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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-78

Filed: 17 September 2019

Chatham County, No. 18 CVS 345

GREGORY E. LINDBERG, Petitioner/Plaintiff

v.

TISHA L. LINDBERG, Respondent/Defendant

Appeal by Plaintiff from Order entered 1 October 2018 by Judge Michael J. O’Foghludha in Chatham County Superior Court. Heard in the Court of Appeals 8 August 2019.

Gailor Hunt Jenkins Davis Taylor & Gibbs, PLLC, by Jonathan S. Melton and S. Nicole Taylor, for plaintiff-appellant.

No brief filed on behalf of defendant-appellee.

HAMPSON, Judge.

Factual and Procedural Background

Gregory E. Lindberg (Plaintiff) appeals from an Order appointing Judge Leon Stanback (Judge Stanback) as arbitrator for Plaintiff and Tisha L. Lindberg’s (Defendant) dispute over their Premarital Agreement. The Record before us tends to show the following:

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On 25 May 2018, Plaintiff initiated the present dispute by filing a Petition for Appointment of an Arbitrator (Petition) in Chatham County Superior Court, requesting the trial court appoint an arbitrator pursuant to the North Carolina Family Law Arbitration Act and the parties' Premarital Agreement. On 4 June 2018, Defendant filed a Motion to Dismiss arguing Chatham County Superior Court did not have subject-matter jurisdiction over Defendant's Petition.

On 24 September 2018, the trial court held a hearing on the Petition and Defendant's Motion to Dismiss. The same morning, Defendant filed an Answer, Counterclaim, and Motion to Appoint Arbitrator (Answer) and withdrew its Motion to Dismiss. At this hearing, both parties agreed the sole issue before the trial court was the appointment of an arbitrator. Plaintiff proposed Judge Fred Hicks (Judge Hicks), a former district court judge; whereas, Defendant requested the trial court appoint Judge Stanback, a former superior court judge. On 2 October 2018, the trial court entered an Order to Arbitrate and Appointing Arbitrator (Arbitration Order), which appointed Judge Stanback as arbitrator for the parties' dispute over their Premarital Agreement.

Because the sole issue before the trial court was the appointment of an arbitrator, we elect to treat the Arbitration Order as a final judgment. *See Veazey v. Durham*, 231 N.C. 354, 361-62, 57 S.E.2d 377, 381 (1950) (A final judgment "disposes of the cause as to all the parties, leaving nothing to be judicially determined between

them in the trial court.” (citations omitted)); *see also Bowden v. Latta*, 337 N.C. 794, 796, 448 S.E.2d 503, 505 (1994) (“[F]inal judgments are always appealable[.]” (citation and quotations marks omitted)).

Analysis

I. Standard of Review

“[W]here matters are left to the discretion of the trial court, appellate review is limited to a determination of whether there was a clear abuse of discretion.” *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985) (citations omitted); *see also Little v. Penn Ventilator Co.*, 317 N.C. 206, 218, 345 S.E.2d 204, 212 (1986) (“The abuse of discretion standard of review is applied to those decisions which necessarily require the exercise of judgment. . . . [T]he reviewing court sits only to insure that the decision could, in light of the factual context in which it is made, be the product of reason.”). “A trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason . . . [or] upon a showing that [the trial court’s decision] was so arbitrary that it could not have been the result of a reasoned decision.” *White*, 312 N.C. at 777, 324 S.E.2d at 833 (citation omitted).

II. Appointment of Arbitrator

Plaintiff contends the trial court abused its discretion in appointing an arbitrator without following the procedural requirements of Section 50-45(c)(1)-(4). We disagree.

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Section 50-45 of our General Statutes, entitled “Appointment of Arbitrators; Rules for Conducting the Arbitration,” states: “Upon the application of a party, the court shall appoint arbitrators . . . [if t]he parties cannot agree on an arbitrator.” N.C. Gen. Stat. § 50-45(b)(3) (2017). In appointing an arbitrator, Section 50-45 provides the trial court with the following guidance:

(c) Arbitrators appointed by the court have all the powers of those arbitrators specifically named in the agreement. In appointing arbitrators, a court shall consult with prospective arbitrators as to their availability and shall refer to each of the following:

- (1) The positions and desires of the parties.
- (2) The issues in dispute.
- (3) The skill, substantive training, and experience of prospective arbitrators in those issues, including their skill, substantive training, and experience in family law issues.
- (4) The availability of prospective arbitrators.

Id. § 50-45(c)(1)-(4). This Statute simply requires the trial court to refer to these four criteria when appointing an arbitrator. *See id.*

Here, Plaintiff petitioned the trial court to appoint an arbitrator because the parties could not agree on an arbitrator for their dispute. *See id.* § 50-45(b)(3). Plaintiff proposed the trial court appoint Judge Hicks; whereas, Defendant requested Judge Stanback. On 24 September 2018, the trial court heard arguments from both

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parties regarding their proposed arbitrators, and on 2 October 2018, the trial court entered its Arbitration Order appointing Judge Stanback.

During the 24 September 2018 hearing, counsel for both parties discussed in depth the four criteria the trial court is to consider when appointing an arbitrator. Specifically, both parties generally agreed that the two issues in dispute were (1) the amount Defendant would receive under the Premarital Agreement and (2) whether Defendant should otherwise be barred from an additional property-settlement payment or spousal support under the Premarital Agreement. *See id.* § 50-45(c)(2) (requiring the trial court to consider the “issues in dispute”). At this hearing, both parties laid out in detail their respective positions and desires regarding the appointment of an arbitrator. *See id.* § 50-45(c)(1) (requiring the trial court to consider the “positions and desires of the parties”). Regarding the third criteria, both parties discussed the qualifications of their respective potential arbitrators. *See id.* § 50-45(c)(3) (requiring the trial court to consider the “skill, substantive training, and experience of prospective arbitrators in [the issues in dispute]”). Plaintiff also presented Judge Hicks’s qualifications and submitted his résumé to the trial court.¹ In addition, the trial court stated: “I will consider any resumés or summaries of experience that either side would like to present.” Lastly, both parties represented to the trial court that their prospective arbitrators had already agreed to arbitrate

¹ It is worth mentioning that Plaintiff’s own counsel specifically referenced the criteria of Section 50-45 to the trial court during this hearing.

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the parties' dispute, thereby satisfying the fourth criteria of the Statute. *See id.* § 50-45(c)(4) (requiring the trial court to consider the "availability of prospective arbitrators").

Consequently, on these facts, we conclude the trial court adequately complied with Section 50-45 for purposes of deciding which of the parties' chosen prospective arbitrators to appoint. Therefore, Plaintiff has failed to show the trial court abused its discretion by appointing Judge Stanback as the arbitrator for the parties' dispute. *See White*, 312 N.C. at 777, 324 S.E.2d at 833 (citations omitted).

Conclusion

Accordingly, for the foregoing reasons, we affirm the trial court's Arbitration Order.

AFFIRMED.

Judges TYSON and MURPHY concur.

Report per Rule 30(e).