STATE OF MICHIGAN

COURT OF APPEALS

DAVID SLATES and DREAM STAR STABLES,

Plaintiffs-Appellees,

v

DEAN DERBYSHIRE,

Defendant-Appellant.

UNPUBLISHED
June 16, 1998

No. 200270
Oakland Circuit Court
LC No. 92-442951 CB

Before: Markman, P.J., and Saad and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order of judgment for plaintiffs. We affirm.

I

Defendant argues that the trial court lacked personal jurisdiction. We review de novo the trial court's jurisdictional rulings. *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644 (1995). When analyzing whether the exercise of limited personal jurisdiction over a given defendant is proper, the courts generally apply a two-step inquiry. *Id.* First, defendant must come within the reach of Michigan's "long-arm" statutes: MCL 600.705; MSA 27A.705 (individuals), MCL 600.725; MSA 27A.725 (partnerships). Here, it is undisputed that the partnership filed an assumed name certificate in Oakland County in 1990. Consistent with the activity listed in the certificate, the partnership raced its horses in four or five Michigan races over the next two years. This activity constituted the "transaction of any business" and was a sufficient basis for the court to exercise limited personal jurisdiction pursuant to MCL 600.705(1); MSA 27A.705(1) and MCL 600.725(1); MSA 27A.725(1).

Second, due process requires that a defendant have certain minimum contacts with the forum state so that the maintenance of the suit "does not offend traditional notions of fair play and substantial justice." *Starbrite Distributing, Inc v Excelda Mfg Co*, 454 Mich 302, 308; 562 NW2d 640 (1997) (quoting *International Shoe Co v Washington*, 326 US 310, 316; 66 S Ct 154; 90 L Ed 95 (1945)). In determining whether a defendant has sufficient minimum contacts with Michigan to support the exercise of limited personal jurisdiction, the court applies a three-prong test: (1) the defendant must have purposefully availed itself of the privilege of conducting activities in Michigan, thus invoking the

benefits and protection of Michigan's laws; (2) the cause of action must arise from the defendant's activities in the state; and (3) the defendant's activities must be so substantially connected with Michigan as to make the exercise of jurisdiction over defendant reasonable. *Id.* at 309. Contrary to defendant's argument that his activity in Michigan was insufficient to confer jurisdiction, we find that as applied to these facts, all three prongs of the minimum contacts test are satisfied.

The partnership purposely availed itself of the privilege of conducting activities in Michigan and deliberately invoked the benefits and protection of Michigan's laws by filing an assumed name certificate in Oakland County in 1990. Defendant's argument that he did not authorize the filing of the assumed name certificate is without merit. Under the Uniform Partnership Act, MCL 449.9(1); MSA 20.9(1), every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name, of any instrument for apparently carrying on in the usual way the business of the partnership of which he is a member, binds the partnership. *Omnicom of Michigan v Giannetti Investment Co*, 221 Mich App 341, 344; 561 NW2d 138 (1997). Defendant and the partnership also purposely availed themselves of the privilege of conducting activities in Michigan by entering partnership-owned horses in Michigan races. Defendant does not dispute that this business activity occurred "four or five times" over a two-year period. Therefore, the first prong of the minimum contacts test has been satisfied.

Additionally, this cause of action for dissolution of the partnership and accounting arises from defendant's activities in the state. The action for accounting suggests that defendant's alleged failure to account for assets, funds, and inventory, as charged in the complaint, could constitute a breach of a fiduciary duty to the partnership. The partnership was not only doing business in Michigan but also kept its primary books and records in Michigan. Therefore, the second prong of the minimum contacts test has been satisfied.

Last, defendant's activities are so substantially connected with Michigan as to make the exercise of jurisdiction over him and the partnership reasonable. Nothing in the record indicates that defendant disputed the propriety of filing an assumed name certificate in Michigan before the instant action. Indeed, filing in Michigan was entirely appropriate because plaintiff David Slates resided in Michigan and maintained the books and records for the partnership in Michigan. Additionally, the business purpose of the partnership was to own, breed, and race horses, and defendant allowed horses to be raced in Michigan on at least four separate occasions. This Court has held that even a single transaction may be sufficient to satisfy the minimum contacts test. *Parrish v Mertes*, 84 Mich App 336, 339; 269 NW2d 591 (1978). Therefore, defendant should have reasonably expected that these actions would allow him to be haled into a Michigan court.

We hold that the trial court properly exercised limited personal jurisdiction over defendant because both the Michigan long-arm statutes and the three-prong minimum contacts test outlined in *Starbrite, supra,* were satisfied.

II

Defendant also asserts that because the arbitrator exceeded his powers in several instances, the trial court erred in refusing to vacate the arbitration award pursuant to MCR 3.602(J)(1)(c) and grant a rehearing pursuant to MCR 3.602(J)(3). Arbitrators exceed their powers whenever they act beyond the material terms of the contract from which they primarily draw their authority or act in contravention of controlling principles of law. *Dohanyos v Detrex Corp (After Remand)*, 217 Mich App 171, 176; 550 NW2d 608 (1996). This Court's ability to review an arbitration award to determine whether an arbitrator exceeded the scope of its authority is restricted to cases in which an error of law appears on the face of the award, the terms of the contract of submission, or such documentation as the parties agree will constitute the record. *Id.* at 175-176. Because the parties agreed not to create a record of the arbitration proceedings in this case, our review is limited to errors of law that appear on the face of the award.

First, defendant argues that the arbitrator exceeded his power by admitting plaintiff's summarized schedules pursuant to MRE 1006 rather than requiring plaintiff to submit actual receipts for money received and expenses paid on behalf of the partnership. Defendant's claim is not an error of law that appears on the face of the arbitrator's decision but instead concerns a procedural matter. Procedural matters, including a determination of whether and to what extent the rules of evidence will be followed, are to be left to the arbitrator and are not judicially reviewable. *Bay Co Building Authority v Spence Bros*, 140 Mich App 182, 188; 362 NW2d 739 (1984); *Gozdor v Detroit Automobile Inter-Ins Exchange*, 52 Mich App 49, 51; 216 NW2d 436 (1974). Therefore, we will not disturb this procedural determination.

Next, in a related argument, defendant asserts that because plaintiff Slates failed to submit actual receipts for money received and expenses paid on behalf of the partnership, the arbitrator improperly assessed mediation sanctions. We disagree. Defendant was assessed attorney fees, one-half the cost of the arbitration, and the entire cost for the supplemental arbitration. According to the arbitrator's Second Supplement to Arbitration Decision, the arbitrator determined a fair and reasonable hourly rate for an experienced attorney. Moreover, defendant presented no evidence to counter plaintiff Slates' proofs as to attorney fees and costs. We find that the total mediation sanctions were properly assessed.

Next, defendant argues that the arbitrator exceeded his power in prematurely issuing the mediation award. We disagree. The order that put the case into arbitration expressly provided that the arbitrator would determine the issue of mediation sanctions and that his finding would be binding. It was only after the arbitration had concluded and the mediation sanctions were awarded that defendant argued that the award of mediation sanctions was premature. Nothing on the face of the award indicates that the arbitrator intended to postpone determination of mediation sanctions until all such partnership assets had been sold. Indeed, in his Second Supplement to Arbitration Decision, the arbitrator expressly notes that he knew that all of the horses had not yet been sold when he made his initial award.

Last, defendant argues that the arbitrator exceeded his power in failing to consider the exchange rate between United States and Canadian currency. We disagree. The arbitrator clearly stated that he received and considered all information provided by both parties, including the parties' arguments about the currency and their agreement to be bound by a lump sum award. This Court may not substitute its

finding of fact for that of the arbitrator on this issue. *Byron Center Public Schools v Kent Co Ed Ass'n*, 186 Mich App 29, 31; 463 NW2d 112 (1990).

Because no error of law appears on the face of the award, we hold that the trial court properly refused to vacate the arbitration award or grant a rehearing.

Affirmed.

/s/ Stephen J. Markman
/s/ Henry William Saad
/s/ Joel P. Hoekstra