

STATE OF MICHIGAN
COURT OF APPEALS

DANIEL HAUSER,

Plaintiff-Appellant,

v

KATHERINE HAUSER,

Defendant-Appellee.

UNPUBLISHED

November 17, 1998

No. 204511

Oakland Circuit Court

LC No. 94-488894 DM

Before: Jansen, P.J., and Holbrook, Jr. and MacKenzie, JJ.

PER CURIAM.

Plaintiff appeals as of right from the parties' judgment of divorce, contending that the trial court erred in failing to vacate the binding arbitration award which supplied the terms of the judgment. We affirm.

Plaintiff and defendant were married in 1978 and had three children, ranging in age from almost fifteen to nine at the time of the proceedings in this case. Plaintiff was employed as executive vice president of Palace Sports and Entertainment, Inc., earning approximately \$250,000 per year, plus a performance bonus and various fringe benefits. Defendant had been employed as a teacher for two years, until the birth of the parties' first child. She expected to receive her bachelor of science degree in nursing in late 1997. The arbitrator found that plaintiff's "continuous infidelity over a period of several years" caused the breakdown of the marriage.

The parties agreed to joint legal custody of the children and physical custody with defendant. The amount of spousal support and the division of marital assets went to arbitration. On April 8, 1997, the arbitrator issued a decision valuing the marital estate in excess of one million dollars. Defendant was awarded the marital home, a car, her IRAs, and certain bank accounts; the total value of these assets was almost \$621,000. Plaintiff was awarded the parties' remaining investments and accounts, valued at almost \$488,000, plus certain personal property.

The arbitrator found no need for defendant to receive permanent alimony, but noted that "[u]ntil such time as Mrs. Hauser completes her education and finds employment with hours consistent with her obligation to the children, she will be totally dependent upon her former husband for economic support."

Defendant was awarded lump sum spousal support of \$6,000 upon entry of judgment, followed by gradually reduced payments. Plaintiff was to pay defendant \$5,500 a month for the first year, \$5,000 a month for the second year, and \$4,000 a month until 2004. In addition, defendant was ordered to pay \$15,000 of defendant's attorney fees.

The arbitrator retained jurisdiction following the entry of his award so that the parties could respond. Plaintiff submitted several exceptions to the award, including an objection to defendant's post-hearing submission of a report prepared by financial planner Dorothy Bossung and a claim that the award failed to consider that defendant was employed at St. Joseph Mercy Hospital and had been briefly employed by Crittenton Hospital in 1996. In a supplemental award dated May 19, 1997, the arbitrator amended the original award in three respects not pertinent to this appeal. With respect to plaintiff's remaining exceptions to the award, the arbitrator found "no valid reason for changing the Arbitration Award." In reference to the Bossung report, the arbitrator stated that he "did not consider any of the evidence presented by the wife after the close of proofs and that the husband's concern in this regard is unfounded." Plaintiff subsequently asked the circuit court to set aside the binding arbitration on the ground that it was procured by defendant's fraud in failing to disclose her employment. The request was denied.

On appeal, plaintiff again argues that the arbitration award should have been vacated because it was procured by fraud. Specifically, plaintiff contends that if defendant disclosed that she had employment, the arbitrator could not have concluded that "[u]ntil such time as Mrs. Hauser completes her education and finds employment with hours consistent with her obligation to the children, she will be totally dependent upon her former husband for economic support," and, presumably, would not have fashioned the alimony schedule included in the arbitration award. While we cannot condone any nondisclosure, it is evident that the arbitrator was aware of defendant's employment when he entered the arbitration award. In addition, the arbitrator's supplemental award makes apparent his conclusion that defendant's wages provided virtually no relief from her status of being "totally dependent" on plaintiff for support. Plaintiff's counsel brought defendant's brief employment at Crittenton Hospital (which produced total gross income of \$800) to the arbitrator's attention more than a month before the original arbitration award was entered. Defense counsel informed the arbitrator of defendant's employment at St. Joseph Mercy Hospital – defendant was working two weekends each month at the gross pay rate of approximately \$9.00 per hour – before the arbitrator entered his award. Because the arbitrator was aware of defendant's nominal income at the time of the original award and found no reason to change the award when plaintiff specifically pointed out the income after the entry of the arbitration award, the circuit court did not err in concluding that there was no meaningful reason to vacate the award.

Plaintiff contends that the trial court should have conducted an evidentiary hearing to determine whether defendant defrauded the arbitrator. We reject this argument. Plaintiff raised his claim of fraud before the arbitrator, who implicitly rejected the claim by refusing to modify the spousal support schedule in the original award. Further, the authorities cited by plaintiff involve motions for relief from judgment, and not motions to vacate an arbitrator's award.

Plaintiff's claim that the arbitration award should have been vacated because it "apparently considered" the Bossung report is similarly without merit. The arbitrator specifically stated that the report was not taken into consideration. We will not second-guess that statement.

Plaintiff argues that the arbitrator's award was unreasonable and that his award of attorney fees to defendant was an abuse of discretion, suggesting that this Court review the merits of the arbitrator's decision. However, such a review is prohibited. A court may not review an arbitrator's factual findings or decision on the merits. *Byron Center Public Schools Bd of Ed v Kent Co Ed Ass'n*, 186 Mich App 29, 31; 463 NW2d 112 (1990); *Port Huron Area School Dist v Port Huron Ed Ass'n*, 426 Mich 143, 150; 393 NW2d 811 (1986). Because plaintiff failed to establish that the arbitrator's award was procured by fraud or incomplete information, or that the arbitrator improperly considered hearsay evidence submitted after the close of proofs, we are satisfied that the trial court did not err in entering a judgment of divorce based on the provisions in the arbitration award.

Affirmed.

/s/ Kathleen Jansen
/s/ Donald E. Holbrook, Jr.
/s/ Barbara B. MacKenzie