

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN STATE EMPLOYEES
ASSOCIATION,

UNPUBLISHED
November 30, 1999

Plaintiff-Appellee,

v

No. 214003
Ingham Circuit Court
LC No. 98-087849 CL

FAMILY INDEPENDENCE AGENCY,

Defendant-Appellant.

Before: Sawyer, P.J., and Hood and Whitbeck, JJ.

PER CURIAM.

Defendant appeals as of right from an order granting summary disposition in part and denying summary disposition in part pursuant to MCR 2.116(C)(4), (8), and (10) and remanding an arbitration award to a new arbitrator selected using the parties' contractual procedure in this arbitration case. We reverse.

This case arises out of a grievance filed by Michigan State Employees Association (MSEA) on behalf of fifteen members alleging that the employees were promised pay at a higher level than they subsequently received from Family Independence Agency (FIA). MSEA raised a subsequent, alternative argument that FIA incorrectly determined the grievants' compensation under the collective bargaining agreement between the parties. An arbitrator found the compensation calculations were correctly made, that equitable estoppel did not apply to the alleged misrepresentations, and that MSEA failed to bring forth evidence in support of its alternative theory. MSEA filed a petition to vacate the arbitration award that the circuit court granted. The court remanded the matter to the arbitrator for reconsideration because the court found that the grievants may have been entitled to placement at a higher level under the terms of the collective bargaining agreement. On remand, the arbitrator again determined the grievants were not entitled to be paid at a higher level because such placement was not authorized under the collective bargaining agreement or any pertinent rules. The arbitrator also found that MSEA failed to meet its burden of proof on the issue whether the agreement had been correctly implemented by FIA.

MSEA filed a petition to vacate the award on remand, to which FIA responded by filing a motion to dismiss and/or for summary disposition pursuant to MCR 2.116 (C)(4), (8), and (10). MSEA claimed that the arbitrator failed to properly answer the question posed to him by the court's prior order and the two questions originally stipulated to by the parties such that he was failing to carry out the duties of an arbitrator. FIA claimed that the court lacked subject matter jurisdiction because the dispute was a proper subject for arbitration and the arbitrator properly performed his duties, that there was no genuine issue of material fact, and that MSEA failed to state a claim because the collective bargaining agreement was complied with and the arbitrator fulfilled his duties under the agreement.

At a hearing on the parties' motions, while the trial court affirmed the arbitrator's award with respect to the misrepresentation claim against FIA, the trial court found the arbitrator failed to provide a sufficient rationale for his conclusion that the grievants were not entitled to be compensated at a higher level under the collective bargaining agreement. The court also determined that a remand to a new arbitrator, chosen pursuant to the parties' contractual selection process, was appropriate, with specific directions that the new arbitrator determine whether a particular provision of the bargaining agreement applied to the grievants' circumstances. The court crafted this remedy because it had already remanded the case back to the arbitrator once before. FIA then brought this appeal.

This Court reviews de novo a trial court's grant or denial of summary disposition. *Walker v Johnson & Johnson Vision Products, Inc*, 217 Mich App 705, 708; 552 NW2d 679 (1996). When reviewing a motion for summary disposition under MCR 2.116(C)(4), this Court must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law or whether the affidavits and other proofs show that there was no genuine issue of material fact. *Id.*

The arbitration in this case took place pursuant to the collective bargaining agreement between the parties and the common law thus controls. Under the common law, judicial review of an arbitration award pursuant to a collective bargaining agreement is very limited and a court may not review an arbitrator's factual findings or decision on the merits. *Port Huron Area School Dist v Port Huron Ed Ass'n*, 426 Mich 143, 150; 393 NW2d 811 (1986); *Lincoln Park v Lincoln Park Police Officers Ass'n*, 176 Mich App 1, 4; 438 NW2d 875 (1989). In fact, if the arbitrator in granting the award did not disregard the terms of his employment and the scope of his authority as expressly circumscribed in the contract, judicial review effectively ceases. *Lincoln Park, supra* at 4. In making this determination, the court may only decide whether the award "draws its essence" from the contract. *Id.* Furthermore, the fact that an arbitrator's interpretation of a contract is wrong is irrelevant. *Michigan State Employees Ass'n v Dep't of Mental Health*, 178 Mich App 581, 584; 444 NW2d 207 (1989).

In addition, where it clearly appears on the face of the award or the reasons for the decision stated that the arbitrators, through an error in law, have been led to a wrong conclusion, and that, but for such error, a substantially different award must have been made, the award and decision will be set aside. *Howe v Patrons' Mut Fire Ins Co*, 216 Mich 560, 570; 185 NW 864 (1921). At the same time, however, there is no requirement that a verbatim record of private arbitration proceedings be made or that the arbitrator specify findings of fact or conclusions of law. *Gordon Sel-Way, Inc v Spence Bros, Inc*, 177 Mich App 116, 127; 440 NW2d 907 (1989).

Furthermore, our Supreme Court has stated that, at common law, courts may vacate an arbitration award on the grounds of (1) fraud on the part of the arbitrator or the parties, (2) gross unfairness in the conduct of the proceedings, (3) lack of jurisdiction in the arbitrator, and (4) violation of public policy. *Detroit Automobile Inter-Ins Exchange v Gavin*, 416 Mich 407, 441; 331 NW2d 418 (1982). In construing *Gavin*, the Court has held that the proper role of a court in regard to determining whether arbitrators have exceeded their power is to examine whether the arbitrators have rendered an award that comports with the terms of the underlying contract between the parties. *Gordon Sel-Way, Inc v Spence Brothers, Inc*, 438 Mich 488, 496; 475 NW2d 704 (1991). In *Gordon Sel-Way*, however, the Supreme Court cautioned that an allegation that the arbitrators have exceeded their powers must be carefully evaluated in order to assure that this claim is not used as a ruse to induce the court to review the merits of the arbitrator's decision, and that courts may not substitute their judgment for that of the arbitrators. *Id.* at 497.

FIA argues that the arbitrator specifically answered the questions presented to him and that the lower court erred when it vacated the award for the sole reason that the arbitrator failed to provide an adequate rationale for his conclusion because an arbitrator is under no obligation to provide reasons for an award. FIA contends that the trial court is improperly seeking to control the final result of the arbitration. We agree.

Review of the record indicates that the arbitrator clearly did reach decisions on the questions posed. Furthermore, read in their entirety, the awards do contain the reasons for the arbitrator's decision. In fact, the trial court itself specifically stated at the hearing on MSEA's first petition to vacate the award that, "actually I can't say that the arbitrator exceeded his authority." Under these circumstances, the court should have stopped there. *Lincoln Park, supra* at 4.

Rather than concluding the matter, the lower court remanded the matter to determine an issue outside the scope of the original grievance. When the arbitrator then returned an award on remand that clearly concluded the grievants were not entitled to placement at a higher level under the terms of the collective bargaining agreement or other governing rules, the court found the arbitrator's decision to lack sufficient justification despite the fact that under this Court's decision in *Gordon Sel-Way, supra* at 127, there is no requirement that the arbitrator specify findings of fact or conclusions of law. An arbitrator simply has no duty to comply with specificity to the same technicalities as the judiciary. Here, the arbitrator did not fail in any such duty because no duty arose. It was error requiring reversal for the court to deny FIA's motion to dismiss for lack of subject matter jurisdiction.

Because the lower court lacked subject matter jurisdiction, this Court need not reach the merits of defendant's other issues.

Reversed.

/s/ David H. Sawyer

/s/ Harold Hood

/s/ William C. Whitbeck