

STATE OF MICHIGAN
COURT OF APPEALS

JENNIFER IONE LONGTHON,

Plaintiff-Appellant,

UNPUBLISHED
February 27, 2001

v

PHILIP JOSEPH LONGTHON,

Defendant-Appellee.

No. 220305
Wayne Circuit Court
LC No. 98-805399-DO

Before: Hood, P.J., and Doctoroff and Collins, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order denying her motion to vacate the arbitration award and granting defendant's motion for entry of judgment of divorce. We affirm.

Plaintiff first argues that the arbitrator exceeded his authority because of errors of law that are apparent from the face of the award. We disagree. Judicial review of arbitration awards is limited. *Konal v Forlini*, 235 Mich App 69, 74; 596 NW2d 630 (1999). Once parties invoke binding arbitration, the parties are bound by applicable statutes and court rules. *Id.* at 73. MCR 3.602(J)(1)(c) provides that an arbitration award may be vacated if the arbitrator exceeds his powers.

In this case, plaintiff alleges that the arbitrator failed to subtract marital liabilities from the marital estate. Consequently, an equitable distribution of the net marital estate did not occur. Plaintiff also alleges that the arbitrator erred in concluding, without specific factual findings, that defendant contributed to plaintiff's post graduate education. Both arguments are fatally flawed. The parties' arbitration agreement expressly provided that the arbitrator was to determine issues including, but not limited to "spousal support, identification, evaluation and division of property, expert witness fees, attorney fees and costs, pre-trial motions including discovery, support or any other matter which has or could be raised in such action." Thus, the power to assess the parties' assets and liabilities as well as individual contributions to the marriage was a factual matter for decision by the arbitrator. While plaintiff contends that the arbitrator's alleged errors are apparent from the face of the award, that conclusion is erroneous. Rather, any claim of disparity is based on plaintiff's factual conclusion in her appellate brief that \$43,884 was a marital liability. While plaintiff characterizes the arbitrator's actions as legal error, in fact, plaintiff's allegation involves factual error. Claims that an arbitrator made a factual error are beyond the scope of appellate review. *Konal, supra* at 75. The arbitrator factually concluded that the

\$43,884 amount of liability comprised plaintiff's liability because it involved her educational expenses.¹ Furthermore, the arbitrator assessed the credibility of the parties and concluded that defendant's testimony regarding his contribution to plaintiff's education was credible. Because this issue is beyond our scope of appellate review, we cannot conclude that the arbitrator exceeded his powers. *Konal, supra*; MCR 3.602(J)(1)(c).

Plaintiff next argues that the trial court erred in denying her motion to set aside the arbitration award when the arbitrator's partiality is evident by the settlement award. We disagree. In order to overturn an arbitrator's award based on partiality or bias, the evidence in support of the allegation must be certain and direct, not remote, uncertain, or speculative. *Belen v Allstate Ins Co*, 173 Mich App 641, 645; 434 NW2d 203 (1988). The party attacking the impartiality has the burden of proof. See *Emmons v Lake States Ins Co*, 193 Mich App 460, 466; 484 NW2d 712 (1992). Plaintiff has failed to meet her burden of proof, and therefore, we cannot conclude that the trial court erred in failing to set aside the award on these grounds. *Emmons, supra*; *Belen, supra*.²

Affirmed.

/s/ Harold Hood
/s/ Martin M. Doctoroff
/s/ Jeffrey G. Collins

¹ Plaintiff's allegation that the \$43,884 consists of marital liability is contrary to her answer to defendant's countercomplaint for divorce. In the answer, plaintiff admitted liability for the loans incurred in obtaining her post graduate/professional degrees.

² Plaintiff also argues that the trial court's findings of fact and conclusions of law were clearly erroneous and an abuse of discretion. There was no testimony presented to the trial court to make findings of fact and conclusions of law. Rather, the trial court evaluated the assets of the marital estate that appeared on the face of the award and concluded that the disposition appeared equitable. Parties who submit their claims to arbitration pursuant to MCR 3.602(J)(1) are on notice that circuit court review is limited to specific instances, and the parties are not entitled to present their claims to the circuit court de novo. Accordingly, the trial court's review was in accordance with MCR 3.602(J)(1).