

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

CLEVELAND POLICE PATROLMEN'S
ASSOCIATION,

:

Plaintiff-Appellant,

:

No. 109351

v.

:

CITY OF CLEVELAND,

:

Defendant-Appellee.

:

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED

RELEASED AND JOURNALIZED: March 11, 2021

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-19-911950

Appearances:

Zashin & Rich Co., L.P.A., George S. Crisci, and Scott H. DeHart; and Barbara A. Langhenry, Cleveland Director of Law, and William Menzalora, Chief Assistant Director of Law, *for appellee*.

Henry J. Hilow and Marisa L. Serrat, *for appellant*.

MARY J. BOYLE, A.J.:

{¶ 1} Plaintiff-appellant, the Cleveland Police Patrolmen's Association ("CPPA"), appeals the trial court's judgment denying its application to vacate the

arbitration award in *Cleveland v. Cleveland Police Patrolmen's Assoc.*, AAA No. 01-17-003-7910 (Dec. 1, 2018). The CPPA raises one assignment of error for our review: The trial court erred in denying the CPPA's application to vacate.

{¶ 2} After review, however, we find that the trial court lacked jurisdiction over the CPPA's application to vacate the arbitration award and therefore cannot reach the merits of the CPPA's appeal. We affirm the trial court's judgment confirming the arbitration award.

I. Procedural History and Factual Background

{¶ 3} The CPPA and defendant-appellee, the city of Cleveland, are parties to a collective bargaining agreement ("CBA"). Under the agreement, the city and the CPPA must resolve disputes concerning employee discipline through the CBA's grievance procedure, which includes arbitration. In May 2017, the city terminated Timothy Loehmann's employment with the Cleveland Police Department, and the CPPA filed a grievance on his behalf, arguing that the city terminated him without just cause in violation of Article IV of the parties' CBA. The CPPA filed a demand for arbitration, and the parties mutually selected an arbitrator. The matter was heard for two days in January 2018 and two days in July 2018.

{¶ 4} On December 1, 2018, the arbitrator issued a detailed, 36-page decision. The arbitrator dismissed the CPPA's grievance, finding that the city had proven by a greater weight of the evidence that it had just cause to terminate Loehmann's employment.

{¶ 5} Following the arbitrator’s decision and award, the CPPA filed an application to vacate the award, and the city moved to confirm the award in the court of common pleas. The city argued in part that the CPPA’s application to vacate the award was procedurally defective, but the trial court did not address those arguments. After full briefing, the trial court confirmed the award, stating, in part, that “Based upon a review of the record, the court is unable to find any of the factors set forth in R.C. 2711.10(A) through (D) and 2711.11(A) through (C) requiring this court to vacate, modify, or correct the arbitration award[.]”

{¶ 6} The CPPA timely appeals from this judgment.

II. The CPPA’s Application to Vacate the Arbitration Award

{¶ 7} Before we can reach the merits of the CPPA’s appeal, we must first address the city’s arguments that the CPPA’s application to vacate the arbitration award was procedurally defective. The city argues that (1) the CPPA did not timely serve the application to vacate the award on the city’s outside counsel, (2) the CPPA’s initial application to vacate the award did not include adequate legal support and acted as a placeholder, and (3) the CPPA did not submit the items required under R.C. 2711.14 within the three-month statute of limitations. We find that the CPPA failed to serve its application to vacate the arbitration award on the city’s outside counsel, and we therefore need not address the city’s remaining procedural arguments.

{¶ 8} R.C. 2711.13 sets a three-month deadline to file and serve a motion to vacate an arbitration award, and the deadline “is mandatory and jurisdictional.”

Mun. Constr. Equip. Operators' Labor Council v. Cleveland, 197 Ohio App.3d 1, 2011-Ohio-5834, 965 N.E.2d 1040, ¶ 28 (8th Dist.). R.C. 2711.05 provides that “[a]ny application to the court of common pleas under sections 2711.01 to 2711.15, inclusive, of the Revised Code, shall be made and heard in the manner provided by law for the making and hearing of motions.” See also *Cleveland v. Laborers Internatl. Union Local 1099*, 8th Dist. Cuyahoga No. 92983, 2009-Ohio-6313, ¶ 18-21 (trial court lacked jurisdiction to vacate or modify an arbitration award where the city failed to serve its application to vacate the award pursuant to R.C. 2711.13 because it did not comply with Civ.R. 5 for service of motions). Pursuant to Civ.R. 5(B)(1), if a party is represented by an attorney, a motion (including a motion to vacate) “shall be made on the attorney unless the court orders service on the party.” Here, the CPPA served the city’s law department instead of the city’s outside counsel, in violation of Civ.R. 5(B)(1). The CPPA therefore failed to perfect service within three months, and pursuant to R.C. 2711.13, the trial court lacked jurisdiction to consider the motion to vacate.

{¶ 9} The CPPA argues that (1) R.C. 2711.13 gave it the option to serve either the city or its outside counsel, and (2) its service on the city’s law department was sufficient because the law department is the city’s attorney and “maintains a role in all work it subcontracts out to other law firms.”

{¶ 10} We disagree that R.C. 2711.13 gave the CPPA the option to serve the city directly instead of its outside legal counsel. R.C. 2711.13 states:

After an award in an arbitration proceeding is made, any party to the arbitration may file a motion in the court of common pleas for an order vacating, modifying, or correcting the award as prescribed in sections 2711.10 and 2711.11 of the Revised Code.

Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is delivered to the parties in interest, as prescribed by law for service of notice of a motion in an action. For the purposes of the motion, any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

{¶ 11} Even though R.C. 2711.13 provides that the motion “must be served upon the adverse party or his attorney,” it also states that service must be done “as prescribed by law for service of notice of a motion[.]” The Ohio Supreme Court has made clear that R.C. 2711.13 “requires service as provided in Civ.R. 5(B).” *Cox v. Dayton Pub. Schools Bd. of Edn.*, 147 Ohio St.3d 298, 2016-Ohio-5505, 64 N.E.3d 977, ¶ 16. The Supreme Court held that when a party is represented by an attorney, service of a motion to vacate an arbitration award “must be made on the attorney unless the court orders service on the party.” *Id.*, quoting Civ.R. 5(B)(1).

{¶ 12} In *Cox*, the plaintiff requested the clerk of courts serve the defendant with her motion to vacate, which it did on March 10, 2014. The plaintiff also sent her motion via certified mail to defendant’s attorney on March 11, 2014, which was received on March 13, 2014. The Supreme Court found that “[b]ecause the [defendant] was represented by counsel, service was accomplished on March 11, 2014.” *Id.*

{¶ 13} We also disagree that service on the city’s law department satisfied Civ.R. 5(B)(1). Although the city’s law department provides legal services for the city, the CPPA acknowledges that the city hires other law firms. For this arbitration, outside counsel represented the city. The city’s outside counsel participated in the four-day arbitration hearing, and the arbitrator’s decision identified outside counsel as “appear[ing]” for the city. The arbitrator’s decision does not state that a representative from the city’s law department participated in the arbitration hearing. The trial court’s docket also identifies the city’s law department as the “defendant” in this case and lists separate outside counsel for the city as “attorney.” We have previously found that when a city hires outside counsel, a party serving an application to vacate an arbitration award must serve the city’s outside counsel. *See Mun. Constr. Equip. Operators’ Labor Council*, 197 Ohio App.3d 1, 2011-Ohio-5834, 965 N.E.2d 1040, at ¶ 24 (upheld the trial court’s judgment striking a union’s application to vacate an arbitration award because the application was not served for the purposes of R.C. 2711.13 until it was served on the city’s outside counsel over three months after the award, as opposed to earlier service on the city directly).

{¶ 14} Here, the arbitrator issued his arbitration award on December 1, 2018. The CPPA filed its application to vacate the arbitration award on March 1, 2019, and its certificate of service states that the CPPA served the application that day to “all parties.” The certificate of service did not indicate that the CPPA also served the city’s outside counsel. A few days later, the clerk of courts served the application to vacate the arbitration award on the city’s law department. The record

reflects that the CPPA did not serve the city's outside counsel with its application to vacate the arbitration award at all, let alone within three months of the December 1, 2018 award. The CPPA failed to comply with Civ.R. 5(B)(1) and therefore did not satisfy R.C. 2711.13's three-month deadline.

{¶ 15} The trial court lacked jurisdiction over the CPPA's motion to vacate the arbitration award, but the trial court did have jurisdiction over the city's motion to confirm the award. Pursuant to R.C. 2711.09, if party moves to confirm an arbitration award any time within one year after the award, the "court shall grant" the motion to confirm. The purpose of a motion to confirm an arbitration award "is to enable parties to an arbitration to obtain satisfaction of the award." *Warren Edn. Assn. v. Warren City Bd. of Edn.*, 18 Ohio St.3d 170, 174, 480 N.E.2d 456 (1985). Therefore, "[t]he common pleas court has no discretion [to deny a motion to confirm] if the motion is made within one year but *must* grant the confirmation unless a timely motion to vacate or modify has been made and grounds for modification or vacation are shown." (Emphasis sic.) *Russo v. Chittick*, 48 Ohio App.3d 101, 104, 548 N.E.2d 314 (8th Dist.1988), citing *Warren* at 174.

{¶ 16} The city filed its application to confirm the arbitration award and served its application on the CPPA's counsel on April 8, 2019, well within one year of the December 1, 2018 award. The CPPA failed to comply with R.C. 2711.13, and therefore no timely motion to vacate was pending before the trial court.

{¶ 17} A trial court has no jurisdiction to vacate, modify, or correct an arbitration award where a party argues to vacate the award in response to a motion

to confirm the award without a separate, timely motion to vacate. *FOP, Ohio Labor Council v. Halleck*, 143 Ohio App.3d 171, 175, 757 N.E.2d 831 (7th Dist.2001) (reversing the trial court's judgment vacating an arbitration award where the appellee did not file a motion to vacate but "only filed an answer to appellant's motion to confirm"); *Brooklyn Estates Homeowner's Assn. v. Miclara, LLC*, 2018-Ohio-2012, 113 N.E.3d 9, ¶ 13-15 (4th Dist.2018) (trial court lacked jurisdiction to vacate an arbitration award where the appellee filed only an answer to appellant's motion to confirm instead of a motion to vacate).

{¶ 18} Here, the parties' briefing on the CPPA's motion to vacate and the city's motion to confirm were intertwined, but without a timely motion to vacate the award, R.C. 2711.09 required the trial court grant the city's motion to confirm the award. Accordingly, we must follow well-established Ohio law and find that the trial court lacked jurisdiction over the CPPA's application to vacate the arbitration award. We therefore are unable to reach the merits of the CPPA's appeal and overrule its assignment of error.

{¶ 19} Judgment affirmed.

It is ordered that appellee recover from appellant the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY J. BOYLE, ADMINISTRATIVE JUDGE

EILEEN A. GALLAGHER, J., and
EILEEN T. GALLAGHER, J., CONCUR