STATE OF MICHIGAN

COURT OF APPEALS

LYNN THOMAS-PERRY, Plaintiff-Appellant,	UNPUBLISHED October 16, 2018
v	No. 340662 Washtenaw Circuit Court
MICHAEL ROBERT PERRY, Defendant-Appellee.	LC No. 16-000490-DM

Before: CAVANAGH, P.J., and MARKEY and LETICA, JJ.

PER CURIAM.

Plaintiff, Lynn Thomas-Perry, appeals as of right the trial court's judgment of divorce enforcing an arbitration award concerning the division of marital property. We affirm.

Plaintiff married defendant, Michael Robert Perry, in March 2000. The parties had one child during the marriage. Plaintiff filed a complaint for divorce in February 2016. As part of the divorce proceedings, the parties agreed to enter into arbitration. Before the arbitration took place, the parties apparently agreed on the issues of child custody, child support, and spousal support. Specifically, they agreed to joint legal and physical custody of the child. The parties further agreed that defendant would pay $188 a month to plaintiff in child support and $567 a month to plaintiff in spousal support.[1] The parties agreed that defendant would make these payments directly to plaintiff and that his support obligations would be imposed retroactively to November 2016. These agreements were incorporated in the arbitrator's written award.

In pertinent part, the arbitration award also granted plaintiff sole ownership of the assets and liabilities of the Thomas Perry Agency (a closely held insurance agency). With respect to

[1] The parties also agreed that child support would be payable until the child graduated high school or reached the age of 18, whichever occurred later, but no later than age 19½. With respect to the duration of defendant's spousal support obligation, the parties agreed that a *Staple* waiver applied to the payment of spousal support, which would run for three years from November 4, 2016, and then would thereafter be barred. See *Staple v Staple*, 241 Mich App 562; 616 NW2d 219 (2000) (allowing parties to waive their statutory right to petition for modification of spousal support order).

the division of three retirement accounts held by defendant, the arbitration award granted plaintiff 50% of the marital share of defendant's retirement annuity calculated as of the date of the dissolution of the marriage and 20% of the marital share of defendant's pension calculated as of the date of the dissolution of the marriage. Defendant received the balance of these accounts—50% of the retirement annuity and 80% of the pension—as well as the entirety of his Emergent Health Partners 403(b) account, which was later described by a referee as having an "indeterminate and seemingly low value." The arbitration award also addressed several student loans taken out by plaintiff, stating that defendant would be responsible for payment of "ACS/Loan Science loan No. 3788062411," along with interest and any obligations to family members that may have been incurred on plaintiff's behalf with regard to the loan.[2] Plaintiff was responsible for the remainder of her student loans.

Shortly after the arbitration award was filed with the trial court, plaintiff moved for the arbitrator to reconsider or modify the award, arguing that the award was not an equitable distribution of the marital assets and debts. Specifically, plaintiff requested that the arbitrator modify the award by: (1) granting plaintiff 50% of defendant's pension; (2) granting plaintiff the marital portion of defendant's Emergent Health 403(b) account; (3) providing "an equitable division" of $187,000 of plaintiff's student loan debt, along with an order directing defendant to refinance his portion of the debt; and (4) splitting $17,000 of debt allegedly owing to plaintiff's relatives. After the arbitrator declined to modify the award, plaintiff filed a motion to vacate or modify the award in the trial court. The trial court referred the matter to a Friend of the Court referee to consider, based upon briefing from the parties and the exhibits submitted to the arbitrator, whether "there was a clear error of law regarding an equitable division made by the Arbitrator . . . which exceeded his powers under MCR 3.602(J)(2)(C)." The referee concluded that the arbitration award was within the range of equitable awards available under the arbitrator's broad discretion, and recommended that the arbitration award be enforced by the court. In light of the referee's recommendation, plaintiff filed objections and defendant moved for confirmation of the arbitration award. The trial court granted defendant's motion and entered a judgment of divorce incorporating the distribution of the marital estate as set forth in the arbitration award. This appeal followed.

We review a trial court's ruling on a motion to vacate or modify an arbitration award de novo. *Washington v Washington*, 283 Mich App 667, 671; 770 NW2d 908 (2009). Likewise, "[w]hether an arbitrator exceeded his or her authority is also reviewed de novo." *Id*. at 672.

MCL 600.5081(2) sets forth the limited circumstances in which a reviewing court may vacate an arbitration award. *Id*. at 671-672. See also MCR 3.602(J)(2) (mirroring statutory grounds for vacation of arbitration award). In this case, plaintiff relies upon MCL 600.5081(2)(c), which allows vacation of an arbitration award if "[t]he arbitrator exceeded his or her powers." "[A] party seeking to prove that a domestic relations arbitrator exceeded his or her authority must show that the arbitrator either (1) acted beyond the material terms of the arbitration agreement or (2) acted contrary to controlling law." *Washington*, 283 Mich App at

[2] Plaintiff's family members cosigned for some or all of her student loans.

672. In considering whether the arbitrator exceeded his or her authority, the following principles apply:

> A reviewing court may not review the arbitrator's findings of fact and any error of law must be discernible on the face of the award itself. By "on its face" we mean that only a legal error "that is evident without scrutiny of intermediate mental indicia," will suffice to overturn an arbitration award. Courts will not engage in a review of an "arbitrator's 'mental path leading to [the] award.' " Finally, in order to vacate an arbitration award, any error of law must be "so substantial that, but for the error, the award would have been substantially different." [*Id*. (citations omitted; alteration in original).]

Plaintiff first argues that the arbitrator exceed his authority by including child and spousal support within the arbitration award when those issues were not submitted to arbitration and, instead, were agreed upon by the parties before the arbitration took place. As plaintiff withdrew this issue during oral argument, we need not address it.

Plaintiff next argues that the arbitration award was inequitable (and therefore contrary to Michigan law) because: (1) she should have received 50% of defendant's pension and Emergent Health Partners 403(b) account funds; (2) defendant should have been ordered to pay more than $63,000 for plaintiff's student loan debt; and (3) the parties should have been ordered to split the $17,000 debt owing to her family.

To determine whether the arbitrator exceeded his authority by acting contrary to controlling law, we must first examine the substantive law applicable to property distribution in divorce proceedings. *Id*. at 673. "The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances." *Berger v Berger*, 277 Mich App 700, 716-717; 747 NW2d 336 (2008). The distribution of assets and debts need not be mathematically equal as long as there is an adequate reason for the chosen distribution. *Id*. at 717. Factors that are traditionally considered in determining an equitable property division include:

> (1) the duration of the marriage, (2) the contributions of the parties to the marital estate, (3) the age of the parties, (4) the health of the parties, (5) the life situation of the parties, (6) the necessities and circumstances of the parties, (7) the parties' earning abilities, (8) the parties' past relations and conduct, and (9) general principles of equity. [*Id*.]

These factors are not exhaustive, and other factors relevant to the particular case may also be considered. *Id*.

The equitable distribution of marital property is "intimately related" to the factual findings regarding relevant property division factors. *McNamara v Horner*, 249 Mich App 177, 188-189; 642 NW2d 385 (2002). Plaintiff's assertion that the distribution of the parties' assets and debts was inequitable fails to recognize the limited scope of our review, which does not extend to the arbitrator's factual findings. *Washington*, 283 Mich App at 672. The very nature of arbitration, which frequently involves "informal and sometimes unorthodox procedures . . .

combined with the absence of a verbatim record and formal findings of fact and conclusions of law," often leaves a reviewing court unable to determine whether a challenged award is attributable to "alleged unwarranted factfinding [or] to asserted error of law." *Saveski v Tiseo Architects, Inc*, 261 Mich App 553, 555; 682 NW2d 542 (2004) (quotation marks and citation omitted). To the extent that the award could have been the result of the arbitrator's findings of fact, the reviewing court cannot reasonably conclude from the face of the award that the arbitrator exceeded the scope of his or her authority by acting contrary to law. *Id*. at 555-556.

In this case, we cannot discern an error of law from the face of the arbitration award. Based upon the assertions of the parties' trial attorneys, it seems probable that the arbitrator used the unequal distribution of defendant's pension and Emergent Health Partners 403(b) account to offset awarding plaintiff the Thomas Perry Agency free and clear of any claim by defendant. Although plaintiff maintains that the agency has little value in light of its existing debts and other liabilities and, thus, does not justify the unbalanced distribution of defendant's retirement accounts in his favor, plaintiff's contention turns on the arbitrator's valuation of these assets—a factual finding that is beyond our authority to review. See *Washington*, 283 Mich App at 675 ("It is simply outside the province of the courts to engage in a fact-intensive review of how an arbitrator calculated values, and whether the evidence he relied on was the most reliable or credible evidence presented.") See also *Krist v Krist*, 246 Mich App 59, 67-68; 631 NW2d 53 (2001) (confirming an arbitration award where the defendant's arguments merely "quarrel[ed] with how the arbitrator valued certain assets during the arbitration proceedings").

With respect to the allocation of plaintiff's student loans, the arbitration award holds defendant responsible for one of plaintiff's four student loans. The amount of the loan is not identified in the award, but the parties appear to agree that the balance is approximately $63,000. Defendant is also responsible for the loan's interest and any obligations to family members that may have been incurred on plaintiff's behalf in regard to the loan. The parties also agree that approximately $134,000 of plaintiff's student loans were used for marital purposes and should be considered marital debt, though plaintiff argues that the interest associated with this amount should be included as well. While it is apparent that the loan attributed to defendant is slightly less than half of the conceded marital portion of the loans, it does not follow that the distribution was inequitable. Simply put, Michigan law does not require a perfectly equal property division, and we cannot conclude that the arbitrator's slight deviation in this regard was a clear error of law. See *Washington*, 283 Mich App at 674.

Finally, plaintiff argues that the arbitrator erred in not splitting between the parties $17,000 in debt allegedly owed to plaintiff's family. The only mention of family debt in the arbitration award is $400 owed to the parties' child. The referee who reviewed the material submitted to the arbitrator also omitted any reference to the $17,000 debt owed to plaintiff's family in describing the assets and debts that were at issue in the arbitration. As a result, we cannot determine whether this debt was even discussed at arbitration. However, when plaintiff moved for the arbitrator to reconsider or modify the award, she observed that the debts owed to her family were not taken into consideration. Nonetheless, the arbitrator declined to modify the award, which suggests that he felt that the distribution of the marital estate remained equitable. Having no reason to believe that the arbitrator misunderstood or misapplied the controlling law, and not being privy to the arbitrator's factual findings regarding the relevant factors for reaching

an equitable distribution, we cannot conclude that the arbitrator exceeded his authority by failing to allocate the $17,000 debt to one or both of the parties.

Ultimately, the parties were given the opportunity to present evidence and testimony on all material issues during arbitration. As we have found in similar cases, "[b]ecause a reviewing court is limited to examining the face of an arbitration ruling, there is no basis for concluding that the arbitrator exceeded his authority in issuing this particular award." *Id*. at 675. See also *Krist*, 246 Mich App at 67 (denying appellate relief where the defendant's claim of error "would require this Court to look beyond the four corners of the document and try to discern the arbitrator's mental path leading to [the] award") (quotation marks and citation omitted; alteration in original). Accordingly, the trial court did not err by denying plaintiff's motion to vacate or modify the arbitration award and, instead, granting defendant's motion to confirm the award.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Jane E. Markey
/s/ Anica Letica