only determine that Collins is entitled to go forward with her case.

For the foregoing reasons, we reverse and remand for further proceedings consistent herewith.

REVERSED and REMANDED. (TORPY and PALMER, JJ., concur.)

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[1]§§ 501.201-.213, Fla. Stat. (2003).

[2]Collins sought to represent a putative class, consisting of persons who purchased or leased 1993 Chrysler minivans and 1997-1998 Dodge Dakota and Durango vehicles equipped with GEN-3 seatbelt buckles. Collins expressly excluded persons who have actions for damages for personal injury or property damage from putative class. Because the class has not yet been certified, we express no opinion on the suitability of this matter for class certification or of Collins as a class representative.

[3]Perhaps, this case is unique in that automobile safety belts "present special reliability concerns. They are used for the emergency protection of human life, and unfortunately, an ordinary passenger has no way of knowing whether his or her seatbelt will actually perform until an unexpected moment of impact, when an unforeseeable collision forces reliance on the seatbelt's emergency protection. Wearing a seatbelt may bolster an expectation that it will perform in a time of need, but . . . such use may also imbue dangerously defective product with a false and misleading appearance of reliability." *DaimlerChrysler Corp. v. Inman*, 121 S.W.3d 862, 879 (Tex. Ct. App. 2003).

* * *

Jurisdiction—Circuit court—Contracts—Dispute between employer and former employee—Bare allegation of amount in controversy exceeding $15,000 is insufficient to confer jurisdiction upon circuit court where facts alleged in complaint demonstrate that amount is substantially less than $15,000—Remand with directions to transfer matter to county court—Arbitration—Error to enter order compelling parties to submit to arbitration without considering employee's challenge to validity of arbitration provisions on ground that agreement was unconscionable—On remand, county court should hold evidentiary hearing to determine whether agreement is unconscionable before deciding whether to compel arbitration

FRANK RAPPA, Appellant, v. ISLAND CLUB WEST DEVELOPMENT, INC., ET AL., Appellee. 5th District. Case No. 5D03-3903. Opinion filed December 30, 2004. Non-Final Appeal from the Circuit Court for Orange County, Jay Paul Cohen, Judge. Counsel: Carol Swanson, of the Law Offices Carol Swanson, Orlando, for Appellant. Ladd H. Fassett and Phil A. D'Aniello, of Fassett, Anthony & Taylor, P. A., Orlando, for Appellee.

(ORFINGER, J.) Frank Rappa appeals the trial court's order compelling him to arbitrate a dispute with his former employer, Island Club West Development, Inc. Because we conclude the trial court lacked subject matter jurisdiction to enter the order, we quash the circuit court's order and remand with directions that this matter be transferred to the county court.

From the limited record available to us, it appears that Rappa entered into an employment agreement ("Agreement") with Island Club. The Agreement provided, among other things, that Rappa's employment was at will, terminable by either party at any time, and contained an arbitration provision in the event of any dispute arising between the parties. Rappa began his employment with Island Club, and within a week, was either fired, according to Rappa, or quit, according to Island Club. In either event, Rappa left Island Club's employ, and contends that he returned all company property. By contrast, Island Club alleges that Rappa left its employ without notice, and failed to return company property entrusted to him.

Several months after Rappa's departure, Island Club notified Rappa that it was initiating arbitration proceedings against him pursuant to the arbitration provisions of the Agreement. The notice informed Rappa that it was seeking $5,000 for leaving its employ without notice and for removing company property. Rappa responded by initiating the instant lawsuit in the circuit court of Orange County, Florida. Rappa's suit sought damages pursuant to the Fair Labor Standards Act, 29 U.S.C. section 216(b), and section 448.08, Florida Statutes (2003). Specifically, Rappa's complaint sought recovery for one week of unpaid wages and a declaration that the Agreement was not a contract, or that it was unenforceable because it was unconscionable.

Island Club filed a motion to dismiss, or, alternatively, to compel arbitration. After a hearing was held on Island Club's motion, the trial court entered an order, compelling arbitration in accordance with the Agreement. This appeal followed.

Island Club contends that the circuit court lacked subject matter jurisdiction to hear Rappa's claims. We agree. Although none of the parties questioned the circuit court's jurisdiction below, their failure to raise this issue below does not preclude this court from addressing it for the first time on appeal where a jurisdictional infirmity appears on the face of the record. *See, e.g., Hoechst Celanese Corp. v. Fry*, 693 So. 2d 1003, 1007 (Fla. 3d DCA 1997) (citations omitted). The circuit courts of Florida have subject matter jurisdiction over actions at law in which the matter in controversy exceeds $15,000, exclusive of interest, costs, and attorney's fees. *See* Art. V, § 20(c)(3), Fla. Const.; §§ 26.012(2)(a), 34.01(1)(c)4., Fla. Stat. (2003). In determining whether the trial court's jurisdiction was properly invoked, the controlling standard is the amount claimed and in good faith placed in controversy, not the amount actually recovered. *See Metro. Drywall Sys., Inc. v. Dudley*, 472 So. 2d 1345 (Fla. 2d DCA 1985).

Here, the bare allegation of an amount in controversy exceeding $15,000 is insufficient to confer jurisdiction upon the circuit court because the facts alleged in the complaint demonstrate an amount that is substantially less than $15,000. The parties concede that Island Club's claim in arbitration seeks no more than $5,000 in damages, while Rappa's claim for unpaid wages is, at most, $615, excluding interest, costs and attorney's fees. If Rappa can make no better showing than that contained in his initial pleading, the case should be transferred to county court, which has equitable jurisdiction over matters within its jurisdictional amount. *Spradley v. Doe*, 612 So. 2d 722 (Fla. 1st DCA 1993) (holding that circuit court lacked subject matter jurisdiction to consider plaintiff's civil rights complaint seeking declaratory judgment and nominal, compensatory, and punitive damages in amount of $950; based upon amount in controversy and relief requested, claim had to be heard in county court); *see* § 86.011, Fla. Stat. (2003) (stating that "circuit courts and county courts have jurisdiction *within their respective jurisdictional amounts* to declare rights. . .") (emphasis added); *Sullivan v. Nova Univ.*, 613 So. 2d 597 (Fla. 5th DCA 1993); *Aysisayh v. Ellis*, 497 So. 2d 1316 (Fla. 1st DCA 1986).

Under both federal statutory provisions and Florida's Arbitration Code, there are three elements for courts to consider in ruling on a motion to compel arbitration of a given dispute: (1) whether a valid written agreement to arbitrate exists; (2) whether an arbitrable issue exists; and (3) whether the right to arbitration was waived. *See Seifert v. U.S. Home Corp.*, 750 So. 2d 633, 636 (Fla. 1999); *Terminix Int'l Co., LP v. Ponzio*, 693 So. 2d 104, 106 (Fla. 5th DCA 1997). In the declaratory action below, Rappa challenged the validity of the arbitration provisions, arguing that the Agreement was unconscionable. *Chapman v. King Motor Co. of S. Fla.*, 833 So. 2d 820 (Fla. 4th DCA 2002) (recognizing that in order to invalidate an arbitration clause as unconscionable, the court must find that the clause is both procedurally and substantively unconscionable). It does not appear from the record that the trial court considered this issue before compelling the parties to submit to arbitration. This was error because the court is required to resolve this issue before compelling arbitration. *See Tropical Ford, Inc. v. Major*, 882 So. 2d 476 (Fla. 5th DCA 2004) (holding that trial court erred in invalidating arbitration clause as invalid for unconscionability, given that trial court failed to set forth any findings of substantive unconscionability and its finding of procedural unconscionable was not supported by evidence); *Fotomat Corp. of Fla. v. Chanda*, 464 So. 2d 626, 631 (Fla. 5th DCA 1985) (reversing and remanding where court refused to consider and apply the procedural/substantive test or any other objective test to determine the issue of unconscionability). Accordingly, on remand, the county

court should hold an evidentiary hearing to determine whether the Agreement is unconscionable before deciding whether to compel the parties to arbitration. *See Chapman v. King Motor Co. of S. Fla.*, 833 So. 2d 820, 821 (Fla. 4th DCA 2002) (holding that purchasers were entitled to evidentiary hearing on unconscionability of arbitration agreement); *Food Assocs., Inc. v. Capital Assocs., Inc.*, 491 So. 2d 345, 345 (Fla. 4th DCA 1986) (finding that trial court erred in determining issue of unconscionability of equipment leases without first conducting evidentiary hearing on the issue).

ORDER QUASHED and REMANDED. (PETERSON and TORPY, JJ., concur.)

* * *

Criminal law—Sexual predators—Civil commitment under Jimmy Ryce Act—Jurisdiction—Error to conclude that because defendant was detained in county jail three days after being sentenced to "time served" prior to the commencement of civil commitment proceedings, court lacked jurisdiction to act on commitment petition—Running of time requirements set forth in statute was triggered when Department of Corrections transferred defendant to custody of Department of Children and Families—Time lines of Act were met where defendant was assessed, resulting report was provided to state within 72 hours after transfer, and state petitioned court within 48 hours after receipt of report—Trial court incorrectly viewed time lines provided by statute as starting to run on day defendant was sentenced to time served—Although defendant may have been arguably illegally detained after he was sentenced to time served, that did not divest circuit court of jurisdiction to adjudicate commitment petition

STATE OF FLORIDA, Appellant, v. RICHARD DUCHARME, Appellee. 5th District. Case No. 5D03-3433. Opinion filed December 30, 2004. Appeal from the Circuit Court for Orange County, Belvin Perry, Judge. Counsel: Charles J. Crist, Jr., Attorney General, Tallahassee, and Douglas T. Squire, Assistant Attorney General, Daytona Beach, for Appellant. James B. Gibson, Public Defender, and Nancy Ryan, Assistant Public Defender, Daytona Beach, for Appellee.

(SHARP, W., J.) The state appeals from a final order dismissing with prejudice the state's involuntary civil commitment petition, which was filed pursuant to the "Jimmy Ryce Act," sections 349.910-349.931, Florida Statutes (2000). The lower court concluded that because Ducharme was detained in the county jail three days after being sentenced to "" prior to the commencement of the civil commitment proceedings, the court lacked jurisdiction to act on the petition. We disagree and reverse.

The record establishes that Ducharme was convicted of aggravated assault, which was sexually motivated in 1986. He was sentenced to two and one-half years in prison, to be followed by three and one-half years on probation. By 1987, Ducharme had been released from prison, and while on probation, he relocated to Michigan.

In Michigan, Ducharme was arrested for burglary and sexual assault, to which he pled no contest. He was incarcerated in Michigan from October 27, 1987 through April 24, 2000, for those offenses.

After serving his sentences in Michigan, he was returned to Florida for violation of his probation. At his VOP hearing held June 13, 2000, the court found he had violated his probation and he was sentenced to "time served."

However, Ducharme was not released immediately. He was detained in the Orange County jail, until the State Attorney notified the Department of Corrections (DOC) of Ducharme's sentence, so that it could calculate when it ended. DOC later determined Ducharme's sentence ended on June 13, 2000, when it was pronounced.

DOC notified the Department of Children and Families (DCF) of Ducharme's imminent release, and DCF requested Ducharme be transferred to the Martin Treatment Center, a facility it supervised and used to evaluate whether persons meet the definition of a sexually violent predator under the Jimmy Ryce Act. Ducharme was transferred to that facility on June 16, 2000, by DOC. Within 72 hours after the transfer, Ducharme was evaluated by a multi-disciplinary team. The assessment took place on June 17 and 18. The team submitted its written assessment and recommendations to the state, within the same 72-hour period. Upon receipt of the report, the state filed an involuntary civil commitment petition, which is stamped as having been filed June 20, 2000, although the judge signed it on June 19, 2000, finding probable cause to detain Ducharme under the Act.

Two years later, Ducharme filed a motion for release and a motion to dismiss for lack of jurisdiction, arguing that the time requirements under the statute had run before the petition was filed because he was unlawfully detained in jail three days before being transferred to the custody of DCF. He relied on *State v. Atkinson,* 831 So. 2d 172 (Fla. 2002).

Section 394.9135, Florida Statutes (2000), sets out a detailed procedure which the state must follow under the Act, when release from total confinement of a person to be committed becomes "immediate for any reason." § 394.9135(1), Fla. Stat. (2000). It provides:

> 394.9135. Immediate releases from total confinement; transfer of person to department; time limitations on assessment, notification, and filing petition to hold in custody; filing petition after release.—
>
> (1) If the anticipated release from total confinement of a person who has been convicted of a sexually violent offense becomes immediate for any reason, the agency with jurisdiction shall upon immediate release from total confinement transfer that person to the custody of the Department of Children and Family Services to be held in an appropriate secure facility.
>
> (2) Within 72 hours after transfer, the multidisciplinary team shall assess whether the person meets the definition of a sexually violent predator. If the multidisciplinary team determines that the person does not meet the definition of a sexually violent predator, that person shall be immediately released. If the multidisciplinary team determines that the person meets the definition of a sexually violent predator, the team shall provide the state attorney, as designated by s. 394.913, with its written assessment and recommendation within the 72-hour period or, if the 72-hour period ends on a weekend or holiday, within the next working day thereafter.
>
> (3) Within 48 hours after receipt of the written assessment and recommendation from the multidisciplinary team, the state attorney, as designated in s. 394.913, may file a petition with the circuit court alleging that the person is a sexually violent predator and stating facts sufficient to support such allegation. If a petition is not filed within 48 hours after receipt of the written assessment and recommendation by the state attorney, the person shall be immediately released. If a petition is filed pursuant to this section and the judge determines that there is probable cause to believe that the person is a sexually violent predator, the judge shall order the person be maintained in custody and held in an appropriate secure facility for further proceedings in accordance with this part.
>
> (4) The provisions of this section are not jurisdictional, and failure to comply with the time limitations, which results in the release of a person who has been convicted of a sexually violent offense, is not dispositive of the case and does not prevent the state attorney from proceeding against a person otherwise subject to the provisions of this part.

The agency "with jurisdiction" to transfer Ducharme to the custody of DCF was the DOC. When the DOC transferred Ducharme to the custody of the DCF on June 16, this triggered the running of the time requirements set forth in the above-quoted statute. Within 72 hours after the transfer, Ducharme was assessed, and the resulting report was provided to the state. (Ducharme was transferred on June 16 and the report was given to the state on June 19.) § 394.9135(2), Fla. Stat. (2000). Thereafter, 394.9135 provides that the state has 48 hours after receipt of the report (here, on June 19), in which to petition the circuit court. In this case, the state filed its petition (at the latest) on June 20th. Thus, the time lines set forth in the statute were met.

The lower court incorrectly viewed the time lines provided by the