IN THE COURT OF APPEALS OF IOWA

No. 7-396 / 06-0488
Filed October 12, 2007

ARTHUR W. RENANDER,
Plaintiff-Appellant,

vs.

C. ALLAN POOTS,
Defendant-Appellee.

Appeal from the Iowa District Court for Johnson County, Patrick R. Grady, Judge.

Plaintiff appeals a district court judgment denying his applications to vacate arbitration awards. **AFFIRMED.**

Davis L. Foster of Foster Law Office, Iowa City, for appellant.

Robert E. Konchar and Sasha L. Monthei of Moyer & Bergman, P.L.C., Cedar Rapids, for appellee.

Heard by Zimmer, P.J., Eisenhauer, J., and Schechtman, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

ZIMMER, P.J.

Arthur Renander appeals a district court judgment denying his applications to vacate arbitration awards. We affirm the judgment of the district court.

I. Background Facts and Proceedings.

This is the third appeal in a continuing saga involving the parties' rights to a certain parcel of real estate once owned by High Country Development (High Country). *See Poots v. High Country Dev. Co.*, No. 02-0555 (Iowa Ct. App. April 30, 2003); *Renander v. Shoemaker*, No. 97-0583 (Iowa Ct. App. Feb. 23, 1999). The parties' dispute began in May 1995 when C. Allan Poots entered into an agreement with High Country to purchase property located near his existing nine-hole golf course and residential development for a proposed expansion. Renander filed a lawsuit against High Country alleging he had an ownership interest in the property. He claimed Poots's planned development infringed on his agreement with High Country that he would have golf course frontage. Poots thereafter filed suit against High Country seeking specific performance of the May 1995 purchase agreement. Both parties intervened in the other's lawsuit.

In April 1999 Renander went to Poots's home in an attempt resolve the land dispute. Renander alleged Poots assaulted him by brandishing a firearm at him in a threatening manner. Poots was charged with assault with a dangerous weapon. As a part of the criminal proceedings, the parties agreed to engage in victim-offender mediation.

Renander and Poots participated in victim-offender mediation on August 11, 1999. Richard Calkins was their mediator. The mediation resulted in a "Settlement Agreement," which provided Renander would purchase Poots's

"interest and title" in the High Country property for $1 million. Renander agreed to pay "$100,000 thirty days from this date or upon the signing of the purchase agreement." The parties also agreed

> to submit any dispute arising under this agreement or any dispute arising between them to binding arbitration. The parties agree that Richard M. Calkins will be the arbitrator and his decision on any matter submitted to him will be final, binding, and nonappealable. Costs of arbitration will be split equally between the parties.

The parties were unable to bring the terms of the August 11, 1999, settlement agreement to fruition despite engaging in negotiations with one another and High Country throughout 1999 and 2000. In June 2000 Renander and Poots met with Calkins again and entered into a second "Settlement Agreement," which contained the same provision regarding arbitration. The parties continued to have difficulties completing their transaction. Poots accordingly requested an arbitration hearing. On September 26, 2000, Renander, Poots, and their attorneys met with Calkins in order to arbitrate their dispute. However, the parties agree a formal arbitration hearing never took place. Instead, they engaged in two days of what was "more akin to mediation" with Calkins. The parties adjourned on September 27, 2000, believing they were close to reaching a resolution.

On December 28, 2000, Poots informed Calkins in writing he had been unable to achieve a final agreement with Renander "despite periodic negotiations since" September 27. He requested Calkins "enter an arbitration decision pursuant to the parties' agreements." Renander responded to Poots's letter on January 25, 2001. Both parties' letters to Calkins set forth a history of the dispute and explained their respective positions and desired relief in detail. Each

party contemplated Calkins might need to hear additional arguments or testimony in order to render a final decision.

Calkins, however, entered an "Arbitration Award" on January 29, 2001, without hearing additional arguments or testimony. He determined Renander breached the August 11, 1999 and June 14, 2000 settlement agreements by failing to pay Poots as required by the agreements. He accordingly declared the settlement agreements "null and void" and concluded Renander had no claim to Poots's "right, title, or interest" in the High Country property. Finally, he awarded Poots "one-half of the interest charges after July 1, 2000, as provided in the June 14, 2000, agreement" and denied Poots's claims for damages and attorney fees.

Renander requested that Calkins reconsider the decision, alleging he failed to consider Renander's January 25, 2001 letter. Calkins acknowledged Renander's letter and his arbitration decision "crossed in the mail." He accordingly entered an "Amended Arbitration Award" on February 19, 2001, and amended his original decision by denying "all claims of . . . Poots for damages, interest, and attorney's fees." Both parties requested Calkins reconsider the "Amended Arbitration Award." On March 14, 2001, Calkins entered a "Reconsideration of Amended Arbitration Award" denying Renander's claims "that an award was entered without a full hearing." Calkins stated he believed the parties were presented with "more than adequate opportunity . . . to make the arguments they wished and offer the evidence they did."

On April 19, 2001, High Country transferred title to the subject property to Renander subject to Poots's claims to the property. Renander then filed a

declaratory judgment action in district court on April 25, 2001, requesting a determination that Poots breached the parties' settlement agreements rendering them "null and void," a vacation of the arbitration awards, and a declaration of Renander's "rights and status . . . in the High Country property." Renander also filed a separate tort action against Poots seeking compensatory and punitive damages for Poots's alleged assault of Renander on April 27, 1999. Finally, Renander filed an "Application to Vacate Arbitration Awards" contemporaneously with the two petitions.

Poots moved to compel arbitration and stay proceedings. The district court granted his motion on August 15, 2001, finding a "valid and enforceable arbitration agreement" existed between the parties pursuant to Iowa Code section 679A.2 (2001). The court ordered that the arbitration awards "shall be enforced" and "any disputes not disposed of by the award shall be submitted to the arbitrator." Renander's subsequent motion to disqualify Calkins as the arbitrator was denied by the district court.

The case proceeded to arbitration. An arbitration hearing was held on July 17-18, 2002, where the parties were allowed to present "newly discovered evidence" and evidence concerning Renander's allegations of fraud and misrepresentation. Calkins entered a "Ruling on Motion for Reconsideration Based on Fraud and Newly Discovered Evidence" on July 22, 2002, rejecting Renander's claims of fraud and misrepresentation and finding "there is no newly discovered evidence which is germane to the issues at hand."

The parties returned to district court where Renander continued his efforts to vacate the arbitration awards. The district court determined "substantial

judicial resources may be saved by making a determination of the validity of the arbitration agreement prior to trial on the declaratory judgment award." On January 3, 2006, the district court entered an order denying the applications to vacate, finding "both parties received a fundamentally fair airing of their dispute as contemplated by their valid agreement to arbitrate. Neither the contract nor Iowa Code Chapter 679A was violated." The court accordingly confirmed the arbitration awards.

Renander filed a "Motion to Correct or Expand Ruling" pursuant to Iowa Rule of Civil Procedure 1.904(2) requesting the court to "address the impact of its Ruling" on the declaratory judgment and assault actions. The district court denied the motion, stating "The Court's denial of Renander's Application to Vacate the Arbitration Award is a denial of all the grounds asserted by Renander, including the statutory grounds under Iowa Code Section 679A.12." The court then entered judgment on the arbitration awards.

Renander appeals, claiming the district court erred in denying his applications to vacate the arbitration awards. He further claims the district court erred in denying his petition for declaratory judgment and "in denying his civil action claim for damages from the assault on him by Poots."

II. Scope and Standards of Review.

A party may appeal a district court order confirming or entering judgment on an arbitration award pursuant to Iowa Code sections 679A.17(1)(c) and (f). Section 679A.17(2) provides that we review the appeal of an arbitration award "in the manner and to the same extent as from orders or judgments in a civil action."

Our review is therefore for correction of errors at law. *Ales v. Anderson, Gabelmann, Lower & Whitlow, P.C.*, 728 N.W.2d 832, 839 (Iowa 2007).

III. Discussion.

A. Validity of Arbitration Awards.

Arbitration is viewed favorably as an alternative to civil litigation because it "avoids the expense and delay generally associated with traditional civil litigation." *$99 Down Payment, Inc. v. Garard*, 592 N.W.2d 691, 694 (Iowa 1999). "Thus, with some exceptions, our law recognizes written agreements to submit a controversy to arbitration to be valid." *Id.*; *see also* Iowa Code § 679A.1. Our law additionally indulges every reasonable presumption in favor of the legality of arbitration awards. *Humphreys v. Joe Johnston Law Firm, P.C.*, 491 N.W.2d 513, 514 (Iowa 1992). Judicial involvement in arbitration is thus "very limited" because allowing "courts to 'second guess' an arbitrator . . . would nullify the very advantages of arbitration." *$99 Down Payment*, 592 N.W.2d at 694.

Iowa Code chapter 679 regulates arbitration in Iowa and reflects the limited judicial involvement in arbitration. Once an arbitration award has been issued, a party may apply to the district court to confirm, vacate, or correct the award. *See* Iowa Code §§ 679A.11-13. Section 679A.12 sets forth specific circumstances for vacation of an arbitration award. "The fact that the relief awarded could not or would not be granted by a court of law or equity is not grounds for vacating . . . the award." *Id.* § 679A.12(2); *see also Ales*, 728 N.W.2d at 839. "As long as an arbitrator's award does not violate one of the

provisions of section 679A.12(1), we will not correct errors of fact or law." *Ales*, 728 N.W.2d at 839.

Renander first argues the arbitrator's awards violated section 679A.12(1)(e) because the awards were in entered in the absence of a valid arbitration agreement. We do not agree. Section 679A.12(1)(e) allows an arbitration award to be vacated by the district court where "[t]here was no arbitration agreement, the issue was not adversely determined in proceedings under section 679A.2, and the party did not participate in the arbitration hearing without raising the objection." The district court correctly refused to vacate the awards under this ground because the issue of whether there was a valid arbitration agreement had been adversely determined by the district court in proceedings under section 679A.2.[1]

Renander next argues the district court should have vacated the arbitration awards pursuant to section 679A.12(1)(c) because Calkins exceeded "the scope of his contractual obligations" by issuing an arbitration award "absent an arbitration process and contrary to the provisions of Iowa Code 679A.5." This argument is essentially an attack under section 679A.12(1)(d), which provides an award shall be vacated if the arbitrator "refused to hear evidence material to the

[1] Renander argues the district court incorrectly concluded it was bound by its "prior holding" entered on August 15, 2001, regarding the validity of the parties' arbitration agreements under the "law of the case" doctrine. The district court rulings Renander is appealing from did not rely on the law of the case doctrine in determining the arbitration awards could not be vacated under section 679A.12(1)(e). We accordingly reject this argument.

controversy, or conducted the hearing contrary to the provisions of section 679A.5, in a manner which prejudiced substantially the rights of a party."[2]

Renander initially asserts Calkins refused to hear evidence and legal arguments on the definition of "'title' in land conveyance agreements," which he urges "mean[s] 'marketable title.'" The record does not support this assertion. The twenty-two page letter written by Renander on January 25, 2001, presented evidence and arguments on the issue of whether the parties' agreements required Poots to deliver "marketable title" to the High Country property to Renander. Calkins considered and rejected this evidence in the "Amended Arbitration Award." Calkins also allowed Renander to present extensive evidence and arguments on the title issue at the arbitration hearing held in July 2002, even though the hearing was limited to the issues of "fraudulent misrepresentations" and newly discovered evidence. We conclude the district court was correct in finding "despite Renander's protests, he has been able to put his full case before the arbitrator." We next turn to Renander's argument that the arbitration awards should be vacated under section 679A.12(1)(d) because he was not afforded a hearing that complied with section 679A.5.[3]

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[2] Although we construe Renander's argument that the arbitrator exceeded his powers as a challenge pursuant to section 679A.12(1)(d), we conclude the district court was correct in finding Calkins "clearly did not exceed his powers" under the broad authority granted to him by the parties' agreements. *See Humphreys*, 491 N.W.2d at 516 ("Absent limitation by the parties to the contrary, the arbitrator becomes the final judge of the facts and law.").

[3] We reject Renander's contention that the proceedings held on September 26-27, 2000, did not meet the notice requirements set forth in section 679A.5(1) because Calkins did not notify "the parties that the mediation talks would also serve as an arbitration hearing." The September 2000 proceedings were originally scheduled as an arbitration hearing. Renander does not contend that he failed to receive proper notice of the

Pursuant to section 679A.5(2), "[t]he parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing." The parties agree the proceedings held on September 26-27, 2000, did not comply with section 679A.5 because there was no formal testimony or cross-examination. Instead, the manner in which Calkins conducted the hearing was "more akin to mediation than arbitration in form, content and result." However, despite the irregularities in the September 2000 proceedings, we agree with the district court that

> [g]iven the amount of information presented to Calkins over the ten months that he had the controversy before him, . . . Renander cannot successfully claim that he was in any way prejudiced by the way the arbitration was handled other than he is unhappy with the result.

Indeed, the record reveals Renander was given ample opportunities "to be heard" and "to present evidence material to the controversy" as previously detailed. Iowa Code § 679A.5(2). Thus, the district court was correct in finding Renander was not prejudiced by Calkins's failure to conduct a formal arbitration hearing in September 2000 because the awards were entered "after a full and fair hearing of the parties." *Humphreys*, 491 N.W.2d at 515 (citation omitted). We therefore conclude the district court did not err in determining the arbitration awards should not be vacated pursuant to section 679A.12(1)(d).

Renander argues he was also prejudiced by Calkins's alleged misconduct in engaging in ex parte communications with him in violation of Iowa Code section 679A.12(1)(b). We do not agree. Ex parte communications alone are

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hearing. Instead, the crux of his argument appears to be the fashion in which the proceedings were conducted.

not sufficient to vacate an arbitration award. *See First Nat'l Bank v. Clay*, 231 Iowa 703, 715, 2 N.W.2d 85, 92 (1942) (denying the proposition that "when there is a communication between a party and an arbitrator in the absence of other parties, the award should be set aside, even though no wrong was intended."). Renander has not shown how Calkins's alleged ex parte communication prejudiced him or caused a different result in the proceedings. *Id.* We also do not believe Calkins committed misconduct in "failing to adhere to the standard rules and procedures of Resolute Systems." Neither chapter 679A nor the parties' agreements required Calkins to adhere to any standard rules or procedures when arbitrating. We accordingly conclude the district court correctly declined to vacate the arbitration awards pursuant to section 679A.12(1)(b).

We further conclude the district court was correct in rejecting Renander's argument under section 679A.12(1)(f), which states an award shall be vacated where "[s]ubstantial evidence on the record as a whole does not support the award" unless the parties agree otherwise. A substantial-evidence challenge is not available to a party where the arbitration agreement provides "that the decision of the arbitrator shall be binding on both parties." *O'Malley v. Gundermann*, 618 N.W.2d 286, 292 (Iowa 2000). Such a provision indicates "that the parties did not intend that the arbitrator's decision would be subject to a substantial-evidence challenge or review." *Id.* Both of the parties' settlement agreements declared that Calkins's "decision on any matter submitted to him will be final, binding, and nonappealable." Thus, Renander is precluded from raising a substantial-evidence challenge. *Id.*

Finally, Renander asserts Calkins's awards were "clearly irrational and must be vacated" because they fail "to draw from the essence of the agreement." The scope of judicial review of arbitration awards is limited to the statutory grounds set forth in sections 679A.12 and 679A.13. *Humphreys*, 491 N.W.2d at 515. The "essence of the agreement" ground for reviewing arbitration awards is not contained in those two sections. Therefore, we question whether an "essence of the agreement" argument is available to Renander in challenging the arbitrator's awards. *But see Cedar Rapids Ass'n of Fire Fighters v. City of Cedar Rapids*, 574 N.W.2d 313, 316 (Iowa 1998) (recognizing an arbitrator's award should be reviewed to determine whether the award draws its essence from the parties' agreement in the collective bargaining context).

Assuming without deciding that we may review the awards under an "essence of the agreement" challenge, we find the district court correctly declined to vacate the arbitration awards on this ground. The arbitrator is the "parties' officially designated 'reader' of the contract." *Id.* at 317 (citations omitted). Thus, a reviewing court may only disturb the award "where there is a manifest disregard of the agreement, totally unsupported by principle of contract construction." *Id.* at 318 (citations omitted). As long as the arbitrator is "even arguably construing or applying the contract . . . even a court's conviction that the arbitrator committed error does not suffice to overturn the decision." *Ales*, 728 N.W.2d at 841 (internal quotation omitted). Renander does not show in what manner the arbitration awards fail to draw from the essence of the parties' agreements other than arguing the arbitrator incorrectly interpreted the terms of the agreements. It is not our function to determine whether an arbitrator has

resolved a dispute correctly. *Postville Cmty. Sch. Dist. v. Billmeyer*, 548 N.W.2d 558, 562 (Iowa 1996). We accordingly conclude the district court did not err in refusing to vacate the arbitration awards under this ground. [4]

B. Declaratory Judgment and Civil Assault Actions.

Renander claims the district court erred in denying his petition for declaratory judgment and "in denying his civil action claim for damages from the assault on him by Poots." Poots argues this court does not have jurisdiction to rule on these issues because the district court did not render a final judgment as to Renander's declaratory judgment and tort actions.

The trials in both cases were continued pending the outcome of the applications to vacate the arbitration awards due to the district court's conclusion that "substantial judicial resources may be saved by making a determination of the validity of the arbitration agreement prior to trial . . . ." The hearing held on November 28, 2005, consequently focused on whether Renander established sufficient grounds to vacate the arbitration awards pursuant to section 679A.12. The ruling entered by the court on January 3, 2006, following the hearing did not address the merits of the declaratory judgment and civil assault actions. Renander accordingly filed a motion pursuant to rule 1.904(2) requesting the district court to "address the impact of its Ruling" on the declaratory judgment and assault actions. The district court denied the motion, stating, "The Court's

[4] We similarly reject Renander's argument that the arbitration awards should be vacated under section 679A.12(1)(a) because "Poots secured Calkins's awards through fraudulent misrepresentation." Renander's argument is another attempt to attack Calkins's interpretation of the parties' agreements and the merits of the arbitration awards. We cannot set aside an arbitration award merely because we disagree with the arbitrator's reasoning. *Postville Cmty. Sch. Dist.*, 548 N.W.2d at 562. The district court did not commit any error in rejecting this ground for vacating the arbitration awards.

denial of Renander's Application to Vacate the Arbitration Award is a denial of all the grounds asserted by Renander, including the statutory grounds under Iowa Code Section 679A.12."

We believe the district court's ruling on Renander's rule 1.904(2) motion operated as a dismissal of Renander's declaratory judgment and civil assault actions. The relief sought by Renander in the declaratory judgment action is identical to the relief he sought in the applications to vacate the arbitration awards. We therefore conclude the district court did not err in dismissing the declaratory judgment action due to our determination regarding the validity of the arbitration awards. We further find the district court did not err in dismissing the civil assault action because the parties agreed to submit "any dispute arising between them to binding arbitration." We accordingly affirm the judgment of the district court.

C. Attorney Fees.

Poots requests an award of appellate attorney fees. The general rule, subject to an exception not urged in this case, is that a party has no claim for attorney fees in the absence of a statute or contract allowing such an award. *Fennelly v. A-1 Mach. & Tool Co.*, 728 N.W.2d 163, 181 (Iowa 2006). Neither Iowa Code chapter 679 nor the parties' settlement agreements authorizes an award of attorney fees. We decline Poots's invitation to interpret section 679A.14, which authorizes the district court to award "costs of the application and the subsequent proceedings and disbursements," to allow claims for attorney fees. *See Weaver Constr. Co. v. Heitland*, 348 N.W.2d 230, 233 (Iowa 1984)

("We do not agree . . . that the word 'costs' should be so liberally stretched as to include attorney fees.").

IV. Conclusion.

We conclude the district court did not err in denying Renander's applications to vacate the arbitration awards. The district court correctly determined Renander failed to establish sufficient grounds existed for vacation of the awards. We accordingly conclude the district court did not err in dismissing Renander's declaratory judgment and civil assault actions. Finally, we deny Poots's request for an award of appellate attorney fees. The judgment of the district court is accordingly affirmed.

AFFIRMED.