court’s limited jurisdiction.”⁵ *Id.* at 727-28.

In general, Code § 17.1-405(A)(3) grants this Court jurisdiction over “any *final* judgment, order, or decree of a circuit court,” subject to an exception not relevant here. (Emphasis added). This includes final appeals from civil matters—a significant change that became effective in January 2022. *See* 2021 Va. Acts Spec. Sess. I ch. 489 (amending Code

⁴ The motion to dismiss the appeal is denied.

⁵ Flight argues that there cannot be a jurisdictional problem here since the notice of appeal complied with Rule 5A:6. Compliance with such a procedural rule may implicate this Court’s *active* jurisdiction. *See Nicholson v. Commonwealth*, 300 Va. 17, 22 (2021) (“In order to confer active jurisdiction on an appellate court, a notice of appeal must be timely, and it must ‘adequately identif[y] the case to be appealed.’” (alteration in original) (quoting *Roberson v. Commonwealth*, 279 Va. 396, 407 (2010))). But even with a sufficient notice of appeal, this Court is “without power to review an appeal” unless a statute grants it *subject matter* jurisdiction over the case. *Reaves*, 67 Va. App. at 727 (quoting *Prizzia v. Prizzia*, 45 Va. App. 280, 286 (2005)).

§ 17.1-405); *P.J. Potter Enters., Inc. v. Comfort Sys. of Va., Inc.*, 83 Va. App. 626, 636-37 (2025). But this Court may also review certain interlocutory orders and decrees, like those issued pursuant to the Multiple Claimant Litigation Act and those certified by a circuit court. Code § 17.1-405(A)(4) (referencing Code §§ 8.01-267.8, -675.5). And we may review, except as provided in Code § 17.1-405(B), “any interlocutory decree or order involving an equitable claim in which the decree or order (i) requires money to be paid or the possession or title of property to be changed or (ii) adjudicates the principles of a cause.” Code § 17.1-405(A)(5).

The VUAA, for its part, allows for interlocutory appeals of certain decisions related to arbitration. Code § 8.01-581.016, the appeals provision of the VUAA, states:

An appeal may be taken from:

1. An order denying an application to compel arbitration made under § 8.01-581.02;
2. An order by a general district court granting an application to compel arbitration;
3. An order granting an application to stay arbitration made under subsection B of § 8.01-581.02;
4. An order confirming or denying an award;
5. An order modifying or correcting an award;
6. An order vacating an award without directing a rehearing; or
7. A judgment or decree entered pursuant to the provisions of this article.

The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

Unlike the Multiple Claimant Litigation Act, the VUAA does not identify any particular court as the one with jurisdiction to hear the listed appeals. *Compare* Code § 8.01-267.8 *with* Code § 8.01-581.016. To the contrary, the VUAA notes that “[t]he appeal shall be taken in the

manner and to the same extent as from orders or judgments in a civil action.” Code § 8.01-581.016.

Before 2022—when appellate jurisdiction over final civil orders was transferred to this Court—the Supreme Court of Virginia took up several appeals of orders denying motions to compel arbitration as interlocutory appeals under Code § 8.01-581.016 of the VUAA. *See, e.g., Boyle v. Anderson*, 301 Va. 52, 55 (2022); *Schuiling v. Harris*, 286 Va. 187, 191 (2013); *Amchem Prods. v. Newport News Cir. Ct. Asbestos Cases Plaintiffs*, 264 Va. 89, 96 (2002). The Supreme Court did not directly explain why it had jurisdiction to hear these appeals when the statute did not specifically direct such appeals to the Supreme Court. Instead, it was fair to reason that because the “manner” that “judgments in a civil action” are appealed was to the Supreme Court, appeals of decisions denying motions or applications to compel arbitration should go to that Court. Code § 8.01-581.016.⁶

Since 2022, the “manner” by which “judgments in a civil action” are appealed is to the Court of Appeals. *See* Code §§ 8.01-581.016, 17.1-405(A)(3). Thus, we now have jurisdiction over the appealable orders enumerated in the VUAA, including an order denying a motion or application to compel arbitration.

B. The court erred by denying Flight’s motion to compel on the present record.

The heart of this appeal is whether there was a valid and enforceable agreement to arbitrate. If so, the court should order the parties to arbitrate “except upon such grounds as exist at law or in equity for the revocation of any contract.” Code § 8.01-581.01. “However, if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed

⁶ So too, appeals from an “order by a general district court granting an application to compel arbitration” presumably went to the circuit court because this was the “manner” that any other “judgment[] in a civil action” from a general district court would be appealed. Code § 8.01-581.016.

summarily to the determination of the issue of the existence of an agreement and shall order arbitration only if found for the moving party.” Code § 8.01-581.02(A).⁷

To determine whether there was “a valid and enforceable agreement to arbitrate,” we turn to the “law of contracts.” *Mission Residential, LLC v. Triple Net Props., LLC*, 275 Va. 157, 160 (2008). “The question whether such a contract exists is a pure question of law, to which we apply a de novo standard of review.” *Id.* at 161. Furthermore, “the circuit court’s findings of fact are presumed correct, but its conclusions of law are reviewed de novo.” *Lovelace v. Orange Cnty. Bd. of Zoning Appeals*, 276 Va. 155, 158 (2008).

1. Arbitration agreements can be enforceable against minors.

First, we address M.D.’s argument that most contracts with minors are voidable by the minor, including arbitration agreements. On this issue, both parties extensively discuss *Britton v. Williams’s Devisees*, 20 Va. (6 Munf.) 453 (1819), a decision from the Supreme Court that is more than 200 years old. “The following was the opinion of this Court,” reproduced in its entirety:

Although infants are bound by judgments had under the superintendence and protection of the Court; yet, where the case is referred to arbitrators, whereby they are deprived of that protection, a submission by infants, even by rule of Court, ought not to be sanctioned. For, as awards are in the nature of Judgments, and are to be final and conclusive, which can not be, where one party has a right to avoid them; it follows that a

⁷ On appeal, Flight suggests that the existence of a valid arbitration agreement is a matter for the arbitrator. Assuming without deciding that this argument was preserved below, we disagree. The statute places questions about the existence of an agreement before the trial court. Code § 8.01-581.01; *see also, e.g., Coinbase, Inc. v. Suski*, 602 U.S. 143, 147-49 (2024) (stating that a court must first determine whether the parties agreed to arbitrate); *In re StockX Customer Data Sec. Breach Litig.*, 19 F.4th 873, 879 (6th Cir. 2021) (observing that issues concerning “formation or [the] existence of the contract containing the provision” are “‘always’ for courts to decide at the outset”); *Gayles v. Sky Zone Trampoline Park*, 254 A.3d 1271, 1275 (N.J. Super. Ct. App. Div. 2021) (noting that a claim of apparent authority presented a matter of formation, not “arbitrability”).

submission by infants, although with adults, can not be obligatory on either party.

As there was, therefore, no valid submission in this case, there could be no award; and consequently the judgment is erroneous, and must be reversed with costs, as far back as the Writ, and the cause sent to the rules for farther proceedings.

Id. at 454. No Virginia court has substantively discussed or applied *Britton*. See *Caperton v. Gregory*, 52 Va. (11 Gratt.) 505 (1854) (referencing the decision in an “Attachment”); *Bassett’s Adm’r v. Cunningham’s Adm’r*, 50 Va. (9 Gratt.) 684 (1853) (same).⁸

Flight contends that *Britton*’s conclusion that minors cannot be bound to an arbitration agreement is no longer good law, and we agree. In 1986, Virginia adopted the Uniform Arbitration Act, which states that “[a] written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, except upon such grounds as exist at law or in equity for the revocation of any contract.” Code § 8.01-581.01. This provision affirms that “the public policy of Virginia favors arbitration.” *Tm Delmarva Power v. Ncp of Va.*, 263 Va. 116, 122 (2002). And it “implies that arbitration agreements should be upheld unless the agreement is against public policy or unconscionable, which are two grounds to set aside a contract in equity.” *Bandas v. Bandas*, 16 Va. App. 427, 431 (1993). Thus, the VUAA prohibits a court from treating an agreement to arbitrate any differently from other contracts.⁹

⁸ Some other decisions, however, have recognized that minors may be bound to arbitration in some instances. See, e.g., *Ware v. Ware’s Adm’r*, 69 Va. (28 Gratt.) 670, 671-74 (1877); *In re O’Neil*, 18 Va. App. 674, 679 (1994).

⁹ The Federal Arbitration Act contains very similar language and has been interpreted as requiring “an equal-treatment principle” where an agreement to arbitrate can be invalidated based on “‘generally applicable contract defenses’ like fraud or unconscionability, but not on legal rules that ‘apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue.’” *Kindred Nursing Ctrs. Ltd. P’ship v. Clark*, 581 U.S. 246, 251 (2017) (quoting *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011)).

The rule set out in *Britton* treats agreements to arbitrate differently from other contracts, so it was superseded by the VUAA. Minors can be bound to arbitrate in the same way they can be bound to other contracts. And we observe that the VUAA otherwise resolved the chief concerns underlying *Britton*: the lack of judicial protection of a minor’s interests in arbitration and the lack of finality given the minor’s ability to disaffirm the agreement. *See* 20 Va. (6 Munf.) at 454. Under the VUAA, a minor can challenge an agreement as voidable under Code § 8.01-581.01. *See Meuse v. Henry*, 296 Va. 164, 182 (2018) (considering a challenge brought under Code § 8.01-581.01). This allows the court—not the arbitrator—to determine whether the minor has disaffirmed the agreement. On the other hand, where a minor fails to raise their voidability challenge to the existence of the agreement and an adverse award results, that party may have waived such a defense as grounds for the court to vacate the award. *See id.* at 182-83.

For these reasons, there is no general rule in Virginia that minors cannot be bound to arbitrate. Next, we must consider whether *this* minor was bound to arbitrate.

2. Whether an adult had apparent authority to bind a minor to an arbitration agreement is a question of fact that must be developed before the trial court in an evidentiary hearing.

As with written contracts generally, the party seeking arbitration must prove the existence of the contract by a preponderance of the evidence. *See Mullins v. Mingo Lime & Lumber Co.*, 176 Va. 44, 49 (1940) (applying the preponderance of the evidence standard to contract formation); *Southside Brick Works, Inc. v. Anderson*, 147 Va. 566, 572 (1927) (noting that the elements of a contract must be “show[n] by a preponderance of the evidence”). And as noted above, we look to the “general ‘law of contracts’” to determine the existence of a valid and enforceable arbitration agreement. *Church Mut. Ins. Co. v. Ephesus Richmond Seventh-Day Adventist Church*, 84 Va. App. 371, 384 (2025) (quoting *Boyle*, 301 Va. at 60 n.2). The

“agreement must contain the essential elements of a valid contract at common law.” *Mission Residential*, 275 Va. at 160-61.

Here, there was clearly a contract purporting to be an agreement to arbitrate, but M.D. argues that the agreement is not valid because Barre had no actual or apparent authority to bind M.D. to its terms.¹⁰ In other words, M.D. argues that Barre was not authorized as an agent to enter into the arbitration agreement. Flight contends that the agreement is valid on its face, so any questions about Barre’s authority should have been resolved by the arbitrator, not the trial court. But even if the issue belonged before the trial court, Flight asserts that the agreement itself was the evidence that Barre had authority to enter into the agreement because in signing it, Barre “represent[ed] and warrant[ed] that I am the parent, legal guardian, or power-of-attorney of the below-listed Child(ren) and have the authority to execute this Agreement on the Child(ren)’s behalf and to act on the Child(ren)’s behalf.”

These arguments raise questions of how the validity of an arbitration agreement signed by a purported agent should be determined, when the issue should be resolved, and what burdens the respective parties bear in proving, or challenging, the validity of a purported agreement. To unpack these issues, we start by reviewing general agency principles and conclude that the existence of an agency relationship is a question of fact. Then we turn to the framework the VUAA puts in place for proving the existence of an arbitration agreement.

Agency is “a fiduciary relationship resulting from one person’s manifestation of consent to another person that the other shall act on his behalf and subject to his control, and the other person’s manifestation of consent so to act.” *Transparent GMU v. George Mason Univ.*, 298 Va.

¹⁰ We reject M.D.’s assertions that Flight waived this argument. While, as discussed more below, the trial court did not make an explicit finding that Barre lacked authority, the court ruled that the Agreement was not binding on M.D., and Flight objected, satisfying Rule 5A:18. Flight also preserved, under the same rule, its argument that Barre had actual, not just apparent, authority when it claimed that M.D.’s “parents permitted Mako Barre to execute the Agreement.”

222, 246 (2019) (quoting *Acordia of Va. Ins. Agency, Inc. v. Genito Glenn, L.P.*, 263 Va. 377, 384 (2002)). “In general, agents derive their authority from either the actual authority granted by their principal or from the apparent authority that a ‘third party reasonably believes [the] agent has, based on the third party’s dealings with the principal.’” *Robert K. Harwood, L.C. v. Chinchilla*, 86 Va. App. 1, 11 (2025) (alteration in original) (quoting *Sanchez v. Medicorp Health Sys.*, 270 Va. 299, 303 (2005)). The scope of an agent’s authority is that “which is actually conferred upon him by his principal, which may be limited by secret instructions and restrictions.” *Singer Sewing Mach. Co. v. Ferrell*, 144 Va. 395, 404 (1926).

Even in the absence of actual authority, a third party may reasonably believe that an agent was authorized to undertake certain actions. Apparent authority “is created by a person’s manifestation that another has authority to act with legal consequences for the person who makes the manifestation, when a third party reasonably believes the actor to be authorized and the belief is traceable to the manifestation.” Restatement (Third) of Agency § 3.03. Under apparent authority, the scope of an agent’s authority includes that “which the *principal has held the agent out as possessing*, or which *he has permitted* the agent to represent that he possesses.” *Sanchez*, 270 Va. at 303-04 (emphases added) (quoting *Bardach Iron & Steel Co. v. Charleston Port Terminals*, 143 Va. 656, 673 (1925)).

Important here, whether the principal manifested that a person is his agent is generally a factual question to be resolved by the fact finder. See *Reistroffer v. Person*, 247 Va. 45, 48 (1994) (“The question of agency *vel non* is one of fact for the fact finder unless the existence of an agency relationship depends upon unambiguous written documents or undisputed facts.”); *Acordia*, 263 Va. at 384 (same). Indeed, the resolution of that question can be fact intensive. For example, when reviewing a trial court’s finding that apparent authority existed to enter an agreement, we considered whether there was evidence of “any verbal or nonverbal

representations” by the principal “that could reasonably lead” the third party to conclude that the agent had authority to enter the agreement on the principal’s behalf. *Walson v. Walson*, 37 Va. App. 208, 214-16 (2001). It was not enough that the principal had authorized the agent to conduct some business on her behalf; instead, we looked to whether the principal “held out [the agent] as possessing the authority to execute the . . . [specific] agreement” through her statements or conduct. *Id.* at 216.

With this background in place, we turn back to the VUAA. Under the statute, the proponent of arbitration bears the initial burden of production to establish the existence of an agreement to arbitrate. Code § 8.01-581.02(A) (“On application of a party *showing an agreement* [to arbitrate], and the opposing party’s refusal to arbitrate, the court shall order the parties to proceed with arbitration.” (emphasis added)). But, “if the opposing party *denies the existence of the agreement to arbitrate*, the court shall proceed summarily to the determination of the issue of the existence of an agreement and shall order arbitration only if found for the moving party.” *Id.* (emphasis added).

The question here is what matters are included under the “existence of the agreement to arbitrate.” The Supreme Court has previously explained that, as part of denying the existence of an agreement to arbitrate, a party can “avoid being sent to arbitration by proving that the arbitration agreement is invalid, unenforceable, or revocable on ‘such grounds as exist at law or in equity for the revocation of any contract.’” *Meuse*, 296 Va. at 182 (quoting Code § 8.01-581.01). We conclude today that this includes whether an agreement is invalid because the agent lacked authority to enter into it in the first place. If an agent “lacks authority to bind his principal . . . to a contract with a third party . . . yet purports to do so anyway, no contract is formed between the principal and the third party.” *Berkeley Cnty. Sch. Dist. v. Hub Int’l. Ltd.*,

944 F.3d 225, 238 (4th Cir. 2019). Thus, a challenge to an agent’s authority to enter into an agreement is a challenge to the existence of the agreement that the trial court must resolve.¹¹

Thus, in the ordinary course, challenges to an agent’s authority to enter into an arbitration agreement can, and should, be brought at the front end.¹² After the existence of an agreement is challenged, the trial court must then resolve whether there is a valid agreement to arbitrate. Some challenges may be legal in nature—such as some disputes over the meaning of language in a contract. But as we set out above, a challenge based on an agent’s authority to enter into an agreement is a factual one. When the challenge involves disputed facts, the trial court must hold an evidentiary hearing. In either event, the burden of proof remains on the party seeking arbitration to prove the existence of an agreement to arbitrate. Finally, we note that while there is a “presumption in favor of arbitrability,” that presumption only arises after “the party seeking arbitration . . . prov[es] the existence of the agreement.” *Mission Residential*, 275 Va. at 161. In other words, “[t]he presumption in favor of arbitrability arises only after a determination has been made that the parties agreed to arbitrate.” *Tm Delmarva Power*, 263 Va. at 126.

¹¹ Federal circuit courts addressing the same issue under the Federal Arbitration Act have reached the same conclusion. *See, e.g., Nat’l Fed’n of the Blind v. The Container Store, Inc.*, 904 F.3d 70, 81 (1st Cir. 2018) (“A challenge to formation can . . . be done by showing that one party never agreed to the terms of the contract, [or] that a signatory did not possess the authority to commit the principal”); *Berkeley Cnty. Sch. Dist.*, 944 F.3d at 238 (explaining that whether agent had authority to bind principal is contract formation issue); *GP3 II, LLC v. Litong Cap., LLC*, 35 F.4th 1124, 1125-26 (8th Cir. 2022) (same); *Sphere Drake Ins. Ltd. v. All Am. Ins. Co.*, 256 F.3d 587, 591 (7th Cir. 2001) (same); *Three Valleys Mun. Water Dist. v. E.F. Hutton & Co.*, 925 F.2d 1136, 1140-41 (9th Cir. 1991) (same). While the Federal Arbitration Act is not a word-for-word match to the VUAA, it is so similar that our Supreme Court has previously cited to it in interpreting our own statute. *Meuse*, 296 Va. at 182.

¹² In limited circumstances, an agent’s lack of authority renders the underlying contract void ab initio which enables a challenge to be brought at any time—including when an arbitration award is submitted for review to the trial court. *Richard L. Deal & Assocs., Inc. v. Commonwealth*, 224 Va. 618, 622-23 (1983) (concluding that the Commonwealth could not be bound to arbitrate under the statute and thus the provision purporting to do so was ultra vires and void ab initio).

In sum, the VUAA sets out a burden-shifting framework. The party seeking arbitration must show an agreement to arbitrate. If shown, the moving party has met its production burden under the VUAA and the court must send the matter to arbitration—unless the opposing party challenges the existence of validity of that agreement. If the opposing party challenges the validity of the agreement to arbitrate, the question is then squarely before the trial court for resolution. And if the challenge to the agreement is based on contested facts, the trial court must hold an evidentiary hearing to resolve those facts. At that hearing, the party seeking arbitration continues to bear the ultimate burden to show there is a valid agreement to arbitrate.

Applying this framework here, Flight met its burden of production to establish a binding arbitration agreement when Flight moved to compel arbitration, attached the agreement, and alleged that the agreement was approved by “the Plaintiff’s parents and legal guardians.” Then, M.D., by her mother, opposed the motion to compel arbitration by denying that Barre was the child’s guardian or that she had authority to enter into the agreement. The trial court was then required to determine whether there was a valid agreement to arbitrate. And because whether an agent had actual or apparent authority to bind a principal is a question of fact, the trial court needed to hold an evidentiary hearing to determine whether the agreement was valid.

Rather than make factual findings about whether M.D.’s parents made any manifestation that Barre had actual or apparent authority to enter the Agreement on behalf of M.D., the court “just assume[d] that what [Barre] said” in representing that she had the requisite authority “was false.” Based on this assumption, the court found that M.D. could not be bound to the Agreement and denied the motion to compel arbitration. There was no evidence presented to support or rebut that assumption. Flight specifically asked the court to hold an evidentiary hearing “to the extent that Plaintiff is injecting a factual dispute as to what the authority was for Mako Barre to enter this agreement,” but the court did not do so. Without taking evidence, the

only thing before the court was the Agreement itself. And while the Agreement includes a representation from the agent (Barre) that she had authority to act, it lacks any representation from the principal (M.D.'s parents) that Barre had the authority to act. In other words, the Agreement alone could not definitively demonstrate that the principal "held out [the agent] as possessing the authority to execute the . . . [specific] agreement" through her statements or conduct. *See Walson*, 37 Va. App. at 216.

We therefore reverse and remand this matter to the trial court to determine whether a valid agreement to arbitrate this dispute exists. The resolution of that issue, in turn, depends on further factual development of whether M.D.'s parents manifested that Barre had actual or apparent authority to enter the Agreement on behalf of M.D.

CONCLUSION

In general, an arbitration agreement may be enforced against a minor. But here the trial court failed to determine whether Barre was an actual or apparent agent of M.D.'s parents with the authority to bind M.D. to an arbitration agreement. We thus reverse the trial court's decision and remand for further proceedings consistent with this opinion.

Reversed and remanded.