STATE OF MICHIGAN

COURT OF APPEALS

JOY GARDIN,

Plaintiff-Appellant,

v

DETROIT JEWISH NEWS LTD and CURTIS DELOYE,

Defendants-Appellees.

UNPUBLISHED
April 15, 1997

No. 188555
Oakland Circuit Court
LC No. 93-446902

Before: Reilly, P.J., and Wahls and N.O. Holowka*, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order denying her motion to set aside an arbitration award. Plaintiff argues that the arbitration award should have been set aside because of the apparent relationship between the neutral arbitrator and defendants' arbitrator. We remand for further proceedings consistent with this opinion.

Plaintiff was discharged in 1992 from her position as a typesetter with defendant Detroit Jewish News. Plaintiff brought suit against the paper and Curtis DeLoye, her former supervisor, alleging a number of claims. The trial court granted summary disposition in favor of defendants on all claims except for her religious discrimination claim. In May of 1994, the parties agreed to submit to binding arbitration. Plaintiff selected Maurice Herskovic as her arbitrator for the panel and defendants selected Arthur Liss. Herskovic and Liss selected Daniel Clark as the neutral arbitrator. Liss shared office space with defense counsel. Prior to the arbitration hearing, plaintiff's counsel returned a telephone call from Clark. The telephone number left by Clark was to Liss' office. Plaintiff's counsel asked about the nature of the relationship between Clark and Liss. Clark assured counsel that no business relationship existed with Liss and that Clark was only using Liss' office on that date to make a conference call.

The arbitrators issued an award of no cause of action in favor of defendants. Liss and Clark formed a majority, and Herskovic dissented. Thereafter, plaintiff's counsel learned that the arbitration

* Circuit judge, sitting on the Court of Appeals by assignment.

award was printed on a computer in Liss' office under Clark's letterhead. Further, unnamed attorneys informed plaintiff's counsel that Clark used Liss' law firm as his Oakland County office, that messages were taken in Liss' office for Clark, and that Clark used the office as a meeting facility. To confirm these allegations, plaintiff's counsel had his secretary telephone Liss' office and ask for Clark. Liss' receptionist informed plaintiff's counsel's secretary that she had recently received a memo stating that no messages were to be taken for Clark at that number. Plaintiff then brought a motion to set aside the arbitration award or, in the alternative, to allow discovery with respect to certain individuals to examine the relationship between Clark and Liss. The trial court denied the motion.

Plaintiff first argues that the trial court should have set aside the arbitrator's award because Clark allegedly had a prior business relationship with Liss, in violation of the Michigan Court Rules pertaining to neutral arbitrators. MCR 3.602(J)(1)(b). On the record as developed thus far, we disagree. To overturn an arbitration award, the partiality or bias must be certain and direct, not remote, uncertain, or speculative. *Belen v Allstate Ins Co*, 173 Mich App 641, 645; 434 NW2d 203 (1988).

However, plaintiff also argues that the trial court should have allowed limited discovery to examine the relationship between Clark and Liss. In *Kauffman v Haas*, 113 Mich App 816, 819; 318 NW2d 572 (1982), this Court held that once the issue of evident partiality is fairly raised, the party should have the opportunity to develop the record to prove the partiality. Specifically, limited discovery of an arbitrator should be allowed in such an instance, restricted to the arbitrator's relationship with the other party. *Id*. at 819-820. We believe that plaintiff has fairly raised the issue of evident partiality and should be afforded the opportunity to further develop the record. Thus, on remand, the court should allow plaintiff to pursue limited discovery, restricted to examining the relationship between Clark and Liss and whether the same suggests bias or partiality toward the defense.

In light of our decision to remand, we find no merit regarding defendants' claim of vexatious appeal.

Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Maureen Pulte Reilly
/s/ Myron H. Wahls
/s/ Nick O. Holowka