

STATE OF MICHIGAN
COURT OF APPEALS

EDWARD J. DINNEWETH,

Plaintiff-Appellee,

v

ELAINE DINNEWETH,

Defendant-Appellant.

UNPUBLISHED
December 19, 2006

No. 263198
Oakland Circuit Court
LC No. 03-686920-DO

Before: Owens, P.J., and White and Hoekstra, JJ.

PER CURIAM.

Defendant appeals by leave granted an order denying her motion to set aside the arbitration award in this divorce dispute. We affirm.

The parties entered into a premarital agreement in 1997. At that time, plaintiff's assets included Mack Industries, which was valued at \$3 million. Defendant's net worth at that same time was valued at approximately \$179,000. After just more than six years of marriage, plaintiff filed for divorce. The parties agreed to submit the dispute, including the issue of the enforceability of the premarital agreement, to arbitration. At the time of the arbitration, Mack Industries was insolvent. The arbitrator found that plaintiff's net worth had decreased from \$4.6 million at the time of the premarital agreement to less than \$1 million at the time of arbitration, and that defendant's net worth had increased approximately fourfold. The arbitrator then concluded that changed circumstances rendered enforcement of the premarital agreement unfair and unreasonable, and proceeded to divide the marital property of the parties equitably. In the trial court, after entry of a judgment of divorce, defendant filed a motion to vacate the arbitration award. The trial court denied the motion. We granted defendant's application for leave to appeal.

Defendant argues that the trial court erred in refusing to set aside the arbitration award on the ground that the arbitrator exceeded his powers by employing an asset-balancing approach in lieu of enforcing the premarital agreement. We disagree.

MCL 600.5081 provides that the court "shall vacate an award under any of" several circumstances, including where "[t]he arbitrator exceeded his or her powers." MCL 600.5081(2)(c). "Arbitrators exceed their powers whenever they act beyond the material terms of the contract from which they draw their authority or in contravention of controlling law."

Miller v Miller, 474 Mich 27, 30; 707 NW2d 341 (2005). This Court reviews de novo a trial court's decision regarding whether an arbitrator exceeded his powers. *Id.*

At the time of arbitration, the controlling law governing the enforceability of premarital agreements was *Rinvelt v Rinvelt*, 190 Mich App 372; 475 NW2d 478 (1991). Under *Rinvelt*, a premarital agreement is enforceable if three questions can be answered in the negative:

1. Was the agreement obtained through fraud, duress or mistake, or misrepresentation or nondisclosure of material fact?
2. Was the agreement unconscionable when executed?
3. *Have the facts and circumstances changed since the agreement was executed, so as to make its enforcement unfair and unreasonable?* [*Id.* at 380 (emphasis added).]

Defendant contends that the arbitrator exceeded his powers by issuing a decision that deviates from the terms of the premarital agreement on the ground of a change in circumstances, thereby contravening *Reed v Reed*, 265 Mich App 131; 693 NW2d 825 (2005). In *Reed*, this Court held that the long duration of the parties' marriage and the fact that the parties' assets grew significantly are not unforeseeable changed circumstances that justify judicially voiding a premarital agreement. *Id.* at 141-149. *Reed*, however, was not decided before the arbitration award at issue, and did not involve arbitration. Thus, it is not controlling under the facts of this case.

Here, the issue of the enforceability of the agreement was submitted to arbitration. It was for the arbitrator to decide whether the agreement was enforceable. The arbitrator could refuse to enforce the agreement, even if the trial court could not render such relief. MCL 600.5081(3). "Arbitration, by its very nature, restricts meaningful legal review in the traditional sense." *Detroit Automobile Inter-Ins Exch v Gavin*, 416 Mich 407, 429; 331 NW2d 418 (1982).

Thus, an allegation that the arbitrators have exceeded their powers must be carefully evaluated in order to assure that this claim is not used as a ruse to induce the court to review the merits of the arbitrator's decision. Stated otherwise, *courts may not substitute their judgment* for that of the arbitrators and hence are reluctant to vacate or modify an award when the arbitration agreement does not expressly limit the arbitrator's power in some way. [*Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 497; 475 NW2d 704 (1991) (emphasis added).]

At the time the arbitrator rendered his decision, *Reed* was not yet decided. Moreover, the decision in *Reed* did not involve arbitration and concerned a longstanding, rather than short, marriage. Therefore, the arbitrator did not contravene existing controlling authority by finding that a relatively short marriage, plus a precipitous and unanticipated decrease in the value of Edward's principal asset, i.e., Mack Industries, combined to render enforcement of the premarital agreement unfair and unreasonable.

Affirmed.

/s/ Donald S. Owens

/s/ Helene N. White

/s/ Joel P. Hoekstra