STATE OF MICHIGAN

COURT OF APPEALS

GWENDA J. SOUDEN, Plaintiff-Appellee, v DEAN F. SOUDEN, Defendant-Appellant.	UNPUBLISHED September 20, 2011 Nos. 297676; 297677 Oakland Circuit Court LC No. 2009-759780-DO
GWENDA J. SOUDEN, Plaintiff-Appellee, v DEAN F. SOUDEN, Defendant, and JOHN P. WILLIAMS and ALLAN S. FALK, Appellants.	No. 297678 Oakland Circuit Court LC No. 2009-759780-DO

Before: M. J. KELLY, P.J., and OWENS and BORRELLO, JJ.

PER CURIAM.

In these consolidated appeals arising from a divorce judgment entered after arbitration, defendant Dean F. Souden appeals by right the trial court's judgment of divorce in docket number 297676. Defendant argues that the arbitration agreement was invalid and unenforceable. He also argues that the arbitrator exceeded his authority under the arbitration agreement and that the arbitrator's award was unjustified under the facts. For these reasons, he maintains, the trial court erred when it entered an order enforcing the arbitrator's award. In docket number 297677, defendant appeals the trial court's order compelling him to pay plaintiff Gwenda J. Souden's attorney fees as a sanction for filing a document that was not well grounded in fact. In docket number 297678, defendant's trial lawyers appeal as of right the trial court's order compelling

them to pay sanctions for the same motion. We conclude that the arbitration agreement was valid and enforceable. Further, because the arbitrator did not exceed his authority under the arbitration agreement and because there was otherwise no basis for the trial court to invalidate the award, we conclude that the trial court properly entered judgment on the arbitration award. However, the arbitrator's award contained an award of property that was ambiguous. As such, we conclude that it is necessary to remand this case for clarification of the award. The trial court also did not err in finding that the defendant's motion concerning the possible relationship between the arbitrator and plaintiff's lawyer had no basis in fact and, for that reason, did not err when it ordered defendant and his attorneys to pay sanctions. Nevertheless, we conclude that the trial court erred to the extent that it ordered defendant to pay $2,000 in attorney fees without holding an evidentiary hearing and erred to the extent that it ordered defendant's trial lawyers to pay an additional $2,500 as a punitive sanction or, in the alternative, without first determining that these fees were actually incurred. For these reasons, we affirm in part, vacate in part, and remand for further proceedings.

I. BASIC FACTS AND PROCEDURAL HISTORY

Defendant married plaintiff in August 1994. The present marriage was defendant's second marriage and plaintiff's third marriage. The parties did not have children together.

During the latter half of the marriage, the parties spent a considerable amount of time apart. Starting in 2004, defendant accepted employment with various employers that were located far from the parties' home in Waterford, Michigan. By 2007, defendant lived in St. Joseph where he worked for Lake Michigan College. Plaintiff did not accompany him when he relocated and she frequently spent time in Florida and at a family farm in Missouri.

Citing a breakdown in the marriage, plaintiff sued defendant for a divorce in May 2009. At a hearing, held in August 2009, the parties indicated that they had intended to submit the case to binding arbitration with retired circuit judge Fred M. Mester, but that the negotiations had faltered. However, at a hearing held in October 2009, the parties informed the trial court that they had agreed to submit the case to facilitation with Mester and that they had scheduled the facilitation for November.

The parties proceeded to facilitation on November 11, 2009. After some time, they decided to transform the proceeding into one of binding arbitration. They signed an arbitration agreement and then continued the proceeding as an arbitration hearing. Mester issued his arbitration award in January 2010. He awarded plaintiff all the parties' real property—including the house in Michigan, the farm property in Missouri, and both condos in Florida—as well as 60% of the pension that defendant earned with the college during the time of the marriage and some or all of his pension from his previous employer, which Mester referred to as the "John Henry Annuity." Finally, Mester ordered defendant to pay plaintiff $1,400 per month in alimony for five years.

On January 21, 2010, the parties appeared before the trial court. At the hearing, plaintiff's lawyer explained that the parties had decided to transform the facilitation proceeding into an arbitration hearing. Accordingly, they signed an arbitration agreement and continued the hearing with Mester now serving as arbitrator. Plaintiff's lawyer stated that he prepared a

proposed judgment after Mester issued his award, but that defendant's lawyer would not accept the proposed judgment and instead wanted to proceed to trial. He then asked the trial court to recognize that the arbitration agreement was binding on the parties and to enter a judgment in accord with Mester's award.

In response, defendant's lawyer remarked that he thought that the whole arbitration hearing had been unfair and irregular; specifically, he found it objectionable that plaintiff improperly raised the issue of marital infidelity and did not disclose her true income. He also stated his belief that the proceedings were inherently unfair because—given that the parties were in separate rooms—he was not aware of these problems and had no ability to defend against them. Finally, he took the position that the arbitration was invalid because the trial court had not entered an order for binding arbitration.

After hearing the arguments, the trial court determined that the arbitration agreement and award were binding on the parties. The court noted that MCL 600.5072 provides a limitation on the court's ability to order the parties to proceed to binding arbitration, but did not prevent the parties from voluntarily proceeding with arbitration even without a court order. It, however, determined that it would enter an order of arbitration *nunc pro tunc* on the basis of the arbitration agreement. It also noted that the arbitration agreement specifically allowed the hearing to be informal with the parties in separate rooms; for that reason, it rejected defendant's lawyer's claims that the arbitration hearing was unfair as a result of the way in which it was conducted. The trial court stated that it would enter judgment in accord with Mester's award.

The trial court entered the judgment of divorce and the order for arbitration on the same day. The trial court's judgment followed Mester's award except that it did not order defendant to transfer his John Henry Annuity to plaintiff. Instead, under a paragraph titled annuity and investment accounts, the court's judgment ordered defendant to transfer "all sums contained in the parties' investment accounts (*as referenced formerly invested under John Henry Annuity, presently invested under Ameriprise Financial*) . . . ."

On January 25, 2010, defendant moved to have the arbitration award vacated. He argued that the award should be vacated because plaintiff procured it through fraud—by giving the arbitrator false testimony—and because the arbitrator exceeded the scope of his authority when he considered fault.

Defendant moved for reconsideration or amendment of the judgment in February 2010. In the motion, defendant reiterated his allegations that the arbitrator's award was inequitable, appeared to be premised on fault, and improperly invaded defendant's separate property. Defendant also alleged that plaintiff's lawyer had had problems with alcohol in the past and failed to disclose that Mester had become a mentor or sponsor to him in an addiction recovery program. Defendant stated that he would not have agreed to use Mester as an arbitrator had he known about the relationship at the time. Notably, defendant did not present any evidence that Mester actually had a mentor or sponsor relationship with plaintiff's attorney.

In response, plaintiff's lawyer categorically denied that he had anything other than a professional relationship with Mester. He also argued that defendant failed to present any grounds for vacating the arbitration award or setting aside the judgment.

In March 2010, defendant submitted a brief in support of his motion for reconsideration. In the brief, he again alleged that plaintiff's lawyer had a special relationship with Mester and again failed to support his allegations with any evidence. He also argued that the arbitration agreement was invalid and that Mester exceeded the scope of his authority by awarding spousal support and invading defendant's sole property. Finally, defendant stated his belief that Mester's award was inequitable.

Also in March 2010, plaintiff moved to have the judgment enforced and asked the trial court to find defendant to be in contempt for failing to transfer the assets that the trial court ordered him to transfer. In a brief filed as a supplement to her answer to defendant's motion to vacate, plaintiff also argued that defendant's allegations that plaintiff's lawyer had a relationship with the arbitrator were scandalous and unfounded. She asked the trial court to find that defendant's motion was frivolous and vexatious and, on that basis, asked the trial court to assess defendant with costs and fees for making the motion. Plaintiff also submitted an affidavit by her attorney in which he admitted that he had been involved in an alcohol recovery program, but denied having had a mentor or other confidential relationship with Mester.

On April 7, 2010, the trial court denied defendant's motion to vacate the arbitration award and his motion to reconsider or amend the judgment of divorce. On the same day, the trial court also ordered defendant to pay $2,000 to plaintiff for her attorney fees and ordered defendant's lawyers, John P. Williams and Allan Falk, to pay $2,500 to plaintiff's lawyer as a sanction for filing a motion with false allegations. The trial court also entered an order granting plaintiff's motion to enforce the judgment in part; specifically, the court ordered defendant to release up to $20,000 in funds from the Ameriprise accounts to allow plaintiff to pay her attorney's fees.

These appeals followed.

II. THE VALIDITY OF THE ARBITRATION AGREEMENT

A. STANDARDS OF REVIEW

Defendant first argues that the arbitration agreement is unenforceable because the agreement did not conform to the requirements of the Domestic Relations Arbitration Act. Specifically, he argues that the arbitration agreement does not meet the requirements stated under MCL 600.5071. He also argues that the parties rendered the agreement void by crossing out a section of the agreement that notified the parties that their right to appeal was limited to that provided under MCL 600.5080 and MCL 600.5081. This Court reviews de novo the proper interpretation and application of a statute. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003). This Court also reviews de novo the proper interpretation of an arbitration agreement. *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005).

B. WAIVER

As a preliminary matter, we shall address plaintiff's argument that defendant waived his right to appellate review by striking the appeal provision from the arbitration agreement and by failing to raise his claims of error before the trial court.

In the arbitration agreement, the parties acknowledged that "they had been informed" of a list of provisions that substantially mirrored the notice requirements provided under MCL 600.5072(1). The notice provisions included a statement that the parties acknowledged that the arbitration was "binding" and that the parties' "right of appeal is limited as stated in the next section." The next section provided that the parties' right of appeal was "limited to those provided by section 5081(1) and 5082 of the Act." However, the parties crossed the body of the latter section out and initialed it.

Plaintiff contends that, by crossing out the section that described the limitations imposed on the parties' right to appeal, the parties agreed that they would have no right to appeal the arbitration award. We cannot agree that the parties contractually limited their right to appeal by crossing out this section. When the arbitration agreement is read without the body of this section, it provides that the parties acknowledge that they had been informed that their right to appeal is limited by the following section, which is labeled "Right to Appeal" and contains no provisions for appeal. That is, the parties agreed that their right to appeal was limited, but then failed to state how it was limited.[1] This is not the same as affirmatively stating that the parties agreed that they would have no right to appeal. Had the parties wanted to waive that right, they should have added language to that effect in the section on the right to appeal; they did not, and we will not infer such a limitation from their decision to delete the relevant language. See *Harbor Park Market, Inc v Gronda*, 277 Mich App 126, 130-131; 743 NW2d 585 (2007) (stating that courts are not free to rewrite a contract under the guise of interpretation).

Plaintiff, however, correctly notes that, in order to properly preserve an issue for appellate review, a party must normally raise the claim of error before the trial court. See *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008) (explaining that Michigan courts generally follow the "raise or waive" rule of appellate review—that is, "a litigant must preserve an issue for appellate review by raising it in the trial court.") This rule has its origins in judicial efficiency and fundamental fairness to the opposing party:

> By limiting appellate review to those issues raised and argued in the trial court, and holding all other issues waived, appellate courts require litigants to raise and frame their arguments at a time when their opponents may respond to them factually. This practice also avoids the untenable result of permitting an

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[1] Indeed, this change could plausibly be understood to mean that the parties agreed that their right to appeal was not limited by the terms of the agreement. This of course is not the same thing as agreeing to give the courts the power to hear an appeal other than provided by law. Such an agreement would have no effect because a court's power to hear an appeal is a matter of substantive law, which might be waived, but certainly cannot be expanded through an arbitration agreement. See *Brucker v McKinlay Transport, Inc*, 454 Mich 8, 17; 557 NW2d 536 (1997) ("All sorts of private conciliation, mediation, and arbitration devices are available. What parties are *not* able to do, however, is reach a private agreement that dictates a role for *public* institutions.").

> unsuccessful litigant to prevail by avoiding its tactical decisions that proved unsuccessful. Generally, a party may not remain silent in the trial court, only to prevail on an issue that was not called to the trial court's attention. Trial courts are not the research assistants of the litigants; the parties have a duty to fully present their legal arguments to the court for its resolution of their dispute. [*Id.* at 388.]

In January 2010, the trial court held a hearing at which it determined that the arbitrator's judgment should be entered. Defendant objected to the entry of the judgment on the ground that the arbitration proceedings had been unfair. He also argued that the arbitration proceeding was invalid because the trial court had not ordered the parties to proceed to arbitration. He did not argue that the arbitration agreement was invalid because it did not comply with the specific requirements of the applicable arbitration acts and he did not argue that the arbitrator exceeded the scope of his authority; he first raised those issues in post-judgment motions.

This Court does not have an obligation to review improperly preserved claims of error in a civil case. But cf. *People v Carines*, 460 Mich 750, 761-764; 597 NW2d 130 (1999) (stating that, in an appeal from a criminal conviction, courts should review unpreserved claims of error for plain error affecting the defendant's substantial rights). Rather, the claims are waived unless we exercise our discretion to overlook the preservation requirements. See *Walters*, 481 Mich at 387; see also *Smith v Foerster-Bolser Constr*, 269 Mich App 424, 427; 711 NW2d 421 (2006) ("[T]his Court may overlook preservation requirements if the failure to consider the issue would result in manifest injustice, if consideration is necessary for a proper determination of the case, or if the issue involves a question of law and the facts necessary for its resolution have been presented."). And this Court will exercise that discretion sparingly and only where exceptional circumstances warrant review. *Booth v University of Michigan Board of Regents*, 444 Mich 211, 234 n 23; 507 NW2d 422 (1993).

Here, defendant did not raise some of his arguments concerning the validity of the arbitration agreement and judgment at the hearing where the trial court considered plaintiff's request to enter judgment. However, it is also apparent from the record that plaintiff did not file a formal motion to have the arbitration award enforced. Instead, plaintiff elected to orally move for enforcement of the award on the date scheduled for the first day of trial. Although defendant raised some of his claims of error at that hearing, he did not raise the others until after entry of the judgment. Despite this, the trial court did eventually consider these claims; it determined that the arbitration agreement was enforceable and that the arbitrator did not exceed the scope of his authority under the agreement. Because defendant's claims of error concerning the scope and validity of the arbitration agreement are questions of law and any facts necessary for the resolution of the questions have been presented, we elect to exercise our discretion to consider them on appeal, notwithstanding defendant's failure to bring them up before the trial court's decision to enter the judgment. *Foerster-Bolser Constr*, 269 Mich App at 427.

C. VALIDITY OF THE ARBITRATION AGREEMENT

1. THE ORDER OF ARBITRATION

We shall next address defendant's claim that the trial court lacked the authority to enter judgment on the arbitration award because the trial court did not order the parties to participate in arbitration until after they had already done so.

Under Michigan's Arbitration Act (the Arbitration Act), persons may agree to submit "any controversy existing between them, which might be the subject of a civil action" to binding arbitration. See MCL 600.5001(1). The agreement must be in writing and must state that the parties "agree that a judgment of any circuit court shall be rendered upon the award made pursuant to such submission." *Id.* When an agreement meets the requirements stated under MCL 600.5001(1), the parties are deemed to have commenced statutory arbitration and the provisions of the Arbitration Act will apply. See *Wold Architects v Strat*, 474 Mich 223, 229-231; 713 NW2d 750 (2006). If the parties' agreement does not meet the requirements of MCL 600.5001(1), the agreement is not one for statutory arbitration; it may nevertheless be enforceable as an agreement for common law arbitration. *Id.* at 231-238.

In addition to the general provisions of the Arbitration Act, the Michigan Legislature provided specific provisions for arbitration of disputes involving domestic relations in the Domestic Relations Arbitration Act (DRAA). See MCL 600.5070 *et seq.* These provisions were intended to supplement the Arbitration Act. See MCL 600.5070(1) (stating that the DRAA controls in the event of a conflict between its provisions and those of the Arbitration Act). In examining the DRAA, this Court has noted that the DRAA is comprehensive and applies to all agreements purporting to submit a domestic relations dispute to binding arbitration; and, if the parties fail to comply with its requirements, courts will not be subject to the limited review provided under the DRAA. See *Harvey v Harvey*, 257 Mich App 278, 283-291; 668 NW2d 187 (2003).[2]

Here, defendant contends that the parties' arbitration agreement was unenforceable under MCL 600.5072(1), because the parties proceeded to an arbitration hearing under the agreement without first getting the trial court to enter an order of arbitration. MCL 600.5072(1) provides that a trial court "shall not order a party to participate in arbitration" unless the parties

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[2] Contrary to defendant's contention on appeal, the decision in *Harvey* cannot be made to stand for the proposition that the Legislature abrogated common law arbitration for disputes involving domestic relations. In *Harvey*, the majority determined that the limited review applicable under the DRAA to child custody issues, see MCL 600.5080, did not apply because the parties' agreement did not meet the DRAA's requirements. See *Harvey v Harvey*, 257 Mich App 278, 291; 668 NW2d 187 (2003). The Court did not hold that arbitration agreements that fail to meet the requirements of the DRAA are unenforceable as a matter of law. Nevertheless, given our resolution of this issue, we need not determine whether common law arbitration remains viable—in whole or in part—for the resolution of disputes involving domestic relations.

acknowledge, in writing or on the record, that they have been informed about the nature of binding arbitration, as specified under MCL 600.5072(1)(a) through (i). Although this provision clearly limits the trial court's ability to *order* a party to participate in binding arbitration, it does not in any way limit the parties' ability to *voluntarily* participate in binding arbitration. Further, defendant has not identified—and we have not found—any provision within the DRAA that invalidates an arbitration agreement, arbitration hearing, or arbitration award when the parties voluntarily proceed through binding arbitration without first obtaining an order to do so. Nevertheless, we recognize that the DRAA—unlike the Arbitration Act—does envision a more active role for the trial court.

Under the Arbitration Act, the parties to a statutory arbitration agreement can provide for the appointment of an arbitrator in their agreement and the trial court need only intervene to appoint an arbitrator in the event the "agreed method fails or for any reason cannot be followed." MCL 600.5015. In contrast, the DRAA contemplates that the trial court will appoint an arbitrator—presumably through an order. See MCL 600.5073 (stating that the "court shall appoint an arbitrator agreed to by the parties . . . ."). The DRAA also delineates the powers and duties applicable to an arbitrator *appointed* under the DRAA. See, e.g., MCL 600.5074; MCL 600.5075; MCL 600.5076. Similarly, under the Arbitration Act, trial courts have the jurisdiction to enforce an arbitration agreement, even where the parties proceeded without an order from the trial court. See MCL 600.5025. But the DRAA specifically provides that the trial court shall enforce an award "issued under this chapter." MCL 600.5079. As such, the trial court's authority to enforce an award appears to depend on whether the arbitration complied with the requirements of the DRAA. Thus, it is clear that the Legislature intended that trial courts have significantly more oversight with regard to arbitration agreements that involve domestic relations than for arbitration agreements that do not involve domestic relations. It is equally clear that the Legislature did this to protect the unique rights at issue in domestic relations matters and ensure the fundamental fairness of the arbitration proceedings. See, e.g., MCL 600.5072 (providing for procedural safeguards). Nevertheless, the DRAA does not require the trial court to proceed in any particular order and nothing within the DRAA precludes a trial court from ratifying the parties' decision to proceed with an arbitration hearing without an order to do so, as long as the parties' arbitration agreement and actions otherwise fully complied with the DRAA's substantive provisions.

Here, the trial court's decision to enter an order of arbitration was—in effect—an order ratifying the parties' decision to enter into an arbitration agreement and to proceed with an arbitration hearing. That is, although styled as an order of arbitration, the trial court essentially adopted the parties' appointment of an arbitrator as its own and determined that the parties' agreement and proceeding otherwise complied with the requirements of the DRAA. And we conclude that the trial court could properly ratify the parties' actions in this way. Therefore, we

do not agree that the trial court's decision to ratify the parties' actions through this order rendered the parties' agreement and the arbitrator's award invalid.[3]

2. SUBSTANTIVE CHALLENGES

Defendant also argues that the trial court erred in entering a judgment on the basis of the arbitrator's award because the parties' agreement did not comply with the DRAA's substantive provisions. Specifically, he argues that the parties' decision to remove the section specifying the limitations on the right to appeal invalidated the acknowledgment required under MCL 600.5072(1)(b).

Under the DRAA a court may not order arbitration involving domestic relations unless the parties acknowledge in writing or on the record that they have—in relevant part—been informed that the arbitration "is binding and the right of appeal is limited." MCL 600.5072(1)(b). In their arbitration agreement, plaintiff and defendant both acknowledged that that had been informed about a variety of issues that substantially mirrored the required acknowledgements listed under MCL 600.5072(1). With regard to the limitations acknowledgement required under MCL 600.5072(1)(b), the agreement provided that the parties acknowledged that they had been informed that arbitration is binding and "the right of appeal is limited as stated in the next section." The next section originally provided that the right of appeal was limited to the rights stated under the DRAA—namely, the limited review provided under MCL 600.5081(1) and MCL 600.5082. However, the parties agreed to eliminate this section. Defendant now argues that the decision to eliminate the limitations on the right of appeal effectively nullified his acknowledgment that he had been informed that he had a limited right to appeal an award after binding arbitration. We cannot agree that the elimination of the provision identifying the limits stated under the DRAA nullified his acknowledgement.

One important—indeed, essential—characteristic of binding arbitration is that it provides a degree of efficiency and finality by strictly limiting the parties' ability to challenge the arbitrator's award on appeal. *City of Huntington Woods v Ajax Paving Industries, Inc*, 177 Mich App 351, 356; 441 NW2d 99 (1989) (noting that Michigan courts are supportive of arbitration agreements and have discouraged efforts to circumvent their goals by narrowly construing the authority of the judiciary to review arbitration awards). But before imposing such a limitation in domestic relations disputes, the Legislature determined that the parties must be informed that the right to appeal an award is limited and acknowledge, in writing or on the record, that they had been so informed.[4] MCL 600.5072(1)(b). Here, the parties acknowledged in writing that they

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[3] Because the order was intended to ratify the parties' agreement and actions in appointing Mester as their arbitrator, we do not agree that the order was invalid as an attempt to supply—after the fact—an action that was never taken. See *Sleboede v Sleboede*, 384 Mich 555, 558-559; 184 NW2d 923 (1971).

[4] On appeal, defendant argues that MCL 600.5072 imposes substantive requirements on the contents of the parties' arbitration agreement. Thus, he contends that MCL 600.5072(1)(b) requires the parties to specifically delineate the scope of their right to appeal in their arbitration

had been informed that their right to appeal was limited as provided in a different section of the agreement. And, although the parties crossed out the provisions of this section, they left the heading—"Right to Appeal"—in place. That is, they agreed that they had been informed that their right to appeal was limited to the right provided under the heading "Right to Appeal", which, after the agreed upon modification, was silent as to whether the parties had a right to appeal. As such, the parties effectively acknowledged that they had a limited right—perhaps even no right—to appeal.[5] Although we have declined to construe the elimination of this section's content as a contractually binding *waiver* of the right to an appeal, we nevertheless conclude that the reference to this section with the substantive provisions deleted still constitutes an acknowledgement that the parties had been informed that their right to appeal was limited, as required under MCL 600.5072(1)(b).[6]

Defendant also argues that the agreement failed to meet the requirements stated under MCL 600.5071. This section authorizes the parties to a divorce to stipulate to binding arbitration through "a signed agreement that specifically provides for an award with respect" to certain enumerated issues. The statute then lists the issues that may be the subject an arbitration agreement. See MCL 600.5071(a) to (i). On appeal, defendant contends that the arbitration

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agreement and the failure to do so renders the agreement invalid. However, MCL 600.5072(1) does not require any particular provisions to be in an arbitration agreement. It limits the court's ability to order arbitration without first ensuring that the parties acknowledge certain features applicable to arbitration proceedings. Although the acknowledgments can be made in the agreement, the parties are not *required* to place the acknowledgments in the agreement. See MCL 600.5072(1) (stating that the acknowledgments may be made on the record).

[5] We also reject defendant's contention that this rendered the agreement unlawful because, under the DRAA, the parties cannot waive their right to appeal. Even if we were to conclude that the parties cannot lawfully waive their right to appeal under the DRAA, as already noted, we did not agree with plaintiff's contention that the parties' decision to cross this section out created a contractually binding limitation on the parties' right to appeal. Nevertheless, when this modified section is read in light of the parties' acknowledgments in the proceeding section, we still conclude that defendant effectively acknowledged that he had a limited right to appeal—albeit under the mistaken belief that it was even more restricted than provided under the DRAA.

[6] Moreover, even if we were to conclude that this section did not satisfy the requirements of MCL 600.5072(1)(b), we nevertheless would conclude that any error does not warrant relief. At the hearing to enforce the award, plaintiff's lawyer informed the court that, before agreeing to proceed with arbitration, defendant had insisted that plaintiff agree to eliminate the right to appeal from the arbitration agreement to ensure the finality of the arbitrator's decision. Plaintiff accordingly agreed to cross the relevant section out of the agreement. Defendant's lawyer did not disagree with this characterization of the discussions that led to the modification of the arbitration agreement. We conclude that this amounted to a concession on the record that defendant had been informed that his right to appeal was limited. Accordingly, the trial court did not err to the extent that it determined that defendant had acknowledged, in writing or *on the record*, that he had been informed that his right to appeal was limited before proceeding with binding arbitration. See MCL 600.5072(1).

agreement failed to specifically provide for an arbitration award for any of the enumerated issues.

In their agreement, the parties agreed that the "cause and all issues raised by the pleadings" were placed into binding arbitration. Nothing within MCL 600.5071 precludes the parties to an arbitration agreement from identifying the issues to be decided by the arbitrator through reference to other documents. Moreover, the parties did not specifically adopt the definition for pleadings used in the court rules, see MCR 2.110(A), or otherwise defined the term pleadings. Thus, the term must be given meaning according to its common usage. See *Meridian Mut Ins Co v Wypij*, 226 Mich App 276, 280; 573 NW2d 320 (1997). And the term pleadings, broadly understood, refers to the "formal allegations by the parties to a lawsuit of their respective claims and defenses, with the intended purpose being to provide notice of what is to be expected at trial." See Black's Law Dictionary (6th ed), p 1152. Here, plaintiff's complaint placed the division of the parties' marital property at issue. And, in his answer, defendant also asked the trial court to issue "an equitable property settlement." Thus, the "cause" and "pleadings" plainly put all the parties' property at issue—not just marital property. In addition, prior to the parties' decision to enter into the arbitration agreement, plaintiff petitioned the trial court for an order compelling defendant to continue to pay plaintiff's ordinary living and household expenses. Similarly, in the documents that she submitted for facilitation, plaintiff alleged that she had insufficient income on which to live and asked that the court to award her support from defendant's property and income—that is, plaintiff essentially asked for spousal support or an award of property sufficient to maintain her lifestyle. In addition, in his facilitation summary, defendant proposed that the court order $1,000 per month in spousal support until plaintiff qualified to receive social security.[7] The petition and facilitation filings were formal documents that served to place the opposing parties on notice of the issues and were submitted before the parties entered into the arbitration agreement.[8] Accordingly, the "cause" and "pleadings" also established that spousal support was at issue.

The agreement also provided that the arbitrator had the authority to "issue an award" after the arbitration hearing on the issues submitted for arbitration and the parties agreed that a "Judgment of Divorce shall be entered in conformity" with the award. With these terms, the parties identified the issues to be decided at arbitration by reference to the pleadings, which included all formal submissions by the parties, and specifically provided for an award with respect to those issues. We conclude that these provisions within the agreement were sufficient to satisfy the requirements of MCL 600.5071.

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[7] Defendant summarized his facilitation proposal in his brief in support of his motion to vacate the arbitration award.

[8] We do not agree with defendant's contention that MCR 3.216(H)(8) precludes the parties from incorporating issues from their facilitation documents by reference. The parties were free to draft their arbitration agreement as they wished and could by agreement explicitly or implicitly waive the limitations stated under that rule.

The trial court did not err when it concluded that the arbitration agreement met the DRAA's requirements for statutory arbitration of a domestic relations dispute and was otherwise valid and enforceable. Consequently, it did not err when it ratified the parties' decision to proceed to arbitration and entered judgment in accord with the arbitrator's award.

III. THE VALIDITY OF THE AWARD

A. STANDARDS OF REVIEW

Defendant also argues that, even if the arbitration agreement is valid and enforceable, the arbitrator's award must be vacated and the judgment set aside on a variety of grounds. Specifically, defendant contends that the arbitrator exceeded his authority when he elected to award spousal support and to award property that was not part of the marital estate because the arbitration agreement did not extend to those issues. Defendant further contends that the arbitrator's award of spousal support and his decision to invade defendant's separate property was not supported by the facts or law. Finally, defendant argues that the overall award is inequitable and unjustified under the facts or law. The scope of an arbitrator's authority under an arbitration agreement is a matter of contract interpretation that this Court reviews de novo. See *Miller v Miller*, 474 Mich 27, 30; 707 NW2d 341 (2005) (noting that arbitrators draw their authority from the arbitration agreement and that courts review de novo whether the arbitrator exceeded his or her authority). This Court also reviews de novo whether the arbitrator's award is contrary to law. *Id.*, citing *Detroit Automobile Inter-Ins Exchange v Gavin*, 416 Mich 407, 433-434; 331 NW2d 418 (1982). Similarly, this Court reviews de novo a trial court's decision on a motion to vacate or modify an arbitration award. *Washington v Washington*, 283 Mich App 667, 671; 770 NW2d 908 (2009).

B. SCOPE OF THE ARBITRATOR'S AUTHORITY

Under the DRAA, courts have a limited ability to vacate a domestic relations award. See MCL 600.5081(2). However, courts may vacate an award where the arbitrator exceeded his or her authority. See MCL 600.5081(2)(c). An arbitrator exceeds his or her authority whenever he or she acts beyond the material terms of the arbitration agreement or acts in contravention of controlling law. *Washington*, 283 Mich App at 672.

To determine whether an issue is subject to arbitration under an arbitration agreement, courts must consider whether the disputed issue arguably falls within the agreement and whether the issue is expressly exempted from arbitration. See *Fromm v MEEMIC Ins Co*, 264 Mich App 302, 305-306; 690 NW2d 528 (2004). As discussed above, we have determined that the parties' arbitration agreement sufficiently complied with the requirements of MCL 600.5071 to put the equitable division of the parties' marital and non-marital property and the possibility of spousal

support at issue. It necessarily follows that the arbitrator did not exceed the authority granted under the arbitration agreement when it considered these issues.[9]

It is also well-settled that an arbitrator can exceed the authority granted under an arbitration agreement by making an award that is unlawful: "The Michigan judiciary is not a procedural bureaucracy which may, by agreement of private disputants, be used to validate patently erroneous arbitration awards as a trade-off for docket relief and speedy, inexpensive, and unreviewable dispute resolution." *Gavin*, 416 Mich at 433. As such, the courts retain the authority to review an award "to determine whether the award rests upon an error of law of such materiality that it can be said that the arbitrators 'exceeded their powers.'" *Id.* Nevertheless, this review is limited to errors that appear on the face of the award. *Washington*, 283 Mich App at 672. This Court may not review the arbitrator's factual findings—or lack thereof—in determining whether the award was unlawful:

> The informal and sometimes unorthodox procedures of the arbitration hearings, combined with the absence of a verbatim record and formal findings of fact and conclusions of law, make it virtually impossible to discern the mental path leading to an award. Reviewing courts are usually left without a plainly recognizable basis for finding substantial legal error. It is only the kind of legal error that is evident without scrutiny of intermediate mental indicia which remains reviewable . . . . In many cases the arbitrator's alleged error will be as equally attributable to alleged "unwarranted" factfinding as to asserted "error of law." In such cases the award should be upheld since the alleged error of law cannot be shown with the requisite certainty to have been the essential basis for the challenged award and the arbitrator's findings of fact are unreviewable. [*Gavin*, 416 Mich at 429.]

In addition to arguing that the arbitrator exceeded the authority granted to him under the agreement by addressing these issues, defendant also claims that the arbitrator exceeded his authority because the award of separate property and spousal support was contrary to Michigan law and unsupported by the facts.[10] Whether the arbitrator's factual findings were inadequate, unwarranted, or erroneous is beyond the scope of our review. *Id.* Therefore, we must reject those claims of error. Although we might not have resolved the issues in the same way as the arbitrator, we cannot conclude that the arbitrator's award of defendant's separate property—to

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[9] We reject defendant's contention that the arbitrator impermissibly considered fault when making its property division because the arbitration agreement did not permit the arbitrator to consider fault. Although the arbitrator mentioned defendant's marital infidelity, there is no indication that he used fault to justify a disproportionate award. Rather, the arbitrator made the reference in summarizing the evidence that there had been a breakdown in the marriage and as part of his rationale for ordering spousal support.

[10] We note that the parties agreed that their dispute would be "guided" by Michigan law: "The parties and the Arbitrator agree to be guided by the statutes and case law of the State of Michigan during the arbitration process . . . ."

the extent that the arbitrator might have found it to be separate property—or the award of spousal support was plainly contrary to law. Further, an unequal property division is not on its face unlawful.

Under Michigan law, courts generally have the power to invade separate property and order spousal support. See *Korth v Korth*, 256 Mich App 286, 291; 662 NW2d 111 (2003) (noting that MCL 552.23(1) authorizes courts to invade separate property under certain circumstances); *Olson v Olson*, 256 Mich App 619, 631; 671 NW2d 619 (2003) (stating that trial courts have the power to order spousal support). Likewise, although courts are required to make an equitable division of the marital estate, an unequal division can be equitable depending on the underlying facts. See *Washington*, 283 Mich App at 673-674 (recognizing that trial courts are required to make equitable distributions—not equal distributions—and refusing to invalidate an arbitrator's award as contrary to law just because the arbitrator awarded 70% of the parties' property to one spouse). And, as long as we are confident that the arbitrator recognized and applied Michigan law, we will not look at the underlying facts or rationale for the decision to make the award. See *Id.* ("Once we are satisfied that the arbitrator applied the controlling law, our review is complete absent some error appearing on the face of the award.").

Before addressing the specific awards, the arbitrator summarized some of the controlling legal principles: he recognized that he had a duty to make "an equitable division" of the marital estate and he noted that he could award separate property to if it appears equitable to do so under the circumstances of the case. In addition, the arbitrator explained that Michigan law permitted an award of spousal support for the suitable maintenance of the other party. He further found that plaintiff could not pay her ordinary expenses without support and determined that defendant should pay $1,400 per month to plaintiff as support for five years.[11] Hence, the arbitrator plainly understood the controlling law and applied the law to the facts as he determined them to be. Because each of the awards was possible under Michigan law, we cannot agree with defendant's contention that the decision to award spousal support or to invade his separate property amounted to legal error on the face of the award. Likewise, we cannot conclude that the division of assets was on its face unlawful. In order to invalidate the property award on this basis, we would have to speculate as to how the arbitrator valued the properties at issue and would have to guess at the mental process that he used to reach the division.[12] This we will not do. See *Washington*, 283 Mich App at 672.

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[11] We note that, in his facilitation summary, defendant apparently conceded that plaintiff would need spousal support until she qualified for social security benefits in order to cover her living expenses.

[12] By way of example, one might at first blush conclude that it was grossly unfair to award all the parties' real property to plaintiff. However, some of the properties were burdened by significant debt and the arbitrator ordered plaintiff to assume all that debt and to hold defendant harmless on it. Further, some of the properties apparently must be managed: the Missouri farm is a partial interest that must be leased and the Florida properties are also leased properties. As such, the

The trial court did not err when it concluded that the award was valid and enforceable and entered judgment in accord with it.

IV. THE JUDGMENT

A. STANDARD OF REVIEW

Defendant also argues that the trial court erred when it entered a judgment that was not in accord with the arbitrator's award. Specifically, defendant contends that the arbitrator did not award plaintiff all the accounts with Ameriprise Financial; rather, the arbitrator only awarded her the annuity account. This Court reviews de novo a trial court's decision to enforce an arbitration award. *Tokar v Albery*, 258 Mich App 350, 352; 671 NW2d 139 (2003).

B. ANALYSIS

Prior to this marriage, defendant worked for a printing company, the John Henry Corporation, and earned a pension. However, at some point during the parties' marriage, defendant converted the John Henry pension into several investments with Ameriprise Financial. The Ameriprise accounts included an annuity, which defendant's lawyer stated had a value of approximately $170,000, and an investment account, which defendant's lawyer stated had a value of approximately $105,000.[13] Despite the fact that the John Henry pension had been converted to investments with Ameriprise, the parties apparently continued to refer to these investments as the John Henry pension or John Henry annuity. And the arbitrator ultimately awarded the "John Henry annuity" to plaintiff.

In January 2010, plaintiff's lawyer submitted a proposed judgment on the arbitrator's award. The judgment provided that plaintiff would receive all the accounts held with Ameriprise: "Defendant . . . shall transfer in total (pre-tax) all sums contained in the parties' investment accounts (*as referenced formerly invested under John Henry Annuity, presently invested under Ameriprise Financial*), including the cancellation of any and all previously named beneficiaries to the Plaintiff . . . ." In his post-judgment submissions to the trial court, it appears that defendant assumed that the judgment applied only to the annuity held with Ameriprise, and not to the other accounts.

At some point after the entry of the judgment, plaintiff tried to access the Ameriprise accounts, but could not and defendant would not cooperate with the transfer of the accounts. For

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value of the award to defendant—he is now free of the debt burden and the obligation to pay taxes and need not manage properties separated by vast distances in three different states in a troubled real estate market—might be greater than it appears on paper. Indeed, in summarizing his own proposed distribution for facilitation, defendant recommended that all the real property be awarded to plaintiff. Consequently, the apparent disparity in this award might be illusory. And the arbitrator was in the best position to evaluate those equities and render an award accordingly.

[13] Defendant's lawyer stated these amounts at the April 7, 2010 hearing on defendant's motion for a stay.

that reason, in March 2010, plaintiff petitioned the trial court to enforce the judgment and find defendant in contempt. At the March 24, 2010 hearing, defendant's lawyer asserted that the judgment went beyond the language of the arbitrator's award in ordering the transfer of all the accounts that he held with Ameriprise. Defendant's lawyer restated his argument at an April 7, 2010 hearing, but the trial court did not resolve the matter.

After an arbitrator issues an award and the award is filed with the clerk, a trial court must enter a judgment that gives effect to the award. MCL 600.5079(1); MCR 3.602(L); *Tokar*, 258 Mich App at 354. The trial court's ability to modify an award is quite limited. MCL 600.5081(1) and (6); MCR 3.602(K); *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 495; 475 NW2d 704 (1991). The court must normally enforce an arbitrator's award as the arbitrator intended. See MCR 3.602(K)(3) (stating that, when correcting or modifying an award, the trial court must do so to "effect its intent."); see *Gordon Sel-Way*, 438 Mich at 501 (holding that the trial court erred "in modifying the award by deleting the preaward interest amount and providing a monetary remedy different from that of the arbitrators."). Consequently, the trial court could not enter a judgment that was inconsistent with the arbitrator's actual award unless it met the strict requirements applicable to modifications or corrections.

In examining the record, we conclude that the arbitrator's reference to the "John Henry annuity" created an ambiguity in the award. Although it is clear that the arbitrator used "John Henry" as a shorthand reference to defendant's investments from his John Henry pension, it is not clear to which accounts this reference applies. It is entirely plausible, that, by referring to the John Henry annuity, the arbitrator intended to award plaintiff all the investment accounts that were derived from the original John Henry pension. However, it is equally plausible that the arbitrator used the word "annuity" in a limiting sense; that is, to limit the award to the annuity that defendant held with Ameriprise. Thus, although it is clear that the arbitrator intended—at the very least—to award plaintiff the Ameriprise annuity, it cannot be determined whether the arbitrator also intended to award plaintiff the remaining accounts. Given the limits on the judicial modification of an arbitration award, we conclude that the proper remedy is to have the arbitrator resolve the ambiguity. See, e.g., *Teamsters Local 214 v Bd of Commn'rs*, 77 Mich App 296, 302-303; 258 NW2d 209 (1977) (vacating a portion of an arbitrator's award and remanding the matter to have the arbitrator craft a "more concise determination.").

For these reasons, we vacate the judgment to the extent that it awarded plaintiff the Ameriprise accounts other than the annuity account, and remand this matter to the trial court. On remand, the trial court shall order the arbitrator to amend his award to clarify whether the award of the "John Henry annuity" referred to all the Ameriprise accounts or just the Ameriprise annuity. And, if the arbitrator clarifies that the award included all the Ameriprise accounts, the trial court shall amend the judgment to give effect to that intent.

V. SANCTIONS FOR SIGNING AN UNSUPPORTED MOTION

A. STANDARDS OF REVIEW

Finally, defendant and his trial lawyers, John Williams and Allan Falk, argue that the trial court erred when it ordered them to pay sanctions for filing a motion that was not well grounded in fact. Specifically, defendant's lawyers argue that their motion had an adequate basis in fact

and that any further investigation would not have relieved them of their duty to protect their client's interest by raising the issue as to whether Mester had a relationship with plaintiff's attorney that should have been revealed to defendant. Defendant and his lawyers also argue that the trial court could not order them to pay plaintiff's attorney fees as a sanction without first holding a hearing to determine whether the amount of the fees was reasonable. This Court reviews de novo the proper interpretation of court rules. *Johnson Family Ltd Partnership v White Pine Wireless, LLC*, 281 Mich App 364, 387; 761 NW2d 353 (2008). However, this Court reviews the factual findings underlying a trial court's ruling for clear error. *Id.* A trial court's findings are clearly erroneous when this Court is left with the definite and firm conviction that a mistake has been made. *Id.*

B. BACKGROUND

After the entry of the judgment in this case, defendant moved for reconsideration of the judgment, or in the alternative to have the judgment amended. Defendant argued in part that the trial court should grant relief because the arbitrator, retired judge Mester, might have had an undisclosed personal relationship with plaintiff's lawyer, A. Lawrence Russell:

> . . . defendant learned, upon information and belief, that plaintiff's counsel may have a personal relationship with the Facilitator/Arbitrator which was not disclosed to defendant, to wit, that plaintiff's counsel has/had an alcohol addiction problem, was twice convicted of drinking/driving violations and that the Facilitator/Arbitrator assisted him in [sic] as a mentor, sponsor or the like, in an addiction recovery program.

Williams signed the motion, but did not attach or cite any evidence in support of this allegation.

After the trial court asked defendant to more fully brief the issues, Williams asked Falk to assist with the briefing. Falk filed an appearance with the court and defendant submitted a supplemental brief with both Williams' and Falk's signatures.

In the supplemental brief, defendant repeated the prior allegations and added that "defense counsel" subsequently learned that Mester and Russell "had a social relationship of significant duration." He also argued that Mester's award must be vacated as a result of "'evident partiality'". In analyzing the law, defendant claimed that Mester had a duty to disclose the relationship or recuse himself and that it was unethical not to do so: "A panoply of formal and informal ethics opinions by the State Bar Committee on Professional and Judicial Ethics repeatedly emphasizes that the duty to disclose any relationship or other potential grounds for disqualification applies to all adjudicators, and that the adjudicator should recuse him- or herself unless affirmatively requested to preside by all parties with standing to object." In summary, defendant—through his lawyers—alleged that Mester had a mentor or sponsor relationship with Russell that arose from Russell's problems with addiction. In addition, he alleged that he now believed that Mester had a longstanding personal relationship with Russell and that Mester acted unethically when he failed to disclose the relationship. He also indirectly argued that the inequity of the award was the result of evident partiality. Despite these serious allegations, defendant did not attach or cite any evidence to establish the existence of the relationship.

In March, the trial court held a hearing on defendant's motion. Just prior to the start of the hearing, Russell gave the court and defendant a copy of an affidavit in which he denied the existence of any relationship with Mester. In response to receiving this affidavit, Falk told the court that, "if we'd been given this information earlier, we would have dropped the issue earlier." He explained that he would have dropped the issue because he had no evidence to rebut the affidavit:

> [MR. FALK:] Mr. Russell has demanded that we—we reveal the source of our information, the source of our information—well, the source of my information is Mr. Williams, the source of his information is members of the local bar who gave him the information only on the promise that it would be kept confidential and that their names wouldn't be brought into it so I don't think we're going to be doing that today.
>
> I am prepared to address the other issues, if you would like, whether our motion or his—
>
> THE COURT: Well, let me just back up for a moment, Mr. Falk.
>
> MR. FALK: Yes, your Honor.
>
> THE COURT: So you have no issue, then, as to any personal relationship that may have existed?
>
> MR. FALK: No, Mr. Russell's affidavit says there is none, and since we have no witnesses to the contrary we accept that.

After responding to defendant's motions generally, Russell asked the court to sanction Falk and Williams for submitting a brief that made allegations that they now admitted "had no basis for signing." The court asked Russell about the amount he was asking for as sanctions. Russell asked for $5,000 in sanctions. He also stated he had billed his client $8,000 for the work that he had done to the present motion and that he "billed her for $2,000 for what I had to do to be here today." The trial court determined that sanctions were warranted:

> With respect to the allegations regarding Mr. Russell and Judge Mester, they are reprehensible. And to have made those allegations without doing sufficient investigation as is required frankly is appalling. So I do think sanctions are in order. And to come into court and say, well, we heard gossip out in the community that this occurred, that is not sufficient. I haven't heard a name, I haven't heard—and even if I had a name, what is this person basing their information on. It's unbelievable to me that counsel would come in and make those kinds of allegations without having proof. I'm not saying it couldn't happen, obviously all kinds of things can happen, but to come in just on the basis of gossip out there in the community is completely insufficient.
>
> I will grant attorney fees for the motion of $2,000 to Mr. Russell; I will also give him $2,500 of sanctions.

The trial court subsequently entered an order compelling Williams and Falk to pay Russell $2,500 as sanctions and a separate order compelling defendant to pay $2,000 to Russell to cover his attorney fees in responding to the motion.

C. THE DECISION TO SANCTION

Every document submitted to a trial court must be signed by an attorney of record or a party. MCR 2.114(C)(1). By signing the document, the signer certifies that he or she has read the document, MCR 2.114(D)(1), and that the document was "not interposed for any improper purpose." MCR 2.114(D)(3). The signer also certifies that, "to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law . . . ." MCR 2.114(D)(2). Thus, with regard to the factual allegations in a document, the rule imposes a twofold burden: the signer must conduct a reasonable inquiry into the factual basis for the allegations and must determine that those allegations are "well grounded in fact." MCR 2.114(D)(2); see also *Attorney General v Harkins*, 257 Mich App 564, 576; 669 NW2d 296 (2003) (characterizing the requirement as one that imposes on the signer a duty to "conduct a reasonable inquiry into the factual and legal viability of a pleading before it is signed.").

Here, the trial court determined that the documents at issue were not well grounded in fact after a reasonable inquiry. As already noted, Russell asked for sanctions at a March 2010 hearing after Falk conceded that he had no evidence to rebut Russell's affidavit. Indeed, Russell argued that Falk had essentially admitted that he had no basis in fact for the allegations contained in his brief. But Falk disagreed that there was no basis for the allegations. "The court rule doesn't say that we have to have absolute proof", Falk retorted, "it says we have to make an investigation of the facts, a reasonable investigation, which we did by speaking to several attorneys in the local area, getting the same information from them." But Falk had earlier admitted that the allegations were made on the basis of third party statements and, on appeal, Williams and Falk admit that the statements were originally made to defendant by members of the Oakland bar at a social gathering. He also admitted that those members only revealed the information on condition that they remain anonymous. That is, he admitted that the basis for his allegations were statements by undisclosed third parties, who he knew would not testify or swear out an affidavit. We agree with the trial court that it was improper for Falk and Williams to found allegations on these third-party statements. Because the third-parties refused to swear out an affidavit or testify and, indeed, insisted on their anonymity, their statements amounted to mere gossip and would, even under the best of circumstances, be inadmissible hearsay. And no one would conclude—on the basis of this evidence alone—that the factual allegations were "well grounded." Likewise, given the informants' desire to remain anonymous, a reasonable person would conclude that the allegations could not be made in a court document absent further investigations to corroborate or confirm the statements. Moreover, the fact that Williams and Falk determined that Mester had been involved in a mentoring program and that Russell had had prior problems with alcohol did not satisfy their duty to conduct a reasonable inquiry into whether the allegations were well founded. These inquiries merely established that the allegations were consistent with known facts; they did not establish that the allegations were *well grounded* in fact. MCR 2.114(D)(2).

The trial court did not clearly err in finding that Falk and Russell violated MCR 2.114(D)(2) by signing a brief without first conducting a reasonable inquiry and determining that the allegations were well grounded in fact.

D. SANCTIONS

If a document is signed in violation of MCR 2.114(D), the court, on the motion of a party or on its own initiative, must issue a sanction:

> the court . . . shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages. [MCR 2.114(E).]

After the trial court determined that Falk and Williams violated MCR 2.114(D)(2), it ordered two sanctions: it ordered defendant to pay to plaintiff's lawyer the $2,000 in attorney fees that plaintiff incurred in answering the allegations and it ordered Williams and Falk to pay plaintiff's lawyer a $2,500 sanction. When the party opposing a motion for attorney fees challenges the reasonableness of the fees, the trial court should normally hold an evidentiary hearing to determine the reasonableness of the fees. *Head v Phillips Camper Sales*, 234 Mich App 94, 113; 593 NW2d 595 (1999). Here, Falk did not directly challenge the reasonableness of the fees during the hearing itself. However, in making his request for attorney fees, Russell incorporated an earlier written motion for attorney fees by reference and defendant challenged the amount of those fees in his reply. Further, the record was not sufficient for the trial court to determine the reasonableness of the fees without holding an evidentiary hearing. Cf. *Head*, 234 Mich App at 113. Accordingly, we conclude that the trial court erred in ordering defendant to pay $2,000 in attorney fees without first holding an evidentiary hearing.

As for the sanctions against Falk and Williams, it is unclear whether the trial court ordered them to pay sanctions under MCR 2.114(E) or under some other authority.[14] To the extent that the trial court proceeded under MCR 2.114(E), the trial court erred in making the award. First, it appears that the sanction might have been punitive. Although trial courts could order punitive sanctions under the prior version of MCR 2.114(E), see *Michigan Bell Telephone Co v Sfat*, 177 Mich App 506, 514; 442 NW2d 720 (1989), our Supreme Court specifically amended the rule to remove the trial court's authority to assess "punitive damages." See MCR 2.114(E); see also Amendments to Michigan Court Rules of 1985, 437 Mich at clxxvi – clxxvii. Second, to the extent that the order might have been for attorney fees, we note that the court rule only permits the recovery of the fees incurred "because of the filing of the document." MCR 2.114(E). At the hearing, Russell asserted that his client had incurred $2,000 in fees as a result of the proceedings at issue. Given that the trial court had already ordered defendant to pay the

[14] The court specifically cited MCR 2.111(B)(1) in its order, but that rule does not authorize sanctions.

$2,000 fees, the order for an additional $2,500—if not punitive—appears to impermissibly permit plaintiff to recover fees in excess of what she actually incurred as a result of the improper filing.

For these reasons, we conclude that, although the trial court did not err when it concluded that the filing of the brief violated MCR 2.114(D), it did err when it ordered sanctions without holding an evidentiary hearing to determine the reasonableness of the amount of the fees and it erred to the extent that it awarded punitive sanctions under MCR 2.114(E). Accordingly, we vacate the trial court's order to the extent that it orders defendant to pay $2,000 in attorney fees and orders Williams and Falk to pay $2,500 in sanctions. We remand the matter to the trial court to hold an evidentiary hearing to determine an appropriate amount for sanctions under MCR 2.114(E) and to enter an order for sanctions in that amount. To the extent that the trial court might have sanctioned Williams and Falk under some authority other than MCR 2.114(E), we do not preclude the trial court from reissuing its order. However, the trial court should clearly identify the authority for its order and state the basis for the specific sanction imposed.

V. CONCLUSION

In docket number 297676, the trial court did not err when it determined that the arbitration agreement was valid and enforceable and that the arbitrator did not exceed his authority under the arbitration agreement. However, the trial court erred to the extent that it determined that the arbitrator's award of the "John Henry annuity" awarded plaintiff all the accounts that defendant held with Ameriprise. The arbitrator's reference to the "John Henry annuity was ambiguous; it might be a reference to just the annuity account, but it might also be a reference to all the accounts. For that reason, we vacate the judgment to the extent that it awarded plaintiff the Ameriprise accounts other than the annuity account, and remand this matter to the trial court. On remand, the trial court shall order the arbitrator to amend his award to clarify whether the award of the "John Henry annuity" referred to all the Ameriprise accounts or just the Ameriprise annuity. And, if the arbitrator clarifies that the award included all the Ameriprise accounts, the trial court shall amend the judgment to give effect to that intent. In all other respects, we affirm in docket number 297676.

In docket numbers 297677 and 297678, we conclude that the trial court did not err in finding that the defendant's motion concerning the possible relationship between the arbitrator and plaintiff's lawyer had no basis in fact and, for that reason, did not err when it ordered defendant and his attorneys to pay sanctions. Nevertheless, we conclude that the trial court erred to the extent that it ordered defendant to pay $2,000 in attorney fees without holding an evidentiary hearing and erred to the extent that it ordered defendant's trial lawyers to pay an additional $2,500 as a punitive sanction or, in the alternative, without determining that these fees were actually incurred. For that reason, we vacate those orders. We remand the matter to the trial court to hold an evidentiary hearing to determine an appropriate amount for sanctions under MCR 2.114(E) and to enter appropriate orders for sanctions in that amount.

Affirmed, but vacated in part in docket number 297676, and remanded for further proceedings consistent with this opinion. In docket numbers 297677 and 297678, we vacate the trial court's April 7, 2010 orders for sanctions and remand for further proceedings consistent

with this opinion. We do not retain jurisdiction. None of the parties having prevailed in full, none may tax costs. See MCR 7.219(A).

/s/ Michael J. Kelly
/s/ Donald S. Owens
/s/ Stephen L. Borrello