

STATE OF MICHIGAN
COURT OF APPEALS

GEORGE FELIX DESJARDINS,

Plaintiff/Counter-Defendant-
Appellant,

v

ALECIA MARIE DESJARDINS,

Defendant/Counter-Plaintiff-
Appellee.

UNPUBLISHED
February 10, 2009

No. 281480
Livingston Circuit Court
LC No. 04-035943-DM

Before: Sawyer, P.J., and Servitto and M. J. Kelly, JJ.

PER CURIAM.

In this divorce suit, plaintiff appeals as of right the trial court's order adopting the recommendation of the Friend of the Court to affirm an arbitration award. Because we conclude that there were no errors warranting relief, we affirm.

I. Basic Facts and Procedural History

In February 2006, the trial court entered a consent judgment of divorce. The consent judgment provided for joint physical and legal custody of the parties' children. The consent judgment also provided that the parties could divide their personal property by agreement. However, if the parties could not agree within seven days of entry of the judgment as to the division of their personal property, including household furnishings and appliances, the parties had to submit the disputes to an arbitrator. Because the parties could not agree on the division of their personal property, the matter proceeded to arbitration.

The arbitrator awarded the children's furniture, two television sets, various photographs, books, and toys, as well as all of the parties' appliances and other furniture, excluding the adult bedroom set and patio furniture, to plaintiff. In addition to the adult bedroom set and patio furniture, the arbitrator awarded defendant two television sets, some of the children's toys, books, the nursery set, a computer, CDs, a sewing machine and table, and a clay piggy bank.

As a result of a dispute over compliance with the award, the arbitrator had to issue a supplemental award. In the supplemental award, the arbitrator stated that the parties had failed to immediately "implement the exchange of the personal property pursuant to the original Arbitrator's Award" following its entry. The arbitrator further stated that if the parties failed to

complete the exchange by December 17, 2006, they would risk “additional Court proceedings with appropriate attorney fees and sanctions imposed as the Judge may deem appropriate.” The supplemental award also provided that the parties were equally responsible for the additional arbitrator’s costs.

Defendant eventually moved for adoption or confirmation of the arbitrator’s award. After this motion, the trial court assigned the matter to a Friend of the Court referee, who held a hearing and issued a report with recommendations. In her report, the referee noted plaintiff’s contention that the arbitrator’s award could not be confirmed “because the arbitrator was not appointed as a statutory arbitrator.” However, the referee rejected this contention and also rejected plaintiff’s argument that his refusal to comply with the arbitrator’s award was justified by defendant’s “alleged noncompliance” with the award. The referee ultimately recommended that the trial court enter the arbitrator’s award as an order and award attorney fees to defendant.

Plaintiff objected to the referee’s recommendation. Plaintiff argued that the arbitrator improperly reopened the arbitration after communicating *ex parte* with defendant and without seeking further evidence or offers of proof from the parties, and improperly threatened to impose attorney fees or seek sanctions from the court if the parties failed to comply with the initial award. The court rejected plaintiff’s arguments, which it characterized as being “in essence . . . a motion to vacate the arbitrator’s award, [which] should have been brought within 21 days.” The trial court then adopted the referee’s recommendation. The trial court entered an order enforcing the referee’s recommendations on October 2, 2007.

II. The Authority to Enforce an Arbitration Award

A. Standard of Review

This Court reviews *de novo* a trial court’s decision to enforce, vacate or modify an arbitration award. *Bayati v Bayati*, 264 Mich App 595, 597-598; 691 NW2d 812 (2004).

B. Analysis

Plaintiff first argues that, without language in the arbitration agreement granting the court the authority to enforce the arbitration award, the court cannot do so. In support of this assertion, plaintiff relies on MCL 600.5001(2) and the decision in *E. E. Tripp Excavating Contractor, Inc v Jackson Co*, 60 Mich App 221; 230 NW2d 556 (1975). However, in this case, the Domestic Relations Arbitration Act (DRAA), see MCL 600.5070 *et seq.*, applies to the parties’ arbitration agreement. Thus, plaintiff’s reliance on MCL 600.5001 and the decision in *E. E. Tripp*, which dealt with the requirements of MCL 600.5001, is misplaced.

Plaintiff also claims that the “[a]rbitration process” did not comply with the statutory requirements governing arbitration.

Under the DRAA, the “[p]arties to an action for divorce . . . may stipulate to binding arbitration by a signed agreement that specifically provides for an award with respect to,” in relevant part, real and personal property, costs, expenses, and attorney fees, the allocation of debt, and other domestic relations matters. MCL 600.5071. However, before a trial court may

order arbitration under the DRAA, the parties must acknowledge in writing or on the record that they have been informed that:

- (a) Arbitration is voluntary.
- (b) Arbitration is binding and the right of appeal is limited.
- (c) Arbitration is not recommended for cases involving domestic violence.
- (d) Arbitration may not be appropriate in all cases.
- (e) The arbitrator's powers and duties are delineated in a written arbitration agreement that all parties must sign before arbitration commences.
- (f) During arbitration, the arbitrator has the power to decide each issue assigned to arbitration under the arbitration agreement. The court will, however, enforce the arbitrator's decisions on those issues.
- (g) The party may consult with an attorney before entering into the arbitration process or may choose to be represented by an attorney throughout the entire process.
- (h) If the party cannot afford an attorney, the party may wish to seek free legal services, which may or may not be available.
- (i) A party to arbitration will be responsible, either solely or jointly with other parties, to pay for the cost of the arbitration, including fees for the arbitrator's services. In comparison, a party does not pay for the court to hear and decide an issue, except for payment of filing and other court fees prescribed by statute or court rule for which the party is responsible regardless of the use of arbitration. [MCL 600.5072(1).]

In this case, the parties did not sign a separate arbitration agreement. However, in *Miller v Miller*, 474 Mich 27, 34; 707 NW2d 341 (2005), our Supreme Court held that “[n]othing in the DRAA mandates that there be an agreement separate from the stipulated order” to arbitrate. Instead, as “long as the parties agree to some document that meets the minimal requirements of MCL 600.5071 and MCL 600.5072(1)(e), the agreement is sufficient.” *Id.* at 34-35. Here, the parties clearly agreed to submit their remaining disputes to arbitration by signing the consent judgment. The consent judgment set forth the areas to be considered by the arbitrator and delineated his powers. Thus, the consent judgment satisfies the requirement of a written arbitration agreement under the DRAA.

Additionally, although plaintiff argues that the arbitration process did not comply with the statute, he does not say in what way the process was noncompliant. Plaintiff merely quotes the statute without providing any explanation as to how the arbitration in this case violated its requirements. As our Supreme Court has explained: “It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments,

and then search for authority either to sustain or reject his position.” *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Because plaintiff failed to adequately brief this issue, he abandoned it on appeal. See *Hamade v Sunoco, Inc (R&M)*, 271 Mich App 145, 173; 721 NW2d 233 (2006).

Plaintiff argues next that the arbitrator exceeded the authority given to him by the consent judgment when he issued an award regarding the payment of the debt on plaintiff’s vehicle and reopened the arbitration in order to issue an “supplemental award.” Plaintiff further argues that, because the arbitrator exceeded his authority, the trial court’s decision to adopt the recommendation was improper under MCL 600.5081. According to plaintiff, the statute requires the lower court to vacate the entire award if a portion of it exceeds the arbitrator’s authority.

In the consent judgment, the parties agreed to each pay half of the \$2,500 owed on defendant’s vehicle. Defendant’s half of the debt was to be deducted from the amount plaintiff owed to defendant for her share in the marital home. However, plaintiff apparently was able to negotiate a reduction in the debt on the vehicle to \$1,250. Nevertheless, plaintiff evidently did not take the reduction of the debt into account in his payment to defendant; instead plaintiff deducted the full \$1,250 that defendant would have owed had the debt on the vehicle not been reduced. In its original award, the arbitrator addressed this disparity and concluded that, because the parties had previously agreed that plaintiff’s payment to defendant for her share of the marital home would be reduced by half of the vehicle debt—which was no longer \$1,250—plaintiff had to pay defendant an additional \$625. Plaintiff argues that this provision was not left to the arbitrator’s jurisdiction in the consent judgment and, therefore, the entire award must be vacated.

We note that the arbitrator was specifically granted the authority “to resolve property issues” in the judgment of divorce. Although the judgment provided for the payment of the debt on plaintiff’s vehicle, the vehicle is clearly “property” and nothing within the judgment prevented the arbitrator from resolving new disputes that arise about property otherwise covered in the judgment. Likewise, we do not agree that the arbitrator exceeded the scope of his authority by issuing a supplemental award. The arbitrator had jurisdiction to correct errors or omissions in the award until the trial court confirmed the award. See MCL 600.5078(3). Hence, the arbitrator had the authority to clarify the timing of the transfers and warn about the potential consequences for failing to comply with the award. In any event, even if we were to conclude that the arbitrator exceeded the scope of his authority in these regards, we conclude that there was no error warranting relief.

A court *may* vacate an arbitrator’s award if the “arbitrator exceeded his or her powers.” MCL 600.5081(2)(c). However, a trial court may only review an arbitrator’s award “[i]f a party applies to the circuit court for vacation or modification” of the award. MCL 600.5081(1). Thus, the trial court was not under a duty to sua sponte review the arbitrator’s award to determine whether it is within the scope of his authority; rather it was the parties’ burden to raise that issue by motion. At the hearing on plaintiff’s objections to the referee recommendation, plaintiff explicitly stated that the action before the court was not a motion to vacate the award. Instead, plaintiff contended that the issue before the court was whether it should adopt the referee’s recommendation to enter the arbitrator’s award. Nevertheless, the trial court rejected plaintiff’s characterization, finding that it was “in essence . . . a motion to vacate the arbitrator’s award, [which] should have been brought within 21 days.” See MCL 600.5081(6) (stating that the

review of an arbitration award is governed by court rule); MCR 3.602(J)(3) (stating that a motion to vacate an arbitration award in a domestic relations case must be filed within 21 days after the date of the award). We agree with the trial court's determination that plaintiff was in effect attempting to make an untimely motion to vacate the arbitrator's award. Plaintiff's failure to timely request the vacation of the award precludes relief on appeal.

Plaintiff also claims that the trial court erred when it confirmed the award because it had not retained jurisdiction to modify the judgment of divorce. The trial court clearly had the authority to confirm the arbitrator's award. See MCL 600.5079; MCR 3.602(I). We do not agree that the trial court's decision to confirm an arbitrator's award effected a modification of the judgment of divorce; the judgment specifically contemplated that additional issues would be resolved in arbitration.

III. Award of Attorney and Arbitrator Fees

A. Standard of Review

This Court reviews an award of fees for an abuse of discretion. *Borowsky v Borowsky*, 273 Mich App 666, 687; 733 NW2d 71 (2007).

B. Analysis

Plaintiff also argues that the referee's report recommending attorney fees and costs amounted to an improper recommendation that the court issue sanctions against plaintiff for contempt. There is no indication in the record that the referee recommended sanctions for contempt. Rather, the referee recommended that the parties split the fee assessed by the arbitrator as payment for his additional work in drafting the "supplemental award," and that the court order plaintiff to pay to defendant attorney fees in the amount of \$750. The circuit court is permitted to award fees to the arbitrator according to its discretion: "if provision for the fees and expenses of the arbitrator has not been made in the award, the court may allow compensation for the arbitrator's services as it deems just." MCR 3.602(M). Similarly, although attorney fees are not recoverable as of right in divorce actions, MCR 3.206(C)(2)(b) permits a trial court to award attorney fees where "the attorney fees and expenses were incurred because the other party refused to comply with a previous court order, despite having the ability to comply." The referee found that plaintiff had chosen not to comply with the arbitrator's initial order. Plaintiff does not offer evidence to counter this finding, nor does he offer support for his assertion that the court was without power to award costs and attorney fees without an additional hearing. Thus, plaintiff has not demonstrated that the trial court abused its discretion with regard to the award of attorney fees. *Borowsky*, 273 Mich App at 687.

Affirmed.

/s/ David H. Sawyer
/s/ Deborah A. Servitto
/s/ Michael J. Kelly