

STATE OF MICHIGAN
COURT OF APPEALS

ANDREA ZOE DIXON,

Plaintiff-Appellant,

v

SCOTT ANTHONY DIXON,

Defendant-Appellee.

UNPUBLISHED

August 12, 2021

No. 355445

Oakland Circuit Court

LC No. 2018-868239-DM

Before: SAWYER, P.J., and BOONSTRA and RICK, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order denying her motion to vacate an arbitration award and granting defendant's motion to confirm the award. We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

This case concerns an arbitration award under the Domestic Relations Arbitration Act (DRAA), MCL 600.5070 *et seq.*, which granted the parties an equal interest in their former marital home. The parties were married in 2000 and divorced in 2019. The home was acquired in 2009. Plaintiff's parents, Robert J. Clark and Mary Clark (the Clarks) assisted the parties financially in purchasing the home, and the parties executed a mortgage to the Clarks agreeing to pay back a portion of the money used to purchase the home. Plaintiff and the Clarks, but not defendant, were listed on the deed to the home as tenants in common.

After the divorce, plaintiff and the parties' children continued to live in the home. The judgment of divorce ordered the parties to sell the home. It further provided that any disputes would be arbitrated. When the parties could not agree on their respective interests in the home, the trial court ordered the parties to arbitration. The parties signed an arbitration agreement stating that they agreed, in pertinent part, to arbitrate the "terms and conditions as to retention of marital home by Plaintiff and payment of any equity to the Defendant."

The arbitration commenced in February 2020. On August 23, 2020, the arbitrator sent the parties a proposed award (the interim award) granting the parties an equal share of the value of the home, minus the Clarks' mortgage and other expenses and debts. In addition to deciding the

parties' respective interests in the home, the interim award contained a statement by the arbitrator that she believed that "the Plaintiff has conspired with her parents to frustrate the interest of the Defendant in the marital home." The interim award further provided that, "[w]ithin fourteen (14) days after this Award is issued, a party to the Arbitration may file a Motion to Correct Errors and Omissions." Neither party filed such a motion, and on September 14, 2020, the arbitrator issued a final arbitration award (the final award). The final award omitted the statement quoted above, and made no reference to any alleged conspiracy to defraud defendant.

Plaintiff moved to vacate the final award, arguing that the arbitrator had exceeded her powers and impermissibly determined the interests of non-parties to the divorce proceeding (the Clarks), and further that the arbitration agreement itself was unenforceable because the trial court was not permitted to determine the interests of non-parties. Defendant moved to confirm the final award. The trial court denied plaintiff's motion to vacate the final award, and granted defendant's motion to confirm it. This appeal followed.

II. STANDARD OF REVIEW

We review de novo a trial court's ruling on a motion to vacate or modify an arbitration award. *Washington v Washington*, 283 Mich App 667, 671; 770 NW2d 908 (2009) (citation omitted). Likewise, "[a] claim that the lower court lacks jurisdiction is a question of law, which this Court reviews de novo." *Reed v Reed*, 265 Mich App 131, 157; 693 NW2d 825 (2005) (citation omitted). We review de novo the interpretation of an arbitration agreement, *Rory v Continental Ins Co*, 473 Mich 457, 461; 703 NW2d 23 (2005), as well as issues of statutory interpretation. *Foster v Foster*, 505 Mich 151, 165; 949 NW2d 102 (2020).

The foremost principle in construing statutes is to discern and give effect to the Legislature's intent. When the statutory language is unambiguous, we presume that the Legislature intended the meaning clearly expressed—no further judicial construction is required or permitted, and the statute must be enforced as written. A provision in a statute is ambiguous only if it irreconcilably conflicts with another provision or it is equally susceptible to more than a single meaning. [*In re Lee*, 282 Mich App 90, 93; 761 NW2d 432 (2009) (quotation marks and citations omitted).]

III. ARBITRATOR'S FINDING OF FRAUD

Plaintiff argues that the arbitrator exceeded the scope of her authority by determining that the Clarks and plaintiff had conspired to defraud defendant of his interest in the home, and that the trial court therefore erred by issuing an award that determined the interests of the Clarks in the home. We disagree.

"Judicial review of arbitration awards is usually extremely limited, and that certainly is the case with respect to domestic relations arbitration awards." *Washington*, 283 Mich App at 671 (citation omitted). Under MCL 600.5081(2), a court may vacate a domestic relations arbitration award when:

- (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.

Plaintiff's argument is based on subsection (c). Arbitrators exceeds their power "whenever they act beyond the material terms of the contract from which they primarily draw their authority, or in contravention of controlling principles of law." *Krist v Krist*, 246 Mich App 59, 62; 631 NW2d 53 (2001), citing *Collins v Blue Cross Blue Shield of Mich*, 228 Mich App 560, 567; 579 NW2d 435 (1998). "In order for a court to vacate an arbitration award because of an error of law, the error must have been so substantial that, but for the error, the award would have been substantially different." *Eppel v Eppel*, 322 Mich App 562, 572; 912 NW2d 584 (2018) (citation omitted). "Any such error must be readily apparent on the face of the award without second-guessing the arbitrator's thought processes, and the arbitrator's findings of fact are immune from review altogether." *Id.* "An issue is moot if an event has occurred that renders it impossible for the court to grant relief. An issue is also moot when a judgment, if entered, cannot for any reason have a practical legal effect on the existing controversy." *In re Gerald L Pollack Trust*, 309 Mich App 125, 154; 867 NW2d 884 (2015) (quotation marks and citation omitted).

Plaintiff's argument is premised on the statement in the interim award concerning an alleged conspiracy. The arbitrator's statement was omitted, however, from the final award that was confirmed by the trial court, and therefore did not form a basis for the arbitrator's final award. Consequently, plaintiff's argument that the trial court should not have confirmed the final award, but should instead have joined the Clarks as parties and held an evidentiary hearing concerning the issue, has no "practical legal effect on the existing controversy" and is moot. *Id.* at 154 (quotation marks and citation omitted). We thus decline to consider this issue.

IV. ADJUDICATION OF THE CLARKS' RIGHTS TO THE HOME

Plaintiff also argues that the arbitrator exceeded the scope of her powers by issuing an award that determined the Clarks' interest in the home, and that the arbitration agreement was unenforceable because the trial court lacked jurisdiction to order the arbitrator to determine the rights of nonparties. We disagree.

Under the DRAA, "[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 . . . [r]eal and personal property." MCL 600.5071(a). "The circuit court shall enforce an arbitrator's award or other order issued under this chapter in the same manner as an order issued by the circuit court." MCL 600.5079(1). However, a trial court may not enforce an award if it lacks jurisdiction. See *Nash v Salter*, 280 Mich App 104, 120; 760 NW2d 612 (2008). This Court has noted that the trial court in a divorce action generally lacks jurisdiction to adjudicate the rights of non-parties:

Absent allegations of fraud, the trial court in a divorce action may only adjudicate the rights of the spouses whose marriage is being dissolved. Thus, the trial court's

jurisdiction is limited to the dissolution of the marriage and to matters ancillary to the marriage's dissolution, such as child support, spousal support, an equitable division of marital assets, and the award to one spouse of the other spouse's property in certain circumstances. So, in a divorce action, the trial court lacks the authority to compel a party to convey property or a property interest to a third person, even a child of the parties, or to adjudicate claims of third parties. [*Reed*, 265 Mich App at 157-158 (quotation marks and citations omitted).]

In this case, the arbitrator did not adjudicate the Clarks' interest in the home. Rather, she determined the value of property that was part of the marital estate and the amount of the equity in the home to be paid to defendant. See *Reed*, 265 Mich App at 158 (noting that the trial court "did not adjudicate the rights of third parties, or order that property be conveyed to third parties. To the contrary, the trial court only determined the extent of defendant's interest in various properties for the purpose of adjudicating a fair and equitable division of marital property."). The award included payment of the parties' mortgage to the Clarks, but did not, itself, convey or modify any portion of the Clarks' ownership interest in the home. "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 arbitrator therefore did not exceed the scope of her authority, and the trial court did not err by confirming the award.

V. TIMELINESS OF PLAINTIFF'S OBJECTIONS TO THE AWARD

Plaintiff suggests that the trial court found her motion to vacate to be untimely, arguing that the trial court erred by stating that she did not timely file any objection to errors or omissions in the arbitrator's award. Plaintiff misinterprets the trial court's analysis—the trial court did not dispute the timing of plaintiff's motion to vacate the final arbitration award; therefore, there is no error requiring relief.

MCL 600.5081 states in pertinent part: "(2) If a party applies under this section, the court shall vacate an award under any of the following circumstances . . . (c) The arbitrator exceeded his or her powers." MCL 600.5078 states in pertinent part: "[a]n arbitrator under this chapter retains jurisdiction to correct errors or omissions in an award until the court confirms the award. Within 14 days after the award is issued, a party to the arbitration may file a motion to correct errors or omissions." MCL 600.5081 thus applies to allegations that the arbitrator exceeded his or her authority, while MCL 600.5078 applies to objections to errors or omissions regarding the award itself.

Plaintiff argues that the trial court erred when it made the following statement in its order confirming the final award:

[P]ursuant to paragraph 7 of the Arbitration Agreement, Plaintiff failed to file a motion with the Arbitrator to correct any errors and/or omissions in this interim award, including seeking a ruling from the Arbitrator to correct, what Plaintiff now claims, is a factually unsupported finding of conspiracy. See [sic] MCL 600.5078(3).

From the context of the statement in the trial court's order, the trial court was addressing plaintiff's contention that the arbitrator had made findings of fraud against plaintiff and the Clarks. In making this statement, the trial court pointed out to plaintiff that, under the terms of the arbitration agreement and MCL 600.5078(3), the time to object to this statement was after the August interim award was issued, not in a challenge to the final award.

In any case, the trial court did not deny plaintiff's motion to vacate the final award because it was untimely or because she had failed to timely object to errors or omissions by the arbitrator. The trial court instead addressed on the merits plaintiff's argument that the arbitrator had exceeded her authority, and concluded that the argument was without merit. As stated, we affirm that holding. Although the trial court decided that issue in defendant's favor, it did not decide the issue on the basis of the timeliness of plaintiff's motion to vacate the final award under MCL 600.5081(2)(c).

Affirmed.

/s/ David H. Sawyer
/s/ Mark T. Boonstra
/s/ Michelle M. Rick