STATE OF MICHIGAN

COURT OF APPEALS

DENNIS DUBUC and CAROL DUBUC,

Plaintiffs-Appellants,

v

DEPARTMENT OF ENVIRONMENTAL QUALITY,

Defendant,

and

EDWARD CHRISTENSEN,

Appellee.

UNPUBLISHED
July 14, 2011

No. 298712
Court of Claims
LC No. 05-000105-MZ

Before: SAAD, P.J., and JANSEN and DONOFRIO, JJ.

PER CURIAM.

Appellants Dennis and Carol Dubuc appeal an order of the circuit court modifying an arbitration award. We vacate the court's order.

Appellee Edward Christensen represented appellants in a takings case against the Michigan Department of Environmental Quality ("the DEQ case") in which the Dubucs were awarded $35,357. Later, a dispute arose between Christensen and the Dubucs regarding attorney fees and Christensen filed a motion for attorney fees in the DEQ case. During the hearing on the motion, the circuit court judge suggested the parties arbitrate the dispute, and they agreed. After the arbitrator made his decision, Christensen brought a motion in the DEQ case to modify the arbitration award. The circuit court granted the motion on the ground that the arbitrator exceeded his authority.

Here, the Dubucs argue that the circuit court erred in exercising its jurisdiction when it heard appellee's motion to modify the arbitration award. We review de novo a trial court's decision to enforce, vacate, or modify an arbitration award. *Tokar v Albery*, 258 Mich App 350, 352; 671 NW2d 139 (2003).

Christensen brought his motion to modify the arbitration award under court rules applicable only to statutory arbitration and the Dubucs used the same rules to support their argument. Contrary to the requirements for statutory arbitration, the parties did not enter into a

written agreement to arbitrate that stated that judgment may be entered on the arbitration award. *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 495; 475 NW2d 704 (1991). However, we hold that the circuit court erred in exercising its jurisdiction when it heard appellee's motion in the DEQ case regardless of whether the parties used statutory or common law arbitration.

A party using statutory arbitration is subject to MCR 3.602(J) and (K), which specify the procedures to request an order to vacate or modify an arbitration award. MCR 3.602(A). If the parties intended statutory arbitration, they would be subject to MCR 3.602(K), which provides in part as follows:

> (1) A request for an order to modify or correct an arbitration award under this rule must be made by motion. *If there is not a pending action between the parties, the party seeking the requested relief must first file a complaint as in other civil actions.* A complaint to correct or modify an arbitration award must be filed no later than 21 days after the date of the arbitration award. [Emphasis added.]

Here, the DEQ case was not "a pending action between the parties." MCR 3.602(K)(1).[1]

"Between" is defined in part as "involving" or "concerning," *Random House Webster's College Dictionary* (1997), or as "[a]ssociating or uniting in a reciprocal action," *The American Heritage Dictionary of the English Language* (1996). The DEQ case was a pending action involving the Dubucs and the DEQ. Christensen was the Dubucs' attorney in the DEQ case, but he was not a party to it. Accordingly, the DEQ case was not a pending action between the Dubucs and Christensen. Therefore, Christensen was required to file a complaint to modify the arbitration award. MCR 3.602(K)(1).

If, as here, the arbitration agreement does not provide that judgment may be entered on the arbitration award, the agreement will be treated as one for common law arbitration. *Wold Architects & Engrs v Strat*, 474 Mich 223, 231; 713 NW2d 750 (2006). The MAA and MCR 3.602 do not apply to common law arbitration. *Gordon Sel-Way*, 438 Mich at 495; MCR 3.602(A). However, the general rule is the same: one must be a party to the proceeding to be heard. Cf. *Bolt v City of Lansing*, 238 Mich App 37, 75; 604 NW2d 745 (1999). Thus, it was impermissible for Christensen to file his motion in a case to which he was not a party.

[1] The legal principles that govern the interpretation of statutes apply to the interpretation of court rules as well. *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 526; 672 NW2d 181 (2003). If the plain and ordinary meaning of the language is clear, judicial construction is neither necessary nor permitted. *Yudashkin v Holden*, 247 Mich App 642, 649-650; 637 NW2d 257 (2001). Words are accorded their plain, commonly understood meanings. *Marketos v American Employers Ins Co*, 465 Mich 407, 413; 633 NW2d 371 (2001).

For these reasons, we vacate the circuit court's order modifying the arbitration award.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Pat M. Donofrio