

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Thomas G. Papps

Court of Appeals No. L-09-1260

Appellee

Trial Court No. CI0200705333

v.

Elizabeth Papps

DECISION AND JUDGMENT

Appellant

Decided: October 15, 2010

* * * * *

Joseph W. Westmeyer, Jr. and Joseph W. Westmeyer, III, for appellee.

Marilyn L. Widman and Amy L. Zawacki, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} Defendant-appellant, Elizabeth Papps, appeals the trial court's decision confirming an arbitration award that determined the ownership of certain real and personal property as between herself and plaintiff-appellee, Thomas G. Papps. For the reasons that follow, the judgment of the trial court is affirmed in part and reversed in part.

{¶ 2} Thomas G. Papps, in his second amended complaint, asserted claims: (1) alleging that Elizabeth Papps converted certain of his property; and (2) seeking an order quieting title to certain parcels of real estate. Elizabeth Papps filed a counterclaim: (1) asserting claims for fraud and conversion; and (2) seeking an order quieting title to certain parcels of real estate.

{¶ 3} After these two pleadings were filed, the parties filed a stipulation agreeing to submit their dispute to arbitration. The arbitrator heard the case and issued a decision determining the legal owner of the various real and personal properties at issue.

{¶ 4} Elizabeth subsequently filed a motion to vacate the arbitrator's award. The trial court denied this motion and, on September 17, 2009, issued a judgment entry confirming the award. It is from the September 17, 2009 judgment entry that Elizabeth Papps now appeals, raising the following single assignment of error:

{¶ 5} "THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO VACATE THE ARBITRATION AWARD AND INSTEAD GRANTING JUDGMENT TO APPELLEE IN CONFORMANCE WITH THE ARBITRATION AWARD."

{¶ 6} An appellate court's review of an arbitration award is confined to the order issued by the common pleas court to confirm, enforce, modify or vacate the award, and an abuse of discretion standard is applied. *Hogan v. Hogan*, 12th Dist. Nos. CA2007-12-137, CA2007-12-141, 2008-Ohio-6571, ¶ 17.

{¶ 7} R.C. 2711.01(A) relevantly provides that "any agreement in writing between two or more persons to submit to arbitration any controversy existing between them at the time of the agreement * * * shall be valid, irrevocable, and enforceable * * *." Id. Contrary to various arguments set forth by Thomas G. Papps, the stipulation agreement that was entered into by the parties is, in fact, covered under the statute, pursuant to the statute's clear and unambiguous language. See, also, *Curry v. Century 21 Kittyhawk Realty, Inc.* (May 15, 1991), 2d Dist. No. 90 CA 95 (applying R.C. 2711.01(A) to an arbitration agreement contained in a stipulation that was entered into by the parties following the commencement of litigation).

{¶ 8} R.C. 2711.01(B)(1) establishes an exception to the general rule that favors the enforceability of arbitration clauses in Ohio, *Murtha v. Ravines of McNaughton Condominium Assoc.*, 10th Dist. No. 09AP-709, 2010-Ohio-1325, ¶ 10, and provides that written arbitration agreements "do not apply to controversies involving the title to or the possession of real estate." R.C. 2711.01(B)(1); see, also, *Murtha*, supra.

{¶ 9} It is undisputed in this case that among the controversies decided by the arbitrator were controversies involving the title to or the possession of real estate. In deciding these controversies and subsequently awarding title to the parcels of real estate to the respective parties, the arbitrator clearly exceeded his authority, pursuant to R.C. 2711.01(B)(1), and, thus, abused his discretion. As to the remainder of the award, there is no allegation of error.

{¶ 10} For the foregoing reasons, appellant's assignment of error is found well-taken. The judgment of the Lucas County Court of Common Pleas is affirmed in part and reversed in part, and is remanded to the trial court for further proceedings consistent with this decision. Appellant and appellee are ordered to divide the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED IN PART
AND REVERSED IN PART.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.