IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

CHESTER LEE MARKS, *Plaintiff/Appellant*,

v.

UNITED AIRLINE FLIGHT 1717, *Defendant/Appellee*.

No. 1 CA-CV 18-0030
FILED 11-15-2018

Appeal from the Superior Court in Maricopa County
No. CV2016-009544
The Honorable Connie Contes, Judge

AFFIRMED

APPEARANCES

Chester Lee Marks, Phoenix
Plaintiff/Appellant

Campbell, Yost, Clare & Norell, P.C., Phoenix
By Stephen C. Yost, Jeffrey McLerran, Kevin R. Myer
Counsel for Defendant/Appellee

MEMORANDUM DECISION

Presiding Judge James P. Beene delivered the decision of the Court, in which Judge Michael J. Brown and Judge James B. Morse Jr. joined.

B E E N E, Judge:

¶1 Appellant Chester Lee Marks ("Marks") challenges the superior court's entry of judgment on a compulsory arbitration award denying him relief for his claims alleging a rough landing. We affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Marks sued "United Airline Flight 1717" alleging that he had suffered injuries in a "rough landing" and seeking $1.5 million in damages. Marks filed a certificate of compulsory arbitration stating that the case was not subject to compulsory arbitration under Arizona Rules of Civil Procedure ("Rules") 72-77.[1]

¶3 Marks filed a "Proof of Services" on August 15, 2016, showing attempted service of the complaint, summons, and certificate of compulsory arbitration on United Airlines ("United") and asking the superior court to "allow him to proceed further without any more process attempts of services." Four days later, Marks applied for the entry of default and moved for the entry of default judgment. United answered the complaint on September 12, 2016, without specifically objecting to insufficient service of process and separately certified that the case was not subject to compulsory arbitration.

¶4 Marks filed a "Request for Arbitrator and Hearing" shortly after the superior court issued a standard 150-day order, stating that he would "agree to an arbitrator appointee in [this] matter." United opposed Marks' request, reiterating its position that the case was not subject to compulsory arbitration. The court, having not seen United's response, treated Marks' "Request" as "an unopposed amendment to the certificate that [he] filed previously . . . meaning that he is not seeking a money judgment that exceeds $50,000.00," and referred the case to compulsory arbitration. Neither side objected to the referral.

¶5 The case proceeded to a compulsory arbitration hearing. There, Marks contended that United was "never . . . served . . . with the COMPLAINT, SUMMON[S], and Certificate of Compulsory Arbitration documents" and that United therefore "should not be allow[ed] to proceed . . . in court." The arbitrator ruled for United and issued his award on

[1] We cite to the current versions of the Rules absent significant revisions pertinent to this case.

August 8, 2017. Marks did not object to the award, and the court entered judgment on it on November 22, 2017.

¶6 Marks filed a notice of appeal challenging the superior court judgment. This Court determined the notice of appeal was premature because the judgment was not final under Rule 54(c). The superior court entered a final judgment on March 26, 2018, and Marks filed a second notice of appeal.

JURISDICTION

¶7 United contends Marks' failure to appeal the arbitration award to superior court deprives us of jurisdiction. Ariz. R. Civ. P. 77(a), (d); *see also* Ariz. Rev. Stat. ("A.R.S.") § 12-133(H) ("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."). We have an independent duty to examine whether we have jurisdiction. *Riendeau v. Wal-Mart Stores, Inc.*, 223 Ariz. 540, 541, ¶ 4 (App. 2010).

¶8 United contends Marks was not aggrieved by the final judgment because he did not appeal the award to superior court, which allowed United to obtain the judgment under Rule 76(d). *See* ARCAP 1(d); *see Chambers v. United Farm Workers Org. Comm., AFL-CIO*, 25 Ariz. App. 104, 107 (App. 1975) ("[A] party to the action may not appeal from a judgment or order unless he is 'aggrieved' by the judgment or order."). A party is aggrieved by a judgment if it denies him "some personal or property right." *McGough v. Ins. Co. of N. Am.*, 143 Ariz. 26, 29 (App. 1984) (quoting *In re Roseman's Estate,* 68 Ariz. 198, 200 (1949)). Marks was aggrieved by the judgment because it denied relief for his tort claims. We therefore have jurisdiction over his appeal. *See* A.R.S. § 12-2101(A)(1).

DISCUSSION

¶9 While Marks' failure to appeal the award to superior court does not deprive this Court of jurisdiction, it does serve as an acceptance of the arbitrator's resolution of the issues raised therein. *Schwab Sales, Inc. v. GN Const. Co., Inc.*, 196 Ariz. 33, 36, ¶ 7 (App. 1998). A party to an arbitration proceeding may appeal from the arbitration award by filing a notice of appeal within 20 days of the award. *See* A.R.S. § 12-133(H); ARCAP 77(b). Marks failed to file this notice; thus, we conclude Marks waived his contentions that (1) the arbitrator erred by finding United not liable for "wanton negligence," and (2) the arbitrator disregarded his

"allegations pertaining to deprivations of his fundamental constitutional rights" under the Fifth and Fourteenth Amendments.

¶10 Marks raises one issue that does not arise out of the compulsory arbitration and therefore is not waived. He contends United "cannot proceed in the court . . . because [it] had not [been] served." On that basis, he contends the "judge, attorney, [and] arbitrator . . . secure[d] a wrongful . . . judgment" against him and that United's counsel acted fraudulently by "participating in the arbitration."

¶11 Rule 4 "requires service of process in order to notify all those interested of an impending litigation." *Ronan v. First Nat'l Bank of Ariz.*, 90 Ariz. 341, 346 (1962); *see also* Ariz. R. Civ. P. 4. But strict compliance with Rule 4 is not necessary if the court has acquired jurisdiction over the receiving party and that party receives actual, timely notice of the improperly-served pleading and its contents. *Kline v. Kline*, 221 Ariz. 564, 570, ¶ 21 (App. 2009).

¶12 Here, United consented to jurisdiction by answering Marks' complaint without objecting to improper service. *See Ariz. Dep't of Econ. Sec. v. Burton*, 205 Ariz. 27, 29, ¶ 8 (App. 2003) ("[A]ny action on the part of a party except to object to personal jurisdiction that recognizes the case as in court will constitute a general appearance."); *Montano v. Scottsdale Baptist Hosp., Inc.*, 119 Ariz. 448, 452 (1978) ("It is a rule of ancient and universal application that a general appearance by a party who has not been properly served has exactly the same effect as a proper, timely and valid service of process."). Marks cites no authority holding that a party who has not been properly served cannot choose to appear, waive service defects, and defend its interests. *See Austin v. State ex rel. Herman*, 10 Ariz. App. 474, 476 (App. 1969) ("For a judgment to be valid and binding the party affected must have been legally serve[d] with process *or must have voluntarily appeared.*") (emphasis added). Marks' admission to failure to effect proper service thus did not preclude United from appearing in the case or participating in the arbitration hearing.

CONCLUSION

¶13 We affirm the judgment. United may recover its taxable costs incurred on appeal upon compliance with ARCAP 21.

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