

STATE OF MICHIGAN  
COURT OF APPEALS

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RONALD H. PORRITT,

Plaintiff-Appellant/Cross-Appellee,

V

VERONICA M. STRAUS,

Defendant-Appellee/Cross-  
Appellant.

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UNPUBLISHED

April 2, 2002

No. 227041

Livingston Circuit Court

LC No. 99-000752-DO

Before: Gage, P.J., and Hoekstra and Meter, JJ.

PER CURIAM.

In this divorce action, plaintiff appeals as of right from the trial court's denial of his motion to vacate an arbitration award of property. Defendant cross-appeals by right. We affirm.

Plaintiff and defendant married on June 27, 1992. The parties had no children together. In 1994, plaintiff's adult son was electrocuted. Plaintiff received a wrongful death settlement amounting to \$1,280,000. Plaintiff placed \$600,000 of this money into a trust in his name and placed \$400,000 into a trust in defendant's name. The parties subsequently separated and plaintiff filed a complaint for divorce.

The parties agreed to binding arbitration. The arbitrator found that the money plaintiff put into the trust in defendant's name constituted marital property. While equitably distributing the property the arbitrator awarded the \$400,000 to defendant. Plaintiff moved to vacate the arbitration award on the basis that the arbitrator had exceeded his powers by committing an error of law when he found that the money in defendant's trust was marital property, but the trial court denied plaintiff's motion.

Plaintiff now contends that the trial court erred in refusing to vacate the arbitrator's award. The parties to a divorce action may agree to submit their property distribution disputes to binding arbitration. *Dick v Dick*, 210 Mich App 576, 581-582; 534 NW2d 185 (1995). At the time the parties agreed to arbitrate, an arbitration agreement had to comply with the standards of the uniform arbitration act, MCL 600.5001 *et seq.*, and MCR 3.602.<sup>1</sup> *Dick, supra* at 588. In

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<sup>1</sup> Effective March 28, 2001, domestic relations arbitrations are subject to the domestic relations arbitration act, MCL 600.5070 *et seq.* This act, however, does not apply to the instant case.

accordance with MCR 3.602(J)(1), a court must vacate an arbitration award only under the following circumstances:

- (a) the award was procured by corruption, fraud, or other undue means;
- (b) there was evident partiality by an arbitrator appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing a party's rights;
- (c) *the arbitrator exceeded his or her powers*; or
- (d) the arbitrator refused to postpone the hearing on a showing of sufficient cause, refused to hear evidence material to the controversy, or otherwise conducted the hearing to prejudice substantially a party's rights.

The fact that the relief could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award. [Emphasis added.]

We will vacate an arbitration award on the ground that an arbitrator exceeded his powers through an error of law only when it clearly appears on the face of the award or in the reasons for the decision that the arbitrator was led to the wrong conclusion because of the error of law, and that but for such error the award would have been substantially different. *Dohanyos v Detrex Corp (After Remand)*, 217 Mich App 171, 176; 550 NW2d 608 (1996).

Plaintiff asserts that the arbitrator committed an error of law when it denominated the trust in defendant's name as marital property and awarded it to defendant. In distributing property, the first task is to determine whether the property is a marital asset or a separate asset. *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997). Unless a statutory exception applies, marital assets are divided among the parties, and each party leaves the marriage with their own separate property. *Id.* at 494. Marital assets are assets earned by either spouse during the marriage. *Byington v Byington*, 224 Mich App 103, 110; 568 NW2d 141 (1997).

We agree with plaintiff that when he first received the wrongful death settlement it constituted his separate property. The wrongful death settlement paid to plaintiff for the death of his son was similar to an inheritance, which usually is considered separate property. *Dart v Dart*, 460 Mich 573, 584-585; 597 NW2d 82 (1999). See also MCL 600.2922(3) (limiting those entitled to recovery in a wrongful death action to family members of the decedent, individuals to whom the decedent's estate would pass under the laws of intestate succession, or persons who are devisees under the decedent's will). We emphasize, however, that plaintiff did not keep the settlement separate. Instead, plaintiff placed a portion of the settlement money into a trust in defendant's name. Furthermore, the arbitrator specifically found that plaintiff did so for tax purposes and with the intent to "offer the Defendant wife comfort and security." Accordingly, the money then became marital property.

To the extent that plaintiff avers that the arbitrator mistakenly determined that he placed the settlement proceeds in trust in defendant's name for other than tax purposes, we reiterate the

established principle that “[c]laims that quarrel with a binding arbitrator’s factual findings are not subject to appellate review.” *Krist v Krist*, 246 Mich App 59, 67; 631 NW2d 53 (2001).<sup>2</sup> Similarly, we also decline to address plaintiff’s challenge to the arbitrator’s factual finding that “the Defendant wife used her efforts and income to help maintain the funds and assets received by the Plaintiff husband as a result of the wrongful death of his son,” and the consequent finding that the rental real estate owned by the parties, to which “both parties contributed from their sole trust accounts into joint accounts,” constituted marital property subject to equitable division.<sup>3</sup>

Plaintiff additionally argues that the arbitrator committed an error of law by admitting into evidence summaries of notes taken by the attorney whom the parties retained to establish the trusts.<sup>4</sup> We need not address the merits of plaintiff’s claim, however, because any error that occurred was harmless in light of the arbitrator’s explicit explanation that it would have reached the same decision “[r]egardless of [the attorney’s] notes.” *Krohn v Sedgwick James of Michigan, Inc*, 244 Mich App 289, 295; 624 NW2d 212 (2001), citing MCR 2.613(A) and MRE 103(a).<sup>5</sup>

Affirmed.

/s/ Hilda R. Gage  
/s/ Joel P. Hoekstra  
/s/ Patrick M. Meter

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<sup>2</sup> While plaintiff argues that the title of the trust in defendant’s name was not dispositive of the nature of this asset, we note that the arbitrator found more than the asset’s title, specifically plaintiff’s intent to provide comfort and support for defendant, indicating that the trust constituted marital property.

<sup>3</sup> We reject plaintiff’s related suggestion that the arbitrator disparately treated the parties’ assets by failing to characterize certain items purchased with the wrongful death settlement proceeds as plaintiff’s separate property. The arbitrator found that the property that plaintiff incorrectly characterizes as his separate property was purchased at least in part with the money in trust in defendant’s name, which we have already explained the arbitrator properly deemed marital property. Consequently, the items purchased with marital funds likewise constituted marital property.

<sup>4</sup> With respect to plaintiff’s characterization of the notes as hearsay, we note that we need not address this unpreserved claim that plaintiff raises for the first time on appeal. Plaintiff previously challenged the notes only on the basis that they contained privileged information. *Garavaglia v Centra, Inc*, 211 Mich App 625, 628; 536 NW2d 805 (1995) (explaining that issues raised for the first time on appeal ordinarily are not subject to review).

<sup>5</sup> We note that we do not address the issue raised by defendant on cross appeal. We find it unnecessary to address defendant’s assertion that the trust money constituted a gift in light of our conclusion that the arbitrator did not exceed its powers in finding that the trust in defendant’s name was marital property. We also do not address the ultimate distribution of the marital property, the equitable nature of which the parties do not specifically challenge.