STATE OF MICHIGAN

COURT OF APPEALS

DONNA J. SANCRICCA,

Plaintiff-Appellant,

v

ROBERT J. DINGES & ASSOCIATES and ROBERT J. DINGES,

Defendants-Appellees,

and

ANDERSON, ANDERSON & ASSOCIATES,

Intervenor-Appellee.

UNPUBLISHED
September 12, 1997

No. 192232
Wayne Circuit Court
LC No. 93-335460-CZ

Before: Markey, P.J., and Jansen and White, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's judgment and order enforcing an arbitration award in this dispute over referral and other legal fees owed on cases plaintiff took with her on leaving defendants' employ, fees claimed to be owing on cases secured through plaintiff's efforts, and plaintiff's claim of sex discrimination. We affirm.

Plaintiff was employed as an associate attorney by defendant Dinges (defendant) from August 1988 until October 1992. The two signed an "Employment Contract" containing an arbitration clause. Defendant filed a demand for arbitration on November 18, 1993, stating under "Nature of Dispute:" "Employment Dispute. . . . After leaving the claimant's office, the respondent has failed to reimburse costs and pay a quantum merit [sic meruit] share of attorney fees on cases she took with her." The demand for arbitration also named as an indispensable party Anderson, Anderson & Associates, and set forth the firm's address.[1]

Plaintiff's "Employment Contract," stated in pertinent part:

> The Firm agrees to employ Jarvis [plaintiff's former surname] subject to the terms and conditions of this Contract. The parties acknowledge that this Contract is subject to the Code of Professional Responsibility and laws of the State of Michigan. **Should any dispute arise out of or in connection with this Contract or the employment relationship, the parties agree that any and all such disputes will be subject to arbitration under the rules of the American Arbitration Association.**
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> ***
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> 3. Fee Split Agreement
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> The parties agree that any and all monies or tangible things received or earned by Jarvis as an attorney for Firm clients is the property of the Firm. The Firm agrees to a Fee Split Agreement with Jarvis with respect to monies received by the Firm from clients who have retained the Firm because of the direct efforts of Jarvis. The parties agree to maintain a list of clients who retain the Firm because of the direct efforts of Jarvis. . . . [Emphasis added.]

On November 23, 1993, plaintiff wrote a letter to the American Arbitration Association acknowledging receipt of defendants' demand for arbitration. Plaintiff asserted that defendant had modified, violated and terminated the employment contract, and that the contract had thus expired, so that the American Arbitration Association had no jurisdiction to arbitrate the dispute. Plaintiff again challenged the arbitrability of the dispute in a second letter in December.

On December 20, 1993, plaintiff, proceeding in propria persona, filed a two-count complaint against defendants, alleging breach of contract and sexual discrimination. On the same date, plaintiff filed an ex-parte motion to stay arbitration proceedings, arguing the same points as set forth in her letters and reiterating the argument that because the contract had long-expired, the AAA lacked jurisdiction.

On January 12, 1994, defendants filed a motion for summary disposition of plaintiff's breach of contract claim arguing, inter alia, that the employment contract contained an arbitration clause that states that "any dispute" regarding the "contract or employment relationship" is subject to arbitration, and that the circuit court thus lacked jurisdiction over that claim.[2]

Defendant also filed a counter-claim alleging that plaintiff's suit was commenced for improper purposes and violated her agreement with defendant to arbitrate all disputes arising out of the contract or employment relationship.

The circuit court granted defendants' motion for summary disposition as to the breach of contract claim, denied plaintiff's ex-parte motion to stay arbitration proceedings and allowed plaintiff sixty-days to appeal to this Court the ruling on plaintiff's motion for stay of arbitration proceedings. Plaintiff filed a motion for stay in this Court. The motion was denied.

The circuit court dismissed plaintiff's sexual discrimination claim and plaintiff then appealed to this Court the circuit court's grant of summary disposition and order compelling arbitration of her claims

and defendants' counter-claim. This Court affirmed the circuit court in *Sancricca v Dinges*, unpublished opinion per curiam, issued April 16, 1996 (Docket Nos. 173671, 176897), concluding that the parties provided for statutory arbitration where they agreed pursuant to the AAA rules, as incorporated in their employment contract, that judgment may be entered on an arbitration award, and that the circuit court did not err in submitting both plaintiff's claims to statutory arbitration.

The arbitration proceeded in the interim and, after holding hearings over seven days, the arbitrator issued an opinion and award on October 13, 1995, awarding plaintiff $10,210.52 against defendant; awarding defendant $36,211.88 against plaintiff; and awarding Anderson, Anderson & Associates $17,638.91 against plaintiff.

Defendant filed a motion to confirm the arbitration award; plaintiff filed a motion to vacate the arbitration award; and Anderson filed a motion for leave to intervene for the limited purpose of supporting defendants' motion and opposing plaintiff's motion. The motions were consolidated for hearing and the circuit court granted Anderson's motion to intervene and confirmed the arbitration award. This appeal ensued.

I

Plaintiff argues that the arbitrator exceeded his powers by deciding the claim of the intervenor, Anderson, because there was no contract between Anderson and plaintiff and there was no court order requiring plaintiff to arbitrate with Anderson. We conclude that plaintiff waived this objection by failing to object on this basis until after the award was rendered, and that Anderson's claim was, in any event, arbitrable because it was a dispute which arose out of or in connection with plaintiff's contract or employment relationship.

This Court's review of an arbitrator's award is very limited; the court's power to modify, correct, or vacate an arbitration award is limited by court rule. *Dohanyos v Detrex Corp (After Remand)*, 217 Mich App 171, 174-175; NW2d (1996). Where it is alleged that the arbitrator exceeded the scope of his or her authority, a reviewing court's ability to review an award is restricted to cases in which an error of law appears from the face of the award, or the terms of the contract or submission, or such documentation as the parties agree will constitute the record. *Id.* at 175-176. Arbitrators exceed their powers when they act beyond the material terms of the contract from which they primarily draw their authority, or in contravention of controlling principles of law. *Detroit Automobile Inter-Insurance Exchange v Gavin*, 416 Mich 407, 434; 331 NW2d 418 (1982). An award will be presumed to be within the scope of the arbitrators' authority absent express language to the contrary. *Gordon Sel-Way v Spencer*, 438 Mich 488, 497; 475 NW2d 704 (1991).

Plaintiff argues that during the arbitration hearings she objected on the basis that there was no valid agreement to arbitrate with Anderson. Plaintiff relies on a letter she wrote to the AAA dated July 12, 1995.[3] At the time plaintiff wrote this letter, six of the seven days of arbitration hearings had been held, on October 11 and 12, 1994, December 15 and 16, 1994, January 21, 1995, and February 11, 1995. The letter stated:

Dear Mr. Farley:

> Per your correspondence of June 20, 1995, the purpose of the hearing of July 31, 1995 is "to address all of Mr. Anderson's cases Ms. Sancricca took with her when leaving Mr. Dinges' firm." By providing the requested information, I trust that there will be no need for any further hearings in the above matter.
>
> Donna Sancricca has never had any contractual agreement with Mr. Anderson. In addition, the law firm of Glotta, Rawlings, & Skutt, P.C. is not a party of this arbitration. Any contractual relationship between Mr. Dinges and Mr. Anderson must be resolved between those two parties. It is excessively burdensome to Donna Sancricca to have to pay for a hearing that is designed only to resolve contractual issues between Mr. Dinges and Mr. Anderson in which there can be no award against Donna Sancricca in any case.
>
> Ms. Sancricca has previously provided the requested information as to the recovery on the following cases both during the many hearings already completed an in footnote 1 of Sancricca's Brief. For completeness, this information is repeated below.
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> [Tables listing cases names, recovery received, and status are omitted.]
>
> It is the position of Donna Sancricca that the proofs have been closed and that the inadequacy of proof relative to the fees in the Anderson cases requires an award reflecting the fact that Mr. Dinges and Mr. Anderson have failed in the presentation of their cases. The arbitrator has stated in the past that upon closing of proofs, the presentation was final and, therefore, Mr. Dinges and Mr. Anderson cannot present further evidence. A further hearing is unacceptable. It is financially burdensome and procedurally invalid.

We do not read this letter as constituting an objection to the AAA's jurisdiction on the basis that Anderson and plaintiff did not have an agreement to arbitrate.

The record establishes that plaintiff first raised the defense of no valid agreement to arbitrate with Anderson in her motion to vacate the arbitration award. The circuit court addressed the issue at the January 19, 1996 hearing on Anderson's motion to intervene. Anderson's counsel argued at that hearing that Anderson was allowed to file a cross-claim in the arbitration proceeding and participated in seven days of arbitration hearings without objection by plaintiff. At this hearing plaintiff was unable, under questioning by the circuit court, to identify any objection in the record to Anderson's participation.

Although plaintiff properly argues that this Court has held that the defense of no valid agreement to arbitrate may be raised for the first time in an action to confirm or enforce an arbitration award, see *Arrow Overall v Peloquin*, 414 Mich 95, 97; 323 NW2d 1 (1982), *Arrow* is distinguishable because the defendant in that case did not participate in the arbitration proceedings and the plaintiff did not seek a preliminary decision from the court as to the existence of an agreement to arbitrate. In the instant case, plaintiff participated in the arbitration after the circuit court determined the claims should be

arbitrated, and did not object to Anderson's participation as an indispensable party until confirmation of the arbitration award was sought.

Further, we agree with defendant that the dispute regarding fees plaintiff owed on cases referred by Anderson was a dispute that arose out of or was in connection with the employment contract and was thus arbitrable. The arbitrator found that plaintiff assumed the obligation, for consideration, to pay the referral fees to Anderson when she left employment with defendant. The arbitrator also found that plaintiff had authored a written agreement while employed by defendant which stated that Anderson would receive one-third of any attorney fees recovered in cases Anderson referred to defendant:

> As Herman Anderson described in his testimony, Mr. Anderson is an attorney. In June 1992, as permitted by the Code of Professional Responsibility, Mr. Anderson began to refer Social Security Disability Claims to the law offices of ROBERT J. DINGES & ASSOCIATES. Mr. Dinges agreed orally and later in writing through a letter dated June 15, 1992 authored by DONNA J. SANCRICCA, THAT Mr. Anderson's office would receive "33 1/3% of any attorney fees recovered in these cases." Mr. Dinges assigned Ms. Sancricca to work on the Anderson cases, because, admittedly, Mr. Dinges had no expertise in this area of the law and Ms. Sancricca had established such expertise.
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> The arrangement with Anderson worked well until a short time later when the relationship between Dinges and Sancricca changed . . . and DONNA SANCRICCA left her employment with the Dinges law firm. In leaving the Dinges firm, the parties agree that Sancricca took the Anderson files with her. Mr. Dinges and Mr. Anderson assert that an oral understanding was reached that Ms. Sancricca would take the files and be solely responsible for payment of the Anderson referral fees. Ms. Sancricca disputes this, but unconvincingly. Ms. Sancricca testified, on the one hand, that she took the Anderson files with the "expectation" that she would continue to receive referrals from Mr. Anderson in the future. She testified that she never discussed this "expectation" with Mr. Anderson. On direct and on cross examination, she asserted that she never took responsibility for payment of the referral fees, as that responsibility remained with Dinges, who had contracted with Anderson. But her statements ring hollow, because upon examination by the Arbitrator the following occurred:
>
> > Q. You take the files [the Anderson files], you know he's [Dinges] got a contractual obligation to Mr. Anderson. You didn't feel any obligation to Mr. Anderson at all regarding those files?
> >
> > A. When I left I felt I had an obligation to honor what the arrangement was with Mr. Dinges and Mr. Anderson.
>
> Thus, in her testimony Ms. Sancricca admitted her obligation to pay the referral fees. [Emphasis in original.]

Under the circumstances, where Anderson was looking to defendant to honor the fee agreement, the dispute was arbitrable under the contract. The circuit court did not err in enforcing the arbitration award in Anderson's favor.

II

Plaintiff next argues that, because the arbitration agreement did not expressly state that the parties consented to enforcing any resulting award in circuit court, and instead merely incorporated by reference the rules of the American Arbitration Association, the trial court erred in refusing to set aside the award. This issue was decided against plaintiff in her appeal from the circuit court's order compelling arbitration. See *Sancricca v Dinges*, unpublished opinion per curiam, issued April 16, 1996 (Docket Nos. 173671, 176897), reh den (7/24/96). Under the doctrine of the law of the case, this Court is precluded from reconsidering the issue unless and until that case is reversed by the Supreme Court. *Clemens v Lesnek (After Remand)*, 219 Mich App 245, 250; 556 NW2d 183 (1996).

III

Plaintiff next argues that defendants destroyed the arbitrator's jurisdiction by claiming that the employment contract—which contained the arbitration clause—was void *ab initio* and that they were entitled to compensation under the theory of *quantum meruit*. We disagree. The arbitrator rejected defendants' claim that plaintiff's failure to disclose certain earlier employment voided the contract. Further, the award of damages to defendants was based on contractual language which stated that all fees earned or received by plaintiff while employed by defendants' firm belonged to the law firm. Lastly, that a court may not have been able to award the remedy ordered by the arbitrator, such as *quantum meruit* in a breach of contract case, is not a ground for setting aside the award. MCR 3.602(J)(1); 8A Michigan Pleading and Practice, Alternative Dispute Resolution, § 62A.21, p 50.

IV

Finally, plaintiff argues that the trial court erred in refusing to set aside the award because the arbitrator exceeded his authority by rejecting plaintiff's claim under the fee-split provision of the contract, by rejecting her sex discrimination claim, and by ignoring a legal argument set forth in her response to defendants' arbitration brief, rather than her arbitration brief. However, plaintiff is essentially challenging the outcome of the arbitration on the merits, and has failed to show a material error of law but for which the award would have been substantially different. See *Gordon Sel-Way Inc, supra* at 496-497.

Affirmed.

/s/ Jane E. Markey
/s/ Kathleen Jansen
/s/ Helene N. White

[1] Defendants' cover letter to the American Arbitration Association, also dated November 18, 1993 and carbon copied to plaintiff, stated in pertinent part:

> I am also forwarding a copy of the Demand for Arbitration to the Indispensable Party, Herman J. Anderson. I am also forwarding to the American Arbitration Association a Consent to Arbitration dated June 24, 1993 signed by Herman J. Anderson on behalf of Anderson, Anderson & Associates.

[2] On the same date defendants filed a motion for more definite statement as to plaintiff's sexual discrimination claim.

[3] We note that plaintiff did state objections to the AAA's jurisdiction at the inception of defendant's demand for arbitration, but the objections had nothing to do with Anderson's participation.