STATE OF MICHIGAN

COURT OF APPEALS

MAZEN DAOUD,

Plaintiff-Appellant,

v

RAND DAOUD,

Defendant-Appellee.

UNPUBLISHED
December 19, 2019

No. 347176
Oakland Circuit Court
Family Division
LC No. 2017-853731-DM

Before: RIORDAN, P.J., and JANSEN and STEPHENS, JJ.

PER CURIAM.

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

I. RELEVANT FACTUAL BACKGROUND

Plaintiff married defendant, Rand Daoud, in July 1992. The parties had three children during the marriage, two of which had reached the age of majority at the time of these proceedings. Plaintiff filed for divorce in June 2017. As part of the divorce proceedings, the parties agreed to enter into arbitration. Before arbitration took place, the parties had agreed on child custody and parenting time of the one minor child.

In relevant part, the arbitration award provided that the proceeds from the sale of the marital home would be equally divided after the payment of all secured debt, professional fees, and arbitration fees. An estate sale had already been held, and the parties were to divide all remaining personal property. With respect to defendant's jewelry, which had been missing since the divorce proceedings were initiated, the arbitrator found that photographs, appraisals, and receipts suggested an aggregate value of $100,000.00. The arbitrator also found that the jewelry had been gifted to defendant throughout the marriage, and it was therefore separate property. Additionally, it was likely that plaintiff had concealed the location of the jewelry. Therefore, defendant was awarded "by way of offsets against [plaintiff's] share of the retirement accounts, the sum of $100,000, plus 'gross-up' of $25,000 for taxes from [plaintiff's] share of the retirement assets."

The parties had five retirement accounts, all in defendant's name. The arbitrator awarded defendant "50% of the aggregate value of the accounts plus $125,000 [for the jewelry] and [plaintiff] will receive 50% minus $125,000." Plaintiff was awarded his businesses, as well as all of his equipment. During the course of the marriage, plaintiff had initiated, and won, a personal injury lawsuit and received an award of $99,409.72 in net proceeds. However, plaintiff had only deposited $16,501.87 into the parties' bank account. Plaintiff then immediately withdrew $16,000.00 and gave it to his sister as repayment for a loan. However, plaintiff never provided any evidence of the existence of a loan, and the arbitrator found his testimony on this point to be incredible. The arbitrator concluded that because the award was not based on pain and suffering, it was a marital asset, to which defendant was entitled to 50%. Plaintiff was ordered to pay defendant her portion of the award from his share of the proceeds of the sale of the marital home if he was unable to secure a non-marital source for the funds.

While the divorce was pending, defendant involuntarily lost her employment, and was given a severance package to cover lost wages and health insurance costs. The arbitrator determined that the severance package was a marital asset, and would be used to pay marital debts such as credit cards and any remaining debt after payment of secured debt and professional fees from the marital home sale proceeds. The parties also owned a coin collection, valued at $6,000.00. The award provided that the parties could either divide the coin collection equally, or one party could keep the entire collection and pay the other party $3,000.00 Finally, the arbitrator awarded plaintiff title to the parties' 2008 GMC Sierra and 2011 Toyota Camry. Defendant was awarded the 2002 Mercedes and 2008 Land Rover.

Plaintiff moved in the trial court to vacate the arbitration award under MCR 3.602(J) and MCL 600.5072. Plaintiff argued that the stipulated order agreeing to arbitrate did not contain language required under MCL 600.5072(2) regarding domestic violence. Specifically, because domestic violence was an issue in this case, plaintiff argued, MCL 600.5072(2) prevented this case from proceeding to arbitration where the domestic violence exception had not been waived. Plaintiff also argued that the stipulation provided that "'the Court will not allow me to participate in arbitration unless I verbally, on the record before the [c]ourt, state that I have been informed of' " of MCL 600.5072(1). However, that never occurred. Finally, plaintiff argued that the arbitrator had exceeded his powers, and that the arbitration award was inequitable on its face.

The trial court held a hearing on plaintiff's motion, which was ultimately denied. The trial court concluded that as of the date the parties stipulated to arbitration, the domestic violence case initiated against defendant at the start of the divorce proceedings had been dismissed, and the PPO against defendant had been terminated, because plaintiff's allegations of domestic violence perpetrated by defendant were unfounded. Accordingly, domestic violence was not an issue in this case, and MCL 600.5072(2) had not been violated. The trial court also concluded that it was unnecessary for the parties to acknowledge that they had been made aware of the requirements of MCL 600.5072(1) on the record because,

> the statute and the language in the stipulated order require the parties to make verbal statements on the record only if they have not read the acknowledgement and had not been informed of the listed items A through K. In this case there was no need for the parties to make – parties to verbally make statements on the record as purported by [p]laintiff because the parties signed the acknowledgement

> as evidence by their signatures on the document clearly indicating that they read and were informed of the items.

Finally, the trial court went through the arbitration award and determined that the arbitrator had not exceeded his authority, and that "there is nothing on the face of the arbitrator's award that evidences an error of law."

The arbitration award was incorporated into the judgment of divorce entered on December 19, 2018. This appeal followed.

II. STANDARD OF REVIEW

"This Court reviews de novo a circuit court's decision to enforce, vacate, or modify an arbitration award." *Eppel v Eppel*, 322 Mich App 562, 571; 912 NW2d 584 (2018), quoting *Cipriano v Cipriano*, 289 Mich App 361, 375; 808 NW2d 230 (2010). Likewise, whether an arbitrator exceeded his authority is reviewed de novo. *Washington v Washington*, 283 Mich App 667, 672; 770 NW2d 908 (2009).

III. ANALYSIS

Plaintiff first argues that domestic violence was an issue in this case, and that the trial court failed to obtain a domestic violence waiver under MCL 600.5072(2) before sending this case to arbitration. Plaintiff argues, therefore, that the arbitration award should not be allowed to stand. We disagree.

MCL 600.5072(2) provides:

> (2) If either party is subject to a personal protection order involving domestic violence or if, in the pending domestic relations matter, there are allegations of domestic violence or child abuse, the court shall not refer the case to arbitration unless each party to the domestic relations matter waives this exclusion. A party cannot waive this exclusion from arbitration unless the party is represented by an attorney throughout the action, including the arbitration process, and the party is informed on the record concerning all of the following:
>
> (a) The arbitration process.
>
> (b) The suspension of the formal rules of evidence.
>
> (c) The binding nature of arbitration.

This case was referred to arbitration pursuant to the parties' stipulation. Plaintiff had obtained a PPO against defendant shortly after filing for divorce, however that PPO was terminated because the allegations underlying plaintiff's petition were false. Similarly, plaintiff had accused defendant of domestic violence, but that case was dismissed because of plaintiff's false allegations. Thus, at the time the parties stipulated to arbitrate, neither party was subject to a PPO, nor were there any allegations of domestic violence. Accordingly, there was no violation of MCL 600.5072(2), and the arbitration award cannot be vacated on that basis.

Next, plaintiff argues that MCL 600.5072(1) and the stipulated order for submission to domestic relations arbitration and written acknowledgment required the trial court to inform each party on the record of items (a) through (k) contained in the stipulated order, which included the statutory requirements of MCL 600.5072(1). Because the trial court failed to do so, plaintiff argues, the arbitrator exceeded his powers and the arbitration award is invalid. Again, we disagree.

MCL 600.5072(1) provides that:

> (1) The court shall not order a party to participate in arbitration unless each party to the domestic relations matter acknowledges, in writing or on the record, that he or she has been informed in plain language of all of the following:
>
> (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.

In addition to the nine requirements listed in MCL 600.5072(1)(a)–(i), the stipulated order included the following:

> j. The decision or award of the arbitrator may not be set aside unless (1) the arbitrator or another is guilty of corruption, fraud, or used other undue means, (2) evidenced partiality, corruption or misconduct, prejudicing a party's right, (3) exceeded his or her powers, or (4) refused to postpone the hearing on a showing

> of sufficient cause, refused to hear material evidence or conducted the hearing to substantially prejudice a party's rights. MCR 3.602(j).
>
> k. Both parties understand that they could insist on a formal arbitration which would include a full hearing. The parties have decided and it is the order of the [c]ourt that the parties shall waive their rights to a formal arbitration hearing and conduct the arbitration hearing in an informal manner.

The stipulated order also contained a written acknowledgment, which provided:

> I have read this Order and am voluntarily signing this Order and Acknowledgement. I understand that unless I have read the Acknowledgement and have been informed of items (a) through (k), the Court will not allow me to participate in arbitration unless I verbally, on the record before the Court, state that I have been informed of items (a) through (k).

Both parties, as well as their attorneys, signed the stipulated order and written acknowledgment.

MCL 600.5072(1) requires both parties agreeing to arbitration to acknowledge in writing *or* on the record that they have been informed of MCL 600.5072(1)(a)–(i). Similarly, the order itself only requires the parties verbally state that they have been informed of items (a) through (k) *if* they had not read or been informed of those items. Because both parties signed the order and acknowledgment indicating they had been informed by their attorneys of the contents of items (a) through (k), the trial court was not required to inform the parties on the record. Thus, the arbitrator was within his powers to preside over the arbitration.

Finally, plaintiff argues that the arbitration award was inequitable, contrary to Michigan law, and thus the award should be vacated. Again, we disagree.

MCL 600.5081(2) details the limited circumstances in which a reviewing court can vacate an arbitration award. Specifically, it provides:

> (2) If a party applies under this section, the court shall vacate an award under any of the following circumstances:
>
> (a) The award was procured by corruption, fraud, or other undue means.
>
> (b) There was evident partiality by an arbitrator appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing a party's rights.
>
> (c) The arbitrator exceeded his or her powers.
>
> (d) The arbitrator refused to postpone the hearing on a showing of sufficient cause, refused to hear evidence material to the controversy, or otherwise conducted the hearing to prejudice substantially a party's rights. [MCL 600.5081(2).]

See also MCR 3.602(J)(2), which mirrors MCL 600.5081(2), and further provides that "[t]he fact that the relief could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

Plaintiff specifically argues that the arbitrator exceeded his 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 672. When evaluating whether an arbitrator exceeded his or her authority,

> 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).]

Here, plaintiff argues that the arbitrator exceeded his authority by issuing an inequitable arbitration award, i.e., the arbitration award was contrary to Michigan law. Plaintiff argues that the arbitration award was inequitable because: (1) defendant was awarded almost 100% of the parties' assets; (2) the arbitrator determined the value of defendant's jewelry without an independent appraisal; (3) the arbitrator found that plaintiff had stolen defendant's jewelry without any evidence; (4) the arbitrator found that defendant's jewelry had been gifted to her during the marriage; and (5) defendant was awarded half of plaintiff's personal injury award because the arbitrator found it to be marital property.

In determining whether the arbitrator exceeded his authority by acting contrary to Michigan law, this Court must examine the substantive, controlling law applicable to property division 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). An *equitable* distribution of property does not require an *equal* distribution of assets and debts, so long as an adequate reason supports the distribution. *Id*. at 717. Factors 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 parities, (6) the necessities and circumstance of the parties, (7) the parties' earning abilities, (8) the parties' past relations and conduct, and (9) general principles of equity. [*Id*.]

The foregoing list is not exhaustive. *Id*.

Equitable division of marital property is "intimately related" to the factual findings regarding the relevant aforementioned factors. *McNamara v Horner*, 249 Mich App 177, 188-

189; 642 NW2d 385 (2002). Indeed, the alleged errors in the arbitration award cited by plaintiff relate to the arbitrator's factual findings, which are beyond the scope of this Court's review, *Washington*, 283 Mich App at 672, and we are unable to discern an error of law on the face of the arbitration award. Again, Michigan law provides for an equitable division of property, which may not necessarily be an equal division of property. *Id*. at 674. Where the arbitrator in this case provided the parties an equal opportunity to present evidence and testimony on all marital issues during arbitration, recognized and applied current and controlling Michigan law, and explained his uneven distribution of property, we find no basis for concluding that the arbitrator "exceeded his authority in issuing this particular award." *Id*. at 675.

Affirmed.

/s/ Michael J. Riordan
/s/ Kathleen Jansen
/s/ Cynthia Diane Stephens