IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

RACHEL CONNIE PEREZ, *Plaintiff/Appellee*,

v.

JASMINE DANIELA VARGAS, *Defendant/Appellant*.

No. 1 CA-CV 15-0591
FILED 3-14-2017

Appeal from the Superior Court in Maricopa County
No. CV2013-011082
The Honorable James T. Blomo, Judge

REVERSED AND REMANDED

COUNSEL

Law Office of Jason A. Gould, PLC, Scottsdale
By Jason A. Gould
Counsel for Plaintiff/Appellee

Cavanagh Law Firm, Phoenix
By Brett T. Donaldson
Counsel for Defendant/Appellant

MEMORANDUM DECISION

Presiding Judge Peter B. Swann delivered the decision of the court, in which Judge Kent E. Cattani and Judge Donn Kessler joined.

S W A N N, Judge:

¶1 Jasmine Daniela Vargas appeals a judgment confirming an arbitration award in favor of Rachel Connie Perez. Vargas argues that the superior court abused its discretion by denying her motion to extend the time to "appeal" the arbitrator's award under the applicable rules of civil procedure. We agree and therefore reverse and remand.[1]

FACTS AND PROCEDURAL HISTORY

¶2 Perez was injured in a motor vehicle collision with a vehicle driven by Vargas. Perez filed a negligence action against Vargas, and the matter proceeded to compulsory arbitration.

¶3 On March 31, 2015, the Arbitrator filed a notice of decision, awarding Perez $20,009.05 in damages. Perez filed a statement of costs on April 10, and Vargas filed an objection thereto on April 13. On April 21, the Arbitrator filed an award in favor of Perez of $21,640.58, including taxable costs ("the Award"). The Arbitrator sent a copy of the Award to counsel via the AZTurboCourt electronic filing system.[2]

¶4 On May 21, 2015, Perez's counsel emailed Vargas's counsel, noting the time for appeal had passed and inquiring when Perez would receive her check. *See* Ariz. R. Civ. P. ("Rule") 77(a). On May 29, Vargas moved to extend the time to appeal based on lack of notice that the Award had been filed. *See* Rule 6(b). After full briefing, the superior court denied the motion.

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[1] Because we reverse on this basis, we need not address the remaining issues, including whether the court erred in awarding Perez post-judgment interest as of the date the Arbitrator filed his award.

[2] The mailing certificate indicated the Arbitrator also emailed a copy of the Award to counsel, but later he conceded it was sent only via AZTurboCourt.

¶5 Later, Perez moved for entry of judgment, and the superior court entered judgment on the Award. *See* Rule 76(c). Vargas moved for reconsideration. After full briefing and oral argument, the court denied the motion and reaffirmed its denial of the motion to extend time. The court also awarded $500 in attorney's fees and $48 in costs to Perez as a Rule 11 sanction. The court entered a final judgment, *see* Rule 54(c), and Vargas appealed.

DISCUSSION

¶6 Rule 76 governs the decision and award process in a compulsory arbitration. It provided,[3] in relevant part:

> Within ten days after completion of the hearing, the arbitrator shall:
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> . . .
>
> (4) notify the parties of the decision in writing (a letter to the parties or their counsel shall suffice); and
>
> (5) file [a] notice of decision with the court.
>
> Within ten days of the notice of decision, either party may submit to the arbitrator a proposed form of award or other final disposition, including any form of award for attorneys' fees and costs whether arising out of an offer of judgment, sanctions or otherwise, an affidavit in support of attorneys' fees if such fees are recoverable, and a verified statement of costs. Within five days of receipt of the foregoing, the opposing party may file objections. Within ten days of receipt of the objections, the arbitrator shall pass upon the objections and *file one signed original award or other final disposition with the Clerk of the Superior Court and on the same day shall mail or deliver copies thereof to all parties or their counsel*.

[3] Rules 72 through 77 govern the procedure for compulsory arbitration of disputes within the jurisdictional dollar amount. *Phillips v. Garcia*, 237 Ariz. 407, 412, ¶ 16 (App. 2015) (citation omitted); *see* A.R.S. § 12-133. The Rules were amended effective January 1, 2017. We apply the rules in effect during the proceedings below.

(Emphasis added.) Rule 77(a) provides that a party who has appeared and participated in an arbitration proceeding may appeal from an award "within 20 days after the award is filed." Rule 77(a). Rule 6(b) provides:

> When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion . . . upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b), 52(b), 59(d), (g) and (l), and 60(c) . . . .

¶7 Because rules 50, 52, 59 and 60 are not at issue in this appeal, Rule 6(b) afforded the court discretion to extend the time for appeal from arbitration. And because an appeal from arbitration is not a true "appeal," but a demand for trial de novo on law and fact, A.R.S. § 12-133(H), the restrictions on the court's discretion found in rules and cases bearing on appellate proceedings have no application. *Cf. Haroutunian v. Valueoptions, Inc.*, 218 Ariz. 541, 550–51, ¶¶ 27–28 (App. 2008) (holding in the appellate context that relief under Rule 6(b) does not require a showing of good cause or excusable neglect when the two prerequisites for relief under the rule have been met).

¶8 Section 12-133(H) provides: "Any party to the arbitration proceeding may appeal from the arbitration award to the court in which the award is entered by filing, *within the time limited by rule of court*, a demand for trial de novo on law and fact." (Emphasis added.) Accordingly, there is no statutory restriction on the superior court's discretion to permit an untimely "appeal" from an award when good cause exists. *See Riendeau v. Wal-Mart Stores, Inc.*, 223 Ariz. 540, 541–42, ¶¶ 6, 9 (App. 2010); *Decola v. Freyer*, 198 Ariz. 28, 34, ¶¶ 24–25 (App. 2000), *superseded in part by rule*, *as recognized in Sw. Barricades, L.L.C. v. Traffic Mgmt., Inc.*, 240 Ariz. 139, 142, ¶ 16 (App. 2016). The only restriction is that provided by rule, and Rule 6(b) provided a means for the court to extend the presumptive time here.

¶9 Having concluded that the superior court had the discretion to extend the time to appeal, we next consider whether it was required to exercise that discretion. In these circumstances, we conclude that it was.

¶10 The parties debate whether service of a copy of the Award via AZTurboCourt constitutes "mail or delivery" under Rule 76(a).[4] The requirement that the arbitrator "notify the parties of the decision in writing" in addition to filing a copy with the court clerk "is not merely to provide the parties the final award but to give them notice of its filing — the event that commences the countdown to appeal." *Guinn v. Schweitzer*, 190 Ariz. 116, 118 (App. 1997); *see also Decola*, 198 Ariz. at 31, ¶ 10 (explaining that the ability of a party to timely appeal from a compulsory arbitration award "obviously is hampered" if an arbitrator does not provide notice that the award has been filed). The record reflects that Vargas did not receive a copy of the Award via AZTurboCourt, and she therefore did not receive notice that the "countdown to appeal" had commenced.

¶11 Because Vargas did not have actual notice of entry of the Award, and the Arbitrator has conceded noncompliance with Rule 76(a), we can conceive of no just reason that the appeal from arbitration should be time-barred. Courts are afforded discretion in application of the Rules of Civil Procedure to ensure that the rules do not themselves detract from the fundamental fairness of the forum. The loss of a substantive right should not flow from the procedural mistake of another — here, the Arbitrator. Accordingly, we find that the court abused its discretion by denying the requested extension.

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[4] We agree with Vargas that the Arizona Supreme Court Administrative Order ("AO") 2014-27 does not apply to this case. AO 2014-27 applies to "service" of a paper under Rule 5(c). We interpret procedural rules using the principles of statutory construction. *State v. Campoy*, 220 Ariz. 539, 544, ¶ 11 (App. 2009). Our objective is to discern and give effect to the supreme court's intent in promulgating the rule, and if the language is clear on its face, we do not look to other factors to construe it. *Bergeron ex rel. Perez v. O'Neil*, 205 Ariz. 640, 646, ¶ 16 (App. 2003). Rule 76(a) requires the arbitrator to "notify the parties of the decision in writing it does not require "service" in accordance with Rule 5(c). Moreover, Perez misstates the record to the extent she suggests Vargas's counsel does not accept service via AZTurboCourt in violation of AO 2014-27.

CONCLUSION

¶12 For the foregoing reasons, we reverse the judgment and award of sanctions and remand for proceedings consistent with this decision. We award costs to Vargas upon compliance with ARCAP 21.

AMY M. WOOD • Clerk of the Court
FILED: AA