

STATE OF MICHIGAN
COURT OF APPEALS

HANNAH BEACHUM,

Plaintiff-Appellee,

v

ALEX BEACHUM,

Defendant-Appellant.

UNPUBLISHED

December 14, 2023

No. 362895

Oakland Circuit Court

Family Division

LC No. 2019-878098-DM

Before: LETICA, P.J., and O'BRIEN and CAMERON, JJ.

PER CURIAM.

Defendant appeals by leave granted¹ the trial court's order granting plaintiff's motion to enforce the judgment of divorce's child support provision. In granting plaintiff's motion, the trial court determined that the issue of child support was subject to arbitration but placed limitations on the arbitrator's review. We affirm in part and vacate in part.

I. FACTUAL AND PROCEDURAL HISTORY

The parties entered a consent judgment of divorce, agreeing to arbitrate “[a]ny dispute over the calculation of child support upon receipt of [defendant’s 2020] income information” After defendant’s 2020 income information became available, plaintiff requested \$10,324 per month in child support. Defendant contested plaintiff’s calculation, and advised that the matter should proceed to arbitration. Instead, plaintiff moved to enforce the child support provision of the consent judgment of divorce.

The trial court determined that the parties’ agreement to “calculate child support based on the 2021 Michigan Child Support Formula [(MCSF)]” prohibited the arbitrator, David Mendelson, from deviating from the MCSF-consistent child support calculation advocated by plaintiff.

¹ *Beachum v Beachum*, unpublished order of the Court of Appeals, entered February 9, 2023 (Docket No. 362895).

Therefore, the trial court held that the parties' agreement to arbitrate necessarily did not include disputes over the MCSF's application to calculate the child support sum. Accordingly, the trial court limited the arbitration to addressing disputes over the calculation of individual factors incorporated into the MCSF, such as income attributed to plaintiff. The trial court later denied defendant's motion for reconsideration, holding the parties did not plainly state an intention to deviate from the MCSF in the consent judgment of divorce. We granted defendant's application for leave to appeal to address the scope of the arbitration.

II. ANALYSIS

Defendant contends the trial court erred by refusing to enforce the parties' agreement to submit "any dispute" over the child support payment to arbitration. We agree in part.²

"Whether a particular issue is subject to arbitration is . . . reviewed de novo . . . as is the interpretation of contractual language." *Altobelli v Hartmann*, 499 Mich 284, 295; 884 NW2d 537 (2016) (citations omitted).

Under MCL 691.1686(2), trial courts have the authority to decide whether an agreement to arbitrate exists, and, if so, whether the controversy is subject to arbitration under the terms of that agreement. The arbitrator's scope of authority depends on the terms of the parties' arbitration agreement. *Tinsley v Yatooma*, 333 Mich App 257, 262; 964 NW2d 45 (2020) (citation omitted). "Binding arbitration is appropriate to resolve . . . child support disputes . . ." *Harvey v Harvey*, 257 Mich App 278, 290; 668 NW2d 187 (2003), aff'd on other grounds 470 Mich 186 (2004); see also MCL 600.5071(c) (providing that parties to a divorce action may stipulate to binding arbitration regarding child support).

To determine the arbitrability of a matter, the court must examine (1) whether the parties' contract has an arbitration provision, (2) whether the disputed issue is arguably encompassed within the arbitration clause, and (3) whether the contract terms expressly exempt the dispute from arbitration. *Registered Nurses, Registered Pharmacists Union v Hurley Med Ctr*, 328 Mich App 528, 536; 938 NW2d 800 (2019) (citation omitted). Any dispute regarding the arbitrability of an issue should be resolved in favor of arbitration. *Id.* Here, the trial court correctly determined that the parties had an arbitration agreement in light of the plain language in the parties' settlement agreement and consent judgment of divorce. Rather, the parties disputed the scope of the arbitrator's review in light of the judgment terms and the disparity between the parties negotiated child support amount of \$3,500, and the calculation in light of defendant's income under the MCSF, an amount in excess of \$10,000. Further, defendant asserted that the \$3,500 amount, a downward deviation, was negotiated in light of other support and property agreements reached in the consent judgment.

² The trial court agreed that submission of the child support issue to the arbitrator was, to some extent, appropriate. But, it concluded that the arbitrator could not deviate from the MCSF and identified the financial information that would serve as the foundation for defendant's income.

“Because arbitration is a matter of contract, when interpreting an arbitration agreement, we apply the same legal principles that govern contract interpretation.” *Lichon v Morse*, 507 Mich 424, 437; 968 NW2d 461 (2021) (quotation marks and citations omitted); see also *Andrusz v Andrusz*, 320 Mich App 445, 452; 904 NW2d 636 (2017) (“Consent judgments of divorce are contracts and treated as such.”) (citation omitted). “Our primary task is to ascertain the intent of the parties at the time they entered into the agreement, which we determine by examining the language of the agreement according to its plain and ordinary meaning.” *Altobelli*, 499 Mich at 295 (citations omitted). “[T]he party seeking to avoid the arbitration agreement bears the burden of establishing that his or her claims fall outside the ambit of the arbitration agreement.” *Lebenbom v UBS Fin Servs, Inc.*, 326 Mich App 200, 211; 926 NW2d 865 (2018) (citation omitted). “Moreover, when deciphering whether plaintiff’s claims are covered by the parties’ arbitration clause, this Court is not permitted to analyze the substantive merits of plaintiff’s claims. Rather, if the dispute is subject to arbitration, the merits of the dispute are left to the arbitrator to decide.” *Id.* (quotation marks and citations omitted). “[W]hen an ambiguity may exist with regard to whether a specific matter falls within the scope of arbitration, that ambiguity is to be resolved in favor of submitting the matter to the arbitrator.” *Id.* at 209-210 (quotation marks and citation omitted).

The child support portion of the consent judgment of divorce contained the following provisions:

12. Child Support. Commencing February 1, 2021, Defendant Husband shall pay Plaintiff Wife \$3,500 per month in child support for the support of the parties’ one minor child, subject to the child support review addressed below.

13. Child Support Review. On or before March 15, 2021, Defendant Husband shall provide Plaintiff Wife with his 2020 income information . . . and the parties shall calculate child support based on the 2021 Michigan Child Support Formula retroactive to February 1, 2021 and an [sic] new [uniform child support order] shall enter as necessary. Any dispute over the calculation of child support upon receipt of Defendant Husband’s income information shall be arbitrated by David Mendelson.

We conclude the plain meaning of the phrase, “[a]ny dispute over the calculation of child support upon receipt of Defendant Husband’s income information shall be arbitrated by David Mendelson[.]” indicates the parties agreed that all disputes over the amount of child support are subject to arbitration. Specifically, the broad phrase, “calculation of child support,” includes both the analysis and calculation of the individual factors incorporated into the child support formula, along with the application of the formula itself and calculation of a final child support figure.

In the present case, defendant contested plaintiff’s calculation of child support, that produced a figure of \$10,324, asserting that this amount was inconsistent with the compromises the parties made in their settlement agreement. Because disputes involving the calculation of the amount of child support are subject to arbitration, and defendant protested plaintiff’s child support calculation, the trial court erred by limiting the parties’ submission of the child support dispute to arbitration as prohibiting consideration of any deviation from the MCSF. Even if the consent judgment’s language was ambiguous and did not clearly delineate whether defendant’s *specific*

dispute was subject to arbitration, the trial court was still obligated to let the parties arbitrate the issue. See *id.* (“[W]hen an ambiguity may exist with regard to whether a specific matter falls within the scope of arbitration, that ambiguity is to be resolved in favor of submitting the matter to the arbitrator.”) (quotation marks and citation omitted).

The trial court determined that disputes over an MCSF-consistent child support figure were, by necessity, outside of the scope of the arbitration agreement because the parties agreed to use the MCSF to calculate child support. Indeed, the parties’ consent judgment expressly provided that once defendant’s income information was available, the child support was to be calculated in accordance with the 2021 MCSF and retroactively applied.

The Court. [The consent divorce] judgment tells me what the support should be. The support should be what the formula amount would be and it even says that it’s retroactive to February 1, 2021. So, the only thing that would go to Mr. Mendelson for arbitration is if there’s a dispute about the factors that go into the calculation.

Consequently, the trial court concluded that a deviation from the MCSF was inappropriate for submission to arbitration because plaintiff’s proposed child support figure was consistent with the MCSF. The trial court explained it would not submit *that aspect* (the deviation) of the child support dispute to arbitration because the parties’ agreement to use the MCSF for child support calculations left Mendelson without the authority to deviate from a straight-forward application of the MCSF—which plaintiff conducted in reaching the \$10,324 child support figure.

But, an arbitrator may deviate from the MCSF when resolving a matter of child support if the parties have so agreed. See *Dick v Dick*, 210 Mich App 576, 582-583; 534 NW2d 185 (1995); see also MCL 600.5078(2).³ Further, simply agreeing to use the MCSF in calculating child support does not necessarily indicate the parties were prohibited from negotiating a deviation from the MCSF. Indeed, MCL 552.605 provides a process for parties using the MCSF to deviate therefrom:

(1) If a court orders the payment of child support under this or another act of the state, this section applies to that order.

(2) Except as otherwise provided in this section, the court shall order child support in an amount determined by application of the child support formula developed by the state friend of the court bureau as required in section 19 of the friend of the court act, MCL 552.519. The court may enter an order that deviates from the formula if the court determines from the facts of the case that application

³ We emphasize that the dispute over the origin of the \$3,500 child support figure is not pertinent to the scope of the parties’ arbitration agreement. See *Lebenbom*, 326 Mich App at 211 (holding neither the trial court nor this Court is permitted to analyze the substantive merits of a dispute reserved for arbitration).

of the child support formula would be unjust or inappropriate and sets forth in writing or on the record all of the following:

(a) The child support amount determined by application of the child support formula.

(b) How the child support order deviates from the child support formula.

(c) The value of property or other support awarded instead of the payment of child support, if applicable.

(d) The reasons why application of the child support formula would be unjust or inappropriate in the case.

(3) Subsection (2) does not prohibit the court from entering a child support order that is agreed to by the parties and that deviates from the child support formula, if the requirements of subsection (2) are met.

Thus, despite the parties' dispute regarding an intent to deviate, the issue should still have been arbitrated. See *Lebenbom*, 326 Mich App at 209-210 (“[W]hen an ambiguity may exist with regard to whether a specific matter falls within the scope of arbitration, that ambiguity is to be resolved in favor of submitting the matter to the arbitrator.”) (quotation marks and citation omitted). Whether Mendelson would find grounds to deviate from the MCSF was irrelevant to determining whether the dispute was subject to arbitration. See *id.* at 211 (“Moreover, when deciphering whether plaintiff’s claims are covered by the parties’ arbitration clause, this Court is not permitted to analyze the substantive merits of plaintiff’s claims. Rather, if the dispute is subject to arbitration, the merits of the dispute are left to the arbitrator to decide.”) (quotation marks and citations omitted).⁴

We affirm the trial court’s determination that the calculation of child support presents a

⁴ The parties disputed how the initial child support amount of \$3,500 was calculated. Plaintiff asserted that the amount was merely a “placeholder” for purposes of entering a consent judgment of divorce until defendant’s income could be determined. Plaintiff submitted that defendant proffered that his income would be approximately \$600,000 in light of the pandemic. But, when his financial information was eventually submitted to the trial court, his income exceeded \$2,000,000. Because the child support calculation was to be retroactively modified, plaintiff claimed that this supported her “placeholder” argument. In contrast, defendant asserted that the \$3,500 monthly child support award was calculated to account for other support and property distributions, including an increased spousal support award. The defense claimed that these issues were raised before Mendelson during settlement negotiations. Yet, defendant’s counsel acknowledged that he was not present for the mediation. No documentary evidence to support the parties’ respective theories was presented. And, in any event, these arguments do not alter the fact that the calculation of child support was expressly reserved as a subject matter for arbitration.

subject matter for arbitration. We vacate the trial court's order to the extent it precluded the arbitrator from determining any deviation in accordance with an alleged agreement by the parties or a statutory basis, MCL 552.605. No taxable costs, neither party having prevailed in full.

/s/ Anica Letica

/s/ Colleen A. O'Brien

/s/ Thomas C. Cameron