

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SAN JUAN COUNTY,)	
)	DIVISION ONE
Respondent,)	
)	No. 67859-1-I
v.)	
)	UNPUBLISHED OPINION
NICHOLAS R. PADVORAC,)	
)	
Appellant.)	FILED: January 22, 2013
_____)	

Dwyer, J. — Nicholas Padvorac appeals the trial court’s order confirming an arbitration award and granting summary judgment in favor of San Juan County. He argues that the arbitrator erred in interpreting the parties’ CR 2A agreement and exceeded his authority. But Padvorac failed to challenge the arbitration award by filing a motion to vacate, modify, or correct the award. His arguments fail to appreciate the scope of judicial review of an arbitration award. The trial court properly granted the County’s motion to confirm and its motion for summary judgment. We affirm.

Nicholas Padvorac has owned a 10-acre parcel of property on Lopez Island since 1949. Approximately half of the parcel is comprised of wetlands. In 2007, San Juan County began negotiating with Padvorac in order to acquire two

easements. The County sought a road right of way easement in order to add shoulders to Fisherman's Bay Road. As part of this road safety improvement project, the U.S. Army Corps of Engineers required the County to construct a mitigated wetland. For this purpose, the County also sought to purchase a wetland mitigation easement.

In 2008, the County paid Padvorac approximately \$79,000 and Padvorac signed a possession and use agreement. This agreement allowed the County to commence the project, while Padvorac considered the County's offer to purchase property from him. The County was ultimately unable to acquire the easement it required through negotiations with Padvorac. Several months later, it filed a petition for condemnation. In the course of this litigation, the parties engaged in mediation and entered into a CR 2A settlement agreement. Under the terms of the agreement, Padvorac agreed to convey a 5-acre parcel to the County for \$270,000. The County's parcel would contain the mitigated wetland. The parties also stipulated to the dismissal of the County's condemnation action with prejudice.

As the County began preparing to close the transaction, a dispute arose regarding the purchase price. The County maintained that the \$270,000 purchase price included the \$79,000 the County had previously paid to Padvorac. Padvorac, however, insisted that the County had agreed to pay the full settlement figure in addition to the amount already paid. He points out that

the agreement does not explicitly state that the agreed amount is inclusive of the amount already paid by the County. The CR 2A agreement contained a provision providing that if the parties were unable to resolve “any issues that arise in implementing this Agreement,” those issues would be submitted to Judge Terry Lukens, who conducted the mediation. According to the agreement, Judge Lukens would first attempt to resolve the disagreement through further mediation, but if that failed, he would resolve it by arbitration.

The parties were unable to agree to a resolution of the purchase price dispute. Following arbitration, Judge Lukens issued a “Final Award.” Judge Lukens determined that the County owes an additional \$191,000 to Padvorac, not \$270,000. Judge Lukens reasoned that if Padvorac’s interpretation were deemed correct, he would receive duplicative payment. The decision further found that both pre- and post-mediation documents supported the County’s position that the parties understood that the purchase price incorporated the prior payment and further payments would be reduced by that amount.

After the arbitrator issued the award, Padvorac refused to execute the deeds necessary to transfer title to the property. Approximately six months after the arbitrator issued the award, the County filed a complaint for specific performance of the CR 2A agreement. Padvorac took the position that the arbitrator erred in interpreting the CR 2A agreement and that the arbitration award was not binding because it had not been filed and confirmed by a court.

The County filed a motion asking the court to confirm the arbitration award and grant it summary judgment on the specific performance claim. Following a hearing, the trial court entered an order confirming the arbitrator's award, and granting summary judgment.¹

II

On appeal, Padvorac challenges the substance of the arbitrator's award. He claims the arbitrator's decision is inconsistent with and contrary to the terms of the CR 2A agreement because the agreement does not specify any amounts to be deducted from the purchase price. Padvorac further contends that the arbitrator lacked the authority to arbitrate because: (1) there was no meeting of the minds regarding the effect of the funds paid by the County in 2008 and the underlying settlement agreement is void, (2) the arbitrator had no authority to arbitrate after the condemnation action was dismissed, and (3) the arbitrator had authority only to resolve issues of implementation, but, instead, exceeded his authority by altering material terms of the agreement.

Padvorac's arguments, however, fail to recognize that the scope of judicial review of the arbitrator's decision under the Washington uniform arbitration act, chapter 7.04A RCW, is extremely limited and does not encompass a review of the merits of the case. Boyd v. Davis, 127 Wn.2d 256,

¹ Padvorac also filed a CR 12(b)(6) motion to dismiss. The court apparently denied that motion, but the order before us on appeal does not specifically address Padvorac's motion.

267-68, 897 P.2d 1239 (1995). Washington courts accord substantial finality to the decision of an arbitrator. Davidson v. Hensen, 135 Wn.2d 112, 118, 954 P.2d 1327 (1998). Such review is controlled by statute which permits vacation of an arbitration award only upon specific grounds, enumerated in RCW 7.04A.230.²

A challenge to an arbitration award based on any of the statutory grounds must be brought within the three-month period set forth in RCW 7.04A.230(2).³ Dougherty v. Nationwide Ins. Co., 58 Wn. App. 843, 848, 795 P.2d 166 (1990) (interpreting predecessor statute). The three-month period in which a motion to vacate must be filed is considered a statute of limitations. Dougherty, 58 Wn. App. at 843. Its purpose “is to expedite finality of the arbitration process . . . consistent with the overall objective of speedy resolution of disputes.”

² Under RCW 7.04A.230, a court may vacate an arbitration award under the following circumstances:

- (a) The award was procured by corruption, fraud, or other undue means;
- (b) There was:
 - (i) Evident partiality by an arbitrator appointed as a neutral;
 - (ii) Corruption by an arbitrator; or
 - (iii) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;
- (c) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to RCW 7.04A.150, so as to prejudice substantially the rights of a party to the arbitration proceeding;
- (d) An arbitrator exceeded the arbitrator’s powers;
- (e) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under RCW 7.04A.150(3) not later than the commencement of the arbitration hearing; or
- (f) The arbitration was conducted without proper notice of the initiation of an arbitration as required in RCW 7.04A.090 so as to prejudice substantially the rights of a party to the arbitration proceeding.

³ If the motion is predicated on the ground that the award was procured by corruption, fraud, or other undue means, however, then a motion to vacate must be brought within 90 days after such ground is known or should have been known.

Dougherty, 58 Wn. App. at 849.

Padvorac did not file a motion to vacate the award. Where, as here, no motion to modify or correct is filed and the time to file such a motion has elapsed, the trial court must confirm the award if such a motion is presented. “After a party to the arbitration proceeding receives notice of an award, the party may file a motion with the court for an order confirming the award, at which time the court **shall** issue such an order unless the award is modified or corrected under RCW 7.04A.200 or 7.04A.240 or is vacated under RCW 7.04A.230.” RCW 7.04A.220 (emphasis added). While almost a year elapsed between issuance of the arbitrator’s award and the County’s motion to confirm, unlike the provisions governing motions to vacate and motions to modify or correct, the statute providing for confirmation specifies no limitation period for filing a motion to confirm. RCW 7.04A.220 provides no basis for the court to deny a motion to confirm where the award has not been modified, corrected, or vacated. See Pegasus Constr. Corp. v. Turner Constr. Co., 84 Wn. App. 744, 747-48, 929 P.2d 1200 (1997) (trial court’s authority upon review of a final arbitration award is derived solely from statute).

Padvorac concedes that the trial court had no authority to vacate, modify, or correct the award in the absence of such a motion. He insists, however, that the trial court should have denied confirmation of the award because the arbitrator exceeded his authority. But an arbitrator exceeds his or her authority

within the meaning of RCW 7.04A.230(d) only when the arbitration award exhibits an error of law. Broom v. Morgan Stanley DW, Inc., 169 Wn.2d 231, 236-37, P.3d 182, (2010). Such an error, if any, must be recognizable from the language of the award. Federated Servs. Ins. Co. v. Pers. Representative of the Estate of Norberg, 101 Wn. App. 119, 124, 4 P.3d 844 (2000). We will not ordinarily consider the evidence before the arbitrator. Davidson, 135 Wn.2d at 119. Nor may we extend our review to discern the parties' intent or interpret agreements underlying the merits of the dispute because such an act is essentially a trial de novo. Boyd, 127 Wn.2d at 261-62. Here, there is no error of law or misapplication of law evident on the face of the award. Assessing Padvorac's claims would require that we look behind the award and examine the parties' CR 2A agreement to determine whether they intended to allow the arbitrator to resolve the dispute over the purchase price. Padovac's fundamental contention on appeal, that the arbitrator's decision conflicts with the parties' agreement, would similarly require us to engage in an evaluation of the evidence. This is prohibited.

We affirm the trial court's order confirming the award and granting summary judgment in favor of the County.

Affirmed.

Deuy, J.

We concur:

Speermy, A.W.

Grosse, J