

STATE OF MICHIGAN
COURT OF APPEALS

ESTATE OF AGNES A. DARDEN, Deceased,

Plaintiff-Appellant,

v

WORKING, INC.,

Defendant-Appellee.

UNPUBLISHED

October 29, 2002

No. 231606

Oakland Circuit Court

LC No. 98-010055-CB

Before: Smolenski, P.J., and Talbot and Wilder, JJ.

PER CURIAM.

Elaine Heitsch is the personal representative of plaintiff Estate of Agnes A. Darden. Plaintiff appeals as of right from a trial court order striking plaintiff's pleadings and entering a default judgment in favor of defendant, Working, Inc. We affirm.

I. Background Facts

In 1992 and 1994, plaintiff entered into two land contracts with defendant for the sale of two portions of property located in Oakland Township. The 1992 Land Contract involved the sale of a house and ten acres for \$375,000. The 1994 Land Contract involved the sale of twenty-seven acres of land and two separate lots for \$425,000. In 1996, the parties entered into two written agreements related to the two land contracts. Disputes arose over plaintiff's failure to deliver title insurance policies pursuant to the two land contracts, plaintiff's failure to execute an easement for the property conveyed under the 1992 Land Contract, plaintiff's alleged fraudulent misrepresentations and concealment of latent defects in the property, and defendant's alleged failure to pay interest and taxes. The parties entered into arbitration, and the arbitrator issued an amended arbitration award ("arbitration award") upholding the relevant contractual provisions of the parties' agreements, and granting defendant \$100,809.92 in damages.

Plaintiff filed the instant lawsuit in circuit court to vacate the arbitration award on the ground that the arbitrator exceeded his powers under MCL 600.5005. The circuit court struck two of the provisions in the arbitration award and confirmed the remaining provisions. Defendant filed two motions for partial summary disposition that were granted, effectively enforcing, in contract law, the provisions that were struck from the arbitration award. Over the course of the three-year litigation, the court entered orders to enforce the confirmed portion of the arbitration award and defendant's partial summary disposition, but Heitsch failed to comply with the orders. This resulted in three orders for Heitsch to show cause why she should not be

held in contempt of court. Heitsch failed to appear before the circuit court pursuant to the first two orders, and she successfully evaded forty-five attempts for personal service of the third order. Accordingly, the circuit court entered an order appointing a receiver to execute the court orders.

On appeal, plaintiff asserts that the arbitrator exceeded his powers under MCL 600.5005, and that the circuit court erred in modifying the arbitration award under MCR 3.602(K), erred in granting defendant's two motions for summary disposition, and abused its discretion when it issued the show cause orders against Heitsch and appointed a receiver.

II. The Arbitration Award

Plaintiff argues that the arbitration award should have been vacated and that the trial court erred in modifying the award. Plaintiff asserts that the arbitrator exceeded his authority under MCL 600.5005 because the subject of the arbitration was barred by MCL 600.5005, which prohibits arbitration of disputes concerning title to real property.

Whether a dispute is arbitrable is a question of law that this Court reviews de novo. *Madison Dist Public Schools v Myers*, 247 Mich App 583, 594; 637 NW2d 526 (2001). A court will vacate or modify an arbitration decision in limited circumstances, including where a clear error of law is evident on the face of the decision or where an arbitrator has exceeded his authority. *DAIIE v Gavin*, 416 Mich 407, 443-444; 331 NW2d 418 (1982); *Rembert v Ryan's Steak Houses, Inc*, 235 Mich App 118, 163-164; 596 NW2d 208 (1999); MCR 3.602(J)(1)(c). MCL 600.5005 bars the arbitration of disputes over ownership of real property. Any determination by arbitrators, where the parties do not agree upon the title, is beyond their jurisdiction. *In re Dissolution of Toynton-Brown Co*, 308 Mich 727, 736; 14 NW2d 550 (1944); *Gallagher v Kern*, 31 Mich 138, 139 (1875); *McFerren v B & B Investment Group*, 233 Mich App 505, 510; 592 NW2d 782 (1999).

In the instant case, the trial court confirmed paragraphs 1, 2(a) and (b), and 3 of the arbitration award. Paragraph 1 of the arbitration award provided defendant damages in the amount of \$100,809.92 for plaintiff's alleged fraudulent misrepresentation and concealment of latent defects in the property. The arbitrator deducted this amount from the remaining principal balance on the 1994 Land Contract. Paragraph 2 of the arbitration award required plaintiff to (a) execute and record an easement and restriction for the wetland areas, as provided by the 1992 Land Contract; and (b) deliver to defendant title insurance policies for the property that had been conveyed under the 1992 Land Contract, and the property described in the 1994 Land Contract. Paragraph 3 of the arbitration award denied plaintiff's claims of default, forfeiture and foreclosure.

The parties did not disagree about ownership of the subject property for purposes of MCL 600.5005. The record indicates that each party disputed only the contractual obligations of the other party under the land contracts and written agreements. From our review of the record, we conclude that the trial court properly confirmed paragraph 2(a) and (b) of the arbitration award.¹

¹ Because plaintiff does not challenge paragraphs 1 and 3 of the arbitration award, we do not
(continued...)

Plaintiff next argues that the circuit court erred in modifying the arbitration award when there was no motion before the court to do so pursuant to MCR 3.602(K). Plaintiff misstates the record. Defendant had, in fact, asked the trial court to modify the arbitration award as alternative relief. Therefore, plaintiff's argument is without merit.

Plaintiff next argues that the award should be vacated because the arbitrator failed to provide written findings of fact and conclusions of law. We disagree. "There is no requirement that a verbatim record be made of private arbitration proceedings, there are no formal requirements of procedure and practice beyond those assuring impartiality, and no findings of fact or conclusions of law are required." *Gavin, supra* at 428.²

III. The Circuit Court's Decision to Grant Defendant Partial Summary Disposition

Plaintiff argues that the circuit court erred in granting defendant partial summary disposition because there were genuine issues of material fact regarding a failure of mutual understanding regarding the conveyances, there was no legal description to convey the property, and defendant failed to pay consideration for any conveyance.

We review a trial court's grant or denial of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). This Court must review the record in the same manner as must the trial court to determine whether the movant was entitled to judgment as a matter of law. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998).

Defendant's two motions for partial summary disposition sought enforcement of the contract provisions which the trial court had struck from the arbitration award, namely, paragraphs 2(c) and (d). From our review of the record, we conclude that plaintiff failed to show any genuine issue of material fact to challenge partial summary disposition in favor of defendant. See, MCR 2.116(C)(10); *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

IV. The Appointment of a Receiver to Implement the Circuit Court's Orders

Plaintiff argues that the circuit court abused its discretion when it appointed a receiver to implement its orders, particularly inasmuch as plaintiff was not served with the orders to show cause and plaintiff could not follow the court orders in the absence of a legal description for the easement related to the wetland areas and for a conveyance of the property "south and west of the pond."

(...continued)

address them.

² Plaintiff's reliance upon *Rembert, supra*, is misplaced. Although this Court in *Rembert* held that the arbitral awards of statutory employment discrimination claims "must be in writing and contain findings of fact and conclusions of law," *Rembert, supra* at 166, the Court did not address whether other types of arbitral awards must be in writing and contain findings of fact and conclusions of law. On the authority of *Gavin, supra*, no such findings or fact or conclusions of law are required.

The decision of a trial court to appoint a receiver to implement its orders is reviewed for an abuse of discretion. *Wayne Co Jail Inmates v Wayne Co Chief Executive Officer*, 178 Mich App 634, 651; 444 NW2d 549 (1989). “Circuit judges, in the exercise of their equitable powers, may appoint receivers in all cases pending where appointment is allowed by law.” *Weathervane Window, Inc v White Lake Const Co*, 192 Mich App 316, 322; 480 NW2d 337 (1991); MCL 600.2926. “The phrase ‘allowed by law’ is not limited to situations where appointment of a receiver is provided for by statute.” *Weathervane Window, supra*. “It also refers to those cases where the facts and circumstances justify appointment of a receiver in order to afford equitable relief.” *Id.*, citing *Band v Livonia Associates*, 176 Mich App 95, 105; 439 NW2d 285 (1989). A court has the basic responsibility of enforcing its own orders and has considerable discretion in choosing the means to be employed. *Id.*

In the instant case, for about two years plaintiff failed to obey the circuit court’s orders to convey the easements and restrictions to the wetland areas under the 1992 Land Contract, to deliver a title insurance policy for the property conveyed under the 1992 Land Contract, to deliver a title insurance policy for the property described in the 1994 Land Contract, to convey property “south and west of the pond” to which plaintiff had received the benefit of the bargain, and to convey the 7.12 acres of land that the arbitrator had awarded defendant as damages pursuant to the parties’ arbitration agreement. The court repeatedly expressed its frustration that it had pleaded with and cajoled plaintiff’s counsel, who was also Heitsch’s husband, in an attempt to induce Heitsch to follow the court orders. At the second show cause hearing at which Heitsch failed to appear, the court asked plaintiff’s counsel to bring Heitsch before the court, and expressed its reluctance to find her in contempt. The record shows that the court’s pleadings with plaintiff’s counsel were ineffective because Heitsch successfully evaded forty-five attempts of personal service of the court’s third and final order to show cause. On March 24, 2000, the court entered an order stating that Heitsch had continuously refused to follow the court’s orders. Accordingly, the court appointed a receiver to implement all of its orders. In light of the circumstances and facts in this case showing that Heitsch failed to abide by the court orders, we find no abuse of discretion in the trial court’s appointment of a receiver to implement these orders.

Plaintiff argues that Heitsch was not personally served with the orders to show cause and that the court ignored her offer to execute and place in escrow the requested easements and conveyances. Plaintiff’s argument is without merit. The record shows that plaintiff’s counsel was served with the first two court orders to show cause, and Heitsch had knowledge of the third order to show cause, at least through her counsel and husband. There is nothing in the record to show that she made any offer to execute the easements and conveyances and place them in escrow with the court.

Plaintiff also argues that Heitsch was unable to convey the easement at issue “in the absence of a legal description for the easement.” The record shows that defendant hired plaintiff’s surveyor to prepare the required legal description. Plaintiff’s only two objections were that the copy of the legal description that was provided to her was illegible and that it lacked a map. When Heitsch subsequently received a legible copy, she argued that the legal description did not

conform to recording requirements. However, plaintiff's counsel failed to respond to the court's inquiries about the reasons that the legal description was nonconforming. Thus, plaintiff's argument is without merit.

Affirmed.

/s/ Michael R. Smolenski

/s/ Michael J. Talbot

/s/ Kurtis T. Wilder