[Cite as *Domestic Linen Supply Co., Inc. v. New Beginnings Residential Ministry*, 2021-Ohio-2349.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

DOMESTIC LINEN SUPPLY CO., INC.,

Plaintiff-Appellee

v.

NEW BEGINNINGS RESIDENTIAL MINISTRY ET AL.,

Defendants-Appellants.

OPINION AND JUDGMENT ENTRY
Case No. 20 MA 0103

Civil Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 2020 CV 862

BEFORE:
Gene Donofrio, Cheryl L. Waite, Carol Ann Robb, Judges.

JUDGMENT:
Affirmed

Atty. Daniel Friedlander, Weltman, Weinberg & Reis Co., LPA, 965 Keynote Circle, Cleveland, Ohio 44131, for Plaintiff-Appellee and

Atty. Thomas Loepp, 3580 Darrow Road, Stow, Ohio 44224, for Defendants-Appellants.

Dated:

June 22, 2021

Donofrio, J.

{¶1} Defendants-appellants, New Beginnings Residential Ministry and Chappie Bair, appeal from a Mahoning County Common Pleas Court judgment confirming an arbitrator's award in favor of plaintiff-appellee, Domestic Linen Supply Co., Inc.

{¶2} Appellants entered into a Domestic Uniform Rental Agreement (the Agreement) with appellee. The Agreement included an arbitration provision. On May 15, 2020, appellee filed an application in the trial court for an order confirming an arbitration award in its favor.

{¶3} On July 6, 2020, appellants filed a motion to vacate, modify, or otherwise correct the arbitrator's award. Appellee filed a motion to strike appellants' answer arguing that it was untimely. It asserted that the arbitrator's award was delivered to the parties on March 27, 2020, and by statute appellants only had 90 days to file their motion. The trial court instructed the parties to further brief the issues.

{¶4} Appellants subsequently filed a response to appellee's motion to strike. They asserted that their deadline to file the motion to vacate, modify, or otherwise correct the arbitrator's award was extended by the Ohio Supreme Court's March 27, 2020 COVID-19 tolling order. Appellee filed a response asking the court to deny appellants' motion claiming appellants failed to state any ground for relief and case law is clear that a trial court cannot review the merits of an arbitration award.

{¶5} The trial court considered the motion and concluded that appellants' motion was timely filed in light of the COVID-19 tolling order. It then went on to consider the merits of appellants' motion to vacate, modify, or correct and of appellee's motion to confirm. The court found that appellants failed to establish fraud, corruption, material mistake, or clear evidence that the arbitrator exceeded his authority. Therefore, the court found there was no basis to vacate, modify, or otherwise correct the arbitrator's award. The court then confirmed the arbitrator's award and entered judgment in favor of appellee in the amount of $33,700 plus arbitration fees.

{¶6} Appellants subsequently filed a timely notice of appeal on September 18, 2020. They now raise a single assignment of error.

{¶7} Appellants' sole assignment of error states:

> THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN CONFIRMING THE AWARD OF THE ARBITRATOR WITHOUT A HEARING, AND WITHOUT TAKING ANY EVIDENCE.

{¶8} Appellants argue that when a party files a timely motion to modify or vacate an arbitrator's award the trial court must hold a hearing before it can confirm the award. Because they filed a timely motion to vacate the arbitrator's award and because the trial court confirmed the award without holding a hearing, appellants argue the trial court abused its discretion in confirming the award.

{¶9} The jurisdiction of the courts to review arbitration awards is narrow and limited pursuant to legislative decree. *Warren Edn. Assn. v. Warren City Bd. of Edn*., 18 Ohio St.3d 170, 480 N.E.2d 456 (1985). When a party to an arbitration award makes a timely motion pursuant to R.C. 2711.09 to confirm the award, the court must grant the motion unless a timely motion for modification or vacation has been made and cause to modify or vacate is shown. *Id*. at syllabus. The trial court is precluded from examining the actual merits upon which the arbitration award was based. *Ford Hull-Mar Nursing Home, Inc. v. Marr, Knapp, Crawfis & Assoc., Inc*., 138 Ohio App.3d 174, 179, 740 N.E.2d 729 (7th Dist.2000). Instead, it is limited to reviewing the record for fraud, corruption, misconduct, or improprieties of the arbitrator. *Russo v. Chittick*, 48 Ohio App.3d 101, 104, 548 N.E.2d 314 (8th Dist.1988), citing *Goodyear Tire & Rubber Co. v. Local Union No. 200*, 42 Ohio St.2d 516, 330 N.E.2d 703 (1975). The trial court is without authority to review the arbitrator's legal and factual conclusions. *Id.*

{¶10} Pursuant to R.C. 2711.09:

> At any time within one year after an award in an arbitration proceeding is made, any party to the arbitration may apply to the court of common pleas for an order confirming the award. Thereupon the court shall grant such an order and enter judgment thereon, unless the award is vacated, modified, or corrected as prescribed in sections 2711.10 and 2711.11 of the Revised Code. Notice in writing of the application shall be

> served upon the adverse party or his attorney five days before the hearing thereof.

Thus, while the statute does refer to a "hearing" it does not specify that the hearing must be an oral hearing as opposed to a non-oral hearing.

{¶11} In *White v. Fitch*, 8th Dist. Cuyahoga No. 102725, 2015-Ohio-4387, ¶ 11, the Eighth District held that the trial court was within its authority to deny the motion to modify or vacate the arbitration award without an oral hearing and sua sponte confirm the award. In so holding, it also noted that the appellant never requested an oral hearing and could have made such a request in her initial motion to modify or vacate the arbitration award or in her reply brief. *Id*.

{¶12} Appellants cite to a Second District case that they assert stands for the proposition that a hearing is mandatory. *MBNA Am. Bank, N.A. v. O'Brien*, 168 Ohio App.3d 137, 2006-Ohio-3757, 858 N.E.2d 1220 (2d Dist.). But while the trial court did hold a hearing in that case, the appellate court never held that the hearing was mandatory.

{¶13} Appellants also cite to a Tenth District case for the proposition that R.C. 2711.09's language is mandatory. *Hughes v. Hughes*, 10th Dist. Franklin No. 19AP-865, 2020-Ohio-5026, ¶ 10. But appellants neglect to mention that the Tenth District stated in *Hughes* that "'[t]rial courts are not required to conduct hearings before confirming arbitration awards.'" *Id*., quoting *Strnad v. Orthohelix Surgical Designs*, 8th Dist. Cuyahoga No. 94396, 2010-Ohio-6161, ¶ 37.

{¶14} Moreover, the Tenth District followed the Eighth District's holding in *White*, supra, finding that because the complaining party did not request an oral hearing and because the court conducted a status conference and a non-oral hearing "'utilizing the various memoranda filed in support and opposition to appellees' application to confirm the arbitration award and appellant's motion to vacate or modify the award'", an oral hearing on the motion to modify or vacate the arbitrator's award was not required. *Norman v. Kellie Auto Sales, Inc*., 10th Dist. Franklin No. 18AP-32, 2020-Ohio-4311, 158 N.E.3d 166, ¶ 20, reconsideration denied, 10th Dist. Franklin No. 18AP-322020-Ohio-6953.

{¶15} Thus, the case law on the subject does not require the trial court to hold an oral hearing before confirming an arbitrator's award pursuant to R.C. 2711.09.

{¶16} Additionally, in the present case, on August 7, 2020, the magistrate stated he would set the matter for non-oral hearing after the issues were fully briefed. Appellants could have, and did not, object to this decision. Nor did they request an oral hearing. Then on August 12, 2020, the magistrate put on an order setting the matter for a non-oral hearing with the trial court on the pending motions to be held August 25, 2020. Again, appellants could have, and did not, object to this order or request an oral hearing. Thus, appellants failed to object or request an oral hearing on two occasions when they were informed that the hearing would be non-oral.

{¶17} For these reasons, the trial court did not err in confirming the arbitrator's award without holding an oral hearing.

{¶18} Accordingly, appellants' sole assignment of error is without merit and is overruled.

{¶19} For the reasons stated above, the trial court's judgment is hereby affirmed.

Waite, J., concurs.

Robb, J., concurs.

For the reasons stated in the Opinion rendered herein, the sole assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.