

STATE OF MICHIGAN
COURT OF APPEALS

JAMES CASLER,

Plaintiff-Appellant,

v

THOMAS VANNUCK,

Defendant-Appellee.

UNPUBLISHED

July 31, 2012

No. 304845

St. Clair Circuit Court

LC No. 11-000571-CZ

Before: TALBOT, P.J., and SERVITTO and M. J. KELLY, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order entering a money judgment on plaintiff's arbitration award. For the following reasons, we reverse and remand for further proceedings.

I. BACKGROUND

Plaintiff and defendant were business partners who suffered financial loss on a real estate venture, and defendant refused to cover his share of the losses. Their partnership agreement specified that the parties were to equally divide their gains and losses. Through negotiation, plaintiff was able to substantially alter the total amount owed to the lenders; the negotiated amount of approximately \$130,000 was to be repaid at the monthly rate of \$355.56 per month for 30 years at zero percent interest, contingent upon plaintiff's ability to timely repay the balance. If plaintiff fails to make the negotiated monthly payments, the debt will immediately increase by approximately \$93,000.00. Because defendant refused to cover his half of the losses, plaintiff submitted the dispute to arbitration with the American Arbitration Association ("AAA"), as required under the partnership agreement. Although the arbitrator awarded plaintiff an amount equal to half of his losses (\$65,000), the award did not specify anything regarding the method or terms of defendant's payment. The award also did not grant plaintiff arbitration costs, attorney fees, or interest. While defendant asked the arbitrator to clarify or reconsider his decision to include payment terms, the arbitrator denied on the grounds that he lacked the authority to do so.

Plaintiff timely filed a complaint with the court for entry of judgment on the arbitration award. Noting that defendant did not file a complaint with the trial court for modification of the award within 21 days of issuance, plaintiff moved for immediate disposition and entry of judgment on the award, including interest and attorney fees. Defendant responded—both in his affirmative defenses and in his response to plaintiff's motion—by asserting that the arbitration award was inequitable because defendant was not permitted to enjoy the same monthly payment

on the loans that plaintiff had negotiated with the lenders. Accordingly, he asked the trial court to exercise its equitable authority under MCL 600.5035 to modify the award and impose payment conditions equal to half of plaintiff's repayment obligation to the lenders (\$177.78 per month for 30 years at zero percent interest).

The trial court concluded that it had the equitable authority to modify the arbitration award to impose fair payment terms and granted defendant's request to impose the identical payment terms. When asked by plaintiff whether the court was finding that the arbitrator committed a substantial error of law, the court responded as follows:

The Court is actually not. The Court has reviewed that, that case [*Detroit Auto Inter-Ins Exch v Gavin*, 416 Mich 407; 331 NW2d 418 (1982)] and it finds it has some value, but the Court primarily is convinced that it does have the equitable authority under [MCL] 600.5035 to make this determination.

In the order of judgment, the trial court incorporated its findings and ordered (1) entry of judgment on the arbitration award in plaintiff's favor and against defendant in the amount of \$64,166.66 (the \$65,000 was offset by past payments); and (2) that defendant was to pay the judgment at \$177.78 per month for 362.5 months at zero percent interest. It is from this order that plaintiff now appeals.

II. CONSIDERATION OF INFORMAL MOTION

Plaintiff argues that defendant failed to comply with the procedural requirements of MCR 3.602(K)(1) and (2) and that the trial court therefore erred in modifying the arbitration award on the basis of a non-conforming request. We disagree.

This Court reviews a trial court's legal conclusions and statutory interpretations de novo. *Ligon v Detroit*, 276 Mich App 120, 124; 739 NW2d 900 (2007). Matters involving the enforcement of an arbitration award are also reviewed de novo. *Tokar v Albery*, 258 Mich App 350, 352; 671 NW2d 139 (2003).

MCR 3.602(K) permits a reviewing court to modify or correct an arbitration award as follows:

(1) A request for an order to modify or correct an arbitration award under this rule must be made by motion. If there is not a pending action between the parties, the party seeking the requested relief must first file a complaint as in other civil actions. A complaint to correct or modify an arbitration award must be filed no later than 21 days after the date of the arbitration award.

Because plaintiff filed a complaint for entry of judgment with the court within 21 days of the award, there was a "pending action" between the parties. Under the facts of this case, it was unnecessary for defendant to file a complaint and comply with the 21-day requirement in MCR 3.602(K)(1).

MCR 3.602(K)(1) and (2) still, however, require the party seeking modification of an arbitration award to move for relief within 91 days of the award. Although defendant did not

formally move for modification of the award, the relief defendant sought was to receive identical payment terms. This necessarily required a modification of the arbitration award. Defendant presented these arguments to the trial court within 91 days of the award by repeatedly invoking the trial court's equitable authority in his oral arguments, pleadings and briefs. Further, plaintiff was present at his own motion hearing and actually responded to defendant's arguments. The trial court was fully able to consider the arguments presented by the parties. Accordingly, defendant's conduct was sufficient to constitute an informal motion to modify the arbitration award. Because the procedural requirements were satisfied, the trial court properly considered defendant's motion to modify the award.

III. GROUNDS FOR MODIFYING AN ARBITRATION AWARD

Plaintiff next argues that the trial court erred by improperly invoking its equitable authority to modify the arbitration award without first finding an appropriate justification to do so, as set forth in MCR 3.602(K)(2). We agree.

This Court reviews a trial court's decision to modify or vacate an arbitration award *de novo*. *Tokar*, 258 Mich App at 352. Judicial review of an arbitration award is very limited; the focus of review should be resolving questions of law, with no deference to the trial court. *Washington v Washington*, 283 Mich App 667, 671; 770 NW2d 908 (2009) (citation omitted). An arbitrator's factual findings are not subject to judicial review. *Krist v Krist*, 246 Mich App 59, 67; 631 NW2d 53 (2001).

When a party challenges an arbitration award, the court has three options: (1) confirm the award; (2) vacate it if fraudulently or illegally obtained; or (3) modify the award to "correct errors that are apparent on the face of the award." *Krist*, 246 Mich App at 67. A court may only modify an arbitration award if (1) the arbitrator made an obvious miscalculation or evident mistake as to the persons or property described in the award; (2) the award pertained to a matter that was not presented to the arbitrator and the award modification would not affect the merits of the arbitrator's decisions on the issues presented; or (3) the form of the award was flawed or inadequate, but nevertheless did not affect the merits of the case. MCR 3.602(K)(2).

In light of the limited power of reviewing courts to scrutinize an arbitrator's decision, the trial court committed legal error requiring reversal by improperly exercising equitable authority to modify the arbitration award. Defendant did not establish any of the above grounds to modify the award. The record does not reflect any patent miscalculation in the award or misidentification of the property or parties subject to the award. Defendant also fails to offer any argument showing that the form of the award was flawed or inadequate. While the lack of repayment terms may be construed as a flaw in the form of the award, this term was on a matter subject to the arbitrator's discretion, which is not subject to judicial review. In *Cipriano v Cipriano*, 289 Mich App 361,378-379; 808 NW2d 230 (2010), this Court specifically found that the trial court committed error requiring reversal when it modified the repayment terms in an arbitration award by invoking its equitable authority without first finding a proper justification as established in MCR 3.602(K)(2). The same holds true here.

It is true that judicial intervention is also warranted in arbitration awards where arbitrators exceed the scope of their authority by committing substantial, prejudicial errors of

law. *Gavin*, 416 Mich at 435. According to the *Gavin* Court, to permit judicial action the error of law (1) must be apparent on the face of the award itself; (2) have been made in manifest disregard of the law; and (3) be “so substantial as to have governed the award, and but for which the award would have been substantially otherwise.” *Id.* at 443-444. However, defendant did not assert or prove that the arbitrator exceeded the scope of his authority in rendering the instant award.

The trial court explicitly refused to find that the arbitrator committed a facially apparent error of law that (1) was made in manifest disregard of the law; and (2) was so substantial that it changed the result. Although it could be argued that the arbitrator’s decision to exclude the favorable repayment terms was an error of law¹ because it effectively apportioned a larger share of the immediate repayment obligation onto defendant—in contravention of the partnership agreement requiring that all debts be equally divided by the parties²—the court explicitly declined to make a finding that the gravity of the error altered the result and was made in manifest disregard for the law. Under the circumstances of this case, the trial court granted itself unlimited discretion to modify the award, substituted itself for the arbitrator as the factfinder in the parties’ dispute, and found as a matter of fact that the terms of payment of the arbitration award should be modified, which greatly diminished if not effectively invalidated the parties’ agreement to arbitrate any disputes arising out of their partnership. Had the parties intended to increase the scope of judicial review over the arbitrator’s decision, they could have done so by providing appropriate language in their partnership agreement. See, *Collins v Blue Cross Blue Shield of Mich*, 228 Mich App 560, 566-567; 579 NW2d 435 (1998). They did not do so.

Defendant argues that it was unnecessary for the trial court to determine whether the arbitrator committed a manifest, substantial and prejudicial legal error of law because MCL 600.5035 granted the trial court broad discretion to invoke equitable authority over arbitration awards, in order to ensure that the award is fair and equitable to all parties. MCL 600.5035 states as follows:

Nothing contained in this chapter shall be construed to impair, diminish, or in any manner to affect the equitable power and authority of any court over arbitrators, awards, or the parties thereto; nor to impair or affect any action upon any award, or upon any bond or other engagement to abide an award.

MCL 600.5035 does not, however, by its specific language *grant* the court any equitable power. It merely does not diminish any equitable power that it may already have had. It does not, therefore, contradict the restrictions on the court contained in MCR 3.602(K).

¹ The interpretation and application of unambiguous contractual language presents a question of law—not fact. *Comerica Bank v Cohen*, 291 Mich App 40, 46; 805 NW2d 544 (2010).

² This is debatable because, as noted earlier, plaintiff’s favorable repayment terms were contingent on his ability to make the payments. In the event that the trial court’s modification stood and plaintiff failed to make a payment and his liability reverted to the original terms, he would shoulder a much larger repayment obligation on the debt than defendant.

Because the trial court expressly refused to find any error committed by the arbitrator, the trial court could not properly invoke equitable authority to modify the award by including defendant's requested repayment terms.

IV. ADEQUACY OF THE TRIAL COURT'S MONEY JUDGMENT

Plaintiff finally argues that the trial court's order of judgment violated the requirement that money judgments entered on arbitration awards have the same force and effect as other money judgments. We agree.

This Court reviews a trial court's factual findings for clear error, while its legal conclusions and statutory interpretations are reviewed de novo. *Ligon*, 276 Mich App at 124. Matters involving the enforcement of an arbitration award are also reviewed de novo. *Tokar*, 258 Mich App at 352.

MCR 3.602(L) states as follows with respect to arbitration awards:

The Court shall render judgment giving effect to the award as corrected, confirmed, or modified. The judgment has the same force and effect, and may be enforced in the same manner, as other judgments.

Plaintiff argues that the trial court's judgment on the arbitration award did not have the same force and effect as other money judgments because it did not include statutory interest or permit collection efforts. While the judgment does not specifically preclude collection efforts in the event of nonpayment, it specifically denied plaintiff any interest on the judgment. MCL 600.6013 generally requires the recovery of statutory interest on a money judgment in a civil action.

However, our Supreme Court has distinguished between preaward interest and postaward, prejudgment interest on an arbitration award. In *Holloway Const Co v Oakland County Bd of County Road Comm'rs*, 450 Mich 608, 612; 543 NW2d 923 (1996), our Supreme Court held that preaward damage claims including interest are considered to have been submitted to arbitration for resolution. Any interest accrued before and after the arbitrator issues the award "is not statutorily required when arbitrators do not award it as part of the prevailing party's compensation" because it is a matter subject to the arbitrator's discretion. *Id.* at 612, 618. However, the Court also stated that postjudgment interest (accruing on the date that the court enters judgment on the award), as well as postaward, prejudgment interest (accruing from the day in which the plaintiff filed the complaint with the court to enforce the arbitration award) is statutorily mandated under MCL 600.6013. *Id.* at 618.

Here, the judgment violated the statutory requirement that interest be awarded on all money judgments. Plaintiff cannot recover preaward interest because (1) he failed to ask for interest from the arbitrator, and (2) the arbitrator expressly refused to grant interest to plaintiff. However, plaintiff was entitled to interest on the award from the date that plaintiff filed his complaint with the court for entry of judgment on the arbitration award. Because the judgment did not comport with the statutory requirements for all money judgments, the court violated MCR 3.602(L) by custom crafting a judgment that lacks the same "force and effect" of other money judgments.

V. CONCLUSION

Since the trial court erred by modifying the award without justification and by refusing to award the statutorily-mandated interest on the award from the date plaintiff filed the complaint for entry of judgment, we reverse and remand for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Deborah A. Servitto
/s/ Michael J. Kelly