STATE OF MICHIGAN

COURT OF APPEALS

MARIYA V. SUCHYTA, Plaintiff-Appellee,	UNPUBLISHED December 11, 2012
v	No. 306551 Wayne Circuit Court Family Division
F. ROBERT SUCHYTA, Defendant-Appellant.	LC No. 10-110255-DM

Before: WILDER, P.J., and METER and GLEICHER, JJ.

MEMORANDUM.

Although their divorce proceedings were contentious, the parties were able to negotiate many terms of their divorce judgment. Unable to reach a consensus on certain terms, including the amount of child support, the parties submitted the remaining issues to binding arbitration. One month before filing for divorce, the plaintiff-wife, Mariya Suchyta, had left her financially lucrative job as a doctor at Oakwood Hospital to work part-time in private practice. Although she had previously earned double the salary she was bringing home at the time of arbitration, the arbitrator imputed only a portion of that income to her. The arbitrator then used that calculated figure to award the plaintiff-wife $2,469.95 a month in child support for the couple's three minor sons.

The circuit court dismissed the divorce suit when the parties did not timely file a judgment following the arbitration hearing. The defendant-husband, F. Robert Suchyta, claims that the court refused to reinstate the case unless the parties approved a judgment, despite the defendant-husband's lingering concerns with the arbitrator's imputation of income to the plaintiff-wife and its effect on the child-support award. The defendant-husband agreed to a reduced figure of $2,000.00 a month in child support and approved the judgment "as to form only."

The defendant-husband does not appeal the child-support award in the divorce judgment. Instead, he claims on appeal that the arbitrator used improper criteria when imputing income to the plaintiff-wife. Because the defendant-husband never moved to vacate or modify the arbitration award and does not now challenge the provisions of the divorce judgment, he is not entitled to relief. We therefore affirm.

MCR 3.602(J)(3) directs that "[a] motion to vacate an [arbitration] award in a domestic relations case must be filed within 21 days after the date of the award." This is a mandatory provision. *Vyletel-Rivard v Rivard*, 286 Mich App 13, 25; 777 NW2d 722 (2009). A motion to modify or correct an arbitration award must be made within 91 days. MCR 3.602(K)(2). The defendant-husband never challenged the arbitration award in the circuit court. He filed no motion to vacate, modify or correct the arbitration award, timely or otherwise. Where the injured party fails to move in "the circuit court for vacation or modification of an arbitrator's award," the circuit court's duty to "review the award" is not triggered. MCL 600.5081(1); MCR 3.602(J)(2); MCR 3.602(K)(2).

The defendant-husband attempts to excuse his failure to file a motion to vacate or modify the arbitration award by accusing the circuit court of forcing him to hastily approve a judgment in order to have the case reinstated. The defendant-husband bore the burden of creating a factual record setting forth his version of events,[1] and he failed to do so. There is nothing in the record suggesting that the circuit court improperly forced the defendant-husband's hand. Even if the court had coerced the defendant-husband to approve a child-support award that he believed was based on inaccurate information, nothing prevented the defendant-husband from filing a motion to set aside the divorce judgment under MCR 2.612(C)(1)(f) (permitting a court to grant relief from a judgment for "[a]ny . . . reason justifying" such relief), in conjunction with a motion to vacate or modify the arbitration award.

Moreover, the award of $2,000 a month in child support in the divorce judgment is not based upon the arbitrator's calculation of the income that the plaintiff-wife is capable of earning. In the circuit court, the parties agreed to a reduced monthly child-support obligation. While the defendant-husband implies that the reduced figure is not based on the evidence, he makes no attempt to establish that the amount is erroneous or unfair. We are not required to make defendant's case for him and therefore consider any challenge to the child-support award in the divorce judgment abandoned on appeal. *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959); *Hamade v Sunoco, Inc*, 271 Mich App 145, 173; 721 NW2d 233 (2006).

Affirmed.

/s/ Kurtis T. Wilder
/s/ Patrick M. Meter
/s/ Elizabeth L. Gleicher

[1] If, for example, the circuit court made such a threat during a bench conference, the defendant-husband could have asked the court to make its ruling on the record to preserve his appellate rights.