

STATE OF MICHIGAN
COURT OF APPEALS

ESTATE OF THOMAS O'CONNOR, SR., by
KERRY DAVIDSON, Personal Representative,

UNPUBLISHED
October 15, 2020

Plaintiff-Appellee,

v

THOMAS O'CONNOR, JR.,

No. 349750
Oakland Circuit Court
LC No. 2018-163150-CK

Defendant-Appellant.

Before: SWARTZLE, P.J., and JANSEN and BORRELLO, JJ.

PER CURIAM.

In this dispute over enforcement of a settlement agreement, defendant appeals as of right the trial court's order granting plaintiff's motion for entry of judgment. Defendant argues that the parties agreed to arbitration and that the arbitrator lacked authority to broker a settlement agreement. We conclude that defendant contributed to the alleged error by seeking settlement, participating in the settlement negotiations, and signing the settlement agreement. Further, defendant has waived and abandoned his remaining issues by failing to properly brief them to this Court on appeal. Therefore, we affirm.

I. BACKGROUND

In 2015, Thomas O'Connor, Sr., filed a lawsuit against defendant, Thomas O'Connor, Jr. In that initial lawsuit, O'Connor, Sr., alleged that defendant unlawfully converted property belonging to him, including the proceeds from a refinanced mortgage on his home. Instead of litigating the matter, defendant entered into a settlement agreement with his father. After signing the settlement agreement, however, defendant refused to abide by its terms. O'Connor, Sr., subsequently filed this lawsuit against defendant, seeking to enforce the settlement agreement. O'Connor, Sr., died before the matter reached trial and Kerry Davidson, the personal representative of his estate, substituted as plaintiff and continued this action.

The trial court conducted a bench trial in March 2019. Defendant testified he agreed to have a retired judge serve as the arbitrator of his original dispute with his father. Defendant confirmed that he and his attorney attended and participated in settlement negotiations for the

entire day on which the arbitration was scheduled to occur, but defendant claimed that he was unhappy with the settlement agreement. Defendant further claimed that, during the proceedings, he told his attorney that he wanted to go to arbitration, but his attorney advised him to agree to a settlement, and the arbitrator directed him to sign the settlement agreement. Defendant claimed that he initially refused to sign the settlement agreement, and that he ultimately signed it under duress.

During the bench trial, defense counsel informed the trial court that he wished to call defendant's attorney from the first lawsuit as a witness. In response to plaintiff's objection, defense counsel conceded that he failed to list the attorney on his pretrial witness list, but argued that he should be permitted to call the witness because he informed plaintiff's counsel of his desire to call the witness one week before trial, and because he previously submitted the witness's affidavit to the trial court. The trial court found that defense counsel failed to timely notify plaintiff's counsel of his intent to call the witness, and sustained the objection made by plaintiff's counsel.

After the bench trial, the trial court found that the parties did not engage in arbitration, but instead chose to enter into a settlement agreement. The trial court further found that the settlement agreement was a binding contract between the parties, which defendant breached, even though defendant received the benefits of the settlement agreement. Finally, the trial court found that defendant's evidence on the issue of duress was not credible, and concluded that defendant failed to establish the defenses of duress or coercion. The trial court awarded plaintiff a monetary judgment. After the trial court issued its written opinion, plaintiff filed a motion for entry of a judgment in her favor, which the trial court granted.

This appeal followed.

II. ANALYSIS

Defendant first argues that the arbitrator exceeded his authority by brokering the settlement between defendant and his father, and that the settlement agreement should be invalidated because of duress or coercion.

This Court reviews de novo whether an arbitrator exceeded his authority. *Washington v Washington*, 283 Mich App 667, 672; 770 NW2d 908 (2009). To the extent this issue concerns the validity of the settlement agreement, this Court also reviews de novo questions of contract interpretation, including the interpretation and enforcement of settlement agreements. *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006).

An arbitrator exceeds his powers if he acts in contravention of controlling law or exceeds the powers that the parties' agreement to arbitrate granted to him. *Eppel v Eppel*, 322 Mich App 562, 572; 912 NW2d 584 (2018). Defendant argues that the arbitrator lacked authority to mediate a settlement between the parties. The agreement to arbitrate indicates that the parties hired the arbitrator to preside over a formal arbitration. The agreement did not specifically vest the arbitrator with the power to facilitate settlement proceedings. Yet, defendant admitted at the bench trial that he actively sought settlement and that he agreed to allow the arbitrator to mediate a settlement on the date scheduled for arbitration. Defendant's actions indicate that he was amenable to settling

the lawsuit instead of proceeding to arbitration. Error requiring reversal may not be predicated on “alleged error to which the aggrieved party contributed by plan or negligence.” *Lewis v LeGrow*, 258 Mich App 175, 210; 670 NW2d 675 (2003). Because defendant contributed to the alleged error by seeking to settle the first lawsuit, participating in the settlement negotiations, and signing the settlement agreement, he cannot now claim relief based on the argument that the arbitrator exceeded the scope of his authority.

Defendant next argues that the arbitrator unlawfully forced him to sign the settlement agreement through duress or coercion. Defendant failed to include this issue in his statement of the issues presented on appeal. “An issue not contained in the statement of questions presented is waived on appeal.” *English v Blue Cross Blue Shield of Mich*, 263 Mich App 449, 459; 688 NW2d 523 (2004). Accordingly, we decline to address the issue.

Defendant next argues that the trial court erred by refusing to allow defendant’s former attorney to testify. We note that defendant has waived this issue by failing to brief the merits of his argument. When “a party fails to brief the merits of an allegation of error, the issue is deemed abandoned by this Court.” *Yee v Shiawassee Co Bd of Comm’rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002) (cleaned up). Because defendant abandoned this issue, we decline to consider it.

Finally, defendant argues that the trial court’s ruling was against the great weight of the evidence. “Because defendant did not raise this issue in a motion for a new trial before the trial court, this issue has been waived.” *Rickwalt v Richfield Lakes Corp*, 246 Mich App 450, 464; 633 NW2d 418 (2001).

Affirmed. Plaintiff, having prevailed in full, may tax costs under MCR 7.219(F).

/s/ Brock A. Swartzle
/s/ Kathleen Jansen
/s/ Stephen L. Borrello